



Airport Law Alert – EPA Announces PFAS Action Plan

02.14.19

EPA Announces Per- and Polyfluoroalkyl Substances (PFAS) Action Plan

Today, the United States Environmental Protection Agency (EPA) announced and published its nationwide Per- and Polyfluoroalkyl Substances (PFAS) Action Plan. As airport sponsors are likely aware, FAA requirements compel Part 139 sponsors to use firefighting foam that contains PFAS, but doing so can release more of the chemicals into stormwater, groundwater, and soils. A recent FAA CertAlert provided guidance on ways to mitigate the risks of PFAS contamination at airports, but there has been no formal regulatory action by FAA yet.

The EPA Action Plan is a comprehensive document summarizing all of EPA's prior and ongoing actions with respect to research on, education about, and regulation of PFAS. Of particular interest to airport sponsors, EPA announced that it "has initiated the regulatory development process for listing PFOA and PFOS as CERCLA hazardous substances." This process is already underway, and once completed, it would give EPA additional authority "to require responsible parties to carry out and/or pay for response actions." In the meantime, EPA expects to continue using its CERCLA and other federal response authorities to investigate sites when needed, and to continue supporting state and local authorities in enforcement of cleanup and response actions under state law. Former and current PFAS users should carefully monitor these developments.

EPA also noted that it intends to publish "interim cleanup recommendations" to address contaminated groundwater and that it is currently conducting research "to identify performance and costs associated with treatment and remediation approaches to address PFAS in the environment." Both issues are important for airports, as they will likely give some insight into EPA's expectations and cost estimates with respect to future potential cleanup actions. EPA expects that both this guidance and the results of the research will be published in 2019.

The Action Plan discusses a wide variety of other strategies and topics, including setting new drinking water standards for certain PFAS chemicals, conducting various research and outreach activities, and cooperating with other federal agencies (though FAA is not specifically mentioned).

For more information about the Action Plan or any other PFAS-related issues, please contact Peter Kirsch or Polly Jessen.

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