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HCMP ENVIRONMENTAL UPDATE: **EPA Says Almost No Amount of PFOA or PFOS in Drinking Water is Safe**

PFOA and PFOS Are Unsafe to Drink

On June 15, 2022, the EPA released interim updated drinking water health advisories for four chemicals belonging to the per- and polyfluoroalkyls substance (**"PFAS"**) chemical family, including perfluorooctanoic acid (**"PFOA"**) and perfluorooctane sulfonic acid (**"PFOS"**). The updated health advisory levels warn that negative health effects may occur even where PFOA or PFOS concentration levels in drinking water are near zero. The announcement comes as part of the EPA's PFAS Strategic Roadmap.

The health advisories are "interim," meaning the EPA plans to establish National Primary Drinking Water Regulations ("**NPDWR**") for the chemicals in the future. NPDWR are legally enforceable primary standards and treatment techniques that protect public health by limiting the levels of contaminants in public drinking water systems. EPA expects to propose NPDWR for the chemicals as soon as Fall 2022, and will continue to assess whether other PFAS chemicals should likewise be subject to strict NPDWR criteria.

What Are PFAS?

PFAS are long lasting chemicals that are slow to break down, and have been widely used in the United States, and especially in Washington State, as a non-stick hydrophobic and oleophobic material. Due to these qualities, PFAS has been used to create a wide range of products including non-stick cookware, stain and water-repellant coatings, food packaging, and certain shampoo, dental floss and cosmetics. In addition, PFAS also have fire-retardant qualities, and have been commonly used in aqueous film-forming foams (**"AFFFs"**) used to fight flammable liquid-based fires, including fires involving grease, gasoline, and jet fuel. Because of this, AFFFs using PFAS may be found at a vast array of locations, including airports, military bases, chemical plants, shipyards, firefighting training facilities, and oil refineries. Due to the near ubiquitous use of PFAS and the chemical's slow degradation, PFAS can be found in our water, soil, air, and even food.

While research into the dangers of PFAS is still ongoing, current research indicates that exposure to PFAS can adversely affect human health. Peer-reviewed scientific studies show exposure to PFAS, in varying amounts, can lead to a variety of health problems including: (1) developmental effects or delays in children; (2) increased risk of cancers, including prostate, kidney, and testicular cancer; (3) reduced ability of the body's immune system to fight infections, including decreased vaccine response; (4) increased cholesterol levels and/or risk of obesity. These health effects represent only a select group of adverse effects studies have attributed to PFAS exposure.

What's Next?

The updated drinking water health advisories for PFOA and PFOS represent one step in a larger EPA plan to: (1) **Research** – research the effects of PFAS exposure on human and ecological health; (2) **Restrict** – proactively prevent PFAS from entering into the air, land, and water in harmful concentrations; and (3) **Remediate** – broaden and accelerate the cleanup of PFAS contamination. This plan is more thoroughly outlined in the EPA's PFAS Strategic Roadmap and Commitments to Action 2021-2024. Significantly, the PFAS Strategic Roadmap includes plans

to propose both PFOA and PFOS are added to the list of hazardous substances under the Comprehensive Environmental Response, Compensation and Liability Act (**"CERCLA"**), also known as the Superfund law. EPA anticipates issuing a final rule to codify the proposed CERCLA hazardous substances listing as soon as summer 2023.

Designating PFOA and PFOS as hazardous substances would have significant impacts on a wide range of industries and property owners, including those who have already entered into settlement agreements with the EPA for CERCLA liabilities. If PFOA and PFOS are designated as hazardous substances, current and former "owners" and "operators" of properties or facilities contaminated with the chemicals will be subject to significant strict, retroactive, and joint and several liability as "responsible parties" under CERCLA.

The Washington State Department of Ecology is also investigating the harmful effects of PFAS on human health and the environment, and has already designated the PFAS chemical family as hazardous substances under the Washington State Model Toxics Control Act (**"MTCA"**), Washington's version of CERCLA. Ecology has not yet set cleanup standards for PFAS compounds and has not indicated when they plan to release such standards. However, like CERCLA, current and former "owners" and "operators" of properties or facilities contaminated with PFAS in amounts above the cleanup standard will be subject to significant strict, retroactive, and joint and several liability as "responsible parties" under MTCA.

How Does This Affect Me?

Property owners, potential purchasers, and potential sellers, should be aware of the potentially significant liability risks associated with purchasing a property contaminated with PFAS. Current or potential property owners, purchasers, and sellers should consider obtaining environmental legal help to assess these liability risks and strategize how best to minimize such risks in real estate transactions.

The Environmental and Real Estate attorneys at Hillis, Clark, Martin & Peterson have years of experience negotiating real estate transactions involving contaminated or potentially contaminated properties, and working with federal and state agencies to address cleanups under both CERCLA and MTCA. Please contact us if we can assist you in developing and executing a strategy to assess liability risks associated with PFAS or other contaminants.

Best regards,

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