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# PFAS = More Risks + More Money (and Where to Find the Dollars)


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# About Us

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# Presenter



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# Agenda

1. What is PFAS?
2. U.S. EPA – NPDWR
3. U.S. EPA – CERCLA Rules
4. U.S. EPA – RCRA Proposed Rule
5. U.S. EPA – Interim PFAS Destruction & Disposal Guidance
6. State Actions on PFAS
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# What is PFAS?
# Per- and Polyfluoroalkyl

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PFAS are synthetic, manufactured chemicals

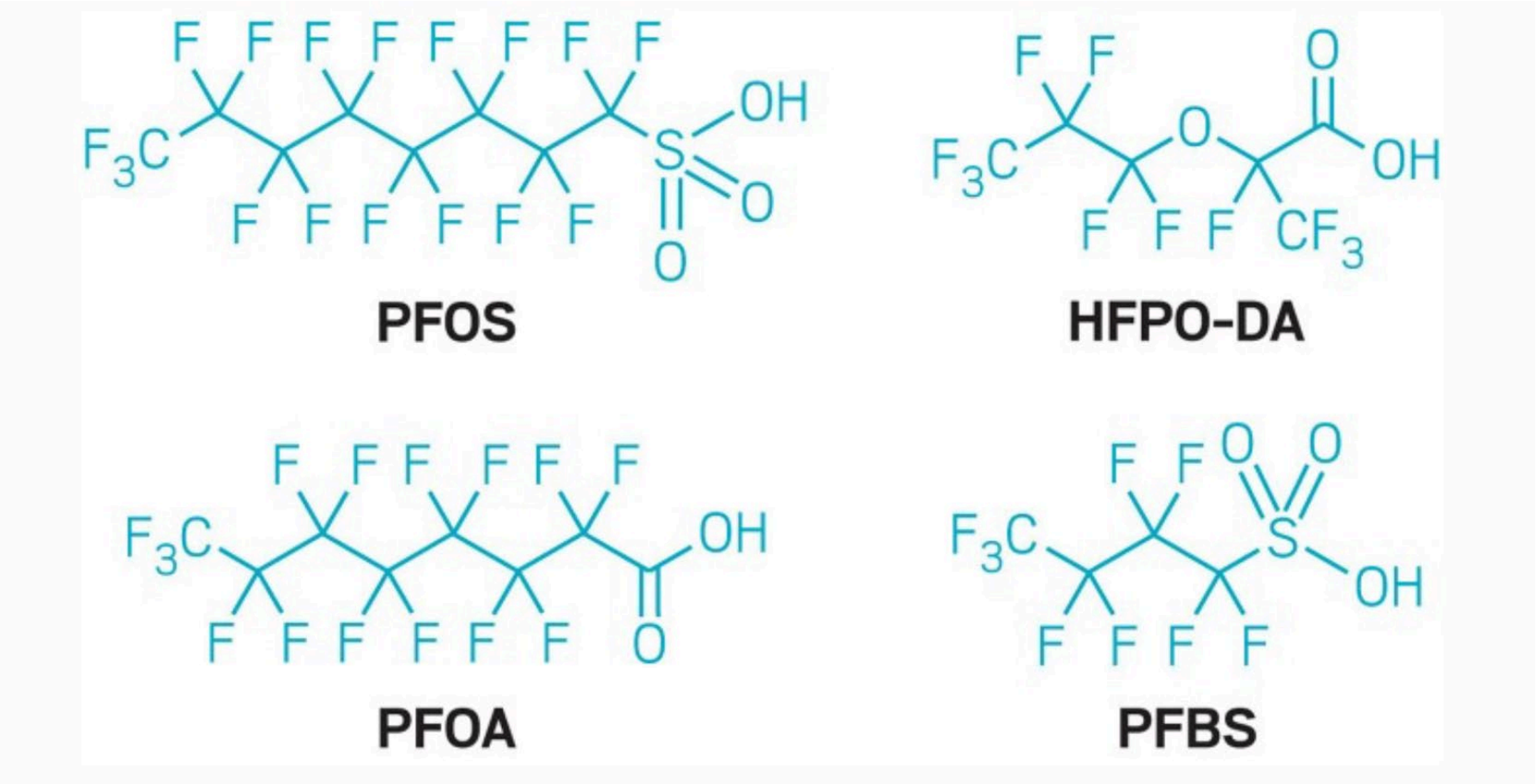
There are over 12,000 different chains of PFAS

PFAS have been used in products for consumers and industry since the 1940s

The synthetic nature of PFAS make the chemical difficult to breakdown and can build up in people, animals, and the environment over time

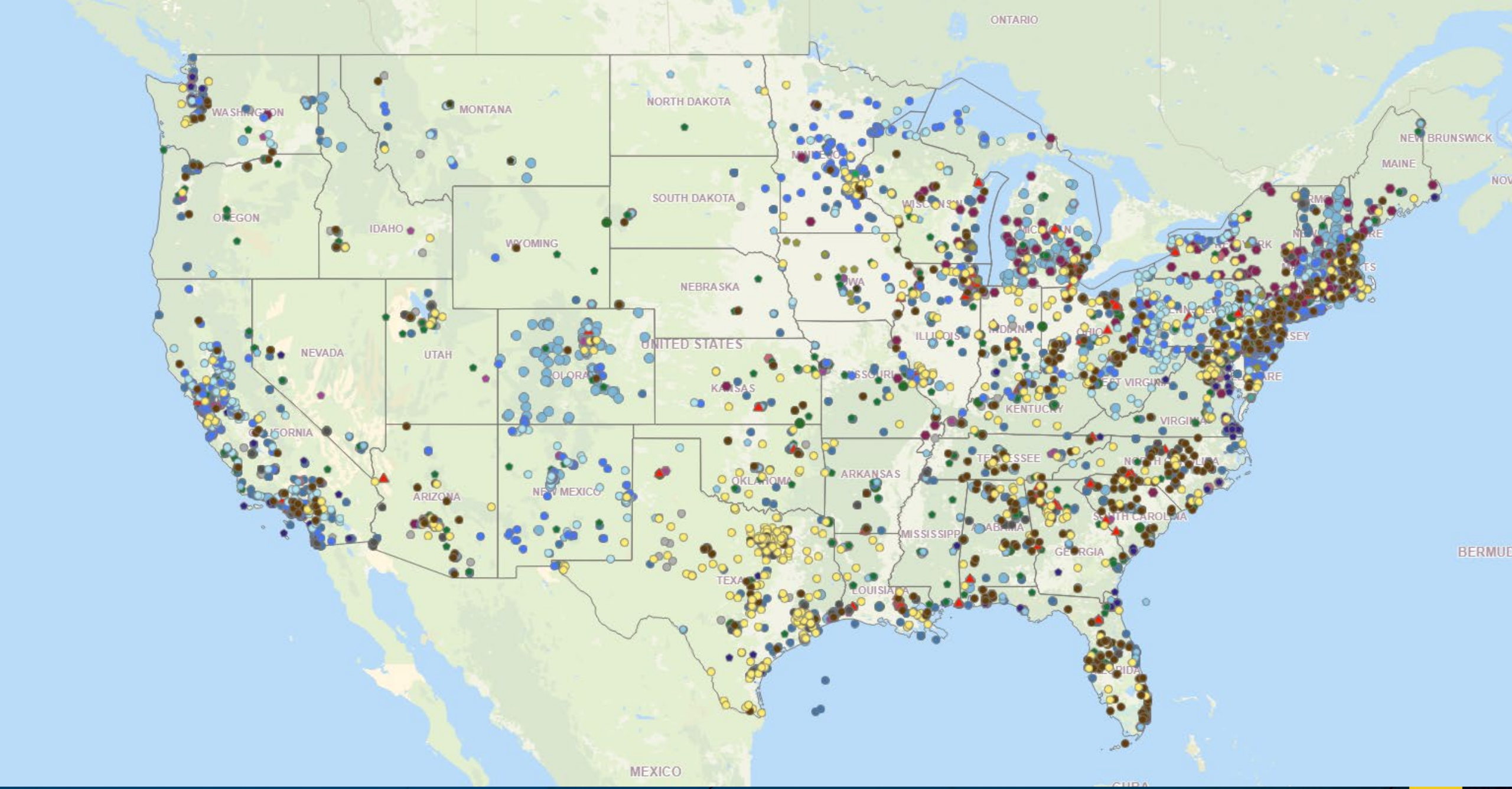
Despite no longer being developed in the U.S., PFAS is still imported in products and in manufacturing processes

# The Most Common(/Known) PFAS






Source: Waterman Engineers – Australia


ONTARIO
WASHINGTON
MONTANA
NORTH DAKOTA
SOUTH DAKOTA
OREGON
IDAHO
WYOMING
NEBRASKA
NEVADA
UTAH
UNITED STATES
KANSAS
ILLINOIS
INDIANA
KENTUCKY
VIRGINIA
ARKANSAS
OKLAHOMA
ARIZONA
NEW MEXICO
MISSISSIPPI
GEORGIA
LOUISIANA
NEW BRUNSWICK
MAINE
MEXICO

# U.S. EPA – National Primary Drinking Water Regulation (NPDWR)

# Maximum Contaminant Level Goal (MCLG) and Maximum Contaminant Level (MCL)

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**MCLG**

MCLGs are nonenforceable maximum contaminant level goal

The MCLG is to be at a level which there are no known or anticipated adverse health effects occur and allowing for an adequate margin of safety

**MCL**

MCL is an enforceable limit for a contaminant in public water supplies

The Safe Drinking Water Act (SDWA) requires the EPA to set the MCL as close to the MCLG as feasible – while also taking into consideration the cost for treatment

# Regulatory Levels

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| Chemical | Maximum Contaminant Level Goal (MCLG) | Maximum Contaminant Level (MCL) |
|---|---|---|
| PFOA | 0 | 4.0 ppt |
| PFOS | 0 | 4.0 ppt |
| PFHxS | 10 ppt | 10 ppt |
| HFPO-DA (GenX chemicals) | 10 ppt | 10 ppt |
| PFNA | 10 ppt | 10 ppt |
| Mixture of two or more: PFHxS, PFNA, HFPO-DA, and PFBS | Hazard Index of 1 | Hazard Index of 1 |

*Compliance is determined by running annual averages at the sampling point

# Maximum Contaminant Levels (MCLs)

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- EPA set the final MCLs for PFOA and PFOS at 4 ppt
- EPA also set a MCL that uses a Hazard Index approach for any combination of PFHxS, GenX Chemicals, PFNA, and PFBS
- This means that the concentration of these combined compounds will be used to determine whether the drinking water satisfies the MCLs
- These nationwide limits are lower than any current state limits

# Public Water System Requirements Under the NPDWR

- Three (3) years to reduce the levels of these PFAS in drinking water
- Monitor for these six (6) PFAS Chains
- Notify the public of the levels of these PFAS

# U.S. EPA – CERCLA Rules

# Comprehensive Environmental Response, Compensation, and Liability Act – CERCLA

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CERCLA aka Superfund

§ 102(a) – Permits the EPA Administrator to designate new hazardous substances

§ 107 – Defines the four categories for liability

- Current Owners/Operators
- Former Owners/Operators
- Arrangers or Generators
- Transporters

Liability = Strict, Joint and Several Liability

Follows “polluter pays” principle

# CERCLA Final Rule

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## Final rule designated PFOA and PFOS including their salts and structural isomers as Hazardous Substances

- First time EPA designated a new hazardous substance with rulemaking process under CERCLA

## EPA Identifies Five Broad Categories of Entities Potentially Affected by this Action

- PFOA and/or PFOS manufacturers (including importers and importers of articles);
- PFOA and/or PFOS processors;
- Manufacturers of products containing PFOA and/or PFOS;
- Waste management and wastewater treatment facilities.

## EPA set a one (1) pound Reporting Quantity or more in a 24-hour period

# CERCLA – Advanced Notice of Proposed Rulemaking

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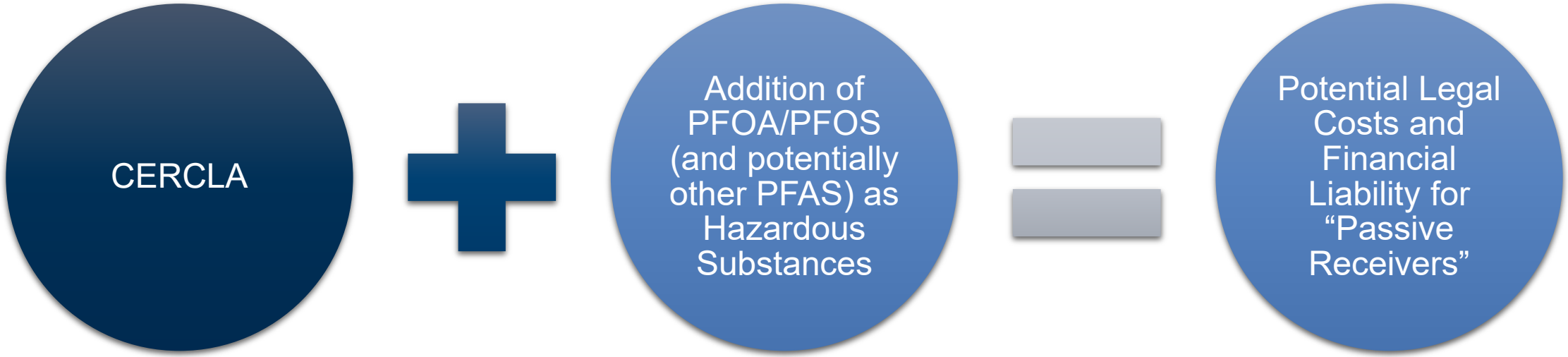
First step to designate seven (7) PFAS chains and their salts and structural isomers as hazardous substances under CERCLA

- PFBS
- PFHxS
- PFNA
- HFPO-DA (aka GenX)
- PFBA
- PFHxA
- PFDA

Aims to designate PFAS as a class as hazardous substances under CERCLA

EPA previously planned to issue a proposed in April 2025, however, the proposed rule has been delayed indefinitely

# What does all of this mean?



# U.S. EPA – Proposed RCRA Rules

# Resource Conservation and Recovery Act (RCRA)

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Governs the disposal of solid and hazardous waste

Signed into law in 1976, RCRA was an amendment to the Solid Waste Disposal Act of 1965

Subtitle C - Hazardous Waste

Subtitle D – Solid Waste

40 CFR Part 260 - Defines Potential Responsible Parties

- Generators
- Transporters
- Those who Treat or Store or Dispose of Hazardous Waste

# RCRA – Proposed Rule

EPA proposed to designate 9 PFAS Chains and their salts and isomers as Hazardous Constituents

- PFOA
- PFOS
- PFBS
- Gen-X
- PFNA
- PFHxS
- PFDA
- PFHxA
- PFBA

Hazardous Constituent is a chemical that is known to have a toxic, carcinogenic, mutagenic, or teratogenic effect on human or other life forms

EPA sees this step as necessary to one day list these chains as hazardous waste

# U.S. EPA – Interim PFAS Destruction & Disposal Guidance

# 2024 Interim Guidance on the Destruction and Disposal of PFAS

Provides recommendations for managers of PFAS and PFAS-containing materials to protect human health and the environment

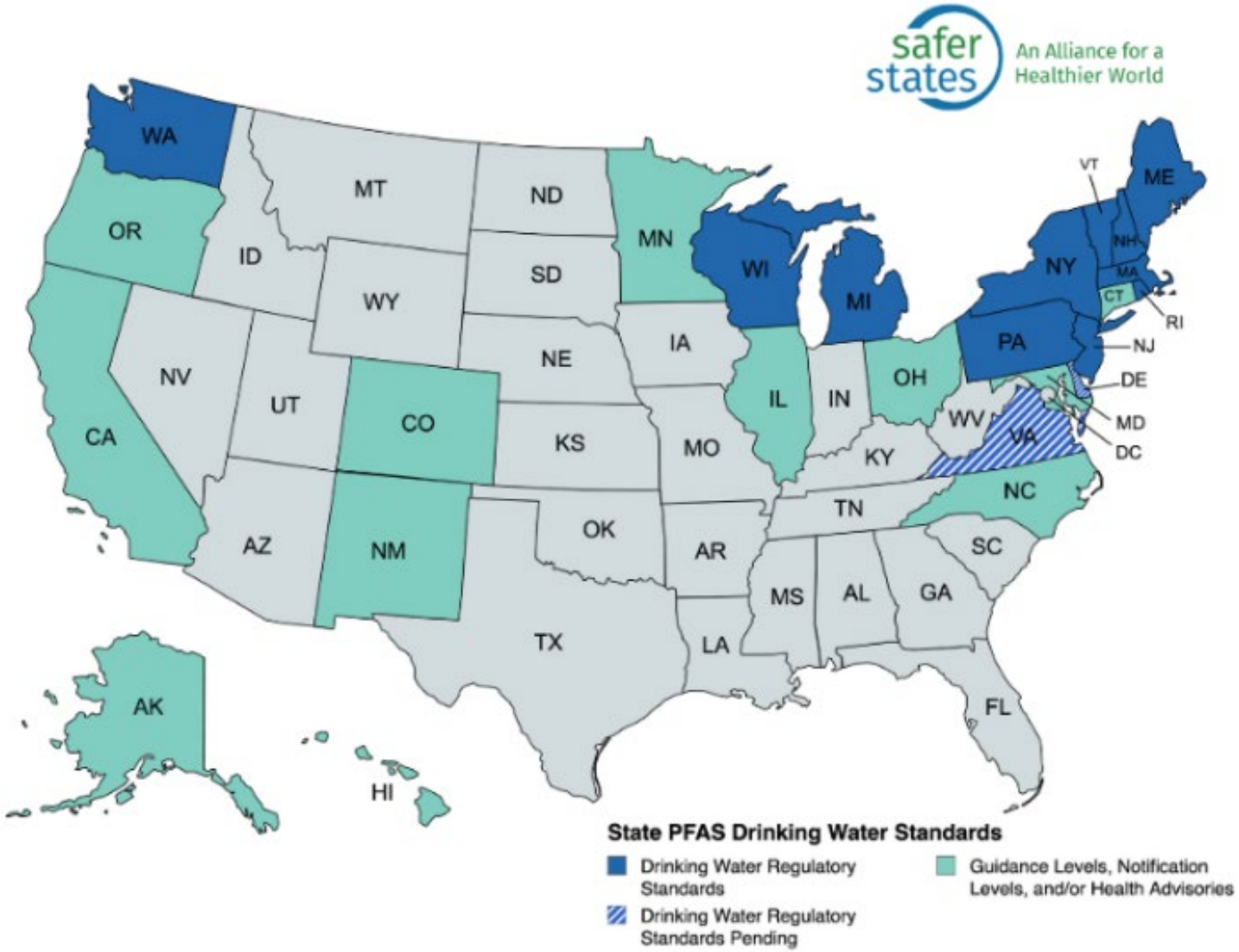
Covers three currently used D&D technologies:

- Underground injection (UIC)
- Landfills
- Thermal treatment under certain conditions, which includes incineration

Comments are due **October 15, 2024**

# State Actions on PFAS

# State-Level Landscape




11 states (ME, MA, MI, NH, NJ, NY, PA, RI, VT, WA, and WI) have standards such as MCLs for certain PFAS in drinking water

Maine has an interim standard of 20ppt that is in effect and enforceable while they go through rule-making to establish final PFAS MCLs

12 additional states (AK, CA, CT, CO, HI, IL, MD, MN, NC, NM, OH and OR) have adopted guidance, health advisory, or notification levels for certain PFAS chemicals

# Legal Landscape

## Litigation

- NPDWR and CERCLA rules both being challenged in court
- As of April 2024, 30 US State Attorneys General have initiated litigation against PFAS manufacturers for PFAS contamination

## PFAS Settlements

- 3M
- Dupont
- Tyco
- BASF

# Federal Funding – Show Me the Money

## Bipartisan Infrastructure Law (BIL)

- Dedicates $9 billion specifically to invest in communities with drinking water impacted by PFAS and other emerging contaminants
- $1B of these funds can be used to help private well owners
- An additional $12 billion in BIL funding is available for general drinking water improvements

## State Revolving Funds (SRF)

- Drinking Water SRF
- Clean Water SRF

## Superfund Trust Fund

- Faces significant funding challenges

## Future Congressional Actions to Provide Funding to Address PFAS

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# Questions?


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