

## PFAS GenX Health Advisories Challenged In Court

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On June 15, 2022, the EPA issued Health Advisories (HAs) for five specific PFAS, including GenX PFAS chemicals. The PFAS GenX health advisories set levels at 10ppt for this chemical group. On July 13, 2022, The Chemours Co. filed a [petition](#) in the Third Circuit challenging the validity of the EPA's GenX HA. The company alleges that the EPA acted outside of its bounds of authority, as well as arbitrarily and capriciously, among other arguments. Other industries that will be impacted by upcoming EPA PFAS regulations will closely follow the lawsuit as it makes its way through court, as it may provide predictive indicators of arguments that will unfold as the EPA's PFAS regulations increase.

### **PFAS GenX Health Advisories**

In October 2021, the EPA released its [PFAS Roadmap](#), which stated explicit goals and deadlines for over twenty action items specific to PFAS. As part of the Roadmap, the EPA pledged to re-assess the existing Health Advisories (HAs) for PFOA and PFOS, as well as establish HAs for PFBS and GenX chemicals. In June 2022, the EPA fulfilled its promise on all fronts when it set HAs for PFOA (interim), PFOS (interim), PFBS (final) and GenX (final). While not enforceable levels for PFAS in drinking water, the EPA's PFAS Health Advisories are nevertheless incredibly significant for a variety of reasons, including influence on future federal and state drinking water limits, as well as potential impacts on future PFAS litigation.

The levels set by the EPA's PFAS Health Advisories were as follows:

PFOA	004 ppt
PFOS	02 ppt
GenX	10 ppt
PFBS	2,000 ppt

### **Chemours Challenge To GenX Health Advisories**

Chemours is challenging the EPA's PFAS GenX Health Advisories primarily on the grounds that the HAs are "arbitrary and capricious." The company alleges that the HAs are arbitrary and capricious because (1) they incorporated toxicity assumptions that deviate from the EPA's own standard methods; and (2) "EPA incorporated grossly incorrect and overstated exposure assumptions?in

essence, EPA used the wrong chemical when making its exposure assumptions, thereby resulting in a significantly less tolerant health advisory for [GenX] than is warranted by the data. In addition, Chemours argues that the EPA failed to go through the necessary public comment period before issuing its final GenX HA, and that in creating the GenX HA, the EPA exceeded its authority under the Safe Drinking Water Act.

## **Conclusion**

Now more than ever, the EPA is clearly on a path to regulate PFAS contamination in the country's water, land and air. The EPA has also for the first time publicly stated when they expect such regulations to be enacted. These regulations will require states to act, as well (and some states may still enact stronger regulations than the EPA). Both the federal and the state level regulations will impact businesses and industries of many kinds, even if their contribution to drinking water contamination issues may seem on the surface to be de minimus. In states that already have PFAS drinking water standards enacted, businesses and property owners have already seen local environmental agencies scrutinize possible sources of PFAS pollution much more closely than ever before, which has resulted in unexpected costs. Beyond drinking water, though, the EPA PFAS Roadmap shows the EPA's desire to take regulatory action well beyond just drinking water, and companies absolutely must begin preparing now for regulatory actions that will have significant financial impacts down the road.

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