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Making Waves: Midterms Turn the PFAS Pool Blue

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By: David H. Quigley, Samantha Z. Purdy, Shivani Swami (Senior International Law Advisor)

The midterm results delivered new or stronger Democratic majorities in a number of statehouses, raising the question of what the "blue wave" means for state per- and polyfluoroalkyl substances (PFAS) policy. We expect that more states will enter the space, and the likeliest candidates are not hard to identify. We are looking at those states where previously introduced PFAS-in-products bills stalled because of partisan divides, such as Michigan and Pennsylvania. In both states, prior efforts that stalled may be reinvigorated since one party controls all branches of government. With respect to newcomers, we are looking to states with legacy contamination (think the Rust Belt) and manufacturing, as in North Carolina and Wisconsin. Indeed, the North Carolina Department of Environmental Quality is already pressing Chemours to accelerate and broaden its response to PFAS contamination from the Fayetteville Works facility. Other states may start with drinking water, cleanup and cost recovery rather than product bans, although product restrictions could follow as regulators learn from early movers' implementation challenges.

Up a level in Washington, D.C., we expect the wave will bring heightened oversight of the Environmental Protection Agency (EPA), particularly where the administration has rolled back federal climate, air, water and public health regulations. PFAS may be a specific target to the extent Congress views EPA as a slow-walking PFAS regulatory action (although PFAS generally remain an area of some bipartisan agreement). That bipartisanship will be tested on the House PFAS Task Force, which must fill the seats of Republican co-chairs who lost re-election bids last week. In the Senate, the new chair of the Environment and Public Works Committee likely will be Sen. Jeff Merkley (D-OR), who, as outgoing ranking member of the Chemical Safety Subcommittee, opposed EPA's rollback of federal PFAS drinking water limits, criticized

the low-volume exemptions for new PFAS chemicals, and pressed for faster cleanups at military installations and tighter limits on toxic chemicals in consumer products and food packaging. Whether the new Congress tackles PFAS legislatively remains to be seen, though we expect some form of agreement on passive receiver protections. We expect a vigorous debate on federal harmonization with respect to extended producer responsibility, as well.

Stay tuned to follow related developments!

Categories

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