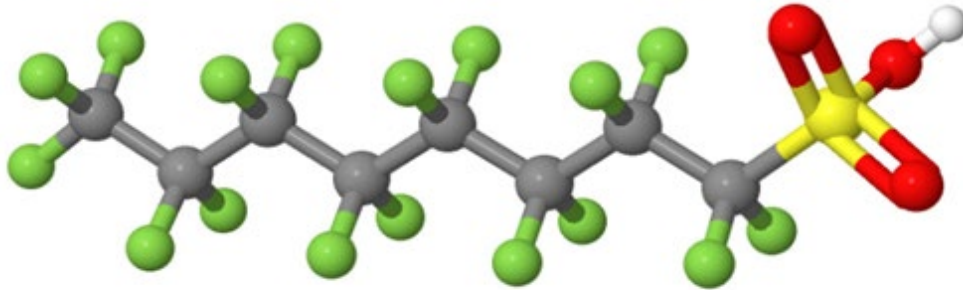


Fully fluorinated
carbon-chain "tail"

Functional
group



e.g. Per-fluorinated - PFOS



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PFAS Legal Risks, 2024: Will Disclosure Mandates and New Rules Widen the Litigation Landscape

January 30, 2024

This presentation is intended for the general information of individuals and organizations on matters of current interest. It is not legal advice. Participants should not act on the information in this presentation without professional counsel. Participating in or viewing this presentation is not intended to establish and does not establish an attorney/client relationship with Thompson Hine LLP.

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Presenters



Joel D. Eagle



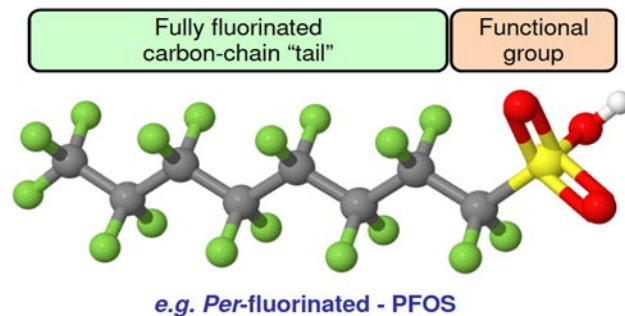
James C. Fraser



William J. Hubbard

Turbulence Ahead: Keep your Seatbelts PFAS-tened in 2024

- What are PFAS – “Forever Chemicals” – **NOT ALL THE SAME**
- EPA and state statutory, regulatory and guidance
- PFAS in the environment
- PFAS in Products
- A Word on ***Chevron*** Deference
- Litigation Updates and Risk Mitigation
- Strategies and best practices



Key Takeaways and Recommendations

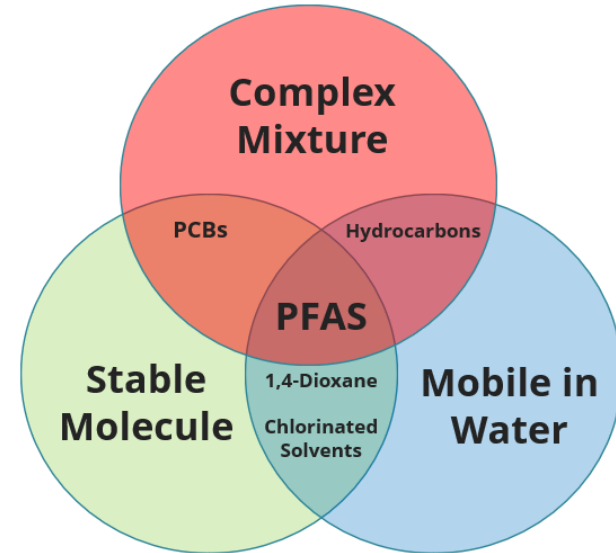
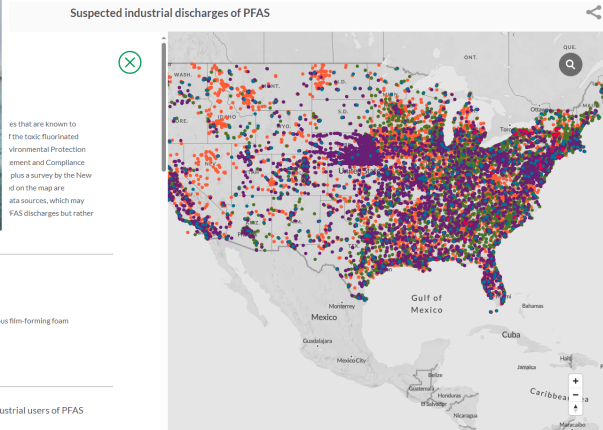


- The tip of the iceberg (*is way out of the water*) – environmental, product regulation, litigation, toxicity
- Stay current on changes – **KNOW YOUR JURISDICTION**
- Proactive v. reactive decisions – evaluate risks
- Conduct investigations under A/C privilege
- Public relations & Communications: Risk management

PFAS are UBIQUITOUSTM

Alarming levels of PFAS in Norwegian Arctic ice pose new risk to wildlife

Oxford University-led study detects 26 types of PFAS compounds in ice around Svalbard, threatening downstream ecosystems



From: Groundwater and PFAS - NGWA

Source: https://www.ewg.org/interactive-maps/2021_suspected_industrial_discharges_of_pfas/map/

PFAS in Modern Society

- Class B aqueous film-forming foams (AFFF)
- Non-stick coatings (e.g. Teflon™)
- Stain treatments for fabric (e.g. Scotchguard™)
- Stain treatments for carpet (e.g. Stainmaster™)
- Waterproof/breathable clothing (e.g. Gore-Tex)
- Food packaging (popcorn bag, pizza boxes, fast food containers, many other food packaging)
- Car wax
- Photographic anti-reflective coatings
- Aerospace/Aviation Products/High performance plastics
- Chemical and temperature resistant plastics and tubing (e.g. Teflon™ tubing)
- Mist-suppressant foams for electroplating
- Cosmetics, shampoos, conditioners, hand creams, sunscreens, toothpaste, dental floss, shaving cream, nail polish, lipstick, eyeliner, mascara

Types of PFAS Liability Risks

PFAS manufacturers

PFAS users in manufacturing

Manufacturers using PFAS without knowing

Municipalities – water treatment

AFFF Storage, use and disposal

PFAS migration to your property

Drinking water / air deposition

Vapor Intrusion



Biden/Harris Administration on PFAS



- ✓ **Biden Environmental Justice Plan:** Tackle water pollution in a **science-based manner**.... *“Instead of making empty promises with no follow-through, **Biden will tackle PFAS** pollution by **designating PFAS as a hazardous substance**, setting **enforceable limits** for PFAS in the Safe Drinking Water Act, prioritizing **substitutes** through procurement, and accelerating **toxicity studies** and research on PFAS.”*
- ✓ **EPA PFAS Strategic Roadmap:** Federal PFAS framework
- ✓ **FY24-27 National Enforcement and Compliance Initiative (Aug. 2023) – “Addressing Exposure to PFAS:”** Achieve site characterization, control ongoing releases that pose a threat to human health and the environment, ensure compliance with permits and other agreements (e.g., Federal Facility Agreements) to prevent and address PFAS contamination, and address endangerment issues as they arise....AND more enforcement starting FY2025.



EPA PFAS Strategic Roadmap (2021-2024)

The Three “Rs” – Cradle to Grave Approach

Research:

- R&D for exposures and toxicity, individual PFAS

Restrict:

- Use all available authorities, establish voluntary programs, prevent or minimize discharges

Remediate:

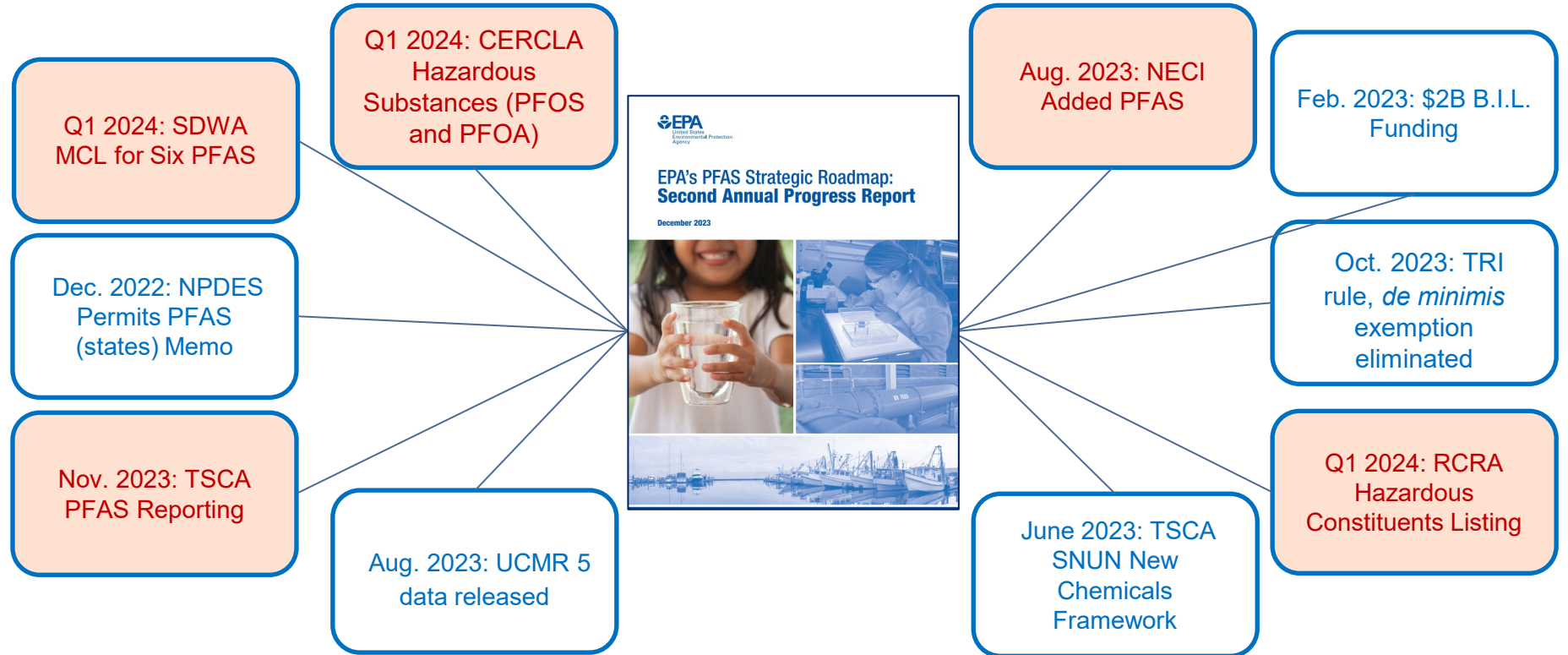
- Harmonize actions under all authorities, maximize PRP performance and funding, focus on EJ, accelerate new treatment, destruction, disposal and mitigation technologies.



PFAS Strategic Roadmap:
EPA's Commitments to Action
2021–2024



USEPA – PFAS Strategic Roadmap (Recent Actions)



CERCLA Hazardous Substances

September 2022, EPA issued a proposal to designate PFOS and PFOA as CERCLA “hazardous substances” 87 Fed. Reg. 54416

Final Rule Aug. 2023? → Q1 2024 (add more PFAS?)

Considering 7 other PFAS (ANPR 2023)

Concern that public utilities could be liable for PFAS passing through systems under CERCLA polluter pays principle.

Water coalitions urge Congress to provides statutory PFAS CERCLA liability exemption for PFAS that travels through their systems

EPA Enforcement Discretion Policy (March 2023 Listening Sessions)



PFAS – Superfund

CERCLA hazardous substances (J&S liability)

Reporting requirements (releases)

Five-year reviews

104(e) information requests

Reopeners – CDs, AOCs, UAOs

Delisting

Fingerprinting

Finger-pointing



CERCLA PFAS Enforcement Discretion and Settlement Policy

Enforcement focus

“PFAS manufacturers, federal facilities and other industrial parties whose actions resulted in the release of significant amounts of PFAS”

No enforcement focus

(i) Community water utilities, (ii) publicly owned or operated MSW landfills, (iii) farmers who accepted biosolids containing PFAS, or (iv) state/tribal/muni airports that stored or used PFAS

List of equitable factors (case-by-case consideration)

Including whether a particular entity acted in the shoes of a governmental agency or otherwise performed a valuable public service; EPA is seeking ideas for other equitable factors to consider

CERCLA only

Apply to enforcement discretion under CERCLA only, not any other federal environmental statute

Imminent and Substantial Endangerment (ISE)

EPA will retain the ability to address ISE situations

Comment themes:

- ✓ Public concern over PFAS
- ✓ Concern over policy v. regulation
- ✓ Polluter pays principle
- ✓ Limited science
- ✓ Address PFAS at source before reaching environment

EPA Drinking Water MCLs and HALs

March 2023 Proposed Rule (Final Rule Q1 2024...)

Constituent	2016 HAL	2022 HAL	2023 Proposed MCL
PFOA	70 PPT	4 PP <u>Q</u>	4 PPT
PFOS	70 PPT	4 PP <u>Q</u>	4 PPT
*GenX	N/A	10 PPT	See below
*PFBS	N/A	2,000 PPT	See below
PNFA, PFHxS, *GenX, *PFBS,	N/A	N/A	1.0 Hazard Index (mixture)

Dayton to spend millions to reduce PFAS chemicals in city, county drinking water

City plans to boost output from PFAS-free well field and mix it with existing water supply to lower concentrations of toxic PFAS chemicals

← PFOA = 7 ppt

EPA Response to PFAS Drinking Water Concern

Biden-Harris Administration Announces \$2 Billion in Bipartisan Infrastructure Law Funding to States and Territories to Address Emerging Contaminants like PFAS in Drinking Water

WASHINGTON (Feb. 13, 2023) – Today, U.S. Environmental Protection Agency (EPA) Administrator Michael S. Regan announced the availability of \$2 billion from President Biden’s Bipartisan Infrastructure Law to address emerging contaminants, like Per- and Polyfluoroalkyl Substances (PFAS) in drinking water across the country. This investment, which



- **\$9 billion** included in Bipartisan Infrastructure Law: invest in communities with drinking water impacted by PFAS and other emerging contaminants.

\$4 billion: Drinking Water State Revolving Fund (DWSRF)

\$5 billion: EPA “Emerging Contaminants in Small or Disadvantaged Communities” grant program.

A CWA First. Likely Not the last

EPA takes first-ever federal Clean Water Act enforcement action to address PFAS discharges at Washington Works facility near Parkersburg, W. Va.

April 26, 2023

Contact Information

EPA Press Office (press@epa.gov)

WASHINGTON – The U.S. Environmental Protection Agency has ordered the Chemours Company to take corrective measures to address pollution from per- and polyfluoroalkyl substances (PFAS) in stormwater and effluent discharges from the Washington Works facility near Parkersburg. The order on consent also directs Chemours to characterize the extent of PFAS contamination from discharges.

This is the first EPA Clean Water Act enforcement action ever taken to hold polluters accountable for discharging PFAS into the environment. PFAS are a group of man-made chemicals that have been manufactured and used in industry and consumer products since the 1940s. There are thousands of different PFAS chemicals, some of which have been more widely used and studied than others.

According to the EPA order, PFAS levels in the discharges from the facility exceed levels that are set in the facility's Clean Water Act permit.

"Administrator Regan has directed EPA staff to use every enforcement tool at our disposal to compel manufacturers of PFAS to characterize, control, and clean up ongoing and past PFAS contamination," said Acting Assistant Administrator Larry Starfield of EPA's Office of Enforcement and Compliance Assurance. "Through this order, EPA is taking action to address PFAS violations and better protect the resources and people of West Virginia."

Source: <https://www.epa.gov/newsreleases/epa-takes-first-ever-federal-clean-water-act-enforcement-action-address-pfas>

RCRA Corrective Action

June 2023:

Proposed Rules listing PFOA, PFOS and 2 more PFAS as "*hazardous constituents*" under Part 261 Appendix VIII – trigger for "*corrective action*."

Rules do not list any PFAS as "*hazardous waste*" to more broadly subject PFAS to RCRA's cradle-to-grave waste management system.

TSCA PFAS Reporting Rule



- **October 11, 2023 Rule:** TSCA 8(a)(7) Reporting and Recordkeeping for PFAS
 - Requires any person that manufactured (including imported) PFAS or PFAS-containing articles in any year from January 1, 2011 to December 31, 2022, to electronically report information regarding PFAS uses, production volumes, disposal, exposures, and hazards
- **PFAS definition** – based on structural definition, but with list of substances meeting definition
- Expands on the definition of PFAS in the proposed rule to include 41 additional PFAS that were identified as being of concern
- At least 12,696 PFAS that are known to have been made or used in the U.S. since 2011 may be subject to the final rule
- **Deadline:** within 18 months of the effective date of the final rule (May 8, 2025)
- **DO YOU HAVE A PLAN?**

“The data we’ll receive from this rule will be a game-changer in advancing our ability to understand and effectively protect people from PFAS”

States – Know Your State

State laws and regulations vary widely (e.g., Maine total ban 2030 – intentionally added PFAS)

PFAS v. PFOA/PFOS, few other PFAS

Intentionally added v. merely in product

Remediation (groundwater, soil) levels

Product phase outs/bans

Changing rapidly, including more industries

Supply chain PFAS certifications, “PFAS-free”?

PFAS – Total Ban in Europe?

- **Feb. 7 2023:** European Chemicals Agency (ECHA) REACH Proposed Restriction – 10,000 PFAS production and use, 1+ fluorinated carbon atom
- 6-month consultation and comment period – through Sept. 2023 (5,600 comments)
- Ban in force by 2025?
- Restriction effective 2026/2027?



Conditions of restriction:

1. Shall not be manufactured, used or placed on the market as substances on their own;
2. Shall not be placed on the market in:
 - another substance, as a constituent;
 - a mixture,
 - an article

in a concentration of or above:

- 25 ppb for any PFAS as measured with targeted PFAS analysis (polymeric PFASs excluded from quantification)
- 250 ppb for the sum of PFASs measured as sum of targeted PFAS analysis, optionally with prior degradation of precursors (polymeric PFASs excluded from quantification)
- 50 ppm for PFASs (polymeric PFASs included). If total fluorine exceeds 50 mg F/kg the manufacturer, importer or downstream user shall upon request provide to the enforcement authorities a proof for the fluorine measured as content of either PFASs or non-PFASs.

Source: <https://echa.europa.eu/documents/10162/f9e7b269-87cd-fc26-1a8e-b8c8b6e40c08>

PFAS Risk Mitigation Tips

- ✓ Know your business
- ✓ Consider product reformulations
- ✓ Secure against releases
- ✓ Corporate/Real Estate Diligence
- ✓ Insurance
- ✓ Remediate or Wait





FDA

What about FDA?



- FDA Activities with Respect to PFAS: Focused on Cosmetics, Food, and Food Contact Substances.

FDA Statement on PFAS in Cosmetics (Feb. 2022)

- The available data “cannot be used to draw definitive conclusions about the potential health risks of PFAS in cosmetics.”
- “Additional research is needed to determine:
 - 1) toxicological profiles for PFAS in cosmetics;
 - 2) the extent to which various PFAS in cosmetics can be absorbed through the skin; and
 - 3) the potential for human health risks from this type of exposure.”
- “As these research gaps are filled, the FDA will continue to monitor the PFAS literature for toxicity studies and for dermal absorption information.”

Modernization of Cosmetics Regulation Act (Dec. 2022)

- FDA “shall assess the use of [PFAS] substances in cosmetic products and the scientific evidence regarding the safety of such use in cosmetic products, including any risks associated with such use.”
- “Not later than 3 years after enactment of this Act, [FDA] shall publish on [its website] a report summarizing the results of the assessment.” (Report due by Dec. 30, 2025).

Chevron and (Auer) Deference

- *Loper Bright Enterprises v. Raimondo; Relentless Inc. v. Department of Commerce* (SCOTUS Oral Arguments 1/17/24)
- Impact on PFAS Regulations? “Invite a flood of litigation” – Justice Barrett
- 77 Chevron SCOTUS cases to date
- *Skidmore* deference (1944)?

Testing of Food Supply for PFAS

- May 2023 statement by Director of FDA's Center for Food Safety and Applied Nutrition (CFSAN):

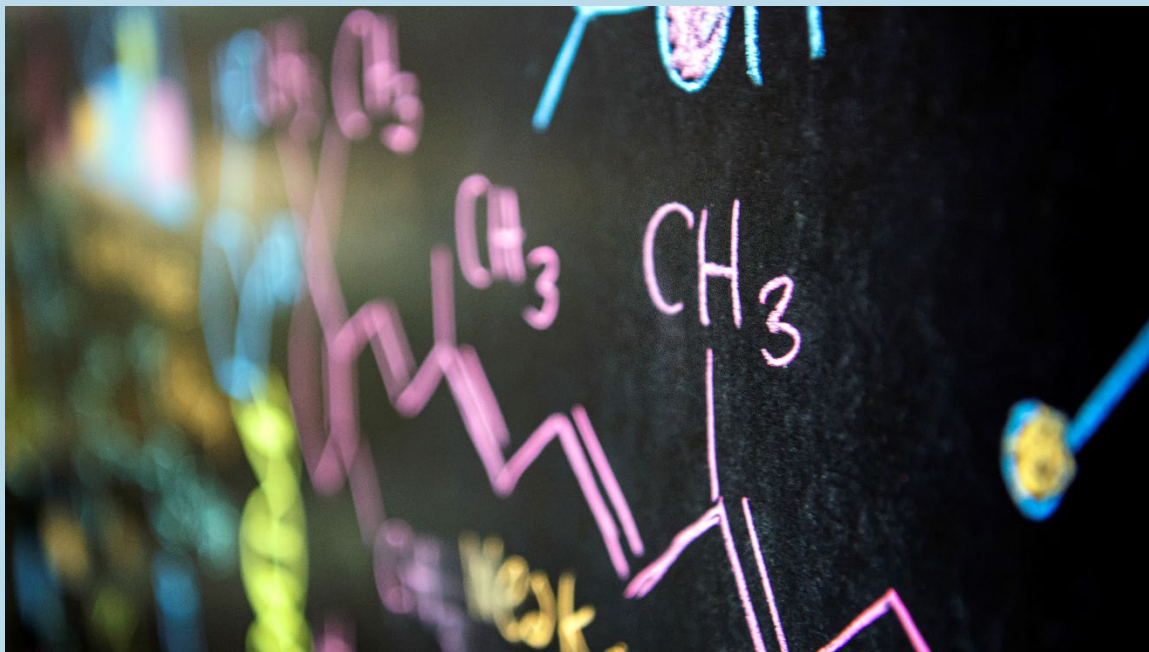
“PFAS in the food supply is an area where there are still more questions than answers.”

“[W]ith the exception of seafood, our testing [of the general food supply] has found that almost all samples tested have no detectable PFAS.”

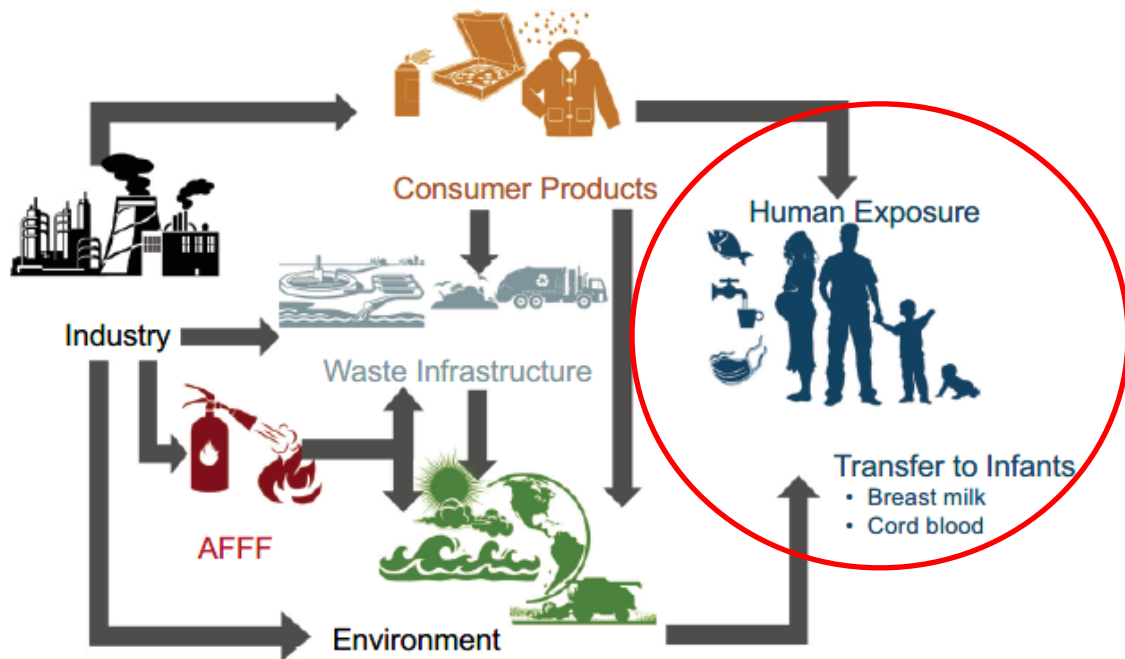
“Our sampling is limited, and so there is still much work for the agency to do to in continuing to test the food supply and reduce dietary exposure to PFAS.”

Food Contact Substances

- **Food contact substance** = a substance that comes into contact with food but is not intended to have a technical effect in such food (e.g. food packaging, processing equipment, cookware).
- Since 2020, FDA has worked with manufacturers to phase out the use of certain short-chain PFAS substances.
- FDA currently examining whether PFAS can form and migrate from certain fluorinated polyethylene food containers.



LITIGATION & CLAIMS



A review of the pathways of human exposure to poly- and perfluoroalkyl substances (PFASs) and present understanding of health effects

Elsie M. Sunderland^{1,2} · Xindi C. Hu^{1,2} · Clifton Dassuncao^{1,2} · Andrea K. Tokranov² · Charlotte C. Wagner² · Joseph G. Allen¹

Received: 6 September 2018 / Revised: 15 October 2018 / Accepted: 19 October 2018 / Published online: 23 November 2018
 © Springer Nature America, Inc. 2018

Common Causes of Action

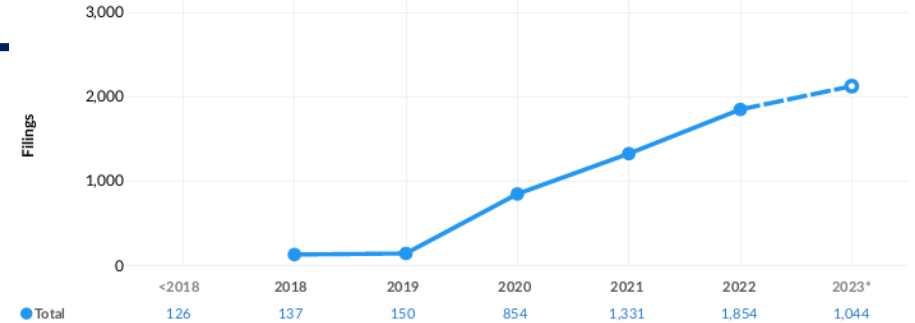
- Defective design
- Failure to warn
- Negligence
- Nuisance
- Strict liability
- Trespass
- Punitive damages
- Other less common: battery, conspiracy, breach of warranty, fraudulent transfer, emotional distress, vicarious liability, unjust enrichment, violation of statute, injunctive relief, public trust doctrine

Federal Court

Showing 5,496 federal district court cases; with keyword(s) [pfas]; pending between 2009-01-01 and 2023-05-05; sorted by textual relevance.

Summary

Case Filings



* 2023 numbers are year-to-date. Open dots are full-year estimates.

Cases by Type

Case Types	Cases
Product Liability	4,653
Securities	17
Consumer Protection	2
Contracts	20
Antitrust	2
Torts	421
ERISA	3
Civil Rights	14
Patent	6
Trade Secret	3
Trademark	4
Employment	23
Environmental	94

Courts

D.S.C.	4,379	80%
E.D.N.C.	331	6%
S.D.N.Y.	79	1%
D.N.J.	68	1%
E.D.N.Y.	60	1%
Other Courts	579	11%

District Judges

Richard Mark Gergel	4,378	80%
James C. Dever III	92	2%
Terrence William Boyle	84	2%
Richard Ernest Myers II	81	1%
Louise W. Flanagan	80	1%
453 Other Judges		

Manufacturer Targets

- Late 1980s against DuPont related to a PFOA by-product used to make Teflon
- A local family in West Virginia sued the company which settled in 2001 for an undisclosed amount
- The info in this lawsuit led to a class action filed (filed by the same attorney) which settled in early 2000s, with DuPont agreeing to provide medical monitoring and fund science panel
- In 2011, probable link between PFOA and six human diseases
- As result of study, over 3,500 personal injury claims brought resulting in \$670.7 million in settlements in Feb. 2017



Shareholder Class Actions

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

IN RE THE CHEMOURS COMPANY
SECURITIES LITIGATION

C.A. NO. 1:19-CV-01911-CFC
Hon. Colm F. Connolly

CLASS ACTION

This Document Related To:

ALL ACTIONS.

**CONSOLIDATED CLASS ACTION COMPLAINT FOR VIOLATIONS
OF THE FEDERAL SECURITIES LAWS AND JURY TRIAL DEMAND**

**PRICKETT JONES &
ELLIOTT, P.A.**

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*Counsel for Lead Plaintiff New York
State Teachers' Retirement System and
Lead Counsel for the Class*

April 3, 2020

Manufacturers

- ***State of Minnesota v. 3M Case:***
 - Minnesota alleged natural resources damages to groundwater and drinking water due to PFOA releases from 3M's Scotch Guard Plant
 - Settled in 2018 for \$850 million
- **DuPont, Corteva, and Chemours Settlement:**
 - Reached a \$4 billion cost-sharing agreement in 2021 to settle a dispute over liabilities associated with historic use of PFAS
- ***Pennsylvania American Water Co. v 3M* (Feb. 2021) against PFAS manufacturers that allegedly contaminated drinking water of 67 public water systems**
- **Santa Clarita Valley Water Agency (Oct. 2020) against PFAS manufactures for water contamination**
- **South Carolina MDL for AFFF (13,000 cases) brought by water utilities, local governments, and individuals.**

AFFF MDL

- Provides funds for cities, towns and other public water providers over a 13-year period to test for and treat PFAS contamination.

Government | Government | Water Management | Climate Change | Environment

3M's \$10.3 billion PFAS settlement gets preliminary approval

By Clark Mindock

August 30, 2023 8:23 PM EDT · Updated 16 days ago



A

Aqueous Film-Forming Foam (AFFF) Product Liability Litigation (MDL 2873)

DISTRICT COURT FOR THE DISTRICT OF SOUTH CAROLINA, MASTER DOCKET NO. 2:18-MN-2873-RMG

[Home](#) [Start a Claim](#) [3M Settlement](#) [DuPont Settlement](#) [FAQs](#) [Documents](#) [Settlement Media](#) [Contact Us](#)

Public Water System Settlements

[Start a Claim](#)

The deadlines to request exclusion from (opt out of) the Settlements have passed. Anyone who submitted a Request for Exclusion from the 3M Settlement may withdraw its request on or before **February 2, 2024**. Anyone who submitted a Request for Exclusion from the DuPont Settlement may withdraw its request on or before **March 1, 2024**.

Settlement Information

This website is devoted to Settlements entered into in the AFFF multi-district Litigation no. 2873 ("MDL") which have received Preliminary Approval from the United States District Court for the District of South Carolina. The current Settlement Agreements are both class action settlements designed to resolve Claims for PFAS contamination in Public Water Systems' Drinking Water, as those terms are defined in the respective Agreements, which are with two groups of Settling Defendants on behalf of:

Hardwick

- *In Re: E.I. Du Pont de Nemours and Co. C-8 Pers. Inj. Litig., (Hardwick v. 3M Co.), 87 F.4th 315 (6th Cir. 2023)*
- Firefighter, exposed to AFFF sought to certify a nationwide class consisting of every person residing in the United States for one year or more since 1977 with 0.05 ppt or more of PFOA and PFAS in their blood.
- District court certified a statewide class of 11.8 million persons subject to Ohio laws.
- 6th Circuit reversed - plaintiff lacked standing - no particular allegations of a pathway connecting each individual defendant to any of the specific PFAS detected in his blood.
- “Seldom is so ambitious a case filed on so slight a basis.”

Secondary Manufacturers

Michigan Dept. Of Env't Quality v. Wolverine World Wide, Inc. (Case 1:18-cv-00039 (W.D. Mich. Filed Jan. 2018))

- State and two townships sued a footwear company for PFAS-related groundwater claims
- Similar suits have been filed against other secondary manufacturers



Cosmetics

- In June 2021, the No PFAS in Cosmetics Act was introduced in the U.S. Senate after a scientific study published conclusions regarding testing of cosmetics in the United States and Canada found PFAS in over half of the products.
- On Dec. 21, 2021, class action in New York against Shiseido alleging that its bareMinerals brand falsely advertised its products as "clean and conscious", "pure", and "free of harsh chemicals" despite the presence of PFAS.
- On Dec. 29, 2021, Toxin Free USA (non-profit) sued CoverGirl and Coty in the D.C. alleging false advertisement due to presence of PFAS in products.
- By 2022, at least six lawsuits were filed:
 - *Davenport v. L'Oreal* (February 22, 2022)
 - *Hicks and Vargas v. L'Oreal* (March 9, 2022)
 - *Spindel v. Burt's Bees* (March 25, 2022)
 - *Brown v. Cover Girl* (April 1, 2022)
 - *Anderson v. Almay* (April 1, 2022)
 - *Rebecca Vega v. L'Oreal* (April 8, 2022)

Risk assessment of fluorinated substances in cosmetic products

Environmental Science & Technology Letters

Fluorinated Compounds in North American Cosmetics

Heather D. Whitehead, Marta Venier, Yan Wu, Emi Eastman, Shannon Urbanik, Miriam L. Diamond, Anna Shalin, Heather Schwartz-Narbonne, Thomas A. Bruton, Arlene Blum, Zhanjun Wang, Megan Green, Meghanne Tjoh, John T. Wilkinson, Sean McGuinness, and Graham F. Peaslee*

Case This: <https://doi.org/10.1021/acs.lett.1c00240> Read Online

ACCESS | Metrics & More | Article Recommendations | Supporting Information

ABSTRACT: Per- and polyfluoroalkyl substances (PFAS), a highly persistent and potentially toxic class of chemicals, are added to cosmetics to increase their durability and water resistance. To assess this potential health and environmental risk, 231 cosmetic products purchased in the U.S. and Canada were screened for total fluorine using particle-induced gamma-ray emission spectroscopy. Of the eight categories tested, foundations, mascaras, and lip products had the highest proportion of products with high total fluorine (20–284 µg F/cm²). Twenty-one products including 20 with high total fluorine concentrations were analyzed using targeted LC-MS/MS and GC-MS. PFAS concentrations ranged from 22–10,500 ng/g product weight, with an average and a median of 268 and 1050 ng/g product weight, respectively. Here, 61 and 82 fluorinated compounds, including alcohols, methacrylates, and phosphate esters, were most commonly detected. These compounds are precursors to PFAS that are known to be harmful. The ingredient lists of most products tested did not disclose the presence of fluorinated compounds exposing a gap in U.S. and Canadian labeling laws. The manufacture, use, and disposal of cosmetics containing PFAS are all potential opportunities for health and ecosystem harm. Given their direct exposure routes into people, better regulation is needed to limit the widespread use of PFAS in cosmetics.

INTRODUCTION

Per- and polyfluoroalkyl substances (PFAS) comprise a class of more than 4700 chemical compounds for which the characteristic perfluorinated carbon moiety confers hydrophobic chemical properties and environmental persistence. Since the 1950s, these compounds have been widely used in industrial products such as firefighting foams and consumer products such as coated fabrics, carpets, cookware and other food packaging, and many others.^{1–3} In 2019, the retail value of personal care products was estimated to be more than \$100 billion (USD) in North America, with approximately \$20 billion coming from cosmetics.⁴ While several studies have documented the use of PFAS in cosmetics from Europe and Asia, no such data exist in North America.^{5–7} PFAS in cosmetics may pose a risk to human health through direct and indirect exposure, as well as a risk to ecosystem health throughout the lifecycle of these products. PFAS are used in cosmetics due to their properties such as hydrophobicity and film-forming ability, which are thought to increase product wear, durability, and spreadability. Additional claimed benefits are increased skin absorption of the product and improvements in the appearance or texture of skin.⁸

Gluge et al.⁹ recently noted that the magnitude of PFAS use in cosmetics in several European countries was difficult to estimate due to lax regulatory requirements for reporting PFAS use. Requirements in the United States (U.S.) and Canada are similarly lax. Use and labeling of cosmetic ingredients in the U.S. is regulated by the Federal Food, Drug, and Cosmetic Act of 1938 and the Fair Packaging and Labeling Act of 1967. These acts do not regulate the type or kind of testing that is needed to determine the safety of cosmetic ingredients, and exemption exist for labeling ingredients which are considered proprietary.¹⁰ In Canada, the Food and Drug Act, the Cosmetic Regulations, and the Consumer Packaging and Labeling Act and Regulations regulate the labeling and safety of cosmetics.¹¹ These require all ingredients (except "accidental" ingredients such as preservatives) to be disclosed both to federal regulators and to consumers on product packaging.

Cosmetics industry-associated groups usually assess the potential hazards of new and emerging ingredients in North American cosmetics. Ingredient names are defined and

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Food Packaging

- March 2022 article identified fluorine in food packaging
- PFAS found in over half the samples
- Lawsuits
 - *Larry Clark v. McDonald's* (March 28, 2022)
 - *Little v. NatureStar* (April 8, 2022)
 - *Azman Hussain v. Burger King* (April 11, 2022)
 - *Hamman v. Cava Group* (April 27, 2022)
 - *Richburg v. Conagra Brands* (May 6, 2022)
 - *Ruiz v. Conagra Brands* (May 6, 2022)

Dangerous PFAS Chemicals Are in Your Food Packaging

CR found 'forever chemicals' in bowls, bags, plates, and wrappers, even from some companies that say they've phased them out



PHOTO: BEN GOLDSTEIN

Updated March 24, 2022

By Kevin Loria

“PFAS Free”

- City/State laws...Boston, CA, VT
- Beware PFAS Free
- Better to reference a standard or testing methodology
 - ASTM D 7968
- Or statutory language
 - PFAS not intentionally added

‘Our community has been deceived’: Turf wars mount over PFAS

By E.A. Crunden, Ariel Wittenberg | 08/03/2022 01:24 PM EDT



FTC Green Guides

- Last updated 2012
- Currently evaluating updates

PART 260– GUIDES FOR THE USE OF ENVIRONMENTAL MARKETING CLAIMS

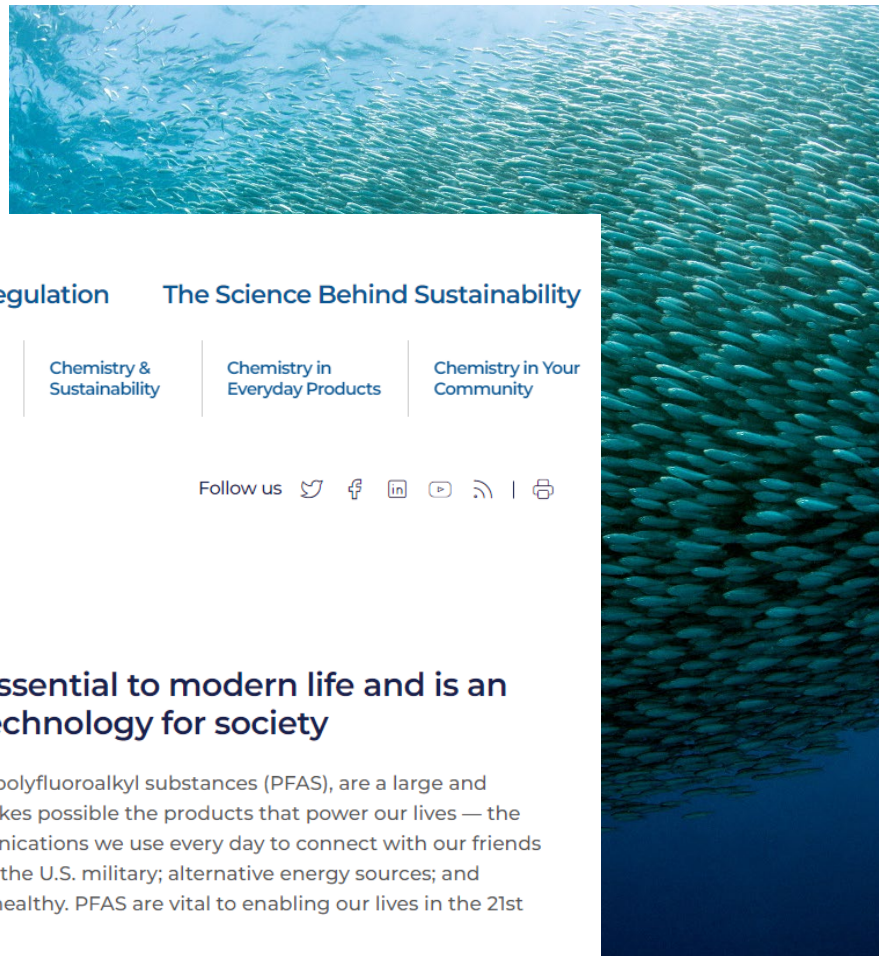
Sec.	260.1	Purpose, Scope, and Structure of the Guides.
	260.2	Interpretation and Substantiation of Environmental Marketing Claims.
	260.3	General Principles.
	260.4	General Environmental Benefit Claims.
	260.5	Carbon Offsets.
	260.6	Certifications and Seals of Approval.
	260.7	Compostable Claims.
	260.8	Degradable Claims.
	260.9	Free-Of Claims.
	260.10	Non-Toxic Claims.
	260.11	Ozone-Safe and Ozone-Friendly Claims.
	260.12	Recyclable Claims.
	260.13	Recycled Content Claims.
	260.14	Refillable Claims.
	260.15	Renewable Energy Claims.
	260.16	Renewable Materials Claims.
	260.17	Source Reduction Claims.

Authority: 15 U.S.C. 41-58.

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Fluorotechnology/Per- and Polyfluoroalkyl Substances (PFAS)

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ACC strongly supports the responsible production, use and management of fluorinated substances and supports a comprehensive approach to managing PFAS that is protective of human health and the environment.

FluoroTechnology is essential to modern life and is an important enabling technology for society

Fluorinated chemicals, or per- and polyfluoroalkyl substances (PFAS), are a large and diverse family of chemistry that makes possible the products that power our lives — the cellphones, tablets and telecommunications we use every day to connect with our friends and family; the aircrafts that power the U.S. military; alternative energy sources; and medical devices that help keep us healthy. PFAS are vital to enabling our lives in the 21st century.

In Conclusion...



- Watch that iceberg, it keeps getting bigger – environmental, product regulation, litigation, toxicity
- **KNOW YOUR JURISDICTION – FAST PACED CHANGES**
- Proactive v. reactive decisions – evaluate risks
- PR Plans and Communications Strategies



Questions?



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PFAS Legal Risks, 2024: Will Disclosure Mandates and New Rules Widen the Litigation Landscape

January 30, 2024

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