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PFAS 101

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In a world filled with acronyms, PFAS has started emerging as a topic of conversation, regulation, and litigation. Enforcement actions and lawsuits have so far mostly focused on the companies that have manufactured two of the most widely used, and the most heavily regulated, PFAS compounds - PFOA and PFOS – but the scope of regulation and litigation is expanding further into this large family of compounds.

WHAT ARE PFAS CHEMICALS?

Per- and polyfluoroalkyl substances ("PFAS") are a family of over 5,000 man-made fluorinated chemicals some of which have been used since the 1940's across a variety of industries as part of manufacturing processes, and as components of consumer products.

PFAS are defined by having elemental bonds of fluorine and carbon, rendering them pervasive and persistent. Significantly, this means that PFAS compounds do not break down easily either in the environment or in living organisms.

PFAS chemicals can repel both water and oil, move quickly through water, and PFAS compounds have been detected in surface water, groundwater, drinking water, soil, and consumer products. PFAS chemicals have also been detected in various living organisms, including humans, fish, and even polar bears.

WHERE IS PFAS FOUND?

According to the United States Environmental Protection Agency ("EPA"), PFAS are found in:

- "**Food** packaged in PFAS-containing materials, processed with equipment that used PFAS, or grown in PFAS-contaminated soil or water.
- **Commercial household products**, including stain- and water-repellent fabrics, nonstick products (e.g., Teflon), polishes, waxes, paints, cleaning products, and fire-fighting foams (a major source of groundwater contamination at airports and military bases where firefighting training occurs).

- **Workplace**, including production facilities or industries (e.g., chrome plating, electronics manufacturing or oil recovery) that use PFAS.
- **Drinking water**, typically localized and associated with a specific facility (e.g., manufacturer, landfill, wastewater treatment plant, firefighter training facility).
- **Living organisms**, including fish, animals and humans, where PFAS have the ability to build up and persist over time."[1]

WHY SHOULD MY BUSINESS CARE?

PFAS pose risks in a variety of different contexts, including the following:

ENVIRONMENTAL AND TOXIC TORT LIABILITY

Litigation risks are associated with manufacturing PFAS compounds, using PFAS as part of the manufacturing process or as an ingredient in products, selling products that contain PFAS, and with non-workplace exposure to PFAS.

TRANSACTIONAL DILIGENCE

Until recently, there was little attention paid to PFAS contamination and risk during transactional due diligence. State and federal regulations have made it clear that these chemicals will be the subject of investigation and remedial actions in the future. Given the significant costs associated with remediating these chemicals, companies should consider their potential presence during due diligence in both real estate and corporate transactions, even though they are not currently required to meet the All Appropriate Inquiries standard.

CONSUMER PRODUCTS

Many states have regulated the presence of PFAS in consumer products. In some instances, particularly for food packaging containers, states are requiring manufacturers to evaluate alternatives to PFAS, and if suitable alternatives are identified, phase out the use of all PFAS. Several states have either banned or limited the use of certain fire-fighting foams which historically have contained PFAS. Finally, a few states have required warning labels, or notifications to state agencies for products that contain certain PFAS compounds.

CLEANUP OBLIGATIONS

EPA and individual states are evaluating PFAS contamination at legacy clean-up sites, as well as at sites that are currently in the remediation process. The re-opening of closed sites may lead to more liability for entities that were once considered potentially responsible parties ("PRPs"), and for additional contribution claims. While this is currently being achieved through state regulations, EPA has announced plans to identify PFOA and PFOS as hazardous substances under CERCLA. This

could upend CERCLA settlements, which are usually associated with the contaminants previously identified, and could lead to future PRP litigation.

PERMIT COMPLIANCE

New regulations are expected to result in facility-specific discharge limits for both air and wastewater.

WHAT CAN MY BUSINESS DO TO ADDRESS PFAS RISKS?

Review relevant state and federal regulations that may apply to your business, real property, and supply chain, and evaluate your PFAS risk. The understanding of the use and risks posed by PFAS is developing, as are the relevant regulations on both the state and federal levels, so it is important to stay current on PFAS issues that may impact your business and risk profile.

More information on a variety of PFAS-related topics can be found on our PFAS Team page, and we will post updates on developing issues on our Emerging Contaminants/Emerging Solutions blog as well. For specific questions, feel free to reach out to Tom Lee, Susan Brice, John Kindschuh, or any other member of our PFAS team.

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[1] https://www.epa.gov/pfas/basic-information-pfas

RELATED PRACTICE AREAS

- PFAS Team

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