



Contaminants *Compass*

June 2024 Edition

For more information, contact:

Chauna A. Abner
Associate | Baltimore
T: +1 410 659 4555
cabner@mcguirewoods.com

E. E. "Matt" Mathews III
Partner | Richmond
T: +1 804 775 1313
mmathews@mcguirewoods.com

Anthony P. Tatum
Partner | Atlanta
T: +1 404 443 5734
ttatum@mcguirewoods.com

Shannon M. Kasley
Partner | Washington, D.C.
T: +1 202 857 1759
skasley@mcguirewoods.com

Adam G. Sowatzka
Partner | Atlanta
T: +1 404 443 5749
asowatzka@mcguirewoods.com

"Contaminants Compass" is a monthly newsletter that provides updates, legal observations and actionable tips to navigate the evolving legal challenges of per- and polyfluoroalkyl substances (PFAS). This edition discusses a potential challenge to the EPA's newly promulgated PFAS Drinking Water Regulation, commenced and potential PFAS litigation, and recently enacted PFAS-related state statutes.

Look for new editions every month and feel free to reach out to the McGuireWoods team with any questions regarding PFAS issues.

I. What's Happening on the PFAS Federal Regulatory Front?

Organizations File Petition for Review of New PFAS Rule

The American Water Works Association and the Association of Metropolitan Water Agencies filed a [petition](#) on June 7, 2024, with the U.S. Court of Appeals for the D.C. Circuit to review the [EPA's Final PFAS Drinking Water Regulation](#). The petition argues that the EPA did not rely on the best science or data when promulgating the rule, and that the EPA "significantly underestimated the costs of this rule and the adverse impact that it will have on individual water users." The petition raises concerns about the impact of the rule on water affordability, particularly for households that struggle to pay for essential needs, and claims that the EPA finalized the rule without following the process mandated by Congress without allowing the public an adequate opportunity to provide comment or addressing the concerns raised by those who work to deliver safe and affordable drinking water to their communities.

Farmers Bring Lawsuit Against EPA for Failure to Regulate Biosolids Under Clean Water Act

A group of five farmers, represented by the watchdog group Public Employees for Environmental Responsibility (PEER), filed a [complaint](#) on June 6, 2024, in the U.S. District Court for the District of Columbia against the EPA alleging that it failed to perform a "nondiscretionary duty" to identify and regulate certain PFAS purportedly present in municipal biosolids under section 405(d) of the additional solid samples such as fabric, packing paper and more.

Clean Water Act. According to the complaint, Potomac Riverkeeper Network; Johnson County, Texas; and the Maine Organic Farmers and Gardeners Association are likely to move to join the plaintiffs in the near future. The complaint alleges that biosolids caused the deaths of family pets, fish, birds, horses and livestock; human health concerns ranging from respiratory and cardiac issues to generalized pain, pre-diabetes and high blood pressure; and the “decimation” of neighboring land value.

Watchdog Group Calls Out EPA for Allegedly Lying About Presence of PFAS in Pesticides

PEER sent the EPA a [letter](#) on May 28, 2024, under the Information Quality Act demanding that the EPA retract a [research memo](#) and related [press release](#) it published in May 2023 titled “Verification Analysis for PFAS in Pesticide Products (ACB Project B23-05b).” In the letter PEER contends that the memo contains false information about testing for PFAS chemicals in pesticides that contradicted a study published in the *Journal of Hazardous Materials*.

The memo discusses the EPA’s testing for PFAS in 10 pesticide products, and the accompanying press release states that the EPA did not find any PFAS in the 10 products. However, according to PEER, the samples that the EPA tested had been spiked “with a small, known concentration of PFAS,” and neither the memo nor the press release mentioned that the samples were spiked nor that the EPA was unable to detect the spike. PEER labeled the EPA’s actions as “egregious” misconduct and detailed additional flaws in the testing.

In addition to demanding that the EPA retract the memo and press release within 90 days, PEER also asked that the EPA issue a public statement about the retraction and issue an apology to the authors of the study published in the *Journal of Hazardous Materials*.

II. What’s Happening in PFAS Litigation?

BASF Agrees to Settlement in Aqueous Film Forming Foam Multidistrict Litigation

BASF Corp. agreed on May 20, 2024, to pay \$316.5 million to resolve claims brought against it and several other corporations by public water systems in the ongoing multidistrict aqueous film forming foam (AFFF) litigation in South Carolina federal district court concerning the alleged contamination of drinking water with toxic PFAS. Subject to court approval, the settlement is structured as a class settlement whereby members must opt out if they chose not to participate.

Under the settlement, BASF will put \$312.5 million into an escrow account for the benefit of the class and will set aside the remaining \$4 million for administrative costs. BASF published a [press release](#) asserting that it is “pursuing recovery of its settlement payment” under various insurance policies. The announcement follows settlements previously reached by Tyco Fire Products LP; 3M; and DuPont, Chemours and Corteva.

Class Action Lawsuit Alleges BIC Failed to Disclose Intentional PFAS Use to Consumers After Previous Disclosures to Maine

The plaintiffs filed a class action [complaint](#) on May 15, 2024, in the Northern District of California against the manufacturer of BIC razors alleging that the manufacturer disclosed its intentional use of PFAS in its products to the state of Maine pursuant to Maine’s disclosure statute but failed to disclose the intentional PFAS use to its customers. This lawsuit is projected to be one of many lawsuits to follow under Maine’s Disclosure Statute, discussed below, and similar mandatory disclosure statutes in other states.

III. What's Happening on the PFAS State Legislative Front?

Connecticut Bans Use of PFAS in Certain Products

Gov. Ned Lamont signed a unanimously passed [bill](#) on June 6, 2024, that will phase out the use of PFAS in Connecticut. Unlike other state PFAS-related statutes, the Connecticut statute does not include a waiver process that would allow a product to stay on the market when there is no reasonable alternative to using PFAS. Lamont therefore noted the impact that the act may have on the availability of certain products, such as affordable cookware and outdoor apparel, and urged the legislature to consider adjustments to avoid product shortages.

Vermont Bans Manufacture and Sale of Products Containing PFAS

Vermont Gov. Phil Scott signed [S.25 \(Act 131\)](#) on May 30, 2024, effectively banning the manufacture and sale of, among other things, cosmetic and menstrual products, clothing, and textiles that contain PFAS.

Maryland Establishes Limits for PFAS in Water

Maryland Gov. Wes Moore signed the [Protecting State Waters From PFAS Pollution Act](#) on May 9, 2024, which established limits for PFAS in water discharged by industrial entities.

Maine Amends PFAS Disclosure Statute

On April 16, 2024, Maine Gov. Janey Mills signed [S.P. 610 - LD 1537](#), amending “An Act to Stop Perfluoralkyl and Polyfluoralkyl Substances Pollution,” which bans the sale of products that contain intentionally added PFAS within the state.

The original statute required companies to report to Maine’s Department of Environmental Protection *any* products that contained intentionally added PFAs. The amendments change the reporting requirement so that companies now only need to report products that contain intentionally added PFAS *and* for which Maine’s Department of Environmental Protection has determined that PFAs use in the product is currently unavoidable.

The prior iteration of the statute also provided that beginning Jan. 1, 2025, retailers will be prohibited from selling certain products “containing intentionally added PFAS for which the department has determined that the use of PFAS in the product is currently unavoidable” unless the manufacturer provided the requisite notice. The amendments pushed the effective date back to Jan. 1, 2032. Maine Rep. Lori K. Gramlich, a co-sponsor of the amendments, explained that the original date did not align with Maine’s Department of Environmental Protection’s capacity to promulgate the requisite rules for the required reporting.

The amendments also provide an exemption for businesses that have less than \$20 million in annual national sales. Gramlich explained that this change was a result of hearing that the statute posed a hardship on small businesses.

About McGuireWoods

McGuireWoods supports clients as they assess and mitigate their PFAS risk, develop and apply business operational responses to changing PFAS laws and regulations at federal and state levels, and defend litigation as it arises, including navigating and coordinating national scientific defenses in novel contexts. [Click here](#) to learn more.

McGuireWoods marketing communications are intended to provide information of general interest to the public. Marketing communications are not intended to offer legal advice about specific situations or problems. McGuireWoods does not intend to create an attorney-client relationship by offering general interest information, and reliance on information presented in marketing communications does not create such a relationship. You should consult a lawyer if you need legal advice regarding a specific situation or problem.

Contents © 2024 McGuireWoods LLP.