



Contaminants *Compass*

May 2024 Edition

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“Contaminants Compass” is a monthly newsletter that provides real-time updates, legal observations and actionable tips to navigate the constantly evolving legal challenges of per- and polyfluoroalkyl substances (PFAS). This edition discusses new EPA guidance and rules on PFAS enforcement, destruction, and disposal, and TSCA reporting and recording requirements; updates in the AFFF MDL litigation; recent McGuireWoods’ analysis of important insurance implications as PFAS litigation continues to grow; and new federal and state legislative developments.

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

TSCA PFAS Reporting and Recordkeeping Requirements Continue to Cause Questions

The EPA’s Nov. 13, 2023 rule titled “[Toxic Substances Control Act Reporting and Recordkeeping Requirements for Perfluoroalkyl and Polyfluoroalkyl Substances](#)” continues to cause questions for manufacturers and importers of PFAS, who are now required to report information on all PFAS produced or imported since Jan. 1, 2011, by either [May 8, 2025](#), or [Nov. 10, 2025](#). The rule, under section 8(a)(7) of the TSCA, requires any entity who manufactured or imported PFAS or PFAS-containing articles at any time between Jan. 1, 2011, and Dec. 31, 2022, to electronically report information regarding PFAS uses, production volumes, byproducts, disposal, exposures and hazards. Entities who have coincidentally produced PFAS as a byproduct or impurity during the manufacture of another chemical substance or mixture are considered manufacturers of PFAS under the rule. However, those who have only processed, distributed, used and/or disposed of PFAS are not subject to the reporting requirements.

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Reporting is required for each PFAS for each year it was manufactured or imported. The EPA defines its reporting requirements for PFAS based on their chemical structure rather than relying on an enumerated list. The EPA published a list of over [1,200 chemicals](#) that meet the structural definition and may be subject to reporting. And as noted, the deadline to submit reports for most entities is May 8, 2025, while the deadline for “small manufacturers” reporting exclusively as article importers is Nov. 10, 2025. Those who fail to report by the applicable deadline or otherwise violate the rule may be subject to civil or criminal penalties.

EPA Seeks Public Comment on Interim Guidance on Destruction and Disposal of PFAS

On April 9, 2024, the EPA issued an [interim guidance](#) for public comment regarding the destruction and disposal of PFAS substances. This guidance updates the EPA’s 2020 guidance on PFAS destruction and disposal, as mandated by the National Defense Authorization Act. It outlines general principles for managing PFAS waste, recommending three large-scale technologies: underground injection, landfills and thermal treatment. Key points in the guidance include::

- **Underground Injection:** The EPA recommends using permitted Class I non-hazardous industrial or hazardous waste injection wells due to their potential to confine injected fluids and prevent underground water contamination. However, limitations in the number of wells currently receiving off-site PFAS and waste transportation logistics may restrict the types and quantities of PFAS-containing fluids suitable for underground injection.
- **Landfills:** The EPA highlighted permitted hazardous waste landfills, particularly Subtitle C landfills, for their robust engineering controls, making them effective at containing PFAS waste and minimizing PFAS release into the environment. The EPA, however, stated that recent findings suggest that landfilling could result in higher PFAS releases than previously anticipated.
- **Thermal Treatment:** The EPA recommends permitted hazardous waste combustors, such as commercial incinerators, cement kilns and granular activated carbon reactivation units, for thermal treatment of PFAS. While thermal treatment has the potential to destroy PFAS, the EPA noted that uncertainties persist regarding its effectiveness. Additional testing and data collection are encouraged, including air emission testing during thermal treatment, to better understand its performance and potential environmental impacts.

The EPA will accept comments on the guidance for 180 days, until Oct. 5, 2025. While not mandatory, the guidance offers the EPA’s insight into acceptable methods for PFAS waste management.

EPA Pledges to Refrain from Enforcement Action Against Municipal Water Systems, Among Others

As reported in our [April special installment of “Contaminants Compass,”](#) on April 19, 2024, the EPA released a memorandum titled [“PFAS Enforcement Discretion and Settlement Policy Under CERCLA.”](#) The EPA’s memo clarifies its approach to pursuing potentially responsible parties (PRPs) for addressing PFAS contamination under CERCLA. The policy outlines when the EPA will use its enforcement discretion to require action on PFAS releases and when it will not pursue specific parties. It focuses on holding major PRPs, such as PFAS manufacturers or industrial users, accountable for contamination. However, certain entities like community water systems, municipal landfills and farms applying biosolids are exempted from enforcement actions unless equitable factors support otherwise. The EPA also aims to mitigate litigation risks for concerned parties through settlements and waiver requirements for major PRPs.

II. What's Happening in PFAS Litigation

AFFF MDL Bellwether Process to Address PFAS Injury Claims

In the aqueous film-forming foams (AFFF) multidistrict litigation (MDL), the U.S. District Court for the District of South Carolina entered a case management order initiating a bellwether process to address personal injury claims related to alleged PFAS exposure in AFFF. These claims include thyroid and liver cancer, kidney cancer, testicular cancer, hypothyroidism/thyroid disease, ulcerative colitis and other injuries.

The court instructed the parties to provide all peer-reviewed articles supporting or disputing the association of the identified diseases with AFFF exposure. The plaintiffs' executive committee (PEC) was to produce supporting articles by April 3, 2024, while the defense coordinating counsel (DCC) had until May 1, 2024, to produce disputing articles. Both parties were to jointly submit these articles to the court by May 15, 2024.

The court also scheduled a "Science Day" to allow limited expert presentations to the court regarding the claimed association of diseases with AFFF exposure. This event would be organized after the submission of peer-reviewed studies, with the court setting the date and overseeing the proceedings. The PEC and DCC were required to cooperate regarding modifications to the list of diseases and the selection and timing of expert presentations.

The AFFF MDL now consists of over 7,000 cases from various U.S. district courts. The personal injury claims involve more than 200 different injuries, including those from a previous PFAS class action. While these proceedings will not resolve all personal injury claims, the court has indicated that it will provide guidance for future cases in the MDL.

III. PFAS And Insurance Considerations

Our McGuireWoods' insurance colleagues recently published [an article](#) identifying important steps companies should be taking now to maximize potential recovery efforts, particularly in light of the EPA's recent designation of PFOA and PFOS as CERCLA "hazardous substances." PFAS liability has become a significant litigation area, with a proliferation of high-profile lawsuits and billion-dollar settlements. As lawsuits develop and increase, insurance coverage for PFAS-related liabilities is also rapidly evolving, particularly in the face of insurers seeking to deny coverage under commercial general liability policies. As a result, coverage lawsuits related to PFAS are emerging nationwide, akin to the historic asbestos coverage litigation, and corporate policyholders should be taking proactive measures, as outlined in this article.

IV. What's Happening on the PFAS Federal Legislative Front

U.S. House Introduces H.R. 8074 – Forever Chemical Regulation and Accountability Act of 2024

On April 18, 2024, Representative Betty McCollum (D-MN) introduced [H.R. 8074](#), which seeks to phase out all "non-essential" uses of PFAS within 10 years. The bill mandates the National Academies of Sciences, Engineering, and Medicine to assess PFAS risks and classify uses as "essential" or "non-essential." PFAS manufacturers and users would need EPA approval for essential uses and provide reports disclosing PFAS information. Accelerated deadlines would be set for eliminating non-essential PFAS uses in certain products, with a 10-year national deadline for others. The bill also addresses litigation by tolling state statutes for newly designated hazardous substances and preventing corporations from using bankruptcy to avoid legal claims.

V. What's Happening on the PFAS State Regulatory Front

California S.B. 903 Banning Products Containing PFAS

California is moving forward with legislation, [S.B. 903](#), that would prohibit the sale or distribution of new products in the state containing intentionally added PFAS. This proposed bill expands on previous bans on PFAS in various products and would apply to all products with some exceptions. It builds upon existing laws that already prohibit PFAS in certain products like textiles, cosmetics, food packaging and juvenile products starting Jan. 1, 2025. The bill, effective Jan. 1, 2030, would prohibit the distribution, sale or offering for sale of products containing intentionally added PFAS unless certain conditions are met, such as a determination by the Department of Toxic Substances Control that PFAS use is unavoidable. The bill outlines criteria and procedures for determining unavoidable PFAS use, imposes penalties for violations and establishes the PFAS Penalty Account to fund enforcement efforts. Additionally, the bill requires the Department of Toxic Substances Control to adopt regulations by Jan. 1, 2027, to administer its provisions, including the assessment of application fees deposited into the PFAS Oversight Fund for administrative purposes.

Businesses should prepare for compliance with this legislation by assessing their products, communicating with their supply chain partners, reviewing supplier agreements and potentially engaging with industry associations to petition the Department of Toxic Substances Control. The bill also includes stringent enforcement measures, with fines for noncompliance and requirements for product testing and notification.

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.

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