

Per- and Polyfluoroalkyl Substances



Impact:

- Thousands of lawsuits consolidated into Multidistrict Litigation (MDL) may lead to a lengthy and costly litigation environment and possible nuclear verdicts or settlements.
- High costs to comply with EPA regulations, especially drinking water standards, may lead to municipalities and utilities seeking contribution from industry to offset remediation costs.
- Causal chain between PFAS and health effects may be attenuated; however, many lawsuits survived motions to dismiss, paving the way for an uptick in PFAS lawsuits.

Quick Facts:

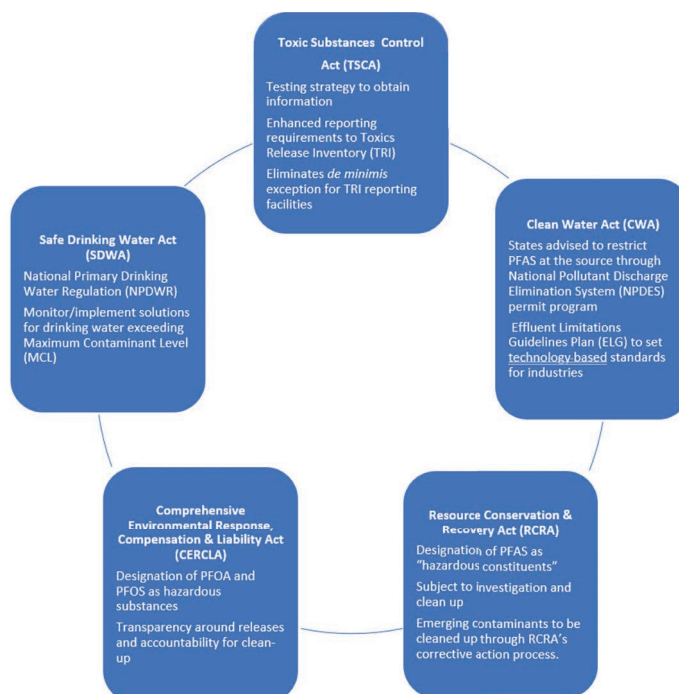
- PFAS encompasses nearly 15,000 man-made chemicals used to make everyday products that resist grease, water and oil.
- PFAS does not break down in the environment, earning the name “forever chemical”.
- Large scale PFAS litigation alleging water contamination, aqueous film-forming foam exposure and exposure through turn out gear worn by firefighters is pending in MDL in South Carolina.
- The EPA’s multi-pronged legislation includes the country’s first National Primary Drinking Water Regulations.

What are Per- and Polyfluoroalkyl Substances?

Per- and Polyfluoroalkyl Substances (PFAS) include nearly 15,000 man-made chemicals that have been used in industry and consumer products since the 1940’s to make items such as nonstick cookware, water-repellent clothing, stain resistant fabrics, carpets, cosmetics, firefighting foams, and products that resist grease, water and oil. During production and use, PFAS can migrate into the soil, water and air. Most PFAS do not break down and remain in the environment, earning the title “forever chemical.” Due to widespread use, PFAS is ubiquitous in the environment. Traces can be found in the blood of people and animals and some food products. With repeated exposure over time, some PFAS can build up in people and animals and may be linked to an increased risk of some cancers.

The Regulations

EPA’s Strategic Roadmap sets forth multi-pronged regulations to address PFAS contamination:



The Litigation

The Judicial Panel on Multidistrict Litigation (MDL) centralized civil actions in the U.S. District Court for the District of South Carolina. The MDL actions include several different types of claims including contamination of public water systems, alleged injury by firefighters using aqueous film-forming foam (AFFF), and alleged injury cases by firefighters wearing PFAS containing-turn out gear (TOG). The MDL houses thousands of cases from across the country.

Over \$13 billion in settlements with public water systems have been approved thus far. Personal injury cases alleging exposure to various products containing PFAS remain ongoing. The MDL judge has employed a bellwether process to conduct trials in certain selected cases. The causal link between PFAS and various alleged cancers and other negative health consequences is tenuous and unclear. Studies of the impact of PFAS on the human body are inconclusive and all note that there is no “signature disease” traceable to PFAS. The litigation environment is costly and lengthy, with many individual issues put on hold. Many defendants do not have an efficient way to exit the litigation through dispositive motion practice and this puts pressure on defendants to settle. The sheer volume of cases also encourages third party litigation funding and allows meritless claims to linger.

Solutions

- Proactively engage the court to exercise its gatekeeping responsibilities under Federal Rule of Evidence 702 and require Plaintiffs to prove a plausible pathway of exposure and causal link to survive dispositive motions.
- Collaborate with customers to ensure evidence of environmental audits providing a cradle-to-grave examination from the time the PFAS chemical is created or used through the time it is disposed is preserved.
- Support the implementation of Federal Rule of Civil Procedure 16.1 on MDL management

Zurich North America Initiatives

- Leads the development and collaboration of industry partners on all lawsuit abuse reform efforts.
- Advocates for all lawsuit abuse reform issues impacting Zurich and its customers through its Government & Regulatory Relations (GRR) team.
- Created the first Claims Judicial & Legislative Affairs (CJLA) unit within Zurich North America Claims as a social inflation task force comprised of a dedicated team of professionals to provide education and advocacy support.
- Launched and participates in the annual Lawsuit Abuse Reform Symposium with industry coalition members.
- Hosts Zurich Defense Attorney Summit twice a year through CJLA.
- Publishes the *Quarterly Digest* and the *Regional Recap* to keep industry partners informed through CJLA.

What can you do?

- Support local civil justice organizations.
- Gather examples and data to show abusive practices by plaintiffs’ attorneys to use as examples to lobby for reform.
- Follow potential PFAS legislation in your state.
- Support streamlining the MDL rules to allow dismissal when warranted so as to avoid costly litigation.

To learn how you can get involved, contact Zurich North America’s Claims Judicial & Legislative Affairs team at usz.cjla@zurichna.com.



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