

# PFAS: Protecting Your Business From 'Forever Chemical' Litigation

Article

*Amundsen Davis Alert*

October 3, 2024

## What Are PFAS?

Perfluoroalkyl and polyfluoroalkyl substances (PFAS) are a group of nearly 15,000 chemicals with heat, grease, oil, water, and stain resistant properties. They may be found in consumer products like food packaging, non-stick cooking materials, water resistant fabrics, and cosmetics. They are also found in commercial firefighting foams and used in industrial manufacturing processes. Commonly referred to as “forever chemicals,” they do not easily break down in the human body or environment.

The widespread use of PFAS began in the late 1940s. Since then, there has been considerable research on PFAS, including their uses, adverse effects of exposure (including cancers, fertility issues, diabetes, developmental issues, and immune disorders), and inability to easily break down. As a result, they have largely been phased out of products and manufacturing processes in the U.S. despite their useful properties.

## PFAS Litigation

PFAS litigation first began in the late 1990s and early 2000s, largely focusing on environmental contamination surrounding manufacturing locations. Major manufacturers, such as 3M and Dupont, have since faced thousands of related lawsuits, many of which alleged contamination of water supplies purportedly leading to adverse health effects for nearby residents.

In the late 2010s, there was an explosive increase in litigation that was driven in part by heightened public awareness of PFAS and the availability of more in-depth research that better proves the causal link between PFAS exposure and adverse health effects. Proving this link is a necessary component of recent litigation and plaintiffs are in a much stronger position than they were only a few years ago. Additionally, the staggering amount of money available in these settlements—some for billions of dollars—may further increase the likelihood of PFAS litigation.

## PROFESSIONALS

John F. D'Jock  
Associate

Jack T. Sanker  
Partner

## RELATED SERVICES

Business Litigation

Contaminants & Toxic  
Materials

Litigation

As a result, there has been an increase in regulatory scrutiny from federal and state governments, though regulation is still in its infancy and varies widely at the state level. The U.S. Environmental Protection Agency has issued various rules and regulations. Notably, many manufacturers and importers of PFAS products will need to report information on and related to such products by 2025. While state regulations are more patchwork in nature, some states have enacted near total bans on PFAS products.

### **Mitigating the Risk of Litigation**

Although early PFAS litigation focused on manufacturers, plaintiffs are increasingly targeting importers and retailers. These include companies that may have PFAS in finished products, even if the companies did not manufacture the PFAS. As a result, manufacturers, importers, and retailers may be the most affected of all by new regulations. Any entity that imports articles or components or buys materials will want to ensure that those products are in compliance with new regulations.

To mitigate the risk of litigation, prudent business owners should consult with legal and environmental professionals if they are concerned that they have or may have manufactured or sold products containing PFAS. Purchase contracts should be examined and revised to include indemnification and fee-shifting protections in the event a buyer inadvertently purchases prohibited or regulated materials. Business owners and operators should also review their business liability insurance policies to see whether PFAS-related claims are excluded from coverage. Newer policies typically already exclude PFAS-related claims, but historical policies may not.

Similarly, parties to real estate transactions may also be targeted and we expect to see standard disclosures around real estate transactions updated to account for PFAS. Sellers may commission environmental studies for potentially contaminated real estate prior to selling. They should also consider including language minimizing liability if PFAS contamination is found later. Parties that previously sold real estate that may have been contaminated should, in consultation with their attorneys, review sales documents to determine the likelihood of facing future litigation.

### **Conclusion**

These new regulations are constantly being revised in local statehouses. Coupled with the sudden federal interest in regulating PFAS, the compliance landscape is likely to impose significant burdens on business operators. A small investment at these early stages could prevent serious losses later, as the consequences of these new rules are yet to be fully understood. Business operators that are adjacent to industries most impacted by PFAS should consult with qualified attorneys experienced in business litigation, environmental risk assessment, insurance coverage disputes, and regulatory compliance to assess their exposure

## PFAS: Protecting Your Business From 'Forever Chemical' Litigation

and to plan how best to manage it.

PFAS:  
Protecting  
Your  
Business  
From  
'Forever  
Chemical'  
Litigation