

PFAS: FOREVER CHEMICALS, EVERYWHERE, ALL AT ONCE!

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HSB is a full-service law firm with 115+ attorneys in five office locations across the Carolinas.



PFAS: FOREVER CHEMICALS, EVERYWHERE, ALL AT ONCE

- Presentation Overview
 - What are PFAS?
 - Definition(s) of PFAS
 - Why do we care? Health risks from PFAS
 - Current litigation....overview
 - Regulation of PFAS...overview
 - What is to be done?

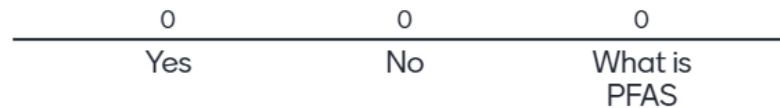
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Question: Have you dealt with a PFAS matter at your company?



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- What are per and polyflouroalkyl substances (PFAS)?
- Where did they come from?
 - Invented by DuPont and 3M and the late 1930's
 - 1940's 3M created PFOS and PFOA and began manufacturing those compounds
 - DuPont created the trademark Teflon (PTFE) in 1945
- 1940's and 1950's PFAS compounds enter the stream of commerce
- 3M and DuPont at forefront of manufacturing these products

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What are PFAS?

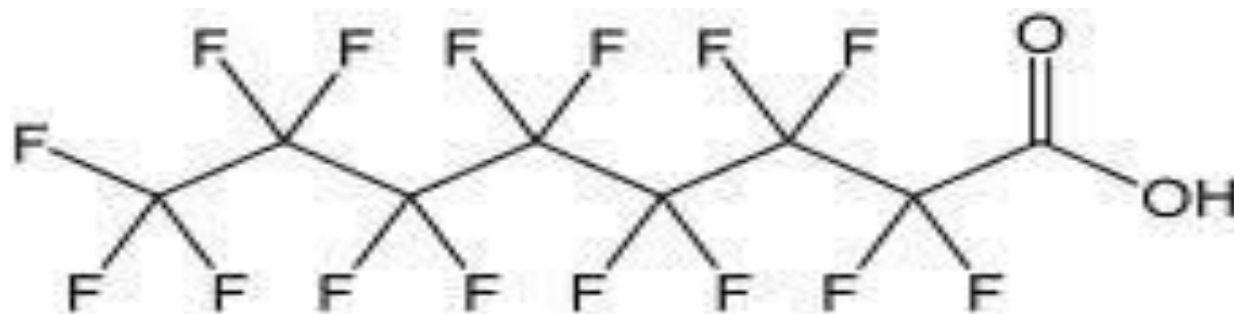
- Definitions vary!
 - EPA under TSCA 8(a)(7) defines PFAS as having one of the following chemical structures:
 - $R-(CF_2)-CF(R')R''$, where both the CF_2 and CF moieties are saturated carbons
 - $R-CF_2OCF_2-R'$, where R and R' can either be F , O , or saturated carbons
 - $CF_3C(CF_3)R'R''$, where R' and R'' can either be F or saturated carbons.
 - EPA released a list of 1,462 chemicals that match this PFAS definition.
 - For our purposes: broad class of synthetic fluorinated compounds
 - Fluorine-Carbon bond VERY strong and durable

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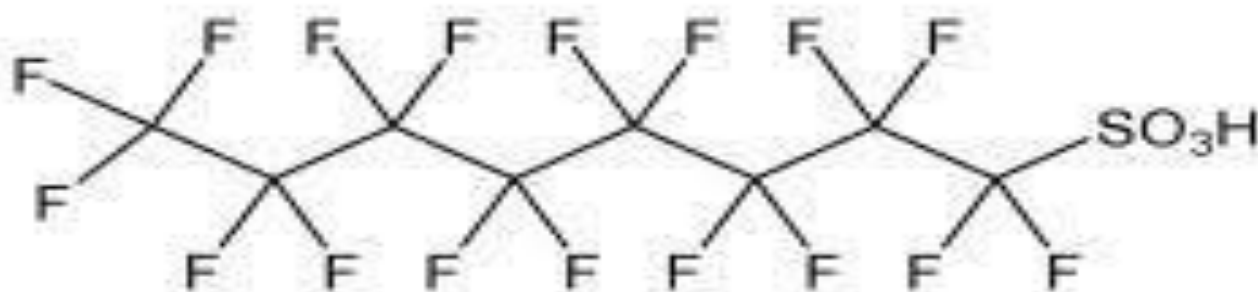
What are PFAS?

- Perfluorooctane sulfonate (PFOS) and perfluorooctanoic acid (PFOA) are most notorious and most widely studied
- Long chain = 8 carbon atoms (PFOS, PFOA)
- Short chain = less than 8 carbon atoms

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Perfluorooctanoic acid (PFOA)



Perfluorooctane sulfonate (PFOS)

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What are PFAS?

- Family of synthetic chemicals used in vast array of products:
 - Teflon, rugs, clothing, tank coatings, fabric, cosmetics, paper, food packaging, this carpet, the table cloth, your shoes...**Wonder Product!**
 - *Better living through chemistry!*
- EPA estimates up to **12,000** different PFAS compounds

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Why do we care?

- Persistent and durable in nature
 - Resist water, grease, oil, heat, sunlight
- Bio-accumulate
- Health effects include endocrine disruption, liver cancer, kidney and testicular cancer, high cholesterol, thyroid injury
- Evidence growing of broad array of health effects

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Why do we care?

- Found in penguins, polar bears, sharks, cows...
- Drinking water
- Surface water
- Groundwater
- Soil
- Air emissions
- ***Blood of 98% of Americans***

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PFAS Litigation Summary

- First case *Tennant v. DuPont*, 1999 (West Virginia)
- Settled in 2001...but
- New class action filed in 2001 (*Leach v. DuPont*)
 - Settled in 2004
 - C-8 panel formed...**blood tests, health data affirmed**
- MDL in Ohio followed *Leach* eventually 3,700 cases
- More MDL: municipal water systems, state claims
 - Focus turned to AFFF as new source...improper disposal
- AFFF MDL consolidated in South Carolina in 2017

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PFAS Litigation Summary

- AFFF MDL in SC started at 75 lawsuits now up to 5,600
 - June 23 settlement by 3M and Dupont/Chemours
 - 3M = \$12.5 billion to drinking water systems
 - DuPont-Chemours-Corteva \$1.185 billion (just approved)
 - **Opt outs by municipal water systems**
- Other: Minnesota v. 3M settlement of \$850 Million
- Property damage/Personal injury claims nation wide
- Praedicat 2023 data = ***9,800 lawsuits filed in 123 federal and state courts against 357 companies, 140 industries***
- More to come

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The State newspaper, November 23, 2023, headline:

"Columbia, Lexington decline millions of dollars to clean up drinking water. Here's why."



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PFAS Litigation Summary

- There will be more litigation
- Costs to drinking water systems to address PFAS estimated to be 100's of billions
 - Also....to what standard?
- Landfills, wastewater systems (POTWs), airports, military bases

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PFAS Regulation Overview

- Drinking water
- TSCA
- RCRA
- CERCLA
- Toxic Release Inventory (TRI) Reporting
- State laws

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PFAS Regulation Overview

- **Safe Drinking Water Act**
- Proposed standards for drinking water
 - PFOS and PFOA **4.0 parts per trillion**
 - For other PFAS...hazard index formula for combined PFAS (GenX, PFNA, PFBS, PFHxS)
- Monitoring requirements
- Costs could be significant....BILLIONS

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PFAS Regulation Overview

- **TSCA** Rule 8(a)(7) Reporting Requirements
- EPA issued final rule November 13, 2023 requiring any person that manufactures (including import) or has manufactured (including imported) PFAS or PFAS-containing articles in any year since **January 1, 2011 to 2022**, to electronically report information regarding PFAS uses, production volumes, disposal, exposures, and hazards.

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PFAS Regulation Overview

- **RCRA**
- January 31, 2024, EPA issued a **proposal rule** to amend RCRA regulations to add nine specific per- and polyfluoroalkyl substances ("PFAS") to the Agency's list of hazardous constituents.
- Corrective Action will be required
- Prelude to hazardous waste designation?

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PFAS Regulation Overview

- **CERCLA (Superfund)**
- August 2022 EPA proposed adding PFOS and PFOA to CERCLA list of Hazardous Substances
- So what?
- Reporting requirements for releases
- AND draconian cleanup liability...
- Joint, Strict, Several and Retroactive to be exact

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PFAS Regulation Overview

- **Toxic Release Inventory (TRI)**
- EPA issues rule requiring TRI reporting of PFAS
- "TRI data is reported to EPA annually by facilities in designated industry sectors that use TRI-listed chemicals above set quantities. The data include quantities of such chemicals that were released into the environment or otherwise managed as waste. Information collected through TRI allows communities to learn how facilities in their area are managing listed chemicals."

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PFAS Regulation Overview

- **State Laws**
- Consumer products and Environmental (similar to Federal laws)
- "intentionally added" language
- Maine, VT, CA, NY, WA, MN, many states are enacting laws limiting the sale of products with PFAS "intentionally added" including food packaging, cosmetics, other consumer products

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What is to be done?

- Conduct audit of product supply chain for PFAS
- Review discharge of air, water and waste for PFAS
- Insurance coverage
 - General pollution exclusion
 - Explicit exclusion
- M&A: screen for PFAS in property purchases
- Set aside reserve funds?
- Monitor changing laws and buckle up



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Has your company undertaken any of the following ?

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Conducted audit of supply chain for PFAS	Review discharge for PFAS	Expanded Insurance Coverage	Set aside reserve funds

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- Sources
 - Milliman Report; *The 'forever chemical' risk is now: An actuarial reserving study can help insurers prepare for PFAS claims and litigation*, November 2023.
 - PFAS Desk Book; James B. Pollack; Environmental Law Institute, 2023.
 - EPA news releases
 - Westlaw updates



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