

Per- and Polyfluoroalkyl (“PFAS”) Substances: A Regulatory and Legislative Update



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Adam Sowatzka, Partner





Topics

- Federal Regulation of PFAS
- Regulatory & Legislative Update
- Current Events
- Case Studies



Federal Regulation of PFAS

- Toxic Substances Control Act (“TSCA”)
- Safe Drinking Water Act (“SDWA”)
- Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA”)
- Other Federal Programs: Resource Conservation and Recovery Act (“RCRA”); Clean Water Act (“CWA”); Clean Air Act (“CAA”)

Proposed Federal Legislation



	Description	House	Senate	Date
1	Designate PFAS as hazardous substance under CERCA.	H.R. 535	S. 638	2/28/2019
2	Address PFAS at military bases.	H.R. 1567	S. 675	3/8/2019
3	Funding for blood testing for DOD firefighters.	H.R. 1863	S. 858	3/26/2019
4	Hospital care and medical services caused by PFAS exposure at covered military installations.	H.R. 2102	S. 1023	4/29/19
5	Secretary of Veterans Affairs to establish and maintain a registry for individuals exposed to PFAS at covered military installations.	H.R. 2195	S. 1105	4/29/2019
6	Amend the SDWA to set MCLs for PFAS.	H.R. 2377		4/29/2019
7	Broad PFAS bill to provide assistance to States on PFAS issues.		S. 1251	4/30/2019
8	EPA grants to communities with water systems contaminated with PFAS.	H.R. 2533		5/7/2019
9	USGS to create testing standards.	H.R. 1976	S. 950	6/13/2019
10	Amend EPCRA to include PFAS on TRI.	H.R. 2577	S. 1507	6/19/2019

State Legislation Enacted 2019



	State	Description	Date
1	California	Authorizes public water systems to monitor for PFOA and PFOS and report as necessary.	7/31/2019
2	Colorado	Prohibits sale and use of AFFF containing PFAS; requires manufacturers to disclose whenever PPE includes PFAS.	6/3/2019
3	Georgia	(HB 458) Prohibits (on and after January 1, 2020) the discharge or other use of firefighting foam that contains PFAS chemicals.	5/7/2019
4	Kentucky	Prohibits use of AFFF containing PFAS as of July 15, 2020.	3/22/2019
5	Maine	Prohibits the production of food packaging containers with various substances, including PFAS.	6/13/2019
6	New Hampshire	Prohibits use of PFAS chemicals in furniture, carpeting, and AFFF.	9/3/2019
7	Vermont	Requires the Secretary of Natural Resources to file a final proposed rule setting maximum contaminant levels for PFAS by February 1, 2020 [NOTE: Governor vetoed bill creating strict liability provisions for companies who release PFAS on June 17, 2019].	5/15/2019
8	Washington	Broad legislation to regulate PFAS and Other Chemicals in Consumer Products and Packaging.	5/10/2019

Georgia Legislation



SECTION 1.

Chapter 2 of Title 25 of the Official Code of Georgia Annotated, relating to regulation of fire and other hazards to persons and property generally, is amended by adding a new Code section to read as follows:

"25-2-41.

(a) As used in this Code section, the term:

(1) 'Class B fire-fighting foam' means any foam designed to extinguish flammable liquid fires.

(2) 'PFAS chemicals' means a class of fluorinated organic chemicals containing at least one fully fluorinated carbon atom, including perfluoroalkyl and polyfluoroalkyl substances, and designed to be fully functional in class B fire-fighting foam formulations.

(3) 'Testing' means calibration testing, conformance testing, or fixed system testing.

(b) On and after January 1, 2020, no person; fire department provided for under Chapter 3 of this title; state department, agency, board, bureau, office, commission, public corporation, or authority; county, municipal corporation, school district, or other political subdivision of this state shall discharge or otherwise use class B fire-fighting foam that contain intentionally added PFAS chemicals unless:

(1) Such discharge or other use occurs in fire prevention or in response to an emergency fire-fighting operation; or

(2) Such discharge or other use is for training or testing purposes which occurs at a facility that has implemented containment, treatment, and disposal measures to prevent uncontrolled releases of such class B fire-fighting foam into the environment.

(c) Nothing in this Code section shall be construed to:

(1) Restrict the manufacture, sale, or distribution of class B fire-fighting foam that contains intentionally added PFAS chemicals or restrict the discharge or other use of class B fire-fighting foam in response to an emergency fire-fighting operation; or

(2) Prevent the use of nonfluorinated foams, including other class B fire-fighting foams, for purposes of training for fire-fighting operations."

Federal Regulatory Efforts 2019



	Entity	Description	Date
1	EPA	Notification of a Public Meeting of the Chartered Science Advisory Board (meeting held June 5, 2019).	6/5/2019
2	EPA	Interim recommendations for how to address PFOA and PFOS contamination at sites evaluated under federal cleanup programs. The preliminary remediation goal is at 70 ppt.	6/10/2019

State Regulatory Efforts 2019



	State	Description	Date
1	Alaska	Technical memorandum “Action Levels for PFAS in Water and Guidance on Sampling Groundwater and Drinking Water.”	4/29/2019
2	California	The State Board requires investigations of PFAS contamination in a three phase approach: Phase I includes investigative orders, while Phases II and III will include clean up and treatment plans.	3/20/2019
3	Maine	DEP issued a recommendation for how to complete sampling by licensed sludge facilities.	3/22/2019
4	Minnesota	MDH issued a water advisory and sampling information for wells throughout Minnesota.	3/1/2019
5	Minnesota	MDH replaced the health-based value for PFOF for 15 ppt and PFHxS at 47 ppt.	4/1/2019
6	New Hampshire	NHDES Proposes New PFAS Drinking Water Standards.	1/2/2019
7	New Jersey	DEP ordered five companies to clean up PFAS contamination; companies have 21 days to respond and to give detailed account of their use and discharge of PFAS.	3/25/2019
8	New York	DEC requires sampling and subsequent analysis of all environmental media for emerging contaminants, including PFAS; sampling is required at all sites that are in the investigative phase of New York's DER program.	3/1/2019

Current Events – Dark Waters



- <https://www.youtube.com/watch?v=RvAOuhyunhY>



Case Study – Scenario #1

- Manufacturing facility in Northern Alabama
- Accidental AFFF release into containment area
- Discharged to POTW
- POTW contaminated with PFAS
- 6 months suspension of sludge application
- Waste disposal issues
- ADEM considered adding PFAS to facility's pre-treatment permit



Case Study – Scenario #2

- Recycling facility with active C&D landfill in New Hampshire
- Buyer performed Phase II and found high levels of PFAS in landfill and groundwater
- Entire deal fell through
- Seller worked with NH Department of Environmental Services to establish reasonable remediation plan following site assessment
- One year later, deal completed with new buyer

Thank You!



Adam Sowatzka

Partner

Environmental, Health & Safety

asowatzka@kslaw.com

+1 404 572-3508

Mr. Sowatzka has significant experience in assisting clients in the defense of administrative, civil, and criminal proceedings involving permitting and environmental enforcement matters at the federal and state levels. Since 2011, Chambers USA Leading Lawyers for Business has recognized Mr. Sowatzka as a leading environmental lawyer in Georgia. In 2012, Chambers USA noted that he "works hard to understand [his client's] business so that his advice takes into account [their] specific situation." Prior to entering private practice, he was an Associate Regional Counsel with the U.S. Environmental Protection Agency's Southeastern Regional Office and Vice President and General Counsel of a manufacturing and services subsidiary of Axel Johnson, Inc.