

PFAS: UPDATES AND PREDICTIONS

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Roadmap

- Recent Federal Efforts to regulate PFAS
- Update on State patchwork for PFAS
- Use of RCRA citizen suit provisions in PFAS cases
- Where do we go from here?

Update on the Federal Regulation of PFAS



Federal Approach to PFAS Regulation: Updates



- On March 2023, the EPA announced a proposed rule to establish a MCL for six PFAS: [PFOA](#), [PFOS](#), [PFHxS](#), [PFNA](#), [PFBS](#), and [GenX](#).
 - EPA is receiving public comments on the proposed rule until May 30, 2023.
- The proposed rule would require public water systems to:
 - Monitor for these PFAS;
 - Notify the public of the levels of these PFAS; and
 - Reduce the levels of these PFAS in drinking water if they exceed the proposed standards

Federal Approach to PFAS Regulation: Updates

- In September 2022, EPA proposed designating PFOA and PFOS as **hazardous substances** under CERCLA.
 - The public comment period was closed in November 2022. EPA is currently reviewing the comments.
- In April 2023, EPA asked for public input regarding potential future hazardous substance designations of seven additional PFAS under CERCLA.
 - Comments must be received on or before June 12, 2023 at docket EPA-HQ-OLEM-2022-0922

Federal Approach to PFAS Regulation: Updates

PFAS	2016 EPA HALs	2022 EPA HALs	2023 Proposed MCL
PFOA	70 ppt	0.004 ppt	4 ppt
PFOS	70 ppt	0.02 ppt	4 ppt
PFBS	--	2,000 ppt	Collective 1.0 Hazardous Index
GenX	--	10 ppt	
PFNA	--	--	
PFHxS	--	--	

Federal Approach to PFAS Regulation: CERCLA Reopeners

- CERCLA settlements often contain reopeners where previously undertaken remedial actions are no longer protective
- Designation of PFOA and PFOS as a hazardous substance under CERCLA could trigger superfund reopeners – especially where a site is set to undergo a five-year review.
- Be proactive to understand your risk!



Thinking Ahead: EPA's Recent Guidance



United States Environmental Protection Agency

Listening Session: CERCLA PFAS Enforcement

March 2023



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EPA's March 2023 Listening Session

CERCLA PFAS Enforcement Discretion

EPA intends to **focus** on manufacturers, federal facilities and other industrial parties whose actions result in the release of significant amounts of PFAS

EPA **may choose not to take** CERCLA enforcement action against certain entities

EPA may settle and provide CERCLA **contribution protection** to some parties



EPA's March 2023 Listening Session

Publicly Owned/Operated Municipal Solid Waste Landfills

Receive **solid waste** from communities,
other residential entities and POTWs

May receive **PFAS-contaminated** waste,
particularly from POTWs

- Solid residues
- Filtration media (e.g., GAC filters)



EPA's March 2023 Listening Session



Farms that apply Biosolids

Biosolids are **treated sewage sludge** from POTWs

Provide disposal alternative

May contain **PFOA or PFOS**

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EPA's March 2023 Listening Session

Limitations & Contingencies



Enforcement discretion limited to CERCLA



EPA retains ability to address situations that present an imminent and substantial endangerment



Policy contingent upon party's cooperation

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EPA's March 2023 Listening Session

Next Steps

- 1 Hear feedback from those **registered** to speak
- 2 Receive **written feedback** through the Agency's CERCLA PFAS enforcement webform
- 3 Develop **discretion policy** considering oral and written feedback
- 4 Make final policy **publicly available**

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EPA's March 2023 Listening Session

Enforcement Discretion Policy Web Resources

Form to submit **written remarks** will be available **until March 31** at:

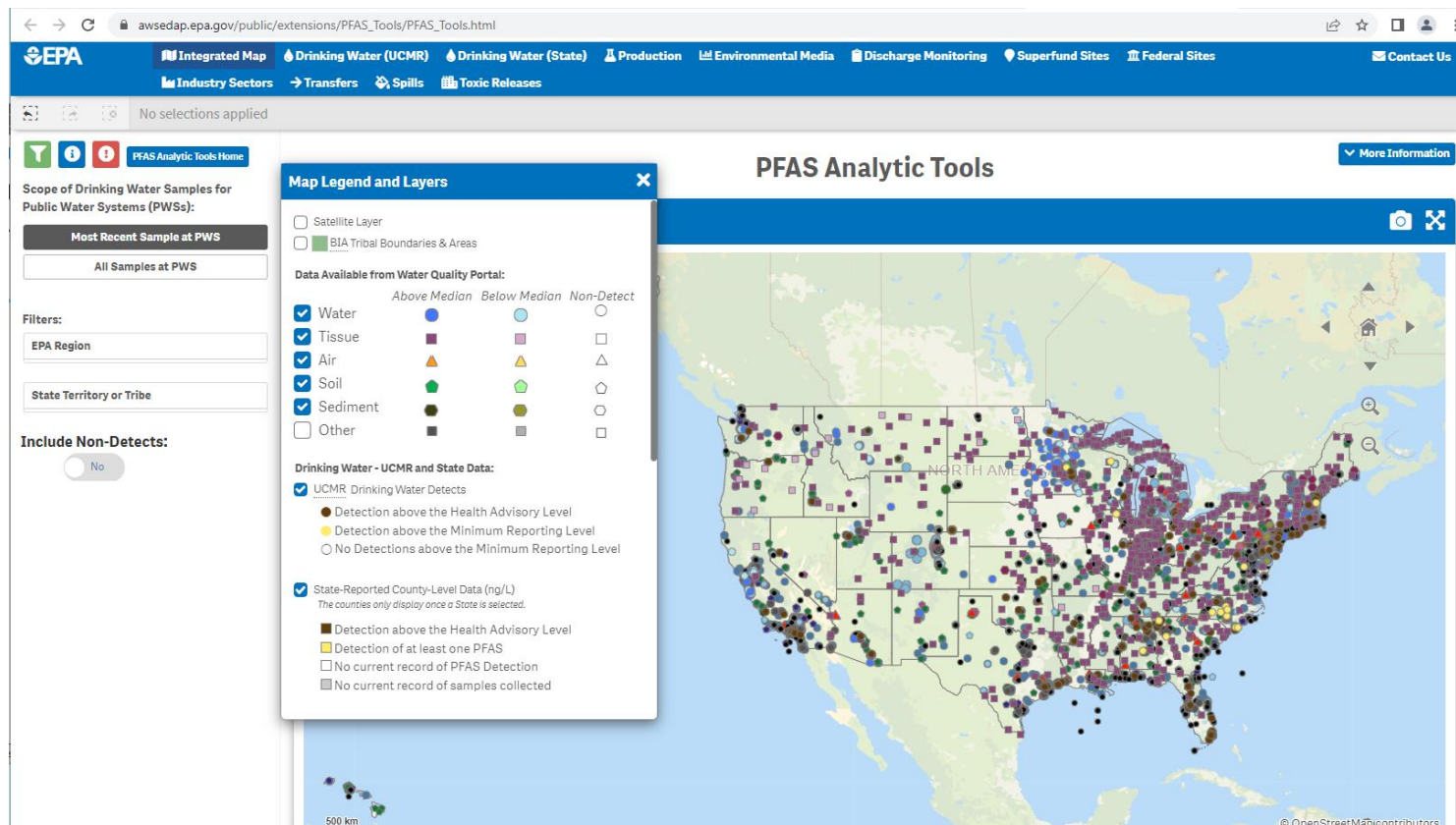
<https://www.epa.gov/enforcement/forms/contact-us-about-cercla-pfas-enforcement-listening-sessions>

Recordings will be posted **after March 23** at: <https://www.epa.gov/enforcement/cercla-pfas-enforcement-listening-sessions>



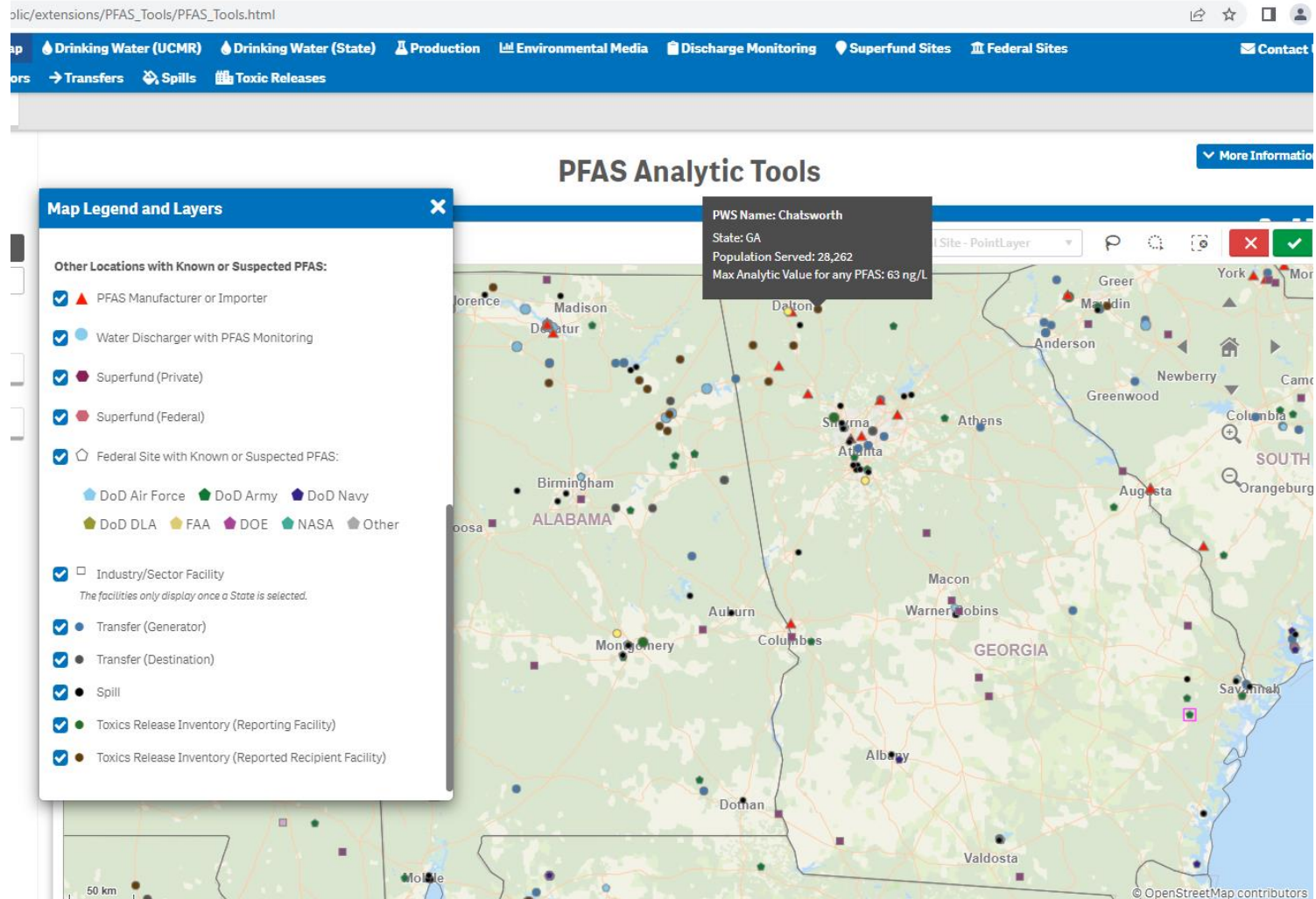
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EPA's PFAS Analytics Mapping Tool



https://awsedap.epa.gov/public/extensions/PFAS_Tools/PFAS_Tools.html

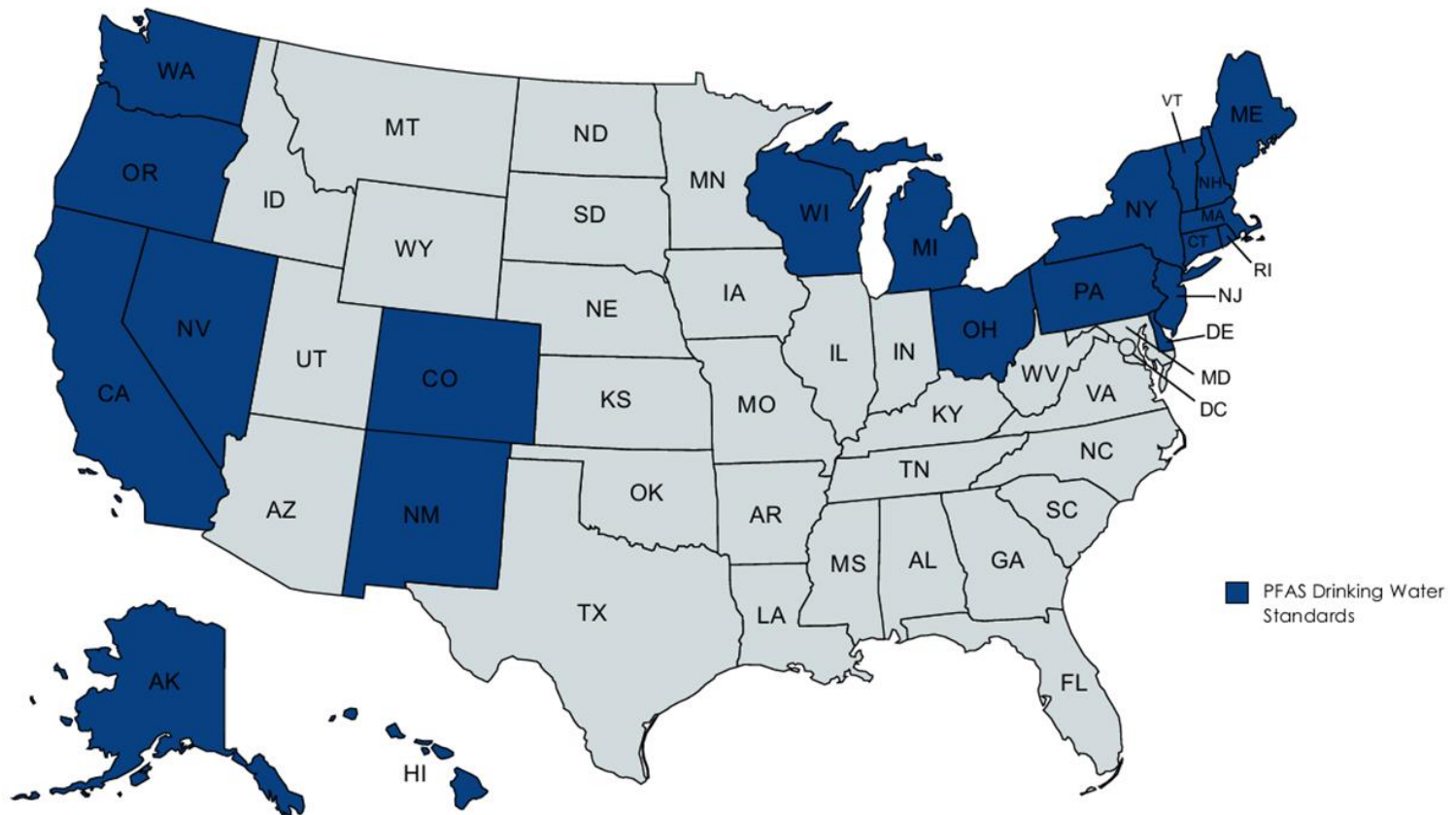
EPA's PFAS Analytics Mapping Tool





State PFAS Regulations: A Patchwork

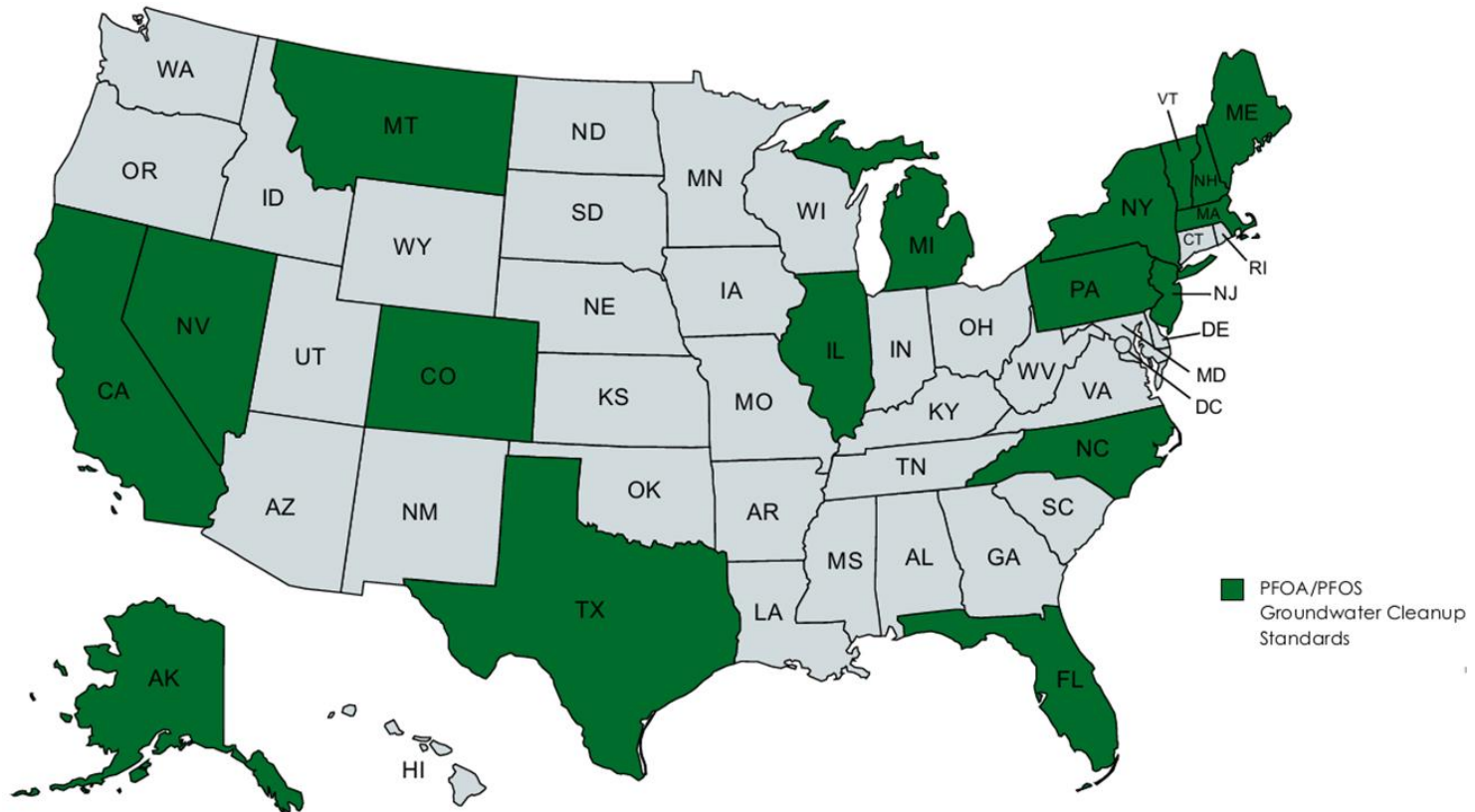
State PFAS Patchwork: Drinking Water Standards



State PFAS Patchwork: Drinking Water Standards

States with Drinking Water Standards						
State	PFOA	PFOS		State	PFOA	PFOS
Alaska	70 ppt	70 ppt		Maine [^]	20 ppt	20 ppt
California	5.1 ppt	6.5 ppt		Massachusetts [^]	20 ppt	20 ppt
Colorado*	70 ppt	70 ppt		Michigan*	8 ppt	16 ppt
Connecticut*	16 ppt	10 ppt		Ohio*	70 ppt	70 ppt
Delaware	70 ppt	70 ppt		Oregon*	30 ppt	30 ppt
Hawaii*	40 ppt	40 ppt		Pennsylvania	14 ppt	18 ppt
New Hampshire*	12 ppt	15 ppt		Rhode Island [^]	20 ppt	20 ppt
New Jersey*	14 ppt	13 ppt		Washington*	10 ppt	15 ppt
New Mexico	70 ppt	70 ppt		Wisconsin	70 ppt	70 ppt
New York	10 ppt	10 ppt		Vermont [^]	20 ppt	20 ppt
Nevada	667 ppt	667 ppt				
*States have additional standards for other PFAS						
[^] 20 ppt limit is the sum of PFOA, PFOS, PFHxS, PFNA, PFHpA, and PFDA						

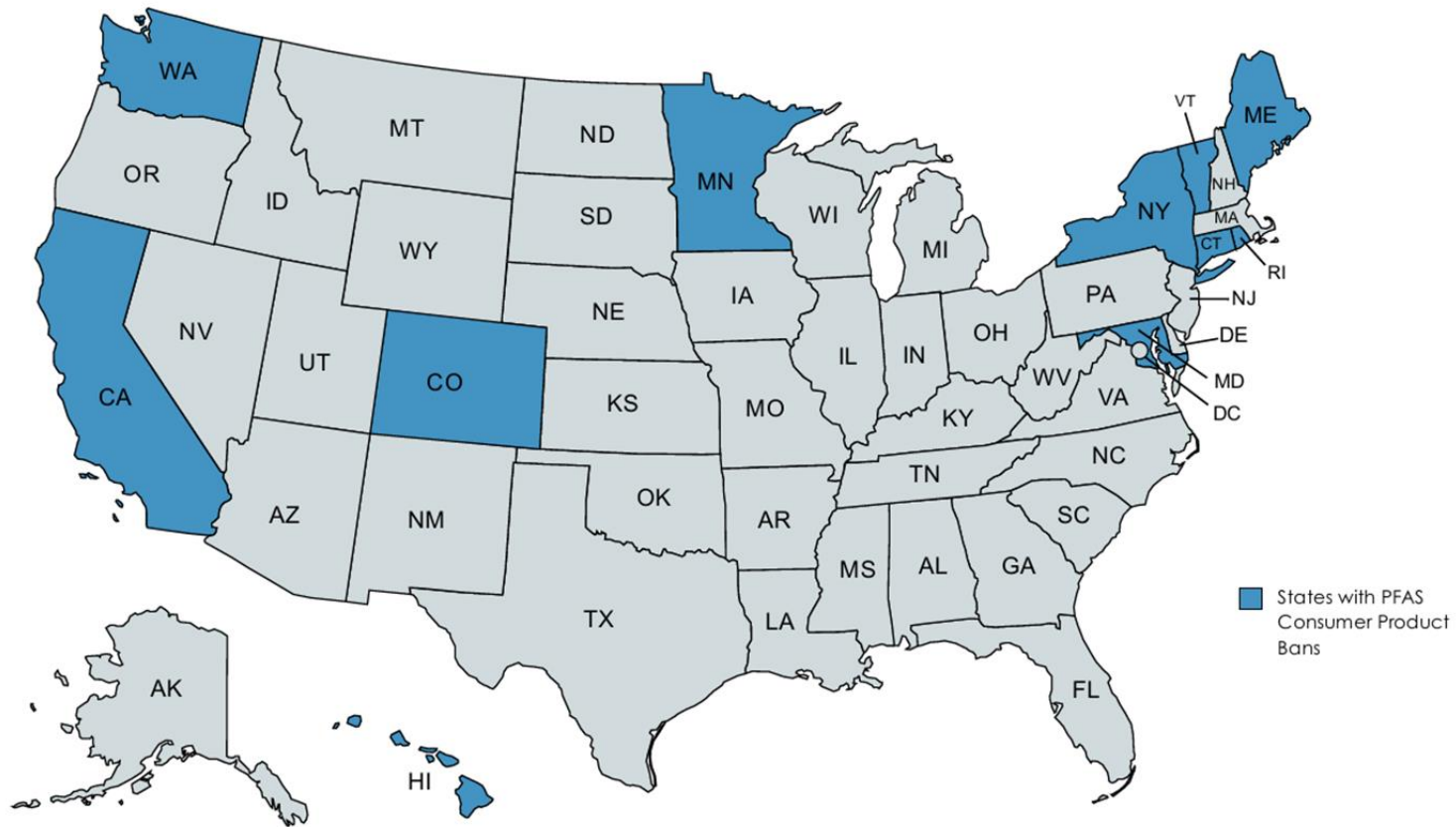
State PFAS Patchwork: Clean-up Standards



State PFAS Patchwork: Clean-up Standards

States with Groundwater Cleanup Standards for PFOA and PFOS						
State	PFOA	PFOS		State	PFOA	PFOS
Alaska	40 ppt	40 ppt		Maine	40 ppt	40 ppt
California	5.4 ppb	1.7 ppb		Massachusetts*	20 ppt	20 ppt
Colorado	70 ppt	70 ppt		Michigan	8 ppt	16 ppt
Florida	70 ppt	70 ppt		Minnesota	35 ppt	15 ppt
Illinois	2 ppt	14 ppt		Montana	70 ppt	70 ppt
New Hampshire	12 ppt	15 ppt		Pennsylvania	70 ppt	70 ppt
New Jersey	2 ppt	13 ppt		Rhode Island	70 ppt	70 ppt
New York	Designed PFOA/PFOS as a hazardous substance			Texas	290 ppt	560 ppt
Nevada	667 ppt	667 ppt		Vermont*	20 ppt	20 ppt
North Carolina	2,000 ppt	--				
*20 ppt limit is the sum of PFOA, PFOS, PFHxS, PFNA, PFHpA, and PFDA						

State PFAS Patchwork: PFAS Bans in Consumer Products



PFAS Patchwork: PFAS Bans in Consumer Products

States Banning PFAS Consumer Products		
State	Effective Date	Products Banned Where they had “Intentionally added PFAS”
California	Jan. 1 2023	<ul style="list-style-type: none">• Food packaging
California	July 1, 2023	<ul style="list-style-type: none">• Juvenile products
California	Jan. 1, 2025	<ul style="list-style-type: none">• Textiles and cosmetics
Colorado	Jan. 1, 2024	<ul style="list-style-type: none">• Carpet or Rugs• Fabric Treatments• Food Packaging• Juvenile products and• Oil and gas products
Colorado	Jan. 1, 2025	<ul style="list-style-type: none">• Cosmetics• Indoor textile furnishings• Indoor upholstered furniture
Colorado	Jan. 1, 2027	<ul style="list-style-type: none">• Outdoor textile furnishings• Outdoor upholstered furniture
Connecticut	Dec. 31, 2023	<ul style="list-style-type: none">• Food packaging
Hawaii	July 1, 2023	<ul style="list-style-type: none">• Food packaging• Firefighting foam

PFAS Patchwork: PFAS Bans in Consumer Products

States Banning PFAS Consumer Products (Cont.)		
State	Effective Date	Products Banned Where they had “Intentionally added PFAS”
Maryland	Jan. 1, 2024	<ul style="list-style-type: none"> • Class B fire-fighting foam, with a few exceptions • Food packaging • Rugs or carpets
Maine	Jan 1, 2023	<ul style="list-style-type: none"> • Any products with intentionally added PFAS
Minnesota	Jan. 1, 2024	<ul style="list-style-type: none"> • Food packaging
New York	Dec. 31, 2022	<ul style="list-style-type: none"> • Food packaging
Rhode Island	Jan. 1, 2024	<ul style="list-style-type: none"> • Food packaging
Vermont*	Jan. 1, 2024	<ul style="list-style-type: none"> • Rugs and carpets • Ski wax • Food packaging
Washington	Jan. 1, 2022	<ul style="list-style-type: none"> • Food packaging
** Bill currently in progress where cosmetics and Astro-turf containing intentionally added PFAS would be banned.		

PFAS Consumer Product Bans: Spotlight on California

- The California PFAS consumer product bans are novel in that the bills define PFAS as "a class of fluorinated organic chemicals containing at least one fully fluorinated carbon atom" and ban PFAS content at or above 100 ppm as measured by *total organic fluorine*.
- Total organic fluorine methods may not adequately capture the PFAS content in products.



State PFAS Patchwork: Considerations

- State approaches are constantly changing.
- States will likely increase rule-making once the EPA has finalized MCLs and listed PFOA and PFOS as hazardous substances.
- Always check your state before conducting any sampling!



PFAS Litigation: New Approach to Old Impacts



PFAS Litigation: RCRA Citizen Suits

- RCRA contains a citizen suit provision allowing private citizens to enforce its mandates in some circumstances. 42 U.S.C. § 6972(a)(1)(B).
- In relevant part, RCRA section 6972(a)(1)(B) empowers any person to “commence a civil action ... against any person ... who has contributed or who is contributing to the past or present handling, storage, treatment, transportation, or disposal of any solid or hazardous waste which may present an *imminent and substantial endangerment* to health or the environment.” *Id.* (emphasis added).

PFAS Litigation: RCRA Citizen Suits

“The Court finds that the Plaintiff has plausibly alleged that *even wholly past disposals* of PFAS-contaminated sludge *are a present threat to downstream water users*. For example, the Plaintiff claims that (1) Trion has disposed of nearly 8,000 tons of PFAS-contaminated sludge in the watershed since 1992; (2) *due to their persistence and mobility, PFAS are discharged from sludge to Raccoon Creek for decades, or longer, after initial disposal*; (3) significant amounts of PFAS-contaminated sludge remain on properties in the watershed, threatening Raccoon Creek and Summerville's water supply with further contamination; and (4) all sludge must be removed from the watershed to abate the risk of harm to the Plaintiff and others who consume Summerville's municipal water.”

Parris v. 3M Co., 595 F. Supp. 3d 1288, 1326 (N.D. Ga. 2022) (emphasis added)

PFAS: Where Do We Go From Here?

- Finalized Federal rulemaking will significantly change risk for PFAS use.
- Georgia likely to follow federal developments; other states are more aggressive.
- Old impacts can present a new problem – be prepared!

Questions?



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