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PFAS (aka Forever Chemicals) 101

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By: Nina Webb-Lawton

What do fast food wrappers, microwave popcorn, and mascara have in common? Manufacturers of all of these products have been sued on the ground that they contain one of the thousands of man-made chemicals that have come to be known as “forever chemicals.” And there are many other PFAS-containing products on the market, even now. In addition to consumer lawsuits, regulations governing the use or sale of PFAS are being written by states and federal agencies. Thus, manufacturers and retailers would be well-served by determining whether they are using PFAS in their manufacturing processes or are selling products that contain PFAS.

What Are PFAS?

PFAS stands for per- and polyfluoroalkyl substances. The first PFAS was discovered by a DuPont chemist in 1938 and became what we all know as Teflon. According to the U.S. Environmental Protection Agency (U.S. EPA), there are now thousands of these man-made chemicals. These substances are often referred to as “forever chemicals” because they break down slowly in the environment and can build up in the body, potentially causing health problems, including cancer.

Two of the most well-known PFAS are PFOA and PFOS. The manufacture of and importation into the U.S. of these two substances have been phased out. In many cases, however, PFOA and PFOS have been replaced with other PFAS materials that may carry with them similar environmental and health risks. For example, a PFAS called **GenX** has been used as a replacement for PFOA. Additionally, U.S. EPA indicates that are other substances that degrade into PFAS that have potential health risks.

Where are PFAS found?

Anyone who has seen the film *Dark Waters* is familiar with PFOA contamination in West Virginia. Another well-known use of PFAS, which has spawned numerous lawsuits, is firefighting foams. PFAS are

also found in numerous and varied consumer products because of their resistance to water, grease, and stains, as well as their non-stick characteristics. For example, PFAS are used in the fabric of some outdoor clothing to resist water while still imparting breathability. The stain-resistant qualities of some PFAS have led them to be used in textile products, including stain-resistant clothing and carpeting. The non-stick and fat-resistant qualities of certain PFAS have made them useful as coatings for food packaging, including fast food packaging and microwave popcorn bags. PFAS have also been found in personal care products such as dental floss and cosmetics. Finally, PFAS-containing products are used in the construction industry.

Retailers are not the only ones who need to be concerned about PFAS. PFAS may be used as processing aids in the manufacture of other substances, or in the manufacturing of PFAS-containing products, which exposes workers who handle the products.

Finally, PFAS can be found in the environment, including in drinking water that has been contaminated by industrial processes that use or create PFAS. The disposal or recycling of PFAS-containing products presents an additional pathway for environmental damage and human exposure. California has enacted a statute that specifically states that packaging or products that contain PFAS that were intentionally added are not recyclable.

What health risks are associated with PFAS exposures?

Exposure to PFAS, including PFOA and PFOS, has been associated with a number of negative health impacts, including kidney and testicular cancer, thyroid disease, low birth weight, and pregnancy-induced hypertension. The National Toxicology Program has stated that PFOA and PFOS are presumed to be an immune hazard in humans and may interfere with the efficacy of vaccines. It should be noted that, to date, the human studies have found that PFAS exposure is linked or associated with these health outcomes, but the available science has not determined definitively that PFAS exposure *causes* any of the negative impacts.

What PFAS regulations exist?

There are an increasing number of state, federal, and European statutes and regulations requiring disclosure of PFAS in products and/or banning the sale of certain PFAS-containing products.

California, Maine, New York, and several other states have enacted, or are considering, legislation banning the sale of certain PFAS-containing products, including food packaging, juvenile products, textiles, carpets, and cosmetics. For example, as of January 1, 2023, California has banned the distribution, sale, or offering for sale of any food packaging containing PFAS.

On March 14, 2023, the U.S. EPA **announced that it will propose** a PFAS National Primary Drinking Water Regulation that would set legally enforceable limits for six PFAS in drinking water, including 4 parts per trillion (ppt) limits for PFOS and PFOA.

Additional regulations are expected to be proposed and debated going forward. There is also ongoing litigation.

To learn more about PFAS regulations and PFAS litigation, [click here](#).

Contacts

Vorys has a group of attorneys who are actively monitoring PFAS regulations and litigation. If you have questions about PFAS or how PFAS regulations may impact your business, please contact your Vorys attorney or Rick Schuster (rdschuster@vorys.com), Susan Harty (sbharty@vorys.com), or Nina Webb-Lawton (niwebb@vorys.com).