

PFAS: Bigger Than Big Tobacco?



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EXECUTIVE SUMMARY

Per- and polyfluoroalkyl substances (PFAS), commonly referred to as “forever chemicals,” remain one of the most significant environmental, legal and financial risks facing businesses and communities. Over the past few years, the PFAS landscape has evolved rapidly. Litigation settlements now total tens of billions of dollars, federal drinking water standards are legally enforceable, and PFAS have been formally designated as “hazardous substances” under CERCLA (US federal Superfund law).

This white paper highlights why PFAS exposure may rival — or exceed — historic mass tort events such as “Big Tobacco” litigation or asbestos, and outlines the resulting implications for risk management and insurance strategy. According to some studies, potential future PFAS liabilities could exceed \$206 billion, which is the amount settled by Big Tobacco through the Tobacco Master Settlement Agreement of 1998.¹

PFAS: BACKGROUND AND ENVIRONMENTAL PERSISTENCE

PFAS are a large class of thousands of synthetic chemicals developed since the 1940s for their resistance to heat, oil and water. These properties have led to their widespread use in industrial processes and consumer products, including non-stick cookware, food packaging, textiles, cosmetics and aqueous film-forming foam (AFFF) used in firefighting.

PFAS have a carbon-fluorine bond which is one of the strongest developed. That is what gives these chemicals their unique and quite useful properties. Because of this bond, these chemicals do not degrade easily in the environment nor in the human body; the same chemical stability that made PFAS commercially valuable also makes them environmentally persistent.

PFAS migrate through soil into groundwater, bioaccumulate in humans and wildlife, and do not readily degrade. As a result, PFAS contamination has been detected in a significant portion of US drinking water systems and across global ecosystems. One U.S. Geological Survey study estimates at least 45% of the country’s tap water may have detectable PFAS. Studies also consistently show that the vast majority of Americans (approximately 98%) have PFAS in their blood, raising long-term public health concerns.

HEALTH AND ENVIRONMENTAL CONCERNS

Scientific research has linked exposure to certain PFAS compounds with a range of adverse health outcomes, including immune system impacts, reproductive and developmental effects, elevated cholesterol and increased risks of certain cancers.

These findings have driven a shift from advisory-level guidance toward binding regulatory standards and aggressive enforcement, demonstrating that regulatory action can oftentimes be the spark that turns latent risk into realized liability.

The growing body of science has also expanded potential liability beyond manufacturers to downstream users, waste handlers, property owners and public entities that may have passively received PFAS through supply chains or wastewater systems.

PFAS LITIGATION: SCALE AND RECENT SETTLEMENTS

PFAS litigation has accelerated markedly and now represents one of the largest environmental liability waves in US history. Municipal drinking water claims have largely set the benchmark, with personal injury and natural resource damages claims continuing to expand.

Key settlements:

- **Public water system settlement:** Large manufacturer settled between \$10.3 and \$12.5 billion, payable through 2036, resolving claims by US public water systems for PFAS treatment and remediation costs.
- **Water utility settlement:** Numerous chemical manufacturers settled at \$1.185 billion to resolve similar drinking water contamination claims, separate from personal injury litigation.
- **Firefighting foam (AFFF) manufacturers:** Settlements associated with the manufacture of PFAS-containing firefighting foams included \$750 million, 730 million and \$316.5 million for three separate companies.
- **State-level actions:** New Jersey settlements with one large manufacturer (up to \$450 million), as well as entities of another large manufacturer (approximately \$875 million in damages plus long-term remediation funding) underscore expanding state attorney general actions.

Collectively, PFAS settlements now rival historic mass tort benchmarks. Unlike tobacco, PFAS exposure is nearly universal, significantly increasing the potential scope of future claims.

REGULATORY LANDSCAPE: WHAT HAS CHANGED

Federal regulation of PFAS has advanced more in the last three years than in the prior three decades. Several developments fundamentally alter liability and compliance obligations.

CERCLA (Superfund)

In April 2024, the U.S. Environmental Protection Agency (EPA) finalized rules designating PFOA (perfluorooctanoic acid) and PFOS (perfluorooctane sulfonate), each part of the broader PFAS chemical classification, as “hazardous substances” under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). This triggers strict, joint, retroactive and several liability for remediation and cost recovery. This allows the EPA to force responsible parties to either clean up a contaminated site or reimburse the EPA for the full cost of remediation. This may lead to requests for sampling and testing for PFAS at existing Superfund sites, and the potential reopening of closed Superfund sites.

Drinking water standards

The EPA issued the first-ever legally enforceable national drinking water standards for PFAS in 2024. While subsequent rulemakings extended compliance timelines and narrowed the scope of regulated compounds, enforceable maximum contaminant levels (MCLs) for PFOA and PFOS remain at four parts per trillion. Public water systems must complete initial PFAS testing by April 1, 2027, and implement treatment technologies to meet MCLs by 2031.

TSCA reporting and supply-chain risk

Under the Toxic Substances Control Act (TSCA), manufacturers and importers must report PFAS usage dating back to 2011. These reporting obligations increase transparency but also create litigation and enforcement risk by establishing detailed historical records of PFAS handling and distribution.

Biosolids and wastewater

EPA continues to assess PFAS risks associated with biosolids applied to agricultural land. Wastewater treatment plants, while not PFAS manufacturers, may increasingly face scrutiny as passive receivers and distributors of contamination through land application and discharge pathways. Even organizations hired to dispose of these biosolids from wastewater treatment plants can face liability.

INSURANCE IMPLICATIONS

Most traditional property and casualty policies exclude pollution-related claims, including PFAS. Environmental insurance remains the primary risk-transfer mechanism for current and future PFAS liabilities, including:

- Third-party bodily injury and property damage
- Cleanup and remediation costs
- Regulatory action and cost recovery claims

There are numerous environmental insurance policies that can address pollution exposures (including PFAS), such as:

- **Pollution Legal Liability (PLL):** For owned/operated locations
- **Contractors Pollution Liability (CPL):** For operations or work conducted at third-party locations
- **Combined general liability and pollution:** Providing comprehensive approach to insuring GL and pollution exposures, especially if the insured's product or work poses inherent pollution concerns.

Coverage availability depends heavily on the insured's exposure to PFAS, contractual risk transfer and even jurisdictional interpretations of pollution exclusions. It is imperative that policies be designed to creatively address all known and unknown environmental risks including PFAS. Early risk identification and policy archaeology remain critical.

Insureds have triggered legacy occurrence-based policies issued prior to the mid-1980s for pollution-related claims including asbestos and now PFAS; these policies may still respond to PFAS claims where pollution exclusions did not apply.



STRATEGIC TAKEAWAYS

- PFAS liability is no longer theoretical; it is capital-intensive, long-tail and expanding beyond manufacturers that made or utilized PFAS and PFAS-containing materials.
- Regulatory momentum has shifted decisively toward enforceable standards, as well as strict and retroactive cleanup authority.
- The utilization of environmental insurance to transfer risk related to PFAS is integral given the ubiquitous nature of these hazardous materials along with the broad nature of liability. Future litigation will prove to be financially significant for many organizations.
- Transitioning away from PFAS use where feasible remains one of the most effective long-term risk mitigation strategies.

CONCLUSION

PFAS represents a defining environmental, legal and insurance challenge for the next several decades. As litigation and regulation continue to evolve, organizations that act early — by understanding their exposure, securing appropriate coverage and reducing reliance on PFAS — will be best positioned to manage costs, protect balance sheets and demonstrate environmental stewardship in an increasingly scrutinized landscape.



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¹Kluger, Jeffrey. "Forever Chemical' Lawsuits Could Ultimately Eclipse the Big Tobacco Settlement," *TIME*, 12 Jul 2023.

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