



PFAS Primer

What are PFAS?

PFAS stands for per- and polyfluoroalkyl substances, a class of thousands of chemicals that repel oil and water and are heat resistant. Widely used since the 1940s, PFAS are found in a range of everyday consumer, commercial, and industrial products, including food, food packaging, textiles, electronics, personal care products and cosmetics, cleaning products, dental floss, furniture, carpet, and other items treated with water and stain protectors, among many others. PFAS accumulate over time, break down very slowly, and are widely found in the blood of people and animals, water, air, and soil worldwide. Exposure to certain types of PFAS has been linked to harmful health effects in humans and animals.

Who should care about PFAS?

- Companies and industrial/commercial/residential facilities that manufacture, sell, distribute and/or use products containing PFAS, or that may contain PFAS because the products are (for instance) waterproof, grease resistant, or stain resistant.
- Restaurants, grocery stores, and food packing suppliers.
- Owners and/or developers of real property.
- Waste management and remediation services.



Why assess your PFAS exposure now?

PFAS are increasingly on the radar of regulators, consumers, and plaintiffs. On June 15, 2022, the EPA announced new health advisory levels for four PFAS chemicals that are below detectable levels—effectively deeming that any level of these four PFAS in drinking water can be damaging to human health. Standards regulating PFAS in consumer products and real property vary by state and are expanding quickly. Alaska, California, Connecticut, Maine, Minnesota, New Jersey, New York and Vermont have enacted standards to restrict, phase-out, ban, and/or remediate PFAS. Numerous states are expected to follow suit and federal standards are expected within the year. Here's what's on the horizon:

- PFOS and PFOA, the two most common PFAS, are slated to be listed as hazardous substances under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), which will potentially result in listings of new Superfund sites and the reopening of previously-closed sites.
- EPA is expected to add 4 PFAS chemicals as Hazardous Constituents under the Resource Conservation and Recovery Act's (RCRA) Corrective Action Program.
- EPA also will require, effective January 1, 2023, businesses that have manufactured and/or imported certain PFAS (including as a byproduct) since January 1, 2011 to report on PFAS use, production volume, disposal, exposure, and hazards.
- Significant new use rules (SNURs) are expected under the Toxic Substances Control Act for 150 PFAS chemicals.

These developments will give opportunistic plaintiffs new avenues to assert PFAS claims, and regulators the basis for expanded investigation and enforcement. Don't wait for a regulatory enforcement action, a lawsuit, or the closing of a property transaction to discuss your potential PFAS exposure.

How can Sheppard Mullin help?

- **Due Diligence:** We can help you assess PFAS risk involved in real property acquisitions, dispositions, and leasing transactions and negotiate deal terms to help you shift risk and protect your investments. We also can advise on costs and insurance challenges involved with remediating PFAS-contaminated property and liability under CERCLA.
- **Counseling & Compliance:** Minimizing PFAS exposure requires careful planning. We can help you understand evolving PFAS regulations, investigate whether your company's activities and products are subject to regulatory, reporting and recordkeeping requirements, and develop and implement prudent compliance practices, while maintaining attorney-client privilege. We also have strong relationships with consultants who can help you determine if PFAS are present in your products in the most cost- and time-efficient way possible.
- **Regulatory Defense:** If you are subject to an investigation or reporting requirements, or receive a notice of violation, we can advise you in addressing issues and minimizing exposure.
- **Litigation Defense:** If you receive a Consumer Legal Remedies Act letter or a Prop 65 notice, or are named in a PFAS class action, we can advise and defend you.

Learn More

Watch our recent webinars:

[PFAS & Consumer Products: Navigating Evolving Liability & Litigation](#)

[PFAS & Real Property Transactions: The Essentials of Diligence & Compliance](#)

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