



Perfluorinated Chemicals – Drinking Water & Fast Food Packaging

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What are PFCs, PFASs, PFOS, and PFOA? [1, 2]

- > PFCs = perfluorinated chemicals
- > PFASs = per- and polyfluoroalkyl substances are resistant to heat, water, and oil.
- > The most highly produced and studied PFASs in the U.S. are PFOS and PFOA.
 - PFOS = perfluorooctane sulfonic acid
 - PFOA = perfluorooctanoic acid
- > EPA states that PFASs are persistent, resist degradation in the environment, and bioaccumulate.

Reduction Efforts by Industry

- > In 2000, one of the principal PFAS manufacturers began phasing out PFOA, PFOS, and PFOS-related compounds. ^[3]
- > EPA launched PFOA Stewardship Program in 2006 due to concerns about the impact of PFOA and long-chain PFASs on human health and the environment.

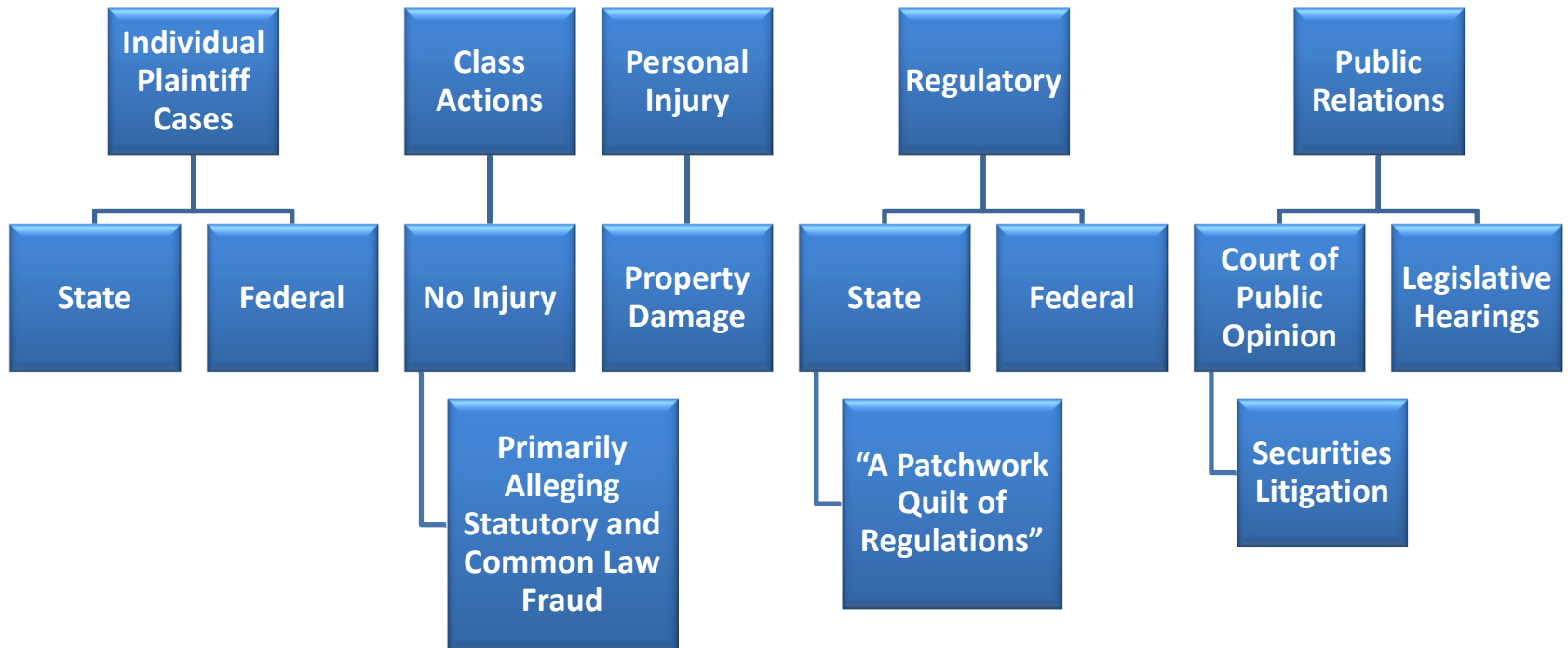
EPA's PFOA Stewardship Program

- > In 2006, EPA invited 8 major companies in the PFASs industry to join a “global stewardship program.”^[4]
- > The PFOA Stewardship Program established two main goals for the companies:
 - (1) 95% reduction PFOA facility emissions and product content levels of the chemicals by 2010; and
 - (2) work to eliminate these chemicals from emissions and products by 2015.
- > EPA reported that all 8 companies have met the Stewardship Program goals.

Drinking Water Health Advisory

- > In 2009, EPA established a provisional short-term health advisory of 400 parts per trillion (ppt) for PFOA in drinking water.
- > In 2016, EPA established a lifetime health advisory level of 70 ppt for PFOS and PFOA in drinking water.^[5]
- > EPA health advisories are “non-enforceable and non-regulatory” and provide technical information to state agencies.
- > More stringent recommendations have been made at the state level (e.g., New Jersey and Vermont).^[6]

A New Paradigm for Toxic Torts: Perfluorinated Chemicals



PFOA Litigation

- > Ohio multi-district litigation (“MDL”) involving over 3,500 personal injury claims arising from environmental releases of PFOA from a plant on the Ohio River settled for \$670.7MM in February.^[7] See *In re E.I. du Pont de Nemours & Co.*, No. 13-md-02433 (S.D. Ohio); *Moody v. E.I. du Pont de Nemours & Co.*, No. 15-cv-00803 (S.D. Ohio).
- > Residents of Hoosick Falls, New York filed a class action complaint in the U.S. District Court for the Northern District of New York alleging PFOA contamination of drinking water. Four putative class action complaints were consolidated in 2016 and a new civil action was designated, *Baker, et al. v. Saint-Gobain Performance Plastics Corp., et al.*, No. 16-cv-0917 (N.D.N.Y.).

PFOS and PFOA Litigation in Pennsylvania

- > Pennsylvania lawsuits in state and federal court alleging PFOS and PFOA contamination of drinking water.
- > Four federal putative class action complaints consolidated pending class certification. *Bates, et al. v. The JM Co., et al.*, No. 16-cv-04961 (E.D. Pa.); *Grande, et al. v. The JM Co., et al.*, No. 16-cv-05380 (E.D. Pa.); *Yockey, et al. v. The JM Co., et al.*, No. 16-cv-05553 (E.D. Pa.); and *Fearnley v. The JM Co.*, No. 16-cv-06416 (E.D. Pa.). Defendants moved to dismiss the complaints on April 21, 2017.^[8] Fifth case filed, *Menkes, et al. v. 3M Co.*, No. 17-cv-00573 (E.D. Pa.), and defendants' response is due May 15, 2017.
- > State court actions also filed against the U.S. Navy alleging PFOS and PFOA contamination of drinking water due to the use of firefighting foams on nearby military base.

Food and Drug Administration

- > Perfluorinated grease-proofing agents have been used on food contact surfaces since the 1960s.
- > Regulations in the United States specify which PFASs are allowed in food contact materials.
- > The FDA currently approves more than 90 PFASs for use in food contact materials.

Evolving Action at the FDA

- > Recent studies have raised safety concerns with one type of perfluorinated chemicals known as C8 compounds.
- > These compounds have perfluorinated chain lengths of 8-carbons.
- > Manufacturers volunteered to stop distributing products containing C8 compounds for food-contact purposes as of October 1, 2011.

Evolving Action at the FDA

- > In January 2016 the FDA rescinded approval for three families of long chain PFAS used in food contact materials.
- > Yet, certain PFASs are still approved by the FDA, including PFAS replacements and shorter chain PFASs, or long compounds with perfluorinated subunits.

Study Published in Environmental Science & Technology Letters on PFASs in Fast Food Packaging

- > Laurel Schaider from Silent Spring Institute along with other researchers from universities and non-profits, examined PFASs in fast food packaging.^[9]
- > Study suggests the presence of PFASs in food packaging poses some safety or environmental concerns.
- > Nevertheless: “It is difficult to assess exposure and risk associated with PFASs in fast food packaging because the extent of exposure from FCMs and the toxicity of most fluorinated chemicals in FCMs are poorly characterized.”

Reactions to Study

- > Public concern expressed in news coverage.
- > Comment from Foodservice Packaging Institute's President:^[10]
 - Today, “short chain” fluorochemicals are used, and these food packaging products undergo rigorous testing to meet FDA regulations.
 - “fluorochemical-free products have been introduced since this study was conducted in 2014 and 2015.”
- > FluroCouncil stated that there are certain “short-chain PFAS chemicals” that have been reviewed and approved by FDA for coating food contact papers.^[11]
- > Some fast food restaurants have indicated they will look into the potential issues identified by the study.

Proposed California Bill

- > California Assembly Member Phil Ting (D-San Francisco) introduced a bill in February that sought to restrict use of fluorinated compounds in food contact paper. AB-958.^[12]
- > On April 20, 2017, the bill was amended with significant changes:
 - “Fluorinated chemicals” deleted and replaced by “perfluoroalkyl and polyfluoroalkyl substances.”
 - The amended bill seeks to prohibit manufacturing, selling, or distributing “any product that contains perfluoroalkyl or polyfluoroalkyl substances with eight or more carbon atoms.”
 - Revise 2015-17 Priority Product Work Plan to include food contact substances containing PFAS for consideration as “potential priority product” under Green Chemistry program.

Status of California AB-958

- > Amended in Assembly on March 21, 2017 and April 20, 2017 and re-referred to the Committee on Environmental Safety and Toxic Materials.
- > Majority vote required.
- > Committee Hearing on April 25, 2017 – PASS (Ayes: 5; Noes: 2; Abstain: 0)
- > Affirmative recommendation made by Committee on Environmental Safety and Toxic Materials and to be re-referred to the Committee on Appropriations.

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