

A large, cylindrical water tower stands on a metal lattice structure against a solid blue background. The tower is the central focus of the image, with its top and bottom flanges clearly visible. The overall tone is professional and serious.

WATER PROVIDER PFAS CONTAMINATION

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EXPERIENCE MATTERS

Each member firm has a significant and pivotal role in prosecuting the pending PFAS actions, and, thus, overseeing the strategic course of this litigation.

Moreover, multiple members of each firm have likewise been appointed as Chairs and/or Co-Chairs to spearhead the multitude of committees created by the PEC to efficiently and effectively prosecute these cases.

As a result of these roles in leadership and committee appointments, each member firm will play an integral role in MDL 2873, and shape its ultimate course going forward. And, to this end, be able to provide invaluable resources and aid to clients in these cases.



Ned McWilliams

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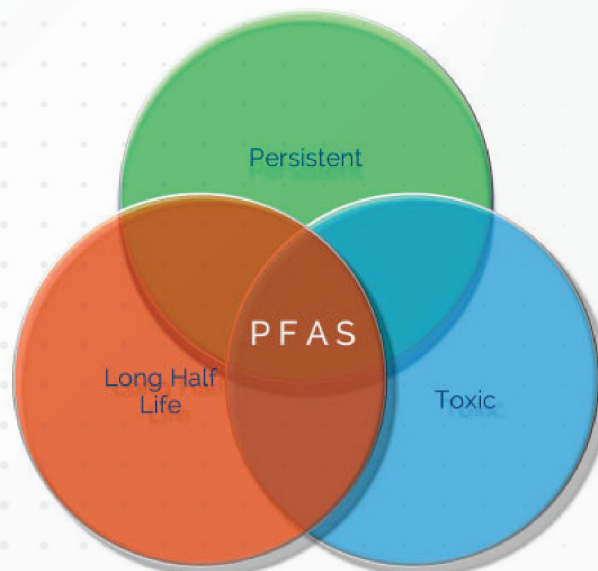
Kennedy & Madonna

AN EMERGING TOXIC TORT

Per and Polyfluoroalkyl substances (“PFAS”) are a group of man-made chemicals that have captured the attention of regulators and public health officials around the world. These substances are used far and wide, including in everyday household products, such as Teflon non-stick pans and microwave popcorn bags, and in fire fighting foams. A growing body of toxicological and epidemiological data has linked exposure to these chemicals to a number of diseases, cancers and other adverse health outcomes. Consequently, the manufacturers of these chemicals are facing a tsunami of lawsuits in various jurisdictions in and outside the United States.

This type of litigation, commonly referred to as toxic torts, is by no means a new area of law. Litigators have tackled a myriad of corporate polluters in our environment – PCBs, MTBE, dioxin and asbestos to name a few. But PFAS chemicals stand out due to their deadly trifecta of attributes:

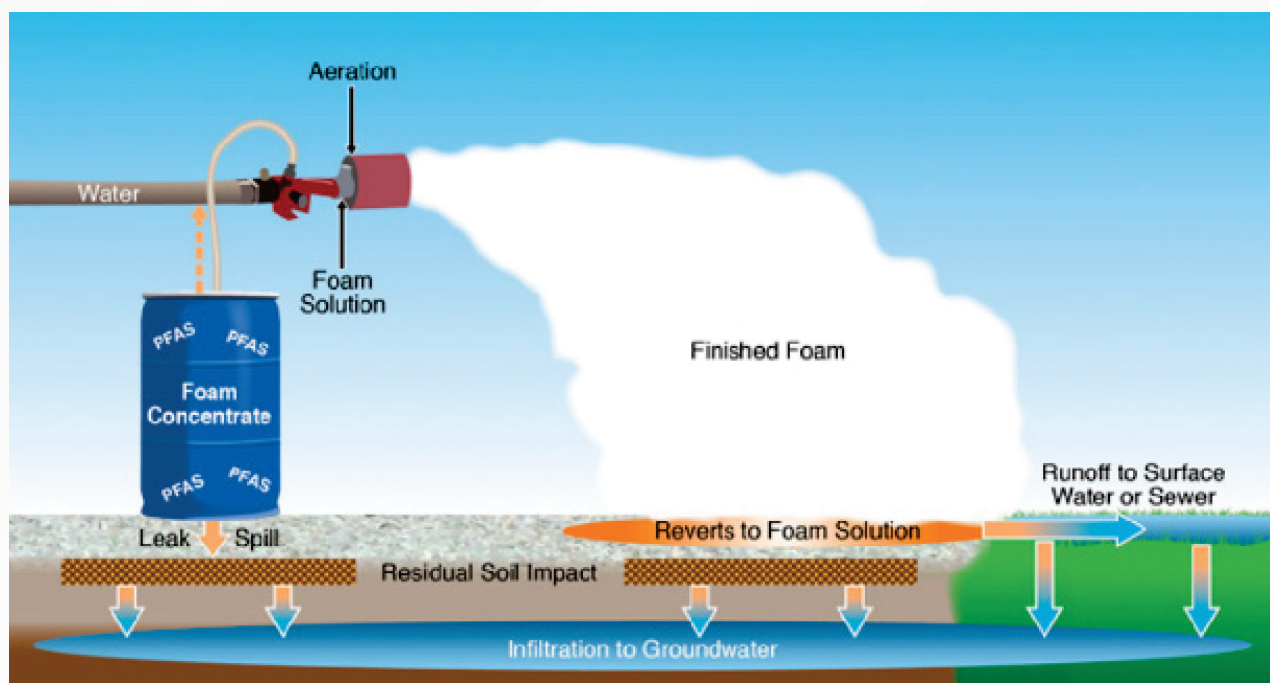
- their persistence in the environment
- their exceptionally long half-lives in humans
- their toxicity



PERSISTENCE IN THE ENVIRONMENT

PFAS chemicals are commonly referred to as **'forever chemicals'** due to their ability to persist in nature. Whereas most chemical compounds degrade over time in the environment after exposure to sunlight, microorganisms, water or heat, PFAS chemicals can survive in the environment for centuries. This is because PFAS chemicals have incredibly strong carbon-fluorine bonds that render Mother Nature ineffective at naturally decomposing them, and it is this quality that makes them so useful to their chemical industry inventors. As a consequence of this chemical attribute, virtually every molecule of this class of chemicals is still in existence, somewhere on this planet, working its way through our environment.

One of the primary ways PFAS has been introduced into the environment is through the use of aqueous film-forming foam (AFFF). AFFF is a type of water-based foam that was first developed in the 1960s to extinguish flammable liquid fuel fires at airports and military bases, among other places. Based on development, marketing, training, sale, handling, and use, AFFF introduced PFAS in extraordinary amounts to the environment.



EXCEPTIONALLY LONG HALF-LIFE

Next in the PFAS chemicals' deadly trifecta is their exceptionally long half-life. Half-life is a fundamental component of pharmacology, measuring how long it takes for half of a substance to leave the body. Most medicines dispensed at a pharmacy work their way through your body in a matter of hours. "Long-acting" versions of medicines are engineered to stay in the body longer, i.e. to have a longer half-life. Environmental toxins are no different. The environmental toxin mercury has a half-life of one to three weeks. The half-life of some PFAS chemicals is measured in years. One of the worst PFAS chemicals, known as Perfluorooctanesulfonic acid ("PFOS"), has a half-life of approximately 5 years. This means that after a single exposure the human body will retain appreciable quantities of this chemical for more than 25 years. As a result, to the extent these chemicals are harmful, they have a long time to be able to cause that harm.

TOXIC TO HUMANS

Relative to other families of chemicals, public health officials and toxicologists had a late start in assessing PFAS chemicals and their risk of harm to humans. This is because the few companies that made and used PFAS chemicals limited access to information about them. For example, until recently, it was nearly impossible for the scientific community and regulators to obtain samples of many of these chemicals that would be necessary to conduct routine toxicology testing.

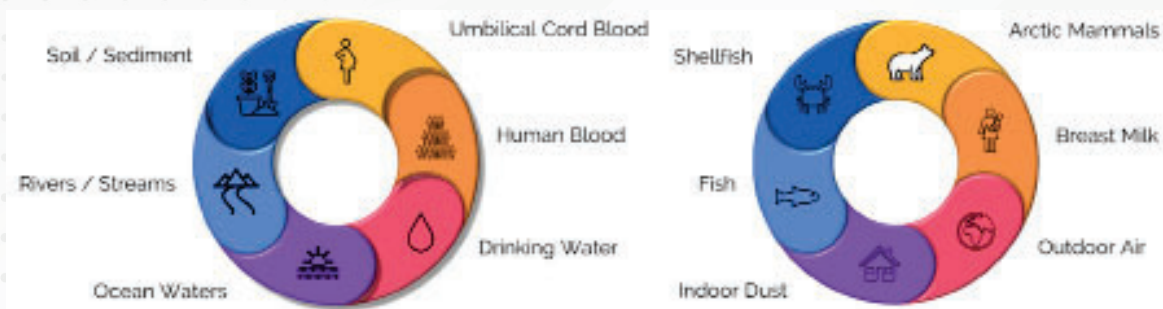
That is no longer the case and a consensus has been reached about their impacts on human health: PFAS chemicals are incredibly toxic. PFOS and PFOA are carcinogens. They have been linked to various cancers, including kidney cancer, testicular cancer, breast cancer and prostate cancer. Similarly, PFAS exposure has been associated with liver damage, thyroid disease and preeclampsia in pregnant women.

This trifecta of attributes makes PFAS chemicals particularly troublesome. Once released into the environment, they will remain there indefinitely, traveling through the environment until they find their way into humans, where their levels will accumulate and effectuate their toxic effects. Unfortunately, vast amounts of PFAS chemicals have already been released into the environment and as a result have contaminated the entire planet.

GLOBAL CONTAMINATION

Ever since PFAS burst into the environmental scene in the late 1990s, scientists have been scouring the planet evaluating the scope and degree of PFAS contamination. What they've discovered is startling. Unlike most contaminants, where the scope of contamination is limited in its geographic proximity to the sites of manufacturing or discharge into the environment, PFAS contamination is global.

PFAS has been detected in virtually every environmental media around the world ranging from rivers and streams to air samples collected in the middle of the Pacific Ocean. It has been detected in dust samples collected from day care facilities in Europe. It has famously even been detected in the blood of Polar Bears.



However, the most concerning of all the various places PFAS has been detected is in the blood of human beings. According to a 2019 Centers for Disease Control study that evaluated PFAS chemicals in the blood of Americans, more than 90% of Americans had detectable levels of PFAS chemicals in their blood. In stark contrast to most other emerging contaminants, this finding removes any doubt with respect to whether exposure to humans has actually occurred.

REGULATORY RESPONSE

In response to this growing body of knowledge of the harmful attributes of PFAS chemicals, regulators have begun to take meaningful action to minimize or prevent additional future exposures to these chemicals. For instance, in 2002, the United States Environmental Protection Agency (“USEPA”) banned the manufacturing and importation of certain PFAS chemicals into the United States. In 2016, the United States Food and Drug Administration revoked authorization for the use of certain PFAS chemicals in food packing materials. In May 2016, the USEPA established a drinking water health advisory for the combined concentrations of two PFAS chemicals (PFOA and PFOS) of 70 parts per trillion (ppt). Above these levels the USEPA “recommends that drinking water systems take steps to assess contamination, inform consumers and limit exposure.” In 2022, the EPA updated the Health Advisory Level to less than 1 ppt.

NEW REGULATIONS



The Fifth Unregulated Contaminant Monitoring Rule (UCMR 5)

Effective early 2023, the EPA has introduced The Fifth Unregulated Contaminant Monitoring Rule (UCMR 5). This regulation applies to any system serving more than 3,300 people (and a randomly selected 800 smaller systems).

The new regulation caps PFAS at 4 parts per trillion.

LITIGATION BROUGHT ON BEHALF OF WATER PROVIDERS

Recently, water providers have begun required testing and many are finding PFAS chemicals in their water supply. Because of the changing regulatory landscape, water providers are grappling with how to address the presence of PFAS chemicals. Proposed regulations will require action to protect Americans from these toxic chemicals. Some customers may not want to consume water tainted with cancer-causing chemicals – notwithstanding the absence of any binding regulations to remove these chemicals from the water. Likewise, customers may not take solace in the fact that there is an “acceptable” amount of these chemicals in their water.

Consequently, public and private water providers have brought lawsuits against the manufacturers and others responsible for failing to instruct and warn end users of their products about the presence of PFAS and the harm it poses to the environment and our communities. These lawsuits seek costs associated with removing PFAS chemicals from the water supply. This cost varies depending on size of water system, treatment technology utilized and the applicable drinking water standard. For example, six small water districts near the Dupont Washington Works Facility serving less than 100,000 residents required an initial \$20 million capital investment and annual ongoing \$1.7 million for operation and maintenance costs. Due to the persistent nature of these chemicals, these water providers can reasonably expect to incur these costs for decades if not centuries going forward. On a national scale, the estimated cost to remove PFAS from drinking water below applicable standards is staggering. The American Water Works Association recently estimated clean-up cost at between \$23-48 billion in capital cost and \$0.46 to 4.8 billion in annual operation and maintenance costs.

CURRENT STATE OF LITIGATION

Water provider cases are currently pending in various state and federal courts around the country. Cases where the alleged source of PFAS contamination is from fire fighting foam (Aqueous Film-Forming Foams (“AFFF”)), have been centralized in In Re: Aqueous Film-Forming Foams Products Liability Litigation, MDL No. 2873 (“AFFF MDL”) before the Honorable Judge Gergel in Charleston, South Carolina. The first bellwether is scheduled to go to trial in June 2023.

WATER PROVIDERS CAN RECOVER

- **Costs**
 - Capital Expenditures
 - Soil and Water Testing
 - Feasibility Study and Engineering
 - Pilot Study Expenses
 - Construction Expenses
 - Operations and Maintenance
- **Punitive damages**

DECADES OF PFAS LITIGATION

Our Attorneys have actively litigated PFAS cases for over a decade, having reviewed millions of pages of corporate documents, retained world renowned experts, and successfully recovered economic and punitive damages.

Recently released documents illustrate the depths to which industry was willing to hide the truth - even from its own scientists - about the toxic nature and widespread harm resulting from PFAS.

28 March 1999

To: 3M

I resign my position as Environmental Specialist effective 6 April 1999. My resignation is prompted by my profound disappointment in 3M's handling of the environmental risks associated with the manufacture and use of perfluorinated sulfonates (PFOS)(CAS# 29081-56-9) and its precursors, such as ethyl FOSE alcohol (CAS #1691-99-2) and methyl FOSE alcohol (CAS #24448-09-7).

Perfluorooctanesulfonate is the most insidious pollutant since PCB. It is probably more damaging than PCB because it does not degrade, whereas PCB does; it is more toxic to wildlife; and its sink in the environment appears to be biota and not soil and sediment, as is the case with PCB.

I have worked within the system to learn more about this chemical and to make the company aware of the dangers associated with its continued use. But I have continually met roadblocks, delays, and indecision. For weeks on end I have received assurances that my samples would be analyzed soon--never to see results. There are always excuses and little is accomplished. I can illustrate with several examples.

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