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PFAS — ‘Forever Chemicals’ — Regulatory and Litigation Risks for Product Manufacturers

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Todd Weiler was born in Georgia and raised in the Chicago suburbs. After graduating from BYU with a business degree, Todd married his wife, Elizabeth. After working in Phoenix and Los Angeles for three years, Todd obtained a law degree from the J. Reuben Clark Law School in 1996. He graduated cum laude. He litigated with several Salt Lake City law firms before accepting his current position with Christensen & Jensen. He specializes in business law, general litigation and domestic issues. Todd is also an adjunct law professor. Todd has served in the Utah Senate since 2012. He serves as the Senate parliamentarian and chairs the Senate Judiciary, Law Enforcement and Criminal Justice Committee, the Veterans and Military Affairs Commission and the Senate Judicial Confirmation Committee.

PRESENTERS



Chris Schilder is Chief Counsel at Pactiv Evergreen, one of the largest manufacturers of fresh food and beverage packaging in North America. You likely handle multiple Pactiv Evergreen product every day: from the cups and lids at Starbucks, McDonalds, and Tim Hortons, to the clamshell food packages at Costco, Walmart and Kroger, to the take home containers from your favorite local restaurants. In his role, Chris is responsible for overseeing the commercial contracts, innovation, regulatory and government affairs teams.

PRESENTERS



Ann Catino is a partner at Halloran Sage and has been practicing environmental regulatory law and involved in the regulatory aspects of hazardous substances since the mid-1980s, when CERCLA and RCRA and various state laws emerged. The breadth of PFAS has hit every environmental program hard and she is counselling clients as to what the standards will be (or are) for PFAS limits in groundwater and soil and how the regulatory climate is changing to address these forever chemicals.

PRESENTERS



Allison Lange Garrison is a litigator at Nilan Johnson Lewis, P.A., a Minneapolis-based law firm. Allison represents and defends business clients in product liability, commercial disputes, and complex litigation. She brings considerable experience in toxic exposure litigation, notably involving carbon monoxide, PFAS, and 1,4-dioxane. A skilled writer with a passion for science and medicine, Allison is highly adept at leveraging the technical aspects of the client's business to produce persuasive defense positions in the courtroom.

THE REGULATORY ENVIRONMENT



PER- AND POLYFLUOROALKYL SUBSTANCES (PFAS)

- Consumer Products:
 - Non-stick cookware
 - Waterproof, water-resistant and stain resistant textiles
 - Waxes (floor, car, boat, skis)
 - Household cleaning products (dishwashing liquids)
 - Grease-resistant and waterproof coatings in food packaging (pizza, take out, straws)
 - Clothes and shoes, cosmetics and personal care products (contact lenses, denture cleaners, shampoo, and sunscreen)
- Manufacturing/Industrial/Agricultural
 - Metal plating and finishing, etching (metals, glass, plastics)
 - Plastics, resins, rubber
 - Refrigerants
 - Surface coating, paint, varnish, inks, photography, lithography
 - Cable and wire insulation
 - Fertilizers, pesticides
 - Aqueous Film-Forming Foam (AFF)
 - Building / Construction - cement, air emission filters, house doors, shutters, siding, windows, roofing

PFAS – Why Worry?

- Resistance to Degradation
- Persistent in the Environment - i.e., Air, Soil, Groundwater
- Persistent in Humans and Animals
 - Health Effects: (PFOA & PFOS) Immune health effects, fetal growth effects, cancers (incl. kidney & testicular), increased risk of cardiovascular disease, liver disease, (Hazard Index PFAS, add thyroid issues), immune system, nervous system, hormone levels

EPA Rulemaking: Drinking Water Standards

- Per- and Polyfluoroalkyl Substances (PFAS) Rulemaking
 - National Primary Drinking Water Regulation (NPDWR) – Maximum Contaminant Levels (MCL)
 - Federal Register NOPR 88 FR 18638 – 18754 (March 29, 2023)
 - Perfluorooctanoic Acid (PFOA) 4 ppt
 - Perfluorooctane sulfonic acid (PFOS) 4 ppt
 - Perfluorononanoic acid (PFNA) 1 (unitless) Hazard Index*
 - Perfluorobutanesulfonic acid (PFBS) 1 (unitless) Hazard Index
 - Perfluorohexane sulfonic acid (PFHxS) 1 (unitless) Hazard Index
 - Hexafluoropropylene oxide dimer acid (HFPO-DA /GenX) 1 (unitless) Hazard Index

*All unitless are based on a Hazard Index, which is the ratio between the detected chemical concentration and EPA's health-based water "safe" concentration.

Pop-Up Question

The EPA proposes to limit PFOS and PFOA to how many parts per trillion?

- A. 4
- B. 10
- C. 70
- D. 250

EPA's Websites

EPA's PFAS NPDWR website:

<https://www.epa.gov/sdwa/and-polyfluoroalkylsubstances-pfas>

The public docket for the NPDWR (Docket ID: EPA-HQ-OW-2022-0114):

<http://www.regulations.gov/>

EPA – Soil & Groundwater Rulemaking

- Notice of Proposed Rulemaking (Docket No. EPA-HQ-OLEM-2019-0341) 87 Fed.Reg. 54415 (Sept. 6, 2022): Rulemaking would designate PFOA and PFOS, including salts and isomers, as hazardous substances under CERCLA
 - Reportable Quantity - 1 pound or more/ 24 hr period
- Advance Notice of Proposed Rulemaking (ANPRM) (Docket No. EPA-HQ-OLEM-2022-0922) - April 13, 2023: EPA asked for public input to add 7 additional PFAS chemicals (PFBS, PFHxS, PFNA, HFPO-DA, PFBA, PFHxA, and PFDA), precursors to PFOA, PFOS and the 7, and other categories of PFAS, as future hazardous substance under CERCLA

PFAS Strategic Roadmap: EPA's Commitments to Action

https://www.epa.gov/system/files/documents/2021-10/pfas-roadmap_final-508.pdf

Effluent Guidelines Program Plan 15 Notice of Availability 88 FR 6258 (January 31, 2023)[includes POTW Influent Study of PFAS discharges from industrial sources (to assess need for source control measures), continued monitoring PFAS applications and discharges from Pulp, Paper, & Paperboard Industry and Airports, and expands studies of other industries - Textiles]

PFAS Reporting Under TSCA § 8 – NOPR 86 FR 33926
(June 28, 2021)

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THANK YOU! If you have any questions, please contact one of the presenters



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