Tucker Ellis LLP

Per- and Polyfluoroalkyl Substances (PFAS) Litigation

Overview

Per- and Polyfluoroalkyl Substances (PFAS) are a group of more than an estimated 9,000 synthetic chemicals resistant to heat, water, oil, and grease that have been manufactured and used in a variety of industries in the United States since the 1940s. PFAS are typically used as water, oil, and stain repellants in a wide range of commercial and household products, including certain paints, water-resistant fabrics and apparel, cosmetics, dental floss, firefighting foams, nonstick cookware, polishes, waxes, stain resistant carpet, leather, textiles, paper and packaging, rubber, plastics, food packaging, and cleaning products. Known as "forever chemicals," PFAS can be found in waste sites, manufacturing and processing facilities, airports, and military installations where products containing PFAS are used or manufactured, leading to PFAS release into the air, soil, and water. Exposure to PFAS typically occurs through ingestion of contaminated water or food, inhalation, dermal exposure, and the use of commercial products containing PFAS.

In litigation, plaintiffs allege that PFAS do not break down easily and can accumulate in the human body and environment over time. To date, plaintiffs have primarily alleged that PFAS exposure can cause kidney cancer, liver cancer, testicular cancer, and thyroid cancer; hypothyroidism/thyroid disease; ulcerative colitis; pregnancy-induced hypertension; and high cholesterol. In addition to personal injury cases, PFAS litigation includes (i) environmental cleanup and remediation cases, including soil and water remediation; (ii) class actions, including medical monitoring and economic loss; (iii) consumer disclosure and false advertising cases, including class actions and California Proposition 65; and (iv) sovereign/state attorney general actions to recoup natural resources damages and costs associated with environmental remediation.

Further, the U.S. Environmental Protection Agency (EPA) has introduced a litany of rules extensively regulating the manufacture, use, and disposal of PFAS, including designating two widely used PFAS chemicals, Perfluorooctanoic acid (PFOA) and Perfluorooctanesulfonic acid (PFOS), as hazardous substances under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). EPA also has established Maximum Contaminant Levels (MCLs) under the Safe Drinking Water Act (SDWA) for six PFAS in drinking water: PFOA, PFOS, PFHxS, PFNA, and HFPO-DA and PFAS mixtures. Similarly, the California Office of Environmental Health Hazard Assessment has added PFOA, PFOS and PFNA to Proposition 65, listing PFOA and PFOS as causing cancer and reproductive toxicity and listing PFNA as causing male reproductive toxicity.

How Tucker Ellis Can Help

PFAS-related litigation is rapidly increasing across the United States, and the range of businesses affected by it is greatly expanding. Currently, the largest PFAS litigation is the multidistrict litigation in South Carolina federal court, which has centralized thousands of cases involving environmental contamination, property damage, State AG actions, and personal injury linked to PFAS-containing fire suppressant foams (AFFF).

Companies in many industries may find themselves facing PFAS litigation ranging from personal injury to class actions to environmental issues – which could result in significant economic damages. Especially at risk are:

- Chemical manufacturers
- Metal finishing
- Textiles
- Food, Cosmetics, and Dietary Supplements and their packaging
- Medical device manufacturers
- Landfill Operators
- Insurance
- Governmental entities
- Construction
- Brownfield developers
- Utilities
- Water providers
- Airports

The types of actions being brought against these defendants include:

- Cleanup actions
- Personal injury
- Actions brought by local water providers for PFAS contamination in water resources
- Class actions or individual actions asserting claims related to property damage, medical monitoring, false advertising, and economic loss
- Consumer product litigation

The PFAS team at Tucker Ellis is experienced in helping clients navigate the numerous regulatory standards (both in their business operations and in transactions), defending clients in PFAS-related litigation, and developing strategies to manage and mitigate PFAS-related risks. Our interdisciplinary team draws from highly experienced members of our environmental, mass tort, class actions, life sciences, business litigation, and intellectual property groups. Our practice is enhanced – and differentiated – by attorneys with advanced

degrees and specific training in organic chemistry, neurobiology, and mineralogy, along with years of relevant experience working with experts – including toxicologists, hydrogeologists, cancer biologists, urologists, and epidemiologists. Our team includes the chair of our Environmental Group – a former Ohio EPA director with more than two decades of experience practicing in environmental law, including environmental litigation, property remediation, and regulatory compliance. We understand the science behind the matters, enabling us to skillfully represent our clients' interests across the full spectrum of chemical and related technologies, including pharmaceuticals, medical and biotech diagnostic devices, polymers, nanotechnology, textiles, and petrochemicals.

Areas of Emphasis

- Environmental Cleanup and Litigation (including CERCLA)
- Product Liability and Warnings (including Proposition 65)
- Personal Injury
- Regulatory Compliance
- Class Action Litigation
- Environmental Due Diligence
- Environmental Enforcement Defense

Experience

- Counsel for a Fortune 500 company in the Aqueous Film-Forming Foams (AFFF) MDL in South Carolina
- Counsel for a Fortune 500 company in a California consumer class action alleging that PFAS chemicals in packaging renders product worthless and entitles nationwide class to economic damages
- Counsel for a product manufacturer in a putative class action in the Eastern District of Missouri where Plaintiffs allege personal injury and groundwater contamination claims stemming from the sale of PFAS products to the facility
- Environmental due diligence counsel for business and real estate transactions that involve PFAS related issues or risks
- Counsel to consumer product manufacturers in complying with PFAS state consumer regulations
- Defend Proposition 65 cases alleging failure to warn for PFAS exposures