



# CLIENT ALERT

July 18, 2019

1

## ENVIRONMENTAL

### WHAT BUSINESS LEADERS NEED TO KNOW ABOUT THE LATEST EMERGING CONTAMINANTS: PFAS/PFOA

by Anna M. Maiuri

Over the last several months, media reports on the next set of emerging contaminants, per- and polyfluoroalkyl PFAS/PFOA have exploded. But what does this latest environmental concern have to do with your business? This short E-Alert serves to answer that question.

#### What are they?

Per- and poly-fluoroalkyl substances are a group of over 5,000 related chemicals that are heat, water and oil resistant. They have strong chemical bonds that make them resistant to degradation, and they bioaccumulate, meaning the amount of PFAS/PFOA builds up in the body over time.

#### Where have they been used?

PFAS/PFOA have been used in many applications since the 1940s. They have been used by various industries but primarily in chrome plating, electronics manufacturing, by oil refineries and in fire suppression foams. PFAS/PFOA were used in virtually anything with a stain or water resistant quality such as carpeting, waterproof clothing, upholstery, non-stick Teflon products, paints, cleaners and on and on.

#### Why are PFAS/PFOA a problem?

These compounds bioaccumulate in the body and are believed to be harmful at extremely low levels, typically at measurements in the parts per trillion (ppt) range. While health effects are still being studied, these compounds have been associated with liver damage, thyroid disease, asthma, and infertility issues, to name a few.

#### Where have they been found?

In soil, groundwater and drinking water in the areas where the electronics and plating industries used these types of materials, near the direct manufacturers of PFAS/PFOA compounds, and near landfills and furnaces where PFAS/PFOA containing wastes have been disposed or burned. In addition, because these compounds are found in firefighting foams, they have been detected at fire departments, oil refineries (where fire suppression is common), military bases, and airports.

#### What are the clean-up levels? What technology is available?

Because this is an emerging contaminant concern, EPA has only set a lifetime health advisory (LTHA) level for 2 types of PFAS in drinking

water: perfluorooctanoic acid (PFOA) and perfluorooctane sulfonate (PFOS). The LTHA level is 70 ppt for PFOA and PFOS combined.<sup>1</sup> Federal clean up levels have not yet been established, so states have taken the lead in establishing cleanup and screening levels. However, there is a wide disparity as to what states believe is a safe level.

Michigan recently replaced its drinking water screening standard of 70 ppt with screening levels as low as 6 ppt for even PFAS/PFOA compounds, and established water quality discharge standards of 11-12 ppt. Vermont determined that 20 ppt is an appropriate level of protection. New Jersey established drinking water cleanup standards of 14 ppt for PFOA and 13 ppt for PFOS. As more research is done and information becomes available, regulators are expecting the 70 ppt federal advisory level to decrease as well. Presently, there are various EPA and state task forces searching for the "right answer."

Remedial technologies are available, but can be costly. The most common are using granulated activated carbon or ion exchange for remediation of drinking water and incineration for soils cleanup.

#### How do PFAS/PFOA affect your business? How can we help?

- 1. When investing in new facilities, Phase I and II environmental site assessments need to consider whether the site has incurred possible PFAS/PFOA impacts.** Given the low levels of toxicity associated with these compounds and its widespread use, cross contamination during sampling and analysis is a significant risk. You need consultants and labs that know and follow the appropriate protocols. We are familiar with experienced environmental consultants and labs and can direct you to the appropriate resources.
- 2. If PFAS/PFOA is found at the site, this fact needs to be considered in the deal negotiations.** We can help identify the issues arising from a detection of PFAS/PFOA and factor them to your benefit in the deal.
- 3. If PFAS/PFOA is found, it may need to be remediated.** We are familiar with the remedial techniques available and those that are emerging and can direct you to the proper experienced environmental consultants to help you find a cost effective remedy.
- 4. If PFAS/PFOA is found to be migrating on to other properties, proper notice may need to be given.** We can advise as to the legal requirements and when and how proper notice should be given. We can also help with developing a public relations strategy for your company.
- 5. If EPA or your state environmental department informs your company that your site is a source of PFAS/PFOA, you need a strategy for evaluating those claims.** Because of the cross

WWW.DICKINSONWRIGHT.COM

DICKINSON WRIGHT

ARIZONA CALIFORNIA FLORIDA KENTUCKY MICHIGAN NEVADA OHIO TENNESSEE TEXAS WASHINGTON DC TORONTO

# CLIENT ALERT

contamination risk, we know of sites where the sampling protocol was not robust and false positives were discovered. If you believe your site has not been impacted by PFAS/PFOA, we can help develop a negotiation and sampling strategy when dealing with the regulators.

<sup>1</sup> See Michigan.gov @ [https://www.michigan.gov/som/0,4669,7-192-45414\\_45929\\_83470\\_83473-452154--00.html](https://www.michigan.gov/som/0,4669,7-192-45414_45929_83470_83473-452154--00.html) for Frequently Asked PFAS Questions.

*This client alert is published by Dickinson Wright PLLC to inform our clients and friends of important developments in the field of environmental law. The content is informational only and does not constitute legal or professional advice. We encourage you to consult a Dickinson Wright attorney if you have specific questions or concerns relating to any of the topics covered in here.*

FOR MORE INFORMATION CONTACT:



**Anna M. Maiuri** is a Member in Dickinson Wright's Troy office. She can be reached at 248-433-7558 or [amaiuri@dickinsonwright.com](mailto:amaiuri@dickinsonwright.com). Anna also serves as Co-Chair of Dickinson Wright's Environmental and Energy Group.