

Morgan Lewis

EARTH DAY CELEBRATION 2021



© 2021 Morgan, Lewis & Bockius LLP

Program Overview

April 19: The Biden Administration's 'All of Government' Approach to Environmental Policy: Climate Change, Environmental Justice, and Beyond

April 20: Regulatory and Legislative Developments in Climate Change and Renewable Energy

April 21: P-FASTen Your Seatbelts: A Look at Emerging Contaminants in 2021

April 22: Environmental Justice Under the Biden Administration

Register at <https://www.morganlewis.com/events/earth-day-celebration-series>

Morgan Lewis

P-FASTen Your Seatbelts: A Look at Emerging Contaminants in 2021

April 21, 2021

Stephanie Feingold
Jeremy Esterkin
Drew Cleary Jordan

© 2021 Morgan, Lewis & Bockius LLP



Presenters



Stephanie Feingold
Partner, Princeton/
New York



Jeremy Esterkin
Partner, Los Angeles



Drew Cleary Jordan
Associate, Washington, DC/
Princeton



Morgan Lewis

What We'll Be Talking About

- PFAS
 - What they are
 - Federal regulation/legislation
 - State regulation/legislation
 - Litigation
- 1,4-Dioxane
 - What it is
 - Federal regulation
 - State regulation/legislation
 - Litigation
- What's Next?

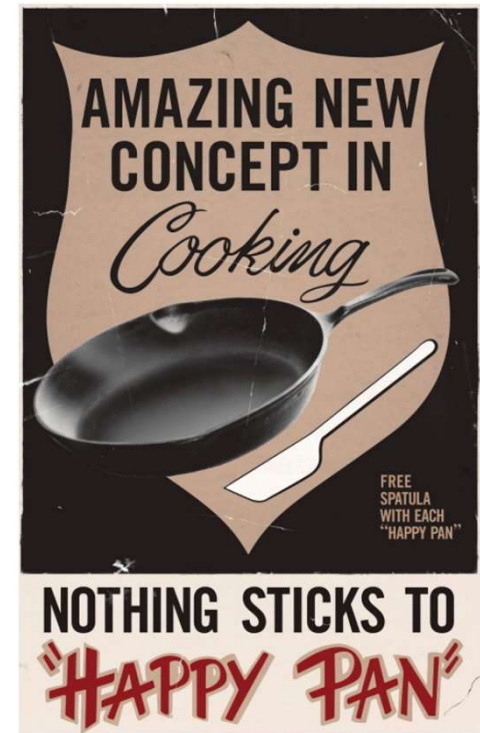
A glass globe of the Earth is the central focus, resting on a patch of green grass. The globe is transparent, showing the continents and latitude/longitude lines. The background is a soft-focus green field with a bright sun flare in the upper center, creating a warm, golden light. The overall scene conveys a message of environmental care and global impact.

PFAS: Per and poly-fluoroalkyl substances

Morgan Lewis

PFAS Overview

- Class of manmade chemicals
- Chain of carbon and fluorine atoms
- Very good at resisting heat, oil, stains, grease and water
- First applications: Teflon, Scotchgard



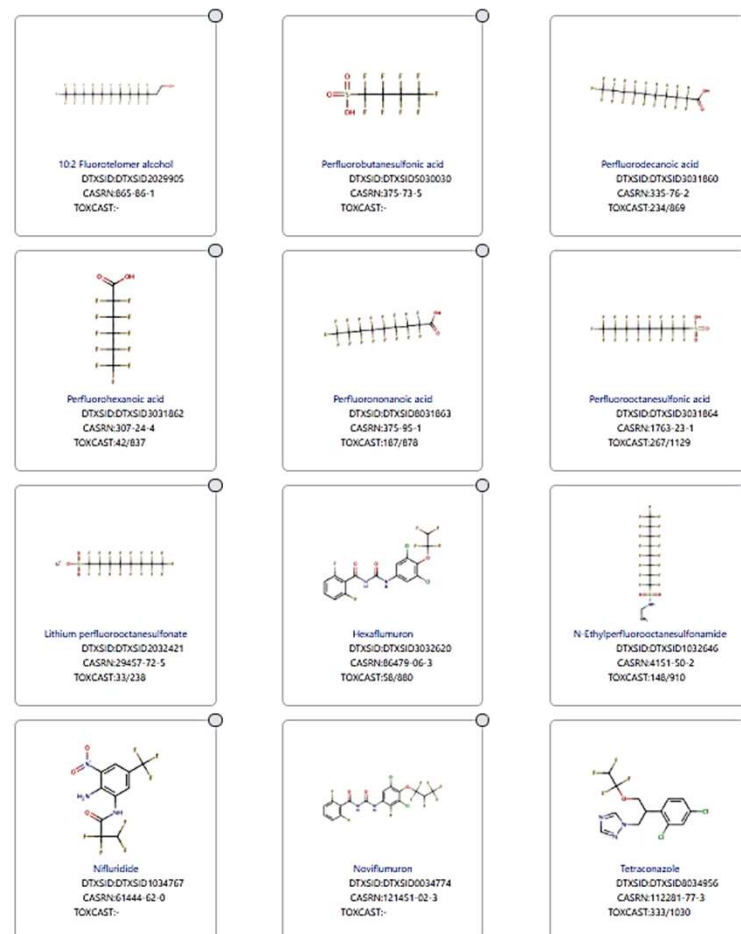
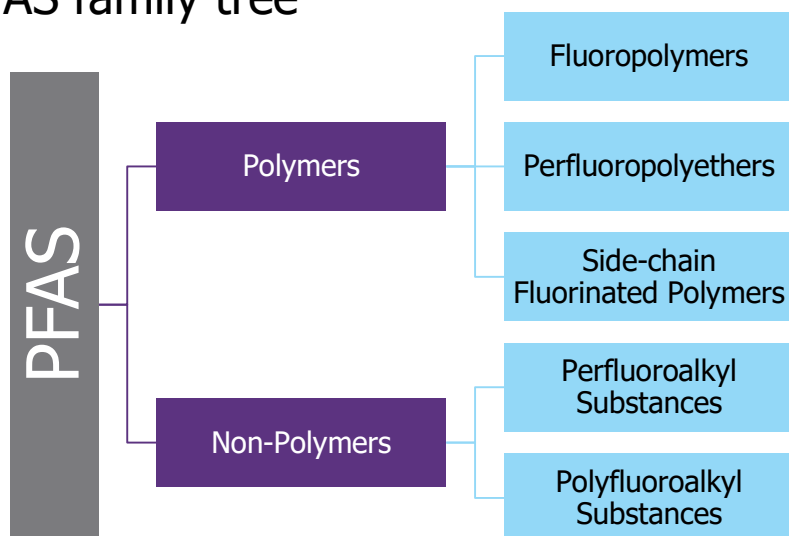
PFAS Overview

- Uses expanded over time:
 - Firefighting foam
 - Fabric surface treatments (furniture, clothes)
 - Nonstick cookware
 - Paper coating (food wrappers, cardboard boxes)
 - Personal care (shampoo, cosmetics, dental floss)
 - Electric wire insulation
 - Cleaning products, polishes, waxes



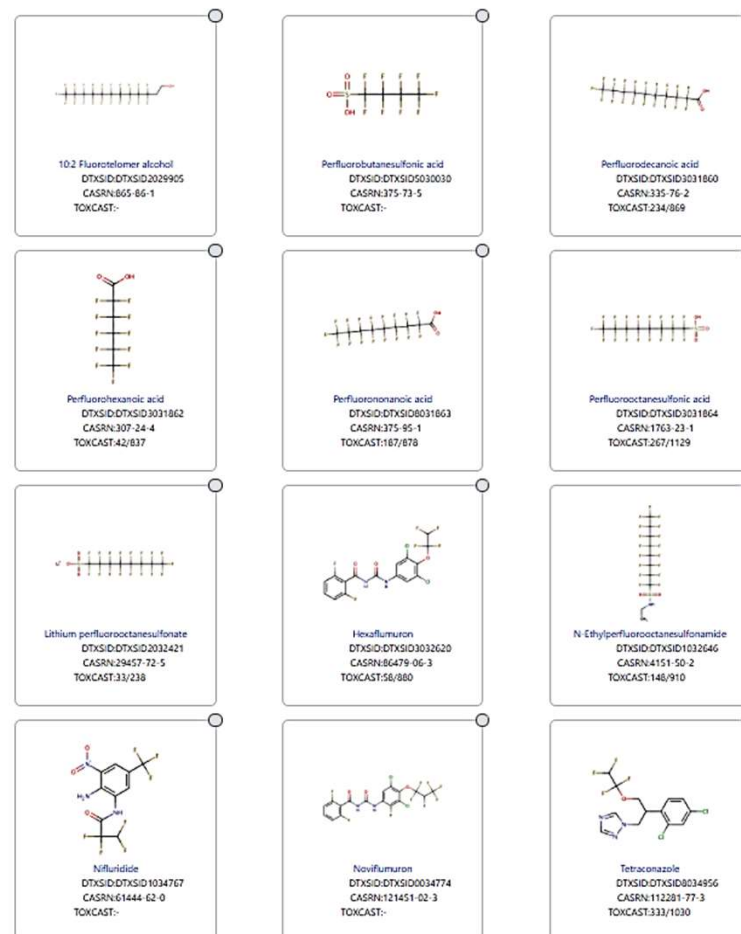
PFAS Overview

- 9,252 chemicals on the U.S. EPA Master List of PFAS Substances
- PFAS family tree



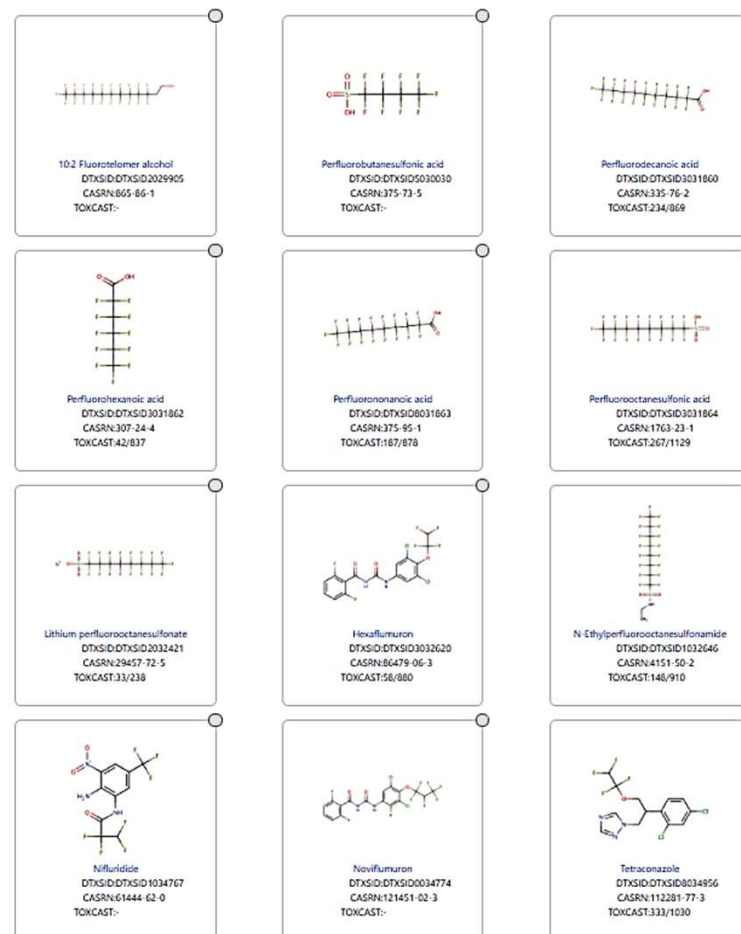
PFAS Characteristics

- Very significant differences affecting potential toxicity and mobility in the environment
 - Molecule size
 - Density
 - Weight
 - Physical state at room temperature
 - Thermal stability
 - Melting/boiling points
 - Many other variables



PFAS Characteristics

- Some PFAS chemicals – but not all – have problematic properties:
 - Persistent
 - Mobile
 - Tendency to bioaccumulate and biomagnify



PFAS Characteristics

- Toxicity?



National Institute of
Environmental Health Sciences

*"Human health effects from exposure to low environmental levels of PFAS are uncertain.... **More research is needed** to assess the human health effects of exposure to PFAS."*

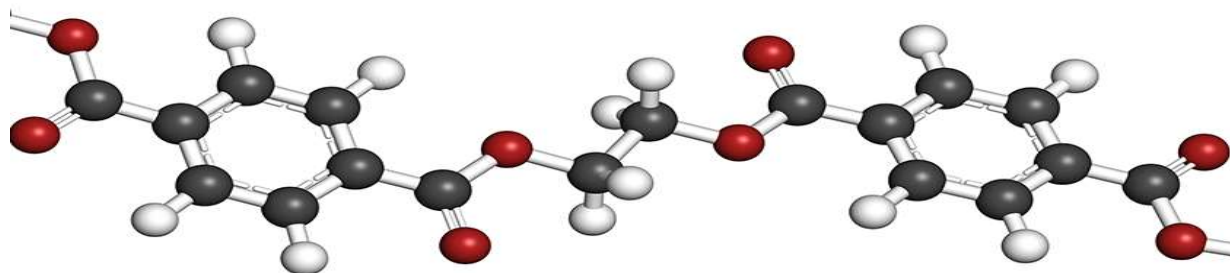
*"At this time, **scientists are still learning** about the health effects of exposures to mixtures of different PFAS.... Additional research may change our understanding of the relationship between exposure to PFAS and human health effects."*

*"When looking for possible human-health effects of chemical compounds, it is important to understand that they are hard to study, especially with thousands of variations in PFAS chemicals.... While knowledge about the potential health effects of PFAS has grown, **many questions remain unanswered.**"*

PFAS Characteristics

- Polymers of Low Concern (OECD) – 13 criteria:

1. Polymer composition
2. Molecular weight (and related characteristics)
3. Weight percent oligomers
4. Electrical charge
5. Reactive Functional Group
6. Functional Group Equivalent Weight
7. Low MW leachables
8. Water/lipid solubility
9. Particle size
10. Polymer stability
11. Thermal stability
12. Abiotic stability
13. Biotic stability



PFAS Characteristics

- Ongoing research
 - EPA:
 - Toxicity assessments for several PFAS chemicals
 - Lab methods to detect and quantify PFAS chemicals in air, water and soil
 - Drinking water treatment technologies
 - Removal and treatment of PFAS chemicals in the environment
 - Management of wastes containing PFAS chemicals



PFAS Characteristics

- Ongoing research
 - CDC/ATSDR Multi-Site Health Study
 - Studying whether and how PFAS chemicals in drinking water impact health at sites across the country
 - Building on and expanding the Pease Study
 - National Toxicology Program
 - Examining six PFAS chemicals' impact on vaccine efficacy



National Toxicology Program
U.S. Department of Health and Human Services

PFAS - PFOA and PFOS

- Reputation driven by PFOA and PFOS
 - Significant historical usage
 - Most well-studied of the PFAS chemicals
 - Largely phased out of US manufacturing:
 - PFOS – 2002
 - PFOA Stewardship Program
 - 95% by 2010
 - Full phase-out by 2015



PFAS - PFOA and PFOS

- Evidence of toxicity?



*"Studies indicate that PFOA and PFOS can cause reproductive and developmental, liver and kidney, and immunological effects in laboratory animals... The most consistent findings from human epidemiology studies are **increased cholesterol** levels among exposed populations, with **more limited findings related to: infant birth weights, effects on the immune system, cancer (for PFOA), and thyroid hormone disruption (for PFOS).**"*

Classified PFOA as "**possibly carcinogenic to humans**" (Group 2B) based on limited evidence in humans that it can cause testicular and kidney cancer, and limited evidence in lab animals.

Expert Health Panel for PFAS (2018): *"There is mostly limited or no evidence for an association with human disease accompanying these observed differences [between low and high exposure groups]. There is **no current evidence that supports a large impact on an individual's health.** In particular, there is no current evidence that suggests an increase in overall cancer risk."*

PFAS - PFOA and PFOS

- Tendency to conflate PFOA/PFOS with PFAS generally
 - “PFAS free” labeling
 - “Total PFAS” vs. MCLs/Notification Levels for PFOA or PFOS



Federal and State Regulation and Legislation of PFAS

Morgan Lewis



EPA's Toolbox



- **Toxic Substances Control Act (TSCA)** – 15 U.S.C. § 2601 *et seq.*
 - TSCA governs use of the chemicals along with reporting, recordkeeping, and testing requirements
- **Safe Drinking Water Act (SDWA)** – 42 U.S.C. § 300 *et seq.*
 - SDWA governs permissible levels in drinking water
 - EPA has regulated more than 90 drinking water contaminants via MCLs; however, no MCL for PFAS chemicals (... yet)
- **Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA)/Superfund**
 - Governs remediation of emerging contaminants in soil, groundwater
 - PFAS are not currently designated as hazardous substances under CERCLA (“imminent and substantial” danger to “public health and welfare”)
- **Clean Air Act (CAA); Clean Water Act (CWA); Toxic Release Inventory (TRI)**

EPA PFAS Action Plan

- Following May 2018 National Leadership Summit and subsequent townhall meetings/community engagements, on February 14, 2019, EPA announced its “Action Plan for Per- and Polyfluoroalkyl Substances”

– Key Actions Identified by EPA:

1. Expand toxicity information for PFAS	5. Use of enforcement tools to address PFAS exposure in the environment and assist state enforcement activities
2. Develop new tools to characterize PFAS in the environment	6. Use legal tools to prevent future PFAS contamination
3. Evaluate cleanup approaches	7. Address PFAS in drinking water using regulatory and other tools
4. Develop guidance to facilitate cleanup of contaminated groundwater	8. Develop new tools and materials to communicate about PFAS

– Overall, EPA identified 23 short- and long-term goals falling within these eight categories

PFAS Action Plan Update as of January 2021

- **Expand toxicity information for PFAS**
 - Issued final PFBS Toxicity Assessment* (*removed on February 9, 2021*)
 - Testing: (1) conducted testing on 120+ PFAS; and (2) initiated assessments on five other PFAS
- **Develop new tools to characterize PFAS in the environment**
 - Published new validated test methods to test for and measure 29 PFAS chemicals
- **Evaluate cleanup approaches**
 - Issued pre-publication version of Advanced Notice of Proposed Rulemaking for consideration of additional authorities for addressing PFAS in the environment
 - Issued interim guidance on disposal and destruction of PFAS
 - Assessed viability of thermal and non-thermal destruction technologies
- **Develop guidance to facilitate cleanup of contaminated groundwater**
 - Developed interim guidance to facilitate cleanup of contaminated groundwater

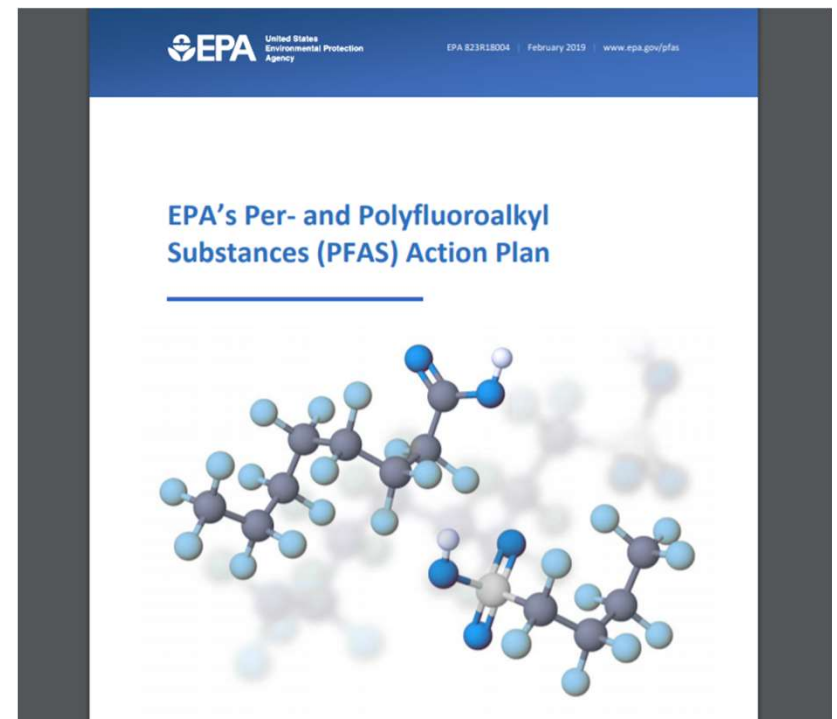
PFAS Action Plan Update (cont'd)

- **Use enforcement tools to address PFAS exposure in the environment and assist states in enforcement activities**
 - As of January 2021, EPA reported 16 PFAS enforcement actions
- **Use of legal tools such as those in TSCA to prevent future PFAS contamination**
 - Finalized a Significant New Use Rule (SNUR) for long-chain perfluoroalkyl carboxylate (LCPFAC) and perfluoroalkyl sulfonate (PFOS) chemical substances
 - TRI: The PFAS Act of 2019 (effective 2020) added 172 PFAS to the list of chemicals that require reporting under the TRI program
- **Address PFAS in drinking water using regulatory and other tools**
 - Issued final determination to regulate PFOA and PFOS in drinking water and proposed to require monitoring for 29 PFAS in drinking water
- **Develop new tools and materials to communicate about PFAS**
 - EPA reported providing technical assistance and support to more than 30 states, along conducting risk communication training, coordination across federal government, among other actions

PFAS Action Plan in Review

To date, EPA:

- Has issued groundwater cleanup guidance;
- Continues to move toward the development of a national drinking water regulation under the SDWA for PFOS and PFOA;
- Issued Final SNUR under TSCA ensuring that new uses of certain chemicals within the class cannot be manufactured or imported without notification and review by EPA;
- Has taken steps to begin the regulatory process for listing PFOA and PFOS as “hazardous substances;” and
- Validated new testing methods to test for PFAS in drinking water.



More Recent Regulatory Actions Under Current Administration and What's Next

- New administration's "aggressive approach" on PFAS regulation
- Final regulatory determinations for PFOA and PFOS under SDWA reissued from the fourth Drinking Water Contaminant Candidate List (CCL4)
 - Sets stage for MCL and potential national drinking water standard
 - Announced EPA currently developing "scientifically rigorous toxicity assessments for seven PFAS chemicals," including PFBS, PFBA, PFHxS, PFHxA, PFNA, PFDA, and HFPO-DA (GenX chemicals)
- Revised fifth Unregulated Contaminant Monitoring Rule (UCMR 5) published
- EPA published ANPRM for PFAS Effluent Limitations Guidelines under CWA
- PFBS Toxicity Assessment recalled (February 9, 2021) and EPA released an Updated Toxicity Assessment (April 8, 2021).

PFAS-Related Legislation



The Honorable Patrick Leahy
Chairman
Committee on Appropriations
United States Senate
Washington, DC 20510

Dear Chairman Leahy:

I am writing to provide you with the President's request for fiscal year (FY) 2022 discretionary funding.

The Administration looks forward to presenting its Budget to you and the American people in the months ahead. As is typical in a transition year, however, the Budget will not be available in time for the start of the Congress's annual appropriations and budget process. Given the importance of that process proceeding on schedule, we are providing the Administration's proposal for baseline FY 2022 discretionary funding at this time. While the discretionary request outlined in the attached enclosures reflects only one piece of the President's broader agenda, it includes a range of proposals that lay a foundation to reinvest in the Nation's strength.

This year's appropriations process arrives during one of the most difficult periods in the Nation's history. America is confronting four compounding crises of unprecedented scope and scale all at the same time: a once-in-a-century pandemic that has claimed more than half a million American lives and counting; a punishing economic crisis that has left nearly 10 million out of work and millions more struggling; six crowded years of progress women have made in the labor force, and has widened the divide between those at the very top and the rest of America; a national reckoning on racial inequity continues in the making; and the growing threat of climate change to America's people and the economy.

Yet this moment of crisis is also a moment of possibility. Together, America has a chance not simply to go back to the way things were before the COVID-19 pandemic and economic downturn struck, but to begin building a better, stronger, more secure, more inclusive America.

The Congress began that important work last month by passing the President's American Rescue Plan Act of 2021—a historic, groundbreaking package that will help change the course of the pandemic, deliver desperately needed relief to millions of workers, families, and small businesses, and build a bridge to a robust, equitable economic recovery.

Passing the American Rescue Plan Act of 2021 was essential, but we know that more work remains. That is why last week the President also outlined a comprehensive strategy to reimagine and rebuild a new American economy—a plan that would create

Over 40 pieces of legislation introduced during the 116th Congress to address PFAS (e.g., National Defense Authorization Act for FY2020)

- Standalone legislation focused on issues of: (1) detection and research; (2) regulatory mandates; (3) cleanup assistance; and (4) PFAS exposure and contamination concerning military installments
- FY2021 Omnibus Appropriations Bill include approximately \$300 million to address PFAS across agencies

FY2022 Budget Request

- Seeks approximately \$75MM for the continued study of PFAS and to “accelerate toxicity studies and research to inform the regulatory development of designating PFAS as hazardous substances.”

PFAS Action Act (H.R. 2467)

- Bipartisan Bill introduced on April 13 by Rep. D. Dingell (D-MI) and R. Upton (R-MI)
- Mirrors PFAS Act of 2019 (H.R. 535) which did not pass the Senate
- Would set a number of deadlines for EPA regulation of PFAS

PFAS State Action

- Approximately 29 states have policies of some kind either in place or in the works addressing PFAS
 - In 2020 alone, state legislatures considered more than 180 bills related to PFAS
- Standards generally include MCLs (drinking water), GWQSs (groundwater), and reporting thresholds, as well as use restrictions and product bans
- Resulting in patchwork of regulations and standards
- Preemption issues



A Sampling of State Drinking Water Standards

State	Action	Compound Level
New Jersey	Drinking Water Standard	PFNA (13 ppt); PFOA (14 ppt); PFOS (13 ppt)
New York	Drinking Water Standard	PFOA (10 ppt); PFOS (10 ppt)
Connecticut	Drinking Water Standard	70 ppt for PFOA, PFOS, PFNA, PFHxS, PFHpA (individually or combined)
California	Drinking Water Standard	Response Levels: PFOA (10ppt); PFOS (40 ppt)
Vermont	Drinking Water Standard	20 ppt for PFOA, PFOS, PFHxS, PFHpA, PFNA (individually or combined)



PFAS Litigation

Morgan Lewis



PFAS Litigation

- First suit ~20 years ago – Tennant Farm
- 2001 *Leach Case*
 - 2004 class certification: individuals who drank water within six water districts for at least one year
 - 2005 settlement → health study, medical monitoring, preservation of rights to pursue claims
 - 2011-2012: Health study published findings
 - Linked PFOA and certain diseases



PFAS Litigation: MDL 2433 – “Preserved Rights” Cases

- Approx. 3,500 *Leach* class members
- Three cases went to trial, resulting in verdicts:

Alleged injury	Compensatory Damages Awarded	Punitive Damages Awarded
Kidney cancer	\$1.6 million	None
Testicular cancer	\$5.1 million	\$500,000
Testicular cancer	\$2.1 million	\$10.5 million

- 2017: settled many cases for \$671 million
- 2021: settled another ~100 for \$83 million



PFAS Litigation: State Actions

- 2010: *Minnesota v. 3M*
 - Action by State of Minnesota alleging surface and groundwater contaminated by PFOA, PFOS and other perfluorochemicals
 - Causes of action:
 - Natural resource damages under state statutes
 - Common law trespass, nuisance, negligence
 - 2018: settled for \$850 million



STATE OF MINNESOTA
COUNTY OF HENNEPIN

DISTRICT COURT

COURT REPORTER
JULY 17 2017
JUDICIAL CENTER
ST. PAUL, MN 55155

FOURTH JUDICIAL DISTRICT

Joseph Klein
JUDGE

Case Type: Other Civil

Judge Joseph Klein

State of Minnesota, by its Attorney General,
Lori Swanson, its Commissioner of Pollution
Control, Paul Aasen, and its Commissioner of
Natural Resources, Tom Landwehr,

Court File No. 27-CV-10-28862

Plaintiff,

AMENDED COMPLAINT

vs.

3M Company,

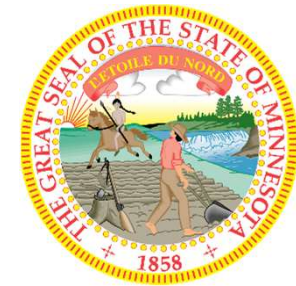
Defendant.

The State of Minnesota, by its Attorney General, Lori Swanson, its Commissioner of Pollution Control, Paul Aasen, and its Commissioner of Natural Resources, Tom Landwehr, for its Complaint against Defendant 3M Company, alleges as follows:

PFAS Litigation: State Actions (cont'd)

- Several similar state actions followed, resulting in significant settlements:

Year of Settlement	State	Settlement Amount
2018	AL	\$4 million
2019	MN	\$2.7 million
2019	AL	\$35 million
2020	MI	\$55 million
2020	MI	\$113 million



PFAS Litigation: MDL 2873 – AFFF (Aqueous Film-Forming Foam)

- District of South Carolina (Hon. Richard Gergel)
- Alleged injuries/damages purportedly caused by PFOA/PFOS used in firefighting foams
- 1,000+ cases
- Not just manufacturers
- Currently in discovery:
 - Millions of documents produced
 - Dozens of depositions taken
- 10 bellwether cases recently selected



PFAS Litigation: *Hardwick v. 3M et al.*

- Proposed nationwide class: any individual with detectable blood levels of any PFAS chemical
 - 99% of US population
- Injury = increased risk of disease
- Seeks:
 - PFAS Science Panel
 - Medical monitoring
- September 2019: motion to dismiss based on absence of alleged injury denied
- Motion to certify class is fully briefed, awaiting hearing and ruling

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

KEVIN D. HARDWICK

Plaintiff,

v.

3M COMPANY,
DYNEON, L.L.C., E. I. DU PONT DE
NEMOURS AND COMPANY, THE
CHEMOURS COMPANY L.L.C.,
ARCHROMA MANAGEMENT LLC,
ARKEMA, INC., ARKEMA FRANCE,
S.A., AGC, INC. d/b/a ASAHII GLASS
CO. LTD., DAIKIN INDUSTRIES LTD.,
DAIKIN AMERICA, INC., and SOLVAY
SPECIALTY POLYMERS, USA, LLC.

Defendants.

CIVIL ACTION NO.: 2:18-cv-1185

Judge

Magistrate Judge

**CLASS ACTION COMPLAINT
AND JURY DEMAND**

Plaintiff, Kevin D. Hardwick, by his undersigned attorneys, alleges upon information and belief, as follows:

I. NATURE OF THE ACTION

1. This is a national class action brought on behalf of Plaintiff individually, and on behalf of all others similarly situated, for injunctive, equitable, and declaratory relief, by Plaintiff and other class members for injuries arising from the intentional, knowing, reckless and/or negligent acts and/or omissions of Defendants in connection with contamination of the blood and/or bodies of Plaintiff and other class members with synthetic, toxic per- and polyfluoroalkyl substances (collectively "PFAS"), including but not limited to perfluorooctanoic acid ("PFOA") and perfluorooctane sulfonic acid ("PFOS") and related chemicals, including but not limited to those that degrade to PFOA and/or PFOS, and including but not limited to C3-C-15 PFAS chemicals, such as perfluorohexanesulfonate (PFHxS), perfluorononanoate (PFNA),

PFAS Litigation: Other Ongoing

- Additional state actions for NRD
 - New York, New Hampshire, Vermont, New Jersey, Ohio, Alaska, Michigan
- Shareholder actions
- Biosolids
- *Some transferred to the AFFF MDL*



PFAS Litigation: Looking Ahead

- Expansion of AFFF MDL
- “PFAS Accountability Act”
 - Proposed legislation would authorize personal injury lawsuits in federal court if “significant exposure” alleged
- Wave of new regulation



PFAS Litigation: New Administration's Focus on PFAS

SDWA	<ul style="list-style-type: none">• Administration plans to set national drinking water standards (MCLs) for at least PFOA and PFOS• Collecting information on PFOA/PFOS, plus 27 other chemicals• Once added:<ul style="list-style-type: none">• SDWA enforcement• Monitoring/reporting obligations
CERCLA	<ul style="list-style-type: none">• Designation of PFAS chemicals as hazardous substances• Once designated:<ul style="list-style-type: none">• Enforcement → cleanup obligations<ul style="list-style-type: none">• Liability is both strict and joint and several• Cost recovery/contribution litigation
Proposed Infrastructure Bill	<ul style="list-style-type: none">• \$10 billion dedicated to monitoring and remediating PFAS chemicals

1,4-Dioxane

Morgan Lewis



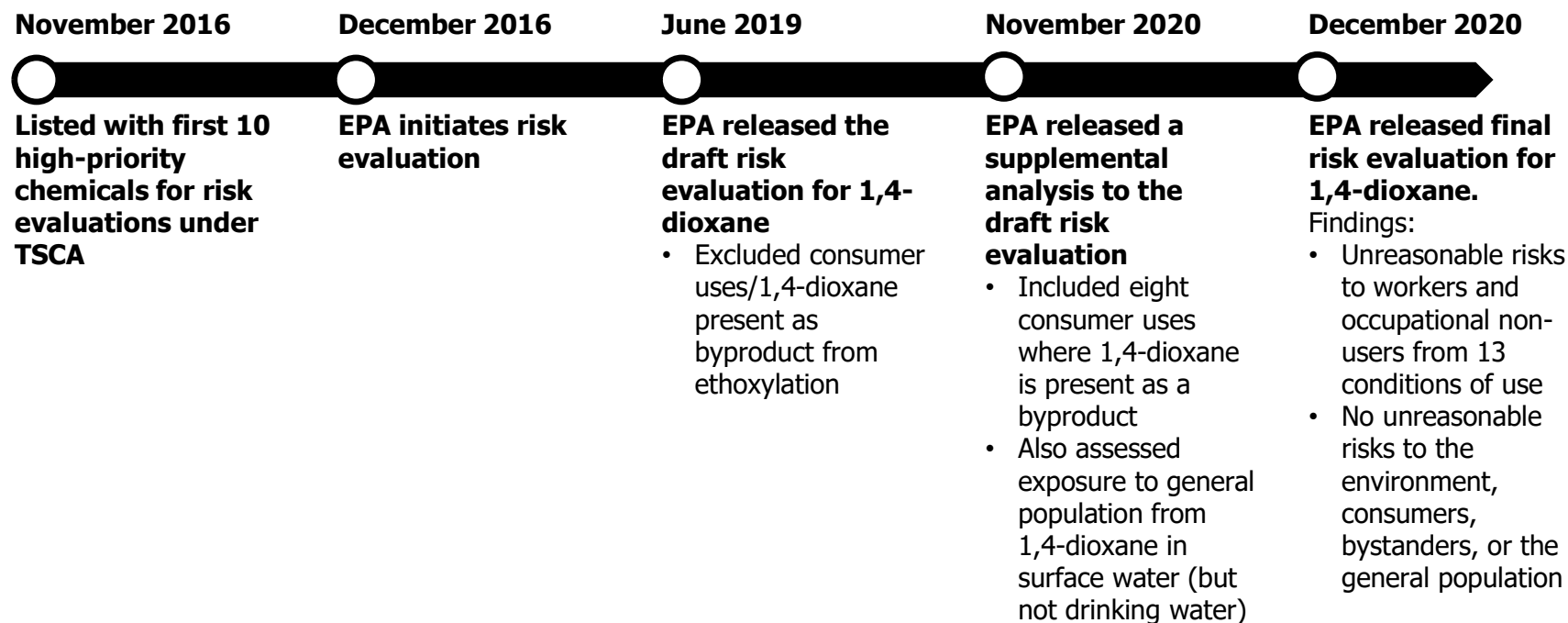
1,4-Dioxane Overview

- Historically, widely used as a stabilizer in chlorinated solvents such as 1,1,1-trichloroethane (TCA)
- Currently used as a solvent in a variety of commercial and industrial applications
- By-product from ethoxylation of other chemicals
- Highly mobile, completely miscible in water, and does not readily biodegrade
- EPA has classified it as “likely to be carcinogenic to humans” (EPA IRIS 2013)
- The International Agency for Research on Cancer (IARC) has classified it as “possibly carcinogenic to humans”

Avenues for Regulation by EPA, Redux

TSCA	Governs use of the chemicals
SDWA	Governs permissible levels in drinking water (MCL)
CERCLA	Governs remediation of emerging contaminants in soil, groundwater
Others	CAA, TRI, CWA, etc.

EPA Regulation: TSCA and 1,4-Dioxane



- Next steps: Address the unreasonable risk identified in the final risk evaluation

TSCA and Regulation of 1,4-Dioxane (cont'd)

- Controversy Associated with Supplemental Analysis to Risk Evaluation
 - Challenges Raised
 - 20-day comment period does not comply with regulatory requirements
 - Rush to issue risk evaluation before year-end
 - Failure to assess risks from additional exposure pathways, such as drinking water
 - No peer review of supplemental analysis
 - Other critiques
 - Deliberate effort to preempt state efforts (e.g., NY, CA) to regulate 1,4-dioxane in consumer products



Additional EPA Regulation of 1,4-Dioxane

- Listed on the SDWA Candidate Contaminant List (CCL) and in third and fourth Unregulated Contaminant Monitoring Rule (UCMR3 and UCMR4).
 - February 2020*: EPA declined to make a preliminary determination regarding 1,4-dioxane under the SDWA; remains on Fourth CCL; EPA continues to evaluate
 - February 2021: 1,4-dioxane excluded from the list of contaminants identified by EPA for action under SDWA
- Listed as a hazardous substance under CERCLA
- Designated a Hazardous Air Pollutant under the CAA
- Been a reportable TRI chemical since 1987

* Published for comment in the Federal Register March 10, 2020

State Regulation of 1,4-Dioxane

- Various states have established drinking water and groundwater guidelines for 1,4-dioxane
 - Reporting limits, groundwater quality cleanup/remediation standards, notification levels, drinking water guidelines
 - California:
 - Notification level of 1 microgram per liter ($\mu\text{g/L}$) in drinking water (Nov 2010)
 - Working to develop public health goals in drinking water for 1,4-dioxane – precursor to establishing an MCL
 - New Jersey:
 - Interim Ground Water Quality Standard (IGWQS) of $0.4 \mu\text{g/L}$ (Jan 2018) – also remediation standard
 - Recommendation by state DWQI to adopt MCL of $0.33 \mu\text{g/L}$ (Sept. 2020)

State 1,4-Dioxane Standards: New York

- **First (and only) state to set an MCL for 1,4-dioxane**
 - 1 µg/l (= 1 ppb)
 - July 2020 (effective August 2020)
- Requires water system monitoring, reporting and mitigation for exceedances
 - Qualifying utilities can defer compliance for up to three years
- Advanced Oxidative Process approved as an effective treatment technology
- Critiques:
 - NY MCL ignores EPA deferral of regulation of 1,4-dioxane under SDWA
 - The state's limit for 1,4-dioxane is 50 times lower than the recommendation issued by Health Canada and the World Health Organization

State 1,4-Dioxane Standards: New York (cont'd)

- Prohibition of sale of household cleaning products that contain 1,4-dioxane
 - NY bill (S4398B), effective January 1, 2022 (signed late 2019)
 - Establishes maximum allowable concentration for household cleansing and personal care products:
 - 2 ppm of 1,4-dioxane on December 31, 2022
 - 1 ppm on December 31, 2023
 - Also establishes maximum allowable concentration for cosmetics
 - 10 ppm of 1,4-dioxane on December 31, 2022
- Wrinkles
 - Potential TSCA preemption
 - Effectiveness?

1,4-Dioxane Litigation

- Suits by Water Districts to recoup cost to test and treat 1,4-dioxane
 - Long Island, NY – multiple active cases
- Defendants:
 - Industrial operations allegedly using solvents associated with 1,4-dioxane
 - Manufacturers, distributors, retailers and promoters of dioxane and dioxane-containing products (used in consumer products)
- CERCLA, tort claims

1,4-Dioxane Litigation: Regulatory Challenges - NY

- *Long Island Pure Water Ltd. v. New York State Dep't of Health, et al.* (filed November 30, 2020)
- Proceeding under NY CPLR Article 78 to challenge the 1,4-dioxane MCL
 - Argues that rulemaking process for the 1,4-dioxane MCL was flawed
 - Seeks to have the court annul the MCL and order NYDOH to reconsider it after considering alternatives, conducting a cost-benefit analysis and making the scientific determinations required by law
- Amicus briefs advanced by both local water districts and industry groups

1,4-Dioxane Litigation: Challenges to TSCA Risk Evaluation

- Three suits filed to date in the U.S. Court of Appeals for the 9th Circuit
 - Environmental Defense Fund, Environmental Working Group and Sierra Club (Jan. 26, 2021)
 - Coalition of North Carolina environmental groups (Feb. 1, 2021)
 - Coalition of 14 Democratic-led states and two cities (Mar. 22, 2021)
- Petition by United Autoworkers in the U.S. Circuit Court for the District of Columbia (Feb. 10, 2021)

What's Next?

Regulation

- Continued state regulation of PFAS and 1,4-dioxane in absence of federal regulation
- More activity under TSCA
- Re-evaluation and challenges to existing risk assessments and regulatory action
- Tension between emphasis on sound science and desire to move quickly to regulate
- How to regulate PFAS – individually?
Groups? Class?

Litigation and Enforcement

- Possible increase in litigation/enforcement as monitoring increases and standards are set and/or lowered
- Possible increased evaluation of PFAS and 1,4-dioxane contamination at cleanup sites, including possible reopeners on five-year reviews
- More Federal MCLs?

Biography



Stephanie R. Feingold

Princeton/New York

+1.609.919.6643/+1.212.309.6000

stephanie.feingold@morganlewis.com

Stephanie R. Feingold represents clients in litigation and dispute resolution with a focus on environmental issues, and provides environmental and regulatory counseling. Her work spans investigations, cost recovery and contribution actions, and enforcement actions brought by and against environmental agencies and government authorities, as well as private party actions, under both federal and state environmental laws. She defends major corporations and businesses in toxic tort actions, commercial litigation, and product liability litigation. Stephanie also counsels clients in matters involving drinking water contamination and emerging contaminants, including per- and polyfluoroalkyl substances (PFAS) and 1,4-dioxane. Stephanie also works with potentially responsible parties (PRPs) in connection with contaminated sites, including working closely with consultants and experts, and negotiating with regulatory agencies.

Morgan Lewis

Biography



Jeremy Esterkin

Los Angeles

+1.213.680.6843

jeremy.esterkin@morganlewis.com

Jeremy Esterkin provides counsel to utility, energy, manufacturing, and other clients regarding environmental litigation and regulatory compliance matters. He has experience in substantive areas of US federal and state environmental law including the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), the National Environmental Policy Act (NEPA), the Hazardous Substance Account Act (HSAA), and the California Environmental Quality Act (CEQA), as well as common law causes of action arising from environmental damage and chemical exposure. Jeremy also advises clients on crisis communications to minimize litigation risk and reputational harm.

Biography



Drew Cleary Jordan

Washington, D.C./Princeton

+1.202.739.5962/+1.609.919.6600

drew.jordan@morganlewis.com

Drew C. Jordan represents corporate and individual clients in a variety of complex commercial and environmental matters before US federal and state courts, including appellate courts. Drew has experience representing clients in matters involving consumer class action and multi-district litigation, fraud and RICO litigation, business and corporate disputes, state and federal government investigations, mass toxic torts, and regulatory and enforcement issues. Drew has extensive experience representing clients in matters involving cost recovery and contribution under CERCLA and state environmental laws, drinking water contamination, state government investigations, and environmental regulatory and enforcement issues, including regulatory counseling in connection with TSCA. Drew works with US and international clients in the retail and ecommerce, energy, utility pharmaceutical, real estate, manufacturing, and financial services industries. Drew is a member of the Firm's war plants and emerging contaminants teams.

Morgan Lewis

Our Global Reach

Africa

Asia Pacific

Europe

Latin America

Middle East

North America

Our Locations

Abu Dhabi

Almaty

Beijing*

Boston

Brussels

Century City

Chicago

Dallas

Dubai

Frankfurt

Hartford

Hong Kong*

Houston

London

Los Angeles

Miami

Moscow

New York

Nur-Sultan

Orange County

Paris

Philadelphia

Pittsburgh

Princeton

San Francisco

Shanghai*

Silicon Valley

Singapore*

Tokyo

Washington, DC

Wilmington



Morgan Lewis

Our Beijing and Shanghai offices operate as representative offices of Morgan, Lewis & Bockius LLP. In Hong Kong, Morgan, Lewis & Bockius is a separate Hong Kong general partnership registered with The Law Society of Hong Kong. Morgan Lewis Stamford LLC is a Singapore law corporation affiliated with Morgan, Lewis & Bockius LLP.

THANK YOU

© 2021 Morgan, Lewis & Bockius LLP
© 2021 Morgan Lewis Stamford LLC
© 2021 Morgan, Lewis & Bockius UK LLP

Morgan, Lewis & Bockius UK LLP is a limited liability partnership registered in England and Wales under number OC378797 and is a law firm authorised and regulated by the Solicitors Regulation Authority. The SRA authorisation number is 615176.

Our Beijing and Shanghai offices operate as representative offices of Morgan, Lewis & Bockius LLP. In Hong Kong, Morgan, Lewis & Bockius is a separate Hong Kong general partnership registered with The Law Society of Hong Kong. Morgan Lewis Stamford LLC is a Singapore law corporation affiliated with Morgan, Lewis & Bockius LLP.

This material is provided for your convenience and does not constitute legal advice or create an attorney-client relationship. Prior results do not guarantee similar outcomes. Attorney Advertising.

Morgan Lewis