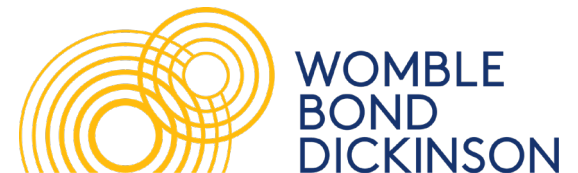




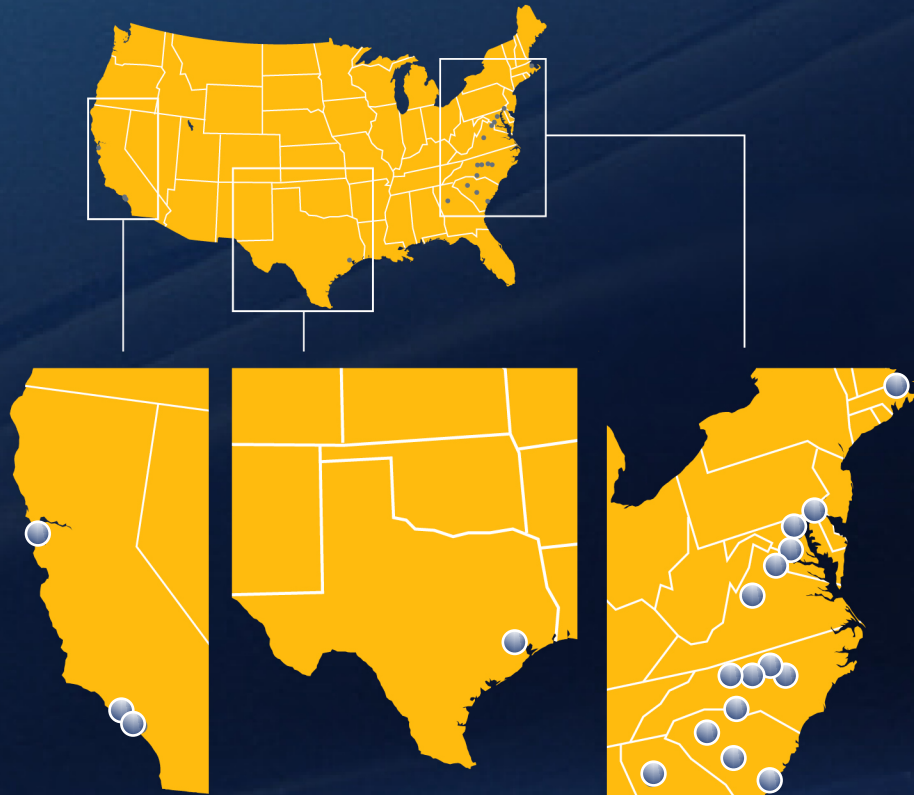
Litigating Chemical Content

Michael J. Sullivan

September 1, 2021



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Agenda for Today

Brief Overview of
PFAS Substances

1

Discussion About
Federal and State
Legislation

2

Litigation Against
Chemical
Manufacturers

3

Case Study: Carpet
Manufacturers and
PFAS Litigation

4

Why is This
Important? What is
in the Future?

5

Closing Thoughts

6

PFAS = Polyfluoroalkyl Substitutes

- Synthetic chemicals engineered to create a carbon fluorine bond
- Impact lasting stain, water, soil resistance
- Used since the 1940s
- Estimates of worldwide chemicals that can be characterized as PFAS range from 2,000 to 30,000
- Pervasive in multiple industries and consumer products

Two Primary PFAS Compounds that Have Drawn Attention

PFOA
(Perfluorooctanic
Acid)

Teflon

PFOS
(Perfluorooctyl
Sulfonate)

Scotchguard

C8 v. C6

- **PFAS/PFOS litigation is directed to “big chain” perfluorinated carbons**
- **C6 began use as substitute – short chain**
 - C6 is a “suspected carcinogen”
 - C6 impure with C8 contamination by unscrupulous manufacturers
 - Compare “blue asbestos” and white asbestos
 - Blue asbestos banned 13 years before white asbestos



EPA Bans Long Chain PFAS on Articles Without Prior EPA Approval – July 2020



- Withdrew the January 2021 compliance guide limited articles affected by the SNUR as political and not consistent with EPA guidelines – June 2021

PFAS Action Act of 2021

- Require EPA to promulgate nationwide drinking water standards within two years for PFOA (perfluorooctanoic acid) and PFOS (perfluorooctane sulfonic acid) – the two most widely studied PFAS – under the Safe Drinking Water Act. It would also require EPA to determine whether to set such standards for any individual PFAS compounds or any groups or classes of PFAS compounds;
- Require EPA to designate PFOA and PFOS as hazardous substances under CERCLA within one year and decide whether to also designate any individual PFAS compounds or groups of PFAS compounds as hazardous substances within five years;



PFAS Action Act of 2021 (continued)

- Require EPA to designate PFOA and PFOS as hazardous air pollutants under the Clean Air Act within 180 days and require the EPA to determine whether to list other PFAS compounds or groups of PFAS compounds as hazardous air pollutants within five years;
- Require EPA to create a voluntary Safer Choice labeling system for various consumer goods manufactured without using PFAS;
- Impose a five-year moratorium on approving new PFAS compounds or significant new uses of PFAS compounds under the Toxic Substances Control Act (TSCA); and
- Require EPA to set effluent standards applicable to certain classes of industrial sources of wastewater discharges containing certain PFAS compounds, including PFOA and PFOS.





**180
DAYS**



**5-Year
Moratorium**



EPA Proposes New PFAS Reporting Rule – June 28, 2021

- Applies to manufacturers and IMPORTERS 
- Requires any manufacturer or importer to report 
- Retroactive from **January 1, 2011**
- Report requires chemical identity, categories of use, volumes manufactured and processed, byproducts, environmental and health effects, worker exposure and disposal 
- One year from date of final rule to submit disclosures 
- Comment period ended on **August 27, 2021**

Who Must Report?

For the purposes of this proposed rule, articles containing PFAS, including imported articles containing PFAS (such as articles containing PFAS as part of surface coatings), are included in the scope of reportable chemical substances. TSCA does

For the purposes of this proposed rule, articles containing PFAS, including imported articles containing PFAS (such as articles containing PFAS as part of surface coatings), are included in the scope of reportable chemical substances. TSCA does not define articles, nor does the statute define articles as a category of substances exclusive of chemical substances. EPA therefore considers its ability to regulate chemical substances to encompass authority to regulate articles containing such chemical substances.

have. Therefore, articles are within the scope of reportable substances under this proposed rule, though EPA is requesting comments on whether imported articles containing PFAS should be within scope (see Unit IV.1).



Highlights

- Retroactive reporting – for 10 years. Further than TSCA reporting requirements
- Broad PFAS category....the list of examples is over 1,000 but not exhaustive
- “Not Known or Reasonably Ascertainable” – but do need a record that you LOOKED

MAINE: July 2021

1. Report use of toxic chemicals
2. Eliminate use by 2030
3. Exception = no alternative

“The more we study PFAS, the more we learn of their harm to human health.”

– LINDA BIRNBAUM

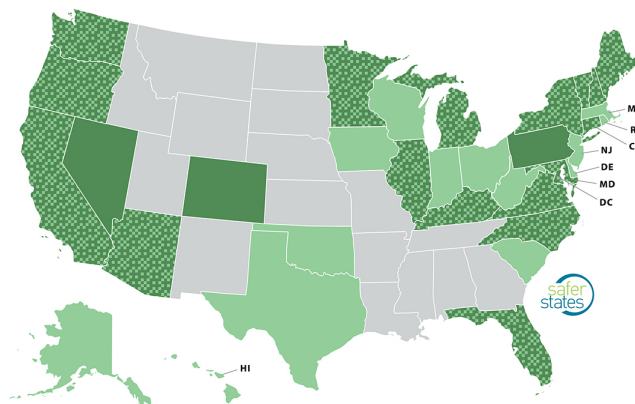
Former Director of the National Institute of Environmental Health Studies and the National Toxicology Program



PFAS

Safer States is at the forefront of a state-driven national movement to combat exposures to PFAS chemicals. We coordinate a large and diverse coalition of advocates, policymakers, scientists, and representatives from the most impacted communities to influence public policy, corporate practices, and end-of-life management decisions on products containing these deadly chemicals. Our goal is to turn off the tap on over 3,000 chemicals in this class and ensure safe drinking water for all. For information intended for a legislative audience, please visit our [PFAS Candidate Engagement Guide \(https://www.pfasaction.org\)](https://www.pfasaction.org).

98 current policies in 31 states
63 adopted policies in 20 states



Current Policies



Adopted Policies



Both

Legal Action

- Primarily v. chemical manufacturers



- Primary focused on water pollution and property damage
- Increasingly personal injury claims being discussed:
 - Thyroid disease
 - Hyperthyroidism
 - Kidney cancer
 - Ulcerative colitis
 - All linked to the C8 exposure

C8 Health Project

- Part of West Virginia class action settlement against DuPont
- Collected data from class members
- C8 science panel identified diseases “probably” related to PFAS exposure:
 - Kidney cancer
 - Testicular cancer
 - Pregnancy induced hypertension
 - Ulcerative colitis
 - High cholesterol

Consumer Product Manufacturer Litigation

Case Study: Carpet Industry

1. *The Water Works & Sewer Board of the City of Gadsden v. 3M Company, et al.*; Circuit Court of Etowah County, AL; Case No. CV-2016-900676.00
2. *The Water Works & Sewer Board of the City of Centre v. 3M Company, et al.*; Circuit Court of Cherokee County, AL; Case No. 13-CV-2017-900049.00
3. *The City of Rome, Georgia v. 3M Company, et al.*; Superior Court of Floyd County, Georgia; Case No. 19CV02405
4. *Jarrod Johnson v. 3M Company, et al.*; United States District Court, Northern District of Georgia; Case No. 4:20-cv-0008-AT

Carpet Manufacturers

1. Aladdin Manufacturing Corporation
2. Arrowstar, LLC
3. Chem Tech Finishers, Inc.
4. DyStar, L.P.
5. Engineered Floors, LLC
6. Lexmark
7. Milliken & Company
8. Mohawk Carpet, LLC
9. Mohawk Industries, Inc.
10. Oriental Weavers USA, Inc.
11. Shaw Industries, Inc.
12. Shaw Industries Group, Inc.
13. Tarkett USA, Inc.
14. The Dixie Group, Inc.



Exposure: Water is Not the Only Source of PFAS Exposure

We breathe them.

“PFAS are highly mobile. Walking on Carpet containing PFAS or wearing treated clothing causes PFAS to become airborne and settle in dust which we then breathe.”

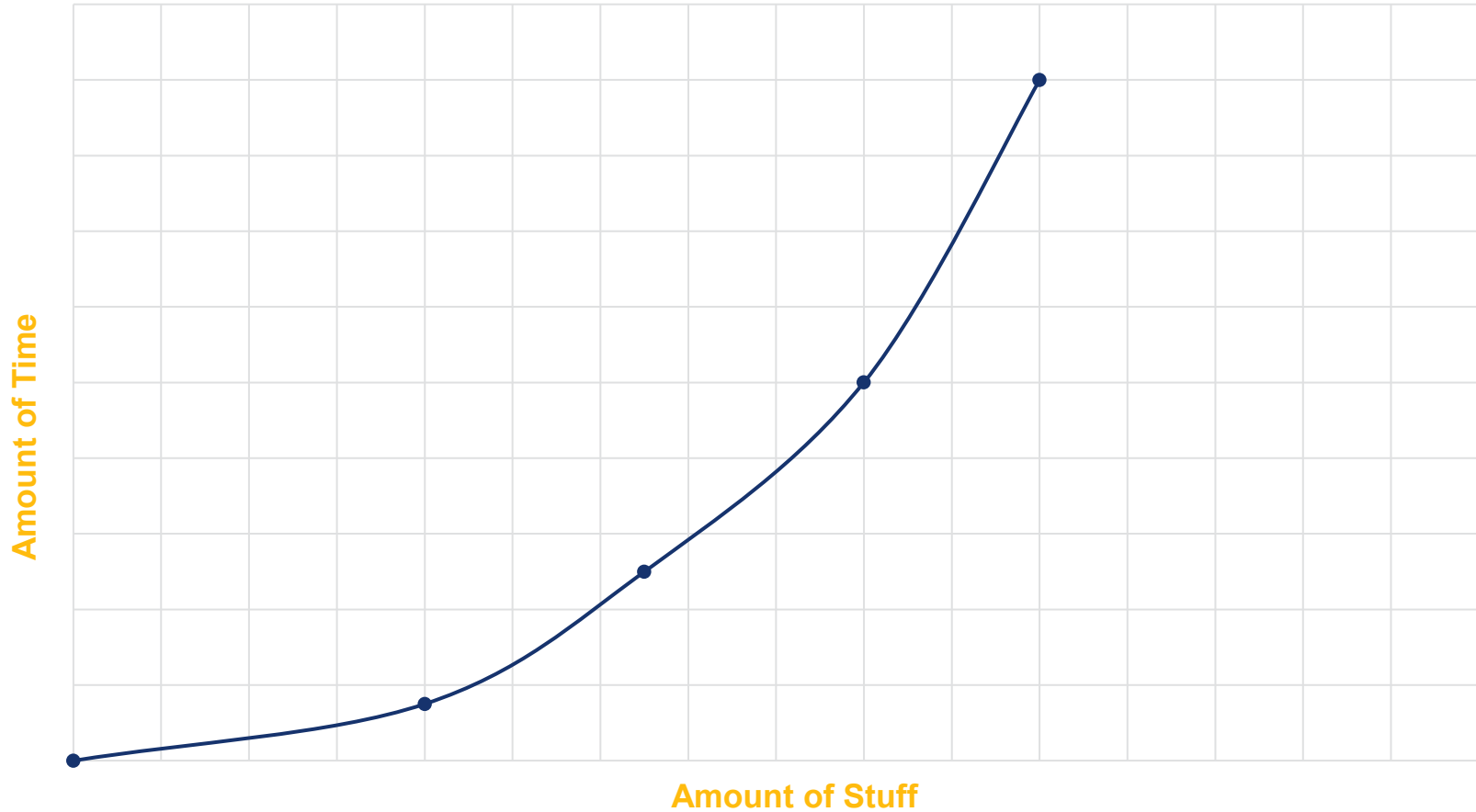
Safer States



Analogy of Legal Liability for Toxic Tort *Asbestos*

Step 1	Claim against asbestos product manufacturer	Asbestos Workers	Blue Asbestos	Johns Manville
Step 2	Claim against manufacturer of product with asbestos component – industrial setting	Boilerworkers; Laborers	White Asbestos	John Crane / Garlock
Step 3	Claim against manufacturers of products with asbestos component – home use	Brakes on family cars	White Asbestos / Encapsulated	General Motors
Step 4	Bystander claims – family members who were near individuals in Steps 2 and 3	Laundry exposure	White Asbestos	All product manufacturers and distributors – Sears / Kmart

Science of Dose Response



It is the dose that makes the poison.



Which Does it is Anyway?

BUT...

- **What happens with dose accumulation?**
- **Have to determine which dose commits the harm**

PFAS

Step 1

Dose from water contaminated from discharges by PFAS manufacturers

Step 2

Dose from water contamination from wastewater from carpet manufacturer which use PFAS products in processes

Step 3

Inhalation – dust released from carpet or furniture or food containers

Which dose causes the disease?



Williamstown PFAS investigations: air monitoring Information for local residents

The risk of exposure to per- and poly- fluoroalkyl substances (PFAS) in air. Studies conducted by the NSW Government, in consultation with independent monitoring experts, have found that the potential health risks posed by PFAS through air, are not significant. These studies concluded that air monitoring did not add to information about exposure risk from these pathways, and that risk through food and water should be the focus of efforts to reduce exposure. Calculations using the recently revised Food Standards Australia New Zealand (FSANZ) guidelines for the tolerable daily intake for PFAS support this finding.

Is PFAS via dust a significant exposure pathway?

While the firefighting foams used at the Williamstown RAAF base did not contain the types of PFAS that are volatile (form a gas in the air), PFAS can attach to dust particles.

Exposure can occur through:

- Inhaling fine dust particles.
- Ingesting dust from hands, furniture, countertops, floors.

However, the health risk from exposure to PFAS via dust is low.

How has the safety of PFAS via dust been determined?

The Human Health Risk Assessment (HHRA) looked at many different exposure scenarios and calculated the health risk to both adults and children.

Additionally, the NSW EPA met with air quality and toxicology experts.

The risk profile for PFAS in dust has subsequently been reviewed following the release of the FSANZ endorsed levels for the tolerable daily intake for PFOS, PFOA and PFHxS, which are lower than those used in the HHRA.

Throughout these assessments, the use of contaminated water (surface water and groundwater) and consumption of home

grown food such as berries were identified as high risk exposure pathways.

Exposure pathways such as dust in air and incidental ingestion of dust were also assessed and identified as low risk exposure pathways.

What factors were used in the calculations?

Separate calculations were performed for the risks associated with ingestion. These calculations were repeated using the FSANZ values.

Real data from the Newcastle monitoring network was used to estimate the amount of dust in the air, however in order to allow a margin of safety, the following 'worst-case scenario' factors were accommodated:

- Levels of dust in the air were assumed to be high, rather than the levels that typically occur.
- All household dust was assumed to be from contaminated soil.
- Levels of PFAS in soil were assumed to be high across the whole area, rather than the lower levels that typically occur.

Is PFAS via dust a significant exposure pathway?

...

Ingesting dust from hands, furniture, countertops, floors.



Oct 20, 2020

Dust from your old furniture likely contains harmful chemicals—but there's a solution

Researchers find people's exposure to PFAS and certain flame retardants could be significantly reduced by opting for healthier building materials and furniture.

[Hannah Seo](#)

PFAS EXPOSURE STUDY

DUKE'S RESEARCH IN THE NC PIEDMONT

SEARCH



PFAS FOUND IN NC HOUSE DUST

BY SAM HALL | DECEMBER 3, 2020 | PFAS

Since we collected dust from the main living areas, the PFAS we found are likely from sources such as carpeting, clothing, and consumer products. Although we found that the levels of legacy PFAS in dust has been declining since the early 2000s, we did find that 8:2 FTOH levels in dust have increased. Other researchers have found that replacing furniture with PFAS-free products **reduces the level of PFAS** in dust.

Technology

. The article, "Per- and Polyfluoroalkyl Substances in Dust Collected from Residential Homes and Fire Stations in North America," describes the levels of several PFAS we measured in dust samples.

For this study, indoor dust was collected from the main living areas in homes and in fire stations. A total of 184 homes and 49 fire stations were sampled from across the United States and Canada.

The dust samples were then analyzed for 17 different PFAS using liquid and gas chromatography-mass spectrometry in our lab. We investigated dust from fire stations in addition to residential

homes because firefighters could be exposed to PFAS from other sources, like turnout gear and aqueous film-forming foams.

Some notable findings from our study:

- Two groups of PFAS known as FTOHs and diPAPs were the most prevalent in dust.
- Dust samples from homes were higher in 8:2 FTOH.
- Dust samples from fire stations were higher in PFOS, PFOA, PFHxS, PFNA, and 6:2 diPAP.
- Levels in dust are decreasing for legacy PFAS such as PFOS, PFOA, and PFHxS.
- Buildings with more carpeting had higher levels of FTOHs in dust.

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« [Recap of Town Hall](#)

[Health Effects of PFAS Exposure on Mothers and Their Babies »](#)

Closing Thoughts

- ✓ **Continue to look for not toxic alternatives for chemical usage**
- ✓ **Supplier Disclosure Forms – Need to be aware of all the chemicals used in the products you use and sell**
- ✓ **Need to follow final rule to see if Federal reporting duty changes ... and if not what and how to report**
- ✓ **Watch for EPA public meetings on this issue. Participate to learn how your business is affected**
- ✓ **Watch This Space**

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Michael Sullivan



- Clients turn to Michael Sullivan for senior-level strategic guidance in mass tort product liability litigation and other large-scale commercial litigation
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