

# Navigating PFAS regulations

Mitigating risk and maximizing opportunities

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A business of Marsh McLennan



Firefighting  
foams



Water resistant  
clothing



Paint



Personal  
care products



Cosmetics



Non-stick  
cookware

# PFAS



Photography



Fast food  
packaging



Pesticides



Stain resistant  
furniture



Stain resistant  
products



Microwave  
popcorn bags

1. PFAS Overview and Regulatory updates
2. Exposure scenarios
3. Financial transaction risks
4. Risk transfer solutions

# Agenda

# PFAS federal regulations

Federal rules regarding **PFAS handling, treatment, and reporting** enforced within existing regulations include:

**Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA)** – [PFOA and PFOS designated as a “hazardous substances”](#) which could trigger requirements for environmental site investigations

**Toxic Substances Control Act (TSCA)** – [Must electronically report](#) information regarding PFAS uses, production volumes, disposal, exposures, and hazards.

**Safe Drinking Water Act** – [EPA established maximum contaminant levels](#) (MCLs) for six PFAS chemicals.

**Toxic Release Inventory (TRI)** – [PFAS added](#) to the list of lower thresholds for chemicals of special concern in conjunction with the National Defense Authorization Act.

**Resource Conservation Recovery Act (RCRA)** – [Proposed regulations](#) would add nine PFAS to the list of RCRA hazardous constituents.

While federal regulations must be complied with, **states can implement more stringent standards.**

# Exposures and damages

- Cleanup liability – costs to assess the extent of the contamination, design a cleanup strategy, physically conduct the cleanup, and monitor the results of that cleanup long term.
- Toxic tort – physical health claims including mental anguish and medical monitoring, property damage with potential diminution in value or loss of use
- Natural resources damages
- Disposal site/generator liability
- Legal expenses

# Real estate transaction environmental diligence

- Conduct a Phase I environmental site assessment
- Evaluate available documentation, such as materials used and stored onsite and historic environmental due diligence reports
- Access public domain data – federal, state, local, and NGO – to help assess PFAS exposure:
  - Ground water
  - Surface water
  - Precipitation
  - Soil
- Negotiate indemnities – known and unknown site pollution

# Potential coverage for PFAS

## Risk transfer solutions

### If you're faced with a PFAS claim today

- Gather your policies/data
  - Coverage may exist is both currently in force and historical policies
  - Many policies, especially historical coverage, are silent regarding PFAS
- Where might coverage lie?
  - Pollution legal liability (PLL)
  - Excess of indemnity
  - Contractors pollution liability (CPL)
  - Remediation cost cap
  - General liability (GL)
  - Product and product pollution liability
  - Umbrella and excess liability
  - Directors & officers liability (D&O)

### Go-forward strategy – coverage considerations

- Who's PFAS is it?
  - Claims can touch any business in the supply chain
  - Identify taxonomy of exposure
  - Mitigate risk where possible
  - Bolster contractual protections
- Coverage is still available...for now
  - Insurers are not taking an absolute position
  - Some are starting to restrict coverage
  - Information is critical to driving coverage outcomes
  - Environmental policies can be written for a 10-year period to maximize your tail of protection



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