



NAVIGATING THE PFAS CRISIS: HEALTH CONCERNS, LEGAL BATTLES, AND RISK MITIGATION STRATEGIES



The Environmental Protection Agency (EPA) has [linked](#) per- and polyfluoroalkyl substances (PFAS) to a range of health issues. These widely used chemicals have been integrated into commercial and consumer products for their valuable properties for decades, with health concerns including cancer, kidney disease, and elevated cholesterol levels now associated with their use. According to the CDC, most Americans have been exposed to these persistent chemicals. They can help everyday products be more resistant to heat, moisture, and stains.

PFAS can be commonly found in homes and workplaces, in items such as:

- + Drinking water
- + Fire extinguisher foam
- + Manufacturing or chemical production facilities
- + Food
- + Food packaging- fast food wrappers, microwave popcorn bags, pizza boxes
- + Personal care products- such as shampoo, cosmetics, dental floss

As both federal and state governments scramble to tackle the PFAS contamination crisis through stringent legislation, the ripple effects are being felt by manufacturers, distributors, and insurers alike. This article delves into the pervasive reach of PFAS, the mounting legal battles, and the insurance landscape, offering a comprehensive overview of the multifaceted challenges posed by these enduring chemicals.

WHY ARE THESE CHEMICALS AN ISSUE?

PFAS are considered a part of a group commonly known as “forever chemicals.” Forever chemicals, including PFAS, can take thousands of years to decay. The Environmental Protection Agency (EPA) has also [discovered](#) that these chemicals can cause cancer, kidney disease, increased cholesterol, and other adverse health problems. Due to the widespread use of these chemicals over decades and their ability to remain in the environment for long periods of time, the CDC has conducted surveys revealing that most people in the United States have been exposed to PFAS. The FDA has been testing many foods, and these chemicals have also been found in meats, seafood, and drinking water.

Building on growing concerns regarding PFAS exposure, on August 26, 2022, the EPA **proposed** designating two of the most widely used PFAS as hazardous substances under the Comprehensive Environmental Response, Compensation, and Liability Act. The act aims to hold polluters accountable for cleaning up any PFAS contaminations.

In December of 2022, the EPA introduced a new rule to increase the reporting requirements of industry sectors using PFAS. This rule aims to eliminate the reliance on the de minimis (small concentration) exemption by covered industry sectors and federal facilities involved in the production or use of PFAS. It is designed to ensure that, despite PFAS being utilized in various products at low concentrations, these entities will no longer be exempt from disclosing their PFAS releases and.

THE IMPACT ON MANUFACTURERS AND DISTRIBUTORS

As more legislation gets passed to reduce the amount of PFAS in food, water, and products, manufacturers that produce and sell PFAS for use in other products, entities that use the manufactured goods, and distributors or retailers that sell products that contain PFAS will be on the hook. More than 6,400 PFAS-related lawsuits, including numerous class actions, have been filed against 3M, DuPont (a defendant in more than 6,100 suits), Kidde- Fenwal, Dynax, and many other manufacturers since 2005. In 2018, the State of Minnesota and 3M reached an **\$850 million settlement**. In Parkersburg, West Virginia, a single plant for DuPont caused **\$671 million** in damages, the story which can now be seen in the movie thriller “Dark Waters” starring Mark Ruffalo. As awareness continues to expand, we’re seeing PFAS litigation shift as well. There have been recent lawsuits against clothing and grocery retailers, restaurants, and cosmetic companies. The complete financial impact caused by PFAS has yet to be seen, but experts estimate that PFAS will lead to insurance losses in the tens of billions.

Results of pollution and product exposure claims from 2018-2023 include the following:

- + **3M was hit** with \$214M in PFAS litigation costs in Q4 2019 over the span of 3 months.
- + 3M reached a **\$10.3B settlement** in 2023 to resolve lawsuits concerning the contamination of numerous U.S. public drinking water systems. This contamination stemmed from potentially harmful compounds found in firefighting foam and a range of consumer products.
- + A **\$1.2B settlement** was reached between Dupont and plaintiffs’ claims for contaminated U.S. public water systems in 2023.
- + A **\$100M+ settlement** was reached between manufacturers, including 3M and Dupont, and the City of Rome, Georgia, over contaminated water due to stain-proofing agents in carpeting produced in local plants in 2023.
- + An **Ohio jury** awarded \$50M to a testicular cancer survivor and his wife, who sued DuPont over contaminated drinking water in 2020.



MITIGATING PFAS EXPOSURES

As more regulations and legislation emerge, insureds can face a growing list of exposures from PFAS, such as bodily injury, product liability, and environmental clean-up. As insurers look more in-depth at coverages for PFAS, coverage is still offered on a case-by-case basis, and there are coverages that manufacturers and distributors should consider. Individual sites or locations where PFAS are manufactured or used in the manufacturing process can be insured through a site pollution form. These policies can cover bodily injury to third parties, site clean-up, and product pollution. Manufacturers will face the greatest challenge of obtaining coverage if there is known contamination or their facilities are located near residential areas or water. Distributors that have PFAS exposure are primarily exposed to product liability, but some could also use site pollution policies if they store PFAS products in their warehouses.

For now, coverage is still available, but as more legislation and regulations are passed, coverage will be more and more challenging to obtain. Some markets are heavily scrutinizing and asking manufacturers and distributors more questions about exposure to PFAS, operations that may use them, or if they are near a known PFAS contamination. We have already seen carriers such as Liberty Mutual and Travelers put exclusions on their excess and primary general liability policies for PFAS. This is a very similar response the insurance market had to **Proposition 65** years ago, and after paying out claims, they began excluding them. If coverage was needed, the more expensive surplus lines market was the only route forward. These “forever chemicals” and the concerns surrounding them will only continue.

Mitigating the risks associated with PFAS chemical exposure requires a proactive and comprehensive approach.

Here are some tangible risk mitigation strategies that businesses can implement to protect against PFAS chemical risk exposures:

- + **Product Assessment and Substitution:** Evaluate the necessity of using PFAS-containing products in your operations. Where possible, consider substituting PFAS-free alternatives to reduce exposure.
- + **Supply Chain Due Diligence:** Assess your supply chain for potential PFAS-containing materials or products. Collaborate with suppliers to ensure transparency and compliance with relevant regulations.
- + **Waste Management and Disposal:** Implement proper disposal procedures for materials containing PFAS. Ensure compliance with local, state, and federal regulations for waste disposal.
- + **Environmental Monitoring:** Regularly monitor soil, water, and air quality in and around your facilities to detect any PFAS contamination early. Engage with environmental experts to conduct thorough assessments.
- + **Regulatory Compliance:** Stay informed about evolving regulations related to PFAS. Ensure your business is in compliance with all relevant laws and standards.
- + **Employee Training and Awareness:** Train employees on the safe handling and disposal of PFAS-containing materials. Foster a culture of awareness and responsibility.
- + **Testing and Screening:** Regularly test products and materials for PFAS content. Implement quality control measures to ensure PFAS levels are within acceptable limits.



The complete financial impact caused by PFAS has yet to be seen, but experts estimate that PFAS will lead to insurance losses in the tens of billions.

Contact an experienced insurance broker for more guidance regarding PFAS risk management.

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