Governments Seek to Hold PFAS Manufacturers and Distributors Responsible for Contamination

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State and local governments across the United States are increasingly pursuing legal action against manufacturers and distributors of per- and polyfluoroalkyl substances (PFAS). Used in countless consumer products and industrial applications since the 1950s, these chemicals are commonly known as “forever chemicals” because they do not readily break down and have become ubiquitous in the environment. Accordingly, state and local jurisdictions have begun filing lawsuits to hold PFAS manufacturers, distributors and users accountable for contamination found in local water supplies and to recover costs associated with environmental remediation.

Fort Worth’s Legal Action

The City of Fort Worth recently joined this growing trend by filing a lawsuit against the U.S. Department of Defense, 3M, Dupont and other manufacturers of PFAS-containing products. Fort Worth’s allegations mainly focus on the manufacture and use of Aqueous Film-Forming Foam (AFFF), a product that is commonly used to fight fires. The city alleges that these entities knowingly produced and distributed products containing PFAS for decades, leading to the contamination of Fort Worth’s drinking water, water rights, storm and wastewater infrastructure, and real property.

Fort Worth brought the lawsuit under several causes of action, including: (1) the Comprehensive Environmental Response, Compensation and Liability Act, (2) the Texas Solid Waste Disposal Act, (3) trespass, (4) negligence, (5) public nuisance, (6) negligence in manufacturing, (7) failure to warn, (8) design defect, (9) unjust enrichment and (10) the Uniform Fraudulent Transfer Act. The lawsuit seeks compensation for the expenses incurred in testing, monitoring and cleaning up the affected resources and requests an award of at least $420,591,734, among other relief.

Nationwide Trend of PFAS Litigation

Fort Worth’s lawsuit is one in a series of cases brought by municipalities and water suppliers regarding PFAS contamination. Some plaintiffs around the country have found success with lawsuits seeking reimbursement for the costs associated with remediating water supplies and facilities contaminated with PFAS through the use of AFFF. In 2023, 3M, one of the largest manufacturers of PFAS-containing products, reached a settlement with the City of Stuart, Florida, in a lawsuit related to PFAS contamination of water systems. The settlement requires the company contribute up to $12.5 billion to a fund that will help communities and water suppliers cover the costs of filtering PFAS from their systems. At the time of the settlement, 3M was facing about 300 similar lawsuits from other communities and water suppliers.[1] Shortly before this settlement was reached, the Chemours Company, DuPont de Nemours, Inc., and Corteva, Inc., reached a similar settlement, agreeing to contribute $1.185 billion to a settlement fund.

State governments have also filed suit against PFAS manufacturers and distributors. In 2024, Texas sued 3M, DuPont and Corteva under the Texas Deceptive Trade Practices Act for false advertising

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and misrepresentations made while marketing products that contained PFAS. The case was filed in December of 2024 and has not yet gone to trial.

Implications and Industry Response

The recent uptick in PFAS-related lawsuits underscores the significant financial and environmental challenges that manufacturers and distributors of PFAS could face in the future. As more cities and states take legal action, the pressure mounts on manufacturers and distributors of PFAS-containing products to address the environmental and health impacts of these substances. These lawsuits not only seek financial compensation but also aim to drive changes in industry practices and promote stricter environmental regulations to prevent environmental contamination in the future.

Even as large PFAS manufacturers such as 3M begin to phase out PFAS production,[2] PFAS manufacturers, distributors and those who made and sold products containing PFAS, should monitor this trend of litigation to evaluate risks and take steps to protect their operations and business interests.

For assistance with PFAS-related issues, or for questions about this topic, please contact one of the attorneys listed at the bottom of this page or a member Haynes Boone's Environmental Practice Group.

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[1] Jim Salter, *Court approves 3M settlement over 'forever chemicals' in public drinking water systems*, THE ASSOCIATED PRESS, (Apr. 1, 2024, 3:17 PM), https://apnews.com/article/pfas-drinking-water-settlement-3m-fa41cadfe0d65b9723377a681df43af1.

[2] ChemSec, *What PFAS producers should do instead of burying their heads in the sand,* (Jan. 11, 2024), https://chemsec.org/what-pfas-producers-should-do-instead-of-burying-their-heads-in-the-sand/.

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