

“Forever chemicals” a PFAS regulatory update with Jean Mosites

Babst Calland Environmental Attorney and Shareholder Jean Mosites on business uncertainties created by federal and state regulations as they push to rid air, water, and common consumer products of PFAS



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We all use them: consumer electronics, textiles, paper packaging, nonstick cookware, chrome plating, paints, varnishes, and stain repellents for carpeting and upholstery. However, such products – and the manufacturing processes used to make them – have incorporated per- and polyfluoroalkyl substances, or PFAS, manufactured chemicals that have been associated with various health and environmental impacts.

Not surprisingly, the U.S. Environmental Protection Agency (USEPA) and many state regulatory agencies are actively pursuing restrictive regulations to significantly reduce the most common PFAS compounds that may be present in water, air, soil, and many products, in an effort to mitigate any health-related risks that may come with them.

According to Jean Mosites, a shareholder with Pittsburgh law firm Babst Calland and a co-chair of the firm’s environmental practice group, businesses and industries are facing regulatory uncertainty, high

costs of mitigation, and the potential for class-action litigation amidst increasing public awareness.

Mosites spoke on the uncertainties facing business and industry as federal and state governments try to address the issues of PFAS from a variety of angles.

“They’re not consistent at this point,” she said of the regulatory agencies’ efforts. “They’ve really been gathering their data and analysis needed to develop regulation for the past 10 years, and this process started with trying to figure out where these chemicals exist. As they realized [the PFAS] are in drinking water – something that we’re all exposed to – they’re trying to figure out what the problem is and what the health impacts are,” said Mosites.

Mosites doesn’t argue with the premise behind the ramped-up regulatory efforts to reduce PFAS.

“They are known as ‘forever chemicals’ because they are really persistent; they don’t degrade,” she said. “So, when they get into the environment, they stay there.” It is the breadth and cost, however, that presents practical limits to implementation of a multi-faceted regulatory approach with more stringent standards for PFAS than many known hazardous substances.

The EPA’s proposed clean water standards

Among the prominent recent government regulatory developments has been the USEPA’s March 2023 proposal of a first-ever national drinking water standard called the “National Primary Drinking Water Regulation.” The USEPA is accepting public comments until May 30. The federal agency, according to the

USEPA’s website, anticipates passage of the proposed regulation applicable to public drinking water systems by the end of 2023.

A complex government action plan

Wrapped up in those and other new standards, though, are a complexity of issues for business and industry, Mosites explained.

“The Biden administration and previous [administrations] through the USEPA had developed an action plan that involves looking at PFAS from a variety of perspectives,” she said. “So, they’re looking at drinking water, discharges, and standards for cleanup.”

“If you have a Superfund cleanup that has PFAS, what do you do with the PFAS? Where do you send it? How do you dispose of it?” Mosites continued. “In recent years, USEPA had identified 180 Superfund sites with PFAS. And so that’s another aspect of it. It’s not just the drinking water, but it’s the cleanup sites as well.”

Mosites suggested that PFOA and PFOS – “two of the most-studied PFAS – are the two that are driving the regulations at this point, and there is a lot more to be learned.”

How companies are responding

Companies across all industries are trying to understand and anticipate “the regulations and their impacts,” Mosites said. “So, if they have wastewater discharges, they can anticipate permit changes that will impose new obligations. If they have cleanups, they will be looking at new standards for the cleanups with respect to PFAS.”

How Babst Calland is helping

Mosites and others at the firm have been working with a number of clients to consider a variety of ramifications from state and federal regulations and navigate solutions across the spectrum of issues, according to Mosites.

“We do track the regulations from a variety of levels because the states are acting differently and sometimes in advance of the federal government,” she said. “So, we need to keep track of those different levels. We provide advice on sampling strategies, permit modifications, and requests for information because the government can ask for a lot of information from companies to which they’re required to respond under a number of statutory obligations.”

In the end, she said, this evolving area of the law and the science is about risk management for those businesses and industries whose products and manufacturing processes create or use PFAS, as well as transactional and operational considerations for property owners and businesses that may simply be PFAS adjacent. Mosites sees the role of Babst Calland as both an educator and strategic partner in helping business and industry navigate such uncertainties, better understand any new rules and regulations, and effectively plan for and manage potential litigation.

As the federal and state governments take actions to address PFAS, Babst Calland attorneys are available to assist with PFAS-related matters. For more information, visit babstcalland.com.