NJIT | TAB Technical Assistance to Brownfield Communities

Emerging Contaminants – PFAS Legislation and Litigation

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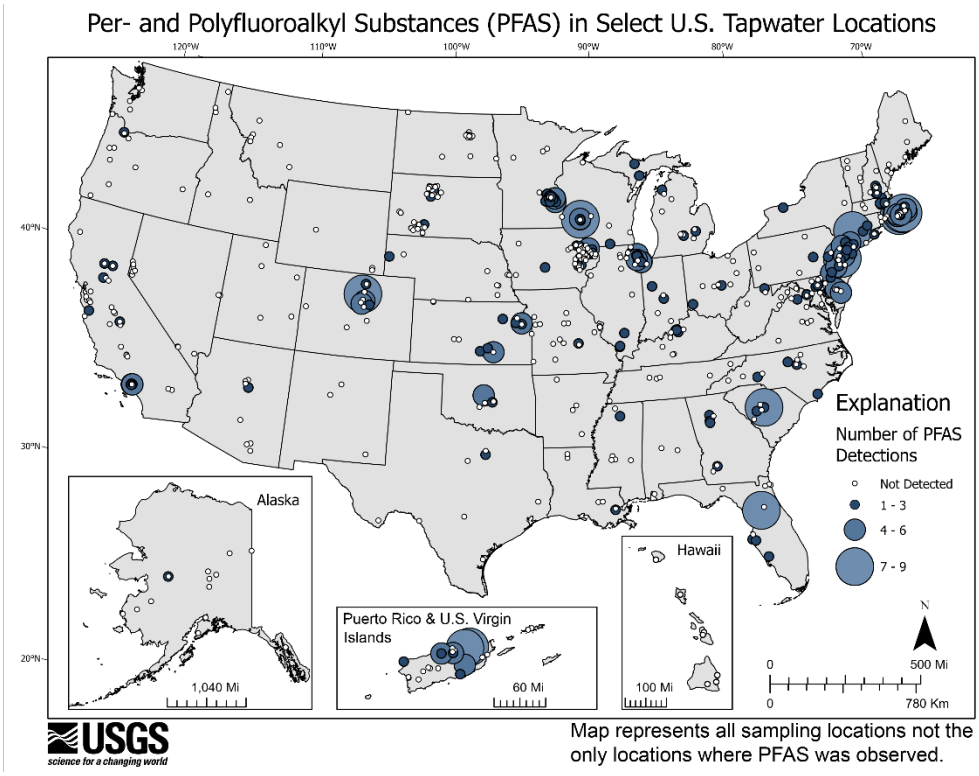
Per- and polyfluoroalkyl substances (PFAS) are a chemical classification for human-made compounds that have largely been manufactured for their water- and oil-proof qualities in household and industrial products, such as firefighting foams and nonstick coatings like Teflon. Research over the last several decades has indicated that these compounds accumulate in human tissue; epidemiological studies on animals have indicated they contribute to irregular fetal development, cancer, and other adverse health effects. These compounds are typically highly stable on a molecular level, meaning they do not readily break down and can remain present as contaminants for decades following environmental discharges. The EPA and state regulators have pushed forth aggressive Maximum Contaminant Level Goals and remediation standards for some PFAS to mitigate public health risks; developments inside courtrooms have also occurred that may ultimately impact parties looking to fund remediation of brownfield sites with PFAS contamination present.



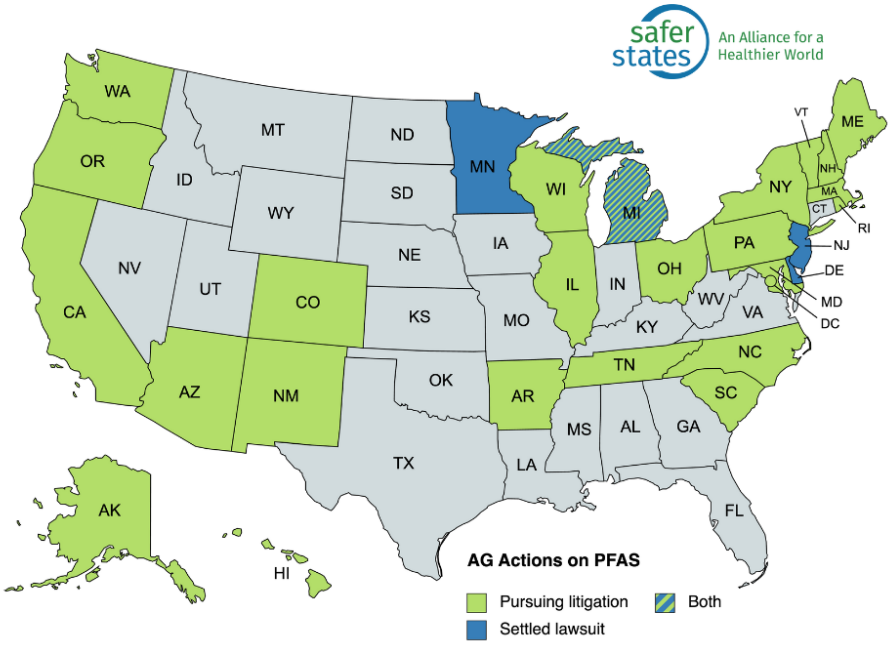
Source: https://www.usgs.gov/media/images/pfas-select-us-tapwater-locations

To date, 28 State Attorneys General have taken legal action against PFAS manufacturing entities. Last June, three manufacturers of PFAS-containing products (Chemours Co., Corteva Inc., and DuPont de Nemours Inc.) reached an agreement in principle totaling $1.19 billion to be paid to hundreds of water providers throughout the US that allege the companies have contaminated public water supplies with PFAS. 3M (another PFAS product manufacturer) secured preliminary approval in August for a $10.3 billion settlement that provides funds to US cities, towns, and public water providers to test for and treat PFAS contamination over the next 13 years. In October, a federal judge in Raleigh, NC allowed more than 100,000 North Carolina residents and property owners to open a class action lawsuit seeking punitive and compensatory damages against Du Pont and Chemours, who they claim have polluted the Cape Fear River with PFAS compounds for decades, resulting in contaminated drinking water and higher-than-normal incidences of disease that have necessitated the replacement of hundreds of miles of public and private water infrastructure.

On the regulatory side, the EPA announced an Advanced Notice of Proposed Rulemaking in April that sought public comments on the agency's intent to classify six PFAS compounds, including the suite collectively known by the industry moniker "GenX", as hazardous substances under CERCLA (the federal Superfund). This follows a September 2022 rule proposed to characterize two PFAS – PFOS and PFOA – as hazardous substances. EPA is currently reviewing public comments on the September

2022 proposal and is expected to finalize the unprecedented CERCLA amendment as early as February 2024. The classification could trigger a wave of requests for clarification, further legal action, and overhauls of insurance/liability agreements from developers with PFAS-contaminated brownfield sites. The proposed rules refer to holding responsible parties accountable for cleanup but don't currently provide detail on which companies these parties are or how to identify them, how much cleanup would be required from them, and how retroactive the new legislation would be for current brownfield property owners to seek cleanup costs from entities identified as responsible parties.

Amongst the budding uncertainty in the regulatory landscape and raging litigation, one thing is clear: PFAS present new and complex challenges to stakeholders looking to remediate their impacted sites, even as their regulation may offer potential new avenues to funding sources for PFAS cleanups at brownfields. At any length, it is a dynamic issue of environmental law and public health, requiring diligence and familiarity of regulations as they exist today to preempt what they will be tomorrow.



Source: https://www.saferstates.org/press-room/more-than-half-of-us-state-attorneys-general-have-taken-action-against-pfas-manufacturers-and-key-users/

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