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What EPA is Doing to Reduce Residential Exposures to Lead and PFAS

Jeff Porter, Environmental Practice Group Chair
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Federal Lead Paint Rules

- Lead Renovation, Repair and Painting Program (RRP) Rule requires that those involved in renovation, repair and painting of homes or child-occupied facilities built prior to 1978 be trained and certified in lead-safe work practices, and use these work practices to guard against lead contamination.
- The RRP Rule also requires that contractors provide information on lead safety prior to beginning work.
- Training and Certification Program for Lead-Based Paint Activities requires that those engaged in lead abatements, risk assessments, and inspections in homes or child-occupied facilities built prior to 1978 be trained and certified in specific practices to ensure accuracy and safety.
- Residential Lead-Based Paint Disclosure Program requires that potential buyers and renters of housing built prior to 1978 receive certain information about lead and lead hazards and provides buyers the opportunity for an independent lead inspection for buyers.
- Residential Hazard Standards and Clearance Levels for Lead in Paint, Dust and Soil are the standards for lead in paint, household dust, and residential soil, as well as corresponding post-abatement clearance levels.



Federal Regulators Are Still Serious About Compliance With Lead Paint Abatement Laws

- In July, Rickey Lynch pleaded guilty to charges related to the removal of lead paint from a Freeport, New York, home.
- Mr. Lynch's guilty plea came a day after his trial began on charges of allegedly violating the Toxic Substances Control Act (TSCA), conspiring to violate the TSCA, obstruction of justice, and other serious offenses.
- The U.S. Environmental Protection Agency (EPA) alleged that Mr. Lynch had:
 - failed to provide prior notice to EPA of lead abatement work in a residence;
 - had no occupant protection plan for that work;
 - conducted the work without controls in place and without the necessary supervision by an EPA-certified supervisor; and
 - concocted an elaborate scheme to conceal his violations.



Federal Regulators Are Still Serious About Compliance With Lead Paint Abatement Laws

- EPA and the U.S. Department of Justice acknowledged this may have been the first time felony charges were brought for violations of the EPA requirements applicable to disturbing lead paint.
- Since it was banned 45 years ago, fewer and fewer homes might have lead paint.
- However, a disproportionate percentage of homes containing lead paint are in Environmental Justice Communities.
- For that reason, EPA's October 2022 Strategy to Reduce Lead Exposures and Disparities in U.S. Communities pledges a "whole of EPA" approach to address the presence of lead paint in "underserved communities."
- Increased enforcement isn't explicitly mentioned as a strategy to combat what EPA identifies as a "risk" for "millions of people."
- Still, it's hard to imagine that a "whole of EPA " approach wouldn't include enforcement, which means that the felony TSCA case in New York may be the first case of its kind, but is unlikely to be the last.

EPA Tightening Lead Standards and Clearance Levels

- In July, more stringent requirements for removal of lead-based paint in pre-1978 residential buildings and child care facilities were proposed.
- The public comment period ended in early October.
- New rules would reduce the **Dust Lead Hazard Standard (DLHS)** under the Toxic Substances Control Act from 10 micrograms per square foot ($\mu\text{g}/\text{ft}^2$) for floors and 100 $\mu\text{g}/\text{ft}^2$ for window sills to **any reportable level**.
- The **Dust Lead Clearance Levels** would be reduced from 10 $\mu\text{g}/\text{ft}^2$ to 3 $\mu\text{g}/\text{ft}^2$ for floors, from 100 $\mu\text{g}/\text{ft}^2$ to 20 $\mu\text{g}/\text{ft}^2$ for window sills, and from 400 $\mu\text{g}/\text{ft}^2$ to 25 $\mu\text{g}/\text{ft}^2$ for window troughs.
- EPA believes these are the **lowest post-abatement dust-lead levels that can be reliably and effectively achieved**.



Federal Funds to Remove Lead in Drinking Water

- According to the EPA, there are still 6 to 10 million lead service lines in the United States, with a significant number located in Environmental Justice Communities.
- The Bipartisan Infrastructure Law allocates \$15 billion to replace these lead pipes via the Drinking Water State Revolving Fund (DWSRF).
- Forty-nine percent of the funds will be allocated as grants or principal forgiveness loans, while 51 percent will be accessible as low-interest loans.
- No state match is required.
- Funding is available for both publicly owned and privately owned community water systems as well as non-profit non-community water systems.
- DWSRF contacts for all 50 states on EPA's website: www.epa.gov/dwsrf/state-dwsrf-website-and-contacts

The PFAS Panic: What We Know

EPA and many states say PFAS are an urgent public health and environment problem.

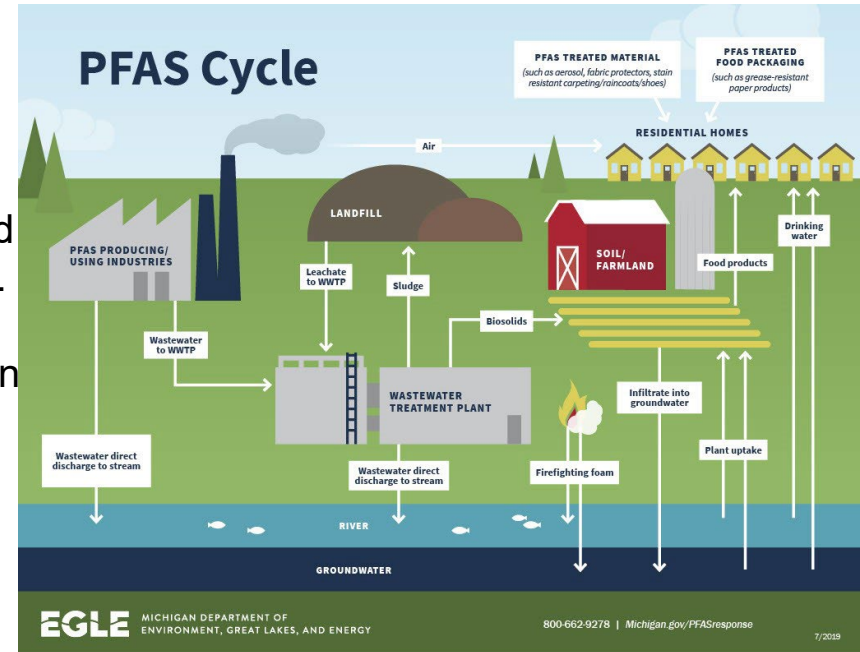
They're complicated. According to experts, there could be more than 6,000 individual PFAS (Per and Polyfluoroalkyl Substances) with differing toxicities.

They're not new. They've been widely used in many products and processes since World War II and they've likely been released to the environment for that long.

They're everywhere. They've been found in the environment from coast to coast.

They're very resilient. Their chemistry makes them persistent in the environment and living things, earning them the moniker “forever chemicals.” Some PFAS last in the human body for hours, others for decades.

We've gotten really good at finding them. Many PFAS are detectable at concentrations as low as parts per quadrillion. That's one thousandth of a part per trillion.



The PFAS Conundrum: What We Don't Know

- At what levels each of the thousands of chemicals collectively called PFAS actually cause adverse ecological or health impacts and what ecological or health impacts they cause.
- How to destroy PFAS in the environment. For now we can just remove them using the expensive and energy intensive “pump and treat” and “dig and dump” remedies of our youth.
- The American Water Works Association has estimated the cost of treating PFAS impacted drinking water at \$3 to \$38 billion dollars.
- As far as I know, there is no reliable estimate of the total cost to remove the PFAS in our environment.



Those Damn Lawyers!

- Firefighting Foam MDL, District of South Carolina (over 700 cases)
- Personal Injury MDL, Southern District of Ohio (over 3500 cases)
- Chemours v. DuPont
- Vermont v. 3M and DuPont
- Michigan v. 3M, et al.
- NH v. Saint Gobain
- Delaware v. 3M



And we're just getting started

Some of the Things We're Arguing About

- Common Law Nuisance/Trespass
- Property Damage
- Allocation (contractual and statutory)
- Divisibility (not yet but wait)
- Remedy (protectiveness and efficiency)
- Medical Monitoring

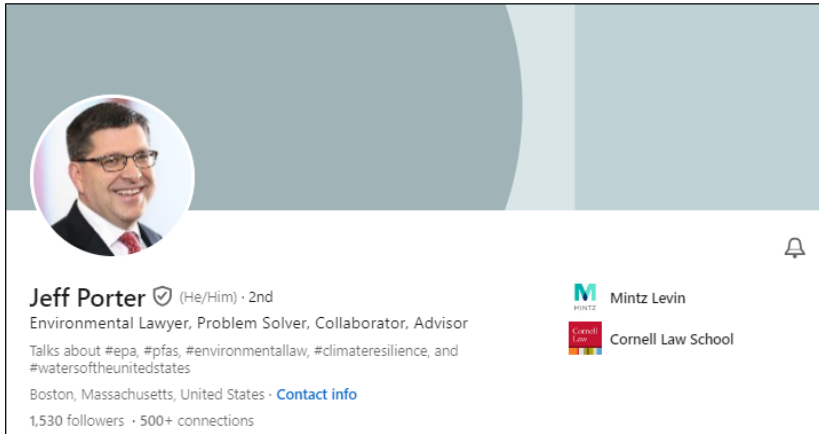


The PFAS Panic and the AFFF Settlements

- These settlements commit up to \$13.7 billion to remove PFAS from drinking water, covering all public water systems.
- A public water system is defined to include any system with at least 15 connections or regular service of at least 25 year round residents.
- Objections to either proposed settlement were due by November 4 (DuPont settlement) and November 11 (3M settlement).
- Opt-out notices are due by December 4 (DuPont settlement) and December 11 (3M settlement).
- Final fairness hearings will be held on December 14 (DuPont settlement) and February 2 (3M settlement).
- The scheduling of the trials of claims against other defendants and for other alleged damages is uncertain.
- It is also uncertain whether the settlement fund will be sufficient to pay all claims and whether the settling defendants will survive their other liabilities in order to make the specified payments.



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THANK YOU

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