

## **New NC PFAS Law Poses Litigation Threat For Manufacturers**

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North Carolina manufacturers currently using or those that have used per/poly-fluoroalkyl substances (PFAS) face greater risk of environmental and toxic tort litigation because of new legislation. The legislation, which went into effect July 1, is a statutory mandate to test all public water supply intakes in NC and various groundwater systems for PFAS. Initial tests must be completed in 2019, with periodic follow-up testing thereafter.

The NC Department of Environmental Quality will investigate potential sources of the PFAS and take action to eliminate them. The legislation imposes liability on any unpermitted source of PFAS that impacts drinking water wells to pay for alternative water supplies to the affected residences. The statute also allows the Governor under certain circumstances to shut down operation of PFAS sources.

Any operation identified by the state to be the source of a PFAS contamination may become the target of private party suits and actions by municipal or county water treatment facilities. Note that PFAS are persistent in the environment and releases of the years ago can be expected to remain in groundwater, soils and even sediments, meaning companies could face litigation and possible regulation long past operations.

Numerous industries have been identified by USEPA as likely sources of PFAS, including:

- Electronics manufacturing
- Food packaging (including food grade contact paper containers like pizza boxes, etc.)
- Manufacturers of commercial household products (polishes, waxes, paints, cleaning products, etc.)
- Solid waste landfills
- Electroplating operations
- Firefighting foams (this implicates municipal and other firefighting facilities)
- Stain and water repellants fabrics

The state initiative was prompted by a litany of lawsuits against Chemours (formerly DuPont) by private individuals and public entities over surface and groundwater contaminated by GenX, a PFAS used in the manufacturing of non-stick pans and waterproof attire and numerous other products.

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