

PFAS Paper Mill Lawsuit Adds Additional Companies

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In March 2021, [we reported](#) on a PFAS paper mill lawsuit in Maine, which was a class action lawsuit was filed in Maine by residents of Fairfield, Maine, alleging that a paper mill company polluted residential land with PFAS. The plaintiffs allege that the PFAS pollution devalued their properties, exposed residents to risks of harm to their health, and necessitated costly remediation of the contaminated land.

Yesterday, an [Amended Complaint](#) was filed in the case, which added 11 new companies to the case, bringing the total number of companies named in the case to over a dozen. In addition to the original case filing that focused on the Skowhegan paper mill, owned by Sappi and referred to as the [Somerset Mill](#), the amended lawsuit adds companies that owned or operated the Madison Paper Mill, former Winslow Paper Mill, Huhtamaki in Waterville, Androscoggin Paper Mill in Jay, and the former Bucksport Paper Mill.

The PFAS paper mill lawsuit will surely be closely followed by anyone involved in PFAS litigation; however, companies of all types (not just paper companies) must understand that this is but one representative example of the type of lawsuits that we have predicted will have significant impacts on company financials as awareness of PFAS issues continues to grow. These impacts will be felt well beyond industries that use PFAS directly in their manufacturing processes, and companies of any type would take a closer look at current or legacy PFAS issues that may plague them in the near future.

What Are PFAS and Why Are They a Concern?

Per- and poly-fluoroalkyl substances (“PFAS”) are a class of over 7,000 manmade compounds. Chemists at 3M and Dupont developed the initial PFAS chemicals by accident in the 1930s when researching carbon-based chemical reactions. During one such experiment, an unusual coating remained in the testing chamber, which upon further testing was completely resistant to any methods designed to break apart the atoms within the chemical. The material also had the incredible ability to repel oil and water. Dupont later called this substance PFOA (perfluorooctanoic acid), the first PFAS ever invented. After World War II, Dupont commercialized PFOA into the revolutionary product that the company branded “Teflon.”

Only a short while later, 3M invented its own PFAS chemical – perfluorooctane sulfonate (PFOS),

which they also commercialized and branded “Scotchgard.” Within a short period of time, various PFAS chemicals were used in hundreds of products – today, it numbers in the thousands.

The same physical characteristics that make PFAS useful in a plethora of commercial applications, though, also make them highly persistent and mobile in the environment and the human body – hence the nickname, “forever chemicals.” While the science is still developing regarding the extent of possible effects on human health, initial research has shown that PFOA and PFOS are capable of causing certain types of cancer, liver and kidney issues, immunological problems, and reproductive and developmental harm.

The PFAS Paper Mill Lawsuit

The Skowhegan paper mill, owned by Sappi and referred to as the [Somerset Mill](#), is a pulping and papermaking facility that manufactures various paper products, including coated paper, grease-proof packaging paper, and bleached chemical pulp. The paper mill has an annual production of 970,000 metric tons of coated paper and 525,000 metric tons of bleached chemical pulp. The paper mill also consists of a wood mill, where incoming lumber is prepared for the manufacturing process. The new paper mill companies included in the Amended Complaint owned and operated similar paper mills in Maine and allegedly utilized PFAS for grease-proofing various paper products.

The Maine paper mills, like many other paper mills across the globe, produce biosolid waste as a result of cleaning and chemically preparing materials for use in the mill’s finished product. The biosolid waste is a sludge material that must be disposed of in some fashion by the mills. Studies have shown that on average, 35% of the material entering pulp and paper mills becomes waste residue. The waste includes a variety of materials, including wastewater sludge, woodyard waste, trash, demolition debris, and ash from boilers. While some of the waste residue can be reused for energy production, the rest must be discarded. Paper mills typically dispose of residue waste by discharging it into the air, water in the form of treated effluent, or into the soil in the form of solid waste or sludge.

In the PFAS paper mill lawsuit, the allegations are that the paper mills disposed of PFAS-containing waste in ways that ultimately leached into the environment and drinking water sources. In the case of the Skowhegan paper mill, it obtained licenses from the state of Maine to spread the sludge material on nearby farms, as it also has fertilizing properties that are beneficial to farmers. However, the paper mill is alleged to have known that the PFAS-containing waste that they spread on farms was hazardous, or based on the existing knowledge about PFAS, they should have known of those hazards.

Since 2020, the Maine Department of Environmental Protection has been investigating PFAS contamination in Fairfield, where at least 29 wells have levels exceeding the U.S. Environmental Protection Agency’s maximum limit of 70 parts per trillion. According to pleadings in the case, in January 2021, one well measurement for one of the named plaintiffs was 12,910 parts per trillion..

Why This Lawsuit Should Concern Many Businesses

The PFAS paper mill lawsuit is but one example of the type of lawsuit that we predict will overwhelm businesses in the near future, especially when (as we predict) the EPA for the first time sets an [enforceable PFAS limit](#) with respect to drinking water. The EPA regulatory action will trigger a requirement that all states follow suit, although each state is still permitted to enact more aggressive standards than the EPA, if they wish.

As states accelerate testing requirements for drinking water sources of all types to determine compliance with the EPA or state-level PFAS limits, enormous amount of data will be collected regarding the scope of PFAS proliferation in the nation's water. This data will allow not only regulatory agencies, but also citizens, such as the ones in Fairfield, Maine, to determine likely sources of PFAS contamination due to businesses in proximity to those water sources. Those companies may become targets of not only regulatory agency action for remediation costs, but also lawsuits from citizens seeking damages for additional remediation costs, property devaluation, and personal injury. Depending on the scope of the PFAS contamination and a company's ultimate contribution to PFAS problems, this could cost some companies millions of dollars.

As the PFAS paper mill lawsuit shows, the lawsuits will not be confined only to chemical manufacturers producing PFAS. Rather, they will extend to companies that utilize the PFAS for their manufacturing process, that purchase raw materials that may be contaminated with PFAS, that utilize water that may be contaminated with PFAS (which would then be discharged by the company), and waste discarded that may contain PFAS. Even companies that merely purchase land that may have legacy PFAS contamination issues may find themselves the target of lawsuits or regulatory action if the PFAS have slowly leached from the soil into water sources over time.

Conclusion

Our prediction remains that in 2021, PFAS drinking water rules will be finalized at the federal level. This will require states to act, as well (and some states may still enact stronger regulations than the EPA). Both the federal and the state level regulations will impact businesses and industries of many kinds, even if their contribution to drinking water contamination issues may seem on the surface to be de minimus. In states that already have PFAS drinking water standards enacted, businesses and property owners have already seen local environmental agencies scrutinize possible sources of PFAS pollution much more closely than ever before, which has resulted in unexpected costs. All companies of all types would be well advised to conduct a complete compliance audit to best understand areas of concern for PFAS liability issues, and ways to mitigate PFAS concerns.

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