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PFAS Litigation 2026 Update

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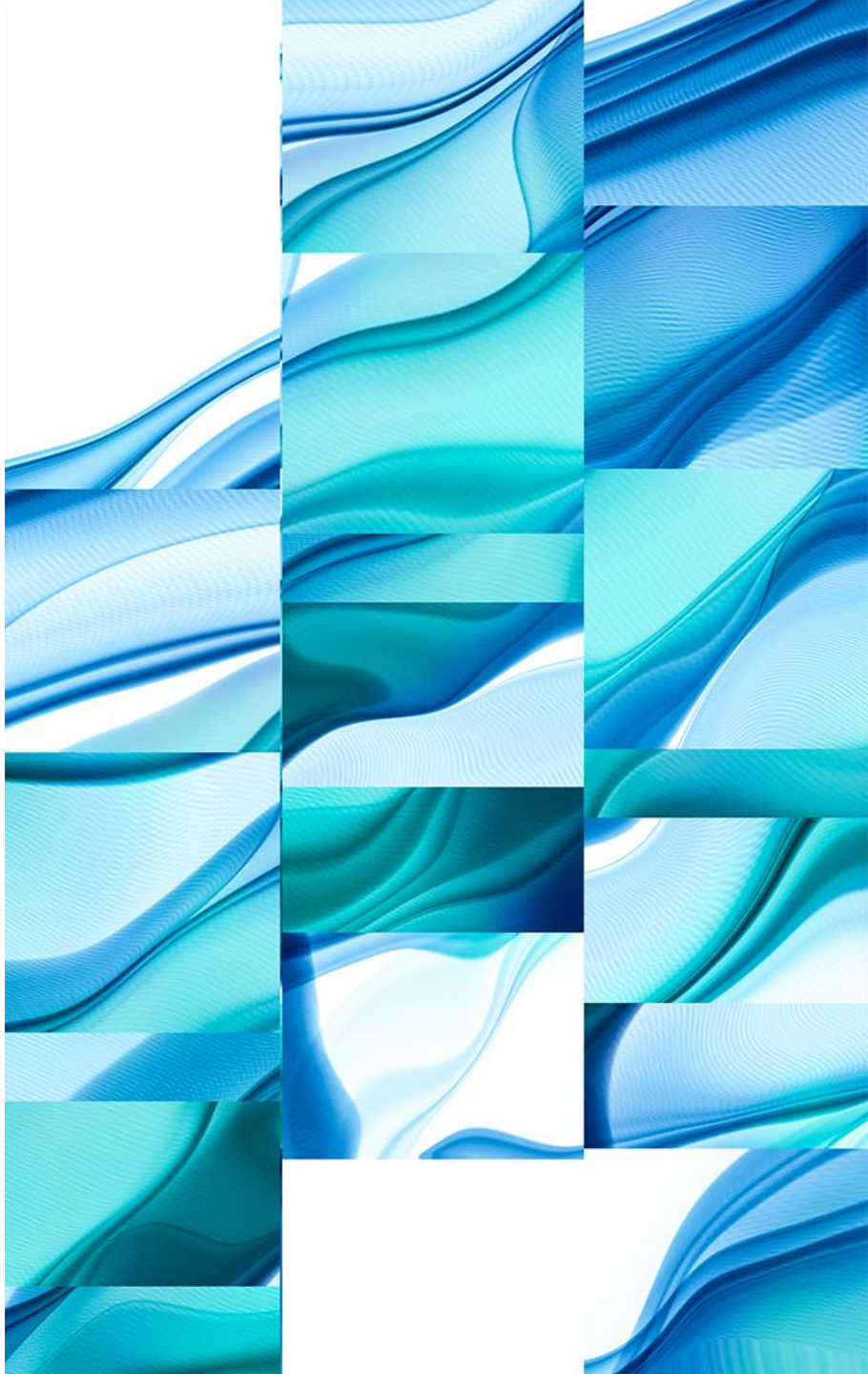
Fall 2026 Mayors Water Council

October 2026



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Forever Chemicals, Forever Litigation?

THE BOND THAT WON'T BREAK

- CERCLA
- SDWA
- NC AND NJ SETTLEMENTS

CERCLA Hazardous Substances Rule

- EPA published its final rule designating PFOS and PFOA , and their salts and structural isomers as CERCLA “hazardous substances” effective July 8, 2024.
- EPA has estimated that the incremental costs of addressing PFOA and PFOS releases at National Priorities List (NPL) sites may range from $10.5 million to $51.7 million annually. (Which seems VERY low.)

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CERCLA Hazardous Substances Rule – cont.

- National Waste & Recycling Association, the U.S. Chamber of Commerce and Associated General Contractors of America challenged the PFOA and PFOS CERCLA designation in the DC Circuit Court.

- New administration repeatedly requested that the Court hold the case in abeyance to allow new EPA leadership time to review the issues and develop its position.

- Decision (Aug. 18, 2026) – Court denied industry group petitions and upheld the 2024 designation.

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WHAT IT MEANS FOR MUNICIPALITIES

The D.C. Circuit's CERCLA Ruling + EPA's Enforcement Discretion Policy

THE SHIELD What protects municipalities

- In April 2024, EPA issued a PFAS Enforcement Discretion Memo.
- In the memo, EPA states that its enforcement will target major PRPs: manufacturers/industrial users and federal facilities.
- EPA does not intend to pursue water systems, POTWs, public landfills, municipal airports, local fire departments.
- Public-service role (e.g., biosolids, activated carbon disposal) weighs against enforcement.
- Settling PRPs must waive suits against protected entities.

THE GAPS Remaining exposure

- Policy is a memo, not a statute — statutory liability unchanged, and policy could change.
- Cannot bar private cost-recovery/contribution suits by other PRPs; environmental groups could still act.
- Congress would need to act to fully protect passive receivers; H.R. 1267 still pending in the House.

ACTION ITEMS

Evaluate legacy sites: landfills, airports, fire training

Document passive-receiver status and permit compliance

EPA's Final PFAS Drinking Water MCLs

Six PFAS Regulated

PFAS	MCL
PFOA	**4.0 ppt**
PFOS	**4.0 ppt**
PFHxS	**10 ppt**
PFNA	**10 ppt**
HFPO-DA ("GenX")	**10 ppt**
Mixtures of 2+ of PFHxS, PFNA, HFPO-DA, PFBS	**Hazard Index 1 (unitless)**

Who & When

- **Applies to:** community and non-transient non-community public water systems (~66,000)
- **By 2027:** complete initial monitoring
- **By 2029:** comply with MCLs; treat or change source if exceeded
- **Violations:** based on running annual average; public notice required

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Final EPA Drinking Water MCLs

- Similarly to the CERCLA rule, American Water Works Association and Association of Metropolitan Water Agencies challenged the MCL rule in DC Circuit Court.

- May 14, 2025, EPA announced that it intended to retain the MCLs for PFOA and PFOS, rescind the MCLs for the others and extend the compliance deadline to 2031.

- Oral arguments held on Sept. 18th.

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PFAS Drinking Water Rule: Reading the Sept. 18 Oral Argument

AWWA v. EPA, No. 24-1188 (D.C. Cir.) | Panel: Judges Millett, Pillard, Katsas | Hours-long argument

PFOA/PFOS limits (4 ppt) appear likely to survive; Hazard Index and other PFAS limits are on shakier ground.

What the Panel Focused On

- **Prejudice:** This part of the argument focused on the procedural steps of making a determination to regulate and then publishing the proposed regulation. EPA conceded that for some PFAS it didn't follow this procedure; panel pressed petitioners on actual prejudice. (Spent 30 minutes just on this topic).
- **Occurrence data:** Petitioners asserted that EPA didn't have enough reliable data showing PFAS in public water systems at levels of concern. The panel, however, resisted the idea that SDWA requires nationwide occurrence; EPA only has to find the contaminant is "substantially likely to occur."
- **Monitoring/treatment costs:** The associations argued that EPA's cost-benefit analysis "oversold the benefits and undersold the true costs" of the rule's limits.

Decision in 3-6 months

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Other Types of PFAS Litigation

- First wave - PFAS manufacturers
- Second wave - PFAS users in manufacturing (textiles, leather goods, electroplating, cardboard & paper products, carpet)
- Third wave – Replacement chemicals

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PFAS Litigation: First Wave – Suppliers

***In re: Aqueous Film-Forming Foams (AFFF) Products Liability Litigation*, MDL No. 2873 (D.S.C. Dec. 7, 2018)**

- As of July 2025, over 11,000 AFFF actions consolidated in Multi-District Litigation (Hon. Richard M. Gergel)
- Plaintiffs: Residents, states, cities, utilities, water drinkers, property owners, water authorities, firefighters, and persons present at training facilities using AFFF; United States participating in pretrial discovery
- Defendants: 3M Co., National Foam, TYCO Fire, E.I. du Pont de Nemours & Co., Buckeye Fire Equipment, Chemguard, Inc., Kidde-Fenwal, Inc., U.S. DOD, U.S. Navy, U.S. Air Force, and municipal water authorities as supplies of contaminated water
- Claims: Negligence, strict products liability, nuisance, trespass, unjust enrichment, fraud, conspiracy, breach of warranty, medical monitoring, loss of enjoyment of life, infliction of emotional distress, CERCLA, RCRA, state environmental statutes, Clean Water Act (CWA), inverse condemnation, property damage, diminution of property value, injunctive relief
- Stated Damages: Exceed $2B; 2024 Public Drinking Water Systems settlements with multiple Defendants

- Defenses:
  - No injury as PFAS bio-accumulates; presence in blood does not alone equate to an injury
  - No control over sites where AFFF used
  - Sophisticated User/Purchaser
  - Bulk Supplier Defense
  - Gov't / Military Contractor Defense – (*see next slide*)
  - State-of-the-art Defense
  - Preemption
  - Assumption of Risk
  - Open and Obvious Danger
  - Misuse
  - Exercise of due care as EPA has not listed chemicals as a hazardous substance, and PFAS has only become an environmental concern in within the last decade
  - Remediation in accordance with state or federal guideline obviating need for injunctive relief
  - Daubert/Frye challenges as dosage in animal studies is far higher than human exposure doses, animal and human studies do not prove causation, and regulatory standards do not prove causation
  - No actual property damage as groundwater does not belong to individual plaintiffs, but the municipality
  - Contamination is temporary and has not reduced property value
  - Material level of contamination has not been shown
  - Sovereign immunity for military defendants
  - CERCLA section 9613(h) for military defendants
- Two tracks – property damage and bodily injury
- New lawsuits focus heavily on occupational exposure, especially among firefighters and military personnel
- First bellwether trial exclusively on kidney cancer claims set for October 20, 2025

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North Carolina PFAS Settlements with Local Governments

Chemours / DuPont / Corteva — Fayetteville Works (Cape Fear River) | Announced September 10, 2026

$455M

Total payments

$380M

To 11 local entities over 15 years

$75M

To the State of North Carolina

$135M

DuPont/Corteva must set up a reserve fund to back remaining obligations in 2019 Consent Order

Participating local governments

- Counties: Bladen, Brunswick, Columbus, Cumberland, New Hanover, Robeson, Sampson
- Municipalities: City of Lumberton, Town of Wrightsville Beach, Village of Bald Head Island; plus Lower Cape Fear Water & Sewer Authority
- All 11 were excluded from the national public water system class settlement approved in 2024

Key terms

- Payment split per 2021 MOU: Chemours 50%; DuPont 35.5%; Corteva 14.5%
- Disbursements begin within 30 days of execution; paid over a 15-year span
- Brunswick County reports a $95M share; allocation among other entities not yet detailed
- Also resolves State AFFF claims and sets procedures for remaining off-site Consent Order work

What remains open

- Cape Fear Public Utility Authority (Wilmington / New Hanover) suit, filed Oct. 2017, continues
- Residents' individual PFAS claims and claims against other PFAS makers are not released
- AG pursuing six separate AFFF manufacturer suits

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NJ PFAS Class Action Settlement: Middlesex Water Customers

Middlesex Water Co. and 3M — PFOA in drinking water (NJ state court) | Settlement announced October 3, 2025

$4.9M

Total class settlement fund

~60,000

Residential water customers in the class

Up to $2,500

Per class member, based on documented expenses

36.1 ppt

Peak PFOA in 2021 vs. NJ MCL of 14 ppt

Background

- Oct. 2021: Middlesex notified customers in its six-town system that PFOA exceeded NJ's 14 ppt maximum contaminant level.
- Class action filed in NJ state court; settled almost four years later, citing litigation length and trial costs.
- Middlesex blamed 3M as the PFOA manufacturer; its separate suit against 3M was resolved as part of this deal.

Key terms

- Economic-loss case, not personal injury.
- Reimburses out-of-pocket costs: bottled water, filtration, doctor visits.
- Awards scale to each claimant's spending; some will receive far less than the cap (e.g., ~$50).

Significance

- Class counsel calls it the largest settlement of its kind in NJ.
- Possibly the only U.S. case to compensate individuals for costs of avoiding PFAS-tainted water.
- Commentators see a possible template for class claims against water utilities.

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NJ State PFAS Settlements with DuPont Entities and 3M

Federal court approval announced August 7, 2026 | Valued at ~$2.5 billion combined

$795M

PFAS Abatement (up to)

$365M

Natural Resource Damages (up to)

$1.2B

DuPont remediation funding (up to)

$475M

Additional DuPont reserve fund

What was resolved

- State claims against EIDP, Chemours, Chemours FC, DuPont Specialty Products USA, Corteva, DuPont de Nemours, and separately 3M.
- Four DuPont sites: Chambers Works, Parlin, Pompton Lakes, Repauno; statewide AFFF; and the state's claims arising from a 2019 order the NJDEP that the chemical companies account for and pay for PFAS contamination across the whole state, not just at their own plants.
- DuPont deal alone (>$2B) is the largest environmental settlement by a single state.

Use of funds (paid annually over 25 years)

- Abatement via NJ Water Bank loans; at least $150M for publicly owned treatment works.
- At least $90M for county fire training academies and airports (AFFF).
- NRD restores resources near the four sites; DuPont must fully remediate regardless of cost.
- ~$195M covers legal fees and costs.
- The reserve fund is a backstop for taxpayers. If any of the DuPont-related companies fails to meet its obligations, the state can use the reserve so taxpayers don't pay.

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Questions?

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