

Is Your PFAS Project Headed for Litigation? Litigation Lessons Learned with "Forever Chemicals"

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Background/Objectives. Per- and polyfluoroalkyl substances (PFAS) are highly soluble and persistent contaminants that have impacted large numbers of public and private drinking water wells with concentrations above U.S. Environmental Protection Agency (US EPA) Final Health Advisories (HAs) for perfluorooctanesulfonic acid (PFOS) and perfluorooctanoic acid (PFOA) lower state thresholds. This has resulted in more than 6,400 PFAS-related lawsuits filed in federal courts alone between July 2005 and March 2022 (Bloomberg Law, 2022). Anticipated lower federal and additional state drinking water criteria and newly discovered PFAS sources will continue to increase the number of litigation cases. The widespread availability of publicly available PFAS data/information (e.g., California, and others) and publications and maps identifying "presumptive" PFAS release sites (e.g., Salvatore et al. 2022), websites (e.g., Interactive Map: PFAS Contamination Crisis: New Data Show 2,858 Sites in 50 States [ewg.org]) and social media information sharing will only serve to further increase the number of litigation cases.

Will your PFAS site/project end up in litigation? Based on the authors collective experience you should probably assume so and be prepared for it.

Approach/Activities. This presentation will provide lessons learned from work on >15 confidential PFAS cases in the U.S., Europe, and Australia and will address the following key issues and more:

- What do I need to be prepared for?
- When should I be proactive when I suspect a potential unacceptable PFAS risk?
- What should I always do before checking offsite for PFAS?
- What should trigger offering to sample? Offering to treat?
- What should my treatment objective be?
- Should I collect extra soil samples and freeze them for later analysis?
- What can I do to prepare for litigation without adding too much cost?

We will also discuss how answers to these questions will influence the probability of litigation.

Results/Lessons Learned. Confidential case studies will be presented to show how preparing for litigation can influence the outcome and still be protective of receptors. An upfront strategy and consistent decision tree across all Sites along with good documentation practices will serve you well on all projects, but especially so on ones that evolve into litigation. Each site/project is unique, but we hope to show how small changes in standard practices and consistent best practices can pay big dividends during litigation or better yet prevent litigation.