



PFAS Contamination and Funding Strategies:

A Comprehensive Guide for Public and Agencies



Introduction

In recent years, concerns have grown over the toxic chemical compounds known as PFAS (per- and polyfluoroalkyl substances), a group of human-made chemicals that have been widely used in various industrial and consumer products, such as firefighting foams, non-stick cookware, and waterproof fabrics. They are often called “forever chemicals” because they do not break down easily and can accumulate in the environment and in living organisms.

New science has linked PFAS exposure with serious negative health effects, including cancer, reproductive and developmental problems, and immune system dysfunction. As a result, EPA and many states have proposed and/or passed various laws, from banning the use of PFAS in consumer products, to setting limits for PFAS in drinking water, to regulating disposal of biosolids contaminated with PFAS. As public awareness has grown, so has the pressure to monitor these chemicals across the country.

Drinking water so far has received the most attention from regulators in the effort to quickly reduce human exposure. But to tackle the persistent presence of PFAS in source water, communities will have to widen their circles of treatment beyond drinking water. The cost of cleanup will be substantial, and affected entities are rightfully asking: Who will pay for it?

This guide will discuss which types of PFAS contamination might affect local governments and will discuss innovative funding strategies to recover current and future costs.

Where may public entities experience PFAS cleanup costs beyond drinking water?

With municipal response to drinking water regulations in full swing, municipalities and counties can apply the knowledge and experience they are gaining to other areas where PFAS remediation costs may arise. These include wastewater treatment facilities, landfills, airports, and fire training facilities. Even though they are all passive receivers of PFAS, these entities are still part of the PFAS remediation equation.

In an era of increasing regulation and scrutiny at all levels of government and public opinion, to understand how the PFAS problem will be solved - and by whom – municipalities, counties, and their utilities often find themselves at the core of these complex discussions and decisions.

▶ Wastewater Treatment Plants

PFAS can enter wastewater treatment plants via influent, due to the presence of PFAS in consumer products. Some products are used in or on the body and released during showering and toileting. Others are added to textiles and cookware and released during laundering and dishwashing. Additionally, municipal plants that treat industrial wastewater and/or stormwater runoff may see also elevated levels of PFAS from these sources. Unfortunately, traditional wastewater treatment methodologies cannot remove or destroy PFAS.

Adding PFAS treatment technology to wastewater plants is expensive. A [2023 report by the Minnesota Pollution Control Agency](#) found that the cost of removing and destroying PFAS from municipal wastewater will range from \$2.7 million to \$18 million per pound, depending on facility size, with a total price tag for all facilities of \$14 billion to \$28 billion over 20 years – and that’s just for one state.

Wastewater facilities are also starting to see revenue loss and increased costs from biosolids disposal. Before the health risks of PFAS were known, highly treated municipal biosolids were deemed safe for agricultural use. This was considered an environmentally sustainable solution, as biosolid recycling minimized the amount sent to landfills while supporting crop growth and reducing the need for chemical fertilizers. Now, some evidence suggests that biosolids may contain PFAS left behind after treatment of contaminated wastewater influent. As a result, certain foods produced on farms using biosolid-derived fertilizers may contain PFAS, making them unsafe for consumption. Several states have restricted, banned, or are in the process of limiting the land application of biosolids. WWTPs may see revenue loss from the inability to sell their biosolids, plus increased costs to dispose of them. Some municipalities may even be required to transport their biosolids long distances to hazardous waste sites, which can be extremely costly.



When assessing whether you may be affected by PFAS contamination, it can be helpful to consider the following questions:

- ▶ Does your agency own and/or operate any wastewater treatment plants?
- ▶ Does your WWTP accept influent from potential PFAS sources such as landfill leachate, industrial wastewater, or urban residential areas?
- ▶ Are you aware of any analytical testing for the presence of PFAS contamination in wastewater or biosolids?

▶ Landfills

Through no fault of solid waste managers, many landfills have also been impacted by PFAS. The chemicals are often found in consumer products discarded in household garbage, as well as biosolids left behind after treating contaminated wastewater. The problem is widespread: [an EPA study in 2021](#) found that 95% of 200 landfills surveyed had PFAS present in leachate. As PFAS are not the first contaminants to appear in landfill leachate, modern landfills are lined with collection systems that prevent the leachate from entering nearby surface water or groundwater. The collected leachate is often sent to local wastewater treatment plants – but those days may be coming to an end if PFAS in the leachate triggers increased treatment costs for the WWTP. Whether at landfill sites or WWTPs, costly PFAS treatment solutions may need to be implemented to prevent environmental contamination and to avoid potential liability for releasing hazardous substances. Municipalities that own both the landfill and the WWTP will need to determine where the cleanup will be most cost-effective.

Unlined landfills, even if they have been closed, may be undiscovered sources of PFAS groundwater and soil contamination. PFAS do not break down naturally for hundreds or thousands of years, so landfills that accepted waste after PFAS exploded into consumer products in the 1950s may still be leaching contaminants into soil and water today. These landfills can present a high liability risk, as contamination from leachate may have acute impacts on people who live in the vicinity.



When assessing whether you may be affected by PFAS contamination at landfills, it can be helpful to consider the following questions:

- ▶ Does your agency own and/or operate a landfill?
- ▶ Are you aware of any analytical testing for the presence of PFAS in any of the following areas?
 - ▶ Municipal biosolids sent to your landfill
 - ▶ Wastewater at WWTPs that accept landfill leachate
 - ▶ Public drinking water systems or private wells near your landfill site

Airports

Airports were required to use aqueous film-forming foam (AFFF), which contains PFAS, for emergency fire response and training exercises for over 50 years without being warned of the health risk to personnel and the environment. The repeated use of AFFF left behind high PFAS concentrations in the soil, and since PFAS compounds do not appreciably degrade in the environment and can leach into groundwater, in many cases the contamination spread beyond the airport grounds into neighboring communities.

Many airports have been transitioning from AFFF to fluorine-free foam (F3) and have experienced firsthand that the transition plans come with a high price tag. Some of the expenses that airports are already incurring or might soon incur include:

- ▶ AFFF replacement
- ▶ AFFF disposal
- ▶ AFFF equipment and facility decontamination
- ▶ ARFF equipment time out of service
- ▶ Site investigation and testing costs
- ▶ Ongoing monitoring costs
- ▶ Soil and groundwater contamination remediation costs (including for off-site contamination)



When assessing whether you may be affected by airport PFAS contamination, it can be helpful to consider the following questions:

- ▶ Does your agency own and/or operate an airport or the airport property?
- ▶ Has AFFF firefighting foam been discharged at a particular site or sites on the property?
- ▶ Are you aware of any analytical testing for the presence of PFAS contamination in soil or groundwater at the airport?

▶ Fire Training Facilities

Firefighting training sites are often significantly impacted by PFAS contamination due to the historical use of PFAS-laden AFFF during fire training exercises. As the risks associated with PFAS were never disclosed by the manufacturers, training exercises were often conducted in open areas or unlined pits, leaving the chemical remains from the use of the toxic foam directly exposed to rainwater. As these exercises were repeated periodically over many years at these sites, they left behind high PFAS concentrations in the soil. Over time, rainwater caused PFAS to leach through the soil into the groundwater beneath. Since PFAS compounds do not appreciably degrade in the environment, they can travel for miles downgradient toward public water supply wells, domestic drinking water wells, or surface waters.

These sites could already be facing costs for necessary PFAS mitigation steps such as replacing their firefighting foam, properly cleaning or disposing of turnout gear and equipment used with AFFF, and remediating soil and groundwater contamination.

When assessing whether you may be affected by PFAS contamination from fire training facilities, it can be helpful to consider the following questions:

- ▶ Does your agency own and/or operate fire departments and/or facilities or properties used for firefighting training?
- ▶ Has AFFF firefighting foam been discharged at the facility or at any property used for fire department operations?
- ▶ Are you aware of any analytical testing for the presence of PFAS contamination in soil or groundwater at the facility?

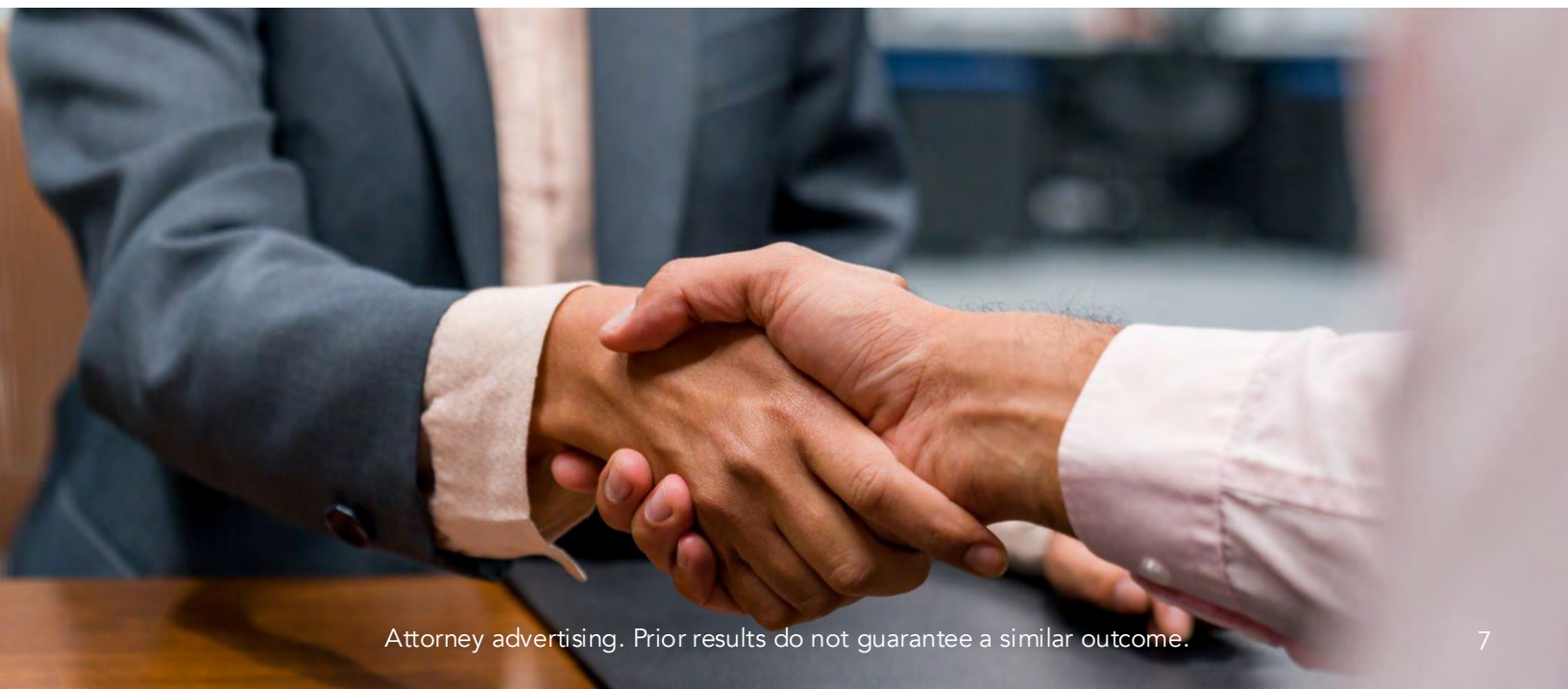


▶ Litigation as a Funding Strategy

PFAS contamination cleanup itself can cost millions of dollars and require years or even decades of ongoing operations and maintenance. Recent federal funding through the Infrastructure Investment and Jobs Act and the Bipartisan Infrastructure Law is historic, but the pieces intended for PFAS remediation apply mostly to drinking water facilities. Other entities will have to seek funds elsewhere.

As many local governments are experiencing increasing program and operational costs while dealing with tighter budgets, leaders are looking for innovative funding strategies for growth and resilience. Recently, many city and county leaders have begun incorporating contamination litigation as an additional revenue stream to fill funding gaps. Across the nation, local governments are recouping substantial funds by holding large manufacturers accountable for the impact of harmful contaminants. The drinking water settlements with 3M, DuPont, Tyco, and BASF are a great example of how litigation can be instrumental in securing funds to help local governments fund vital projects and services.

Funds opportunities are not just for PFAS in drinking water. As previously discussed, PFAS manufacturers have produced various hazardous substances without warning consumers or the government, leading to contamination of drinking water, wastewater, municipal airports, fire training sites, landfills, and more. With today's increasing challenges and operational costs, local governments can benefit from thinking outside the box and taking advantage of novel funding sources. If they do not explore all available options, they may be at risk of leaving money on the table.





What You Need to Know About the Ongoing PFAS Multi-District Litigation

As many public and private entities across the U.S. have filed lawsuits against the PFAS manufacturers, they have had their cases grouped together before the same court in a multidistrict litigation (MDL). MDLs are used to coordinate complex litigation filed in multiple federal district courts by similar parties. By consolidating the discovery and pretrial motions, both sides save time and money.

The Aqueous Film-Forming Foams (AFFF) Products Liability Litigation MDL-2873 was formed in December 2018. In 2023, DuPont and 3M proposed settlements for drinking water systems, followed by Tyco and BASF in 2024.

SL Environmental Law Group represents over 300 entities in MDL-2873 against AFFF manufacturers, including states, counties, municipalities, water and wastewater utilities, and airports affected by PFAS contamination. To date we have helped our clients, eligible for Phase 1 of the PFAS water settlements, over \$1B from the 3M and DuPont drinking water settlements.

Additional plaintiffs are still able to join the MDL.

As discussed, the current settlements only provide funds for PFAS impacts to drinking water supplies and do not provide funding for PFAS impacts to non-drinking water operations or facilities. These claims will continue to be litigated as part of the AFFF MDL and are expected to be resolved by future settlements or litigation on behalf of individual plaintiffs.

Why should affected entities consider acting now rather than waiting for future settlements?

- ▶ There is no guarantee that any settlements will include agencies who did not file their own lawsuits.
- ▶ Even if they did, agencies have an opportunity to increase their potential settlement payouts by bringing their own legal action now. In fact, drinking water providers that filed suit over PFAS before the settlements were announced will recover as much as 25% more than those who did not.
- ▶ By deciding to pursue litigation against the PFAS manufacturers, entities can mitigate financial risk and increase their recovery potential.

Common Misconceptions

There are several common concerns that people have when they consider taking legal action. However, when relying on an experienced team, litigation can often improve the situation rather than complicate it. When working with public and private agencies, we often hear:

Litigation sounds burdensome.



A law firm with extensive experience in contamination litigation will lessen the burden on your entity both when preparing for and during the lawsuit. Additionally, entities joining the PFAS multi-district litigation (MDL-2873) would only have to complete a brief “fact sheet” that summarizes their PFAS impacts, along with supplying a minimal number of documents.

I’m not legally required to act now so I think I’ll wait.



There is no guarantee that any future PFAS settlements will include agencies who did not file their own lawsuits, and even if they did, entities have an opportunity to increase their potential settlement payouts by bringing their own legal action now. For example, drinking water providers that filed suit over PFAS before the settlements were announced will recover as much as 25% more than those who did not.

Additionally, it is important to be aware of the statutes of limitations—or the time limit that applies to every legal claim. Outside of special circumstances, claims brought after the statute of limitations has run out cannot be brought to court, no matter how valid or valuable they are. The time to bring a lawsuit and what triggers the clock varies from state to state, so entities considering this option should consult with legal counsel at the first opportunity.

Filing a lawsuit will cause negative public perception.



We have yet to see public backlash from filing a suit against polluters to recover contamination costs. In fact, it seems to be the opposite: taxpayers appreciate the practical approach, where their local government and utilities take action not only to protect public resources but also to ensure that the ones who polluted the community’s resources pay for the clean-up rather than doing nothing and leaving the public to pay for the cleanup.

▶ Conclusion



The PFAS problem was created by companies that, once they became aware of the health hazards of substances they invented, chose to continue manufacturing them recklessly for decades. Entities now saddled with the responsibility of cleaning up those companies' pollution shouldn't be left holding the bill.

At SL Environmental Law Group, we have over 20 years of contamination litigation experience against large chemical manufacturers, working with states, counties, municipalities, utilities, airports, and private businesses. Since 2003, SL Environmental Law Group has helped more than 400 clients, resulting in over \$2 billion recovered in settlements and trials which would have otherwise been shouldered by our clients and their taxpayers. Thanks to our decades of experience, we can help you weigh options, understand how regulations may impact your agency, provide legal guidance, and help maximize funds recovery.


How SL Environmental Law Group can Help


Our Senior Partner is available for a confidential, complementary consultation to discuss your specific situation and address questions.


If interested, feel free to contact Valentina Bieser at vbieser@slenvironment.com.

SL Environmental Law Group, P.C.

 4 Park Street, Concord, NH 03301

 175 Chestnut Street, San Francisco, CA 94133

 www.slenvironment.com

 (603) 227.6929