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Governor Lamont Releases PFAS Task Force Action Plan

On November 4, 2019, Governor Ned Lamont officially released the [PFAS Action Plan](#) (the “Action Plan”), as prepared by the Connecticut Interagency PFAS Task Force (the “Task Force”). In the absence of comprehensive federal laws and regulations governing per- and polyfluorinated alkyl substances (“PFAS”) and heightened media coverage of this group of over 4,000 chemicals, on July 8, 2019, Governor Lamont directed the Department of Energy & Environmental Protection and Department of Public Health to convene the Task Force to develop recommendations for state action to: (1) minimize environmental exposures to PFAS; (2) identify, assess, and clean up historic releases of PFAS; and (3) minimize future releases of PFAS.

The Action Plan is an important step but also raises many questions, particularly concerning methods of PFAS sampling, testing and remediation. Companies and property owners in Connecticut must monitor implementation of the Task Force’s recommendations and be prepared to face significant legal, technical and business challenges in light of the uncertainty surrounding PFAS.

PFAS Action Plan Recommendations

The Action Plan includes the following recommendations:

- **Sampling and Testing:**
 - Require sampling at and around certain areas known to use or store aqueous film forming foam (“AFFF”) (a known source of PFAS), such as at airports, firefighting training facilities and fire departments
 - Require sampling at and around landfills using a tiered approach and prioritizing those that pose potential health risks
 - Develop a GIS database of known potential PFAS sources
 - Identify vulnerable populations associated with each source
 - Use strategic, targeted and random sampling to identify impacted areas
- **Drinking Water and Food:**
 - Minimize exposure from drinking water by requiring testing of public drinking water supply sources and private wells on a phased-in basis, prioritizing sources and vulnerable populations
 - Require testing of bottled water produced or sold in Connecticut
 - Identify and evaluate food-related exposure pathways, including through fish and shellfish, food service goods, and agricultural products and practices involving fertilizer, compost and biosolids
- **Investigation and Remediation Requirements:**
 - Establish PFAS cleanup standards for soil, groundwater, surface water and other media
 - Use existing statutory and regulatory authorities to compel environmental



investigations and clean-up of PFAS impacted sites

- **Occupational Health and Safety:**
 - Minimize workplace exposures by identifying workplaces where PFAS are used or manufactured and assist companies with exposure control strategies
- **Firefighting Foams:**
 - Minimize future releases and exposure by supporting legislation limiting the use of PFAS-containing AFFF
 - Create an AFFF take-back program for municipalities and state agencies
 - Assist state agencies to select and procure PFAS-free alternatives
- **Other Actions Recommended in the Action Plan:**
 - Establish PFAS standards and limits for various media, operations and products that have been identified as sources or repositories of PFAS, including wastewater treatment and recycling facilities
 - Establish an Advisory Council to develop Maximum Contaminant Levels for PFAS and other contaminants of emerging concern in drinking water
 - Evaluate whether Connecticut can require manufacturers to disclose PFAS content in certain filings and product labeling
 - Consider implementation of an extended producer responsibility program for PFAS-containing products, wherein a manufacturer would be responsible for costs of a product through its entire lifecycle, including take-back and ultimate disposal

Our Take — Key Technical Issues and Open Questions

The Action Plan is an ambitious first step, but—in part because of the Task Force's very short timeline—it also has clear limitations regarding implementation details and allocation of resources to carry out the recommendations. Notably, the Action Plan leaves unanswered and unaddressed a number of questions, data gaps and technical issues that must be pursued as part of any future informed legislative or rulemaking process. Property and business owners should still rightly be concerned about the potential unintended business and legal consequences of such broad recommendations that may impose sampling, testing and cleanup requirements before proper standards and protocols are established for undertaking such efforts.

Baseline & Health Risks. Although the scientific literature regarding PFAS is growing, establishing a baseline of exposure for specific PFAS compounds and associated potential health risks remains a critical priority. Property owners may be justifiably reluctant to engage in the Action Plan's proposed preliminary PFAS sampling concept without further information regarding the data collection efforts and what legal and regulatory obligations such testing could create. Regulators should be open with the regulated community regarding any major data gaps in terms of environmental and health-based baselines and continue to accept stakeholder input to develop workable solutions.

Cross Contamination Challenges. PFAS concentrations are measured in parts per trillion (ppt); therefore, even extremely low levels of cross contamination can lead to erroneous test results. While the Action Plan recommends sampling across a variety of environmental media (soil, groundwater, drinking water, air), there are presently no verified and uniform PFAS field collection methods and, given the ubiquity of PFAS, regulators must address the significant risk of cross contamination (i.e., false positives), whether from PFAS-containing consumer goods (including food and food containers), sampling tools, or laboratory equipment made of Teflon, Gore-Tex or low density polyethylene. Regulators must, therefore, prioritize developing best practices to standardize sampling and testing methodologies and eliminate or



minimize this risk before becoming hyper-focused on results at such a challenging detection limit.

Laboratory Methods. The U.S. Environmental Protection Agency (“EPA”), state, academia and industry researchers are still developing methods of detecting and quantifying PFAS in various media. Currently, there is only one EPA-approved testing methodology (EPA Method 537.1), covering just 18 of the more than 4,000 PFAS compounds and exclusively available for drinking water. We are not aware of any approved testing method for other environmental media, leaving laboratories to independently develop their own modified methods; however, this may lead to inconsistent results. Other issues such as the limited number of laboratories in the northeast region equipped and trained to conduct drinking water testing and the increased cost of PFAS sample analysis—generally two to three times the price of “traditional” sample analysis—pose practical challenges to implementation. Robust and validated testing methods for all environmental media that may ultimately be regulated are critical for ensuring consistency and accuracy. Otherwise, the data collected will inevitably lead to inconsistent results, unbalanced enforcement and costly and protracted legal disputes.

Sampling Requirements. Businesses, property owners, lenders/investors and Connecticut Licensed Environmental Professionals (LEPs) need specific guidance as to what would necessitate a duty to sample. With limited exceptions for public water suppliers, significant environmental hazards and regulated site characterizations, sampling for PFAS in Connecticut remains a largely optional exercise without the benefit of formal rules or guidance. Measured official guidance from regulators would be appropriate and useful for consistency among site assessments statewide.

Remediation Measures and Options. Finally, regulators should continue to solicit input from the scientific and technical community to develop and validate remediation measures and options. PFAS are resistant to water, oil and environmental degradation, so the application of traditional remedial methods such as “remediation by extraction” to address PFAS are limited and may not be realistic. The regulated and scientific communities should be embraced to help develop and promote best practices, including innovative technologies and, where appropriate, alternative risk-based remediation tools to foster regularity and certainty as to what remediation methods are and will be appropriate to address PFAS contamination.

What’s Next?

The Action Plan provides a series of broad recommendations. The next step for implementing those recommendations is up to the Governor, legislative leaders and the affected agencies. While agencies will continue to work within their existing authorities and perhaps propose more detailed regulations through rulemaking procedures, we may see additional legislation in the coming session to implement some of the Action Plan recommendations.

In summary, Connecticut is just one of many states moving quickly and aggressively to regulate PFAS. Many states have developed or are likely to develop their own PFAS “Action Plans,” which will lead to an unwieldy patchwork of legislation, regulation and guidance. As a result, the state regulatory framework is shaping up to be a tricky field of potential jurisdictional inconsistencies and uncertainties that will present significant risk management issues for companies with operations and/



or potential exposures in multiple venues. As noted in our prior PFAS client alert, “[PFAS: What’s All the PFUSS?](#)”, property owners and businesses should work with their trusted legal and technical advisors in a proactive and coordinated way to evaluate their potential PFAS-related risks and develop an appropriate management plan which identifies, mitigates and manages PFAS risks associated with past, present and future operations.

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