The United States leads on PFAS litigation: Will other countries follow?

The US leads in PFAS litigation, providing significant relief for PFAS contamination. Will Canada and the UK follow this example?

PER- AND POLYFLUOROALKYL SUBSTANCES (PFAS) is a hot topic, gaining widespread public attention. A search of the term 'PFAS' on Google yields over 23 million results in under one second. The 'forever chemicals' nickname has garnered public attention from people otherwise unconcerned with environmental issues (or with the thousands of other chemicals used in commerce). Hollywood even made a movie about PFAS starring Mark Ruffalo and Anne Hathaway, portraying plaintiffs' lawyers as courageous warriors against corrupt corporate giants. Media has covered the facts that exposure to these chemicals is tied to cancers and other serious health conditions. Because the manufacturers apparently knew of the environmental and health risks for decades, the story grabs headlines and attention.

The widespread use of PFAS is another compelling plot point. Their properties made PFAS useful in a wide variety of consumer and industrial products, ranging from food wrappers, carpets, and stain repellents to hydraulic fluids, metal finishers, and firefighting foams. PFAS are incorporated into diverse products used in a wide range of settings.

What is the extent of contamination?

The legacy of common PFAS use is ubiquitous PFAS contamination. In the United States, over 120,000 facilities may have used or released PFAS into the environment.[1] It is estimated that almost half of all tap water contains detectable PFAS.[2] The United Kingdom is home to over 1,500 sites where PFAS has been detected in water, soil, or living organisms.[3] Canada routinely detects PFAS in environmental samples collected in ambient air, aquatic ecosystems and wildlife, landfill leachate, wastewater and biosolids, and human blood.[4]

Given the universal and persistent nature of the contamination, no practical clean-up response is possible on a national scale. Various estimates of costs for remediation reach well into the hundreds of billions of dollars. Moreover, not all PFAS contamination is traceable to a particular source or responsible party to share in the financial burden of a response. The problem is simply too big to address with a single solution.

What are governments doing?

Governments have struggled to respond to PFAS contamination. A look at actions by the United States, Canada, and the United Kingdom reveal different approaches to this emerging issue. As they continue to collect data and scientific understanding evolves, these approaches will continue to shift over time. They all include some degree of tracking PFAS production, cleaning up existing PFAS in the environment, and preventing future contamination and exposure.

As a fundamental matter, there is no one definition of PFAS that is universally used by scientists and governments. Some agencies define PFAS substances structurally – depending on inclusion of certain molecules and saturation of carbons.[5] Others forgo a chemical definition and focus on properties or uses of certain substances.[6] As a result, PFAS describes a

varying number of compounds across the US, Canada, and the UK.[7]

The responses of these nations have varied, too. The US has focused on specific compounds. After PFOS production ended in 2002, the Environmental Protection Agency worked with industry to reduce PFOA production by the year 2015.[8] As additional PFAS compounds were identified, EPA took steps to limit PFAS in drinking water. It first announced guidelines in 2009 and enacted enforceable standards in 2024 for five specific PFAS compounds and an additional standard for mixtures of PFAS compounds in drinking water.[9] At the same time, EPA implemented a rule requiring manufacturers and importers of PFAS-containing articles to report a range of information for products made or sold in each year from 2011-2022.[10] In 2025, EPA softened its regulatory stance. It rescinded the standards for all compounds except PFOA and PFOS and now limits each of those to four parts per trillion in drinking water.[11] EPA has recently proposed exemptions for the reporting rule, citing the difficulty to report information regarding past products, the costs to businesses, and impediments to innovation and development.[12] In addition, EPA recognised a need to harmonise US regulations with those of Canada and the UK.[13]

The UK treats PFAS as a class, and tracks the production and uses of PFAS products via the Registration, Evaluation, Authorization and Restriction of Chemicals (REACH) legislation.[14] Generally, REACH triggers reporting and warning duties for any article with a PFAS concentration of 0.1% by weight or more.[15] REACH does not prohibit or restrict manufacture of PFAS as a class of chemicals, though the HSE has proposed a prohibition on the use of PFAS in firefighting foam.[16] Although no regulatory standards specifically limit PFAS in drinking water, the Drinking Water Inspectorate established guidance for public water suppliers to limit individual PFAS to below 0.01 parts per billion.[17]

Canada acted in 2008 to phase out the production of PFOA, PFOS, and related compounds by 2016.[18] The ban on PFOS was repealed, but in 2021, Canada announced a planned ten-year phased prohibition of PFAS compounds as a class (except for fluoropolymer products).[19] That ban would apply to PFAS – including C6 – used in firefighting foams.[20] Canada has adopted a drinking water objective of 30 parts per trillion for the sum of 25 specified PFAS compounds found in drinking water.[21] It is unknown whether the regulation will allow an exemption for products containing a *de minimis* amount of PFAS by weight.

While all three nations have implemented some remediation at limited sites, the crushing cost renders large-scale environmental clean-up simply impracticable. In the US, litigation has emerged as a means to obtain funds for treatment of public water supplies, and compensation for private property owners, shifting those costs to the manufacturers who incorporated PFAS into products with the knowledge of inevitable contamination and potential human exposure.

Effects of litigation

Since the year 2020, over 100,000 PFAS lawsuits have been filed in the US, the vast majority alleging harm caused by PFAS-containing fire-fighting foam ('aqueous film-forming foam' or 'AFFF'). Most of these suits are consolidated in MDL 2873 under a rule that allows similar cases that are pending in federal courts to be transferred to a 'Multidistrict Litigation' (MDL) court for co-ordinated or consolidated pretrial proceedings.[22] This rule applies only to cases that are properly before federal courts. In the AFFF litigation, the manufacturer defendants invoked a federal defence that allowed the federal courts to exert jurisdiction over the cases. As a result, most of the AFFF cases filed in state court are removed to federal court and then transferred to the MDL. Included there are four broad categories of cases: lawsuits by public water suppliers to recover the costs of removing PFAS from water they serve to consumers; lawsuits by states and sovereigns to recover their costs of statewide contamination and damages for the effects on natural resources; lawsuits by individuals alleging personal injury caused by exposure to AFFF; and lawsuits to recover damages for contamination of real property where AFFF was used (for example, fire training facilites and airports). The court allowed the public water suppliers to proceed before the other categories to conduct discovery and select bellwether plaintiffs for trial.

This process yielded incredible results for the public water suppliers, culminating in historic settlements with 3M Company ($10.5-12.5bn), the DuPont Entities ($1.185bn), Tyco ($750m), and BASF ($312.5m). To date, thousands of public water suppliers have received substantial cash payments from these companies, and the litigation continues against remaining manufacturers. Those payments will not defray all the costs of removing PFAS from water supplies, but they provide funding for treatment system installation and maintenance. The expense is borne by the manufacturers rather than the consumers or taxpayers.

The personal injury cases began a similar process that has since resulted in massive numbers of new case filings. This group of cases highlights the developing nature of the science regarding medical causation and the difficulties of establishing and quantifying human exposure to PFAS in some circumstances. As the court rules on these issues, however, it will establish methods and procedures that will guide litigation of current and future cases.

Also before the court are claims arising from the contamination of private property. A group of real

property owners' lawsuits is currently working its way through discovery and will likely be scheduled for bellwether selection and trial. New cases are filed every day and transferred to the MDL, and still other lawsuits are pending in various state courts across the country.

In Canada and the UK, PFAS filings have yet to reach this scale. The Province of British Columbia filed a national class action on behalf of all provinces, territories, municipalities, and other entities to recover costs of removing PFAS from drinking water.[23] A group of individual private well owners filed another class action. Several individuals who developed cancers after exposure to AFFF filed still another class action.[24] No doubt, litigation will similarly proceed in the UK, although no cases have been filed.

Conclusion

The crushing cost of PFAS contamination has led to regulatory actions by the governments of the US, Canada, and the UK. In the US, litigation is a key means of compensating public water suppliers and property owners for contamination caused by PFAS manufacturers' products. Generally, litigation advances in the US before it gets traction in Canada and the UK. Whether case filings in Canada and the UK reach the numbers filed in the US will become evident over the next several years as these countries scramble to deal with the lasting effects of PFAS production and use.

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