

Key Trends In PFAS Regulation And Litigation For 2026

By **Brian Gross, Max Swetman and Mikaela Barbour** (January 7, 2026)

The legal and regulatory framework for per- and polyfluoroalkyl substances continues to develop as we enter 2026, shaped by regulatory recalibration, judicial oversight and sustained state-level innovation.

Over the past year, the Trump administration's U.S. Environmental Protection Agency has recalibrated several cornerstone Biden-era PFAS initiatives, while courts have clarified — often sharply — the limits of the EPA's statutory authority to compel or accelerate regulation.

At the same time, states have continued to fill perceived regulatory gaps through aggressive product bans, drinking water standards and biosolids restrictions, creating a complex and uneven compliance environment for manufacturers, water providers and downstream users.

On the litigation front, the long-running aqueous film-forming foam multidistrict litigation remains in a holding pattern as bellwether personal injury trials are postponed, while non-MDL cases continue to test the reach of federal preemption, administrative law limits and causation standards.

Collectively, these trends suggest that in 2026, the administration will focus less on introducing sweeping new federal PFAS regulations and more on reinforcing those already in place.

Federal Regulatory Developments: A Narrower, More Cautious EPA

Drinking Water MCLs

One of the most consequential regulatory shifts heading into 2026 was the Trump EPA's decision to narrow the scope of its drinking water regulations.

In May 2025, as part of the American Water Works Association v. EPA litigation, the agency announced to the U.S. Court of Appeals for the District of Columbia Circuit its intent to rescind maximum contamination levels applicable to perfluorononanoic acid, perfluorohexanesulfonic acid, hexafluoropropylene oxide dimer acid and the Hazard Index covering perfluorobutanesulfonic acid.

The EPA also announced that it planned to preserve existing alternate concentration levels for perfluorooctanoic acid and perfluorooctanesulfonic acid.

This shift marked a significant departure from the agency's 2023 National Primary Drinking Water Regulation, which had treated multiple PFAS compounds as suitable for combined regulation at detection-limit levels.



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The EPA's motion to vacate rested on procedural and statutory concerns under the Safe Drinking Water Act, including the adequacy of notice-and-comment and the agency's cost-benefit analysis.

CERCLA Hazardous Substance Designations

Despite retrenchment elsewhere, the EPA has continued to defend its designation of PFOA and PFOS as "hazardous substances" under Section 102 of the Comprehensive Environmental Response, Compensation, and Liability Act, also known as the Superfund law.

That designation remains the subject of consolidated challenges pending before the D.C. Circuit, in Chamber of Commerce of the U.S. v. EPA, with oral argument scheduled for Jan. 20.

Industry challengers argue that the EPA's interpretation of the statutory phrase "may present substantial danger" lacks limiting principles, and fails to account for cost considerations, particularly in light of the U.S. Supreme Court's 2024 decision in Loper Bright Enterprises v. Raimondo, which abrogated Chevron deference.

The EPA, on the other hand, maintains it has the authority to make these designations, arguing it is crucial for holding polluters accountable and facilitating cleanup of widespread PFAS contamination.

The outcome of this appeal is widely expected to shape not only PFAS liability exposure, but also the future viability of the EPA's emerging contaminants framework more broadly.

Scaling Back TSCA PFAS Reporting

In November, the EPA also proposed significant amendments to its PFAS reporting rule under Section 8(a)(7) of the Toxic Substances Control Act. The original one-time reporting rule, finalized in 2023, required manufacturers and importers, including article importers, to report PFAS data for the period dating back to 2011.

The EPA acknowledged that the rule imposed nearly \$1 billion in compliance costs, and suffered from serious implementation challenges, including system failures in the agency's Central Data Exchange system.

The proposed amendments introduce multiple significant exemptions, including for imported articles, low-concentration PFAS, impurities, and research and development uses, while narrowing the universe of information that must be reported.

If finalized, these changes would meaningfully reduce compliance burdens, while preserving the EPA's access to higher-value exposure and use data.

Pesticides and PFAS: EPA Pushes Back on "Forever Chemical" Narratives

Another notable development in 2025 was the EPA's public rebuttal of claims that it had approved "forever chemical" pesticides.

In a November fact check, the agency clarified that pesticides containing single-fluorinated carbon compounds do not meet the agency's definition of PFAS — which requires at least two fluorinated carbons — and do not exhibit the persistence or bioaccumulation associated with PFAS of concern.

The EPA emphasized that these compounds have been approved under the Federal Insecticide, Fungicide and Rodenticide Act across multiple administrations and jurisdictions, following extensive toxicity and environmental fate review.

Judicial Constraints on Federal PFAS Regulation

Courts are increasingly delineating the scope and pace of federal PFAS regulation by enforcing statutory limits on agency authority, limiting what is required of the EPA, tightening procedural requirements, and mediating the balance between federal and state regulation.

EPA Not Required to Regulate PFAS in Biosolids

On Sept. 29, in *Farmer v. EPA*, the U.S. District Court for the District of Columbia dismissed a lawsuit seeking to compel the EPA to regulate PFAS in biosolids, or sewage sludge, under the Clean Water Act and Administrative Procedure Act.

The plaintiffs — including farmers, counties and environmental organizations — had argued that the EPA's biennial biosolids reviews imposed a nondiscretionary duty to identify and regulate PFAS.

The court, however, rejected that theory, holding that while the agency must conduct biennial reviews, the statute does not impose a date-certain deadline to regulate additional pollutants. The court further held that the EPA's biennial biosolids report is not "final agency action" subject to APA review.

The decision underscores the difficulty of using citizen suits or APA claims to force PFAS regulation absent a clear statutory mandate.

Federal Preemption and the Reallocation of Regulatory Responsibility

Courts have also begun to clarify the limits of state PFAS enforcement where federal mandates govern the relevant conduct.

In *Michigan Department of Environment, Great Lakes and Energy v. Gerald R. Ford International Airport Authority*, a case seeking PFAS remediation and civil penalties against a public airport, the Michigan Circuit Court of Kent County held on Nov. 24 that the Federal Aviation Administration's mandatory requirements governing the use of PFAS-containing firefighting foam preempted state enforcement efforts.

The court further concluded that the airport's activities constituted a "permitted release" under state law, granting summary disposition and dismissing the case with prejudice.

This and other decisions have redirected near-term PFAS regulatory momentum toward the states, while shaping the EPA's implementation strategy.

As federal PFAS initiatives remain constrained by statutory interpretation and procedural litigation, states continue advancing broader product bans, biosolids restrictions and enforcement actions. The result is an increasingly fragmented regulatory landscape that regulated entities must navigate while awaiting definitive appellate rulings and, potentially, congressional intervention.

PFAS Litigation in 2026: MDL Delays and Targeted Non-MDL Rulings

AFFF MDL Bellwethers Postponed

As of December, more than 15,000 cases remained pending in *In re: Aqueous Film-Forming Foams Products Liability Litigation*, a multidistrict litigation in the U.S. District Court for the District of South Carolina, reflecting continued growth throughout the latter half of the year.

That expansion, driven in part by intensified regulatory scrutiny and mounting public awareness of PFAS risks, has coincided with increasing procedural caution from the court. In August, Judge Richard Gergel postponed the first personal-injury bellwether trials, citing concerns that thousands of potentially related claims involving the selected medical conditions had not yet been filed.

The court's decision underscored both the scale of the MDL and the difficulty of testing representative claims in a litigation environment marked by ongoing case inflow.

The postponement has broader implications beyond trial scheduling. It delays Daubert and Rule 702 rulings that many litigants and potential litigation funding entities view as pivotal, not only to the MDL's trajectory but also generally to the future viability of PFAS personal injury claims — particularly given that personal injury claims hinge on complex, evolving scientific evidence regarding general and specific causation.

Those evidentiary rulings, once issued, are widely expected to shape not only bellwether outcomes but also settlement leverage and case valuation across thousands of remaining MDL actions and future claims.

In the interim, the absence of near-term trial risk has heightened settlement pressure, while reinforcing uncertainty over how courts will ultimately assess causation theories central to PFAS personal injury litigation.

Non-MDL Litigation and Preemption

Outside the AFFF MDL, PFAS litigation has produced more discrete but consequential outcomes, including both significant settlements and targeted rulings narrowing the scope of liability. Most notably, state-led enforcement actions have resulted in unprecedented monetary resolutions addressing legacy PFAS contamination.

In August, in *New Jersey Department of Environmental Protection v. E.I. du Pont de Nemours and Co.*, a case in the U.S. District Court for the District of New Jersey, the state reached a \$2.5 billion settlement resolving claims against DuPont and affiliated entities arising from contamination at the Chambers Works site.

The agreement, which followed a series of bench trials on liability, was the largest environmental settlement ever achieved by a single state. In the May, as part of the same litigation, the state resolved claims against 3M for \$450 million.

At the same time, courts addressing PFAS claims outside the AFFF MDL have increasingly engaged with threshold defenses grounded in federal preemption and statutory limits — particularly where claims intersect with federally regulated conduct or delegated authority.

Recent decisions granting dispositive relief to public entities on those grounds highlight a parallel trend in PFAS litigation — one that constrains expansive state-law theories even as

large-scale settlements proceed in other forums.

As regulatory standards continue to tighten and enforcement activity accelerates, additional rulings in 2026 are likely to further define the boundary between permissible state-law claims and conduct shielded by federal frameworks.

States Continue to Fill the Federal Regulatory Gap

As federal regulation narrows or stalls, states have accelerated efforts to regulate PFAS across product categories, drinking water and waste streams.

During the 2025 legislative session, states enacted or expanded bans on intentionally added PFAS in food packaging, textiles, cosmetics, firefighting foam and children's products; established drinking water standards more stringent than federal MCLs; and adopted disclosure and reporting regimes for PFAS-containing products.

California, Minnesota, Michigan and several New England states, including Maine, continue to lead in both legislative activity and enforcement, particularly with respect to biosolids land-application bans and cleanup funding mechanisms.

While these state initiatives address perceived regulatory gaps, they also create a patchwork compliance environment that complicates national manufacturing, distribution and waste management strategies.

Conclusion

As 2026 begins, the PFAS regulatory landscape is defined less by sweeping federal initiatives and more by incremental adjustments, judicial guardrails and state-driven regulations.

Companies navigating this space should expect continued complexity, marked by uneven state requirements, evolving compliance obligations and litigation that tests the boundaries of federal authority.

In this environment, proactive risk management and close monitoring of both state and federal developments will be essential to maintaining compliance and mitigating exposure.

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