

## PFAS UPDATE: STATE REGULATION OF PFAS IN FIREFIGHTING FOAM AND EQUIPMENT

Oct 27, 2021

This blog was originally published in October 2021. Visit our [up-to-date blog on PFAS in firefighting foam \(AFFF\) and equipment: state-by-state regulations](#) >

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31 states have either enacted or proposed regulations regarding per- or polyfluoroalkyl substances (“PFAS”) present in Class B Aqueous Film-Forming Foams (“AFFF”) used for firefighting, or present in firefighters’ clothing and equipment. These regulations typically involve restrictions in four general areas:

1. **Discharge or Use Restrictions.** These regulations usually limit or prohibit the use of AFFF in training or testing exercises, and only allow the use of AFFF in active firefighting situations;
2. **Disposal, Storage, Inventory or “Take-back” Provisions.** Some states have enacted state run programs to purchase and dispose of AFFF, usually purchasing supplies from government agencies;
3. **Notification or Reporting Requirements.** When continued use of AFFF is allowed, some states have required that businesses report specific details regarding their discharge; and
4. **Limitations on Personal Protective Equipment (“PPE”).** Some states have limited or prohibited PPE for firefighters that contain PFAS materials.

### Background

The specific regulations are described in the chart below, but the following is an overview of the potential risks that businesses may encounter as a result of AFFF use or storage.

- **Investigation and Remediation.** Businesses that own(ed) or operate(d) property where AFFF was historically used, stored, or disposed of may be the focus of investigation and remediation actions based upon PFAS impacts to drinking water, groundwater, and other media, as well as municipal systems like sewers and water treatment plants.

- **Impacted Industries.** To date, airports have been the primary focus of investigations by regulatory agencies, usually focusing upon impacts to drinking water wells and groundwater supplies on or adjacent to the property. If your business is involved in aviation, it may be advisable to review your company's current or historic use of AFFF. Other impacted industries include the oil and gas sector, marine facilities, mining, and certain types of industrial facilities.
- **Regulatory Compliance.** Some AFFF regulations impose use restrictions and reporting requirements for businesses that choose to continue to use AFFF. Failure to comply with those requirements creates additional regulatory enforcement risk.
- **Litigation.** Certain states, cities, and individual plaintiffs have filed suits based on impacts from AFFF, usually targeting the manufacturers of these chemicals. Although PFAS manufacturers have been the primary focus so far, businesses that stored, used, or disposed of the chemicals are expected to be the target of future litigation.

While there are many technical AFFF resources available, [the materials available on the Interstate Technology Regulatory Council website](#) are particularly helpful.

## National Defense Authorization Act

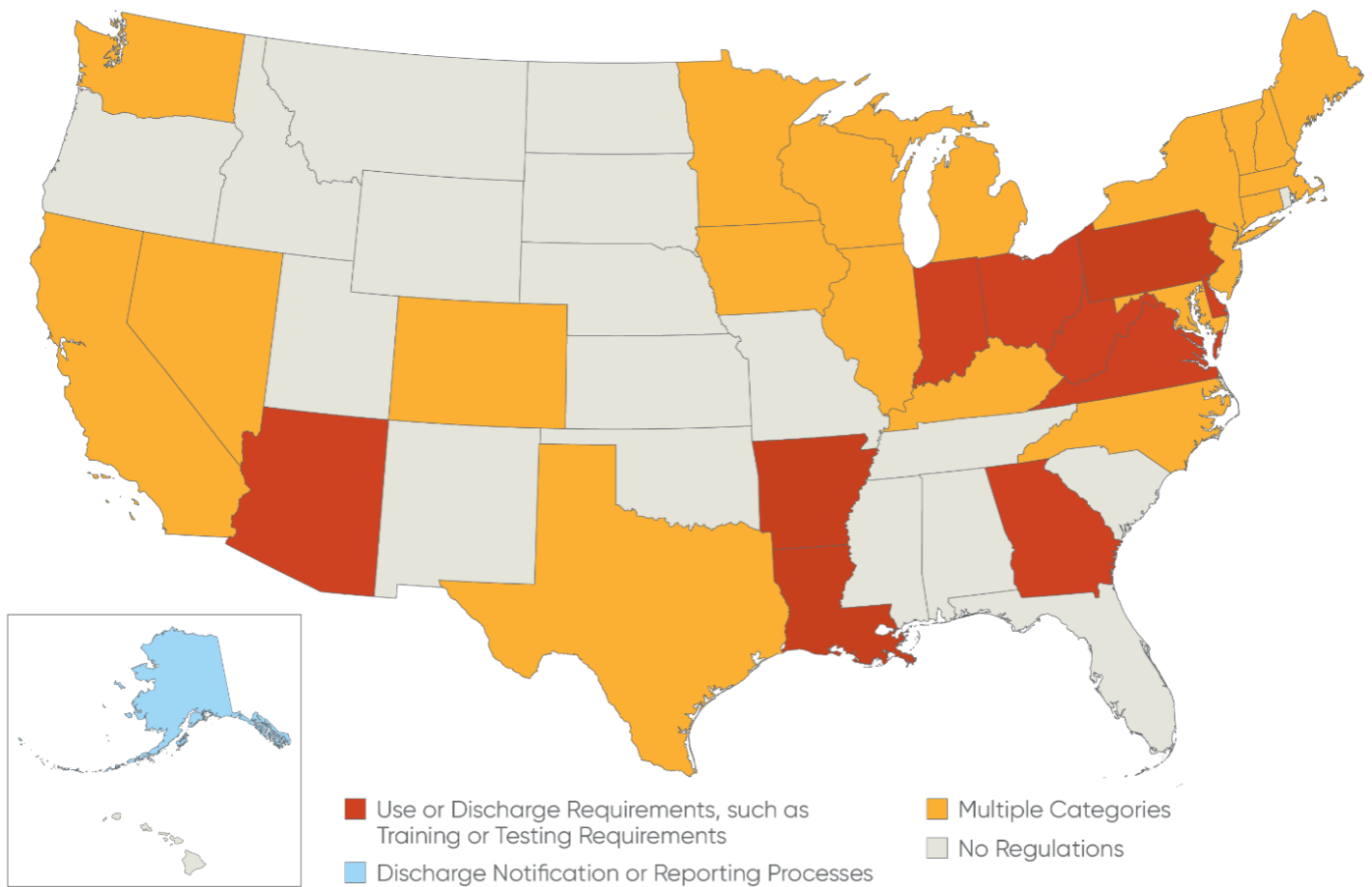
On December 20, 2019, Congress passed the [National Defense Authorization Act](#) ("NDAA"). This lengthy law phases out the use of AFFF, subject to some limited exceptions, at all military sites by October 1, 2024. In the meantime, the NDAA forbids training exercises which cause any AFFF releases.

Importantly, the provisions of the NDAA only apply to military facilities on property owned by the federal government, and do not apply to any civilian facilities. However, defense contractors should be aware of the provisions of the NDAA both for planning and risk mitigation purposes.

## Individual State Regulations and Bills

A map showing the states that have enacted or proposed regulations regarding AFFF is below, along with a detailed chart providing more information on the specific provisions of those regulations. Because the regulation of AFFF is developing rapidly, it is important to note that this client alert reflects the status of state regulations in AFFF as of October 26, 2021.

# ENACTED AND PROPOSED PFAS FIREFIGHTING FOAM REGULATIONS



As of October 26, 2021

State	Product Categories	Regulatory Status	Reference
Alaska	Reporting: Immediately report discharges of AFFF as certain PFAS materials are defined as hazardous substances.	Enacted	Reporting discharges in regions pursuant to 18 AAC 75
	Use and Take-back Provisions: Permitted use of PFAS substance in certain situations and accepting disposal for a PFAS firefighting substance not to exceed 25 gallons each year.	Proposed	SB 121

State	Product Categories	Regulatory Status	Reference
Arizona	Discharge and Use: Beginning on January 1, 2020, a person, local government or state agency may not discharge or use AFFF for training or testing purposes, unless the testing facility has implemented appropriate containment, treatment, and disposal measures to prevent releases to the environment.	Enacted	Ariz. Rev. Stat. 36-1696
Arkansas	Discharge and Use: Beginning on January 1, 2022, a person, local government, or state agency shall not discharge AFFF for training or testing purposes, unless the testing facility has implemented appropriate containment, treatment, and disposal measures to prevent releases to the environment.	Enacted	HB 1351
California	Discharge and Use: Beginning on January 1, 2022, manufacturers of AFFF are prohibited from selling or distributing AFFF. Discharges or uses of AFFF for training purposes are also prohibited.	Enacted	SB 1044
	Reporting: Entities that use AFFF shall report their use to the State Fire Marshal within five business days.	Enacted	SB 1044

State	Product Categories	Regulatory Status	Reference
	Notification: Beginning on July 1, 2021, a manufacturer of AFFF shall provide written notification to persons that sell the manufacturer's products. For products sold after July 1, 2021, a manufacturer shall provide written notification on or before December 31, 2021.	Enacted	<a href="#">SB 1044</a>
	PPE: Beginning on January 1, 2022, a person, including a manufacturer, that sells PPE must provide written notification to the purchaser at the time of sale if the PPE contains PFAS substances.	Enacted	<a href="#">SB 1044</a>
Colorado	Discharge and Use: Beginning on August 2, 2019, a person or fire department may not discharge or use any AFFF for training or testing purposes, subject to certain exceptions. Also, beginning on August 2, 2021, a manufacturer may not sell or distribute any AFFF that contains PFAS substances, subject to certain exceptions.	Enacted	<a href="#">CRS 24-33.5-1234</a> and <a href="#">CRS 25-5-1303</a>
	Notification: A manufacturer of AFFF must provide written notification to persons whom sell the products prior to August 2, 2020.	Enacted	<a href="#">CRS-25-5-1304</a>

State	Product Categories	Regulatory Status	Reference
	PPE: Beginning on August 2, 2019, a person, including a manufacturer, that sells PPE must provide written notification to the purchaser at the time of sale if the PPE contains PFAS substances.	Enacted	<a href="#">CRS 25-5-1305</a>
	Take-back Program: The Department of Public Health and the Environment shall purchase and dispose of eligible materials, subject to available funds.	Enacted	<a href="#">CRS 25-5-1311</a>
Connecticut	Use: Beginning on July 13, 2021, no person, local government or state agency shall use a foam that intentionally added PFAS substances for training or testing purposes. Also, beginning on October 1, 2021, no person shall use a firefighting foam that contains PFAS substances for any vapor suppression or firefighting purpose unless such fire is a flammable liquid-based fire and the Commissioner of Energy and Environmental Protection failed to identify an alternative to such use before July 1, 2021.	Enacted	<a href="#">SB 837</a>
	Take-back Program: Beginning on October 1, 2022, an agency shall develop a take-back program for municipal sources of PFAS substances.	Enacted	<a href="#">SB 837</a>

State	Product Categories	Regulatory Status	Reference
Delaware	Discharge: Beginning on January 1, 2022, it is unlawful to discharge AFFF, subject to certain exceptions for emergency firefighting operations and for training or testing purposes.	Proposed	<a href="#">SB 63</a>
Georgia	Discharge and Use: Beginning on January 1, 2020, no person, including fire departments, state agencies and political subdivisions, shall discharge or use AFFF, subject to some exceptions.	Enacted	<a href="#">O.C.G.A. 25-2-41</a>
Illinois	Discharge and Use: Provides that a person, local government, fire department, or agency may not discharge AFFF for training or testing purposes. Also, beginning on January 1, 2022, the manufacture, sale, or distribution of a Class B Firefighting Foam is prohibited, subject to a few exceptions.	Enacted	<a href="#">SB 561</a>
	Take-back Program: A voluntary take-back provision is established for local fire departments that store older firefighting foam made with PFAS materials.	Proposed	<a href="#">SB 562</a>
	Disposal: Incineration of PFAS is forbidden.	Proposed	<a href="#">HB 4039</a> and <a href="#">HB 3190</a>

State	Product Categories	Regulatory Status	Reference
Indiana	Use: Beginning on June 30, 2020, a person, unit, or state agency shall not use AFFF for training or testing purposes, unless the testing facility has implemented appropriate containment, treatment, and disposal measures to prevent releases to the environment.	Enacted	HB 1189
Iowa	Use: A person shall not manufacture, sell, or distribute Class B Firefighting Foam with PFAS substances. Also, no person, including fire departments and state agencies, shall discharge or use AFFF, subject to some exceptions.	Proposed	<a href="#">HF 293</a>
	PPE: A person shall not manufacture, sell, or distribute PPE with PFAS substances.	Proposed	<a href="#">HF 293</a>
Kentucky	Use: Beginning on July 15, 2020, AFFF shall not be used for training or testing purposes, unless the testing facility has implemented best industry practices to prevent uncontrolled releases into the environment.	Enacted	<a href="#">Ky. Rev. Stat. 227.395</a>
	PPE: Beginning on January 1, 2022, PPE that contains intentionally added PFAS chemicals shall not be used for firefighting or firefighting training purposes.	Proposed	<a href="#">HB 559</a>



State	Product Categories	Regulatory Status	Reference
Louisiana	Use and Discharge: Beginning on January 1, 2022, no person shall discharge or use AFFF unless such discharge or use occurs in fire prevention or in response to an emergency firefighting operation.	Enacted	HB 389
Maine	Use: Beginning on January 1, 2022, a person, local government or state agency may not discharge firefighting foam to which PFAS substances have been added for testing or training, subject to an exception. Also, on January 1, 2022, a manufacturer of a firefighting foam may not manufacture, sell, or distribute a foam to which PFAS substances have been added.	Enacted	LD 1505
	Notification: A person that discharges or firefighting foam to which PFAS substances have been added shall report the discharge as soon as practicable, but no later than 24 hours after the discharge occurs.	Enacted	LD 1505
Maryland	Use: Beginning on October 1, 2021, AFFF may not be used for training or testing purposes, subject to some exceptions.	Enacted	Md. Code, Envir. 6-1603, 1604

State	Product Categories	Regulatory Status	Reference
	Use: After January 1, 2022, a person may not use, manufacture, sell, or distribute Class B Firefighting Foam that contains intentionally added PFAS chemicals for specified testing purposes, unless the testing facility has implemented appropriate containment, treatment, and disposal measures to prevent releases into the environment.	Proposed	<a href="#">HB 0022</a>
	Notification: Within five days of a release, a person should report the release and submit certain information.	Proposed	<a href="#">HB 0022</a>
	Disposal: A person may not dispose of AFFF using incineration or landfills.	Proposed	<a href="#">HB 0022</a>
<b>Massachusetts</b>	Take-back Program: Extensive AFFF materials (128,000 pounds) were disposed in this program in 2018.	Enacted	<a href="#">Take-back Program Details</a>

State	Product Categories	Regulatory Status	Reference
	PPE: Beginning on January 1, 2023, a manufacturer or other person that sells PPE containing PFAS chemicals to any person, local government, or state agency shall provide written notification to the purchaser at the time of sale. Also, beginning on January 1, 2025, a manufacturer or other person that sells PPE containing PFAS chemicals to any person, local government, or state agency shall not manufacture, sell, or distribute these materials.	Proposed	<a href="#">S 1576</a>
	Incineration: No person shall dispose of AFFF by incineration.	Proposed	<a href="#">H 3836</a>
Michigan	PPE: The Director of the Department of Licensing and Regulatory Affairs establishes rules involving the containment and handling of PFAS materials, including the decontamination of PPE, following the use of AFFF.	Enacted	Mich. Comp. Laws <a href="#">408-1014r</a>
	Use: Beginning on January 1, 2020, AFFF should not be used for equipment calibration purposes, subject to two exceptions.	Enacted	Mich. Comp. Laws <a href="#">408-1014r</a>

State	Product Categories	Regulatory Status	Reference
	Use and PPE: Beginning on October 6, 2020, AFFF must not be used in any training. Also, until December 31, 2023, the training must follow two requirements: (1) include the proper use, handling, and storage of the AFFF; and (2) adhere to the best environmental and public health practices, including the containment, disposal, and decontamination of the PPE used.	Enacted	Mich. Comp. Laws <a href="#">29-369c</a>
	Notification: The fire chief shall report when a fire department uses AFFF to the Michigan Pollution Emergency Alert System immediately after the incident.	Enacted	Mich. Comp. Laws <a href="#">324.14703</a>
	Take-back Provisions: A collection program is available for entities properly disposing of any firefighting foam containing PFAS substances.	Enacted	Mich. Comp. Laws <a href="#">324.14705</a>
Minnesota	Discharge: Beginning on July 1, 2020, no person, political subdivision, or state agency shall discharge AFFF for training purposes, subject to some exceptions, and for testing purposes, unless the testing facility has implemented appropriate containment, treatment, and disposal measures to prevent releases to the environment.	Enacted	<a href="#">Minn. Stat. 325F.072</a>

State	Product Categories	Regulatory Status	Reference
	Notification: Beginning on July 1, 2020, any person, political subdivision, or state agency that discharges AFFF must be reported to the Minnesota Fire Incident Reporting System within 24 hours of the discharge.	Enacted	<a href="#">Minn. Stat. 325F.072</a>
Nevada	Notification: Any person, political subdivision, local government or agency who discharges, uses, or releases foam that contains PFAS substances shall notify the Division of Environmental Protection of the State Department of Conservation and Natural Resources within 24 hours after the release.	Enacted	<a href="#">AB 97</a>
	Use: A person should prevent the release of firefighting foam that contains PFAS substances to the surrounding environment, and requires that a person testing the foam has ensured that the proper containment, treatment and disposal of the foam are available at the testing location.	Enacted	<a href="#">AB 97</a>

State	Product Categories	Regulatory Status	Reference
New Hampshire	Discharge and Use: Beginning on January 1, 2020, no person, local government, or state agency may use AFFF for training or testing purposes, but the testing may occur if there are containment, treatment, and disposal measures to prevent any releases to the environment. Also, beginning on January 1, 2020, a manufacturer shall not sell or distribute AFFF, subject to some exceptions.	Enacted	N.H. Rev. Statute 154:8-b
	Take-back Provision: After evaluating some additional information, beginning on July 1, 2021, the Department of Environmental Services will establish a take-back program for the purpose of safe and contained disposal of firefighting foams containing PFAS materials.	Enacted	N.H. Rev. Statute 154:8-b
	Notification: The municipality discharging the AFFF shall notify the Department of Environmental Services within 48 hours of the discharge.	Enacted	N.H. Rev. Statute 154:8-b
	PPE: Beginning on January 1, 2020, a manufacturer or other entity that sells PPE to any person, municipality, or state agency must provide written notice to the purchaser at the time of sale if the PPE contains PFAS chemicals.	Enacted	N.H. Rev. Statute 154:8-c

State	Product Categories	Regulatory Status	Reference
New Jersey	Discharge: Beginning two years after the date of enactment, no person shall discharge AFFF for training or testing purposes, unless the testing facility has implemented the appropriate containment, treatment, and disposal measures to prevent releases to the environment.	Proposed	<a href="#">A 747</a>
	Take-back Program: Extensive AFFF materials (18,000 gallons) were disposed in this program in 2018.	Enacted	<a href="#">Take-back Program Details</a>
New York	Discharge and Use: No person, local government, or state agency will discharge or use AFFF for training purposes. Also, beginning on December 23, 2021, manufacturers may not manufacture, sell, or distribute AFFF, subject to some exceptions.	Enacted	<a href="#">S 439A</a>
	PPE: A manufacturer or other person that sells PPE to any person, local government, or state agency must provide written notice to the purchaser at the time of sale if the PPE contains PFAS substances.	Enacted	<a href="#">S 439A</a>

State	Product Categories	Regulatory Status	Reference
	Notification: Releases of a hazardous substance must be reported by an employee, agent, or representative of the person who has knowledge of the release to the Department's Spill Hotline within two hours after discovery of the release. PFOS and PFOA are specifically listed as hazardous substances.	Enacted	6 NYCRR 597; PFOS and PFOA are listed as hazardous substances
	Incineration: Incineration of AFFF shall be prohibited in a city with a population between 16,000 and 17,000 and in a region designated by the Department of Environmental Conservation as an environmental justice area.	Enacted	A 9952
North Carolina	Storage: The North Carolina Policy Collaboratory shall create an inventory of AFFF used or stored by fire departments in North Carolina operated, managed, or overseen by units of local government.	Enacted	SB 433
	Discharge and Use: No person may discharge or use AFFF for training purposes. Also, a manufacturer may not manufacture, sell, or distribute AFFF, subject to some exceptions.	Proposed	HB 355



State	Product Categories	Regulatory Status	Reference
	<p>Notification: Fire departments operated, regulated, or managed by the government shall, no later than July 1, 2022, and annually thereafter:</p> <p>(1) provide an inventory of all AFFF at each department; (2) identify all AFFF no longer utilized by each department that should be properly disposed of; and (3) report within 15 days every incident where AFFF was used.</p>	Proposed	<a href="#">HB 355</a>
Ohio	<p>Use: No person shall use AFFF for training or testing purposes, unless the facility has implemented appropriate containment, treatment, and disposal measures to prevent releases into the environment.</p>	Proposed	<a href="#">HB 158</a>
Pennsylvania	<p>Discharge and Use: Beginning on July 1, 2021, no person, entity, or a municipality may discharge or use AFFF for testing or training purposes, subject to some exceptions including: (1) the testing facility has implemented appropriate containment, treatment and disposal measures to prevent releases into the environment; and (2) the training replaces the AFFF that contains a PFAS chemical with non-fluorinated substance.</p>	Proposed	<a href="#">HB 1166</a>

State	Product Categories	Regulatory Status	Reference
Texas	Discharge and Use: A person may not discharge a firefighting foam designed to extinguish flammable liquid fires that contains intentionally added PFAS substances. Also, a manufacturer may not manufacture, sell, or distribute a firefighting foam designed to extinguish flammable liquid fires that contains PFAS substances.	Proposed	<a href="#">SB 2073</a>
	PPE: A manufacturer or other person who sells PPE should provide written notice of the PFAS materials at the time of the sale.	Proposed	<a href="#">SB 2073</a>
Vermont	Discharge and Use: A person, municipality, or state agency must not discharge or use AFFF for training purposes. Also, a manufacturer of AFFF shall not manufacture, sell, or distribute AFFF, subject to numerous exceptions.	Enacted	<a href="#">S 20</a>
	PPE: A manufacturer that sells PPE to any person, municipality, or state agency shall provide written notice to the purchaser at the time of sale if the PPE contains PFAS substances.	Enacted	<a href="#">S 20</a>

State	Product Categories	Regulatory Status	Reference
Virginia	Discharge and Use: Beginning on July 1, 2021, no person, local government, or agency shall discharge or use AFFF for training, subject to an exception. AFFF can only be used for testing purposes if the facility has implemented appropriate containment, treatment, and disposal measures to prevent releases into the environment.	Enacted	VA Code Ann. 9.1-207.1
Washington	Discharge and Use: Beginning on July 1, 2018, a person, local government, or state agency may not discharge or use AFFF for training purposes. Also, beginning on July 1, 2020, a manufacturer of AFFF may not manufacture, sell or distribute any AFFF, subject to some exceptions.	Enacted	RCW 70A.400.010 and RCW 70A.400.020
	PPE: Beginning on July 1, 2018, a manufacturer that sells PPE to any person, local government, or state agency must provide written notice to the purchaser at the time of sale if the PPE contains PFAS chemicals.	Enacted	RCW 70A.400.030
West Virginia	Discharge and Use: Beginning on July 1, 2021, no person or other listed entity may discharge or use AFFF, subject to some exceptions.	Enacted	HB 2722

State	Product Categories	Regulatory Status	Reference
Wisconsin	Discharge and Use: No person may discharge or use AFFF, including for training or testing purposes, subject to some exceptions. The testing facility must implement appropriate containment, treatment, disposal, or storage measures to prevent releases to the environment.	Enacted	<a href="#">Wis. Stat. 299.48</a>
	Notification: A person who uses or discharges AFFF shall notify the Department of Natural Resources immediately or as soon as practicable without hindering fire prevention operations.	Enacted	<a href="#">Wis. Stat. 299.48</a>

No Regulations: Alabama, Florida, Hawaii, Idaho, Kansas, Mississippi, Missouri, Montana, Nebraska, New Mexico, North Dakota, Oklahoma, Oregon, Rhode Island, South Carolina, South Dakota, Tennessee, Utah, and Wyoming.

## Groundwater Contamination Impacts to Businesses

One of the most significant risks that businesses in many industries face is impacts to groundwater from PFAS in AFFF. For example, numerous Department of Defense (“DOD”) facilities have allegedly contributed to PFAS groundwater contamination which has migrated onto adjoining properties. DOD has compiled a list of [651 DOD and National Guard sites](#) where the DOD “is performing an assessment of PFAS use or potential release.” There is also a DOD task force that discusses PFAS contamination at various sites and submits [periodic reports](#). The risk is particularly high at airfields and related facilities where AFFF was used in actual fire incidents and during training, and was usually washed down storm drains or other water management systems which could have allowed PFAS to enter the soil and groundwater.

There have already been reports of economic loss as a result of PFAS groundwater contamination which is believed to have been caused by the historic use of AFFF. For example, in New Mexico, one farmer has reportedly been forced to [dispose of 15,000 gallons of milk per day](#), and eventually cull his entire herd because of the PFAS contamination migrating from a nearby Air Force base.

Businesses that are purchasing property, or that want to evaluate their PFAS risk profile, should consider whether there are any nearby properties that may have historically used AFFF, and use that as a component of their due diligence and risk assessment.

## **Biofuels and AFFF**

Biofuels are fuels that are derived from either plant material or animal waste. Biofuels are considered to be a source of renewable energy, especially since these materials can easily be replenished. Biofuels can be in solid form, such as wood, or in liquid form, such as ethanol, and are currently used in the transportation sector.

The regulation and potential liability associated with AFFF is relevant to the biofuels industry because of the use of alcohol resistant AFFF (“AR-AFFF”) to address ethanol fires. EPA and industry documents highlight the need for this specialized form of AFFF to address ethanol fires because the alcohol can break down the traditional AFFF foam structure. This means that the biofuels industry may face some of the same legacy environmental challenges as the rest of the oil and gas industry with respect to AFFF, particularly at facilities where there were fire incidents and AR-AFFF was used.

## **Conclusion**

Many states have implemented new AFFF regulations over the past year, and BCLP expects this trend to continue into the near future as regulators and industry groups try to understand and address the potential risks of AFFF use.

If you believe that you may be impacted by an enacted or proposed regulation, or if you have a question about an AFFF regulation in a specific jurisdiction, please contact Tom Lee, Steve Poplawski, or John Kindschuh at Bryan Cave Leighton Paisner LLP.

## **RELATED CAPABILITIES**

- PFAS
- Environment

## MEET THE TEAM



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