



# Brenner, Saltzman & Wallman LLP

Attorneys at Law – Established 1963

## CLIENT ALERT

### NEW LAW BANNING PFAS IN FIRE PROTECTION SYSTEMS AND FOOD PACKAGING

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**PFAS (Perfluoralkyl or polyfluorakyls substances) are a class of commonly used chemicals now banned from:**

- **Class B fire protection foam regularly used to extinguish flammable liquid fires at airports and petroleum product and/or chemical manufacturing and storage facilities as of 10/1/21**
- **Except airport-related entities have until 10/1/23 to replace PFAS foam systems**
- **Food Packaging, as of 12/31/23**

(Public Act 21-191).

Owners of chemical plants, oil refineries or terminals, or storage or distribution facilities for flammable liquids may apply to DEEP to request an extension of time for eliminating PFAS foams.

As of 10/1/21, DEEP must develop a program to take back municipally owned class B firefighting foam containing PFAS. DEEP has already worked with some towns to take their PFAS foams.

Prior to 10/1/23, airport-related facilities must implement plans to prevent release of PFAS foam into the environment, even when the foam is used as intended. These plans shall include containment, treatment, or disposal of the foam.

Manufacturers or “distributors” of food containers, including but not limited to restaurants, delis, quickie marts, and grocers, must create, and maintain on file, or on their website, a certificate of compliance that the food packaging that they make and/or distribute complies with this new law. They must supply the certificate to DEEP within 30 days of its request, or within 60 days after anyone else requests in writing a copy of the certificate.

#### **Why is Connecticut banning the use of PFAS? To get ahead of a potential problem.**

Right now, PFAS are deemed “constituents of concern,” in large part because they have been so widely used in industry, fire-fighting, and household goods and products, and because PFAS last in the environment for a long time, i.e. they are “persistent.” These characteristics thus raise the “concerns,” because, if they were very toxic to humans, they are all over the place, and do not break down quickly.

EPA’s Human Health Report, issued April 2021, states that the ability to draw conclusions about associations between PFAS exposures and human health outcomes is, “limited due to the small number of human studies...Of the examined health outcomes, only asthma and serum cholesterol levels in humans

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were found to exhibit a statistically significant positive association with [PFAS] exposure. No studies have been identified that evaluate the association between [PFAS] exposure and potential cancer outcomes.” (<https://cfpub.epa.gov/ncea/risk/recordisplay.cfm?deid=350888>),

EPA has requested that any studies that people know about be sent to it, so that it can determine whether PFAS are harmful enough to regulate as a “hazardous substance,” as that term is defined in numerous environmental statutes ([https://www.epa.gov/sites/production/files/2021-01/documents/frl-10019-13-olem\\_addressing\\_pfoa\\_pfos\\_anprm\\_20210113\\_admin-508.pdf](https://www.epa.gov/sites/production/files/2021-01/documents/frl-10019-13-olem_addressing_pfoa_pfos_anprm_20210113_admin-508.pdf)).

## **What should you do?**

- If you have a fire suppression system, check whether it uses foam containing PFAS. If you are a municipality, and have not already done so, contact DEEP about taking your PFAS foam. If you are not a municipality, contact DEEP or an environmental consultant for instructions about steps to take to: (i) properly dispose of any remaining PFAS foam; (ii) flush your fire suppression system; and (iii) identify safe alternatives to replace the PFAS foam. Retain any documentation that proves that you have taken these steps.
- If you cannot complete these steps by the deadline(s) listed above, contact DEEP to request an extension.
- If you are an airport-related entity with a PFAS foam fire suppression system, contact a consultant who can also help you develop a means to contain, treat, and/or dispose of any PFAS foam fire suppressant, in case you need to activate your system before you replace the PFAS foam with an approved alternative.
- If you manufacture food packaging, determine whether any of your products contain PFAS. If so, make certain that any items that you have that contain PFAS are removed from your inventory before 12/31/23.
- If you are a food “distributor,” whether restaurant, grocer, deli, or quickie mart, check with the suppliers of your food, and any separate food packaging materials that you use, to request that they advise whether any food packaging that they supply to you contains PFAS. Make certain that any items that you have that contain PFAS are removed from your inventory before 12/31/23.
- If you are a manufacturer of food containers, or you place food in packaging as part of your business, you must prepare “certificates” that confirm that the food containers that you sell or use for food that you sell contain no PFAS. You can also place that certification on your website.

These are the most basic and general action items. You should confer with your environmental consultant and/or counsel to determine whether the law triggers any different and additional requirements for you.