

Florida Regulation of PFAS at Airports and Governmental Installations Ramps Up

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A new regulatory initiative could have a major impact on airports, governmental firefighting training facilities, and ultimately other governmental facilities such as water treatment plants and landfills. The Florida Department of Environmental Protection (FDEP) is in the process of performing investigations at a number of federal, state, and local facilities that use or have used per- and polyfluoroalkyl substances (PFAS) to determine the presence of PFAS in soil and groundwater at those facilities. FDEP intends to take action to require further assessment and cleanup of these compounds, if found.

If you haven't heard the acronym PFAS yet, you will — this is a family of several thousand chemicals that are used in a wide variety of products and processes, including stain- and water-repellent fabrics, nonstick products (e.g., Teflon), polishes, waxes, paints, cleaning products, and firefighting foams. The U.S. Environmental Protection Agency notes on its website that PFAS is "a major source of groundwater contamination at airports and military bases where firefighting training occurs." PFAS used in firefighting foam is generally referred to as "AFFF," aqueous film-forming foam, and at this point the FAA requires airports to use it, although there is a plan to phase out its use.

The EPA has issued a "health advisory level" for PFAS, which is in the parts per trillion level, but there is no federal drinking water standard (yet). This is currently under active discussion by Congress as part of the defense reauthorization package. At this point, FDEP has no promulgated standards for cleanup of PFAS in soil, groundwater, or surface water, but in conjunction with the University of Florida's Toxicology Department has "established" non-promulgated "provisional cleanup targets," with which it intends to direct that these various governmental entities comply. These cleanup levels are in the parts per trillion range. These chemicals are very persistent in the environment and very mobile. Assessment and treatment of affected groundwater and soil will be costly. Claims will certainly follow if surrounding landowners are affected.

With a very small group of stakeholders, including a firm client and Jorge Caspary (former director of FDEP's Division of Waste Management), Laurel Lockett, co-leader of Carlton Fields' Environmental Regulation & Litigation Practice, recently met with FDEP to learn its game plan for attacking PFAS statewide. Mr. Caspary has engaged with the Florida Airports Council, and Carlton Fields is in discussions to engage other trade associations that may be interested in formulating a Florida legislative solution.

Our client has the unfortunate distinction of being one of the first local governments to be targeted directly by FDEP on this issue. Carlton Fields is monitoring what's happening in the state and at the federal level, and we are well situated to help clients on this issue and to formulate a strategy to address the regulatory action and the inevitable claims that will follow discovery of PFAS.