PFAS Policy and Litigation: Key Developments in the Southeast

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I. Introduction

Concern over PFAS contamination and exposure has grown with a greater understanding of their lasting impact on the environment and human health. As concerns have grown, so has state policymaking to identify, address, and prevent PFAS contamination. However, state actions vary by region. Across the country, PFAS policy development takes many different forms, including legislation, regulation, agency guidance, research, and litigation.

Litigation is one of the primary drivers of activity in the Southeast region. Most notably, the aqueous film-forming foam multidistrict litigation (AFFF MDL) in the U.S. District Court of South Carolina, which has over 9,000 active cases relating to the use and exposure of Class B AFFF containing PFAS. Outside of the multidistrict litigation, lawsuits addressing other types of PFAS contamination have seen varying levels of success. Some lawsuits have been successful in getting polluters to commit to ending their use of PFAS and cleaning up existing contamination, such as North Carolina's Chemours Consent Order. However, progress in many cases brought by citizens have been delayed by defendants filling multiple motions to dismiss.

Most of the PFAS policy activity in the Southeast occurs at the agency level. State legislatures in the region have been slow to propose and enacted PFAS legislation. The legislation that has passed generally focuses on funding research to identify contaminated sites or risk. Only Florida has enacted legislation requiring their environmental agency to establish a PFAS definition and set Maximum Containment Levels (MCLS) for PFAS substances—and then, only if the federal Environmental Protection Agency (EPA) does not set one by 2025. None have classified PFAS as a hazardous substance under their hazardous substance/waste cleanup acts. Most states in the region defer to the federal EPA with respect to standard development and permit requirements.

Most states, however, have undertaken sampling to identify PFAS contamination in waterways. This sampling is important as it informs agency policy on drinking water and fish consumption advisories, and decision-making with respect to Attorney General suits. However, not many states have begun to take concrete action to mitigate or remediate future contamination, such as setting clean-up standards or imposing limits on discharges. Georgia so far is the only state in the region to ban the use of PFAS in a product, Class B AFFF containing PFAS, and there are still exceptions to this ban.

This report provides an overview of the policy-making approaches and key actions in the Southeastern states. To provide context, a short explanation of federal PFAS regulation is included before the state summaries. The report concludes with a section on how to find state documents and stay informed of future developments.

I. Background

Per- and polyfluoroalkyl (PFAS) are a class of manufactured chemicals that are commonly used in things such as water repellent, food and cosmetic packaging, pesticides, cosmetic products, fire-fighting foam, and more. PFAS take a long time to breakdown and thus accumulate in the

waterways, air, soil, animals, and humans over time.[1] Today, most people in the country have been exposed to PFAS; exposure can occur by consuming or touching materials that contain PFAS or by breathing them in.[2] Prolonged exposure to PFAS can lead to certain types of cancer, increased risk of obesity, decreased fertility in pregnant people, developmental delays in children, and reduced ability of immune disease to fight infections or respond to vaccines.[3] There are potentially other health effects that are currently unknown.

Prior to 2024, there were not any enforceable federal regulations regarding PFAS in the environment. In 2016, the EPA set drinking water lifetime health advisories for two types of PFAS: perfluorooctanoic acid (PFOA) and perfluorooctanoic sulfonate acid (PFOS). These non-enforceable health advisory levels were set based on peer-reviewed scientific evidence and research on the health effects from PFAS exposure.[4] For both PFOS and PFOA, EPA recommended concentrations below 70 parts per trillion (ppt) in drinking water.[5]

In 2024, the EPA took two major steps towards regulating PFAS—specifically PFOS and PFOA. On April 10, 2024, the EPA announced the final National Primary Drinking Water Regulation for 6 PFAS under the Safe Drinking Water Act. The regulation establishes enforceable MCLs that public drinking water systems will now have to meet. The MCLs for PFOS and PFOA is 4 ppt, significantly lower than the health advisory level. For three other compounds—perfluorohexanesulfonic acid (PFHxS), perfluorononanoic acid (PFNA), and HFPO-DA (GenX)—the MCL is 10 ppt. There is also an MCL for any mixture that contains 2 or more of perfluorobutanesulfonic acid (PFBS), PFHxS, PFNA, and GenX.[6]

The new regulatory requirements will phase in overtime and states will have primary responsibility for ensuring compliance. Public water systems have until 2027 to perform initial monitoring to determine PFAS contamination levels and provide public information on PFAS levels in drinking water sources.[7] Beginning in 2029, public water systems that violate an MCL must develop and implement a plan to reduce contamination levels and provide the public with information about these MCL violations.[8]

Lawsuits to challenge the new drinking water regulations have already been filed. In June 2024, two lawsuits were filed in the D.C. Court of Appeals claiming that EPA did not have the authority under the Safe Drinking Water Act to promulgate such rules and that these rules were

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[1] *Our Current Understanding of the Human Health and Environmental Risks of PFAS*, ENV'T PROT. AGENCY (May, 16, 2024), https://www.epa.gov/pfas/our-current-understanding-human-health-and-environmental-risks-pfas.
[2] *PFAS Explained*, ENV'T PROT. AGENCY 2 (2023), https://www.epa.gov/system/files/documents/2023-10/final-virtual-pfas-explainer-508.pdf.
[3] ENV'T PROT. AGENCY, *supra* note 1.
[4] *Fact Sheet PFOA & PFOS Drinking Water Health Advisories*, ENV'T PROT. AGENCY 1 (May, 31, 2016), https://www.epa.gov/sites/default/files/2016-06/documents/drinkingwaterhealthadvisories_pfoa_pfos_updated_5.31.16.pdf.
[5] *Id.* at 2.
[6] *Per- and Polyfluoroalkyl Substances (PFAS) Final PFAS National Primary Drinking Water Regulation*, ENV'T PROT. AGENCY (Jun. 17, 2024), https://www.epa.gov/sdwa/and-polyfluoroalkyl-substances-pfas.
[7] *Id.*
[8] *Id.*

arbitrary and capricious.[9] With the Supreme Court's recent overturn of *Chevron* deference, it is now unclear how these lawsuits will play out or if these new regulations will survive judicial review.[10]

On July 8, 2024, a new rule went into effect which designates PFOS and PFOA as hazardous substances under the Comprehensive Environmental Response, Compensation, and Liability Act (CERLA).[11] Under CERCLA, EPA is able to cleanup existing contaminated sites, commonly referred to as Superfund sites, and hold known polluters financially responsible. A site must be contaminated with a designated hazardous substance in order for EPA to be able to response.[12] Under this rule, releases of PFOA and PFOS must be reported within 24 hours when they exceed the reportable quantity and reasonable notice must be provided to potential injured parties by the owner and operates "of any vessel or facility."[13] Additionally, the U.S. Department of Transportation must include PFAS as hazardous materials and regulate them under the Hazardous Materials Transportation Act. Along with the new rule, EPA created a new enforcement discretion policy which "clarifies the agency's intent to not pursue certain parties such as farmers, municipal landfills, water utilities, municipal airports, or local fire departments" for cleanup and investigation costs under CERLA.[14]

Regardless of the fate of the EPA regulation, the role of states in identifying, cleaning up, and preventing PFAS contamination will not change. EPA rules and requirements represent only the baseline of what states must do; states can choose to go beyond federal rules. However, even in states that have put a lot of effort into researching, identifying, and mitigating PFAS contamination, public knowledge of these efforts can be lacking. Even across state agencies, there can be a lack of communication about what research and work has already been done.

This report seeks to improve understanding and knowledge of state action on PFAS in the Southeast region. The state summaries below look beyond enacted legislation and regulation to

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[9] National Association of Manufacturers, et al v. EPA et al., Docket No. 24-01191 (D.C. Cir. Jun 10, 2024); American Water Works Association, et al v. EPA et al., Docket No. 24-01188 (D.C. Cir. Jun 07, 2024); Hiroko Tabuchi, *Chemical Makers Sue Over Rule to Ride Water of 'Forever Chemicals,'* N.Y. TIMES (June 10, 2024), https://www.nytimes.com/2024/06/10/climate/pfas-forever-chemicals-lawsuit.html. For more information about these cases and the EPA's new regulation see Cheyanne Sharp, *Conquering Forever Chemicals: U.S. EPA Regulates PFAS in Nation's Drinking Water*, NAT'L SEA GRANT L. CTR. (June 26, 2024), https://nsglc.olemiss.edu/blog/2024/jun/26/index.html.

[10] Loper Bright Enterprise v. Raimondo, 603 U.S. __ (2024). For more on *Loper* see, e.g., Adam Liptak, *Justices Limit Power of Federal Agencies, Imperiling an Array of Regulations*, N.Y. TIMES (June 28, 2024), https://www.nytimes.com/2024/06/28/us/supreme-court-chevron-ruling.html; Jake Bittle & Zoya Teirstein, *The Supreme Court Overturns the Chevron Doctrine, Gutting Federal Environmental Protections*, SIERRA (June 28, 2024), https://www.sierraclub.org/sierra/supreme-court-overturns-chevron-doctrine-gutting-federal-environmental-protections.

[11] *Designation of Perfluorooctanoic Acid (PFOA) and Perfluorooctanesulfonic Acid (PFOS) as CERCLA Hazardous Substances*, ENV'T PROT. AGENCY (MAY 8, 2024), https://www.epa.gov/superfund/designation-perfluorooctanoic-acid-pfoa-and-perfluorooctanesulfonic-acid-pfos-cercla#:~:text=EPA%20is%20taking%20action%20to,committee%20(local%20emergency%20responders).

[12] *Questions and Answers About Designation of PFOA and PFOS as Hazardous Substances Under CERCLA*, ENV'T PROT. AGENCY (Aprl. 19, 2024), https://www.epa.gov/superfund/questions-and-answers-about-designation-pfoa-and-pfos-hazardous-substances-under-cercla.

[13] *Id.*

[14] *Id.*

agency-conducted research and outreach. These activities reveal administrative priorities and inform decisions about future rulemaking and litigation.

Compared to other regions, states in the southeast have had more limited resources to perform PFAS work. The cost of sampling and identifying PFAS contamination and implementing technology to reduce and remove PFAS from drinking water sources falls largely on states and public water systems; while, some state and federal funding is available to support these efforts, it is insufficient given the estimated scale of contamination nationally.[15] Litigation is an alternative means of generating funds to cover cleanup and abatement of PFAS contamination, however trials can be lengthy with no guarantee that all costs will be covered if a state or utility authority wins.

For instance, the U.S. District Court for the District of South Carolina is currently overseeing the massive AFFF MDL, *In re Aqueous Film-Forming Foams Prods. Liab. Litig*. Federal cases about the manufacturing, distribution, use, or sale of Class B AFFF containing PFAS can be considered by a federal judicial panel for inclusion in the MDL. If the panel determines that a case should be part of the MDL, it will be transferred to the District Court of South Carolina, regardless of if the court would normally have jurisdiction over the case, for pretrial discovery purposes. The presiding judge is currently accepting settlements between companies and injured parties—mainly public water systems/utility services and private citizens injured from their exposure.[16] These early settlements provide funds to water systems to perform the needed research and cleanup in order to prevent further PFAS exposure.

Due to the AFFF MDL and the rise in litigation around PFAS contamination and exposure, some in the legal field predict a forthcoming wave of litigation, similar to asbestos class actions, against companies that have contributed to PFAS contamination. This wave could make litigation a more appealing option for agencies and public water systems lacking state funds to carry out sampling and mitigation efforts.[17]

II. State Summaries

a. Alabama

Alabama is the only state in this report that has not attempted to pass any PFAS legislation. However, despite the lack of legislative action, there has still been efforts in the state to identify and address PFAS contamination. The Department of Environmental Management and Department of Public Health have both been active in identifying and monitoring PFAS contamination of waterways and fish, respectively. Additionally, public utilities and

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[15] *Questions & Answers: PFAS National Primary Drinking Water Regulations*, ENV'T PROT. AGENCY 2 (Apr. 9, 2024), https://www.epa.gov/system/files/documents/2024-04/pfas-npdwr_qa_general_4.9.24v1.pdf.
[16] For more information on the MDL, see Cheyanne Sharp, THE AQUEOUS FILM-FORMING PRODUCTS LIABILITY MULTIDISTRICT LITIGATION: THE BASICS. Nat'l Sea Grant L. Ctr. (2024), https://nsglc.olemiss.edu/projects/waterresources/files/aqueous-film-forming-products.pdf.
[17] Hiroko Tabuchi, *Lawyers to Plastic Makers: Prepre for 'Astronomical' PFAS Lawsuits*, N.Y. TIMES (May 28, 2024), https://www.nytimes.com/2024/05/28/climate/pfas-forever-chemicals-industry-lawsuits.html?searchResultPosition=1.

municipalities have filed lawsuits against companies to address and prevent further PFAS contamination of drinking water sources.

Legislation
Alabama has not enacted any PFAS legislation.

Executive Branch Actions
There are two agencies in Alabama primarily involved in PFAS research, monitoring, and cleanup: the Alabama Department of Public Health (ADPH) and the Department of Environmental Management (ADEM). Both agencies maintain webpages that provide information on their research and other activities related to PFAS.

ADEM has been monitoring and testing drinking water systems —specifically sampling wells and treatment plants/sites – since 2020. They have released data from this program for 2020, 2022, and 2023. The data was published in a couple different reports, all found on their website. The 2023 results show that every water system had at least one sample test positive for at least one type of PFAS.

ADPH is responsible for the issuance of fish consumption guidelines. Since 2012, the department has issued consumption advisories for PFOS contamination. In 2012 and 2013, for example, Baker's Creek had a "no consumption" advisory for all fish; although this was later downgraded to consumption of no more than 1 fish per month for all fish in 2014. Since 2013, ADPH have also recommended only consuming 1 largemouth bass per month from Wheeler Reservoir due to PFAS contamination.

ADPH has also worked to inform the public on PFAS contamination and exposure through press releases and Fact sheets.

Litigation
Litigation in Alabama has mostly been driven by utility authorities and citizens suing companies for the contamination of drinking water sources. For example, in *Water Works & Sewer Board of Gadsden v. 3M Co.*, the Water Works and Sewer Board in Gadson, Alabama sought relief for PFAS contamination that was a result of discharges containing PFAS at 3M's carpet and chemical manufacturing plant in Dalton, Georgia. The parties eventually settled in a sealed agreement. An attempt to appeal the case to the 11th Circuit Court of Appeals by some of the defendants was denied in 2018. However, citizens affected by the PFAS contamination and settlement have attempted to intervene and unseal the settlement agreement in recent years.

However, a few cases have reached resolutions. In 2021, plaintiffs reach settlements with 3M in two cases filed by the nonprofit organization Tennessee Riverkeeper and by the City of Decatur, Morgan County and Decatur Utilities, respectively. These settlements require 3M to pay for the cleanup and abatement of PFAS contamination that resulted from their activities at their plant in Decatur, Alabama. Under their settlement with Tennessee Riverkeeper, 3M also committed to investigating for other potential PFAS contamination in the area.

Lastly, some cases filed in Alabama have ended up in the AFFF MDL in Southern Carolina. For example, *Cowart v. 3M*—which was originally brought in Alabama state court for the wrongful death of Terry Cowart— became a part of the MDL after 3M motioned to transfer the case. The case was transferred even though the Estate of Terry Cowart explicitly opposed it, and the plaintiffs did not raise Class B AFFF containing PFAS related claims. Similarly, one municipality, Birmingham Water Works, sued several companies for PFAS contamination and joined the MDL, but later dropped their lawsuit.[18]

b. Florida

Florida is still in the early stage of researching and identifying PFAS contamination around the state. However, despite the lack of legislation and litigation, there still have been efforts to identify contamination in the state. Prior to 2021, the Department of Environmental Protection (FLDEP) worked with researchers at the University of Florida Center for Environment and Human Toxicology to develop PFAS cleanup and screening levels. This partnership could have occurred due to the department's lack of PFAS specific funding prior to 2021. In 2021, the state legislature created the University of Florida PFAS Contaminated Material Treatment Pilot Project to assist DEP with researching PFAS and for testing for contamination around the state. The research from this new partnership could lead to an increase in litigation and legislative actions in the state as contamination and potential exposure is better understood.

Legislation
Florida has successfully passed 3 pieces of PFAS legislation. Two of the bills provide funding to the Florida Department of Environmental Protection (FLDEP) and the University of Florida PFAS Contaminated Material Treatment Pilot Project (UF PFAS Project) to study, identify, and monitor PFAS contamination in the state (SB 2500 (2021) and HB 5001 (2022)). The other bill, HB 1475 (2022), requires the FLDEP to establish a PFAS definition and state cleanup levels by 2025 if the EPA does not set levels before then.

Efforts to enact legislation to address specific PFAS concerns, such as the cleanup of known PFAS brownfield sites, prohibition of Class B AFFF containing PFAS, or public notice requirements for existing contamination, have been unsuccessful to date. Multiple bills have been introduced on these subjects in every legislative session since 2019 but so far none have made it out of committee.

Executive Branch Actions
The FLDEP is the primary agency involved in PFAS research, monitoring, and outreach. Until recently, FLDEP seemed to have relied on partners at the University of Florida Center for Environment and Human Toxicology to develop target levels for PFOS and PFOA. The researchers at UF helped FLDEP develop target levels of screening and cleanup of PFAS and review other states' PFAS criteria. The resulting research memos are available on FLDEP's website. However, in 2021 the legislature created and funded the UF PFAS Project to help DEP research and cleanup PFAS contamination.

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[18] Jonathan Hardison, *Birmingham Water Works Says Water is Safe, Despite Filing Lawsuit Claiming Water Supply is 'Contaminated,'* WBRC FOX 6 NEWS (Mar. 3, 2023), https://www.wbrc.com/2023/03/03/birmingham-water-works-says-water-is-safe-despite-filing-lawsuit-claiming-water-supply-is-contaminated/.

FLDEP has two additional documents on its website. One is its 2021 PFAS dynamic plan, which lays out how it will identify PFAS contamination and work towards the target cleanup levels developed by UF researchers. The other is the results of its18-month study to detect PFAS in groundwater and drinking water wells around 10 different drycleaners across the state.

Lastly, FLDEP has put out one FAQ to inform the public about its work to test for PFAS contamination at Fire Training Facilities.

Litigation
No lawsuits litigated or settled in the state of Florida were found. However, some municipalities have joined the AFFF MDL in South Carolina by filing cases that may have started in a state or federal court in Florida but were transferred into the MDL. For example, *City of Stuart, Fla. v. 3M Co*, was originally filled in a U.S. District Court in Florida in 2018 but was later transferred into the AFFF MDL because it involved claims about the defendants' use of Class B AFFF containing PFAS. In 2023, *City of Stuart, Fla* was chosen as the first bellwether, or test case, for the MDL but was settled in June of that year.[19]

c. Georgia

Georgia is the only state in the region that has enacted legislation to prohibit the use of Class B AFFF containing PFAS. However, despite this prohibition, Georgia has been unsuccessful in passing any other PFAS bans. The Department of Public Health and the Environmental Protection Division have done some work to identify PFAS contamination in state drinking water sources, and to raise public awareness of PFAS exposure and contamination. However, as of 2022, the Environmental Protection Division was working on 'next steps' for their PFAS monitoring but have not taken any public actions beyond sampling and monitoring for PFAS contamination. Additionally, there have been some lawsuits filed by municipalities, utilities, and citizens in the state over existing contamination of drinking water sources.

Legislation
In 2019, the Georgia Legislature enacted HB 458 which regulates the use of Class B AFFF containing PFAS.[20] The act prohibits the use of Class B AFFF containing PFAS in all situations except in emergency firefighting or testing at facilities that have implemented control measures to prevent leaks into the environment.

Other legislative efforts to control and prohibit PFAS in food packaging, cosmetics, children's products, and in feminine hygiene products have been unsuccessful. These bills were all introduced in the House, but did not make it out of committee.

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[19] *See, e.g.*, *City of Stuart Announces Settlement with 3M for Contamination of City's Water Systems*, WEITZ & LUXENBERG (June 26, 2023), https://www.weitzlux.com/firm-news/city-stuart-announces-settlement-3m-contamination-citys-water-systems/.
[20] Ga Code Ann § 25-2-41.

Executive Branch Actions
The two agencies primarily involved with PFAS are the Georgia Department of Public Health (GADPH) and the Environmental Protection Division of the Georgia Department of Natural Resources (GAEPD). Both agencies maintain webpages related to PFAS where they provide information about their PFAS work.

The GAEPD has focused the majority of their research on identifying PFAS contamination in surface and groundwater. Since 2012, the GAEPD and U.S. EPA have collected surface water samples together, to determine if drinking water sources are above the EPA's recommended PFAS levels, originally under the EPA's 2012 Unregulated Contaminant Monitoring Rule (UCMR 3).[21] Now GAEPD relies on the EPA's 2024 drinking water standards. On their website. GAEPD has have published two reports about water quality in the state both include updates on their PFAS work; GAEPD also has a "story map" that contains the results of their PFAS research and sampling efforts. The story map also provides more general information on PFAS and the EPA's lifetime health advisory levels.

GADPH's PFAS work focuses more on providing information to the public on PFAS exposure, where PFAS is found, and how to reduce exposure. They released one FAQ in 2022.

Litigation
Most litigation in the state has been brought by citizens, non-profit groups, and municipalities for damages due to PFAS contamination of drinking water.

Cases such as *Johnson v. 3M* and *Parris v. 3M*, for example, have been brought against companies and municipalities/ utility authorities for the discharge of waste containing PFAS into drinking water sources. These cases have had mixed results. For example, in *Johnson*, two of the plaintiff's state law claims—negligence and negligence per se—were dismissed in 2021. Since then, there were two other rulings denying the defendants' motions to be removed from the case. For example, in 2022, the Eleventh Circuit ruled that Dalton Utilities does not have municipal immunity in respect to nuisance claims. Similarly, in 2022, a Georgia district court ruled that James River Insurance Co. does have a duty to defend Dalton-Whitfield Solid Waste Management Authority in this case. *Parris* has faced similar struggles with the defendants attempting to dismiss claims, assert municipal immunity, and delay the case by attempting to join the AFFF MDL in South Carolina.

In 2023, the Coosa River Initiative, represented by Southern Environmental Law Center (SELC), reached a settlement with the town of Trion and Mount Vernon Mills for Clean Water Act violations due to Mount Vernon's use of PFAS at their textile facility in Trion. The Consent Decree, signed July 7th, 2023, required Mount Vernon to stop using PFAS at the facility by the end of 2023 and to take steps to reduce the amount of PFAS contamination that is being sent down river into the town's wastewater treatment plant. More recently, in March 2024, the Coosa River Basin Initiative, again represented by SELC, sued the city of Calhoun and Moss Land Co.,

[21] *Third Unregulated Contaminant Monitoring Rule*, ENV'T PROT. AGENCY (Jun. 10, 2024), https://www.epa.gov/dwucmr/third-unregulated-contaminant-monitoring-rule#:~:text=The%20third%20Unregulated%20Contaminant%20Monitoring,the%20EPA%20and%20consensus%20organizations.

LLC for violations of the Clean Water Act for the discharge of sludge containing PFAS into the Coosawattee River Watershed.

d. North Carolina

North Carolina is unique in the region in that the majority of contamination is GenX from the Chemours plant near the Cape Fear River Basin. Thus, the state has been able to do more because they could focus resources towards addressing that contamination and preventing future exposure in that area. In addition to legislative and regulatory focus on the Cape Fear River Basin contamination, most litigation in the state has also been focused on seeking remedies for the exposure communities have suffered from and preventing future contamination.

North Carolina's legislature has provided funding to the N.C. Department of Environmental Quality (NCDEQ) and university partners at the North Carolina Policy Collaboratory to collect samples, monitor existing known contamination, and provide resources to affected communities; however, legislative efforts to regulate or ban the use of PFAS in products have been less successful. North Carolina may have been more successful than the other southeastern states in passing PFAS legislation and addressing contamination due to the fact that its Governor is the only one in the region who has advocated for more work to be done to address PFAS contamination. While the Governor has not issued any Executive Orders related to PFAS, the Governor's office has published 10 press releases related to state and federal regulation of PFAS between 2017–2023. In these press releases, Governor Roy Cooper has called upon the U.S. EPA to finalize MCLs and for the N.C. legislature and U.S. Congress to take more action to curb PFAS contamination.

Legislation
The North Carolina Legislature has pass eight bills related to PFAS. However, none of the bills solely address PFAS or ban the use of PFAS in products. Seven of the bills were appropriations or other budget bills that provided funding for various PFAS efforts by the North Carolina Policy Collaboratory and NCDEQ. Two of the budgetary bills, SL 2018-97 and SL 2019-241, also authorizes the Governor to permit NCDEQ to require PFAS polluters to provide alternative water sources to communities impacted by PFAS-contaminated drinking water and require all facilities to cease operations and activities that result in PFAS discharge beyond federal and state limits. SL 2023-58 *Energy Choice/ Solar Decommissioning Requirements*, passed in 2023, is the only bill that is not related to appropriations or budget. Among other things it requires utility-scale solar projects to report any PFAS that are used or associated with PV modules used to general electricity.

Similar to Florida, North Carolina has formed a partnership with universities to research PFAS contamination in the state. Since 2018, the N.C. Legislature has appropriated funds to the North Carolina Policy Collaboratory (Collaboratory)—housed at UNC Chapel Hill—to research PFAS in public drinking water supplies. The Collaboratory coordinates research efforts at various universities on GenX contamination of public water systems. Similarly, the Collaboratory has also been allocated funds to develop mitigation and removal technology, sampling, and monitoring along with their research efforts. In 2023, the Collaboratory received funding to run a voluntary takeback program and research on Class B AFFF containing PFAS. The North

Carolina PFAS Testing Network, a group within the Collaboratory that receives funding from the legislature, has its own website that has an interactive map of all the data collected from surface water, drinking water wells, and air sources to determine PFAS contamination. Also on the website is a report that discusses their efforts to inventory all Class B AFFF containing PFAS presently in the state at fire departments. No additional information on the success of the takeback program was found. North Carolina State University, in partnership with the Collaboratory and National Institute of Environmental Health Services, have also done their own GenX exposure study in the Cape Fear River Basin, the results of which are on its website.

Almost thirty other bills related to PFAS contamination have been introduced in the North Carolina Legislature. These bills have covered a wide variety of topics, including Class B AFFF containing PFAS, amending existing rules and regulations to include references to PFAS, set MCLS for PFAS, set PFAS limits for NPDES permits, local infrastructure improvement programs, and funding for drinking water purchases and other needs. Unlike other states, North Carolina's legislative attempts often contain multiple proposed actions in a single bill and include more attempts at providing grants to municipalities/utility authorities to do sampling or remediation work. For example, H 829 *Wrightsville Beach/Water Infrastructure Funds*, introduced in 2023, would have given Wrightsville Beach funds to do water and wastewater infrastructure improvements in order to address PFAS contamination and saltwater intrusion. This bill, however, never made it out of the House Committee on Appropriations.

Executive Branch Actions
The two agencies in North Carolina primarily involved in PFAS are the Department of Health and Human Services (NCDHHS) and the NCDEQ.

The NCDEQ's PFAS work has been focused on sampling and monitoring PFAS contamination, specifically in the Cape Fear River Basin. NCDEQ also does extensive sampling of surface water, groundwater, and private drinking water wells. The department communicates information about its PFAS work through various webpages and in webinars and public hearings. For example, NCDEQ have a specific page related to their 2019 Chemours Consent Order, where all documents and information relating to the Consent Order can be found. Another example is its PFAS Sampling page, which contains all the information about their sampling of public water systems for PFAS contamination.

NCDHHS issues fish consumption advisories for a variety of contaminants. Since 2023, DHHS issued advisories for catfish and bass in Cape Fear River for PFAS contamination. The fish consumptions are nonbinding.

NCDHHS's work has also focused on identifying human exposure and informing hospitals on PFAS exposure. NCDHHS has done research in communities around the Cape Fear River Basin to identify PFAS contamination in private drinking water wells and within community members. For example, in 2018 it tested residents around a manufacturing facility in Bladen for signs of PFAS exposure from drinking water wells. The department has also done similar tests with residents around the Chemours Fayetteville Works Facility and has released two reports on its community research.

NCDHHS has also created numerous outreach documents aimed at informing the public and medical professionals about PFAS. For instance, it has created two memos for medical centers/clinics on GenX exposure, EPA's GenX health goal level, and information about where people can get their drinking water tested for GenX.

Lastly, both departments have also worked with the Secretaries' Science Advisory Board to publish a joint report on GenX, and on the state's efforts to address contamination. The Advisory Board is a group of 16 professors, researchers, and scientist from universities and the public and private sectors who are appointed by the Secretaries of the NCDHHS and NCDEQ.

Litigation

The biggest case in North Carolina is *State ex rel. Regan v. Chemours Co. FC, LLC*, which led to a negotiated settlement in 2019, referred to as the Chemours Consent Order. Under the consent order, the state, Chemours Co., E.I. DuPont de Nemours & Co. inc., and Cape Fear River Water entered into an agreement requiring Chemours to: (1) install abatement technology to reduce PFAS air emissions; (2) capture wastewater for offsite disposal until they receive a new NPDES permit from the EPA; (3) undertake abatement and remediation of existing groundwater contamination; (4) provide alternative drinking water sources to those affected by the contamination; and (5) comply with all commitments and requirements of the consent order. More information on the consent order can be found on NSGLC's website.[22]

Residents and utility authorities affected by the GenX contamination in the Cape Fear River Basin and elsewhere in the state have also filed lawsuits seeking compensation and remedies for the contamination of drinking water sources. Some of these cases, especially ones brought by residents, have struggled to remain in court. For example, in *Dew v. E.I. du Pont de Nemours & Co.,* residents whose drinking water wells were affected by the discharge of GenX into the Cape Fear River brought 8 state law claims against the companies responsible for the contamination. However, after reviewing each claim, only two claims—trespass to real property and negligence—survived the companies' motion to dismiss. These two claims are moving forward, although slowly due to the filing of several motions by the companies to seal documents as "highly sensitive trade secrets," exclude the residents' expert witnesses' testimony, and challenge class certification for the case.

The state is currently litigating another case over the contamination of "air, land, and water" from the Fayetteville Works Facility. In *State ex rel. Stein v. E.I. Du Pont de Nemours & Co.*, the State brought a case as the real property owner of the natural resources and on behalf of its residents against Corteva, Inc. and DuPont de Nemours, Inc. (New DuPont) for the contamination of PFAS resulting from discharge from the Fayetteville Works facility. There have been several procedural rulings relating to jurisdiction and other matters, but the court has yet to reach the merits of the case.

Other cases have sought to hold PFAS companies accountable using federal regulatory claims. For example, in *Winyah Rivers All. v. Active Energy Renewable Power, LLC.*, Winyah Rivers

[22] For more information on the Chemours Consent Order, see Cheyanne Sharp, AN OVERVIEW OF NORTH CAROLINA'S CHEMOURS CONSENT ORDER, Natl Sea Grant L. Ctr. (2024), https://nsglc.olemiss.edu/projects/waterresources/files/nc-chemours-consent-order.pdf.

Alliance, represented by SELC, claimed that Active Energy Renewable Power and other companies had violated the Clean Water Action (CWA) by discharging PFAS into waterways without a permit to discharge treated wastewater that contained multiple pollutants, including PFAS. While the case survived motions to dismiss from the defendants in 2022—in part because the state had not developed NPDES permit policies around PFAS—it was ultimately dismissed in 2023 after the defendants filed for NPDES permit. Similarly, in *Center for Environmental Health v. Michael S. Regan*, four nonprofits challenged the EPA's decision under the Toxic Substances Control Act (TSCA) on how they will study PFAS contamination in the Cape Fear River Basin. After initially denying the nonprofits' petition to start testing for PFAS under TSCA, EPA eventually granted the petition in 2021. The EPA and non-profits have argued over how to test for PFAS contamination, leading to two unsuccessful appeals to the district court and Fifth Circuit Court of Appeals.

e. South Carolina

South Carolina has been more litigation focused in their PFAS work than other states. While there have been some efforts by the legislature to pass PFAS regulations, most of the state's efforts have been focused on identifying and addressing PFAS contamination and on providing funds to private well owners, municipalities, and counties to address and prevent contamination. The Department of Health and Environmental Control has been actively testing for PFAS contamination in waterways and in aquatic species in part to guide future monitoring and mitigation/remediation efforts. However, the largest PFAS work in the state comes from the AFFF MDL. The AFFF MDL, currently with a judge in the District Court of South Carolina, has over 9,000 active cases about companies' use of Class B AFFF containing PFAS. The presiding judge has approved millions in settlement funds to be distributed to utility authorities nationwide to begin to address existing contamination.

Legislation
South Carolina has enacted two pieces of legislation to address PFAS. Both were provisions in appropriations bills; in 2022 and 2023, the Legislature provided funding to the Department of Health and Environmental Control (SCDHEC) for their "PFOS, PFOA, and Emerging Pollutants Remediations Fund." This fund provides grants to private well owners and certain municipal, county, and joint public water systems to improve their facilities to prevent PFAS contamination or address known contamination.

The eight other unsuccessful bills were all attempts to pass the same amendment to the South Carolina Cancer Prevention Act. The amendment would have required SCDHEC to promulgate MCLs for PFAS based on best available scientific evidence and data put out by government agencies and other peer-reviewed groups. The bills were introduced in both the House and the Senate, but none made it out of their initial committee assignment.

Executive Branch Actions
SCDHEC is the agency in South Carolina most involved in addressing PFAS. SCDHEC's Bureau of Water leads sampling and testing efforts; specifically, efforts to test drinking water groundwater, aquifers, and private wells for PFAS contamination.

In 2020, SCDHEC published a report on how they plan to evaluate and identify PFAS in drinking water sources and surface water. SCDHEC has also conducted comprehensive sampling of surface water, blue crab, oyster tissue, and freshwater fish tissue for PFAS contamination. In 2023, the department published a report summarizing their findings. The data from their sampling is also publicly available. Based on the sampling results, SCDHEC recommended establishing long-term monitoring programs to gather more data. The data collected through this sampling program have not resulted in any fish or drinking water advisories to date.

Litigation
Besides the AFFF MDL, there have been other cases in South Carolina about PFAS contamination. In 2023, the South Carolina Attorney General filed a complaint in the Court of Common Pleas against 3M Co. and other companies for the contamination of state drinking water sources with PFAS. Like other Attorney General PFAS cases, the South Carolina AG claimed that the companies manufactured and distributed products containing PFAS in the state, even though they knew the chemicals were harmful to the environment and human health. 3M and others transferred the case into the AFFF MDL; however, it was recently returned to the Court of Common Pleas and is ongoing.

In March 2024, SELC, representing Congaree Riverkeeper, announced their intent to sue Shaw Industries for their alleged illegal discharge of PFAS into the Saluda River around Columbia, S.C. In their suit, filed July 2024, SELC claimed that Shaw Industries does not have the proper permit required under the Clean Water Act—their last one expired in 2018—so their discharge of pollutants violates federal discharge regulations.

III. How to Research State PFAS Actions

State PFAS policy is ever-changing, and the above summaries will quickly become outdated. This will be especially true as states begin to act under the EPA's new PFAS drinking water rule and as litigation grows. Keeping track of PFAS policy developments can be difficult, especially without direct access to legal databases. Using a search engine, such as Google, is often the best way to get started. But open searches require you to have a general idea of what you are looking for and may not return the most relevant results. A Google search for "PFAS policy" may generate a results list that includes sponsored pages, scientific research articles, and domestic and foreign government websites.

Below are some tips for finding and tracking official sources for state PFAS policy developments.

Legislation
Every state legislature maintains a website that provides information for each legislative session, including proposed bills and enacted legislation. Some state legislature websites are easier to navigate than others. For instance, some allow you to search for bills by key words; these allow you to easily use terms like "PFAS," "Forever Chemicals," or "water pollution" to narrow down your search to bills that may address PFAS contamination. It is important to note, however, that using "PFAS" or similar acronyms may not always capture all relevant bills as significant variability exists in terminology and regulated substances. Further, some legislature search

engines will only return results if the keyword is in the bill title or the short caption describing what the bill is about. Other legislative websites do not allow you to narrow a search by key words, so you must scroll through all bills from a session and pick out which ones may include some sort of reference to PFAS. However most legislative websites allow you to narrow your search by keyword.

Another option to stay informed about PFAS legislative developments is use of university or non-governmental organization databases. Databases, such as Northwestern University's PFAS Governance Tracker, can be useful tools for staying informed of policy developments for a specific topic. [23] Another option is the National Conference of State Legislatures (NCSL) database.[24] However, unlike Northwestern's tracker, the NCSL database is not searchable by state and instead categorizes legislation by its focused (drinking water, Class B AFFF containing PFAS, food containers/packaging containing PFAS, or cleanup).

These databases, however, have limitations. Depending on how frequently they are maintained and updated, some information may be out of date, so additional research beyond these databases will be needed to have a complete picture of all legislative actions. The PFAS Governance Tracker, for example, does not always contain bills prior to 2019 and does not contain bills in active legislative sessions. Using these PFAS databases however are helpful for getting a baseline idea of what activities states have taken. The scope of a particular database may also be narrower than what you are interested in. The PFAS Governance Tracker, for instance, does not capture when PFAS funding is part of larger appropriation bills.

Regulatory Actions

The best place to start is often with the state agencies responsible for addressing PFAS risks. While most states maintain an official record of administrative actions, including the adoption of regulation, such websites can be difficult to navigate. All states in the Southeast region have at least one agency website related to PFAS; however, since how they organize and update their websites varies, it can sometimes be easier to start elsewhere. Administrative registers or other state records may be helpful but can also be equally as difficult to navigate and search. When you are not sure what documents or resources you are looking for, it can be easier to use a search engine instead of clicking through each document linked until you find what you are looking for.

Some states, such as North Carolina, break up information into multiple different pages based on the topic (i.e. testing information, information on the Chemours Consent Order, information about monitoring and remediation, etc.). Other states, such as Florida, have one page that compiles all their information into one place. The number of webpages seem to correlate with how much PFAS activity the state has going on.

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[23] *The PFAS Governance Tracker*, NORTHWESTERN UNIV. PFAS PROJ. LAB. https://governance.pfasproject.com/ (last visited Jun. 27, 2024).

[24] *Per- and Polyfluoroalkyl Substances (PFAS) | State Legislation and Federal* Action, Nat'l Conf. State Legislatures (Mar. 23, 2023), https://www.ncsl.org/environment-and-natural-resources/per-and-polyfluoroalkyl-substances. There's also a document by the Environmental Council of the States, but similar to the National Conference of State Legislatures, this is not a searchable database, but instead a report compiling all state PFAS actions up to 2023. Sarah Grace Hughes, *Process & Considerations for Setting State PFAS Standards*, Env't Council of the States (2023), https://www.ecos.org/wp-content/uploads/2023/03/2023-ECOS-PFAS-Standards-Paper-Update.pdf.

The easiest way to find an agency's webpage on PFAS is either by: (1) using a search engine to conduct a simple search for "PFAS [state name]" or (2) by going to a state agency's website and typing "PFAS" into their search bar. The first option tends to be more effective, as it does not depend on pre-existing knowledge of responsible agencies. Internal agency webpage searches may also return less relevant results, such as news releases or meeting minutes. Further, such searches will not identify relevant information on other agency websites.

Documents and reports put out by agencies, often include links to other reports, pages, or documents relating to PFAS. These documents can be helpful when you found one report but are having difficulty navigating an agency's website to find more. Some agencies such as North Carolina's, embed links to reports and research within narrative documents, instead of just listing them all on the landing page. Others, such as the Florida DEP, link all reports and research results at the bottom of their webpage under the heading "Resources." In both of these methods, agencies often incorporate federal or third-party reports or webpage links in order to fill in the gaps in their research.

Similarly, in states that have university partnerships, the university partners maintain separate webpages from the state agencies. These university websites contain information about the partners' PFAS work. These pages are sometimes more up-to-date on active sampling and research efforts than agency websites. The easiest way to find these websites is by searching the name of the task force given to them by the legislature; sometimes, their research is linked on the agencies' website, but that seems to vary by state and topic.

Litigation

Tracking litigation can be difficult without access to legal databases such as LEXIS, Westlaw, and Bloomberg. Often cases that have been decided or dismissed are not readily accessible when they are in state trial courts. Similarly, active case dockets are not usually available beyond legal litigation databases like Bloomberg or PACER. If you live near or have access to a law library, the law librarians can help pull complaints, court decisions, or other documents from dockets, and track dockets for cases that you know are currently being litigated.

LEXIS and Westlaw both capture final decisions and other court orders, but you must have a paid account to access the decisions. However, some courts also post final decisions as well. If you know a case was decided in a certain court, you can go to the court's website and request an order or document (sometimes a fee is required). If you are not looking for a particular case, legal databases are easiest because you can search by key words. Research suggests the most successful search term is "'PFAS" or "Forever Chemicals"' plus the state of interest. This search yielded the best results; however, you do have to check the cases since the filter also pulls family law and corporate law cases due to their use of the acronym PFA (e.g. "protection from abuse" and "premium financial agreement," respectively).

This type of litigation tends to be very motion heavy—before the court gets to the merits of each party's claims, parties file lots of motions to dismiss claims, change the court where the case is heard, or attempt to join the case as a plaintiff or defendant. Each motion delays a case further and causes municipalities, utility authorities, and citizen groups bringing these cases to continue

to wait for their health and environmental harm concerns to be addressed and redressed. Many cases brought by citizen groups face motions to dismiss for lack of standing—a parties' ability to bring a case—or for failure to state a claim upon which relief can be granted. In order to bring a case, the party suing must have the ability to bring the case, or standing, and must show enough facts to prove that there is a claim the court can rule on; as litigation around PFAS contamination and exposure is growing, some citizen groups may struggle to provide enough evidence in initial suits to prove that the case should proceed. In response to these motions from companies, courts must review each claim brought by the citizens and consider if they have alleged enough to proceed to trial. Many cases are either outright dismissed at this initial stage, or only a couple claims are found to be sufficient to proceed.

News articles from local newspapers or legal websites like Reuters and Law360 (requires subscription to access) are good tools to find cases. With the increase public attention on PFAS, more news sources are writing about legal settlements and new cases being filed. The best way to find these reports is through a search engine; however, you have to weed through lots of advertisements by law firms looking for people to join potential PFAS class actions. Searches can be narrowed by adding keywords for identified companies or contaminated areas. For example, in North Carolina the Cape Fear River Basin is the focus of a lot of state action due to the contamination from the Chemours Fayetteville Works Facility. A Google search for '"PFAS cases" and "Cape Fear River Basin" or "Fayetteville Works Facility"' in your search would help to narrow down results. Additionally, many legal news articles will provide the case name and filing number at the end which you can use to look for complaints or settlements (if not already linked). Similarly, State Attorney Generals and nonprofit public interest organizations often post press releases when they file complaints or when their lawsuits are settled. The press release will often include links to the filed complaints or motions, or case numbers that can assist with tracking down relevant documents.

IV. Conclusion

Researching and finding state documents and information about efforts to address PFAS contamination can be difficult when you are unsure what exactly you are looking for. The easiest place to start is with a Goggle search; for example, if you are looking for fish advisories in North Carolina, it may be easiest to search "North Carolina PFAS fish advisory" than to try and start with the agencies' websites. Once you have an idea of what you are looking for, it may become easier to navigate a state's legislature or agency website.

As state agencies are the frontline for information on PFAS contamination and exposure, most people understandably turn to them first for information on state PFAS activities. As discussed above, state agencies are a wealth of PFAS resources. As state agencies research and better understand the extent of contamination and exposure in their states, more information will become publicly available. Beyond agency websites, some agencies maintain listservs where interested individuals can sign up to receive email notifications about new releases and other developments or use social media to disseminate information to the public. Using these communication tools, people can easily stay informed of PFAS developments in their state.