

ARIZONA STATE UNIVERSITY

**CORPORATE & BUSINESS LAW JOURNAL FORUM**

---

---

VOLUME 6

FEBRUARY 2025

NUMBER 15

---

---

**COMMENTARY**

*Health Continues to Take a Backseat: The PFAS Crisis and the  
Politics of Corporate Freedom*

BY KATERINA ROMANO\*

Envision being present amidst uncharted worlds where the indefinite risk of society's health continues to be compromised for just a probable economic return,<sup>1</sup> but more tragically, by way of direct infiltration of residential water supply with what is commonly known as the “forever chemical” made up of Perfluoroalkyl and Polyfluoroalkyl Substances (“PFAS”). The future ramifications and health implications directly correlate—subject but not limited—to cancer, reproductive and developmental issues, liver and kidney dysfunction, and decreased efficiency of response to vaccines.<sup>2</sup> However, this does not change the current state in which we are accustomed. The societal costs of seeking medical monitoring far outweigh the financial influx of what PFAS collects.<sup>3</sup>

PFAS is not only found in water and is impossible to remove from the bloodstream, but it is found in a plethora of consumer products such as clothing, mattress pads, cosmetics, commercial household products, biosolids, packaged food, and even dental floss.<sup>4</sup> Hence, there is no found medically approved treatment to remove it from the human

---

\* J.D. Candidate, Class of 2026, Sandra Day O'Connor College of Law at Arizona State University

<sup>1</sup> *Chemsec Identifies The Top 12 Pfas Producers In The World And Reveals Shocking Societal Costs*, CHEMSEC, (May 22, 2023), <https://chemsec.org/chemsec-identifies-the-top-12-pfas-producers-in-the-world-and-reveals-shocking-societal-costs/> (“The global societal costs – remediation, health care etc. – of PFAS chemicals amount to €16 trillion per year. The average market price of PFAS is €19 per kilogram. However, if the societal costs were included, the accurate price would be €18 734 per kilogram.”).

<sup>2</sup> Marijke Durning, RN. et. al., *PFAS: What to Know*, WEBMD, (Begum Jabeen MD., eds., 2024), <https://www.webmd.com/a-to-z-guides/what-is-pfas>.

<sup>3</sup> CHEMSEC *Supra* note 2.

<sup>4</sup> See EPA, *Where are PFAS Found?*, <https://www.epa.gov/system/files/documents/2023-10/final-virtual-pfas-explainer-508.pdf>.

body.<sup>5</sup> This introduces the predominant issue that the legal system and victims of exposure face—that is, remedies for a stand-alone medical monitoring claim due to increased medical costs for increased exposure.<sup>6</sup> Only within the last few decades has there been wider documentation bringing awareness and detection to the public on PFAS manufacturing from a century-long commercial use.<sup>7</sup>

The impactful overturn of *Chevron* and its lack of deference to the Environmental Protection Agency (EPA) confirmed the [broader] imminent public health threat absent its delegation to effectively regulate the discharge of PFAS chemicals.<sup>8</sup> Large manufacturing plants like DuPont and its subsidiaries will continue to flourish and remain unaffected despite any challenges questioning their liability.<sup>9</sup>

With President Trump’s recent signing of an Executive Order declaring a “national energy emergency,”<sup>10</sup> it is attempting, amongst other things, to provide the Office of Management and Budget (OMB) capacity to withdraw substantive measures that were taken by the EPA introducing regulations based on Clean Water Act (CWA) Effluent Limitations Guidelines (ELG).<sup>11</sup> Near completion, pending legislation included a comprehensive plan to enforce a limitation of PFAS being discharged from manufacturers,

---

<sup>5</sup> Aaron Bernstein, *American Medical Association*, AMA (Feb. 2, 2024), <https://www.ama-assn.org/delivering-care/public-health/pfas-health-effects-and-cdc-guidelines-how-reduce-pfas-exposure-aaron>.

<sup>6</sup> See Pau LaFata, *Forever Focus: Trends PFAS Litigation and Regulations*, ABA, (May 20, 2024), [https://www.americanbar.org/groups/tort\\_trial\\_insurance\\_practice/resources/tortsource/2024-winter/forever-focus-trends-pfas-litigation-regulations/?login](https://www.americanbar.org/groups/tort_trial_insurance_practice/resources/tortsource/2024-winter/forever-focus-trends-pfas-litigation-regulations/?login).

<sup>7</sup> Bero Lisa, *The Devil they Knew: Chemical Documents Analysis of Industry Influence on PFAS Science*, NAT’L. LIBR. OF MED. (June 1, 2023), <https://pmc.ncbi.nlm.nih.gov/articles/PMC10237242/> (“Although some PFAS have been manufactured since the 1950s, PFAS were not widely documented in environmental samples until the early 2000s.”).

<sup>8</sup> See generally *Chevron, U.S.A., Inc. v. Nat. Res. Def. Council, Inc.*, 467 U.S. 837, 104 S. Ct. 2778, 81 L. Ed. 2d 694 (1984), *overruled by Loper Bright Enterprises v. Raimondo*, 603 U.S. 369, 144 S. Ct. 2244, 219 L. Ed. 2d 832 (2024).

<sup>9</sup> Attorney General Jeff Jackson, *Court Grants Significant Win in Attorney General Stein’s PFAS Case Against Chemours and DuPont*, U.S. DEP’T OF JUST. (Feb. 8, 2024), <https://ncdoj.gov/court-grants-significant-win-in-attorney-general-steins-pfas-case-against-chemours-and-dupont/>.

<sup>10</sup> Exec. Order No. 14,156, 90 Fed. Reg. 8433 (Jan. 29, 2025).

<sup>11</sup> Clean Water Act Effluent Limitation Guidelines and Standards for the Meat and Poultry Products Point Source Category, 89 Fed. Reg. 4474-01 (proposed Jan. 23, 2024) (to be codified at 40 C.F.R. pt. 432). See also White Deirdre, *OMB Withdraws EPA’s PFAS Effluent Limitation Guidelines and Standards Proposed Rule*, ASDWA, (Jan. 24, 2025), <https://www.asdwa.org/2025/01/24/omb-withdraws-epas-pfas-effluent-limitation-guidelines-and-standards-proposed-rule>.

that fell within the industrial categories,<sup>12</sup> posing stricter guidelines on the oil and gas industry to protect the public's health and welfare. This is not to be mistaken with the PFAS National Primary Drinking Water Regulation (NPDWR) the EPA ruled on April 26, 2024.<sup>13</sup>

There is a phenomenon and a threshold that one should consider before having preconceived notions of the current impact on society's state of health accompanied by an understandably limited comprehension of the horizontal powers. Just like other executive orders have been challenged and recently blocked<sup>14</sup> for their clear question of constitutionality, Trump completely "withdrawing" any pending regulations that would place limitations on PFAS discharge from large corporations may be as well, so long as people remain affected.<sup>15</sup> But unless President Trump acted without authority to issue the order or was found to have a clear attack on the U.S. Constitution, it is likely not vulnerable to being stricken down.<sup>16</sup> Although President Trump's intention is to alleviate these shackles on multinational chemical companies, particularly to "drill, baby, drill,"<sup>17</sup> it nevertheless poses a substantial threat to society's health.

Thinking creatively, this portion of President Trump's order—as vested in him by the U.S. Constitution—<sup>18</sup> was an attempt to reduce the burden of high energy prices through eminent domain based on the Clean Water Act "to facilitate the identification, leasing, siting, production, transportation, refining, and generation of domestic energy resources."<sup>19</sup> By trying to alleviate the suffering of American people financially, via cutting regulations in order to: accelerate the approval processes; deploy additional oil drilling rigs; construct more pipelines; and integrate more power plants into the grid, it may present itself as another avenue for new suffering to emerge. But theoretically, no additional amounts of PFAS with existing laws necessarily add to existing exposure—it just prolongs the process of limiting bouts of exposure and prevents any remedial measures for the future—at least while this order is not being challenged.

---

<sup>12</sup> See *Effluent Guidelines*, EPA, [epa.gov/eg](https://epa.gov/eg) (Jan. 25, 2025). See also *Trump order halts EPA's proposed limits on PFAS discharges*, UNDERGROUND INFRASTRUCTURE (Jan. 30, 2025), <https://undergroundinfrastructure.com/news/2025/january/trump-order-halts-epa-s-proposed-limits-on-pfas-discharges>.

<sup>13</sup> 40 C.F.R. §§ 141-42; (codified at 42 U.S.C. 300f, *et. seq*) (issuing a procedural correction delegated to the EPA to meet regulatory standards under Safe Drinking Water Act (SDWA)).

<sup>14</sup> See *e.g.*, President Trump's efforts to end birthright citizenship guaranteed to citizens (U.S. CONST. amend. XIV, § 1.1.2).

<sup>15</sup> U.S. CONST. art. III, § 2.

<sup>16</sup> See generally *Marbury v. Madison*, 5 U.S. 137, 140, 2 L. Ed. 60 (1803); Judicial Review of Executive Orders Federal Judicial Center, FED. JUD. CTR., (last visited Feb. 6, 2025), <https://www.fjc.gov/>.

<sup>17</sup> Donald Trump, *Inaugural Address*, January 20, 2025, Washington, D.C.

<sup>18</sup> 50 U.S.C. 1601 *et seq*; 3 U.S.C.A. § 301 (West, 1951).

<sup>19</sup> Jeff Brady, *Trump's Energy Emergency Is A Gift To Fossil Fuel Firms. It's Likely Headed To Court*, NPR (Jan. 22, 2025).

Given the wide range of lives affected, PFAS will continue to be an issue that requires greater legislation. The current political climax supporting the dispense of the forever chemical presents its own further challenges.