

Information previously presented in "Environmental Concerns and Potential Impacts of Per- And Polyfluoroalkyl Substances (PFAS): An Introductory Webinar for Airport Owners and Operators" on November 29, 2018.



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## **Background**

- **Parkersburg, West Virginia**, DuPont Washington Works Plant/Teflon/end of 1990's/others potential sources date back to the 1940's / Minnesota Mining and Manufacturing - started using in approximately 1949 ; Wolverine World Wide back to the late 1950's
- **Provisional (2009) and Revised Health Advisories (May 2016) for potable water** as established by EPA, singularly, at 70/ppt for PFAS, or PFOS, and for total PFAS + PFOS = **Total PF-EPA (most extensively used as studied)**
- **Some PF-285+ chemicals:** PFAS, PFOS, PFOSA, PFHxS, PFNA, PFDeA, PFHpA, MeFOSAA, PFUA, PFOA, PFBS - Perfluorobutanesulfonic acid - and on and on = PF-285+
- **PF-State-PFAS (assumed to be potable water standard), PF-State-PFOS**
- **Ubiquitous-PF-285+**, including commercial household products, food packaging, food grown in PF-285+ contaminated soils or waters, stain and water repellent fabrics, nonstick Teflon products, polishes, waxes, paints, cleaning products, chrome plating, electronics manufacturing, oil recovery, landfills, general manufacturing equipment, wastewater treatment plants, carpets, paper and packaging, coatings, rubber, plastics, textiles, Scotchguard (TM – Minnesota Mining and Manufacturing) just to name a few
- **Potential Health Impacts:** low infant birth rates, adverse effects on immune system; cancer (PFOA only), thyroid disruptions, liver damage, high cholesterol, decreased fertility, others
- **Good Information: Association of State Drinking Water Administrators**
- **Key inquiry: nexus to potable water sources** (only a few states, such as, Minnesota and Vermont currently have groundwater standards, although more states are likely in the future to extend PF-285+ concerns to groundwater standards)
- **Military bases and airports associated with firefighting and firefighting training** – most "convenient" targets, but "you" are not alone. However, the locations of military bases and airports, and their usual surrounding "sensitive potable water receptors" throughout the country will increasingly become targets as the concerns over PF-285+ become more and more a matter of public health initiatives/concerns, local/regional blood testing programs, and class-action lawsuits.

## **Target asks: "What to do?"**

Do I need a team? Yes. You all do. All of you!  
Who is on the team? What should I do?



## **R-Index:**

**Local Passive Team** ("LPT") – Limited likelihood of on-the-grounds airport PF-285+ impacts

**Regional Passive Team** ("RPT") – High likelihood of on-the-grounds airport PF-285+ impacts potentially involving sensitive potable water receptors beyond the airport grounds;

**Regional Proactive Team** ("RPRO") - High likelihood of on-the-grounds airport PF-285+ impacts with high likelihood of impacting sensitive potable water receptors beyond the airport grounds;

These are general "T –Shirt sizes" based upon a "sensitive potable water receptor evaluation" quite different from current State and/or ASTM 1527-13 definitions (such as referenced in ASTM 1527-13, 3.2.4;3.2.67; 3.2.84; 8.2.2; 8.2.3; 8.2.4; 8.3.3; 9.4.1.3; 13.1.5.14). Remember, we are talking about "T-shirt sizes" with no particular weightings provided to the many following general considerations and variables.

A "sensitive potable water receptor evaluation" is based upon readily obtainable information. As the result of past environmental spills/discharges and/or tank removals and replacements, you all should know groundwater flow direction(s) from your airport site. The next considerations are, but not necessarily limited, to the following:

- (1) proximities to community and public drinking water wells, whether side-gradient, up-gradient (possible cones of influence), or down-gradient
- (2) proximities to lakes, rivers, and other water-ways
- (3) extent of control or lack of control and directions of runoff from rainfall, snow melt, and regular water usage and discharges, and their proximities to community and public drinking water wells and to lakes, rivers and other waterways
- (4) man-made drainage systems, sewer system piping and pre-treatment equipment and retention/storm-water detention ponds/ basins, and their proximities to community and public drinking water wells and to lakes, rivers and other waterways
- (5) local irrigation wastewater flows and general wastewater outflows, and their proximity to the airport grounds
- (6) stream channel, levee and dam constructions, and hydropower facilities, and their proximities to the airport grounds
- (7) local and/or regional residential and commercial/manufacturing developments (some commercial/manufacturing activities may be taking place on the airport grounds) and their proximities to the airport ground
- (8) private drinking water wells servicing commercial and

residential developments and their proximities to the airport grounds

(9) length of military history and regular airport foam fire-fighting, fire department, and foam fire-training using foam materials stored on-site.

So, what to do? Risk management assumes that at some time you are going to be a target, and you need documents, information, and your **Team** at-the-ready.

**LPT-** basic to LPT, RPT, and RPRO are the following recommendations:

- (1) identify and gather the following documents for safe-keeping: on-grounds airport fire department records, firefighting photographs, foam and related fire-fighting supply orders (as far back as possible) with notes, if possible, of foam manufacturers utilized, and any records pertaining to non-on-grounds airport fire departments called upon in the past, as well as any other organizations participating in foam fire-fighting training alongside airport personnel;
- (2) general liability insurance policies as far back as possible;
- (3) site plan, pre-construction, and any 'as built' plans showing locations of runways, detention basins, and all other items mentioned in the "sensitive potable water receptor evaluation" paragraph as they developed throughout the years, and as far back as possible;
- (4) bank records, copies of checks, and internal accounts payable documents and ledgers pertaining to payments made by you for the previously mentioned items, as these records usually have more detailed information necessary to identify and search out documents relating to the purchased items; and
- (5) assemble documents and photographs concerning the length of military history and regular airport foam fire-fighting, fire department, and foam fire-training using foam materials stored on-site (and places of storage). The photographs and historical on-grounds and off-grounds fire department documents may be particularly important in determining the approximate dates of discharges of PF-285+ materials which may have a substantial bearing on any insurance coverage claims.

All these documents should be placed in fire-proof safes.

As important, immediately obtain information pertaining to such documents, which may not all be found upon concluding your searches for them. The longer you wait, the more likely people with "corporate memory" will no longer be around to tell you what your need to know, such as, the information concerning the items referenced in the preceding paragraph as "(1)", the insurance



companies that wrote general liability policies, the identify of photographers used in the past and local newspaper articles (including photographs) reporting upon the fires and fire-fighting events in the past, the insurance brokers/agents used in the past, the accountants and lawyers used in the past, the surveyors, land use planners, and construction/repair contractors used in the past. Record this information, and seek to obtain any documents that may be readily available from the stored records of these potential document sources. Your insurance policies may also be identified on records provided to regulatory or client-based documents, and the plans prepared by the surveyors, land use planners, and construction/repair contractors used in the past will likely be available from local government or regulatory sources and agencies.

LPT consists of designated existing employees. However, before proceeding upon the activities suggested, it is recommended that you check with your regular attorney concerning the advantages that may be available in your State to protect as "confidential" any analysis you may place in writing concerning "an audit" of your document readiness and/or any written analysis or "internal audit" of the threats that your airport may or may not pose to potable waters from PF285+. Similar protections may be available as attorney-client privileged documents as the result of communications between you and your attorney concerning these issues. Please check out these possible protections with your regular attorney.

**RPT** – basic to RPT and RPRO are the following recommendations:

- (1) determine other likely sources of PF-285+ in the region as possible sources for impacts to potable water quality and have them "mapped out";
- (2) hire a public relations firm on a yearly "base-retainer basis" and lock them in by making sure that the public relations firm has agreed not to become in any way available to anyone else involved with similar CF-285+ issues, and meet with the firm to scope out the best possible and focused responses, particularly, given the ubiquitous nature of CF-285+ and other likely local sources;
- (3) see your regular accountant and regular attorney to determine the best method to set aside an essential emergency risk management fund to which regular contributions should be made each year; and
- (4) as needed, use paid advertising space in local and regional newspapers to make sure your message gets through to the public;
- (5) it's "ok" for you and your public relations firm to respond to local reporters' queries, but the response should only come from one designated person who needs to be prepared with a focused message and be sufficiently

patient to sit down with any reporter to explain this highly complex set of issues. Many people "get into trouble" with reporters because they do not take the time (perhaps a few hours may be needed) to fully explain the complexities of scientific issues. The importance of these approaches cannot be overstated, and are essential to getting a fair shake, at least in the article written by the reporter (the newspaper's editor will control the headlines); and

(6) if not already, become generally politically active with, and familiar to, your locally elected governmental municipal and county representatives and the municipal and county health department officials, generally stressing transparent communications with them, as well as the importance of the services, conveniences, and gratuities you provide to the region. A consistent reminder of these benefits to the region should also be part of regular public relations initiatives. Remember: "everyone loves to come to the airport for special events".

RPT consists of designated existing employees, your regular attorney and accountant, a public relations firm on a yearly "base-retainer basis" locked-in by making sure that the public relations firm has agreed not to become in any way available to anyone else involved with similar CF-285+ issues, and as necessary, a person skilled in making rather detailed maps of other potential PF-285+ sources in the region (does not need to be a surveyor), and amongst these individuals, a person providing the rather delicate approaches needed to meet the goals noted in "(6)", above.

**RPRO**- basic to RPRO are the following recommendations:

- (1) hire the very best environmental and "insurance claim" attorney(ies) you can locate on a yearly "base-retainer basis" and lock in the attorney by making sure that the attorney's firm has agreed not to become in any way available to anyone else involved with similar CF-285+ issues, even those without an apparent or potential conflict, and who is familiar with the defenses available to airport operations as the result of the requirements to use certain fire-fighting foams containing CF-285+, and the possible defenses associated with military uses ;
- (2) hire the very best environmental laboratory specializing in testing for (even by refined "in-house proprietary" methods other than those recognized by governmental agencies) PF-285+ that you can locate on a yearly "base-retainer basis" and lock in the environmental testing laboratory, if possible, by making sure that the environmental testing laboratory has agreed to only represent commercial, industrial, and manufacturing facilities involved with similar CF-285+ issues, and not the general public/citizenry or any governmental entity in any way;

- (3) hire the very best environmental scientist specializing in GF-285+ that you can locate on a yearly “base-retainer basis” and lock in the scientist by making sure that the scientist has agreed to only represent commercial, industrial, and manufacturing facilities involved with similar CF-285+ issues, and not the general public/citizenry or any governmental entity in any way;
- (4) as early as possible, determine with your lawyer the circumstances under which he/she can asserted the earliest possible claim against general liability insurance carriers based upon claims that may have been made against the airport;
- (5) as early as possible, determine with your lawyer the circumstances under which he/she can assert the earliest possible written notice of claims against any other potentially responsible parties, which would also require retention of electronic communications, and non-spoilation of evidence;
- (6) become part of an assemblage of local airports hiring the very best political lobbyist in your State on a yearly “base-retainer basis” and lock in the political lobbyist by making sure that the political lobbyist has agreed to only represent commercial, industrial, and manufacturing facilities involved with similar CF-285+ issues, and is not nor will become associated in any way with the general public/ citizenry, or any non-governmental agency or organization unless specifically approved.
- (7) become part of an national assemblage of airports hiring the very best national political lobbyist on a yearly “base-retainer basis” and lock in the national political lobbyist by making sure that the national political lobbyist has agreed to only represent commercial, industrial, and manufacturing facilities involved with similar CF-285+ issues, and is not nor will become associated in any way with the general public/citizenry or any non-governmental agency or organization unless specifically approved.

RPRO in addition to the other persons mentioned previously, this **TEAM** consists of professionals as designated in the previous paragraph, and the airports to the extent possible, should seek out joint representation by these professionals, assuming various interim and informal groups fall into similar **R-Index** categories, and can define their common interests, and can agree upon conflict waivers.

Ultimately, I anticipate that the only realistic efforts to deal with all or most of the issues of man-made contaminants (instead of ad hoc actions and reactions, featured by litigation and public relation initiatives) will come from a national health based approach which can only accomplish some “rough justice”

most likely involving individual medical monitoring and water treatment system “upgrades” in certain instances based upon community based blood levels and other yet to be determined variables as funded by the historically large CF-285+ manufacturers, the Federal government (as the result of military involvements and foam requirements for CF-285+), and perhaps some form of ad valorem tax on smaller manufacturers and even users of CF-285+ based upon the value of CF-285+ goods sold or used over specific time periods, all of which would be predicated upon outlawing the manufacture and importation of any goods containing a broad range of identified CF-285+ materials. While this issue has been “hanging around” for a rather long time (it’s not in any way, “emerging contaminants”) with no apparent national leadership, until this series of issues raises to a level of a “clarion call”, instead of the Federal and State related ad hoc whimpers, most of which seek issue(s) and comprehensive solution avoidance, all the commercial, industrial, and manufacturing entities adversely touched by CF-285+ are on their own, and will be throughout, at least this current Federal Administration and the 115th and 116th Congress. Whatever more encompassing and far more practical commercial, industrial, and manufacturing entity efforts to holistically deal with these issues will, for the moment, remain State and litigation centric. These issues currently provide real challenges especially for certain impacted States and their local political lobbyists to holistically propose comprehensive solutions. That is where some real action (“a call for State comprehensive legislative actions seeking solutions”) should also be focused. 🏗️

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