



# From Litigation Trends to Mitigation Strategies

## Examining the Impact of PFAS on Your Business



**Karen Firstenberg**

Partner | Venable

**Kathleen Hardway**

Partner | Venable

**Derek Smith**

Partner | Venable

**Joo Cha Webb**

Partner | Venable



**VENABLE** LLP

# Today's Speakers



**Karen Firstenberg**

Partner

+1 310.229.9648

[kmfirstenberg@Venable.com](mailto:kmfirstenberg@Venable.com)



**Kathleen Hardway**

Partner

+1 410.528.2842

[kshardway@Venable.com](mailto:kshardway@Venable.com)



**Derek Smith**

Partner

+1 312.210.1521

[dcsmith@Venable.com](mailto:dcsmith@Venable.com)



**Joo Cha Webb**

Partner

+1 310.229.0343

[jcwebb@Venable.com](mailto:jcwebb@Venable.com)

# Overview of Today's Discussion

- PFAS Background
- Litigation Trends
- Mitigating PFAS Risks

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# PFAS Background

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# What Are PFAS?

“PFAS” is an acronym for per- and polyfluoroalkyl substances. They are man-made chemicals characterized by a carbon-fluorine bond.

PFAS have been used for decades to improve the performance, longevity, and durability of products because of their remarkable resistance to heat, oil, water, corrosion, and degradation.



The carbon-fluorine bond is one of the strongest single bonds in chemistry

1938

DuPont scientist discovers PTFE

1948

DuPont makes PTFE commercially available as “Teflon”

Early 1950s

PFOA and PFOS manufacturing begins

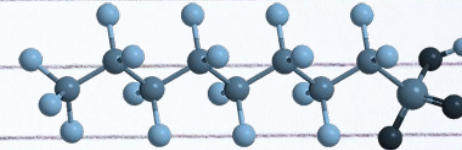
1956

Scotchgard hits the market

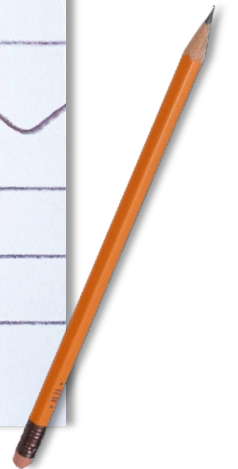
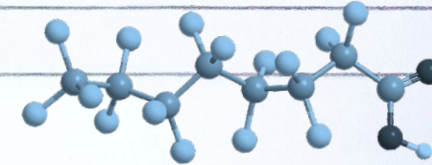
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Two of the most widely used and studied PFAS:

Perfluorooctanesulfonic Acid (PFOS)



Perfluorooctanoic Acid (PFOA)





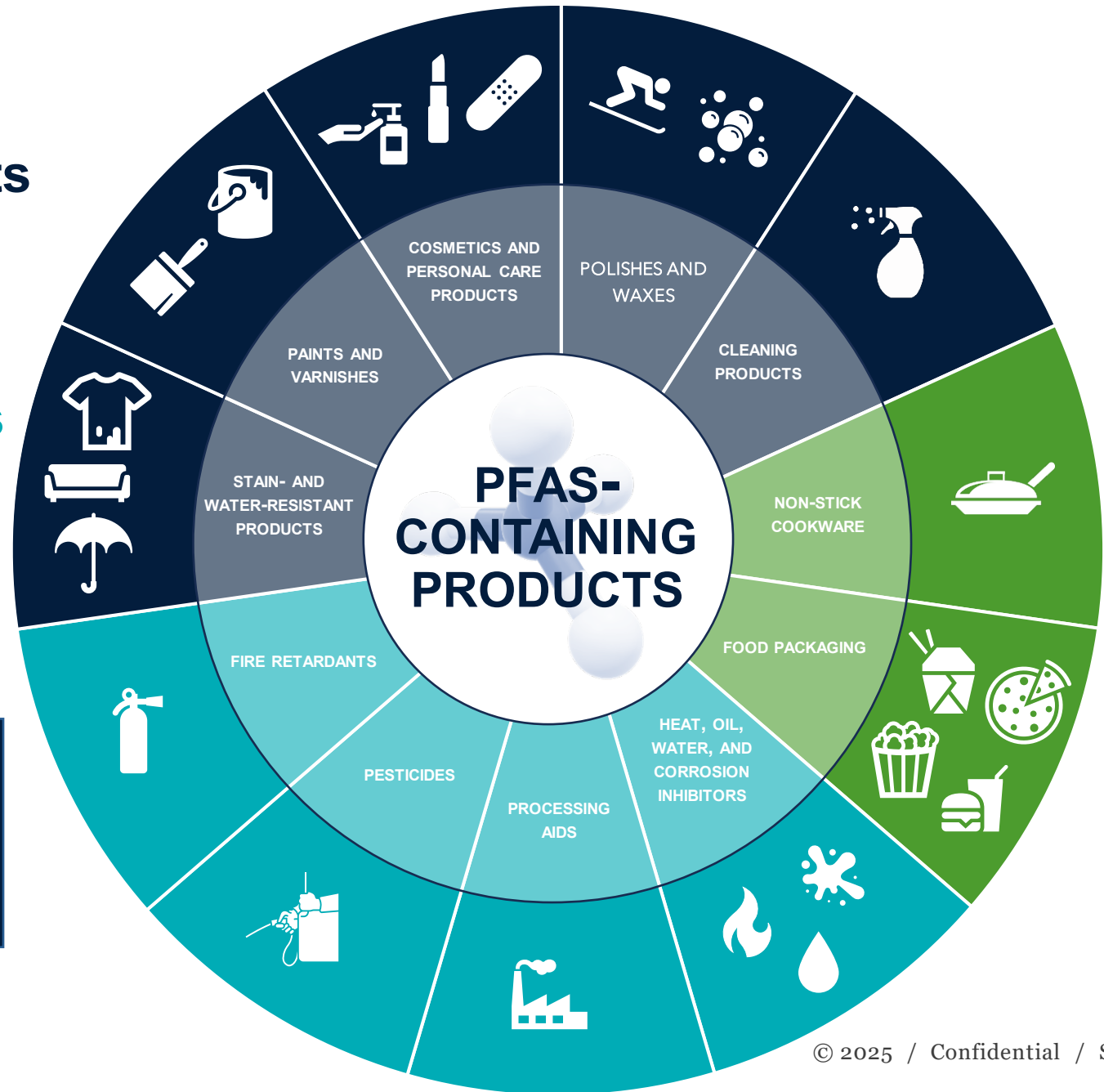
## Consumer Products



## Industrial and Specialty Materials



## Food Contact



PFAS have been used for decades to improve the performance, longevity, and durability of products because of their remarkable resistance to heat, oil, water, corrosion, and degradation.



# Where Might PFAS Be Found in Our Homes?



Source: *Time* magazine

# Why Are PFAS Under Increased Scrutiny?

The properties that make PFAS so desirable have also led to concerns about their potential impact on the environment, persisting for years in soil and water.

Nearly all people in the United States have measurable amounts of PFAS in their blood.



PFOA and PFOS have been replaced with “shorter chain” PFAS, but those newer PFAS are also under scrutiny

*Persistence in the environment has earned PFAS the moniker:*

*“FOREVER CHEMICALS”*



Late 1990s

PFOS and PFOA identified in blood samples from the U.S. population

2000

Voluntary phaseout of PFOS

2006

2010/2015 PFOA Stewardship Program launches



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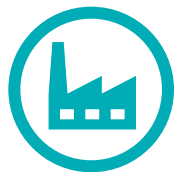
# Litigation Trends

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# Understanding the Scope of PFAS Liability



**Makes It**



**Uses It**



**Buys It**



**Sells It**



**Touches It**

PFAS Manufacturers  
Product Manufacturers  
Product Users  
Product Sellers  
Product Importers  
Landowners (Current and Former)  
Waste Disposal Companies  
Passive Receivers

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# PFAS in the News

## The New York Times

### *Lawyers to Plastics Makers: Prepare for 'Astronomical' PFAS Lawsuits*

At an industry presentation about dangerous “forever chemicals,” lawyers predicted a wave of lawsuits that could dwarf asbestos litigation, audio from the event revealed.

## PFAS in the News



PFAS in Drinking Water: Fabrics  
Manufacturer Among the Latest Hit With  
Toxic Tort Suit



BIC Hit With Class Action Over PFAS-Containing Razors



**Costco sold baby wipes  
containing high levels of PFAS,  
lawsuit claims**



Samsung Misled Consumers with PFAS in Smartwatches,  
Suit Alleges

# Cause and Effect: from “Study” to Lawsuit

April 4, 2024:

## Using bandages for wound care? Study finds cancer-causing forever chemicals in Band-Aids

*Bandages from popular brands like Band-Aid and CVS Health were found to contain dangerous levels of forever chemical 'organic fluorine' linked to negative health effects. Some bandages had detectable levels of organic fluorine, prompting calls for the removal of PFAS from wound care products.*

Edited By **Alka Jain**  
Published • 4 Apr 2024, 09:02 AM IST

A new study revealed that [bandages](#) from some reputable brands including Band-Aid and CVS Health contain dangerous levels of forever chemical 'organic fluorine' — a strong indicator that consists of per- and poly-fluoroalkyl substances and also known as PFAS.

These substances have been linked to many negative health effects, such as decreased immune system performance and vaccine response, infant and child learning and developmental issues, certain cancers, decreased fertility, endocrine disruption, and other effects.

Linda S. Birnbaum, scientist emeritus and former director of the National Institute of Environmental Health Sciences said it is concerning to learn that bandages applied to open wounds could potentially expose adults and children to [PFAS](#).

**mint**

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April 10, 2024:

Case 2:24-cv-04757 Document 1 Filed 04/10/24 Page 1 of 34 PageID: 1

UNITED STATES DISTRICT COURT DISTRICT OF NEW JERSEY	
SHARNAY MOULTRIE, individually and on behalf of all others similarly situated,	Case No.
Plaintiff,	COMPLAINT
v.	<u>JURY TRIAL DEMANDED</u>
JOHNSON & JOHNSON and KENVUE INC.,	
Defendants.	

26. To enable consumers to avoid the harms associated with PFAS chemicals, Mamavation has commissioned consumer studies on numerous beauty and personal care products, foods and beverages, supplements, menstrual products, clothing, food packaging and parchment paper, baby and children products, electronic equipment, and cleaning and laundry products.

27. Because of known toxicity associated with PFAS, Mamavation commissioned scientific studies on indications of PFAS in bandages, to analyze popular bandages marketed to consumers.

# Key Drivers in Litigation Looking Forward

- State-driven identification of contaminated drinking water
- State legislation eliminating or limiting PFAS in consumer products
- Evolution of science on medical causation
- Evolution of testing capabilities
- Further research on exposure pathways (e.g., living near manufacturing plants, athletes playing on turf, food packaging)
- Bankruptcy
- Insurance Coverage



# Key Drivers in Litigation Looking Forward

- Product Identification
  - Multiple potential exposure sources
  - Lack of product records
- Theories of Medical Causation
- Statute of Limitations
- Court interpretations of injury and reasonable consumer test in marketing claims
- Sovereign Immunity (military bases or public airports)
- Government Contractor Defense
- Federal Preemption

# Dollars and Cents

Extent of Potential Liabilities



**Extent of Liability** depends on class size, alleged injuries, and area of impact

**Consumer  
Products**

**Bio and Medical  
Monitoring**

**Personal Injury**

**Past Remediation  
Costs**

**Natural Resource  
Damages**

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# Dollars and Cents

## Settlements



AFFF use from early 1960s to 2017; \$15M (property damage) and \$2.5M (personal injury)

**\$17.5M**

PFAS Manufacturer (AFFF MDL – single class action and PI suits)



PFAS Manufacturers have paid **billions** to settle public water supply contamination claims

**\$316.5M-\$12.5B**

PFAS Manufacturers (AFFF MDL - public water system claims)



**\$400M**  
PFAS User (NRD and Groundwater Contamination)

**\$69.5M**

PFAS User (Public Water Supply Connection)

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# Mitigating PFAS Risks

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**Regulatory**



**Contracts**



**Environment**



**R&D**



**Employees**



**Products**



## Six Areas of Focus



**Compliance  
Lobbying**



**Insurance  
Indemnification Agreements  
Acquisition and Sale Agreements  
(Land and Business)**



**Site Investigations  
Environmental Releases and Discharges  
Environmental Remediation  
Waste Disposal**



**Alternative Chemistries  
Toxicology and Epidemiology Studies  
Product Testing**



**Training  
Occupational Health and Safety**



**Warnings and Labeling  
Advertising  
Supply Chain Certifications**

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## Compliance

- Stay up to date!
  - Laws are changing rapidly – Imperative that companies monitor applicable regulatory developments to understand compliance obligations, applicable expectations, and potential penalties
    - Heightened for those companies doing business in numerous states, particularly where state regulations differ

## Lobbying

- Educating regulators about particular PFAS that are of critical importance to the health and well-being of the population, the economy, and/or the security of the U.S.





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Lobbying



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## Insurance

- Assessment of historical coverage for potential PFAS claims
- Negotiate future coverage for potential PFAS claims

## Acquisition and Sale Agreements

- Acquisition and sale of *businesses* with potential PFAS liabilities
- Acquisition and sale of *land* with potential PFAS contamination



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## Site Investigations

- Evaluate current and historical site operations
  - manufacturing processes
  - AFFF presence/use
  - Groundwater (e.g., process water) use

## Environmental Releases and Discharges

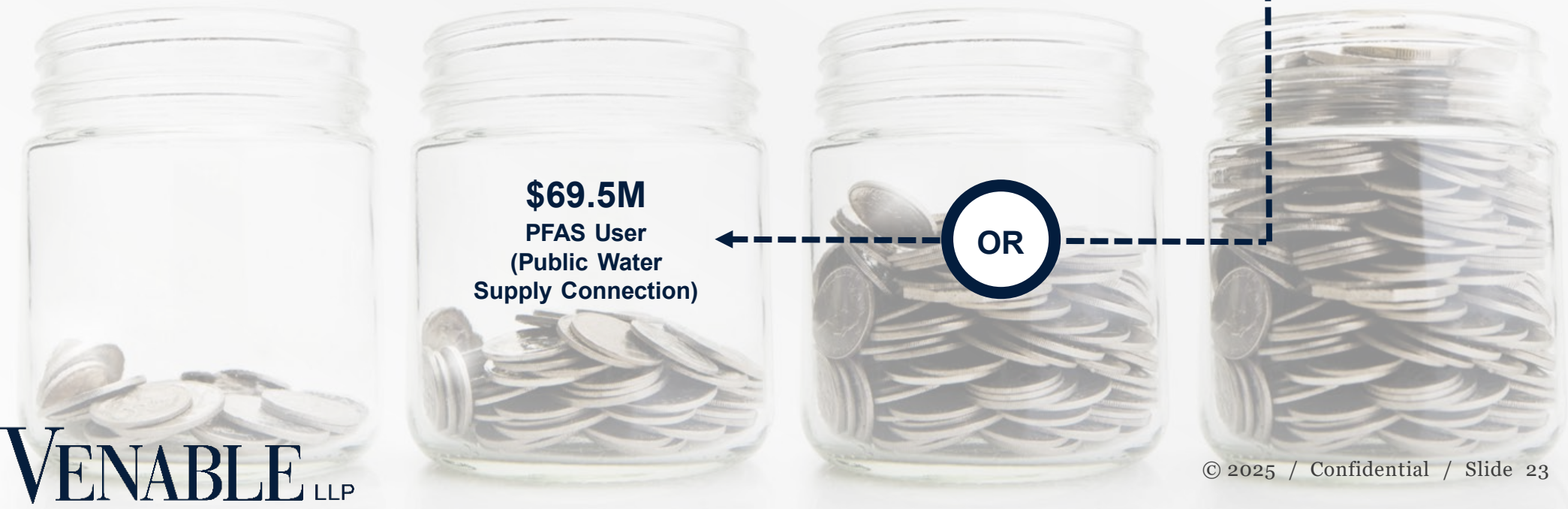
- If PFAS/AFFF used, evaluate source and scope of releases/discharges to the environment

## Waste Disposal

- Proper management and disposal of PFAS-contaminated media is important
  - But so is clearly defining who is assuming potential future liabilities associated with the disposal

# Environmental Remediation

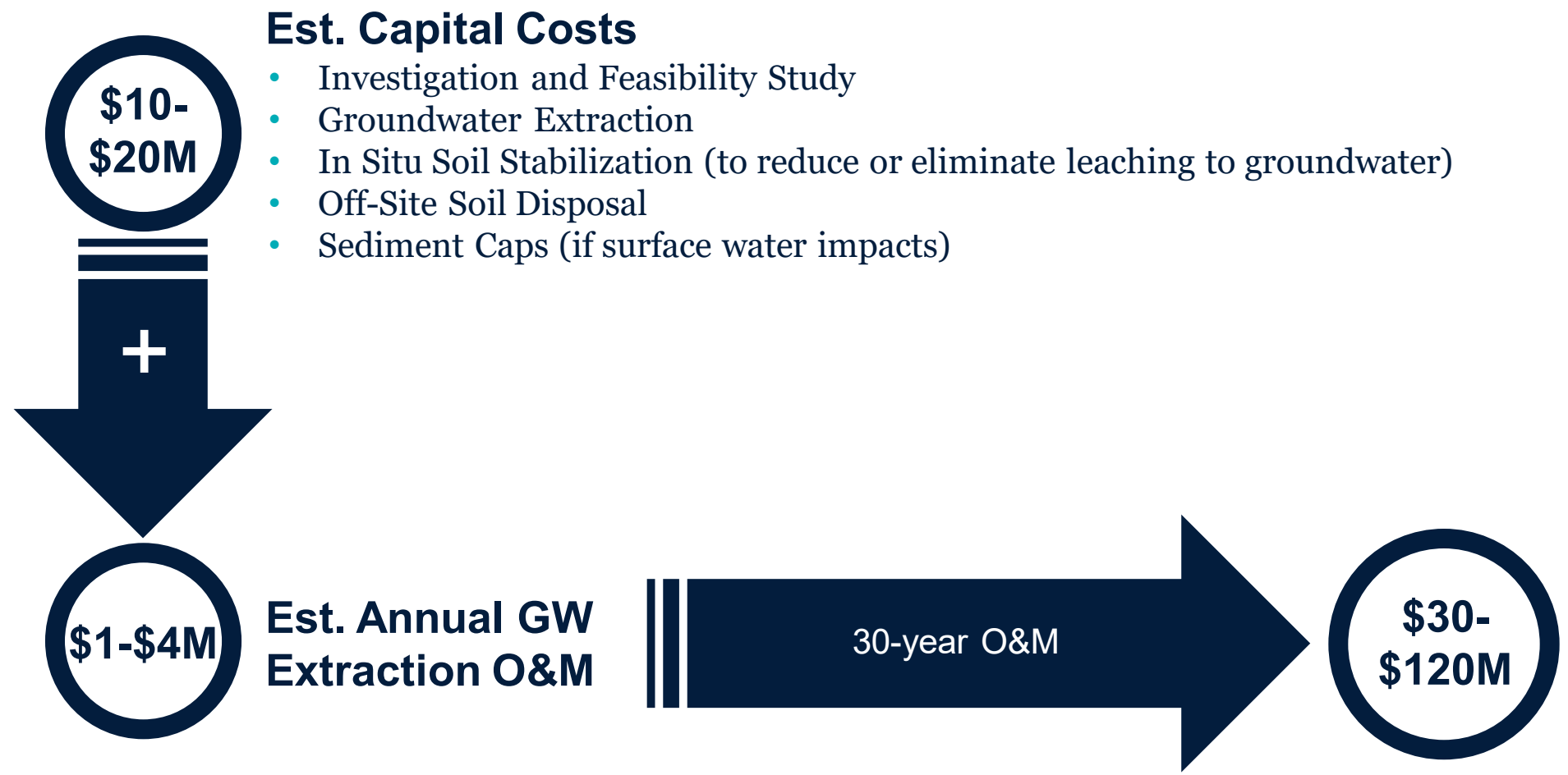
Potential POET System Cost





# Environmental Remediation

Potential On-Site Remediation Costs





**Compliance  
Lobbying**



**Insurance  
Indemnification Agreements  
Acquisition and Sale Agreements  
(Land and Business)**



**Site Investigations  
Environmental Releases and Discharges  
Environmental Remediation  
Waste Disposal**



**Alternative Chemistries  
Toxicology and Epidemiology Studies  
Product Testing**



**Training  
Occupational Health and Safety**



**Warnings and Labeling  
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## Alternative Chemistries

- Environmental Risk vs. Product Risk
  - Toxicology and Epidemiology Studies and Product Testing may not warrant Alternative Chemistries
    - Polymer vs. Non-Polymer PFAS
  - Manufacturing process might alter the analysis



Compliance  
Lobbying



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## Training

- From Procurement to PPE (Top-Down Training)
  - Ensure all relevant members of organizational hierarchy, from managers to employees, understand how PFAS impacts their jobs
  - Tailor training by relevant business units, groups, tasks, etc.

## Occupational Health And Safety

- Review current EH&S policies and SOPs to ensure continued applicability to emerging contaminants such as PFAS
- Conduct an occupational exposure assessment to identify, evaluate, control, and potentially eliminate PFAS exposures
  - Procurement to PPE...





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Lobbying**



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**Warnings and Labeling  
Advertising  
Supply Chain Certifications**

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## **Warnings and Labeling**

- Address presence/confirm absence of PFAS

## **Advertising**

- False claims/consumer fraud lawsuits are on the rise, with plaintiffs asserting that products contain PFAS notwithstanding claims to the contrary
  - Avoid unqualified claims, such as “clean” and “all natural”
  - Explicitly list what products are “free from”

## **Supply Chain Certifications**

- Investigate and obtain certifications
- Evaluate non-PFAS alternatives
- Develop phaseout timeline and implementation plan

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**CLE Code**

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# Venable Webinar Series: PFAS Insights

**Sign up for Venable PFAS Alerts:**

<https://www.connect.venable.com/49/4351/landing-pages/pfas-subscription-form.asp>

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## Upcoming Webinars in the Series:

- “PFAS” (Un)Defined: Deconstructing How PFAS Is Defined and the Impact of Broad Definitions on Your Business
  - Thursday, June 26, 2025 | 1:00 – 2:00 p.m. ET

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# Questions?

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**Karen Firstenberg**

Partner

+1 310.229.9648

[kmfirstenberg@Venable.com](mailto:kmfirstenberg@Venable.com)



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**Joo Cha Webb**

Partner

+1 310.229.0343

[jcwebb@Venable.com](mailto:jcwebb@Venable.com)





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