



Mitigating the risk of PFAS; a universal responsibility

The environmental and human health impacts from exposure to per-and poly-fluoroalkyl substances – known as PFAS chemicals - are a mounting concern in Australia and worldwide.

The unique characteristics of these chemicals means that even if a site has never made direct use of PFAS it may still be contaminated, putting both the environment and people – both residents and workers - at risk.

According to recent [reports](#) there are 10 sites in Sydney, 25 in New South Wales and 90 nationwide that authorities are currently investigating for elevated levels of PFAS.

Property purchasers, property sellers, developers, construction companies – indeed any enterprise considering significant redevelopment of an existing site - would be wise to conduct appropriate due diligence ahead of finalising their plans in order to determine whether the land has been contaminated by PFAS chemicals.

If there is evidence of contamination then must address the issue responsibly or expose the business, their staff, and the broader community to significant risk.

Profile of PFAS

PFAS have been used extensively in firefighting foams, and in a broad range of products including non-stick pans and textile treatments. Although largely phased out a decade ago, PFAS are still in limited use, because of their efficacy in fighting petroleum and oil fires.

Despite the limitations now placed on PFAS usage, these chemicals remain problematic to human, animal and environmental health.

They do not easily degrade or decompose, and are very transportable – there is evidence of the chemicals being found as far as 20 km from an original site when carried in ground or surface water. The persistent nature of the chemicals means that even sites which have no record of using PFAS themselves, may be contaminated by adjacent or other local sites.

PFAS also have the potential to bioaccumulate, meaning that humans – being at the top of the food chain – will likely have higher concentrations of PFAS than animals and plants lower down the chain.

The highest profile impact of PFAS in Australia relates to residents living near Defence facilities in Katharine, Northern Territory, Williamtown, New South Wales and Oakey, Queensland – where PFAS had been used since the 1970s. As a result of complaints and concerns, residents have been offered blood tests and alternative drinking water supplies.

The challenge is not limited to Defence bases however. The longevity and transportability of PFAS makes them a risk for virtually any property development or construction projects.



Plan for progress

In January this year an initial PFAS National Environment Plan ([NEMP](#)) was released following agreement by Australia's environment ministers, which, while not prescriptive, provides guidance for organisations navigating the issue.

Intended to provide a nationally consistent, practical, risk-based framework for the environmental regulation of PFAS-contaminated materials and sites, the PFAS NEMP also acts as a how-to guide for the investigation and management of PFAS contamination and waste management. It includes a series of recommended approaches expected to inform the actions of Environmental Protection Agencies and other regulators dealing with PFAS issues.

Further guidelines and protocols will be added to the PFAS NEMP over time.

Failure to address the issue properly is risky as it can prove both very costly and damaging to reputation:

- In Australia a series of legal actions is underway, including a class action against the Department of Defence on behalf of 450 individuals in Oakey, while individual legal cases are being brought against the Department of Defence on behalf of Katherine residents.
- Airservices Australia notes a \$23.2 million liability in its latest annual report for managing the fallout from site contamination.
- In the US the State of Minnesota is suing 3M for \$US5 billion, alleging that the chemicals the company once used for Scotchguard, fire retardants and other products have been implicated in cancers, premature births and lower fertility.

Property owners, buyers – and pretty much any enterprise seeking to develop or repurpose land and facilities would be wise to conduct proper due diligence in advance. To get started organisations should:

- Take the time to learn about PFAS and the impact they can have;
- Determine if PFAS have ever been used on the site, or on adjacent or nearby sites;
- Assess any current exposure (airports/oil refineries where PFAS may still be in limited use);
- Engage environmental consultants to investigate possible PFAS contamination and, if present, determine the levels;
- If required work with specialist consultants on remediation plans prioritised by site and use case referencing the PFAS NEMP as a framework; and
- Liaise with lawyers and insurance professionals on future plans.

To discuss PFAS or any other environmental liability issue, please get in touch.

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