

# Legal Steps to Consider When PFAS Comes Knocking at Your Door

Jeff Kray, Managing Partner, Marten Law

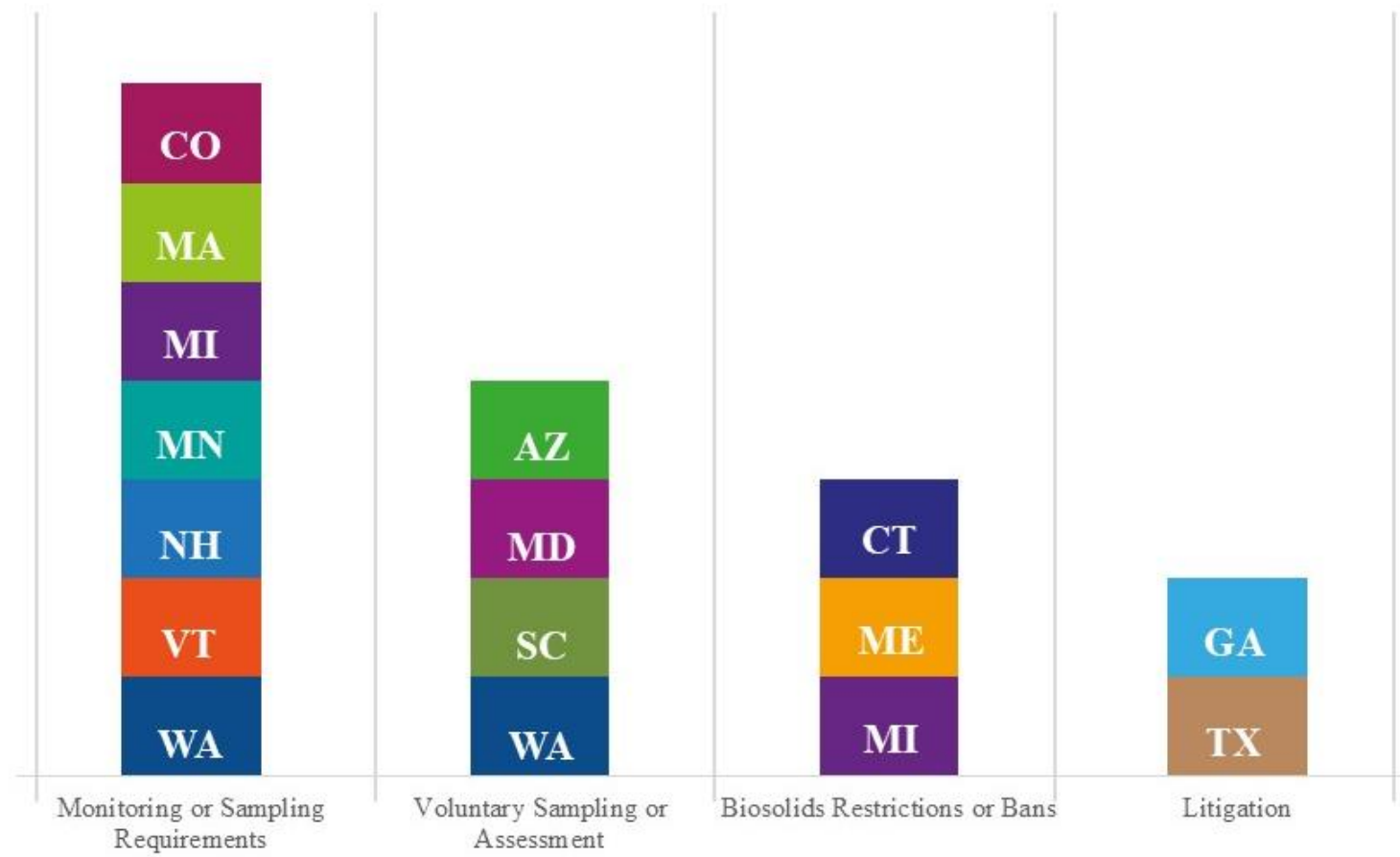


# A Rapidly Evolving Regulatory Landscape – Federal Actions

## EPA actions in 2024-2025:

- **SDWA Maximum Contaminant Levels (MCLs):** EPA established MCLs for six PFAS in drinking water
- **CERCLA designations:** Earlier this year, EPA designated PFOA and PFOS as “hazardous substances” under CERCLA
- **Proposed RCRA listing for 9 PFAS**
- **Destruction and disposal guidance:** A guidance document from April 2024 recommends destruction and disposal methods for certain types of biosolids and residuals
- **[Proposed] EPA Information Collection Request (ICR)**
  - If approved by OMB, the ICR will require 400 “large” POTWs to complete a survey about their industrial users, and a subset of 200-300 POTWs to conduct wastewater and sewage sludge samples
- **Draft Biosolids Risk Assessment:** Found unacceptable human health risks in some scenarios when sewage sludge containing 1 or more parts per billion of PFOA or PFOS is land applied; if finalized, EPA expects to propose a regulation under CWA Section 405

# A Rapidly Evolving Regulatory Landscape - State Actions



# Significant Litigation in 2024

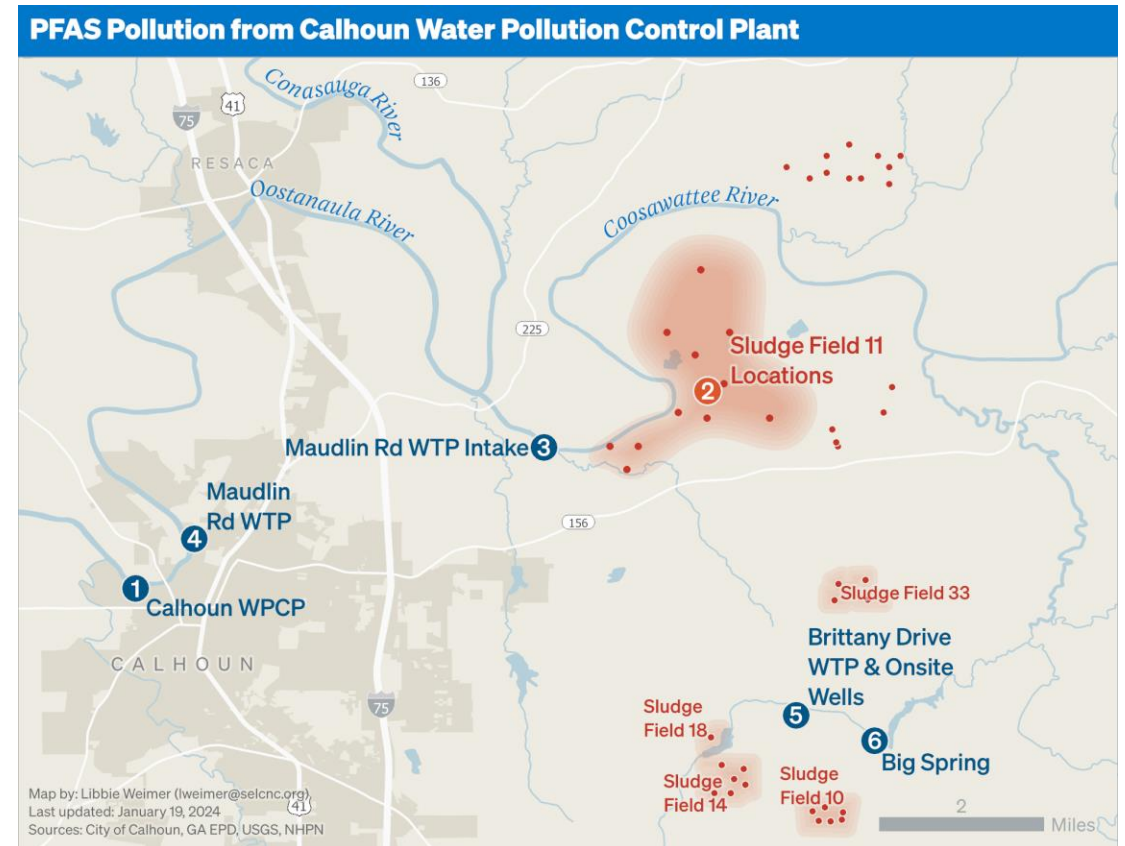
- **Litigation/Citizen suits:**

- *Coosa River Basin Initiative v. City of Calhoun*
  - Nonprofit sues City of Calhoun, GA – settlement reached in August requires extensive actions by City
- *Tennessee Riverkeeper v. City of Lebanon*
  - Nonprofit sues city in Tennessee under CWA for discharges to creek from inactive landfill (Dec. 2023)
- *Farmer v. Synagro*
  - Texas farmers with high PFAS in water, livestock, bring tort claims against biosolids company

- **Notices of Intent:**

- Local groups against Missouri Dept. Natural Resources and biosolids companies
- Nonprofit against North Carolina biomass energy plant with on-site wastewater treatment

- Municipalities file wastewater claims in MDL



Source: Southern Environmental Law Center

# Potential Claims and Chances to be Proactive

- **Clean Water Act**

- Determine whether your NPDES permit regulates PFAS implicitly and ensure that you are otherwise complying with your permit.
- Understand potential for PFAS runoff from land application of biosolids/residuals, effluent discharge; consider landfilling

- **Resources Conservation and Recovery Act (RCRA)**

- Determine whether your biosolids/residuals management potentially qualifies as a “beneficial reuse”

- **Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA)**

- Incorporate National Contingency Plan elements when spending money to respond to PFAS
- Consider equitable allocation factors

- **Torts**

- Determine potential governmental immunity



# Tools to Manage Potential Liability

- **Pretreatment**

- Pretreatment programs may be used to assess PFAS risk through identification and classification or mitigate/manage liability by identifying upstream Significant Industrial Users (SIUs) or Industrial Users (IUs), and updating IU permits or other control mechanisms

- **Reviewing/updating contracts**

- If a POTW contracts with companies or third parties disposing or applying biosolids/residuals, or upstream industrial users, and those contracts contain an indemnity clause or similar provision, the POTW may be able to tender any claims filed against it to the contractual party

- **Evaluating insurance coverage**

- If a POTW possesses historic pollution liability insurance, it may cover claims or help pay for damages related to the release and/or clean-up of toxic materials, including PFAS

# Questions?

## **Jeff Kray**

Managing Partner, Marten Law

[jkray@martenlaw.com](mailto:jkray@martenlaw.com)

253.686.2594

