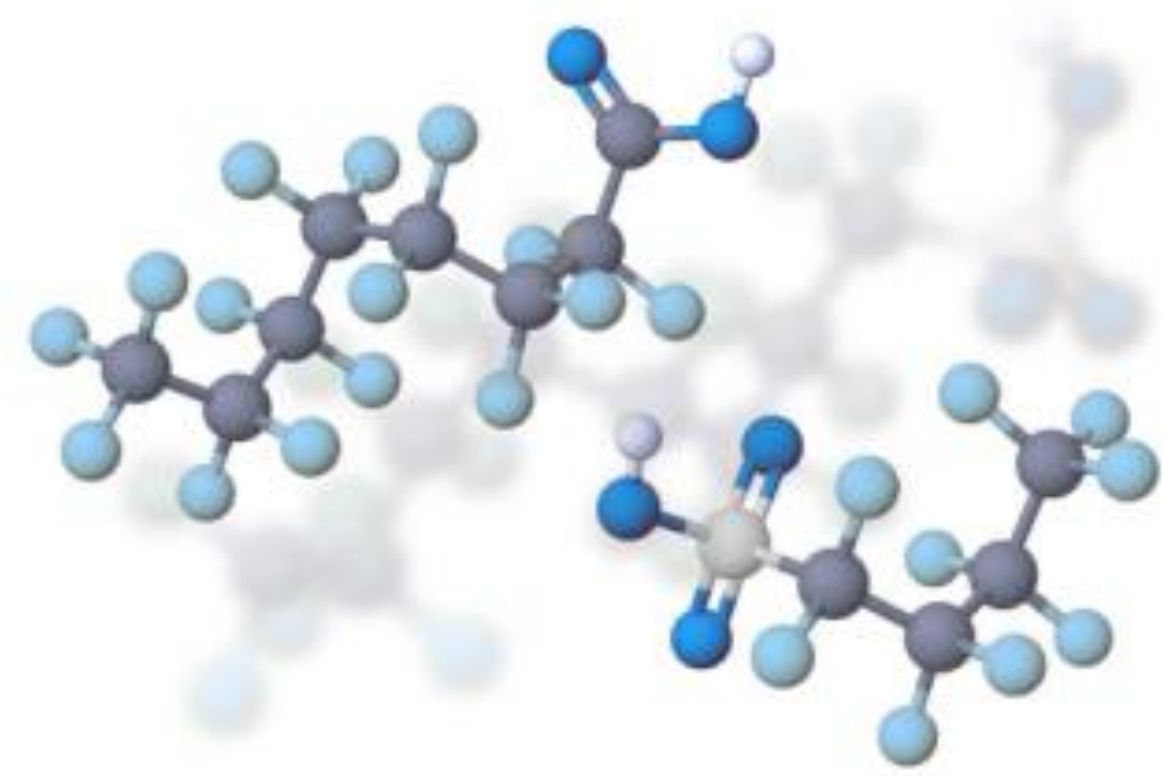
General Contractors: Questions and Considerations Related to PFAS



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DOCUMENT PURPOSE & DISCLAIMER – THIS DOCUMENT IS NOT LEGAL ADVICE

AGC of America intends this document to help construction companies understand the risks associated with encountering per- and polyfluoroalkyl substances (PFAS) on jobsites. The document raises considerations and questions that contractors may ask during preconstruction and project execution to make informed decisions in this rapidly evolving policy area. The federal government's policy and rules regarding PFAS are under litigation, the subject of future rulemaking, and the subject of an executive branch statutory redrafting project with the U.S. Congress. State actors are deploying varying and developing policies as well.

Consequently, this document is provided for informational purposes only and for issue-spotting; it is not designed to provide legal advice. It should not be read to establish an industry standard, prescribe specific practices, or provide an exhaustive treatment of the subjects that it covers. PFAS regulation is rapidly evolving; this document reflects information available at the time of publication. Contractors should consult with their respective legal counsel, insurers, and technical experts regarding site-specific risks and obligations.

The Associated General Contractors of America, Inc. assumes no liability for reliance on the contents of this document. The examples included in this document are provided solely and exclusively for instructional purposes.

SPECIAL NOTE

AGC will update this document periodically, please check AGC.org for the most recent edition. Furthermore, AGC appreciates the members of the AGC PFAS Task Force and AGC Environmental Committee for their leadership on this effort.

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INTRODUCTION

Per- and polyfluoroalkyl substances (PFAS) are long-lasting chemicals found in everyday products, such as cosmetics, apparel, fire retardants, automotive parts, carpeting, coatings and sealants as well as many more. There are between 5,000 and 12,000 PFAS (estimates vary widely). The breadth of estimated types of PFAS signals the limited understanding and policy development that currently exists on this issue. Due to their widespread use across all areas of the economy, PFAS may be present on construction sites, including those for utilities, airports, highways, and military base projects—not just environmental cleanup jobs. Depending on the siting and past use, other types of projects may be impacted as well.

Regulators have identified certain PFAS as presenting potential health concerns, prompting restrictions on their use. However, these PFAS can be found in green spaces and industrial sites across the country due to their historical use.

In April 2024, the Biden Administration's U.S. Environmental Protection Agency (EPA) issued a final rule to regulate two types of PFAS, Perfluorooctanoic Acid (PFOA) and Perfluorooctane-sulfonic Acid (PFOS), as hazardous substances under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA, also known as Superfund). We refer generally to "PFAS" throughout the document, but it is important to note that the CERCLA designation is limited in scope at the current time. On September 17, 2025, the Trump Administration's EPA filed a brief in federal court that defends the Biden era rule.

Superfund liability is triggered regardless of intent or fault; it is considered retroactive, joint and several, and strict liability. If your company is a potentially responsible party, they could be required to help with the cleanup of a Superfund site. Please see more information on EPA's website about Superfund enforcement and liability. Because PFAS regulation is new and testing protocols were not historically required, contractors may face retroactive CERCLA liability for past projects. There also is currently no compliance path that would alleviate some of the risk, though in a September 17, 2025 press release, the EPA announced that it would urge Congress to revise CERCLA's strict liability framework "to protect passive receivers," potentially including contractors, "from liability."

The federal government and states are addressing PFAS (collectively as a group and/or targeting specific PFAS such as PFOA and PFOS). This means that the regulatory framework

is evolving rapidly and may vary depending on where your project is located. Currently, the construction industry does not have clear federal background levels protective of human health and the environment; no standards for testing, handling, or cleanup; and limited to no risk-sharing in contracts. (Note: EPA released a drinking water standard for PFAS in 2024.)

AGC does not want contractors to proceed blindly—taking on legal and financial risks they cannot control or predict. This document offers a series of considerations related to the potential for PFAS contamination on a project in order to spread awareness and promote effective risk management.

PURSUIT & PRE-CONSTRUCTION/DESIGN

CONSIDERATION #1 – SITE LOCATION AND HISTORICAL USES

Some projects will carry a higher level of potential that PFOA or PFOS was used on or near the site. The first consideration is to determine whether the project is located in a high-risk area based on historical uses. High-risk areas include those where prior use of these products were used in training drills and in fire suppression, systems testing, or areas with known or likely spills. Primary concern stems from the use of PFAS-containing firefighting foams such as aqueous film-forming foam (AFFF); however, AFFF is one of numerous sources. Prior uses of PFOA and PFOS include coatings, surfactants, processing aids, waterproofing membranes, wire casing, etc.

Below are examples of sites that would likely warrant more research to assess potential contamination, but the list is not exhaustive. Your company's assessment of a project should be nuanced and site-specific. For example, renovating the baggage handling areas at an airport could be a low-level risk activity at a high-risk site.

Areas where firefighting foam may have been used/applied:

- Airports,
- Firefighting training facilities,
- Military facilities,
- Previous fire (large scale)/Wildfire sites, and
- Refineries and bulk petroleum storage terminals.

Areas that may have received PFAS containing wastes:

- Landfills,
- Locations that treat or remove PFAS chemicals,
- Some prior converted croplands or projects adjacent to existing cropland (where biosolids were applied), and
- Wastewater treatment.

Industrial and/or other areas that may have used PFOA or PFOS (or another PFAS of concern) in processing or fire control:

- Dry cleaning facilities,
- Highway and road right-of-ways,
- Incinerators,
- Manufacturing facilities,
- Mining facilities,
- Railyards, and
- Site that is proximate to a high-risk site above.

CONSIDERATION #2 – PHYSICAL RISKS

Based on discussions with AGC members, general contractors can encounter PFAS on jobsites during site work, dewatering, and the handling of certain materials. There will also be implications for the reuse and disposal of materials that may have trace amounts of contamination. Many contractors reuse materials (such as soil, crushed concrete, and recycled asphalt) onsite or on other projects. As a reminder, there are currently no established background levels protective of human health and the environment. However, PFAS regulation is an evolving area, with ongoing activity at both the federal and state government levels.

- Scope of Work:
  - Is there excavation?
  - Are there milling or crushing operations?
  - Is there potential for export?
  - Is there potential for dewatering of groundwater?
- Disposal:
  - What are the treatment/disposal options for PFAS-containing soil and/or effluent?
    - Haul off for disposal (transport and disposal fees)

        - Filter and treat on site (disposal of used filtration media)
    - What is the potential (and risk) of selling materials off a site to the public, e.g., asphalt millings or crushed concrete?
    - Will offsite waste or borrow areas be established?
- Recycling/Reuse:
    - What expectation is there for recycling/reusing waste and other materials from the jobsite?
    - Where will those materials go to be recycled or reused (e.g., transported to a company-owned site for processing or to another location)?

CONSIDERATION #3 – CONTRACTUAL RISK

For projects in high-risk areas, the general contractor will want to carefully review the contract to ensure that management of any PFAS risk is adequately addressed, including responsibility for testing, handling, and remediation. Below are some considerations.

- Is there a Soil Management Plan?
    - Does it cover export/disposal (onsite/offsite disposal)?
    - Reference documents (see below)
- Groundwater/dewatering plan, if applicable?
- Testing: Has the owner tested? Is there existing testing data? If not, will the owner test?
    - Does the contract state that the contractor is responsible for testing of any potentially contaminated media (soil, water, demolition materials, etc.)?
- Who is responsible for hazardous materials/waste?
    - Does the contract specify whether the owner or contractor is responsible for management of hazardous materials/wastes? Does it differentiate between documented/undocumented wastes?
- Is there compensation for differing site conditions?
- Indemnity clauses
- Check for federal and state laws (contract clauses require contractors to comply with all applicable laws)

Reference Documents: The owner does not always provide key documentation as part of the request for proposals (RFP). In these cases, the contractor may research documentation related to the project in order to responsibly respond to the RFP. The depth of this research will often depend on whether the project represents a low-level risk versus a high risk. The contractor will review these documents for other hazards in addition to PFAS.

Here are some reference documents for this type of research:

- Plans and specifications (Especially for references to pre-existing hazardous materials and/or waste.),
- Soil and groundwater testing data,
- Geotechnical documents,
- Soil management plan,
- Phase I & Phase II Environmental Site Assessment documents,
- National Environmental Policy Act (NEPA) documents,
- Existing surrounding land use, and
- Desktop review (Historical look at adjacent land use through publicly available information, e.g., federal or state information on contaminated sites.).

Internal Questions:

- Are there any data gaps?
- Is the contract language clear on responsibility?
- Regulatory framework for the location:
    - List of state resources
    - Does the state have clean-up standards or stormwater standards for PFAS?
    - Does the state have disposal standards?
    - Is there a safe background concentration?
    - Are there regional screening levels (RSLs)?
- Are we willing to accept the risk?

Insurance Coverage: PFAS-related risks may not be insurable. Most commercial general liability (CGL) policies exclude coverage for pollution, and some insurers have introduced explicit PFAS exclusions. Even contractor's pollution liability (CPL) policies may exclude PFAS. Contractors should review their coverage with brokers to understand potential uninsured exposures.

CONSIDERATION #4 – SOLICITATION/PRE-BID

Bidder inquiries can help to fill data gaps. This can be similar to the approach used with other site-specific hazards, except that PFAS does not have a regulatory framework/program to follow.

Internal Questions:

- Is there testing data?
- Is there a Soil Management Plan? Groundwater plan?
- Is there an on-site disposal/management option (e.g., dredge spoils)?
- How does the owner intend to dispose/manage unanticipated PFAS?
    - Example: PFOA and PFOS are listed as hazardous substances under CERCLA. This exposes the owner and contractor to CERCLA and civil liabilities.
- Does the owner agree to sign waste manifest forms for PFAS-contaminated soil or water?

CONSIDERATION #5 – ESTIMATING AND BID REVIEW

Testing for and treating PFAS can be costly and time-consuming. Below are a few considerations during the estimating process (ensure reflected in time/scheduling for the proposal) and bid review.

- Volume of dirt work and demolition
- Volume of groundwater dewatering
    - Soil type
    - Depth of excavation below the water table
    - Soil profile below the water table
    - Adjacent sites (pulling water)
- Vetting disposal sites
- If hazardous, the cost for disposal at specialized landfills and transportation costs for hazardous substances (or non-hazardous landfill as appropriate)
- Testing costs (and consulting costs)
- Does the owner have testing requirements for imported soil? Does the contractor want to test themselves?
- Effluent containment (e.g., baker tank rental) and disposal

- Dewatering treatment (scaling and batching) – recharging granular activated carbon (GAC), disposal of cleanup/filtering media. Note that tanks, pumps, and hoses may be contaminated and require decontamination or disposal at accepted landfills.
- Onsite disposal/reuse options for effluent (dust control?) or soil
    - Review to ensure that the disposal site is protected and not likely to result in a discharge to stream or offsite
    - A permit or other authorization may be needed to reuse the soil or groundwater onsite
- Is there an increased need for new materials, because the contractor cannot reuse or recycle onsite resources due to potential PFAS contamination?

Tips for Bid Review:

- Determine appropriate management level to review and approve bid due to unique PFAS risk at the site
- Vet pricing based on above
- Assess and allocate risk
- Determine contingencies: Have we adequately addressed risk to the job?

PROJECT EXECUTION

The considerations raised during bid review process will need to be addressed during the construction phase. For example, if research reveals that contaminated soil is present on a project, that risk will need to be addressed on the site.

CONSIDERATION #1 – CONTRACTOR TESTING

- High Risk Projects
    - Request the owner to test for PFAS, if not already provided
        - Testing performed in project area
        - Adequate testing frequency
        - Testing methodology
    - Conduct additional testing, if required
        - Time required (four to six weeks is the norm)
        - In situ before vs stockpile testing while performing the work
        - Availability of space to store soil/water while awaiting testing

    - If sampling in-house, ensure training and following of protocols to protect against cross-contamination (e.g., avoiding the use of cosmetics, lotions, hygiene products, etc., see example below).
- Disposal site testing requirements (risk as co-generator when owner does not want to test even on high-risk sites like airports)
    - Waste characterization form typically asks what type of land it came from (reasonable assumption that landfills may have greater scrutiny in the future)
    - What exposure does having PFAS on the manifest bring to the contractor (e.g., being named in future cleanups).
- See the U.S. Environmental Protection Agency's (EPA) interim guidance on disposal (2024) and testing methodologies.

WHAT TO AVOID WHEN SAMPLING: Avoid wearing clothing washed with fabric softener, flame resistant or waterproof garments, or Tyvek suits. Avoid "day of" or 24-hours prior use of moisturizers, fluoride containing toothpaste, nail polish, dental floss, shaving cream, shampoo and conditioner, sunscreen, insect repellent, or sanitizers. Do not bring into the area you are sampling: food packaging, aluminum foil, adhesives (such as stickie notes or tape), plumber tape or paste, permanent markers, plastic clipboards, or glass bottles. Strict guidance on what to avoid will vary, this example is from the New Jersey Department of Environmental Protection (link opens a PDF).

Examples of water and soil sampling for PFAS:

CONSIDERATION #2 – DISPOSAL

- Onsite disposal facility
  - Follow Soil Management Plan
  - Follow any agreements / permits for onsite disposal
  - Vet the owner-identified disposal areas
  - Encapsulation – may involve cost/risk
- Onsite storage site (e.g., temporary stockpiling)
  - Determine if there are risks near storage area
    - Near wetland or waterways
    - Residential / school development
    - Determine appropriate permits and controls (example: BMPs)
  - Assess future land use (e.g., residential or school)
  - Define storage/cover plan that aligns with work phasing
  - Provide runoff and run-on controls, if necessary, around stockpiles
  - Future material use (long-term plan)
    - Reused on site
    - Exported for re-use
- Offsite disposal
  - Identify Disposal Facility
    - Disposal Options (soil and/or groundwater)
      - Landfill - May be least costly option, however, landfills may not accept waste with even trace amounts of PFAS
      - Specialized or hazardous waste landfill – More costly due to limited availability and may require longer transportation distances
      - Incineration – This can be very costly because it requires very high temperatures. Mobile incinerators may be more feasible cost-wise for larger projects (but requires a lot of energy) – resultant waste should be inert (dead dirt)
      - Other options (varying costs and feasibility)
        - Solidification / Encasement
        - Deep Well Injection
        - Discharges to Wastewater Treatment Plants
    - Verify that the disposal is permitted
    - Identify any acceptance criteria

- Determine transport options
    - Factor any internal standard operating procedures (SOP), for example, your firm may require using a hazardous waste transporter if the material is going to a hazardous waste facility
    - Consider regulatory requirements to use a licensed waste hauler
    - Identify and mitigate risks to self-haul and/or use of non-hazardous waste transporter
    - Consider management needs of any groundwater form excavating soil prior to transporting

CONSIDERATION #3 – REUSE

Onsite Reuse Considerations: Companies would benefit from consulting with counsel before deciding whether onsite reuse of material is appropriate. Using material with PFAS present could, depending on regulatory interpretation, create potential liability under environmental laws.

Offsite Reuse Considerations: In the absence of federal or state/local requirements on reuse (e.g., testing for PFAS in clean fill), your company may want to consider taking steps to protect itself against potential future litigation.

Contractors may want to consider:

- Past use (e.g., industrial, high risk, biosolids land application site)
- Future land use (e.g., residential, schools, agriculture)
- Test the material to be exported
- Provide test results to the receiving site owner

CONSIDERATION #4 – RELEASES

Note that any release of 1 pound or more of a hazardous substance triggers reporting requirements under CERCLA, see EPA's website for the designation of PFOA and PFOS. This would apply to the specific PFAS chemistries designated as hazardous under CERCLA, not "all" PFAS.

REGULATORY AND OTHER CONSIDERATIONS

As described at the beginning of this document, federal and state governments are addressing PFAS, and a patchwork of requirements currently exists. Some policies are under litigation, other policies are being developed or modified from existing policies, and the federal government is seeking legislative revision of CERCLA to provide safe harbor for passive recipients of PFAS. Several law firms track PFAS-related regulations at the state level. If you work in multiple states or want to see broadly what states are doing in this area, search "PFAS state tracker" in a free legal news aggregator of your choice, such as JD Supra or National Law Review or set up a Google alert for yourself.

At the federal level, EPA has a portion of its website dedicated to PFAS at www.epa.gov/pfas. EPA is taking a comprehensive approach to PFAS, in addition to its CERCLA rulemaking mentioned in the introduction. The agency is considering PFAS in all of its program offices, including drinking water, stormwater, hazardous waste, and toxic substances. For example, there is a reporting requirement for manufacturers and importers that may impact a limited number of contractors (e.g., those importing equipment or parts with PFAS-containing coatings).

For its part, AGC has been educating and advocating for the construction industry related to PFAS for close to a decade. AGC has challenged EPA's CERCLA rulemaking to ensure the agency accounts for the practical impacts and costs on the construction industry. The agency did not account for the cost and risk to contractors to manage and dispose of PFAS-containing wastes, nor did it acknowledge the retroactive risk across a company's project portfolio in some cases spanning decades.

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