Episode Title: New PFAS Deadlines Are Closing Fast in Minnesota and New Mexico -- A Conversation with Carla N. Hutton

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Lynn L. Bergeson (LLB): Hello, and welcome to *All Things Chemical*, a podcast produced by Bergeson & Campbell (B&C®), a Washington, D.C., law firm focusing on chemical law, business, and litigation matters. I am Lynn Bergeson.

This week, I had the distinct pleasure of speaking *again* with my colleague, Carla Hutton, Senior Regulatory Analyst here at B&C, to discuss recent developments in state PFAS (per- and polyfluoroalkyl substance) regulation. Carla and I visited just a few months ago, but there have been so many recent developments, we thought we needed to visit again to ensure our listeners are well informed. We discussed what is new with PFAS reporting and labeling under the New Mexico PFAS Protection Act. New guidance is welcome, as there has been a decided lack of clarity regarding the scope of the labeling requirement. We discuss the litigation underway in New Mexico challenging the regulations. We also discussed some fast-approaching deadlines pertinent to PFAS reporting in Minnesota that you will want to understand. Now here is my conversation with Carla Hutton.

Welcome back, Carla. You are brought here back by popular demand, given how successful our last podcast was and the extraordinary amount of interest in state PFAS requirements, so thank you for being here.

Carla N. Hutton (CNH): I am always pleased to sit down and discuss PFAS with you.

LLB: Carla, we're just grateful that you know as much as you do about state PFAS regulations, and I'm thrilled that you're here. We sat down in May to discuss state PFAS requirements, but there has been so much going on and so many new developments. Here we are in August, and we thought we should sit down again. So what's new?

CNH: Nothing much. Uh, just kidding.

LLB: Right.

CNH: For anyone who reads our blog items or follows us on Twitter, we reported on July 30 that the New Mexico Environment Department (NMED) stated that New Mexico's labeling and reporting requirements do not apply to industrial products. Under New Mexico's PFAS Protection Act, a *consumer product* is defined as, quote, "a tangible personal property that is distributed in commerce and normally used for personal, family or household use, including product categories that are normally used in households but designed for or sold to businesses, such as commercial carpet or floor waxes," end quote. So although there may be some products that are designed and sold only to businesses, this clarification from New Mexico has significantly narrowed the scope of industrial products subject to New Mexico's law.

LLB: That's good news, I think, for many of our clients. But how did we get here? Does the New Mexico PFAS Protection Act, or some recent rule, actually define *consumer*?

CNH: While New Mexico's 2025 Act does not define *consumer*, the final rule implementing the Act, which was issued in May 2026, does. That final rule defines a consumer as, quote, "one who seeks or acquires by purchase or lease, any consumer product as that term is defined," end quote, in the PFAS Protection Act. The *consumer product* definition in the act refers to product categories normally used in households but designed for or sold to businesses.

LLB: Okay. I'm guessing -- well, let me back up. One of the big challenges our clients are having -- and we as counselors *to* those clients are having -- is just the lack of consistency in definitional organization. Key terms are defined disparately in state regulatory frameworks, as is a state's right, of course. There's no requirement to be consistent, but it adds an additional layer of complexity and intrigue, when it comes to understanding and trying to comply with a new reporting and/or labeling law. I'm guessing this could well be an issue in other states. Are you about to tell me that industry does not have to comply with reporting in Minnesota? I suspect not.

CNH: You would be correct, and so everyone listening can sit back. Minnesota has been very clear, going back to a webinar in July 2024, that a consumer is a person who acquires a product from a manufacturer for personal, residential, commercial, or industrial purposes. So there's no exemption for professional uses, and the agency in that webinar that came out in a Q&A [question and answer document]. I know we were counseling clients that far back that, "Nope, you may sell just to businesses. As far as Minnesota is concerned, you are a consumer -- you're selling consumer products" --

LLB: -- You're in scope.

CNH: -- and are subject to the reporting." But we've talked a lot about how words may matter, and so this is just one of those cases where a few additional words could have made things more clear in New Mexico.

Maine does not define *consumer*, but defines *consumer products* as "goods which are marketed for and intended to be used primarily for personal, family or household purposes," and it defines a *product* as items "manufactured, assembled, packaged, or otherwise prepared for sale to consumers, including its product components, sold or distributed for personal, residential, commercial, or industrial use, including for use in making other products." Maine's January 1, 2032, PFAS prohibition applies to products, not *consumer* products.

LLB: That recitation of definitions underscores the importance of really understanding what terms are defined, how they are defined, and being mindful of these critical differences. I asked for what's new, and that is definitely a new development. Is there anything else that's happened since our last recording?

CNH: I referenced New Mexico's final PFAS rule earlier; that came out in May. That final rule covers reporting, prohibition, and labeling requirements. Just last month in July, NMED released labeling and reporting guidance and frequently asked questions, or FAQs, that address reporting, labeling, currently unavoidable uses, also known as CUUs, and enforcement. Would that have been a great place to clarify the issue of consumer products and industrial professional products? Yes, but NMED may update its facts on its website to reflect questions answered since that release. I am sure that the agency is still getting a lot of questions. New Mexico's final rule has been challenged at the state and federal level. We've blogged about a paint manufacturer that has challenged the labeling and fee provisions in the state appellate court.

Meanwhile, a coalition of industry associations has filed suit in the U.S. District Court for the District of New Mexico, and the coalition is arguing that the final rule is unconstitutional and that its enforcement should be permanently enjoined. The federal plaintiffs have requested injunctive relief, and New Mexico's response to the motion is actually due today, the day of our recording, so stay tuned for a blog item on that, once it's filed.

LLB: Carla, you've mentioned a lot of different resources: The Minnesota July 24 webinar, these various FAQs that are coming out, and other regulatory utterances in Minnesota, Maine, and New Mexico. We make a point of blogging or preparing memoranda that we put on our various blogs and/or B&C websites, so I would urge listeners who are maybe pulling their hair out right now, trying to keep all of these different regulatory definitions -- who did what, when, and how does this impact forthcoming reporting obligations and labeling obligations -- to look at our website as a resource. It is all there and explained in pretty granular detail.

As Carla just said, it's early August. The New Mexico folks need to respond to the federal district court action that was filed a number of weeks ago, or maybe -- I forget when it was filed, Carla -- but it's a very clear recitation of some of the constitutional and procedural issues that many of us had with the New Mexico implementation of the PFAS rule, particularly as it relates to labeling. That will be a critically important document to *read*, and I'm sure once we get a copy of the pleading, we'll put it up in a blog or a memo on our website. With regard to the July 2024 webinar, is that available on the state of Minnesota's web page, or our page, or both?

CNH: Minnesota has kept it up, and we blogged about it in real time. It was key because the agency was answering questions in the chat and released those as a FAQs document afterward that's still available on its website and is one of the better sources for how the agency is thinking about these things and clarifying things like -- medical devices might be exempt from TSCA, but they are not exempt from Minnesota's PFAS reporting. Everybody must report everything.

LLB: We've talked about that before. That eludes logic to me, but who am I? Thank you for clarifying that. We've talk about this new, important clarification in New Mexico, and thank you for sharing that with our listeners, Carla. Let's transition to some of the really fast approaching state deadlines. What *are* the most important state deadlines we should remind our listeners about, and why are they so critically important?

CNH: For anyone listening, as soon as this podcast episode is released, it's not too late to submit a request to Minnesota for an extension or a waiver of the reporting requirement. Those requests must be postmarked by August 16, and I admit I only recently realized that's a Sunday, so really, I mean, best of my knowledge, the post office is not open on Sunday. So those requests have to be postmarked Saturday, August 15. Minnesota is not accepting online requests, and payment must be in the form of a check that needs to be included with the completed form. I mentioned it's possible to request a waiver, but again, I don't know of similar information on PFAS and products that's publicly available, so if anyone *is* aware and has the ability to submit a waiver request, that is an option, but otherwise, I think the focus is on the extension request.

LLB: Right. What if companies *don't* request an extension? Has Minnesota postponed the reporting period again, or is it still like September 15, which is seemingly tomorrow? But that's fast-approaching. If a company is listening and trying to decide *whether* to request an expansion, do you have a recommendation? I know that some manufacturers have had issues obtaining information from suppliers, which is of course a chronic concern, and I appreciate that that might be a valid reason for seeking an extension, but what do you get if you submit and obtain an extension?

CNH: Reports are still due September 15, and I've pulled up Minnesota's reporting database, and it's right now at 16,392 items. Again, those are the line items reported, not -- an item here does not correspond to a consumer product. Reports are still due September 15. For companies waiting for suppliers to respond and wondering whether it makes sense to request an extension, I think I would go ahead and report what you have. An extension, if approved, will buy you only 90 days, meaning that reports would be due December 14, 2026, instead of September 15. Extension or not, annual updates are due in Minnesota on February 1, starting next year, so February 1, 2027, and that is whether you report September 15 or December 14.

LLB: Thank you. That's very helpful. It seems that you might have to go through a lot of process to get a relatively short extension period, so I think listeners can decide for themselves what's going to work best for them. Reports are filed in Minnesota, and I will need to update those reports if necessary by February 1, 2027, which also is not all that far away. I know that New Mexico will be prohibiting intentionally added PFAS in cookware, food packaging, dental floss, juvenile products, and firefighting foam as of January 1, 2027. Are there deadlines related to that? And this is multiple questions that I've strung together, Carla, so I hope you can respond to each of them separately. Is it possible to apply for a currently unavoidable use? We referred them as CUUs for those product categories. I know that Minnesota did not accept CUU proposals for these initial prohibitions, but that Maine did. What's going on in New Mexico?

CNH: New Mexico is following Maine's path and *will* accept CUU proposals for these early prohibitions. Because New Mexico's final rule -- I've mentioned it a couple of times now, the one that came out in May. It covers CUU proposals, and because it *only* came out in May, CUU proposals for products that will otherwise be prohibited on January 1, 2027, are due October 31, 2026. NMED will consider the proposals approved, pending its review, and intends to issue final determinations by March 1, 2027. Some products are also exempt from the broad prohibition requirements, such as fluoropolymers. So no CUU is necessary for a pan with a Teflon coating.

LLB: There are a lot of dates here, Carla. I kind of sympathize with our listeners who might be driving or not able to jot these things down. Again, I just urge anyone listening to be

mindful that all of these dates and all of these critical deadlines are set forth in pretty elaborate detail on our Product Stewardship Blog™ and PFAS News and Information center on our website. You've also mentioned January 1, 2027. For many of us, that's a holiday, and it's not all that far off. Maybe there's a labeling requirement in our future? Maybe can you explain a little bit about what's going on and the relevance of that date?

CNH: Well, yes. This would be where industry's head, I think, pretty much exploded, and that would be the labeling requirement. Through the rulemaking process, it now applies to products manufactured after January 1, 2027, so consumers will not suddenly see Erlenmeyer flasks with "PFAS" on their shelves, but companies are currently required to label products containing intentionally added PFAS with that Erlenmeyer flask with "PFAS" in it. As we started off, the agency has clarified it does not apply to industrial products, so I know a number of our clients have breathed a sigh of relief to get *that* clarification. Others are figuring out, Does it go on the product? Does it go on the packaging? Does it go on both? Where does it go? How big is it? And that's a lot. It's August. Guidance and facts came out just a couple of weeks ago. Our clients are busy, and so are we.

LLB: As we noted at the beginning of this podcast, Carla, NMED recently clarified that the labeling requirement does not apply to *industrial* products. Can consumer product manufacturers request a waiver of the labeling requirement or obtain an extension?

CNH: The good news is that they can, at least for certain products. Products that are exempt from the reporting and prohibition requirements that meet certain criteria are eligible for a waiver, and waiver requests are due to New Mexico on October 31, 2026. NMED will consider the request approved, pending review, and will issue final determinations whether approving or denying the request by June 1, 2027. If the request is denied, manufacturers must label the product within 90 days of the denial, so three months, not much time. Products manufactured up to the date of denial may be sold without a label, however. Approved label requests will expire three years after approval.

LLB: That's great. That's very clear, Carla. Thank you. It seems like we might be forgetting something. New Mexico will require reporting. When are *those* reports due? And does New Mexico's clarification about industrial products change things?

CNH: Reports are due in New Mexico by January 1, 2027. I so appreciate that this is just a podcast. I think the flowchart of all the deadlines would be incredibly complicated. According to the clarification from New Mexico that we've discussed, industrial products are not subject to the reporting requirements.

LLB: Carla, will consumer product manufacturers that reported in Minnesota have to report again? I know that we discussed before that New Mexico's PFAS statute allows the agency to accept information submitted to a shared system as meeting the reporting requirements. Now, that seems like it would really be simple if New Mexico could download the Minnesota reports and upload them to *its* database. That may well be aspirational and maybe sounds too good to be true, though. Can you clarify that?

CNH: This is something where New Mexico's guidance, I thought -- I initially thought it would be that simple, but based on the guidance that came out last month, it does not seem that the agency will be importing data from Minnesota. This may be because New Mexico has a slightly different definition of *intentionally added*, meaning that byproducts and impurities must be reported in New Mexico, and those do not have be reported to Minnesota, or

because New Mexico has different reporting ranges from Minnesota. The good news is that the reporting system is the same one hosted by the Interstate Chemicals Clearinghouse, and manufacturers that reported in Minnesota I think should be well positioned to report in New Mexico. I assume companies are completing their templates offline. They'll have those saved and can just save a new version and update it to reflect any changes necessary for New Mexico and then upload that.

LLB: That seems sensible. Remember that Minnesota opened its online reporting around January 30 of 2026 -- of this year -- going on eight months ago. I know that you have been tracking the reports made to date. You often comment to clients what you're seeing. Is there anything that we can learn from those reports that are now publicly available? Are there trade secret issues or PFAS in surprising places? What are your general observations that you can share with our listeners?

CNH: One, it seems to be updating a little *less* frequently. I feel that the number of line items reported had been at about 14,500 for a few weeks. This morning, though, it's now about 16,400. Just a reminder: Line items do not equal items reported. Depending on the product, there may be multiple lines because the PFAS, its function, and its range must be reported for each product component. Some PFAS or amounts of PFAS have been claimed as trade secret, but there is no sort of red secret across that square. Instead, those are PFAS that are reported by category and listed by category. There are also entries where the PFAS concentration is reported as unknown. That may be because it's genuinely unknown by the manufacturer *and* the supplier, but it may also be because the supplier won't share it or the supplier genuinely doesn't know. I know the agency in a FAQ has suggested that one way to address CBI [confidential business information] or trade secret issues is, "Have the supplier report that information on your behalf." But I think what we've seen is suppliers are not eager to embrace reporting and have just said, "No, it's a trade secret. You have what you have."

LLB: Which is not an unusual response, right? Either the supplier does not know, its trade secret knows and not going to share, or simply has no more information to add. So we're not suggesting that any of those responses is inappropriate. Frankly, given supply chain complexity and a lack of familiarity sometimes with the nature of the materials suppliers are distributing, you should be prepared to have a deficit of information in all the categories that the state agencies are requesting.

Carla, this podcast is going to be posted well before the September 15 deadline for reporting in Minnesota. I know that you have been working with many clients on what information has to be reported and how best to do it, given your familiarity with the reporting frameworks. Do you have any general advice at this late stage with regard to both the quality of the information, the categories of information, and the timing of reporting? I suspect in response to the question, it's probably not okay to wait until September 14 to register and upload the report. I'd like your views on that. Any other tips that you have picked up along the way?

CNH: Minnesota recommends that each company have at least two registered users, and I think that's a good idea. Companies should provide several days to allow the registration to be completed. So no, I would not wait until September 14 to register. Minnesota announced that it has revised the template so that up to 10,000 rows of data can be uploaded at one time. I recommend that companies register this month in August and consider reporting by late August. The agency has repeatedly asked users to reach out with questions, but I can only imagine Minnesota's going to be a lot busier the closer it gets to September 15. So

allow some time to -- if there are technical difficulties with the registration, if there technical difficulties uploading the report -- to then have time to reach out to Minnesota. There are how-to videos that it's posting, I think, on YouTube. FAQs, it's scheduling online desktop sharing during office hours, if that's necessary. I think Minnesota is doing about as much as it can, short of doing the report for you, to try to get companies to get their reports online and available.

LLB: Carla, what has your experience been in seeking guidance from all of the different state agencies engaged here? My sense is that on the whole, states have been responsive, eager to assist, and recognize the burden that these new programs are imposing on the regulated community, but also genuinely interested in helping people do things correctly. Has that largely been your experience?

CNH: I think it has, and this is new for everybody. I think Minnesota wants the program to be successful. I think they want to make sure consumers can access this information. They're not coming out of the gate in an adversarial position to industry or to questions.

Will enforcement be an issue down the line? If industry *refuses* to report, but at the moment, the emphasis is on education. So if industry has questions, now is the time to ask, either directly or through an industry association, or through us, or some similar trusted advisor or consultant. The agencies are responding.

LLB: Yes, given all the questions you are asked by different sources, I have been impressed with what seems to be an eagerness to respond and a thoroughness in responding to the question asked, which is no small feat, given the fact that these state agencies have a lot more on their plates. As to your point, these are new programs, and with new programs you're always expected to entertain novel questions and perhaps deal with issues you haven't already thought about. Hence, the need to stay on top of this stuff and to be aware of what new communications, FAQs, guidance documents, interpretive releases, litigation outcomes. Very fluid area, and I'm so thankful to you, Carla, that you stay on of this like nobody's business.

Maybe we can spend just a minute talking about the federal TSCA Section 8(a)(7) reporting obligation. That's been a very fluid reporting situation now since at least 2023. What is the state of play as we speak now in August 2026, Carla?

CNH: Under the 2023 rule, importers of articles containing intentionally added PFAS must report that information to EPA. But that's only imported articles, not products manufactured within the United States. EPA has proposed exempting importers as well as a *de minimis* exemption of 0.1 percent. EPA also proposed exempting impurities, byproducts, R&D [research and development] chemicals. Given the detailed reporting required in Minnesota, I don't know if there will be any interest in what's ultimately reported to EPA. From my perspective, it seems it might be interesting or curious to get a historical perspective, but that information is already several years out of date. So if you're a consumer wanting to choose PFAS-free products or wanting to confirm or find out what the exposure is like in your current products, you won't get that information from EPA.

LLB: It is a statutory recording obligation, and the information will be gathered. There have always been questions about its utility. To your point, some of the state information that will be much more timely and current might be more useful for purposes of informing consumer decisions and also focusing on regulatory activities at the federal and state levels. I think the

Unified Regulatory Agenda expected a final rule out by EPA this summer or early fall, so we'll, of course, be reporting on that. Stay tuned on the federal front.

One last question, Carla, before we let you go, and that is, we are continually asked by clients and interested others, can the federal government do something to discharge all of these state reporting obligations? Eliminate the possibility that we'll have 50 different state reporting obligations, labeling obligations, and other restrictions that are propagating all over the place now. My response as a lawyer is probably not, if not definitely not. But what are your thoughts? Because I know you get that question a fair bit.

CNH: I think the states have already enacted requirements going back -- I don't want to say what came first, but I think Washington might have had some 2018 requirements. I don't know if that was firefighting foam, firefighting gear. I don't know -- I just don't think you can unwind all these state requirements. A federal scheme would be much easier to comply with.

There is a federal bill that's been introduced that would address PFAS in the U.S. supply chain. I'm not sure that it would address preemption, and the bill is so extensive that I won't go through all the provisions, but the National Academies [of Sciences, Engineering, and Medicine] would initiate a study to review the persistence by accumulation and human health risks of PFAS. They'd also identify current PFAS uses and provide guidance on classification of essential or nonessential uses that EPA would then use to require that uses designated nonessential be phased out. PFAS manufacturers and users would have to report, EPA would disclose certain information relating to PFAS, and manufacturers would have to prepare a phaseout schedule of their products to be completed within ten years.

Super ambitious, as we've seen with REACH [the European Union's (EU) Restriction, Evaluation, Authorisation and Restriction of Chemicals legislation] and that super ambitious restriction proposal, very unlikely to pass as introduced. I think the National Academies would get hung up about identifying essential versus nonessential uses. I think ECHA, the European Chemicals Agency, and its scientific committees, that was maybe one of the significant roadblocks that they hit was PFAS are used in a lot more places, and a number of those functions are critical. Fluoropolymers are not PFOA [perfluorooctanoic acid] or PFOS [perfluorooctane sulfonate], so you have to really dig in and get into the details to distinguish those.

LLB: You track my thoughts exactly, that a lot of these requirements have been on the books for a number of years. That horse has left the barn. The probability of any type of federal preemption provision is unlikely. Although we can all hope for greater consistency between and among state initiatives -- and I would imagine that states might be coalescing around certain core elements, so although you always will need to be mindful of what particular requirements apply, by when, how terms are defined, what the intent of the statute is -- my prediction is these requirements are not going to diminish over time. They may well increase. Do you agree, Carla?

CNH: I do. I think in our May podcast, we touched on Connecticut, which has a notification requirement that took effect July 1, and it was just for a handful of products. For example, one of them is dental floss. But several states, including, I believe, Maine and Minnesota, have already banned PFAS in dental floss. I would be surprised if there is a dental floss currently on the market in the United States that still *has* intentionally added PFAS. In that regard, for floss manufacturers, the position may be, "Sure. Bring on the requirements. We're out of PFAS!"

LLB: Right. Which is the intended goal of the regulatory requirement.

CNH: Yes. It works!

LLB: Well, it did in that case, right.

I want to thank you for breaking all of this important information down and being as clear as you always are and remind listeners that there's so much information in our blog, on our website. And Carla, you're always available to help on the tough issues. I don't know if you're going to be coming back later this year, but my very strong suspicion is yes, because there's more always to be found in helping to understand what these requirements are, how to discharge them, and how to do it correctly. So thank you, Carla, for your scholarship and your attention to detail here because you make it sound easy, and I know it isn't.

CNH: Oh, thank you. You put out an entertaining and informative podcast, and I'm sure this has kept many listeners amused as they commute to work.

LLB: That is the hope. Thank you so much for joining us today.

CNH: Thank you.

LLB: Thanks again to Carla for sharing her impressive knowledge of PFAS regulation, especially at the state level. There is an awful lot going on, and we hope this discussion has been helpful. Thanks for listening, and remember to check out our website at www.lawbc.com, where you will find much more information on state, federal, and international PFAS law and regulation.

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