PFAS Litigation: Trends and Why January 20, 2025 Is a Red Herring

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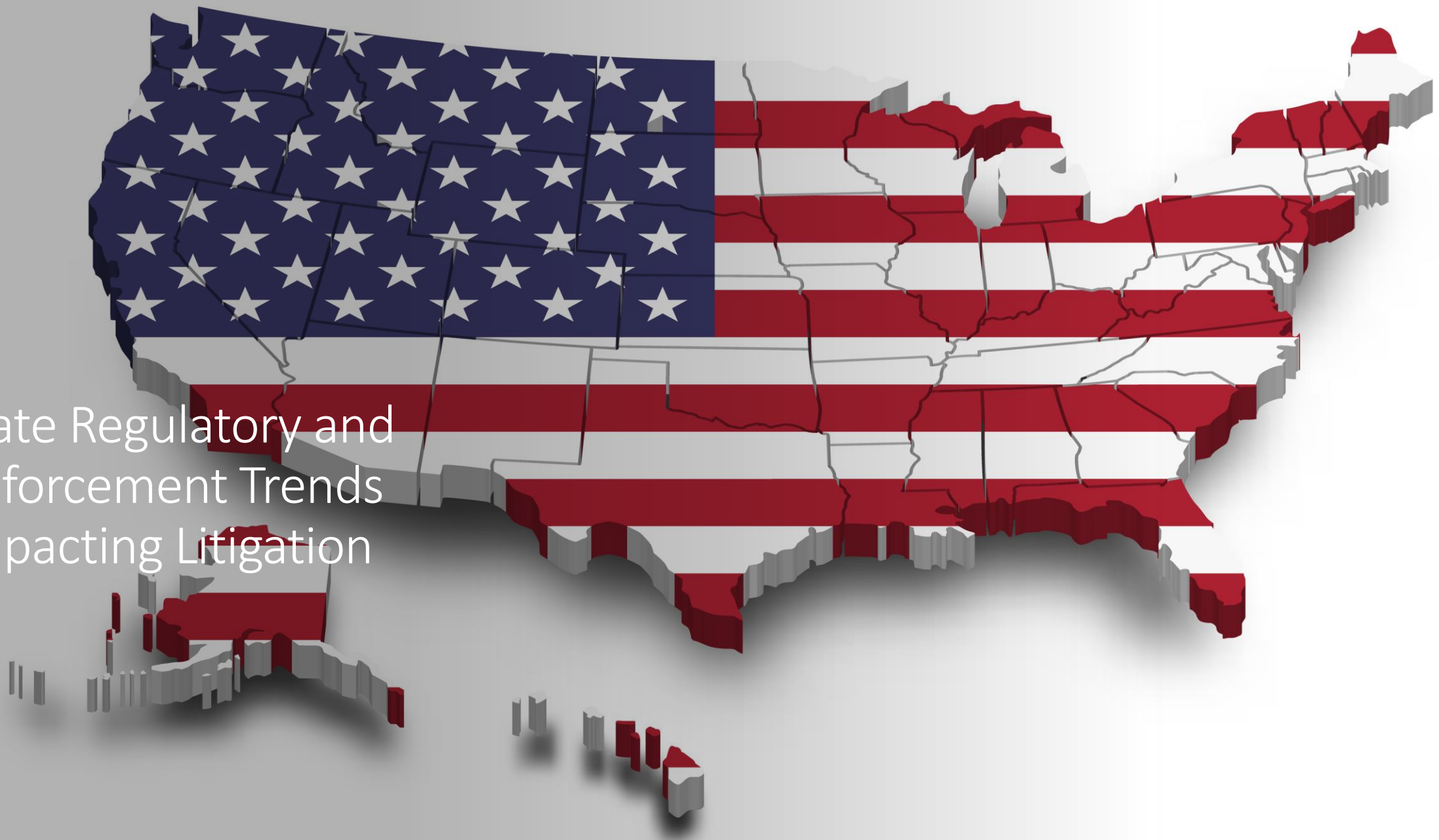
Impactful Trends

1. State Enforcement and Regulatory Action Impacting Litigation
2. Water Utilities and the MDL
3. Greenwashing, Class Action and Personal Injury Litigation

Picture From: Water Pictures Free Download, PixelsTalk.Net

State Regulatory and Enforcement Trends Impacting Litigation



Top 6 State Trends

(1) Rise of consumer product legislation

(2) Rise of “all PFAS / all products” bans

(3) Beginning of labelling laws

(4) Broad-sweeping definitions of PFAS

(5) State legislation recognizing medical monitoring right of recovery

(6) States with existing PFAS drinking water and/or pollution regulations will continue enforcement

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Case Study:

Manufacturing Facility

- 1970s – 2010s: manufacturing company discharges effluent into stream adjacent to facility
- Discharges were fully permitted
- 2022: state issues Notice of Responsibility to company for drinking water contamination
- To date: $12.5 million in costs

Case Study:

State EPA Reopener

- 2010 fire at tire recycling facility – AFFF used
- 2010: plan submitted to state and approved – did not address PFAS b/c not an issue in 2010
- 2019: state audits file after town PFAS levels becomes concern
- 2020: Notice of Violation sent to current and former property owners for fines and cleanup costs

Water Utilities and the MDL

Utilities Need Alternate Funding Sources

- Billions in settlements, but billions more needed
- Federal funding likely to drastically drop in new Administration
- Predicted result = litigation

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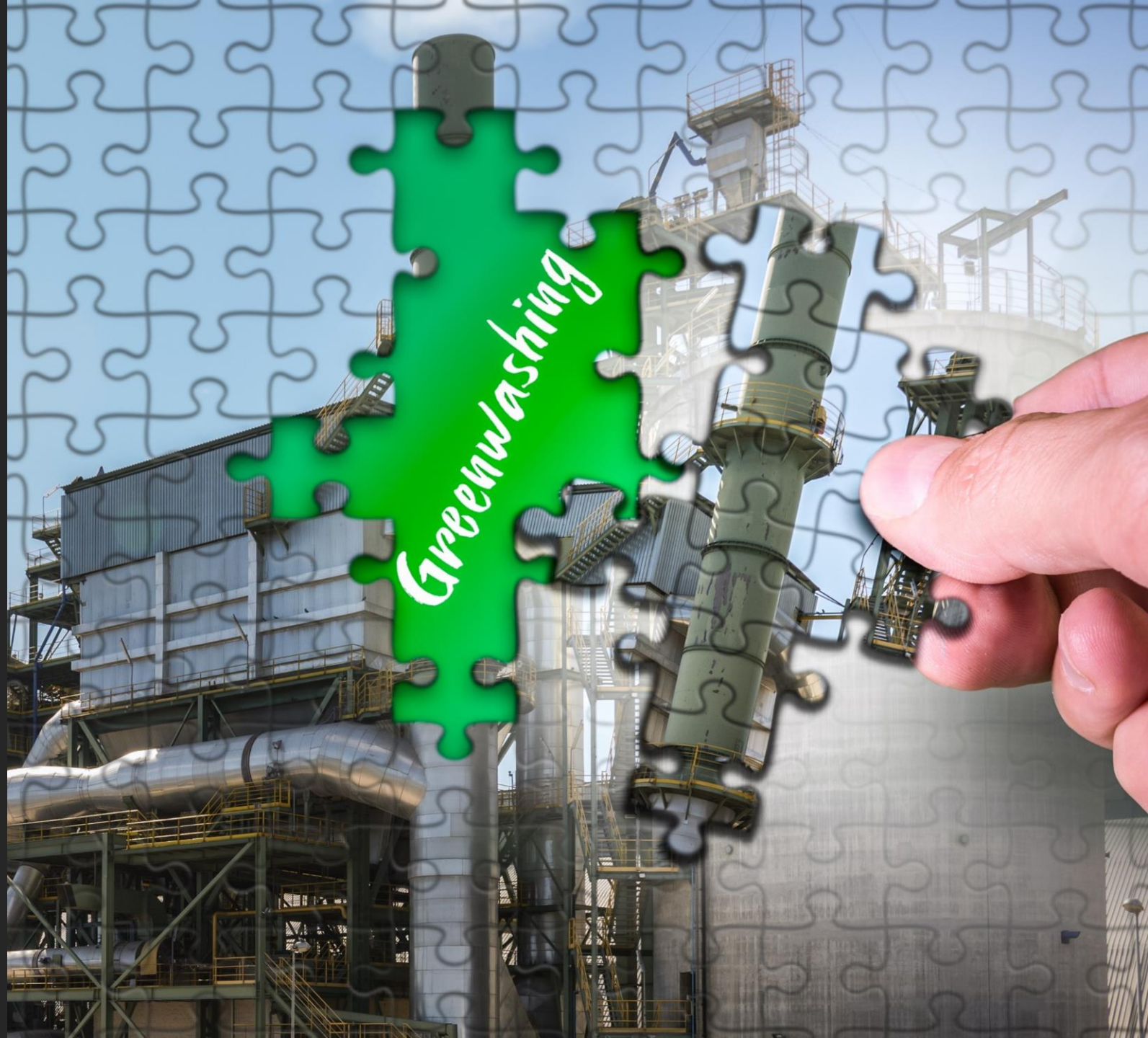
Current Litigation Trends

Rise of Consumer Fraud Cases

- Product X marketed as “green”, “safe to use”, “healthy”, “environmentally friendly”, etc.
- Product is tested and contains PFAS
- Lawsuit filed for deceiving consumers
- Damages sought are for full value of each item sold in commerce in given time period in given geographic area



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Consumer Fraud Cases Trends

- 2021: 3 PFAS consumer fraud lawsuits had been filed in total
- 2024 (as of today): over 50 PFAS consumer fraud lawsuits
- Industries targeted vary:
  - Cosmetics
  - Apparel
  - Hygiene
  - Food packaging
  - Beverages
- Recent successes defeating cases but roadmap provided in rulings

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Civil Litigation Impacts of PFAS Developments

- 355% increase in number of class action lawsuits (excluding AFFF litigation) from 2021 to 2023
  - Land contamination, property devaluation, nuisance, emotional distress
- Rise of medical monitoring claims brought by citizens
- Entirely NOT reliant on federal regulations for class action litigation

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Class Action Case Study:

Unknowing PFAS User

- Company recycles cardboard products
- Sends “residuals” (dry waste pellets) to site for composting
- 2022: neighboring private well testing shows elevated PFAS
- Results: EPA enforcement, class action lawsuits by citizens, personal injury lawsuit by one citizen

Case Study:

DePaul, et al., Case No. 3:24-cv-00271 (USDC-CT)

- Facility manufactured diapers and tissues for decades
- PFAS may have been used as wetting agent to help turn wood pulp to paper or tissue
- PFAS may also have been unintentionally used as lubricant in manufacturing
- Damages alleged stem from air emissions contaminating nearby properties

Personal Injury Litigation

- General Causation:
  - IARC December 2023
    - PFOA: carcinogenic
    - PFOS: possibly carcinogenic
  - EPA “no safe dose” + carcinogenic
- Specific Causation:
  - “Specific” to a product type and the plaintiff
  - Missing link right now is dose response information
  - Plaintiffs’ bar will develop reptile theory of litigating PFAS personal injury cases

Litigation – Looking Ahead

- 2025 – 2026
  - Private citizen class action lawsuits will increase significantly every year
  - Water utilities will go on the offensive
  - Enforcement action and litigation under state PFAS laws will continue
- 2026 and beyond
  - The rise of personal injury lawsuits for consumer products

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