



PFAS Regulatory Challenges for Waste Management, Both Historical And Prospective

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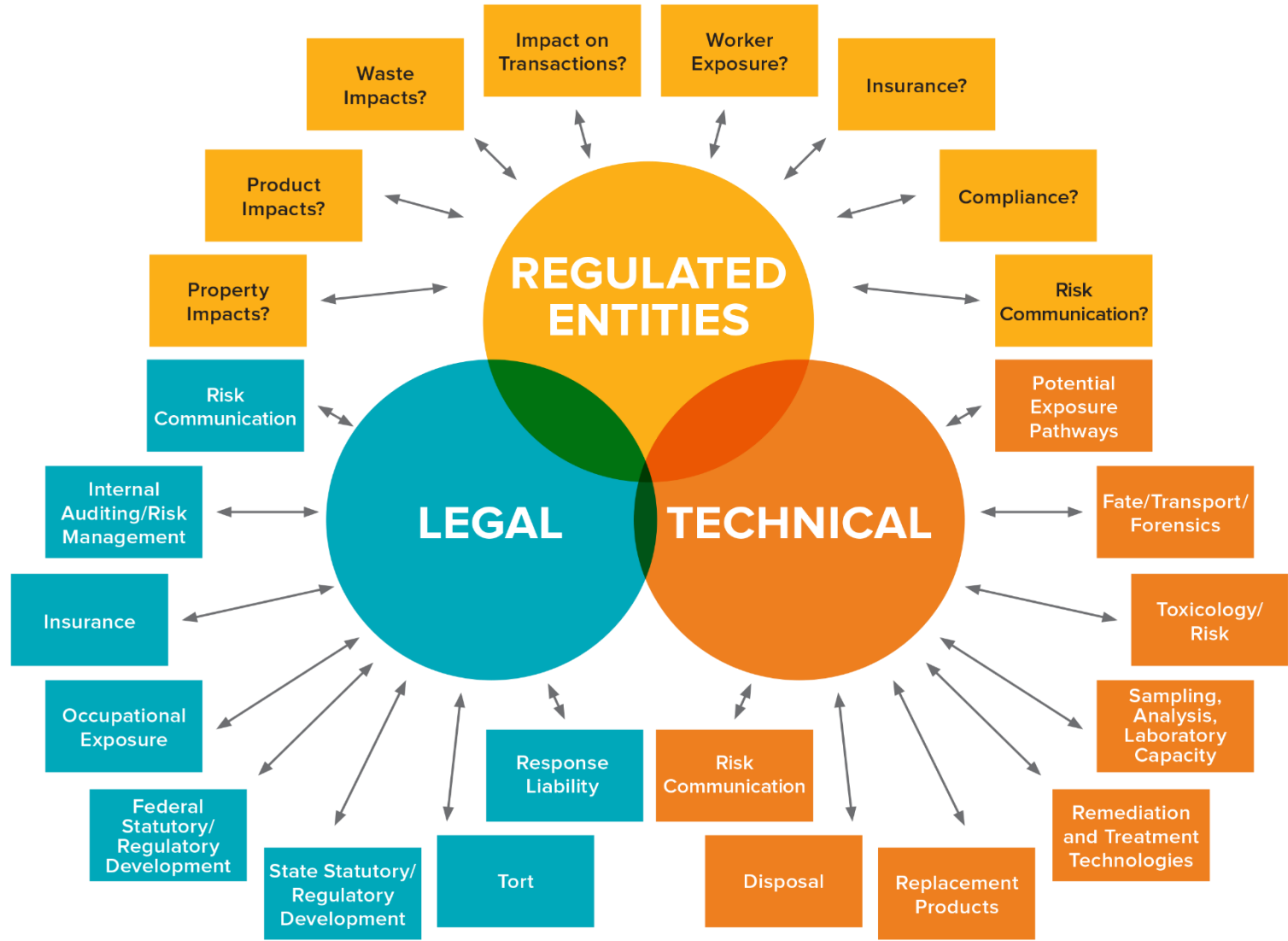
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Overview

- Remediation
- Disposal
- Environmental Diligence
- Toxic Tort
- Insurance

BARNES & THORNBURG – NAVIGATING THE COMPLEX PFAS DYNAMIC



Which Facilities May Be Affected?

1. Chemical manufacturing
2. Airports (AFFF)
3. Refineries/Bulk Storage
4. Defense facilities
5. Metal finishing/plating
6. Wastewater Treatment Plants (POTWs)
7. Landfills
8. Agricultural (land application, irrigation)
9. Other manufacturers (*e.g.*, floor covering, paper, textiles, etc.)

Remediation/Regulation

- What if PFAS compounds become “Hazardous Substances” under CERCLA?
 - Response activity claims pursuant to Sections 107 and 113(f)
 - National Priorities Listing (NPL) of sites based solely on PFAS in soils, groundwater, surface water, etc.
 - Section 106 removal action unilateral orders
 - Potential re-opening of existing Superfund sites of contamination
- Natural Resources Damages (NRD) claims by federal/state/tribal trustees
- RCRA “Hazardous Waste”?
 - “Discarded” materials
 - Improper waste management (treatment, storage, transportation or disposal)
 - Cause increase in mortality or serious incapacitating illness
 - Pose substantial present or potential hazard to human health or the environment
- Clean Water Act: RQs for releases, Water Quality Standards for discharges
- Safe Drinking Water Act: MCLs; injection well regulations
- EPCRA Form R (TRI) reporting

Disposal

- Landfill waste characterization screening
- Landfill leachate discharge (surface water or POTW)
- Wastewater treatment POTWs
 - Industrial pre-treatment requirements
 - Biosolids disposal: land application or landfilling
- Incineration feasibility
- Food chain implications (recent FDA report)

Environmental Diligence

- Does “all appropriate inquiry (AAI)” necessarily include PFAS compounds?
- If PFAS is recognized environmental condition (REC) identified in Phase I, what is the scope of Phase II sampling and analysis?
- Continuing/new “due care” obligations for owners/operators of “Brownfield” sites?

Toxic Tort

- Products liability (failure to warn, warranty of merchantability, fraudulent concealment, defective design)
- Strict liability for abnormally dangerous/ultra-hazardous activities
- Public/private nuisance
- Trespass
- Negligence
- Medical monitoring

Insurance

- Retrospective
 - Comprehensive general liability (CGL) policies applicable?
 - Property damage, bodily injury, personal injury?
- Duty to defend?
- Prospective: pollution legal liability coverage available?

QUESTIONS?



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