

# **PFAS: How We Got Here and Legal Options Going Forward**

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# CHINO BASIN WATERMASTER

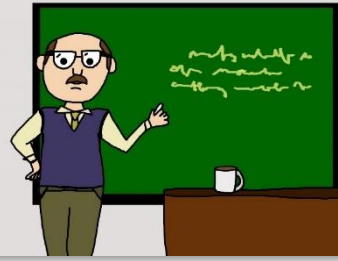


# Legal Disclaimer

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**The information provided in this presentation are for educational purposes only.**

# Learning Objectives



- 1. Emergent Contaminants – why PFAS, why now?**
- 2. What are the potential risks to assess before testing for unregulated contaminants?**
- 3. What are the potential benefits of testing for unregulated contaminants?**
- 4. What is on the regulatory horizon for PFAS?**

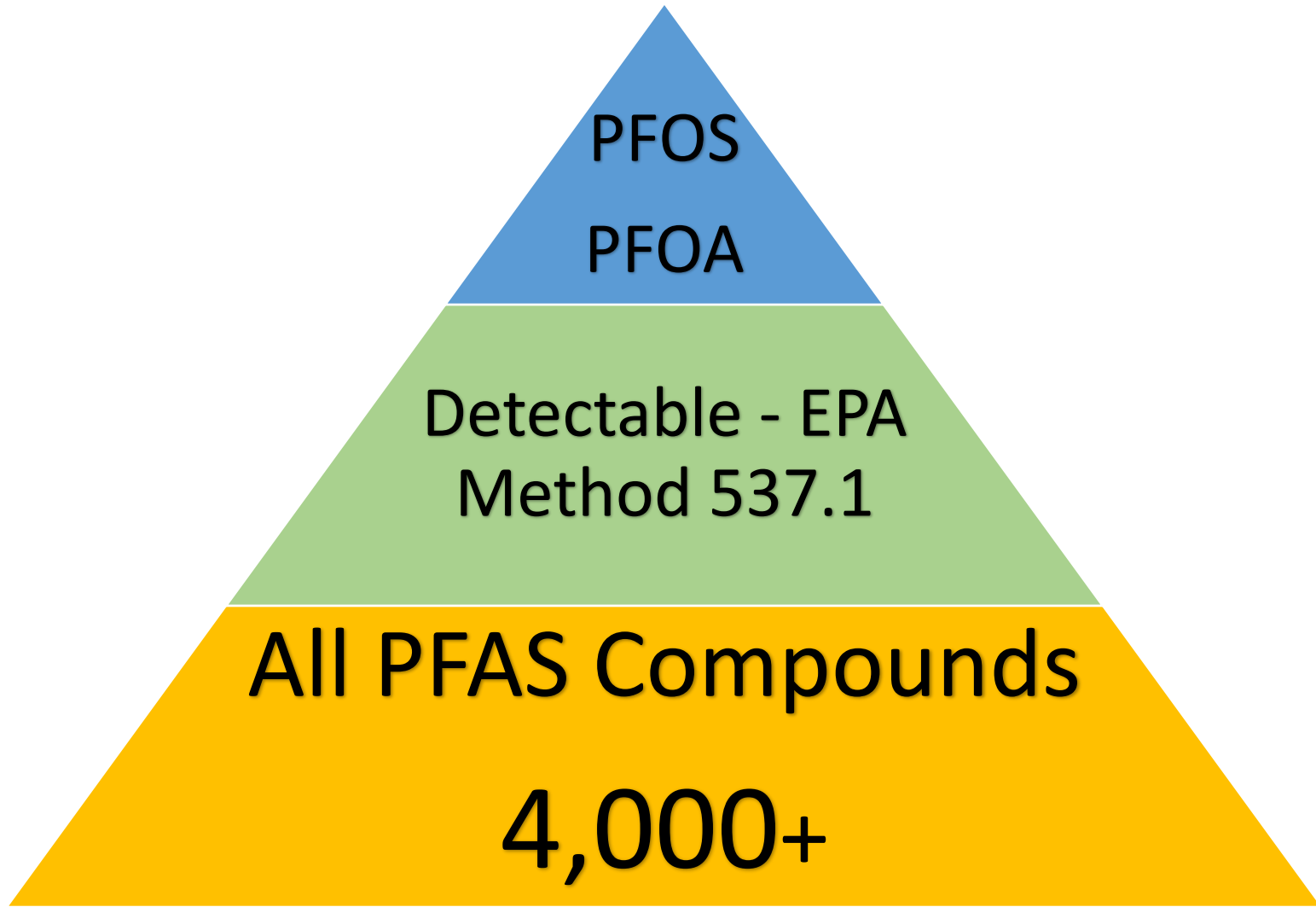
# Flint Michigan



**“The authorities should have listened to the community.** The residents were speaking out. We were living this, but nobody listened. We’ve had to rely on our families to get us through this. The day my father saw me crying about my daughters lead levels is the day he said, ‘I support your work on speaking out. I support you whatever you need.’ ”

— Yaquelin Vargas, resident of Flint, mother and activist

# PFAS – A Growing Dilemma





# Safe Drinking Water Act UCMR

UCMR 1  
26 Contaminants

UCMR 2  
25 Contaminants

UCMR 3  
30 Contaminants  
\*Including PFAS\*

UCMR 4  
30 Contaminants

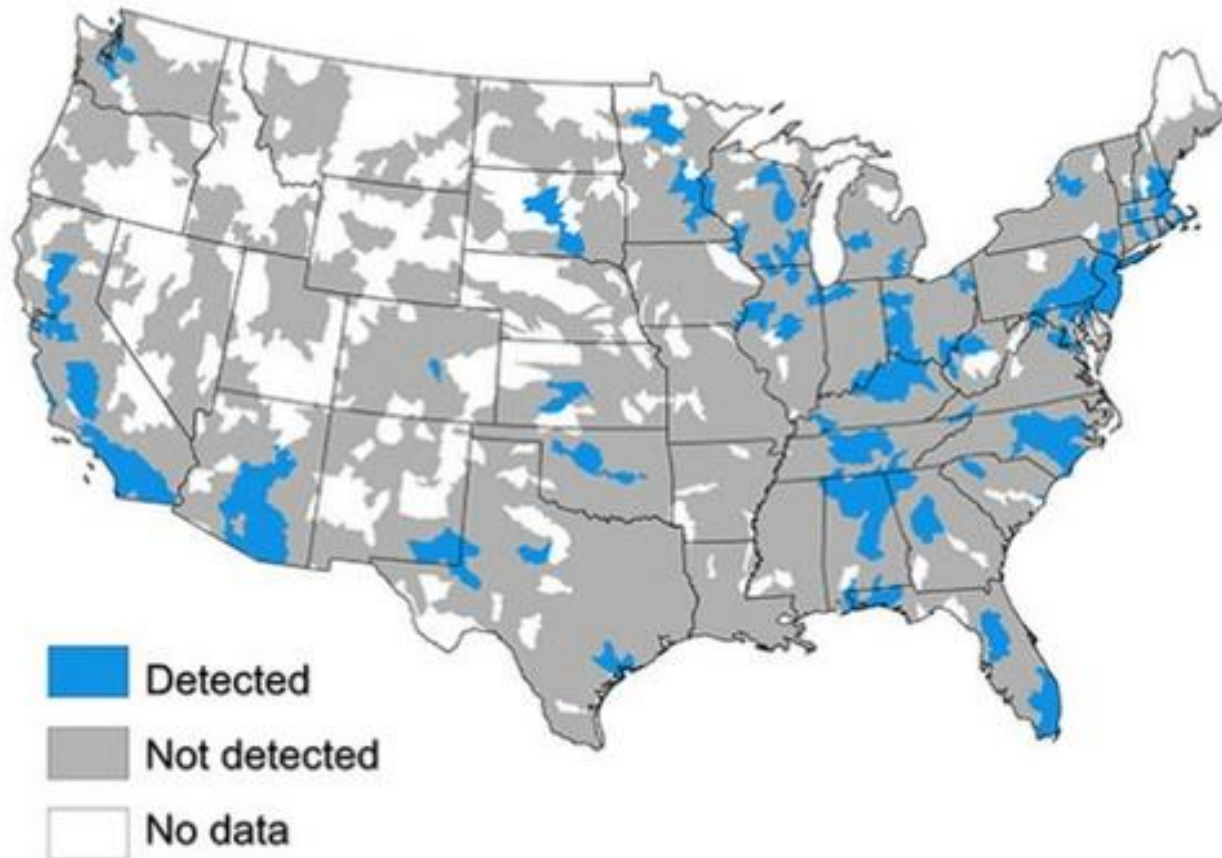
1997-1998-1999-2000-2001-2002-2003-2004-2005-2006-2007-2008-2009-2010-2011-2012-2013-2014-2015-2016-2017-2018-2019-2020-2021

The EPA has indicated that UCMR 5 will include additional PFAS compounds.



# UCMR3 PFAS Detections

Hydrological units with detectable PFASs





# EPA Method 537.1

EPA Document #: EPA/600/R-08/092

METHOD 537. DETERMINATION OF SELECTED PERFLUORINATED ALKYL ACIDS IN DRINKING WATER BY SOLID PHASE EXTRACTION AND LIQUID CHROMATOGRAPHY/TANDEM MASS SPECTROMETRY (LC/MS/MS)

Version 1.1  
September 2009

J.A. Shoemaker US EPA, Office of Research and Development, National Exposure Research Laboratory

P.E. Grimmett US EPA, Office of Research and Development, National Exposure Research Laboratory

B.K. Boutin The National Council on Aging, Senior Environmental Employment Program

NATIONAL EXPOSURE RESEARCH LABORATORY  
OFFICE OF RESEARCH AND DEVELOPMENT  
U. S. ENVIRONMENTAL PROTECTION AGENCY  
CINCINNATI, OHIO 45268

537.1

## 1. SCOPE AND APPLICATION

1.1 This is a liquid chromatography/tandem mass spectrometry (LC/MS/MS) method for the determination of selected perfluorinated alkyl acids (PFAAs) in drinking water. Accuracy and precision data have been generated in reagent water, and finished ground and surface waters for the compounds listed in the table below.

<u>Analyte</u>	<u>Acronym</u>	<u>Chemical Abstract Services Registry Number (CASRN)</u>
N-ethyl perfluorooctanesulfonamidoacetic acid	NEtFOSAA	—
N-methyl perfluorooctanesulfonamidoacetic acid	NMeFOSAA	—
Perfluorobutanesulfonic acid	PFBS	375-73-5
Perfluorodecanoic acid	PFDA	335-76-2
Perfluorododecanoic acid	PFDoA	307-55-1
Perfluoroheptanoic acid	PFHpA	375-85-9
Perfluorohexanesulfonic acid	PFHxS	355-46-4
Perfluorohexanoic acid	PFHxA	307-24-4
Perfluorononanoic acid	PFNA	375-95-1
Perfluorooctanesulfonic acid	PFOS	1763-23-1
Perfluorooctanoic acid	PFOA	335-67-1
Perfluorotetradecanoic acid	PFTA	376-06-7
Perfluorotridecanoic acid	PFTTrDA	72629-94-8
Perfluoroundecanoic acid	PFUnA	2058-94-8

# Expansive Use of PFAS

<b>Commercial Products</b>	<b>Industrial Uses</b>
Cookware (Teflon®, Nonstick) Fast Food Containers Candy Wrappers Microwave Popcorn Bags Personal Care Products (Shampoo, Dental Floss) Cosmetics (Nail Polish, Eye Makeup) Paints and Varnishes Stain Resistant Carpet Stain Resistant Chemicals Water Resistant Apparel Cleaning Products Electronics Ski Wax Car Wax	Firefighting Aqueous Film-Forming Foam Photo Imaging Metal Plating Semiconductor Coatings Aviation Hydraulic Fluids Medical Devices Insect Baits Printer and Copy Machine Parts Chemically Driven Oil Production Textiles, Upholstery, Apparel and Carpets Paper and Packaging Rubber and Plastics

# EPA Health Advisory

**2009**

Provisional Health Advisory

200 parts per trillion PFOS  
and 400 ppt PFOA



**2016**

Lifetime Health Advisory

70 parts per trillion  
combined PFOA & PFOS

**Future**

EPA Action Plan/State Action  
More Health Advisories?  
Maximum Contaminant Level?  
What PFAS Compounds?  
What Concentrations?

# State Regulation of PFAS

Alaska

California

Colorado

Connecticut

Delaware

Iowa

Maine

Massachusetts

Michigan

Minnesota

Nevada

New Hampshire

New Jersey

New York

North Carolina

Oregon

Pennsylvania

Rhode Island

Texas

Vermont

# California

- **Notification Levels**
  - PFOS - 13 ppt**
  - PFOA - 14 ppt**
- **Response level**
  - PFOS/PFOA – 70 ppt**
- **Drinking water systems are not currently required by state regulations to monitor for PFOA and/or PFOS.**

# Risks and Benefits of Testing

- **Notification & Response Levels**
- **Regulatory & Legislative Interest**
- **MCLs on the Horizon**
- **Consumer Confidence**
- **Liability/Safe Harbors**
- **Statute of Limitation**



# Notification Levels

**Required: notify governing body.**

**Recommended:**

**Inform customers (presence and health concerns).**

**Take source out of service if considerably higher than notification level ( “Response Level”).**

**≥Response Level, monthly sampling,**

**<Response Level, quarterly for 12 months.**

**Quarterly notification to customers and consumers  
(and if refuse, DWW may provide the information)**

# Safe Harbor

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**Water users may not hold their water providers to higher standards (lower MCLs) for contaminants than those set by the California Department of Public Health.**

# Statute of Limitations

**Under California law, a cause of action begins to accrue for statute of limitations purposes when the plaintiff suffers “appreciable and actual harm”.**

**“[T]esting and reporting requirements, standing alone, do not constitute appreciable harm under California law.”**

**“[f]or statute of limitations purposes contamination sites must be analyzed on a site-by-site basis” under California law. See *In re MTBE*, 676 F. Supp. 2d at 149.**

# **Future of PFAS Regulation**

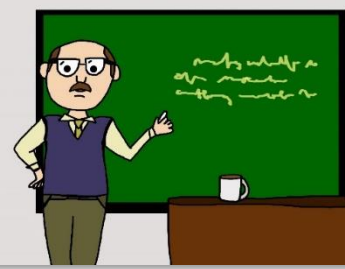
**EPA Action Plan**

**Federal MCL**

**Groundwater Remediation Levels**

**California – MCL?**

# Learning Objectives Review



## **1. Emergent Contaminants – Why PFAS?**

***Common fluorinated products that do not degrade when released in the environment, bioaccumulate and are linked to human health impacts.***

## **2. What are the potential risks to assess before testing for unregulated contaminants?**

***Notification, customer concern, statute of limitations***

## **3. What are the potential benefits of testing for unregulated contaminants?**

***Customer satisfaction, planning for MCL.***

## **4. What is on the regulatory horizon for PFAS?**

***EPA Action Plan, CA MCL.***

# Any Questions?

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