

Back to the Future, Part 2: Learning PFAS Lessons From the History of MTBE With Steven Cook

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In the second of a two-part episode of the Bracewell Environmental Law Monitor, host [Daniel Pope](#) continues the conversation with Bracewell partner Steven Cook about per- and polyfluoroalkyl substances (PFAS). They explore the unique challenges presented by the ubiquity of PFAS in society and how government and industry stakeholders can assess and respond to the long-term adverse consequences.

What makes PFAS similar to MTBE?

Recognize that with regard to MTBE, there are all sorts of nuances and details that, due to the nature of the broadcast, we can't get into. But there are some general principles that you can draw from it. One of them is to say, how are you going to deal with the litigation? How are you going to deal with the product? What is your approach? Are you going to defend it on all fronts everywhere? Are you going to concede the field? Are you going to withdraw when the fuels producers opted out of buying anymore MTBE?

After the legislation changed, my former employer was left with a choice. What do we do with the equipment? What was interesting is Europe had come to a different conclusion, as had Asia, with regard to worrying about MTBE. They loved it because it was helping them with environmental issues. They also at that time had had double coal tanks for many years, so they didn't have a leakage problem, so the storage problem was solved. Therefore, in their minds, the MTBE was fine.

Are we seeing something like that with other governments? Are we seeing divergent approaches and different contexts?

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You do see different approaches. Everybody talks about science. The prior administration got hammered a lot with that. We didn't follow the science. What that means now with EPA is more you didn't follow the process. The process has become the science in many ways. And when you talk about health effects, it isn't just a direct measurement aspect, and it isn't something you just go stick a thermometer out at.

You know what the temperature is. You observe and you conduct tests that aren't anything like the real world on whether it's animals or models or whatever. And you come up with something you can measure and then you translate that into a potential health effect on humans. And during that translation process, there are a lot of judgment calls that get made.

What was the regulatory history like with MTBE and where are we at now with PFAS? Does it sync up with what you observed at the time with MTBE?

MTBE from a regulatory standpoint was fascinating to watch. States that didn't use it banned it, so Congress was saying we don't want any MTBE in our states. Okay, fine. Well, it's never been there, so good. But others try to set up various standards, and so there was some state efforts. But when the federal legislation changed, the market opted out of it. It was gone from usage. So, then you were into a cleanup mode. But the litigation continued. In fact, there was just a recent settlement, I think with Rhode Island, on MTBE contamination. So, the litigation is still there. With PFAS, the trail of liabilities and resolutions is going to be with us for decades.

You still see the ads for asbestos on the TV. You will see some type of thing for PFAS for many decades. And that's where I think you look at companies trying to figure out what their strategy is. Your first challenge as a company is to figure out, do I have this material in my supply chain somewhere? And for industrial facilities, is it in the water that I'm using and then discharging back out? You may not be including it, but it may be in the water you're in-taking.

Have questions about PFAS? Contact [Steven Cook](#) or [Daniel Pope](#).

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