



New Mexico faces PFAS disclosure dilemma after court halts labelling scheme

Experts say court's reasoning may impact future product label regimes

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A preliminary injunction blocking New Mexico's PFAS product labelling regime has raised questions about whether the state can adjust the mandate without creating new constitutional risks, according to observers.

The ruling leaves the New Mexico Environment Department (NMED) with difficult choices if it hopes to preserve its PFAS disclosure mandate, experts told Chemical Watch News & Insight. It also could impact how other labelling schemes are crafted and defended in the future, they said.

A federal judge on 16 September [temporarily halted](#) the labelling regime that was created under the authority of New Mexico's PFAS Protection Act ([HB 212](#)).

The requirement – mandating the inclusion of an [Erlenmeyer flask](#) icon bearing the term “PFAS” on most PFAS-containing products sold in the state – was [due to take effect](#) on 1 January 2027, but the injunction halts the scheme while the federal lawsuit proceeds.

In issuing the preliminary injunction, the court said the state was likely to fail in defending the requirement against [a legal challenge](#) brought by the American Chemistry Council (ACC) and eight other industry groups.

Several attorneys who were not directly involved in the case said the decision is “surprising” because of the reasoning behind it.

The court agreed with New Mexico that the PFAS labelling requirement was both factual and uncontroversial.

However, it said the state [failed to show](#) how the label advanced its asserted public health and environmental interests.

Court's reasoning surprised observers

Brian Gross and Mikaela Barbour, a partner and associate with MG+M The Law Firm, said it was “not surprising that the court found a First Amendment violation, but what is

surprising is where the court found the violation”.

Industry groups spent much of the litigation arguing that the term “PFAS” is too broad and that the Erlenmeyer flask symbol functions as a warning, when the safety of many PFAS remains unsettled. Yet the court rejected those arguments and concluded that the labelling requirement – the speech in question – was both factual and uncontroversial.

However, New Mexico’s own defence of the label ultimately contributed to its loss, according to Gross and Barbour. By arguing that the Erlenmeyer flask symbol served only to inform consumers that a product contains PFAS rather than warn of any risks the chemicals might pose, the state undermined its ability to show how the label advanced its asserted health and environmental interests.

“Once the state stripped the speech of any warning, instruction, or risk information, the court could not see how the speech advanced those interests,” Gross and Barbour said. “Curiosity about an ingredient is not enough.”

New Mexico faces difficult choices

Gross and Barbour said the ruling leaves New Mexico “in a bind on *this* label” with no easy path forward if it hopes to preserve the disclosure requirement.

In its ruling, the court suggested that a revised labelling requirement may survive constitutional scrutiny. However, Gross and Barbour said changing the label could create new difficulties for New Mexico regulators who have previously defended it in court as a neutral disclosure.

“The Catch-22 is real,” Gross and Barbour said, “but the way out isn’t untenable.”

They said New Mexico could narrow the products subject to the labelling requirement, replace the hazard-style symbol with text, tie the disclosure to a specific consumer instruction or adopt an explicit warning supported by evidence demonstrating the statement’s accuracy.

However, any attempt to strengthen the warning could draw the same First Amendment concerns the state sought to avoid in the first place by positioning the label as a neutral disclosure.

If New Mexico now makes the labelling requirement a health and safety warning, “the controversy problem returns”, Gross and Barbour said. “That’s the bind.”

Verdant Law founder Philip Moffat, who is involved in a separate [state-court legal challenge](#) of New Mexico’s PFAS regulations (see box), identified a similar tension.

New Mexico “could adjust the label to make the warning more explicit, but that would risk making it controversial” and thus more likely to be struck down by a First Amendment challenge, Moffat said.

“In other words, the state is vulnerable in different ways; it boils down to which vulnerability the state is most willing to litigate,” Moffat said.

Implications for Connecticut?

Gross and Barbour said the ruling’s implications could extend beyond New Mexico to Connecticut, which is implementing its own PFAS [labelling scheme](#).

Unlike New Mexico’s broad requirement, Connecticut limits labelling to specific product categories, allows companies to use a range of approved wording options and pairs its labelling mandate with a [forthcoming 2028 ban](#) on intentionally added PFAS in products in those same categories.

Even so, Gross and Barbour said the New Mexico ruling could “certainly provide persuasive precedent” if Connecticut’s requirements were ever challenged in court.

If there were a legal challenge and Connecticut deems their label “consumer awareness and nothing more, a court could ask the same question New Mexico couldn’t answer: what, exactly, is the purchaser supposed to do with that information, and how does that reduce exposure or environmental release?” Gross and Barbour said.

Conversely, “if Connecticut calls it a warning, it inherits the controversy problem the New Mexico court reserved”, they said.

‘Much-needed relief’ for manufacturers

Meanwhile, Ryan Carra, a principal at Beveridge & Diamond, focused on the practical implications for manufacturers.

He said that New Mexico’s PFAS labelling mandate generated “significant concern” across industry because of the short timelines companies have been given to comply.

“This injunction will provide much-needed relief to some,” he said.

Carra added that many of his clients are hopeful that a spate of recent [industry-favorable](#) First Amendment decisions in both the New Mexico case and [litigation over several](#) of California’s Proposition 65 warnings could help curb the expansion of state-specific disclosure mandates.

"Given recent favourable Prop 65 First Amendment case law and this opinion, many of our clients are hopeful that a patchwork of state labelling obligations can be avoided," he said.

Reactions to the ruling

Kevin Martin, partner at Goodwin Procter and lead counsel for the ACC and other industry groups that filed the lawsuit, said the plaintiffs are "grateful" that the court granted the preliminary injunction.

"The mandated label would have delivered no clear message to consumers," Martin said. "Yet it would have imposed staggering compliance costs on industry."

Meanwhile, the environmental group WildEarth Guardians criticised the court's ruling. While the NGO is not involved in the lawsuit, Rebecca Sobel, the organisation's climate and health programme director, said people "have a right to know" when PFAS are used in products.

"The answer to PFAS pollution isn't keeping New Mexicans in the dark," she said. "Transparency is the bare minimum."

The NMED did not respond to a request for comment.

The case is *American Chemistry Council et al v Kenney et al*.

Bobby DeMuro

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FURTHER INFORMATION

[Preliminary injunction \(federal court\) →](#)

[Diamond Vogel brief \(state court\) →](#)

[NMED PFAS in products webpage →](#)

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Separate state appeal continues

A separate challenge to New Mexico's PFAS implementation rule is [also ongoing](#) before the state Court of Appeals.

In it, paint manufacturer Diamond Vogel argued that the labelling requirement unlawfully compels speech, exceeds the scope of HB 212 and imposes an arbitrary compliance deadline. The company is also challenging fees established under the NMED's rule implementing the law, alleging that regulators adopted them without legislative authority.

Moffat said Diamond Vogel filed its latest brief earlier this month and is awaiting New Mexico's response.

"There's sufficient daylight between elements of the federal court's reasoning and the free-speech arguments we're advancing in state court," he said. "Regardless of what happens with labelling, our suit also challenges the fee programme."

Moffat said he expects the federal preliminary injunction to remain in place while New Mexico continues to litigate both cases and lawmakers [consider potential revisions](#) to HB 212. If New Mexico changes its labelling requirement, Diamond Vogel will respond accordingly, he said.

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