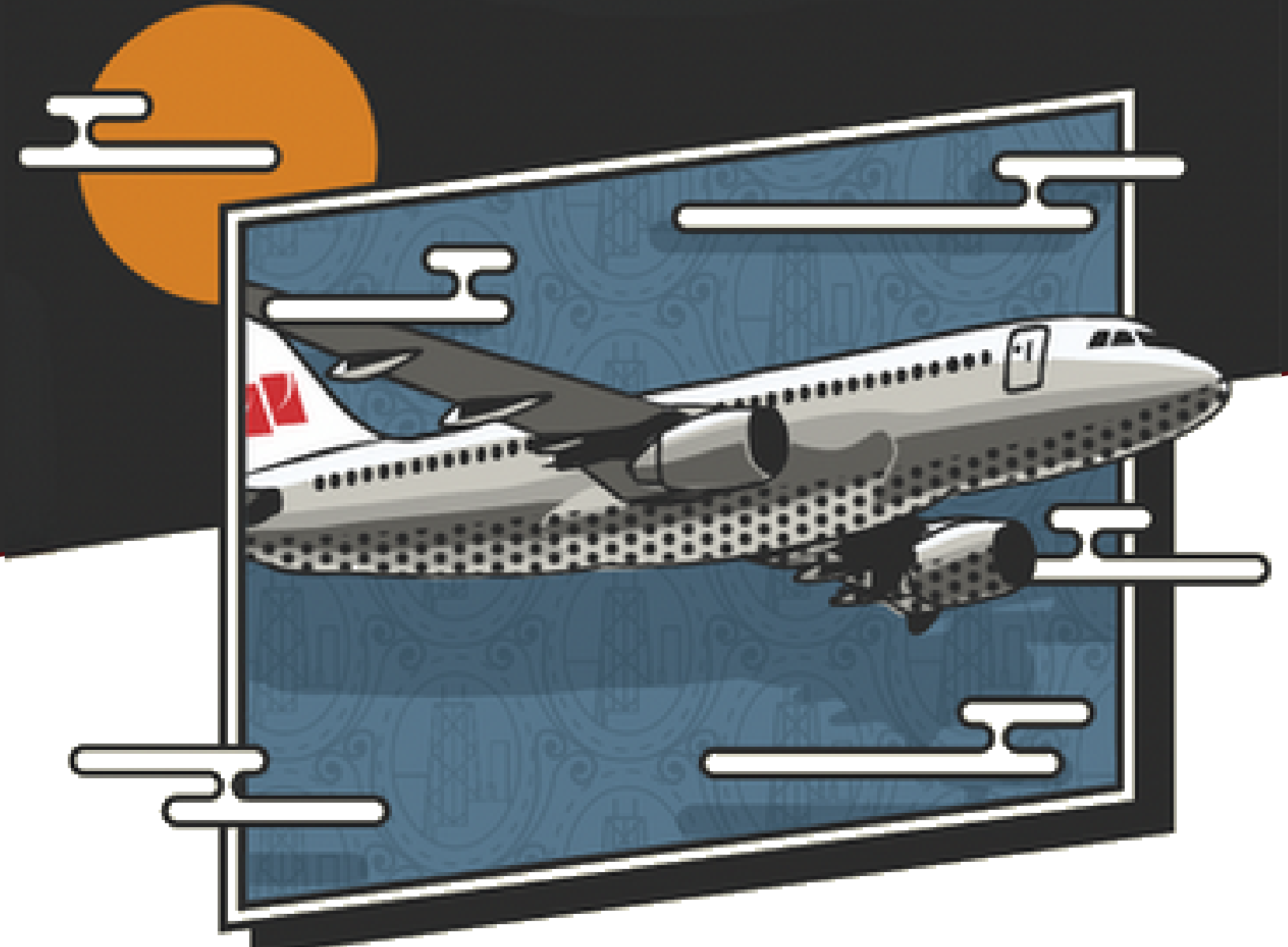


40th Annual
Airport Law Workshop



Session #9

Environmental Issues & PFAS

Speakers

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AGENDA



Part I. Environmental Impacts & Obligations

- AIR
- WATER
- WASTE
- CERCLA
- ENVIRONMENTAL MANAGEMENT
- FAA REAUTHORIZATION ACT



Part II. PFAS

- BACKGROUND
- REGULATORY NEWS
- PFAS LITIGATION
- F3 TRANSITION
- RISK MANAGEMENT
- COST RECOVERY



PART I: ENVIRONMENTAL IMPACTS AND OBLIGATIONS OF AIRPORT OPERATORS

Airport environmental impacts

What causes environmental impacts at airports?



- Aircraft operations
- Vehicles and GSE
- Facility construction & expansion
- Aircraft cleaning & maintenance
- Facility cleaning & maintenance
- Deicing and anti-icing
- Fueling & fuel storage
- Fire-fighting foams

Water quality

Impacts & obligations

- **Common issues**
 - Construction
 - Anti-icing/deicing
 - Leaks/spills
 - AFFF discharges (PFAS)
- **Regulatory schemes**
 - Clean Water Act
 - Safe Drinking Water Act
 - Stormwater BMPs
 - State & local PFAS Rules
- **News**
 - Revised definition of “WOTUS”
 - First nationwide MCL for PFAS



Air quality

Impacts & obligations

- **Major Impacts**
 - Vehicles & GSE
 - Stationary sources
- **Compliance tips**
 - Knowledgeable staff
 - Compliance mechanisms
 - Prompt reporting
 - Relationship with regulators
- **News**
 - Leaded AvGas Endangerment Finding
 - Leaded AvGas Grant Assurance



Hazardous materials

Impacts & Obligations



- **Airports are industrial operations**
 - Solvents, cleaners, paints
 - Fuels
 - De-icing fluids
 - Chemical waste
- **Regulatory schemes**
 - Occupational Safety & Health Act
 - Resource Conservation & Recovery Act
 - Clean Water Act
 - Hazardous Materials Regulations
- **News**
 - Proposed RCRA PFAS rules

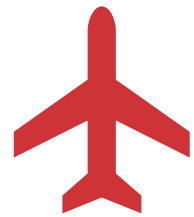
Comprehensive Environmental Response, Compensation, & Liability Act

- **CERCLA regulates “hazardous substances”**
 - Release reporting & EPA information requests
 - Cleanups/payment of costs by PRPs
- **Liable Parties (PRPs)**
 - Current/former owners & operators
 - Transporters
 - Generators
- **CERCLA liability is special**
 - Strict
 - Joint & Several (usually)
 - Retroactive
- **News**
 - PFOA/PFOS CERCLA designation
 - PFAS Enforcement Discretion Policy



Overall environmental management

Tips for Success



Responsibility

- * Know who is responsible for environmental compliance in each area



Contract terms

- * Properly negotiate environmental provisions in leases/other contracts



Management

- * Environmental policies & procedures
- * Environmental issues in airport planning



Training

- * Applicable laws and reporting procedures
- * Ongoing training
- * Communication with public/stakeholders

2024 FAA Reauthorization Act

Environmental Funding FY2025–2028

- **AIP Funding**
 - Noise & Environmental Set Aside
 - VALE
 - ZEV
 - Airport Env'tl. Mitigation Pilot Program
 - Energy Power Demands Program
 - Electric Aircraft Infrastructure Program
 - Multiple new projects eligible under AIP
- **Safety & Resilient Infrastructure Program**
 - Resiliency projects and runway safety
- **PFAS Replacement Grant Program**
 - Funding for F3 transition



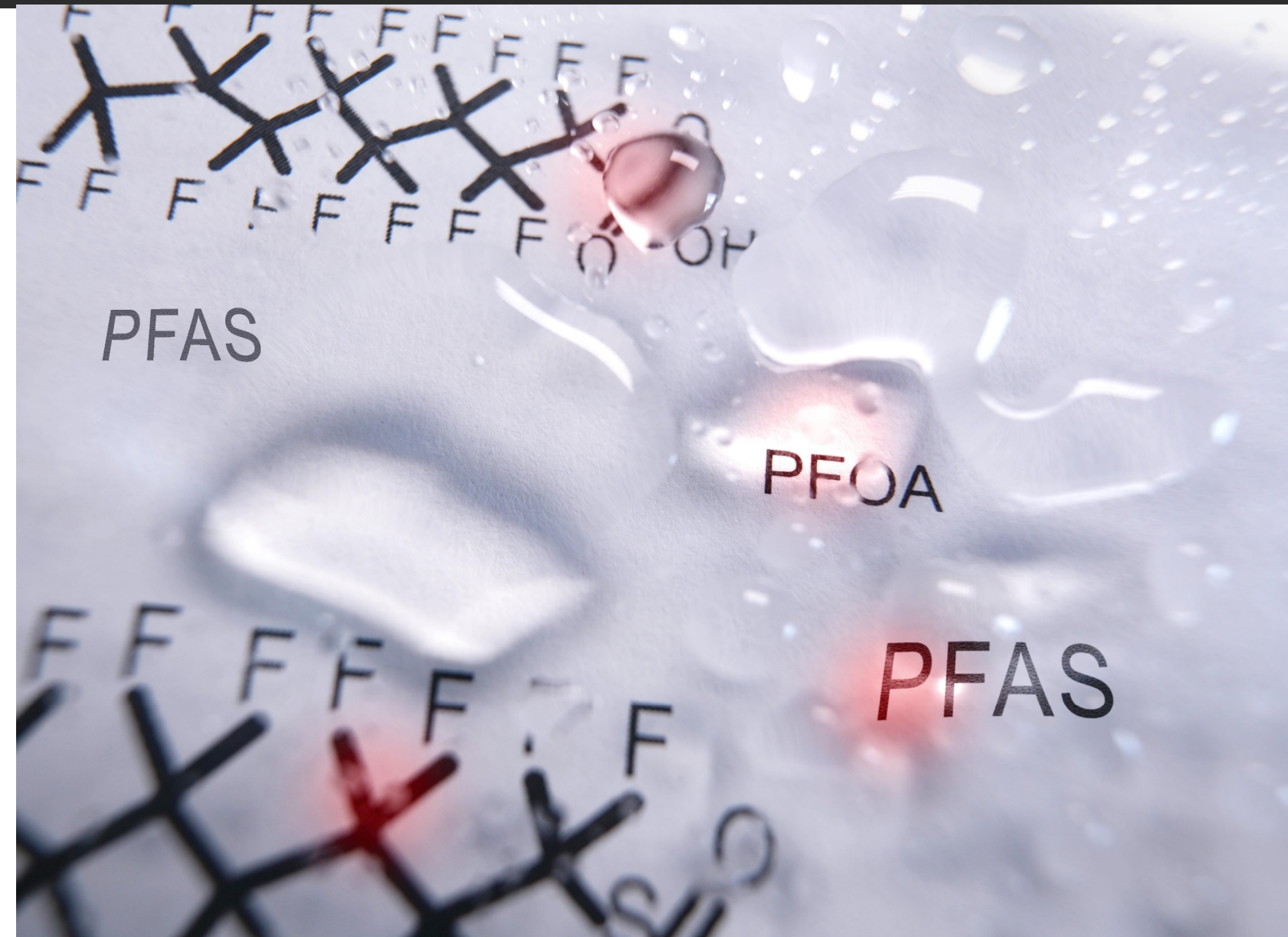


PART II: PFAS NEWS, RISK MANAGEMENT, AND COST RECOVERY

What are PFAS?

“Forever Chemicals”

- Man-made class of thousands of chemicals
- Chemically stable and virtually indestructible
- Water soluble (travel quickly in water)
- Heat and water resistant
- Bioaccumulate in plants and animals
- Now ubiquitous in the environment
- Evolving science and understanding of PFAS health risks



What is AFFF?

Why was it used at Airports?



- FAA historically required Part 139 Airports to use PFAS-containing AFFF that met a specific Mil Spec
- **Oct. 2021**: FAA allows F3 if it meets Mil Spec
- **Jan. 2023**: DOD releases a new Mil Spec for F3
- **Oct. 2024**: Transition to F3 has begun
 - Three F3 products are approved /on the market
 - Airport operators have started transitioning
 - AFFF manufacture expected to end soon

Where are PFAS at airports?

Potential locations of PFAS impacts

- **Primary impact**

- Sites of fuel fires
- Training areas
- Hangars
- ARFF/Fire Stations

- **Secondary impact**

- Soil re-use areas
- Wastewater lagoons
- Stormwater runoff

- **Environmental media**

- Groundwater
- Surface water
- Impacted soil



F3 Transition Planning

What are the issues?

Create Airport Stakeholder Team

Dispose of AFFF/ARFF

Decontaminate/replace ARFF

Modify/procure new ARFF

Manage spent F3 from testing

Train on ARFF with F3

Identify locations for all the above

Pay for all of this



2024 FAA Reauthorization Act

PFAS Replacement Grant Program FY2025–2028

- **\$350M through FY2028**
- **Eligible costs incurred after Sept. 12, 2023**
 - One-time acquisition of F3
 - Disposal of AFFF to facilitate transition
 - Cleaning/disposal of existing ARFF
 - Acquisition and replacement of ARFF
- **Part 139 Airports to receive a grant based on formula**
 - AFFF concentrate required to be held by airport compared with total for all Part 139 airports



PFAS federal regulatory developments

CERCLA/Superfund



PFAS designated as “hazardous substances”

- PFOA and PFOS only (for now)
- CERCLA liability for AFFF releases
- Potential for enforcement/lawsuits

PFAS Enforcement Discretion Policy

- Agency to focus on industrial sources
- Encourages public entities to enter voluntary settlements
- Makes settlement protections available

PFAS federal regulatory developments

Safe Drinking Water Act

EPA sets Maximum Contaminant Levels for several PFAS:

- PFOA, PFOS = 4 ppt
- PFNA, PFHxS, & GenX = 10 ppt
- Mixtures of PFHxS, PFNA, GenX, & PFBS = Hazard Index

Implementation timeline:

- 2024–2027: PWSs must monitor for PFAS
- 2027–2029: PWSs must publish results
- 2029 onward: compliance with MCLs required

Impacts on airport operators:

- Stringent standards
- Scrutiny on sources of PFAS
- MCLs could be de facto cleanup standards



AFFF Multi-District Litigation

PFAS Litigation Update

- **Plaintiffs:** states, counties, cities, PWSs, airport operators, and more
- **Claims:** product liability, common law torts
- **Status:** “bellwether cases” selected, discovery, trials scheduled, settlements
- **PWS Settlements:** 3M = “largest drinking water settlement in U.S. history”; also DuPont, Tyco, & BASF
- **Importance:** impacts for PFAS litigation
- **Airport Operators in the AFFF MDL**



What should airport operators do?

Where Are We?

- Many airports likely released AFFF
 - may be groundwater and soil contamination onsite
 - may have migrated off-site to other properties, PWSs, landfills, etc.
- Airports are starting the complicated, costly transition from AFFF to F3
- New federal regulations subject airport operators to liability under CERCLA
- Airport operators may be increasingly subject to enforcement and/or lawsuits

What's Next?

- Airport operators need a strategy for:
 - Reducing & managing PFAS liability
 - Recovering PFAS-related cleanup costs
- Such a strategy will apply beyond PFAS

Airport operators need a PFAS strategy

General

- Do not admit liability and reserve rights
- Know & abide by PFAS regulations/guidance
- Understand airport tenant operations
- Include PFAS in planning /development
- Have a multidisciplinary team (technical, legal, and PR expertise)

Releases

- Minimize future releases
- Complete the transition to F3 as quickly as possible
- Research historical releases (proper documentation to distinguish sources)

Remediation

- Conduct testing and remedial efforts strategically
- Maximize ability to recover costs under CERCLA by complying with the National Contingency Plan (NCP)

Publicly

- Engage thoughtfully with the public
- Disclose potential PFAS liability risk in Official Statements
- Be responsive and respectful with regulators

PFAS Costs – Options

Strategies to obtain money to address PFAS

- **Grants**

- \$350M PFAS Grant Replacement Program in FAA Reauthorization Act (FY25–28)
- Airport-specific AIP grants for PFAS
- State programs

- **Insurance**

- Historical policies
- Obtain new PFAS-specific policy

- **Cost Recovery Litigation**

- Federal claims (CERCLA)
- State claims (analogous state statutes)
- Common law claims

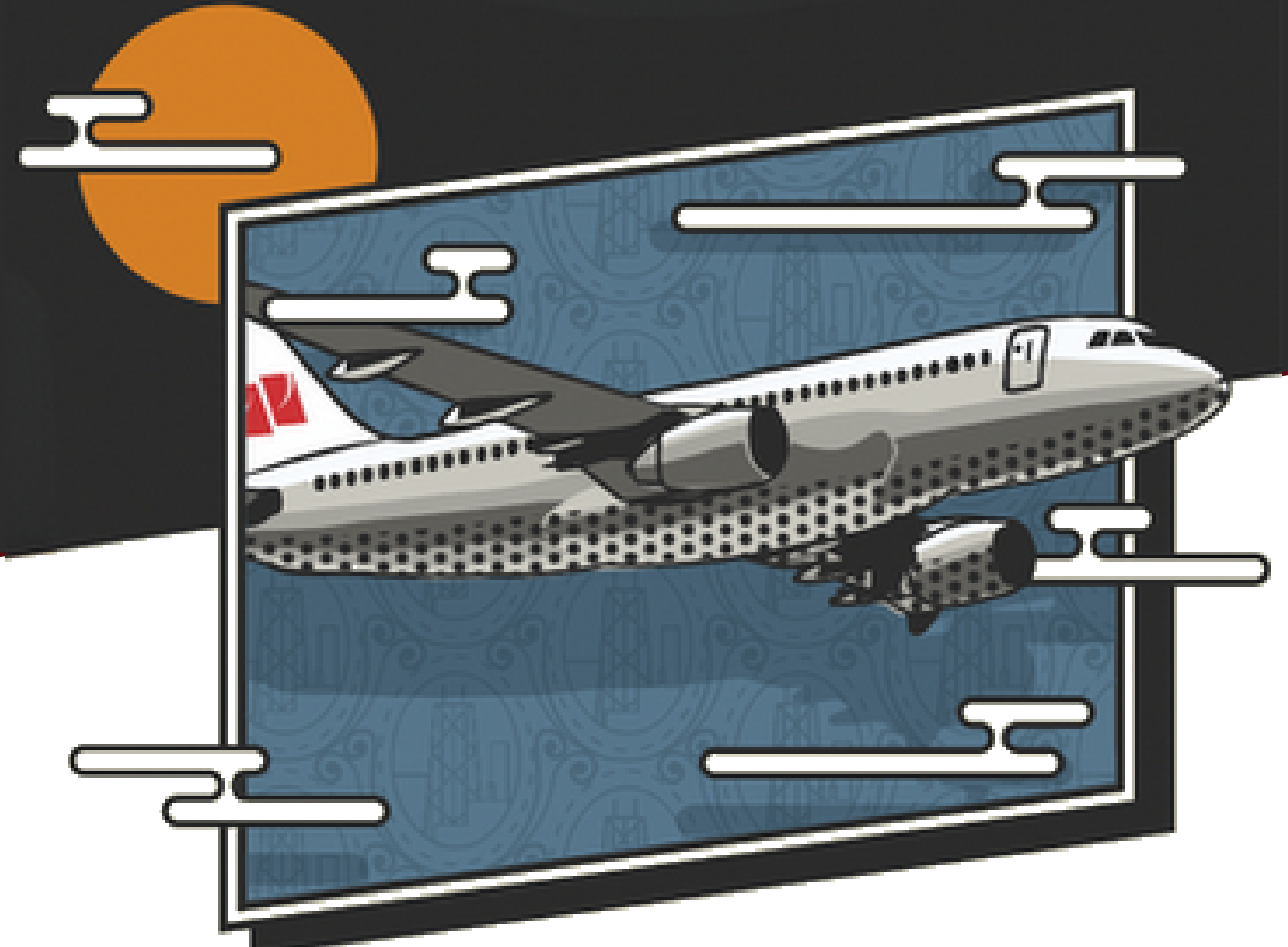


Conclusions



- Airport operators today must be **proactive** and **sophisticated** environmental managers
- Ensure run-of-the-mill **environmental compliance**
- Track **emerging issues** and comply with **new obligations**
- Handle **complicated F3 transition**
- For PFAS, strive to **reduce liability** and **maximize cost recovery**

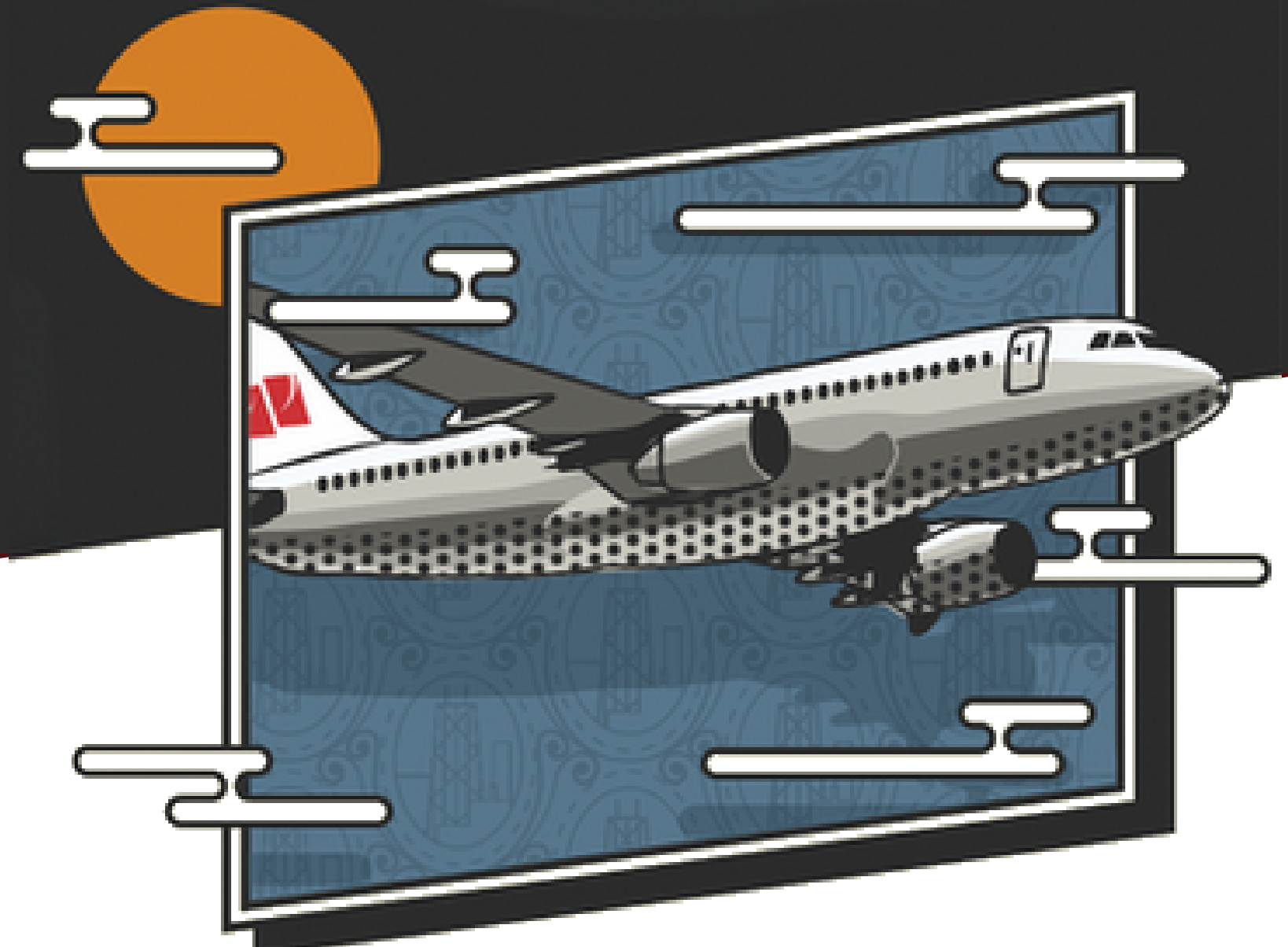
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QUESTIONS?



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THANK YOU!