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SOURCE


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Lawsuits Against PFAS Manufacturers and Other PFAS-Related Parties Continue to Mount

By Michael D. Klein

In a world desperate for some good news, we have got whacked with yet more bad news. In a newly published August 2022 study in the *Journal of Environmental Science & Technology* <https://pubs.acs.org/doi/10.1021/acs.est.2c02765>, it was found that levels of PFAS and PFOA in rainwater often greatly exceed U.S. EPA Lifetime Drinking Water Health Advisory levels. Since rainwater contributes to sources of surface water and groundwater drinking supplies, this is another concern for public water suppliers. So, on that theme, what follows is an update on PFAS and PFOA lawsuits having been initiated by public water suppliers.

In a recent issue of *The Water News Source*, I discussed the lawsuit filed by the Municipal Authority of Westmoreland County against PFAS manufacturers and other PFAS- and PFOA-related parties. In that article, I mentioned that other similar lawsuits have been filed across the United States. I want to take the opportunity here to identify several, but not all in the long list, of those lawsuits to show the magnitude of the involvement of the water sector, and state and local government, in the lawsuits.

In Pennsylvania, several of the plaintiffs who have initiated such lawsuits include: Aqua Pennsylvania, Bucks County, Delaware County, and Pennsylvania American Water. Nationally, several of the plaintiffs who have initiated such lawsuits include: Alaska, Colorado; Massachusetts; Wisconsin; City of San Diego, CA; Utilities Board of Tuskegee, AL; and West Des Moines (IA) Water Works. The Massachusetts lawsuit, filed in the United States District Court for the District of South Carolina, [Master Docket No. 2:18-mn-2873], in May of this year, is an example of some of the lawsuits that have been filed by other parties. Firstly, it is lengthy at 74 pages. Secondly, it names 15 defendants. The thrust of the case against the defendants is the allegation that they “Nevertheless, long after they became aware of these dangers, Defendants continued to advertise, market, manufacture for sale, offer for sale, and sell PFAS-containing AFFF (collectively, “AFFF Products”) to inter alia, the Commonwealth’s governmental entities, counties, municipalities, local fire departments, businesses, entities, and residents.” [pp. 1-2 of the Complaint].

Two of the natural resources alleged to have been adversely affected by the AFFF products are groundwater and surface freshwater. In each instance, the Complaint describes the importance of groundwater and surface freshwater to drinking water. The Complaint goes on to allege, in part, that “PFAS are toxic and cause significant adverse effects to human health. The presence of these chemicals in drinking water presents a serious threat to public health.” [p. 20 of the Complaint]. Massachusetts cites the Federal *Safe Drinking Water Act* (SDWA) in its Complaint and asserts that “The PFAS contamination of drinking water throughout the Commonwealth presents an imminent and substantial endangerment to human health within the meaning of 42 U.S.C. § 300i... Manufacturer Defendants violated and are violating SDWA by engaging in activities that have caused or contributed to imminent and substantial endangerment to the health of the Commonwealth’s water users, whose drinking water contains PFAS in excess of the PFAS6 MCL. See 42 U.S.C. § 300i(a).” [p. 65 of the Complaint]. The relief sought in the Complaint, includes asking the Court to “Find Defendants liable for all costs to investigate, clean up and remove, restore, treat, monitor, and otherwise respond to PFAS contamination resulting from Manufacturer Defendants’ AFFF products so the contaminated natural resources are restored to their original condition, or are replaced by reasonably equivalent resources, and for all damages to compensate the residents of the Commonwealth for the lost use and value of these natural resources during all times of injury caused by PFAS and for such orders as may be necessary to provide full relief to address the threat of contamination to the Commonwealth...” [p. 71 of the Complaint].

[EPA Issues Guidance to Public Water Systems in Developing and Maintaining Service Line Inventory](#)

On August 4, 2022 EPA released guidance for developing and maintaining a service line inventory to support water systems with their efforts to develop inventories and provides states with needed information for oversight and reporting to EPA

[see, Office of Water (4606M), EPA 816-B-22-001]. The Guidance consists of 8 Chapters, plus Appendices A through F, and Exhibits 1-1 through 7-3. The Guidance states that the information contained in the document can position water systems to begin replacing lead service lines as soon as possible. Also, as stated in the Guidance, it covers the lifecycle of the inventory, including inventory creation, material investigations, system reporting, state review, public accessibility of service line information, and service line consumer notification. [p. 1-1 of the Guidance].

The Guidance provides essential information to help water systems comply with the Lead and Cooper Rule Revisions (LCRR) requirement to prepare and maintain an inventory of service line materials by October 16, 2024. On pp. 2-8 and 2-9 of the Guidance in Section 2.2.1, there is an explanation that under the LCRR, 40 CFR § 141.84(a), "All community water systems must prepare an inventory of all service lines connected to the public water distribution system, regardless of ownership status." As further explained in that Section, this means that any service line connected to the public water system, even where the water system owns no portion of the service line, must be included in the inventory. In those instances where ownership is split, the inventory must include both the system-owned and customer-owned portions of the service line. To do this, water systems will need to internally track

address locations of each service line and their respective material classification (40 CFR § 141.84(a)). Where a single service line serves multiple units in the same building, the water system may choose to exclude unit numbers from the address. However, the unit numbers may be required to comply with other LCRR requirements, such as the notification requirements of 40 CFR § 141.84(d) and 40 CFR § 141.85(e). As you can imagine, the Guidance is loaded with a significant amount of new and consequential information. I highly recommend that you participate in webinars being hosted by EPA, PADEP and/or others on this important topic. 📢

About the Author

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This column is intended to be a discussion of legal issues in the water industry. It is not intended to be legal advice, or to establish any attorney-client relationships. Before making any legal decisions regarding anything discussed in this column, you should always consult with an attorney.



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