

PFAS Water Utility Lawsuit Shows An Increasing Trend

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In the latest PFAS water utility lawsuit ([PAWC Complaint – PFAS](#)), the Pennsylvania-American Water Co. (“PAWC”) sued numerous PFAS manufacturers over allegations that the companies knowingly or negligently allowed the contamination of the drinking water in the state of Pennsylvania. Now, the PAWC alleges, it will need to spend significant amounts of money to remediate drinking water sources, which many estimate will be alleged to be hundreds of millions in alleged damages sought by the PAWC. While the lawsuit by the water utility is certainly [not the first of its kind](#), it is nevertheless significant due to the fact that the PAWC owns and controls 67 public water systems and over 100 groundwater wells throughout Pennsylvania, which provide drinking water to approximately 2.4 million citizens, making the scope of the impact and potential remediation costs some of the largest to date.

What Are PFAS and Why Are They a Concern?

Per- and poly-fluoroalkyl substances (“PFAS”) are a class of over 7,000 manmade compounds. Chemists at 3M and Dupont developed the initial PFAS chemicals by accident in the 1930s when researching carbon-based chemical reactions. During one such experiment, an unusual coating remained in the testing chamber, which upon further testing was completely resistant to any methods designed to break apart the atoms within the chemical. The material also had the incredible ability to repel oil and water. Dupont later called this substance PFOA (perfluorooctanoic acid), the first PFAS ever invented. After World War II, Dupont commercialized PFOA into the revolutionary product that the company branded “Teflon.”

Only a short while later, 3M invented its own PFAS chemical – perfluorooctane sulfonate (PFOS), which they also commercialized and branded “Scotchgard.” Within a short period of time, various PFAS chemicals were used in hundreds of products – today, it numbers in the thousands.

The same physical characteristics that make PFAS useful in a plethora of commercial applications, though, also make them highly persistent and mobile in the environment and the human body – hence the nickname, “forever chemicals.” While the science is still developing regarding the extent of possible effects on human health, initial research has shown that PFOA and PFOS are capable of causing certain types of cancer, liver and kidney issues, immunological problems, and reproductive and developmental harm.

PFAS Water Utility Litigation To Date

The Pennsylvania lawsuit is not the first lawsuit brought by a water district seeking to recoup the costs of cleanup and decontamination of PFAS. For example, on October 27, 2020, another California water district (the [Santa Clarita Valley Water Agency](#)) brought a similar, albeit much less extensive, lawsuit for PFAS cleanup costs. Shortly thereafter, in December 2020, eleven water districts in Orange County, California filed a lawsuit for PFAS remediation costs from drinking water and publicly estimated the damages to be over \$1 billion. However, it was a lawsuit in 2010 brought by the state of Minnesota alleging environmental pollution against PFAS manufacturers that began the ever-increasing litigation brought by states, municipalities, and water districts for PFAS cleanup costs.

In 2010, Minnesota brought the first PFAS pollution claim against 3M for negligently discharging PFAS used in the manufacture of Scotchgard into sources of drinking water. The lawsuit resolved in 2018 for \$850 million, which the state used to fund drinking water and water sustainability projects in the areas affected by contamination. Several states have since followed suit, including Michigan, whose Attorney General sued 17 companies that manufactured PFAS in January 2020 alleging causes of action under the Natural Resources and Environmental Protection Act, the Michigan Fraudulent Transfer Act, and Michigan’s laws of negligence, trespass, public nuisance, and unjust enrichment. This case will likely take years to resolve, but will shape the future of PFAS litigation, especially since the lawsuit involves a much broader list of defendants than the Minnesota case. The below chart shows the amounts of reported settlements in environmental pollution cases related to PFAS:

Year of Settlement	Amount	State
2018	\$850 million	MN
2018	\$4 million	AL
2019	\$2.7 million	MN
2019	\$35 million	AL
2020	\$55 million	MI
2020	\$113 million	MI

More recently, water districts from coast to coast either have or are contemplating bringing lawsuits similar to the ones filed in California and Pennsylvania. Ever-increasing public and media pressure have caused PFAS to be one of the most (if not the most) prevalent toxic tort agents discussed in mainstream media. The result has been a slew of passed and proposed legislation in states to regulate PFAS, as well as increased pressure on the EPA to regulate PFAS at the federal level. In turn, agencies such as water districts and wastewater treatment facilities fear that they could be the targets of lawsuits for allegedly contributing to the dispersion and spread of PFAS pollution. Such lawsuits could assert claims under the Clean Water Act and the Resource Conservation and Recovery Act. In short, the allegations would state that the facilities failed to install costly technology that would adequately filter PFAS from water sources. By failing to do so, these facilities (either knowingly or unknowingly) sent PFAS-contaminated water further downstream to other water districts.

As the lawsuits pile up, some water district and wastewater treatment facilities have begun to proactively install state-of-the-art multi-million-dollar filtration systems that eliminate PFAS. However, districts have also begun to fight back and, like some states, are looking to companies that discharge PFAS into the air, water, or soil for contribution. More municipalities, water boards, and treatment facilities are likely to follow in Pennsylvania’s footsteps, as the costs of cleanup continue to increase, and parties look to municipalities and treatment facilities to pay damages for PFAS pollution to drinking water.

Future Trends For Water Utilities

Faced with mounting pressure by the public and media to take action, we predict that in 2021, several other water utilities, states, and municipalities will file lawsuits for PFAS cleanup costs to drinking water. As the lawsuits increase, so, too, will the breadth of companies that are brought into the lawsuits. While the chemical manufacturers themselves will remain the focus of litigation for the foreseeable future, water utilities (similar to trends often seen in products liability lawsuits) will look to PFAS polluters more broadly to recoup as much of the PFAS remediation costs as possible.

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National Law Review, Volume XI, Number 48

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