

PFAS Contamination Cost Recovery

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PFAS, Generally:

PFAS, short for per- or polyfluoroalkyl substances, are part of a group of man-made perfluorinated chemicals have been manufactured and used in various products since the 1940s. They were most notably in DuPont's nonstick Teflon pans and other common industrial and household products including microwave popcorn bags, water-repellent fabrics, and firefighting foams. The issue of these "emerging contaminants" in drinking water, particularly from the military's use of firefighting foam, or Aqueous Film Forming Foam ("AFFF") has made headlines over the past few years. Although AFFF has not been used in recent years, it continues to effect water providers today.

PFAS' toxicity and persistence in the environment create a health and environmental hazard, endangering public health at low levels of exposure resulting in developmental effects to fetuses, kidney damage, cancer, and other illnesses. Exposure to PFAS could occur through public water systems and drinking water wells amongst other avenues, and it is why a water provider in the United States can no longer assume their drinking water is free from AFFF contamination. Luckily, water providers across the country have increasingly begun to take steps to address these toxic chemicals.

The MDL National Rural Water and Napoli Shkolnik PLLC

In 2018, the Judicial Panel for Multidistrict Litigation ("MDL") ordered all AFFF cases to be consolidated before Judge Richard Gergel of the District of South Carolina, where Paul J. Napoli from Napoli Shkolnik PLLC, was appointed as Plaintiffs' Co-Lead Counsel. *In Re: Aqueous Film-Forming Foams Products Liability Litigation* (MDL No. 2:18-mn-2873-RMG). This MDL was filed against a variety of manufacturers of AFFF based on allegations that the product harmed humans and contaminated groundwater.

The goal for Napoli Shkolnik in leading this MDL is for water providers to receive enough funds to treat these chemicals down to non-detect levels in each well of their impacted water supply. For years, Napoli Shkolnik's environmental litigation team has been fighting for

water providers to recoup the money spent on treatment and remediation to remove PFAS. Napoli Shkolnik is uniquely qualified to undertake this task as it is a national leader in PFAS contamination representing numerous individuals, local governments and water districts across the nation. The scope of services includes but is not limited to: evaluation, investigation, recovery of capital costs associated with treatment systems, chemistry analysis, hydrogeology analysis, water filtration, document review, working with state DNR, Federal EPA, risk assessment and expert testimony.

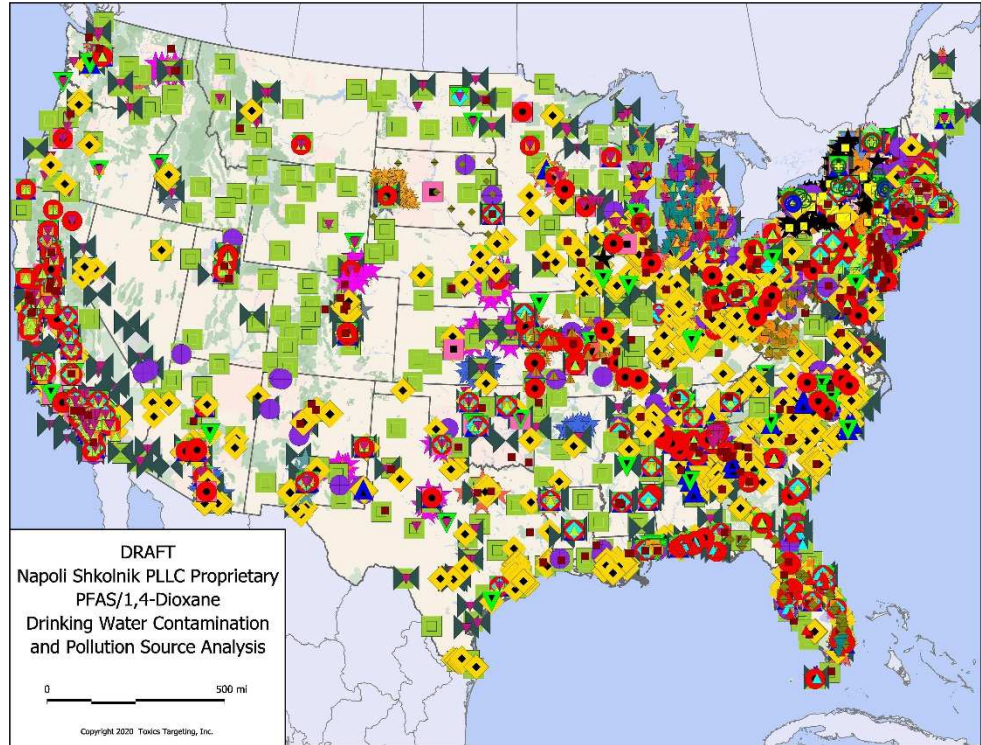
The firm also represents the National Rural Water Association (“NRWA”) and the NRWA network of utilities members now dealing with unregulated chemicals in their drinking water. The NRWA devotes substantial time to train and assist 49 affiliated State Rural Water Associations, that currently have over 31,000 utility system members. This lawsuit could provide a mechanism for addressing and resolving those concerns so costs to investigate and remediate are not borne by the rate payer,.,

To help water providers cover the exorbitant costs of cleaning up PFAS in the drinking water, proper parties must be held accountable such as the manufacturers and sellers of the AFFF. These manufacturers have knowingly sold dangerous PFAS products and failed to inform the public. It is no surprise then, that this work in managing complex environmental litigations involving toxic exposures directly translates to litigation involving AFFF, enabling the firm to represent dozens of water districts around the country on PFAS contamination.

The Benefit to Water Providers by Joining Suit

PFAS chemicals have invaded the nation's drinking water supplies, thanks mostly to discharges from manufacturers and the use of firefighting foam by the military. The

Environmental Working Group estimates that 1,500 drinking water systems across the country may be contaminated, affecting 110 million Americans. That is why more and more water providers are concerned about being stuck with



major expenses. See the map herein that represents PFAS contamination sites across the country.¹

Due to PFAS contamination across the country, the EPA has issued a non-binding health advisory level of 70 parts per trillion (ppt) for cumulative lifetime exposure to PFOA and PFOS. However, this is advisory only. Yet even in the absence of federal regulation, a handful of states are already taking affirmative actions to make their own binding level of PFOA and PFOS in drinking water. It is likely that we will see more states try to safeguard the public from PFAS contamination by requiring testing on public drinking water systems for PFAS and finalizing their own drinking water standards for these chemicals. Without filing suit, water providers would be left with mounting costs to treat these contaminants on their own.

¹ *Poisoning the Well : Toxic Firefighting Foam Has Contaminated U.S. Drinking Water* (The Intercept, December 2015). Available at: <https://theintercept.com/2015/12/16/toxic-firefighting-foam-has-contaminated-u-s-drinking-water-with-pfcs/>

There have been instances where water providers and those affected by PFAS contamination settle directly with DuPont de Nemours, Inc., 3M, Chemours, and other PFAS manufacturers. This is a ploy by the manufacturers to win the public relation battle, and a superficially easy solution to municipalities that want to get money without litigation. The problem with this occurrence is these settlements are never nearly enough to cover the full scope of damages these chemicals cause. This includes the substantial up-front capital costs for water providers to install new water filtration systems, including granulated activated carbon (“GAC”) or anion exchange, as well as the operation and maintenance costs for many years after.

It is important to note these lawsuits, like those represented in the MDL mentioned above, are not against the local firms, municipalities or the like, but instead, against the manufacturers of these chemicals based on allegations that the product harmed humans and contaminated groundwater. When everything is taken into consideration, responsibility for this widespread water contamination lies with the manufacturers, not the local water companies and water authorities who are themselves victims of these hazardous disposal practices.

Protect Your System

There is no upfront cost to your utility to participate and access funds when a settlement is awarded. However, your utility must be registered in the suit. More information on PFAS, the suit and the process available to recover any cost you may incur from testing, treatment and remediation is available at <https://www.napolilaw.com/nrwa-pfas/>