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PFAS CONTAMINATION

These "Forever Chemicals" are being found increasingly in the groundwater and drinking water supplies in communities throughout the country.

WHAT IS PFAS?

Perfluorooctanoic acid ("PFOA") and perfluorooctane sulfonate ("PFOS") (collectively "PFAS") are part of a group of man-made perfluorinated chemicals that were used in common industrial and household products, including firefighting foam and Scotchgard.

Due to the chemical nature of PFOA and PFOS as a surfactant, it was able to be mixed with water and sprayed as foam on fires, putting a film on the fire to separate oxygen from the fuel surface, and therefore able to stop the chemical reaction from burning.

This firefighting foam, or Aqueous Film Forming Foam ("AFFF") was widely used particularly at municipal airports and military bases for training purposes and to combat jet fuel spills. The foam seeped through the soil at these sites and, through migration and runoff, leached into underground aquifers and surface water bodies used for drinking water.

THERE IS NO SAFE LEVEL OF EXPOSURE

WHO IS RESPONSIBLE?

PFOA was produced by eight major U.S. companies, including: Arkema, Asahi, Ciba, Clariant, Daikin, DuPont, 3M/Dyneon, Solvay, and Solexis. PFOS was solely produced by one company in the United States: 3M Company. Although these manufacturers agreed to phase-out AFFF containing PFAS several years ago, recent testing has led to the discovery of widespread contamination indrinking water supplies in many states.

PLAINTIFFS INVOLVED IN PFAS LITIGATION

The cases in the MDL involve a variety of plaintiffs and claims, including class actions brought on behalf of residents in areas where AFFF contamination occurred, lawsuits involving individual personal injury claims, and actions brought on behalf of states, municipalities, and public water districts for costs associated with treating contaminated water systems.

PAUL J. NAPOLI, *Of Counsel*

Co-Lead Counsel in the AFFF Products Liability Litigation

In addition to litigating extensively on behalf of clients for environmental contamination, Mr. Napoli is known for his dedicated representation of 9/11 responders and other rescue and recovery workers who became ill or were injured during rescue, recovery and debris-removal activities at the World Trade Center in the months following 9/11.

AWWA MEMBER

NYSAC EXCELSIOR PARTNER

NATIONAL RURAL WATER ASSOCIATION CORPORATE MEMBER NRWA

NATIONAL ASSOCIATION of COUNTIES NACo

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PFAS: EMERGING CONTAMINANTS

ENVIRONMENTAL AND HEALTH CONCERNS

PFAS can remain in the environment, particularly in water, for many years and can move through air, soil and into groundwater. PFAS has also been found to bioaccumulate in humans and animals. People can be exposed to PFAS through food, drinking water, and/or biodegradation of consumer products. These contaminants are readily absorbed by the body and, once ingested, may persist in the body for long periods of time. The body of scientific studies supporting a connection between serum levels and disease include those conducted in the US and Europe.

One of the most often cited studies was conducted by the C8 Science Panel, formed as the result of a settlement in a class action lawsuit against DuPont, found a probable link between PFOA and the following six diseases:

- Kidney Cancer
- Testicular Cancer
- Ulcerative Colitis
- Thyroid Disease
- Pregnancy Induced Hypertension (including preeclampsia)
- Hypercholesterolemia

STATE ACTION SAND REGULATORY LIMITS

The trigger for the current wave of litigation in the U.S. regarding PFAS came when in May 2016, the EPA issued Lifetime Health Advisories and Health Effects Support Documents for PFOA and PFOS recommending that exposure to PFOA and PFOS not exceed 70 parts per trillion in drinking water. While health advisories are non-regulatory, they reflect the EPA's assessment of the best available peer-reviewed science. In addition, the Agency for Toxic Substances and Disease Registry (ATSDR) and Center for Disease Control and Prevention (CDC) have also issued an Interim Guidance to aid physicians withpatient consultations which identifies health effects associated with exposure.

Although EPA's heath standard is only advisory, they have made it clear that they are taking the necessary steps to set enforceable limits for both PFOA and PFOS under their PFAS Action Plan. More importantly, many states either have or are considering much more stringent and mandatory Maximum Contaminant Levels (MCLs) including California, Minnesota, New Hampshire, New Jersey, and Vermont. In New Jersey, an MCL of 13 ppt for PFOA was adopted. State Attorneys Generals, including in Minnesota and New York, have also sued to recover the costs of cleanup, drinking water remediation and Natural Resource Damages.

Since 2016, dozens of lawsuits have been filed against the manufacturers of AFFF on behalf of public and private water providers. One such manufacturer, 3M, was warned by its own environmental specialist-merely two decades ago-of the insidious toxic nature of PFAS. In late 2018, the Judicial Panel for Multidistrict Litigation (JPML) ordered that all AFFF cases be consolidated before Judge Richard Gergel of the District of South Carolina. In Re: Aqueous Film-Forming Foams Products Liability Litigation (MDL No. 2:18-mn-2873-RMG). Recently, Paul J. Napoli was appointed as Plaintiffs' Co-Lead Counsel in the above litigation, charged with overseeing the coordination, preparation, and presentation of the necessary legal documentation.

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