



9:15 - 10:15 AM

How To Manage PFAS

Speakers: Erin Dickinson, Attorney, Crueger Dickinson, LLC; Jim Zellmer, Division Administrator, WI Department of Natural Resources Moderator: Samantha Kerkman, County Executive, Kenosha County

How to Manage PFAS

Jim Zellmer, Administrator Environmental Management Division

2023 WCA Annual Conference September 19, 2023

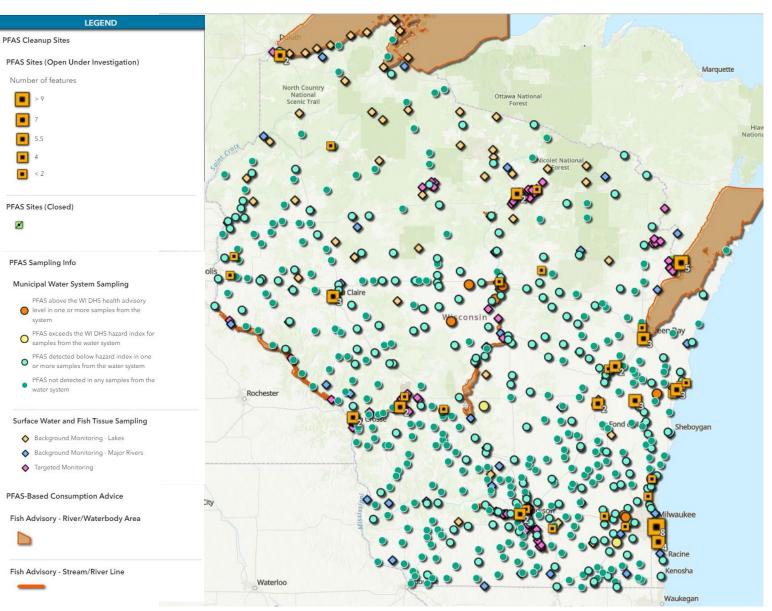
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Brief Background

- What are PFAS?
 - Group of chemicals used in consumer and industrial products since the 1950's
- Where are PFAS found?
 - Fire-fighting foam, grease-resistant paper, nonstick cookware, water-resistant fabrics and coatings, personal care products
- PFAS Exposure
 - Drinking PFAS contaminated water
 - Eating fish with high levels of PFAS
- Health Effects increase cholesterol, interfere with vaccinations, possible increases in certain cancers

Where Have we Looked for PFAS in WI?

- Over 1,000 Public Water Systems
- Over 1,000 Private Wells
- Over 100 Active Clean up Sites
- Over 50 Surface Water Segments

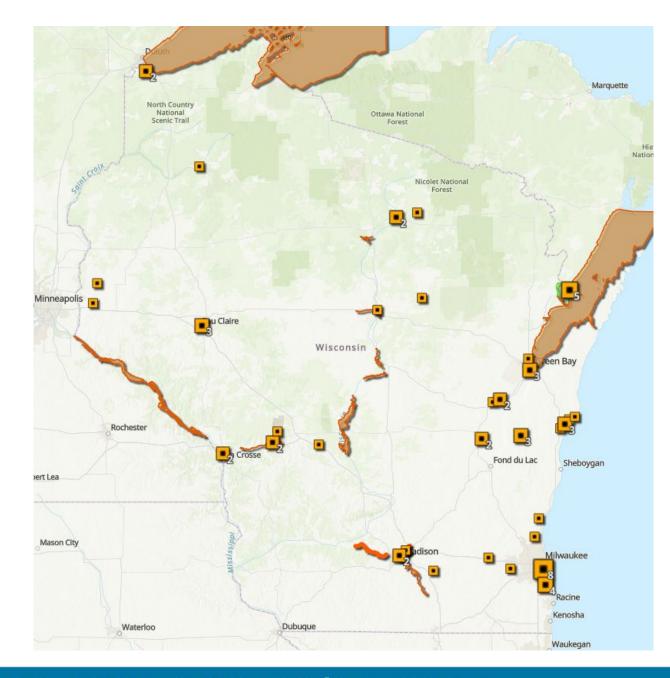


Source: Wisconsin PFAS Interactive Data Viewer

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Where are PFAS Found in WI?

- ~100 Active PFAS Groundwater Investigations
- ~25 Public Drinking Systems Exceed the DHS PFAS Health Hazard Index
- Recent Research Indicates at Least One PFAS Detected in Most Shallow Private Groundwater Wells Sampled
- Elevated Concentrations and Fish Consumption Advisories in Several WI Surface Waters



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Regulating PFAS in Wisconsin

Public Drinking Water Standards

- PFOA and PFOS, 70 parts per trillion
- Requires all public water systems test for PFAS
- Surface Water Standards
 - PFOA: 20 ppt if public drinking water source; 95 ppt for other waters
 - PFOS: 8 ppt for most waters
 - Requires wastewater discharges to be tested for PFAS
- Groundwater
 - Currently no standards, rely on health-based recommendations

Reducing Your Exposure to PFAS

Drinking Water

- Public Water System
 - Check with your public drinking water system
 - Compare results with DHS health-based recommendations
- Home Drinking Water Well
 - Check with your local health department
- Fish Consumption Advisories
 - DNR Website: Choose Wisely consumption advice

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Resources Available to Address PFAS

- State and federal funding
 - PFAS Trust Fund \$125 million
 - Bipartisan Infrastructure Law \$200 million over 5 years
- Private well owners
 - Temporary bottled water
 - Well replacement or abandonment
- DNR Website: Community Toolkit and Interactive Data Viewer

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CONNECT WITH US

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PFAs in the Court System: Litigation and Settlements

Presenter: Erin Dickinson- Crueger Dickinson LLC



Early PFAs Cases

Notable Past Cases:

- State of Minnesota vs. 3M-\$850 million settlement in 2018.
- Private lawsuits on behalf of 70,000 residents in West Virginia and Ohio resolved in 2019 against Dupont for \$670 million.



New Wave of Litigation ongoing since 2018.....

2 fronts:

- 1. Contamination as a result of AFFF Fire Fighting Foam (all cases in South Carolina Federal Court MDL in front of a single Judge)
- Non-AFFF contamination as a result of a plant, landfill etc. (pending in state and federal courts around the country)

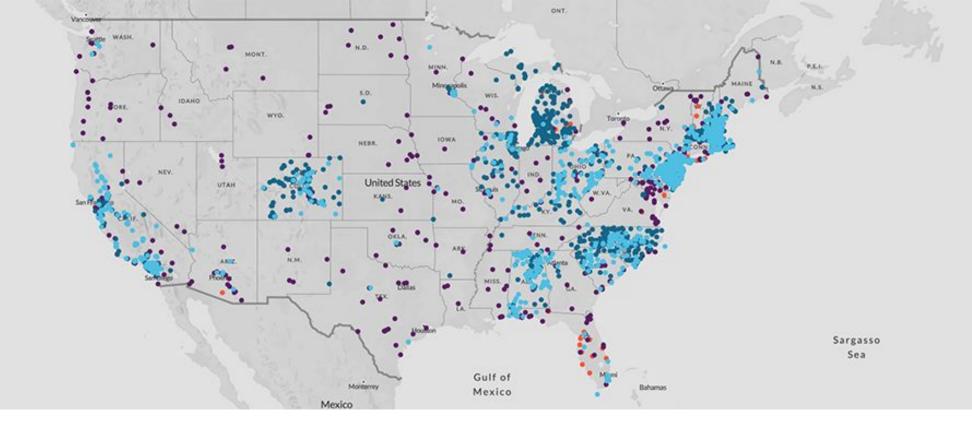


Litigation Driven by....

Increasing detections.

Impending new standards.

Greater understanding of the dangers of PFAs.



Detections of PFAs above permissible levels....

New standards:

The U.S. Environmental Protection Agency (EPA) announced the Proposed National Primary Water Regulations on March 14, 2023

Regulations expected to be finalized by the end of 2023 establishing legally enforceable levels in drinking water

- Covers 6 PFAS:perfluorooctanoic acid (PFOA); perfluorooctanesulfonic acid (PFOS); perfluorononanoicacid (PFNA); hexafluoropropylene oxide dimer acid (HFPO-DA, commonly known as GenXChemicals); perfluorohexanesulfonic acid (PFHxS); and perfluorobutanesulfonic acid (PFBS)
- Public Water Systems will also be required to: Monitor for these PFAS
- Notify the public of the levels of these PFAS
- Reduce the levels of these PFAS in drinking water if they exceed the proposed standards.

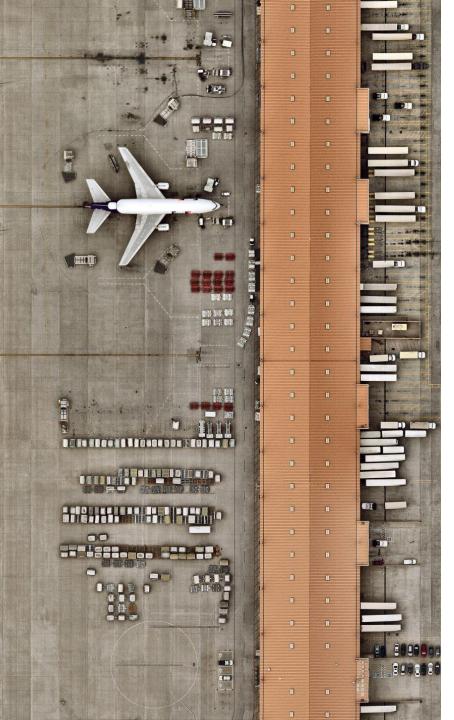
Levels in New Standards:

Compound	Proposed MCLG	Proposed MCL (enforceable levels)
PFOA	Zero	4.0 parts per trillion (also expressed as ng/L)
PFOS	Zero	4.0 ppt
PFNA	1.0 (unitless) Hazard Index	1.0 (unitless) Hazard Index
PFHxS		
PFBS		
HFPO-DA (commonly referred to as GenX Chemicals)		

Key Defendants in the Litigation

- Тусо
- Chemguard
- Chemours/DuPont
- 3 🕅





AFFF Cases

In Re Aqueous Film-Forming Foams Products Liability Litigation MDL 2873 District Court for the District of South Carolina, Charleston Division The Honorable Richard M. Gergel

- Over 4,000 cases consolidated in the MDL
- This includes:12 Airports;
- 217 Cases Brought by Towns and Counties;
- 21 Cases Brought by AGs;
- 107 Cases Brought by Utility and Emergency Departments;
- Cases Also Filed on Behalf of School Districts, Local Businesses, Individuals, Etc.

Wisconsin Cases



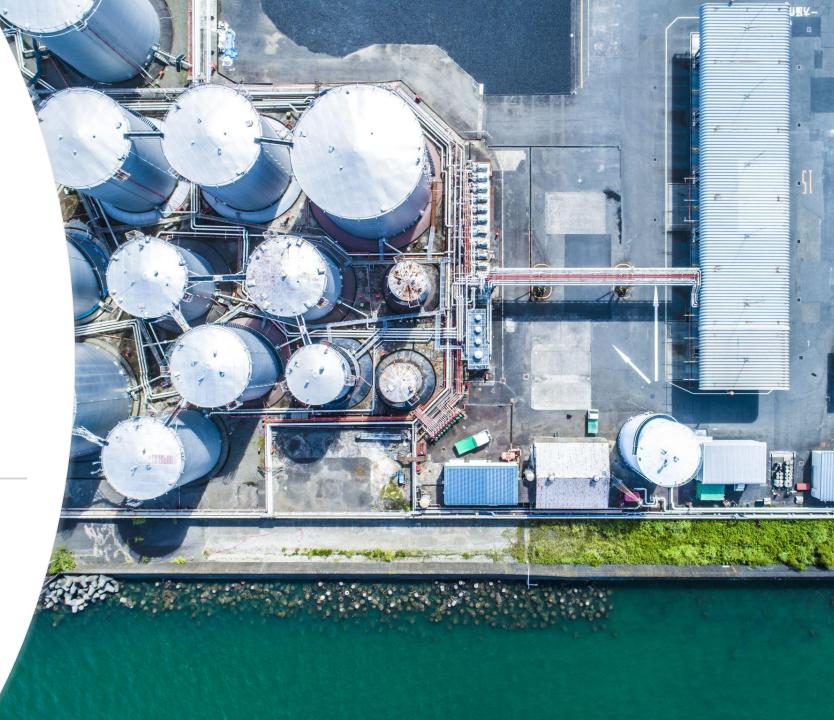
- City of LaCrosse-March 2021 (MDL)
- State of Wisconsin v. Tyco -March 2022
- Dane County-May 2022 (MDL)
- State of Wisconsin v. 3M et al. (federal court in Wisconsin-Western District of WI)
- City of Peshtigo-October 2022 (MDL)

Litigation Proceeds for 5 years....



NEW DEVELOPMENT SETTLEMENTS-ALL PUBLIC WATER PROVIDERS PAY ATTENTION!

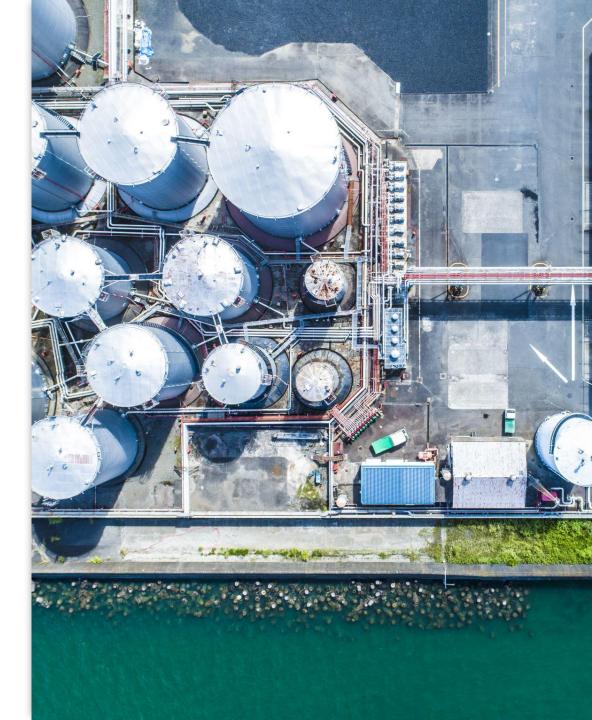
In June 2023 a Class Settlement Involving ALL Public Water Providers was announced with 3M and Dupont



Settlement Amounts

- 3M settlement is for between \$10.5 and \$12.5 billion
- The DuPont family of entities (including Chemours, Corteva, and EIDP) have settled for \$1.185 billion.

This is NATIONWIDE for ALL PUBLIC WATER PROVIDERS- NOT JUST RELATED TO AFFF FOAM- VERY IMPORTANT YOU UNDERSTAND!



If you are a public water provider (whether or not you have a case or a known problem) your rights will be impacted

Your rights <u>will be</u> impacted if you do nothing.

If you do not "Opt Out" and you are a public water provider you will be bound by the Settlement



What Does This Mean?

The Judge has certified a class for settlement. If you are a public water provider in the United States you are in that class unless you take yourself out of it.

You will get a notice in the mail to this effect soon.



What Does This Mean?

If you do not "opt out":

- You may only recover monetary compensation through the settlement claims process

- You will be barred from bringing future litigation against 3M or Dupont even if you later discover you have been contaminated by one of these companies.

That may be a good thing or may not, but you need to consult a professional.....



What Should My County Do?

Test. You need to determine whether any of your water is contaminated.

Consult an attorney. Especially if you have a known or suspected problem.

Deciding whether to opt out or stay in the settlement is something that depends on your factual circumstances and should be made with advice of experienced lawyers.

The settlement may be good for you and it may not.

Decisions MUST BE MADE SOON.

Deadlines to Opt Out of Settlement are:

December 4, 2023 for Dupont settlement.

December 11, 2023 for 3M settlement.

If you don't opt out by those dates- you are in!!!



How will my County determine what it gets out of the Settlements if we stay in?

"PHASE 1"- THOSE WITH ALREADY KNOWN IMPACTS":

"Phase 1" of the allocation, and water systems with impacted wells will share a \$6.875 billion fund that will be divided among those who make claims based on two factors:

- 1. Each impacted well's flow rate
- 2. Each impacted well's level of contamination

See matrix (Dupont: DuPont-Estimated-Allocation-Range-Table.pdf (pfaswaterprovidersettlement.com) and 3M: 3M-Estimated-Allocation-Range-Table.pdf (pfaswaterprovidersettlement.com)



What if we stay in and detect PFAs later?

"PHASE 2"- THOSE WITH CURRENTLY KNOWN IMPACTS:

If you don't have any currently impacted wells, but that serve more than 3,300 people and are required to test for PFAS under "UCMR-5" The Fifth Unregulated Contaminant Monitoring Rule (UCMR 5) Fact Sheet (epa.gov) and later determine you have a claim:

> Between \$3.625 billion and \$5.625 billion additional dollars are set aside for claims that arise later.





Final Approval Hearings for Settlements are December 14 (Dupont) and Feb. 2 (3M)claims will begin if approved



Timeline

- Preliminary Approval of Class Action Settlement: August 22, 2023
- Notice Period Begins: September 5, 2023
 - Direct notice mail, email,
- Last day to opt out: December 4, 2023/ December 11, 2023
- Last day to object: November 4, 2023
- Final Fairness Hearing: December 14, 2023
- After the fairness hearing and final judgment is entered, claims period opens (many different funds, but file your claims within 60 days to be safe)

Settlement Information

https://www.pfaswatersettlement.com/

Remaining Litigation

Many other defendants have not settled litigation will continue against:

- BASF Corp.
- Buckeye Fire
- Chemguard
- Kidde-Fenwal
- Tyco Fire
- Many others...



Your Decision

- Stay in the Settlement and File a Claim.
- Opt-Out and Individually Litigate a Case Against Defendants.
- Do Nothing- you will be bound by Settlement but receive nothing.





Bottom Line- Key Take Aways

- 1. Test now.
- 2. Get Legal Counsel to advise you on opting out or staying in (especially if you already have detections).
- 3. Do not "do nothing."



Questions? ekd@cruegerdickinson.com