Understanding PFAS

A GROWING CHALLENGE FOR WISCONSIN

By Andy Phillips and Evan Claditis, Attorneys, Attolles Law, s.c.

Per- and polyfluoroalkyl substances (PFAS) are a large class of man-made chemicals that have been used in industrial applications and consumer products since the late 1940s. Although scientists have identified more than 10,000 PFAS compounds, perfluorooctanoic acid (PFOA) and perfluorooctane sulfonate (PFOS) are two of the most widely used and extensively studied chemicals in the PFAS family.

For decades, PFAS were found in countless everyday products, including fast-food wrappers, microwave popcorn bags, nonstick cookware, carpeting, stain-resistant fabrics, shampoos, cosmetics, and even toilet paper and dental floss. Because of their unique ability to coat ignited fuel sources and suppress combustion, PFAS substances have long been present in aqueous film-forming foam (AFFF), which has been used since the 1960s to control and extinguish Class B aviation and other shallow-spill fires. With high concentrations of PFOA and PFOS, AFFF has been a leading source of contamination in groundwater and drinking water systems.

PFAS are often referred to as "forever chemicals" because they contain an extremely strong carbon-fluorine bond, making them highly resistant to natural degradation and extraordinarily persistent in both the environment and the human body. Nearly all Americans have been exposed to PFAS, and national studies estimate that approximately 99% of the population has detectable levels in their blood. While Wisconsinites appear to have slightly lower detectable levels compared to the national average, PFAS have nevertheless been identified in every corner of the state.

Why do we care?

When products containing PFAS are spilled, sprayed or disposed of, PFAS readily migrate through soil into groundwater, contaminating public drinking water systems, private wells, lakes and rivers. Investigators have identified PFAS contamination at landfills, hazardous waste sites, and airports and firefighting training facilities where AFFF was discharged. In addition, the land application of biosolids (e.g., eco-friendly fertilizers from sewage sludge) has introduced PFAS into agricultural fields, leading to contamination of grazing livestock, crops and fish inhabiting affected waters.

According to the Wisconsin Department of Natural Resources, people may be exposed to PFAS by drinking contaminated municipal or private well water, eating fish with elevated PFAS concentrations, consuming food grown or raised near contaminated areas, eating food packaged in PFAS-treated materials, or using certain grease-resistant, water-resistant, or water-repellent consumer products.

PFAS's persistence and ability to accumulate in human tissue over time make PFAS contamination a serious public health threat. Studies have shown that PFAS exposure may be associated with decreased fertility, pregnancy-induced hypertension, thyroid hormone disruption, immune system impairment, birth defects and developmental delays in children, and an increased risk of prostate, colon, kidney, liver and testicular cancers.

According to UW-Madison Extension, the challenge is exacerbated by the difficulty in testing for PFAS. Many water sources across the state have not yet been tested for these chemicals due to the level of expertise and equipment required to conduct the tests and interpret the results. ■

See the Legal Issues column on page 44 for an update by Attolles Law on relevant laws and court action.

An Update on PFAS Laws and Litigation

By Andy Phillips and Evan Claditis, Attorneys, Attolles Law, s.c.

Federal and state governments have responded aggressively to growing PFAS concerns. In April 2024, following decades of legal challenges from PFAS manufacturers, the U.S. Environmental Protection Agency adopted the first nationwide drinking water standards regulating six PFAS compounds and establishing maximum contaminant levels of 4.0 parts per trillion (ppt) for both PFOA and PFOS. Wisconsin subsequently updated its own drinking water standards to align with the new federal regulations pursuant to Wis. Stat. § 281.17, which authorizes the Department of Natural Resources to administer a statewide drinking water program that meets or exceeds federal standards under the Safe Drinking Water Act.

Recognizing that compliance with these stricter standards would require substantial financial resources, the Wisconsin Legislature enacted 2025 Wisconsin Acts 200 and 201 to help combat PFAS contamination across the state. Together, these companion laws appropriate more than $133 million from Wisconsin's PFAS Trust Fund to help local governments, private well owners, airports and industrial facilities investigate contamination, improve water infrastructure and undertake remediation efforts. The legislation also created several grant programs specifically designed to assist communities affected by PFAS contamination.

Wisconsin is also focused on preventing future contamination. Because aqueous film-forming foam used to control fires has historically been one of the most significant sources of PFAS contamination in drinking water, Wis. Stat. § 299.48 prohibits the use of Class B and Class A/B firefighting foams containing intentionally added PFAS except during emergency firefighting operations, or for certain testing purposes after strict containment, treatment, and disposal or storage measures have been implemented to prevent discharge of PFAS into the environment. The use of Class B firefighting foams containing intentionally added PFAS is expressly prohibited for training exercises.

The state of Wisconsin, and many Wisconsin counties, cities and villages have already joined the multidistrict litigation, with more municipalities swelling the plaintiffs' ranks every day.

Regulatory reforms have been accompanied by extensive nationwide litigation. Thousands of lawsuits brought by municipalities and public water systems, private property owners, state governments, and individuals claiming personal injuries from PFAS exposure have been consolidated in multidistrict litigation pending before Judge Richard Gergel in the U.S. District Court for the District of South Carolina. Multidistrict litigations establish a highly coordinated and efficient framework to resolve complex cases that share common defendants and common questions of fact. By centralizing discovery and pretrial procedures, multidistrict litigations conserve valuable time and resources while preventing duplicative work and inconsistent judicial rulings.

Given the sheer volume of claims continually joining the PFAS litigation, Gergel structured it into sequential

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LEGAL ISSUES

PFAS chemical manufacturers agreed to pay over $12 billion in damages, comprising the largest drinking water contamination settlements in United States history. These multibillion-dollar settlements will help fund drinking water treatment and environmental remediation projects across the country.

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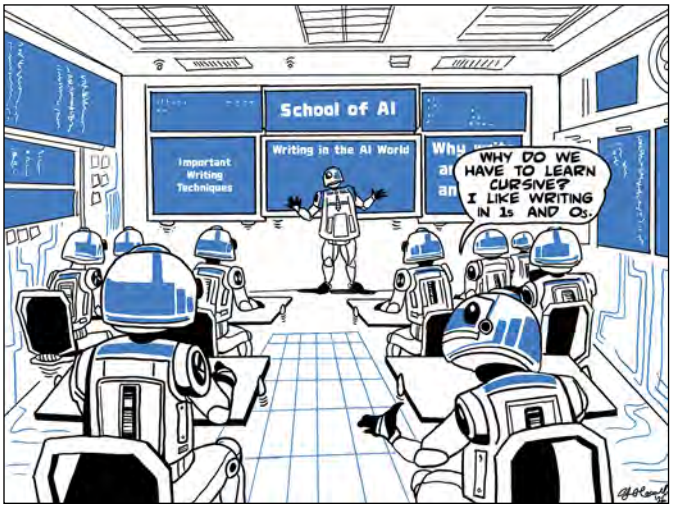
bellwether programs to systematically manage three different categories of plaintiffs: water, personal injury, and soil. The common allegation running through each is that chemical manufacturers, including 3M and DuPont, designed, produced, marketed and sold PFAS-laden products despite knowing the long-term environmental consequences of these toxic chemicals.

The first category, now functionally complete, involved public water systems. Gergel recognized that municipal water contamination posed the most immediate public health threat and would be addressed first. PFAS chemical manufacturers agreed to pay over $12 billion in damages, comprising the largest drinking water contamination settlements in United States history. These multibillion-dollar settlements will help fund drinking water treatment and environmental remediation projects across the country.

The second category, which is currently active, involves bodily injury claims targeting PFAS-linked illnesses like thyroid disease and kidney and testicular cancers. The third category, which is expected to emerge next, will involve soil and property damage. It will focus on recovering the immense costs needed to excavate and remediate contaminated ground at sites like county airports and landfills. The chemical manufacturers will be confronted with allegations, including the defective design of their hazardous firefighting foams and their failure to warn users of the human health and environmental dangers inherent in handling PFOA and PFOS. The state of Wisconsin, and many Wisconsin counties, cities and villages have already joined the multidistrict litigation, with more municipalities swelling the plaintiffs' ranks every day.



Conclusion

Although PFAS contamination presents one of the most significant environmental challenges facing communities and county governments today, there is reason for cautious optimism. According to the DNR, approximately 2,000 public water systems have been tested statewide, and nearly 95% of Wisconsin's public water systems currently meet Wisconsin's new, more protective drinking water standards. Continued monitoring, scientific research, responsible regulation, legislative funding and environmental remediation will remain essential to reducing future exposure and ensuring that affected communities have the resources necessary to protect public health. ■

Attolles Law, s.c. works on behalf of Wisconsin counties, school districts and other public entities across the state of Wisconsin. Its president & CEO, Andy Phillips, has served as outside general counsel for the Wisconsin Counties Association for more than 20 years.

1. Wis. Stat. § 281.17 authorizes the DNR to establish, administer and maintain a statewide safe drinking water program that meets or exceeds federal EPA standards. Prior to the recent rule revisions, Wisconsin's drinking water enforcement standard for PFOA and PFOS was 70 ppt. Updated administrative rules now establish the more protective 4.0 ppt enforcement standard consistent with the EPA's safe drinking water standards. The Safe Drinking Water Act does not apply to private wells, although annual testing is encouraged, particularly where contamination is suspected.