



## **NRWA Files Groundbreaking Class Action Lawsuit Against PFAS Manufacturers for Making, Selling Toxic Chemicals**

The National Rural Water Association (“NRWA”) filed a lawsuit today on behalf of and its members now dealing with unregulated chemicals in their drinking water. The NRWA is a non-profit organization dedicated to training, supporting, and promoting the water and wastewater professionals that serve small communities across the United States.

The lawsuit seeks money for testing and treatment along with other damages and penalties from the chemical manufacturers, The 3M Co., Tyco Fire Products L.P., National Foam, Inc., Buckeye Fire Protection, Chemguard, E.I. Du Pont De Nemours and Company (“DuPont”) and The Chemours Company. These manufactures developed, marketed, and sold perfluorooctanoic acid and perfluorooctane sulfonate (“PFAS”) that can be found in products such as firefighting foam, household and food products, industrial sites as well as landfills across the country.

The NRWA devotes substantial time to train and assist 49 affiliated State Rural Water Associations, that currently have over 31,000 utility system members. The NRWA and its members will be forced to expend significant resources to test and remediate groundwater contamination by virtue of defendants' past practice of allowing hazardous chemicals, including perfluorooctanoic acid and perfluorooctane sulfonate (“PFAS”), to be released into the groundwater.

Aqueous film-forming foam (AFFF) is used for fire suppression, particularly at municipal airports and Air Force bases for training purposes and to combat jet fuel spills. However, many AFFF products contain PFAS. PFAS contamination also results from carpet, metal plating, paper, plastics, and textiles manufacturing. Human exposure to these toxic substances, through use or contaminated drinking water, can lead to an increased risk for testicular cancer, kidney cancer, serious thyroid problems and/or ulcerative colitis.

“The corporations we’re suing today knew full well the health and environmental risks associated with PFAS. It should not be up to NRWA members across the country to pay the extensive costs to test, treat, and remediate these contaminants” said Paul J. Napoli. “These companies betrayed the people. They knew the harm their products could cause yet hid this from both the government and the public, leaving many to pay for the consequences,” he continued.

Filed [today] in D.C., the five-count complaint alleges that the defendant companies manufactured, marketed and sold their AFFF products for decades despite knowing the significant threat they posed to the environment and human health.

There is uncertainty across the country as to how communities can afford to test and treat PFAS contamination in the absence of certain State or Federal standards. This lawsuit could provide a mechanism for addressing and resolving those concerns so costs to investigate and remediate are not borne by the American taxpayers. We strongly encourage you to contact the



NRWA or Napoli Shkolnik PLLC for more information on how to become involved in this litigation.

#### **About the NRWA**

The National Rural Water Association is a non-profit organization dedicated to training, supporting, and promoting the water and wastewater professionals that serve small communities across the United States. The mission of NRWA is to strengthen State Associations. For more information, see <https://nrwa.org/initiatives/pfas/>.

#### **About Napoli Shkolnik PLLC**

Napoli Shkolnik PLLC is a national litigation firm providing representation to plaintiffs in class actions and complex commercial litigation, as well as victims of environmental contamination disasters, defective prescriptions drugs, asbestos-related illnesses, and other mass tort matters. The firm has over 10 offices nationwide is readily available to clients.

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## Litigation Combats Hazards of Aqueous Film-Forming Foam Products

BY PAUL J. NAPOLI AND MICHELLE GREENE

**Aqueous film-forming foam (AFFF) has been used on hundreds of military bases around the country to put out emergency fires and, more often, for training purposes to prepare for those emergencies. Although AFFF manufacturers voluntarily agreed to phase out the manufacture of firefighting foam with perfluorinated compounds (PFCs) several years ago, legacy contamination continues to be found in drinking water systems, a major source of PFC exposure.**

**M**ounting scientific research has linked PFC exposure to a host of health effects on the liver and the immune system as well as testicular and kidney cancer. Given the life-threatening illnesses these contaminants can cause, as well as their persistent nature in the environment, US water providers can no longer assume their drinking water is free from AFFF contamination. That's why a multi-district litigation (MDL) has been created in which potentially billions of dollars are at stake in the form of claims against AFFF product manufacturers.

### MDL RATIONALE

Research and testing performed by the Minnesota Mining and Manufacturing Company (3M) and DuPont Chemical Solutions Enterprise indicated that per- and polyfluoroalkyl substances (PFASs), because of their unique chemical structure, persist in the environment essentially unaltered and accumulate in people's blood (see "PFASs: Why They Matter and How to Treat Them," *Opflow*, June 2019). Yet both companies downplayed, avoided, and reframed research conclusions about the chemicals they produced, leaving water providers and the communities they served in the dark about these potential risks.

Apart from the well-known Scotchgard product that contained PFASs, 3M was also known to have sold PFASs for use in AFFF products, starting in the 1950s. Throughout this time, overwhelming evidence has

shown that 3M knew these chemicals were unsafe but chose to hide this from the public as well as governmental agencies. In fact, in April 2006, 3M agreed to pay a penalty of more than \$1.5 million to the US Environmental Protection Agency (USEPA) for failing to disclose studies dating back decades that confirmed the potential hazards of these chemicals to public health and the environment, among other things.

DuPont, another company that disregarded the effects of chemicals found in AFFF, manufactures products in its Washington Works plant in Parkersburg, W.Va. For years, starting in the 1950s, DuPont allowed large amounts of perfluorooctanoic acid (PFOA) from its plant to contaminate the drinking water in Ohio and West Virginia. By 2003, DuPont allowed nearly 2.5 million pounds of PFOA from its plant into the Ohio River Valley, harming residents across six water districts. The company also failed to report that some of its pregnant female employees exposed to PFOA had passed it to the bloodstreams of their unborn children. Other residents of Ohio and West Virginia suffered from life-threatening illnesses, including certain cancers, and even death after consuming the PFOA-contaminated water.

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. Nonetheless, local water utilities face several legal hurdles in seeking recourse against these manufacturers. To help water providers cover these expenses, which can run into the tens of millions of dollars, proper parties must be held accountable. These parties include AFFF manufacturers and sellers that have knowingly sold the dangerous PFC products and failed to inform users or the general public of the products' potential dangers.

### FORMING THE MDL

MDL No. 2873 was created as a result of dozens of lawsuits filed against a variety of other AFFF manufacturers based on allegations that AFFF products harmed humans and contaminated groundwater. These lawsuits sought, among other things, compensatory damages and costs associated with monitoring for cancer and other medical problems.

In October 2018, several defendants filed motions to consolidate the AFFF cases pending in eight districts before a single judge, setting the path to create a single MDL. The cases subject to consolidation included class actions, personal injury claims, and individual lawsuits brought on behalf of municipalities and water districts for costs associated with well head treatment.

The Judicial Panel on Multidistrict Litigation (JPML) heard oral arguments on defendants' motions to consolidate on Nov. 29, 2018. In the following month, the JPML consolidated 75 personal injury cases pending in courts across the country into a single MDL. Throughout this litigation, 3M and other AFFF manufacturers have been vigorously fighting back. Nonetheless, MDL No. 2873 is likely to sweep in other emerging claims against these manufacturers as additional contamination is found.

Paul J. Napoli serves as Of Counsel to Napoli Shkolnik PLLC ([www.napolilaw.com](http://www.napolilaw.com)), New York. Michelle Greene is an associate in the firm's Environmental Litigation Department.

## FIGHTING FOR WATER PROVIDERS


The serious adverse effects of exposure and the confirmed elevated drinking water concentrations from AFFF require immediate action from water districts across the country. Despite this fact, the USEPA issued nonbinding drinking water health advisories for PFASs in 2016 of 70 ng/L (or parts per trillion). Because these are only health advisories, water providers are left with the responsibility—but not the funding—to monitor their water sources to treat and remediate for contaminants.

Luckily, states and plaintiff attorneys haven't been deterred from suing responsible parties to seek compensation. A handful of states have already taken affirmative actions to implement their

own binding regulatory detection level of PFOA and PFOS in drinking water. For example, New York is recommending a 10 ng/L level for PFOA and PFOS. Expect to see an expansion of this trend as more water supplies become affected and future mandatory standards are put in place on the federal and state levels.

The current situation—the profound effects related to exposure and the lengthy period that PFOA and PFOS remain present in water absent filtration—requires swift treatment. Without MDL No. 2873 or other lawsuits like it, water providers would be left with mounting costs to treat these contaminants on their own. This includes the substantial investigation and up-front capital costs for water providers to install new water filtration

systems, including granulated activated carbon or anion exchange to clean out PFCs. Water providers will also incur significant operational and maintenance costs, given AFFF's reluctance to biodegrade, making litigation necessary for the benefit of communities across the country. Only through this litigation can water districts receive enough funds to treat these chemicals down to nondetect levels in each well of affected water supplies.

MDL No. 2873 will also help spur additional studies on how PFAS chemicals behave and how they affect human health and the environment. Not only will additional research help in the fight against AFFF manufacturers, it will help drive much-needed regulation and litigation for years to come. 



WORKING TO FIGHT  
WATER CONTAMINATION

# PFOA AND PFOS WATER CONTAMINATION & COST RECOVERY PROGRAM

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ATTORNEYS AT LAW





The National Rural Water Association (“NRWA”) filed a class action lawsuit on behalf its members now dealing with unregulated chemicals in their drinking water.

# Your Team

An aerial photograph of the Wisconsin State Capitol building, a large white neoclassical structure with a prominent central dome. The building is surrounded by green lawns and trees. In the background, other city buildings and a body of water are visible under a blue sky with scattered clouds. The text 'Your Team' is written in a large, white, sans-serif font across the upper left portion of the image, with a thin white vertical line extending downwards from the end of the text.



# About Our Principals

## Marie Napoli, Partner

Ms. Napoli is a driving force behind the push to have Congress create a Victim's Compensation Fund for families affected by contaminated water. This fund could draw from federal and state money to pay for residents' health costs. Marie and the NS legal team visited Washington D. C. with families affected by contaminated water so that the families could share their stories with Members of Congress.

## Hunter J. Shkolnik, Partner

Mr. Shkolnik has appeared on national networks such as NBC and Fox News to discuss the Water Crises occurring across the country. He is also a sought-after speaker on water contamination, Co-Chairing and speaking at several Litigation Conferences focusing on Lead Poisoning. Mr. Shkolnik's legal achievements have been industry and peer recognized by Super Lawyers®.

Named Co-Liaison Counsel in the Flint Water Crisis Litigation by U.S. District Judge Judith E. Levy.

## Paul J. Napoli, Of Counsel

Mr. Napoli has litigated extensively on behalf of municipal clients for contamination to land and water supplies resulting from petroleum and related chemical spills. He led the team who obtained more than \$50million for environmental contamination of municipal water supplies by leaks of petroleum additive.

Named Co-Lead Counsel in the AFFF Products Liability Litigation by U.S. District Judge Richard Mark Gergel.

Named Liaison Counsel in the Colorado PFOA/PFOS Toxic Tort Litigation by U.S. District Judge R. Brooke Jackson.

# Your Environmental Team



Louise R. Caro  
Partner



Andrew W. Croner  
Partner



Hank Naughton  
Partner



Lilia Factor  
Associate



Patrick J. Lanciotti  
Associate



Michelle Greene  
Associate



Sam Wade  
Water Consultant



Walter Hang  
Science Consultant



# PFAS Background

## *What are PFAS?*



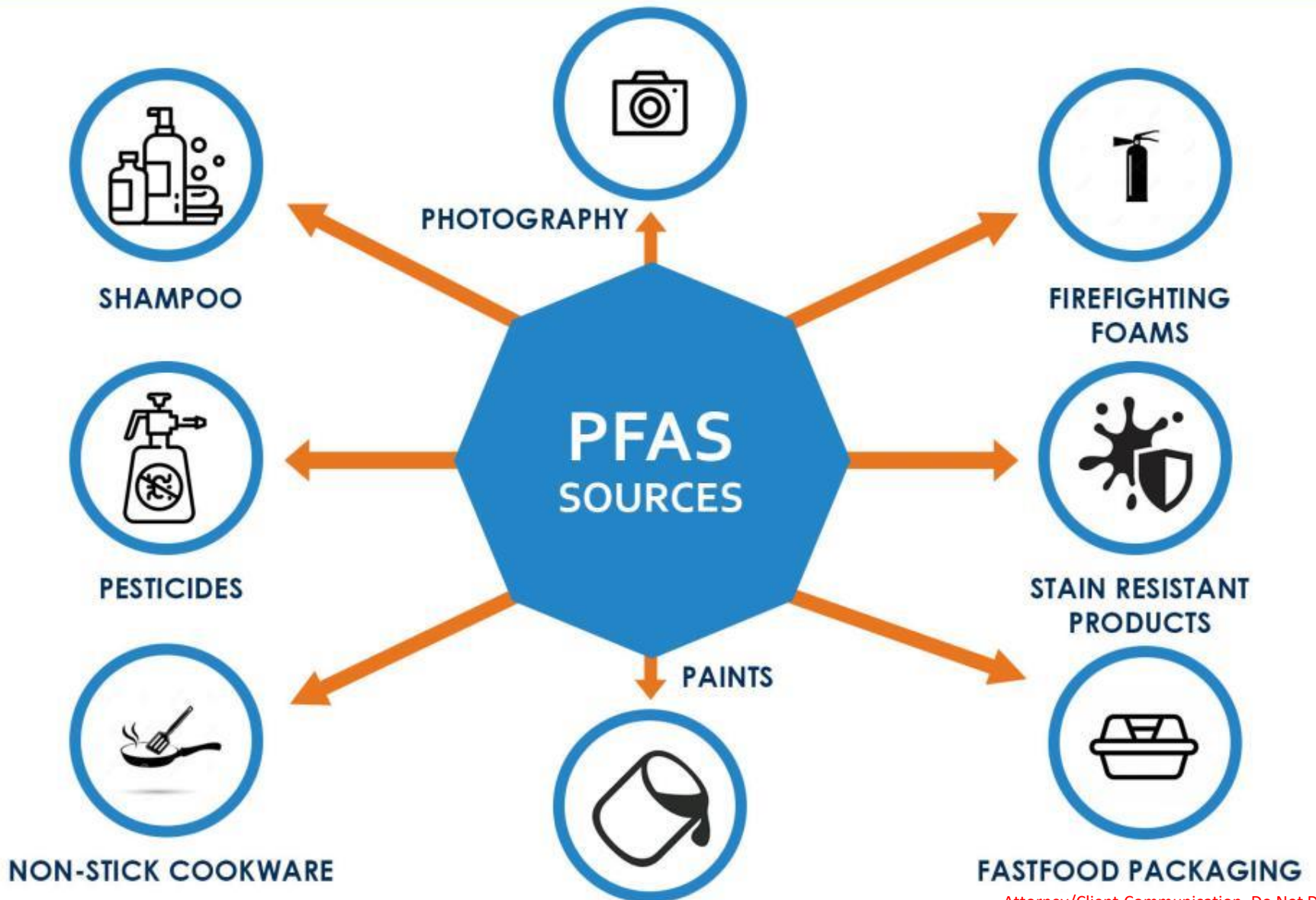
Per- and polyfluoroalkyl substances (PFAS) are a group of man-made chemicals that includes PFOA, PFOS, GenX, and many other chemicals. PFAS have been manufactured and used in a variety of industries around the globe, including in the United States since the 1940s.

\*\*\*

PFOA and PFOS have been the most extensively produced and studied of these chemicals. Both chemicals are very persistent in the environment and in the human body – meaning they don't break down and they can accumulate over time. There is evidence that exposure to PFAS can lead to adverse human health effects.

PFAS are a group of man-made chemicals that have been in use since the 1940s and are (or have been) found in many consumer products like cookware, food packaging, and stain repellants, PFAS manufacturing and processing facilities, airports, and military installations, that use firefighting foams are some of the main sources of PFAS.

# PFAS Exposure





# PFAS Contamination

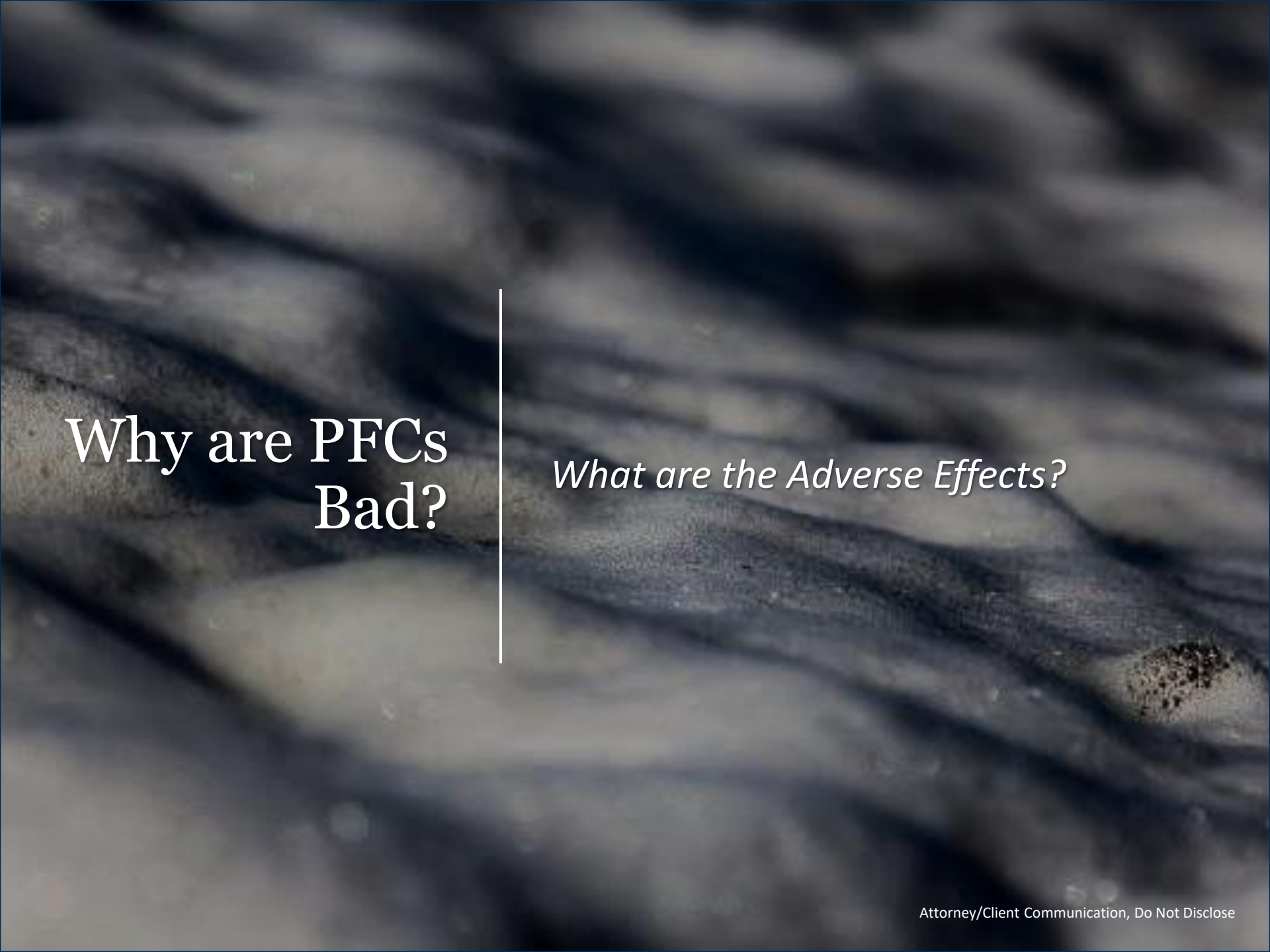
PFCs have been manufactured for more than 50 years where the substances PFOS and PFOA are part of a group of old-generation PFCs which will be used to a lesser extent in the future due to their potential hazards.

\*\*\*

These hazards have resulted and will result in [litigation] and a number of [national] and international legislative bans worldwide.

Source: [epa.gov](https://www.epa.gov)





Why are PFCs  
Bad?

*What are the Adverse Effects?*



# Why Are PFCs Bad?

*Effects of Exposure per the Center for Disease and Control Prevention (CDC) and the Environmental Protection Agency (EPA)*



**CDC:** PFAS are extremely persistent in the environment and resistant to typical environmental degradation processes.

**CDC:** PFOS and PFOA also persist in the human body and are eliminated slowly, with a half life of 2 to 9 years.

**EPA:** Exposure to PFOA and PFOS over certain levels may result in adverse health effects, including developmental effects to fetuses during pregnancy or to breastfed infants (e.g., low birth weight, accelerated puberty, skeletal variations), cancer (e.g., testicular, kidney), liver effects (e.g., tissue damage), immune effects (e.g., antibody production and immunity), thyroid effects and other effects (e.g., cholesterol changes).

#### Citations

1. Olsen et al. 2007a
2. IARC 2017
3. EPA 2016e, 2016f

A black and white photograph of three individuals in full-body white hazmat suits, including hoods and respirators. They are standing in a field of gravel or dirt. The person on the left is carrying a large black cylindrical container. The person in the middle is holding a clipboard. The person on the right is holding a camera or binoculars. In the background, there is a white building and some trees under a cloudy sky.

# PFOA/PFOS Contamination

*Where did it come from?*

# PFCs Contamination

## *Where did they come from?*

### PFOA/PFOS Manufacturers

PFOA was produced by eight major US companies, including:

- Arkema
- Asahi
- Ciba
- Clariant
- Daikin
- DuPont
- 3M/Dyneon (primary producer)
- Solvay Solexis

PFOS was solely produced by one company in the United States: 3M

### AFFF Manufacturers

PFOS-based aqueous film-forming foam (AFFF) was produced by six manufacturing companies, including:

- Ansul
- Chemguard
- DuPont
- Dynax
- Kidde
- Solberg

Together these companies have formed the Firefighting Foam Coalition (FCC) to represent the industry's interests on issues related to the environment.



# Firefighting Foam

*Aqueous Film-Forming Foam (AFFF)  
containing PFCs*



# AFFF Background

## *How are AFFFs used?*

- In the military and in airports across the country, PFCs were most commonly used in firefighting foams, referred to as **Aqueous Film-Forming Foam (AFFF)**.
- The foam and film layers act to separate oxygen from the fuel surface and are therefore able to stop the chemical reaction from burning.
- Military and airport personnel have practiced putting out fires with AFFF at numerous Fire/Crash Training Areas located at airports and military bases nationwide.

## Military Specification (MILSPEC)

AFFF is either 3% or 6% by volume in a solution of water.

MILSPEC AFFF is used to extinguish Class B (flammable liquid) fuel fires.

Oftentimes, this training occurred in **burn pits**, recognizable by a blackened, repeatedly-burned airplane frame at the center of an unlined dirt pit.



# AFFF Training

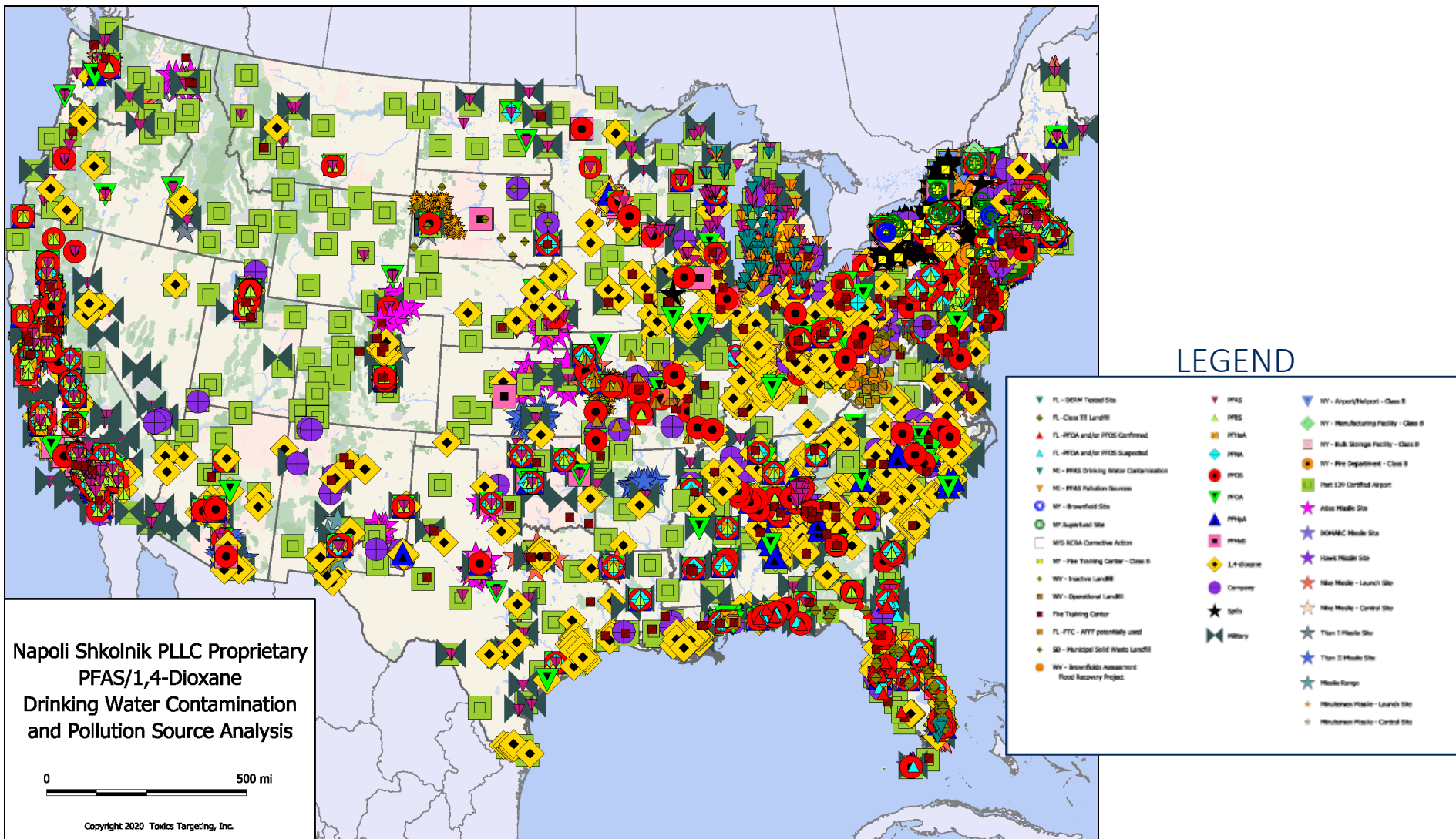
While all fire fighting requires training, **putting out fuel fires via AFFF requires more rigorous *[and repeated]* training** due to the complicated nature of the equipment used and various techniques of application.

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The repetitive nature of AFFF training can lead to increased likelihood of contamination to the nearby environment.

# Where Was AFFF Used?

## *PFC Contamination Sites Across the Country*



# What Makes Us Different

## HOW CAN WE HELP?

**The hazards of PFAS contamination are coming to light, we can speak out for states, using our resources across the country.**

**Experience** managing large, complex litigations

A **dedicated** environmental department

Represent municipalities **across the country**

Deep bench of resources of expert and legal **talent**

A team of attorneys with **significant experience** as litigation leaders





# \$17.5 MILLION

“This settlement marks a significant step in victims’ efforts to secure just compensation for those impacted by PFAS contamination caused by AFFF. But there is still more work to do as we continue to seek to hold the manufacturers of these chemicals accountable for the harm they’ve inflicted on individuals and the environment.”

Paul J. Napoli

## AS COVERED BY



Representing individuals in the Town of Peshtigo, Wisconsin, Napoli Shkolnik announced an agreement in principle with Tyco Fire Products L.P., Chemguard, Inc., and ChemDesign, Inc. (“Defendants”) to settle a putative class action addressing certain claims of damage arising from contamination of dozens of privately-owned drinking water wells in the Town of Peshtigo with per- and polyfluoroalkyl substances (“PFAS”) attributable to the use and release of Aqueous Film-Forming Foam (“AFFF”).



**NAPOLI  
SHKOLNIK PLLC**  
ATTORNEYS AT LAW

**WORKING TO FIGHT  
WATER CONTAMINATION  
A COST RECOVERY PROGRAM**

**REGISTER NOW!**



[www.napolilaw.com/nrwa-pfas](http://www.napolilaw.com/nrwa-pfas)



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# PFAS CONTAMINATION

A COST RECOVERY PROGRAM



## PFAS IN WATER AND WASTEWATER

PFAS contamination testing and regulation is in full swing for drinking water systems across the nation with a ever increasing regulatory focus on wastewater and bio solids. In January of this year, the EPA proposed to the Office of Management and Budget that PFAS be labeled a hazardous substance.

If labeled as such, bio solids contaminated with PFAS will need to be disposed of in a hazardous waste landfill, a substantial cost to the utility. We strongly encourage your system to protect your ratepayers from this financial burden by registering your utility in the Cost Recovery Program.

**ACT NOW**

**This settlement marks a significant step in victims' efforts to secure just compensation for those impacted by PFAS contamination. There is more work to do as we continue to seek to hold the manufacturers of these chemicals accountable for the harm they inflict on individuals and the environment.**

- PAUL J. NAPOLI

**NAPOLI SHKOLNIK IS PLEASED TO ANNOUNCE  
A \$17.5M SETTLEMENT ON BEHALF OF THEIR  
PESHTIGO, WI CLIENTS EXPOSED TO PFAS**

## REGISTER YOUR UTILITY TODAY

It easy to register your utility onto the cost recovery rolls. The cost recovery class action suit is not punitive, it is allowing your utility to recovery your cost for testng, treatment and remediation, it is filed against the global manufacturers of these compounds and there is no upfront cost to your utility.

**Register Today**

## STRENGTH IN NUMBERS



## STRENGTH IN NUMBERS

As with your association, there is always strength in numbers. We encourage you to make your neighboring systems aware of this opportunity to recoup any cost associated with testing, treatment or remediation of PFAS contamination.

There is no upfront cost to the utility and the suit is filed against the global manufacturers of these compounds not a local company who may have used them.



**MORE INFORMATION**

**CONTACT US**

**OFFICES NATIONWIDE**





# PFAS CONTAMINATION

A COST RECOVERY PROGRAM



## REQUIRING SPECIAL ATTENTION!

Systems whose water source is close to a potential PFAS contamination site should pay special attention as to detections in their water and wastewater systems.

Those potential contamination sites are airports, military bases, landfills, firefighting training activity areas and certain manufacturing.

PFAS is labeled a "Forever Chemical" meaning it does not deteriorate rapidly in the environment thus posing long-term contamination issues of our water sources.

Wastewater should also be considered as the Biden Administration has stated they intend to label PFAS as a hazardous substance and establish a standard for drinking water. Some states have established more stringent standards than the EPA Health Advisory standard of 70 ppt. The issuance of an MCL for drinking water will place many systems out of compliance facing a tremendous expense for testing, treatment and remediation.

The cost recovery program was established to provide systems the opportunity to recover that expense.



**REGISTER TODAY**

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It is easy to register your utility onto the cost recovery rolls. The cost recovery class action suit is not punitive, it is allowing your utility to recover your costs for testing, treatment and remediation. It is filed against the global manufacturers of these compounds and there is no upfront legal cost to your utility.

**Register Today**

# Q & A



## FREQUENTLY ASKED QUESTIONS

Q - We have not tested, should my system register onto the claims roll?

A - Yes, most definitely and especially if your system's water source is located near a potential contamination site. Registering onto the rolls now provides for the potential recovery of future expenses.

Q - Is there a time frame to sign on?

A - There is no set time frame, however, these types of suits typically end with a negotiated settlement that can happen at any time. In other words, the sooner the better to be on the safe side.

Q - I need help in presenting this to our board, any suggestions?

A - The Napoli Shkolnik PFAS legal and science team welcomes the opportunity to make presentations to governing boards or water and wastewater department personnel.



**MORE INFORMATION**

**CONTACT US**

**OFFICES NATIONWIDE**