

KENNEDY & MADONNA, LLP

Attorneys at Law

48 DEWITT MILLS ROAD
HURLEY, NEW YORK 12443

ROBERT F. KENNEDY, JR
KEVIN J. MADONNA

(845) 481-2622

(845) 230-3111 (fax)

kmadonna@kennedymadonna.com

Ms. Mayor Montour Falls
408 West Main Street
PO Box 812
Montour Falls NY 14865-0812

97

April 3, 2019



RE: IMPENDING NEW YORK STATE MAXIMUM CONTAMINANT LEVEL FOR PFOA AND PFOS

Dear Water Manager:

I am a partner in the NY-based environmental law firm, Kennedy & Madonna, LLP. Our firm represents municipalities, public water suppliers and communities which are dealing with the effects of environmental contamination. I am writing today regarding the emerging contaminants PFOA and PFOS, collectively termed PFAS.

As you are probably aware from the extensive media coverage, communities across the country have been impacted by the detection of these chemicals in their drinking water supplies. These detections often alarm the public and may lead to a need to install expensive water treatment systems.

Communities are struggling with the ramifications of the recent U.S. Environmental Protection Agency's ("EPA") health advisory level of 70 parts per trillion (ppt) for the combined concentration of PFOA and PFOS. Numerous states have also enacted their own guidelines or maximum contaminant levels ("MCL") for PFOA and PFOS.

In December 2018, New York's Drinking Water Quality Council recommended a 10 ppt MCL for PFOA and PFOS, which will be the lowest in the nation. This recommendation will now be considered by the Commissioner of Health who will issue a notification of Proposed Rulemaking in the New York State Register followed by a 60-day public comment period. Once an MCL is adopted, public drinking water suppliers of all sizes will be required to comply with the MCL. In New York, it is estimated that contamination by PFOA and PFOS is sufficiently wide-spread that twenty-three percent of community water systems will require treatment under the proposed MCL with estimated statewide capital costs of \$855 million and annual operation and maintenance costs of \$45 million.

PFAS chemicals are man-made and do not appear naturally in the environment. They are in the environment because they were used in commercial products (including in certain fire extinguishment foams known as aqueous film forming foams or AFFF) as well as in certain manufacturing processes. Those companies responsible for the current PFAS contamination of drinking water supplies should be responsible for the problems that these chemicals have caused to communities in New York, particularly because those companies knew the risks that PFAS posed to drinking water supplies and, despite this

knowledge, continued to sell and promote products containing PFAS. We are currently pursuing legal claims against these companies on behalf of municipal clients across the country for the investigation and treatment of drinking water supplies contaminated with PFAS. The goal of this litigation is to hold the companies which profited from the use of PFAS financially responsible for treatment costs and **not** the ratepayers.

Given the likely scope of PFAS contamination in New York and the fact that those responsible for PFAS contamination are some of the largest and most powerful corporations in the world, my firm has partnered with the following five other law firms to represent municipalities and public water systems that have been impacted by this problem:

- **Taft, Stettinius & Hollister, LLP** (Ohio). Rob Bilott and his team at the Taft firm brought the very first PFAS environmental exposure cases in the country, including the first drinking water contamination class action that resulted in a settlement that included water filtration systems for impacted private and public water supplies, provisions for medical monitoring, and the funding of independent scientific health studies for PFOA, all valued at well over \$300 million.
- **Douglas & London, P.C. (N.Y.), Levin, Papantonio, Thomas, Mitchell, Rafferty, & Proctor, P.A.** (Florida), and Kennedy & Madonna, LLP, in partnership with the Taft firm, recently settled over 3,500 individual cases against DuPont for over \$670 million that involved PFAS contamination of six public drinking water supplies.
- **SL Environmental Law Group, PC** (San Francisco) a firm which represents only states, municipalities and drinking water systems in water contamination litigation has recovered over \$1 billion for their clients, the result of both jury verdicts and settlements.
- Attorneys from **Kelley, Drye & Warren, LLP** (Houston) have successfully represented numerous states in Natural Resource Damage litigation involving the impact of contamination of groundwater and surface water, including representing the State of Louisiana in the Gulf Spill litigation to recover natural resource damages, all of which were ultimately recovered as part of a \$20 billion global settlement, the largest environmental and natural resource damages recovery in history.

To help answer questions that water systems and their lawyers, engineers, and other advisors may have regarding the impact of PFAS contamination, we have coordinated with the American Water Works Association to host a complimentary webinar on April 30, 2019 from 12-1:30 pm EDT to discuss the regulatory, legal, scientific, financial, and political issues involving New York's impending PFOA/PFOS MCLs.

Panel members will include three speakers: Rob Bilott, from the Taft firm, who brought the very first PFAS environmental exposure case in 1999 that resulted in the discovery and public disclosure of PFOA in drinking water supplies for approximately 70,000 people in West Virginia and Ohio. Michael Marley is president and co-founder of the environmental consulting firm XDD, LLC. Mike is a nationally-known expert who focuses on implementation of groundwater remediation and water treatment technologies. Richard Head is Of Counsel at SL Environmental Law Group PC. Richard previously worked for the New Hampshire Department of Justice as the Bureau Chief of the Environmental Protection Bureau and currently represents municipalities and water systems around the country in PFAS litigation.

The webinar will include an opportunity for attendees to ask questions and receive answers directly from panelists. Registration details for this event are available on AWWA's website at https://store.awwa.org/store/productdetail_event.aspx?productid=76750449 or on my site at <http://www.kennedymadonna.com/press>.

If you would like to speak with me prior to the webinar, please feel free to contact me at (845) 481-2622 or at kmadonna@kennedymadonna.com.

Sincerely,



Kevin Madonna

(Admitted to practice in New York, the United States District Court for the Southern and Eastern Districts of New York and the United States Court of Appeals for the Second Circuit.)