



Slow crawl of Bucks, Montgomery County water contamination lawsuits continues

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Dismissals, appeals and plenty of dense procedure define first 18 months of lawsuits filed over widespread drinking water contamination along the counties' border.

Eighteen months after a slew of lawsuits over drinking water contamination in Bucks and Montgomery counties, the cases still are in limbo in county and federal courts.

The suits represent more than a thousand area residents who were presumably exposed to unregulated perfluorinated chemicals in their drinking water, which are believed to have originated from firefighting foam used at military bases near the counties' shared border. The suits seek myriad remedies, including blood testing, health screenings, and monetary damages related to health conditions, property values and other related costs.

"We're still in the infancy," said Donald Soutar, an associate attorney of New York City law firm and lead counsel of the largest area lawsuit. "It's fair to say (it'll be) a matter of years."

In total, eight significant lawsuits have been filed on behalf of residents affected by the contamination since 2016, although several have since been consolidated. Soutar, whose firm is associated with consumer advocate Erin Brockovich, is lead counsel on a consolidated class-action lawsuit, joined by attorneys from of Norristown, as well as attorneys from three Philadelphia-based firms: and

More than a thousand residents have signed on to the suit,, Soutar said. However, if successful, its class-action status means that any of the tens of thousands of residents meeting certain criteria for their exposure to the chemicals would be eligible for awards, including a medical monitoring program to screen for potential illnesses, a blood testing program and certain monetary damages.

The suit was filed in the U.S. District Court for Eastern Pennsylvania, located in Philadelphia. It lists as defendants five companies that manufactured firefighting foam: 3M, the Buckeye Fire Protection Co., Chemguard, National Foam Inc. and Tyco Fire Products.

“We want to hold the companies responsible,” Soutar said. “Our opinion is they manufactured a dangerous product, that they knew it was dangerous, and that they sold it without providing proper warnings.”

This news organization reached out to several defense attorneys court records show as being the most active in cases involving the foam manufacturers, but did not receive a response by press time.

Court records show the defendants filed motions to dismiss the case last April, but that Judge Petrese Tucker ultimately dismissed them in December. She then put a stay on the case as two other suits related to the contamination work their way through the court system.

One of those cases is the _____ to be filed in the area, brought by the Philadelphia-based _____, on behalf of the Giovannis, a Warrington family allegedly affected by the contamination.

That case, filed in August 2016, is suing the U.S. Navy for blood testing for the family and other area residents affected by water contamination, as well as medical monitoring and attorney fees.

A _____, filed in February 2017 by Weir & Partners, also of Philadelphia, is also suing the Navy on behalf of Ivyland resident Dorothy Palmer and her son. Court records show the elder Palmer allegedly has a PFOA blood level of 31 parts per billion, which is about 15 times the national average.

Both the Giovanni and Palmer cases have followed a similar track, first being successfully pulled out of county court by the Navy, which then successfully had the suits dismissed in federal court by arguing that the military is immune due to area bases' status as federal Superfund sites.

“The judge said that under the Superfund law, you can't sue for blood testing or a health study until clean-up is complete,” Cuker said. “Our argument was that Pennsylvania gives residents affected by contamination a right to sue ... federal law doesn't block it.”

Steven Angstreich, a partner at Weir and lead attorney on the Palmer case, said he made a similar argument.

“Medical monitoring does not interfere with the (clean-up) work that’s being undertaken by the Navy, as required by the Environmental Protection Agency,” Angstreich said. “Therefore we believe the ... judge got it wrong in his analysis, and that we should be permitted to proceed.”

This news organization reached out to defense attorneys for the federal government for comment but did not receive a response by press time.

Both Cuker and Angstreich appealed the dismissals of their cases to the U.S. Court of Appeals for the Third Circuit, in Philadelphia. The cases have been consolidated and a hearing is set for late April.

Meanwhile, Tucker, the eastern district judge overseeing the large class-action case, is holding off until the appeals are resolved. Attorneys for all three cases said they were surprised at the decision, noting that the appealed cases are suing the U.S. government, while the class-action suit seeks damages from private companies.

“I don’t necessarily agree with Judge Tucker,” Soutar said. “(But she) believes that some of the issues that are up on appeal overlap some of the issues in our case.”

Soutar said a teleconference was held with Tucker and defense attorneys in February, in which both sides laid out their arguments about why the case should be stayed or not. Soutar said the judge sided with the defendants, prompting the plaintiffs to file a motion earlier this month asking her to reconsider. That request has not yet received a ruling.

Soutar added he believes the speed of litigation is important.

“My clients were exposed to these chemicals. They’re fearful for what’s going to happen to their health,” he said. “And we’ll be two years in to it and nothing will have moved forward at all.”

However, other cases are not yet bogged down in legal proceedings.

The five firms involved in the class-action suit have also filed a representing more than 500 area residents who believe the chemicals may have impacted their health. Some studies have linked the chemicals to a variety of health effects including high cholesterol, ulcerative colitis, developmental delays, low birth weight and some cancers.

Soutar said the tort case, which was filed in February 2017 and is also suing foam manufacturers, is still in early stages. Counsels are getting organized and strategizing on the best way forward.

“We’re trying to put a model on top of this so we’re not trying to litigate all 500 cases all at once,” Soutar said. “Where we can pick some cases to go forward as test cases.”

Similar mass-tort cases litigated elsewhere in the country have led to lump-sum settlements from defendants. In 2017, chemical company DuPont agreed to a settlement with 3,500 plaintiffs along the Ohio River who allegedly were exposed to PFOA from a nearby plant. The settlement came after the plaintiffs won several “test” cases in which juries returned multi-million dollar awards.

Also working their way through the system are three additional cases filed by Cuker: in the U.S. Court of Federal Claims on behalf of Horsham’s Penna family, in the eastern district on behalf of Warminster’s Menkes family, and a third filed in Montgomery County Court on behalf of two former Warminster residents who have bladder cancer.

In the first case, Cuker said he’s arguing that the U.S. government essentially “took” the Horsham family’s property illegally due to contaminated runoff and groundwater from the nearby NASJRB Willow Grove. Cuker said judge is scheduled to visit the property this spring to get the “lay of the land.”

“It’s fascinating, I’ve never had that happen,” Cuker said. “I think it’s to her credit that she takes it that seriously.”

The Menkes case, which sues the foam manufacturers, has been met with a motion to dismiss by the defendants, who are arguing the claim is invalid under products liability law, Cuker said. The judge in that case has yet to rule because he is waiting to see the outcome of a similar case in New York state, Cuker said. The third case is still in the earliest stages.

Plaintiff attorneys on each case said they believe the ongoing litigation is important, despite the lengthy legal process.

“If you contaminate someone’s water supply, you ought to be responsible for any health problems you cause,” Angstreich said.



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