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Webinar Moderator



Connor Larson
Sales Associate
American Water Works Association

Connor Larson is the Sales Associate to the Midwest and Western U.S. territories in the Sales Department at AWWA. He has been with AWWA for almost 4 years, corresponding and building relationships with the members, advertisers, exhibitors and sponsors. Connor has a BS in Advertising from Northern Arizona University.

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Panel of Experts



Richard Head
Of Counsel
SL Environmental Law Group PC



Rob Bilott
Partner
Taft Stettinius & Hollister LLP

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PFAS Contamination:
Shifting drinking water treatment costs to product manufacturers

Richard W. Head | Of Counsel
rhead@slenvironment.com | (603) 716 - 8235
November 5, 2020



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Learning Goals



- Where do PFAS come from?
- Why are PFAS so prevalent?
- How are PFAS being regulated?
- How can litigation be used to fund treatment costs?



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Where do PFAS come from?



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Where do PFAS come from?





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PFAS are released into the environment from many sources

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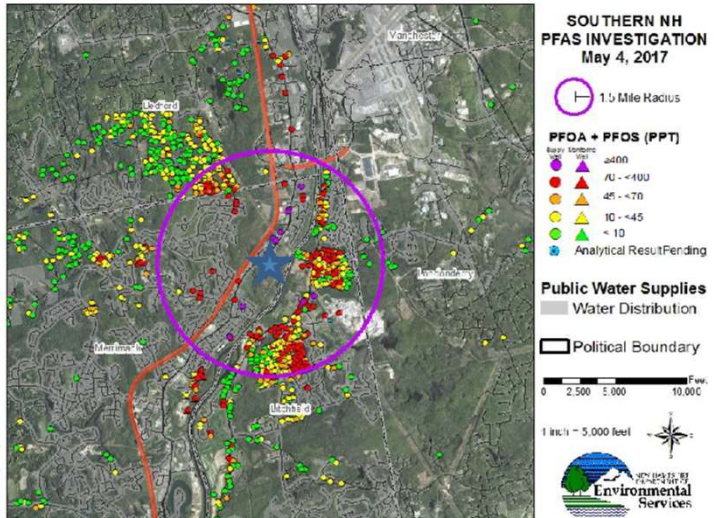


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PFAS can be widely distributed

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How did PFAS become regulated?



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Toxic Substances Control Act (TSCA)

Objective: to regulate chemicals that pose an “unreasonable risk to health or to the environment.”



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3M had knowledge of the risks

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Fluorochemicals Technical Review Committee Letter 1979

“Recent animal studies have shown that FC-95 is more toxic than was previously believed. Some chemical workers are exposed to this material and are known to have FC-95 in their blood. It was suggested that this information might constitute a substantial risk under the Toxic Substances Control Act.”

1168

1168.0001

3MA10067042

1168.0002

3MA10067043

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3M had knowledge of the risks

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Internal Memo 1979

“FC-95 was administered to rhesus monkeys....The study was terminated after 20 days because of the early deaths of the monkeys in all treatment groups.”

137-087

137-087

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Encompasses all work performed during the period 1975-1978

Important If report is printed on both sides of paper, send two copies to TCC.

FM 3422 was found to be "completely resistant" to biodegradation under the test conditions employed

REPORT ABSTRACT: (200-250 words) This abstract information is distributed by the Technical Communications Center alert 3M^{ers} to Company R&D. It is Company confidential material.

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Internal memo 1988

27-CV-10-2880

Surferfest Correspondent

Filed in Fourth Judicial District Court
 Volume 60370017 7-27-19
 Jackson County, MI

Date: 30-Dec-1988 06:21pm CST
From: US034918USP01
RLODR, DONHPROFSGSMBHRETEL

UFG4.7

TO: WILLIAM, MICHAEL E #PROFS #SSAN# #QUIGLY
TO: PIKE, MIKE T #PROFS #SSAN# #QUIGLY

Subject: EC-129 Bioterrorism

“I don't think it is in 3M's long-term interest to perpetuate the myth that these fluorochemical surfactants are biodegradable.”

regulations that exempt low level specialty uses. The already adopted German surfactant biodegradation regulation quite clearly does not exempt specialty uses of nonbiodegradable surfactants.

Made Available by 3M for Inspection and Copying as Confidential Information
Subject to Protective Order in *Palmer v. 3M*, No. C2-04-6300

3MA10035935



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Lessons learned from PFAS litigation

- 3M and DuPont knowledge
- Air emissions
- Water discharges
- Landfill leachate

The New York Times Magazine

FEATURE

The Lawyer Who Became DuPont's Worst Nightmare

Rob Bleth was a corporate defense attorney for eight years. Then he took on an environmental suit that would upend his entire career — and expose a brazen, decades-long history of chemical pollution.

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PFAS regulation

2009

Provisional Health Advisory

200 parts per trillion PFOS and 400 ppt PFOA

2016

Lifetime Health Advisory

70 parts per trillion combined PFOA & PFOS

Future

State Action

EPA Action Plan

More Health Advisories?

Maximum Contaminant Level?

What PFAS Compounds?

What Concentrations?

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PFAS cause significant environmental and human health issues

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- The “forever chemical.”
- Very mobile in groundwater.
- Bioaccumulates in humans and animals.
- Impacts to prostate, liver, kidney and immunological systems

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How much will PFAS cost water systems?

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More than \$3 billion per year by 2030.

Source: Bluefield Research, *PFAS: The Next Challenge for Water Utilities*.


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Legal liability of manufacturers

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Liability theories

- Product Liability
- Negligence
- Nuisance/Trespass
- Statutory Claims
- Natural Resource Damage or Public Trust Doctrine

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What damages can a water system seek?



- Design, construction and operation and maintenance of new wells and treatment facilities.
- Extension of service to impacted private wells.
- Replacement water.
- Property damage.



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What is product defect liability?

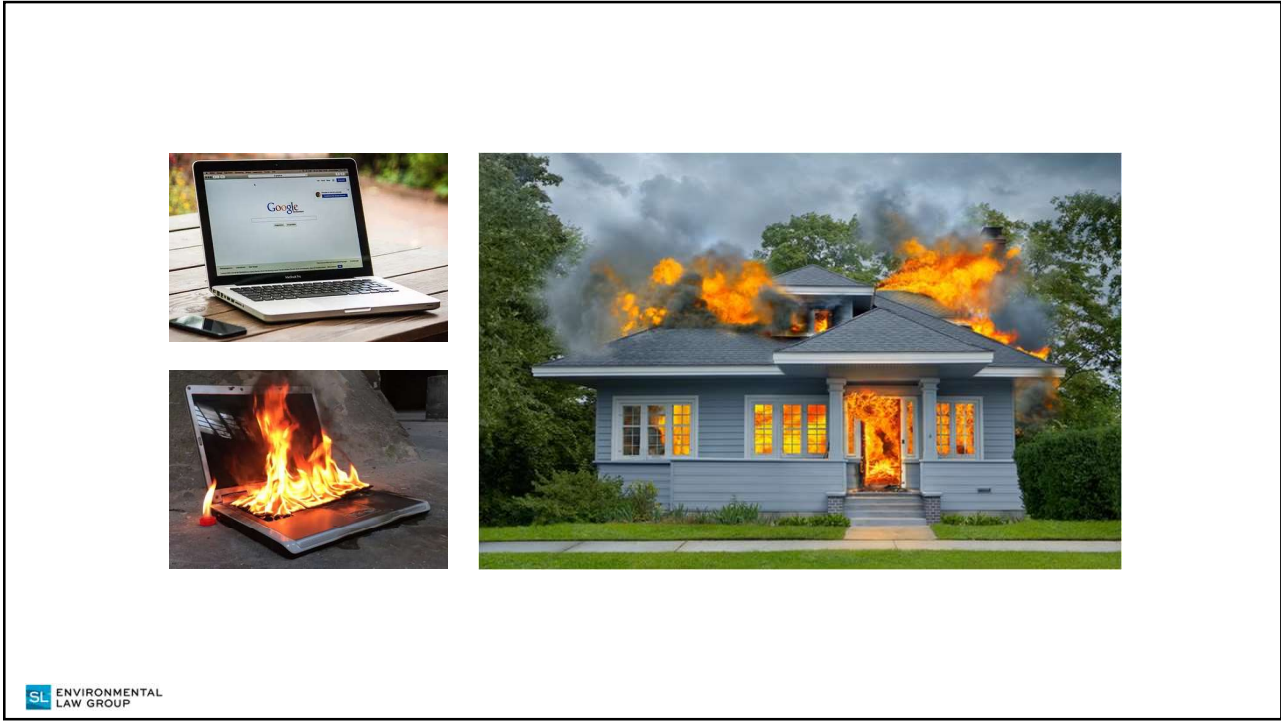


A manufacturer is liable if a defect in the manufacture or design of its product causes injury while the product is being used in a reasonably foreseeable way.

Kim v. Toyota Motor Corp., 424 P.3d 290 (Cal. 2018)



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Defect means

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A product did not perform the way consumers expected.

or

The risks of the design outweigh the benefits of the design.

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Failure to warn means

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The foreseeable risks could have been reduced or avoided by providing reasonable instructions or warnings,

and

the failure to provide those instructions or warnings makes the product unreasonably dangerous.



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Product liability – why is it fair?

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“The burden... from dangerous products... should be placed upon those who profit from their production... That burden should not be imposed exclusively on the innocent victim.”

- Brooks v. Beech Aircraft Corp., 902 P.2d 54, 58 (1995)



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How does product liability apply to PFAS?



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Is AFFF Defective?

| | |
|--|---|
| Product causes harm when used as intended. | ✓ |
| Harm is caused by the defect. | ✓ |
| The risk of the harm does not outweigh the benefits. | ✓ |
| The risks could have been reduced or avoided by providing reasonable warnings. | ✓ |

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Water system successes

TCP



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Thank You

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Ask the Experts



Richard Head
Of Counsel
SL Environmental Law Group PC



Rob Bilott
Partner
Taft Stettinius & Hollister LLP

Enter your **question** into the **question pane** on the right-hand side of the screen.
Please specify to whom you are addressing the question.

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Presenter Biography Information

Richard Head is Of Counsel at SL Environmental Law Group PC. SL represents states, municipalities and water utilities in environmental litigation cases. Before joining SL, Richard worked for the New Hampshire Department of Justice. As Associate Attorney General, he was the Director of the Division of Legal Counsel and oversaw the management of the Civil and Transportation Bureaus and the Charitable Trust Unit. As a Senior Assistant Attorney General, he served as the Bureau Chief of the Environmental Protection Bureau and the Consumer Protection and Antitrust Bureau. Before working for the New Hampshire Justice Department, Richard worked in private practice with a focus on environmental litigation.

Rob Bilott is a partner in Taft's Environmental, Litigation, and Product Liability and Personal Injury groups. Rob has secured benefits in excess of \$1 Billion for clients impacted by PFAS contamination. In 2017, Rob received the international Right Livelihood Award, also known as the "Alternative Nobel Prize," for his decades of work on PFAS issues. Rob is the author of the book, "Exposure: Poisoned Water, Corporate Greed, and One Lawyer's Twenty-Year Battle against DuPont," and his story is the inspiration for the motion picture, "Dark Waters", starring Mark Ruffalo as Rob. His story is also featured in the documentary available on Netflix, "The Devil We Know."

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