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Public Water Systems Finally Get Federal Help With PFAS

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An estimated 200 million Americans may have PFAS-contaminated drinking water, and state and municipal water systems will get help from the federal government cleaning it up under the Infrastructure and Jobs Act, says David K. McCay, chair of Mirick O'Connell's litigation department. But more funding is needed, and many systems will continue trying to get it through lawsuits against companies that released the chemicals, and from ratepayers, he says.

Ninety-nine percent of Americans likely have per- and polyfluoroalkyl substances (PFAS) in their bodies. It's been estimated that up to 200 million Americans may have PFAS-contaminated drinking water. PFAS have been linked to kidney and testicular cancer, ulcerative colitis, thyroid disease, pregnancy-induced hypertension, and high cholesterol.

For many years, and across multiple administrations, the federal government failed to address PFAS contamination. While the federal government wavered, several states, like my home state of Massachusetts, forged ahead moving to regulate PFAS under its existing regulatory framework for drinking water and hazardous materials.

In January 2019, the Massachusetts Department of Environmental Protection (MassDEP) issued final rules for soil and groundwater cleanup setting a reportable

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concentration of 20 parts per trillion (ppt) for the sum of six PFAS compounds. Less than a year later, MassDEP set a maximum contaminant level for PFAS in drinking water, also at 20 ppt.

Public water systems are now required to test new wells for PFAS, and in November, MassDEP announced a program to provide free testing of private wells in communities where at least 80 percent of residents use private wells for their drinking water.

The federal government is playing catch up. To its credit, the Environmental Protection Agency last month issued its [PFAS Strategic Roadmap: EPA's Commitments to Action 2021-2024](#). EPA's roadmap is a start, although execution will matter more.

And it remains to be seen whether EPA will follow through on its promises. Those are to establish a national PFAS testing strategy, enhance PFAS reporting requirements, establish maximum concentration levels for PFAS in drinking water, and designate PFAS as hazardous substances under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), better known as Superfund.

Municipal and Public Water Systems Need Assistance

The policy response to PFAS, at both the federal and state level, has for too long overlooked municipal and public water systems.

As the states and now the federal government begin to “normalize” PFAS regulation by treating them as hazardous materials and requiring their removal from drinking water, municipal and public water systems are saddled with the burden and cost of compliance. These often small, local water utilities must find a way to pay for PFAS testing and the design, construction, and ongoing operation of PFAS removal systems from public drinking water.

Thankfully, there are effective treatment methods at the utility scale and in small settings like homes and offices. Carbon filtration systems and those using ion exchange resins, nanofiltration, and reverse osmosis are effective in removing PFAS from drinking water.

The efficacy of these various systems depends on the type of PFAS, and the system used. Not surprisingly, the most effective systems are often the most sophisticated and

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expensive. Systems at the utility scale can cost from \$3 million to over \$100 million, depending on size and type of system.

Many municipalities (and even states) are going to court seeking to recover the costs of PFAS assessment and treatment from manufacturers like DuPont and 3M, manufacturers of products containing PFAS, and against local PFAS users that have contaminated drinking water aquifers. Some states, such as Minnesota and Alaska, have filed suit to recover PFAS-related damages incurred by the state, including state costs assisting local water agencies.

Litigation is itself expensive, however, and the results are often distant and uncertain. Instead of litigation, many public water systems are passing the expense of PFAS treatment along to their ratepayers.

State grant and loan programs are available in some cases. Massachusetts, for example, has a system of grants and loans to help public water suppliers fund the design and construction of PFAS remediation systems. In two recent supplemental budgets, Massachusetts dedicated \$28.4 million for water infrastructure and PFAS testing.

But as testing expands, these funding sources struggle to meet the need.

Most communities are already constrained by aging water infrastructure and the costs of decades of deferred maintenance. The results of litigation are often too uncertain and expensive to be a practical solution in the near term. The problem of PFAS mitigation for local public water systems cries out for a more centralized solution at the state or federal level.

The silver lining is that help is on the way. The federal Infrastructure Investment and Jobs Act provides \$10 billion in funding for PFAS mitigation: \$5 billion through the Safe Drinking Water Act for small and disadvantaged communities to purchase filters and filtration systems; \$4 billion through the Drinking Water State Revolving Fund to help water utilities address emerging contaminants "with a focus on PFAS"; and \$1 billion through the Clean Water State Revolving Fund to provide technical assistance to rural, small, and tribal wastewater treatment facilities to address PFAS in wastewater.

Other Sources of Funding Will Still Be Needed

This new federal funding is only a piece of the puzzle. As testing becomes more widespread and more public water utilities identify PFAS contamination in their systems, they are likely to need more funding. Federal and state regulators need to address the source, preventing PFAS from reaching drinking wells in the first instance.

Revolving fund loans by the federal and state governments will require repayment. And what about homeowners with private drinking wells?

The PFAS-related provisions of the Infrastructure Bill are no panacea. But they should be recognized for what they are—a good start in helping municipal and public water systems deal with PFAS in our drinking water.

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