

Title ideas:

- Why PFAS Manufacturers Are Continually Held Responsible for PFAS Contamination
- The History of PFAS Contamination and Holding PFAS Polluters Accountable
- PFAS Polluters Knew What They Were Doing and Are Finally Being Held Responsible
- Utilities Are Using the Law to hold PFAS Polluters Accountable
- The Legal History of PFAS and Holding Polluters Accountable

Title Placeholder

While concern over PFAS contamination is having a moment in the public spotlight, knowledge about the dangers of the toxic family of chemicals and the use of PFAS litigation to hold polluters accountable is decades old.

The bad news is that more than half a century went by in which PFAS was used in manufactured products and made its way into water sources, then plants and animals, and eventually into humans. We are now finding it in everything, a fact that water utilities specifically are beginning to uncover in droves. The good news is that there is precedence for how to handle PFAS contamination, and for who is liable for the damage.

To understand why so many water providers, property owners, individuals and governments are suing PFAS manufacturers to recover the cost of water treatment, it's helpful to know the history of manufacturer knowledge and the evolution of PFAS litigation within the context of ever-increasing state and federal regulation.

Manufacturers knew the risks

We now know that two corporations, 3M and DuPont, are responsible for PFAS contamination. They knew their own responsibility, and just how dangerous PFAS might be, well before the rest of us did. Let's start at the beginning.

In 1947, 3M Corporation invented PFOA, part of the PFAS family of around 6,000 man-made "forever chemicals" found in stain-, water- and grease-resistant products. A few years later, DuPont started purchasing these chemicals to use in the manufacturing of its own products including Teflon, a brand best known for non-stick cookware.

In 1961, internal DuPont scientists found that PFAS could increase liver size in rats and rabbits. In 1981, 3M found that PFOA ingested by rats caused birth defects. Two of seven employees in DuPont's Teflon division gave birth to children with eye defects. Jumping forward three years, DuPont tested public water supplies for PFOA near its West Virginia plant. The chemical was found within several communities in West Virginia and Ohio that were drawing water from the Ohio River or were impacted by air emissions from the plant.

In 1988, 3M scientists were the first to set their own safety limit of 1,000 parts per trillion (ppt) for PFOA in community drinking water, although levels three to five times higher than that were found in surrounding water sources. By the early 1990s, two internal 3M cancer studies had been completed, confirming that PFOA caused cancer in the liver, pancreas, and testicles of rats.

The U.S. Environmental Protection Agency (EPA) was formed in 1970, and the Toxic Substances Control Act (TSCA) was passed in 1976. Under TSCA, any manufacturer of a chemical that found evidence of substantial risk to human health or the environment from toxic chemicals was required to report it to the EPA for testing.

It is well documented that 3M and DuPont knew of the dangers of PFOA, but did not disclose this knowledge to the EPA, their workers, or the surrounding public who were at risk of exposure. Before the first PFAS lawsuit, knowledge of PFOA, its toxicity, and prevalence lay solely with the manufacturers and their scientists.

The First PFAS Lawsuit

During the 1980s, DuPont dumped over 7,000 tons of sludge containing PFOA into an unlined landfill next to a creek in West Virginia. By the early 1990s, DuPont had tested the creek water and found it contained an extraordinarily high concentration of PFOA.

Meanwhile, a farmer named Wilbur Tennant began noticing health issues in his cattle, who drank water that traveled downstream from the unlined landfill. Over 100 cattle prematurely died, while others suffered from stillborns, birth defects or stillborns, tumors, and black teeth. DuPont had not disclosed the discovery of PFOA in the creek to Tennant, despite knowledge of the chemical's toxicity. Instead, it blamed the farmer for poor husbandry of his cows.

In 1999, Tennant filed the first lawsuit against DuPont for contaminating water with PFOA. DuPont settled the case with Tennant as the facts about how the corporation had not disclosed knowledge of PFOA concentrations and the danger it posed came to light.

In March of 2001, Tennant's attorney Robert Bilott sent a letter to the EPA, US Attorney General and numerous federal agencies revealing the findings of the case, warning of a potential public health emergency and urging regulators to act with haste.

Tennant's story is well documented in various media, including the motion picture, "*Dark Waters*," and the book that inspired it, "*Exposure*," as well as the documentary, "*The Devil We Know*." What started as one man's legal fight against a large corporation turned into the exposure of a full-blown public health emergency that has spawned hundreds of lawsuits across the country over the past two decades.

PFAS Litigation Gains Momentum

In the summer of 2001, a class-action lawsuit on behalf of the tens of thousands of people with drinking water contaminated with PFOA from DuPont's Teflon plant in West Virginia was filed by Bilott and his team. DuPont settled the class action in 2004 and agreed to pay \$300 million in settlement benefits including the design, installation, and maintenance of state-of-the-art water filtration systems. This case set in motion the pattern of polluters rightly paying for the costs of water treatment and contamination clean up - utilities today are continuing to file suit in the wake of this precedent.

In 2004, the EPA sued DuPont because it withheld information revealing a substantial risk to human health and the environment based on the information DuPont's own scientists had about PFOA toxicity and its presence in local drinking water supplies. The parties settled a year later for \$16 million. Meanwhile, 3M paid a \$1.5 million penalty in 2007 for having withheld certain PFAS information from the EPA.

In 2012, an independent science panel confirmed probable links between PFOA exposure in drinking water and kidney cancer, testicular cancer, thyroid disease, high cholesterol, ulcerative colitis and preeclampsia. By 2013, a multidistrict litigation (MDL) comprising approximately 3,500 personal injury cases against DuPont for the six diseases linked to PFOA exposure was underway. After losing the first trials, DuPont eventually agreed to settle all of the pending cases for around \$671 million in 2017.

A number of plaintiffs filed cases alleging PFOA water and ground contamination that were consolidated into another multidistrict litigation (MDL-2873) by 2019. The water provider plaintiffs have been selected as the first group of cases to go to trial in the United States District Court of South Carolina in 2023.

More Utilities are Opting for PFAS Litigation

In the years since he took on Tennent's case against DuPont – and won – attorney Robert Bilott has joined a PFAS team of five law firms, which includes SL Environmental Law Group. The PFAS team has the only lawyers in the country who have tried multiple PFOA cases successfully against 3M and Dupont, and has exclusive access to documents from the manufacturers demonstrating they knew PFAS was harmful and purposefully provided false information to the public about its dangers. These documents, proving knowledge and therefore liability, have been the lynchpin of the legal strategy that has continued to hold polluters accountable for cleanup costs.

Tennent's case, Bilott's class action suit, the EPA's litigation and multiple MDLs all prove that gigantic corporations can, and will, be held responsible for polluting drinking water. Legal action is a popular choice, and for good reason – there is a history of success both with PFAS litigation and with water contamination litigation at large. PFAS litigation experts are not afraid of suing or taking the manufacturers to trial because there is evidence that this approach works. To talk to a member of the PFAS team about your options, please contact us [here](#).

Appendix

PFAS Regulation:

On the regulatory front, in 2016 the EPA announced its first long-term Provisional Health Advisory for PFOA and PFOS at 70 ppt individually or combined. The 2016 health advisory resulted in an explosion of testing. Many states including Michigan, New Jersey, Ohio, Massachusetts were finding these chemicals in their water and in some cases above the federal guideline. New Jersey became the first state to adopt an MCL for PFAS in drinking water in 2018. More states followed suit and set their own PFAS MCLs, most well below the EPA 70 ppt guideline.

In 2021, the EPA released its latest strategic roadmap of commitments and actions it plans to take over the next three years to address PFAS. As part of this plan of action, in June of 2022 the EPA slashed its health advisory by more than 17,000 times to 0.004 ppt for PFOA, and by 3,500 times to 0.02 ppt for PFOS. The agency has also proposed a rulemaking to designate PFOA and PFOS as hazardous substances under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). If this regulation is adopted, water suppliers will need to install costly filtration systems and other devices in order to avoid being out of compliance. The EPA is expected to publish final recommended water quality criteria for PFAS in 2023.

Valentina notes

Ultimately our goal is to show that there is value in suing because there is proof that these manufacturers knew the harm they were causing, and courts have ruled against them.

A water system doesn't care about the history per se but they would go into the piece thinking:

- Lawsuits against the big evil guys never go anywhere
- This would be a nightmare for me, why bother?

- It would be so much work for me and it will take forever to get a verdict - assuming I can even get a favorable one

What we want them to think after reading the piece is:

- The law is on my side, I can actually sue and get the money to cover the costs
- This won't be as impossible as I thought and there is evidence to support our claims
- If I partner with the right firm they'll do a lot of the work and I won't be over burdened by this

Keywords:

- PFAS in water
- PFAS litigation
- Water utilities PFAS

Izzy Outline:

- Intro: there is legal precedence with PFAS and other types of contamination
- Manufacturers knew the risks, which is why they are continually held liable
- Litigation is Gaining Momentum
- History has paved the way