

# Holding PFAS Polluters Responsible in New England

Presented by Ken Sansone, Partner

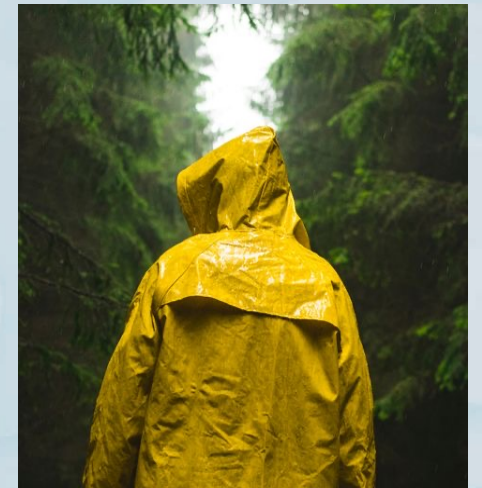
SL Environmental Law Group

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# Agenda

- ▶ What are PFAS and how will they impact water suppliers?
- ▶ What is the legal responsibility of manufacturers when their products harm others?
- ▶ How can water suppliers use the law to make PFAS manufacturers pay?

# Many products contain PFAS

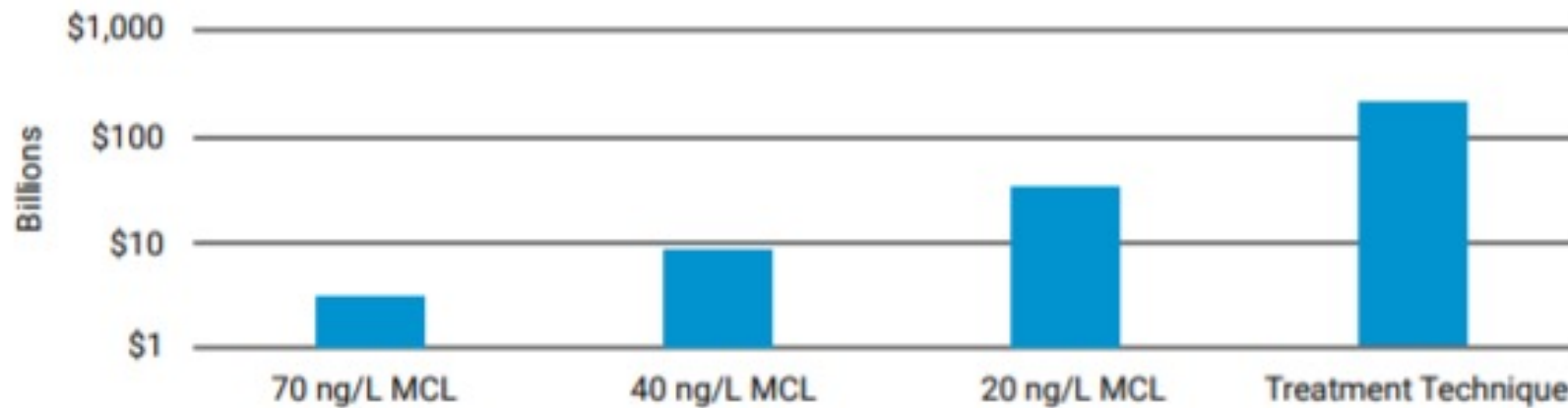


# How PFAS enters the environment



# AWWA estimate of costs

## U.S. Cost of Drinking Water Treatment to Remove PFOA and PFOS Using GAC

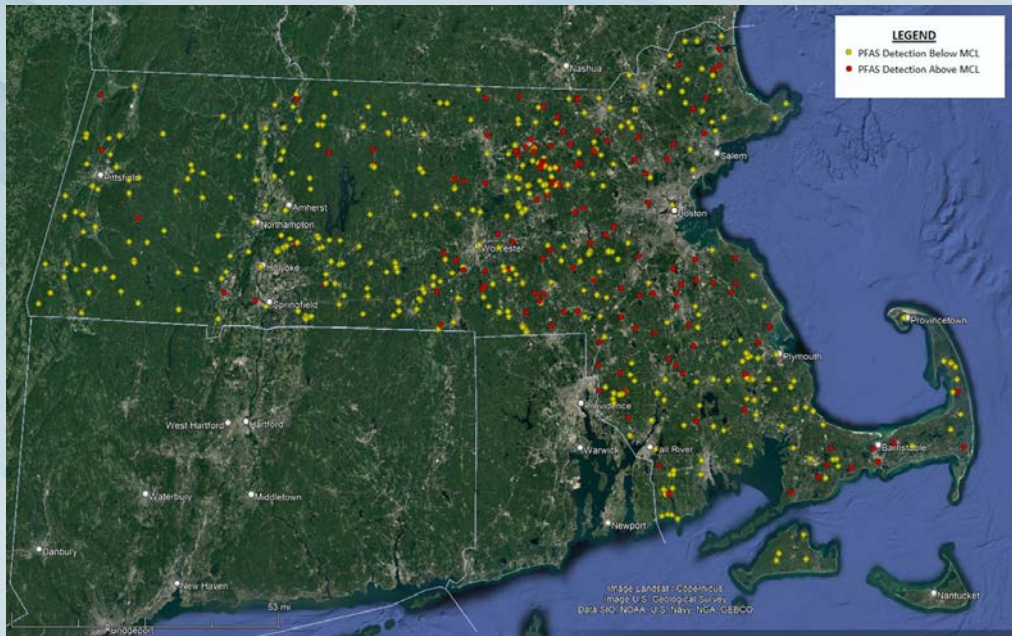


*Planning level costs are estimated to be conceptual and may be higher (+50%) or lower (-30%).*

Source: [AWWA](#)

# Massachusetts Data

Standards: Combined PFOS, PFOA, PFDA, PFHpA, PFHxS, PFNA = 20 ppt



- ▶ Systems tested for PFAS: 792
- ▶ Systems with PFAS detected: 539
- ▶ Systems above the MCL: 146

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Profit and resources

Manufacturer

Distributor/Retailer

End User

Awareness of risk

## Failure to warn liability

It is well settled that a manufacturer has duty to warn users of foreseeable latent dangers associated with ordinary uses of its products. ”

*Powell v. Standard Brands Paint Co.*, 212 Cal. Rptr. 395, 397 (Ct. App. 1985).

# Failure to warn

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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# Successful water contamination litigation against manufacturers

Perchlorate



MTBE



1,2,3-TCP



# Status of AFFF MDL

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA  
CHARLESTON DIVISION

IN RE: AQUEOUS FILM-FORMING  
FOAMS PRODUCTS LIABILITY  
LITIGATION

MDL No. 2:18-mn-2873-RMG

This Document Relates to All Actions

- ▶ Water system “bellwether” cases selected
- ▶ Other systems who file need only to complete brief “fact sheet” for now
- ▶ Goal is to attempt mass resolution – other cases will be sent “home” for trial



# The litigation process

## Concern

## The truth

Expensive?



Contingency basis.

Negative public perception?



Sends the message that public resources are being protected.

Burdensome?



Experienced lawyers reduce impact on staff.

Do we need to sue our local airports, fire departments, or customers?



Sue national PFAS manufacturers.

# The litigation process - PFAS

## Concern

## The truth

We don't know the source.



The primary domestic manufacturers of PFOA and PFOS were 3M and DuPont.

The regulations aren't set yet.



Regulation will likely be in place by the time the case reaches a decision point.

We haven't incurred costs yet.



Counsel will work with experts to calculate all likely future costs, regardless of the status of treatment.

Why not just wait?



The statute of limitations may be running!



Please reach out with questions

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