PART 1: *(April 23rd)* - What is PFAS and Connecticut’s Response

PART 2: *(April 30th)* - How Does PFAS get into the Environment and how is it Regulated and Treated

PART 3: *(May 7th)* - Litigation and Municipality Response to PFAS
PART 3: Litigation and Municipality Response to PFAS
Today’s Presenters

Robinson + Cole (R + C)

- *James P. Ray* – Partner with R + C, environmental and product liability litigating and counselor and has served as court-appointed common counsel or liaison counsel.

GZA GeoEnvironmental, Inc.

- *Richard J. Desrosiers* – Vice President/Hydrogeologist, Licensed Environmental Professional, Professional Geologist and leads GZA’s corporate PFAS Initiative.

Town of Canton

- *Robert H. Skinner* - Town Administrator
About Robinson+Cole

Robinson+Cole, an AmLaw 200 law firm founded in Hartford 175 years ago, serves municipal, institutional and private sector clients, from start-ups to Fortune 500 companies.

Robinson+Cole’s services include legal representation and counsel in litigation, financing, leasing, sales and other transactions, tax, labor and employment, and environmental matters including:

- representing clients in federal and state courts
- resolving issues in business transactions
- conducting due diligence
- negotiating purchase and sale agreements
- obtaining permits
- remediating contaminated sites
- siting power production and telecom facilities
- responding to releases, government inspections, and major incidents
- providing risk management guidance and regulatory counseling
About GZA

54 Years

31 Offices in 15 States

5 Core Services

700+ Staff

Engineers/Scientists

Extensive Training & Experience

Diversified Client Base

Employee-Owned

3-Part Webinar Series
PFAS Litigation

• Property Damage

• Personal Injury/Medical Monitoring

• Class Action

• Regulatory Enforcement
Sites Involved - Examples

- Manufacturers
- Fire fighting foam sites (airports, training facilities)
- Landfills
- WWTP
DuPont – Parkersburg, WV
2001 Class Action

• 6 water districts (WV, OH)

• Private well owners

• 80,000 potentially affected class members
2004 Settlement

• Water filtration projects

• $70 million settlement fund for Health Project
  • Questionnaire (for use by Health Project)
  • Blood tests
    • Presence of PFAS compounds
    • Indicators of cancer or other disease

• C8 Science Panel
2013 Science Panel Results

- Kidney cancer
- Testicular cancer
- Thyroid disease
- Ulcerative colitis
- High cholesterol
- Pregnancy-induced preeclampsia
Parkersburg Personal Injury Claims

• Multi-District Litigation docket in Ohio
• 3500 claimants with 1 of 6 diseases
• Early plaintiff’s verdicts
  • $1.6 million (kidney cancer)
  • $5.6 million (testicular cancer)
  • $2 million (testicular cancer) – plus $10.5 million in punitive damages
• $650 million settlement in 2017
• ~50 cases pending post-dating settlement
Other PFAS Litigation

• AFFF MDL

• Class Actions (e.g. VT, NH, NY)

• Nationwide Class Action
Municipal Examples

• Town of Barnstable v. Barnstable County (filed in 2016)
  • Impacted water supply wells from County fire training academy
  • Settled in 2017 for $3 million in capital costs, $200,000 annually for O&M
  • Separate County lawsuit against AFFF manufacturers/sellers

• City of Westfield v. 3M Company et al. (filed in 2018)
  • Impacted wells from use of AFFF at Westfield/Barnes Regional Airport

Both of these cases now part of the AFFF MDL
Other Public Entity Examples

• **Town of East Hampton v. East Hampton Fire Department** (2020)
  • East Hampton, NY
  • Impacted water supply wells from AFFF used in emergencies and for training at East Hampton airport

• **Metropolitan District Commission v. Connecticut Department of Energy and Environmental Protection** (2019)
  • PFAS in leachate from Hartford Landfill discharges to MDC treatment system
  • Alleged to be part of rate dispute over discharges of landfill leachate to MDC system
Municipal Considerations

- PFAS Sources (yours, others)
  - Manufacturers
  - Landfills, WWTP
  - Fire departments and training centers

- Receptors
  - Water supplies (public, private)
  - Landfills, WWTP

- PFAS Management
Case Study

Municipality Response to PFAS

Richard J. Desrosiers
GZA GeoEnvironmental, Inc.
Cherry Brook Primary School

- Canton Fire Department conduct fire training exercises using used Aqueous Film Forming Foam (AFFF) on school grounds.

- Training occurred in 2014 and perhaps 2007/2008

- Approximately 40 gallons of AFFF mixed with 1,300 gallons of water.

- Well water supplies school and adjacent properties.
CTDPH – CTDEEP Request

- November 6, 2019 letter issued to Town of Canton concerning historic discharge of AFFF.
- Requested that school’s wells be analyzed for PFAS and an alternative water supply be provided until results were provided.
- Conduct well receptor study and test for PFAS at properties within 500 feet of school boundaries.
- Analyze shallow (0-3 inches) and deep soil for PFAS.
- Conduct subsequent investigation and/or remediation as necessary.
- Retain an Environmental Consultant.
Water Supply Sampling Results

- School’s water supply wells did not detect the presence of PFAS.
  - Wells were located upgradient of the discharge
  - Water supply to school resumed
- Farmington Valley Health Department & Town of Canton submitted letters to property owners requesting access to sample
- 6 of 11 property owners granted access
- 5 water supply samples did not detect the presence of PFAS.
- 1 property detected a trace (0.9 ppt) concentration of a single PFAS compound, well below the CTDPH Action Limit of 70-ppt
Soil Sampling Results

Data is compared to the Residential Direct Exposure Criteria (RDEC) and the GA Pollutant Mobility Criteria (PMC) of the Remediation Standard Regulations.

- **RDEC = 1,350 µg/Kg (sum of 5 compounds)**
  - No samples (shallow/deep) exceeded criteria.

- **PMC = 1.4 µg/Kg (sum of 5 compounds).**
  - Eastern Field (max = 337.7 µg/Kg)
    - 10 of 10 shallow samples exceeded PMC
    - 4 of 6 deep samples exceeded PMC
  - Southern Field (max = 2.9 µg/Kg)
    - 2 of 5 shallow samples exceeded PMC
    - 1 of 3 deep samples exceeded PMC

- Data submitted to CTDPH & CTDEEP
  - Pending comments
Lessons Learned
Municipality Response to PFAS

Robert H. Skinner
Chief Administrative Officer
Town of Canton
Take Immediate Steps

Notify Local, Regional and State Officials
• 10/30/19 – Fire Chief notified at evening training meeting of prior FAAA use and sends email to CAO
• 10/31/19 – CAO notifies the Health District, Superintendent and First Selectman
• 10/31/19 – Health District notifies State Health Department

Address Safety Concerns
• 11/5/19 – Town officials shut off the wells, flushed the pipes and found a certified alternative water supply.
  • Health District can provide strong guidance as to appropriate steps.

Find out all the facts
• When did the training occur?
• Where did the training occur?
• How much FAAA was involved?
• What type of FAAA?
• Explanation of why fire retardant foam was used at the school?
Utilize a Professional Environmental Firm Familiar with PFAS

- Need professional environmental firm to prepare an Action Plan to be presented to State Agencies and who can oversee testing and, if necessary, remediation.
- State has a list of firms that have been certified through a competitive process.
- Firm should be identified as having experience with PFAS contamination.

Regional Health District

- Can address health concerns with residents and advise on necessary steps to protect the public health.

Notify Insurance Carrier – CIRMA and CHUBB

- Insurer may have additional resources
- Insurer will want test results
Communicate details of PFAS release to Staff, State Officials and the Public.

- The sooner everyone knows what occurred the more reliable and transparent public officials messaging will be perceived.
- Within a week of discovering the discharge a notice went to teachers and parents.

Public Forum

- Within two weeks of the Town being notified of the PFAS release a public forum was held at the elementary school that included both local and state officials.
- Keep messaging focused on local issue - residents are going to be more concerned about what impact PFAS will have on their family's health and property values then the findings of a legislative task force.

Web Site

- A Section of the Town web site is set up and dedicated to PFAS related information, including testing results.
Private Property Owners given three documents:

Access Agreement
- Authorizes right to perform testing.
- Tests performed at no cost to property owner.
- Property will not be disturbed unnecessarily and if altered it will be restored to original condition.
- 5 days prior notice before entering.

Letter to Residents
- Explain reasons for testing.
- Coordination of schedules.
- Contact numbers for additional information – Health District and GZA.

Water Sampling Procedures
- Explains Process, especially where sample will be taken and by whom.
Thank You

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