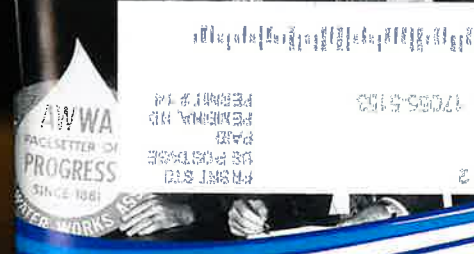


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# A PENNSYLVANIA PUBLIC WATER SYSTEM AVERTS A **DISASTER**

By Michael D. Klein

**W**hen I reflect upon the many quarterly legal articles that I have written for this column in the *Water News Source*, I must acknowledge that most of them have been about bad news, and the associated legal consequences. A typical example are my articles in the Winter issue, where I discussed a water system employee being criminally charged; a mistrial in the ongoing litigation in the Flint, Michigan lead in drinking water case; and the water system crisis in Jackson, Mississippi, and the ongoing investigations related thereto. A number of regular readers have remarked about this to me, and asked, "When are you going to write about some good legal water news?"

I have espoused in a few articles, the legal advantages of water systems nipping problems in the bud, before they can become disasters, i.e., where steps are taken to prevent water system problems from becoming disasters. In those situations, harms to persons and property, lawsuits, fines, and penalties, can be avoided, or at least mitigated. That should be considered good news. But it would be better good news if it were coupled with an actual situation.

One such recent situation, where a public water supplier, averted a major disaster, through immediate, and extraordinary actions, recently took place in Schuylkill County, and involved the Schuylkill County Municipal Authority (SCMA). On October 28, 2022, at 3:08 p.m., SCMA experienced a major water main break in a 16-inch diameter cast iron pipe. The pipe is located in a barely accessible location within a 60-inch diameter corrugated metal conduit for a length

of 1,500 linear ft. that runs under four lanes, and three ramps of Interstate I-81, and four lanes of State Route 61. At risk, if the possible disaster was not averted, are a number of high-risk customers, namely, the State Correctional Institution at Frackville and its 1,000 inmates; and the State Correctional Institution at Mahanoy and its 2,000 inmates. Other customers included the Village of New Boston; the Laurel Ridge Development; the Mahanoy Business Park; and a Comfort Inn. The water main break prevented SCMA from supplying water to any of those customers via the 16-inch diameter cast iron pipe. A looming risk was that the water storage tanks at the two correctional facilities would go dry and the several thousand prisoners would have to be immediately evacuated and moved to other facilities, a story that the national media would pounce upon. One can only imagine the videos of that evacuation being run on every network, and over the internet *ad nauseam*.

SCMA, its employees, and contractors, under the leadership of its Executive Director, Patrick Caulfield, immediately addressed the problem. SCMA personnel worked with local fire companies, dispatched through the Schuylkill County Emergency Management Agency, to install 4,000 ft. of temporary 5-inch diameter fire hose run overland to provide positive pressures and some flow to the affected portion of the water system. The flow produced, however, did not prevent the correctional institutions' water storage tanks water levels from continuing to drop. A private contractor, Valacon Enterprises, Inc. was engaged to install 4,000 ft. of temporary 12-inch diameter flexible hose,

which was a temporary fix, while the permanent solution was being initiated. The permanent solution was the insertion of 1,500 ft. of 14-inch diameter High Density Polyethylene (HDPE) pipeline through the 16-inch diameter cast iron pipeline that had the break in it. SCMA personnel and its contractor worked 24/7 until the final repair was completed, and service completely restored in 11 days, 6 hours and 30 minutes. Thanks to the efforts of those mentioned previously in this article; and Pennsylvania Water/Wastewater Agency Response Network (PaWARN), and Dan Rickard of PA American Water, no customer was in a "no water" situation during the emergency. Problem solved, disaster averted. That is very good news.

## **Pennsylvania Adopts MCLs for PFOA and PFOS**

The January 14, 2023 issue of the *PA Bulletin*, 53 Pa.B. 333, contains a 26 page section on the Environmental Quality Board amending Chapter 109 of the PA Code, 25 PA. Code CH. 109, by establishing MCLs for two per- and polyfluoroalkyl substances (PFAS) – perfluorooctanoic acid (PFOA) and perfluorooctanesulfonic acid (PFOS). Pennsylvania joins seven states that have set MCLs or other regulatory limits for one or more PFAS. Those states are Massachusetts, Michigan, New Hampshire, New Jersey, New York, Vermont and Washington. The United States EPA has yet to establish MCLs for PFAS. If and when EPA sets MCLs for PFAS, those MCL levels will become enforceable in Pennsylvania, if they are equal to, or exceed the MCLs adopted by Pennsylvania.

The Pennsylvania MCL set for PFOS is 18 parts per trillion, and for PFOA the MCL is set at 14 parts per trillion. The MCL levels set by Pennsylvania are at higher parts per trillion than those set by five of the other states. Pennsylvania and New Jersey have the same 14 parts per trillion MCL for PFOA. Vermont and Massachusetts, are exceptions, having set higher MCL levels, at 20 parts per trillion, than Pennsylvania, for groups of PFAS, including PFOA and PFAS. Pennsylvania's PFOA and PFAS MCLs will apply to all 3,117 community, non-transient noncommunity, bottled, vended, retail, and bulk water systems in Pennsylvania. The rulemaking became effective on January 14, 2023. Initial compliance monitoring for community and non-transient noncommunity water systems serving a population of greater than 350 persons, and all bottled, vended, retail and bulk hauling water systems begins January 1, 2024. Initial monitoring for community and non-transient noncommunity water systems serving a population of less than or equal to 350 persons begins January 1, 2025.

### **Pennsylvania Receives Low Rating for Water Efficiency**

I hate to end on a sour note, but in the January 18, 2023 issue of *The Hill*, it is reported that the Water Alliance for Water Efficiency, a stakeholder-based nonprofit in Chicago, ranked the 50 states on policies for water efficiency, conservation, sustainability, and accessibility. California was ranked the highest. Surprisingly, Pennsylvania, was ranked among the lower performing states, which are Mississippi, Alaska, South Dakota, North Dakota, Missouri, Wyoming, Oklahoma and Nebraska. I thought that Pennsylvania would have been ranked among the best performing states. The article describes the rankings being based on answers each state gave to a survey that assessed whether certain water efficiency and sustainability laws had been adopted. I do not know how scientific, or impartial the survey was, but the article states that "The survey and scoring rubric was reviewed by an advisory committee, which included a group of state water agency officials, according to the report."

### **About the Author**

Michael D. Klein is a Senior Counsel in the Harrisburg, PA, and Washington D.C. offices of Cozen O'Connor. He practices in the areas of utility and environmental law. He can be reached at [mklein@cozen.com](mailto:mklein@cozen.com) and 717-703-5903. This column is intended to be a discussion of legal issues in the water industry. It is not intended to be legal advice, or to establish any attorney-client relationships. Before making any legal decisions regarding anything discussed in this column you should always consult with an attorney. ♡



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