

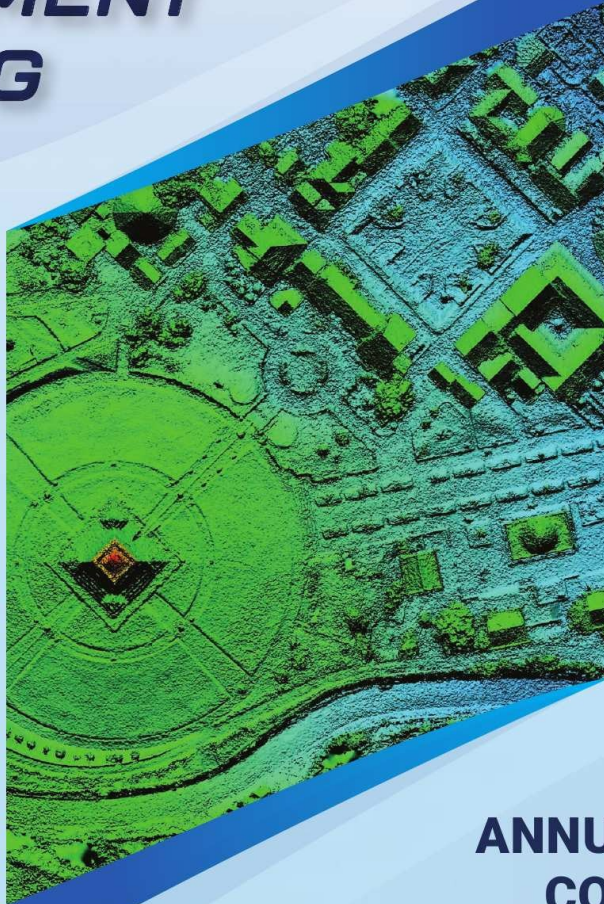


THE **WATER** NEWS

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# SOURCE

## STRATEGIC ASSET MANAGEMENT PLANNING



## 74<sup>TH</sup> ANNUAL PA-AWWA CONFERENCE *Highlights*

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The ideas, opinions, concepts, procedures, etc., expressed in this publication are those of individual authors and not necessarily those of the PA-AWWA Section, its officers, general membership, or the editor. The Section maintains the right to edit all articles for clarity and space. Individuals or organizations are encouraged to submit suggestions, ideas, articles, and items for the calendar of events. Please submit as a Word file and email to donhershey@paawwa.org.

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# MUNICIPAL AUTHORITY FILES LEGAL ACTION INVOLVING PFAS



By Michael D. Klein

**T**he Municipal Authority of Westmoreland County (MAWC) has filed a 58-page Complaint in a civil action against more than 20 defendants involved in designing, manufacturing, marketing, distributing, supplying, and/or selling aqueous film-forming foam products (AFFF), and certain chemical ingredients incorporated into those products, allegedly causing contamination and pollution of natural resources located in and around Westmoreland County, including drinking water and wastewater treatment systems owned and operated by the MAWC, with per- and polyfluoroalkyl substances (PFAS). See, *Municipal Authority of Westmoreland County v. 3M Company, et al.* case no. 22C100818 in the Westmoreland County Court of Common Pleas. The Complaint contains six separate causes of action against the defendants. In the Complaint, MAWC is seeking to recover past, current, and future costs, losses, damages, and other relief relating to the actual or potential presence of toxic PFAS traceable to AFFF products in water and water systems, including drinking water supplies and wastewater treatment works and public waters and natural resources under MAWC's ownership or management. The specified costs, losses and damages include those resulting from or associated with the investigation, assessment, monitoring, analysis, remediation, treatment, removal, disposal, or other past, current, or future action or response, etc. (See, averment 5 of the Complaint).

MAWC further alleges that it is likely to be required, in the future, to retrofit or upgrade its water infrastructure, including drinking water and wastewater treatment systems, in order to manage, remove, control, and reduce the presence of PFAS attributable to defendants' misconduct in MAWC's resources and properties, and in resources and properties of other jurisdictions. MAWC alleges that certain of the defendants designed, manufactured, marketed, sold and/or distributed AFFF products containing or breaking down into PFAS, including PFOS, PFOA, and PFHxS. MAWC alleges that those products were used and discharged into the environment in and around the area served by MAWC. (See, averments 28 and 30). An example given in the Complaint of how the PFAS were used and discharged in the MAWC service area is a fire in the City of McKeesport in which firefighting units at the scene utilized AFFF in their efforts to control the fire. Those efforts (allegedly) resulted in AFFF being introduced into the local water system, owned and operated by MAWC. The alleged resulting damages and losses include expense to test and flush its water system, to provide water to nearby customers, and to engage in a public education campaign to inform customers about the ongoing situation, including do-not-use restrictions for nearby residents. (See, averment 193 of the Complaint).

Similar legal actions have been filed in Pennsylvania and other states as public water suppliers seek to recover costs in dealing with PFAS contamination.

PA Supreme Court Grants the Petition for Allowance of Appeal Filed in the Legal Battle Over the Possible Sale of Chester Water Authority's Assets.

In previous issues, I have reported on the legal battle raging over whether the City of Chester has the unilateral right to sell the assets of the Chester Water Authority ("CWA"). During September of 2021, the Commonwealth Court ruled that the City of Chester has that right. In the majority opinion of the Commonwealth Court, it is stated that "...we hold that section 5622(a) of the MAA [Municipality Authorities Act] continues to vest a municipality, such as the City in this case, with the power to acquire and

dispose of the assets of an authority itself, such as the Authority in this case, without the advice or consent of the authority or, here, the Authority." Immediately following the issuance of that decision, CWA filed a Petition for Allowance of Appeal at the PA Supreme Court. As I had explained in an earlier issue, appeals to the PA Supreme Court do not automatically get heard by that Court. The PA Supreme Court has the right to pick and choose what appeals it will allow and hear. On April 11, 2022, the PA Supreme Court issued an Order granting the Petition for Allowance of Appeal filed by CWA, thus, agreeing to hear and decide the merits of the case. After the parties file briefs and participate in an oral argument, the PA Supreme Court will issue its decision.

**The PA Public Utility Commission Adopts Regulations Requiring Diversity Reporting**

The PA Public Utility Commission (PUC) has adopted regulations requiring diversity reporting by major public utilities in Pennsylvania, regulated by the PUC. In a press release on the action, published on April 14, 2022, the PUC states that "it is incumbent on major utilities to have a diverse workforce as this is an essential element of success for all businesses." The press release provides that the PUC rulemaking standardizes the definitions, and format for utility diversity reporting to collect the following information:

- Corporate policies for improving diversity in the workplace and procurement process.
- Training on diversity initiatives in employment and in the contract of goods and services.
- Demographic data regarding diverse employment in various job classifications.
- A description of diversity recruitment, promotion and retention efforts.
- Involvement with organizations promoting diversity.
- A summary of diverse owned businesses the company contracts with for goods and services, including the percentage of dollars spent with diverse-owned businesses versus non-diverse businesses.

As reported in the press release, the final rulemaking order has been submitted, for review, to the legislative standing committees, the PA Independent Regulatory Review Commission, the Office of Attorney General, and the Governor's Budget Office. Following those reviews, the regulations will become effective upon publication in the *PA Bulletin*.

**About the Author**

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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.