



CONTAMINATED DRINKING WATER PROMPTS CLASS ACTIONS

March 2016 - Ryan Watson

In the wake of the Flint, Mich., water crisis, contamination of drinking water has become an increasing safety concern nationwide. Over the past month, plaintiffs filed two class actions—one in Flint and the other in Chicago—and random tests found elevated lead levels in residential drinking water in Jackson, Miss., and Sebring, Ohio, and at nearly half of Newark, N.J., public schools.

The problem typically arises with older water distribution systems that contain lead piping. Without proper treatment, water can corrode the pipes, allowing lead to enter the water supply. When residents drink or bathe in contaminated water, lead is absorbed into the body, damaging the nervous system. Infants and children are especially vulnerable to the effects of lead, even in small amounts.

Although drinking water contamination has only entered the national spotlight recently, it is not a new problem, said Hunter Shkolnik, a New York City attorney who represents the Flint plaintiffs. “There have been other lead contamination incidents before but nothing quite the magnitude of Flint.”

The Flint, Mich., water crisis

The city of Flint had relied on the Detroit Water and Sewage Department (DWSD) since 1964. But in 2011, as part of a cost-saving effort, the city investigated alternate sources of drinking water. It resolved to join a Lake Huron-based water authority partnership in 2016 but left a two-year gap during which neither DWSD nor the partnership would service the city.

The city had considered the nearby Flint River as a water source and commissioned a feasibility report.

The contractor recommended against using the river, finding the river water highly corrosive and unsuitable for use without proper corrosion controls, which would be expensive. Nevertheless, the city decided to switch to river water. The Michigan Department of Environmental Quality approved the switch even though it knew of the river water's corrosiveness and knew that corrosion control measures had not been implemented.

Soon after the switch, residents began complaining about the water's color, taste, and odor. City officials issued boil-water advisories after finding bacteria in the water, and a nearby General Motors plant stopped using municipal water because it was corroding car parts. During this time, city and state officials blamed cold weather, aging pipes, and a declining population. The city refused DWSD's offers to waive the reconnection fee and resume supplying Flint residents with water.

Concerns about Flint's water quality mounted, and independent studies confirmed the gravity of the problem. A Virginia Tech research team found elevated lead levels in residents' tap water, and the team determined that the river water was nearly 19 times more corrosive than the DWSD water. City officials continued to insist the water was safe.

Finally, in September 2015, a doctor released a report that found a dramatic increase in the number of Flint children with elevated blood lead levels. This was a significant turning point. "Children with elevated lead levels are a huge red flag," Shkolnik explained.

State and county officials finally declared a public health emergency and reconnected Flint to DWSD water, but they still urged residents not to drink, bathe, or cook with unfiltered tap water while the corroded pipes were investigated or treated.

On Mar. 7, seven Flint, Mich., families filed a class action against state and local officials, including Governor Rick Snyder. (McMillian v. Snyder, No. 2:16-cv-10796 (E.D. Mich. filed Mar. 7, 2016)). They alleged violations of residents' Fourteenth Amendment rights, as well as violation of the federal Safe Drinking Water Act and the EPA's Lead and Copper Rule. "We are environmental lawyers, so we filed under environmental statutes," Shkolnik said.

The complaint also alleges that the city concealed evidence of the elevated lead levels and used improper testing methods, such as "pre-flushing" taps before sampling them, to create results compliant with federal regulations.

McMillian seeks to establish a medical monitoring fund; appointment of a Flint water operations monitor; and compensatory and punitive damages. "Our goal is to get these families and children compensated appropriately, and to get the pipes fixed in homes so that they don't have to cook with bottled water, bathe in heated up bottled water, and wash their children in bottled water," Shkolnik said.

Similar problems in Chicago

Three Chicago residents filed a class action in state court, alleging lead contamination in the city's water system. (Blotkevic v. City of Chi., No. 2016-CH-02292 (Ill. Cir. Ct. Cook Cnty. filed Feb. 18, 2016)).

Chicago's public water system, like Flint's, was built long ago and contains lead piping—in fact, the

complaint notes, nearly 80 percent of Chicago properties receive water through lead pipes. The city treats its water supply with a polyphosphate chemical, which forms a white coating on the interior of the water lines—this prevents lead and other metals from leaching into the water. This treatment is generally effective but can fail if the pipes are disturbed. Additionally, replacing sections of lead piping with copper can cause galvanic corrosion—accelerated lead corrosion resulting from contact between the two metals.

The city has been working to modernize its aging water system but did not initially warn residents that the construction efforts might increase lead contamination in the water. It also did not advise them of EPA-approved methods to flush out lead-containing debris from residential service lines, such as removing faucet aerators and running cold water for 30 minutes before use. The only action the City has taken is advising residents to flush out their taps for three to five minutes before use, which may not be sufficient to reduce lead to safe levels.

The class seeks full replacement of the service lines and establishment of a medical monitoring fund, and would represent all Chicago residents who lived in areas affected by water main upgrades since 2008.

DETAILS

[Trial](#)

[Other News](#)



777 6TH STREET, NW, SUITE 200 WASHINGTON, DC, 20001

800.424.2725 | 202.965.3500

© 2016. American Association for Justice, All Rights Reserved

[Privacy Policy](#)