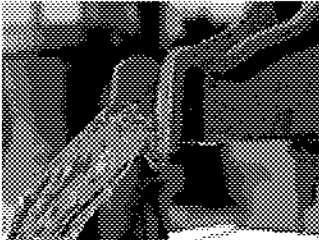


From: Tracy Mehan <mehan321@verizon.net>
Sent: Tuesday, November 17, 2015 6:38 AM
To: Tracy Mehan
Subject: from Bloomberg BNA Water Law & Policy Monitor

Drinking Water

Flint Residents Sue City, State Over Lead in Water



BNA Snapshot

Michigan Water Lawsuit

Key Development: Flint, Mich., residents sue city and state officials, alleging they knew there were problems with lead in the drinking water system.

What's Next: The Natural Resources Defense Council announced its intent to sue Michigan Gov. Snyder and others over alleged violations of the Safe Drinking Water Act.

By Nora Macaiuso

Nov. 16 — A group of Flint, Mich., residents filed a federal lawsuit against Michigan Gov. Rick Snyder (R) and state and city officials, claiming they knew city drinking water wasn't being properly treated after its source was switched, even as they made public statements that the water was safe (*Mays v. Snyder*, E.D. Mich., No. 15-14002, 11/13/15).

The lawsuit, which was filed Nov. 13 in the U.S. District Court for the Eastern District of Michigan and seeks class action status, claims officials switched the city's drinking water source from the Detroit water system to the Flint River as a money-saving move and delayed informing residents, even though they knew there were problems with the water supply.

The residents filing the lawsuit say they have experienced injuries including neurological disorders, skin lesions and hair loss, as well as loss of property value, because of the water. They cited e-mails obtained by researchers as evidence that risks and problems were known to officials at the time they made public statements assuring residents that the city's water supply was safe.

"For more than 18 months, state and local government officials ignored irrefutable evidence that the water pumped from the Flint River exposed the plaintiffs and plaintiff class to extreme toxicity, causing serious and dire injury and health hazards, and property damage, to the Flint water users," the lawsuit said.

A spokeswoman for the governor said the governor's office had not been served with the suit and declined to comment.

The Environmental Protection Agency announced an audit of the state's drinking water program, administered by the Department of Environmental Quality, after officials admitted they didn't follow proper sampling procedures after the 2014 switch (2015 WLPM 46, 11/19/15).

The admission came after researchers—who sampled residences and found high lead levels—released e-mails obtained under a Freedom of Information Act request that showed DEQ officials were aware the water wasn't being treated with phosphate, the preferred method for controlling corrosion, and weren't using proper sampling techniques (2015 WLPM 42, 10/22/15).

Among the plaintiffs are Melissa and Michael Mays and Keith and Jacqueline Pemberton, homeowners who say they experienced problems, including physical, neurological and psychological disorders, as a result of high lead and copper levels in their bloodstreams, brains, bones and other organs. They and others are suing on behalf of all those who were exposed to the water between April 25, 2014, and the present, a number in the tens of thousands, the suit says.

Due Process Violations Alleged

The suit alleges violation of the due process clause of the 14th Amendment, as officials "deliberately" replaced the residents' drinking water with "dangerous, unsafe and untreated (or inadequately treated) Flint River

water," knowing that it "could and would" result in consequences including lead poisoning. "This conduct was culpable in the extreme," the lawsuit says.

An attorney representing the residents, Michael Pitt of Pitt McGehee Palmer & Rivers P.C., said the officials' actions have injured the plaintiffs and damaged their property.

"Under constitutional principles, if the state creates the danger and takes affirmative action toward creating or enhancing the danger to the citizens, there's a due process violation," Pitt told Bloomberg BNA Nov. 16. Because the suit alleges constitutional violations, the officials won't be able to claim governmental immunity, Pitt said. "Our expectation is that the state officials responsible for what happened, and some of the city officials, are going to be held accountable and that compensation will be made available to these people," he said.

In addition to Snyder, the lawsuit names DEQ Director Dan Wyant; Liane Shekter Smith, former head of the department's drinking water office; department spokesman Brad Wurfel; other DEQ officials; Darnell Earley and Gerald Ambrose, the state-appointed emergency managers for Flint; former Mayor Dayne Walling; and city officials responsible for providing the state with information about the city's water system.

The lawsuit seeks an order certifying the case as a class action; an order declaring the defendants' conduct unconstitutional; an order of "equitable relief," including property repairs, and the establishment of a medical monitoring fund and a court-appointed monitor for the city's water operations; and compensatory and punitive damages.

Pitt said he's looking for state and local officials to come up with "innovative ways" of compensating the residents, such as creating a fund to address their immediate needs.

"Many of our potential clients are not wealthy folks," he said. "They don't have the financial resources to take care of what needs to be taken care of."

NRDC Plans Suit

Meanwhile, Snyder, Wyant and members of a Flint advisory board face a separate lawsuit from the Natural Resources Defense Council. The environmental group, in conjunction with the American Civil Liberties Union of Michigan, Concerned Pastors for Social Action and Mays—one of the plaintiffs in the federal suit—announced its intent to sue under the Safe Drinking Water Act, alleging failure to control lead in the city's drinking water. The lawsuit wouldn't seek monetary damages but would request remedies like medical monitoring, oversight, replacement of lead service lines and "assurances that the city and state are in fact complying with the letter and spirit of the Safe Drinking Water Act," NRDC attorney Anjali Waikar told Bloomberg BNA Nov. 16.

"The goal of this lawsuit really is to ensure we are holding the government accountable for what is an absolute and utter public health disaster," Waikar said.

While the state has provided funds for a switch back to the Detroit system and the governor has appointed a task force to review the situation, "what we're trying to do is get to the heart of the matter, which is making government accountable under the Safe Drinking Water Act, the federal law designed precisely to ensure drinking water of citizens is protected," she said.

To contact the reporter on this story: Nora Macaluso in Lansing, Mich., at nmacaluso@bna.com

To contact the editor responsible for this story: Larry Pearl at lpearl@bna.com

Related Articles

Topics:

- class certification
- drinking water
- due process

Agencies:

- Environmental Protection Agency

Courts:

- U.S. District Court, Eastern District of Michigan

States:

- Michigan

[< Previous](#) | [Next >](#)

[« Top](#)