A Slick Mess: PFC Litigation Expanding in Alabama

By John W. Scott

1. Introduction to PFCs, PFOA and PFOS

PFCs are a class of synthetic chemicals which have been, and continue to be, used in a variety of industrial and consumer applications and products. While there are a number of different PFCs, the two primary PFCs at issue in current litigation are perfluorooctanoic acid (“PFOA”) and perfluorooctane sulfonate (“PFOS”). PFOA and PFOS were once widely used in the manufacturing of products such as carpets, clothing, fabrics for furniture, paper packaging for food and other materials to make them resistant to water, grease or stains.

According to the EPA, “PFOS and PFOA are extremely persistent in the environment and resistant to typical environmental degradation processes. As a result, they are widely distributed across the higher trophic levels and are found in soil, air and groundwater at sites across the United States. The toxicity, mobility and bioaccumulation potential of PFOS and PFOA pose potential adverse effects for the environment and human health.”

PFCs at this point generally are not regulated by the EPA. In 2009, the EPA developed national drinking water provisional health advisory levels for PFOA at 0.4 ppb and PFOS at 0.2 ppb. In May 2016, the EPA announced revised drinking water health advisories reducing the advisory levels in drinking water to 70 ppt for PFOA and PFOS based upon lifetime exposure. A definitive link between PFC exposure and adverse health effects in humans is still unclear at this point, although there have been studies linking PFOA to certain diseases. The EPA considers PFOA and PFOS to constitute “emerging contaminants.” As such, the EPA is continuing studies regarding possible risks of adverse health effects and continuing to assess possible further regulatory action.

2. PFCs and the North Alabama Tennessee River Area

PFCs have been manufactured or used in manufacturing in the Decatur, Alabama, area since the early 1960s by a number of companies, including 3M Company. The current crop of PFC-related litigation began in 2002 with a worker’s compensation lawsuit filed against 3M involving its Decatur plant, which is located on the Tennessee River. This case eventually morphed into an environmental class action involving property owners in the surrounding three counties. The defendants include 3M, its subsidiary Dyneon, LLC, as well as other manufacturers with plants along the Tennessee River in the Decatur area. Plaintiffs also sued the local municipal wastewater treatment plant based on allegations that the plant has received process wastewater from the industrial defendants over the years which contained PFCs, as well as leachate from local landfills which also contains PFCs. The treated waste water is then discharged into the Tennessee River.
More recently, an environmental organization, Tennessee Riverkeeper, Inc., filed a federal RCRA lawsuit seeking to reduce PFC discharges and compel defendants to effectively reduce current PFC levels in the river. In addition, a lawsuit was filed in federal court by a water authority that draws its source drinking water from the Tennessee River. That lawsuit also includes class action allegations involving a class consisting of the water authority customers. Two other mass actions have been filed in state court primarily alleging property damage by certain water authority customers in the area.

Significantly, and most recently, a federal class action was filed alleging serious personal injury claims. The putative class consists of water authority customers and users in the Decatur, Alabama, area who allegedly suffer from various illnesses that have been linked to PFOA exposure. The defendants consist of the water authority itself, as well as three of the manufacturing defendants, including 3M. The named plaintiffs allegedly suffer from thyroid disease, hyperthyroidism, kidney cancer, and ulcerative colitis.

3. **PFCs and the East Alabama Coosa River Area**

Dalton, Georgia, is known as the “carpet capital” of the world, and is reportedly home to over 150 carpet manufacturers. Some of these manufacturers have historically used PFOA and PFOS, as well as other PFCs, in the carpet manufacturing process to make carpets stain and water resistant.

Industrial process wastewater from these manufacturing facilities allegedly containing these chemicals was discharged by certain manufacturers and treated at the Dalton Utilities’ wastewater treatment plant. Treated wastewater was then applied to the surface of a 9,800 acre area as a “land application system” for treatment of the wastewater. The Dalton Utilities land application system has allegedly resulted in PFC contamination of the Conasauga River in north Georgia. The Conasauga River, in turn, is one of five tributaries of the Coosa River which flows from Georgia into northeast Alabama through a complex watershed system.

In May 2016, after the EPA revised its drinking water advisories for PFOA and PFOS, the Alabama Department of Environmental Management (“ADEM”) issued a drinking water advisory for five water systems in the Coosa River basin, including the City of Gadsden Water Works and the Town of Centre Water Works. ADEM’s advisory was based on testing that showed drinking water from these systems did not meet the new EPA advisory levels for PFOA and PFOS.

These two water authorities have sued Dalton-area carpet manufacturers, distributors, and a number of chemical companies in Alabama state court. Defendants removed both actions to federal court, but both have been remanded and are in the early stages of litigation in state court.