

ALASKA STATE LEGISLATURE
HOUSE HEALTH AND SOCIAL SERVICES STANDING COMMITTEE

March 9, 2020

3:12 p.m.

MEMBERS PRESENT

Representative Tiffany Zulkosky, Chair
Representative Harriet Drummond
Representative Geran Tarr

MEMBERS ABSENT

Representative Ivy Spohnholz, Vice Chair
Representative Matt Claman
Representative Sharon Jackson
Representative Lance Pruitt

COMMITTEE CALENDAR

PRESENTATION: THE IMPACT OF FOREVER CHEMICALS

- HEARD

PREVIOUS COMMITTEE ACTION

No previous action to record

WITNESS REGISTER

ROBERT BILOTT, Attorney, Taft, Stettinius & Hollister LLP
Cincinnati, Ohio

POSITION STATEMENT: Presented on the Public Health Threat of PFOA & PFOS Contamination.

PAMELA MILLER, Executive Director
Alaska Community Action on Toxics
Anchorage, Alaska

POSITION STATEMENT: Testified during the presentation.

KELLY McLAUGHLIN
Gustavus PFAS Action Coalition
Gustavus, Alaska

POSITION STATEMENT: Testified during the presentation.

ACTION NARRATIVE

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CHAIR TIFFANY ZULKOSKY called the House Health and Social Services Standing Committee meeting to order at 3:12 p.m. Representatives Zulkosky, Drummond, and Tarr were present at the call to order.

Presentation: The Impact of Forever Chemicals

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CHAIR ZULKOSKY announced that the only order of business would be a presentation on The Impact of Forever Chemicals.

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ROBERT BILOTT, Attorney, Taft, Stettinius & Hollister LLP, stated that he was speaking in a personal capacity to share information he has collected and brought out to the public over the last 20 years about PFAS chemicals, what is known about them, what's known about the health threat from them, and what can be done using that information to protect the public. He shared his background of working on these chemicals in litigation context for more than 20 years. He reported that this litigation had uncovered many internal documents from the companies which manufactured these chemicals, primarily Dupont and 3M. He added that these chemicals were completely man-made, synthetic materials, which did not exist prior to World War II. He pointed out that litigation over the past 20 years had resulted in access to the internal studies and documents from Dupont and 3M about PFAS, which had not been available to the public, the regulators, or the scientific community. He declared that, as the chemicals were known to have a unique structure which made it almost impossible to break down in the environment, they became known as "forever chemicals" and would stay in the water and soil virtually forever.

MR. BILOTT reported the companies knew these chemicals would get into the environment. He shared there had been internal laboratory toxicity studies on animals, and later, on humans who had been exposed to the chemicals. By the 1980s, it was known these chemicals were toxic, and caused cancer in animals. He reiterated that the companies had kept this information internal, and the regulators and scientific community were not aware of it. He shared that he had contacted the EPA (Environmental Protection Agency) in 2001 and asked that appropriate standards be set for these chemicals in drinking

water. He emphasized that, 19 years later, there was still not an enforceable, federal drinking water standard for any of these chemicals, even as the EPA had announced programs for a priority review and action plans in 2002, in 2003, and 2009. He noted that in 2018 and 2019 there was another statement by the EPA of an action plan to move forward, yet there was still not an enforceable standard by the EPA. In the meantime, his group had been able to set up, through a settlement in 2004, independent scientists to look at all the data and internal files and information, while doing new studies of 70,000 people in West Virginia and Ohio. This study had taken place over more than 7 years, had cost more than \$100 million, and had been able to confirm, by 2012, that PFOA was linked with 6 different diseases, including testicular cancer, kidney cancer, thyroid disease, and high cholesterol.

MR. BILOTT reported these were some of the most comprehensive, extensive human health studies ever done on any chemical. It was only at this point in 2012 that the EPA added PFOA and the related PFOS to the list of chemicals for public water supplies to begin sampling. Finally, in 2016, the EPA came out with its first guideline for PFOA and PFOS in drinking water after a NY Times magazine article summarized the history and indicated that the chemical was found in drinking water all over the country. At that time, states and public water providers started to ask the EPA about the safety level, and the EPA presented a guideline of no more than 70 parts per trillion. He pointed out that, once sampling began using this guideline, people asked about the safety level, as the guideline was unenforceable. He reported that states began to set enforceable standards for these chemicals in the water and water providers were incurring costs to clean the water. States were reviewing all the data and were recommending much lower numbers than the EPA. The regulators were taking the current information on PFOA and PFOS and applying it to the broader group of PFAS chemicals, instead of waiting for guidelines from the federal government which could still be years away.

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PAMELA MILLER, Executive Director, Alaska Community Action of Toxics, spoke about the significant public health threat from PFAS contamination to safe drinking water supplies in Alaska. She urged immediate legislative action to prevent further harm, to ensure safe drinking water supplies and responsible clean-up, with measures to monitor and protect the health of affected community members and first responders. She reported that PFAS

were an unregulated class of chemicals, with more than 5000 substances in their class, and that they were found in many consumer products, including industrial firefighting foams for Class B petroleum and chemical fires, and electronics. She pointed out that, in Alaska, the dispersive use of AFFF (Aqueous Film Forming Foam) had resulted in most of the contamination in drinking water and the environment. She emphasized that these chemicals were toxic at exceedingly low levels, with effects on the immune systems of children and effects on mammary gland development during breastfeeding.

MS. MILLER declared that there were not any enforceable drinking water standards in Alaska. She offered her belief that it was important for the Alaska State Legislature to step up to protect Alaskans. She directed attention to a report that showed adverse health effects were found at up to 700 times the guidance level established by EPA, which she defined as the 0.1 - 1 parts per trillion. She emphasized that the EPA standards were "far from health protective." She reported firefighters suffered higher rates of cancer than the general population, as they were at risk from the occupational exposure to PFAS. She shared a report titled "Threats to Drinking Water and Public Health in Alaska," which reviewed thousands of pages of records obtained through the Freedom of Information Act and the Public Records request, as well as a thorough review of peer-reviewed literature of health effects. She identified 100 individual sites contaminated with PFAS, including 33 airports in Alaska which had known or suspected release of AFFF into the environment. She noted that, of these 33 airports, only 13 had been investigated. She reported that 10 Alaska communities had been identified with PFAS-contaminated drinking water, at levels deemed unsafe even by EPA standards. She opined that the number of communities with contaminated water would increase as there was more sampling. She expressed her concern with the rolling back of regulations by the current Governor Mike Dunleavy's administration.

MS. MILLER declared that there were safe, effective, non-chlorinated alternatives for AFFF firefighting foams, and that these were already in use throughout the world. She stated that restriction of the use of AFFF would stop further contamination and harm to the environment, as well as the high costs of clean-up and associated liability. She expressed a desire to work toward legislation that was as protective as possible from the effects of PFAS. She recommended a class-based approach to setting water quality standards for PFAS, as so many chemicals in this family of chemicals shared structural and toxicological

properties. She declared that the goal should set a maximum contaminant level at a very low parts per trillion, even though there may not be any safe levels of exposure. She offered her belief that, as the State of Washington had just passed a bill with the strongest ban on PFAS-based firefighting foam in the United States, it was necessary for the Alaska State Legislature to take similar responsibility.

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CHAIR ZULKOSKY asked about the rollback of regulations by the current administration.

MS. MILLER explained that under the administration of former Governor Bill Walker there were measures to enact rules to regulate and require testing of at least six PFAS chemicals. She suggested that it was best to take a class-based and protective approach in the regulation of these chemicals. She reported that the administration of Governor Dunleavy had announced that there would be a return to the earlier regulations, which covered only PFOA and PFOS, and would defer to the federal standard. She offered her belief that this federal standard was not protecting health.

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KELLY McLAUGHLIN, Gustavus PFAS Action Coalition, pointed out that the reversal by the Dunleavy administration was simply implemented and had not been announced. She shared that results of testing in Yakutat and Cordova were not even released. It was only then that the Department of Environmental Conservation stated there had been a return to the federal standards, whereas the public had been under the impression that a new regulation package had been moving forward.

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MS. MILLER said that this decision had been at the objection of staff in the Department of Environmental Conservation. She shared a memo from staff working in the contaminated sites program, which read, in part:

the best way to protect our citizens of the State is not by rolling back standards; such action goes against our responsibility as environmental and health professionals to ensure the drinking water of Alaskans is safe. As a science-based agency, we must use a

science-based approach to set standards, investigate all potential contaminated areas and receptors, require complete reporting and do all that we can to protect Alaskans and the environment from additional exposures to PFAS. To do otherwise, is negligence.

CHAIR ZULKOSKY asked if that recommendation from within the Department of Environmental Conservation was received through the public records request.

MS. MILLER replied that the writer had made the memorandum available to the public.

CHAIR ZULKOSKY asked if the public comment period was regarding the Department of Environmental Conservation addressing the class-based approach to water quality and chemicals.

MS. McLAUGHLIN replied that Department of Environmental Conservation had put into action a set of five chemicals with a combined total to meet the action level of 65 parts per trillion. This had been put together to react to the emergency and had then put it out for public comment.

CHAIR ZULKOSKY asked if any of them would drink water with 70 parts per trillion of PFAS. She asked if they believed the EPA standards were stringent enough.

MS. LAUGHLIN replied, "no."

MR. BILOTT offered his belief that the standards were not stringent enough.

MS. MILLER reported that the director of the National Toxicology program had stated that the 70 parts per trillion was probably about 700 times too lax to protect public health.

REPRESENTATIVE TARR commented on agency staff working in whistleblower fashion, and the concern for retribution.

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MS. McLAUGHLIN referenced two proposed bills, noting that these were "barely going to start dealing with this problem." She stated that using bottled water was only a start, not a solution, adding that her property was still contaminated. She declared the need to stop using PFAS.

CHAIR ZULKOSKY asked for her written testimony to better understand the situation at her home in Gustavus.

MS. McLAUGHLIN shared her story from the early homestead bought by her grandparents in Gustavus during the 1960s, and its subsequent division among their children. She reported that the property encompassed an old drainage ditch from the local airport when it was built in World War II, to the river. She relayed that, as PFAS followed water, it flowed down the river and through the properties of all her relatives. After discussions with her family, they contacted Pam Miller, and began a path of unity to start the Gustavus PFAS Action Coalition. She relayed that their first action was a letter writing campaign for public comment on the regulation package. When they wrote to the Department of Transportation & Public Facilities asking that the foam be removed from the Gustavus airport, they were informed that the Gustavus airport, as an index A (smaller) airport, was exempt. She reported that the coalition began a pilot study of 40 residents and asked people for blood tests. The coalition began a limited animal testing program through Alaska Department of Fish & Game, and she shared some of the results. She pointed out that, as the non-detect levels were fairly high, it did not rule out existence of the chemicals. She stated that the coalition was also working on advocacy and awareness and would love to have Gustavus remediated to the way it had been with clean soil and water. She reported that the group was still collecting data and information and needed more tests on water and blood to better know the correlation with health effects.

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REPRESENTATIVE DRUMMOND asked about AFFF.

MS. McLAUGHLIN explained that it was aqueous film forming foam, the main source of contamination.

MR. BILOTT explained that these foams were usually used for petroleum-based fires.

REPRESENTATIVE DRUMMOND asked whether some water systems were filtering out these products.

MR. BILOTT replied although it was expensive there were effective technologies for the PFOA and PFOS compounds. He reported that these technologies were put on in-home systems for private wells and had been in operation for more than a decade.

He said that it was more difficult and required more expensive treatment systems to treat the newer replacement PFAS chemicals.

REPRESENTATIVE DRUMMOND asked if there was a cost increase as the carbon decreased.

MR. BILOTT explained that the carbon essentially captured the PFOS and filtered it out of the water, and then the carbon was regenerated.

CHAIR ZULKOSKY asked how many individuals were tested in Gustavus and how this testing was sponsored and paid. She asked for more information on the animal testing.

MS. McLAUGHLIN explained that the Alaska Department of Fish & Game had been interested in funding the animal testing. She reported that the blood testing had been sponsored through a grant from the Alaska Community Action of Toxics with "lots of volunteer hours."

MS. MILLER explained that free analytical work had been offered by Indiana University. She shared information from another community-based research project for PFAS chemicals in people with no source of firefighting foam in the drinking water, indicating long-range transport.

CHAIR ZULKOSKY asked where the testing had been done in Alaska, where it still needed to be done, what resources were necessary, and what collaboration existed with the Department of Health and Social Services. She noted that some communities were reliant on the collection of water from a local well or water system.

MS. MILLER offered her belief that this was just the beginning stages of water testing, even though the military had performed water testing downstream and around military bases in Alaska. She shared that Department of Environmental Conservation had plans to test places where use of AFFF was known. She reported that the Agency for Toxic Substances and Disease Registry had started a human biomonitoring project for people living in Moose Creek, affected by PFAS contamination from the nearby Eielson Air Force Base. She added that there had also been studies in the Circumpolar Arctic which showed long range transport of these chemicals. She stated that, as there had been very limited testing of fish tissue and other traditional food sources, there should be another priority as two lakes had been shut down to fishing because of high levels of PFAS.

MR. BILOTT reported that some states had issued fish consumption advisories and deer hunting advisories after testing showed high levels of these chemicals.

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MS. McLAUGHLIN reported that the water of Kimberly Lake, which had been shut down, was 122 parts per trillion. She noted that in 9 months, the fish, which had been stocked clean into the lake, had accumulated about 90,000 parts per trillion. She emphasized that animals uptake very quickly.

REPRESENTATIVE DRUMMOND asked how to improve contaminated soil.

MS. McLAUGHLIN said that remediation, which was removal and replacement, was not cost effective. She shared what was being done in Fairbanks, that an activated carbon liquid was injected into the ground which absorbed the incoming PFAS.

REPRESENTATIVE TARR asked what was the most strategic way to spend money while trying to keep the most people healthy.

MR. BILOTT shared that there had previously been arguments that there was insufficient human data to show the impacts of these chemicals. He declared that, when dealing with chemicals linked with rare health outcomes, it was necessary to have very large data sets, with large populations, to conduct the studies to confirm these effects. He shared that the studies in West Virginia and Ohio used \$70 million from Dupont to start the testing, and then another \$35 million to do the epidemiology studies from this data. He pointed out that by already having this data, it was possible to move forward to protect people.

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CHAIR ZULKOSKY asked for action recommendations at the state level to make drinking water safe.

MS. MILLER declared that first it was necessary to set health protective, enforceable drinking water standards. Then, it was necessary to ensure that those who had been exposed to low levels be provided with safe drinking water sources. She expressed her concern for the Fairbanks area which had seven major source areas of these chemicals. She added that no longer allowing the use of firefighting foam would "go a long way to prevent further harm." She stated that it was necessary to have effective clean-up and health protective technologies.

MS. McLAUGHLIN declared that the starting point would be a low parts per trillion maximum contamination level.

MR. BILOTT stated that it was critically important to have an enforceable standard. He emphasized that people should not have to get a lawyer in order to have safe drinking water.

MS. MILLER shared that there were a series of recommendations in the report, "Threats to Drinking Water and Public Health in Alaska."

REPRESENTATIVE DRUMMOND asked how to set drinking water standards.

MS. MILLER replied that there were good precedents in other states, including the State of Michigan, and that some other states were taking a class-based approach for a very low parts per trillion level on combined contaminants. She opined that there may not be a safe level of exposure.

CHAIR ZULKOSKY asked if there was anything to be done if a person tested positive for these chemicals.

MS. McLAUGHLIN said that "information is power" and that it was necessary for people to know their "body burden." She said that the House Health and Social Services Standing Committee could pass legislation to educate doctors in Alaska.

MR. BILOTT expressed his agreement that education was key as was making the resources and information available. He reported on a subsequent panel of independent medical doctors, in 2013, who reviewed appropriate medical testing and recommendations for exposure to these chemicals. He pointed out that most medical professionals had not heard of PFAS and did not know to ask questions or do tests.

CHAIR ZULKOSKY reflected on the high levels of bioaccumulation in subsistence foods.

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ADJOURNMENT

There being no further business before the committee, the House Health and Social Services Standing Committee meeting was adjourned at 4:06 p.m.