



THE WATER NEWS

Volume 58 | No. 4 | Winter 2022

SOURCE

75TH **MARK YOUR CALENDARS**
PA-AWWA ANNUAL CONFERENCE
KALAHARI RESORTS & CONVENTIONS | POCONOS, PA
MAY 9-11

**PA-AWWA ANNOUNCES
NEW PARTNERSHIP**



www.paawwa.org



Address Service Requested: PA-AWWA - 1309 Bridge Street, Lower Level, New Cumberland, PA 17070

The Few, The Not-So-Proud Water System Operators Who Have Gone Awry

By Michael D. Klein

In my many years of representing public water systems, I have developed a high regard for water system operators, and the highly skilled work that they perform in order to provide safe and reliable drinking water to the public. As with any profession, mine included (that is why there are so many, and not so funny attorney jokes), we hear on an all too often basis of professionals intentionally departing from the standards that they are required meet. Water system operators have usually been an exception to that, so when there is an incident involving a water system operator, it is surprising, and worth noting. As a bonus, I am going to discuss not one, but two recent incidents. The first was reported by the Associated Press on October 21, 2022, and involves a waterworks operator in Richmond, Vermont, who, acting alone, and without authorization, lowered the fluoride level in Richmond's public water system for over a decade. In his resignation letter, he contended that fluoridation is voluntary and that amounts are not mandated. Richmond discovered that the fluoride added by the operator was half the amount recommended by federal and state agencies. The second incident is closer to home. On August 17, 2022, the Pittsburgh Post-Gazette reported about a former supervisor, at a water treatment plant owned and operated by the Pittsburgh Water and Sewer Authority, being criminally charged, and sentenced to three years' probation for "conspiring to violate the *Clean Water Act* by polluting the river". That river is the Allegheny River. "Prosecutors said he was to blame for unauthorized discharge of sludge from the plant's clarifiers into the river. He told employees to discharge sludge and admitted to submitting false reports about it." The report goes on to state that over time so much sludge was discharged, that it accumulated in the river and formed an island.

Jurors in a Flint Water Trial Cite Physical and Mental Health Problems Leading to a Mistrial

I have written about the Flint water trials so often (so you don't make the same mistakes), that you are probably getting sick and tired of my articles. Well, the jurors for one of the Flint water trials have also gone bonkers. Law360 reported in an article on August 11, 2022, that "A Michigan federal judge on Thursday declared a mistrial in a landmark bellwether case over the Flint water crisis after jurors said their mental and physical health had reached a breaking point." The breaking point was reached after the jurors had endured six months of the trial, and six days of jury deliberation. The case involved a Flint water crisis legal action against two water contractors, "alleging a change in drinking water sources in 2014 and 2015 leached lead from pipes and brought it into houses and schools." The allegations against the two contractors were, among other things, that they did not inform the City of Flint that it should use corrosion inhibitors

when it switched from purchasing water from Detroit, to withdrawing water from the Flint River and processing the water without using any corrosion inhibitor. The mistrial is not the end of the case. It will go to trial again with a new jury. Unfortunately, the public water sector, its consultants, and federal and state regulators will be tainted by the Flint water crisis for many years to come. The next article is a case in point.

The Jackson, Mississippi Water Crisis Has Similarities to the Flint Water Crisis

Jackson, Mississippi, the capital city of Mississippi, has a water crisis that's been brewing for many years, and then began to receive national notoriety in August of 2022, when Jackson's source of water supply, the Pearl River flooded, putting the City's water treatment plant out of commission. This resulted in the 71,000 water connections, serving a population of 150,000, being unable to deliver access to safe drinking water to the customers of Jackson's water system. The Mississippi National Guard was called-out for duty at Jackson, and among those duties was distributing bottled water to the residents. The Governor of Mississippi declared a state of emergency for Jackson, and President Biden issued an emergency declaration, which enabled Mississippi to get help from the Federal Emergency Management Agency. Jackson, like Flint, is a city where minorities comprise a majority of the population. The media, the public, and government outside of Jackson, are unwilling to accept the flooding of the Pearl River as a get out of jail card for Jackson and Mississippi officials. The EPA Inspector General, who investigated Flint, is now investigating the federal response to the Jackson crisis. This means the EPA could be in trouble for its oversight of Mississippi's administration and enforcement of the *Safe Drinking Water Act*, as it applies to Jackson. On September 26, 2022, EPA Administrator Michael S. Regan went to Jackson, and met with Jackson's Mayor Chokwe Antar Lumumba about the water crisis. In a news release issued by EPA, it is reported that after the



meeting Administrator Regan issued the following statement, quoted in part, herein: "The people of Jackson, Mississippi, have lacked access to safe and reliable water for decades. After years of neglect, Jackson's water system finally reached a breaking point this summer, leaving tens of thousands of people without any running water for weeks. These conditions are unacceptable in the United States of America." On September 27, 2022, the NAACP filed a complaint under Title VI of the *Civil Rights Act* of 1964 regarding alleged discrimination by Mississippi gravely impacting the drinking water system of Jackson and the health and wellbeing of the people of Jackson. In a nutshell, the claim made under the *Civil Rights Act* is that Mississippi received federal funds, but discriminated against Jackson in the distribution of those funds, on the basis of race and color. On top of this, as reported on September 19, 2022 by AXIOS, residents of Jackson have filed a class action lawsuit against Jackson, its current and former mayors, city officials and engineering companies "...alleging that years of neglect culminated in a recent water crisis for more than 150,000 people." And finally, the U.S. Department of Justice, on September 26, 2022 sent a letter to Jackson's Mayor, City Attorney, and Assistant City Attorney, notifying them that the Department of Justice is "...prepared to file an action against Jackson under the *Safe Drinking Water Act*, but would hope

this matter could be resolved with an enforceable agreement that is in the best interest of both the City and the United States." Among the violations cited in the letter is "The Justice Department further believes that State and local authorities have not acted to protect public health, pursuant to Section 1431 of the SDWA...". For example, the letter states that over 300 boil water notices have been issued over the past two years and multiple line breaks occurred during the same period of time. All of this should be an opportunity for public water suppliers, their consultants, and the regulators of water systems in Pennsylvania, to learn from the mistakes of others.

About the Author

Michael D. Klein is a Senior Counsel in the Harrisburg, PA, and Washington D.C. offices of Cozen O'Connor. He practices in the areas of utility and environmental law. He can be reached at mklein@cozen.com and 717-703-5903. 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. ♡



Our office provides legal advice and representation in the following areas:

- PADEP MATTERS
- PUC MATTERS
- ENVIRONMENTAL & PERMITTING
- FINANCINGS – PENNVEST/PEDFA/CFA
- CSO/SSO ISSUES
- CONDEMNATIONS
- REAL ESTATE & LAND USE
- REGIONALIZATION/ACQUISITIONS
- EMERGENCY RESPONSE PLANS & SECURITY
- WIND & SOLAR POWER
- MARCELLUS SHALE LEASING & REGULATION
- WATER ALLOCATIONS

WE PROUDLY SERVE AS LEGAL COUNSEL TO THE WATER UTILITY COUNCIL OF THE AMERICAN WATER WORKS ASSOCIATION, PA SECTION

Michael D. Klein
 (717) 703-5903 | mklein@cozen.com
 17 North Second Street | Suite 1410 | Harrisburg, PA 17101
 750 attorneys | 30 offices | cozen.com

© 2020 Cozen O'Connor

Pressure Tank Rentals
Emergency Tank Repairs
Tank Cleaning

I.K. Stoltzfus
Service Corp.

ikstoltzfus.com
 717-653-6789