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COVID-19 and the CRITICAL INFRASTRUCTURE WORKER

By Michael D. Klein

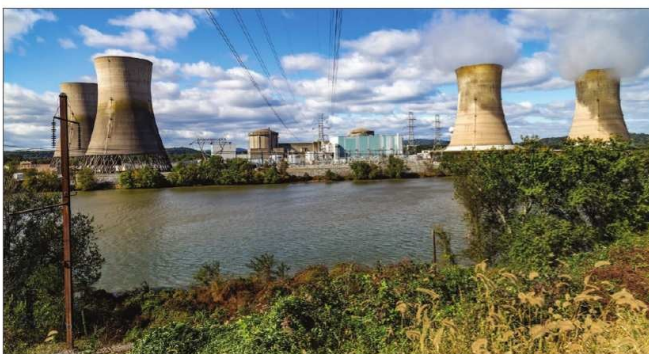
The number of COVID-19 cases spiked in the fall, and some experts have predicted that we may not get much relief from this ubiquitous disease during winter. Many non-essential workers, like most lawyers, me included, may still be working remotely into 2021. I must note that long ago, I was an essential employee, when I was an Assistant Attorney General for the Commonwealth of Pennsylvania. When I was sworn in for that position, I did not think of it as being a dangerous job. But soon thereafter, in 1979, there was the infamous accident at the Three Mile Island nuclear plant. As radiation levels rose, many people in the Harrisburg area evacuated with their families. That was what I intended to do with my wife and one-year-old daughter. As we were about to fly the coop and seek refuge with family in Wilkes-Barre, I received notice from the Attorney General that I was an essential employee and had to stay and work at my office in Harrisburg. My relatives went berserk about the possibility of my daughter being exposed to radiation, or worse, a nuclear melt-down. After receiving threats from both sides of the family, I got the message, and took my wife and daughter to the safety of Wilkes-Barre. There, I left them temporarily and returned alone to work in Harrisburg for what seemed like forever, before it was safe for them to return to Harrisburg. That experience has caused me to have great admiration for the men and women who are first responders, healthcare workers and, of course those who work in critical infrastructure roles like many in the water sector. When COVID-19 first began to spread, and quarantine rules were being imposed,

there was – and still is – a great concern in the water sector about essential workers, such as a water treatment plant operator contracting COVID-19, or being exposed to someone who has COVID-19. A bigger concern is that the plant operator may have had contact with some or all of the other water treatment plant operators, and that all of them would have to self-quarantine. That could leave the water system without a licensed plant operator. The PA Department of Health has issued quarantine guidelines on this very situation. The guidance provides that a worker in a critical infrastructure role who has had close contact with someone, or has a household member who has COVID-19, must self-quarantine, if that worker has symptoms, for at least 10 days after symptoms onset and is fever-free for 24 hours. However, if the worker is in a critical infrastructure role, and does not have symptoms, that person can continue to work, but only if adhering to CDC protocols. Also, remember that PAWARN is there to help members with needs in emergency situations.

COVID-19 and The Partial End of a PUC-Imposed Moratorium on Utility Service Terminations

In March 2020, the Pennsylvania Public Utility Commission (PUC) issued an emergency order that generally prohibited water and wastewater utilities, and certain other utilities under the jurisdiction of the PUC, from terminating service to customers during the COVID-19 Pandemic Emergency. On October 13, 2020, the PUC issued an Order lifting the absolute moratorium on utility service termination effective November 9, 2020. [Public Utility Service Termination Moratorium-Modification of March 13 Emergency Order, Dkt. No. M-2020-3019244; issued October 13, 2020]. However, unless otherwise authorized by the PUC, a utility is not allowed to terminate residential service to customers who are at 300% and below the federal poverty income guidelines. To receive protection from termination, a protected customer must apply for all assistance programs for which the customer is eligible; and request a payment arrangement from the utility, if appropriate.

Unless otherwise authorized by the PUC, a utility must offer a payment arrangement for a period of no less than 18 months to small business customers, with past-due amounts. A small business customer that remains current on their payment



arrangement and current bill is not subject to utility service termination. The restrictions on utility service terminations to certain residential and small business customers of public utilities will remain in effect until the earlier of

1. March 31, 2021;
2. the date on which the PA Governor's Proclamation of Disaster is rescinded; or 3. a time otherwise established by the PUC.

Flint, Michigan Lead-In-Drinking-Water Crisis Spawns More Lawsuits

As I reported previously, in August, a federal judge allowed a lawsuit filed by a group of Flint, Michigan residents against the U.S. Environmental Protection Agency (EPA), to proceed. The judge ruled that EPA had an obligation, not an option, to step in within 30 days of learning that the water system was not in compliance and assist the state in bringing it into compliance. [Law360, October, 14, 2020 "Feds Want Quick Appeal of Immunity in Flint Water Case"] That lawsuit has since been followed by one brought by a group of Flint residents against JPMorgan Chase & Co., Wells Fargo, and Stifel, Nicolaus & Co.

Those investment banks helped to finance the construction of a new pipeline that enabled Flint to rely on the corrosive Flint River as a water source. An allegation against the investment banks is that they knew if they participated in the financing that children would get hurt. The plaintiffs are seeking damages in the neighborhood of \$2 billion. [The Detroit News, October 7, 2020,



"Flint Residents sue investment banks, accuse them of helping to create water crisis"] \$2 billion may seem like a pipe dream, but in August, 2020, the State of Michigan settled a lawsuit for \$600 million for its role in the water crisis. What all of this litigation may result in for water systems across the country is that EPA may be more proactive in getting into enforcement actions under the *Safe Drinking Water Act*, and investment banks may be reluctant to finance controversial water projects.

About the Author



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Disclaimer: 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.

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