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NEW YORK LENGTHENS THE LIMITATIONS PERIOD FOR PUBLIC WATER SUPPLIERS TO SUE FOR ALLEGED WATER CONTAMINATION

To Our Clients and Friends:

Last week, New York Governor Andrew Cuomo signed a new measure lengthening the statute of limitations period for public water suppliers to sue for water contamination.^[1] Supporters have characterized this as a “significant blow” to companies alleged to be polluters^[2] because it could aid in suing to recover hundreds of millions of dollars for alleged contamination cleanup costs.^[3] The new law will take effect immediately.^[4]

The Old Limitations Period

Before last week, New York law set forth a three-year limitations period for claims to recover damages from latent effects of substance exposure, running from “the date of discovery of the injury by the plaintiff or from the date when through the exercise of reasonable diligence such injury should have been discovered by the plaintiff, whichever is earlier.”^[5] New York law also provided an independent one-year period (subject to conditions) if the plaintiff did not know the cause of its injuries during the initial three-year period.^[6]

Officials and environmental advocates criticized this standard as discouraging lawsuits by public water suppliers, in part because of a lag between contamination and discovery^[7] and perceived ambiguity over when contamination allegedly occurred.^[8] Moreover, prior court rulings applied the general rule that began the statute of limitations period when a “reasonably prudent water provider should have or could have brought the suit.”^[9] In the context of public water suppliers alleging contamination, however, the general counsel for the Suffolk County Water Authority explained that such a rule makes it difficult “to know when they should commence the action.” For example, New York courts had held that discovery occurred when, “based upon an objective level of awareness of the dangers and consequences of the particular substance, ‘the injured party discovers the primary condition on which the claim is based.’”^[10] “Thus, knowledge of both the ‘dangers and consequences’ posed by contamination and harmful impact” were required.^[11] In light of such obstacles, lawmakers complained that it was difficult for public water suppliers to overcome statute of limitations defenses raised by polluters in many cases.”^[12]

The hurdles presented by the prior limitations period were evident in a recent Second Circuit decision affirming dismissal of claims brought by the Bethpage Water District.^[13] The parties took divergent views on the application of New York law, with a company arguing that a “cause of action accrues when the water provider learns that the contamination threatens water quality to such an extent that remedial

action must be promptly taken, *even if the contamination has not yet reached the water source,*” and the District arguing that the limitations period “does not accrue until contamination is *actually detected in the water source itself.*”^[14] Rejecting the District’s argument, the Court dismissed the District’s claims because it had been “aware that the threat of contamination was sufficiently significant to warrant ‘immediate or specific remediation efforts.’”^[15]

The New Limitations Period

The new measure amends the Civil Practice Law and Rules to create a new statute of limitations for actions brought by public water suppliers to recover damages from water contamination.^[16] The period begins to run once contamination has been detected in a public water supply, rather than when the contamination occurred.^[17] It also clarifies that the statute of limitations period runs from the latest of (1) when a test has detected contamination in the raw water of a well or plant intake sample point in excess of state or federal drinking water limits, or (2) the last action taken by a company contributing to the contamination.^[18]

“Polluters need to be held responsible for their actions and with this measure we are closing an unacceptable loophole that let them skate for far too long,” Governor Cuomo said in a statement.^[19] “This law will equip public water authorities with a desperately needed tool to hold corporate polluters accountable for contaminating our drinking water and ensure these deep-pocketed polluters, not ratepayers, pay the costs of removing contaminants like 1,4-dioxane from our drinking water,” a legislation sponsor said.^[20]

Conclusion

The new measure increases potential challenges for companies alleged to be contributors to contamination. By setting the limitations period to run from the date of the impact on the water supply, this measure lengthens the period in which public water suppliers may sue, and it clarifies certain instances in which discovery will trigger that period to run. Moreover, while the old limitations period will still apply for private plaintiffs,^[21] this new measure will nevertheless increase the potential liability of companies faced with allegations that they have contributed to ground water contamination. Moving forward, companies and stakeholders may wish to account for the greater resulting uncertainty about their potential liability risk due to this statute.

[1] <https://www.nystateofpolitics.com/2019/11/173011/>.

[2] <https://www.newsday.com/long-island/environment/water-treatment-pollutants-1-4-dioxane-1.31984977>.

[3] <https://www.newsday.com/news/region-state/1-4-dioxane-cuomo-gaughran-1.38223403>.

[4] [Click here.](#)

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- [5] *See* N.Y. C.P.L.R. 214-c.
- [6] Vincent C. Alexander, Practice Commentaries to C.P.L.R. 214-c (Westlaw 2019).
- [7] <https://www.newsday.com/news/region-state/1-4-dioxane-cuomo-gaughran-1.38223403>.
- [8] <https://www.nystateofpolitics.com/2019/11/173011/>; also click here.
- [9] <https://www.newsday.com/long-island/environment/water-treatment-pollutants-1-4-dioxane-1.31984977>.
- [10] *Bethpage Water Dist. v. Northrop Grumman Corp.*, 884 F.3d 118, 125 (2018) (quoting *MRI Broadway Rental, Inc. v. U.S. Min. Prods.*, 92 N.Y.2d 421, 429 (1998)).
- [11] *Id.*
- [12] N.Y. State Assembly Mem. In Supp. of Legis., [click here](#).
- [13] *See Bethpage Water Dist.*, 884 F.3d at 119.
- [14] *Id.* (emphasis added).
- [15] *Id.* at 128.
- [16] *See* N.Y. C.P.L.R. 214-h.
- [17] <https://www.newsday.com/news/region-state/1-4-dioxane-cuomo-gaughran-1.38223403>;
<https://www.governor.ny.gov/news/governor-cuomo-signs-legislation-giving-public-water-suppliers-three-year-statute-limitations>.
- [18] <https://www.governor.ny.gov/news/governor-cuomo-signs-legislation-giving-public-water-suppliers-three-year-statute-limitations>;
see https://nyassembly.gov/leg/?default_fld=&leg_video=&bn=A05477&term=2019&Summary=Y&Text=Y.
- [19] <https://www.governor.ny.gov/news/governor-cuomo-signs-legislation-giving-public-water-suppliers-three-year-statute-limitations>.
- [20] *Id.*
- [21] *See, e.g., Panzo v. Keyspan Corp.*, 2019 N.Y. Slip Op. 07407 (2d Dep’t Oct. 16, 2019).

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