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LITIGATION

Plaintiff lawyers focus on TCP

Cancer-causing chemical in drinking water has triggered recent litigation

By Fiona Smith
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Plaintiffs' attorneys are zeroing in on an obscure cancer-causing chemical that has contaminated hundreds of drinking water sources around the state to hit major companies with a growing number of lawsuits.

The complaints, filed on behalf of cities and municipal water suppliers against companies such as Dow Agrosociences LLC and Shell Oil Co., claim defendants turned a blind eye to the harm of TCP, an inactive ingredient in popular agricultural fumigants they manufactured.

On Friday, lawyers filed three more suits on top of 12 others brought in recent weeks, all of which will likely join the dozen cases already being handled in a coordinated proceeding in San Bernardino. *In re: Coordination Proceeding TCP cases*, JCPSS4435 (San Bernardino County Super. Ct.).

The companies, which argue TCP is used in many industrial operations, have denied responsibility for the contamination. They are fighting some cases and settled others.

Shell defeated a \$46 million claim over TCP contamination by the city of Redlands in a 2010 trial while other defendants settled, and in 2011 companies reached a \$13 million settlement with the city of Livingston in Merced County. The city of Shafter is headed to trial at the end of this year. Two firms, San Francisco's Sher Leff LLP and Miller, Axline & Sawyer in Sacramento, are filing the suits.

The issue of TCP in groundwater has been a "ticking time bomb," particularly in the Central Valley, where most of the contamination has been found, said K. Eric Adair, a name partner with Hinson Gravelle & Adair LLP.

"If [plaintiffs' lawyers] are having success with these cases and being able to resolve concerns of municipalities and make some money for attorneys, that would explain why there's been a recent flood of cases," said Adair, who has defended environmental contamination claims.

"If the Livingston settlement is any indication ... and you scale it for the amount of cleanup they'll have to do, you're certainly talking eight figures and maybe nine figures in the future," he added.

The cities — including Bakersfield, Fresno and Clovis — have detected TCP, short for 1,2,3-Trichloropropane, in their water systems.



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Todd E. Robins, a partner with Sher Leff LLP, which has filed the majority of the TCP cases.

They are pinning blame for the problem on two fumigants that farmers used on their fields from the 1940s to the 1980s to kill microscopic worms called nematodes.

TCP in the fumigants migrated from the soil and seeped into groundwater, and even though Shell and Dow long suspected TCP posed a contamination threat, they hid it from regulators, the lawsuits claim.

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The suits do not allege personal injury, but property damage, nuisance and product defect claims. The plaintiffs also target companies that sold or distributed TCP including Chevron USA Inc., Occidental Petroleum Corp., and Wilbur-Ellis Co.

"These communities should not have to choose between affordable and clean water and these suits are about ensuring both rights are vindicated," said Todd E. Robins, a partner with Sher Leff, which has filed the majority of

the TCP cases.

Shell and Dow Agrosociences and their lawyers with Steptoe & Johnson LLP and King & Spalding LLP respectively, declined requests for comment.

In an appellate brief in a case in which Shell is defending its trial victory against Redlands, Shell argues that federal regulators approved the use and labeling of its fumigant, called D-D. There were only trace amounts of TCP in D-D and Shell attorneys blamed the contamination on a nearby aircraft facility.

TCP first hit the state regulators' radar screens after it was detected over ten years ago at a Burbank Superfund site. The state Department of Public Health, which regulates drinking water, began testing wells around the state and reports that 336 water sources in 18 counties have potentially hazardous levels of TCP.

The department is poised to issue limits on TCP in water in the next year or two, which could require many cities and water districts to clean up their supplies.

"The urgency of the issue has ticked up and the cities are stepping up to make sure responsible parties rather than ratepayers and the public shoulder the burden," Robins said.