
Wave of lawsuits follows West Virginia chemical spill

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By Mica Rosenberg

NEW YORK, Jan 13 (Reuters) - People whose drinking water was contaminated in West Virginia have filed at least 18 lawsuits in state court against two companies after a chemical spill affected 300,000 residents and shut down businesses and schools.

Lawyers started filing suits last Friday in West Virginia's Kanawha County court, less than 24 hours after the first alarms were sounded about the release of an industrial chemical into the Elk River.

None of the 18 cases filed against Freedom Industries, which owned the leaky chemical storage tanks, and a water processing plant upstream, have been certified yet as class actions, according to a court clerk.

Several law firms are soliciting clients affected by the spill, posting hotline numbers on their websites for legal advice.

"We're receiving calls by the minute regarding the situation that's occurred following the spill," said Bernard Layne, a personal injury attorney in the state capital Charleston who filed the first claim when the court opened on Friday morning.

Restaurants and other businesses are suing to recover lost income after the discharge of some 7,500 gallons (28,000 liters) of the chemical 4-methylcyclohexane methanol, or Crude MCHM, from the storage tanks.

"For the restaurant owners, we have an economist that's looking at their average income loss to make sure that we quantify that," said Roger Decanio, another Charleston-based attorney.

"Many of these people live paycheck to paycheck, and now they have to buy water and they are not working. The economic impacts are huge. What the damages would be to repair that, I can't even begin to fathom," Decanio added.

One suit in which Decanio's firm is involved was brought by a dialysis patient whose kidney transplant was delayed because of a lack of clean water. Another was filed by the owner of a local Mexican cafe who told employees to stay home from work.

Decanio said he has not yet calculated how much money his clients will be seeking, but said many lawyers were scrambling to file claims quickly in case Freedom Industries declares bankruptcy, anticipating heavy liabilities from the spill.

Freedom Industries, a Charleston company that produces specialty chemicals for the mining, steel and cement industries, is the main defendant in most of the cases.

West Virginia American Water Co, which runs the biggest water processing plant in the state near the chemical storage facility, was also named in some claims.

The county court's office could not confirm if the companies had filed court papers related to the cases and neither company responded to requests for comment.

'MIND-BOGGLING'

So far, none of the lawsuits name state or local officials as defendants, but plaintiffs lawyers say the West Virginia Department of Environmental Protection or other agencies may become targets if evidence is found of lax oversight.

The U.S. Chemical Safety Board said on Friday that federal investigators were being deployed to the scene.

"When we are talking about a facility that is sitting right on our fresh water supply and there is no one that is watching these tanks, to me that's mind-boggling," Layne said. "Could one of the regulatory agencies be involved eventually? I would rule nothing out at this point."

It will be up to the assigned circuit court judges to decide whether or not the claims meet the necessary criteria to be considered as class-action suits, said Kanawha County court clerk Cathy Gatson.

"I wouldn't be surprised if (a class action) is certified," said Edward Sherman, an expert on complex litigation at Tulane University Law School in New Orleans. "They are all claiming they were injured by an identical action by the defendant."

Attorney Anthony Majestro filed a motion over the weekend to group the cases together for referral to the state's mass litigation panel.

Water carrying the chemical MCHM has an odor like licorice or anise. While not highly lethal, it can cause symptoms including nausea, vomiting, dizziness, diarrhea, rashes and reddened skin.

The spill prevented residents from bathing or drinking tap water for days and hundreds of people called the state poison center to report health concerns, with a handful hospitalized.

On Monday, West Virginia officials lifted the tap water ban in some areas of the state.

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