

# NEW YORK SUPREME COURT REJECTS 3M'S CHALLENGE OF ITS PFAS MCL

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In a recent decision, the State of New York Supreme Court of the County of Albany rejected an effort by the 3M Company to invalidate the New York Department of Health's maximum contamination level (MCL) of 10 parts per trillion for certain kinds of PFAS contamination in drinking water supplies. 3M argued the MCL was invalid because it had been enacted on insufficient science, which 3M criticized as "tantamount to a regulatory guess." New York's MCL is largely consistent with the regulatory limits that other states have placed on PFAS contamination, and so the court ruled in favor of the New York Department of Health and dismissed 3M's action for lack of standing.

Standing is a legal doctrine that requires the plaintiff to be the proper party bringing the case. To demonstrate standing, the plaintiff must prove that they were injured, the injury was reasonably connected to the defendant's conduct being challenged through the lawsuit, and that a court can redress the injury. In ruling that 3M lacked standing to challenge New York's MCL for PFAS in drinking water supplies, the court focused on 3M's inability to prove that it was injured by the promulgation of the MCL.

3M tried to prove standing in four ways: (1) it has a business presence in New York, (2) it submitted comments to the Department of Health as part of its consideration of the MCL that were not implemented in the MCL as issued, (3) the regulation directly impacts 3M's liability in ongoing litigation, and (4) relatedly, the MCL increases liability for obligatory remedial cleanup standards. The court rejected these arguments.

First, the court ruled that mere business presence in a state is not enough to confer standing to challenge its regulations. In a similar fashion, mere participation in the administrative rulemaking process (by submitting comments) does not by itself create standing. The court then turned to 3M's remaining arguments, which were based on 3M's stated fear of potential liability for PFAS remediation expenses, as one of the leading manufacturers of the PFAS-containing compounds and products that caused PFAS contamination. The court ruled that this was also insufficient to confer standing because, regardless of the MCL, the New York Attorney General would be able to bring a lawsuit for PFAS contamination of the State's public resources. The court reasoned that, if a defendant contaminates drinking water, it can be held liable regardless of whether or not there is an MCL in place for that contaminant, therefore the regulation did not itself create potential liability for 3M.

"This case serves as a significant victory for states that have enacted MCLs, especially New York because while the case only pertains to New York, the court's standing analysis may prove persuasive in other jurisdictions where courts are facing similar administrative challenges to their PFAS regulations," said Ashley Campbell, Attorney for SL Environmental Law Group.

The court's reasoning that MCLs are not necessary to impose legal liability on those who pollute groundwater is also a reminder that, regardless of whether MCLs for PFAS compounds have been put into place in a particular jurisdiction, water systems and other well owners whose resources are contaminated by PFAS should consider legal action against 3M and other manufacturers who may be responsible.