



TOP News on Water: April, 2022

Committee Mission: *“To achieve a permanent safe drinking water solution, within the current site investigation area in the Town of Peshtigo, at the expense of the identified responsible party.”*

TIMELINE UPDATES:

March, 2022

3/1: JCI begins challenging reimbursement of previously approved services.

3/10: Town contracts with Grant and Eisenhoffer (G&E) See *press release below* and contract online https://townofpeshtigo.org/wp-content/uploads/2022/03/3_11_22-GE-Signed-CFA.pdf

3/14: State Attorney General announces lawsuit against Tyco/Johnson Controls See *DOJ response to Town* online https://townofpeshtigo.org/wp-content/uploads/2022/03/3_25_22-DOJ-response.pdf

3/14: JCI withdrawal from Town reimbursement agreement: fortunately, the Strand engineering analysis was completed (see *Water Matrix* online) <https://townofpeshtigo.org/wp-content/uploads/2022/02/2.14.22-Water-Matrix.pdf> and G&E has agreed to advance investigative costs and the costs of litigation on the Town’s behalf and will only recover those costs if the Town recovers from one or more defendants. If there is no recovery, the Town will pay G&E nothing, and the costs incurred will not be the Town’s responsibility. See *press release below* and letter online https://townofpeshtigo.org/wp-content/uploads/2022/03/3.14.22_Reimburesment-Termination.pdf

3/22: EPA Preliminary Assessment petition was submitted on behalf of town residents Jeff Lamont and Cindy Boyle (Not in official Town capacity: See *press release below*).

3/25: The Town of Peshtigo is selected to participate with the American Geophysical Union (AGU) in the Thriving Earth Exchange in the development of our own customized scientific study. This program is estimated to take place over an 18 month period. (See *press release below*)

ONGOING:

- Town and City of Peshtigo continue to evaluate next steps including cost of service and modeling studies in an effort to vet out feasibility of an intergovernmental agreement.
- Town actively investigates and prepares itself toward the pursuit of non-matching water infrastructure grant dollars made available through the Federal Infrastructure Bill.
- Federal Appropriations requests are being pursued through Senator Baldwin’s Office.

COMMUNICATION TO PUBLIC:

3/11/22 At a special Town Board meeting on 3/10/2022 the Town Board voted to secure the legal services of Grant & Eisenhofer P.A. Grant & Eisenhofer (G&E) is a national litigation boutique specializing in representing injured plaintiffs, including institutions and government plaintiffs suffering damages or other losses as a result of corporate wrongdoing. G&E's Environmental Litigation Group, which represents municipal and other public entities in complex environmental lawsuits, has agreed to represent the Town of Peshtigo in connection with the extensive contamination of groundwater and other natural resources with PFAS chemicals that occurred as a result of the misconduct of Johnson Controls, Inc., Tyco Fire Products LP, and related companies at the Fire Training Center in Marinette. G&E has agreed to advance investigative costs and the costs of litigation on the Town's behalf and will only recover those costs if the Town recovers from one or more defendants. If there is no recovery, the Town will pay G&E nothing, and the costs incurred will not be the Town's responsibility. This is the optimal arrangement for the Town because it requires absolutely no out of pocket expense or payment on the part of the Town and aligns the firm's financial interest with that of the Town: the greater the Town's recovery, the greater the firm's compensation. G&E's role will be to prosecute legal claims available to the Town for the protection of the public health and the integrity of our precious natural resources. Town Chair, Cindy Boyle, explained; "The companies that wrongfully degraded our environment will be required to make us whole, to the extent the law allows. This is the bare minimum of accountability that the Town and its residents are entitled to and should expect. The Town strongly believes that JCI/Tyco must be held to account and we have engaged the nation's leading environmental advocates to ensure our best case is put forward—all at no direct cost to the Town.

3/22/22 On the heels of the Wisconsin Natural Resources Board failure to move forward with protective PFAS groundwater standards, residents have turned to the Environmental Protection Agency (EPA) for help. Impacted residents Jeff Lamont and Cindy Boyle have jointly filed a Citizen Petition for a Superfund Preliminary Assessment to evaluate the feasibility of moving the Peshtigo, Wisconsin PFAS contamination site through the Superfund/CERCLA process.

The Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), commonly known as Superfund, was enacted by Congress on December 11, 1980. This law created a tax on the chemical and petroleum industries and provided broad Federal authority to respond directly to releases or threatened releases of hazardous substances that may endanger public health or the environment. According to petitioner Jeff Lamont, "The responsible party, Tyco/Johnson Controls has failed to remediate the area which they have contaminated and the State NRB has failed to set ground water standards for the 1/3 of Wisconsinites drinking from private drinking wells. We have to use every resource at our disposal to ensure the responsible party is held accountable and our health is protected".

At the February 23, 2022 Wisconsin Natural Resources Board meeting the NRB set drinking water and surface water standards for the State of Wisconsin but failed to set standards on ground water with a tied vote and one abstention. "This has been a long and arduous battle, but until we are assured permanent safe drinking water we really have no choice but to continue the fight", remarked Cindy Boyle.

3/24/22 Recent newspaper reporting, and social media chatter has misled the public on the Town Board's actions and intentions. The Open meetings law requires us to give a 24-hour notice to the public in advance of a subject being discussed at a Board meeting. I became aware of Tyco/Johnson Controls' intention to renege on their commitment to reimburse the Town for its legal and engineering expenses to solve the PFAS contamination problem shortly before our March 15th Board meeting. At that point, I had no choice but to wait until the next meeting to properly notice it as a topic. Tyco/Johnson Controls failure to honor an existing agreement is not the Town's failure, it is Tyco/Johnson Controls failure.

In July of 2021 the City of Marinette passed a resolution and reaffirmed it in August, stating they wanted no part of providing water to the Town, and literally told us in that resolution to look to the City of Peshtigo. Months later, their position has not changed. We are grateful that the City of Peshtigo remains a viable option and are wasting no time investigating it and all other options.

As to concerns regarding closed meetings, the need for closed session meetings is clearly defined in each and every compliant notice, for example: '*§19.85(1)(g) of the Wisconsin Statutes for purposes of conferring with legal counsel for the governmental body who is rendering oral or written advice concerning strategy to be adopted by the body with respect to litigation in which it is or is likely to become involved*'. The board would be acting irresponsibly if we discussed litigation concerning Tyco/Johnson Controls in open session. I welcome the day when the Tyco/JCI water crisis has been resolved and we are able to conduct single monthly board meetings. Until then, I encourage all interested parties to avail themselves of the open monthly water committee meeting, as well as sign up for notices at townofpeshtigo.org for monthly comprehensive water reports. The information is free for the taking, it requires more effort than a Facebook post, but it also contains the truth.

At the Town's initiation, multiple DNR sponsored Water Summit meetings have occurred in an effort to bring all parties together. Within this last year, the Town Board has had more public discussion on the PFAS water crisis and provided more information on its website than ever before. We all wish this would be over, and we all wish it would be easier. But the Town Board has the responsibility to do this correctly, and we are trying to the best of our ability to do that and to stay within the law in all our proceedings

3/25/22 The Town of Peshtigo has been selected to participate with the American Geophysical Union (AGU) in the development of a scientific PFAS study of their choosing. AGU was established in 1919 by the National Research Council and operated as an unincorporated affiliate of the National Academy of Sciences for more than 50 years.

Town Chairperson and applicant, Cindy Boyle responded with enthusiasm; 'We were overwhelmed with excitement to learn that the Town of Peshtigo had been accepted into the 2022 cohort. The idea of being connected with our own designated team of scientists to develop a PFAS program of our choosing was almost surreal. The biggest challenge will be in narrowing our scope and developing our program parameters, but we look forward to maximizing the 18 months of scientific analysis made available to us.' AGU is an

international nonprofit association supporting an inclusive community of earth and space scientists and partners dedicated to discovery and solutions to societal challenges. AGU's Thriving Earth Exchange program connects communities with scientists and supports them as they work together to tackle local challenges related to natural hazards, natural resources, and climate change.

Water Committee member and hydrogeologist, Jeff Lamont relates strongly to such a foundation; "It's thrilling to be provided the opportunity to develop a program in collaboration with Community Science Fellows and the University of Wisconsin's UniverCity Alliance and EPIC-Network. We are excited about developing a program that helps provide knowledge and solutions to those impacted by PFAS contamination." **Community Science** happens when communities and scientists *do science together* to advance community priorities. "Doing science" includes defining questions, designing protocols, collecting and analyzing data, and using scientific knowledge in decision-making. Every community science project begins with community voice, is guided by community knowledge, and ends in community impact.

Cindy Boyle – Town of Peshtigo Chair and resident in the Tyco contamination area