



**AMC 2023**

**Session 4**

**They Paved Paradise and Put  
Up a TOXIC WASTE Facility**

*Bartlett Durand, Madison*

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*Jodi Arndt Labs, Law Firm of Conway, Olejniczak & Jerry, S.C., Green Bay*

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# About the Presenters...

**Bartlett Durand**, Madison.

**Dennis Grzezinski's** solo practice centers on environmental law and justice. Educated at Princeton University and Yale Law School, he served as judicial law clerk to Judge Myron Gordon (Eastern District Wisconsin). Controversies regarding Infrastructure, including transportation, energy, mining, and other projects, have long been part of his practice. He has been Chair of the Environmental Law Section of the State Bar and Co-chair of the Environmental Law Section of the Milwaukee Bar Association. He served for 18 years as a Commissioner of the Milwaukee Metropolitan Sewerage District, and as Commission Chair. Grzezinski currently is legal chair for the Wisconsin Chapter of the Sierra Club.

**Jodi Arndt Labs**, Law Firm of Conway, Olejniczak & Jerry, S.C., Green Bay

Mary Beth Peranteau assists individuals, associations, businesses and local governments in matters relating to real estate, zoning and land use, property rights disputes and navigable waters law. Mary Beth advises clients in land use law, including real estate transactions, resolution of boundary disputes, quiet title actions, public dedication, annexation, restrictive covenants, homeowner's association and subdivision law, environmental permitting and county and municipal zoning proceedings including rezoning, conditional use permits and variances. Mary Beth is experienced in water law, including pier and other navigable waters permit proceedings and dam regulation, riparian rights disputes and the public trust doctrine, and representation of inland lake protection and rehabilitation districts in regulatory and governance matters. Mary Beth's practice also includes energy law matters, including the representation of local electric distribution cooperatives in regulatory compliance, policy and governance matters and member relations, renewable energy procurement and contracting. Mary Beth specializes in appeals of administrative agency and lower court decisions.

Ted A. Warpinski is a partner at Halling & Cayo, S.C. Ted has been practicing law in Wisconsin for over 35 years since graduating from Marquette University Law School in 1987. A native of Green Bay and a current resident of Ripon, Ted has a statewide and national practice focusing on environmental and land use law, complex litigation, and insurance coverage matters on behalf of policyholders. Ted spent the first 30 plus years of his career at the Milwaukee firm, Friebert, Finerty & St. John. Ted then moved to Davis & Kuelthau, S.C. for a approximately 4 ½ years, before joining Halling & Cayo in October of 2022, with his longtime colleague, Andy Skwierawski. He has represented individuals, community groups, local and tribal governments, small business, utilities and large corporations in a wide variety of matters including environmental nuisance claims and toxic tort litigation, contract, land use and property disputes, construction defects, insurance coverage litigation and enforcement actions. Ted has extensive experience working on complex real estate development projects handling due diligence investigations and environmental permitting. This breadth of experience helps Ted prepare his clients for what they can reasonably expect in litigation by looking at the case from the other side's point of view.

***Forever Chemical Solutions Facility Siting  
Town of Leopold, Sand County, Wisconsin  
Environmental Law Issues***

**Facts**

The Town of Leopold in Sand County is located on the North River on the outskirts of the City of Aldo, home to Aldo State University. Enterprising researchers at Aldo State have developed an innovative treatment process to breakdown a group of chemicals commonly referred to as PFAs or “forever chemicals.” Forever Chemical Solutions, LLC (FCS) was subsequently formed and is proposing to build a facility in the town that would accept PFAs contaminated soils, sediments, and biosolids for treatment.

The proposed site is a former manufacturing facility located adjacent to a residential neighborhood along the North River, which neighborhood is located on the outskirts of the Town of Leopold. The manufacturing facility has been non-operational for 10+ years.

The following are some of the key census data for the surrounding residential neighborhoods:

- One of the immediate adjacent neighborhoods is a relatively new, affluent subdivision with homes that cost in excess of \$500,000. This neighborhood is located further on the outskirts of the town and it is not directly adjacent to the City of Aldo, as is the proposed site.
- 38.2% of the residents located within a mile radius of the proposed site are minorities (versus state average of 13.2% and national level of 23.7%); if we remove the demographics for the aforementioned subdivision, 51.3% of the residents located within a mile radius would be minorities.
  - o 46% of those minority residents residing within one-mile of the proposed site are members of the North River Nation.
- 18.9% of the residents live in poverty (versus state average of 10.4% and national level of 12.3%)
- 56.5% of the residents are over the age of 25 and have higher than a high school diploma
- 18.3% of the resident have no internet access
- North River Nation has trust lands located within three (3) miles of the proposed site; proposed travel path for trucked-in PFAs waste (based on location of facilities that are known to generate PFAs waste) runs through tribal lands.

The PFAs waste would be trucked into the facility, stored onsite, and then processed for treatment using water drawn from the North River. Because the treatment of PFAs is still a new area, FCS is exploring several means of treatment, including incineration (thermal destruction), chemical oxidation, and potential beneficial reuse.

The immediate adjacent residential neighborhood is served by private wells and septic systems.

FCS plans to seek annexation into the city, and, under the zoning code, a conditional use permit will be required. The City Planning Commission has preliminarily approved of the plan but there

are some opposed to the proposed annexation, meaning FCS may not get the benefit of the “friendly” city planning commission. Grant funding is being sought from U.S. EPA, which has been actively looking for treatment methodologies to address PFAs.

At a minimum, FCS will need an air permit and a WPDES permit. Other permits may include a water withdrawal permit (individual water use permit) and high capacity well, depending on the actual quantity of water needed for the proposed treatment processes.

### **Basic Facts About PFAS**

Much like polychlorinated biphenyls (PCBs), PFAS refers to a family of chemicals. PFAS is shorthand for per- or polyfluoroalkyl substances. There are thousands of these compounds. Two PFAS compounds, PFOS and PFOA (now phased out) have been the ones subject to the most regulation and litigation, but others, like PFBS or those referred to as GenX, also are getting increased attention. The following are some basic facts about PFAS:

- PFAS are man-made chemicals (also referred to as “forever chemicals” and “emerging contaminants”) that have been used in industry and consumer products worldwide since the 1940s.
- PFAS are widely used, long lasting chemicals, components of which break down very slowly over time.
- PFAS are extremely resistant to biological/chemical degradation and bioaccumulate in the environment and wildlife. In addition, their high solubility and mobility in surface and groundwater pose a significant challenge to control sources that remediate them.
- Because of their widespread use and their persistence in the environment, many PFAS are found in the blood of people and animals all over the world and are present at low levels in a variety of food products and in the environment.
- PFAS are found in water, air, fish, and soil at locations across the nation and the globe.
- Scientific studies have shown that exposure to some PFAS in the environment may be linked to harmful health effects in humans and animals.
  - Studies have shown high levels of PFAS in human liver, lung, kidney, brain and testicles.
  - Adverse health impacts include weaker immune system, cancer, increased cholesterol levels, pregnancy-induced hypertension, liver damage, reduced fertility, and increased risk of thyroid disease.
- There are thousands of PFAS chemicals, and they are found in many different consumer, commercial, and industrial products. They have been used to make nonstick cookware, water-repellent clothing, stain resistant fabrics and carpets, some cosmetics, some firefighting foams, and products that resist grease, water, and oil.
- The wide range of uses makes it challenging to study and assess the potential human health and environmental risks of PFAS.

- There is a lot we don't fully know or understand about PFAS at this time. EPA's researchers and partners across the country are working hard to answer critical questions about PFAS:
  - How to better and more efficiently detect and measure PFAS in our air, water, soil, and fish and wildlife
  - How much people are exposed to PFAS
  - How harmful PFAS are to people and the environment
  - How to remove PFAS from drinking water
  - How to manage and dispose of PFAS
- The WDNR and the Department of Health Services have announced various fish consumption advisories in the state due to the detection of PFAS in fish species, as well as consumption of the livers in whitetail deer.

**Potential Legal Issues / Questions Surrounding Proposed Project**

National Environmental Policy Act (“NEPA”) and Wisconsin Environmental Policy Act (“WEPA”) issues result from air and water permits and federal funding.

Is there a need for a high cap well which would raise the issue of DNR discretionary determinations under the Lake Beulah standard?

Does the site along the North River have historical or cultural significance to the Native Indian tribe? Does the project have the potential to alter or disturb a culturally significant location or artifacts?

Federal funding of the facility and of WI DNR operations makes Title VI of the Civil Rights Act applicable – raising questions of whether there are disproportionate adverse impacts upon protected classes (Native Americans or other minorities), as well as whether the benefits of the project go disproportionately to majority white communities.

What is the nature of the wastes or end products of the facility? How will they be discharged or transported (if other than into air or water)?

Would the facility require expanding the footprint or adding to the height of the existing building(s)?

Question whether the project would require County zoning (especially if they are unsuccessful in having the property annexed to the City). If the project were to require County zoning approval, there are a number of challenges the neighbors could bring.

- Scenario where a rezone is required would trigger requirement for consistency with comp. plan.
- Protest petition proceeding.
- Town “veto” power over County zoning map amendment

May 15, 2023

Attorney Tiffany Woelfel  
Davis Law  
123 Broadway  
Green Bay, WI 54301

**RE: Introductory Information for Meeting Concerning Forever Chemical Solutions, LLC's Proposed Project**

Dear Ms. Woelfel,

I want to thank you for agreeing to meet with me next week regarding Forever Chemical Solutions, LLC's ("FCS") proposed treatment facility in the Town of Leopold. As I mentioned to you during our short conversation yesterday, a number of residents in the City of Aldo have formed a coalition, Friends of the North River (the "Friends Coalition"), to challenge FCS's proposed treatment facility due to various concerns we have about the environmental impacts the project will have on the river, as well as our groundwater and surrounding lands. The Friends Coalition has asked me for my assistance, not only because I grew up in their neighborhood but because I have been working as a paralegal at a local law firm in Aldo and they know that I have always aspired to become an environmental lawyer, something I still plan to do when I finish up my bachelor's degree at the Aldo State University.

I thought it would be helpful for me to provide some background information for your review prior to our meeting so as to allow us to use our time more effectively to flush out whether you and your firm may be able to assist the Friends Coalition in challenging FCS's proposed facility.

FCS is proposing to rehabilitate a former manufacturing facility that was shut down more than ten (10) years ago. The facility was used to manufacture parts for solar panels. Unfortunately, the solar industry did not take off as well as many of us had hoped back in the early 2000s so the owners of the facility found themselves having to close their operations. The site has remained vacant since then.

The proposed site is located in the Town of Leopold which is situated in Sand County, as is Aldo. The Town of Leopold is located on the North River on the outskirts of the City of Aldo. In fact, the proposed site is located immediately adjacent to the boundaries of the City of Aldo. The subject site also is situated directly adjacent to the North River and is located adjacent to a residential neighborhood which is located on the outskirts of Town of Leopold, further away from the City of Aldo.

As you may have heard, a number of enterprising researchers at Aldo State University have been researching various treatment processes to breakdown a group of chemicals commonly referred to as PFAS or "forever chemicals." This group of researchers apparently developed an innovative treatment process to breakdown PFAS and they subsequently formed FCS. FCS's proposed facility would accept PFAs contaminated soils, sediments, and biosolids for treatment. The PFAs

waste would be trucked into the facility, stored onsite, and then processed for treatment using water drawn from the North River.

FCS claims that they will be able to treat such PFAS-laden waste streams in a safe manner that will not cause adverse environmental impacts to the North River or surrounding community. However, FCS has not been very transparent as to its treatment processes or the technology it will be using. FCS claims that it cannot be more transparent due to the proprietary nature of the technology and processes it is working on. While that may be true, we are very concerned about FCS's actual ability to treat the PFAS waste streams that will be transported to the facility in an environmentally safe manner, especially since there is so much still unknown about PFAS. It is our understanding that no one else has been able to effectively and/or safely treat PFAS waste streams.

Many of the residents that are part of the Friends Coalition, as well as the other residents that live nearby, are not connected to a public water or sewer system. Therefore, we rely on wells for our drinking water supply and we have serious concerns about contamination to our groundwater. After all, we have heard the horror stories about the contaminated groundwater in Peshtigo, along with other communities in our state that do not have a clean drinking water supply. We don't want to experience the same type of problems. We also have concerns about the quantity of water that FCS will likely need to use in its operations. While FCS has said that it will be using water from the North River, we suspect that they will need an additional source of water as the North River can get quite low during the late summer and fall months. Thus, it is possible that FCS will need to drill a well, or multiple wells, to provide the amount of water they will need the PFAS-contaminated waste streams brought to the facility for treatment. Furthermore, the Friends Coalition has concerns about PFAS in the air. Based on our research of PFAS treatment technology, FCS's technology is more than likely going to include some form of incineration, meaning hazardous pollutants will be discharged into the air that we breathe.

Not only does the Friends Coalition have the foregoing concerns that center around the actual operations at the facility, it has concerns about the likely and potential impacts that may occur during the transportation of PFAS-contaminated waste streams to and from the facility. For example, FCS and its customers will be hauling in waste to the facility for treatment. Such hauling will be across those roads that go through the City of Aldo, the Town and the North River Nation tribal lands. Who is to say that such trucks may not be engaged in any type of accident on the way to FCS's facility, wherein the PFAS-contaminated waste is spilled in which case it may spread across our lands and actually into the North River?

In addition to the foregoing, the Friends Coalition is pretty confident that FCS's project will present environmental justice issues and we want to figure out how we get the various entities involved in the approval process (e.g., the City, the Town, County and perhaps even the State) to take such issues into consideration as they consider whether to approve the various permitting and zoning approvals that will be needed for the project. For example, the North River Nation has trust lands located within three miles of the proposed site. Based on our preliminary research concerning FCS's project, including an evaluation of the traffic routes that FCS will likely need to use to bring waste to its facility for treatment, the proposed travel path for trucked-in PFAs waste will run through tribal lands.

Not only will the North River Nation be adversely impacted by the project, there are other socio-economic disadvantaged residents and minorities that reside in the neighborhoods that will be directly impacted by FCS's project. I have pulled together some census data for the area that is surrounding the proposed project site. Such statistics include the following:

- 38.2% of the residents located within a mile radius of the proposed site are minorities (versus state average of 13.2% and national level of 23.7%);
  - o 46% of those minority residents residing within one-mile of the proposed site are members of the North River Nation; and
  - o If we remove the demographics for the relatively new, affluent subdivision that is located directly adjacent to the proposed site, 51.3% of the residents located within a mile radius would be minorities (the homes in this particular subdivision cost in excess of \$500,000 and is located further on the outskirts of the town).
- 18.9% of the residents live in poverty (versus state average of 10.4% and national level of 12.3%);
- 56.5% of the residents are over the age of 25 and have higher than a high school diploma; and
- 18.3% of the resident have no internet access.

When we meet next week, I would like to discuss the various approvals that will be needed for FCS's project and hopefully map out a strategy on which approvals the Friends Coalition may be able to effectively hinder or prevent. While you likely know of other approvals, we believe that FCS will require various zoning approvals from the Town, and perhaps the City of Aldo and/or Sand County. Based on the informational meetings we have attended to date, FCS plans to seek annexation into the City of Aldo. Our sources tell us that the City Planning Commission has preliminarily approved of the plan but we have also heard that there are some residents, including some of the Town board members, that are opposed to the proposed annexation, meaning FCS may not get the benefit of the "friendly" City Planning Commission. If FCS is successful in annexing the property to the City, the City's zoning code requires that FCS secure a conditional use permit for the proposed treatment facility. One of the questions the Friends Coalition has is whether it would be better to support the annexation and deal with City zoning or oppose the annexation and deal with the Town and/or County zoning rules.

In addition to zoning, FCS will need to secure various environmental permits. At a minimum, we understand that FCS will need an air permit and a WPDES permit. We would like a better understanding as to what other environmental permits FCS will need, as well as whether any of these permitting processes will involve public comment wherein the Friends Coalition can voice its concerns about the project.

The Friends Coalition does not currently have a lot of financial means to challenge FCS's project but we will be looking to do some fundraising in order to raise additional funds. We also have a lot of members who can provide valuable support in researching issues, attending meetings, and organizing residents. We just need guidance from you and your firm as to where we should focus our efforts to have the best chance of success.



Please let me know if you need any additional information prior to our meeting. I look forward to meeting you.

Sincerely,

Jodi Labs