



## AlaFile E-Notice



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CIRCUIT COURT OF  
LAWRENCE COUNTY, ALABAMA  
HARCE HILL, CLERK

**33-CV-2009-900005.00**

To: BARNETT WESLEY WARRINGTON  
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# NOTICE OF ELECTRONIC FILING

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**IN THE CIRCUIT COURT OF FRANKLIN COUNTY, ALABAMA**

**WILLARD STOVER v. DAIKIN AMERICA, INC. ET AL  
33-CV-2009-900005.00**

The following complaint was FILED on 2/23/2009 6:14:43 PM

Notice Date: 2/23/2009 6:14:43 PM

**ANITA SCOTT  
CIRCUIT COURT CLERK  
FRANKLIN COUNTY, ALABAMA  
P. O. BOX 160  
RUSSELVILLE, AL 35653  
  
256-332-8861  
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**IN THE CIRCUIT COURT OF FRANKLIN COUNTY, ALABAMA**

**DAVID GASTON, WILLARD STOVER, on behalf of  
himself and all others similarly situated; and  
FRANKLIN COUNTY, ALABAMA, by and through  
THE FRANKLIN COUNTY COMMISSION,**

**PLAINTIFFS,**

**VS**

**DAIKIN AMERICA, INC.; BIOLOGICAL  
PROCESSORS OF ALABAMA, INC.;  
DYNEON, L.L.C.; TORAY CARBON FIBERS  
AMERICA, INC.; TORAY FLOUROFIBERS, INC.;**  
And Fictitious Defendants A, B,C, D, E, F, G, H, I, J, K,  
L & M, being those persons, firms, corporations,  
associations, partnerships and/or  
other legal entities who were responsible for the daily  
manufacture, administration, management, operation,  
maintenance disposal and control of PFOS and PFOA's  
that contaminated plaintiffs' property  
and/or who, on the occasions complained of  
in this Complaint through negligence or  
wantonness, caused or contributed to or failed to  
prevent the injuries and damages suffered by  
plaintiffs, whose names are otherwise  
unknown to plaintiffs at this time, but will be  
added or substituted by amendment when  
ascertained,

**DEFENDANTS**

**CASE NO. 09-cv-900005**

**JURY TRIAL DEMANDED**

**SECOND AMENDED AND CONSOLIDATED STATEWIDE  
CLASS ACTION COMPLAINT**

**INTRODUCTION**

The purpose of this amendment is to add additional defendants Toray Carbon  
Fibers America, Inc. and Toray Fluorofibers, Inc. The remaining sections of the  
Complaint remain unchanged.

## **NATURE OF ACTION**

This is a statewide class action for injunctive and equitable relief and for compensatory damages.

## **PARTIES AND VENUE**

1. Plaintiff David Gaston is over the age of 19 years and is a resident of Franklin County, Alabama.
2. Plaintiff Willard Stover is over the age of 19 years and is a resident citizen of the State of Alabama.
3. Franklin County, Alabama, brings this action on behalf of its citizens, by and through the Franklin County Commission.
4. Defendant Synagro-WWT, Inc. is a business corporation organized under and existing pursuant to the laws of the state of Maryland, with its principal place of business in Annapolis, Maryland. Synagro-WWT, Inc. does business by agent in the county and state.
5. Defendant Synagro South, LLC is a business corporation organized under and existing pursuant to the laws of the state of Delaware, with its principal place of business in Houston, Texas. Synagro South, LLC does business by agent in the county and state. Defendants Synagro-WWT, Inc., and Synagro South, LLC are affiliates and are referred to hereinafter collectively as “Synagro.”
6. Defendant Daikin America, Inc. (“Daikin”), upon information and belief is a corporation organized under and existing pursuant to the laws of the State of

Delaware, and is licensed to do business in and is doing business in Alabama.

7. Defendant Dyneon, L.L.C. (“Dyneon”), upon information and belief is a corporation organized under and existing pursuant to the laws of the State of Minnesota, and is licensed to do business in and is doing business in Alabama.

8. Defendant Biological Processors of Alabama, Inc. (“BPA”), upon information and belief is a corporation organized under and existing pursuant to the laws of the State of Alabama, and is licensed to do business in and is doing business in Alabama.

9. Defendant Toray Carbon Fibers America, Inc., upon information and belief is a corporation organized under and existing pursuant to the laws of the State of Alabama, and is licensed to do business in and is doing business in Alabama.

10. Defendant Toray Fluorofibers, Inc., upon information and belief is a corporation organized under and existing pursuant to the laws of the State of Alabama, and is licensed to do business in and is doing business in Alabama. Defendants Toray Carbon Fibers America, Inc. and Toray Fluorofibers, Inc. are affiliates and are referred to hereinafter collectively as “Toray.”

11. Fictitious Defendants A, B, C, D, E, F, G, H, I, J, K, L, and M are those persons, firms, corporations, associations, partnerships and/or other legal entities who were responsible for the daily manufacture, administration, management, operation, maintenance, disposal and control of PFOS and PFOA’s that contaminated plaintiff’s property and/or who, on the occasions complained of in this Complaint through negligence or wantonness, caused or contributed to or failed to prevent the injuries and

damages suffered by plaintiffs, whose names are otherwise unknown to plaintiffs at this time, but will be added or substituted by amendment when ascertained.

### **FACTUAL AVERMENTS**

12. This action concerns the defendants' polluting of neighboring farmland, grasslands and water supplies with toxic substances known as perfluorooctanoic acid ("PFOA"), perfluorooctane sulfonate ("PFOS") and other perfluorochemicals in counties in Alabama. PFOA and PFOS are highly toxic substances.

13. High levels of PFOA and PFOS contamination are contained in municipal sewage sludge or biosolids.

14. The toxic municipal sludge containing these high levels of PFOA and PFOS has been applied to plaintiffs' and other class members' farmland and grasslands in Franklin and other counties that are used for grazing beef cattle and other agricultural purposes for at least the past twelve years.

15. The defendants are the main source of these pollutants and have known that these toxic chemicals were being released into the environment and were being used on local farmland and grasslands but have failed to take any action.

### **CLASS ACTION ALLEGATIONS**

16. Plaintiffs bring this action on their own behalf and on behalf of others similarly situated as a statewide class action pursuant to Rule 23 of the Alabama Rules of Civil Procedure.

The class which plaintiff seeks to represent is composed of and defined as:

All persons within the State of Alabama who, within the past six years, have had PFOA, PFOS and other perfluorochemicals released or dumped onto their property by the defendants.

17. This action has been brought and may properly be maintained as a class action pursuant to the provisions of Rule 23(a)(1)-(4) and Rule 23(b) of the Alabama Rules of Civil Procedure, and satisfies the numerosity, commonality, typicality, adequacy and superiority requirements thereof because:

(a) The plaintiff class is so numerous that the individual joinder of all members is impracticable under the standard of Ala. R. Civ. P. 23(a)(1).

(b) Common questions of law and fact exist as to all members of the class, as required by Ala. R. Civ. P. 23(a)(2), and predominate over any questions which affect only individual members of the class within the meaning of Ala. R. Civ. P. 23(a)(2). These common questions of law and fact include, without limitation:

(1) Whether defendant has engaged in a violation of law as alleged herein;

(2) Whether defendants by nature of its wrongful conduct is liable for damages and losses resulting from the conduct alleged herein;

(c) Plaintiff's claims are typical of the claims of the members of the class under Ala. R. Civ. P. 23(a)(3). The plaintiff and all members of the class sustained damages arising out of defendants' common course of conduct in violation of law as

complained herein. The losses of each member of the class were caused directly by defendants' wrongful conduct in violation of law as alleged herein.

(d) The individual and representative plaintiff will fairly and adequately protect the interests of the class as required by Ala. R. Civ. P. 23(a)(4). Plaintiffs have no interests which are adverse to the interests of the class members. Plaintiffs are adequate representatives of the class and any subclass as designated by the court. Plaintiffs have retained counsel who have substantial experience and success in the prosecution of class action and consumer litigation.

(e) The actions/inactions of defendants affected all class members similarly. Each plaintiff and class member has suffered damage to their property as a result of defendants' conduct.

(f) A class action is superior to other available methods for the fair and efficient adjudication of this controversy under Ala. R. Civ. P. 23(b) since individual joinder of all members of the class is impracticable. Furthermore, the expense and burden of individual litigation would make it difficult or impossible for individual members of the class to redress the wrongs done to them. The cost to the court system of adjudication of such individualized litigation would be substantial. Individualized litigation would also present the potential for inconsistent or contradictory judgments and would magnify the delay and expense to all parties and the court system in multiple trials of the factual issues of the case. By contrast, the conduct of this action as a class action presents far fewer management difficulties, conserves the resources of the parties and the court system, and protects the rights of each class member

**COUNT I**  
**NEGLIGENCE**

18. Plaintiff re-alleges all prior paragraphs of this complaint as if fully set out herein.

19. The defendants negligently caused and/or allowed PFOA's and PFOS's to be released onto plaintiffs' property thereby causing plaintiffs damage. The defendants owed plaintiffs a duty to use due care, and the defendants breached this duty by their actions and/or inactions.

20. As a direct and proximate result of the defendants' negligence, plaintiff has been damaged, and this injury was foreseeable.

WHEREFORE, PREMISES CONSIDERED, plaintiff seeks from defendants actual and compensatory damages, together with interest, costs and such other relief which plaintiff may be justly entitled to receive, said damages to be more specifically proved at trial.

**COUNT II**  
**INJUNCTIVE AND OTHER EQUITABLE RELIEF**

21. Plaintiff re-alleges all prior paragraphs of this complaint as if fully set out herein.

22. Plaintiffs seek such injunctive and other relief, including, but not limited to, comprehensive environmental testing and assessment throughout the county and state, and other such relief as to which they may in equity be entitled.

### **MISCELLANEOUS**

23. This action is properly maintained in the State Court of Alabama. The Class Action Fairness Act of 2005 states that Federal Courts *shall* decline federal subject matter jurisdiction when more than 2/3 of the class members are from the forum state and a significant defendant is from the forum state, and the injuries occurred in the forum state and no other class action has been filed in the preceding three years. All the class members reside within this state; one defendant from whom significant relief is sought is a citizen of this state; the injuries all occurred in this state, and no other class action relating to this matter has been filed in the three years preceding the filing of this complaint. All conditions are met and this action must remain in and be decided by an Alabama State Court.

### **PRAYER FOR RELIEF**

WHEREFORE, the premises considered, plaintiffs pray that this Court will:

- A. Take jurisdiction of this cause;
- B. After appropriate discovery and a hearing, certify this cause as a statewide class;

- C. Order injunctive relief including, but not limited to, ordering defendants to test properties for the presence of these toxic chemicals and to remediate any properties on which such chemicals are found;
- D. Upon a jury verdict, enter judgment in favor of plaintiffs and the class for compensatory damages and other damages awarded by the jury;
- E. Appoint class counsel and, after appropriate hearing and approval, award reasonable attorney's fees to plaintiffs' counsel;
- F. Award other appropriate injunctive relief prohibiting defendants from continuing their wrongful conduct of depositing PFOA, PFOS and other perfluorochemicals on plaintiffs' property;
- G. Award other appropriate equitable relief including, without limitation, comprehensive environmental testing to determine the full extent of the contamination of plaintiffs' properties followed by proper environmental remediation to restore plaintiffs' contaminated property; and
- H. Award such further and different relief as the Court may deem appropriate.

/s/ Robert I. Rogers  
Robert I. Rogers  
Jeffrey L. Bowling  
Attorneys for Plaintiffs

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**JURY DEMAND**

**Plaintiff demands a trial by jury.**

/s/ Robert I. Rogers  
Of Counsel

**NOTICE TO CLERK:**

**SERVE NEW DEFENDANTS BY CERTIFIED MAIL AS FOLLOWS:**

Toray Carbon Fibers America, Inc.  
The Corporation Company  
2000 Interstate Park Drive, Ste 204  
Montgomery, AL 36109

Toray Fluorofibers, Inc.  
The Corporation Company  
2000 Interstate Park Drive, Ste 204  
Montgomery, AL 36109