

Plastics News

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Erie County Water Authority sues major PVC pipe producers for alleged price fixing in class-action lawsuit

Class-action lawsuit follows similar civil suits



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The Erie County Water Authority in Buffalo, N.Y., filed a class action lawsuit on Nov. 8 against seven PVC pipe manufacturers and the Oil Price Information Service (OPIS), accusing them of colluding to fix prices and inflate profits, in violation of the Sherman Act.

The Erie County Water Authority in Buffalo, N.Y., has filed a proposed class action lawsuit against municipal PVC pipe producers alleging illegal collusion to increase prices.

The lawsuit filed Nov. 8 in U.S. District Court in Chicago accuses seven pipe makers and the Oil Price Information Service (OPIS) of violating the Sherman Act by conspiring to eliminate competition for the pricing of PVC pipes.

The lawsuit was filed the day after a U.S. Department of Justice investigation into alleged price fixing in the PVC pipe market **came to light** and about two months after similar **civil cases were filed** by contractors.

The pipe-producing defendants — Atkore Inc., Diamond Plastics Corp., Ipex USA LLC, JM Eagle, National Pipe & Plastics Inc., Otter Tail Corp. and Westlake Corp — control more than 90 percent of the PVC pipe market for standard municipal pipes for water and sewer applications in the United States, Erie County's 53-page lawsuit says.

In 2022, this market was valued at \$3.3 billion, the suit adds.

Unlike the Erie County lawsuit, the civil cases also name conduit manufacturers Cantex Inc., Prime Conduit Inc., and Southern Pipe Inc. in addition to the seven pipe producers and OPIS, which puts out PVC & Pipe Weekly to give subscribers timely information on pricing, supply and demand.

The DoJ investigation was disclosed in a quarterly report filed Nov. 7 by Otter Tail Corp., a publicly traded company that owns PVC pipe makers Northern Pipe Products Inc. and Vinyltech Corp.

The Fergus Falls, Minn.-based company wrote that on Aug. 27, "the company received a grand jury subpoena issued by the U.S. District Court for the Northern District of California, from the U.S. Department of Justice Antitrust Division."

"The subpoena calls for production of documents regarding the manufacturing, selling, and pricing of PVC pipe. The company is responding to the subpoena and intends to comply with its obligations under the subpoena," it said.

Otter Tail President and CEO Chuck MacFarlane mentioned the legal actions at the end of the Nov. 4 quarterly call but not the federal probe.

"As I conclude, I want to acknowledge the class action lawsuits against many of the pipe manufacturers in the industry. We believe there are factual and legal defenses to the allegations in the complaints and we intend to defend ourselves. These are current and active cases," MacFarlane said, adding he wouldn't comment further about it.

Plastics News reached out to the other defendants and no one else would comment either.

The Erie County Water Authority lawsuit also names three pipe and conduit distributors – Core & Main Inc., Ferguson Enterprises Inc. and Fortiline Waterworks – as alleged co-conspirators.

The lawsuit says PVC pipe and conduit manufacturers colluded with distributors to artificially maintain historically high pricing brought by the pandemic.

The defendants allegedly fixed prices and overcharged customers by coordinating actions via the OPIS industry newsletter.

"These PVC pipe price changes generated historic profits for the converter defendants, which motivated defendants to implement and maintain their conspiracy," the lawsuit says.

The defendants' profit margins remain extremely elevated to this day when compared to historic pricing data, the lawsuit says.

"For example, profit margins for defendant Otter Tail PVC exploded to 61 percent in 2023 from its 14 percent long-term average (2013-2019) due in large part to profit from its PVC municipal water pipe business," the suit says.



Atkore

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Municipal pipe case

The civil antitrust action brought by the New York public water system, which supplies about 500,000 customers and sells bulk water to 22 other towns and villages, claims the defendants overcharged for municipal pipes.

Pipe manufacturers raised prices for PVC municipal water pipes and electrical conduit by about 500 percent between late 2019 and the middle of 2022 to artificially boost the increased prices they enjoyed during the COVID-pandemic era, the lawsuit says.

By the middle of 2022, the COVID-era supply chain issues plaguing the industry had normalized, and by January 2023, the price of resin had fallen to 51 cents per pound, which was comparable to pre-COVID pricing levels.

However, the lawsuit says, citing OPIS, that prices for PVC municipal pipes continue to be about 4.7 times higher than pre-COVID levels.

"SEC filings from the converter defendants show that the elevated prices for PVC pipes do not correlate to strong demand for the products," the lawsuit says. "For example, defendant Otter Tail reported that its prices for PVC pipes manufactured to municipal

standards increased by 198 percent but volume for those pipes decreased by 23 percent from 2019-2023 cumulatively. This is not consistent with the laws of supply and demand – i.e., when demand goes down, price should go down as well, absent coordination among commodity manufacturers."

The spread between PVC pipe prices and PVC resin reported by OPIS began to move abnormally about Jan. 1, 2021, according to the lawsuit, which covers that date to the present.

The number of plaintiffs could reach into the tens of thousands, the lawsuit says. They are seeking a jury trial.



JM Eagle

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Pipe prices falling

PVC pipe prices of Otter Tail Corp. products have declined steadily throughout 2024 and are down 11 percent compared to a year ago, Vice President and CFO Todd Wahlund said during the Nov. 4 earnings call about results for the third quarter ending Sept. 30, 2024.

The price decline dropped plastics segment earnings by 8 percent, or about \$5 million, MacFarlane said during the same call.

Even so, increased sales volume offset the price drop, and this "could potentially be the company's best year yet" in terms of annual earnings, MacFarlane added.

A slide in the quarterly presentation says, "Gross profit margins higher in 2023 as compared to 2022 as the cost of PVC resin and other input costs decreased more rapidly than the sales prices."

Year-to-date earnings for the company, which has three business segments, are ahead of last year by 4 percent, MacFarlane said.

In 2023, the company posted a profit of \$294.2 million on sales of \$1.3 billion, which was up from 2022, when the profit was \$284.2 million on sales of \$1.46 billion.

For the third quarter, however, sales are down to \$338 million from \$358 million.

In the plastics segment, which consists of PVC pipe makers Northern Pipe Products Inc. and Vinyltech Corp., prices continue to decline but at a slower rate than company officials expected.

"While plastic segment earnings were lower than the same time last year, its financial results exceeded what we had anticipated for the third quarter," MacFarlane said. "Due to the strong financial performance within our plastics segment, we are increasing and narrowing our 2024 earnings guidance to a range of \$6.97 to \$7.17 from our previous range of \$6.77 to \$7.07."

The plastics segment continues to perform better than expected and is capitalizing on customer sales volume growth and improved distributor and end market demand, MacFarlane said.

"Our ability to fill orders on an immediate basis is serving us well in the current environment," he said. "The first phase of our Vinyltech expansion project in Arizona continues to progress well and is nearly complete. We look forward to adding large diameter PVC pipe capability at this location later this year so that we can better serve our customers in the South and Southwest while simultaneously freeing up large diameter capacity at Northern Pipe Products in North Dakota."

How much will the products cost?

MacFarlane said "Our prices reflect the dynamic nature of the business and the industry, including the supply and demand of PVC pipe and the cost of supply and material inputs including PVC resin. Improved demand has moderated the rate of pricing declines. However, we continue to expect the sale price of PVC pipe to decline over time. We continue to closely monitor new home construction, vacant lot development and interest rates."