

NOTE: This document is being provided for informational purposes only and does not constitute legal advice. The Office of the Attorney General and retained outside counsel are not providing any legal representation to individual public water systems with respect to the matters discussed in this document. Public water systems are advised to independently consult their legal counsel concerning the issues discussed herein.

In re Aqueous Film-Forming Foams Products Liability Litigation, MDL No. 2:18-mn-2873

INFORMATION SHEET ON PFAS SETTLEMENT FOR PUBLIC WATER SYSTEMS

TIME SENSITIVE INFORMATION ON LEGAL RIGHTS

Executive Summary. The purpose of this Information Sheet is to provide information to public water systems in Maine and to notify them that a federal court in South Carolina has granted preliminary approval to two separate nationwide class action settlements between public water systems and companies that manufactured PFAS chemicals. The two separate nationwide settlements are with (1) 3M Company and (2) several DuPont-related companies.¹ Public water systems that are part of the nationwide class in either settlement may either decide to remain in the class or opt out of the class action settlement. **Any public water system that is part of the 3M and/or DuPont settlement classes and does not affirmatively opt out of the class will be bound by the settlement once it is finally approved and will lose the legal right to file a separate lawsuit against 3M or DuPont in exchange for any monies received through the settlement.** The 3M and DuPont settlements encompass public water systems that have PFAS detections as well as those that have tested but not detected PFAS in drinking water. The settlements encompass claims for PFAS contamination caused by any product, including firefighting foam known as Aqueous Film Forming Foam (AFFF), as well as PFAS chemicals in consumer, industrial, and other products.

In light of these recent settlements, which are discussed in further detail below, all public water systems in Maine should consider: (1) immediately evaluating their legal rights, potentially with legal counsel; (2) determining whether they are members of the 3M class settlement and/or the DuPont class settlement; (3) visiting the class action website (www.pfaswatersettlement.com) to calculate any expected payments under the class settlements; (4) comparing such expected payments to potential costs they may incur to treat PFAS contamination; and (5) deciding whether to opt out or remain in the classes and accept the class payments. Any public water system that opts out should pay careful attention to the requirements and deadlines to opt out. Any public water system that decides to stay in the class should pay careful attention to the requirements to obtain payments.

¹ The DuPont related companies are EIDP, Inc. (formerly known as E. I. DuPont de Nemours and Company), The Chemours Company, The Chemours Company FC, LLC, DuPont de Nemours, Inc., and Corteva, Inc.

The State of Maine’s Lawsuits. The State of Maine has filed its own, separate lawsuits against the same PFAS manufacturers (3M Company and DuPont-related entities).² Among other kinds of relief, the State’s lawsuits each seek to recover a broad range of damages, including damages to address the costs of removing PFAS contamination from public water systems and for ongoing testing of public water systems for PFAS contamination. If the State ultimately prevails and recovers funds to remove PFAS from contaminated drinking water and for ongoing testing of drinking water, the State’s lawsuits may result in the establishment of a fund to pay for remediation and treatment to remove PFAS from public water systems that are contaminated and for ongoing testing. While the State cannot guarantee the outcome of its lawsuits, which are expected to take several years, or that any funds ultimately recovered will be distributed to a particular public water system, the State’s lawsuits are seeking to recover significantly more money damages from 3M and the DuPont companies than would likely be available to Maine public water systems under the national class action settlements.³

The 3M Settlement. The 3M settlement provides for overall payments of between \$10.5 billion and \$12.5 billion to settle all claims of PFAS contamination in public water systems against 3M. The total amount of the 3M settlement depends upon the number of public water systems that ultimately stay in the class. The 3M settlement is divided into two categories: (1) phase one class members are public water systems with any detection of PFAS; and (2) phase two class members are public water systems that have not detected PFAS but which are conducting (or will conduct) PFAS testing under the EPA-required unregulated contaminant monitoring program, UCMR5. The 3M settlement does not include transient public water systems or non-transient non-community public water systems that serve fewer than 3,300 people. 3M will fund the settlement over a period of thirteen years, from July 1, 2024, to April 15, 2036.

The DuPont Settlement. The DuPont settlement provides for payment of \$1.185 billion to settle all claims of PFAS contamination in public water systems against DuPont. This amount is divided into two categories: (1) public water systems that draw or collect from any water source that has a detection of PFAS; and (2) public water systems that are subject to the monitoring rules set forth in UCMR5 or are required under applicable federal or state law to test or otherwise analyze any of their water sources or the water they provide for PFAS before the UCMR5 deadline. The DuPont settlement includes public water systems that have at least 15 service connections or regularly serve at least 25 individuals and includes community water systems, non-transient non-community water systems and transient non-community water systems that meet these criteria. The DuPont settlement monies will be paid out over a period of years through at least 2031.

The amount of money that a public water system would receive under the 3M and/or DuPont settlements cannot be precisely determined because the amount would depend on the number of public water systems participating in the settlements and other factors. However, 3M,

² Maine did not negotiate either of the class action settlements. The class action settlements were negotiated by 3M, the DuPont-related entities, and a small number of represented public water systems.

³ One of the State’s two lawsuits addresses PFAS contamination in firefighting foam (AFFF) and is in federal court. The State’s other lawsuit addresses PFAS contamination from non-AFFF sources and is in state court. Both of the State’s cases seek, among other forms of relief, a broad range of damages that encompasses claims for contamination of public water systems in Maine.

the DuPont-related entities, and the lawyers for a relatively small number of public water systems who negotiated the settlements have developed a formula for each class member to estimate its potential recovery under the settlements. The formula requires two inputs: the flow rate for the public water system and the level of PFAS detected. Public water systems may access the formula and calculate a range of their likely payments under either settlement at the following website: www.pfaswatersettlement.com/

In making decisions about whether to remain in the class action settlements or to opt out, public water systems may wish to, among other things, compare their anticipated costs for remediating and treating PFAS in their systems with the estimated class action payments under the formula on the website discussed above. Cost considerations may include, but are not limited to, capital and ongoing and maintenance costs involving routine sampling for PFAS, costs of treatment for PFAS (such as granular activated carbon or “GAC”), and ongoing costs associated with treatment (*e.g.*, changing and monitoring filtration). Public water systems may also find it helpful to reference other State studies which have analyzed these costs.^{4,5}

We understand that there are likely over 100,000 potential class members that may receive money under the settlements. The federal court in South Carolina has preliminarily approved both settlements, which triggers certain deadlines for opting out. Below, we summarize our understanding of the current schedule and procedures for opting out of the class for both settlements, and if you are a water provider who elects to remain in the class, the schedule and procedures required to prove a claim and obtain a potential recovery.

- 1. Summary of opt-out schedules and procedures.** The 3M settlement provides for overall payments of between \$10.5 billion and \$12.5 billion to settle all claims of PFAS contamination in public water systems against 3M. The DuPont settlement provides for payment of \$1.185 billion to settle all claims of PFAS contamination in public water systems against DuPont. Please note that these are two separate settlements that each require independent action to either participate or opt out of each settlement as discussed below. The summary of each settlement below is for informational purposes only, does not constitute legal advice, and may be subject to change. Class members should consider consulting legal counsel and refer to the settlement website noted above for full and up-to-date opt-out schedules and procedures.

- a. DuPont Settlement**

- The DuPont settlement provides that a class member who wants to opt out of the DuPont settlement must submit a written Request for Exclusion to the Notice

⁴ [New Hampshire Department of Environmental Services. \(2019\). Summary Report on the New Hampshire Department of Environmental Services Development of Maximum Contaminant Levels and Ambient Groundwater Quality Standards for Perfluorooctanesulfonic Acid \(PFOS\), Perfluorooctanoic Acid \(PFOA\), Perfluorononanoic Acid \(PFNA\), and Perfluorohexanesulfonic Acid \(PFHxS\). R-WD-19-01. January 4.](#)

⁵ [State of Wisconsin Department of Administration. \(2021\). Administrative Rules, Fiscal Estimate & Economic Impact Analysis. Promulgation of new drinking water maximum contaminant levels for Per- and Polyfluoroalkyl Substances \(PFAS\) including Perfluorooctanesulfonic acid \(PFOS\) and Perfluorooctanoic acid \(PFOA\). Board order DG-24-19. October 12.](#)

Administrator, and serve a copy of such written request on Class Counsel and Settling Defendants' Counsel at the addresses set forth in the [Notice](#).

- The written Request for Exclusion must certify, under penalty of perjury in accordance with 28 U.S.C. § 1746, that the filer has been legally authorized to exclude the Person from the Settlement and must: (a) provide an affidavit or other proof of the standing of the Person requesting exclusion and why they would be a Settlement Class Member absent the Request for Exclusion; (b) provide the filer's name, address, telephone and facsimile number and email address (if available); and (c) provide the name, address, telephone number, and e-mail address (if available) of the Person whose exclusion is requested.
- In sending any document to the Notice Administrator, Claims Administrator, the Court, Class Counsel, or Settling Defendants' Counsel, a public water system must include the following case name and identifying number on any documents and on the outside of the envelope: ***In re: Aqueous Film-Forming Foams Products Liability Litigation, MDL No. 2:18-mn-2873 (D.S.C.), this document relates to: City of Camden, et al., v. E.I. DuPont de Nemours and Company, et al., No. 2:23-cv-03230-RMG.*** You must also include your full name, address, email address, and a telephone number where you can be reached.
- The last day of the opt out period for the DuPont settlement is currently **December 4, 2023**. The written Request for Exclusion must be received by the Notice Administrator no later than this date.

b. 3M Settlement

- The 3M settlement provides that a class member who wants to opt out of the 3M Settlement must submit a written Request for Exclusion to the Notice Administrator, and serve a copy of such written request on Class Counsel and Settling Defendants' Counsel at the addresses set forth in the [Notice](#).
- The written Request for Exclusion must certify, under penalty of perjury in accordance with 28 U.S.C. § 1746, that the filer has been legally authorized to exclude the Person from the Settlement and must: (a) provide an affidavit or other proof of the standing of the Person requesting exclusion and why they would be a Settlement Class Member absent the Request for Exclusion; (b) provide the filer's name, address, telephone and facsimile number and email address (if available); and (c) provide the name, address, telephone number, and e-mail address (if available) of the Person whose exclusion is requested.
- In sending any document to the Notice Administrator, Claims Administrator, the Court, Class Counsel, or Settling Defendants' Counsel, a public water system must include the following case name and identifying number on any documents and on the outside of the envelope: ***In re: Aqueous Film-Forming Foams Products Liability Litigation, MDL No. 2:18-mn-2873 (D.S.C.), this document relates to: City of Camden, et al., v. 3M Company, No. 2:23-cv-03147-RMG.*** You must also

include your full name, address, email address, and a telephone number where you can be reached.

- The last day of the opt out period for the 3M settlement is currently **December 11, 2023**. The written Request for Exclusion must be received by the Notice Administrator no later than this date.

2. Class participants who do not opt out

Participating class members are **not** entitled to monetary allocations simply by virtue of their inclusion in either class, but as explained below, must take specific steps to submit a claim and obtain a potential recovery in both the DuPont and 3M settlements. Class members should consider consulting with legal counsel and refer to the settlement website for full and up-to-date information regarding what class members would need to do to submit a claim and obtain potential recovery if they opt to remain in either class.

a. DuPont Settlement

- A Final Fairness Hearing before the federal court in South Carolina is currently set for December 14, 2023.
- For Phase One Qualifying Members, available settlement funds are grouped into five separate payment sources: Phase One Very Small Public Water System Payments, the Phase One Inactive Impacted Water System Payments, the Phase One Action Fund, the Phase One Supplemental Fund and the Phase One Special Needs Fund.
- For Phase Two Qualifying Members, funds are grouped into five separate payment sources: the Phase Two Very Small Public Water System, the Phase Two Baseline Testing Payments, the Phase Two Action Fund, the Phase Two Supplemental Fund, and the Phase Two Special Needs Fund.
- Each fund source will have separate claims forms that need to be filled out and submitted by DuPont class members who do not opt out in order for such a water provider to be eligible to receive a payment under the DuPont settlement. Dupont class members can submit such a Claims Form online at www.pfaswatersettlement.com, or can download, complete and mail a Claims Form to the Claims Administrator at AFFF Public Water System Claims, P.O. Box 4466, Baton Rouge, Louisiana 70821.
- The DuPont settlement does not provide a list of public water systems that are included within each phase of the settlement. Instead, a public water system must determine whether it meets the description of a class member. The deadline to submit a Claims Form following Final Approval has not yet been determined and will likely be set by the Claims Administrator following Final Approval of the DuPont settlement.

- Each water source for a public water system must be tested. Untreated and treated water sources tested prior to December 7, 2021, that have test results that do not show a detection of PFAS at any level must retest. PFAS analysis must be conducted at a minimum for PFAS analytes for which UCMR 5 requires, the PFAS test results must report any measurable concentration of PFAS, regardless of whether the level of PFAS detected in the water is above or below UCMR 5's relevant minimum reporting level, and testing shall be done on untreated (raw) water. Failure to test and submit these testing results will disqualify a public water system from DuPont settlement payments.
- **Failure to file a proper claim may preclude a class member from receiving any recovery under the DuPont settlement.**

b. 3M Settlement

- A Final Fairness Hearing before the federal court in South Carolina is currently set for February 2, 2024.
- The Claims Administrator will separate Phase One Funds into three distinct funds: the Phase One Action Fund, the Phase One Supplemental Fund and the Phase One Special Needs Fund.
- The Claims Administrator will separate Phase Two Funds into four distinct funds: the Phase Two Action Fund, the Phase Two Supplemental Fund, the Phase Two Special Needs Fund, and the Phase Two Testing Compensation Fund.
- The 3M settlement identifies those water providers that it believes fall within Phase One or Phase Two. This list may not be complete. Copies of the list of such class members can be found at www.pfaswatersettlement.com along with copies of the relevant claim forms and a sample chart of expected range of settlement value for class members.
- Each fund source will have separate claims forms that need to be filled out and submitted by 3M class members who do not opt out in order for such a water provider to be eligible to receive a payment under the 3M settlement. However, as a general matter, the following information will be required for each 3M Qualifying Member for all claims forms:
 - Each 3M settlement Phase One Qualifying Class Member must test each of its Water Sources for PFAS; request from the laboratory that performs the analyses all analytical results, including the actual numeric values of all analytical results; and submit or cause the testing laboratory to submit detailed PFAS test results to the Claims Administrator on a Claims Form(s) by dates specified below and on the Settlement website, available at <http://www.pfaswatersettlement.com>.

- Each 3M settlement Phase Two Qualifying Class Member must test each of its Water Sources for PFAS; request from the laboratory that performs the analyses all analytical results, including the actual numeric values; and submit or cause the testing laboratory to submit detailed PFAS test results to the Claims Administrator on a Claims Form within forty-five (45) calendar days after receiving the test results, absent what the Claims Administrator deems in writing to be an extraordinary circumstance, and no later than July 1, 2026.
- The deadline to submit a Claims Form following Final Approval has not yet been determined and will likely be set by the Claims Administrator following Final Approval of the 3M settlement.
- **Failure to file a proper claim may preclude a class member from receiving any recovery under the 3M settlement.**

Conclusion. In short, all public water systems in Maine should consider: (1) immediately evaluating their legal rights, potentially with legal counsel; (2) determining whether they are members of the 3M class settlement and/or the DuPont class settlement; (3) visiting the class action website (www.pfaswatersettlement.com) to calculate any expected payments under the class settlements; (4) comparing such expected payments to potential costs they may incur to treat PFAS contamination; and (5) deciding whether to opt out or remain in the classes and accept the class payments. Any public water system that opts out should pay careful attention to the requirements and deadlines to opt out. Any public water system that decides to stay in the class should pay careful attention to the requirements to obtain payments.