Aqueous Film-Forming Foam (AFFF) Product Liability Litigation (MDL 2873)

District Court for the District of South Carolina, Master Docket No. 2:18-MN-2873-RMG

**IMPORTANT: PLEASE READ BELOW AS YOUR WATER SYSTEM’S LEGAL RIGHTS MAY BE ADVERSELY IMPACTED**

This alert concerns recent settlements related to PFAS contamination.[[1]](#footnote-1) **Please note that action may be required by your water system by December 4, 2023.**

PFAS, also known as “forever chemicals”, are linked to several adverse health impacts. As a result, the U.S. Environmental Protection Agency is in the process of drafting regulations that may require public water systems to conduct expensive and long-term treatment if PFAS is found in their water supply - <https://www.epa.gov/sdwa/and-polyfluoroalkyl-substances-pfas>. US EPA is also requiring many systems to test for PFAS as a part of Unregulated Contaminant Monitoring Rule 5 - <https://www.epa.gov/dwucmr/fifth-unregulated-contaminant-monitoring-rule>.

Various PFAS manufacturers were sued in a class action lawsuit brought on behalf of systems across the country. Recently, the court approved settlements involving two large PFAS manufacturers: 3M and DuPont. These settlements resolve claims for PFAS contamination in system supplies. **The settlements are structured so that every eligible system is automatically included as a “class member” in the case unless it submits formal “opt out” requests to the court**. **This means that you must take action if you want to preserve your ability to sue.**

A website created by 3M and DuPont provides more information regarding the settlements: <https://www.pfaswatersettlement.com/>. This website includes links to key documents and information about each settlement. Every system should carefully review the information available on the website to decide whether to remain in the settlements or to submit the documents to opt out from one or both settlements. **If you are a class member, you will be bound by the settlements unless you affirmatively opt-out. Given the ramifications of the decision to remain in the settlements, or to opt out, you may wish to consult with legal counsel to understand how your system may be impacted by the settlements.**

The settlements website lists important dates and deadlines under each settlement agreement. The three most important deadlines to keep in mind are: (1) the opt-out or “Requests for Exclusion” deadlines, (2) the objections deadlines, and (3) the settlement claims submission deadlines.

Likewise, the website contains a tool to estimate your potential recovery under each settlement. To estimate the settlement amount you may receive if you submit a claim, you may use the 3M Estimated Allocation Range Table to calculate a rough estimated allocation amount for each of your Impacted Water Sources (groundwater well or surface water system with PFAS contamination).

The 3M Estimated Allocation Range Table is available at <https://www.pfaswatersettlement.com/wp-content/uploads/2023/08/3M-Estimated-Allocation-Range-Table.pdf>

The DuPont Estimated Allocation Range Table is available at <https://www.pfaswatersettlement.com/wp-content/uploads/2023/08/DuPont-Estimated-Allocation-Range-Table.pdf>.

**We recommend that you look at these estimates as soon as possible as they may help you and your legal counsel determine whether it is in your system’s best interests to accept the terms of one or both settlements and thereby waive your system’s legal right to pursue future claims against these defendants.** **Note: if your system is a class member and does not affirmatively opt out, your system may lose future legal rights to obtain a recovery against these defendants.**

**3M SETTLEMENT**

**(*City of Camden, et al. v. 3M Company*, Case No. 2:23-cv-03147-RMG)**

A. Who is a class member?

Settlement class members are:

1. All active systems in the United States of America that have one or more Impacted Water Sources as of June 22, 2023.

AND

2. All active systems in the United States that do not have one or more Impacted Water Sources as of June 22, 2023, and (i) are required to test for certain PFAS under UMCR-5, or (ii) serve more than 3,300 people, according to SDWIS.

“Impacted Water Source” means a Water Source that has a qualifying test result showing a measurable concentration of PFAS.

B. What options does a class member have?

Systems that are settlement class members have three options: request to be excluded (opt out) from the settlement, object to the settlement, or file a settlement claim.

1. Opt out of the settlement (“Request for Exclusion”) by the **DEADLINE: December 11, 2023**

• If you do not want to settle claims you may have against 3M for PFAS contamination, you must affirmatively opt out of the 3M Settlement by filing a “request for exclusion” by the Dec. 11, 2023 deadline.

• Unless you timely opt out you will be bound by the settlement and any related judgment or other final disposition, including the release set forth in the agreement. If you do not timely opt out, you will not be able to separately pursue claims against 3M if those claims are within the scope of the release.

• Guidance for how to opt out is available on the [settlements website](https://www.pfaswatersettlement.com/) and in the separately attached instructions and template.

2. Object to the settlement by the **DEADLINE: November 11, 2023**

• Any settlement class member who has not successfully opted out may object to the 3M agreement.

• An objection will not be treated as an opt-out. Objecting to the settlement is not the same as opting out, and you may be subject to the terms of the agreement even if you object.

• A class member can object to the settlement or to an award of fees or expenses to class counsel.  Objections must be in writing and served on the Clerk of Court, class counsel, and 3M’s counsel. Additional information about this option is set forth in the settlement.  Objections will be heard at the Final Fairness Hearing, which will be on **February 2, 2024, at 10 a.m. EST**.  If you do not opt out and choose to file an objection, you cannot choose to opt out after the objections hearing because the deadline for doing so will have passed. Based on the objections, the court can decide not to allow the settlement to proceed.

3. Submit a claim. **DEADLINES:** Phase One claims due 60 days after Effective Date[[2]](#footnote-2); Phase Two claims by July 31, 2026

• Each settlement class member that has not opted out of the settlement class will be eligible to receive a check(s) from the claims administrator based on the allocation procedures.

* Qualifying class members fall into two categories. You should consider consulting with an attorney to assist in determining whether you are in Phase One or Phase Two.
  + Phase One Qualifying Class Member: an active system in the United States that has one or more Impacted Water System as of June 22, 2023.
  + Phase Two Qualifying Class Member: an active system in the United States that does not have one or more impacted water sources as of June 22, 2023 and (i) is required to test for certain PFAS under UCMR-5 or (ii) serves more than 3,300 people.
* In order to participate in the 3M Settlement and receive a payment, you must submit a claim within 60 days after the effective date if you are a Phase One Qualifying Class Member and by July 31, 2026 if you are a Phase Two Qualifying Class Member.

C. Factors you may wish to consider in determining whether to opt out, object, or submit a claim include the benefits from submitting a claim balanced against the consequences of doing so.

1. By submitting a claim (assuming your system is eligible), your system will receive a payment from 3M to address PFAS contamination in your system without the need for your system to bring litigation or take any further action. However, this payment may be far less than the costs to address any PFAS impacts on your system’s water supply.

2. To *estimate* the amount your system may receive if it submits a claim, you may use the 3M Estimated Allocation Range Table to calculate a rough estimated allocation amount for each of your system’s impacted water sources (groundwater well or surface water system with PFAS contamination). The table is available at <https://www.pfaswatersettlement.com/wp-content/uploads/2023/08/3M-Estimated-Allocation-Range-Table.pdf>

3. The actual amount your system will receive if it submits a claim is not, however, currently available. Each class member’s award will depend on the number of claims submitted as well as other information in the claim forms, and the available pool of funds for distribution under the Settlement Agreement. The available pool for Phase One qualifying class members is $6.875 billion. The available pool for Phase Two qualifying class members is $105 million for testing and between $3.625 and $5.625 billion for compensation. The information required to calculate awards is not publicly available and is only obtainable through the claim forms submitted by class members. Thus, the awards that each class member receives is not determinable until the claims administrator analyzes all the claims forms submitted by the deadline.

4. The payments will be made according to a payment schedule between July 1, 2024, and April 15, 2036. (See Exhibit K to 3M Settlement Agreement.) If 3M files for bankruptcy, a court might discharge in full or in part 3M’s obligation to pay your system any balance owed after it filed for bankruptcy.

5. By submitting a claim, your system waives its right to any additional recovery from 3M beyond the amount received under this settlement for contamination or remediation related to all PFAS compounds even if the amount your system receives is not sufficient to address all treatment costs. The waiver extends to your system’s right to pursue future litigation against 3M for any PFAS compounds that do not have a current treatment standard.

6. By filing a claim or claims, your system will be considered a settlement class member and is bound by the terms of the 3M Settlement Agreement, including the release in Section 11 of the agreement. The release prevents Settlement class members from bringing any lawsuits against 3M for Claims resolved by the Settlement Agreement. It is important to consider how this release would impact your system’s rights should it be sued by a water user or other third party for harms related to PFAS. In addition, all settlement class members release any and all Claims they may have against 3M for punitive damages. In other words, your system may not be able to obtain additional money or funds for claims regarding alleged PFAS-related harm to drinking water and associated financial burdens from 3M after your system receives its settlement payment.

**DUPONT SETTLEMENT**

**(*City of Camden, et al. v. E.I. DuPont de Nemours and Company, et al.*, No. 2:23-cv-03230-RMG)**

A. Who is a class member?

Settlement class members are:

1. All systems in the United States of America that draw or otherwise collect from any water source that, on or before June 30, 2023 was tested or otherwise analyzed and found to contain PFAS at any level.

AND

2. All systems in the United States as of June 30, 2023 are (i) subject to the monitoring rules set forth in UCMR 5 (i.e., “large” systems serving more than 10,000 people and “small” systems serving between 3,300 and 10,000 people), or (ii) 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 UCMR 5 Deadline.

B. What options does a class member have?

Systems that are settlement class members have three options: request to be excluded (opt out) from the settlement, object to the settlement or file a settlement claim.

1. Opt out of the settlement (“Request for Exclusion”) by the **DEADLINE: December 4, 2023**

• If your system does not want to settle claims it may have against DuPont for PFAS contamination, your system must affirmatively opt out of the DuPont Settlement by filing a written and signed statement entitled “request for exclusion” by the December 4, 2023, deadline.

* To be treated as valid, the request for exclusion must be sent via certified or first class mail to the Notice Administrator, Counsel for DuPont, and the Class Counsel at addresses specified on the settlements website. The request for exclusion must be received by the Notice Administrator no later than December 4, 2023.

• Unless your system timely opts out of the DuPont Settlement, your system will be bound by the DuPont Settlement and any judgment or other final disposition related to the settlement, including the release set forth in the DuPont Settlement Agreement. If your system does not timely opt out, it will not be able to separately pursue claims against DuPont if those claims are within the scope of the settlement release.

• Guidance for how to opt out and submit a request for exclusion is available on the [settlements website](https://www.pfaswatersettlement.com/) and in the separately attached instructions and template.

2. Object to the settlement by the **DEADLINE: November 4, 2023**

• Any settlement class member who has not successfully opted out of the DuPont Settlement Agreement by filing a Request for Exclusion may object to the DuPont Settlement.

• An objection will not be treated as an opt out. Objecting to the DuPont Settlement is not the same as opting out, and your system may be subject to the terms of the settlement even if it objects.

• A class member can object to the DuPont Settlement or to an award of fees or expenses to class counsel.  Any class member who wishes to object must file a written and signed statement designated “Objection” with the Clerk of Court and provide service on class counsel and DuPont’s counsel. Additional information about this option is set forth in the settlement.  Objections will be heard at the Final Fairness Hearing, which will be on **December 14, 2023, at 10 a.m. EST**.  Based on the objections, the court has the option to decide not to allow the settlement to proceed.

3. Submit a claim. **DEADLINES:** Phase One Claims due 60 days after Effective Date[[3]](#footnote-3); Phase Two Claims due by June 30, 2026

• Each settlement class member that has not opted out of the settlement class will be eligible to receive a settlement check(s) from the claims administrator based on the allocation procedures described in the DuPont Settlement.

* Qualifying class members fall into two categories. Your system should consider consulting with an attorney to assist in determining whether your system is in Phase One or Phase Two.
  + 1) Phase One Qualifying Settlement Class Member: a system that draws or otherwise collects from any water source that tested or otherwise analyzed on or before June 30, 2023 and found to contain any PFAS at any level.
  + 2) Phase Two Qualifying Settlement Class Member : a system that is not a Phase One Qualifying Settlement Class Member and is subject to the monitoring rules set forth in UCMR 5 or other applicable state or federal law.
* In order to participate in the DuPont settlement and receive a payment, your system must submit a claim within 60 days after effective date if it is a Phase One Qualifying Class Member and by June 30, 2026 if it is a Phase Two Qualifying Class Member.

C. Factors your system may wish to consider in determining whether to opt out, object, or submit a claim include the benefits from submitting a claim balanced against the consequences of doing so.

1. By submitting a claim, your system will receive a payment from DuPont to address PFAS contamination in your system without the need for your system to bring litigation or take any further action. However, this payment may be far less than the costs to address any PFAS impacts on your system’s water supply.

2. To *estimate* the settlement amount your system may receive if it submits a claim, your system may use the DuPont Estimated Allocation Range Table to calculate a rough estimated allocation amount for each of your system’s Impacted Water Sources (groundwater well or surface water system with PFAS contamination). The table is available at <https://www.pfaswatersettlement.com/wp-content/uploads/2023/08/DuPont-Estimated-Allocation-Range-Table.pdf>.

3. The actual amount your system will receive if your system submits a claim is not, however, currently available. Each class member’s award will depend on the number of claims submitted as well as other information in the claims forms, and the available pool of funds for distribution under the settlement agreement. Phase One qualifying class members will be allocated 55% of the settlement funds and the remainder will be allocated to Phase Two qualifying class members. The information required to calculate settlement awards is not publicly available and is only obtainable through the claims forms submitted by class members. Thus, the awards that members receive is not determinable until the claims administrator analyzes all the claims forms submitted by the deadline.

4. If DuPont files for bankruptcy, a court might discharge in full or in part DuPont’s obligation to pay your system any balance owed after it filed for bankruptcy.

5. By submitting a claim, your system waives its right to any further recovery from DuPont, beyond the amount received under this settlement, for contamination or remediation related to all PFAS compounds, even if the amount it receives is not sufficient to address all treatment costs. The waiver extends to the right to pursue future litigation against DuPont for any PFAS compounds that do not have a current treatment standard.

6. By filing a claim or claims, your system will be considered a settlement class member and is bound by the terms of the DuPont agreement, including the release in Section 12. The release prevents settlement class members from bringing any lawsuits against DuPont for claims resolved by the settlement. It is important to consider how this release would impact your system’s rights should it be sued by a water user or other third party for harms related to PFAS. In addition, settlement class members release any and all claims they may have against DuPont for punitive damages. In other words, your system may not be able to obtain additional money or funds for claims regarding alleged PFAS-related harm to drinking water and associated financial burdens from DuPont after your system receives its payment.

1. The State Water Resources Control Board provides this alert for informational purposes only. The information provided in this alert does not, and is not intended to, constitute legal advice. This alert contains links to third-party websites. Such links are only for the convenience of the reader or user, and the State Water Resources Control Board does not endorse the contents of those third-party sites. The readers of this alert should contact their attorneys to obtain advice with respect to the matters addressed in this alert. No reader of this alert should act or refrain from acting on the basis of the information in this alert without first seeking legal advice from counsel. [↑](#footnote-ref-1)
2. “Effective Date” for the 3M settlement means five (5) business days after the date of Final Judgment. [↑](#footnote-ref-2)
3. “Effective Date” for the DuPont settlement means the date of Final Judgment. [↑](#footnote-ref-3)