

Environmental Alert



3M and DuPont National Settlements for PFAS Drinking Water Contamination Claims:

Recently, the 3M Company (3M) and E.I. Du Pont de Nemours and Company (DuPont) have each announced settlements to try and buy their way out of collective claims against both manufacturers related to drinking water contamination in Public Water Systems (PWS) caused by "forever chemicals". Specifically, these settlements aim to resolve issues concerning per- and polyfluoroalkyl substances (PFAS). For 3M, the settlement is for 12.5 billion dollars, with DuPont adding their own 1.2 billion dollars in a separate settlement. Over a period of 13 years, the settlement will provide funds to cities, towns, and other public water systems for testing and treating PFAS contamination. It is important to note that neither company admits liability and that as large as these settlements are, they are likely to represent only a small portion of the costs incurred by PWS for the design and installation of water treatment, and of the ongoing costs of maintenance. In addition, this round of settlements is focused on public drinking water supply systems and does not include future potential claims from wastewater treatment facilities, fire training areas, and local airports.

Background

PFAS refers to a wide category of per- and polyfluorinated substances with widely varying properties and characteristics. They can be in the form of gases, liquids, or solids, and some organizations define "PFAS" differently. They are frequently used in manufacturing because of their ability to resist grease, oil, heat, and water. As such, they can be found in places as diverse as the treatment for a stain-resistant fabric on your couch, a non-stick frying pan in your kitchen, or as an ingredient in firefighting foam. With such a diverse manufacturing background, it is no surprise that PFAS have become widespread in our environment. These are durable, long-lasting chemicals, and various studies have shown that some of the PFAS we are exposed to in the environment may be linked to harmful health effects in people. As such, the United States Environmental Protection Agency (USEPA) and various States (including New Jersey) are trying to control the human exposure to PFAS by controlling the allowable concentration of PFAS in our drinking water. This has resulted in installing advanced levels of water treatment in areas impacted by PFAS, a technology that has proven to be expensive. This brings us back to the question of "how does a public drinking water system pay for the additional costs to reduce or remove PFAS from

their drinking water supply?" The result has been thousands of claims against the manufacturers and suppliers of these chemicals to help recover their costs.

Who is Eligible to Submit a Claim?

Most public water systems will qualify if they can show any level of contamination in their public water supply. Specifically, public water providers must meet the following:

To participate in the DuPont settlement, a public-water supplier must:

- Qualify as a "public water system";
- Have a current detectable level of PFAS in its water or face mandatory PFAS testing under federal or state law; and
- Not belong to a state or federal government or be located in the Lower Cape Fear River Basin of North Carolina.

To participate in the 3M settlement, a public-water supplier must:

- Have already detected PFAS in its water supplies; or
- Currently serve over 3,300 consumers and face mandatory PFAS testing by the end of 2025 under federal or state law; and
- Not belong to a state or federal government, be near a manufacturing site, or have already settled with 3M.

There are exceptions to the eligibility, including PWSs associated with a specific PFAS-manufacturing facility owned by 3M, those owned by state or federal governments without independent authority to sue and be sued, and PWSs that have already settled their PFAS-related claims against 3M and DuPont. Additionally, privately owned wells (providing water only to individual households) and other non-PWS water provision systems are not included.

Deadlines

These settlements are set up in an "opt-out" format. In other words, if an impacted PWS wants to pursue a PFAS case on their own against either 3M or DuPont, they must opt out of the current settlement offers, otherwise they will be in the combined pool of affected parties. In addition, there are also deadlines regarding the chance for an impacted PWS to object to the terms and conditions of the settlement agreements. These important dates are listed below:

<u>Deadlines</u>	<u>DuPont Deadline</u>	<u>3M Deadline</u>
Submit objections	11/4/2023	11/1/2023
Opt-out of the settlement	12/4/2023	12/11/2023

The Bottom Line

According to the proposed settlement agreements, the amount that any phase-one PWS receives will be based on the following:

- Completion and filing a series of claims forms that document PFAS concentrations
- Number of users served by the water system
- Amount of water used
- PFAS test results
- Description of the source of the raw water
- Various other details that demonstrate the costs of eliminating PFAS at these facilities

Conclusion

The proposed \$13.2 billion dollars put forth by DuPont and 3M Co. for settlement with multiple U.S. PWSs signifies a first, big step towards addressing the widespread issue of PFAS drinking water contamination. With the funds allocated, impacted communities will have some resources to tackle the detection, treatment, and mitigation of PFAS chemicals impacting their drinking water supply. More technical issues and more funding questions are likely to occur over the coming years, but for now at least it is a start.

Please note that for additional information, please refer to the EJIF memo on this topic (September 25, 2023, revised September 27, 2023) issued by the Executive Director and General Counsel for the FUND. This memo details some of the important legal information regarding this settlement and provides references to law firms currently managing this issue in New Jersey. A copy of this memo is attached for reference.

With the deadline for these settlements rapidly approaching, time is indeed of the essence.

Further details can be found on the Aqueous Film-Forming Foam (AFFF) Product Liability Litigation website found here: <https://www.pfaswatersettlement.com/>

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If you need a more detailed explanation of this topic or need assistance in interpreting how it may impact your site, the EJIF suggests that you contact the EJIF environmental consultants for further information.

All EJIF members please feel free to contact Richard Erickson or Sunita Dhar of First Environment at rerickson@firstenvironment.com and sdhar@firstenvironment, respectively, or 973.334.0003.