PFAS Class Action Settlements (3M & DuPont)

Samantha Gamboa

Portland City Attorney's Office

Portland, Oregon



But First…P What??

- Per- and polyfluoroalkyl substances (PFAS)
- PFAS are a large group of human-made chemicals, components of which break down very slowly over time.
- Often referred to as “forever chemicals.”
- Found in firefighting foams and non-stick, water-repellent, or stain-repellent consumer goods.
- PFAS in the environment may be linked to harmful health effects in humans and animals.
    - May lead to reproductive effects, developmental effects or delays in children, increased risk of some cancers, and impacts to immune system function.

PFAS Multi-District Litigation

- Over 5,000 lawsuits were filed all over the nation against 3M and DuPont regarding PFAS in fire fighting foam in the U.S. District Court of South Carolina (*In re Aqueous Film-Forming Foams Products Liability Multi-District Litigation* (No. 2:18-mm-02873-RMG)(MDL).
- Approximately 400 of the over 5,600 cases pending in the MDL were brought by drinking water providers alleging PFAS manufacturers and various other defendants contaminated their drinking water.
- Since 1963, 3M and DuPont have owned approx. 70% and 3-7%, respectively, of the PFAS market.



The Settlements



- In June 2023, the water provider parties reached settlements with 3M and DuPont
- The agreements are meant to resolve nearly all PFAS-related claims involving drinking water brought by water providers in the US against 3M and DuPont
- Only 400 named water provider plaintiffs, but settlements identified more than 12,000 water providers nationwide who would be affected if they did not actively “opt out” of the settlements.

Key Settlement Terms



Money

3M pays $10.5 and $12.5 billion

DuPont pays $1.185 billion.

These amounts will cover only a fraction of the nationwide cost of addressing PFAS-contaminated drinking water.



2 Phases of Class Members

Phase 1: Providers who had already detected PFAS in their water supplies

Phase 2: Providers who had not yet detected PFAS in their water supplies



Releases

Broad releases for for future PFAS claims

The Money



Phase 1 claimants:

- Award depends on flow rates and level of PFAS contamination.
- Money for both capital costs and O&M.
- Special Needs funds for money already spent to address PFAS (pulling water from other sources, purchasing supplemental water and/or drilling new wells)

Phase 2 claimants:

- Money for sampling:
  - $800 per sample (3M) and $200 per sample (DuPont).
- Through Dec 31, 2030, if PFAS detected, water provider is eligible for a “supplemental fund” to address impacted water sources.

The Releases (3M)

- Any current or future claim against 3M related to PFAS, including any PFAS that may reasonably be expected to enter drinking water;
- Any current or future claim related to 3M's transport, disposal, or arrangement for disposal of PFAS-containing waste or wastewater;
- Any claim relating to the development, manufacture, distribution, or use of PFAS in any product, including AFFF;
- Any claim for false advertising regarding PFAS or products containing PFAS;
- Any current or future claim for punitive damages.





The Releases (DuPont)

- Any claims arising from conduct of DuPont and related entities before June 30, 2023, and PFAS in the class member's drinking water or property;
- Any claims relating to the development, manufacture, distribution, or use of PFAS in any product, including AFFF;
- Any other claim that could have been brought in the MDL litigation.

Opting Out

- Lots of unknowns re PFAS
- No detection of PFAS in active drinking water supply
- Want to preserve any future claims (avoid “claims over”)
- Award amounts too speculative





Questions?

Comments?