

PFAS Town Hall Chat Questions:

And Responses Provided by Marten Law, LLP

August 9, 2023

*** The responses below are not intended to provide legal advice, but general information on the AFFF MDL settlements. ***

1. How can a water supplier determine the amount it may get in the settlement before deciding whether or not to opt in to the proposed settlement? **(Tim Hopkins, Suffolk County Water Authority)**

Under the proposed settlements, there is currently no way for a water provider to independently calculate the exact amount it would receive. Many factors affecting each water provider's potential award will be unknown until all claims forms have been submitted, including: the number of water providers that opt in, the number of Impacted Water Sources each opt-in water provider has, the average and maximum flow from each Impacted Water Source, the types and concentrations of PFAS in each of those Impacted Water Sources, whether the water provider tested for PFAS before the respective settlement date, and whether the provider filed in the MDL.

However, proposed class counsel has stated that they have had a tool developed to estimate the amount that each water provider could receive under the proposed settlements, and they have offered to meet individually with water providers to run their data. The class settlement website will reportedly provide Estimated Allocation Range Tables for each settling defendant (so far, under the 3M and DuPont settlements) for any Impacted Water Source. Proposed class counsel stated that the tool should be available on or around August 9.

2. Could you share any more information on the upcoming Time Sensitive Deadlines for the settlements? **(Madeline Voitier, Association of Clean Water Administrators)**

The upcoming deadlines will depend on the date that the Court grants preliminary approval for the settlements and the date that notice is mailed to potential class members. Because we do not know if and when the judge will grant preliminary approval, exact dates for the deadlines are not yet available. The following table summarizes the applicable upcoming deadlines.

Proposed Settlement Timeline

Milestone	3M Settlement	DuPont Settlement
Order Granting Preliminary Approval	Any day	Any day
Notice	Must begin within 14 days of entry of the Order Granting Preliminary Approval.	Must begin within 14 days of entry of the Order Granting Preliminary Approval.

<p>Objection Deadline</p>	<p>Class representatives have requested the Court to set the deadline 60 calendar days after Notice is mailed.</p> <p>If an Eligible Claimant is represented by counsel, the attorney must file a notice of appearance with the Clerk of Court no later than the date ordered by the Court for the filing of Objections and serve 3M's Counsel and Class Counsel within the same period.</p>	<p>Class representatives have requested the Court to set the deadline 60 calendar days after Notice is mailed.</p> <p>If an Eligible Claimant is represented by counsel and seeks to object, the attorney must file a notice of appearance with the Clerk of Court no later than the date ordered by the Court for the filing of Objections and serve Defendants' Counsel and Class Counsel within the same period.</p>
<p>Opt-out / Exclusions Deadline</p>	<p>Class representatives have requested the Court set the deadline 60 calendar days after Notice is mailed.</p> <p>Any Eligible Claimant that has elected to opt out may withdraw its Request for Exclusion at any time prior to the Final Fairness Hearing and thereby accept all terms of this Settlement Agreement, including its Dismissal provisions.</p>	<p>Class representatives have requested the Court set the deadline no less than 90 calendar days after Notice is mailed.</p> <p><i>The DuPont settlement does not address a party's right to withdraw an exclusion request.</i></p>
<p>Final Fairness Hearing:</p>	<p>The date of the Final Fairness Hearing will be set by the Court in the Preliminary Order and communicated to all Eligible Claimants in a Court-approved Notice.</p>	<p>The date of the Final Fairness Hearing will be set by the Court in the Preliminary Order and communicated to all Eligible Claimants in a Court-approved Notice.</p>
<p>Order Granting Final Approval</p>	<p>Any time after the Final Fairness Hearing</p>	<p>Any time after the Final Fairness Hearing</p>

- Does the settlement specify the analytical method(s) for historical PFOS/PFOA data results to be considered valid for base score calculations? **(Annika Bankston, Minneapolis Division of Water Treatment & Distribution)**

The proposed settlements do not specifically list analytical methods.

Under the 3M settlement, the only requirement for analytical methods is that they be **approved or validated by a state or federal agency**. PFAS tests must also be “conducted by or at the direction of a Class Member or of a federal, state, or local regulatory authority, or [be] any test result reported or provided to the Class Member by a certified laboratory or other Person,” and the sample must be from “Drinking Water or water that is to be drawn or collected into a Class Member’s Public Water System.”

Under the DuPont settlement, testing conducted after the settlement date must follow the UCMR 5 testing requirements or applicable State requirements (if stricter), but testing done prior to the settlement date that detected PFAS at any level will be treated as if the testing followed such requirements.

4. What about a wholesale water treatment provider? We send treated water to each customer's public water system to a specified delivery point and the City is responsible from the delivery point to their citizens. **(Matt Jalbert, Trinity River Authority of Texas)**

To provide legal advice for a specific water provider, we would need to enter into a representation agreement. In general terms, however, wholesale water providers may be eligible for settlement funds if the Eligible Claimant criteria are met, *i.e.*, the treatment provider is an active Public Water System with one or more impacted Water Source(s). Water Source is defined in the 3M settlement as “a groundwater well, a surface-water intake, or any other intake point from which a Public Water System draws or collects water for distribution as Drinking Water, and the raw or untreated water that is thus drawn or collected.” The DuPont settlement very similarly defines a Water Source as: “any groundwater well, surface water intake, and any other intake point from which a Public Water System draws or collects Drinking Water.” In turn, both settlements do not permit recovery for “a purchased water connection from a seller that is a Water Source.”

5. As I understand it, 3M manufactures some of the filters used to clean water with PFAS via R/O. Has a settlement ever included supplying free filters for the life of the plume cleanup? Has it ever been considered? **(Laurene Green, Zone 7)**

We have not been and are not privy to the settlement discussions, which are confidential between the manufacturers and the Plaintiffs’ Executive Committee. But the current proposed 3M settlement agreement does not mention 3M-supplied filters.