

A NACWA WEBINAR

Class Action Litigation: Proposed PFAS Settlements

MONDAY, OCTOBER 23, 2023 | 2:00 PM – 3:00 PM ET

NACWA 



Aqueous Film-Forming Foams (AFFF) Public Water System Settlements

*PRESENTATION TO THE NATIONAL ASSOCIATION OF CLEAN
WATER AGENCIES (NACWA)*

October 23, 2023

Dustin Mire

Welcome & Introductions



Dustin Mire
(Eisner Advisory Group)
Court Appointed Claims Administrator



Purpose & Outline of Webinar

- Settlement Process Overview
- Class Definitions
- Key Settlement Terms
- Class Member Legal Rights and Options
- Key Dates & Deadlines
- Claims & Allocation Procedures
- Next Steps



Settlement Process Overview

- ❖ June 2023: Settlements reached with Defendants
- ❖ July 2023: Submit Settlement Agreements to Court for Preliminary Approval
- ❖ August 2023: Court grants preliminary approval
- ❖ September 2023: Notice program commences and settlement administration process begins

<https://www.PFASWaterSettlement.com>



Class Definitions

- **DuPont Settlement Class Definition:**

All Public Water 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 for PFAS and found to contain any PFAS at any level;

AND

All Public Water Systems in the United States of America that, as of June 30, 2023, are (i) subject to the monitoring rules set forth in the U.S. EPA's Fifth Unregulated Contaminant Monitoring Rule ("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 state or federal law to test or otherwise analyze any of their Water Sources or the water they provide for PFAS before the deadline of sample collection under UCMR 5.

- **3M Settlement Class Definition:**

All Active Public Water Systems in the United States of America that have one or more Impacted Water Sources as of June 22, 2023;

AND

all Active Public Water Systems 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 U.S. EPA's UCMR-5, or (ii) serve more than 3,300 people, according to U.S. EPA's SDWIS data system.



Key Settlement Terms

- **Settlement Amounts:**
 - ❖ DuPont: \$1,185,000,000
 - ❖ 3M: \$10,500,000,000 - \$12,500,000,000
- **Settlement Benefit:**
 - ❖ Payments to each Class Member (who has not excluded itself) based on Allocation Procedures
 - ❖ See *Estimated Allocation Range Tables* for reference
- **Allocation Procedures:**
 - ❖ Reflects factors used in designing a water treatment system in connection with contamination levels
 - ❖ Key Factors: Volume of impacted water (Flow Rate) and Degree of impact (Contamination Levels)
 - ❖ Formulaic approach applied pro-rata to eligible Claimants
- **Claims Process**
 - ❖ Baseline Testing
 - ❖ Claims Forms
- **Settlement Payment Schedule**
 - ❖ DuPont vs. 3M



Class Member Legal Rights & Options

1. Participate in the Settlement(s)

2. Opt-Out of the Settlement(s)

3. Object to the Settlement(s)

4. Do Nothing



Key Dates and Deadlines

Deadline Description	DuPont Deadline Date	3M Deadline Date
Deadline to Submit Objections	11/4/2023	11/11/2023
Deadline to Submit Requests for Exclusion	12/4/2023	12/11/2023
Court's Final Fairness Hearing	12/14/2023 at 10:00 AM EST	2/2/2024 at 10:00 AM EST
Phase One Public Water System Settlement Claims Form	60 Days After the Effective Date	60 Days After the Effective Date
Phase One Special Needs Claims Form	45 Days After the Phase One Public Water System Claims Form Deadline	45 Days After the Phase One Public Water System Claims Form Deadline
Phase Two Testing Claims Form	1/1/2026	1/1/2026
Phase Two Public Water System Claims Form	6/30/2026	7/31/2026
Phase Two Special Needs Claims Form	8/1/2026	8/1/2026
Phase One Supplemental Fund Claims Form	12/31/2030	12/31/2030
Phase Two Supplemental Fund Claims Form	12/31/2030	12/31/2030



Claims & Allocation Procedures

- **Class Member Categories:**

- ❖ Phase One vs. Phase Two – Based on Impacted Water Sources as of the Settlement Date(s)
- ❖ Claim Funds
 - Action Fund
 - Supplemental Fund
 - Special Needs Fund
 - Testing Compensation Fund (Phase Two only)

- **Allocation Calculations:**

- ❖ Volume of impacted water (Flow Rate) – Data from last 10 years
- ❖ Degree of impact (Contamination Levels) – Highest historical concentration of PFOA, PFOS, and Other PFAS
- ❖ EPA Cost Curve Model & PFAS Modifier
- ❖ Base Score = Capital Cost Component + Operation and Maintenance Cost Component
- ❖ “Bump” Adjustments – Regulatory, Litigation, Bellwether
- ❖ Adjusted Base Score = (Sum of Adjustments * Base Score) + Base Score
- ❖ **Allocated Award = (Adjusted Base Score / Sum of All Adjusted Base Scores) x (Available Funds)**



Allocation Procedures (Continued)

Example of Determining Base Score

CWS 1's SW System A has a PFAS Score of 62 and an Adjusted Flow Rate of 1,494 gpm.

Cost per 1,000 gallon production = $7.7245 * (1,494)^{-0.281} = .99$

Annual 1000 gallons units $(1,494 * 60 * 24 * 365) / 1,000 = 785,246$

Capital Costs Component = $785,246 * .99 = 777,828$

O&M Costs Component = $((62 * .005) * 777,828) + 777,828 = 1,018,955$

Base Score = $777,828 + 1,018,955 = 1,796,783$

Example of Determining Adjusted Base Score

CWS 1's SW System A's PFAS levels exceed the Proposed Federal PFAS MCL. CWS 1 filed a lawsuit in the AFFF MDL on November 1, 2022, against 3M and it was not selected as a Public Water Provider Bellwether Plaintiff. System A will receive the following Bumps:

Regulatory Bump:	4.00
<u>Litigation Bump:</u>	<u>0.15</u>
Total Adjustment:	4.15

Adjusted Base Score = $(\text{Sum of Adjustments} * \text{Base Score}) + \text{Base Score}$

$(4.15 * 1,796,783) + 1,796,783 = 9,253,432.5$



Next Steps

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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

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Public Water System Settlements

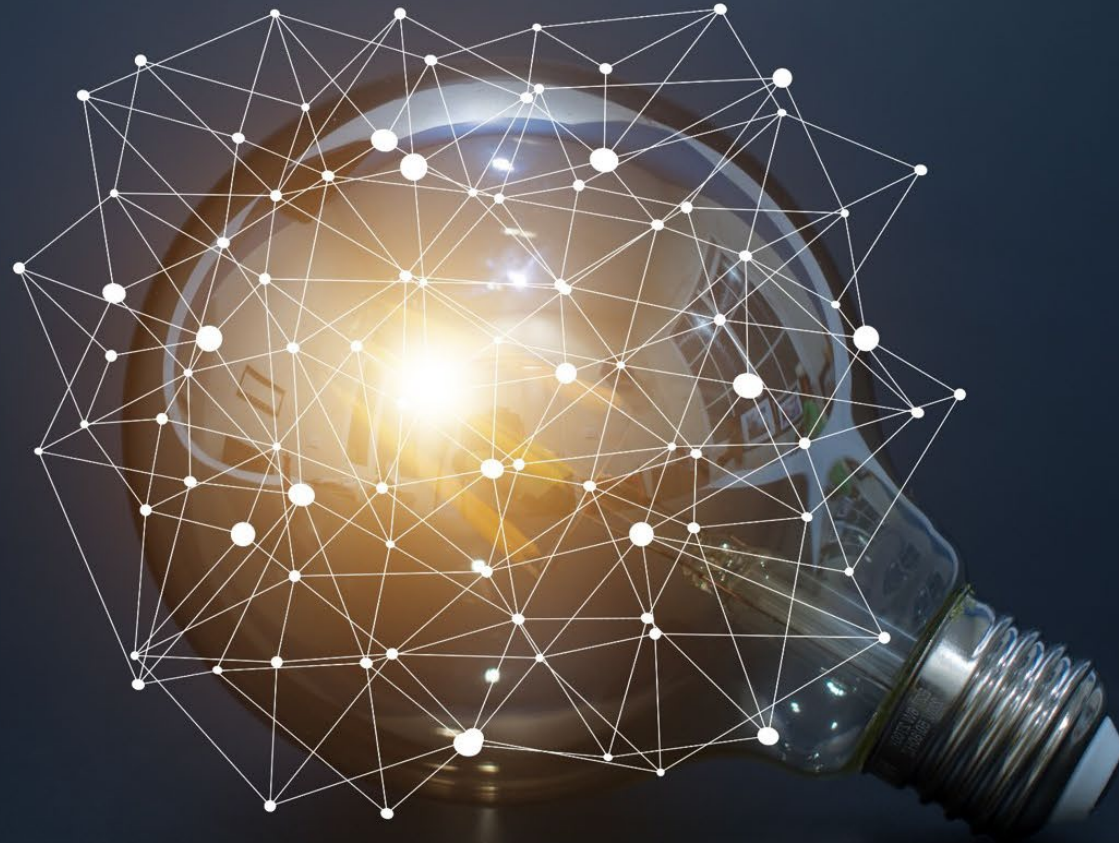
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Questions?

<https://www.PFASWaterSettlement.com>

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