

3M and DuPont PWS Settlements FAQ

Cleaning up Forever Chemicals – Making Wrongdoers Pay Instead of Ratepayers

What are PFAS?

PFAS, short for per- and poly-fluoroalkyl substances, are a class of thousands of synthetic chemicals used both in, and in the manufacturing process of, products like cookware, food wrappers and firefighting foam. Research shows exposure to PFAS, has been linked to cancer, fertility issues, thyroid disease and other health problems. The EPA considers two of the most studied PFAS, namely, PFOA and PFOS, carcinogens for which there is no safe level of exposure. Drinking water is one of the primary routes through which humans are exposed to, and potentially suffer harm from, PFAS.

What are these cases about?

Public water providers take many steps to ensure that the water delivered to their customers is of the best possible quality. Although most public water providers have found low levels of PFAS in their water supplies, they began this litigation to shift the costs of removing PFAS from their customers to the companies who sold these chemicals. The settlement provides funds for removing PFAS now and improving water quality in the future.

Why are PFAS called “forever chemicals?”

PFAS are known as “forever chemicals” because they do not break down naturally in the environment, and have very long half lives in the human body. This means even after exposure to PFAS may have stopped, PFAS will remain in the body for several years.

How many Americans are affected by PFAS in their drinking water?

More than 150 million Americans are at risk from the public health crisis created by PFAS-contaminated drinking water. Studies show PFAS contamination in approximately 45% of the nation’s drinking water, and that 99% of Americans have some level of PFOA and/or PFOS in their blood.

What are the new EPA rules surrounding PFAS and drinking water?

Based on an exhaustive review of the scientific literature, in March 2023, the United States Environmental Protection Agency (“EPA”) concluded that PFOA and PFOS, two of the most common and widely studied PFAS chemicals, are likely carcinogens for which there is no safe level of exposure. Given the EPA's position, it has proposed and it is expected to adopt enforceable Maximum Contaminant Levels (“MCLs”) for PFOA and PFOS of 4ppt (parts per trillion) for each. In fact, the new rules require public water providers to monitor their systems by testing for six specific PFAS chemicals, which in addition to PFOA and PFOS as individual contaminants, include PFHxS, PFNA, PFBS, and GenX as a PFAS mixture, notify the public about PFAS levels and work to reduce levels that go above the standards allowed for each. Public Water Systems (“PWSs”) will have three years to comply with the proposed standards

from the date of final approval of these standards by the EPA. The settlement funds secured by the 3M and DuPont PWS Settlements will allow water systems to plan and help pay for timely compliance.

How were these settlements reached?

Lawyers have been pursuing cases related to certain subsets of PFAS chemicals for approximately 20 years. This particular litigation, the *AFFF MDL* (MDL2873), is focused specifically on PFAS contamination associated with aqueous film-forming foam, or AFFF. However, although the *AFFF MDL* focused on AFFF, both the 3M and DuPont Settlements pertain to all PFAS in PWS irrespective of source.

The *AFFF MDL* began approximately five years ago and was consolidated into a multi-district litigation (MDL) before the Honorable Richard M. Gergel in the District of South Carolina. The *AFFF MDL* involved the production of 37.4 million pages of documents, 164 depositions, over a year of briefing and argument on 3M's and DuPont's key legal defenses, overcoming dozens of attacks on Plaintiffs' world-renowned experts, hearings and rulings on thousands of pages of damaging evidence and 2½ years of settlement negotiations, including more than 60 days of intense Court-appointed mediation sessions, and a trial-ready team poised to begin trial when settlement was reached, which was literally the night before jury selection was scheduled to begin.

Why is it important for 3M and DuPont to pay billions?

The settlements reached with 3M Company and the DuPont defendants,¹ for \$12.5 billion and \$1.185 billion, respectively, are, collectively, the largest water provider settlements in history. Together they represent potentially the single largest source of funding for PFAS treatment costs to date. It is estimated that it would cost approximately \$100 billion or more to address the nation's PFAS contamination. Finding funding sufficient to address a problem of this magnitude will require more than one funding source. The effort to address PFAS contamination to provide safe and clean drinking water for every American will require a years-long effort involving multiple actors and funding sources, including government entities, environmental agencies and private companies.

However, in addition to these settlements, the recently enacted Bipartisan Infrastructure Law set aside approximately \$4 billion dollars in federal funding for PFAS treatment and another \$5 billion was set aside exclusively for underserved communities.² While federal funding will supplement the settlements that have already been reached, at the same time, the MDL litigation will continue and Plaintiffs will continue to fight to reach *additional* settlements with the many other defendants in the litigation to secure more sources of funding for PFAS treatment so that they may be held responsible to the fullest extent possible for the harm they have caused. These

¹ The DuPont defendants are The Chemours Company, The Chemours Company FC, LLC, DuPont de Nemours, Inc., Corteva, Inc., and E.I. DuPont de Nemours and Company n/k/a EIDP, Inc. (hereinafter collectively referred to as "DuPont").

² EPA website, Bipartisan Infrastructure Law: A Historic Investment in Water, *available at*: <https://www.epa.gov/system/files/documents/2021-11/e-ow-bid-fact-sheet-final.508.pdf>

settlements show that wrongdoers are paying for PFAS cleanup, rather than the ratepayers who would otherwise have to pay higher rates to cover cleanup costs.

Will these settlements be enough to clean up PFAS in America's water supply?

No single settlement will provide enough money to make every water provider in the U.S. whole, as the anticipated cost of PFAS drinking water clean-up exceeds the market cap of all potentially liable defendants. The historic \$12.5 billion 3M settlement is one of a number of funding sources PWS can access to fund PFAS treatment; other sources include the \$1.185 billion DuPont settlement; the federal government has also earmarked approximately \$9 billion in funds that may be available to assist with PFAS cleanup; further settlements with other defendants are likely; and there are grant and loan opportunities available to PWS as well.

What was the settling defendants' role in producing PFAS?

3M was historically the largest producer of PFAS, and since 1965 has controlled more than 70% of that market.

DuPont comprised a much lesser market share. DuPont's estimated relative liability as compared to other Defendants in the *AFFF MDL* was estimated to be approximately 3-7%.

Do these settlements preclude the States, other entities and individuals from suing 3M and DuPont?

No. These settlements do not resolve all of 3M's and DuPont's potential exposure for PFAS litigation. Personal injury and property damage suits by individuals, as well as suits by States for damage to natural resources, remain outside the scope of these agreements.

How much will each PWS receive?

PWS will receive funds in line with their flow rates and rate of PFAS contamination, since those are the primary objective factors that drive treatment costs. The Estimated Allocation Range Tables allow potential Class Members to get an estimate of how much they might receive per contaminated water source from the 3M Settlement, while this Table provides such estimate for the DuPont Settlement. The settlements also provide funds for testing where PFAS is not yet detected. Many PWSs are or will soon be subject to applicable drinking water standards and so will be required to perform this testing, independently of the settlements. The testing provided for by the settlements is broader than the testing required by the EPA.

The Tables are available at the Claims Administrator Settlement website, www.PFASWaterSettlement.com, or at the Court-appointed Plaintiffs' Executive Committee (PEC)'s website, www.afff-mdl.com.

How do you respond to those who may say the 3M settlement isn't enough money?

The 3M settlement of up to \$12.5 billion is by far the largest single source of private funding for PFAS remediation to date, and represents 22% of the company's entire market cap. Furthermore, the settlement is structured so that it maximizes recovery while reducing the risk of a 3M bankruptcy..

Can PWS opt out of the settlements?

Yes, they can but that will set them back years, since they would need to relitigate the issues that the settlements would otherwise resolve and further there is no guaranteed outcome. By contrast, the settlements remove litigation risk and will provide funds starting in 2024 so PWS can begin to fix their PFAS contamination problems quickly.

How are those who negotiated the settlements addressing the concerns of some state Attorneys General?

The attorneys who negotiated the settlements worked with the States to address their concerns and the AGs have withdrawn their opposition to the DuPont and 3M settlements.

Who will get the money from the settlements?

Based on the settlement agreements, the money will go directly to the PWS, not to the States or other entities.

How many PWS will benefit from the settlements?

The settlements would include any PWS serves more than 25 people and has detected PFAS in their wells or must test for same. The DuPont settlement agreement would also provide for a one-time payment to Inactive Water Systems that have confirmed contamination, as well as a one-time payment for Very Small Public Water Systems (those serving less than 3,300 people). Funds from the settlements are to be used for water testing and decontamination, and for the construction of filtering systems.

How long will it take to clean up the nation's water supply?

PFAS contamination did not happen overnight and will not be resolved overnight. It took decades for regulators to catch up to the issue, and it will take decades and the combined efforts of industry, government, and public water providers to clean up the country's PWS.

What happens if too many PWS opt out?

If too many PWSs seek their own trials or a larger payday, 3M and DuPont will have no choice but to exercise their right to terminate the settlements, and might well seek bankruptcy protection. If that were to occur, PWS would be forced to wait years for the bankruptcy court to

sort out all of the defendants' creditors and water systems could end up with pennies on the dollar, at best.

What if a PWS discovers contamination sometime in the future?

Both agreements account for the fact that the number of PWS with PFAS contamination is unknown (and currently unknowable, since PWS are not required to report their PFAS test results). The settlements are structured so that both those PWS with known contamination – Phase One claimants – and those with as-of-yet unknown contamination – Phase Two claimants – are compensated in such a way that reflects the real-world costs of both testing for and remediating PFAS in drinking water..

Can members of the general public receive funds if their water supply or their private well is contaminated with PFAS?

No. Only PWS are Class Members in these class action settlement agreements.

What do organizations representing PWS say about the settlements?

The National Rural Water Association – the nation's largest water and wastewater utility membership association – strongly supports the settlements. "These settlements serve as a source of supplementary funding for public water systems, aiding them in the important task of purifying their drinking water sources from PFAS contamination," Matt Holmes, CEO of the National Rural Water Association, said in a statement.

Where can PWS get details on how much they will receive from the settlements?

Estimated Allocation Range Tables detailing what PWS can expect from the settlement are available at www.PFASWaterSettlement.com, as well as at www.afff-mdl.com.

When will the settlements be final?

Judge Gergel has scheduled a Final Fairness Hearing for the DuPont settlement on December 14, 2023, and for the 3M settlement on February 2, 2024. The settlements are expected to receive final approval after those hearings.

When will PWS begin to receive payments?

Payments are expected to begin in 2024 and continue for a number of years.

What do PWS need to do next?

Potential Class Member PWS need to complete a claim form, which is available online at www.PFASWaterSettlement.com and can be submitted to the Claims Administrator electronically or on paper. PWS can begin providing information required by the Claims Forms for both the DuPont and 3M settlements now that the judge has granted preliminary approval.

The applications can then be finalized after final approval of the settlements (expected in December for the DuPont settlement and in February for the 3M settlement).