



Agency of Natural Resources
Vermont Department of Environmental Conservation

October 31, 2023

INFORMATION ON PFAS SETTLEMENTS FOR PUBLIC WATER SYSTEMS

This memo provides basic information about two recent class action settlements involving PFAS and public water systems. More information is available at: www.pfaswatersettlement.com. This also is where you can find any amendments or updates to the settlements (in particular on the “Documents” tabs).

A federal court in South Carolina granted preliminary approval to two separate, nationwide class action settlements between certain public water systems and companies that manufactured PFAS chemicals. The settlements are with (1) 3M Company and (2) several DuPont-related companies. The case is *In re Aqueous Film-Forming Foams Products Liability Litigation*, MDL No. 2:18-mn-2873.

Public water systems that are part of the class in either settlement may decide to remain in the class or opt out of each settlement.

- **If a water system decides to opt out, the deadlines are:**
 - **December 4 (DuPont)**
 - **December 11 (3M)**
 - **See page 9.**
- **If a water system decides to remain in a class, the water system must file a claim in order to receive any funds from the settlement. See page 14.**

The State of Vermont has two separate, ongoing lawsuits against PFAS and aqueous film-forming foam (AFFF) manufacturers. See page 6 for more information about the lawsuits.

This document is for informational purposes only and is not intended as legal advice. Water systems should consult with their own legal counsel about the information presented here. The State is not providing recommendations on whether water systems should remain in the class or opt out. This is an individual choice for each water system.

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How to figure out whether your public water system is in one of the classes:

- If you are a potential member of a class, you should have already received a “Legal Notice of Settlement of Class Action” from 3M, DuPont,¹ or both (if your system is a potential member of both classes). The Notice was sent to public water systems that are potential class members.
- **3M Settlement:** The 3M settlement does not include transient public water systems or non-transient non-community public water systems that serve fewer than 3,300 people. There are two phases of class members.
 - “Phase one” class members are public water systems with any detection of PFAS.
 - “Phase two” class members are public water systems that have not detected PFAS and are required to conduct PFAS testing under UCMR5 (UCMR5 is the U.S. EPA-required unregulated contaminant monitoring program).
 - 3M has provided lists of potential class members that may fall into the “phase one” and “phase two” classes to help public water systems determine whether they are class members but you are only a class member if you meet one of the class definitions.²
- **DuPont Settlement:** The DuPont settlement includes community water systems, non-transient non-community water systems, and transient non-community water systems that meet these criteria:
 - Public water systems that have at least 15 service connections or regularly serve at least 25 individuals if the water system:
 - Draws or collects from any water source that has a detection of PFAS; *or* Is subject to the monitoring rules in UCMR5 *or* is required under federal or state law to test or otherwise analyze any of its water sources or the water it provides for PFAS before the UCMR5 deadline.

More information on UCMR5 is available here: <https://www.epa.gov/dwucmr/fifth-unregulated-contaminant-monitoring-rule>.

The parties to the 3M and DuPont settlements recently provided guidance that wholesalers and retailers of water may be part of the classes if they otherwise meet the class definitions.³

If you are a class member, then you can opt out or file a claim -- see page 9.

¹ The DuPont related companies are EIDP, Inc. (formerly known as E. I. du Pont de Nemours and Company), The Chemours Company, The Chemours Company FC, LLC, DuPont de Nemours, Inc., and Corteva, Inc.

² Settlement Agreement Between 3M Company and Public Water Systems at § 5.2 and Exhibits E and F, *available at* <https://www.pfaswatersettlement.com/wp-content/uploads/2023/09/3.-ECF-10-3-Settlement-Agreement-as-originally-filed.pdf>.

³ See the “Order Granting Joint Motion to Supplement Allocation Procedures” and “Joint Guidance on Interrelated Drinking-Water Systems” under the “Documents” tabs for the 3M and DuPont settlements at www.pfaswatersettlement.com.

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The basics of the settlements:

Background. The settlements arose from multidistrict litigation (MDL) in the United States District Court for the District of South Carolina, where there are thousands of cases from across the country for PFAS contamination caused by a firefighting foam known as AFFF. The MDL includes many cases by water providers as well as by other plaintiffs like states and individuals. The first water provider trial was set to begin in June, but the parties reached these class action settlements instead. Because the class action settlements are so broad, many public water systems are part of the classes *even if* the water system did not file a case in the MDL and *even if* the water system is not contaminated by AFFF.

Though Vermont has a case in the MDL (see below for further information), Vermont did not negotiate the class action settlements. The class action settlements were negotiated by 3M, the DuPont-related entities, and attorneys for certain public water systems located outside Vermont.

Process. There are different phases to class action settlements.

- Preliminary approval. The MDL court granted preliminary approval to the 3M and DuPont settlements in August. This approved the mailing of notice to the potential class members informing them of the settlement, providing them with information and upcoming deadlines regarding the settlement, and telling them that they may opt out of the settlement.
- Notice to class members. This is the time period when the attorneys in the class action settlement mail notice of the settlement to potential class members.
- Opt-out period. This is the period we are in right now. During this time period, class members need to decide whether to opt out of the settlement. **If you do nothing, then you will remain in the proposed class (assuming you are a class member), and you will need to file claim form(s) in order to receive funds under the settlement(s).**⁴
- Final approval. This is when the court will determine whether to grant final approval to the settlement. Once this happens, it establishes a deadline to file claim forms.
- Claims period. If you did not opt out, this is the period during which you need to submit a claims form in order to receive funds under the settlement.
- Other. After the claims period, under the 3M settlement there is an opportunity to submit supplemental claims under certain circumstances in future years.

Settlement terms.

3M settlement: provides for overall payments of between \$10.5 billion and \$12.5 billion to settle all claims of PFAS contamination in public water systems that are part of the class. The total amount of the settlement depends upon the number of public water systems that stay in the class. 3M will fund the settlement over a period of thirteen years, from July 1, 2024 to April 15, 2036.

⁴ If you don't opt out, this is also the time when you can file an "objection," though the deadlines are almost a month earlier. An objection is a way to challenge the terms of the settlement or the attorneys' fees for class counsel. <https://www.pfaswatersettlement.com/3m-frequently-asked-questions/> at FAQ #8.

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DuPont settlement: provides for payment of \$1.185 billion to settle all claims of PFAS contamination in public water systems that are part of the class. The DuPont settlement monies will be paid out over a period of years through at least 2031.

Any public water system that is part of the 3M and/or DuPont settlement classes and does not affirmatively opt out of the class will be bound by the settlement once it is finally approved and will lose the legal right to file a separate lawsuit against 3M or DuPont for PFAS contamination, in exchange for any monies received through the settlement. There are many other terms to the settlement, and we encourage water systems to consult with their own legal counsel to learn more about the terms and what they mean for each individual water system.

The 3M settlement agreement is available here:

<https://www.pfaswatersettlement.com/3m-court-documents/>

(scroll down to “Court Documents”)

The DuPont settlement agreement is available here:

<https://www.pfaswatersettlement.com/duPont-court-documents/>

(scroll down to “Court Documents”)

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Information about Vermont's lawsuits:

The State of Vermont has filed its own, separate lawsuits against PFAS and AFFF manufacturers. One lawsuit addresses PFAS contamination from AFFF. This case is in federal court in the MDL. The other lawsuit addresses PFAS contamination from non-AFFF sources like consumer products and industrial operations. This case is in state court. Both of the State's cases include claims for contamination of public water systems in Vermont. The cases seek money damages to pay for the costs of removing PFAS contamination from public water systems and for ongoing testing of public water systems for PFAS contamination, among other things. The State's lawsuits are expected to take several years.

If a water system does not opt out of the class action settlement(s), then the State probably will not be able to recover funds from one or both defendants to address PFAS in that water system as part of the State's lawsuits. While the State **cannot guarantee the outcome of its lawsuits or the amount of any recovery**, or that any funds ultimately recovered will be distributed to a particular public water system, the State is seeking to recover significantly more money from 3M and the DuPont companies than would likely be available to Vermont public water systems under the national class action settlements.

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How to figure out what you will receive under the 3M and DuPont settlements:

The amount of money that each public water system would receive under the 3M and/or DuPont settlements **cannot be precisely determined** because the amount will depend on the number of public water systems participating in the settlements and other factors. There are over 100,000 potential water system class members who may receive money under the settlements.

The attorneys who worked on the class action settlement have developed a formula for each class member to estimate its potential recovery under the settlements. The formula requires two inputs: the flow rate for the public water system in gallons per minute (gpm) and the level of PFAS detected. Public water systems may access the formula and calculate a range of their likely payments under either settlement at the following webpages:

- 3M Estimated Allocation Range Table: <https://www.pfaswatersettlement.com/wp-content/uploads/2023/08/3M-Estimated-Allocation-Range-Table.pdf>.
- DuPont Entities Estimated Allocation Range Table: <https://www.pfaswatersettlement.com/wp-content/uploads/2023/08/DuPont-Estimated-Allocation-Range-Table.pdf>.

The State has developed the chart on the next page to show the approximate amounts that a public water system would have to spend on granular activated carbon (GAC) treatment (both capital costs and annual operation and maintenance costs) in order to remove PFAS contamination. **The chart does not include other costs that water systems may incur to address PFAS, such as:**

- Treatment design, construction/project management, and permitting costs;
- O&M manual;
- Pre-treatment capital and O&M costs to address things like iron and manganese which will impact the GAC's ability to address PFAS;
- Capital and O&M costs for disinfection modification/relocation/adjustment;
- The need to install storage and/or booster pumps in certain situations when GAC treatment is installed;
- The need to build a new building to house treatment equipment if it will not fit into the existing system building(s);
- Purchasing of land for new buildings for treatment equipment.

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State Estimate of GAC-Only Costs to Remove PFAS Contamination

PWS Design Flow (gpm)	Non-transient, non-community water systems		Community water systems	
	GAC Equipment (GAC equipment and labor for installation)	Annual O&M for GAC (equipment and labor for GAC replacement filters, includes sampling)	GAC Equipment (GAC equipment and labor for installation)	Annual O&M for GAC (equipment and labor for GAC replacement filters, includes sampling)
3	\$5,790	\$44,500	\$11,580	\$ 44,600
8	\$17,350	\$50,200	\$34,700	\$50,700
15	\$54,350	\$69,400	\$108,700	\$70,000
30	\$107,300	\$106,800	\$214,600	\$109,800
50	\$259,048	\$115,700	\$518,096	\$125,400
125	\$ -	\$ -	\$1,019,530	\$184,100
250	\$ -	\$ -	\$1,715,560	\$286,000

** The chart does not include other costs that water systems may incur to address PFAS, as listed on the preceding page.*

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How to opt out or file a claim:

Below, we outline:

- 1) the current schedule and procedures for opting out of the classes for both settlements, and
- 2) if you decide to remain in the class(es), the procedures for filing a claim to obtain funds.

The below outline is intended to be helpful, but please consult the Notice you received, the materials on the class action website (www.pfaswatersettlement.com), and/or your own legal counsel to ensure you meet all the requirements for opting out or making a claim.

As noted below, if you do not opt out, you need to make sure to follow the specific requirements for submitting a claim in order to receive any funds under the settlement. Please review those requirements carefully to ensure you follow them if you remain in the class and wish to receive funds.

1. Opt-outs

a. DuPont Settlement – deadline December 4, 2023

See www.pfaswatersettlement.com/dupont-frequently-asked-questions/
 (“What do you need to do now?”)

A class member who wants to opt out must submit a written “Request for Exclusion” to the Notice Administrator and serve a copy on the Claims Administrator, Special Master, Class Counsel, and Settling Defendants’ Counsel at the addresses set forth in the Notice and reproduced here.

How and where to send: send a written “Request for Exclusion” separately via first class or certified mail, confirmation requested to each of the following:

Notice Administrator:

In re: Aqueous Film-Forming Foams Products Liability Litigation
c/o Notice Administrator
1650 Arch Street, Suite 2210
Philadelphia, PA 19103

Claims Administrator:

AFFF Public Water System Claims
PO Box 4466
Baton Rouge, LA 70821

Special Master:

Matthew Garretson
Wolf/Garretson LLC
P.O. Box 2806
Park City, UT 84060

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Settling Defendants:

The Chemours Company
Office of the General Counsel
1007 Market Street Wilmington, DE 19801
Attn: Kristine M. Wellman
kristine.m.wellman@chemours.com

Jeffrey M. Wintner
Graham W. Meli
Wachtell, Lipton, Rosen & Katz
51 West 52nd Street New York, NY 10019
jmwintner@wlrk.com
gwmeli@wlrk.com

DuPont de Nemours, Inc.
974 Centre Rd.
Wilmington, DE 19806
Attn: Erik T. Hoover
erik.t.hoover@dupont.com

Kevin T. Van Wart
Kirkland & Ellis LLP
300 North LaSalle
Chicago, IL 60654
kevin.vanwart@kirkland.com

Corteva Inc.
974 Centre Road
Building 735
Wilmington, DE 19805
Attn: Cornel B. Fuerer
cornel.b.fuerer@corteva.com

Michael T. Reynolds
Cravath, Swaine & Moore LLP
825 Eighth Avenue
New York, NY 10019
mreynolds@cravath.com

EIDP, Inc.
974 Centre Road
Building 735
Wilmington, DE 19805
Attn: Thomas A. Warnock
thomas.a.warnock@corteva.com

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Michael T. Reynolds
Cravath, Swaine & Moore LLP
825 Eighth Avenue
New York, NY 10019
mreynolds@cravath.com

Class Counsel:

Michael A. London
Douglas & London, P.C.
59 Maiden Lane,
6 Floor New York, New York 10038
mlondon@douglasandlondon.com

Paul J. Napoli
Napoli Shkolnik
1302 Avenida Ponce de Leon
Santurce, Puerto Rico 00907
Pnapoli@NSPRLaw.com

Scott Summy
Baron & Budd, P.C.
3102 Oak Lawn Avenue, Suite 1100
Dallas, Texas 75219
ssummy@baronbudd.com

Elizabeth A. Fegan
Fegan Scott LLC
150 South Wacker Drive, 24th Floor
Chicago, Illinois 60606
beth@feganscott.com

Joseph F. Rice
Motley Rice LLC
28 Bridgeside Boulevard
Mt. Pleasant, South Carolina 29464
jrice@motleyrice.com

Contents of request: the written Request for Exclusion must certify, under penalty of perjury in accordance with 28 U.S.C. § 1746, that the filer has been legally authorized to exclude the Person (i.e., public water system and WSID) from the Settlement and must: (a) provide an affidavit or other proof of the standing of the Person requesting exclusion and why they would be a Settlement Class Member absent the Request for Exclusion; (b) provide the filer's name, address, telephone and facsimile number and if available email address; and (c) provide the name, address, telephone number, and if available e-mail address of the Person whose exclusion is requested.

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Other document requirements: in sending any document to the Notice Administrator, Claims Administrator, the Court, Class Counsel, or Settling Defendants' Counsel, a public water system must include the following case name and number on any documents and on the outside of the envelope: *In re: Aqueous Film-Forming Foams Products Liability Litigation*, MDL No. 2:18-mn-2873 (D.S.C.), this document relates to: *City of Camden, et al., v. E.I. DuPont de Nemours and Company, et al.*, No. 2:23-cv-03230-RMG. You must also include your full name, address, email address, and a telephone number where you can be reached.

Deadline: the written Request for Exclusion must be received by the Notice Administrator no later than ninety (90) calendar days following the commencement of the Notice Plan in the settlement, which is the last day of the opt out period. The last day of the opt out period is **December 4, 2023**.

b. 3M Settlement – deadline December 11, 2023

See www.pfaswatersettlement.com/3m-frequently-asked-questions/ (“What do you need to do now?”)

A class member who wants to opt out must submit a written Request for Exclusion to the Notice Administrator, and serve a copy on the Claims Administrator, Special Master, Settling Defendants' Counsel, and Class Counsel at the addresses set forth in the Notice and reproduced here:

How and where to send: send a written “Request for Exclusion” separately via electronic mail (for the following with email addresses below) and overnight courier, confirmation requested to each of the following:

Notice Administrator:

In re: Aqueous Film-Forming Foams Products Liability Litigation
c/o Notice Administrator
1650 Arch Street, Suite 2210
Philadelphia, PA 19103

Claims Administrator:

AFFF Public Water System Claims
PO Box 4466
Baton Rouge, LA 70821

Special Master:

Matthew Garretson
Wolf/Garretson LLC
P.O. Box 2806
Park City, UT 84060

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3M's Counsel:

Kevin H. Rhodes
Executive Vice President and Chief Legal Affairs Officer Legal Affairs Department
3M Company
3M Center, 220-9E-01
St. Paul, MN 55144-1000
krhodes@mmm.com

Thomas J. Perrelli
Jenner & Block LLP
1099 New York Avenue, N.W., Suite 900
Washington, DC 20001-4412
Tperrelli@jenner.com

Richard F. Bulger
Mayer Brown LLP
71 South Wacker Drive
Chicago, Illinois 60606
Rbulger@mayerbrown.com

Class Counsel:

Michael A. London
Douglas & London, P.C.
59 Maiden Lane,
6 Floor New York, New York 10038
mlondon@douglasandlondon.com

Paul J. Napoli
Napoli Shkolnik
1302 Avenida Ponce de Leon
Santurce, Puerto Rico 00907
Pnapoli@NSPRLaw.com

Scott Summy
Baron & Budd, P.C.
3102 Oak Lawn Avenue, Suite 1100
Dallas, Texas 75219
ssummy@baronbudd.com

Elizabeth A. Fegan
Fegan Scott LLC
150 South Wacker Drive, 24th Floor
Chicago, Illinois 60606
beth@feganscott.com

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Joseph F. Rice
Motley Rice LLC
28 Bridgeside Boulevard
Mt. Pleasant, South Carolina 29464
jrice@motleyrice.com

Contents of request: the Written Request for Exclusion must certify, under penalty of perjury in accordance with 28 U.S.C. § 1746, that the filer has been legally authorized to exclude the Person (i.e., public water system and WSID) from the Settlement and must: (a) provide an affidavit or other proof of the standing of the Person requesting exclusion and why they would be a Settlement Class Member absent the Request for Exclusion; (b) provide the filer's name, address, telephone and facsimile number and email address (if available); and (c) provide the name, address, telephone number, and e-mail address (if available) of the Person whose exclusion is requested.

Other document requirements: in sending any document to the Notice Administrator, Claims Administrator, the Court, Class Counsel, or Settling Defendants' Counsel, a public water system must include the following case name and number on any documents and on the outside of the envelope: *In re: Aqueous Film-Forming Foams Products Liability Litigation*, MDL No. 2:18-mn-2873 (D.S.C.), this document relates to: *City of Camden, et al., v. 3M Company*, No. 2:23-cv-03147-RMG. You must also include your full name, address, email address, and a telephone number where you can be reached.

Deadline: the written Request for Exclusion must be received by the Notice Administrator no later than ninety (90) calendar days following the commencement of the Notice Plan in the settlement, which is the last day of the opt out period. The last day of the opt out period is **December 11, 2023**.

2. Class members who do not opt out

Class members are not entitled to monetary allocations simply by being in the class. Instead, a water system must take specific steps to submit a claim and obtain a recovery.

a. DuPont Settlement

- A Final Fairness Hearing is set for December 14, 2023 for the DuPont Settlement. Please see www.pfaswatersettlement.com for deadlines to submit claims forms.
- Each fund source will have separate claims forms that need to be filled out and submitted in order for a water provider to be eligible to receive a payment under the Settlement.

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- For Phase One Qualifying Members, available settlement funds are grouped into five separate payment sources: Phase One Very Small Public Water System Payments, the Phase One Inactive Impacted Water System Payments, the Phase One Action Fund, the Phase One Supplemental Fund, and the Phase One Special Needs Fund.
- For Phase Two Qualifying Members, funds are grouped into five separate payment sources: the Phase Two Very Small Public Water System, the Phase Two Baseline Testing Payments, the Phase Two Action Fund, the Phase Two Supplemental Fund, and the Phase Two Special Needs Fund.
- The DuPont Settlement does not provide a list of public water systems that are included within each phase of the settlement. Instead, a public water system must determine whether it meets the description of class members.
- Class members can submit the Claims Form online at www.pfaswatersettlement.com or you can download, complete, and mail the Claims Form to the Claims Administrator at AFFF Public Water System Claims, P.O. Box 4466, Baton Rouge, Louisiana 70821.
- Each water source for a public water system must be tested.
 - Water sources tested prior to December 7, 2021 with test results that do not show a detection of PFAS at any level must re-test. Each water source must be analyzed for at least the 29 PFAS chemicals required under UCMR 5, using a methodology consistent with the requirements of UCMR 5 or applicable State requirements (if stricter).
 - Water sources tested for PFAS after U.S. EPA's announcement of the testing requirements of UCMR-5 (December 2021) that were analyzed using a methodology consistent with the requirements of UCMR 5 or applicable State requirements (if stricter) that do not show a detection of PFAS at any level do not need to re-test.
 - Water sources tested for PFAS after U.S. EPA's announcement of the testing requirements of UCMR-5 (December 2021) that were not analyzed using a methodology consistent with the requirements of UCMR 5 or applicable State requirements (if stricter) that do not show a detection of PFAS at any level must re-test using a methodology consistent with the requirements of UCMR 5 or applicable State requirements (if stricter).
 - Any water source tested before June 30, 2023 that did result in a PFAS detection does NOT need to re-test.
 - If you do need to retest, the PFAS analysis must be conducted at a minimum for PFAS analytes required by UCMR 5, the PFAS test results must report any measurable concentration of PFAS (regardless of whether the level of PFAS detected in the water is above or below UCMR 5's relevant minimum reporting level), and testing shall be done on untreated

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(raw) water. Failure to test and submit these testing results will disqualify a public water system from DuPont settlement payments.⁵

- Failure to file a proper claim may prevent a water system from receiving any recovery under the settlement. The Claims Administrator will review each Claims Form, verify the completeness of the data it contains, and follow up as appropriate, including to notify class members of the need to cure deficiencies in their submission.⁶

b. 3M Settlement

- A Final Fairness Hearing is set for February 2, 2024 for the 3M Settlement. Please see www.pfaswatersettlement.com for deadlines to submit claims forms.
- The Claims Administrator will separate the Phase One Funds into three distinct funds: the Phase One Action Fund, the Phase One Supplemental Fund and the Phase One Special Needs Fund. Similarly, the Phase Two Funds will be separated into four distinct funds: the Phase Two Action Fund, the Phase Two Supplemental Fund, the Phase Two Special Needs Fund, and the Phase Two Testing Compensation Fund.
- The 3M Settlement identifies those water providers that it believes fall within Phase One or Phase Two. Copies of the list of such class members can be found at www.pfaswatersettlement.com.⁷
- Class members can submit the Claims Form online at www.pfaswatersettlement.com or you can download, complete, and mail the Claims Form to the Claims Administrator at AFFF Public Water System Claims, P.O. Box 4466, Baton Rouge, Louisiana 70821.
- Each fund source will have separate claims forms that need to be filled out and submitted in order for a water provider to be eligible to receive a payment under the Settlement. However, as a general matter, the following information will be required for each Qualifying Member for all claims forms:
 - Each Phase One Qualifying Class Member must test each of its Water Sources for PFAS; request from the laboratory that performs the analyses all analytical results, including the actual numeric values of all analytical

⁵ Class Action Settlement Agreement at Exh. C pp. 7-8, *available at* <https://www.pfaswatersettlement.com/wp-content/uploads/2023/09/3.-ECF-4-2-Settlement-Agreement.pdf>.

⁶ Notice of Proposed Class Action Settlement and Court Approval Hearing for DuPont settlement at pp.7-8, *available at* <https://www.pfaswatersettlement.com/wp-content/uploads/2023/08/DuPont-Notice-Long-Form-with-Coversheet.pdf>.

⁷ Settlement Agreement Between 3M Company and Public Water Systems at § 5.2 and Exhibits E and F, *available at* <https://www.pfaswatersettlement.com/wp-content/uploads/2023/09/3.-ECF-10-3-Settlement-Agreement-as-originally-filed.pdf>.

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results; and submit or cause the testing laboratory to submit detailed PFAS test results to the Claims Administrator on a Claims Form(s).

- Each Phase Two Qualifying Class Member must test each of its Water Sources for PFAS; request from the laboratory that performs the analyses all analytical results, including the actual numeric values; and submit or cause the testing laboratory to submit detailed PFAS test results to the Claims Administrator on a Claims Form within forty-five (45) calendar days after receiving the test results, absent what the Claims Administrator deems in writing to be an extraordinary circumstance, and no later than July 1, 2026.

Failure to file a proper claim may prevent a water system from receiving any recovery under the settlement. The Claims Administrator will review each Claims Form, verify the completeness of the data it contains, and follow up as appropriate, including to notify class members of the need to cure deficiencies in their submission.⁸

We encourage water systems to consult with their legal counsel with any questions about their rights or obligations under the class action settlements and for any legal advice regarding how they should proceed.

Purely technical questions (e.g., regarding flow rates or PFAS sampling results) or questions about DEC's regulatory program can be directed to DEC's PFAS hotline at (802) 693-0206.

⁸ Notice of Proposed Class Action Settlement and Court Approval Hearing for 3M settlement at p.4, *available at* <https://www.pfaswatersettlement.com/wp-content/uploads/2023/09/AFF-3M-Long-Form-Notice-Final.pdf>.