



AGENDA

Special Utility Commission Meeting
Waupun Utilities – 817 S Madison St.
Waupun, WI P.O. Box 431
Thursday, November 16, 2023 AT 3:00 PM

There is a special commission meeting scheduled for Thursday, November 16, at 3:00 p.m. via Zoom.

Join Zoom Meeting

<https://us02web.zoom.us/j/84469768765>

Meeting ID: 844 6976 8765

Passcode: 987845

By phone

+1 312 626 6799

Meeting ID: 844 6976 8765

Passcode: 987845

CALL TO ORDER

ROLL CALL OF COMMISSIONERS

AGENDA

1. Opt-Out Approval of PFAS Water Settlement with 3M and DuPont Per Municipal Environmental Group Recommendation

ADJOURNMENT

Upon reasonable notice, efforts will be made to accommodate disabled individuals through appropriate aids and services. For additional information, contact the General Manager at 920-324-7920.

From: Lawrie J. Kobza <lkobza@boardmanclark.com>
Sent: Wednesday, October 18, 2023 1:12 PM
Subject: IMPORTANT - PFAS Settlement Information

Good afternoon MEG-Water Members,

Most of you have likely received notices of the PFAS settlements with 3M and DuPont. If you do nothing with these settlement notices, you will automatically be included in these settlements. That will be the case even if you do not submit a claim or receive any settlement funds. *If you are included in the settlements, your municipality will have released its claims against DuPont and 3M to the extent described in the agreements.*

A memo is attached that discusses the releases your municipalities will be providing to 3M and DuPont if you stay in the settlements. PLEASE READ THE ATTACHED MEMO. As the memo describes, the release provided to 3M is broad and addresses more than a municipality's drinking water claims. Since the municipality will be the one releasing claims if a utility stays in the 3M settlement, you should ensure that your municipality is aware of the impact and supportive of the settlement.

A municipality will be covered by the settlements and will grant the releases described in the memo unless it opts out of the settlements before the court established dates. The opt-out date for the DuPont settlement is December 4, 2023 and the opt-out date for the 3M settlement is December 11, 2023.

Lawrie



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TO: MEG-Water Members

FROM: MEG-Water Legal Counsel
Lawrie Kobza lkobza@boardmanclark.com
Jared Walker Smith jsmith@boardmanclark.com

DATED: October 18, 2023

RE: PFAS Settlement Documents from 3M and DuPont

Most Wisconsin water utilities have received class action settlement notices related to PFAS settlements with 3M and Du Pont. There are two separate settlements (one with 3M, and one with DuPont) and the terms of the settlements differ.

One thing that is the same with both settlement is that you will be covered by the settlement (and will have released the claims identified in the settlement agreements) unless you explicitly opt-out of the settlement.

Here are some things to consider.

- These settlements impact your municipality's future rights. The settlements do not just impact the water utility. Under the settlement agreements, your municipality is the "releasing party" or "releasing person". Your municipality should be making the decision whether to stay in the settlement.
- If you stay in the settlements, your municipality will be granting the releases in the settlement agreements even if the water utility does not file a claim or receive any money from the settlements.
- The releases in the 3M settlement and the DuPont settlement are different. The release provided in the DuPont settlement appears to be more limited and focused on claims related to drinking water impacts.¹

¹ The DuPont Agreement provides at Paragraph 12.1.3(y) that:

"[A]ny Releasing Person that is not a Public Water System but that is legally responsible for funding (by statute, regulation, other law, or contract) or that has authority to bring a Claim on behalf of, or to seek recovery for harm to, a Public Water System in the Settlement Class or the Public Water System's ability to provide safe or compliance Drinking Water, gives the release only to the extent of Claims that seek to recover for alleged harm to such Public Water System, and "Released Claims" shall not include other Claims of such Releasing Person."

- The release provide in the 3M settlement is much broader and should be carefully reviewed by your municipality. The settlement received from 3M may not justify the extent of the release your municipality would be giving 3M.
- The 3M release provides at paragraph 11.1 that a municipality who owns a public water system – and does not opt out of the 3M settlement – will be releasing 3M from all of the following claims:
 - All claims related to PFAS and drinking water or your public water system.
 - All claims for punitive or exemplary damages that relates to PFAS or any product manufactured with or containing PFAS (including AFFF) – no exceptions. (This is not limited to drinking water claims.)
 - All claims that relate to or involve representations about PFAS or any product (including AFFF) manufactured with or containing PFAS without exception. This would likely release any failure to warn claim a municipality may have against 3M. (This is not limited to drinking water claims.)
 - All claims related to the development, manufacture, formulation, distribution, sale, transportation, storage, loading, mixing, application, or use of PFAS or any product (including AFFF) manufactured with or containing PFAS – with a limited exception for federal or state required investigation or remediation costs to address PFAS contamination on municipal property that is not related to the public water system. (This is not limited to drinking water claims.)
 - All claims that relate to the municipality’s transport, disposal, or arrangement for disposal of PFAS-containing waste or PFAS-containing wastewater – with a limited exception for required costs to remediate or remove PFAS contamination at the municipality’s a permitted wastewater or stormwater system. (This is not limited to drinking water claims.)
- A municipality may file an objection to either settlement agreement with the court. An objection to the DuPont settlement must be filed by November 4, 2023. An objection to the 3M settlement must be filed by November 11, 2023. The court order sets out requirements that must be followed to file an objection.
- The deadline for opting out of the DuPont settlement is December 4, 2023. The deadline for opting out of the 3M settlement is December 11, 2023. The court order sets out requirements that must be followed to opt-out of the settlement.

Make sure that you are making an informed decision with respect to these settlement agreements. Do not release your municipality’s future rights by inaction.

If you have questions, please reach out.