



## MEMORANDUM

Date: October 24, 2023

To: Water Utility Board

From: Doran Viste, Assistant City Attorney  
Krishna Kumar, General Manager  
Joe Grande, Water Quality Manager

Subject: Status Report on PFAS Settlements

## BACKGROUND

All pending civil cases by drinking water suppliers against PFAS manufacturers in the United States have been consolidated into a multi-district litigation (MDL), overseen by a federal court in South Carolina. The MDL identified some “bell-weather” cases that were to set the stage for such actions moving forward. On the eve of the first of these trials, a settlement was reached with the two largest manufacturers: 3M and DuPont. 3M is by far the largest producer of the product, with the most potential liability.

Under the proposed settlements, all public water suppliers would be potential class members. 3M will pay between \$10.5B and \$12.5B in damages, and DuPont will pay \$1.185B in damages. Actual damages are unknown and will depend on how many members remain in the class and the extent of the existing or future PFAS contamination. Damages are meant to reimburse water providers from the costs incurred, or that will be expended, to treat the water supply so that it meets drinking water standards. Full details of the proposed settlements can be found at: <https://www.pfaswatersettlement.com/>.

Under Class Action laws, as a potential class member through the Madison Water Utility (Utility), the City of Madison can:

- 1) Remain in the class. This default option requires the City to waive all claims against the defendants, and then abide by the settlement agreement. The waiver does not apply to non-drinking water related property contamination claims, or to

claims arising from storm water or sanitary sewer remediation and treatment costs.

- 2) Opt out of the class settlement. This option will keep all of the City's claims against the manufacturers intact.

The City has until December 4, 2023 to opt out of the DuPont settlement, and December 11, 2023 to opt out of the 3M settlement. If the City remains in the class, it will have to file specific claims based upon the Utility's PFAS testing results.

As part of the settlements, the class attorneys have prepared a basic "good faith" estimate to let class members determine their potential settlements. Based on the "good faith" estimate framework of the damages provided by the class attorneys, and the City's testing results, the estimated settlement amount for the Utility is \$3.5 million. Please note that the actual amount could be higher (if lower overall class participation, or less overall contamination is reported), or lower (if more overall class participation and more widespread contamination is reported).

Therefore, the City's choices are:

- 1) To remain in the class and stand to receive a \$3.5 million estimated settlement payment to pay for drinking water treatment
  - a. For 3M, this would be over a 12-year proposed settlement payment period (2024-2036).
  - b. For DuPont, payment would be over the next couple of years.
- 2) To opt out and determine what the City wants to do later.
  - a. If the City opts out, it can still pursue civil litigation to recover our treatment costs. However, there is concern that the companies may declare partial bankruptcy or take other maneuvers to shelter the companies from other PFAS liability (such as personal injury, ground contamination, etc.).
  - b. Litigating these cases after the settlement could be difficult, especially if all of the bell-weather cases where the evidence has been gathered are settled. In this case, the Utility would be on its own in suing the companies.
  - c. There certainly is a risk that the Utility could end up getting substantially less than the \$3.5 million estimated settlement amount.

No formal action is required by the Water Utility Board or the Common Council for the City to remain in the class. Formal action would be required to opt-out of the class however.

The settlement amount would be used to offset the costs of the soon-to-be-constructed Well 15 PFAS treatment facility project. That way, the settlement amount would cover a portion of the cost of actual PFAS contamination in Madison's drinking water.