Preliminary Approval of PFAS Settlements for Dupont and 3M Triggers Important Deadlines for Public Water Systems

Sep 29, 2023

Categories:

Publications

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Public water systems (PWSs) across the U.S. are evaluating formal notices sent from a federal court in South Carolina, stating that two multibillion-dollar class-action settlements have received preliminary approval that may provide funding to deal with per- and poly-fluoroalkyl substance (PFAS) contamination of drinking water. For the past five years, the court has overseen thousands of claims filed against manufacturers, suppliers, and end users of PFAS-containing firefighting foams, as part of a federal multidistrict litigation statute. Frost Brown Todd (FBT) represents clients involved in the litigation.

These notices trigger important deadlines to decide whether to (1) file objections to, and/or opt out of, one or both settlements; (2) participate in upcoming hearings where the court will take testimony before deciding whether to issue final approval; and (3) prepare forms to seek recovery from the funds, which requires that most PWSs (referred to as Phase 1 or Phase 2 PWSs) conduct new or additional testing of water sources and evaluate flow data, and then prepare applicable forms to estimate recovery amounts. Here is a summary of the deadlines:

Event	Dupont Deadline	3M Deadline
Submit objections	11/4/2023	11/11/2023
Opt out of the settlement	12/4/2023	12/11/2023
Hearing to determine whether to issue final approval	12/14/2023 (participation limited to parties that file objections, but do not opt out of the settlement)	2/2/2024 (participation limited to parties that file objections, but do not opt out of the settlement)

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Submit phase 1 or 2 claim form	60 days after effective date of final judgment approving the settlement for phase 1, and 6/30/26 for phase 2	60 days after effective date of final judgment approving the settlement for phase 1, and 7/31/26 for phase 2
Submit special needs claim form	45 days after phase 1 claim form deadline, and 8/1/26 for phase 2	45 days after phase 1 claim form deadline, and 8/1/26 for phase 2
Submit phase 2 testing compensation claim form	1/1/2026	1/1/2026
Submit phase 1 or 2 supplemental fund claim form	12/31/2030 for both phase 1 and 2	12/31/2030 for both phase 1 and 2
Submit phase 2 action fund claim form	n/a	7/31/2026

While deadlines to submit final claim forms are not due for some time, preparation of draft forms must begin now due to the short deadlines to file objections and/or opt out of the settlements. In addition, because (1) the number of water sources and level of contamination and flow rate for each source, as well as (2) the potential eligibility for different pools of available funding, are the primary factors impacting the amount of recovery, there are several important decisions involved in each of these steps.

While not an exhaustive list, PWSs should immediately begin to (1) become familiar with settlement-related documents on the website identified in the notice; (2) evaluate whether new or additional testing of water sources is required or desired; (3) evaluate past flow data for each water source; (4) evaluate eligibility criteria for the different pools of funds; and (5) calculate an estimate of potential recovery under each settlement using the formulas provided in the claim forms, guided by the allocation procedures.

Unfortunately, the settlement amounts (approximately $1.2 billion for Dupont and related entities, and a maximum of $12.5 billion for

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3M) would provide only a small percentage of the total capital and O&M costs estimated by the U.S. EPA to be needed by PWSs to remove PFAS from drinking water. Information is not yet available to support the dollar amounts, including whether they fairly represent the culpability/market share of the settling companies, or whether they represent what the companies can reasonably afford to pay. FBT is working to obtain this information to assist clients to evaluate the reasonableness of the settlements, answer questions posed by residents and water customers, and otherwise make informed decisions.

Whether to object to, or opt out of, either settlement requires more than just estimating potential recovery and comparing it to the cost to treat PFAS. It also requires evaluating potential future claims that may be released if the PWS participates in the settlements, including contamination of property (e.g., fire training areas and local airports) and claims related to PFAS-contaminated wastewater/biosolids. As structured, a PWS that does not affirmatively opt out by the applicable deadline is bound by the settlement if the court grants final approval. If a PWS does not opt out, but fails to timely submit applicable claim forms once final approval is issued, existing and future claims against the settling companies will be barred.

Please contact the authors or another member of our Environmental Practice Group with any questions about the proposed settlements, or if you would like to discuss how FBT can assist in evaluating whether to accept the settlements and how to maximize potential recovery amounts.

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