
City Council Special Meeting

DEPARTMENT: Legal

FROM: Matt Ribitzki, Sr. Deputy City Attorney/Director of Legal Services

MEETING: November 27, 2023

SUBJECT:

Consider approval of a resolution authorizing the City Attorney or his designee to opt the city of Burleson out of the 3M and DuPont class action settlements for drinking water contamination, authorizing the city to enter into a memorandum of understanding with the city of Fort Worth and other wholesale water customers regarding the class action lawsuit; and authorizing litigation against 3M, Dupont, and other parties as necessary. (*Staff Presenter: Matt Ribitzki, Sr. Deputy City Attorney/Director of Legal Services*)

SUMMARY:

Forever chemicals, known technically as per- and polyfluoroalkyl substances (“PFAS”), are a class of man-made chemicals that do not naturally break down and have been linked to negative health and environmental outcomes. Recently, the U.S. Environmental Protection Agency has proposed to regulate certain PFAS under the Safe Drinking Water Act and Comprehensive Environmental Response, Compensation, and Liability Act. Thousands of lawsuits relating to harms caused by PFAS have been combined into multi-district litigation in the U.S. District Court for the District of South Carolina, *In re Aqueous Film-Forming Foams Products Liability Litigation*, No. 2:18-mn-2873-RMG (“MDL”). Numerous U.S. public water systems have brought hundreds of lawsuits currently pending in the MDL alleging contamination of their water supplies by PFAS manufacturers such as 3M Company (“3M”), which is or was a predominant manufacturer of PFAS, and DuPont de Nemours, Inc. and several associated companies (collectively, “DuPont”), which are or were major players in the PFAS market. The MDL court preliminarily approved two proposed class action settlement agreements between a nationwide class of public water systems and 3M as well as DuPont, in the cases *City of Camden, et al. v. 3M Company*, Case No. 2:23-cv-03147-RMG (D.S.C.), and *City of Camden, et al. v. E.I. DuPont de Nemours and Company, et al.*, No. 2:23-cv-03230-RMG (D.S.C.). Under the current MDL settlement documents, the City constitutes a public water system and is therefore a class member in both settlements. Unless the City affirmatively files a request for exclusion, or “opts out” of the settlement class, any class member, including the City, will be held to participate in each settlement. Class members have until December 4, 2023, to opt out of the DuPont settlement and until December 11, 2023, to opt out of the 3M settlement.

In the proposed resolution, the City Council would authorize the City Attorney or his designee to opt the City out of the 3M and DuPont settlements.

RECOMMENDATION:

- 1) Approve as presented or with modifications
- 2) Deny request

PRIOR ACTION/INPUT (Council, Boards, Citizens):

n/a

REFERENCE:

n/a

FISCAL IMPACT:

n/a

STAFF CONTACT:

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