

MEMORANDUM

TO: City Council

FROM: Eric Hagen

DATE: November 16, 2023

RE: 3M and DuPont PFAS Settlements

This memo is being provided to give guidance on whether the City should opt-out of the 3M and DuPont PFAS settlements by the December 4, 2023 (DuPont) and December 11, 2023 (3M) opt-out deadlines.

Public water utilities, such as the City, have received class action settlement notices related to PFAS settlements with 3M and DuPont. There are two separate settlements, and the terms of the settlements differ somewhat.

One thing that is the same with both settlements is that the City will be covered by the settlements (and will have released the claims identified in the settlement agreements) unless the City affirmatively opts-out of the settlements. If the City stays in the settlements, the City will be granting the releases in the settlement agreements even if it does not file a claim or receive any money from the settlements.

The releases in the 3M and DuPont settlements are different. The DuPont settlement release appears to be more limited and focuses on claims related to drinking water impacts. Whereas the release provided in the 3M settlement is much broader, 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. This is not limited to just drinking water claims.
- All claims that relate to or involve representations about PFAS or any product manufactured with or containing PFAS. This would likely release any failure to warn claim the City would have against 3M and is not limited to just drinking water claims.

- All claims related to development, manufacture, formulation, distribution, sale, transportation, storage, loading, mixing, application, or use of PFAS or any product 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 just 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 a municipality's permitted wastewater or stormwater system. This is not limited to just drinking water claims.

At this time, the City has a low-level detection of PFAS in Well Number 5, which is below the state's limit (70 parts per trillion) and the proposed federal limit (4 parts per trillion). Based on the amount of contamination and the well's flow rate, the City is estimated to receive approximately \$20,000 to \$40,000. In addition to this amount, the City will receive up to \$200/Well from DuPont and up to \$800/Well from 3M for testing. If additional contamination is detected at Well 5 or there is a detection in any of the City's other wells on or before December 31, 2030, the City will be eligible for additional funds. However, the City will not receive any additional money for any detections after December 31, 2030. Therefore, there is a risk that if the City stays in the settlements, it could have further detections after December 31, 2030, that it will not receive any money for, but would still be bound by the settlement releases preventing further recovery from 3M and DuPont.

While remaining in the settlements pose a risk that the City may have a detection it cannot obtain further compensation for from 3M and DuPont, opting out of the settlements also carries a risk. These settlements may be the best/only chance the City has to get any money from these companies for its PFAS contamination. One of the PFAS producing companies (Kidde-Fenwal Inc.) has already declared bankruptcy, in light of the lawsuits against it. It is very possible 3M and/or DuPont could also declare bankruptcy, barring future recovery against them. Additionally, the City would have to sue 3M and DuPont on its own if it opts out of the settlements, which carries some risk due to the inherent uncertainty of litigation and may be very costly.

Considering the City will receive an award due to the detection of PFAS in Well 5 and the risk associated with opting out of the settlements, it is my opinion that the City should consider remaining in both settlements.

Let me know if you have further questions.