



Office of

Attorney's Matters – December 12, 2023

# INDIAN RIVER COUNTY ATTORNEY

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## MEMORANDUM

TO: The Board of County Commissioners

THROUGH: John A. Titkanich Jr., County Administrator

FROM: Keith Jackman, Assistant County Attorney

DATE: December 7, 2023

SUBJECT: PFAS Class Action Settlement; In Re: Aqueous Film Forming Foams Product Liability Litigation

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### **BACKGROUND:**

Per- and Polyfluoroalkyl Substances (PFAS) are a group of manufactured chemicals that have been used in industry and consumer products since the mid-1940s because of their useful properties. There are thousands of different PFAS, some of which have been more widely used and studied than others. PFAS are long lasting chemicals, components of which break down very slowly over time.

Because of their widespread use and their persistence in the environment, many PFAS are found in the blood of people and animals all over the world and are present at low levels in a variety of food products and in the environment. PFAS are found in water, air, fish, and soil at locations across the nation and the globe. Scientific studies have shown that exposure to some PFAS in the environment may be linked to harmful health effects in humans and animals. There are thousands of PFAS chemicals, and they are found in many different consumer, commercial, and industrial products. This makes it challenging to study and assess the potential human health and environmental risks. PFAS are associated with numerous health problems, as well as heightened risk of testicular and kidney cancer. Because they do not break down easily in the environment and most bioaccumulate in humans and the food chain they are called “forever chemicals.”

PFAS can be present in our water, soil, air, and food as well as in materials found in our homes or workplaces, including:

- **Drinking water** – in public drinking water systems and private drinking water wells.
- **Soil and water at or near waste sites** - at landfills, disposal sites, and hazardous waste sites such as those that fall under the federal Superfund and Resource Conservation and Recovery Act programs.
- **Fire extinguishing foam** - in aqueous film-forming foams (or AFFFs) used to extinguish flammable liquid-based fires. Such foams are used in training and emergency response events at airports, shipyards, military bases, firefighting training facilities, chemical plants, and refineries.

- **Manufacturing or chemical production facilities that produce or use PFAS** – for example at chrome plating, electronics, and certain textile and paper manufacturers.
- **Food** – for example in fish caught from water contaminated by PFAS and dairy products from livestock exposed to PFAS.
- **Food packaging** – for example in grease-resistant paper, fast food containers/wrappers, microwave popcorn bags, pizza boxes, and candy wrappers.
- **Household products and dust** – for example in stain and water-repellent used on carpets, upholstery, clothing, and other fabrics; cleaning products; non-stick cookware; paints, varnishes, and sealants.

Some of the most familiar would be stain-proofing compounds, Teflon, Scotchguard, waxes, and waterproofing compounds.

### **What We Know about Health Effects**

Current peer-reviewed scientific studies have shown that exposure to certain levels of PFAS may lead to:

- Reproductive effects such as decreased fertility or increased high blood pressure in pregnant women.
- Developmental effects or delays in children, including low birth weight, accelerated puberty, bone variations, or behavioral changes.
- Increased risk of some cancers, including prostate, kidney, and testicular cancers.
- Reduced ability of the body's immune system to fight infections, including reduced vaccine response.
- Interference with the body's natural hormones.
- Increased cholesterol levels and/or risk of obesity.

### **Class Action Law Suits**

In the Class Action lawsuits the Defendant, Companies, are accused of putting profit over the safety of human health. The complaints allege the Defendants knew that PFAS would be released, stored, and or disposed of at, near or within the vicinity of drinking water wells and or water supplies of Public Water Systems that provide drinking water to the public. There are many other defendants but two of these Defendants have proposed settlements.

This Class Action relates to two settlements: (A) 3M Company; and (B) The Chemours Company, DuPont de Nemours, et. al. Within each settlement there are two (2) general phases: Phase I & Phase II. Notwithstanding specific exceptions, forms must be completed and returned in order to receive compensation. The following describes the standards for both settlements, which are similar:

(A) 3M Company Settlement conditions; Settlement Hearing February 2, 2024 at 10:00 am.

Opt. Out date: December 11, 2023

Settlement Funds: \$10.5 - \$12.5 Billion and up to \$5 Million for costs.

Applies to: (1) All Active Public Water Systems in the United States of America that have one or more Impacted Water Sources as of June 22, 2023; and (2) All Active Public Water Systems in the US that do not have one or more impacted Water Sources as of June 22, 2023; and (i) are required to test for certain PFAS under UCMR-5, or (ii) serve more than 3,300 people.

Phase I: Allocated \$6.875 Billion and three (3) separate funds.

Must submit test results from Waters Sources for PFAS; request all analytical results, including the actual numeric values of all analytical results; and cause the testing laboratory that performed the tests to submit detailed PFAS test results to the Claims Administrator on a Claims Form and the Settlement Website ASAP, see Settlement Website for deadline. 60 days after Effective Date.

Any Water System tested on or before June 22, 2023, using a government approved methodology and found to contain a measurable concentration of PFAS, does not need to be tested again. However, any Water Source tested prior to June 1, 2019, or later, and it did not result in a Measurable Concentration of PFAS, requires no further testing.

Failure to test and submit results for Water Sources disqualifies Water Sources from payment.

Phase II: Allocated \$3.625 – \$5.625 Billion

Must submit test results from each of its Waters Sources for PFAS; request all analytical results, including the actual numeric values of all analytical results; and cause the testing laboratory that performed the tests to submit detailed PFAS test results to the Claims Administrator on a Claims Form within 45 calendar days after receiving results, but no later than July 1, 2026.

(B) The Chemours Company, et. al.; Settlement Hearing December 14, 2023 at 10:00 am.

Opt. Out Deadline: December 4, 2023  
Objection Deadline: November 4, 2023  
Settlement Funds: \$1.185 Billion

Applies to: All Public Water Systems in the United States of America that draws or otherwise collect from any Water Source that, on or before as of June 30, 2023, was tested or analyzed and found to contain any PFAS; and all Public Water Systems in the US that, as of June 30, 2023, are (i) subject to the monitoring rules under UCMR-5, or (ii) required under state or federal law to test or otherwise analyze any of their Water Sources or the water they provide for PFAS before the UCMR 5 Deadline, December 31, 2025. **Public Water Systems owned and operated by a State or the federal government that cannot sue or be sued in their own name are expressly excluded.**

The initial step for establishing Settlement Class Membership and eligibility for compensation is completion of the Claimant Information Form. After a person completes the Public Water System Settlement Claims Form, the Settlement Class Member will be provided with additional relevant Claims Form for payment sources for which member is eligible.

Both Phase I & Phase II requires baseline testing for every water source for PFAS to determine which Water Sources have current PFAS detections. Any Water Source tested before December 7, 2021 that did not result in a PFAS detection must retest. Any Water Source that tested before June 30, 2023 that did result in a PFAS detection does NOT need to retest. However, testing is required any other Water Sources that have not previously had a detection. Testing must be completed by federal or State accredited laboratory. A special allocation will be provided for very small Water Systems, which serve less than 3,300 people.

Phase I: Allocated 55% of Settlement Fund and five (5) separate funds. Phase II: Allocated 45% of Settlement Fund and five (5) separate funds; and deadline is January 1, 2026.

**FUNDING:**

There are no taxpayer costs associated with this settlement. However, there is a cost of \$8,640.00 for testing, which will be paid out of the Utilities/Water Production/Other Professional Services, provided by PO 00098299. This testing will likely be reimbursed.

**RECOMMENDATION:**

The County Attorney's Office recommends the BOCC resolve to opt-in to the class action lawsuit because we would fall into class members. The County Public Water Systems immediately complete baseline testing and submit results on the relevant Claims Forms, the Claimant Information Form, as well as the Public Water System Settlement Claims Form to the Claims Administrator. The County Attorney's Office also recommends it consider taking steps to eliminate PFAS from our public drinking water.