

Litigation Funds and Compensation for Public Water Systems Impacted with PFAS

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**2024 NH Environmental Regulatory Conference
New Hampshire Business and Industry**

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Groundwater Bureau Administrator**

Topics of Today's Presentation

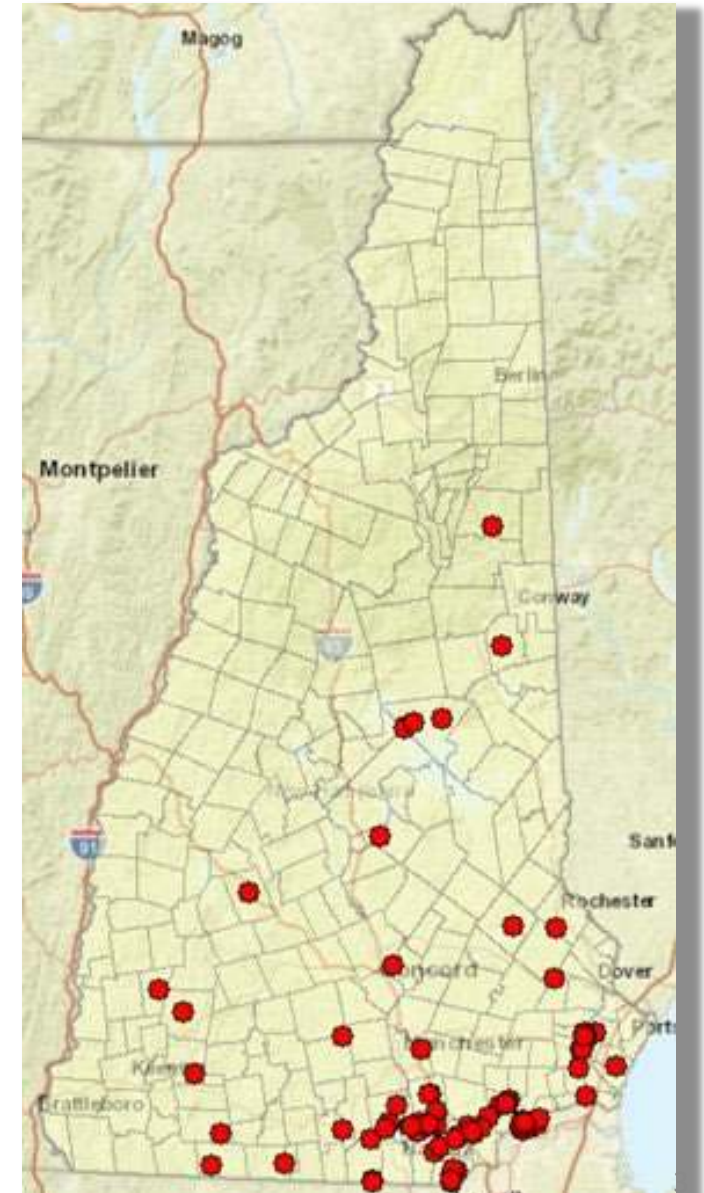
- **Prevalence of PFAS in New Hampshire**
- **Overview of ongoing litigation**
 - Background
 - Dupont and 3M class action lawsuits
- **Settlement Agreements Structure**
 - Phase 1
 - Phase 2
 - Data Requirements
- **DES Proposal on Public Water System PFAS Compensation**
 - Process for DES to disburse settlements funds to impacted Public Water Systems
 - DES request from Advisory Commission

Prevalence of PFAS in New Hampshire

208 water sources that supply public water systems currently exceed US EPA's new Maximum Contaminant Levels for PFAS

PFAS Contaminant	Number of Water Supply Sources with exceedence	New USEPA MCL (part-per-trillion)
PFOA	189	4.00
PFOS	82	4.00
PFNA	2	10.00
PFHxS	8	10.00

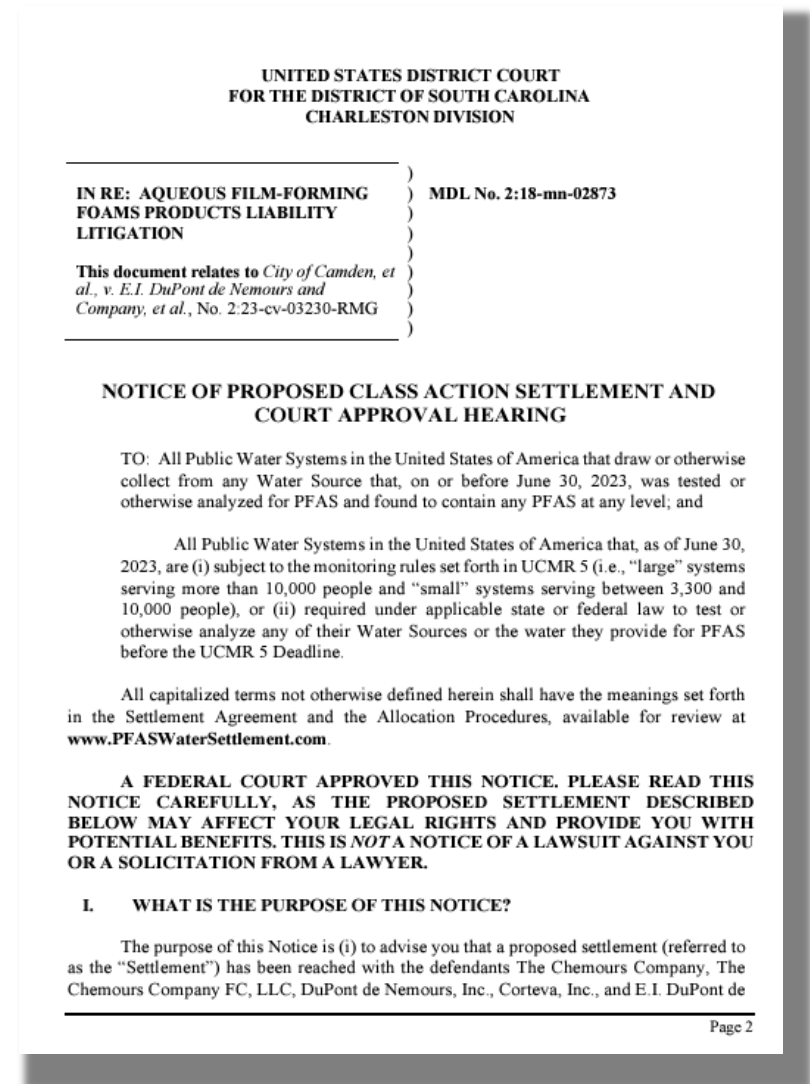
Numbers do not include approximately 100 water systems that have already mitigated PFAS and therefore no longer exceed USEPA or NH MCLs



PFAS Litigation Background

- **New Hampshire has opted into a class action lawsuit with 3M and Dupont for PFAS impacts to certain public water systems***
 - Settlements are designed for water systems to make their claims **one-by-one**
 - Due to legal precedence set with MtBE, the NH Department of Justice represents water systems when addressing broad contamination in New Hampshire
 - The State, NOT water systems, submitted the claims under the settlement agreements
 - Additional settlements with other corporations may occur

***Does not include: 1) Private wells 2) Natural resources and 3) Certain water systems based on size and type. Litigation for these is ongoing.**



The PFAS Public Water System Settlement – Sentiment of the Court Overseeing the Proceedings

Why Opt into the Settlement?



The Honorable Richard M. Gergel

Product of AFFF MDL No. 2873 Leadership

“Let me be honest for folks who are considering opting out. Let me just be honest. We are probably several years away from me returning cases that aren’t resolved to my colleagues in the district court. My goal is to get it all resolved, but if I can't do it, I'm going to send it back to my 675 colleagues.

So, realistically, we're talking about years before it would ever be remanded. And then you know your case of your individual dockets, likely years more before you'd actually get to a trial.

I would think if there were appeals and so forth, you’re probably talking about a decade before it would all be over. So, you just need to weigh that.” - July 14, 2023

Settlement Agreement Structure

Phase 1

Water sources with a PFAS detection prior to June 22, 2023 are eligible for compensation

Claims form due
July 26, 2024

Phase 1- Special Needs

Out of pocket expenses water systems incurred to address PFAS

Claims form due
August 26, 2024

June 22, 2023

Phase 2

Water sources with a detection after June 22, 2023 are eligible for compensation

Claims form due
June 30, 2026

January 1, 2026

✓ New Hampshire has submitted claims for Phase 1 and Phase 1 Special Needs and expects to begin receiving payments beginning next year. Payments are going to occur over time

New Hampshire is currently collecting the “baseline” data and information required for Phase 2 for submittal in 2026

Settlement Data Requirements

1. PFAS Testing- Requirements do not align with how public water systems test their water

- Samples after June 23, 2023 must include 29 PFAS analytes.
- Requires testing one sample with different analytical methods
- For regulatory purposes, only one analytical method is required because it addresses all analytes regulated by NHDES and USEPA

2. Water Use

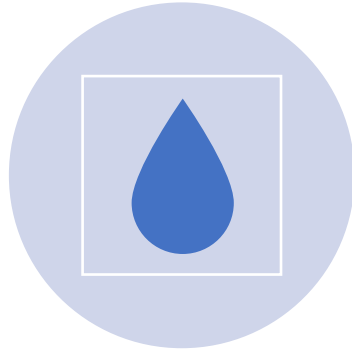
- 10 years of data for each source
- Not available for sources using <20,000 gallons/day and DES had to obtain this data

3. Maximum Pumping Capacity

- DES had to mine this data from archive records
- DES did these calculations on behalf of many water systems



Settlement Data Requirements

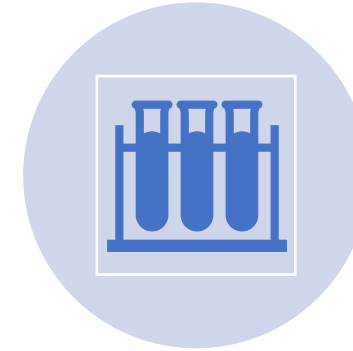


550 water sources that DES sampled for 29 PFAS analytes in early 2024 over a 6 week period

! ~ \$500,000 cost to DES Drinking Water and Groundwater Bureau



660 claims submitted by DES on behalf of eligible public water systems



1,000 additional sources will be sampled by DES for Phase II

! ~ \$800,000 cost to DES Drinking Water and Groundwater Bureau

Compensation Formula

1

Calculate a PFAS score for each Impacted Water Source



Select the higher of:
 (max PFOA level + max PFOS level)
 OR
 (max PFOA + max PFOS) averaged with
 (√ max any other PFAS listed on the Claims Form)

= _____

2

Calculate Adjusted Flow Rate for each Impacted Water Source



Add 3 highest annual average flow rates 2013-2022
 $(\text{rate 1} + \text{rate 2} + \text{rate 3}) \div 3 = \text{average}$
 Then average this number with the max flow rate
 $(\text{average} + \text{max flow rate}) \div 2$

= _____

3

Locate your Adjusted Flow Rate and PFAS score on the Table

Adjusted Flow Rate (gpm)

PFAS score			\$ Compensation estimate	

[More details on the compensation formula can be found on the settlement webpage](#)

Settlement Amount and Considerations

New Hampshire expects to receive ~ \$65M-\$75M under Phase 1 ~ Very Preliminary Estimate

- Final amount depends on the number of claims nationally
- Claims are based on the Compensation Formula

Company	Estimated Amount for Phase 1 Nationally	Payout Period
3M	\$6.875B	2024-2033
Dupont	\$0.65B	2025

- Settlement funds will go in the Drinking Water and Groundwater Trust Fund per State Law
- Additional settlement agreements may occur and may increase the overall funding slightly

Considerations

- ! The amount New Hampshire receives will not be enough to cover all water system costs to address PFAS
- ! Water systems are already contacting the State asking about their share of the settlement

House Bill 1649: *“Any funds from judgments or settlements received by the state resulting from lawsuits against manufacturers of PFAS attributable to impacts to public drinking water systems shall be deposited directly into the drinking water and groundwater trust fund.” Signed by Governor Sununu 08/02/2024*

‘PFAS Compensation Fund for Public Water Systems’

Objective: Distribute settlement funds directly to water systems that have incurred costs to mitigate PFAS contamination

Eligibility

- Public water systems with detected PFAS levels
- Have incurred costs, or will before June 30,2026, to remove or reduce PFAS that were not already covered by a grant/loan forgiveness

Approval Process

- DES will review applications and determine if eligible
- Determine the Compensation Amount based on the Compensation Formulas prorated to align with the amount of compensation actually received as of June 30 2026.

Compensation Determination

- Public Water Systems: Up to the compensation amount calculated under the settlement agreements (and prorated to align with the amount paid to NH by June 30, 2026) for each source it expended funds on to address PFAS
- Non-transient non-community water systems: Up to \$20,000 (schools, daycares, places of work)

****Approved by the Drinking Water and Groundwater Advisory Commission on September 9, 2024.****