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37636

Resolution

Authorize City Attorney to opt the City out of DuPont and 3M class-action settlements related to drinking water contamination

Adopted

WHEREAS, per- and polyfluoroalkyl substances ("PFAS") are a large group of human-made chemicals, components of which break down very slowly over time and may be linked to harmful effects in humans and animals; and

WHEREAS, thousands of lawsuits relating to 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"); and

WHEREAS, hundreds of the cases in the MDL were brought by U.S. drinking water providers alleging that PFAS manufacturers, including DuPont de Nemours, Inc. (and companies associated with DuPont) and 3M Company, contaminated the drinking water of those providers; and

WHEREAS, the U.S. District Court for the District of South Carolina has given preliminary approval to separate class-action settlements for MDL defendants DuPont de Nemours, Inc. (and companies associated with DuPont) and 3M Company for drinking water claims ("the DuPont and 3M Settlements"); and

WHEREAS, the City of Portland is a member of the proposed classes in the DuPont and 3M Settlements because it is a "Public Water System" under the terms of the DuPont and 3M Settlements; and

WHEREAS, the terms of the DuPont and 3M Settlements require class members who do not wish to participate in the settlements to actively opt out to avoid being bound by the terms of the settlements; and

WHEREAS, members of the proposed classes of water providers have until December 4, 2023 to opt out of the DuPont Settlement and until December 11, 2023 to opt out of the 3M Settlement; and

WHEREAS, the DuPont and 3M Settlements include broad releases of future PFAS-related claims; and

WHEREAS, PFAS is known to impact media other than drinking water, including soil, wastewater, and groundwater, and federal and state regulations for PFAS are expected to be enacted in 2024 and beyond; and

Introduced by

[Mayor Ted Wheeler](#)

Bureau

[City Attorney](#)

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Requested Agenda Type

Consent

Date and Time Information

Requested Council Date
November 15, 2023

WHEREAS, the Portland Water Bureau has sampled for PFAS in its active drinking water sources in compliance with federal drinking water regulations and, to date, has not detected PFAS in those sources; and

WHEREAS, the Portland Water Bureau plans to sample its active drinking water sources in 2024 in accordance with new, federally-proposed drinking water standards; and

WHEREAS, the Bureau of Environmental Services and Portland Fire & Rescue have begun and plan to continue to sample and investigate various media including stormwater, groundwater, wastewater, and soil for PFAS contamination; and

WHEREAS, the City may incur costs associated with PFAS impacts in the future and more time is needed for the City to gain a better understanding of the scope of future legal, financial, and operational impacts of PFAS; and

WHEREAS, it is in the public interest for the City to preserve any PFAS-related claims the City may have against DuPont, 3M, and other potential defendants until the risks and impacts of PFAS are better understood.

NOW, THEREFORE, BE IT RESOLVED, that the City Attorney or their designee is authorized to opt the City out of the DuPont and 3M Settlements.

Impact Statement

Purpose of Proposed Legislation and Background Information

The City of Portland is a member of the proposed classes in two, separate class-action settlements between drinking water providers and DuPont de Nemours, Inc. (and companies associated with DuPont) and 3M Company in the in the multi-district litigation, 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)(the “DuPont and 3M Settlements”). The DuPont and 3M Settlements are to resolve claims brought by drinking water providers alleging that DuPont and 3M manufactured per- and polyfluoroalkyl substances (“PFAS”), which contaminated those providers’ drinking water. The DuPont and 3M Settlements include broad releases that could limit or extinguish participating class members’ future PFAS-related claims against DuPont, 3M, and other possible defendants. The settlement agreements require all proposed class members who do not wish to participate in the settlements to actively opt out of to avoid being bound by the terms of the settlement agreements.

PFAS are a group of human-made chemicals that break down very slowly over time and may be linked to harmful effects in humans and animals. Federal and state regulations of PFAS are still being developed and are expected to be enacted in 2024 and beyond. Although, to date, the City has tested for and not found PFAS in its active drinking water sources, the City’s investigation into the impacts of PFAS on City activities and operations is ongoing.

Preserving PFAS-related claims the City may have against DuPont, 3M and other possible defendants, by opting out of the DuPont and 3M Settlements is

consistent with City policies.

Financial and Budgetary Impacts

There will be no out-of-pocket expenses; the City Attorney's Office will prepare and submit the opt-out paperwork for both settlements.

Community Impacts and Community Involvement

This Resolution involves direction from the Council to its lawyers in the City Attorney's Office, based on privileged attorney-client communications, so there was no public outreach or input.

100% Renewable Goal

Not applicable.

Budget Office Financial Impact Analysis

No fiscal impact.

Agenda Items

956 Consent Agenda in [November 15, 2023 Council Agenda](https://www.portland.gov/council/agenda/2023/11/15)
(<https://www.portland.gov/council/agenda/2023/11/15>)

Adopted

Commissioner Mingus Mapps Yea

Commissioner Carmen Rubio Yea

Commissioner Dan Ryan Yea

Commissioner Rene Gonzalez Yea

Mayor Ted Wheeler Yea