

PUBLIC WORKS MEMORANDUM
#36-2023

DATE: Dec. 4, 2023

TO: Honorable Mayor Meredith Leighty and City Council Members

THROUGH: Heather Geyer, City Manager *hmg*
Jason Loveland, Interim Deputy City Manager *ALZ*

FROM: Kent Kisselman PE, Director of Public Works *KKK*
Tamara Moon, Environmental Manager

SUBJECT: CR-165 – 3M and DuPont PFAS Lawsuit Settlement Participation

PURPOSE

To consider CR-165, a resolution authorizing participation in the PFAS (polyfluoroalkyl substances) class action lawsuit settlement against 3M and DuPont.

BACKGROUND

In October 2023, a settlement was reached in a class action lawsuit filed by numerous drinking water utilities against the manufacturers of PFAS, otherwise known as “forever chemicals.” The current settlement is with 3M and DuPont (and its subsidiaries).

Northglenn, as a public water system which has positively identified small amounts of PFAS in its drinking water supply, is included in phase one of the settlement payout. By participating in the settlement action, Northglenn is entitled to some portion of the settlement funds.

Participating in this portion of the class action settlement does not limit Northglenn’s ability to receive additional settlement funds from other manufacturers. It also does not limit the City’s ability to participate in future suits that may focus on stormwater and wastewater contamination by these chemical families.

Non-participation in the settlement requires the City to respond by Dec. 4, 2023, for the 3M settlement and Dec. 11, 2023, for the DuPont settlement. To stay in the settlement group, the City can take no action until the courts request the data and information necessary to determine the amount of settlement funds that the City receives. This is anticipated to occur sometime between February and April 2024.

BUDGET/TIME IMPLICATIONS

If the City chooses not to participate in the class action settlement, a response will need to be made very quickly. If the City chooses to participate in the settlement, staff will work with legal counsel to ensure that all deadlines and responses to inquiry are met.

At this time, apart from legal fees paid to Kaplan Kirsch and Rockwell to assist with navigating the process, there is no anticipated impact to the budget. Staff will provide an update on the settlement amount once it is known.

STAFF RECOMMENDATION

Staff recommends approval of CR-165.

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STAFF REFERENCE

If Council Members have any questions, please contact Kent Kisselman, Director of Public Works, at kkisselman@northglenn.org or 303.450.4005.

CR-165 – 3M and DuPont PFAS Lawsuit Settlement Participation

SPONSORED BY: MAYOR LEIGHTY

COUNCIL MEMBER'S RESOLUTION

RESOLUTION NO.

No. CR-165
Series of 2023

Series of 2023

A RESOLUTION AUTHORIZING PARTICIPATION IN 3M AND DUPONT PFAS PUBLIC WATER SYSTEM SETTLEMENTS

WHEREAS, since 2018, thousands of product liability lawsuits related to Aqueous Film-Forming Foam ("AFFF") have been brought against manufacturers of polyfluoroalkyl substances ("PFAs"), including lawsuits by public water systems nationwide;

WHEREAS, two class action settlements between public water systems nationwide and 3M Corporation ("3M") and DuPont Company and its affiliates, Chemours and Corteva (collectively, "DuPont") have been preliminarily approved (see Order re Preliminary Approval of Settlement Agreement (Aug. 29, 2023) ("3M Settlement") and Motion for Settlement (July 10, 2023) ("DuPont Settlement") in *City of Camden, et al. v. 3M, in re AFFF Prods. Liabl. Litig. MDL* (D.S.C.));

WHEREAS, if a sufficient number of public water systems elect to participate, under the 3M Settlement, 3M will pay between \$10.5 and 12.5 billion to resolve claims by public water systems and, under the DuPont Settlement, DuPont will pay \$1.185 billion to resolve such claims;

WHEREAS, the City of Northglenn, Colorado, is a member of the class of public water systems eligible to participate in both settlements;

WHEREAS, to participate, eligible public water systems do not need to take any affirmative action, or must affirmatively elect to "opt out" on or before December 4, 2023, for the DuPont Settlement and December 11, 2023, for the 3M Settlement; and

WHEREAS, the City Council, after consideration of (i) the expense of pursuing independent claims against 3M and DuPont, (ii) the potential cost of testing for PFAs and treating to remove PFAs in its public water system, (iii) the potential amount of recovery; and (iv) the scope of claims released and retained if it participates in the settlement, has determined that participation in both settlements would be in the best interests of the City of Northglenn.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF NORTHGLENN, COLORADO THAT:

Section 1. The City of Northglenn will not take action to "opt out" of the 3M and DuPont Settlements.

Section 2. If such settlements achieve sufficient participation to become effective, City staff is hereby instructed to collect all necessary information to make those filings and submittals necessary to apply for the City of Northglenn’s share of available settlement funds.

DATED, at Northglenn, Colorado, this _____ day of _____, 2023.

MEREDITH LEIGHTY
Mayor

ATTEST:

JOHANNA SMALL
City Clerk

APPROVED AS TO FORM:

HILARY M. GRAHAM
Acting City Attorney