



**MARTEN**

# 3M Company/DuPont Settlements

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# Key Issues



Indemnity



Release



Timing of payment



Adequacy of funds

# Finality – What is 3M Requiring from Settling Water Suppliers?

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## Indemnity

“each Releasing Party hereby covenants and agrees to indemnify and hold each and every Released Party harmless of and from (i) any future or further exposure or payment arising out of, related to, or involving the Released Claims, including . . . by any person seeking contribution, indemnity, or subrogation in connection with such Released Claims, and (ii) any Claim arising out of, related to, or involving PFAS that has entered or may enter Drinking Water or any Releasing Party’s Public Water System.”

- Some States concerned indemnity provision "would seem to make class members liable to 3M for the claims by States and their citizens against 3M"

# Finality – What is 3M Requiring from Settling Water Suppliers?

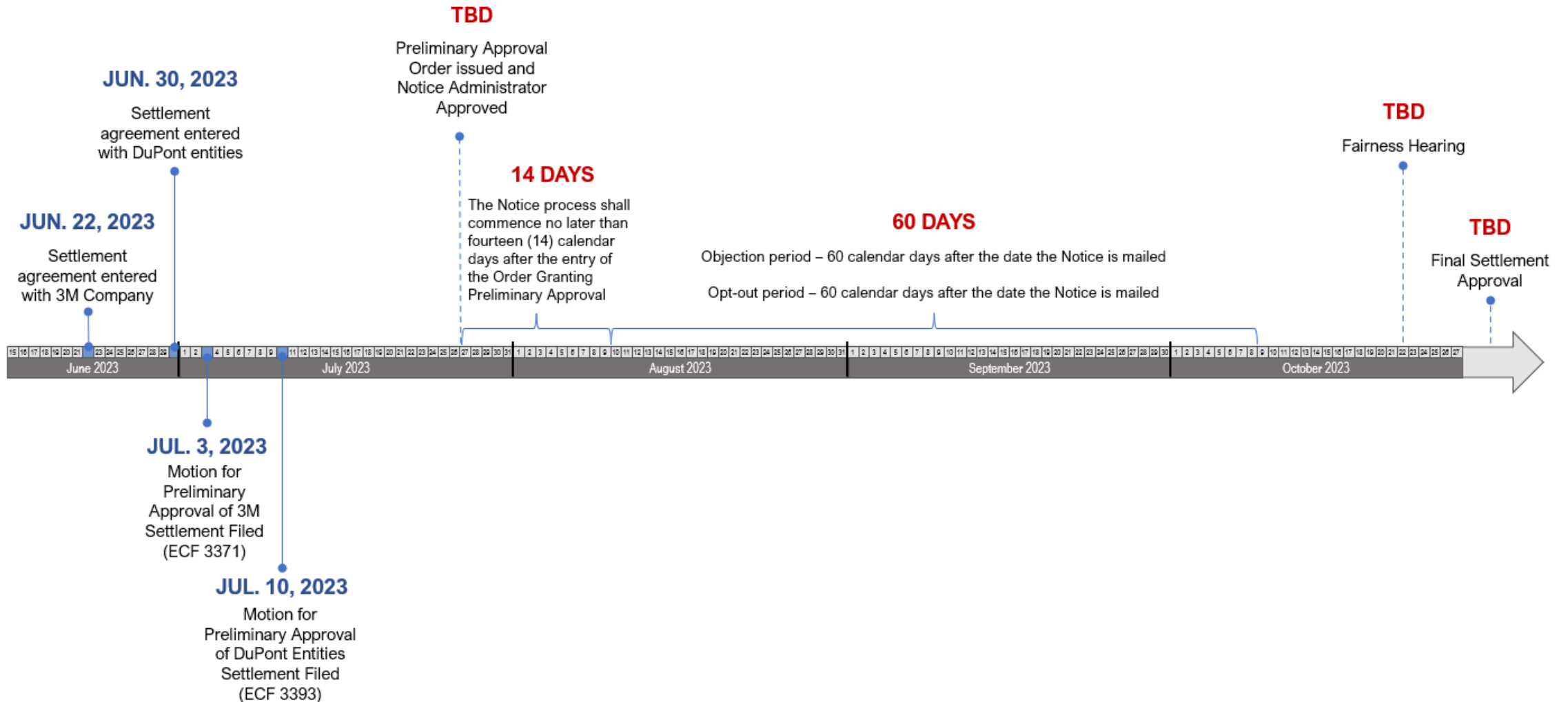
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## Scope of Release

“It is the intention of this Agreement that the definitions of ‘Release’ and ‘Released Claims’ be as broad, expansive, and inclusive as possible.”

“Released Claims” include “any Claim that may have arisen or may arise at any time in the future out of, relates to, or involves PFAS that has entered or may reasonably be expected to enter Drinking Water or any Releasing Party’s Public Water System”

# How Soon Do We Need to Decide? Notice/Opt-out or Object



# When to Expect Payment (3M Company)

Earliest Possible Payment Date	Purpose	Amount with Phase Two <u>Floor</u> (before adjusting for Stuart and Rome)	Amount with Phase Two <u>Cap</u> (before adjusting for Stuart and Rome)
July 1, 2024	50% of Phase Two Testing Fund 67% of Phase One infrastructure	52,500,000 2,763,750,000	52,500,000 2,763,750,000
April 15, 2025	50% of Phase Two Testing Fund 33% of Phase One infrastructure 14% of Phase One O&M	52,500,000 1,361,250,000 385,000,000	52,500,000 1,361,250,000 385,000,000
April 15, 2026	16% of Phase One O&M	440,000,000	440,000,000
April 15, 2027	12% of Phase One O&M 70% of Phase Two infrastructure	330,000,000 1,478,400,000	330,000,000 2,318,400,000
April 15, 2028	14% of Phase One O&M 30% of Phase Two infrastructure 12% of Phase Two O&M	385,000,000 633,600,000 168,960,000	385,000,000 993,600,000 264,960,000
April 15, 2029	12.5% of Phase One O&M 13% of Phase Two O&M	343,750,000 183,040,000	343,750,000 287,040,000
April 15, 2030	8.5% of Phase One O&M 15% of Phase Two O&M	233,750,000 211,200,000	233,750,000 331,200,000
April 15, 2031	8.5% of Phase One O&M 15% of Phase Two O&M	233,750,000 211,200,000	233,750,000 331,200,000
April 15, 2032	7.5% of Phase One O&M 13% of Phase Two O&M	206,250,000 183,040,000	206,250,000 287,040,000
April 15, 2033	7% of Phase One O&M 8% of Phase Two O&M	192,500,000 112,640,000	192,500,000 176,640,000
April 15, 2034	8% of Phase Two O&M	112,640,000	176,640,000
April 15, 2035	8% of Phase Two O&M	112,640,000	176,640,000
April 15, 2036	8% of Phase Two O&M	112,640,000	176,640,000
<b>TOTAL</b>	<b>100% of Phases One and Two</b>	<b>\$ 10,500,000,000</b>	<b>\$ 12,500,000,000</b>

# Adequacy of Funds – Treatment Cost Estimates

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- Estimates of nationwide PFAS treatment costs vary significantly
  - \$772 million-\$1.2 billion annualized cost (EPA estimate)<sup>1</sup>
  - \$5.2 billion annualized cost (Black & Veatch estimate)<sup>2</sup>
- Each water provider will need to individually estimate its own costs

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<sup>1</sup> EPA, [Economic Analysis for the Proposed Per- and Polyfluoroalkyl Substances National Primary Drinking Water Regulation](#) at 5-2 (March 9, 2023)

<sup>2</sup> Black & Veatch, [WITAF 56 Technical Memorandum PFAS National Cost Model Report](#) at App. A-1, prepared for AWMA (March 7, 2023)

# How Much Might a Water Supplier Expect to Receive?

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PFAS test results



Flow rates

Capital Costs + Operation and Maintenance Cost = Base Score

Base score is adjusted for various "bumps"

Settlement Award = (Adjusted Base Score / Sum of All Adjusted Base Scores) \* (Action Fund)



# Recommended Team – Who Should be Involved

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## **Key water supplier staff**

- City Administrator/General Manager
- Public Works Director/Water Utilities Director
- Water Engineer
- Chief Financial Officer
- City Council
- City Attorney

## **Outside technical consultants**

- Environmental Consultants
- Forensic Economists/Environmental Remediation Cost Specialists
- Modelers

## **Legal Counsel**

# Questions?



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