Judge Richard Gergel Approves $12.5B PFAS Settlement for 12,000 Public Water Systems

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Judge Richard Gergel of the United States District Court for the District of South Carolina, the judge who is overseeing multi-district litigation concerning aqueous film-forming foam (AFFF), yesterday gave final approval to a class settlement between 3M and approximately 12,000 public water systems that will resolve the water systems' claims that AFFF contaminated their water systems with per- and polyfluoroalkyl substances (PFAS).

The proposed settlement was first announced in June 2023, on the eve of the first bellwether trial of the water providers' claims. As part of the settlement, 3M has pledged to pay up to $12.5 billion to public water systems that have detected PFAS at any level or may do so in the future. The class settlement automatically included all public water systems not owned by a federal or state government that failed to opt out by filing a “Request for Exclusion” with the Notice Administrator by December 11, 2023. Only approximately 7.5% of class water systems opted out of the settlement.

While several public water systems filed objections to the settlement, the court ruled in favor of the settlement, finding that “[t]he alternative to the efficiency achieved through the proposed settlement would be for federal judges in 94 judicial districts to adjudicate—over 12,000 times—claims directly tied to 3M's alleged common course of conduct.” Moreover, litigating all those cases could take up to a decade, cost millions of dollars in the aggregate, and any verdicts would be the subject of protracted appeals.

Pursuant to the agreement, 3M is expected to make settlement payments over 13 years. Payments under the agreement are scheduled to begin in the third quarter of 2024, provided there are no pending appeals of the final approval order.

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