

CITY COUNCIL REPORT



Meeting Date: November 20, 2023
 General Plan Element: *Provide for the orderly administration of the affairs of the City*
 General Plan Goal: *Fiscal Management*

ACTION

Request: Adopt Resolution No. 12997 authorizing the City to participate in settlement agreements with defendants DuPont and 3M with respect to water resources damages sustained by the City from firefighting foam products (known as "aqueous film forming foam" or "AFFF") and/or other products containing perfluoroalkyl substances ("PFAS") (including perfluorooctanoic acid ("PFOA" or "C8"), perfluorooctane sulfonate ("PFOS"), and any other related compounds).

Background

On May 16, 2023 the City Council adopted Resolution 12827 authorizing the City to retain the law firms of Baron & Budd, P.C., Cossich, Sumich, Parsiola & Taylor LLC, and Law Office of Joseph C. Tann, PLLC in order to pursue damages, compensation, and other relief against the manufacturers of AFFF and/or other products containing PFAS, and any other related compounds. Multiple lawsuits filed around the country have been consolidated in the United States District Court in South Carolina.

The District Court of South Carolina has granted preliminary approval of class settlements with two defendants, 3M and DuPont. (*City of Camden, et al. v. E.I. DuPont de Nemours and Company, et al.*, No. 2:23-cv-03230-RMG and *City of Camden, et al. v. 3M Company*, Case No. 2:23-cv-03147-RMG). The District Court further established deadlines of December 4, 2024 and December 11, 2024 for opting out of the DuPont and 3M settlements respectively. If the City does not opt out of either or both settlements, the City will remain a class member. As a class member, the City will be required to file damage claims in the Spring of 2024. The City may also file supplemental claims for the next seven years if additional water sources become contaminated with PFOA and PFOS above the Maximum Contaminant Level. Additionally, the City may file a Special Needs Claim Form to recoup a portion of the monies already spent by the City in addressing PFAS contamination in its water sources.

The settlements approved \$10.5 billion to settle claims against 3M and \$1.185 billion to settle claims against DuPont. The actual amount of monies received by the City is dependent upon the number of public water systems throughout the United States that remain class members. All class members' claims will be evaluated based on the amount of PFAS contamination in their water system and the amount of water that flows through that system.

The DuPont settlement will be paid in one payment. The 3M settlement will be paid over a period of ten years. The 3M payments will be front-loaded, with the largest two payments to be deposited with the claims administrator in July of 2024 and 2025, and smaller payments to be made annually thereafter.

ANALYSIS & ASSESSMENT

Recent Staff Action

Staff from the Water Resources Division has sampled the City's surface water and groundwater to determine the extent of PFAS contamination. Staff from the City Attorney's Office and Water Resources Division have provided the PFAS sampling results along with the flow rate data for each well and the CAP water Treatment Plant and the Chaparral Water Treatment Plant to the City's outside legal counsel in order for claims to be filed.

Policy Implications

None.

Significant Issues to be Addressed

None.

Community Involvement

No community involvement is necessary regarding this matter.

RESOURCE IMPACTS

Available funding

There is no funding requirement to participate in this matter.

Staffing, Workload Impact

The Water Resources Division has sufficient staff to prepare the necessary claims to receive settlement payments. Water Resources Division staff will be required to monitor the City's water sources for new PFOS/PFOA contamination over the next seven years and work with the City Attorney's Office to file supplemental claims for any detections over regulatory standards. Additionally, the Water Resources Division staff will be required to compile information regarding the monies spent by the City to address PFAS contamination and assist the City Attorney's Office in filing a Special Needs Claim Form to recoup a portion of the monies.

Future Budget Implications

The total amount of recovery that the City will be able to collect cannot be calculated with certainty as the amount is ultimately contingent on the level of participation in the settlement by public water systems throughout the United States and the extent of those systems' PFAS contamination relative to the City of Scottsdale.

Cost Recovery Options

None.

OPTIONS & STAFF RECOMMENDATION

Recommended Approach

Adopt **Resolution No. 12997** authorizing the City to participate in the settlement of *City of Camden, et al. v. E.I. DuPont de Nemours and Company, et al.*, No. 2:23-cv-03230-RMG, and the settlement in *City of Camden, et al. v. 3M Company*, Case No. 2:23-cv-03147-RMG.

Proposed Next Steps

The City Attorney's Office will work with the Water Resources Division to file all claims, including the initial claim, Special Needs Claim, and any supplemental claims.

RESPONSIBLE DEPARTMENT(S)

City Attorney's Office
Water Resources Division

STAFF CONTACTS (S)

Sherry R. Scott, City Attorney, SScott@ScottsdaleAZ.gov
Karen Tyler, Senior Assistant City Attorney, KTyler@ScottsdaleAZ.gov
Suzane Grendahl, Water Quality Director, sgrendahl@scottsdaleaz.gov

APPROVED BY



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Karen Tyler, Senior Assistant City Attorney
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Date 11/14/23

ATTACHMENTS

1. Resolution No. 12997

RESOLUTION NO. 12997

A RESOLUTION OF THE COUNCIL OF THE CITY OF SCOTTSDALE, MARICOPA COUNTY, ARIZONA, AUTHORIZING THE CITY'S PARTICIPATION IN PENDING SETTLEMENT AGREEMENTS WITH TWO MANUFACTURER DEFENDANTS RELATED TO DAMAGES SUSTAINED FROM PRODUCTS CONTAINING PERFLUOROALKYL SUBSTANCES ("PFAS").

WHEREAS, the City Council previously adopted Resolution 12827 authorizing the City to pursue damages, compensation, and other relief against the manufacturers of firefighting foam products (known as "aqueous film forming foam" or "AFFF") and/or other products containing perfluoroalkyl substances ("PFAS"), and any other related compounds;

WHEREAS, two lawsuits were filed in the United States District Court in South Carolina (*City of Camden, et al. v. E.I. DuPont de Nemours and Company, et al.*, No. 2:23-cv-03230-RMG and *City of Camden, et al. v. 3M Company*, Case No. 2:23-cv-03147-RMG);

WHEREAS, the District Court has preliminarily approved settlements with defendants, 3M and DuPont;

WHEREAS, the City has until December 4, 2024 to opt out of the DuPont settlement and December 11, 2024 to opt out of the 3M settlement;

WHEREAS, by remaining a class member, the City will be entitled to compensation based on the amounts of PFAS contamination in the City's water system and the amount of water that flows through the system;

WHEREAS, the City Council has determined that it is in the best interest of the City to participate in the 3M and DuPont settlement agreements pending in the United States District Court in South Carolina in order to receive a distribution of funds from these settlements; and

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Scottsdale, Maricopa County, Arizona, as follows:

Section 1. The City Council hereby approves the City's participation in the settlement with DuPont in *City of Camden, et al. v. E.I. DuPont de Nemours and Company, et al.*, No. 2:23-cv-03230-RMG, and the settlement with 3M in *City of Camden, et al. v. 3M Company*, Case No. 2:23-cv-03147-RMG.

Section 2. The City Council hereby authorizes and directs the City Attorney to file all claims, including future supplemental claims and a Special Needs Claim Form, with the District Court.

Section 3. That the City Manager, the City Treasurer, the City Attorney, and their respective staffs are authorized and directed to execute any such documents and take any such other actions reasonably necessary to carry out the purpose of this Resolution.

PASSED AND ADOPTED by the Council of the City of Scottsdale this __ day of November, 2023.

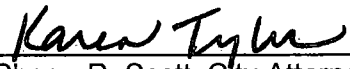
CITY OF SCOTTSDALE, an Arizona
municipal corporation

ATTEST:

Ben Lane, City Clerk

David D. Ortega, Mayor

APPROVED AS TO FORM:
OFFICE OF THE CITY ATTORNEY



Sherry R. Scott, City Attorney
By: Karen Tyler, Senior Assistant City Attorney