PFAS UPDATE

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AQUEOUS FILM-FORMING FOAM (AFFF)

As early as the 1960s, PFAS have been used in AFFF, a water-based foam developed to extinguish Class B (flammable liquid) fuel fires at airports fire stations, fire training facilities and military bases, among other places.

PER- AND POLYFLUOROALKYL SUBSTANCES (PFAS)

PFAS is a family of man-made chemicals that includes PFOS and PFOA. PFAS have been used worldwide since the 1950s in industry and consumer products, such as:

- Non-stick cookware
- Firefighting foams
- Water-repellent & stain-resistant fabrics
- Cosmetics
- Food packaging
- Other products that resist grease, water, and oil

Stain- & water-resistance treatments

Nonstick cookware

Waterproof apparel

Cleaning products

Firefighting foam

Takeout containers

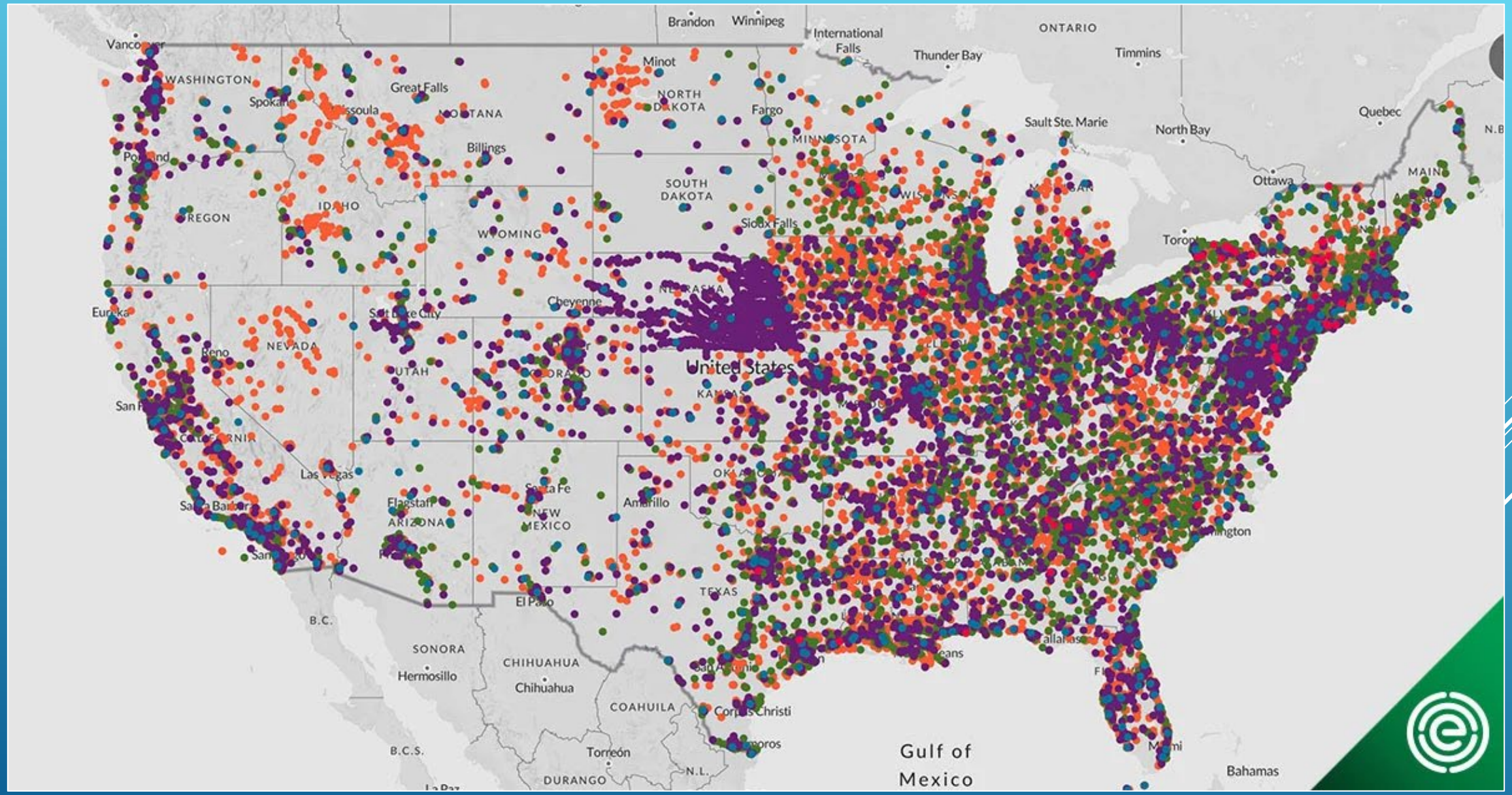
Carpets & textiles

Image Source: Washington Department of Ecology, https://ecology.wa.gov/Waste-Toxics/Reducing-toxic-chemicals/Addressing-priority-toxic-chemicals/PFAS

MAJOR SOURCES OF PFAS

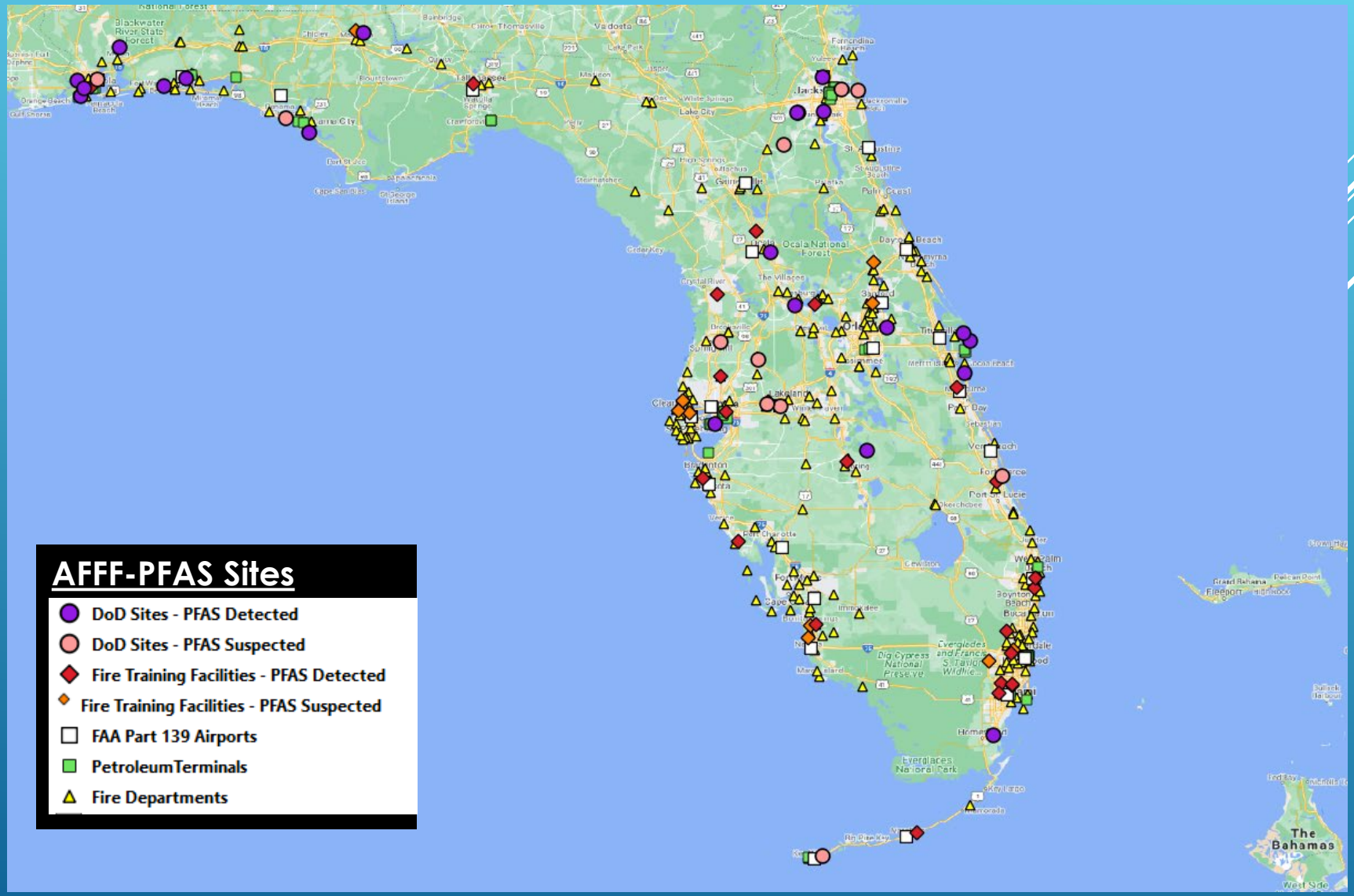
- Existing and Former Department of Defense Military Installations
- Airports
- Fire Training Facilities
- Superfund/RCRA Sites
- Landfills
- Electroplating
- Oil Refineries & Petrochemical Plants

SUSPECTED INDUSTRIAL DISCHARGES OF PFAS



Source: Environmental Working Group https://www.ewg.org/interactive-maps/2021_suspected_industrial_discharges_of_pfas/map/

Map of Known, Suspected and Potential AFFF-PFAS Sites in Florida



EPA'S RESPONSE TO PFAS

2009: EPA published provisional health advisories for PFOS and PFOA in drinking water (400 ppt PFOA + PFOS)

2013-2015: EPA included 6 PFAS in UCMR 3 testing requirements

2016: EPA replaced the 2009 provisional health advisories for PFOS and PFOA with new lifetime health advisories of 70 ppt, individually or combined

2021: EPA finalized UCMR 5, which will require sample collection for 29 PFAS between 2023 and 2025

JUNE 15, 2022: REVISED HEALTH ADVISORIES RELEASED

- The EPA released four drinking water health advisories for PFAS. EPA issued interim, updated drinking water health advisories for PFOA and PFOS that replace those EPA issued in 2016. For the first time, EPA is issuing final health advisories for perfluorobutane sulfonic acid and its potassium salt (PFBS) and for hexafluoropropylene oxide (HFPO) dimer acid and its ammonium salt ("GenX" chemicals).
- The new EPA health advisories are:
  - PFOS - **0.02 ppt** (PARTS PER TRILLION)
  - PFOA - **0.004 ppt**
  - GenX - **10 ppt**
  - PFBS - **2,000 ppt**

Source: EPA Drinking Water Health Advisories for PFAS Fact Sheet for Communities, https://www.epa.gov/system/files/documents/2022-06/drinking-water-ha-pfas-factsheet-communities.pdf

UCMR 3
2013-2015

Required monitoring for 30 unregulated contaminants, including PFOS, PFOA, PFNA, PFHxS, PFHpA, and PFBS, between 2013 and 2015.

Applied to all public water systems (PWSs) serving more than 10,000 people and 800 representative PWSs serving 10,000 or fewer people.

Minimum reporting levels for PFOS and PFOA were 40 ppt and 20 ppt, respectively.

According to the data collected through UCMR3, at least **6 million Americans** were exposed to drinking water impacted by PFOA or PFOS greater than 70 ppt.

Approx. 97% of PWSs in the US have not yet tested.

UCMR 5 2023-2025

PWSs will collect samples for 29 PFAS and lithium, during a 12-month period from January 2023 through December 2025.

EPA has lowered the UCMR 5 minimum reporting levels for PFOS and PFOA down from what they were under UCMR 3.

New UCMR 5 minimum reporting levels for PFOS and PFOA are 4 ppt.

SAFE WATER DRINKING ACT RULES

- EPA finalized rule setting maximum contaminant levels for 6 PFAS in April 2024
  - PFOA, PFOS, PFHxS, PFNA, and HFPO-DA; and
  - PFAS mixtures containing at least 2 or more of PFHxs, PFNA, HFPO-DA, and PFBS using a Hazard Index MCL
- Utilities must monitor for these PFAS for three years and then continue to monitor compliance
- Beginning in 2027, utilities must disclose to the public the levels of these PFAS in their drinking water
- By 2029, utilities must implement solutions to reduce the PFAS that exceeds the MCLs
- Beginning in 2029, if there are exceedances of a MCL, utilities must take action to reduce levels and must notify the public of the violations
- Three lawsuits were filed in June by parties that are directly or indirectly responsible for paying to remove PFAS from tap water

CERCLA

- EPA finalized rule deeming PFOA and PFOS as hazardous substances under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) – Superfund in April 2024
- The PFAS Designation Rule became effective on July 8, 2024 and a lawsuit was filed by industry groups
- EPA issued a CERCLA enforcement discretion policy regarding EPA focusing enforcement on parties who significantly contributed to the release of PFAS into the environment

WHAT'S NEXT ON THE FEDERAL LEVEL?

- EPA issued "EPA's PFAS Strategic Roadmap: Three Years of Progress" (November 2024)
- Federal legislation
  - Limit and protect utilities from liability
  - Revising CERCLA to exclude PFAS or creating exemptions for certain parties
  - Appropriations for PFAS cleanup

- Trump Effect
  - Initiate new rulemaking to modify or revoke the rules
  - Reducing the EPA's budget
  - Issuing National Policy Guidance instructing them to delay implementation/enforcement

STATE OF FLORIDA PFAS REGULATIONS

- No current Florida PFAS maximum containment level rules or regulations
  - Florida provisional cleanup target levels re contaminated site cleanup
- FDEP is assessing/monitoring fire training sites, waste cleanup sites, dry cleaners, public wells, and U.S. Defense sites
- 2022 FDEP PFAS Dynamic Plan
- Chapter 2022-203, Laws of Florida
  - DEP authorized to adopt rules if no EPA standards by January 1, 2025
  - Prohibits administrative or judicial action, site rehabilitation, or fines/penalties until rules are ratified

IN RE: AQUEOUS FILM-FORMING FOAM PRODUCTS LIABILITY LITIGATION

MDL NO. 2873

COURT: U.S. District Court for the District of South Carolina, Charleston Division

MDL JUDGE: Honorable Richard M. Gergel

TYPES OF PLAINTIFFS IN THE MDL:

States & Territories

Public & Private Water Providers

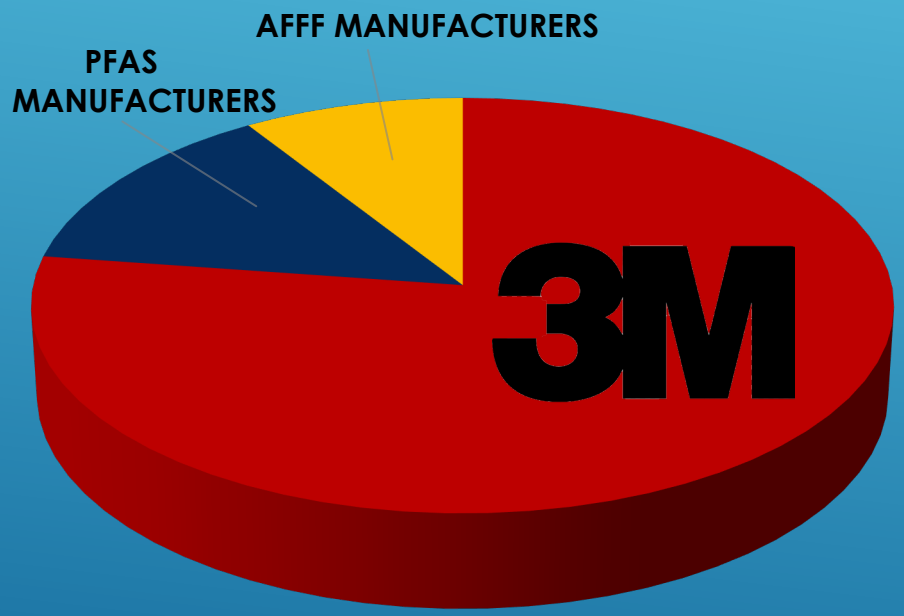
Individual Well Owners

Property Damage

Medical Monitoring

Personal Injury

KEY PLAYERS



Deepwater Chemicals
BASF
Tyco Fire
National Foam
Clariant
3M
Chemguard
Buckeye
Company
Arkema
E. I. DuPont de Nemours & Company
Kidde
ChemDesign Products Inc.
Chemours
Dynax

LATEST MDL DEVELOPMENTS

- May 14, 2023: Kidde-Fenewal (seller of AFFF) files bankruptcy
  - The litigation has cost Kidde-Fenwal $6 million in legal fees in 2023 alone
- June 2, 2023:
  - A settlement was reached with the DuPont Defendants (E.I. DuPont de Nemours and Company, The Chemours Company, The Chemours Company FC, LLC, DuPont de Nemours, Inc., and Corteva, Inc.).
  - $1.185 Billion
  - The DuPont Defendants hold a relatively small share of the AFFF market.
  - Solely for the benefit of public water providers
  - A portion of the settlement will be dedicated to those entities with known PFAS contamination, and another portion will be dedicated to those who find PFAS contamination in the near future.
  - The settlement is negotiated on a class-wide basis.
- Phase 1: PFAS detections before June 22, 2023; Claims including analytical data showing PFAS detections and flow rates due **July 2024**
- Phase 2: No PFAS detections before June 22, 2023; Ongoing testing and claims filed in **2026 (if PFAS is detected)**
- Allocated based on a mathematical formula that uses several factors to approximate PFAS-treatment costs including:
  - Water capacity or water usage
  - Types of water sources
  - PFAS contamination levels
- Those that filed a lawsuit and did not properly retain their rights against DuPont, waived future property, stormwater, and wastewater claims – there is an argument that this waiver applies to those that did not file a lawsuit

3M SETTLEMENT

- Announced June 22, 2023
- Up to $12.5 billion –largest in US History
- Related only to PFAS contamination to public groundwater and surface water sources that supply drinking water
- Made on a class-wide basis
- Benefits both public water systems that have already detected PFAS and those utilities who will sample in upcoming UCMR5
- Phase 1: PFAS detections before June 22, 2023; Claims including analytical data showing PFAS detections and flow rates due **July 2024**
- Phase 2: No PFAS detections before June 22, 2023; Ongoing testing and claims filed in **2026 (if PFAS is detected)**
- Allocated based on a mathematical formula that uses several factors to approximate PFAS-treatment costs including:
  - Water capacity or water usage
  - Types of water sources
  - PFAS contamination levels
- Does not impact potential claims related to PFAS in wastewater and property – unless failed to submit a reservation of rights

- TYCO Settlement
  - TYCO Fire Products, Chemguard, Chemdesign Products, and Johnson Controls International
  - $750 million
  - Settlement reached on April 21, 2024

- BASF Settlement
  - BASF Corporation, Ciba Speciality Chemicals and other associated companies
  - $316.5 million ($4 million in July and balance in March 2025)
  - Settlement reached on May 21, 2024

- Both Settlements
  - Approved by the Court on November 22, 2024
  - Only for drinking water utilities that has detected PFAS prior to or before **May 15, 2024**
  - Not paying for future contaminations; no detection=no release of claims
    - Special Needs Claims allowed
    - Supplemental Claims allowed for wells that tested negative before initial claims but before December 31, 2030
  - Using the same model to determine allocation of funds
  - Must opt out
  - Does not include wastewater, property or stormwater claims

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