

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA**

IN RE: AQUEOUS FILM-FORMING FOAMS ) Master Docket No.:  
PRODUCTS LIABILITY LITIGATION ) 2:18-mn-2873-RMG

---

CITY OF CAMDEN, et al., )

*Plaintiffs,* )

v. )

3M COMPANY, )

*Defendant.* )

) Civil Action No.:  
) 2:23-cv-03147-RMG

) **ORDER**

---

**ORDER REGARDING COMPLIANCE ASSESSMENTS OF OPT-OUTS**

In advance of the February 2, 2024 Final Fairness Hearing in the above-captioned matter, the Court enters this order to offer guidance regarding compliance assessments of opt-outs submitted pursuant to the Settlement Agreement Between Public Water Systems and 3M Company (“Settlement Agreement”).

Under the Settlement Agreement, 3M has a right to terminate the Settlement Agreement (“Walk-Away Right”) if any Required Participation Threshold is not met. The timing for 3M’s Walk-Away Right is based on 3M’s receipt of the Special Master’s determination under Paragraph 9.2 of the 3M Settlement Agreement. The Court has been informed that the Special Master has not yet provided his report to 3M, and the relevant period for 3M will extend after the February 2 Final Fairness Hearing.

The Court therefore concludes that the Special Master and 3M might benefit from guidance in assessing compliance of opt-outs under the Settlement Agreement, including under Paragraph 8.5 thereto. The Court further concludes that others, including Class Counsel and

Eligible Claimants, also might benefit from such guidance. The Court notes that an “opt out request need not perfectly conform to the format chosen by the district court or the proposed settlement agreement to effectively express a desire to opt out of a class action settlement.” *In re Deepwater Horizon*, 819 F.3d 190, 196 (5th Cir. 2016). On the other hand, “[o]pting out of a class action settlement is an ‘individual right’ that ‘must be exercised individually’ in order to protect the due process rights of class members. As a result, courts routinely require class members to fill out and sign individually a hardcopy opt-out form in order to be excluded from a settlement and prohibit so-called ‘mass opt-outs,’ where an attorney or law firm files a single, unsigned opt out form on behalf of a large group of class members.” *In re TikTok, Inc. Consumer Privacy Litigation*, 617 F. Supp. 3d 904, 931 (N.D. Ill. 2022) (internal citations omitted).

Recognizing these basic standards, the Court provides the following statements as guidance in reviewing opt-outs for compliance with the Settlement Agreement:

1. Opt-outs submitted in a single envelope by a law firm on behalf of multiple clients, each of which has included individually completed opt-out forms in compliance with Paragraph 8.5 of the Settlement Agreement, should not be deemed a “mass” or “class” opt-out under Paragraph 8.5.4 of the Settlement Agreement.
2. If a municipality or other entity owns multiple Eligible Claimants and submits a single opt-out form for those Eligible Claimants, and said form otherwise complies with Paragraph 8.5 of the Settlement Agreement and the Parties’ Joint Interpretive Guidance on Entities that Own and/or Operate Multiple Public Water Systems (Dkt. No. 85-1), said municipality or entity should not have its opt-out deemed non-compliant as a “mass” or “class” opt-out.
3. Where a non-owner of a PWS submits a single opt-out for multiple Eligible Claimants,

such joint submissions should be treated as non-compliant under Paragraph 8.5.4, and where a non-owner of a PWS submits an opt-out form for any Eligible Claimant that does not certify under penalty of perjury that “the filer has been legally authorized to exclude the Eligible Claimant from the Settlement,” that opt-out shall be treated as non-compliant under Paragraph 8.5.1.

4. An opt-out form otherwise in compliance with Paragraph 8.5 of the Settlement Agreement should not be deemed non-compliant under Paragraph 8.5 because the form indicates the intent to opt-out of both the DuPont and 3M settlements.
5. An opt-out form that is otherwise in compliance with Paragraph 8.5 that omits some of the information required by Paragraph 8.5.1.3 but is otherwise identifiable should not be deemed non-compliant under Paragraph 8.5.
6. An opt-out form that was received after the December 11, 2023 deadline for opt-out submissions but carries satisfactory evidence it was mailed or submitted to a delivery service on or before December 11, 2023 should not be deemed non-complaint under Paragraph 8.5 so long as the opt-out form otherwise complies with Paragraph 8.5. Further, if an Eligible Claimant timely submitted an opt-out notice via email that was otherwise in compliance with Paragraph 8.5, the receipt of the hard copy of the opt-out form after December 11, 2023 would not be considered non-compliant.

The Court plans to issue this guidance to the Special Master and to direct the Special Master to review, in consultation with the Notice Administrator and/or the Claims Administrator if the Special Master so desires, the opt-out forms and, if necessary, to revise any determinations regarding non-compliance that are inconsistent with this guidance.

The list of Eligible Claimants whose opt-out submissions are determined by the Special

Master to be non-compliant after the Special Master completes this review will be fully disclosed on the docket with an indication regarding which aspect of the opt-out submission has been determined to be non-compliant and the cause of such non-compliance. Thereafter, the Court will afford all Eligible Claimants that have had their opt-out submissions determined to be non-compliant an opportunity to file objections to that determination and will afford Class Counsel and/or 3M an opportunity to file responses thereto. Further, any party wishing to contest a finding that an opt-out submission complied with the Settlement Agreement is authorized to do so.

This shall be the sole procedure for challenging the compliance determination with respect to any opt-out submission. Any motions or other submissions on the subject that do not follow these procedures will be stricken by the Court, and the Court will not entertain any argument relating to the compliance/non-compliance of any Eligible Claimant's opt-out submission during the Final Fairness Hearing, the purpose of which is to consider the fairness, reasonableness, and adequacy of the Settlement as a whole.

The Court directs the Notice Administrator, the Claims Administrator, and the Special Master not to communicate with any Eligible Claimant regarding the compliance/non-compliance of an Eligible Claimant's opt-out submission until the Court expressly permits such communication.

**AND IT IS SO ORDERED.**

s/Richard Mark Gergel  
Richard Mark Gergel United  
States District Judge

January 31, 2024  
Charleston, South Carolina