

Aqueous Film-Forming Foam (AFFF) Product Liability Litigation (MDL 2873)

United States District Court for the District of South Carolina, Master Docket No. 2:18-MN-2873-RMG; (**This document relates to *City of Camden, et al. v. BASF Corporation*, Docket No. 2:24-cv-03174-RMG.**)

**IMPORTANT: PLEASE READ BELOW AS YOUR WATER SYSTEM'S LEGAL RIGHTS MAY BE ADVERSELY IMPACTED**

This alert concerns a recent proposed class action settlement with BASF Corporation (BASF) related to PFAS contamination.<sup>1</sup> **Please note that action may be required by your water system by October 15, 2024.**

Per- and Polyfluoroalkyl Substances (PFAS), also known as “forever chemicals”, are linked to several adverse health impacts. As a result, the U.S. Environmental Protection Agency adopted the National Primary Drinking Water Regulation (NPDWR) for six PFAS - <https://www.epa.gov/sdwa/and-polyfluoroalkyl-substances-pfas>. The NPDWR establishes legally enforceable Maximum Contaminant Levels (MCLs) for these six PFAS and requires public water systems to conduct expensive and long-term monitoring and treatment if PFAS exceeding the MCLs are found in their water supply. US EPA is also requiring many systems to test for PFAS as a part of Unregulated Contaminant Monitoring Rule 5 - <https://www.epa.gov/dwucmr/fifth-unregulated-contaminant-monitoring-rule>.

Various PFAS manufacturers were sued in class action lawsuits brought on behalf of public water systems across the country. Recently, class action plaintiffs and BASF agreed to settle claims related to PFAS contamination for a settlement amount of three hundred twelve million, five hundred thousand dollars (\$312,500,000). This proposed settlement resolves claims against BASF for PFAS contamination in system supplies. **The settlement is structured so that every eligible public water system is automatically included as a “class member” in the case unless it submits a formal exclusion or “opt out” request. This means that you must affirmatively request that your system be excluded from the settlement if you do not want to be part of the settlement and want to preserve your ability to sue.**

A website created for the public water system PFAS settlements provides more information regarding the BASF settlement at <https://www.pfaswatersettlement.com/>. This website includes links to the full settlement agreement and key documents and information about the BASF settlement. Every system should carefully review the information available on the website to decide whether to remain in the BASF settlement or to submit the documents to opt out from the settlement. **If you are an Eligible Claimant, you will be considered a Class Member and bound by the terms of the settlement unless you affirmatively opt out. Given the ramifications of the decision to remain in the settlement, or to opt out, you may wish to consult with legal counsel to understand how your system may be impacted by the settlement.**

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<sup>1</sup> The State Water Resources Control Board provides this alert for informational purposes only. The information provided in this alert does not, and is not intended to, constitute legal advice. This alert contains links to third-party websites. Such links are only for the convenience of the reader or user, and the State Water Resources Control Board does not endorse the contents of those third-party sites. The readers of this alert should contact their attorneys to obtain advice with respect to the matters addressed in this alert. No reader of this alert should act or refrain from acting on the basis of the information in this alert without first seeking legal advice from counsel.

The PFAS settlements website lists important dates and deadlines for the BASF Settlement Agreement. The two most important deadlines to keep in mind are: (1) the opt-out or “Requests for Exclusion” deadline, and (2) the settlement claims submission deadline. You should monitor this website regularly for important updates or changes to deadlines.

Exhibit A to the BASF Settlement Agreement also has information regarding allocation procedures for settlement funds and a formula to estimate your potential recovery under the BASF settlement. See <https://www.pfaswatersettlement.com/wp-content/uploads/2024/06/BASF-Settlement-Agreement.pdf>.

To estimate the settlement amount you may receive if you submit a claim, you may use the BASF Public Water Provider Settlement Estimated Allocation Range Table to calculate a rough estimated allocation amount for each of your Impacted Water Sources (groundwater well or surface water system with PFAS contamination). The BASF Public Water Provider Settlement Estimated Allocation Range Table is available at <https://www.pfaswatersettlement.com/wp-content/uploads/2024/07/BASF-Estimated-Allocation-Range-Table.pdf>.

**We recommend that you look at the allocation estimates as soon as possible. These estimates may help you and your legal counsel determine whether it is in your system’s best interests to accept the terms of the BASF settlement and thereby waive your system’s legal right to pursue future claims against BASF. Note: if your system is an Eligible Claimant and does not affirmatively opt out, your system may lose future legal rights to pursue other recovery against BASF.**

## **BASF SETTLEMENT OPTIONS AND KEY CONSIDERATIONS**

### ***(City of Camden, et al. v. BASF Corporation., Docket No. 2:24-cv-03174-RMG)***

A. What is the difference between an Eligible Claimant and a Class Member?<sup>2</sup>

Under the BASF Settlement Agreement, an “Eligible Claimant” refers to an Active Public Water System that qualifies as a member of the Settlement Class, while a “Class Member” is an Eligible Claimant that does not opt out of the Settlement Class. See BASF Settlement Agreement paragraphs 2.14 and 2.23.

The “Settlement Class” includes every Active Public Water System in the United States of America that has one or more Impacted Water Sources as of May 15, 2024. See BASF Settlement Agreement paragraph 5.1. “Impacted Water Source” means a Water Source that has a Qualifying Test Result showing a Measurable Concentration<sup>3</sup> of PFAS. Thus, if you are an active public water system that has test results showing measurable amounts of PFAS in your water source or sources as of May 15, 2024, you are considered an Eligible Claimant in the BASF Settlement Class. Systems that have not tested positive before May 15, 2024, are excluded from the settlement.

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<sup>2</sup> All capitalized words and terms are defined in the BASF settlement agreement.

<sup>3</sup> Measurable Concentration means the lower of a concentration equal to or greater than the limit of detection of the analytical method used – regardless of whether that limit is higher than, lower than, or equal to any limit established for any purpose by federal or state law – or one part per trillion (one nanogram per liter). See paragraph 2.34 of the BASF settlement agreement.

B. What options does an Eligible Claimant have?

Systems that are Eligible Claimants have two options: (1) request to be excluded (opt out) from the BASF settlement, or (2) file a settlement claim.

1. Opt out of the settlement by the **DEADLINE: October 15, 2024**
  - If you do not want to participate in the BASF settlement and settle claims you may have against BASF for PFAS contamination, you must affirmatively opt out of the BASF settlement by filing a “Request for Exclusion” by the October 15, 2024, deadline.
  - Unless you timely opt out, you will be bound by the settlement and any related judgment or other final disposition, including the release set forth in the agreement. For additional information regarding the scope of the release, see the BASF Settlement Agreement at paragraphs 1.4 and 3.2, Section 12, and Exhibits J and P. If you do not timely opt out, you will not be able to separately pursue claims against BASF if those claims are within the scope of the release.
  - Guidance on how to opt out of the BASF agreement is available at the opt-out portal, which can be accessed at <https://www.pfaswatersettlement.com/documents-basf/>, and in the separately attached BASF Opt Out Checklist.
2. Submit a claim by the applicable **DEADLINES:** For Action Fund Claims Forms, 60 calendar days after the Effective Date, which is five (5) business days after the date of Final Judgment.<sup>4</sup> For Special Needs Fund Claims Forms, up to forty-five (45) calendar days after submitting the Action Fund Claims Forms. For Supplemental Claims Forms, any time up to and including December 31, 2030.
  - Each Eligible Claimant that has not opted out of the settlement class must submit a claim electronically at <https://www.pfaswatersettlement.com/> or by paper form submission by the applicable deadline. As a class member, a system will be eligible to receive a check(s) from the claims administrator based on the allocation procedures.
  - Additional guidance on how to submit a claim and allocation procedures is available at paragraph 11.3 and Exhibits A, B, M, N, O and P of the BASF Settlement Agreement.

C. Factors you may wish to consider in determining whether to opt out or submit a claim include the benefits from submitting a claim balanced against the consequences of doing so.

1. By submitting a claim (assuming your system is eligible), your system will receive a payment from the BASF claims administrator to address PFAS contamination in your system without the need for your system to bring litigation or take any further action. However, this payment may be far less than the costs to address any PFAS impacts on your system’s water supply.

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<sup>4</sup> Claim forms for the BASF settlement are not yet available. Continue to monitor the PFAS settlements website at <https://www.pfaswatersettlement.com/> for additional updates on the BASF settlement claims submission forms and deadline(s).

2. To *estimate* the amount your system may receive if it submits a claim, you may use the BASF Public Water Provider Settlement Estimated Allocation Range Table to calculate a rough estimated allocation amount for each of your system's impacted water sources (groundwater well or surface water system with PFAS contamination). The table is available at <https://www.pfaswatersettlement.com/wp-content/uploads/2024/07/BASF-Estimated-Allocation-Range-Table.pdf>.
3. The actual amount your system will receive if it submits a claim is not, however, currently available. Each class member's award will depend on the number of claims submitted as well as other information in the claim forms, and the available pool of funds for distribution under the BASF Settlement Agreement.
4. By submitting a claim, your system waives its right to any additional recovery from BASF beyond the amount received under this settlement for contamination or remediation related to all PFAS compounds, even if the amount your system receives is not sufficient to address all treatment costs. The waiver extends to your system's right to pursue future litigation against BASF for any PFAS compounds that do not have a current treatment standard.
5. Any system that meets the settlement's definition of "Eligible Claimant" will be considered to be a settlement class member and is bound by the terms of the BASF Settlement Agreement, including the release in Section 12 of the agreement. The release prevents settlement class members from bringing any lawsuits against BASF for claims resolved by the BASF Settlement Agreement. It is important to consider how this release would impact your system's rights should it be sued by a water user or other third party for harms related to PFAS. In addition, all settlement class members release any and all claims they may have against BASF for punitive damages. In other words, your system may not be able to obtain additional money or funds for claims regarding alleged PFAS-related harm to drinking water and associated financial burdens from BASF.