

NOTICE OF OPEN MEETING

Posted 4:00 p.m. November 28, 2023

Notice is hereby given that the Neosho City Council will meet in special session on Thursday, November 30, 2023 at 4:00 p.m., in the Council Chambers at City Hall 203 East Main Street, Neosho, Missouri.

AGENDA SPECIAL SESSION NEOSHO CITY COUNCIL

The agenda of this meeting includes:

CALL TO ORDER

ROLL CALL

APPROVAL OF AGENDA

NEW BUSINESS

1. PFAS Class Action Lawsuit

CLOSED SESSION

1. Section 610.021 (1) RSMo,...Legal actions, causes of action or litigation involving a public governmental body and any confidential or privileged communications between public governmental body or its representatives and its attorneys.

ADJOURN

REQUESTED COUNCIL MEETING DATE: November 30, 2023

ITEM: PFAS Class Action Lawsuit

ORIGINATING DEPARTMENT: City Manager

ATTACHMENT:

1. PFAS litigation memo 25Sep2023

PURPOSE:

BACKGROUND:

RECOMMENDATION:

To: Local Managers, Division Managers

From: Tim Geraghty

cc: Tony Sneed, Mark Mahler

Date: September 25, 2023

Re: PFAS Litigation – Drinking Water and Wastewater

DRINKING WATER SYSTEMS

Recently, many of you received notices regarding a class action lawsuit brought by drinking water utilities against manufacturers of PFAS chemicals. A copy of one such notice is attached for reference. Please read the notice so that you are fully informed of the details. Here are some of the more critical highlights:

- Class Representatives (water utilities) have alleged that they have suffered harm resulting from the presence of PFAS in drinking water and/or are required to monitor for the presence of PFAS in drinking water and that Settling Defendants (the chemical manufacturers) are liable for damages and other forms of relief to compensate for such costs.
 - Costs may include those for testing, engineering studies, required capital improvements for contaminant removal, additional operations & maintenance costs, etc.
- The Settling Defendants deny the allegations... and deny that they have any liability... for any claims of any kind, and would assert a number of legal and factual defenses against such claims if they were litigated to conclusion...
- Potential claimants in the Class Action are any public water utility that:
 - tested for PFAS prior to June 30, 2023, or
 - is subject to the monitoring rules set forth in UCMR 5* (generally, systems serving more than 3,300 people), or
 - is required under state or federal law to test their raw water or tap water for these chemicals before the UCMR 5 deadline (currently 12/31/2025).

*UCMR 5 is USEPA's fifth Unregulated Contaminant Monitoring Rule.
- Public water systems that are owned and operated by a State or the federal government and cannot sue or be sued in their own name are excluded from the Settlement Class.
- Each Settlement Class Member's settlement amount will depend on flow rate and level of concentration as compared to all other Settlement Class Members. Those with higher flow rates and levels of concentration will receive a higher settlement amount.



What does this mean to you? Your client utility should discuss and decide if it wishes to exclude itself from the Class Action. No decision will result in being included in the Settlement Class. In my discussions with an attorney knowledgeable of this issue, it seems that most utilities excluding themselves are those that are either (1) located near a manufacturing facility of 3M, DuPont or another defendant in this case (“Proximate Facilities”) or (2) have already found high levels of PFAS in their water supply. Those utilities are excluding themselves because they expect their cases to be stronger and their related expenses to be much higher than they might receive as reimbursement from this Settlement. Therefore, unless your client’s utility is near a PFAS manufacturer’s facility or has already found high levels of PFAS, I would expect it to participate in the Settlement. Regardless, each utility should make its own decision on the matter, so I recommend they consult with their legal counsel. If they choose to exclude themselves from the Settlement, they must submit (with your assistance) a Request for Exclusion no later than December 4, 2023.

Here's a summary of the key deadlines:

<u>Deadline</u>	<u>Date</u>
Deadline to submit objections	11/4/2023
Deadline to submit Requests for Exclusion	12/4/2023
Court’s Final Fairness Hearing	12/14/2023
Phase One Public Water System Claims Form	60 days after effective date
Phase Two Claim Forms	1/1/2026

WASTEWATER

For wastewater utilities, no class action has been brought. However, roughly 15 to 20 wastewater utilities have filed individual claims; more are sure to follow. Costs to wastewater facilities could be especially high if the Federal government chooses to classify PFAS chemicals as hazardous waste. Costs could include those related to testing, plant upgrades to meet contaminant limits in NPDES permits and restrictions on land application of biosolids.

Utilities who file a claim before a class action is filed typically get additional funds from any settlement, as is true of the drinking water class action described above. Therefore, wastewater utilities have incentive to file individual claims sooner rather than later. For those who find PFAS in their influent or effluent, there is an opportunity to file a claim now, without paying legal fees, through a group of attorneys who are looking for roughly 100 claimants in an effort to eventually file a class action. If your client utility has interest in filing such a claim, you must first test and identify PFAS in their wastewater. Then contact me for further instructions.

