

REQUEST FOR CITY COUNCIL CONSIDERATION

Meeting Date: November 27, 2023

Agenda Item: 3	Prepared for: Chris Noury, City Attorney
Agenda Section: Consent: Resolution	Date: November 28, 2023
Subject: A resolution opting out of the Dupont and 3M Class Action Settlements	Division: Legal

Background:

Attached is a resolution of the City of North Myrtle Beach opting out of the DuPont and 3M Class Action Settlements in re: Aqueous Film Forming Foams Product Liability Litigation, US District Court of South Carolina, MDL No. 2:18-MN-2873; Case No. 2:23-CV-03230.

Recommended Action:

Adoption of the Resolution

Reviewed by Department Head	Reviewed by City Manager	Reviewed by City Attorney
Council Action: Motion By _____ 2 nd By _____ To _____		

A RESOLUTION

A RESOLUTION OF THE CITY OF NORTH MYRTLE BEACH OPTING OUT OF THE DUPONT AND 3M CLASS ACTION SETTLEMENTS IN RE: AQUEOUS FILM FORMING FOAMS PRODUCT LIABILITY LITIGATION, US DISTRICT COURT OF SOUTH CAROLINA, MDL NO. 2:18-MN-2873; CASE NO. 2:23-CV-03230

WHEREAS, perfluoroalkyl and polyfluoroalkyl substances (“PFAS”) are a large group of synthetic chemicals which do not break down in the environment and eventually contaminate surface and groundwater supplies and soils, among other things; and

WHEREAS, countless lawsuits relating to PFAS have been combined into multi-district litigation in the U.S. District Court for the District of South Carolina *In re Aqueous Film-Forming Foams Products Liability Litigation* (No. 2:18-mn-2873-RMG) (“MDL”); and

WHEREAS, hundreds of the cases in the MDL were brought by U.S. drinking water providers alleging that PFAS manufacturers, including DuPont de Nemours, Inc. (and companies associated with DuPont) and 3M Company, contaminated the drinking water of those providers; and

WHEREAS, the U.S. District Court for the District of South Carolina has given preliminary approval to separate class-action settlements for MDL defendants DuPont de Nemours, Inc. (and companies associated with DuPont) and 3M Company (“the DuPont and 3M Settlements”); and

WHEREAS, the City of North Myrtle Beach operates a public water system and has been identified as a member of the proposed classes in the DuPont and 3M Settlements; and

WHEREAS, the terms of the DuPont and 3M Settlements require class members who do not wish to participate in the settlements to affirmatively opt out to avoid being bound by the terms of the settlements; and

WHEREAS, the DuPont and 3M Settlements include broad releases of future PFAS-related claims; and

WHEREAS, PFAS is known to impact not only drinking water but soil, wastewater, and groundwater, and federal and state regulations for PFAS are expected to be enacted in 2024 and beyond; and

WHEREAS, the scope and resulting consequences of PFAS contamination are unknown; additional time is needed for the City of North Myrtle Beach to gain a better understanding of the true legal, operational and financial impacts of PFAS; and

WHEREAS, the City of North Myrtle Beach is classified as a consecutive water system since the City purchases most of the water from a regional supplier, Grand Strand Water and Sewer Authority. As such, any anticipated settlement amount would be nominal.

WHEREAS, it is in the public interest for the City of North Myrtle Beach to preserve any PFAS-related claims it may have against DuPont, 3M, and other potential defendants until the risks and impacts of PFAS are better understood.

BE IT RESOLVED BY THE MAYOR AND COUNCIL FOR THE CITY OF NORTH MYRTLE BEACH, SOUTH CAROLINA, that it specifically elects to not participate in the proposed DuPont and 3M Class Action Settlements in re: Aqueous Film Forming Foams Product Liability Litigation, US DISTRICT COURT OF SOUTH CAROLINA, MDL NO. 2:18-MN-2873 CASE NO. 2:23-CV-03230. This litigation would require participating member to “release certain Claims against Settling Defendants, their affiliates, certain predecessors and successors, and other persons as set forth in the Settlement Agreement...Generally speaking, the Release will prevent and Settlement Class Member from bringing any lawsuit against the Settling Defendants or making any claims resolved by the Settlement Agreement.” The Council further authorizes the City Manager to sign the documents necessary to opt out of the settlement.

Dated this 27th day of November 2023

Marilyn Hatley, Mayor

ATTEST:

Allison K. Galbreath, City Clerk

Resolution: RES-23-11