



DEPARTMENT OF
**LEGAL AND
ADMINISTRATIVE
SERVICES**

CITY ATTORNEY'S OFFICE
100 North Appleton Street
Appleton, WI 54911
p: 920.832.6423
f: 920.832.5962
www.appleton.org

TO: Chairperson Vered Meltzer
Members of the Utilities Committee

FROM: Christopher R. Behrens, City Attorney
Chris Stempa, Director of Utilities

DATE: August 1, 2024

RE: PFAS Opt Out – BASF and Tyco
Our File No. A21-0078

In 2023 the Common Council authorized the City Attorney's Office to file the necessary documents to opt out of class action settlements with 3M and DuPont related to PFAS. Recently we were made aware of similar opt-out opportunities with Tyco and BASF class action lawsuits. I'm providing the following that was included in the 2023 memo as it still provides relevant context:

City staff including the Utilities Director, City Attorney and Risk Manager along with their staff, have reviewed this matter in several respects. From the Utilities perspective, the known impact of PFAS on the water utility is minimal at this time due to the City's primary water source being surface water. Tests for PFAS have fallen well below current regulatory limits. Appleton is fortunate in that it hasn't been negatively impacted as some other communities around the country who have been forced to take extreme measures including trucking in water. What is unknown is how the regulatory requirements regarding acceptable PFAS levels might change in future years or decades and, in that scenario, the extent of additional infrastructure that would be required to meet those new requirements. These considerations (even though still relatively unknown) and preservation of potential future rights have to be balanced against what rights would be given up should Appleton stay in the settlement class and accept a (projected) settlement from each company.

The City belongs to Municipal Environmental Group (MEG)-Water Division and their attorneys have more closely analyzed the Tyco and BASF class action settlement terms. The following summary they provide is instructive, "The Tyco and BASF releases are similar to the release included in the 3M settlement. These releases are broader than what was included in the DuPont settlement." Given that these releases are similar to, if not broader than, the 3M/DuPont releases that the City previously has opted out of, staff recommends doing the same with regard to the Tyco/BASF lawsuits. **Accordingly, we are respectfully recommending that it be:**

APPROVED that City Staff and the Mayor be authorized, on behalf of the City of Appleton, to immediately execute and file a Request for Exclusion with the appropriate courts and parties in the Tyco and BASF class action lawsuits so that the City is opted-out of these respective lawsuits.