

Issue: Environment

The 3M Settlement Controversy – a Short Course

The Situation

The State of Minnesota sued manufacturing giant 3M for environmental damage caused by certain of the company's manufacturing wastes. The waste chemicals, known by the class name of perfluorocarbons, or PFCs, have dispersed into a 100-square-mile plume in the groundwater. PFCs have been found in the drinking water of communities along the East Metropolitan area of the Twin Cities. Affected cities include Afton, Cottage Grove, Lake Elmo, Newport, Oakdale, St. Paul Park, Woodbury and the townships of Grey Cloud Island and West Lakeland.

The case was settled in February 2018 in an intensive pretrial negotiation session after 7 years of litigation. 3M paid \$850 million to the Minnesota Environmental Remediation Fund as a restricted grant with the primary purpose of providing a clean, sustainable water supply for the area affected. In addition to the \$850 million paid for long-term correction of the problem, 3M will pay up to \$40 million for short-term drinking water needs for affected households. The company will also pay for temporary municipal drinking water treatment systems until longer-term, more sustainable solutions can be built. 3M is also responsible for remediation costs associated with three disposal sites in Washington County. Finally, there is a consent order from 2007 under which 3M will continue to pay if the original \$890 million is exhausted and drinking water problems remain.

The grants from the Remediation Fund will be administered by the Minnesota Pollution Control Agency (MPCA) and the Minnesota Department of Natural Resources (DNR). A Working Group formed by those agencies will evaluate proposed projects for feasibility and sustainability and administer the funds. They will also conduct "listening sessions" in the affected communities to determine courses of action.

The Technical Background

The class of chemicals in question is called perfluorochemicals, or PFCs. PFCs were used to make, among other items, Scotchgard stain repellent, some fire-fighting foams, and Teflon™, a proprietary DuPont Chemical product. The manufacturing process generated liquid wastes that also contained PFCs. From 1951 to 1971 the liquid wastes were disposed of by trench burial. The liquids migrated from the trenches into local aquifers, where they could be detected in well samples. In 1971 3M built an incinerator for much of the waste, although some tars still required land disposal in treated barrels. 3M phased out production of PFCs in 2002.

PFCs are not biodegradable and they are bioaccumulative—that is, they remain within organisms that consume them. PFCs have been found in far-flung reaches of the world where the materials have never been manufactured: for instance, in the blood of Antarctic penguins and Arctic polar bears. The long-term effects of these chemicals in humans and in wildlife are unknown. Some studies indicate that they are carcinogenic and that they may be hormone disruptors. There is some uncertainty as to their health impacts for humans or wildlife. 3M argues that the dosages found in drinking water are well below the calculated dosages that might affect human health but does not dispute that low concentrations of these chemicals can be detected in well water samples in the affected communities.

The criticisms fall into 3 categories

1. Second-guessing the Attorney General's office that a higher settlement should have been reached, given that the original lawsuit was for \$5 billion. (The litigation was extensive and lasted for 7 years and might not have been won by the state.)
2. Questioning the legal fees: of the \$850 million, approximately \$130 million will go to pay legal and other expenses. Sarah Anderson (R-Plymouth, District 44A) questioned the use of outside legal counsel at what seemed to be an exorbitant expense. The Attorney General's office noted that the outside legal counsel operated on a contingency fee and would not have been paid at all if there had been no settlement and if the state had lost its case against 3M.
3. Challenging the administration of the funds. This is the biggest issue for opposition research. Minnesota State Representatives are critical that the administration will be handled by two state agencies and not by the Legislature. The Attorney General's office pointed out that the Legislature had raided the 1998 tobacco settlement fund in 2011 to close a funding gap, and the structure of the 3M settlement is intended to prevent a future raid for unrelated purposes. The state's leading agencies for environmental protection and industrial oversight will control the fund. Republicans introduced and passed a bill requiring legislative oversight of the fund administration in the form of twice-yearly reports from the Working Group. The bill (HF3660) was sent on to Governor Dayton, but its fate is still undetermined.

References

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