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DuPont To Pay $8.3M To End Two Suits Over Alleged Exposure to Chemicals

E.I. du Pont de Nemours and Co. will pay $8.3 million to settle two U.S. class actions over release of chemicals into the water supply in Salem County that allegedly affected 4,248 households.

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E.I. du Pont de Nemours and Co. will pay $8.3 million to settle two U.S. class actions over release of chemicals into the water supply in Salem County.

District Judge Renee Bumb in Camden approved the settlement with 4,248 households, as well as $2.77 million in class counsel fees and $886,224 in expenses, on Aug. 26.

The agreement provides class members with a choice of either $800 cash or a Culligan in-home water filtration system, 10 replacement cartridges and $200 toward filter installation.

The class members are neighbors of DuPont's Chambers Works plant in Deepwater, allegedly exposed to perfluorinated chemicals known as PFOA that DuPont released into the Delaware River and deposited them at a landfill. PFOA allegedly causes birth defects and cancer, but DuPont maintained that research had not shown the chemicals hazardous.

Rowe v. E.I. du Pont de Nemours and Co., 06-1810, was filed in federal court in Camden in April 2006. *Scott v. E.I. du Pont de Nemours and Co.*, 06-3080, was filed in state court in Salem County and removed by DuPont in June 2006.

The plaintiffs asserted claims for negligence, private nuisance, trespass, battery and medical monitoring.

The parties settled after Bumb's Dec. 22 rejection of an earlier agreement that she said did not give adequate relief. That settlement would have provided class members with $200 each, but most of the $8.3 million would have gone to Salem Community College, the local YMCA and United Way of Salem County.

Class members lost their request for certification for all claims in December 2008. They then sought certification of medical-monitoring claims only, but that was denied on July 29, 2009.

Finally, in October 2009, under Federal Rules of Civil Procedure 23(b)(2), Bumb certified one subclass of private well owners and another of Penns Grove Water System customers, all within two miles of the plant and seeking injunctive relief for private nuisance. Bumb also certified the issue of strict liability for class treatment.

Last September, while DuPont's motion for summary judgment was pending, the parties sought approval of the first settlement. On Dec. 16, Bumb said it did not provide injunctive relief, as required by Rule 23(b)(2). She suggested the money be better spent on providing water filters for class members.

DuPont lawyer John Johnson, of Lightfoot, Franklin & White in Birmingham, Ala., replied that DuPont did not believe that remedy was legally or scientifically justified, considering the proposed settlement would not release DuPont from future health claims.

Last March 22, Bumb gave preliminary approval to the revised settlement, with its options for the water filter or the $800 cash. She amended her earlier certification to state that it covers those who met the qualifications as of March 31, the date of the settlement's class notice.

Objections then came from Samuel Switzenbaum and Pennsgrove Associates, owners of the 240-unit Rivers Bend Apartments within two miles of the plant, whose motion to intervene Bumb granted. They claimed, among other things, that the settlement gives class members disproportionate relief compared with the severity of their allegations.

Their attorney, Merrill Davidoff of Berger & Montague in Philadelphia, cited *In re GMC Pick-up Truck Fuel Tank Products Liability Litigation*, 55 F.3d 768 (3d Cir. 1995), which held a proposed settlement unreasonable because it was entered "too quickly with too little development on the merits."

But Bumb said the DuPont case was different: The settlement had been reached "after five years of exhaustive, contentious litigation, where liability has been vigorously disputed" and after the original agreement had been rejected.

Bumb added that the intervenors' counsel wrongly supposed that class members would receive the relief sought if the case went to trial.

The merits of the plaintiffs' allegations about the impact of PFOA "have been hotly contested, leaving DuPont's liability far from certain." Thus, the intervenors' objection — that the filter system fails to approximate the relief plaintiffs originally sought — does not warrant rejection of the settlement, Bumb said.

The intervenors also called the settlement inadequate because it provides filtration of only one source of water in each household, but Bumb said that wrongly assumes PFOA had been established as harmful to human health.

She cited a declaration from a DuPont scientist that, "based on extensive health and toxicological studies, DuPont does not believe that PFOA exposure poses a health risk to the general public."

The intervenors objected to installation of filters in the apartments in their complex and said they would notify tenants that such filters were not allowed. Bumb agreed to modify the claim form to let tenants know of that restriction.

Class counsel Shari Blecher, of Lieberman and Blecher in Princeton, says the class members were pleased with Bumb's ruling. Blecher, who handled the case with Stuart Lieberman, declines to discuss what led to the wide variations between the terms of the two settlements.

Local counsel for DuPont, Roy Cohen of Porzio, Bromberg & Newman in Morristown, referred a reporter's question to the company. A DuPont spokesman, Dan Turner, said the settlement would allow DuPont to "focus on plant operations and the community and not on lengthy and contentious legal proceedings."