

If you paid stormwater service fees to the City of Duluth for nonresidential property from September 8, 2015, to the present, a class action lawsuit may affect your rights.

A state court authorized this notice. This is not a solicitation from a lawyer.

- A class action lawsuit was filed on behalf of Moline Machinery LLC, and Glass Merchant, Inc., d/b/a Walsh Windows (“Plaintiffs”) against City of Duluth (“Defendant”) in the case entitled *Moline Machinery, LLC et al. v. City of Duluth*, Case No. 69DU-CV-21-1668 (6th Jud. Dist. Cnty. of St. Louis, Minn.).
- Plaintiffs and the class are represented by Larson · King LLP and Trial Group North PLLP. The City of Duluth is represented by Greene Espel PLLP.
- The lawsuit addresses whether the City of Duluth failed to follow Minnesota law and its own City Code to properly calculate fees charged for stormwater service to owners of nonresidential properties. Plaintiffs allege the City of Duluth failed to charge or undercharged the required fees to certain nonresidential properties as required by City Code. Plaintiffs also allege the City of Duluth has unjustly and unfairly forced other owners of nonresidential property to pay the fees that should have been charged to the underpaying properties. The City of Duluth denies the allegations.
- This Notice is being provided to you in advance of a trial. No judge or jury has concluded the Plaintiffs’ legal claims are correct or that the City of Duluth did anything wrong. For this reason, there is no money available now, and there is no guarantee there ever will be. If you are a class member, however, you have a choice to make now.

This Notice may affect your legal rights. Please read it carefully.

YOUR LEGAL RIGHTS AND OPTIONS		DEADLINE
EXCLUDE YOURSELF	Get out of this lawsuit. Get no money or benefits if any are available in the future. Keep the right to sue separately. You have the right to exclude yourself from the lawsuit, if you timely submit an exclusion request. The Court will then exclude you from the lawsuit. If you ask to be excluded from the lawsuit and money or benefits are later awarded, you will not receive any money or benefits. You will keep any right to file your own lawsuit or be part of any <i>other</i> lawsuit against the Defendant.	Postmarked by March 18, 2024
DO NOTHING	Stay in this lawsuit. Give up the right to sue separately. If you do nothing, you may become entitled to money or benefits if later awarded, if Plaintiffs prevail at a trial or as part of a settlement. You will give up your right to sue the Defendant. You will be bound by any future judgment regarding the Defendant.	

- The Court has not decided whether the Defendant did anything wrong. Your legal rights are affected whether you act or not. Please read this notice carefully.

Questions? Go to www.DuluthStormwaterFeeLitigation.com or call 1-888-610-9397.

BASIC INFORMATION

1. Why was this notice issued?

A Court has “certified” this case as a class action lawsuit against City of Duluth.

If you are a class member, you have legal rights and options before the Court decides whether the legal claims being made on your behalf are correct. This Notice explains all these things.

2. What is this lawsuit about?

Plaintiffs allege the City of Duluth failed to follow Minnesota law and its own City Code to properly calculate fees charged for stormwater to owners of nonresidential properties, and for arbitrarily failing to assess the required fees to certain nonresidential properties.

Plaintiffs also allege the City of Duluth undercharged certain nonresidential properties by failing to assess those properties the actual fees required by City Code. Plaintiffs allege the City of Duluth has unjustly and unfairly forced other owners of nonresidential property to pay the fees that should have been charged to the underpaying properties.

Duluth contends that its system for setting stormwater charges enables it to cover costs of creating and maintaining a stormwater management system, without collecting more or less than is needed to accomplish that purpose.

Duluth also contends its charges are just and equitable, and authorized by state statute.

Duluth further contends that it’s investigated and re-established the primary element of its stormwater rate-setting program.

Duluth further contends that Minnesota law does not entitle companies or persons to pay a stormwater fee and later receive a refund of some or all of what they paid.

3. Why is the lawsuit a class action?

In a class action lawsuit, one or more people or entities or businesses called class representatives sue on behalf of others who have similar legal claims, all of whom together are a “class.” Individual class members do not have to file a lawsuit to participate in the class action lawsuit or be bound by the judgment in the class action. One court resolves the issues for everyone in the class, except for those who exclude themselves from the class.

4. Is there any money available now?

No. The Court has not decided whether City of Duluth did anything wrong, or whether any class members are entitled to relief, so there is no money or other benefit available to the class and no guarantee that there ever will be. If money or benefits become available, class members may have to take other steps, such as submitting a claim form, to get their shares. If so, you will be notified of any additional steps you must take. You can stay informed of the progress of this case by visiting www.DuluthStormwaterFeeLitigation.com or by calling 1-888-610-9397.

WHO IS INCLUDED IN THE LAWSUIT?

5. How do I know if I am part of the Lawsuit?

The Court has decided class member are defined as:

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All persons and entities who paid stormwater service fees to the City of Duluth for non-residential structures from September 8, 2015, to the present, except for those who are exempt as described in the following section.

6. Are there exceptions to being included in the Settlement?

Yes. This class *excludes* the owners of “waterfront” property who received “waterfront” designation BMP credits, or other discounts related to stormwater service fees before 2021, as identified on the document produced in this lawsuit with Bates number COD0003682, and any person or entity who paid the stormwater service fees for such properties. This class also excludes the owners of multi-family properties who paid stormwater service fees and any person or entity who paid such fees for multi-family properties. This class further excludes the City of Duluth, as well as the judge assigned to this case, any member of the judge’s immediate family, and any person or entity that has previously commenced and concluded a lawsuit against the City of Duluth arising out of the subject matter of this lawsuit.

(Note: The persons or entities identified in COD0003682, who are owners of “waterfront” property who received “waterfront” designation BMP credits or other discounts related to stormwater service fees before 2021, are identified by name or address in Attachment A accompanying this notice.)

7. What if I am still not sure whether I am part of the Lawsuit?

If you are still not sure if you are included, please review the detailed information contained in the Class Certification Order, available at www.DuluthStormwaterFeeLitigation.com, or call the Notice Administrator’s toll-free telephone number at 1-888-610-9397.

YOUR RIGHTS AND OPTIONS

8. What am I giving up by staying in the class?

Unless you exclude yourself, you are staying in the class, which means that you cannot sue, continue to sue, or be part of any other lawsuit relating to stormwater service overcharges against the City of Duluth. It also means that all the Court’s orders will apply to you and legally bind you.

9. What happens if I do nothing at all?

If you are a member of the class and you do nothing, you will remain a member of the class. You will be legally bound by all the decisions the Court makes. You will also have the opportunity to participate in any future settlements or judgments against the City of Duluth in the lawsuit. If the Plaintiffs obtain money or benefits, you may be entitled to a share. Regardless of the outcome of the lawsuit, if you do nothing, and thereby remain in the class, you will never be able to sue (or continue to sue) the City of Duluth about the legal claims in this lawsuit.

10. How do I exclude myself?

If you do not want to be legally bound by the terms of the lawsuit, or if you wish to pursue your own separate lawsuit against the City of Duluth, or if you do not want to be a class member, you must exclude yourself by completing and submitting a written request to the Notice Administrator in the accompanying Exclusion Request Form, by using the accompanying prepaid, preaddressed envelope.

You must mail your Exclusion Request Form, **postmarked by March 18, 2024.**

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If you do not wish to use the accompanying Exclusion Request Form or the accompanying prepaid, preaddressed envelope, you can also exclude yourself if you submit a written request to the Notice Administrator stating your intent to exclude yourself from the class. Your exclusion request must include the following:

- (a) Name and address;
- (b) A statement that you want to be excluded from the class in *Moline Machinery, LLC et al. v. City of Duluth*; and
- (c) Your signature.

You may also obtain an Exclusion Request form at www.DuluthStormwaterFeeLitigation.com.

You must mail your Exclusion Request, **postmarked** by **March 18, 2024**, to:

Moline Machinery v. City of Duluth
Exclusion Request
P.O. Box 5683
Portland, OR 97228-5683

11. If I exclude myself, can I get anything from the lawsuit?

No. If you exclude yourself, and the class is awarded money or benefits later, you will not be eligible to claim any of that money or benefits. You also will not be legally bound by the Court's judgments if you exclude yourself. You will be able to sue (or continue to sue) the City of Duluth on your own about the legal claims that are involved in this lawsuit, now or in the future, assuming your legal claims are not time-barred or otherwise prohibited (you should consult your own lawyer to make such a determination).

12. If I do not exclude myself, can I sue Defendant for the same thing later?

No. Unless you exclude yourself, you give up the right to sue the City of Duluth for the legal claims that the lawsuit involves, and you will be legally bound by the judgment in this lawsuit. If you have a pending lawsuit against the City of Duluth, speak to your lawyer for that lawsuit immediately to determine whether you must exclude yourself from this lawsuit to continue your own lawsuit against the City of Duluth.

THE LAWYERS REPRESENTING YOU

13. Do I have a lawyer in this case?

Yes, the Court has appointed Larson · King LLP and Trial Group North, PLLP as Class Counsel for the class. If you wish to remain a member of the class, you do not need to hire your own lawyer because Class Counsel is working on your behalf. If you wish to pursue your own case separate from this one, or if you exclude yourself from the class, these lawyers will no longer represent you. You may enter an appearance through your own attorney if you so desire. You will need to hire your own lawyer if you wish to pursue your own lawsuit against the City of Duluth.

14. How will Class Counsel be paid?

If Class Counsel obtains money or benefits for the class, they may ask the Court for fees and expenses. You will not have to pay these fees and expenses. If the Court grants their request, the fees and expenses will either be deducted from any money obtained or paid separately by the City of Duluth.

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A TRIAL

15. How and when will the Court decide who is right?

If the lawsuit is not dismissed or settled, there may be a trial. To prevail in the lawsuit, Plaintiffs will have to prove their legal claims at a trial to be scheduled at a later date. During the trial, the judge and/or jury will hear evidence to determine whether Plaintiffs or the City of Duluth are right about the legal claims in the lawsuit. There is no guarantee the Plaintiffs will win any money or benefits for the class.

16. If there is a trial, do I have to attend the trial?

If there is a trial, you will not need to attend unless you choose to do so, or you are called as a witness. You and/or your own lawyer are welcome to attend at your own expense. If you are interested in attending, please check the website or call the toll-free number and ask to be kept informed of the trial schedule.

17. Will I get money if there is a trial?

If Plaintiffs obtain money or benefits because of a trial, then members of the class will be notified about how to submit a claim to participate in a claims process. It is unknown how long this may take. Information will be posted on the website www.DuluthStormwaterFeeLitigation.com as it becomes available. You can access the website whether you stay in the lawsuit or exclude yourself.

GETTING MORE INFORMATION

18. How do I get more information about the lawsuit?

This Notice summarizes the lawsuit and your legal rights. More details are in the Class Certification Order. You can find a copy of the Class Certification Order, other important documents, and information about the current status of the lawsuit by visiting www.DuluthStormwaterFeeLitigation.com. You may also contact the Notice toll-free at 1-888-610-9397 or by writing to:

Moline Machinery v. City of Duluth
P.O. Box 5683
Portland, OR 97228-5683

PLEASE DO NOT CONTACT THE COURT REGARDING THIS NOTICE

Questions? Go to www.DuluthStormwaterFeeLitigation.com or call 1-888-610-9397.

ATTACHMENT A TO CLASS NOTICE

Great Lakes Aquarium
Bayfront Park
DECC & Marcus Theaters
DEDA
Hallett Dock Co
Hallett Dock 7 LLC
Harbor Cove Marina
Lakehead Boat Basin
North American Salt Co
Park Point Marina Inn
Pier B
111 & 1200 Port Terminal Dr.
Riverland AG
Theodore Smith – 600 Garfield Ave
AZCON Inc
900 Garfield Ave – Port Terminal
901 Helberg & 1210 Port Terminal Dr
1100 Port Terminal Dr
1102 & 1125 Port Terminal Dr
1108 & 1130 Port Terminal Dr
1200, 1255, 1222 & 1325 Port Terminal Dr
North Shore Track Services
North Star Steel Co
Fairfield Inn & Suites
Duluth Ready Mix
Spirit Lake Marina
Calumet Superior LLC
US Army Corps of Engineers
US Coast Guard
US Army Reserve
Sand Point Yacht Club
Park Point Park
Duluth Rowing Club
Sky Harbor Airport
C. Reiss Coal Co.
Allete/MN Power
Lavarock Property
Railroad St. Properties
WLSSD
Terry Lucia
James Holgren
Burlington No/Santa Fe RR
7000 Pulaski St.
VERSO
Tate & Lyle