

STATE OF MINNESOTA

DISTRICT COURT

ST. LOUIS COUNTY

SIXTH JUDICIAL DISTRICT

Moline Machinery, LLC and Glass Merchant, Inc., d/b/a Walsh Windows on behalf of themselves and all others similarly situated,

Honorable Eric L. Hylden
Court File No. 69DU-CV-21-1668

Plaintiffs,

**ORDER REGARDING PLAINTIFFS'
MOTION FOR APPROVAL OF CLASS
NOTICE**

v.

City of Duluth,

Defendant.

The above-entitled matter came before the undersigned Judge of District Court on November 16, 2023, pursuant to Plaintiffs' motion for approval of class notice. Plaintiffs were represented by Shawn M. Raiter and Jerome Feriancek, and Defendant was represented by John M. Baker . The Court reviewed the memoranda of law, oral arguments, and all files, records and proceedings herein. Based on all of the foregoing,

IT IS HEREBY ORDERED:

1. The combined motions of the parties to approve the manner and form of class notice are granted.
2. Plaintiffs are authorized to use Epiq Class Action and Claims Solutions, Inc. and Hilsoft Notifications as the notice administrator for dissemination of notice regarding the certification of the class in this matter.
3. As required by Minn. R. Civ. P. 23.03(b)(2), Plaintiffs' "individual notice" to "class members" must state each of the six items listed in Rule 23.03(b)(2), including but not limited to items (D) and (E). This order applies to all forms of notice to class members. Because creation of a website is not itself "individual notice to all class members who can be identified through reasonable effort," omitting

any of the six items from notice sent to class members but placing it on a website does not comply with Rule 23.03(b)(2) or this order.

4. To comply with Minn. R. Civ. P. 23.03's requirement that Plaintiffs' individual notice to class members be "the best notice practicable under the circumstances," which includes notice that enables class members to make an informed decision about whether to exercise their right to opt out of the class, both Plaintiffs and Defendant are allowed to state their position in all forms of notice to class members, as approved in the attached notices, Exhibits A through
5. The members of the class have been regularly billed by the City of Duluth for stormwater charges—traditionally, by United States mail directed to a specific postage address, and, for certain class members, more recently by email. If class members' commercial nonresidential properties in the City have been sold since September 2015, it is relatively easy for Class Counsel to identify those sales and the parties to that sale through the Minnesota Department of Revenue's online Electronic Certificate of Real Estate Value (eCRV) database. The Court therefore disallows that part of Class Counsel's class notice plan that includes social-media advertising.
6. Class Counsel shall send the required notice via United States mail to the class members' last known postage address, because forwarding of mail sent to a postage address is superior to any forwarding of email sent to an email address. If the required notice is returned to the sender and an email address is available for that class member, then Class Counsel shall then promptly send the email form of notice to that class member.

7. Because of the need for legibility, no "postcard notice" can comply with all terms of this order, including Minn. R. Civ. P. 23.03's requirement that Plaintiffs' "individual notice" to "class members" be "the best notice practicable under the circumstances." Therefore, postcard notice is no substitute for compliance with paragraphs 1 through 6 of this order, and its use is not approved.

8. Everything required in this order to be included in one or more notices must also be stated and easy to locate on the home page of the website.

9. The opt-out exclusion form required in this order and the long-form notice form must also be available and easy to locate on the website.

10. The proposed forms of notice, as amended by the Court comply with Rule 23.03 and due process requirements. Class Counsel are authorized and required to use the following forms: Exhibit A is the approved Long Form Notice.

11. Exhibit B is the approved Email Notice. An Email Notice will be delivered to all potential Class members for whom an email address is available from the City of Duluth, in addition to the Long Form Notice. Hilsoft will use the method described in Paragraphs 22 and 23 of the Anzari Declaration for the delivery of Email Notice.

12. The Court approves the use of a case website, with informational pages in forms substantially like those that are attached as Exhibit C. The website shall contain a link to an opt-out/request for exclusion form substantially like the form attached as Exhibit D, as well as a pdf version of the same form. The website shall also contain a copy of the Long Form notice and other information described in Paragraph 31 of the Anzari Declaration.

13. The Court does not approve the use of the Internet Digital Notice Campaign described in Paragraphs 27-30 of the Anzari Declaration. The Court was not persuaded that the campaign would add much to the notice process, given the potential class in this case.

14. Within 7 days of the date of this order, Defendant will provide to class counsel the name, address and available email addresses in its possession for potential class members. Within 14 days of class counsel's receipt of the class member information, Hilsoft will commence implementation of the Notice efforts described in this order. Hilsoft will then select a deadline to opt out/ request exclusion that is approximately 60 days after the commencement date, and shall include that date in the Notices provided to the potential class members and on the case website.

15. Following the close of the period to opt out/ request exclusion from the lawsuit, class counsel shall provide to defense counsel a list of the persons or entities who submitted valid and timely opt out/ requests for exclusion. Those persons and entities will be excluded from the lawsuit.

16. At the same time, class counsel shall provide defense counsel with a list of persons and entities who would be considered class members. Without further order of the Court, counsel will exchange all information they have on these persons and entities that is reasonably relevant to the claims and defenses being made.

17. Counsel shall also contact Court Admin once notice has been sent to request an in-person status conference with the Court, where next steps will be discussed.

BY THE COURT:

Honorable Eric L. Hylden
Judge of District Court

EXHIBIT A

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 Month, DD, 20YY
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.

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.xxxxxxxxxx or by calling 1-xxx-xxx-xxxx.

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:

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.xxxxxxxxxx, or call the Notice Administrator’s toll-free telephone number at 1-xxx-xxx-xxxx.

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 Month, DD, 20YY**

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 **Month, DD, 20YY**, to:

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

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.

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 xxxxxxxxxx.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.xxxxxxxx.com. You may also contact the Notice toll-free at 1-xxx-xxx-xxxx or by writing to:

Moline Machinery v. City of Duluth
P.O. Box XXXX
Portland, OR XXXXX-XXXX

PLEASE DO NOT CONTACT THE COURT REGARDING THIS NOTICE

EXHIBIT B

To: [REDACTED]

From: Notice Administrator <noreply@xxxxxxxxxxx.com>

Subject: Moline Machinery, LLC et al. v. City of Duluth Class Action Notice

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 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.).

What is this lawsuit about? 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.

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 has 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.

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.

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

The Court has decided class members are defined as:

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

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. 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 the long-form notice which can be reviewed at www.DuluthStormwaterFeeLitigation.com.

Please call the Notice Administrator's toll-free telephone number at 1-xxx-xxx-xxxx if you are not sure if you are a class member.

You have the right to exclude yourself from the lawsuit, class, if you timely submit an exclusion request. The Court will then exclude you from the lawsuit.

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.

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.

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, stating your intent to exclude yourself from the class (an “Exclusion Request”). Your Exclusion Request must include the following: (1) name and address; (2) a statement that you want to be excluded from the class in *Moline Machinery, LLC et al. v. City of Duluth*; and (3) your signature. You must mail your Exclusion Request, **postmarked** by **Month, DD, 20YY**, to: Moline Machinery v. City of Duluth, Exclusion Request, P.O. Box xxxx, Portland, ORxxxxx-xxxx.

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).

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.

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 the class website. You may also contact the Notice Administrator toll-free at 1-xxx-xxx-xxxx or by writing to: *Moline Machinery v. City of Duluth*, P.O. Box xxxx Portland, OR xxxxx-xxxx.

EXHIBIT C

Moline Machinery v. City of Duluth

Moline Machinery, LLC et al. v. City of Duluth, Case No. 69DU-CV-21-1668 (6th Jud. Dist. Cnty. of St. Louis, Minn.)

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Welcome to the *Moline Machinery v. City of Duluth* Class Action Website.

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.

Your legal rights are affected whether you act or don’t act. Read this website and the [Notice](#) carefully.

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 [Notice](#) is being provided 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.

Your Legal Rights and Options in This Lawsuit

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 this lawsuit. If you timely submit an exclusion request, the Court will 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.
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 rights to sue the Defendant. You will be bound by any future judgment regarding the Defendant.

Current Status

On August 9, 2023, the Court entered its order certifying a class in this lawsuit.

Important Dates

September 8, 2015 – Present

Class Period

Month DD, YYYY

Deadline to Exclude Yourself from the Settlement

Moline Machinery v. City of Duluth

Moline Machinery, LLC et al. v. City of Duluth, Case No. 69DU-CV-21-1668 (6th Jud. Dist. Cnty. of St. Louis, Minn.)

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Important Documents

For additional information, select from the documents listed below.

Class Notice Documents



[Long-Form Notice](#)



[Postcard Notice](#)



[Email Notice](#)



[Exclusion Request Form](#)

Court Documents



[Class Certification Order](#)



[Motion for Notice](#)

[Schedule](#)



[Declaration of Cameron R. Azari, Esq. Regarding Notice Program](#)



[Summons and Complaint](#)

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Contact Us

If you have any questions regarding this lawsuit, you may contact the Notice Administrator. Please ensure that you include your name and your return address on all correspondence.

 **Email Us:**

info@DuluthStormWaterFeeLitigation.com

 **Call Us:**

[1-888-610-9397](tel:1-888-610-9397) (Toll-Free) (Recorded Information Only) Call Center Hours: 8 a.m. – 8 p.m. CDT
Monday – Friday except Holidays

 **Write Us:**

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

Moline Machinery v. City of Duluth

Moline Machinery, LLC et al. v. City of Duluth, Case No. 69DU-CV-21-1668 (6th Jud. Dist. Cnty. of St. Louis, Minn.)

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1. **Why was a notice issued?**

A Court has established, or “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. The [Notice](#) explains all of these things.

District Court Judge Eric L. Hylden of the 6th Judicial District County of St. Louis, Minnesota is overseeing this class action lawsuit. The case is known as *Moline Machinery, LLC et al.*

v. City of Duluth, Case No. 69DU-CV-21-1668. The parties that filed this lawsuit are called the “Plaintiffs,” and the company sued is City of Duluth (“City of Duluth” or the “Defendant”).

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2. What is this lawsuit about?

Plaintiffs allege the Defendant 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.

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

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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 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.

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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, in order 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 this website or by calling 1-888-610-9397.

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

The Court has decided “class member” is defined as:

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 [FAQ 6](#).

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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 the [Notice](#).)

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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](#), or call the Notice Administrator’s toll-free telephone number at 1-888-610-9397.

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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.

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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.

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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 stating your intent to exclude yourself from the class (an "Exclusion Request"). Your Exclusion Request must include the following:

1. Your name and address;
2. A statement that you want to be excluded from the class in *Moline Machinery, LLC et al. v. City of Duluth*; and
3. Your signature.

You may also obtain an Exclusion Request form [here](#) but must return that form to the Notice Administrator. You must mail your Exclusion Request, postmarked by **TBD**, to:

Moline Machinery v. City of Duluth

Exclusion Request

P.O. Box 5683

Portland, OR 97228-5683

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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).

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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.

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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. You may enter an appearance through your own attorney if you so desire. 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 will need to hire your own lawyer if you wish to pursue your own lawsuit against the City of Duluth.

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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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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.

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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.

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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 here on the website as it becomes available. You can access the website whether you stay in the lawsuit or exclude yourself.

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

The [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 on this website. You may also contact the Notice Administrator toll-free at 1-888-610-9397 or by writing to:

Moline Machinery v. City of Duluth
Notice Administrator

P.O. Box 5683
Portland, OR 97228-5683

PLEASE DO NOT CONTACT THE COURT REGARDING THE [NOTICE](#).

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EXHIBIT D

EXCLUSION REQUEST

City of Duluth Stormwater Fees Class Action
Moline Machinery, LLC et al. v. City of Duluth, Case No.
69DU-CV-21-1668 6th Jud. Dist. Cnty. of St. Louis, Minn.

This is NOT a Claim Form.

1. If you submit this Form, you will be excluded from this Class Action.
2. **Do NOT submit this Form, if you want to receive any money or benefits that may be awarded in the future. You will NOT receive any money or benefits if you submit this Form.**
3. If you want to receive any money or benefits that may be available in the future, you do not need to do anything at this time.

Name of Class Member / Property Owner: _____

Address: _____

Street City State ZIP Code

Telephone: _____ Mobile telephone: _____

Please exclude me / my business from the class in *Moline Machinery, LLC et al. v. City of Duluth*.

I understand that by submitting this Exclusion Request Form, I / my business will not be eligible to receive any money or benefits that may be awarded in the future.

Signature of Class Member

Date Signed

The consequences of returning this Form are explained in the Class Notice. To be effective and exclude yourself or your business from this class action, this Form must be completed, signed, and mailed, **postmarked** by **Month DD, 20YY**, to the following address.

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