

Notice regarding pending class action settlement affecting users of the Town of Kernersville, North Carolina's sanitary sewer system

Fasano v. Town of Kernersville and the Winston-Salem – Forsyth County City/County Utilities Commission
(Forsyth County, No. 16 CVS 2801)

The Superior Court authorized this notice. It is not a solicitation from a lawyer.

- A \$12.3 million settlement has been reached in a class action lawsuit about whether the Town of Kernersville (“Kernersville”) and the Winston-Salem – Forsyth County City/County Utilities Commission (“CCUC”) overcharged users of Kernersville’s sewer system from July 1, 2012 to August 1, 2016. The settlement resolves litigation over whether the overcharges violated federal and state law. Kernersville and the CCUC are called “Defendants” in this Notice.
- Se ha llegado a un acuerdo en una demanda colectiva sobre los sobrecargos por tarifas de alcantarillado desde el 1 de julio de 2012 hasta el 1 de agosto de 2016 en Kernersville. Se realizarán reembolsos a los clientes elegibles del sistema de alcantarillado. Para obtener una copia en español de este Aviso, visite www.KernersvilleSewerSettlement.com o llame al 1 (888) 292-1832 para obtener información adicional.
- You may be eligible to receive refunds of overcharges, with interest, as part of the settlement.
- The settlement is subject to approval by the North Carolina Superior Court, Forsyth County. Refunds will be provided to eligible participants only if the Court approves the settlement. You may participate in the Court’s proceedings regarding approval of the settlement, as explained below.
- If you are an eligible Class Member and the Court approves the settlement, then you will receive a refund without the need to take any additional action.
- Your rights with respect to the settlement, and the actions you can take, are explained in this Notice. Please read this notice carefully. You may also check the settlement website at www.KernersvilleSewerSettlement.com for updates and further details, or call 1 (888) 292-1832.

BASIC INFORMATION

1. What is this lawsuit about?

Kernersville’s sewer system is managed by the CCUC. Sewer rates charged to Kernersville sewer users are based on a multiple of the rate charged by the CCUC to users of Winston-Salem’s sewer system. As of 2011, the rate multiplier was 2.487x, meaning that for the same volume of sewer service, Kernersville users paid 2.487 times the rate paid by Winston-Salem users. Under a 2011 agreement, Kernersville and the CCUC agreed to reduce the rate multiplier charged to Kernersville users to 1.2x as of June 30, 2012, unless they had reached a new agreement on sewer rates. Defendants did not reach a new agreement by June 30, 2012, but continued to charge the 2.487x rate multiplier, instead of reducing the rate multiplier to 1.2x. The rate multiplier remained at 2.487x until September 2015, when Defendants reduced the rate multiplier to 1.6x. Kernersville and the CCUC finally reached a new written agreement on sewer rates as of August 1, 2016, setting the rate multiplier at 1.6x. Kernersville and CCUC have since further reduced the sewer rate multiplier to 1.5x.

The issue in this case is whether Kernersville and the CCUC overcharged sewer system customers from July 1, 2012 until August 1, 2016, during which time the rate multiplier should have been 1.2x. On August 1, 2017, the Court entered an Order determining that the failure to reduce the rate multiplier to 1.2x during the relevant time period and the subsequent overcharges constituted a breach of contract and an unconstitutional taking without just compensation in violation of the United States and North Carolina Constitutions.

The Court has certified the Class as Plaintiffs and all other citizens and residents of Kernersville and persons in its outlying (extraterritorial) area, including any businesses, firms, trusts, corporations or any other entity, who received, and paid for, Kernersville sanitary sewer system services at any time between 1 July 2012 and 1 August 2016.

After the Court held that Defendants are liable to the Class, the parties agreed to the settlement set forth in this Notice.

Judge Edwin G. Wilson, Jr., of the North Carolina Superior Court, is in charge of this case. Edward and Debra Fasano, the Kernersville residents that brought this case, have been appointed by the Court as Class Representatives. The Court has appointed H. Brent Helms and Franklin Scott Templeton of Robinson & Lawing, LLP in Winston-Salem, and Alan W. Duncan and Stephen M. Russell, Jr. of Mullins Duncan Harrell & Russell PLLC in Greensboro, as Class Counsel. Garden City Group, LLC has been appointed by the Court as Class Administrator.

2. Why is there a notice?

Class Members have a right to know about the proposed settlement of a class action lawsuit and about their options before the Court decides whether to approve the settlement.

3. What are the terms of the settlement?

Defendants have agreed to pay \$12.3 million into a common fund under the Court's control. Class Members will be refunded 85% of the common fund. In turn, the Class will release its claims against Defendants arising from sewer fee overcharges stemming from the rate multiplier during the relevant time period. The settlement also provides that 15% of the common fund will be used to pay the costs of administering the refund process and for the Court to award attorneys' fees and costs to Class Counsel, in an amount to be determined by the Court. The Court may also approve a representative award to the Class Representatives, not to exceed \$11,000.00 for each Class Representative, for their service in bringing and maintaining this lawsuit. The Court will determine whether to approve any award and the amount of such award to the Class Representatives at the final approval hearing. (See Question 13).

The Court's approval of the settlement will have no impact on the sewer rate that you are currently charged, or on the amount of property taxes or other fees owed by Kernersville residents.

4. What will I get from the settlement?

Each eligible Class Member is expected to receive 100% of the overcharged sewer fees from July 1, 2012 to August 1, 2016, plus approximately 6% interest. The amount of individual refunds will be based on each Class Members' sewer usage and the period of time that they received sewer services in Kernersville. For many Class Members, this refund may be several hundred dollars. The Class Administrator cannot advise of the specific amounts due to each Class Member, so please do not call and ask the Class Administrator for such information. (Revised 5-7-18.)

5. What am I giving up to stay in the Class?

If you do not exclude yourself from the Class by opting out, and the Court approves the settlement, you will not be able to sue the Town of Kernersville or the CCUC regarding the overcharged sewer fees during the relevant time period, and you will be bound by the decisions of the Court in this case.

6. How will I receive my refund?

Refund checks will be mailed to the names and addresses of Class Members according to data maintained by the CCUC. You do not need to submit any information to receive your refund check. However, if your address has changed, or if a Class Member has passed away or closed (in the case of a business entity), please contact the Class Administrator, Garden City Group, LLC, at Fasano v. Town of Kernersville, c/o GCG, P.O. Box 10566, Dublin, OH 43017-7266. Please promptly deposit the refund check upon receipt.

7. When will I receive my refund?

Refunds will be mailed to eligible Class Members as soon as possible after the Court grants final approval of the settlement. In the event there are any appeals from the Court's final approval, those appeals may need to be resolved before any refunds can be distributed.

YOUR OPTIONS

8. How do I get out of the settlement?

If you do not want to receive a refund from this litigation, but want to keep the right to separately sue the Defendants over the legal issues in this case, then you must take steps to get out of this settlement. This is called asking to be excluded from – or “opting out” – of the Class. To opt out of the settlement, you must complete and mail to the Settlement Administrator a letter stating that it is a “Request to Opt Out,” that includes the following: (a) your name, address, telephone number, and email address (if available); (b) the name of the case (*Fasano v. Town of Kernersville, et al.*); (c) an explicit statement of your desire to opt out of this settlement; and (d) your signature, acknowledged by a notary public. You must mail the Request to Opt Out, postmarked no later than July 6, 2018, to the Class Administrator, Garden City Group, LLC at Fasano v. Town of Kernersville, c/o GCG, P.O. Box 10566, Dublin, OH 43017-7266.

9. If I opt out, will I still get a refund from the settlement?

No. If you opt out, you will not receive a refund from this settlement.

10. How can I tell the Court my opinion of the settlement?

If you are a Class Member, you can submit written comments to the Court in support of, or in opposition to, the settlement. A written comment in opposition to a settlement is called an “objection.” To do so, you must send a letter stating that it is a “Comment on Settlement,” that includes the following: (a) your name, address, telephone number, and email address (if available); (b) the name of the case (*Fasano v. Town of Kernersville, et al.*); (c) the reasons you support or object to the settlement, accompanied by any legal support for your comments; (d) a statement of whether you intend to appear at the Final Approval Hearing (see Question 15); and (e) your signature, acknowledged by a notary public. You must mail the Comment on Settlement, postmarked no later than July 6, 2018, to the Class Administrator, Garden City Group, LLC at Fasano v. Town of Kernersville, c/o GCG, P.O. Box 10566, Dublin, OH 43017-7266. If your Comment on Settlement is not postmarked by July 6, 2018, then the Court will not consider your comments. Class Members are not required to submit comments on the settlement.

If you request to opt out of the settlement (see Question 8), you will not be allowed to submit a comment regarding the settlement, because you will no longer be part of the Class.

11. What is the difference between opting out and objecting?

Objecting is simply telling the Court that you do not like the terms of the settlement, and the reasons why, but you will ultimately receive the benefit of any settlement approved by the Court. You can object to the settlement only if you do not opt out of the settlement. Opting out of the settlement means telling the Court that you do not want to be part of the settlement and that you do not want to receive a refund from the settlement.

12. What happens if I do nothing at all?

If the Court approves the settlement and you are an eligible Class Member, you will receive your refund as noted in Questions 4 and 7 above, and you will not be able to pursue a separate lawsuit about these issues.

THE COURT'S FINAL APPROVAL HEARING

13. When and where will the Court decide whether to approve the settlement?

The Court will hold a Final Approval Hearing on July 27, 2018 at 9:30 AM, at the courtroom located in the Kernersville Town Hall, 134 E. Mountain St., Kernersville, NC 27284. The Honorable Edwin G. Wilson, Jr., Superior Court Judge, will preside at the hearing.

At the Final Approval Hearing, the Court will consider whether the settlement is fair, reasonable, and adequate. The Court will also consider how much to award Class Counsel and to award to the Class Representatives out of the 15% set aside. If there are objections to the settlement, the Court will consider them at the hearing. The hearing may be moved to a different date, time, or location without additional notice, so check www.KernersvilleSewerSettlement.com for updates.

14. Do I have to come to the hearing?

No. Class Counsel will answer any questions that the Court may have. If you send a comment supporting or objecting to the settlement, you may, but do not have to come to Court to talk about it. (See Question 10.) As long as you mailed your written comment on time to the proper address, the Court will consider it. You may also attend the hearing in person at your own expense, and may retain your own attorney to attend on your behalf.

15. May I speak at the hearing?

Yes. If you submit a comment in support of or objecting to the settlement, please indicate in your written comment that you wish to speak at the Final Approval Hearing. Even if you do not submit a written comment, you may indicate your desire to speak at the hearing by sending a letter stating that it is your "Notice of Intent to Appear." In your letter, you must include the following: (a) your name, address, telephone number, and email address (if available); (b) the name of the case (*Fasano v. Town of Kernersville, et al.*); and (c) your signature. You must mail your Notice of Intent to Appear, postmarked no later than July 6, 2018, to Fasano v. Town of Kernersville, c/o GCG, P.O. Box 10566, Dublin, OH 43017-7266. If you do not submit a Notice of Intent to Appear by July 6, 2018, the Court may not allow you to speak at the hearing.

16. Do I need an attorney to represent me at the final approval hearing?

No. Class Counsel has already been appointed to represent the Class and their interests in this matter. If you wish to object to the settlement, then you may want to retain separate counsel at your own expense, but you do not need to do so in order to object in writing or to speak at the final approval hearing.

GETTING MORE INFORMATION

17. How do I get more information?

This Notice summarizes the proposed settlement. More details, and other filings from the lawsuit, are available at www.KernersvilleSewerSettlement.com. If you have additional questions, you can visit the settlement website, call the Class Administrator at 1 (888) 292-1832, or write to the Class Administrator: Fasano v. Town of Kernersville, c/o GCG, P.O. Box 10566, Dublin, OH 43017-7266.

PLEASE DO NOT CONTACT THE COURT OR THE CLERK'S OFFICE CONCERNING THIS CASE.