

# Did you purchase Hydrogen Peroxide directly from a Distributor or Manufacturer of Hydrogen Peroxide in Canada between November 1, 1998 and December 31, 2003?

If so, apply now to receive money from a class action settlement.

**Please read this notice carefully. It may affect your legal rights.**

The deadline to apply to receive a payment is September 3, 2019.

**This notice applies to: all persons who, between November 1, 1998 and December 31, 2003 purchased Hydrogen Peroxide in Canada directly from an eligible Manufacturer of Hydrogen Peroxide or through a Distributor of Hydrogen Peroxide.**

## I. NATURE OF THE LAWSUIT AND THIS NOTICE

Hydrogen peroxide is a clear, colourless, inorganic liquid used primarily as a bleach or oxidizer, and sold in aqueous solutions, typically 35%, 50% or 70% by weight, in different grades or formulations specifically tailored for enhanced performance in a particular application of the product (“Hydrogen Peroxide”).

This class action is brought on behalf of all persons (excluding the defendants and their subsidiaries, affiliates and predecessors) who, between November 1, 1998 and December 31, 2003 purchased Hydrogen Peroxide in Canada directly from a manufacturer of Hydrogen Peroxide or through a distributor of Hydrogen Peroxide (the “Class” or “Class Members”).

This class action alleges that between November 1, 1998 and December 31, 2003, the defendants, FMC Corporation and FMC of Canada, Ltd. (collectively, “FMC”), and co-conspirators conspired to raise, fix, maintain, or stabilize prices for Hydrogen Peroxide and allocate markets and customers for the sale of Hydrogen Peroxide. It is alleged that the defendants and their co-conspirators communicated with each other and made agreements to (i) fix prices and volumes of sales, (ii) coordinate price increases, (iii) allocate volumes of sales, customers and markets, (iv) refrain from bidding for supply contracts, (v) submit intentionally non-competitive bids for supply contracts, (vi) conceal the conspiracy from customers, and (vii) discipline corporations that failed to comply with the conspiracy. It is alleged that this conduct impacted the price of Hydrogen Peroxide and that the defendants profited, at the expense of the Class which paid artificially high prices for Hydrogen Peroxide. These allegations have not been proven in court and are denied by FMC.

On January 14, 2010, this action was certified as a class proceeding by order of the Ontario Superior Court of Justice. Irving Paper Limited and Irving Pulp & Paper, Limited are the representative plaintiffs for the Class.

A previous distribution (the “First Distribution”) in this action occurred in relation to monies obtained as a result of the following settlements (i) Solvay Chemicals Inc. and Solvay S.A. (collectively, “Solvay”), dated May 1, 2008, (ii) Evonik Degussa Corporation formerly Degussa Corporation, Evonik Degussa GmbH formerly Degussa A.G., and Evonik Degussa Canada Inc. formerly Degussa Canada Inc. (collectively, “Degussa”), dated June 12, 2008, (iii) Eka Chemicals, Inc., Eka Chemicals Canada Inc. and AkzoNobel Chemicals International B.V. (collectively, “Eka”), dated July 24, 2008, and (iv) Kemira OYJ and Kemira Chemicals Canada Inc. (collectively, “Kemira”), dated November 3, 2008.

A settlement with Atofina Chemicals Inc., Arkema Inc., Arkema Canada Inc., and Arkema S.A. (collectively, “Arkema”) was reached on May 31, 2011 and subsequently approved by the court. The court approved the use of the monies obtained as a result of that settlement for expense reimbursement.

## II. SETTLEMENT AND ITS BENEFITS

A settlement (the “Settlement Agreement”) has been reached with FMC. On January 18, 2019, the Ontario Court approved the Settlement Agreement. This approval order was declared applicable and enforceable by the British Columbia Court on March 12, 2019.

Under the terms of the Settlement Agreement, FMC has agreed to pay CDN\$3,250,000 (the “Settlement Amount”) to settle the class action. The Settlement Amount less court-approved legal fees, costs and other expenses, and a Class Proceedings Fund levy will be held in trust for the benefit of the Class until it is distributed in accordance with a court-approved distribution process. The Settlement Agreement settles, extinguishes and bars all claims relating in any way to or arising out of the proceeding against FMC.

The settlement is a compromise of disputed claims, and FMC does not admit any wrongdoing or liability.

Questions? Visit [www.hydrogenperoxideclassaction.ca](http://www.hydrogenperoxideclassaction.ca); email [hydrogenperoxide@ricepoint.com](mailto:hydrogenperoxide@ricepoint.com)  
or call toll-free 1-866-413-5890.

### III. ARE YOU INCLUDED IN THE LAWSUIT?

You are included in this lawsuit if:

- you are a person who, between November 1, 1998 and December 31, 2003 purchased Hydrogen Peroxide in Canada directly from an eligible manufacturer of Hydrogen Peroxide<sup>1</sup> or through a distributor of Hydrogen Peroxide.

The deadline to opt out of this proceeding has already passed.

### IV. PROPOSED DISTRIBUTION OF THE SETTLEMENT FUNDS

On January 18, 2019, the Ontario Court approved a protocol for distributing the settlement funds, plus accrued interest, less court-approved legal fees, costs and other expenses, and a Class Proceedings Fund levy. A copy of the distribution protocol is available at [www.hydrogenperoxideclassaction.ca](http://www.hydrogenperoxideclassaction.ca).

#### A. Calculation of Notional Entitlement

For purposes of the distribution, a Notional Entitlement will be attributed to Class Members' Hydrogen Peroxide purchases during the Class Period for purposes of calculating their entitlement to the Net Settlement Amount<sup>2</sup>. The Notional Entitlement for particular Hydrogen Peroxide purchases will depend on the vendor and the purpose for which the products were purchased. The categories are as follows:

- **Direct Purchaser:** means a person or entity in Canada, other than a Distributor, who purchased Hydrogen Peroxide directly from FMC, Arkema, Solvay, Degussa, Eka, or Kemira.
- **Distributor:** means a person or entity in Canada who purchased Hydrogen Peroxide from FMC, Arkema, Solvay, Degussa, Eka, or Kemira and resold the Hydrogen Peroxide without further processing or including it in any other product.
- **Fabricator:** means a person or entity in Canada who purchased Hydrogen Peroxide directly from a Distributor, and manufactured products that contain Hydrogen Peroxide and/or products the production of which involved the use of Hydrogen Peroxide.

Class Members can fall within multiple purchase groups depending on the types of purchases they made during the Class Period.

The following values will apply to Hydrogen Peroxide purchases depending on purchase category:

- Hydrogen Peroxide purchases made in a Direct Purchaser capacity during the Class Period will be valued at 100%.
- Hydrogen Peroxide purchases made in a Distributor capacity during the Class Period will be valued at 10%.
- Hydrogen Peroxide purchases made in a Fabricator capacity during the Class Period will be valued at 90%.

#### B. How Settlement Funds will be Distributed

The Net Settlement Amount will be distributed to eligible Claimants proportionately based on the value of the Claimant's Notional Entitlement, as compared to the value of all qualifying Claimants' Notional Entitlement. Because settlement benefits are being distributed *pro rata*, the amount payable to individual claimants will not be known until after the claims process is complete.

#### C. Method for Claiming

Class Members who wish to apply for compensation under the settlements must apply no later than September 3, 2019. Claims that are not made before the deadline may not be eligible for compensation. If you do not receive a copy of the claim form from the Claims Administrator, you can obtain one online at [www.hydrogenperoxideclassaction.ca](http://www.hydrogenperoxideclassaction.ca). If you do not have internet access, please contact the Claims Administrator at 1-866-413-5890.

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<sup>1</sup> Eligible manufacturers include FMC, Arkema, Kemira, Eka, Degussa and Solvay.

<sup>2</sup> Net Settlement Amount means the amount paid by FMC pursuant to the terms of the settlement for the benefit of Class Members minus approved Class Counsel fees, settlement monies for the payment of costs, Class Counsel's disbursements, the Class Proceedings Fund's levy, administrative expenses, taxes, and any other deductions approved by the Ontario Court.

**i. Previous Claimants**

Class Members who are Previous Claimants will be sent a letter along with a claim form stating their eligible Hydrogen Peroxide purchases based on the defendants' sales records and sales information submitted by the Previous Claimants to establish their purchases. Previous Claimants will be entitled to rely on the defendants' sales records and sales data submitted in the previous distribution.

Previous Claimants can claim for additional FMC Hydrogen Peroxide purchases if they disagree with the amount set out in the claim form by providing a declaration attesting to: (a) the value of the Hydrogen Peroxide and (b) whether the purchases were made in the capacity of a Direct Purchaser, Distributor and/or Fabricator. Additional details on how to make supplemental claims can be found in the distribution protocol available at [www.hydrogenperoxideclassaction.ca](http://www.hydrogenperoxideclassaction.ca). Previous Claimants will not be entitled to claim for any other additional purchases.

Supplemental claims will be subject to audit by the Claims Administrator. If a Class Member's claim is selected for audit, the Class Member will be required to provide additional information or documents to substantiate their purchases.

**ii. New Claimants with sales data from FMC**

If applicable, New Claimants will be sent a letter along with a claim form stating their eligible Hydrogen Peroxide purchases based on sales data obtained from FMC. Each New Claimant will be entitled to rely on the Hydrogen Peroxide purchases set out in the claim form.

New Claimants can claim for additional Hydrogen Peroxide purchases if they disagree with the amount set out in the claim form by providing a declaration attesting to: (a) the value of the Hydrogen Peroxide and (b) whether the purchases were made in the capacity of a Direct Purchaser, Distributor and/or Fabricator. Additional details on how to make supplemental claims can be found in the distribution protocol available at [www.hydrogenperoxideclassaction.ca](http://www.hydrogenperoxideclassaction.ca). Previous Claimants will not be entitled to claim for any other additional purchases.

Supplemental claims will be subject to audit by the Claims Administrator. If a Class Member's claim is selected for audit, the Class Member will be required to provide additional information or documents to substantiate their purchases

**iii. New Claimants without Sales data from FMC**

Class Members who are New Claimants who did not receive a claim form setting out their eligible Hydrogen Peroxide purchases may submit a claim by obtaining a claim form from [www.hydrogenperoxideclassaction.ca](http://www.hydrogenperoxideclassaction.ca) or by contacting the Claims Administrator at 1-866-413-5890, and submitting it to the Claims Administrator. The claim form will require a declaration attesting to: (a) the value of the Hydrogen Peroxide and (b) whether the purchases were made in the capacity of a Direct Purchaser, Distributor and/or Fabricator.

Claims will be subject to audit by the Claims Administrator. If a Class Member's claim is selected for audit, the Class Member will be required to provide additional information or documents to substantiate their purchases.

**D. Excluded Purchases and Duty to Declare**

Claimants are required to declare any Hydrogen Peroxide purchases for which compensation was received in the related U.S. Hydrogen Peroxide class action litigation. Claimants are further required to declare compensation that was received or a release given through a private settlement with FMC, Arkema, Solvay, Degussa, Eka or Kemira. Claimants will not be eligible to receive compensation for Hydrogen Peroxide purchases for which they previously obtained compensation or provided a release.

Only Hydrogen Peroxide purchases from FMC, Arkema, Solvay, Degussa, Eka, Kemira or a Hydrogen Peroxide distributor in Canada will be eligible for compensation.

Only Hydrogen Peroxide purchases made during the class period (outlined above) will be compensable.

## E. Sample Calculation

If a New Claimant purchased \$100,000 of Hydrogen Peroxide in 2001 as a Distributor, \$50,000 in 2000 as a Direct Purchaser and \$100,000 in 2004 as a Fabricator, their Notional Entitlement would be as follows:

\$100,000 (representing the value of the Hydrogen Peroxide purchase) x 0.10 (representing the categorization of the purchases as a Distributor purchases) = \$10,000.

\$50,000 (representing the value of the Hydrogen Peroxide purchases) x 1.00 (representing the categorization of the purchases as Direct purchases) = \$50,000.

There would be no notional entitlement for the Fabricator Hydrogen Peroxide purchases in 2004 because the class period ends on December 31, 2003.

For a total Notional Entitlement of: \$60,000.

**The Notional Entitlement does not reflect the actual amount to be paid to Settlement Class Members, but rather the value of their claim for the purpose of determining their proportional share of the Net Settlement Amount (subject to the order of payment rules discussed above).**

## V. CLAIMS ADMINISTRATOR

The Ontario Superior Court of Justice has appointed RicePoint Administration Inc. (an independent third party) to receive and review claims, make determinations in respect of direct payment benefits, and issue payments to eligible Class Members.

Questions regarding the claims process should be directed to RicePoint Administration Inc. at 1-866-413-5890 or [hydrogenperoxide@ricepoint.com](mailto:hydrogenperoxide@ricepoint.com).

## VI. THE LAWYERS REPRESENTING YOU

The law firms of Siskinds LLP, Strosberg Sasso Sutts LLP, and Camp Fiorante Matthews Mogerman represent you and other Class Members as Class Counsel. You will not have to directly pay any of the fees, costs and expenses of Class Counsel. Such fees, costs and expenses as the court may approve for Class Counsel will be deducted directly from the Settlement Amount.

## VII. GETTING MORE INFORMATION

Additional information is available on the website [www.hydrogenperoxideclassaction.ca](http://www.hydrogenperoxideclassaction.ca). For further information, please contact:

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## VIII. INTERPRETATION

If there is a conflict between the provisions of this notice and the Settlement Agreement with FMC or Distribution Protocol, the terms of the Settlement Agreement and Distribution Protocol will prevail.

**DISTRIBUTION OF THIS NOTICE HAS BEEN AUTHORIZED  
BY THE ONTARIO SUPERIOR COURT OF JUSTICE**

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or call toll-free 1-866-413-5890.