

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION**

**IN RE: AQUEOUS FILM-FORMING
FOAMS PRODUCTS LIABILITY
LITIGATION**

MDL No. 2:18-mn-2873-RMG

Case Management Order No. 32

**This Order relates to
ALL CASES**

PRODUCT ID PROTOCOL CASE MANAGEMENT ORDER

In furtherance of the Court's Order, dated November 4, 2024 [ECF No. 6341], the Court hereby issues the following Case Management Order ("CMO") to govern the selection of sites for focused product identification discovery. These sites will include sites in this complex MDL where the owner of the site alleges damages to real property where Aqueous Film-Forming Foam ("AFFF") is alleged to have been released or discharged (hereinafter referred to as "Real Property Product ID Site"). It is presumed that these Real Property Product ID Sites shall primarily include airports and certain fire training centers and/or other locations where AFFF was used. The Real Property Product ID Sites shall only include sites on which AFFF was alleged to have actually been used and, conversely, shall not include sites where the source of alleged PFAS contamination is from a different location or locations.

A. SELECTION OF REAL PROPERTY PRODUCT ID SITES

1. In order for a site to be eligible for selection as a Real Property Product ID Site, the complaint alleging AFFF contamination must have been filed and served on all named defendants on or before December 20, 2024, and the plaintiff alleging AFFF contamination must have served a substantially complete PFS pursuant to CMO 5 by no later than December 26, 2024

and have any alleged PFS deficiencies cured by January 17, 2025, or objections to same served. To the extent the parties dispute the sufficiency of a PFS as of January 17, 2025, the parties agree that they will bring that dispute to the Court's attention for resolution on an expedited basis.

2. By January 17, 2025, the Defense Coordinating Committee ("DCC") shall provide a proposed Product ID Profile Form ("PIDPF"). The PIDPF shall be comprised of (1) basic identifying information (name of site, case number associated with site, location of site, etc.), (2) a concise set of no more than ten questions that can be answered through check boxes on an electronic portal,¹ such as (a) the type of site(s) at issue (airport, fire training center, etc.), (b) the manufacturer(s) of AFFF for which the plaintiff has preliminary evidence, (c) the categories of evidence the plaintiff has identified (e.g. photographs, witness statements, AFFF take-back program documentation, receipts, customer records, unused AFFF product, etc.), (d) the decade(s) in which the AFFF was purchased or used (if known), and other similar basic information, and (3) the name(s) and case number(s) of other AFFF MDL cases that the plaintiff believes to be potentially associated with the site.² The parties shall promptly meet and confer and are strongly encouraged to agree on the form and substance of the PIDPF. Given the short time frames, the PIDPF need not be signed or verified by the plaintiff, and is otherwise

¹ The parties shall use the same vendor for the PIDPF that they are already using for the personal injury Plaintiff Profile Form (*see* CMO-31) and the Amended Personal Injury Fact Sheet (*see* CMO-5G).

² For example, to the extent a plaintiff is aware of an airport being located near public water systems with cases pending in this MDL, or are aware of a fire training center alleged to be associated with particular personal injury cases in this MDL, plaintiff and its counsel shall endeavor to try and list those other cases on the PIDPF. Because this is intended for initial informational screening only, failure to list on the PIDPF a case or plaintiff potentially associated with a site shall not constitute a waiver of any kind as to that case or plaintiff and the parties' rights are all reserved. Similarly, by listing any such potentially related case does not constitute an admission that such site is the source of the AFFF contamination in any drinking water supply, or in case of a personal injury plaintiff, the source of the plaintiff's exposure to AFFF.

inadmissible, given that it was designed to aid the DCC in selection of potential Real Property Product ID Sites. The parties shall submit an agreed PIDPF or competing PIDPF's to the Court by no later than January 24, 2025.

3. For purposes of cooperating on the selection of Real Property Product ID Sites, by no later than January 21, 2025, each side shall serve on the other side a list of sites that they believe are eligible Real Property Product ID Sites. These lists will be best efforts of the parties and should potentially eligible cases be missed and/or ineligible cases inadvertently included, neither party shall be faulted.

4. By no later than February 14, 2025, the PEC will endeavor to propose to the DCC an agreed to number of Sites (which shall presumptively include 25 to 35 sites, unless the parties mutually agree or the Court orders otherwise) from which the parties will confer to select the 10 to 15 Real Property Product ID Sites to undergo product ID discovery as set forth in Section B, below. Any plaintiff whose site is proposed by the PEC must also provide a written waiver of *Lexecon* to PEC leadership counsel to be exchanged with the DCC. The DCC has the option to propose to the PEC an additional list of Sites for consideration and subject to further conferrals with the PEC for inclusion in the pool of eligible Real Property Product ID Sites and shall do so no later than February 19, 2025. The parties shall also confer if there are any disputes about whether a site proposed by either side is in fact eligible per the terms of the CMO. The result of this process shall be an agreed "Preliminary Pool" of sites. Counsel for each Preliminary Pool Site shall serve a completed PIDPF on the DCC for each of the proposed Preliminary Pool Site cases by no later than February 14, 2025. By no later than February 26, 2025, the parties shall promptly meet and confer and are strongly encouraged to agree on the pool of Real Property Product ID Sites. They shall submit an agreed list of Real Property Product ID Sites or competing

lists to the Court by no later than March 7, 2025.

5. Should briefing be necessary to determine the final pool of Real Property Product ID Sites, then such briefing will be submitted by no later than March 14, 2025.

B. PRODUCT ID DISCOVERY OF REAL PROPERTY PRODUCT ID SITES

1. Once the final pool of Real Property Product ID Sites is selected, Product ID discovery will immediately commence and continue for no longer than six (6) months from the date of the Court's order approving the final pool and pursuant to the Court's Order dated November 4, 2024 [ECF No. 6341] and will consist of:

- a. **Written and Documentary Discovery:** The presumptive scope of written and documentary discovery will be as set forth below:
 - i. No more than ten (10) requests for production and no more than ten (10) interrogatories regarding the Real Property Product ID Sites, including discrete subparts, directed to each party involved in the particular Real Property Product ID Site pool and such discovery requests shall not be duplicative of master discovery (including Defense Fact Sheets) served on the parties in this MDL or written discovery propounded by Plaintiffs in any Bellwether process.
 - ii. With respect to any document production made in response to a document request made pursuant to subsection B(1)(a)(i) above, production shall be substantially complete within 60 days of the date written responses are served.
 - iii. To the extent that any master discovery request for production or interrogatory directed to parties calls for responses specific to any/all individually named Defendants or a specific Plaintiff, responses shall be provided by each individual Defendant and/or Plaintiff. Such requests do not constitute separate requests or subparts for the purposes of the presumptive limit of 20 requests discussed above.
 - iv. There will be no presumptive limit on the number of third-party subpoenas that each Party is entitled to serve. To the extent the United States or any of its agencies may be in possession of relevant Product ID Discovery, as they have in bellwether programs to date, the parties shall meet and confer with the United

States to ensure the efficient accomplishment of such discovery.

- b. **Depositions:** The presumptive limit on depositions will be as set forth below. However, should a party assert that additional depositions beyond the presumptive limit are necessary, the Parties shall meet and confer and promptly raise any disputes with the Court as necessary:

i. **Party Depositions:**

- Defendants shall be entitled to up to two (2) case-specific depositions for each Plaintiff for a Real Property Product ID Site.
- Plaintiffs shall be entitled to take one Rule 30(b)(6) deposition of each Defendant named in the Real Property Product ID Site cases, unless a defendant designates multiple witnesses. To the extent plaintiff(s) identify some nexus between a defendant and plaintiff relevant to a particular Site, the parties shall meet and confer regarding non-duplicative, fact deposition(s) to address the discovery sought. Defendants shall not unreasonably withhold agreement to producing said fact witness(es) for deposition. Any such additional fact deposition(s) shall not seek duplicative testimony already obtained from the defendant's Rule 30(b)(6) deposition(s).

- ii. **Non-Party Depositions:** Depositions of third parties will not be counted against the above presumptive limits and will not be limited. To the extent a witness from the United States or any of its agencies may be relevant to Product ID Discovery, as they have in bellwether programs to date, the parties shall meet and confer with the United States to ensure the efficient accomplishment of such deposition discovery, including as and where feasible a 30(b)(6) to address all Product ID Discovery issues for a particular site.³

- c. As to all Product ID Discovery, each side shall coordinate internally to avoid duplication and maximize efficiency.

³ To the extent an entity is a Defendant in cases involving certain Real Property Product ID Sites and a "third-party" as to other Real Property Product ID Sites, that Defendant shall be treated as a party for purposes of this Order and shall not be subject to the third-party discovery provisions of this Order.

2. Although robust Product ID discovery is permissible, this discovery is to be limited to Product ID discovery, only, absent agreement of the parties. The Court does not intend such discovery to preclude further discovery of the Parties on the merits of claims should any particular case advance to other proceedings in this MDL, but the parties should be mindful that if witnesses can be deposed one time, they should be, and any such later discovery shall not be duplicative of the Product ID Discovery and shall be the subject of further orders of this Court.

C. FOLLOW ON PROCESSES

1. Thirty days prior to the conclusion of the Product ID discovery process, the parties shall begin to confer further on a process to address partial dismissals, if any, that may occur following the Product ID Discovery and any further proceedings as may be warranted as to these cases or any subset of such cases.

2. No later than sixty days prior to the conclusion of the Product ID discovery process, the parties shall meet and confer on a process and further proceedings as to these cases or any subset of such cases, including as to whether any such case(s) would be appropriate for continued workup in a bellwether or trial work-up process. Should any such cases advance to a bellwether or trial work-up process, Defendants shall negotiate in good faith as to *Lexecon* waivers for such cases consistent with the prior bellwether settings and schedules in this MDL.

AND IT IS SO ORDERED:

January 15, 2025
Charleston, South Carolina

s/Richard Mark Gergel

Richard Mark Gergel
United States District Judge