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Bulletin #56, Multidistrict Litigations, May 5, 2022

Because there are so many PFAS related lawsuits occurring, the “Judicial Panel on Multidistrict Litigations determined that the AFFF cases filed involved common questions of law and fact such that centralization of the cases was appropriate.”<sup>1</sup> Any legal action involving AFFF [PFAS] will be transferred to the U.S. District Court in South Carolina.

“These cases all involve varied causes of action and claims relating to per- or polyfluoroalkyl substances (PFAS). Plaintiffs generally allege that aqueous film-forming foams (AFFFs) containing perfluorooctanoic acid (PFOA) and/or perfluorooctane sulfonate (PFOS), two types of PFAS, contaminated groundwater near various military bases, airports, and other industrial sites where AFFFs were used to extinguish liquid fuel fires. The plaintiffs allege that they were caused personal injury, a need for medical monitoring, property damage or other economic losses.”<sup>2</sup>

- In 2017: “DuPont and plaintiffs’ attorneys in the Ohio multi-district litigation (MDL) have jointly agreed to a settlement in principle of the MDL involving about 3,550 lawsuits related to PFOA personal injury claims arising from environmental releases of PFOA (perfluorooctanoic acid and its salts) from the Washington Works plant in West Virginia.”<sup>3</sup>
- “DuPont, Chemours and Corteva announced a cost-sharing agreement worth \$4 billion to settle lawsuits involving the historic use of the highly toxic “forever chemicals” known as PFAS.”<sup>4</sup>

There were “2,324 AFFF plaintiffs as of March 16, 2022.”<sup>5</sup>

A recently filed complaint in New Jersey alleges strict product liability. “The owner of a business that burned in Carteret, New Jersey in 2020 has filed suit against ten fire departments, a county fire marshal, the state, and National Foam, alleging each is liable for the cleanup costs associated with the use of aqueous film forming foam (AFFF).”<sup>6</sup>

Meanwhile, states are using taxpayer money to fund firefighting foam take back programs and clean up.

1 United States District Court, District of South Carolina, Aqueous Film-Forming Foams (AFFF) Products Liability Litigation, <https://www.scd.uscourts.gov/mdl-2873/index.asp>

2 *ibid.*

3 DuPont Press Release, DuPont Reaches Global Settlement of Multi-District PFOA Litigation, February 13, 2017, <https://www.dupont.com/news/dupont-reaches-global-settlement-of-multi-district-pfoa-litigation.html>

4 EWG, DuPont, Chemours and Corteva Reach \$4 Billion Settlement on ‘Forever Chemicals’ Lawsuits, <https://www.ewg.org/news-insights/news-release/dupont-chemours-and-corteva-reach-4-billion-settlement-forever-chemicals>

5 Miller & Zois, Firefighter Foam Cancer Lawsuit and Settlements, accessed 25 April 2022, <https://www.millerandzois.com/firefighting-foam-lawsuits.html>

6 Fire Law Blog, NJ Fire Departments Sued Overuse of AFFF At Fire Scene, Curt Varone, April 12, 2022, <https://www.firelawblog.com/2022/04/11/nj-fire-departments-sued-over-use-of-afff-at-fire-scene/>



Firefighting foam overflow from a hangar at Truax Air Force Base, Madison, Wisconsin, photo by Dr. Maria Powell