

**In re: Aqueous Film-Forming Foam
Products Multi-District Litigation
Update on Settlements and Rulemaking**

MDL No. 2873

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MANSON BOLVES DONALDSON TANNER, PA

PER- AND POLYFLUOROALKYL SUBSTANCES (PFAS)

PFAS is a family of man-made chemicals that includes PFOS and PFOA. PFAS have been used worldwide since the 1950s in industry and consumer products, such as:

- Non-stick cookware
- Firefighting foams
- Water-repellent & stain-resistant fabrics
- Cosmetics
- Food packaging
- Other products that resist grease, water, and oil



**Stain- & water-
resistance
treatments**



**Nonstick
cookware**



**Waterproof
apparel**



**Cleaning
products**



**Firefighting
foam**

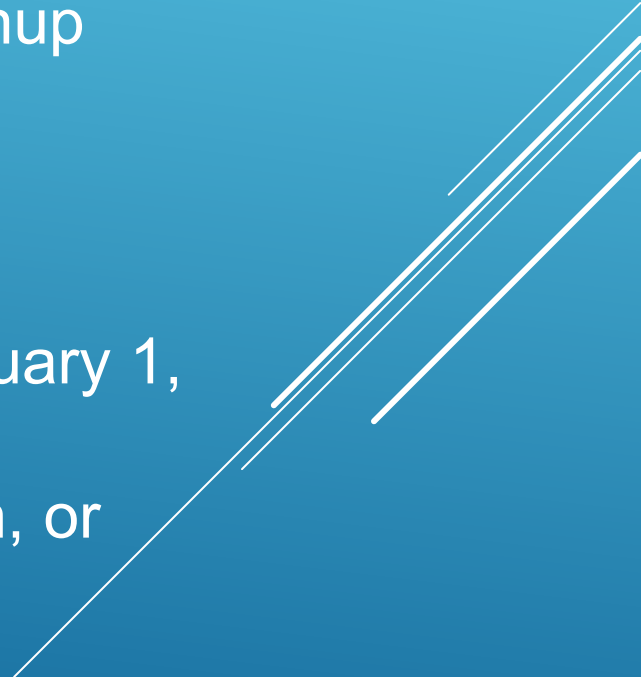


**Takeout
containers**



**Carpets &
textiles**

STATE OF FLORIDA PFAS REGULATIONS

- No current Florida PFAS maximum containment level rules or regulations
 - Florida provisional cleanup target levels re contaminated site cleanup
 - FDEP is assessing/monitoring fire training sites, waste cleanup sites, dry cleaners, public wells, and U.S. Defense sites
 - 2022 FDEP PFAS Dynamic Plan
 - Chapter 2022-203, Laws of Florida
 - DEP authorized to adopt rules if no EPA standards by January 1, 2025
 - Prohibits administrative or judicial action, site rehabilitation, or fines/penalties until rules are ratified
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**IN RE: AQUEOUS
FILM-FORMING FOAM
PRODUCTS LIABILITY
LITIGATION**

MDL NO. 2873

COURT: U.S. District Court for the District
of South Carolina, Charleston Division

MDL JUDGE: Honorable Richard M.
Gergel

TYPES OF PLAINTIFFS IN THE MDL:

States & Territories

Public & Private Water Providers

Individual Well Owners

Property Damage

Medical Monitoring

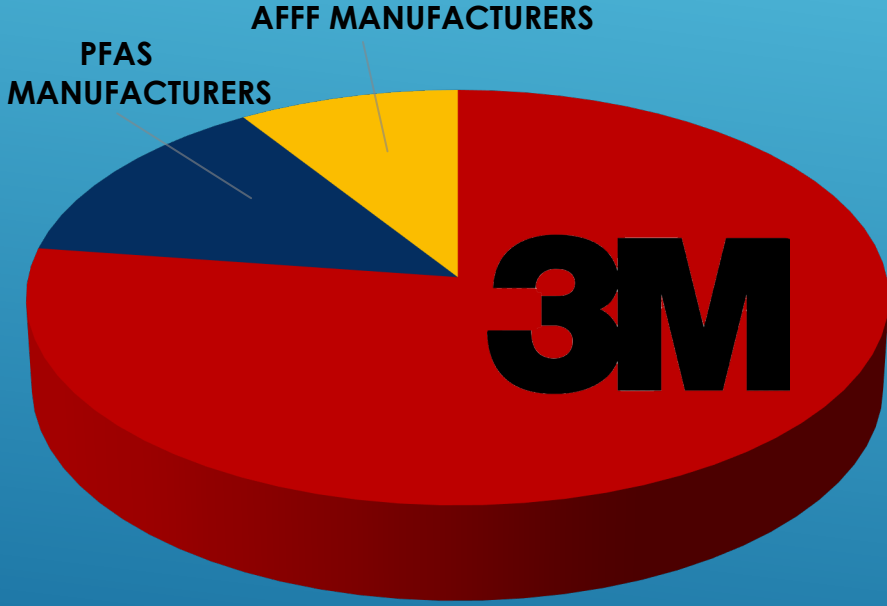
Personal Injury

FORMATION OF THE AFFF MDL

The Judicial Panel on Multidistrict Litigation (JPML) consolidated those cases that allege, in part, “that AFFF products used at airports, military bases, or certain industrial locations caused the release of PFOA or PFOS” into the environment.

The JPML found the cases to contain common “factual questions concerning the toxicity of PFOA and PFOS and their effects on human health; the chemical properties of these substances and their propensity to migrate in groundwater supplies; the knowledge of the AFFF manufacturers regarding the dangers of PFOA and PFOS; their warnings, if any, regarding proper use and storage of AFFFs; and to what extent, if any, defendants conspired or cooperated to conceal the dangers of PFOA and PFOS in their products.”

KEY PLAYERS



DEEPWATER CHEMICALS
BASF
TYCO FIRE
NATIONAL FOAM
CHEM GUARD
ARKEMA
CLARIANT
BUCKEYE
E. I. DUPONT DE NEMOURS & COMPANY
KIDDE
CHEM DESIGN PRODUCTS INC.
DYNAX

3M COMPANY

STATUS OF THE MDL

- 4 years in
- Full Discovery of the Manufacturing Defendants: over 100 depositions taken
- Defendant and third-party overall document productions: approx. 4,600,000 documents and 37,400,000 pages
- Aside from the Bellwether Plaintiffs, Defendants are not entitled to discovery from the other Plaintiffs except a Fact Sheet
- Court Denied Government Contractor Immunity Defense September 16, 2022
- First Public Water Provider Bellwether Trial set for June 2023 -- delayed
- Court Appointed Mediator October 26, 2022: Hon. Layn Phillips

FLORIDA ENTITIES ALREADY IN THE MDL

Martin County
Miami-Dade County
Monroe County
Pasco County
City of Stuart
City of Lauderhill
City of Pensacola
City of Tampa
City of Melbourne
City of Pompano Beach
City of Plant City
City of Tallahassee
City of Zephyrhills
City of Plantation
City of Ocala

Peoples Water Service Company of
Florida, Inc.
Hillsborough County Aviation
Authority
Sanford Airport Authority
Emerald Coast Utilities Authority
Tampa Bay Water
Immokalee Water and Sewer
District
North Collier Fire Control and
Rescue District
Bonita Springs Fire Control and
Rescue District
Hillsborough Community College

FLORIDA ATTORNEY
GENERAL
FILES SUIT IN
STATE COURT
APRIL 15, 2022

IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT
IN AND FOR HILLSBOROUGH COUNTY, FLORIDA

STATE OF FLORIDA

Plaintiff,

JURY TRIAL DEMANDED

v.

Case No.:

TYCO FIRE PRODUCTS LP;
CHEMGUARD, INC.;
BUCKEYE FIRE EQUIPMENT COMPANY;
NATIONAL FOAM, INC.;
KIDDE-FENWAL, INC.;
DYNAX CORPORATION;
E.I. DU PONT DE NEMOURS & COMPANY;
THE CHEMOURS COMPANY;
THE CHEMOURS COMPANY FC, LLC;
CORTEVA, INC.;
DUPONT DE NEMOURS, INC.;
UTC FIRE & SECURITY AMERICAS
CORPORATION, INC.; and
CARRIER GLOBAL CORPORATION.

Defendants.

COMPLAINT

Plaintiff State of Florida (“the State” or “Florida”), by and through its attorney, Ashley Moody, Attorney General for the State of Florida, brings this action against Tyco Fire Products LP; Chemguard, Inc.; Buckeye Fire Equipment Company; National Foam, Inc.; Kidde-Fenwal, Inc.; Dynax Corporation; E.I. du Pont de Nemours & Company; The Chemours Company; The Chemours Company FC, LLC; Corteva, Inc.; DuPont de Nemours, Inc.; UTC Fire & Security Americas Corporation, Inc.; and Carrier Global Corporation, and alleges as follows:

EPA'S RESPONSE TO PFAS

2009: EPA published provisional health advisories for PFOS and PFOA in drinking water (400 ppt PFOA + PFOS)

2013-2015: EPA included 6 PFAS in UCMR 3 testing requirements

2016: EPA replaced the 2009 provisional health advisories for PFOS and PFOA with new lifetime health advisories of 70 ppt, individually or combined

2021: EPA finalized UCMR 5, which will require sample collection for 29 PFAS between 2023 and 2025

UCMR 3 2013-2015

Required monitoring for 30 unregulated contaminants, including PFOS, PFOA, PFNA, PFHxS, PFHpA, and PFBS, between 2013 and 2015.

Applied to all public water systems (PWSs) serving more than 10,000 people and 800 representative PWSs serving 10,000 or fewer people.

Minimum reporting levels for PFOS and PFOA were 40 ppt and 20 ppt, respectively.

According to the data collected through UCMR3, at least **6 million Americans** were exposed to drinking water impacted by PFOA or PFOS greater than 70 ppt.

Approx. 97% of PWSs in the US have not yet tested.

UCMR 5 2023-2025

PWSs will collect samples for 29 PFAS and lithium, during a 12-month period from January 2023 through December 2025.

EPA has lowered the UCMR 5 minimum reporting levels for PFOS and PFOA down from what they were under UCMR 3.

New UCMR 5 minimum reporting levels for PFOS and PFOA are 4 ppt.

JUNE 15, 2022: REVISED HEALTH ADVISORIES RELEASED

- The EPA released four drinking water health advisories for PFAS. EPA issued interim, updated drinking water health advisories for PFOA and PFOS that replace those EPA issued in 2016. For the first time, EPA is issuing final health advisories for perfluorobutane sulfonic acid and its potassium salt (PFBS) and for hexafluoropropylene oxide (HFPO) dimer acid and its ammonium salt (“GenX” chemicals).
- The new EPA health advisories are:
 - PFOS - **0.02 ppt** (PARTS PER TRILLION)
 - PFOA - **0.004 ppt**
 - GenX - **10 ppt**
 - PFBS - **2,000 ppt**

JUNE 15, 2022: FUNDING ANNOUNCED

- EPA also announced that it is inviting states and territories to apply for \$1 billion – the first of \$5 billion in Bipartisan Infrastructure Law grant funding – to address PFAS and other emerging contaminants in drinking water, specifically in small or disadvantaged communities.
- EPA will be reaching out to states and territories with information on how to submit their letter of intent to participate in this new grant program.

DECEMBER 2022: EPA RELEASES MEMO ON ADDRESSING PFAS IN CLEAN WATER ACT PERMITTING

- The memo provides guidance to States:
 - On how to use the Clean Water Act's National Pollutant Discharge Elimination System (NPDES) permitting program to reduce harmful PFAS pollution.
 - For addressing sewage sludge PFAS contamination and recommends that States monitor the levels of PFAS in sewage sludge across publicly owned treatment works.

FEBRUARY 13, 2023: ADDITIONAL FUNDING ANNOUNCED

- EPA announces \$2 Billion in Bipartisan Infrastructure Law Funding to States and Territories to Address Emerging Contaminants like PFAS in Drinking Water.
- Funding is to address emerging contaminants and promote access to safe and clean water in small, rural, and disadvantaged communities.
- The money will be made available as grants through EPA's Emerging Contaminants in Small or Disadvantaged Communities Grant Program.

MARCH 14, 2023: EPA'S LATEST RESPONSE TO PFAS

The EPA announced its first-ever proposed national drinking water standard for six PFAS:

- PFOA
- PFOS
- PFHxS
- GenX Chemicals
- PFNA
- PFBS

This proposed regulation could become enforceable within the next year and it includes proposed Maximum Contaminant Levels (“MCLs”):

- PFOA at **4 ppt**
- PFOS at **4 ppt**

Source: Per- and Polyfluoroalkyl Substances (PFAS)

Proposed PFAS National Primary Drinking Water Regulation <https://www.epa.gov/sdwa/and-polyfluoroalkyl-substances-pfas>

APRIL 13, 2023: EPA ISSUED AN ADVANCED NOTICE OF PROPOSED RULEMAKING

- The EPA issued an Advanced Notice of Proposed Rulemaking requesting public input related to designating PFAS as a hazardous waste under CERCLA (Superfund).
- The request for input and information follows EPA's September 2022 proposed Notice of Proposed Rulemaking designating PFOA and PFOS as CERCLA hazardous substances.
 - EPA is currently reviewing comments received on the proposed rule.
- EPA has extended the comment period to August 11, 2023.
- This potential regulation will impact how wastewater is treated and what a local government does with its potable water treatment system byproduct.

DRAFT FEDERAL PER- AND POLYFLUOROALKYL SUBSTANCES (PFAS) LEGISLATION

- Senate Environmental and Public Works Committee's recent release of draft bipartisan legislation (6/22)
- Highlights federal government's commitment to provide funding and resources to remedy PFAS pollution and contamination by including significant assistance to researchers, private industry, and the scientific community to create cost-effective and innovative ways to detect, monitor, mitigate, and ultimately eliminate PFAS from contaminated air, soil, and water
- Seeks to prevent further PFAS pollution and contamination, it fails to provide safeguards for the special districts and local governments that are already experiencing PFAS pollution and contamination
- Missing: Federal liability protections for local governments

LATEST MDL DEVELOPMENTS

- May 14, 2023: Kidde-Fenewal (seller of AFFF) files bankruptcy
 - The litigation has cost Kidde-Fenwal \$6 million in legal fees in 2023 alone
- June 2, 2023:
 - A settlement was reached with the DuPont Defendants (E.I. DuPont de Nemours and Company, The Chemours Company, The Chemours Company FC, LLC, DuPont de Nemours, Inc., and Corteva, Inc.).
 - \$1.185 Billion
 - The DuPont Defendants hold a relatively small share of the AFFF market.
 - Solely for the benefit of public water providers
 - A portion of the settlement will be dedicated to those entities with known PFAS contamination, and another portion will be dedicated to those who find PFAS contamination in the near future.
 - The settlement is negotiated on a class-wide basis -- has not been approved by the Court so it is not in effect.
- June 5, 2023:
 - First day of the City of Stuart case
 - Judge granted a delay for 3M to negotiate a potential settlement
- The Court is focused on drinking water providers as there is a desire to provide funding for treatment as quickly as possible.
 - The current settlement(s) do not impact claims associated with PFAS in wastewater as well as property impacts.

3M SETTLEMENT

- Announced June 22, 2023
- Up to \$12.5 billion –largest in US History
- Related only to PFAS contamination to public groundwater and surface water sources that supply drinking water
- Made on a class-wide basis
- Benefits both public water systems that have already detected PFAS and those utilities who will sample in upcoming UCMR5
- Must submit claims that includes analytical data showing PFAS detections and flow rates
- Allocated based on a mathematical formula that uses several factors to approximate PFAS-treatment costs including:
 - Water capacity or water usage
 - Types of water sources
 - PFAS contamination levels
- Has to be approved by Federal Judge
- Does not impact potential claims related to PFAS in wastewater and property

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