

Airport enters multi-district PFAS lawsuit

Litigation against aircraft firefighting foam manufacturers seeks to recoup financial losses.

By **Lucas Thors** - February 13, 2020



Airport commissioners voted on Thursday to enter a multi-jurisdictional lawsuit to recoup PFAS-related expenses. - Lucas Thors

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The Martha's Vineyard Airport has entered into a multi-district litigation against a slew of aircraft fire fighting foam manufacturers in order to recoup the financial losses caused by the spread of per- and polyfluoroalkyl substances (PFAS).

At an airport commission meeting Thursday, commissioners voted to engage in a retainer agreement with national law firm, Napoli Shkolnik, and the Ferraro Law Firm. Both firms have been actively involved in litigation against large aqueous film forming foam (AFFF) manufacturers.

Since November of 2019, the airport has been involved in mitigation of PFAS in private wells adjacent to the airport property.

The fluorinated firefighting foams that have been used at private and public airports like Martha's Vineyard for decades were the only foams that met certain standards required by the Federal Aviation Administration (FAA).

According to airport commission chair Bob Rosenbaum, the airport is attempting to recoup mitigation expenses spent making sure neighbors of the airport property have clean and safe water to drink.

Remediation efforts by the airport's engineering services company, Tetra Tech, have included testing more than 100 wells in the area of Coffins Field, Waldrons Bottom Road, and Vineyard Meadow Farms, and installing point of entry activated charcoal carbon filters for households whose wells tested positive for PFAS above 70 parts per trillion.

Airport officials had no immediate estimate of how much the PFAS-related mitigation has cost.

Rosenbaum said at least half a dozen AFFF manufacturers will be the focus of the litigation, including the 3M Company, an American multinational manufacturing conglomerate.

Over the years, the airport has utilized a number of different companies for their firefighting foams, so Rosenbaum said it will be tasking to go through records to determine which companies contributed most to the proliferation of PFAS within the community.

The multi-district litigation, which Rosenbaum said is distinct from a class action lawsuit, involves individual suits, as opposed to one large suit. "It involves individual entities that file suit, and since the suits are all so similar, the court consolidates them into one case," Rosenbaum said. "The difference is that the awards are allocated separately for each party."

The lawsuit will be on a contingency basis, which means the airport will not have to expend any of its existing funds. "The legal firm takes out expenses related to the suit, then they take 25 percent of the resulting award, and we get 75 percent," Rosenbaum said.

Rosenbaum pointed out the financial advantage of getting on board with the suit sooner rather than later. "We've been looking at this for a while now, and now it's time to move forward," Rosenbaum said.

Barnstable Municipal Airport is also involved in a suit against AFFF manufacturers as well, but Rosenbaum said they have retained different attorneys.

"It's important to point out that this is another action we are taking to bring to light the problems associated with this foam. It is the belief that the manufacturers were fully aware of the problems this type of foam caused, and that is the basis of the suit," Rosenbaum said.

"We were very proactive in going into the community and mitigating for our neighbors, but many problems have been created by the foam, and we would like to get some of those expenses back."

According to James Ferraro Jr., of the Ferraro Law Firm, the airport "has done everything they can possibly do," to get ahead of the emerging PFAS issue, which he said is affecting municipalities across the country. In the overall litigation, Ferraro said there are approximately 140 other municipal entities filing suit as part of the multidistrict litigation, including other airports, and public and private water suppliers.

Ferraro also said there are hundreds of personal injury cases against AFFF manufacturers filed by firefighters and others who were affected by the spread of these chemicals.

All the research that the airport's engineers and attorneys are doing have, according to Ferraro, indicated that the FAA did not know until after recent investigations how these fluorinated foams would affect human health and wellness.

Currently, Ferraro said most municipal airports have switched over to GenX firefighting foam, manufactured by The Chemours Company, a spinoff of the DuPont chemical company.

The compound was created as an alternative to PFAS and related long-chain chemicals. Although GenX firefighting foam is a shorter-chain compound that contains 6 carbon atoms instead of the 8 carbon atoms contained in PFAS, and was originally thought to be less detrimental to human health, there are varying opinions within the scientific community.

"Remember, these are still referred to as forever chemicals. It is the belief of some scientists that these new chemicals cause many of the same health problems [as PFAS]," Ferraro said.

Updated to add comments from one of the attorneys.

