

ChemicalWatch

GLOBAL RISK & REGULATION NEWS

More than 100 firefighting foam cases combined in complex litigation

South Carolina judge will hear multidistrict PFAS lawsuit

15 August 2019 / Legal cases, PFCs, United States

More than 100 lawsuits involving aqueous film-forming foams (AFFFs) in the US have been brought together in one multidistrict litigation (MDL) that could see manufacturers facing "billions of dollars" in claims.

Plaintiffs in the complex case, which is being heard in South Carolina, allege that the firefighting foams – mainly used at airports, military bases and industrial locations – caused the release of the per- and polyfluoroalkyl substances (PFASs), PFOS and PFOA, into local groundwater and contaminated drinking water supplies.

Defendants in the case include 3M, DuPont, Tyco/Chemguard and Kidde and both the US government and a number of federal entities that are being blamed for producing the substances or foams, or calling for their use.

The suits have been brought by municipal and private water utilities, as well as local authorities and industrial plants, and come from states as far apart as Colorado, Delaware, Florida, Massachusetts, New York, Oklahoma, Tennessee and Washington.

They are seeking damages, among others, for personal injury, a need for medical monitoring, property damage or other economic losses. Also central to many of the cases is the cost of remediation in areas affected by AFFF contamination.

Paul Napoli, co-lead counsel from the law firm Napoli Shkolnik, which is acting for a number of the plaintiffs, told Chemical Watch that the burden of dealing with PFAS contamination falls on municipalities to make sure engineering controls are up to date.

"To avoid forcing resident ratepayers to cover the additional treatment costs through higher bills, water providers will be forced to bring lawsuits against the manufacturers of the AFFF and companies that sent PFAS-containing waste to airports, etc, that ended up impacting the water districts," he said.

‘Billions of dollars’

More cases are expected to be filed or transferred to the MDL in the coming months. And in a paper on the litigation, Mr Napoli wrote that "potentially billions of dollars of claims are at stake against the manufacturers over AFFF products".



While the MDL focuses on PFOA and PFOS – two substances that have largely been voluntarily phased out in the US in recent years – Michelle Greene, an associate with the same firm, says this could just be a matter of time.

"Many bases and airports continue to use AFFF containing short-chained PFASs, as these are said to be less harmful and more easily biodegradable," she said. "But, in my opinion we will likely have these same issues with the shorter-chain PFASs say, ten years from now."

Regarding the claims against the company, 3M told Chemical Watch that it had "acted responsibly with its manufacture and sale of AFFF and will defend its record of environmental stewardship."

Meanwhile, a spokesperson for DuPont said the company does not comment on pending litigation. But he added: "We will vigorously defend our record of safety, health and environmental stewardship."

Next steps

The various lawsuits have been joined together because they share factual questions on:

the toxicity of PFOA and PFOS and their effects on human health;
their chemical properties and propensity to migrate into groundwater supplies;
the alleged knowledge of the AFFF manufacturers on their dangers;
the warnings, if any, regarding proper use and storage of AFFFs; and
the extent, if any, the defendants conspired or cooperated to conceal the dangers.

Over the next few weeks the plaintiffs and defendants have been tasked with producing factsheets. The judge is currently reviewing several science articles on PFOS and PFOA submitted by parties in the litigation and there will be a science day on 6 September.

A growing concern

PFASs, particularly the long-chain versions, have become a source of increasing concern in the US, amid **reports**¹ of widespread environmental contamination and potentially **serious and costly health effects**².

In February, the EPA published a **federal plan**³ to manage the risks, but this has been **criticised**⁴ by lawmakers and environmental advocates for lacking specificity and urgency.

Meanwhile, state legislators have **passed legislation**⁵ to ban or restrict their use in firefighting foams and food contact **materials**⁶.

At the federal level, a variety of amendments addressing the chemicals are under consideration, to be included in a major defence **spending bill**⁷ working its way through Congress.

Last month, a House of Representatives committee heard calls for PFASs to be designated 'hazardous chemicals'. At the same time the Department of Defense set up a **taskforce**⁸ to address PFAS contamination on and near military bases.



Nick Hazlewood⁹

News editor

Related Articles

NGO researchers call to ban PFASs from firefighting foam¹⁰

PFAS cost to EEA health estimated at up to €84bn – report¹¹

US EPA announces PFAS action plan¹²

EPA accused of dragging its feet with federal PFAS management plan¹³

Expert Focus: US states outpace EPA on PFAS firefighting foam laws¹⁴

Maine bill on PFASs, phthalates in food packaging becomes law¹⁵

US House passes defence spending package with PFAS provisions¹⁶

US Department of Defense launches PFAS taskforce¹⁷

Further Information:

Multidistrict litigation transfer order¹⁸

<https://chemicalwatch.com/74831/ngo-researchers-call-to-ban-pfass-from-firefighting-foam>

<https://chemicalwatch.com/75340/pfas-cost-to-eea-health-estimated-at-up-to-84bn-report>

<https://chemicalwatch.com/74353/us-epa-announces-pfas-action-plan>

<https://chemicalwatch.com/74507/epa-accused-of-dragging-its-feet-with-federal-pfas-management-plan>

<https://chemicalwatch.com/78075/expert-focus-us-states-outpace-epa-on-pfas-firefighting-foam-laws>

<https://chemicalwatch.com/78871/maine-bill-on-pfass-phthalates-in-food-packaging-becomes-law>

<https://chemicalwatch.com/79873/us-house-passes-defence-spending-package-with-pfas-provisions>

<https://chemicalwatch.com/80307/us-department-of-defense-launches-pfas-taskforce>

<https://chemicalwatch.com/search/?author=Nick%20Hazlewood>

<https://chemicalwatch.com/74831/ngo-researchers-call-to-ban-pfass-from-firefighting-foam>

<https://chemicalwatch.com/75340/pfas-cost-to-eea-health-estimated-at-up-to-84bn-report>

<https://chemicalwatch.com/74353/us-epa-announces-pfas-action-plan>