

**UNITED STATES JUDICIAL PANEL  
on  
MULTIDISTRICT LITIGATION**

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

MDL No. 2873

**TRANSFER ORDER**

**Before the Panel:**\* Defendants E. I. du Pont de Nemours and Company, The Chemours Company, The Chemours Company, FC, LLC, Corteva, Inc., and DuPont de Nemours, Inc. (collectively, DuPont) move under 28 U.S.C. § 1407(c) to transfer the *Commonwealth of Kentucky* action listed on Schedule A to the District of South Carolina for inclusion in MDL No. 2873. No party responded to this motion, and DuPont states that plaintiff agrees to transfer of this action to MDL No. 2873.<sup>1</sup>

Plaintiff seeks to hold defendants liable for contamination of Kentucky’s natural resources and groundwater with per- or polyfluoroalkyl substances (PFAS) allegedly originating from DuPont’s Washington Works chemicals plant near Parkersburg, West Virginia. We have consistently held that a party seeking transfer of action that does not on its face raise claims relating to the use or disposal of aqueous film-forming foams (AFFFs) bears a “significant burden” to persuade us that transfer is appropriate. Order Denying Transfer at 2, MDL No. 2873 (J.P.M.L. Dec. 18, 2019), ECF No. 541. DuPont has satisfied that burden here. It argues that plaintiff is seeking recovery for PFAS contamination of the same water supply in a separate action pending in the MDL that is specifically directed to AFFFs. *Commonwealth of Kentucky, Energy & Env’t Cabinet v. 3M Co.*, C.A. No. 2:23-03535 (D.S.C.). Both complaints seek recovery for, *inter alia*, 41 community water supplies in which PFAS were detected. Significantly, plaintiff does not dispute DuPont’s characterizations of its actions. In addition, several municipalities and water suppliers in Kentucky have filed separate actions pending in the MDL that allege AFFF contamination at sites that overlap with the action DuPont now seeks to transfer.

Accordingly, after considering the argument of counsel, we find that the action listed on Schedule A involves common questions of fact with the actions transferred to MDL No. 2873, and that transfer under 28 U.S.C. § 1407 will serve the convenience of the parties and witnesses and promote the just and efficient conduct of the litigation. In our order centralizing this litigation, we held that the District of South Carolina was an appropriate Section 1407 forum for actions in which

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\* Judges Karen K. Caldwell and David C. Norton did not participate in the decision of this matter.


<sup>1</sup> In any event, “[f]ailure to respond to a motion shall be treated as that party’s acquiescence to it.” Panel Rule 6.1(c).

- 2 -

plaintiffs allege that AFFF products used at airports, military bases, or certain industrial locations caused the release of perfluorooctane sulfonate and/or perfluorooctanoic acid into local groundwater and contaminated drinking water supplies. The actions in the MDL share factual questions concerning the use and storage of AFFFs; the toxicity of PFAS and the effects of these substances on human health; and these substances' chemical properties and propensity to migrate in groundwater supplies. *See In re Aqueous Film-Forming Foams Prods. Liab. Litig.*, 357 F. Supp. 3d 1391, 1394 (J.P.M.L. 2018). The *Commonwealth of Kentucky* action here will share common questions of fact with the AFFF actions in the MDL and will benefit from inclusion in the centralized proceedings.

IT IS THEREFORE ORDERED that the action listed on Schedule A is transferred to the District of South Carolina and, with the consent of that court, assigned to the Honorable Richard M. Gergel for coordinated or consolidated pretrial proceedings.

PANEL ON MULTIDISTRICT LITIGATION

A handwritten signature in black ink, reading "Nathaniel M. Gorton", is positioned above a horizontal line.

Nathaniel M. Gorton  
Acting Chair

Matthew F. Kennelly  
Dale A. Kimball

Roger T. Benitez  
Madeline Cox Arleo

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

MDL No. 2873

**SCHEDULE A**

Eastern District of Kentucky

COMMONWEALTH OF KENTUCKY, ENERGY AND ENVIRONMENT CABINET  
v. E.I. DUPONT DE NEMOURS AND COMPANY, ET AL.,  
C.A. No. 3:23-00047