

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION**

IN RE: AQUEOUS FILM-FORMING)	MDL No. 2:18-mn-2873-RMG
FOAMS PRODUCTS LIABILITY)	
LITIGATION)	Case Management Order No. 5D
)	
)	This Order relates to
)	ALL CASES
)	

CASE MANAGEMENT ORDER No. 5D
(Defense Fact Sheets)

1. Case Management Order No. 5 (“CMO No. 5”) currently governs the form, procedure, and schedule for the completion and service of Defense Fact Sheets (“DFS”) for all Member Actions in MDL No. 2873.

2. CMO No. 5 was entered on August 7, 2019, and since that time additional entities have been named as Defendants in this MDL, including a number of alleged manufacturers of the fluorinated surfactants (fluorosurfactants) and/or fluorinated telomers (fluorotelomers) utilized in AFFF and alleged distributors that placed AFFF products into the stream of commerce.

3. The current DFS form required under CMO No. 5 was tailored to alleged manufacturers of AFFF and does not adequately assist in gathering facts and information relevant to Plaintiffs’ claims when applied to either fluorosurfactant/fluorotelomer manufacturers or AFFF distributors.

4. This Order amends CMO No. 5 to require that any Defendant in this MDL who contends it is not an AFFF manufacturer complete and serve the DFS form attached hereto as Exhibits 1 in lieu of the DFS form currently required by CMO No. 5. Except as noted in Paragraphs

5 and 6 below, the provisions of CMO No. 5 shall otherwise govern the procedure for the completion and service of the DFS form attached hereto as Exhibit 1.

5. Consistent with the above, Paragraph 27 of CMO No. 5 is amended to require that any Defendant in this MDL who contends it is not an AFFF manufacturer complete and serve the DFS form attached hereto as Exhibits 1 in lieu of the DFS form currently required by CMO No. 5.

6. Paragraph 30 of CMO No. 5 is also amended to provide that:

a. all current Defendants in this MDL who are required under Paragraph 5 above to complete and serve the DFS form attached hereto as Exhibit 1 shall do so by February 24, 2021;

b. each current Defendant in this MDL who is required under Paragraph 5 above to complete and serve the DFS form attached hereto as Exhibit 1 may request one extension of twenty-one (21) days to serve a completed DFS form, which Plaintiffs shall not unreasonably withhold; and

c. any entity that is later added as a Defendant in this MDL and required under Paragraph 5 above to complete and serve the DFS form attached hereto as Exhibit 1 shall do so within ninety-eight (98) days of being served with the first complaint filed against the entity in this MDL.

AND IT IS SO ORDERED.

s/ Richard Mark Gergel
Richard Mark Gergel
United States District Judge

February 4, 2021
Charleston, South Carolina

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION**

IN RE: Aqueous Film-Forming Foams (AFFF)
Products Liability Litigation

MDL No. 2873

EXHIBIT 1

TO CASE MANAGEMENT ORDER NO. 5D

RE: NON-AFFF MANUFACTURER DEFENDANT

FACT SHEET

***IN RE: Aqueous Film-Forming Foams (AFFF)
Products Liability Litigation***

This Defense Fact Sheet (“DFS”) is to be completed by any Defendant in any action transferred to or originally filed in this multi-district litigation who contends it is not an AFFF Manufacturer. It is not meant to be a substitute for general discovery of a Defendant but rather to assist in gathering facts and information relevant to Plaintiffs’ claims in this litigation that have not otherwise been obtained through Master MDL discovery demands and which may be in the answering party’s possession, custody, or control. This DFS incorporates by reference the definitions and terms provided in the attached Appendix and any applicable requirements or guidelines set forth in Case Management Orders No. 5, 5A, and 5D.

In completing this DFS, you are under oath, subject to the penalties of perjury, and must provide information that is true and correct to the best of your knowledge. If you cannot provide all the details requested, please provide as much information as you can. If the requested information does not apply to you, you may answer, “N/A.” If the requested information is not obtainable after a reasonable search, you may answer, “I don’t know.” If the requested information is readily ascertainable from documents provided with this DFS, you may respond by referring to those documents. To the extent you have already provided information or documents responsive to the questions in this DFS in response to master discovery demands, you may respond by referring to such information or documents. Materials prepared by your attorneys for use in the litigation (Attorney Work Product) are not required to be produced. You must complete the DFS in accordance with the applicable requirements and guidelines set forth in Case Management Orders No. 5, 5A, and ___. To the extent that any response requires additional space, please insert additional space or information or attach a continuation sheet referencing the question at issue.

The scope of this DFS is limited to information related to AFFF and/or fluorotelomer and/or fluorosurfactant products that the answering defendant knows were ultimately incorporated into AFFF (the “Products”). All questions should be answered with this limitation in mind.

Background

1. Name of Defendant: _____
 - a. State and Date of Incorporation: _____
 - b. Principal Place of Business: _____
 - c. If a successor in interest: _____
 - i. Name of company you succeeded: _____
 - ii. Date you became successor in interest: _____
 - d. Years of operation: _____
 - e. Other business names _____
 - f. Parent corporations or subsidiaries: _____

MANUFACTURERS/SELLERS OF PRODUCTS INCORPORATED INTO AFFF

1. Beginning in 1960, provide the addresses for all locations in the United States where you manufactured any Product, if known, for any Defendant in this multi-district litigation for use in AFFF.

Address	Approx. Dates Product(s) Manufactured At This Address

Product Identification

2. List the brand names and/or product identification numbers for all Products, if known, that you processed, manufactured, and/or sold to any Defendant in this multi-district litigation for use in AFFF. For each product identified provide the dates when you started and (if applicable) stopped processing, manufacturing, or selling the product.

Brand Name & Product ID	Date Sales Began	Date Sales Concluded

- a. For each product identified above, attach or provide the following to the extent not

already produced in response to master discovery:

- i. a copy of each version of the Material Safety Data Sheet that was used for the product;
- ii. a copy of any labeling affixed to or supplied with the product; and
- iii. documents that include information about the composition and/or chemical structure of the product or its constituents.

If produced in response to master discovery, please so provide the Bates ranges where they can be found here: _____

3. List the names of all the Defendants in this multi-district litigation that purchased the Products you processed, manufactured, and/or sold, if known, and for each of them provide: (1) the brand name and/or product ID for each of the Products purchased; (2) the dates when the manufacturer started and (if applicable) stopped purchasing each Product; and (3) the volume (in pounds) purchased by that manufacturer for each Product.

Defendant Name	Brand Name & Product ID	Purchase Dates	Volume Purchased

- a. Attach or provide documentation reflecting the information requested in Question 5 to the extent not already produced in response to master discovery. This includes but is not limited to contracts, agreements, purchase orders, and invoices.

If produced in response to master discovery, please provide the Bates ranges where they can be found here: _____

Market Position

4. If known, for each calendar year that you sold one or more Products to a Defendant in this multi-district litigation, provide:

- a. the total sales per year for each Product you sold to Defendants in this multi-district litigation in the United States for use in AFFF; and
- b. the total volume per year of each Product you sold to Defendants in this multi-district litigation in the United States for use in AFFF.

Year	Product Sales (\$)	Product Volume

- c. Attach or provide documentation reflecting the information requested in Question 7 to the extent not already produced in response to master discovery. This includes but is not limited to contracts, agreements, purchase orders, and invoices.

If produced in response to master discovery, please provide the Bates ranges where they can be found here: _____

DISTRIBUTORS OF AFFF

1. Beginning in 1960, provide the addresses for all of your current and former store locations, office locations, warehouses, and/or distribution facilities in the United States.

Current and Prior Addresses	Approx. Dates Company Was Located at the Address

Current and Prior Addresses	Approx. Dates Company Was Located at the Address

Supplier and Product Identification

2. List the names of all manufacturers whose AFFF products you distributed and for each manufacturer identified provide:
- the brand name and product ID for each of the products that you distributed;
 - the dates when you started and (if applicable) stopped distributing each product; and
 - the total volume (in kilograms, pounds, or gallons) you distributed for each product.

Manufacturer Name	Brand Name & Product ID	Purchase Dates	Quantity/Volume Purchased

- Attach or provide documentation reflecting the information requested in Question 2 to the extent not already produced in response to master discovery. This includes but is not limited to contracts, agreements, purchase orders, and invoices.

If produced in response to master discovery, please provide the Bates ranges where they can be found here: _____

3. For each manufacturer listed in your response to Question 2, provide the following information:

- a. If not already produced in master discovery, please produce any documents that you have been able to locate after a reasonable search that the manufacturer provided you containing information about the environmental or human health risks associated with the manufacturer's AFFF products. This includes but is not limited to Material Safety Data Sheets (MSDS), product labeling materials, internal memoranda or reports, environmental or toxicological studies, and published studies or research papers.

If such documents were already produced in response to discovery, please provide the Bates ranges where they can be found here: _____

If you were unable to locate such documents after a reasonably diligent search, please so indicate here: _____

- b. To the extent not already produced in master discovery, please produce any documents that you were able to locate after a reasonable search that the manufacturer provided you containing information about the disposal of AFFF or treatment of AFFF wastewater. This includes but is not limited to MSDS, instruction manuals, technical bulletins, and guidance documents.

If such documents were already produced in response to discovery, please provide the Bates ranges where they can be found here: _____

If you were unable to locate such documents after a reasonably diligent search, please so indicate here: _____

Customer Identification and Locations

4. Beginning in 1960, list each State with one or more locations included on the Site List where you distributed AFFF products to customers located in the State and provide:
- the names of each customer to whom you sold AFFF products in that State; and
 - the address for each of those customers at the time of sale.

State	Customer Name	Customer Address at Time of Sale

State	Customer Name	Customer Address at Time of Sale

5. For each customer listed in your response to Question 4, provide:

- the brand name and product ID of each AFFF product you sold to the customer;
- the dates when you started and (if applicable) stopped selling each of those AFFF products to that customer; and
- the quantity (in kilograms, pounds, or gallons) of each AFFF product you distributed to that customer.

Customer Name	Brand Name & Product ID	Purchase Dates	Quantity Distributed

6. For each customer listed in your response to Question 6, provide the following information:

- To the extent not already produced in master discovery, please produce any documents that you were able to locate after a reasonable search that you provided to that customer containing information about the environmental or human health risks associated with the AFFF product(s) you distributed to them. This includes but is not limited to MSDS, product labeling materials, internal memoranda or reports, environmental or toxicological studies, and published studies or research papers.

If such documents were already produced in response to discovery, please provide the Bates ranges where they can be found here: _____

If you were unable to locate such documents after a reasonably diligent search, please so indicate here: _____

- b. To the extent not already produced in master discovery, please produce any documents that you were able to locate after a reasonable search that you provided to that customer containing information about the disposal of AFFF or treatment of AFFF wastewater. This includes but is not limited to instruction manuals, technical bulletins, and guidance documents.

If such documents were already produced in response to discovery, please provide the Bates ranges where they can be found here: _____

If you were unable to locate such documents after a reasonably diligent search, please so indicate here: _____

DOCUMENTS

Provide all the documents specifically requested in the above questions and/or that were used to respond to the above questions.

CERTIFICATION

I am an authorized agent of the Defendant identified below, and I hereby certify that the matters stated herein are not the personal knowledge of the undersigned; that the facts stated herein have been assembled by authorized employees and counsel to Defendant; and that the undersigned is informed that the facts stated therein are true. I further certify in my capacity as an authorized agent of the Defendant identified below that the responses herein are true and complete to the best of the Defendant's knowledge, based upon a reasonably diligent search and analysis of the information available to the Defendant and its counsel, and that the requested documentation has been provided.

Signature

Print Name

Defendant's Name

Title

Date