

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

IN RE: AQUEOUS FILM-FORMING)	
FOAMS PRODUCTS LIABILITY)	MDL No. 2:18-mn-2873-RMG
LITIGATION)	CASE MANAGEMENT ORDER NO. 25
)	
)	This Order Relates to All Actions
)	

**PROTOCOL FOR THE SCHEDULE FOR
THE UNITED STATES OF AMERICA’S JURISDICTIONAL MOTIONS**

The Court issues the following Case Management Order (“CMO”) to govern the schedule for the United States to move to dismiss claims or cases against it in the cases that are part of this MDL (the “Cases”) on global jurisdictional grounds (the “Global Jurisdictional Motions”) and Site Specific Grounds (the “Site Specific Jurisdictional Motion”).

A. The parties agree that the United States will continue to produce all responsive documents for this litigation.

B. No later than April 28, 2023, Plaintiffs shall designate one site for fact discovery from amongst the Cases (the “Site”).

C. Beginning on Monday, July 17, 2023, if not sooner, the Plaintiff(s) with claim(s) pending against the United States involving the Site (the “Site Specific Plaintiffs”) will have 75 days to complete any ongoing review of all discovery that has already been produced by the United States in this MDL, as well as the publicly available CERCLA administrative record, to determine if they need additional discovery from the United States (hereafter, “Jurisdictional Discovery”) relevant to the Global Jurisdictional Motions and Site Specific Jurisdictional Motion.

D. No sooner than Friday, September 29, 2023, the Site Specific Plaintiffs may serve additional discovery demands on the United States as limited by this paragraph and by Paragraph

E, *infra*. The Site Specific Plaintiffs will undertake best efforts to ensure that the information sought in these discovery demands is Site-specific, has not already been produced by the United States, and is not publicly available as part of the referenced CERCLA administrative record. Any such Jurisdictional Discovery must be completed within one hundred and twenty (120) calendar days. The United States will produce any additional discovery, including but not limited to declarations upon which it intends to rely.¹ The United States will make their declarants available for deposition during the Jurisdictional Discovery period. Jurisdictional Discovery will conclude on Friday, January 26, 2024.

E. The parties agree to confer about the scope of any Jurisdictional Discovery, to ensure that it is both relevant to the jurisdictional issues and proportional to the needs of the case, *see* Fed. R. Civ. P. 26(b)(1). In particular, before propounding any discovery demands pursuant to Paragraph C above, counsel for the Site Specific Plaintiffs propounding those demands will state, in a writing accompanying the demands, that after performing a good faith review of both the United States' existing document productions and the publicly available CERCLA administrative record, they have determined that the information sought in those demands has not already been produced.

F. The United States will file its Global Jurisdictional Motions on or before Monday, February 26, 2024. The United States will file one Memorandum of Law supporting the United States' Motion to Dismiss the Plaintiffs' FTCA claims based on the Discretionary Function Exception, and one Memorandum of Law to support its Motion to Dismiss Plaintiffs' claims based on the timing of review provision of CERCLA, 42 U.S.C. § 9613(h). Each Memorandum will be

¹ The United States may supplement its declaration(s), if appropriate, to address issues in any new case(s) added to the MDL at any point before Jurisdictional Discovery concludes.

no more than fifty (50) pages long, exclusive of the tables of contents, tables of authorities, and signature blocks.

G. Plaintiffs with claim(s) pending against the United States will file one “omnibus” Opposition brief to the United States’ Motion to Dismiss the Plaintiffs’ FTCA claims based on the Discretionary Function Exception and one “omnibus” Opposition to the Motion to Dismiss Plaintiffs’ claims based on the Timing of Review provision of CERCLA, 42 U.S.C. § 9613(h). For the Oppositions, Plaintiffs will have seventy-five (75) pages, exclusive of the tables of contents, tables of authorities, and signature blocks, for each “omnibus” Opposition. These Oppositions shall be due on or before Tuesday, April 16, 2024.

H. The United States will file any Replies in support of its Jurisdictional Motions on or before Thursday, May 16, 2024. Each Reply will be no more than thirty (30) pages long, exclusive of the tables of contents, tables of authorities, and signature blocks.

I. On or before February 26, 2024, the United States shall file a Site Specific Jurisdictional Motion to Dismiss of no more than 15 pages. On or before Tuesday April 16, 2024, the Site Specific Plaintiffs shall file a response in opposition of equal length. The United States will file any reply, no longer than 15 pages, on or before Thursday May 16, 2024.

AND IT IS SO ORDERED.

April 24, 2023
Charleston, South Carolina

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