

UNITED STATES JUDICIAL PANEL ON MULTIDISTRICT LITIGATION

In re: Aqueous Film-Forming Foams Products Liability Litigation

MDL No. 2873 · No. MDL No. 2873 · Decided April 2, 2026

SUMMARY

The Judicial Panel on Multidistrict Litigation orders the transfer of four Alabama actions, a City of Fresno action, and two State of Maine actions to the District of South Carolina for coordinated or consolidated pretrial proceedings in MDL No. 2873. The Panel concludes that the actions overlap with existing MDL proceedings involving AFFF-related PFAS contamination of the same water supplies or sites, making transfer appropriate under 28 U.S.C. § 1407. The order rejects arguments that the actions involve only non-AFFF sources, that pending remand proceedings or discovery create obstacles to transfer, or that transfer would improperly broaden the MDL.

CASE DETAILS

COURT	United States Judicial Panel on Multidistrict Litigation
WRITING FOR THE COURT	Karen K. Caldwell; Nathaniel M. Gorton; Matthew F. Kennelly; Roger T. Benitez; Dale A. Kimball; Madeline Cox Arleo
JURISDICTION	United States Judicial Panel on Multidistrict Litigation
DECIDED	April 2, 2026
DOCKET	MDL No. 2873
DISPOSITION	other
PROCEDURAL POSTURE	Plaintiffs moved under Panel Rule 7.1 to vacate conditional transfer orders transferring their actions to the District of South Carolina for inclusion in MDL No. 2873. The Panel denied the motions and ordered the actions transferred under 28 U.S.C. § 1407.
STANDARD OF REVIEW	The Panel assessed whether the statutory requirements for transfer under 28 U.S.C. § 1407 were met, including common questions of fact, convenience of parties and witnesses, and promotion of just and efficient conduct of the litigation.
PRECEDENTIAL VALUE	unpublished
PARTIES	Plaintiffs in the actions listed on Schedule A v. 3M Company, Other defendants in the City of Fresno action

TOPICS

civil procedure

venue

environmental law

municipal law

PRACTICE AREAS

civil procedure

multidistrict litigation

environmental law

municipal law

QUESTIONS PRESENTED

1. Whether the Panel should vacate prior conditional transfer orders for the Alabama, Fresno, and Maine actions because the actions purportedly involved only non-AFFF sources of PFAS contamination.
2. Whether factual overlap involving the same water supplies or contamination sites is sufficient to warrant transfer under 28 U.S.C. § 1407 without requiring complete overlap of wells or sources.
3. Whether pending remand motions, an appeal concerning federal-officer removal, or discovery already conducted in the transferor courts made transfer inappropriate.
4. Whether transferring the actions would improperly expand MDL No. 2873 into a broader PFAS multidistrict litigation.

HOLDINGS

1. The actions listed on Schedule A involve common questions of fact with actions already transferred to MDL No. 2873, and transfer will serve the convenience of the parties and witnesses and promote the just and efficient conduct of the litigation.
2. Complete overlap in allegedly impacted wells and water sources is not required; transfer may be warranted when the same water supply is alleged to be contaminated by AFFF and is also at issue in actions pending in the MDL.
3. The Panel will not conduct a merits review of the complaints based on the level of detail in plaintiffs' pre-suit investigations or characterize allegations as conclusory for purposes of deciding transfer.
4. Pending remand motions, a related appeal concerning federal-officer removal, and limited discovery in the transferor courts do not preclude transfer when centralization would further the expeditious resolution of the litigation as a whole.

KEY QUOTATIONS

“We have not previously required a complete overlap in allegedly impacted wells and water sources, but only that the same water supply is alleged to be contaminated by AFFF.” (at 3)

“Doing so inevitably would require that we “engage in a merits review of the complaints based on the amount of detail of plaintiffs’ pre-suit investigations.”” (at 3)

“As a prerequisite to transfer to this MDL, we still require that complaints contain AFFF claims or, if the actions do not raise AFFF claims on their face, that movants satisfy a “significant burden” to persuade us “that transfer is appropriate and will not undermine the efficient progress of the MDL.”” (at 4)

“This action must either proceed as part of the MDL or separate from it, and the State’s repetitive disclaimers, as well as its stated intent to continue disclaiming sites whenever AFFF is identified as a

potential source of PFAS contamination, all strongly suggest that this action currently encompasses sites at which AFFF has been or will be identified.” (at 7)

“IT IS THEREFORE ORDERED that the actions listed on Schedule A are 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.” (at 7)

FACTUAL BACKGROUND

The actions concern alleged PFAS contamination of public water supplies and natural resources. The Alabama and Fresno plaintiffs primarily attributed contamination to non-AFFF industrial sources and disavowed claims based on AFFF use or disposal, while the State of Maine similarly attempted to separate its non-AFFF claims from an AFFF action. The Panel found that the same water supplies or contamination sites were also implicated in personal-injury or water-provider actions already pending in the AFFF MDL, creating potential duplicative discovery and overlapping pretrial issues.

PROCEDURAL HISTORY

The Alabama, Fresno, and Maine actions were pending in various federal districts and had been conditionally transferred or were subject to motions concerning transfer to MDL No. 2873. Plaintiffs argued that their claims involved non-AFFF sources of PFAS contamination, that transfer would cause inefficiency or delay, and, for the Alabama actions, that related federal-officer-removal issues were pending before the Eleventh Circuit. The Panel found factual overlap with actions already in the MDL, concluded that centralized pretrial proceedings would promote convenience and efficiency, denied the motions to vacate, and transferred the Schedule A actions to the District of South Carolina for coordinated or consolidated pretrial proceedings.

DISPOSITION

other

CASES CITED

- In re Aqueous Film-Forming Foams Prods. Liab. Litig., 357 F. Supp. 3d 1391, 1394 (J.P.M.L. 2018)
- Maine v. 3M Co., Inc., 159 F.4th 129 (1st Cir. 2025)
- In re Aqueous Film-Forming Foams Prods. Liab. Litig., MDL No. 2873, 2021 WL 755083, at *2 (J.P.M.L. Feb. 4, 2021)
- In re Prudential Ins. Co. of Am. Sales Pracs. Litig., 170 F. Supp. 2d 1346, 1347-48 (J.P.M.L. 2001)
- In re Gen. Motors Class E Stock Buyout Sec. Litig., 696 F. Supp. 1546, 1547 (J.P.M.L. 1988)
- Transfer Order at 1-2 (City of Opelika), MDL No. 2873 (J.P.M.L. Oct. 9, 2025), ECF No. 3869
- Transfer Order at 2 (City of Savannah), MDL No. 2873 (J.P.M.L. June 2, 2025), ECF No. 3536
- Order Vacating CTO at 2-3, MDL No. 2873 (J.P.M.L. Aug. 3, 2022), ECF No. 1511
- Transfer Order at 3, MDL No. 2873 (J.P.M.L. June 5, 2023), ECF No. 1927
- Order Denying Transfer at 2-3, MDL No. 2873 (J.P.M.L. Dec. 11, 2025), ECF No. 4062
- Order Denying Transfer at 2, MDL No. 2873 (J.P.M.L. Dec. 18, 2019), ECF No. 541

- Transfer Order at 1-2, MDL No. 2873 (J.P.M.L. Oct. 4, 2024), ECF No. 2938
- Transfer Order at 4, MDL No. 2873 (J.P.M.L. June 7, 2021), ECF No. 1020

OPINION

FILED Apr 02, 2026 UNITED STATES JUDICIAL PANEL CLERK, U.S. DISTRICT COURT on EASTERN DISTRICT OF CALIFORNIA MULTIDISTRICT LITIGATION IN RE: AQUEOUS FILM-FORMING FOAMS PRODUCTS LIABILITY LITIGATION MDL No. 2873 TRANSFER ORDER Before the Panel:* Plaintiffs in the actions listed on Schedule A move under Panel Rule 7.1 to vacate our orders that conditionally transferred their respective actions to the District of South Carolina for inclusion in MDL No. 2873.

Defendant 3M Company opposes all the motions to vacate. Several other defendants in the City of Fresno action also oppose the motion to vacate as to that action.¹ After considering the argument of counsel, we find that the actions listed on Schedule A involve 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 plaintiffs allege that aqueous film-forming foams (AFFFs) used at airports, military bases, or certain industrial locations caused the release of per- or polyfluoroalkyl substances (PFAS) into local groundwater and contaminated drinking water supplies.

The MDL actions 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). Plaintiffs in the four Alabama actions listed on Schedule A are public water providers.

Plaintiffs in three of these actions allege that their drinking water supplies have been contaminated by PFAS originating from carpet and textile manufacturing in and around Dalton, Georgia (which allegedly impacted the Coosa River), as well as metal plating businesses in Alabama. Plaintiff in the fourth action (the City of Irondale) alleges that its water supply has been contaminated by various chemical and electroplating facilities in and near Irondale.

Plaintiffs in all four actions explicitly disavow claims relating to AFFF use or disposal. We previously denied motions to transfer Shelby County and City of Irondale. See Order Denying Transfer at 1–2, MDL No. 2873 *Judge David C. Norton did not participate in the decision of this matter. 1 Commercial Electro Plating, Inc., Meclec Metal Finishing, Inc., New Age Metal

Finishing, LLC, Valley Chrome Plating, Inc., Valley Metal Finishing, Inc., and SureTec, Inc. - 2 - (J.P.M.L.

Apr. 3, 2025), ECF No. 3419 (denying transfer of Shelby County); Order Denying Transfer at 1–3, MDL No. 2873 (J.P.M.L. Feb. 12, 2025), ECF No. 3260 (denying transfer of City of Irondale). We conclude that transfer of the four Alabama actions, including Shelby County and City of Irondale, is now warranted because the water supplies at issue in those actions are already at issue in actions pending in the MDL.

3M has identified one or more personal injury actions in the MDL in which a plaintiff alleges that they drank water from the Alabama water providers, that PFAS in the water injured them, and that this PFAS stemmed from AFFF use or disposal.² The Panel previously has concluded that transfer is justified where such overlap exists. See, e.g., Transfer Order at 1–2 (City of Opelika), MDL No. 2873 (J.P.M.L.

Oct. 9, 2025), ECF No. 3869 (transferring City of Opelika because water supply was also at issue in action in the MDL); Transfer Order at 2–3 (City of Savannah), MDL No. 2873 (J.P.M.L. June 2, 2025), ECF No. 3536 (same).

In opposition to transfer, plaintiffs argue that their actions do not involve AFFF claims but are wholly focused on non-AFFF sources of PFAS, such as the carpet industry in Dalton, Georgia. Plaintiffs assert that the MDL personal injury plaintiffs’ failure to identify a particular contaminated water source (as opposed to a contaminated water supplier) renders the MDL complaints “conclusory” and does create a sufficiently “substantial and concrete” overlap necessary to transfer otherwise non-AFFF actions.

See Order Vacating CTO at 2–3, MDL No. 2873 (J.P.M.L. Aug. 3, 2022), ECF No. 1511 (declining to transfer State of New Hampshire where the asserted AFFF overlap was not “substantial and concrete”). However, it is sufficient for our purposes that 3M has identified plaintiffs in the MDL who allege that they consumed water provided by these water providers and that this water allegedly was contaminated from PFAS stemming from AFFF use or disposal.

We see a clear overlap among the Alabama actions and actions pending in the MDL and, as a consequence, efficiencies will be gained from centralized pretrial proceedings and the elimination of duplicative discovery. We decline plaintiffs’ suggestion to create a “de minimus” exception for transfer.

We have not previously required a complete overlap in allegedly impacted wells and water sources, but only that the same water supply is alleged to be contaminated by AFFF. See, e.g., Transfer Order at 2 (City of Savannah), MDL No. 2873 (J.P.M.L. June 2, 2025), ECF No. 3536 (“[T]ransfer is warranted because the water supply at issue in City of Savannah is already at issue in an action in the MDL.”) (emphasis added).

We likewise decline the invitation to characterize the MDL plaintiffs' allegations as "conclusory." Doing so inevitably would require that we "engage in a merits review of the complaints based on the amount of detail of plaintiffs' respective pre-suit investigations." Transfer Order at 3, MDL No. 2873 (J.P.M.L. June 5, 2023), ECF No. 1927. 2 See *Abarca v. 3M Co.*, C.A.

No. 2:25-12448 (D.S.C.) (Shelby County); *Atkins v. 3M Co.*, C.A. No. 2:25-12220 (D.S.C.) (Canton); *Arnett v. 3M Co.*, C.A. No. 2:25-12175 (D.S.C.) (Irondale); *Adams v. AGC Chems. Ams., Inc.*, C.A. No. 2:25-11944 (D.S.C.) (Irondale); *Abrams, Jr. v. AGC Chems. Ams., Inc.*, C.A. No. 2:25-11938 (D.S.C.) (Shelby County); *Bridges v. AGC Chems. Ams., Inc.*, C.A. No. 2:25-11847 (D.S.C.)

(Canton); *Conway v. 3M Co.*, C.A. No. 2:25-10062 (D.S.C.) (Coosa Valley). - 3 - Plaintiffs further suggest that transfer of these actions would effectively transform MDL No. 2873 into a broader PFAS MDL. Our intent, both now and when we created this MDL, is that this litigation should be limited to actions asserting claims for harm caused by AFFF manufacture, use, or disposal, and we have endeavored to maintain this line in the sand.

See, e.g., Order Denying Transfer at 2–3, MDL No. 2873 (J.P.M.L. Dec. 11, 2025), ECF No. 4062 (declining to expand scope of MDL to include non-AFFF direct exposure claims by firefighters). But even under the terms we have set, this is an expansive MDL that encompasses many, if not most, water providers across the country. This merely reflects the nature and scope of PFAS contamination and AFFF use.

As a prerequisite to transfer to this MDL, we still require that complaints contain AFFF claims or, if the actions do not raise AFFF claims on their face, that movants satisfy a "significant burden" to persuade us "that transfer is appropriate and will not undermine the efficient progress of the MDL." Order Denying Transfer at 2, MDL No. 2873 (J.P.M.L. Dec.

18, 2019), ECF No. 541. One way of meeting that burden is to demonstrate that the action involves overlapping water supplies, such that the actions will entail duplicative discovery and pretrial motion practice. See, e.g., Transfer Order at 1–2, MDL No. 2873 (J.P.M.L. Oct. 4, 2024), ECF No. 2938 (transferring Long where plaintiffs alleged PFAS contamination of their properties from groundwater also at issue in municipalities' MDL suits alleging AFFF contamination).

3M has met that burden here, and transfer will not alter the scope of this AFFF litigation. The Alabama plaintiffs also argue that transfer would result in inefficiencies and delay because the current MDL case management orders do not cover cases involving municipal water- systems that have opted out of the significant settlements reached in the MDL. Even so, discovery is underway that likely will be relevant to these actions, such as the bellwether product- identification discovery.

The transferee judge has neither suggested remand of any particular category of cases nor indicated that any category of cases should not be transferred to the MDL. In any event, “[t]ransfer of an action is appropriate if it furthers the expeditious resolution of the litigation taken as a whole, even if some parties to the action might experience inconvenience or delay.” *In re Aqueous Film-Forming Foams Prods.*

Liab. Litig., MDL No. 2873, 2021 WL 755083, at *2 (J.P.M.L. Feb. 4, 2021) (citing *In re Watson Fentanyl Patch Prods. Liab. Litig.*, 883 F. Supp. 2d 1350, 1351–52 (J.P.M.L. 2012) (“[W]e look to the overall convenience of the parties and witnesses, not just those of a single plaintiff or defendant in isolation.”)).

Finally, plaintiffs argue that transfer of the Alabama actions is inappropriate because they have been stayed pending the Eleventh Circuit’s decision in *Town of Pine Hill, Alabama v. 3M Company*, No. 25-10746, which addresses a federal officer removal question relevant to all four Alabama actions. Plaintiff in *City of Irondale* additionally argues that it should not be transferred because of its participation in the appeal (it has joined an amici brief).

Ultimately, these arguments are not persuasive. Pending remand motions generally do not present an impediment to transfer. See, e.g., *In re Prudential Ins. Co. of Am. Sales Pracs. Litig.*, 170 F. Supp. 2d 1346, 1347–48 (J.P.M.L. 2001) (“[R]emand motions can be presented to and decided by the transferee judge.”). Plaintiffs express concern that, if transferred to the MDL, the Eleventh Circuit’s ruling in the Pine Hill appeal may not be controlling.

But the Panel does not concern itself with applicable circuit law when considering transfer under Section 1407. See, e.g., *In re Gen. Motors Class E Stock Buyout Sec. Litig.*, 696 F. Supp. 1546, 1547 (J.P.M.L. 1988) (“When determining whether to transfer an action under Section 1407, however, it is not the business of the Panel to consider what - 4 - Irondale’s participation in the appeal.

It is joined in its amici brief by Colbert County and the Cities of Muscle Shoals, Opelika, and Savannah—all parties to actions the Panel already has transferred to MDL No. 2873. See Amici Brief, *Town of Pine Hill v. 3M Co.*, No. 25-10746 (11th Cir. Aug. 26, 2025), Dkt. No. 26. Turning to the *City of Fresno* action, this is another public water provider action in which plaintiff alleges that its water supply has been contaminated by PFAS originating from various non-AFFF industrial concerns (primarily local metal stripping and electroplating firms).

As with the Alabama cases, plaintiff expressly disavows claims relating to AFFF use or disposal. And like the Alabama cases, 3M has identified multiple personal injury plaintiffs in eighteen personal injury actions pending in the MDL who allege they were exposed to AFFF-contaminated drinking water supplied by the *City of Fresno*.³ In opposition to transfer, the City asserts many of the same arguments as the Alabama plaintiffs, which fail for the reasons previously stated.

The City argues that City of Fresno is not an AFFF action but is focused on local non-AFFF industries. The City contends that its claims are limited to 26 industrial locations some distance from the one well (Well 70) the City admits was contaminated by AFFF. This narrow characterization of the action, however, is not consistent with the text of the complaint, which does not appear to be limited to specific wells, but rather to specific defendants.

See Compl. ¶¶ 1, 8–9, *City of Fresno v. 3M Co.*, C.A. No. 1:25-02057 (E.D. Cal. Dec. 29, 2025), ECF No. 1-1 (alleging PFAS contamination of “soil, water (surface water, groundwater, or drinking water wells), or other City property” and seeks recovery for contamination “in or around the City”). By seeking recovery for PFAS contamination throughout its system, the City’s claims necessarily encompass a known AFFF-contaminated well.

As with the Alabama actions, the Panel’s decisions in *City of Savannah* and *City of Opelika* are directly on point. 3M has identified multiple MDL personal injury plaintiffs who allege exposure to AFFF-contaminated drinking water through the City’s water system.

Accordingly, there is likely to be duplicative discovery regarding the source of PFAS contamination in the City’s water supply. The City argues that transfer will not be convenient or efficient because of the large number of local defendants, but many cases in the MDL involve unique defendants. Transfer of *City of Fresno* is warranted. 3 See *Aaron v. 3M Co.*, C.A.

No. 2:25-12192 (D.S.C.); *Abarca v. 3M Co.*, C.A. No. 2:25-12448 (D.S.C.); *Acosta v. 3M Co.*, C.A. No. 2:25-11940 (D.S.C.); *Adair v. AGC Chems. Ams., Inc.*, C.A. No. 2:25-12152 (D.S.C.); *Adams v. AGC Chems. Ams., Inc.*, C.A. No. 2:25-11944 (D.S.C.); *Adams v. AGC Chems. Ams., Inc.*, C.A. No. 2:25-11942 (D.S.C.); *Aguinaldo v. 3M Co.*, C.A. No. 2:25- 12166 (D.S.C.); *Baker v. 3M Co.*, C.A.

No. 2:24-00029 (D.S.C.); *Braithewaite v. AGC Chems. Ams., Inc.*, C.A. No. 2:25-11844 (D.S.C.); *Bridges v. AGC Chems. Ams., Inc.*, C.A. No. 2:25- 11847 (D.S.C.); *Clayton v. AGC Chems. Ams., Inc.*, C.A. No. 2:25-11838 (D.S.C.); *Cruz v. AGC Chems. Ams., Inc.*, C.A. No. 2:25-12063 (D.S.C.); *De La Cruz v. 3M Co.*, C.A. No. 2:24-00030 (D.S.C.); *Infausto v. 3M Co.*, C.A.

No. 2:23-06837 (D.S.C.); *Morales v. 3M Co.*, C.A. No. 2:24- 00613 (D.S.C.); *Sifuentes v. 3M Co.*, C.A. No. 2:23-03429 (D.S.C.); *Vasquez v. 3M Co.*, C.A. No. 2:23-03431 (D.S.C.); *Yepez v. 3M Co.*, C.A. No. 2:23-05638 (D.S.C.). - 5 - The final motion to vacate concerns an action by the State of Maine.

The State filed this “non-AFFF” action in Maine state court alongside its “AFFF” action. Both are directed to PFAS contamination of the State’s groundwater, surface water, and other natural resources. The AFFF action was directed to AFFF manufacturers; the non-AFFF action was limited to 3M and DuPont (the principal manufacturers of PFAS) and explicitly disavowed any claims relating to AFFF use or disposal.

The AFFF action was removed to federal court and transferred to the MDL without opposition. The non-AFFF action was also removed, but the district court remanded it to state court, where it proceeded while the First Circuit heard an appeal of the remand order. During written discovery, the State identified more than 900 sites at issue. 3M removed the action again in September 2025, arguing that the State had identified sites where AFFF use was reported.

On November 19, 2025, the First Circuit reversed the remand order, holding that the State's disavowal of AFFF claims did not obviate the need for the trial court to determine whether any particular site was contaminated by AFFF use, and thus that federal officer removal was appropriate. See *Maine v. 3M Co., Inc.*, 159 F.4th 129 (1st Cir. 2025).⁴ The State argues that transfer is inappropriate because this action does not raise AFFF claims.

Since 3M's second removal of this action to federal court, the State has filed several "disclaimers" of liability for PFAS contamination at certain sites that 3M has identified as plausibly involving AFFF contamination. It also has sought leave to amend its complaint to remove any reference to the allegedly AFFF-contaminated sites.

The State contends that these disclaimers and its proposed amended complaint remove any potential AFFF-issues from the case and eliminate the overlap the First Circuit identified when it reversed the remand order. The State also argues that discovery is well underway in the District of Maine, such that transfer would yield inefficiencies and delay.

The State's arguments are not convincing. 3M has identified numerous alleged contamination sites identified by the State in its written discovery responses that, 3M contends, involve AFFF contamination and are at issue in personal injury or water district actions pending in the MDL.⁵ While the State has since disclaimed liability for these sites, its practice of filing a ⁴ The First Circuit's decision resulted in two dockets for the same case: one (C.A.

No. 25-453) when 3M removed the action in September 2025; and a second (C.A. No. 23-210) when the First Circuit remanded the case to the District of Maine following the appeal. The two dockets have since been consolidated and both are listed in Schedule A. ⁵ In its brief, 3M identifies personal injury plaintiffs in more than twenty MDL actions who allege they were exposed to AFFF-contaminated water from sites identified by the State.

See *Aldamuy v. 3M Co.*, C.A. No. 2:25-11800 (D.S.C.) (Calais Water Department); *Kirkland v. 3M Co.*, C.A. No. 2:25-11988 (D.S.C.) (Cold Spring Water Company); *Abner v. 3M Co.*, C.A. No. 2:25-11443 (D.S.C.) (Dexter Utility District); *Amaral v. 3M Co.*, C.A. No. 2:25-11478 (D.S.C.) (Dexter Utility District); *Best v. 3M Co.*, C.A. No. 2:25-11231 (D.S.C.) (Dexter Utility District); *Johnson v. 3M Co.*, C.A.

No. 2:25-05904 (D.S.C.) (Gray Water District; Yarmouth Water District); *Abernathy v. 3M Co.*, C.A. No. 2:25-11875 (D.S.C.) (Greater Augusta Utility District); *Bowie v. 3M Co.*, C.A. - 6 - new

disclaimer of liability every time 3M identifies an AFFF-contaminated site is not a practicable way of proceeding. This action must either proceed as part of the MDL or separate from it, and the State's repetitive disclaimers, as well as its stated intent to continue disclaiming sites whenever AFFF is identified as a potential source of PFAS contamination, all strongly suggest that this action currently encompasses sites at which AFFF has been or will be identified.

Allowing this action to continue to proceed in this fashion is not tenable and will only result in delay and continuing confusion as to the scope of the action. Furthermore, we share the First Circuit's concern regarding the State's attempt to split its AFFF and non-AFFF claims and contemplated that this action may be transferred to the MDL. See *Maine*, 159 F.4th at 131–32 (“Maine’s efforts to have two courts answer the same questions must fail.”).⁶ We likewise have transferred state actions where the state attempts to “split its claims into AFFF and non-AFFF complaints and thereby maintain an action outside the MDL.” Transfer Order at 4, MDL No. 2873 (J.P.M.L.).

June 7, 2021, ECF No. 1020 (transferring “non-AFFF” action by the State of Michigan). See also Transfer Order at 2–3, MDL No. 2873 (J.P.M.L. June 5, 2023), ECF No. 1927 (transferring putative non-AFFF action by State of Illinois, despite disclaimer of AFFF claims, where complaint identified water supplies that were being litigated in the MDL).

The State points to the Panel's denial of transfer of State of New Hampshire, but there the state had “identified different contamination sites in each action,” and 3M had not identified actions in No. 2:25-04550 (D.S.C.) (Greater Augusta Utility District); *Hanna v. 3M Co.*, C.A. No. 2:23-04527 (D.S.C.) (Greater Augusta Utility District; Maine Water Company Skowhegan Division); *Ande v. 3M Co.*, C.A.

No. 2:25-10293 (D.S.C.) (Greater Augusta Utility District); *Huhn v. 3M Co.*, C.A. No. 2:25-01045 (D.S.C.) (Greater Augusta Utility District); *Penninger v. 3M Co.*, C.A. No. 2:25-11183 (D.S.C.) (Greater Augusta Utility District); *Rios v. 3M Co.*, C.A. No. 2:23-04617 (D.S.C.) (Greater Augusta Utility District); *Earl v. Arkema, Inc.*, C.A. No. 2:24-04324 (D.S.C.) (Guilford-Sangerville Water District); *Moore v. 3M Co.*, C.A.

No. 2:26-00076 (D.S.C.) (Hallowell Water District); *Willis v. 3M Co.*, C.A. No. 2:25-08671 (D.S.C.) (Harrison Water District); *Day v. 3M Co.*, C.A. No. 2:24-04292 (D.S.C.) (Lisbon Water District); *Krueger v. 3M Co.*, C.A. No. 2:24- 05671 (D.S.C.) (Lisbon Water District); *Wilson-Zeigler v. 3M Co.*, C.A. No. 2:25-08819 (D.S.C.) (Lisbon Water District); *Athanas v. 3M Co.*, C.A.

No. 2:25-12400 (D.S.C.) (Maine Water Company Skowhegan Division); *Degonza v. 3M Co.*, C.A. No. 2:25-13623 (D.S.C.) (Maine Water Company Skowhegan Division); *Walker v. 3M Co.*, C.A. No. 2:25-11308 (D.S.C.) (Newport Water District); and *Rich v. 3M Co.*, C.A. No. 2:21-01333

(D.S.C.) (Yarmouth Water District). 3M also identifies two water provider actions that it claims involve AFFF contamination of a site claimed by Maine in its “non-AFFF” action.

See *Kennebec Water Dist. v. 3M Co.*, C.A. No. 2:22- 04164 (D.S.C.) (identifying China Lake as the source of plaintiff’s drinking water); *Sanford Sewerage Dist. v. 3M Co.*, C.A. No. 2:25-01310 (D.S.C.) (alleging that plaintiff discharges AFFF- contaminated effluent into Mousam River). 6 The State attempts to distinguish this discussion by the First Circuit as reflecting a concern about federalism.

But the only way the court could be concerned about the state and federal systems addressing the same PFAS contamination sources alleged in Maine is if there are two actions (i.e., another federal action) that overlaps with the State’s action. This is precisely the overlap that _7- the MDL alleging AFFF contamination at the sites New Hampshire identified in its non-AFFF complaint.

Order Vacating CTO at 2, MDL No. 2873 (J.P.M.L. Aug. 3, 2022), ECF No. 1511. In contrast here, 3M repeatedly has identified sites at issue in State of Maine that are at issue in actions pending in the MDL. Our decision in State of New Hampshire is inapposite.

The State’s argument regarding the progress of discovery in State of Maine is not well taken. To date, the parties have only exchanged limited written discovery. There have been no depositions and little motion practice. There remains ample scope for coordination with discovery in the MDL, which involves numerous other state actions (including Maine’s “AFFF” action).

While transfer may result in some delay for the State, transfer is nonetheless appropriate if it furthers the expeditious resolution of the litigation taken as a whole. See *Jn re AFFF*, 2021 WL 755083, at *2. Finally, the State echoes the Alabama and City of Fresno plaintiffs’ argument that transfer would result in the creation of aPFAS MDL.

For the reasons we have explained, both with respect to those actions and State of Maine, transfer of this action will not expand the scope of the MDL. IT IS THEREFORE ORDERED that the actions listed on Schedule A are 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 Karen K. Caldwell Chair Nathaniel M. Gorton Matthew F. Kennelly Roger T. Benitez Dale A. Kimball Madeline Cox Arleo PSHE DISTR. A TRUE COPY XQ) ATTEST: ROBIN L. BLUME, CLERK a ALD Cos” DEPUTY CLERK IN RE: AQUEOUS FILM-FORMING FOAMS PRODUCTS LIABILITY LITIGATION MDL No. 2873 SCHEDULE A Middle District of Alabama CITY OF CLANTON WATER WORKS AND SEWER BOARD v. 3M COMPANY, ET AL., C.A.

No. 2:25-00751 Northern District of Alabama SHELBY COUNTY, ALABAMA, ET AL. v. 3M COMPANY, ET AL., C.A. No. 1:25-00112 COOSA VALLEY WATER SUPPLY DISTRICT, INC. v. 3M COMPANY, ET AL., C.A. No. 1:25-01931 CITY OF IRONDALE, ALABAMA v. 3M COMPANY, INC., ET AL., C.A. No. 2:24-01327 Eastern District of California CITY OF FRESNO v. 3M COMPANY, ET AL., C.A. No. 1:25-02057 District of Maine STATE OF MAINE v. 3M COMPANY, ET AL., C.A.

No. 2:23-00210 STATE OF MAINE v. 3M COMPANY, ET AL., C.A. No. 2:25-00453

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