



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

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

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**MDL No. 2:18-mn-2873-RMG
CASE MANAGEMENT ORDER NO. 25B
This Order Relates to All Actions**

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

By Agreement of the Parties, (Dkt. No. 4839), this CMO 25B amends the protocol set forth in CMO 25A for the Schedule for the United States of America’s Jurisdictional Motions. The resulting Protocol and Schedule is as follows:

A. The United States shall file its Global Jurisdictional Motions to Dismiss and its Site-Specific Jurisdictional Motion to Dismiss regarding Cannon AFB on or before **Monday, February 26, 2024**. The United States shall file one Memorandum of Law supporting the United States’ Global Motion to Dismiss the Plaintiffs’ FTCA claims based on the Discretionary Function Exception, and one Memorandum of Law to support its Global Motion to Dismiss Plaintiffs’ claims based on the timing of review provision of CERCLA, 42 U.S.C. § 9613(h). Each Global Memorandum will be no more than fifty (50) pages long, exclusive of the tables of contents, tables of authorities, glossaries of terms, and signature blocks. The United States’ Site-Specific Jurisdictional Motion to Dismiss shall be no more than fifteen (15) pages long, exclusive of the table of contents, table of authorities, and signature block.

B. Plaintiffs with claim(s) pending against the United States shall 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 these Oppositions, Plaintiffs shall have seventy-five (75) pages, exclusive of the tables of contents, tables of authorities, and signature blocks, for each "omnibus" Opposition. Plaintiffs shall also file one Opposition, not exceeding twenty (20) pages in length, in response to the United States' Site-Specific Jurisdictional Motion to Dismiss regarding Cannon AFB. These Oppositions shall be due on or before **Tuesday, April 16, 2024**.

C. The Cannon AFB Plaintiffs informed the United States that, depending on the arguments the United States makes in its opening briefs, it is possible they may rely on affidavits or declarations from their own affirmative witnesses who have not previously been disclosed to the United States (including, potentially, expert witness testimony), in the April 16, 2024, opposition to the United States' Site-Specific Jurisdictional Motion to Dismiss regarding Cannon AFB. In order to provide the United States with the opportunity to take discovery of any such affirmative witnesses, the Parties hereby agree that in the event that the Cannon AFB Plaintiffs submit an affidavit or declaration on behalf of one or more affirmative witnesses in support of their site-specific (CAFB) oppositions, the briefing schedule set forth in CMO 25 shall be modified as follows:

- i. The United States shall have until **Tuesday, July 16, 2024** (*i.e.*, ninety (90) days) to take discovery of such witnesses, including depositions;
- ii. The United States shall have until **Friday, August 16, 2024**, to file any Replies in support of its Global Jurisdictional Motions to Dismiss and its Site-Specific Jurisdictional Motion to Dismiss regarding Cannon AFB; and
- iii. In the event Plaintiffs decide to seek leave to file a Sur-Reply to respond to issues raised by the United States concerning Plaintiffs' affirmative

witnesses, they shall do so no later than **Friday, August 23, 2024**. Any motion for leave to file a Sur-Reply regarding Cannon AFB shall be limited to ten (10) pages. The United States shall have until **Friday, September 6, 2024**, to file any opposition brief, also limited to ten (10) pages.

D. In the event the Cannon AFB Plaintiffs do not submit any affidavits or declarations from affirmative witnesses in support of the oppositions they file April 16, 2024, the deadline for the United States to file any Replies in support of its Global Jurisdictional Motions to Dismiss and its Site-Specific Jurisdictional Motion to Dismiss regarding Cannon AFB will remain unchanged and, consistent with CMO 25, shall be set for **May 16, 2024**.

E. Regardless of when they are filed, each Reply in support of the United States' Global Jurisdictional Motions to Dismiss will be no more than thirty (30) pages long (exclusive of the tables of contents, tables of authorities, glossaries, and signature blocks), and the United States' Reply in support of its Site-Specific Jurisdictional Motion to Dismiss regarding Cannon AFB shall be limited to twenty (20) pages (exclusive of the table of contents, table of authorities, and signature block).

IT IS SO ORDERED.

Dated: April 23 , 2024
Charleston, South Carolina

s/Richard M. Gergel
Hon. Richard M. Gergel
United States District Judge