

**IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF ILLINOIS
ROCK ISLAND DIVISION**

PEOPLE OF THE STATE OF ILLINOIS, *ex*
rel. KWAME RAOUL, Attorney General of
the State of Illinois,

Plaintiff,

v.

3M Company, a Delaware Corporation,

Defendant.

CASE NO. 22-cv-4075

NOTICE OF REMOVAL

Defendant 3M Company (“3M”), by undersigned counsel, hereby gives notice of removal of this action, pursuant to 28 U.S.C. §§ 1441, 1442(a)(1) and 1446, from the State of Illinois Circuit Court of the Fourteenth Judicial Circuit, Rock Island County, to the United States District Court for the Central District of Illinois. 3M is entitled to remove this action under the federal officer removal statute, 28 U.S.C. § 1442(a)(1). As further grounds for removal, 3M states as follows.

PRELIMINARY STATEMENT

1. The State of Illinois (“State”) brought this action seeking to hold 3M liable for its alleged conduct in manufacturing and discharging per- and polyfluoroalkyl substances (“PFAS”), including perfluorooctane sulfonate (“PFOS”) and perfluoro-octanoic acid (“PFOA”), from a 3M manufacturing facility in Cordova, Illinois (“Cordova Facility”) located on the banks of the Mississippi River. 3M’s manufacture and discharge of PFAS at the Cordova Facility purportedly has resulted in alleged contamination of the State’s environment and natural resources. *See* Ex. A, Summons and Complaint, at Complaint p. 1. The State seeks to recover for *all* damages to the

State’s environment and natural resources caused by the release of PFAS from 3M’s Cordova Facility (*see id.*), including for alleged contamination of the Mississippi River (*see id.* ¶¶ 105, 191).

2. But PFAS releases elsewhere on the Mississippi River, including releases of PFOS and PFOA, likely resulted from the use, storage, and/or disposal of PFAS-containing aqueous film-forming foams (“AFFF”) that 3M developed for sale to the U.S. military in accordance with rigorous military specifications (“MilSpec”). Use of MilSpec AFFF at the Rock Island Arsenal—located 25 miles downstream from the Cordova Facility—plausibly contributed to the alleged harm to the State’s environment and natural resources from PFAS. *See* Ex. B, *Draft Final VIA Preliminary Assessment and Site Inspection of Per- and Polyfluoroalkyl Substances, Rock Island Arsenal, Illinois*, prepared for the U.S. Army Corps of Engineers (Feb. 2021) (“RIA PA/SI”).¹

3. Because this action seeks damages for all Illinois natural resources allegedly contaminated with PFAS from the Cordova Facility—including downstream areas of the Mississippi River—the alleged contamination for which the State is seeking damages plausibly may encompass and overlap with PFAS contamination from the use, storage, and discharge of MilSpec AFFF at the Rock Island Arsenal. To the extent that the State’s alleged damages arise from MilSpec AFFF, 3M intends to assert the federal government contractor defense in this action. Although the Complaint purports to allege that “PFAS, as defined in this Complaint, do not include any PFAS that have contaminated Illinois’ environment or natural resources from aqueous film-forming foams (‘AFFF’)” (Ex. A, Complaint ¶ 11), this allegation cannot prevent 3M “from raising the production of MilSpec AFFF as a defense or an alternate theory” of causation. *Nessel v. Chemguard, Inc.*, No. 1:20-cv-1080, 2021 WL 744683, at *3 (W.D. Mich. Jan. 6, 2021).

¹ Exhibit B was produced by the United States in the *In re Aqueous Film-Forming Foams (“AFFF”) Products Liability Litigation*, MDL No. 2873, pending in the U.S. District Court for the District of South Carolina.

4. Under the federal officer removal statute, 3M is entitled to remove this action to have its federal defense adjudicated in a federal forum, as multiple courts have held in other PFAS cases including cases filed by other state attorney-generals. *See Nessel*, 2021 WL 744683, at *4 (denying State of Michigan’s motion to remand); *In re Aqueous Film-Forming Foams Prods. Liab. Litig.* (“*In re AFFF*”), No. 2:18-mn-2873, 2019 WL 2807266, at *2 (D.S.C. May 24, 2019) (denying State of New York’s motion to remand). Such removal “fulfills the federal officer removal statute’s purpose of protecting persons who, through contractual relationships with the Government, perform jobs that the Government otherwise would have performed.” *Isaacson v. Dow Chem. Co.*, 517 F.3d 129, 133 (2d Cir. 2008); *see Ruppel v. CBS Corp.*, 701 F.3d 1176, 1181 (7th Cir. 2012) (federal officer removal “covers situations . . . where the federal government uses a private corporation to achieve an end it would have otherwise used its own agents to complete”).

THE STATE’S SUMMONS AND COMPLAINT

5. The State filed this action on March 16, 2022, in the State of Illinois Circuit Court of the Fourteenth Judicial Circuit, Rock Island County, bearing Case No. 2022LA16. *See* Ex. A, Summons and Complaint. 3M was served with the Summons and Complaint on March 22, 2022. *See id.* at Notice of Service of Process.

6. The Complaint pleads that the State has brought this action to hold 3M liable “for its operation of . . . its Cordova Facility in Rock Island County, Illinois” and “its discharge . . . of [PFAS] from the Cordova Facility.” Ex. A, Complaint p. 1.

7. The State alleges that 3M has owned and operated the Cordova Facility (located on the banks of the Mississippi River) since the 1970s, and that 3M manufactured and disposed of PFAS and PFAS-containing products from the Cordova Facility, allegedly resulting in PFAS contamination of the State’s environment and natural resources “at and around” the facility. *Id.* ¶ 105; *see id.* ¶¶ 34-48, 74. The Complaint specifically alleges that 3M has discharged PFAS from

the Cordova Facility into the Mississippi River (*id.* ¶¶ 105, 107-108, 129-136), and that PFAS has migrated into the environment from the Cordova Facility (*id.* ¶¶ 143, 178), causing contamination of the State’s groundwater, surface waters, wetlands, and wildlife (*id.* ¶¶ 145-180), including the Mississippi River (*e.g., id.* ¶ 129-136, 190-192).

8. Among other forms of relief, the State seeks “monetary damages for the cost of identifying, monitoring, and remediating contamination caused by the release of PFAS from 3M’s Cordova Facility and all damages to the State’s environment and its natural resources because of the resulting contamination.” *Id.* at p. 1. That encompasses purported damages for all alleged contamination “at and around” the Cordova Facility (*e.g., id.* ¶ 248, 259), such as downstream harms caused by PFAS from the Cordova Facility, including damages to “groundwater, surface waters, wetlands, drinking water supplies, biota, wildlife, aquatic life, and their associated soils, sediments, and uses, and other State natural resources and property” (*id.* at p. 61).

9. Based on allegations concerning 3M’s manufacture and discharge of PFAS chemicals in the State of Illinois, the State asserts claims against 3M for multiple counts of violations of the Illinois Environmental Protection Act, 415 ILCS 5/1, *et seq.* (*id.* ¶¶ 181-232), for restoration under the Fish and Aquatic Life Code, 515 ILCS 5/5-5, and the Wildlife Code, 520 ILCS 5/1-10 (*id.* ¶¶ 233-244), and for negligence (*id.* ¶¶ 245-248), trespass (*id.* ¶¶ 249-259), public nuisance (*id.* ¶¶ 260-264), and unjust enrichment (*id.* ¶¶ 265-276).

**THE PROCEDURAL REQUIREMENTS FOR REMOVAL
UNDER 28 U.S.C. §§ 1441 AND 1446 ARE MET**

10. Venue is proper in this Court pursuant to 28 U.S.C. §§ 93(b) and 1441(a) because the State of Illinois Circuit Court of the Fourteenth Judicial Circuit, Rock Island County, is located within the Central District of Illinois.

11. Pursuant to 28 U.S.C. § 1446(a), true and correct copies of the Summons and Complaint are attached hereto as Exhibit A.

12. This Notice of Removal is being filed within 30 days of service of the Complaint on 3M. Pursuant to 28 U.S.C. § 1446(b), this Notice of Removal is timely filed.

13. Pursuant to 28 U.S.C. § 1446(d), a copy of this Notice of Removal is being served upon counsel for the State, and a copy is being filed with the Clerk of the State of Illinois Circuit Court of the Fourteenth Judicial Circuit, Rock Island County.

14. By filing a Notice of Removal in this matter, 3M does not waive, and reserves, its right to assert any defenses and/or objections to which it may be entitled.

15. 3M reserves the right to amend or supplement this Notice of Removal.

16. If any question arises as to the propriety of the removal of this action, 3M requests the opportunity to present a brief and oral argument in support of removal.

**REMOVAL IS PROPER UNDER THE FEDERAL
OFFICER REMOVAL STATUTE, 28 U.S.C. § 1442(a)(1)**

17. Removal here is proper under 28 U.S.C. § 1442(a)(1), which provides for removal when a defendant is sued for acts undertaken at the direction of a federal officer. Removal is appropriate under this provision where the removing defendant establishes that it is a “(1) ‘person’ (2) ‘acting under’ the United States, its agencies, or its officers (3) that has been sued ‘for or relating to any act under color of such office,’ and (4) has a colorable federal defense to the plaintiff’s claim.” *Ruppel*, 701 F.3d at 1180-1181 (quoting 28 U.S.C. § 1442(a)); *accord Mesa v. California*, 489 U.S. 121, 124-25, 129-31, 133-35 (1989); *Baker v. Atlantic Richfield Co.*, 962 F.3d 937, 941 (7th Cir. 2020); *Betzner v. Boeing Co.*, 910 F.3d 1010, 1015 (7th Cir. 2018); *Cuomo v. Crane Co.*, 771 F.3d 113, 115 (2d Cir. 2014); *Bennett v. MIS Corp.*, 607 F.3d 1076, 1085 (6th Cir. 2010); *Durham v. Lockheed Martin Corp.*, 445 F.3d 1247, 1251 (9th Cir. 2006).

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