

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

MICHIGAN DEPARTMENT OF  
ENVIRONMENTAL QUALITY,

Plaintiff,

v.

WOLVERINE WORLD WIDE, INC.,

Defendant.

and

PLAINFIELD CHARTER TOWNSHIP  
and ALGOMA TOWNSHIP,

Intervening Plaintiffs,

v.

WOLVERINE WORLD WIDE, INC.,

Defendant.

\_\_\_\_\_ /

WOLVERINE WORLD WIDE, INC.,

Third-Party Plaintiff,

v.

3M Corporation,

Third-Party Defendant.

\_\_\_\_\_ /

No. 1:18-cv-00039-JTN-ESC

HON. JANET T. NEFF

MAG. ELLEN S. CARMODY

**JOINT NOTICE OUTLINING A  
REMEDY DETERMINATION  
PROPOSAL**

Polly A. Synk (P63473)  
Brian J. Negele (P41846)  
Danielle Allison-Yokom (P70950)  
Assistant Attorneys General  
Attorneys for Plaintiff  
Environment, Natural Resources, and  
Agriculture Division  
P.O. Box 30755  
Lansing, MI 48909  
(517) 335-7664  
synkp@michigan.gov  
negeleb@michigan.gov  
allisonyokomd@michigan.gov

Douglas W. Van Essen (P33169)  
Elliot J. Gruszka (P77117)  
Silver & Van Essen, P.C.  
Attorneys for Intervening Plaintiffs  
300 Ottawa Avenue NW, Suite 620  
Grand Rapids, MI 49503  
(616) 988-5600  
dwv@silvervanessen.com  
egruszka@silvervanessen.com

Daniel L. Ring  
Michael A. Olsen  
Richard F. Bulger  
Timothy S. Bishop  
Mayer Brown  
Attorneys for Third-Party Defendant 3M  
Corporation, Inc.  
71 S. Wacker Drive  
Chicago, IL 60606  
(312) 782-0600  
dring@mayerbrown.com  
molsen@mayerbrown.com  
rbulger@mayerbrown.com  
tbishop@mayerbrown.com

John V. Byl (P35701)  
Madelaine C. Lane (P71294)  
Janet L. Ramsey (P63285)  
James Moskal (P41885)  
R. Michael Azzi (P74508)  
Scott M. Watson (P70185)  
Warner Norcross & Judd LLP  
Attorneys for Defendant/Third-Party  
Plaintiff  
111 Lyon Street NW, Suite 900  
Grand Rapids, MI 49503  
(616) 752-2000  
jbyl@wnj.com  
mlane@wnj.com  
jramsey@wnj.com  
jmoskal@wnj.com  
mazzi@wnj.com  
swatson@wnj.com

Joe G. Hollingsworth  
Frank Leone  
Attorneys for Defendant/Third-Party  
Plaintiff  
Hollingsworth LLP  
1350 I Street, N.W.  
Washington, DC 20005  
(202) 898-5800  
jhollingsworth@hollingsworthllp.com  
fleone@hollingsworthllp.com

Harold A. Barza  
Johanna Y. Ong  
Joe M. Paunovich (P65340)  
Valerie Roddy  
Attorneys for Defendant/Third-Party  
Plaintiff  
Quinn Emanuel Urquhart &  
Sullivan, LLP  
865 South Figueroa Street, 10th Floor  
Los Angeles, CA 90017  
(213) 443-3000  
halbarza@quinnemanuel.com  
johannaong@quinnemanuel.com  
joepaunovich@quinnemanuel.com  
valerieroddy@quinnemanuel.com

/

## JOINT NOTICE OUTLINING A REMEDY DETERMINATION PROPOSAL

Pursuant to this Court’s June 12, 2019 Order, the parties were instructed to “present proposals for concurrently and expeditiously addressing the question of the appropriate remedy for the affected water supply in the House Street area.” As instructed in the Order, the Parties have conferred and have reached consensus on certain elements of a plan to expedite a determination of the appropriate remedy for the affected water supply in the House Street area. In filing this Joint Notice, no party waives any claim or defense.

To provide for the orderly presentation and resolution of the claims and defenses regarding remedy for the affected water supply in the House Street area, the parties propose the following process:

1. The parties propose that the Court enter an order requiring all parties—the Michigan Department of Environmental Quality, Wolverine World Wide, Inc., the Intervenor Townships, and the 3M Company—to participate in structured, confidential settlement discussions or confidential mediation under the following terms:

- A. All parties are required to participate;<sup>1</sup>
- B. The parties will collectively select a mediator within fourteen

---

<sup>1</sup> MDEQ, Wolverine, and the Townships acknowledge and agree that 3M is not a party to the MDEQ’s and Townships’ claims against Wolverine and, therefore, 3M will not participate in the Phase I trial with respect to those claims against Wolverine or, to the extent it may be handled separately, any trial to decide on the appropriate remedy associated with liability for those claims against Wolverine for the affected water supply in the House Street area. Nonetheless, 3M is willing to participate in the confidential mediation process outlined in this submission.

days from entry of the Court's order, but if the parties are unable to agree on a mediator the Court will appoint one from a list provided by the parties;

C. Within fourteen days from the date the mediator is selected or appointed, the mediator will consult with the parties and set a time and place for an initial mediation session and any additional mediation sessions as necessary;

D. At least seven days before the initial mediation session each party will provide the mediator with a memorandum, no more than ten double-spaced pages in length;

E. The settlement or mediation discussions will occur contemporaneously with the ongoing discovery and litigation schedules;

F. The settlement or mediation discussions will not delay or impede the progress or deadlines in this matter; and

G. The settlement or mediation discussions, and any written submissions, are subject to Rule 408 of the Federal Rules of Evidence and *Goodyear Tire & Rubber Co. v. Chiles Power Supply, Inc.*, 332 F.3d 976, 981 (6th Cir. 2003).

2. To ensure the appropriate remedy for the affected water supply in the House Street area is expeditiously addressed, the parties request that the Court decide the appropriate remedy for the affected water supply in the House Street area at the same time that it decides the issue of liability pertaining to the Tannery and House Street areas—both issues to be decided under the process outlined in the

Court's April 5, 2019, Order (ECF No. 62). Accordingly, the parties propose that, in addition to indicating whether discovery conducted is sufficient to proceed with dispositive motion practice regarding the issue of liability pertaining to the House Street and Tannery areas, the parties' September 16, 2019, Joint Notice will indicate whether discovery conducted is sufficient to proceed with dispositive motion practice regarding the remedy for the affected water supply in the House Street area. The parties will also include in their Joint Notice recommended next steps, e.g., additional discovery, pre-motion conference requests, additional mediation sessions, or trial, to address both the issue of liability pertaining to the House Street and Tannery areas and the remedy for the affected water supply in the House Street area. MDEQ and the Townships fully expect that discovery will be sufficient at that time, and they request that as soon as possible the Court schedule a trial to be held prior to March 2020 if settlement or mediation discussions are unsuccessful. The trial shall address any outstanding issues pertaining to liability at the Tannery and House Street areas and the appropriate remedy for the affected water supply in the House Street area.

3. If the parties indicate in their September 16, 2019, Joint Notice under the Court's April 5, 2019, Order (ECF No. 62) that the discovery conducted is sufficient to proceed with dispositive motion practice regarding the remedy for the affected water supply in the House Street area, the parties may file pre-motion conference requests at that time.

4. The parties reserve the right to indicate in their September 16, 2019, Joint Notice under the Court's April 5, 2019, Order (ECF No. 62) that further discovery is necessary, and may provide their recommendation for conducting that further discovery.

In addition, the Court's June 12, 2019 Order requested that the parties include in their proposal "a factual predicate for the plan proposed, describing the geographic area involved, the affected homes/homeowners, the current status of remedial action, the anticipated outcome, and other relevant underlying facts."

Accordingly, the parties provide the following joint response:

**1. Factual Predicate for the Plan Proposed.** MDEQ and the Townships agree that for the drinking water well use locations identified below, connection to municipal water is the only appropriate long-term remedy to address the contamination emanating from the House Street Disposal Site, based on the unabated presence of PFAS contamination in groundwater that is the source of drinking water to residences, and the risks posed to residents by long-term reliance on private wells drawing from that contaminated drinking water source. While the whole house filters installed by Wolverine and the Plainfield municipal water plant both use granular activated carbon, they use it in different systems. MDEQ and the Townships believe that the unabated presence of contamination in the drinking water source to the residents poses an imminent and substantial endangerment.

Wolverine's position is that the Plaintiffs' claims are moot because every affected resident already has access to a filter that uses the same technology (i.e.,

granular activated carbon) as that used by municipal water systems, including the one currently operated by Plainfield Township, to address PFOA and PFOS.

Accordingly, Wolverine's position is that there is not an imminent and substantial endangerment under RCRA.

**2. Geographic Area Involved.** In order to clarify the geographic area covered by this phase of the proceedings as to remedy for the affected water supply in the House Street area, the parties have attached Exhibit A. The parties have differing positions and reserve all rights, claims, and defenses regarding whether and to what extent the water supply in this area is "affected." The map included in Exhibit A depicts the area the parties intend to be included when discussing the "appropriate remedy for the affected water supply in the House Street area."

Identification of this area is intended to clarify the area being discussed in this phase of the litigation and does not purport to address MDEQ's and the Townships' claims, or Wolverine's defenses, related to the entire House Street area, portions of which are still being investigated as to impact. The parties reserve all rights and defenses related to remedy appropriate for all other areas, and agree that the map depicting the area for a proposed remedy for the affected water supply in the House Street area does not in any way limit or preclude any claims or defenses any of the parties may bring regarding any other geographic area in mediation, settlement discussions, or other phases of this litigation.

**3. Affected Homes/Homeowners.** The parties are filing a list of affected drinking water well use locations in the geographic area depicted in Exhibit

A that includes the homeowner's or landowner's name and the physical address of the property. The parties have differing positions and reserve all rights, claims, and defenses regarding whether and to what extent these locations are "affected." This document is being filed under seal in order to protect the identity of the homeowners.

**4. Current Status of Remedial Action.** The parties have differing positions regarding the current status of remedial action. As such, the parties will address this in their individual proposals.

**5. Anticipated Outcome.** The parties have differing positions regarding the anticipated outcome. As such, the parties will address this in their individual proposals.

**6. Other Relevant Underlying Facts.** The parties have differing positions regarding the other relevant underlying facts. As such, the parties will address this in their individual proposals.

Dated: July 8, 2019

/s/Danielle Allison-Yokom  
Polly A. Synk (P63473)  
Brian J. Negele (P41846)  
Danielle Allison-Yokom (P70950)  
Assistant Attorneys General  
Attorneys for MDEQ

Dated: July 8, 2019

/s/Scott M. Watson  
(with permission)  
John V. Byl (P35701)  
Madelaine C. Lane (P71294)  
Janet L. Ramsey (P63285)  
James Moskal (P41885)  
R. Michael Azzi (P74508)  
Scott M. Watson (P70185)  
Warner Norcross & Judd LLP  
Attorneys for Wolverine World Wide,  
Inc.



Dated: July 8, 2019

/s/Douglas W. Van Essen  
(with permission)  
Douglas W. Van Essen (P33169)  
Elliot J. Gruszka (P77117)  
Silver & Van Essen, P.C.  
Attorneys for Intervening Townships

Dated: July 8, 2019

/s/Daniel L. Ring  
(with permission)  
Daniel L. Ring  
Michael A. Olsen  
Richard F. Bulger  
Timothy S. Bishop  
Mayer Brown  
Attorneys for Third-Party Defendant 3M  
Corporation, Inc.

LF: Wolverine World Wide, Inc. (MDEQ)/AG# 2018-0205144-A/Joint Notice 2019-07-08

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

MICHIGAN DEPARTMENT OF  
ENVIRONMENTAL QUALITY,

Plaintiff,

v.

WOLVERINE WORLD WIDE, INC.,

Defendant.

and

PLAINFIELD CHARTER TOWNSHIP  
and ALGOMA TOWNSHIP,

Intervening Plaintiffs,

v.

WOLVERINE WORLD WIDE, INC.,

Defendant.

\_\_\_\_\_ /

WOLVERINE WORLD WIDE, INC.,

Third-Party Plaintiff,

v.

3M Corporation,

Third-Party Defendant.

\_\_\_\_\_ /

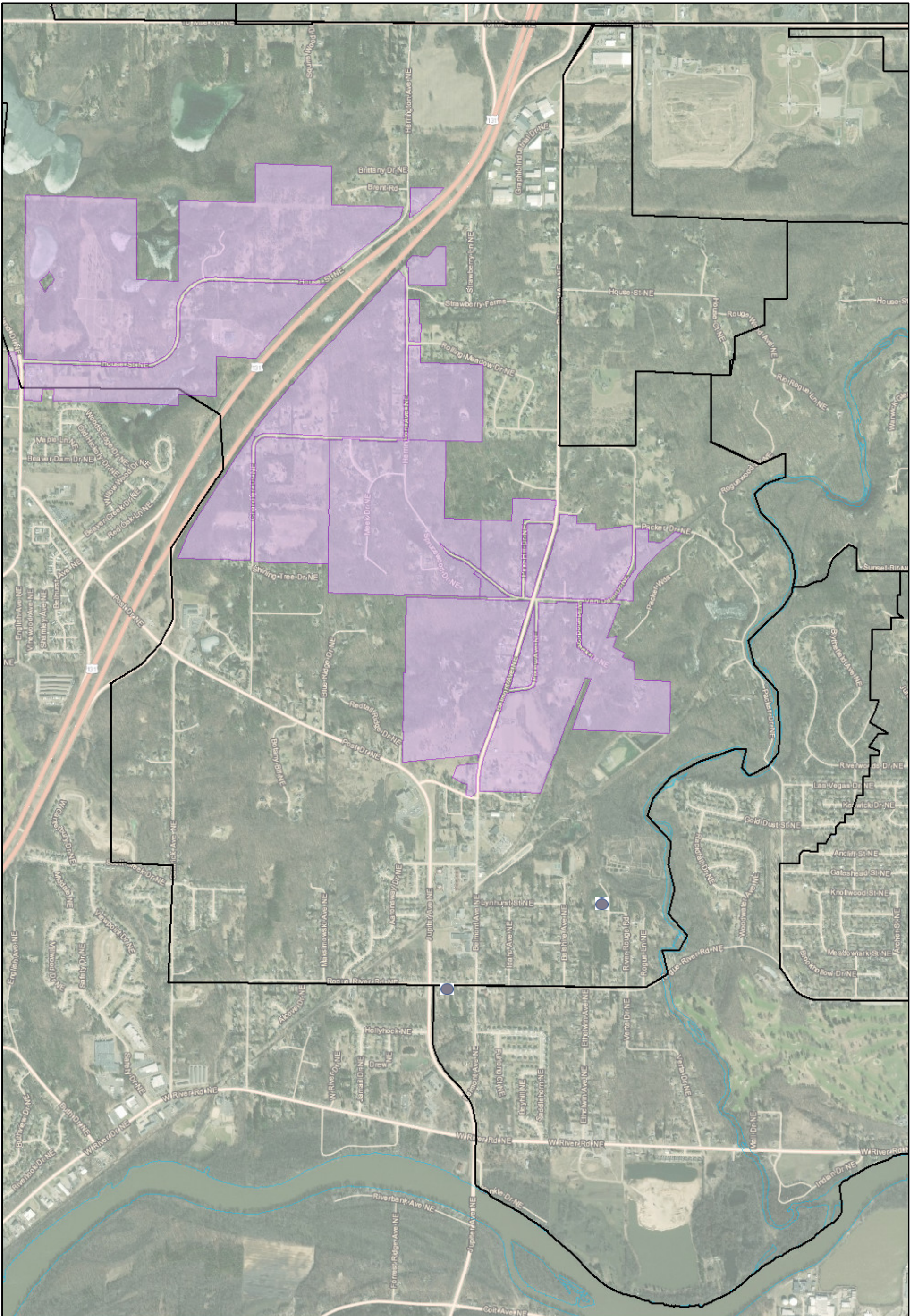
No. 1:18-cv-00039-JTN-ESC






HON. JANET T. NEFF

MAG. ELLEN S. CARMODY

EXHIBIT A





	<p>Map Location</p> 	<p><b>Legend</b></p> <ul style="list-style-type: none"> <li> Geographic area involved (See Paragraph 2 in Joint Notice)</li> </ul> <p>Base map from AECOM as modified by EGLE 7/8/19</p> <p>0 0.5 1 Miles</p>	<p style="text-align: center;">N</p>  <p style="text-align: center;"><b>GEOGRAPHIC AREA AFFECTED WATER SUPPLY IN THE HOUSE STREET AREA</b></p> <p style="text-align: center;"><b>NORTH KENT DISPOSAL AREA KENT COUNTY, MI</b></p>
 <p>Prepared: 6/28/2019</p>			