

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.

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WOLVERINE WORLD WIDE, INC.,

Third-Party Plaintiff,

v.

3M Corporation,

Third-Party Defendant.

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

HON. JANET T. NEFF

MAG. ELLEN S. CARMODY

**PLAINTIFF MICHIGAN  
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ENVIRONMENTAL QUALITY'S  
INDIVIDUAL NOTICE OUTLINING  
A REMEDY PROPOSAL**

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**PLAINTIFF MICHIGAN DEPARTMENT OF ENVIRONMENTAL QUALITY'S INDIVIDUAL NOTICE OUTLINING A REMEDY PROPOSAL**

Pursuant to this Court's June 12, 2019 Order, the parties filed today a Joint Notice outlining their proposal to concurrently and expeditiously address the question of the appropriate remedy for the affected water supply in the House Street area, arising from the PFAS (per- and polyfluoroalkyl substances) contamination from Wolverine's tannery operations and disposal practices. As indicated in the Joint Notice, although the parties have been able to agree on many issues related to the Court's Order, in order to fully address the substance of the issues the Court asked the parties to address, the Michigan Department of Environmental Quality (MDEQ) files this Individual Notice.

MDEQ is in full agreement with the process outlined in the Joint Notice. However, MDEQ reiterates here its request that this Court schedule a trial now to be held prior to March 2020. Although MDEQ is hopeful that mediation or settlement discussions will allow the parties to resolve this matter without a trial, given this Court's recognition of the need to expeditiously address the appropriate remedy for the affected water supply in the House Street area, MDEQ believes it is imperative that a trial date is set now as a backstop in the event a negotiated resolution cannot be quickly obtained. MDEQ additionally agrees that the trial should 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.

The Court's June 12, 2019 Order requested that the parties set forth "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." As indicated in the Joint Notice, although the parties were able to agree on many pieces of the Court's request, the parties are filing separately to address their individual positions.

**1. Factual Predicate for the Plan Proposed.** MDEQ agrees with the statements regarding the position of MDEQ and the Townships in the parties' Joint Notice. As set forth below under "other relevant underlying facts," there are additional facts that support MDEQ's position that municipal water is the appropriate remedy for the affected water supply in the House Street area.

**2. Geographic Area Involved.** MDEQ agrees that Exhibit A to the parties' Joint Notice depicts the area the parties intend to be included in the Court's determination of the "appropriate remedy for the affected water supply in the House Street area."

**3. Affected Homes/Homeowners.** MDEQ agrees with the joint list of affected drinking water well use locations that was filed under seal by the parties.

**4. Current Status of Remedial Action.** In 2017, concerned citizens brought the former House Street disposal location to MDEQ's attention. In response to these concerns, MDEQ requested that Wolverine sample residential wells, and PFOA and PFOS were detected at levels exceeding USEPA's lifetime health advisory (Michigan established its enforceable groundwater criteria in

January 2018). In August 2017, Wolverine began its on-site groundwater investigation on the House Street site, and expanded the investigation offsite as detections indicated that the contamination had migrated in groundwater. The following description of the status of remedial action focuses on the House Street area under consideration for an expedited remedy for the affected water supply.<sup>1</sup>

**A. House Street Disposal area PFAS investigation**

Since April 2017, Wolverine has sampled approximately 692 residential water supply wells in the area surrounding the House Street Disposal area located at 1855 House Street in Belmont.

Out of the 692 properties sampled:

- 355 wells had detections of perfluorooctanoic acid (PFOA) and perfluorooctanesulfonic acid (PFOS) below 70 ppt, which is the Part 201 cleanup criterion for groundwater used as drinking water.
- 39 wells had detections of PFOA and/or PFOS above 70 ppt.
- 298 wells were non-detect for PFOA and PFOS.

A May 2019 sample at a residential well near the House Street Disposal Area measured 96,000 ppt for PFOA and PFOS.

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<sup>1</sup> MDEQ understands the Court's June 12, 2019 Order to request the current status of remedial actions in the geographic area set forth on Exhibit A. MDEQ can provide the Court with additional information pertaining to the overall status of Wolverine's remedial actions related to PFAS in Northern Kent County, but views that discussion as more appropriate for a forthcoming phase of trial, since more data is needed in those areas to enable informed decisions about appropriate remedies.

Wolverine began installing environmental monitoring wells (wells measuring contamination in ambient groundwater, not in drinking water wells) at and near the House Street Disposal site in September 2017, after MDEQ requested a remedial investigation work plan in May 2017. Based on monitoring well sampling results provided to MDEQ in the “Conceptual Site Model and Remedial Investigation Work Plan” report dated November 27, 2017, Wolverine has known since at least the fall of 2017 that high concentrations of PFAS are present in the groundwater at the House Street Disposal site.

In May 2019, Wolverine reported concentrations of PFOA and PFOS as high as 87,200 ppt in deeper groundwater monitoring wells at and near the House Street Disposal site. Shallow perched groundwater samples collected from within the source area on the House Street Disposal site had PFOA and PFOS concentrations as high as 550,000 ppt. Wolverine’s consultant, Rose & Westra, a Division of GZA GeoEnvironmental, Inc. (GZA), estimated that approximately 83,000 cubic yards of tannery waste remains on the House Street Disposal site. Concentrations of PFOS were detected in the waste materials at concentrations as high as 220,000 ug/kg (micrograms per kilogram, which would roughly translate to 220 *million* ppt). This estimated 83,000 cubic yards of tannery waste material is an uncontrolled source of PFAS contamination, which is migrating off-site at concentrations above Part 201 Cleanup Criteria.

Despite this knowledge, Wolverine’s efforts to characterize and define the PFAS contamination that is emanating from the House Street Disposal site have

been inadequate.<sup>2</sup> For example, at the time of this filing, Wolverine has only installed groundwater monitoring wells at 18 locations around the House Street Disposal site in an approximately seven square-mile investigation area to gather information about how the plume is moving offsite. Because of how PFAS behaves in the environment (contaminant fate and transport) and the complex geology in the surrounding area, MDEQ believes potentially hundreds of monitoring well locations will be necessary to fully define and characterize the PFAS contamination emanating from the House Street Disposal site. Without this more complete data, neither MDEQ nor the health agencies (Kent County Health Department and the Michigan Department of Health and Human Services) can make decisions regarding the risks posed to residents.<sup>3</sup>

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<sup>2</sup> Similarly, Wolverine's work toward characterizing and defining the plume emanating from the former Tannery site has been inadequate. The work necessary to investigate, capture and treat contaminated groundwater at and emanating from the Tannery site is critical to protecting the environment, and therefore is appropriate to consider as soon as possible, but does not need to be part of the plan for consideration of an expedited remedy addressing the affected water supply in the House Street area.

<sup>3</sup> Although the Court is currently only addressing the appropriate remedy for the affected water supply in the House Street area, additional remedies are necessary (and will be sought in subsequent phases of this litigation) to address the environmental impacts from Wolverine's contamination at the House Street Disposal site. Wolverine's work to address environmental impacts from the House Street Disposal site is also currently inadequate. For example, Wolverine has not proposed or completed any response activities addressing the Groundwater to Surface Water Interface (GSI)—locations where groundwater vents into surface water. This is especially concerning given the numerous surface water bodies near the House Street Disposal site, such as the Rogue River, Freska Lake, Clear Bottom Lake, as well as numerous unnamed wetlands and streams.

In addition to inadequate efforts to define the nature and extent of the PFAS plume, Wolverine also has not submitted any proposed work plans aimed at removing or controlling the source of PFAS emanating from the House Street Disposal site. Wolverine did remove barrels and subsurface waste at two locations near the House Street Disposal site, but a complete removal effort is not in place.

**B. Status of installation and monitoring of filters in the House Street area depicted in Exhibit A**

Wolverine has undertaken interim response activities in the House Street area by installing hundreds of whole house filters and point-of-use filters. In the area depicted on Exhibit A, 191 homes have a whole-house installed, and 49 homes have point-of-use filters installed. Drinking water wells that draw from contaminated groundwater—but are fitted with filters—must be sampled regularly and continuously to ensure the protection of public health and as part of regular maintenance of the filters. Wolverine does not have an MDEQ-approved filter monitoring and maintenance plan in place for the whole-house filters it installed.

**C. Concurrent EPA-lead investigation and removal action at House Street Disposal site for non-PFAS hazardous substances**

USEPA issued an Order to Wolverine under Section 106(a) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. § 9606(a) on January 10, 2018, directing Wolverine to investigate federally-listed hazardous substances (other than PFAS contaminants) at the former Tannery and in the area of the House Street Disposal site.



Wolverine submitted a work plan to USEPA on June 3, 2019 regarding the necessary next steps to address the USEPA time-critical work to locate and remove non-PFAS contamination such as heavy metals, volatile organic compounds, and semi-volatile organic compounds. USEPA and MDEQ coordinate their respective investigations and cleanup of tannery wastes, with MDEQ addressing PFAS contamination in sediments, soil, groundwater, surface water, and drinking water, and USEPA addressing other contaminants that are covered by its Unilateral Order.

**D. MDEQ's conclusions regarding remedial actions**

MDEQ does not view Wolverine's work to date as meeting the requirements in the law that a responsible party "diligently pursue" response activities. Michigan Comp. Laws § 324.20114. Although Wolverine acted swiftly to provide interim relief in the form of installing filters in homes affected by Wolverine's PFAS contamination, Wolverine has not acted with the same diligence in conducting its environmental investigation and subsequent response activities. MDEQ believes municipal water is the necessary remedial action for the affected water supply in the House Street site depicted in Exhibit A based on the uncontrolled and high levels of source contamination at the House Street Disposal site, Wolverine's failure to define and characterize the plume, and the intensive monitoring and maintenance needed to safely maintain hundreds of filters in perpetuity.

**5. Anticipated Outcome.** MDEQ anticipates that this Court will determine that Wolverine is liable for the PFAS contamination at and emanating

from the House Street Disposal and Tannery sites and that the only appropriate remedy for the affected water supply in the area depicted on Exhibit A is municipal water, and that the costs of extending and connecting the drinking water well users listed in the sealed filing must be borne by the responsible party, which under Michigan law is Wolverine.

**6. Other Relevant Underlying Facts.** There is little question regarding Wolverine's liability for the contamination at and emanating from the Tannery and House Street Disposal sites. As set forth in the chart the parties filed summarizing their claims and defenses, Wolverine owned and operated both sites, and disposed of waste from its tannery operations at both sites. Those wastes contained PFAS and PFAS contaminants have leached into the environment from both sites and are impacting, *inter alia*, the geographic area identified in Exhibit A to the parties' Joint Notice. MDEQ's position is that these PFAS contaminants pose an imminent and substantial endangerment to both human receptors and environmental receptors.

Wolverine's liability and the presence of PFAS contamination at high levels posing risks to human health and the environment is thus a straightforward matter. However, as it relates to the appropriate remedy for the affected water supply in the House Street area, there are specific facts relevant to the Court's consideration that support the conclusion that only municipal water is an appropriate remedy. On May 21, 2019, the Michigan Department of Health and Human Services (MDHHS) issued a Letter Health Consultation to Kent County

Health Department. The area MDHHS identified in the Letter Health Consultation coincides with the geographic area the parties identified in their Joint Notice as the area under discussion for an expedited remedy for the affected water supply.

The Letter Health Consultation recognized that Wolverine has provided affected individuals in the House Street area with whole house filters or point-of-use filters to mitigate residents' exposure to PFAS in their drinking water currently sourced from contaminated groundwater aquifers. MDHHS determined that despite the installation or use of filters in this area, PFAS in the groundwater could harm people's health and is a public health hazard. MDHHS's Letter Health Consultation reviewed available data and concluded that the filters Wolverine installed were not a reliable long-term remedy for mitigating the PFAS risks for homeowners because of the need for continued, on-going operation and maintenance, the necessity of legal agreements to bind Wolverine to conduct the necessary operation and maintenance, and the burden placed on individual property owners. As a result, MDHHS recommended that a new, permanent water source be provided to residents in the portion of the House Street area designated in the MDHHS Letter Health Consultation and in the parties' Joint Notice. MDHHS's recommendation is consistent with the long-term remedy MDEQ is seeking in this portion of the House Street area, where the risks are documented and point to the need for a new, permanent water source in the form of municipal water.

Additionally, based on the Letter Health Consultation Letter, on June 20, 2019, the Kent County Health Department (KCHD) issued a memo prohibiting the

construction of new groundwater wells within the geographic area identified in the parties' Joint Notice. KCHD's decision to prohibit new wells was based on its authorities and responsibilities contained within or arising from the Public Health Code, Mich. Comp. Laws § 333.1101 *et seq.* and MDHHS's determination that filtration systems were not a reliable long-term remedy for mitigating the public health hazard caused by Wolverine's PFAS contamination. The well-prohibition area identified in KCHD's memo coincides with the geographic area identified in the parties' Joint Notice.

This is not the first time that KCHD has prohibited a new well in the House Street area because of PFAS contamination in the groundwater. In November 2018, KCHD denied a new well permit application for a home located at 1781 House Street in Belmont, Michigan after that home's well failed. KCHD stated that its "decision [was] supported by the *Water Regulations for Kent County, MI: Sections 3.5 and 12.5* and the *Michigan Water Well Construction and Pump Installation Code – Part 127: Rules 121 and 122.*" (November 8, 2018 letter from KCHD to Thomas and Terry Hula denying emergency application for well permit (italics in the original).) That home is now reliant on expensive and inconvenient hauled water stored in an outdoor tank until a permanent remedy is in place.

These determinations by the health agencies that onsite filtration is not a reliable long-term remedy is enough to support the conclusion that municipal water is the appropriate remedy, but moreover, Wolverine's lackluster track record in operating and maintaining the existing filtration systems confirms the State's

conclusion that a long-term, reliable solution cannot rely on a promise from a corporation to inspect and maintain hundreds of filters in perpetuity. Almost two years have passed since Wolverine began installing whole house filters and point-of-use filters. But Wolverine still has not submitted an approvable operation and maintenance plan for the whole house filters to MDEQ, nor has Wolverine been able to accurately predict when whole house filter breakthrough (the point when the carbon can no longer absorb contaminants and some level “breaks through” the filter) will occur. These issues, in combination with the long-term costs of the filters and the inconvenience of routine maintenance inside residents’ homes, support MDEQ’s position that municipal water is the only appropriate remedy for the affected water supply in the House Street area.

Respectfully submitted,

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