

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF MICHIGAN

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MICHIGAN DEPARTMENT OF  
ENVIRONMENTAL QUALITY,

Plaintiff,

and

PLAINFIELD CHARTER TOWNSHIP and  
ALGOMA TOWNSHIP,

Intervening Plaintiffs,

v.

WOLVERINE WORLD WIDE, INC.,

Defendant/Third-Party Plaintiff,

and

3M COMPANY,

Third-Party Defendant.

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Polly A. Synk (P63473)  
Brian J. Negele (P41846)  
Eric M. Jamison (P75721)  
Assistant Attorneys General, Environment,  
Natural Resources, and Agriculture Division  
Attorneys for Plaintiff MDEQ  
P.O. Box 30755  
Lansing, MI 48909  
(517) 373-7540  
[synkp@michigan.gov](mailto:synkp@michigan.gov)  
[negeleb@michigan.gov](mailto:negeleb@michigan.gov)  
[jamisone@michigan.gov](mailto:jamisone@michigan.gov)

Case No. 1:18-cv-39  
Honorable Janet T. Neff

**INTERVENING PLAINTIFF  
TOWNSHIPS' STATEMENT OF  
CURRENT REMEDIATION  
CONDITIONS, ANTICIPATED  
OUTCOME, AND OTHER RELEVANT  
FACTS**

John V. Byl (P35701)  
James Moskal (P41885)  
Scott M. Watson (P70185)  
WARNER NORCROSS & JUDD LLP  
Attorneys for Defendant/Third-Party Plaintiff  
Wolverine  
111 Lyon Street, NW, Suite 900  
Grand Rapids, MI 49503  
(616) 752-2149  
[jbyl@wnj.com](mailto:jbyl@wnj.com)  
[jmoskal@wnj.com](mailto:jmoskal@wnj.com)  
[swatson@wnj.com](mailto:swatson@wnj.com)

Douglas W. Van Essen (P33169)  
Elliot J. Gruszka (P77117)  
SILVER & VAN ESSEN, P.C.  
Attorneys for Intervening Plaintiff Townships  
300 Ottawa Avenue, NW, Suite 620  
Grand Rapids, MI 49503  
(616) 988-5600  
[dwv@silvervanessen.com](mailto:dwv@silvervanessen.com)  
[egruszka@silvervanessen.com](mailto:egruszka@silvervanessen.com)

Harold A. Barza  
Joseph M. Paunovich  
Johanna Y. Ong  
Valerie Roddy  
QUINN EMANUAL URQUHART &  
SULLIVAN, LLP  
Attorneys for Third-Party Plaintiff Wolverine  
865 South Figueroa Street, 10<sup>th</sup> Floor  
Los Angeles, CA 90017  
(213) 443-3000  
[halbarza@quinnemanuel.com](mailto:halbarza@quinnemanuel.com)  
[joepaunovich@quinnemanuel.com](mailto:joepaunovich@quinnemanuel.com)  
[johannaong@quinnemanuel.com](mailto:johannaong@quinnemanuel.com)  
[valerieroddy@quinnemanuel.com](mailto:valerieroddy@quinnemanuel.com)

Robert L. DeJong (P12639)  
Joseph M. Infante (P68719)  
MILLER, CANFIELD, PADDOCK AND  
STONE, P.L.C.  
Attorneys for Third-Party Defendant 3M  
99 Monroe Avenue, NW, Suite 120  
Grand Rapids, MI 49503  
(616) 454-8656  
[dejong@millercanfield.com](mailto:dejong@millercanfield.com)  
[infante@millercanfield.com](mailto:infante@millercanfield.com)

Joe G. Hollingsworth  
Frank Leone  
HOLLINGSWORTH LLP  
Attorneys for Third-Party Plaintiff Wolverine  
1350 I Street, NW  
Washington, DC 20005  
(202) 898-5842  
[jhollingsworth@hollingsworthllp.com](mailto:jhollingsworth@hollingsworthllp.com)  
[fleone@hollingsworthllp.com](mailto:fleone@hollingsworthllp.com)

Timothy S. Bishop  
Michael A. Olsen  
Daniel L. Ring  
Richard F. Bulger  
MAYER BROWN LLP  
Attorneys for Third-Party Defendant 3M  
71 South Wacker Drive  
Chicago, IL 60606  
(312) 782-0600  
[dring@mayerbrown.com](mailto:dring@mayerbrown.com)

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Intervening Plaintiffs, the Charter Township of Plainfield (“Plainfield”) and Algoma Township (“Algoma”)(also, collectively, the “Townships”), by and through their attorneys, Silver & Van Essen, P.C., respond to this Court’s June 12, 2019, Order asking the parties to submit statements regarding the procedure for determining a permanent potable water solution in the House Street Area to the PFAS contamination emanating from the House Street Dump. The parties

are submitting a joint statement, but were unable to agree on a joint view as to the current status of remediation, anticipated outcome, and other relevant facts regarding the affected area and have agreed to submit separate statements on those issues. This is the Townships' Individual Statement:

**1. No Regulatory Approved Remedial Investigation (“RI”), Feasibility Study (“FS”), or Remedial Action Plan (“RAP”) is in place.** This may be the first environmental response project for the shoe company; however, there is an established, logical pedagogy for remediations that must be followed to ensure that an imminent and substantial environmental threat (which Wolverine tacitly admits is present) is truly abated. Although Wolverine has responded to the PFAS water crisis by testing *residential wells* and providing whole house filters *after* PFAS is detected, no *“scientific” hydrogeological study* to measure the depth, length, width, or movement of the plume has been undertaken, much less approved by EGLE or the EPA. Since PFAS moves vertically with water table changes and horizontally with groundwater flow, dozens of additional residences are at imminent and substantial risk of exposure to the PFAS as the plume changes. If whole house filters were to be an approved solution, they would have to be combined with a scientifically designed and executed hydrogeological study and groundwater monitoring plan to accurately predict where the plume might be and where it may go so that area residents are protected from the imminent and substantial threat of exposure.

**2. Wolverine has made no commitments.** Further, no plan is in place regarding the length or scope of Wolverine's commitment, nor the scientific groundwater monitoring that must occur for the imminent and substantial harm to be truly abated. For instance, no contract, order, or stipulation is in place to obligate Wolverine to continue the maintenance or eventual replacement of the current whole house filters, much less extend them indefinitely to homes in areas where the plume is headed. Wolverine has refused to legally commit to a continued maintenance and

replacement of the whole house filters to area residents, the Townships, the State of Michigan, or any other authority. At this point, it has an “at its will” voluntary relationship with all interested parties. No abatement of a substantial and imminent threat has ever been found under such tenuous legal conditions.

**3. Wolverine has offered no security.** Wolverine has not pledged to back its current provision of whole house filters with any financial assurances to the affected residents. Wolverine has created no trust fund for maintenance or replacement of these filters to protect residents forever from these forever chemicals. Affected area residents are wholly dependent on Wolverine’s continued viability and whims. No abatement of a substantial and imminent threat has ever been found under such tenuous financial conditions.

**4. Wolverine’s status quo would render an approximately ten-square-mile area devoid of further development.** On information and belief, the drilling of new wells is not permitted anywhere in the United States in an aquifer that is contaminated by dangerous chemicals. Consistent with traditional regulatory responses, EGLE and the Kent County Health Department are banning the drilling of any new wells into the House Street PFAS plume, including at any residential property currently served by Wolverine’s whole house filters if that property’s current well fails. This is a standard environmental approach to ensure that the contamination is not spread into other strata of the aquifer and the contamination is not spread. Eventually, all wells in the area will fail and the whole house filters will be wholly ineffectual as they have become with some residents already. Wolverine’s position will effectively relegate the House Street Area to the Grand Rapids equivalent of the Love Canal neighborhood of Niagara Falls in the sense that it will be devoid of any future development and will result in declining usage of current homes as on-site conditions naturally evolve.

**5. Wolverine has not offered to pay home owners to protect the buying public with deed restrictions that would bind current and future homeowners to use the whole house filters.** Ordinarily, in court and regulatory agency approved remedial action plans involving institutional controls, a polluter will pay affected property owners for the right to install a deed restriction on their properties so that the buying public is made aware that the property is affected by pollution and to obligate current and future homeowners to actually use the whole house filters. No such institutional controls are present here.

**6. 550 (or much more if necessary) whole house filters are NOT equivalent to municipal water plant using GAC filtering.** Wolverine has been falsely suggesting that whole house filters present the same level of protection to the residents that Plainfield's municipal water service would provide because the granulated active technology that the Plainfield plant is using is similar to that of the whole house filters that Wolverine is arbitrarily providing. This is misleading for several reasons, including:

**A. Residents are not obligated to use the whole house filters.** Unlike with municipal water, residents are not obligated to use the whole house filters, even if provided by Wolverine. While the Court may have little sympathy with adults who make the decision not to connect or to disconnect the whole house filters, those adults may have innocent children or elderly relatives living with them, and both groups are particularly vulnerable to the known harms of PFAS.

**B. The whole house filters do not have professional operators working 24/7 to monitor their performance.** Plainfield has professional, certified water treatment plant operators who monitor its GAC filtering system 24 hours a day, seven days a week. There

is no one monitoring the effectiveness of the Wolverine-provided whole house filters on a constant basis.

**C. Plainfield’s system will have redundancy, and any breakdown will be promptly fixed.** A nonredundant “system” relying on the operational integrity of 550 individual, mechanical systems that will regularly become saturated and ineffective and inevitably break down is inherently unstable compared to one constantly monitored system that has built-in engineered redundancies to ensure that if there is a breakdown, it will be picked up by a secondary filter.

**D. Municipal water permits a safety buffer system and permits future development.** There is a reason that cities and even large townships develop municipal water plants and delivery systems; namely, they permit safe development, irrespective of the local contamination of an aquifer. No future development may occur in this area, which is roughly the size of East Grand Rapids.

**E. Municipal water systems have ongoing financial stability.** No municipal water system has ever financially failed. Not only are the residents capable of sharing in the economic costs of the system, but the full faith and credit of the municipalities utilizing the system and the area’s ongoing tax base buttresses the financial capabilities of the system. In contrast, even if the Court were to order a trust fund based on conservative income and liberal cost projections, that fund would be based on assumptions and the continued support of a company that could be out of business tomorrow.

**F. Municipal water is not dependent on a robust groundwater monitoring program.** As designed, the municipal water extensions will provide municipal water to the entire area of the current and expected House Street plume. Without it, Wolverine will

have to regularly plot the actual plume movement with an extensive and expensive groundwater monitoring program to assure that additional residences are not affected. Moreover, the financial security will not only have to cover maintenance and replacement of the existing whole house filters in current homes that are affected, but also future filters for homes that might be in affected in the future.

As far as an expected outcome, the Townships note that Wolverine's position is without precedent. That is to say that none of the cases cited by Wolverine in its chart for the proposition that whole house filters are an adequate court-approved remedy have involved a situation where the polluter did not undertake an RI, FS, or obtain a court-approved RAP with institutional controls that did not include deed restrictions and robust groundwater monitoring and financial assurances. The truth is that Wolverine has admitted it owns the House Street Dump, placed PFAS-laden waste therein, and such waste has now befouled the groundwater in the affected area. The further truth is that although extension of municipal water to the affected area will be expensive, that expense pales compared to the additional hydrogeological study, permanent groundwater monitoring, deed restriction purchase costs for an approximately ten-square-mile area, and the trust fund costs necessary to ensure that present and future whole house filters and groundwater monitoring can occur indefinitely relative to this forever family of chemicals. Municipal water is far less expensive and much more effective in abating the imminent and substantial risks that Wolverine's waste disposal practices have imposed on the House Street Community than any approvable whole house filter solution the Court might entertain. The sooner Wolverine is ordered to undertake this remedy, the better off it and, more importantly, the affected community will be.

SILVER & VAN ESSEN, P.C.  
Attorneys for Intervening Plaintiffs

Date: July 8, 2019

By: /s/ Douglas W. Van Essen  
Douglas W. Van Essen (P33169)

BUSINESS ADDRESS AND TELEPHONE:  
300 Ottawa Avenue, NW, Suite 620  
Grand Rapids, MI 49503  
(616) 988-5600  
[dwv@silvervanessen.com](mailto:dwv@silvervanessen.com)