

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

MICHIGAN DEPARTMENT OF
ENVIRONMENTAL QUALITY,

Plaintiff,

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

HON. JANET T. NEFF

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.

_____ /

WOLVERINE WORLD WIDE, INC.’S NOTICE
RESPONDING TO THE COURT’S JUNE 12, 2019, ORDER

Plaintiff Michigan Department of Environmental Quality, Intervening Plaintiffs Plainfield Charter Township and Algoma Township, Defendant/Third-Party Plaintiff Wolverine World Wide, Inc., and Third-Party Defendant 3M Company have filed a Joint Notice (ECF No. 94) in accordance with this Court’s June 12, 2019, Order (ECF No. 82).

As indicated in their Joint Notice, the parties have differing positions regarding certain topics in the Court’s June 12 Order. Accordingly, Wolverine files this separate Notice setting out its position on the following topics: (i) whether and to what extent homeowners in the area depicted in Exhibit A of the Joint Notice are “affected,” (ii) the current status of Wolverine’s remedial action, (iii) the anticipated outcome, and (iv) other relevant facts.

1. Whether and to what extent homeowners in the area depicted in Exhibit A of the Joint Notice are “affected.”

The area depicted in Exhibit A of the Joint Notice (ECF No. 94-1) contains 250 drinking water well use locations and 31 locations that are listed as vacant, already connected to municipal water, or otherwise not using groundwater for drinking water.

Wolverine periodically samples the wells in those 250 locations for the presence of PFAS. Across all of the multiple sampling events at each of those wells, only 40 of the 250 locations have at any time shown concentrations of combined perfluorooctane sulfonic acid (“PFOS”) and perfluorooctanoic acid (“PFOA”) in excess of 70 parts per trillion, which is the EPA’s lifetime health advisory value and the State’s drinking water criterion.¹

¹ Part 201 Generic Cleanup Criteria and Screening Levels, *available at* https://www.michigan.gov/documents/deg/deg-rrd-UpdatedGroundwaterCleanupCriteriaTableWithFootnotesPFOSPFOA1-25-2017_610379_7.pdf

The remaining 210 well use locations have all consistently tested below 70 parts per trillion. The vast majority of those (159) are below 10 parts per trillion, over seven times less than the regulatory standard. In fact, it is undisputed that 58 of the wells—fully 23% of the well use locations where the Plaintiffs insist an additional remedy is necessary—have no detectable levels of PFOA or PFOS whatsoever.

Given this, only the 40 homeowners whose wells exceed 70 parts per trillion combined PFOS and PFOA could be considered as “affected” homeowners for purposes of Plaintiffs’ claims against Wolverine. As described below, however, even those homeowners are not currently affected by PFOA and PFOS because Wolverine has provided all of them with whole house filters—a remedy.

2. The current status of Wolverine’s remedial action.

Plaintiffs’ insistence on the superiority of municipal water as the only possible remedy is a thinly veiled attempt to usurp the power of this Court. Plaintiffs do not seek *a* remedy. Rather, they seek to force this court to enter an order requiring Wolverine to implement and pay for their *preferred* remedy. But the simple, undisputed, dispositive fact is that all of the well use locations within the area depicted in Exhibit A of the parties’ Joint Notice already have access to clean water from filters provided by Wolverine.

Whole house filters may not be Plaintiffs’ preferred remedy, but they are an effective remedy. Even the State concedes on its website that municipal water is not an inherently superior remedy and that in at least some cases filters are a solution to address the presence of PFOA and PFOS in drinking water. *See Michigan.gov, PFAS Response: Residential Well Water Testing and Results: Frequently Asked Questions*, https://www.michigan.gov/pfasresponse/0,9038,7-365-86704_86712---,00.html (“Is PFAS a problem even if my home receives municipal water? There is concern regardless of if you have

a private drinking water well or are on a municipal or community water system. . . . When the amount of PFOA and PFOS exceed the EPA lifetime health advisory level (LHA) of 70 ppt, the Michigan Department of Health and Human Services (MDHHS) advises using bottled water or water filtered by a system certified to reduce the amount of PFOA and PFOS.”)

Wolverine has already provided a whole house filter to each of the 40 homeowners whose well water contains over 70 parts per trillion combined PFOA and PFOS. In addition, Wolverine offered a whole house filter to every home with any detectable level of PFOA or PFOS, whether above or below the 70 parts per trillion regulatory standard. And in six cases in the area depicted in Exhibit A to the Joint Notice, even homes with no detectable levels of PFOA or PFOS have a filter. Wolverine has consistently provided all appropriate monitoring and maintenance of the filters, and it will continue to do so.

By comparison, when the MDEQ (now EGLE) has implemented response actions at other sites impacted by PFOA and PFOS (e.g., the Grayling Army Airfield), the State has provided filters only where PFAS is detected. The filters that are provided are only point-of-use filters, not whole-house filters. The MDEQ deems point-of-use filters adequate at those sites, and it cannot credibly now argue that Wolverine’s above-and-beyond actions in installing whole house filters are somehow inadequate.

In addition to already providing an effective remedy, Wolverine has also conducted significant remedial investigation activities at House Street, submitted final reports regarding that investigation, and submitted work plans outlining active environmental investigation and actions it plans to undertake pursuant to a U.S. EPA order under section 106 of CERCLA.

<https://www.epa.gov/mi/wolverine-world-wide-tannery>.

3. Anticipated outcome.

Wolverine is not liable for a drinking water remedy in any areas where PFOA/PFOS are present in concentrations below regulatory limits. In any event, because every affected homeowner already has access to a complete and adequate remedy (i.e., a filter), the liability question is ultimately moot.

The technology (i.e., granular activated carbon) utilized in the filters Wolverine installed is the same as the technology utilized by municipal water systems, including the one currently operated by Plainfield Township, to address PFOA and PFOS. Since installing the filters, Wolverine has monitored them, some as often as weekly, to ensure their effectiveness. Wolverine has collected thousands of verification samples from hundreds of homes, and all of the data gathered from over 18 months of operation has demonstrated that the filters are effective and reliable.

Each of the whole house filters at issue here is tailored to the individual use case, and all of the whole house filters that Wolverine has installed utilize a redundant filtering system. Water passes through not one but two granular activated carbon filters before it is available for use or drinking in the home. To date, none of the filters—not even the first in the chain of two in any one household—has required replacement. In other words, every system is 100% redundant, and there has been no evidence that any resident has been exposed to, or even at risk of exposure to, any concentration of PFOA or PFOS since the filters were installed. This applies across all homes, including those with the highest concentrations.

In short, the actual data generated from Wolverine's ongoing operation and maintenance efforts—as opposed to the unsupported speculation of Plaintiffs—has demonstrated that the filters are working as designed, and every affected homeowner already has clean water filtered by the same technology as municipal water. Accordingly, Wolverine anticipates that if the

parties are unable to reach a settlement it will file a motion for summary judgment on the basis that that whole house filters are an effective remedy and that the Court should dismiss Plaintiffs' claims for that reason.

Conclusion

RCRA and Part 201 do not regulate how cleanup outcomes are achieved. Rather, they regulate only the outcome itself. Here, the outcome of providing every affected resident with access to clean and reliable water has already been achieved. Accordingly, the Court should (i) find that there is no imminent and substantial endangerment or need for further remedy and (ii) dismiss Plaintiffs' claims for that reason.

Dated: July 8, 2019

/s/ Scott M. Watson

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