

STATE OF MINNESOTA
COUNTY OF HENNEPIN

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HENNEPIN DISTRICT
COURT ADMINISTRATOR

DISTRICT COURT
FOURTH JUDICIAL DISTRICT
Case Type: Other/Civil

State of Minnesota, by its Attorney General Lori
Swanson,

Plaintiff,

and

City of Lake Elmo, a Minnesota municipal
corporation,

Plaintiff/Intervenor,

v.

3M Company,

Defendant.

Court File No: 27-CV-10-28862

COMPLAINT

Plaintiff, City of Lake Elmo, as and for its Complaint against the Defendant 3M Corporation, states and alleges as follows:

PARTIES

1. Plaintiff City of Lake Elmo ("Lake Elmo") is a Minnesota municipal corporation located in Washington County, Minnesota.
2. Defendant 3M Company ("3M") is a Delaware corporation which, upon information and belief, has its principal place of business and headquarters in Maplewood, Ramsey County, Minnesota. 3M Company's resident agent for service of process is CT Corporation System, Inc. located in Minneapolis, Minnesota.

JURISDICTION AND VENUE

3. Lake Elmo has all rights and powers vested to municipal corporations pursuant to Minn. Stat. Chap 412, including the power to sue as provided in Minn. Stat. § 412.211.
4. Jurisdiction of the court in this matter is appropriate under Minn. Stat. § 484.01.

FACTS

5. 3M is a Fortune 500 company which has developed and manufactured many well-known and widely used consumer products for over 100 years. 3M has production facilities all over the United States (as well as in other countries), including a site in Cottage Grove, Minnesota.
6. In or around 1956, 3M began production of its Scotchgard product ("Scotchgard") at its Cottage Grove facility.
7. Scotchgard contains, and is manufactured through the utilization of, certain chemical compounds which are known as perfluorochemicals ("PFCs").
8. The waste products resulting from 3M's production of Scotchgard in Minnesota were primarily disposed of at several sites in Minnesota, including at a site in Oakdale, Minnesota in the 1950s (which is now a Superfund site) and at the Washington County Landfill located in Lake Elmo, Minnesota, which is now a Closed Landfill Program site (the "Landfill").
9. Upon information and belief, disposal of 3M production waste containing PFCs at the Landfill began when the Landfill began accepting waste in 1969, and continued until the Landfill ceased operations in 1975.
10. Upon information and belief, 3M began conducting studies regarding the health impacts of PFCs on their employees in the mid-1970s, but did not share this information with applicable federal or state agencies, or make anyone aware of the potential health consequences of PFCs, for many years. In the 1990s, labs outside of 3M began studying PFCs and their effects on living tissue. PFCs have been found to be persistent, bioaccumulative, and toxic. Animal studies have shown that

PFCs are readily absorbed orally and distributed mainly to the liver (where they are shown to be toxic) and blood. Such studies have also shown that PFCs can cause certain types of cancer in laboratory test animals. One PFC, perfluorooctanoic acid ("PFOA"), was recommended as a "likely carcinogen" by a Science Advisory Board to the U.S. Environmental Protection Agency ("EPA").

11. In 2000, under extreme pressure from the EPA because of these newly-discovered health effects, 3M agreed to phase out use of PFCs in its Scotchgard product. This phase-out was complete in approximately 2002.
12. So little was initially known about PFCs and their effect on human health and the environment that Health Based Values ("HBVs"), the level at which a chemical may be present in drinking water and not cause adverse reactions over the course of lifetime exposure, were not developed for any of these compounds until 2002. In 2002, HBVs were developed for PFOA and perfluorooctane sulfonate ("PFOS"), only two of many individual compounds included in the PFC family. PFOS and PFOA are the mostly widely-studied and well-understood compounds in this family.
13. Even though HBVs existed for PFOA and PFOS in 2002, the Minnesota Pollution Control Agency ("MPCA") did not have an accurate way of testing for these compounds until 2004.
14. When accurate testing became possible, MPCA, in cooperation with the Minnesota Department of Health ("MDH"), began testing the groundwater (including well water) and soil samples in and around the Landfill and other known 3M disposal sites.
15. In or about March of 2005, PFOS and PFOA were found in the municipal wells serving the City of Oakdale, Minnesota. Well #5 contained PFOS above the HBV level of

- 1 part per billion ("ppb"). PFOS and PFOA were also found to be present in many private wells in the Oakdale and Lake Elmo areas.
16. In March of 2006, MPCA and MDH developed a test for 5 other PFC contaminants believed to pose a risk to human health, and began testing private and municipal wells for these compounds, including Perfluorobutanoic acid ("PFBA"), a chemical used by 3M in making film. Upon testing for PFBA, it was found to contaminate many of the same areas as PFOA and PFOS as a result of disposal of waste materials at the Landfill and the Oakdale site.
 17. In August of 2005, 3M announced that it would voluntarily install a carbon filter on Oakdale's municipal well #5, at a cost of approximately \$1 million.
 18. In May of 2006, the MDH announced that, as a result of recent research, it had determined that the HBVs for PFOS and PFOA had to be lowered to assure the protection of the public's health-- from 1 ppb to <1 ppb for PFOS and from 7 ppb to 3 ppb for PFOA.
 19. In 2002, Lake Elmo drilled a municipal well called "Well #3" in the southern portion of the city, near I-94 and County Road 13 (Inwood Avenue). Well #3 was contemplated to serve future development, and was completed as part of a contemporaneous water system project in the northern portion of Lake Elmo. It was expected that, as the southern portion of Lake Elmo along I-94 became more developed, a municipal water system fed by Well #3 would be built and utilized. As a result, Well #3 was drilled and capped with the intent of future use and development.
 20. In 2006, in its ongoing effort to determine the extent of the PFC contamination by 3M, the MDH tested the yet-unused Well #3 for PFC contamination and determined that Well

#3 was contaminated with PFOA, PFOS, and PFBA. On that basis, Lake Elmo has determined that Well #3 is presently unusable and is damaged.

21. In order to provide municipal water service to the areas of Lake Elmo intended to be served by Well #3, substantial modifications to the well or infrastructure will be required.

COUNT ONE
COMMON LAW AND STATUTORY NUISANCE

22. Lake Elmo restates and re-alleges all of the facts and allegations contained in the preceding paragraphs as if fully set forth herein.
23. Lake Elmo is the owner of Well #3 and other properties within the municipal boundaries of the city.
24. Lake Elmo has the legal right to use and enjoy its property, which includes the right and ability to drill municipal wells to serve its residents.
25. The invasion of 3M's hazardous substances into Lake Elmo's well and onto Lake Elmo's property has materially and substantially interfered with its ability to use and enjoy its property.
26. 3M knew, or should have known at the time of the disposal, that its placing of these hazardous substances in the Landfill would cause substantial injury to Lake Elmo, materially interfere with Lake Elmo's legal rights to use and enjoy its property, and be offensive or harmful to humans to the senses.
27. 3M intentionally or negligently allowed its hazardous substances to escape from the Landfill and invade upon Lake Elmo's property, infringing upon Lake Elmo's rights.
28. 3M's conduct constitutes a violation of Lake Elmo's common law right to have the use

- and enjoyment of its property free from nuisances caused by 3M.
29. Minn. Stat. § 561.01 (2010) provides that: "Anything which is injurious to health, or indecent or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property, is a nuisance. An action may be brought by any person whose property is injuriously affected or whose personal enjoyment is lessened by the nuisance, and by the judgment the nuisance may be enjoined or abated, as well as damages recovered."
30. 3M's conduct constitutes a violation of Minn. Stat. § 561.01, inasmuch as its release of PFCs into Lake Elmo's well and property is injurious to health, and indecent and offensive to the senses, and an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of its property.
31. Directly and proximately caused by 3M's disposal of hazardous substances and the continuing invasion of those substances onto its property, Lake Elmo has been denied its right to use and comfortably enjoy its property to the fullest extent available, and Lake Elmo's rights to its property has been substantially infringed.
32. 3M intentionally caused this nuisance because it refused to change the conditions causing the nuisance even after being advised by Lake Elmo and various state agencies of the effect that its actions were having on Lake Elmo's ability to use and enjoy its property.
33. Lake Elmo has been damaged, and will continue to be damaged, by 3M's nuisance in an amount to be proven at trial, but which is not less than \$50,000.
34. In addition to its damages, Lake Elmo seeks and is entitled to an injunction against 3M from and against the continuing nuisance that the hazardous chemicals are causing, and

an order that 3M must abate the nuisance.

COUNT TWO
TREBLE DAMAGES UNDER MINN. STAT. § 548.05

35. Lake Elmo restates and re-alleges all of the facts and allegations contained in the preceding paragraphs as if fully set forth herein.
36. Lake Elmo is the rightful owner of the well and the water contained in the wells.
37. The wells and the water contained in the wells are personal property belonging to Lake Elmo.
38. The water in Lake Elmo's wells were destroyed by the trespass of 3M's hazardous substances onto its property.
39. Pursuant to Minn.Stat. § 548.05, Lake Elmo is entitled to recover from Defendant treble damages arising from 3M's trespass onto its property, which is an amount to be proven at trial, but which is not less than \$50,000.

COUNT THREE
COMMON LAW TRESPASS

40. Lake Elmo restates and re-alleges all of the facts and allegations contained in the preceding paragraphs as if fully set forth herein.
41. Lake Elmo is the rightful owner, and is the rightful party in possession, of its property, the wells and the water contained in the wells on its property.
42. 3M unlawfully trespassed upon its property, the wells, the water contained in the wells and the groundwater on its property.
43. The PFCs released by 3M are mobile in the groundwater, are constantly shifting and

changing, and thereby constitute a continuing and ongoing trespass upon Lake Elmo's property.

44. Lake Elmo have suffered damages, and will continue to suffer damages, as a direct and proximate result of 3M's trespass, the amount of which will be proved at trial, but which are not less than \$50,000.
45. In addition to its damages, Lake Elmo seeks and is entitled to an injunction against 3M from and against the continuing trespass that the hazardous chemicals are causing, and an order that 3M must abate the trespass.

COUNT FOUR
STRICT LIABILITY FOR ABNORMALLY DANGEROUS ACTIVITIES

46. Lake Elmo restates and re-alleges all of the facts and allegations contained in the preceding paragraphs as if fully set forth herein.
47. 3M knew, or should have known, that the PFCs which it was depositing were ultrahazardous materials which posed a significant risk to human life and property values.
48. Because of the ultrahazardous and abnormally dangerous nature of the PFCs which were deposited, the likelihood that harm would result from these materials being placed in the Land was great.
49. Because of the nature of the disposal, no amount of reasonable care on the part of 3M could eliminate the risk that these compounds pose.
50. There is no value to the community from these ultrahazardous materials being improperly disposed of in the Land, and the dangerous attributes of 3M's activity greatly outweigh the value to the community arising from 3M's activities.

51. 3M is strictly liable for all damages suffered by Lake Elmo arising from or relating to 3M's abnormally dangerous activity. Such amounts will be proven at trial, but are not less than \$50,000.
52. In addition to its damages, Lake Elmo seeks and is entitled to an injunction against 3M from and against the continuing contamination that the hazardous chemicals are causing, and an order that 3M must abate the contamination.

COUNT FIVE
NEGLIGENT FAILURE TO WARN OF ULTRAHAZARDOUS CONDITION

53. Lake Elmo restates and re-alleges all of the facts and allegations contained in the preceding paragraphs as if fully set forth herein.
54. 3M knew, or should have known, that the PFCs which 3M deposited are ultrahazardous materials and that 3M's act of depositing the chemicals was an ultrahazardous activity, which created an ultrahazardous condition.
55. 3M had a duty to warn all landowners in the vicinity of the Landfill of this ultrahazardous condition.
56. 3M negligently failed to warn or advise Lake Elmo of the existence of this ultrahazardous condition.
57. As a direct and proximate result of 3M's ultrahazardous activity and failure to warn of the resulting ultrahazardous condition, Lake Elmo has been, and continues to be, damaged in an amount to be proven at trial in excess of \$50,000.
58. In addition to its damages, Lake Elmo seeks and is entitled to an injunction against 3M from and against the continuing contamination that the hazardous chemicals are causing, and an order that 3M must abate the contamination.

COUNT SIX
LIABILITY PURSUANT TO MINN. STAT. § 103I.241

59. Lake Elmo restates and re-alleges all of the facts and allegations contained in the preceding paragraphs as if fully set forth herein.
60. Lake Elmo is the owner of the real property upon which the well that is the subject of this action is located.
61. 3M disposed of certain hazardous chemical compounds, which ultimately contaminated the well owned by Lake Elmo on its property.
62. Lake Elmo has been damaged, and will continue to be damaged, by 3M's contamination of its well in an amount to be proven at trial, but which is not less than \$50,000.
63. Pursuant to Minn.Stat. § 103I.241, 3M is liable to Lake Elmo not only for its damages, but also for its reasonable attorneys' fees, costs and disbursements.

COUNT SEVEN
NEGLIGENCE

64. Lake Elmo restates and re-alleges all of the facts and allegations contained in the preceding paragraphs as if fully set forth herein.
65. 3M had a duty to act reasonably and responsibly with regard to the disposal of its PFC hazardous waste in a manner that would protect Lake Elmo from reasonably foreseeable harm.
66. 3M breached this duty when it chose to dispose of this hazardous waste in an unlined Landfill not licensed for such disposal activities.
67. 3M's breach of this duty was the direct and proximate cause of the injuries to Lake

Elmo's property and resultant damages.

68. Lake Elmo has suffered, and will continue to suffer, damages because of 3M's negligence, the amount of which will be proven at trial, but are not less than \$50,000.
69. In addition to its damages, Lake Elmo seeks and is entitled to an injunction against 3M from and against the continuing contamination that the hazardous chemicals are causing, and an order that 3M must abate the contamination.

COUNT EIGHT **CONVERSION**

70. Lake Elmo restates and re-alleges all of the facts and allegations contained in the preceding paragraphs as if fully set forth herein.
71. 3M's improper disposal of hazardous waste and contamination of Lake Elmo's municipal well and the water therein has caused an intrusion upon, changes to, damage to, and destruction of Lake Elmo's property interest therein, and has deprived Lake Elmo of the possession, control, and use of its property interest.
72. 3M's conduct constitutes conversion of Lake Elmo's personal property interest in its municipal well and the water therein.
73. Lake Elmo has suffered, and will continue to suffer, damages because of 3M's conversion, the amount of which will be proven at trial, but are not less than \$50,000.

WHEREFORE, Plaintiff Lake Elmo requests an Order and Judgment of this Court as follows:

1. Judgment in favor of the Plaintiff and against Defendant for all of Plaintiff's damages and injuries which were directly or proximately caused by 3M's conduct in an amount in excess of \$50,000.00 to be proven with specificity at trial;

2. Finding that 3M violated Minn. Stat. § 548.05 when it trespassed upon Plaintiff's property and damaged Plaintiff's real and personal property, and awarding Plaintiff treble damages which Plaintiff incurred as a result of this trespass as provided for in Minn. Stat. § 548.05, in an amount in excess of \$50,000.00 to be proven with specificity at trial.
3. For an award of pre-judgment interest on all damages incurred.
4. For an award of Plaintiff's costs and disbursements;
5. For an award of Plaintiff's reasonable attorneys' fees pursuant to Minn. Stat. § 103I.241 and all other applicable rules and law; and
6. For any other legal or equitable relief this Court deems just and appropriate.

**ECKBERG, LAMMERS, BRIGGS,
WOLFF & VIERLING, P.L.L.P.**

Dated: 1-14-11

By: 

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ACKNOWLEDGMENT

Pursuant to Minn. Stat. §549.211 (1) and (3), the party or parties represented by the undersigned attorneys acknowledge(s) that costs, disbursements, and reasonable attorney and witness fees may be awarded to the opposing party or parties for actions in bad faith; the assertion of a claim or a defense that is frivolous and that is costly to the other party; the assertion of an unfounded position solely to delay the ordinary course of the proceedings or to harass; or the commission of a fraud upon the Court.

**ECKBERG, LAMMERS, BRIGGS,
WOLFF & VIERLING, P.L.L.P.**

Dated: 1-14-11

By: 

David K. Snyder, Esq. (#0251392)
Kevin S. Sandstrom, Esq. (#348958)

Attorneys for Plaintiff City of Lake Elmo