

STATE OF MINNESOTA
COUNTY OF HENNEPIN

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DISTRICT COURT
FOURTH JUDICIAL DISTRICT

Case Type: Other Civil

Judge Joseph Klein

Court File No. 27-CV-10-28862

State of Minnesota, by its Attorney General,
Lori Swanson, its Commissioner of Pollution
Control, Paul Aasen, and its Commissioner of
Natural Resources, Tom Landwehr,

Plaintiff,

AMENDED COMPLAINT

vs.

3M Company,

Defendant.

The State of Minnesota, by its Attorney General, Lori Swanson, its Commissioner of Pollution Control, Paul Aasen, and its Commissioner of Natural Resources, Tom Landwehr, for its Complaint against Defendant 3M Company, alleges as follows:

INTRODUCTION

1. For over 50 years, Defendant 3M Company produced at facilities in Minnesota chemicals known as perfluorochemicals, or PFCs. 3M used these chemicals in the production of a variety of consumer, commercial, and industrial products, including stain repellents like Scotchguard™, fire retardants, and chemical products. 3M disposed of waste and discharged wastewater containing PFCs in Minnesota, causing pollution of Minnesota ground and surface water and injury to the natural resources of the State of Minnesota. The State of Minnesota, through its Attorney General, Commissioner of Pollution Control, and Commissioner of Natural Resources, brings this action as trustee for the State's natural resources and to recover damages

for injury, loss, and destruction of Minnesota's natural resources caused by 3M's pollution of the environment.

PARTIES

2. The State of Minnesota (sometimes hereinafter referred to as the "State") is a sovereign state of the United States of America acting as trustee of the natural resources of the State of Minnesota, including all groundwater, surface water, wetlands, sediments, and aquatic life, including fish.

3. Lori Swanson, the Attorney General of the State of Minnesota, is authorized under Minn. Stat. §§ 115B.17, subd. 7 and 115.071, subd. 3, and has common law authority, including *parens patriae* authority, to bring this action on behalf of the State of Minnesota and its citizens to enforce Minnesota law and to recover the damages and other relief requested in this Complaint.

4. Paul Aasen is the Commissioner of the Minnesota Pollution Control Agency ("MPCA"). The MPCA is a statutory agency of the State of Minnesota responsible for administering and enforcing Minnesota statutes and rules relating to water, land and air pollution. See Minn. Stat. Chs. 115, 115B and 116 (2010).

5. The MPCA is authorized to adopt and enforce rules "in order to prevent, control or abate water pollution . . ." Minn. Stat. § 115.03, subd. 1(e).

6. Tom Landwehr is the Commissioner of the Minnesota Department of Natural Resources ("MDNR"). The MDNR is a statutory agency of the State of Minnesota responsible for administering and enforcing Minnesota statutes and rules relating to the preservation, conservation, management and regulation of natural resources of the State. See Minn. Stat. Chs. 84, 85, 94 and 103 G (2010).

7. Money recovered by the State for natural resource damages is deposited into the State's remediation fund. Minn. Stat. § 116.155, subd. 3(1) (2010). The general portion of the remediation fund is appropriated to the Commissioners of MPCA and MDNR, among other things, "to take actions related to releases of hazardous substances, or pollutants or contaminants as provided in section 115B.20." Minn. Stat. § 116.155, subd. 2(1) (2010). Minn. Stat. § 115B.20 (2010) authorizes money appropriated from the remediation fund to be spent for the "assessment and recovery of natural resource damages by [the MPCA] and the commissioner of natural resources for administration, planning and implementation by the commissioner of natural resources of the rehabilitation, restoration, or acquisition of natural resources to remedy injuries or losses to natural resources resulting from the release of a hazardous substance."

8. Defendant 3M Company (sometimes hereinafter referred to as "3M") is a corporation incorporated in the State of Delaware and has its principal place of business in Maplewood, Minnesota. 3M Company's resident agent for service of process is CT Corporation System Inc., which is located at 100 South Fifth Street, Number 1075, Minneapolis, Minnesota 55402 in Hennepin County.

JURISDICTION AND VENUE

9. Jurisdiction exists in this Court under Minn. Stat. § 484.01 (2010), and venue exists in this Court under Minn. Stat. §§ 542.07 and 542.09 (2010). Among other things, 3M's registered agent is located in Hennepin County, and waters impaired by 3M's discharge of PFCs are located in Hennepin County.

FACTUAL BACKGROUND

I. 3M Produced PFCs in Minnesota for Over 50 Years.

10. 3M began research and development of a group of chemicals known as perfluorochemicals, or PFCs, in Minnesota in the late 1940s. The company began commercial production of PFCs in Minnesota in the early 1950s. 3M used PFCs to manufacture many consumer, commercial, and industrial products, including but not limited to stain repellents like Scotchguard™, fire retardants, stain removers, paints, hydraulic fluids, semi-conductors, and other chemical products.

11. PFCs are a class of chemicals--not natural to the environment--in which fluorine atoms replace the hydrogen atoms that are normally attached to the carbon "backbone" of hydrocarbon molecules. For purposes of this Complaint, "PFCs" include all perfluorochemicals manufactured by 3M, and all byproducts, compounds, and/or waste containing any perfluorochemical associated with 3M's manufacture, treatment, disposal, discharge, or release of perfluorochemicals. PFCs include these chemicals and associated compounds:

- perfluorooctanoate (also known as "perfluorooctanoic acid" or "PFOA");
- perfluorooctane sulfonate (also known as "PFOS");
- perfluorobutanoate (also known as also known as "perfluorobutyrate," "perfluorobutyric acid" or "PFBA"); and
- perfluorobutane sulfonate" (also known as "nonafluorobutanesulphonic acid" or "PFBS").

12. For decades, 3M manufactured PFOS, PFOA and other PFCs at facilities in the Twin Cities metropolitan area in Minnesota. 3M was the sole manufacturer of PFOS in the United States and a major manufacturer of PFOA.

13. The chemical structure of PFCs make them resistant to breakdown or environmental degradation. As a result, they are persistent when released into the environment.

Some PFCs have been found to bioaccumulate in humans and animals. A 2005 report by the U.S. Department of Health and Human Services found that "human exposure to PFOS and PFOA lead to the buildup of these chemicals in the body."

14. Following negotiations with the United States Environmental Protection Agency ("EPA"), 3M announced in the year 2000 that it would stop producing PFOS in Minnesota. At the time of this announcement, the EPA wrote in a news release: "3M data supplied to EPA indicated that these chemicals are very persistent in the environment, have a strong tendency to accumulate in human and animal tissues and could potentially pose a risk to human health and the environment over the long term. EPA supports the company's plans to phase out and develop substitutes by year's end for the production of their involved products." 3M stopped producing PFOS in Minnesota in late 2002.

II. PFCs Have Adverse Health and Environmental Consequences.

15. Numerous studies have shown that PFCs pose serious risks to human health and the environment.

16. In a Public Health Assessment released for comment in August 2010, the Minnesota Department of Health described the results of some studies of the impact of PFCs on human health and the environment. For example, the Department cited studies indicating that it has been reported that:

- a. Exposure to high levels of PFOA, PFOS and PFBA is acutely toxic to test animals;
- b. Some long term animal studies suggest that exposure to PFOA could increase the risk of tumors of the liver, pancreas and testes;

- c. Chronic or subchronic exposure to low doses of PFOA in rats typically results in reduction in body weight and weight gain;
- d. Adverse immune system effects have been reported in mice exposed to high doses of PFOA; and
- e. Adverse developmental effects have been observed in the offspring of pregnant rats and mice exposed to high doses of PFOA and PFOS.

17. The Department also noted that a recent study by 3M of its employees suggested a positive association "between PFOA exposure and prostate cancer, cerebrovascular disease, and diabetes." The Assessment further notes that: "PFCs disposed of [by 3M] have impacted soil, groundwater, surface water, sediments, biota, and nearby drinking water wells, both public and private." The Department also pointed out that residents of the eastern metropolitan area of the Twin Cities showed elevated PFC levels in blood tests when compared to the U.S. population as a whole.

18. In its 2007 notice placing special restrictions on the construction of wells in a 12 square mile "special well construction area" in Washington County, the Minnesota Department of Health pointed to various health concerns with PFCs, including that: "In animal studies, high concentrations of PFCs harm the liver and thyroid. Developmental problems have been seen in the offspring of rats and mice exposed to PFCs while pregnant."

19. In its 2007 notice placing special restrictions on the construction of wells in a 12 square mile "special well construction area" in Washington County, the Minnesota Department of Health pointed to various health concerns with PFCs, including that: "In animal studies, high concentrations of PFCs harm the liver and thyroid. Developmental problems have been seen in the offspring of rats and mice exposed to PFCs while pregnant."

20. In a 2005 Health Consultation report relating to PFCs at 3M's Cottage Grove facility, the Agency for Toxic Substances and Disease Registry of the U.S. Department of Health and Human Services states that, "Animal studies have shown that PFOA and APFO (its ammonium salt) are easily absorbed through ingestion, inhalation, and dermal contact." The report states that "[e]xposure to high levels of PFOA and PFOS is acutely toxic in test animals" and that "[c]hronic or sub-chronic exposure to lower doses of PFOA in rats typically results in reduction in body weight and weight gain, and in liver effects such as an increase in liver weight and alterations in lipid metabolism." The report further states that, "A 90-day study of relatively high-dose oral PFOA exposure in rhesus monkeys resulted in adverse effects on the adrenal glands, bone marrow, spleen, lymphatic system, and death in some animals."

21. In 2009, the EPA issued provisional health advisories, guidance on toxicity values, and soil screening levels relating to potential risk from exposure to PFOA and PFOS in the environment. The limits set on PFC exposure by the EPA are comparable to limits set by the Minnesota Department of Health. Environmental authorities in other states and in foreign countries also have set safe drinking water values for PFCs that are comparable to the limits established by the Minnesota Department of Health.

22. In 2009, EPA placed PFOA and PFOS on its Third Contaminant Candidate List for possible regulation under the Safe Drinking Water Act, 42 U.S.C. § 300g 1(b)(1)(B)(i). 74 Fed. Reg. 51850 (October 8, 2009).

23. During the time that it manufactured PFCs, 3M extensively studied the impact of PFCs on human health and the environment. 3M knew or should have known that as a result of its regular disposal of PFCs and PFC-containing wastes, it was reasonably likely that PFCs would be released from the disposal sites and would reach the groundwater, surface water and

sediments and to result in injury, destruction, and loss of natural resources of the State, including groundwater, surface water, sediments and aquatic life such as fish. 3M knew or should have known of the potentially harmful effects that PFCs have on human health and the environment. 3M knew or should have known that the discharge of PFCs would pollute groundwater and surface water of the State, making them unavailable to the citizens of the State for their normal and designated uses, including as sources of drinking water and habitat for fish which may be consumed as food.

III. 3M Discharged PFCs in Minnesota For Decades.

24. For decades, 3M disposed of waste and discharged wastewater containing PFCs in Minnesota. 3M is responsible for releasing PFCs into the Minnesota environment, causing pollution of groundwater, surface water, and sediments and resulting in injury, destruction and loss of natural resources of the State.

25. 3M disposed of wastes containing PFCs at several sites in the Twin Cities Minnesota metropolitan area, including at least the following:

- a. its industrial facility located in the City of Cottage Grove, Minnesota ("the 3M Cottage Grove Site");
- b. a disposal site located in the City of Oakdale, Minnesota ("the 3M Oakdale Disposal Site");
- c. a disposal site located on the border of the cities of Cottage Grove and Woodbury, Minnesota in the area encompassed by Woodbury Drive (County Road 19) and Cottage Grove Drive ("the 3M Woodbury Disposal Site"); and
- d. the Washington County Landfill, located in the City of Lake Elmo, Minnesota.

For years, 3M buried wastes containing PFCs in unlined dumps, thereby releasing PFCs into the groundwater beneath the sites and ultimately into other groundwater.

26. 3M also discharged wastewater containing PFCs from the 3M Cottage Grove Site into surface water of the State which flows into the Mississippi River. 3M did so both directly and indirectly. For years, 3M piped wastewater containing PFCs directly into a stream that flows directly into the Mississippi River. In addition, 3M disposed of waste containing PFCs on land in close proximity to the Mississippi River, allowing this waste to leach into the river.

27. Over 100 square miles of groundwater have been contaminated by 3M's disposal of PFCs, and the source of residential drinking water for tens of thousands of Minnesotans is potentially affected by the contamination caused by 3M's disposal of PFCs. The area of contamination includes four major aquifers; namely, the St. Peter, Prairie du Chien, Jordan, and Franconia aquifers. These four aquifers serve as the sole source of drinking water for approximately 125,000 or more Minnesotans who reside in the Twin Cities area.

28. PFCs have also polluted Lake Elmo and approximately 139 miles of the Mississippi River from St. Anthony Falls in Minneapolis (Hennepin County) downstream to the La Moille Dam (Lock and Dam No. 6), south of Winona.

29. 3M's release and discharge of PFCs into the groundwater and surface water are in violation of Minnesota water quality rules and were not authorized or permitted by the State. 3M was not authorized by the Minnesota Pollution Control Agency to discharge PFCs into waters of the State at any of the sites where 3M disposed of wastes containing PFCs or at other facilities 3M owned or operated.

30. Minn. Rule 7050.0210, subp. 2, provides: "No sewage, industrial waste, or other wastes shall be discharged from either point or nonpoint sources into any waters of the state so as

to cause any nuisance conditions, such as the presence of significant amounts of floating solids, scum, visible oil film, excessive suspended solids, material discoloration, obnoxious odors, gas ebullition, deleterious sludge deposits, undesirable slimes or fungus growths, aquatic habitat degradation, excessive growths of aquatic plants, or other offensive or harmful effects." Minn. Rule 7053.0205, subp. 2, sets forth the same prohibition as found in Minn. Rule 7050.0210, subp. 2. The discharge of PFCs from sites where 3M disposed of wastes and discharged wastewater have polluted waters of the State and precluded and adversely affected the use of underground waters for potable use, thereby causing nuisance conditions and other offensive and harmful effects on waters of the state within the meaning of Minn. Rules 7050.0210, subp. 2 and 7053.0205, subp. 2.

31. Minn. Rule 7050.0210, subp. 13, provides that "[n]o sewage, industrial waste, or other wastes shall be discharged from either a point or a nonpoint source into the waters of the state in such quantity or in such manner alone or in combination with other substances as to cause pollution as defined by law." Underground waters, including the primary drinking water aquifers in the eastern metropolitan area of the Twin Cities, have been polluted by the discharge of PFCs from sites where 3M disposed of wastes containing PFCs.

32. Minn. Rule 7060.0600, subp. 2, provides that "[n]o sewage, industrial waste, other waste, or other pollutants shall be allowed to be discharged to the unsaturated zone or deposited in such place, manner, or quantity that the effluent or residue therefrom, upon reaching the water table, may actually or potentially preclude or limit the use of the underground waters as a potable water supply, nor shall any such discharge or deposit be allowed which may pollute the underground waters." 3M allowed PFCs to be discharged at sites where 3M disposed of wastes containing PFCs in such a way as to pollute underground waters, including the primary drinking

water aquifers in the eastern metropolitan area of the Twin Cities, and to actually or potentially limit or preclude the use of the underground waters as a potable water supply.

IV. 3M's Discharge of PFCs Caused Damage To the State's Natural Resources.

33. The State and its citizens place a high value on the State's natural water resources.

34. 3M released PFCs into the Minnesota environment, thereby causing pollution of groundwater and surface water, and causing injury to and destruction and loss of natural resources of the State of Minnesota. PFCs from wastes disposed of by 3M are now widespread in the environment in the Twin Cities metropolitan area. PFCs released by 3M have been found in soil, groundwater, surface water, sediments and fish.

35. As a result of the injury caused by 3M to the State's natural resources by the discharge of PFCs into the environment, the State and its citizens face substantial costs to provide alternative sources of groundwater for domestic and other uses and to restore surface waters for the full use and enjoyment of the public.

1. Well and Water Usage Restrictions.

36. The Minnesota Department of Health has established health-based standards for human consumption of PFCs in drinking waters. Under Minnesota law, a health risk limit ("HRL") is "a concentration of a substance or chemical adopted by rule of the commissioner of health that is a potential drinking water contaminant because of a systemic or carcinogenic toxicological result from consumption." Minn. Stat. § 103H.005, subd. 4 (2010). Before the Department establishes an HRL through formal rulemaking, the Department develops interim guidelines known as Health Based Values ("HBVs"). HBVs are based on source studies that are of the same quality as those used to develop formal HRLs.

37. In 2002, the Minnesota Department of Health issued HBVs for PFOA and PFOS in drinking water.

38. In 2007, the Minnesota Legislature expressly authorized and directed the Minnesota Department of Health to adopt HRLs for PFOA and PFOS using a special provision in Minnesota's Administrative Procedures Act which is reserved for rules that "address a serious and immediate threat to the public health, safety or welfare." Laws of Minnesota 2007, chapter 37, sec. 1; Minn. Stat. § 143.388, subd. 1(1) (2010). The Department thereafter in 2007 adopted temporary rules setting HRLs for PFOA and PFOS in groundwater. In 2009, the Department adopted permanent Health Risk Limits, or HRLs, for PFOA and PFOS. The Department has also issued HBVs for PFBA and PFBS.

39. In addition, the Minnesota Pollution Control Agency ("MPCA") issues generic health-based criteria for soil that are based on a standard exposure scenario for contaminated sites. MPCA has issued Soil Reference Values for evaluating the risks to public health from concentrations of PFOA and PFOS in residential (Tier I) and industrial (Tier II) soils.

40. PFCs have been found in groundwater and soils at the sites used by 3M to dispose of wastes containing PFCs at levels that exceed the health based standards (HRLs and HBVs) adopted by the Minnesota Department of Health and the Soil Reference Values issued by the MPCA. PFC concentrations in the groundwater at the 3M disposal sites at times have been more than 100 times higher than the health-based standards established by the Minnesota Department of Health.

41. In addition, as noted above, PFCs have been found in four major drinking water aquifers (St. Peter, Prairie du Chien, Jordan and Franconia) which lie below and down gradient from the sites where 3M disposed of PFC-containing wastes. These aquifers are the sole source

of drinking water for approximately 125,000 residents of the eastern metropolitan area of the Twin Cities, including residents of the cities of Oakdale, Lake Elmo, Woodbury, and Cottage Grove. As a result, the source of residential drinking water for tens of thousands of Minnesotans is potentially affected by PFC contamination caused by 3M.

42. In 2007, the Minnesota Department of Health issued a Special Well Construction Advisory, which remains in effect, for an area of more than twelve square miles in Washington County, due to the contamination of groundwater caused by 3M's disposal and releases of PFCs. Through the Advisory, the Department placed limits on the installation and operation of any new groundwater wells for drinking and other purposes within the well advisory area because of the PFC contamination. These restrictions, which result from 3M's disposal and discharge of PFCs, will result in substantial additional costs to public and private entities that use the affected groundwater to meet their present and future water supply needs.

2. Surface Water Impairment and Fish Consumption Advisories.

43. Because of high levels of PFOS in tissues of fish from certain parts of the Mississippi River and from Lake Elmo, the Minnesota Department of Health has recommended that citizens limit their fish consumption from these waters.

44. In 2008, as a result of these fish consumption advisories, the Minnesota Pollution Control Agency listed certain areas of the Mississippi River and Lake Elmo as "impaired" under Section 303(d) of the federal Clean Water Act, 33 U.S.C. § 1313(d). A surface water is "impaired" when it does not meet applicable water quality standards or fully support applicable beneficial uses (such as recreational fishing) due to pollution from point or nonpoint sources. Minn. Rule 7050.0150, subp. 4.H.

45. The PFC contamination which led to these fish advisories and impairment listings resulted from or was significantly contributed to by 3M's releases of PFCs into the environment,

including discharge of industrial wastewater containing PFCs from the 3M Cottage Grove Site, and discharge of extracted groundwater containing PFCs from the 3M Woodbury Disposal Site and the 3M Oakdale Disposal Site.

3. The Natural Resources Damages Caused by 3M Have Not Been Remedied and Are Ongoing.

46. In 2007 the Minnesota Pollution Control Agency and 3M entered into a Settlement Agreement and Consent Order ("Remediation Consent Order") requiring 3M to take certain steps to remediate its releases of PFCs at the 3M Cottage Grove Site, the 3M Oakdale Disposal Site and the 3M Woodbury Disposal Site. The Remediation Consent Order, however, did not address 3M's liability for the injuries that its release of PFCs have caused to the natural resources of the State; to the contrary, Section XXV(D) of the Remediation Consent Order specifically reserved the State's claims for natural resource damages associated with 3M's releases of PFCs. The Remediation Consent Order does not compensate the State for the injury to and destruction and loss of its natural resources caused by 3M's releases of PFCs, or restore the State's injured natural resources to their pre-release condition.

47. The State brings this action to compensate the State and its citizens for the current and ongoing injury to, destruction of, and loss of natural resources which have resulted from 3M's conduct.

48. The damages caused by 3M's disposal and discharge of PFCs, including the injuries to and destruction and loss of use of the State of Minnesota's natural resources, are continuing. The sources of PFC pollution at sites where 3M disposed of or discharged PFCs have not been controlled or abated, and PFCs continue to spread in the environment. This injury and damage will continue into the future, unless and until the resources are restored.

CLAIMS FOR RELIEF

COUNT ONE - DAMAGES UNDER MERLA

49. The State re-alleges all prior paragraphs of this Complaint.

50. Chapter 115B of the Minnesota Statutes is known as the Minnesota Environmental Response and Liability Act, or MERLA.

51. Under MERLA, the State of Minnesota is the trustee of the air, water, and wildlife of the State. Minn. Stat. § 115B.17, subd. 7.

52. Under Minn. Stat. § 115B.17, subd. 7, an action pursuant to § 115B.04 for damages with respect to air, water or wildlife may be brought by the Attorney General in the name of the State of Minnesota as trustee for the State's natural resources.

53. Under Minn. Stat. § 115B.04, subd. 1a, any person who is responsible for a release or threatened release of a hazardous substance from a facility is strictly liable, jointly and severally, for damages which result from the release or threatened release or to which the release or threatened release significantly contributes, including "(3) all damages for any injury to, destruction of, or loss of natural resources, including the reasonable costs of assessing such injury, destruction, or loss."

54. 3M is a "person who is responsible" for the release of PFCs into the environment under Minn. Stat. § 115B.03, subd. 1 and subd. 3. This includes for the following reasons:

a. With respect to the release of PFCs at the 3M Cottage Grove Site:

i. 3M is a responsible person under MERLA, Minn. Stat. § 115B.03, subd. 1(1) and subd. 3(1)-(3) because 3M owned and operated the site; engaged in the business of generating, storing, treating, and disposing of wastes and wastes containing PFCs at the site; and knowingly permitted

use of the site for the regular disposal of wastes and for the disposal of wastes containing PFCs;

- ii. 3M is a responsible person under MERLA, Minn. Stat. § 115B.03, subd. 1(2) because it owned or possessed waste containing PFCs and arranged, by contract, agreement, or otherwise, for the disposal, or transport for disposal of the waste at the site; and
- iii. 3M is a responsible person under MERLA, Minn. Stat. § 115B.03, subd. 1(1) because it owned and operated facilities including pipes, equipment and installations at the site from which PFCs were released into the environment.

b. 3M is a responsible person under MERLA, Minn. Stat. § 115B.03, subd. 1(2) for the release of PFCs from the 3M Oakdale Disposal Site because it owned or possessed waste containing PFCs and arranged, by contract, agreement, or otherwise, for the disposal, or transport for disposal of the waste at the site.

c. With respect to the release of PFCs at the 3M Woodbury Disposal Site:

- i. 3M is a responsible person under MERLA, Minn. Stat. § 115B.03, subd. 1(1) and subd. 3(1)-(3) because 3M owned and operated the site and knowingly permitted use of the site for the regular disposal of wastes and for the disposal of wastes containing PFCs; and
- ii. 3M is a responsible person under MERLA, Minn. Stat. § 115B.03, subd. 1(2) because it owned or possessed waste containing PFCs and arranged, by contract, agreement, or otherwise, for the disposal, or transport for disposal of the waste at the site.

d. 3M is a responsible person under MERLA, Minn. Stat. § 115B.03, subd. 1(2) for the release of PFCs from the Washington County Landfill because it owned or possessed waste containing PFCs and arranged, by contract, agreement, or otherwise, for the disposal, or transport for disposal of the waste at this landfill. The Washington County Landfill is a closed, mixed municipal waste landfill which was operated under an MPCA permit by the Counties of Ramsey and Washington from approximately 1969 to 1975. This landfill is a "qualified facility" as defined in the Landfill Cleanup Act ("LCA"). Under the LCA, the MPCA has assumed responsibility for long term environmental response actions to address releases from the Washington County Landfill, including releases of PFCs. The LCA does not absolve 3M of liability under MERLA for any injury to, destruction of, or loss of natural resources associated with releases of PFCs from the Washington County Landfill.

55. Under Minn. Stat. § 115B.02, subd. 15, "release" means any "spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment which occurred at a point in time or which continues to occur." The "release" of PFCs as defined in Minn. Stat. § 115B.02, subd. 15, has occurred and continues to occur at the sites where 3M disposed of wastes containing PFCs --- including at least the 3M Cottage Grove Site, the 3M Oakdale Disposal Site, the 3M Woodbury Disposal Site, and the Washington County Landfill --- including releases to groundwater, surface water and sediments.

56. Under Minn. Stat. § 115B.02, subd. 8(3), "hazardous substance" means "any hazardous waste." Under Minn. Stat. § 115B.02, subd. 9 (1), "hazardous waste" means "any hazardous waste as defined in section 116.06, subdivision 11, and any substance identified as a hazardous waste pursuant to rules adopted by the agency under section 116.07."

57. Under Minn. Stat. § 116.06, subd. 11, "hazardous waste" means "any refuse, sludge, or other waste material or combinations of refuse, sludge or other waste materials in solid, semisolid, liquid, or contained gaseous form which because of its quantity, concentration, or chemical, physical, or infectious characteristics may . . . (b) pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, or disposed of, or otherwise managed."

58. PFCs released into the environment by 3M, including at and from the 3M Cottage Grove Site, the 3M Oakdale Disposal Site, the 3M Woodbury Disposal Site and the Washington County Landfill, including PFOA, PFOS, PFBA and PFBS, are hazardous substances as defined in MERLA, Minn. Stat. § 115B.02, subd. 8. PFCs are hazardous wastes, and therefore hazardous substances. PFCs pose a substantial present or potential hazard to human health and the environment in the way that 3M managed its wastes and wastewater containing PFCs. Many studies of PFCs have identified actual and potential hazards to human health from exposure to PFCs. The Minnesota Department of Health ("MDH"), and a number of other state and federal agencies and foreign countries, have used the available health information on PFCs to establish health-based drinking water standards for PFCs. MDH health-based standards are generally comparable to those set by other agencies that have set such standards. PFCs are found in soil and groundwater at four or more sites in Minnesota where 3M disposed of wastes containing PFCs. These wastes were disposed of in unlined disposal areas, allowing PFCs to spread to groundwater in a 100 square mile area. PFCs in groundwater at and down gradient from the 3M disposal sites have exceeded MDH's health-based standards, including exceedances in both municipal and private drinking water wells. PFCs at 3M disposal sites at times have been 100 times higher than the health-based standards that MDH established.

MPCA's Soil Reference Values for PFCs have also been exceeded at the 3M disposal sites. Additionally, 3M's disposal and discharge of PFCs has resulted in certain Minnesota surface waters being formally declared as impaired because of MDH advisories to limit human consumption of fish from those waters. PFCs are hazardous wastes and hazardous substances under MERLA.

59. Under Minn. Stat. § 115B.02, subd. 5, the term "facility" means:

- a. any building, structure, installation, equipment, pipe or pipeline (including any pipe into a sewer or publicly owned treatment works), well, pit, pond, lagoon, impoundment, ditch, landfill, storage container, motor vehicle, rolling stock, or aircraft;
- b. any watercraft of any description, or other artificial contrivance used or capable of being used as a means of transportation on water; or
- c. any site or area where a hazardous substance, or a pollutant or contaminant, has been deposited, stored, disposed of, or placed, or otherwise come to be located.

The areas where 3M disposed of wastes containing PFCs, including the 3M Cottage Grove Site, the 3M Oakdale Disposal Site, and the 3M Woodbury Disposal Site; pipes, equipment and installations from which PFCs have been discharged at the 3M Cottage Grove Site; and the Washington County Landfill, are "facilities" as defined in MERLA, Minn. Stat. § 115B.02, subd. 5.

60. Under Minn. Stat. § 115B.02, subd. 10, "natural resources" has the meaning set forth in Minn. Stat. § 116B.02, subd. 4. Under Minn. Stat. § 116B.02, subd. 4, "natural resources" "shall include, but not be limited to, all mineral, animal, botanical, air, water, land, timber, soil, quietude, recreational and historical resources. Scenic and esthetic resources shall also be considered natural resources when owned by any governmental unit or agency." Waters,

soil, animals, and recreational resources are "natural resources" within the foregoing definitions, and have been injured by 3M's release of PFCs.

61. Under Minn. Stat. § 115B.02, subd. 19, "water" has the meaning given to the term "waters of this state" in Minn. Stat. § 115.01, subd. 22. Minn. Stat. § 115.01, subd. 22 defines "waters of this state" as "all streams, lakes, ponds, marshes, watercourses, waterways, wells, springs, reservoirs, aquifers, irrigation systems, drainage systems and all other bodies or accumulations of water, surface or underground, natural or artificial, public or private, which are contained within, flow through, or border upon the state or any portion thereof." The waters of the State, including surface water and underground water, have been injured by 3M's release of PFCs within the meaning of the foregoing definitions.

62. 3M is: a) responsible for the release of a hazardous substance, namely PFCs, from facilities including at least the 3M Cottage Grove Site, the 3M Oakdale Disposal Site, the 3M Woodbury Disposal Site and the Washington County Landfill; and b) is strictly liable, jointly and severally, for the damages which resulted from the release or to which the release or threatened release significantly contributed, including all damages for any injury to, destruction of, or loss of natural resources, including the reasonable costs of assessing such injury, destruction, or loss. Releases of PFCs into the environment from these facilities have resulted in, or have significantly contributed to, injury to, destruction of, or loss of natural resources of the State, including groundwater, surface water, sediments and aquatic life including fish. 3M's liability under Minn. Stat. § 115B.04, subd. 1(3) also includes the State's reasonable costs of assessing such injury, destruction, or loss.

63. Releases of PFCs for which 3M is responsible have caused injury to, destruction of and loss of groundwater, surface water, sediments and aquatic life, including fish, and have

resulted in loss of use, value, benefits and enjoyment of these resources by the State and its citizens and in the imposition of substantial costs to the public to meet current and future water supply needs and restore impaired surface waters.

64. Pursuant to MERLA, Minn. Stat. § 115B.04, subd. 1(3), the State is entitled to recover from 3M all damages incurred through the time of trial, and for all future damages, for injury to, destruction of, or loss of natural resources which have resulted from 3M's releases of PFCs into the environment, including releases at and from the 3M Cottage Grove Site, the 3M Oakdale Disposal Site, the 3M Woodbury Disposal Site and the Washington County Landfill, or to which those releases significantly contributed, including the State's reasonable costs of assessing such injury, destruction, or loss.

65. Under Minn. Stat. § 115B.14, 3M is responsible for the State's costs, disbursements, and attorneys fees in bringing this action.

COUNT TWO - DAMAGES UNDER THE MWPCA

66. The State re-alleges all prior paragraphs of this complaint.

67. Sections 115.01 - 115.09 of the Minnesota Statutes are known as the Minnesota Water Pollution Control Act, or MWPCA.

68. Under Minn. Stat. § 115.071, subd. 3(b), a person may be required to forfeit and pay to the state a sum which constitutes just compensation for any loss or destruction to wildlife, fish or other aquatic life and for other actual damages to the state caused by an unauthorized discharge of pollutants, where the discharge violates, among other things, provisions of the MWPCA or any rules promulgated by the Minnesota Pollution Control Agency.

69. Under Minn. Stat. § 115.071, subd. 3 (b), "Any person who violates any provision of this chapter or chapter 114C or 116, . . . or of (1) any effluent standards and limitations or

water quality standards, (2) any permit or term or condition thereof, (3) any national pollutant discharge elimination system filing requirements, (4) any duty to permit or carry out inspection, entry or monitoring activities, or (5) any rules, stipulation agreements, variances, schedules of compliance, or orders issued by the agency, . . ." may be required to "(b) forfeit and pay to the state an additional sum to constitute just compensation for any loss or destruction to wildlife, fish or other aquatic life and for other actual damages to the state caused by an unauthorized discharge of pollutants."

70. The damages provided for in section 115.071, subd. 3(b), may be recovered by a civil action brought by the Attorney General in the name of the State of Minnesota.

71. Under Minn. Stat. § 115.01, subd. 10, a "person" includes a private corporation. 3M is a "person" within the meaning of Minn. Stat. § 115.01, subd. 10.

72. Under Minn. Stat. § 115.01, subd. 4, "discharge" means "the addition of any pollutant to the waters of the state or to any disposal system." Under Minn. Stat. § 115.01, subd. 22, "waters of the state" means "all streams, lakes, ponds, marshes, watercourses, waterways, wells, springs, reservoirs, aquifers, irrigation systems, drainage systems and all other bodies or accumulations of water, surface or underground, natural or artificial, public or private, which are contained within, flow through, or border upon the state or any portion thereof." 3M's disposal and discharge of PFCs have caused discharge of pollutants into waters of the State.

73. Discharges of PFCs into waters of the State, as defined in the MWPCA, Minn. Stat. § 115.01, subd. 4, 5, 6 and 22, including discharges to groundwater and surface water, have occurred and continue to occur, including at and from the 3M Cottage Grove Site, the 3M Oakdale Disposal Site, the 3M Woodbury Disposal Site and the Washington County

Landfill. These discharges have polluted and adversely impacted groundwater, surface water, and other natural resources in the Twin Cities area.

74. Under Minn. Stat. § 115.01, subd. 12, "pollutant" means "any sewage, industrial waste, or other wastes, as defined in this chapter, discharged into a disposal system or to waters of the state." Under Minn. Stat. § 115.01, subd. 13, "pollution of water," "water pollution," or "pollute the water" means: "(a) the discharge of any pollutant into any waters of the state or the contamination of any waters of the state so as to create a nuisance or render such waters unclean, or noxious, or impure so as to be actually or potentially harmful or detrimental or injurious to public health, safety or welfare, to domestic, agricultural, commercial, industrial, recreational or other legitimate uses, or to livestock, animals, birds, fish or other aquatic life; or (b) the alteration made or induced by human activity of the chemical, physical, biological, or radiological integrity of waters of the state." PFCs discharged into waters of the State, including at and from the 3M Cottage Grove Site, the 3M Oakdale Disposal Site, the 3M Woodbury Disposal Site and the Washington County Landfill, including PFOA, PFOS, PFBA and PFBS, are pollutants as defined in the MWPCA, Minn. Stat § 115.01, subd. 12. The releases of PFCs resulted in water pollution.

75. 3M's discharges of PFCs to waters of the state have violated rules promulgated under the MWPCA, including:

a. Minn. R. 7050.0210, subp. 2. 3M's discharges of PFCs have resulted in listing of certain surface waters of the State as impaired and created offensive and harmful effects in groundwater;

b. Minn. R. 7050.0210, subp. 13. 3M's discharges of PFCs into groundwater, as defined in the MWPCA, Minn. Stat. § 115.01, subd. 6, were unauthorized and were in

such quantity and manner as to cause water pollution as defined in the MWPCA, Minn. Stat. § 115.01, subd. 13;

c. Minn. R. 7053.0205, subp. 2. 3M's discharge of PFCs into waters of the State, as defined in the MWPCA, Minn. Stat. § 115.01, subd. 9 and 22, caused nuisance conditions and other offensive or harmful effects; and

d. Minn. R. 7060.0600, subp. 2. 3M discharged PFCs in such places and in such a manner that PFCs have polluted underground waters, including the primary drinking water aquifers in the eastern metropolitan area, and have actually or potentially limited or precluded the use of underground waters as a potable water supply.

76. 3M's discharges of PFCs into waters of the State, including at and from the 3M Cottage Grove Site, the 3M Oakdale Disposal Site, the 3M Woodbury Disposal Site and the Washington County Landfill, were not authorized or permitted by the State. These discharges have resulted in, or have significantly contributed to, loss and destruction of fish or other aquatic life and other actual damages to the State.

77. 3M's unauthorized discharges of PFCs have polluted waters of the State within the meaning of Minn. Stat. § 115.01, subd. 13, by creating nuisance conditions; by rendering state waters unclean and impure so as to be actually or potentially harmful or detrimental to public health, safety, and welfare, or to domestic, commercial, recreational, or other legitimate uses; by altering the chemical integrity of the waters by human activity; and by rendering groundwater actually and potentially unavailable for drinking water purposes.

78. Pursuant to the MWPCA, Minn. Stat. § 115.071, subd. 3(b), 3M is liable to pay the State just compensation for all loss and destruction of fish or other aquatic life and for all other actual damages to the State caused by its unauthorized discharges of PFCs to waters of the

State. Pursuant to the MWPCA, Minn. Stat. § 115.071, subd. 3(b), 3M may be required to forfeit and pay to the State just compensation for all loss and destruction, through the time of trial, and in the future, of fish and other aquatic life and for all other actual damages to the State caused by 3M's unauthorized discharges of PFCs into waters of the State, including discharges at and from the 3M Cottage Grove Site, the 3M Oakdale Disposal Site, the 3M Woodbury Disposal Site and the Washington County Landfill, or to which such discharges significantly contributed, including the State's reasonable costs of assessing such loss, destruction, and other damages.

79. The damages caused by 3M's discharge of PFCs, including the injuries to and destruction and loss of use of the State of Minnesota's natural resources, are continuing. The sources of PFC pollution at sites where 3M disposed of or discharged PFCs have not been controlled or abated and PFCs continue to spread in the environment. This injury and damage will continue into the future, unless and until the resources are restored.

COUNT THREE - DAMAGES FOR TRESPASS

80. The State re-alleges all prior paragraphs of this Complaint.

81. Groundwater, surface water, sediments, and aquatic life including fish are natural resources of the State of Minnesota, and the State of Minnesota is the trustee of these resources on behalf of its citizens, now and in the future. These natural resources are property of the State.

82. For decades, 3M disposed of wastes containing PFCs at various sites in the Twin Cities metropolitan area, and discharged PFCs directly and indirectly into the Mississippi River. As a result of these actions, PFCs have entered and spread in and have contaminated groundwater, surface water and sediments in the Twin Cities metropolitan area of Minnesota and have contaminated aquatic life including fish in affected surface water.

83. The entry of 3M's PFCs into these natural resources, which constitute property of the State of Minnesota, was unlawful. The State never authorized or permitted 3M to release PFCs into groundwater, surface water or sediments. Furthermore, 3M knew or should have known that its disposal and discharge of PFCs was substantially certain to result in PFCs entering and polluting these natural resources of the State.

84. The entry of PFCs into the State's groundwater, surface water and sediments is continuing. The sources of PFC pollution at sites where 3M disposed of or discharged PFCs have not been controlled or abated and PFCs continue to spread in the environment.

85. The entry of 3M's PFCs into the State's groundwater, surface water, sediments and the contamination of fish has injured and destroyed these natural resources, and resulted in a loss of the public's ability to use them for their normal and designated uses. Such injury to, destruction of and loss of use of these resources will continue into the future, unless and until the resources are restored.

86. 3M is liable for damages to compensate the State for the injury to, destruction of and loss of use of the State's natural resources caused by 3M's continuing trespass in the form of PFC contamination of the State's property.

COUNT FOUR - DAMAGES FOR COMMON LAW NUISANCE

87. The State re-alleges all prior paragraphs of this Complaint.

88. The use, enjoyment and existence of the State's groundwater, surface water and sediments, free from interference, is a right common to the citizens of the State.

89. The contamination of groundwater, surface water and sediments with PFCs materially and substantially interferes with State citizens' free enjoyment of these natural resources, and constitutes a public nuisance.

90. 3M knew or should have known that its disposal of wastes containing PFCs would pollute groundwater and surface water of the State, making them unavailable to the citizens of the State for their normal and designated uses, including as sources of drinking water and habitat for fish which may be consumed as food.

91. The nuisance conditions described in this Complaint are continuing, and the sources of PFC pollution at sites where 3M disposed or discharged PFCs have not been controlled or abated and PFCs continue to spread in the environment.

92. The impairment of the State's groundwater and surface water by PFC contamination has injured and destroyed these natural resources, and resulted in a loss of the public's ability to use them. Such injury to and destruction and loss of use of the State's natural resources will continue into the future, unless and until the resources are restored.

93. 3M is liable for damages to compensate the State for the injury, destruction and loss of use of the State's natural resources caused by the continuing public nuisance created by PFC contamination of the State's property.

COUNT FIVE - DAMAGES FOR STATUTORY NUISANCE

94. The State re-alleges all prior paragraphs of this Complaint.

95. Minn. Stat. § 561.01 (2010) provides that: "[a]nything 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."

96. The use, enjoyment and existence of the State's groundwater, surface water and sediments, free from interference, is a right common to the people of the State.

97. The contamination of groundwater, surface water and sediments with PFCs materially and substantially interferes with citizens' free enjoyment of these natural resources, and constitutes a public nuisance.

98. 3M knew or should have known that its disposal of wastes containing PFCs would pollute groundwater and surface water of the State, making them unavailable to the people of the State for their normal and designated uses, including as sources of drinking water and habitat for fish which may be consumed as food.

99. The nuisance conditions described in this Count are continuing. The sources of PFC pollution at sites where 3M disposed or discharged PFCs have not been controlled or abated and PFCs continue to spread in the environment.

100. The pollution of the State's groundwater and surface water by PFC contamination has injured and destroyed these natural resources, and resulted in a loss of the public's ability to use and enjoy them. Such injury to, destruction of and loss of use of natural resources will continue into the future, unless and until the resources are restored.

101. 3M is liable for damages to compensate the State for the injury, destruction and loss of use and enjoyment of the State's natural resources caused by the continuing public nuisance created by PFC contamination of the State's property.

COUNT SIX - DAMAGES FOR NEGLIGENCE

102. The State re-alleges all prior paragraphs of this Complaint.

103. At all times material to this Complaint, 3M owed to the State and its citizens a duty to dispose of PFC-containing wastes in a manner that would protect the public from reasonably foreseeable harm.

104. 3M owed to the State and its citizens a duty to comply with Minnesota water protection rules and regulations, including but not limited to Minn. Rules 7050.0210, subp. 2 and 13; 7053.0205, subp. 2; and 7060.0600, subp. 2.

105. 3M breached its duties set forth in this Complaint, by (1) disposing of PFC-containing wastes at various sites in the Twin Cities metropolitan area in Minnesota in circumstances in which it knew or should have known that PFCs were reasonably likely to be released from the disposal sites and reach the groundwater, surface water and sediments, and (2) discharging PFC-containing wastes directly or indirectly into the Mississippi River.

106. 3M's conduct in breach of its duties has resulted in contamination of groundwater, surface water, sediments and aquatic life, including fish, with PFCs. This damage to the natural resources of the State was reasonably foreseeable to 3M. 3M breached its duties and knew or should have known of the potentially harmful effects of PFCs on human health and the environment.

107. The injuries to natural resources described in this Complaint are continuing because the sources of PFC pollution at sites where 3M disposed of or discharged PFCs have not been controlled or abated and PFCs continue to spread in the environment.

108. The contamination of the State's groundwater, surface water, sediments and aquatic life, including fish, by 3M's releases of PFCs has injured and destroyed natural resources of the State, and resulted in a loss of the public's ability to use those natural resources. Such

injury to and destruction and loss of use is continuing and will continue into the future, unless and until the resources are restored.

109. 3M is liable for damages to compensate the State and its citizens for the injury to, destruction of, and loss of use of the State's natural resources caused by 3M's negligence.

PRAYER FOR RELIEF

WHEREFORE, the State of Minnesota respectfully asks this Court to award judgment against Defendant 3M Company as follows:

1. Awarding judgment against Defendant under MERLA for damages for injury to, destruction of, or loss of natural resources which resulted through the time of trial, and for all future damages, from releases of PFCs by 3M, or to which those releases significantly contributed, including the State's reasonable costs of assessing such injury, destruction, or loss;

2. Declaring that Defendant is responsible under MERLA for all damages that the State may suffer in the future for injury to, destruction of, or loss of natural resources which result from releases of PFCs into the environment, or to which those releases significantly contribute, including the State's reasonable costs of assessing such injury, destruction, or loss;

3. Awarding judgment against Defendant under the MWPCA for just compensation for all loss to or destruction of fish or other aquatic life and for all other actual damages to the State caused through the time of trial, and in the future, by 3M's unauthorized discharge of pollutants into waters of the State, or to which such discharges significantly contributed, including the State's reasonable costs of assessing such loss or destruction;

4. Declaring that Defendant is responsible under the MWPCA to pay just compensation for all loss to or destruction of fish or other aquatic life and for all other actual damages to the State caused in the future by 3M's unauthorized discharge of pollutants into

waters of the State, or to which these discharges significantly contributed, including the State's reasonable costs of assessing such loss or destruction;

5. Awarding judgment against Defendant for damages for all injury to, destruction of and loss of use of the State's natural resources caused by 3M's continuing trespass in the form of contamination of the State's property with PFCs, under the *parens patriae* doctrine, the general equitable powers of the court, and any other authority;

6. Awarding judgment against Defendant for damages for all injury to, destruction of and loss of use of the State's natural resources caused by the continuing common law and statutory nuisance created by 3M's contamination of the State's property with PFCs, under the *parens patriae* doctrine, the general equitable powers of the court, and any other authority;

7. Awarding judgment against Defendant for damages to compensate the State for the injury to, destruction of and loss of use of the State's natural resources caused by 3M's negligent release of PFCs into the environment, under the *parens patriae* doctrine, the general equitable powers of the court, and any other authority;

8. Awarding the State its attorneys' fees, witness fees and costs and disbursements to bring this action as provided in MERLA, Minn. Stat. § 115B.14 and other applicable law; and

9. Granting such other and further relief as provided by law and/or as the Court deems just and proper.

Dated: 1-18-11

Respectfully submitted,

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**MINN. STAT. § 549.211
ACKNOWLEDGMENT**

The party or parties on whose behalf the attached document is served acknowledges through their undersigned counsel that sanctions may be imposed pursuant to Minn. Stat. § 549.211 (2010).

Dated: 1-18-11



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