

STATE OF MINNESOTA  
COUNTY OF HENNEPIN

FILED PSL

DISTRICT COURT

11 NOV -7 PM 3: 04

FOURTH JUDICIAL DISTRICT

Case Type: Other/Civil

BY: SB DEPUTY  
HENN. CO. DISTRICT  
COURT ADMINISTRATOR

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

Court File No: 27-CV-10-28862  
Judge Margaret A. Daly

Plaintiff,

City of Lake Elmo, a Minnesota municipal corporation,

**COMPLAINT**

and

Metropolitan Council,

Plaintiffs/Intervenors,

v.

3M Company,

Defendant.

Plaintiff Metropolitan Council, for its Complaint against the Defendant 3M Company, alleges as follows:

#### INTRODUCTION

1. The State of Minnesota intends to impose restrictions on the Metropolitan Council's wastewater treatment process that will require the Metropolitan Council to raise \$1 billion in additional fees from area residents and businesses. These restrictions are the result of Mississippi River pollution caused by 3M Company through its discharge of PFOS and other PFC chemicals.

2. With this Complaint, Metropolitan Council seeks to require 3M, rather than Metropolitan Council customers, to pay for or implement any treatment process or other remedy imposed upon Metropolitan Council as a result of 3M's discharges.

#### PARTIES

3. Plaintiff Metropolitan Council is a public corporation and regional governmental political subdivision of the State of Minnesota with headquarters in Saint Paul, Minnesota.

4. Plaintiff State of Minnesota (the "State") is a sovereign state of the United States of America with authority to enforce Minnesota law, including as it relates to protection of natural resources such as groundwater, surface water, sediments, and aquatic life.

5. Plaintiff City of Lake Elmo is a Minnesota municipal corporation located in Washington County, Minnesota.

6. Defendant 3M Company ("3M") is a corporation incorporated in the State of Delaware with 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

7. The Metropolitan Council is a public corporation and political subdivision of the state under Minnesota Statutes Chapter 473. The Metropolitan Council has all powers necessary or convenient to enable it to perform and carry out its duties and responsibilities including the power to sue.

8. Jurisdiction exists in this Court under Minnesota Statutes section 484.01, and venue exists in this Court under Minnesota Statutes sections 116B.03 and 542.09. Among other things, 3M's registered agent is located in Hennepin County, and waters and sediments impaired by 3M's discharge of PFCs are located in Hennepin County.

## FACTUAL BACKGROUND

### Metropolitan Council

9. The Metropolitan Council is responsible for wastewater treatment for the seven county Twin Cities metropolitan area. Costs of wastewater treatment are recovered through fees imposed on users of the Council's wastewater system. Most of these fees are fees paid by municipalities, which then pass the fees on to users. Certain businesses pay fees directly.

10. The Metropolitan Council's discharge of effluent from its wastewater treatment plants is subject to regulation by the Minnesota Pollution Control Agency ("MPCA").

11. The Metropolitan Council's Metropolitan Wastewater Treatment Plant ("Metro Plant") is located on the Mississippi River in Saint Paul just across from the Minneapolis-St. Paul International Airport, 17 miles upstream of 3M's Cottage Grove facility. The Metro Plant is the largest wastewater treatment plant in Minnesota. The Metropolitan Council serves 105 communities, including more than 2 million people, all of which would be subject to higher fees to pay for added costs related to PFOS treatment at the Metro Plant or any other Metropolitan Council treatment plant.

### 3M's Discharges

12. In the late 1940s, 3M began research and development that led to commercial production of a group of chemicals known as perfluorochemicals, or PFCs, in Minnesota. 3M used PFCs in numerous products, including but not limited to stain repellents like Scotchguard™, fire

retardants, stain removers, and other chemical products. 3M commercially manufactured PFCs at 3M's Cottage Grove facility until 2002. On information and belief, 3M was the sole manufacturer in the US of a PFC known as perfluorooctane sulfonate or "PFOS."

13. Certain PFCs are resistant to breakdown or environmental degradation. PFCs are therefore persistent when released into the environment and will accumulate in fish and other aquatic animals.

14. 3M's Cottage Grove manufacturing facility is a source of discharge of PFOS into the waters and sediments of the Mississippi River. 3M admits that 3M wastes containing PFCs were disposed of at the Cottage Grove facility and elsewhere in Minnesota. 3M admits that it discharged wastewater containing PFCs from its Cottage Grove plant. 3M admits that PFC-containing wastewater discharged from its Cottage Grove manufacturing facility has resulted in the release of PFCs which have been detected in certain environmental media.

15. The State alleged in its Amended Complaint that 3M's release and discharge of PFCs into the groundwater and surface water violate Minnesota water quality rules and were not authorized or permitted by the State. The State also alleged that 3M was not authorized by the MPCA to discharge PFCs into waters of the State at the Cottage Grove site or any other 3M site.

16. The 3M Cottage Grove plant discharges into "Pool 2" of the Mississippi River. Pool 2 is a 33-mile stretch of the Mississippi River that runs from the Ford Dam (Lock and Dam 1) to Lock and Dam Number 2 at Hastings, which is 1.5 miles downstream from 3M. Specifically, 3M discharges into what MPCA has identified as Section 4 of Pool 2, which is the furthest downstream segment of Pool 2. A locator map is attached as Exhibit A.

17. In 2007 the MPCA and 3M entered into a Settlement Agreement and Consent Order requiring 3M to take certain steps to remediate its releases of PFCs at sites including Cottage Grove.

## PFOS Contamination

18. PFOS is the only PFC that accumulates to levels of concern in fish.

19. Because of high levels of PFOS in tissues of freshwater drum, the Minnesota Department of Health (“MDH”) Fish Consumption Guidelines recommend citizens consume no more than one meal per month of freshwater drum taken from Pool 2.

20. In 2008, as a result of the MDH’s Fish Consumption Guidelines recommendation, MPCA listed Pool 2 in its entirety 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.

21. The State alleged in its Amended Complaint that the PFC contamination that led to the MDH fish consumption advisory and the MPCA impairment listing for Pool 2 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. Groundwater also carries PFOS from the 3M facility to the river.

22. By far the highest PFOS readings in Section 4 of Pool 2 were those closest to the discharge outlets from the 3M Cottage Grove facility on the north bank of the river. Soils and groundwater at 3M Cottage Grove are contaminated with PFOS to concentrations that are up to several orders of magnitude higher than concentrations observed upstream of 3M. A 2006 MPCA study estimated that 3M may have released 50,000 pounds of PFCs to the river every year for several decades, and as recently as 2006 was releasing an estimated 3,500 pounds per year.

23. In 2009, MPCA conducted a study that found average PFOS concentrations were above Minnesota Department of Health (“MDH”) advisory levels in the fish tissue of freshwater drum fish (sometimes called sheepshead) in Section 4 of Pool 2.

24. Section 4, the location of 3M's facility, is the only portion of Pool 2 with contaminated drum fish. Freshwater drum in Sections 1 through 3 showed no impairment, with PFOS concentrations well below the MDH advisory level. In contrast, concentrations of PFOS in fish in Section 4 were 10 to 100 times higher than those in Sections 1 through 3. The MDH fish advisory and subsequent MPCA declaration of impairment, however, include the entire Pool 2.

25. About 85% of PFOS found in freshwater drum comes from river sediment, not water, as the drum eat benthic organisms that absorb PFOS from the contaminated sediment.

26. The State has alleged in its Amended Complaint that the damage caused by 3M's disposal and discharge of PFOS and other PFCs is continuing, including the injuries to and destruction and loss of use of the State of Minnesota's natural resources. The sources of PFC pollution at sites where 3M disposed of or discharged PFOS and other PFCs have not been entirely controlled or abated, and PFOS and other PFCs continue to spread in the environment. This injury and damage will continue into the future, unless and until completely remediated.

27. Sediment can be remediated directly at Section 4 of Pool 2 through excavation or other remedial techniques.

#### The Impact of 3M's PFOS Contamination on the Metropolitan Council

28. MDH has issued a Health Risk Limit for PFOS of 300 parts per trillion. A Health Risk Limit is the amount of a chemical in drinking water that MDH scientists consider safe for people to drink daily for a life time. Thus any drinking water with 300 parts per trillion or less of PFOS does not pose a health risk. 300 parts per trillion is less than a quarter teaspoon in a 660,000 gallon Olympic-sized swimming pool.

29. The current PFOS discharge from the Metro Plant is about 60 parts per trillion, one fifth of the drinking water standard.

30. In addition, available data demonstrate that any PFOS discharged from the Metro Plant dissipates to undetectable levels in both the water and the sediment before reaching Section 4. The Metropolitan Council, therefore, cannot be contributing to the elevated levels of PFOS in fish tissue in Section 4.

31. MPCA has stated unconditionally to Metropolitan Council that because of the PFOS contamination in the river caused by 3M, MPCA will require Metropolitan Council to drastically reduce PFOS discharges from the Metro Plant when the next State permit is issued.

32. Specifically, the State has promised it will require Metropolitan Council to reduce PFOS discharges from its Metro Plant to a maximum PFOS discharge of 10 parts per trillion as a monthly average and 17 parts per trillion as a daily maximum. This monthly average is 30 times cleaner than MDH's standard for drinking water.

33. Moreover, a standard of 10 parts per trillion is not reliably attainable with known technology.

34. The costs of attempting to achieve a PFOS discharge of 10 parts per trillion or less are massive. Metropolitan Council has estimated costs of retrofitting the Metro Plant to meet MPCA's stated PFOS limitation at \$500 million, with another \$500 million to operate the system, for a total costs of \$1 billion to be paid for by metro area residents and businesses through higher fees. Additional costs may result from MPCA limits imposed at other Metropolitan Council treatment works.

35. Based on present information, the costs of addressing PFOS through remediation near the 3M plant are a fraction of the costs of attempting to reduce discharges at the Metropolitan Council's Metro Plant to 10 parts per trillion.

36. The limits MPCA will impose on Metropolitan Council are a result of 3M's conduct, not the Council's. 3M is responsible for the costs of meeting those limits.

COUNT ONE  
COST RECOVERY UNDER MERLA SEC. 115B.04

37. Metropolitan Council re-alleges all prior paragraphs of its complaint.

38. Minnesota Statutes section 115B.04 subd. 1(1) of the Minnesota Environmental Response and Liability Act (“MERLA”) allows any political subdivision to obtain strict, joint and several liability against a polluter for “all reasonable and necessary response costs incurred” by the political subdivision in addressing pollution.

39. Response costs include “removal,” which includes “other actions necessary to prevent, minimize or mitigate damage” and includes actions taken in anticipation of a threatened release. Minn. Stat. § 115B.02, subd. 17.

40. 3M is a responsible person under MERLA for the release and threatened release of PFCs and PFOS from its Cottage Grove facility.

41. As a result of 3M’s pollution of the Mississippi River with PFOS and other PFC contaminants, Metropolitan Council has incurred and will continue to incur response costs projected at \$1 billion, which it is entitled to recover from 3M.

42. Metropolitan Council is also entitled under section 115B.14 to recover its attorney fees and designated costs in seeking this relief.

COUNT TWO  
DECLARATORY RELIEF UNDER  
MINNESOTA ENVIRONMENTAL RIGHTS ACT CH. 116B

43. Metropolitan Council re-alleges all prior paragraphs of its complaint.

44. Under Minnesota Statutes section 116B.03, as a political subdivision of the state, Metropolitan Council may maintain a civil action for declaratory or equitable relief for the protection of the water and other natural resources from pollution, impairment or destruction.



45. Pool 2 of the Mississippi River is a protectable natural resource under Chapter 116B. 3M's discharge of PFOS and PFCs has, or is likely to cause the pollution, impairment, or destruction of the resource.

46. Metropolitan Council seeks declaratory and equitable relief against 3M's pollution of the waters and sediments of the Mississippi River with PFOS and other PFC contaminants. Specifically, the Metropolitan Council seeks a declaration that 3M is responsible for PFOS contamination in Pool 2 of the Mississippi River and an order requiring 3M to assume responsibility for conducting and paying for all remedial action.

COUNT THREE  
NEGLIGENCE

47. Metropolitan Council re-alleges all prior paragraphs of its complaint.

48. 3M had a duty to act reasonably and responsibly with regard to the disposal of its PFOS waste in a manner that would protect Metropolitan Council and area residents from reasonably foreseeable harm.

49. 3M breached this duty when it chose to discharge or dispose of PFOS in the Mississippi River.

50. 3M's breach of this duty was and will be the direct or proximate cause of the injuries to Metropolitan Council and resultant damages, namely the cost of the improvements to be required by the State.

51. Metropolitan Council 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.

52. In addition to its damages, Metropolitan Council 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.

WHEREFORE, Metropolitan Council requests an Order and Judgment of this Court

granting:

1. Judgment in favor of the Metropolitan Council and against Defendant for all of Metropolitan Council's damages, remedial costs and injuries directly or proximately caused by 3M's conduct in an amount in excess of \$50,000 to be proven with specificity at trial;
2. An award of pre-judgment interest on all damages incurred;
3. A declaration that 3M is responsible for PFOS contamination in Pool 2 of the Mississippi River and an order requiring 3M to assume responsibility for conducting and paying for all remedial action.
4. An injunction against 3M from and against the continuing contamination that PFOS or any other substance is causing, and an order that 3M must abate the contamination;
5. An award of Plaintiff's costs and disbursements;
6. An award of Plaintiff's reasonable attorney fees and costs pursuant to Minnesota Statutes section 115B.14 and all other applicable rules and law; and
7. Any other legal or equitable relief this Court deems just and appropriate.

**METROPOLITAN COUNCIL**

Dated:

Nov. 7, 2011



DANIEL L. ABELSON  
Atty. Reg. No. 0327554

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ATTORNEYS FOR  
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COUNCIL

ACKNOWLEDGEMENT

Plaintiff/Intervenor Metropolitan Council acknowledges through its undersigned counsel that sanctions may be imposed pursuant to Minn. Stat. § 549.211 if, after notice and a reasonable opportunity to respond, the Court determines that a party has violated Minn. Stat. § 549.211, subd.2.

Dated: Nov. 7, 2011

  
\_\_\_\_\_  
DANIEL L. ABELSON  
Atty. Reg. No. 0327554



**EXHIBIT A**

STATE OF MINNESOTA  
COUNTY OF HENNEPIN

FILED PSL

11 NOV -7 PM 3:03

DISTRICT COURT  
FOURTH JUDICIAL DISTRICT  
Case Type: Other/Civil

BY: \_\_\_\_\_ DEPUTY  
HENN. CO. DISTRICT  
COURT ADMINISTRATOR

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

Court File No: 27-CV-10-28862  
Judge Margaret A. Daly

Plaintiff,

City of Lake Elmo, a Minnesota municipal corporation,

**AFFIDAVIT OF SERVICE**

and

Metropolitan Council,

Plaintiffs/Intervenors,

v.

3M Company,

Defendant.

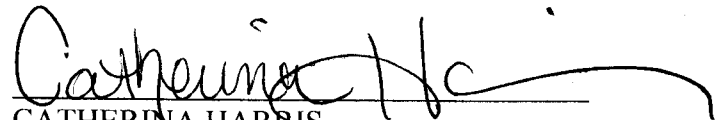
STATE OF MINNESOTA )  
 )ss.  
COUNTY OF RAMSEY )

CATHERINA HARRIS, being first duly sworn, on oath deposes and states that on the 7th day of November, 2011, she did cause to be served a true and correct copy of **Metropolitan Council's Notice of Intervention, Complaint, Certificate of Representation and Parties, Motion for Admission Linda E. Benfield and Paul Bargren, Pro Hac Vice, and proposed Order for Pro Hac Vice** by facsimile to the numbers identified below and by U.S. Mail, in an envelope properly sealed and with postage prepaid thereon, addressed to:

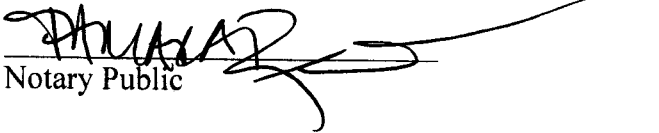
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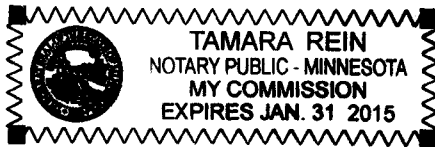
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CATHERINA HARRIS

Subscribed and sworn to before  
me this 7<sup>th</sup> day of November, 2011.

  
Notary Public



November 7, 2011

Court Administrator  
Hennepin County Government Center  
300 South 6<sup>th</sup> Street  
Minneapolis, MN 55487

**Re: *State of Minnesota v. 3M***  
**Court File No. 27-CV-10-28862**

Dear Court Administrator:

Enclosed for filing please find Metropolitan Council's Notice of Intervention, Complaint, Certificate of Representation and Parties, Motion for Admission Linda E. Benfield and Paul Bargren, *Pro Hac Vice*, and proposed Order for *Pro Hac Vice* along with an Affidavit of Service in the above-referenced matter. Also enclosed please find a check in the amount of \$422.00 representing the \$322 filing fee along with the \$100 motion fee.

Thank you for your assistance in this matter.

Sincerely,



Daniel L. Abelson  
Associate General Counsel

Enclosures

cc: Mark W. Lee, Attorney for 3M Company  
Robert B. Roche, Assistant Attorney General  
David K. Snyder, Attorney for City of Lake Elmo  
The Honorable Margaret A. Daly, Judge of District Court