Green: MDEQ; Blue: Wolverine; Pink: Townships

MICHIGAN DEPARTMENT OF ENVIRONMENTAL QUALITY'S FIRST PARTY COMPLAINT AGAINST WOLVERINE WORLDWIDE, INC.

Claims and Defenses	Summary of Facts In Support	Legal Authority In Support (Statutory or Case Law)
MDEQ: **Claim 1:** Section 7002(a)(l)(B) of RCRA, 42 U.S.C. § 6972(a)(l)(B) – Imminent and Substantial Endangerment	• Wolverine utilized its Rockford Tannery and affiliated properties for nearly a century to process hides and leathers to make shoes, boots, and other consumer goods. (ECF No. 1, PageID 5, ¶ 14.) • Wolverine used materials containing PFAS in its operations at the Tannery for decades. (ECF No. 1, PageID 6, ¶ 20.) • Wolverine generated wastes containing PFAS at its former Tannery on property it owned in Rockford. (ECF No. 1, PageID 5, 6, ¶¶ 13, 16.) • Wolverine buried or placed tannery wastes, including hides and leather, on the Tannery site. (ECF No. 1, PageID No. 5, ¶ 15.) • The wastes from Wolverine's production processes are discarded materials from their industrial operations that are solid wastes covered by RCRA's statutory definition. (ECF No. 1, PageID 10, ¶ 39.) • Wolverine contributed to the handling, storage and treatment of PFAS and PFAS-containing wastes at and near the former Tannery, and also transported or arranged for transportation of wastes containing PFAS to the House Street Disposal Site and other areas where it disposed of the PFAS-containing wastes into the environment. (ECF No. 1, PageID 5–6, ¶¶ 15–2 1.)	• RCRA, 42 U.S.C. § 6901 to 6992k • §6972(a)(1)(B) citizen suit provision • *Davis v. Sun Oil Co.*, 148 F.3d 606 (6th Cir. 1998) (RCRA is a remedial measure that courts construe and apply broadly; finding an imminent and substantial endangerment does not require actual harm, it means a threatened or potential harm *citing Dague v. City of Burlington,* 935 F.2d 1343, 1355–56 (2d. Cir. 1991); specific circumstances of a disposal site may justify a finding of imminent and substantial endangerment as a matter of law where large and unmitigated hazards are present). • *Zands v. Nelson,* 797 F.Supp. 805 (S.D. Cal. 1992) (finding imminent and substantial endangerment as a matter of law based on evidence of location and quantity of contamination at summary disposition stage). • *Paper Recycling, Inc. v. Amoco Oil Co,* 856 F. Supp 671 (1993) (rejecting defendant's motion for summary judgment, and finding presence of contaminant may present an imminent and substantial endangerment to health or the environment; remedial actions taken b)y the defendant and compliance with a government order not determinative of whether imminent and substantial endangerment exists; RCRA applies to past or present actions that contributed to or are contributing to disposal of waste which may present an imminent and substantial endangerment to health of the environment.) • *Cox v. City of Dallas, Tex.*, 256 F.3d 281 (5th Cir. 2001)(no error in court's finding that imminent and substantial endangerment to

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	• Wastes containing PFAS identified at Wolverine disposal sites have been determined to be byproducts and waste materials from Wolverine's operations. • Wolverine's PFAS-containing wastes have leached PFAS contaminants into the environment. (ECF No. 1, PageID 6 and 7, ¶¶ 22 and 26.) • PFAS chemicals are persistent in the environment and do not break down easily, and they bioaccumulate in plants, animals, and humans. • EPA has determined that human exposure to PFOA and PFOS, two of the prominent PFAS chemicals in Wolverine's wastes, present a risk of adverse health effects to humans including but not limited to development, thyroid, liver, and immune system effects. (ECF No. 1, PageID 11, ¶ 40.) • Elevated levels of PFOA and PFOS have been found in surface water, river sediment, foam, and animals and have led to the issuance of a fish consumption advisory and a health advisory regarding PFAS foam for some waterways impacted by PFAS released by Wolverine. • Levels of PFOA and PFOS measured at the former Tannery, at the House Street Disposal Area, and at other disposal areas used by Wolverine greatly exceed the State of Michigan's water quality standards and cleanup criteria, and greatly exceed federally-issued lifetime health advisory levels. • Levels of PFOA and PFOS in groundwater, surface water, foam, sediment, and waste have been measured at elevated levels in areas and on property not owned by Wolverine, where the contamination has migrated from areas where Wolverine disposed of its PFAS-containing waste.	health or the environment existed at 2 open dumps; threatened harm being present is sufficient; imminence found in possible discharge into creek, possible leaching (no evidence of either); possibility of leachate and gases sufficient to meet imminent and substantial endangerment showing). • *Maine People's Alliance And Natural Resources Defense Council v. Mallinckrodt, Inc.*, 471 F.3d 277 (1st Cir. 2006) (reasonable prospect of future harm is adequate to invoke the citizen suit provision of RCRA; showing of a reasonable scientific concern for the environment was enough to establish imminent and substantial endangerment; court did not abuse discretion by ordering defendant to pay for study of contamination). • *Kara Holding Corp. v. Getty Petroleum Marketing, Inc.,* 67 F. Supp. 2d 302 (S.D.N.Y. 1999) (plaintiff did not have to show ongoing leaks or current violations of RCRA; only required to show that previously spilled contaminant had not been satisfactorily removed, and that remaining waste might pose an imminent and substantial endangerment; plaintiff survived SJ). • *Volunteers of America of Western New York v. Heinrich,* 90 F. Supp. 2d 252 (W.D.N.Y. 2000) (presence of contamination on site and allegation of threat of serious harm to ecology through migration into deep bedrock and groundwater enough to meet imminent and substantial endangerment basis for cause of action under RCRA citizen suit provision). • *Interfaith Community Org. v. Honeywell Intern., Inc.*, 399 F.3d 248 (3d Cir. 2005) (district court's findings after trial that hexavalent chromium presented imminent and substantial endangerment to both human health and the environment, as well as actual harm to environment, were not clearly erroneous, also affirming district court's injunction requiring excavation and removal cleanup)

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	• Analytical data from soil, surface water, foam, sediments, waste, and groundwater investigations show PFOA and PFOS at and migrating from Wolverine's properties and disposal areas at high concentrations. • Analytical data from drinking water well testing shows that residents of North Kent County were exposed to high levels of PFAS contamination that migrated from Wolverine's wastes through the groundwater into their private drinking water wells. (ECF No. 1, Page ID 8–9, ¶ 28 and 30.) • Residents are still at risk of exposure to PFAS contamination. • The use of residential filters has not abated the imminent and substantial endangerment posed by Wolverine's PFAS contamination, in part because Wolverine has failed to submit an approvable filter plan, has failed to demonstrate the efficacy of the filters it has installed, and has failed to demonstrate the filters are reliable. • The geology of the area and the behavior of PFAS in the environment further support the direct link between Wolverine's wastes and the groundwater contamination affecting residents with drinking water wells and the environment in North Kent County. • The volume and concentration of the contamination from Wolverine's PFAS waste continues to exceed state cleanup standards and federal health advisory levels, and continues to pose a risk to the drinking water of residents in the area.	

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	• The movement of PFAS through soil and groundwater, the complex geology of the area, and the high levels of contamination in the soil and groundwater create conditions that have exposed residents to unacceptable levels of PFAS in drinking water, and those high levels continue to exist in the groundwater that is the source of drinking water for hundreds of residents. • State health officials have issued a health consult letter recommending a that a new, permanent water source be provided to residents in some areas where Wolverine's PFAS contamination is impacting residential drinking water wells. • Contamination migrating from areas where Wolverine disposed of PFAS-containing wastes has impacted the aquifers, making them unusable as a source of drinking water, and the contaminated groundwater poses a threat to residents. • Where drinking water wells are located in areas of contamination, county health officials have denied at least one replacement drinking water well permit because the Well Code prohibits the placement of a residential drinking water well in an area of contamination. See Mich. Admin. Code R 325.1622(1). • Contamination from Wolverine's disposal of wastes at the former Tannery and other areas is migrating into the Rogue River and other waterways at levels that exceed state water quality standards for PFOA and PFOS. (ECF No. 1, PageID 6–7, ¶¶ 22–25.)	

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	• The continuing undefined and unabated presence of high concentrations of PFAS contamination in groundwater in the area poses an imminent and substantial endangerment to residents using drinking water wells and to the environment in areas impacted by Wolverine's disposal of PFAS-containing wastes. • U.S. EPA's January 10, 2018 unilateral administrative order to Wolverine was issued pursuant to EPA's authority under CERCLA to "abate the imminent and substantial endangerment to the public health or welfare or the environment that may be present by the actual or threatened release of hazardous substance at or from the [House Street Disposal site and the Tannery site]." The Order issued by EPA covers hazardous substances as defined under CERCLA, which at the time of issuance of the Order and at the time of this filing do not include PFAS. EPA and MDEQ (now EGLE) coordinated closely on actions related to House Street and the Tannery, and EPA's Order does not bar MDEQ's action against Wolverine that relates to PFAS contamination released at these sites.	
Wolverine: **First Defense to Claim 1:** There is no imminent and substantial endangerment, and Plaintiffs' claims are moot.	RCRA does not regulate how cleanup outcomes are achieved. Rather, it regulates only the outcome itself. Here, the outcome of providing every affected resident with access to clean and reliable water has already been achieved. When the MDEQ (now EGLE) has implemented cleanup actions at other sites impacted by PFAS, it has not supplied bottled water at the time of sampling. Rather, it provided alternate water only after sampling results showed the presence of PFAS. Only when PFAS were	Even in situations where Kent County health officials have refused to issue a well permit that would allow residents access to filtered water, Wolverine is providing homeowners with access to safe and reliable water. *See In re Nylaan Litigation*, Case No. 17-10716-CZ, at ¶ 3.a (Mich Cir. Ct. May 31, 2019) ("Despite the inconvenience to the Hulas, they do have access to safe and reliable water."). (**Attached as Exhibit A.**) Cleanup actions to address exposure pathways eliminate any imminent and substantial endangerment and bar a RCRA claim even if contaminants remain in the soil and groundwater. *Leister v. Black &*

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	detected did it provide a filter, and the filters that MDEQ provided are point-of-use filters, not whole-house filters. The MDEQ deems those actions adequate at the sites at which it undertakes them. By comparison, in Wolverine's sampling of over 1,500 residential wells for PFAS compounds, Wolverine offered bottled water to every resident at the time of sampling; for homes where PFOA or PFOS was detected, Wolverine provided filters, including over 500 whole-house filters; Wolverine has monitored the filters, some as often as weekly, to ensure their effectiveness; it has collected thousands of verification samples from hundreds of homes, and none of the actual data gathered from over 18 months of operation has even suggested that the filters are not effective or reliable. The same whole house filtration systems have been used for similar remedial actions at other PFAS sites, including in Vermont and New York. There is no dispute that every affected resident has access to a filter, and there is no dispute that the filters are effective at removing PFOA and PFOS from drinking water. The technology (i.e., granular activated carbon) utilized in the filters Wolverine installed is identical to the technology utilized by municipal water systems, including the one operated by Plainfield Township, to address PFOA and PFOS. Residents with whole house filters already have clean water filtered by the same technology as municipal water.	*Decker (U.S.), Inc.*, 117 F.3d 1414 (table) (4th Cir. 1997) (dismissing imminent and substantial endangerment claim even though contaminants were present in groundwater because filtration systems eliminated any potential threat from drinking the water); *Foster v. United States*, 922 F. Supp. 642, 662 (D.D.C. 1996) (finding no imminent and substantial endangerment because even though there was significant contamination present on the property, there was no exposure to the contamination); *Price v. United States*, 818 F. Supp. 1323, 1325 (S.D.Cal.1992) (finding no imminent and substantial endangerment because even though contamination was left on the property remedial actions had adequately addressed exposure pathways); *Tilot Oil, LLC v. BP Prod. N. Am., Inc.* 907 F. Supp. 2d 955, 966–67 (E.D. Wis. 2012) (finding no imminent and substantial endangerment because exposure to the contamination was being addressed, even though there was a risk that the ongoing remedial actions could fail); *Lucero v. Detroit Pub. Sch.*, 160 F. Supp. 2d 767 (E.D. Mich. 2001) ("Where the nonmovant has taken remedial action, the balance of harms is readjusted because the potential for harm to the movant has been eliminated."); *Warren v. Matthey*, No. CV 15-01919, 2016 WL 215232, at *7 (E.D. Pa. Jan. 19, 2016) (finding no imminent and substantial endangerment because, among other reasons, contaminated water was being filtered by a whole house filter). The Court's authority to order a remedy necessarily includes the authority to order state and local agencies to take steps to allow that remedy to be implemented, even if those steps would violate state law. 28 U.S.C. § 1651; *Washington v. Wash. State Comm. Passenger Fishing Vessel Assn.*, 443 U.S. 658 (1979).

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	Kent County health officials and Plainfield and Algoma Townships are actively interfering with Wolverine's remedial action. Kent County Health officials have denied at least one replacement drinking water well permit and have threatened to deny others. The Townships have publicly threatened to pass an ordinance that would ultimately prohibit the installation and use of whole house filters. Those actions by the County and Townships seek to deny affected residents a safe and effective remedy. Yet all of the affected residents can be provided with clean drinking water from their wells if this Court orders that filters are an effective remedy.	
Wolverine: **Second Defense to Claim 1:** Plaintiffs' claims are barred, in whole or in part, by the statutory defenses to liability set forth in RCRA.	The U.S. EPA is already diligently prosecuting an action against Wolverine under section 106 of CERCLA. The U.S. EPA issued a unilateral administrative order to Wolverine on January 10, 2018, with an effective date of February 1, 2018. Wolverine sent a response letter to EPA dated February 1, 2018, indicating that it would comply with the order but also preserving objections to the order. Wolverine has been implementing the order, under objection, ever since. Wolverine has conducted significant remedial investigation activities at House Street and the tannery, submitted final reports regarding that investigation, and submitted work plans for active environmental cleanup at the tannery and House Street sites. https://www.epa.gov/mi/wolverine-world-wide-tannery	No action may be commenced under section 7002(a)(1)(B) of RCRA if the EPA is already diligently prosecuting an action under section 106 of CERCLA. 42 U.S.C. 6972(b)(2)(B); *Carrier Corp. v. Piper*, 460 F. Supp. 2d 853, 857, 860 (W.D. Tenn. 2006) (finding that RCRA suit "would duplicate remediation efforts already underway" pursuant to the EPA's section 106 order); *LeClercq v. Lockformer Co.*, No. 00 C 7164, 2002 WL 907969, at *5 (N.D. Ill. May 6, 2002) (finding that RCRA claim was barred because EPA had issued an order under § 106 of CERCLA).

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***MDEQ:* Claim 2:** Part 201 of the NREPA, Mich. Comp. Laws § 324.20102(c) – Liability under Part 201 of the NREPA	• Wolverine utilized its Rockford Tannery and affiliated properties for nearly a century to process hides and leathers to make shoes, boots, and other consumer goods. (ECF No. 1, PageID 5, ¶ 14.)
	• Wolverine used materials containing PFAS in its operations at the Tannery for decades. (ECF No. 1, PageID 6, ¶ 20.)
	• Wolverine generated wastes containing PFAS at its former Tannery on property it owned in Rockford. (ECF No. 1, PageID 5, 6, ¶¶ 13, 16.)
	• Wolverine buried or placed tannery wastes, including hides and leather, on the Tannery site. (ECF No. 1, PageID No. 5, ¶ 15.)
	• Wolverine owned and operated the Tannery and the House Street Disposal Area, where its operations and disposal practices caused the release of hazardous substances into the environment. (ECF No. 1, PageID 5-6, ¶¶ 13–21.)
	• Wolverine arranged for the disposal of and disposed of materials containing hazardous substances at its own properties and in other disposal areas in Kent County. (ECF No. 1, PageID 6, ¶¶ 16–19.)
	• Wolverine's PFAS-containing wastes have leached PFAS contaminants into the environment. (ECF No. 1, PageID 6 and 7, ¶¶ 22 and 26.)
	• PFAS chemicals are persistent in the environment and do not break down easily, and they bioaccumulate in plants, animals, and humans.
	• EPA has determined that human exposure to PFOA and PFOS, two of the prominent PFAS chemicals in Wolverine's wastes, present a risk of adverse health
		• Part 201, Environmental Contamination, of the Natural Resources and Environmental Protection Act, Mich. Comp. Laws §§ 324.20101 *et seq.,* and the Part 201 Rules.
		  • MCL 324.20101; 324.20102; 324.20114; 324.20126(1)(a), (b), and (d); 324.20126a; 324.20137; 324.20139.
		  • Mich. Admin. Code R. 299.1-299.50.
		  • *Department of Natural Resources and Environment v. Strefling Oil Co.,* 2014 WL 3747347, at *2-*4 (applying Part 201 liability provisions and definitions of "owner," "operator," and "release" to leaking underground storage tank case, and finding defendants liable under "unambiguous" statutory language).
		  • *Tennine Corp. v. Boardwalk Commercial, L.L.C.,* 315 Mich. App. 1, 8–9 (2016) (applying Part 201 liability provisions in context of standing analysis).
		• *Attorney General ex rel Department of Environmental Quality v. Bulk Petroleum Corp.,* 276 Mich. App. 654 (2007) (case under Part 213 (Leaking Underground Storage Tanks), which is a complementary and similarly worded cleanup program in the NREPA, upholding trial court's imposition of over $2 million in civil fines for noncompliance with the statute, on top of Department's imposition of statutory civil penalties).

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	effects to humans including but not limited to development, thyroid, liver, and immune system effects. (ECF No. 1, PageID 11, ¶ 40.) • Elevated levels of PFOA and PFOS have been found in surface water, river sediment, foam, and animals and have led to the issuance of a fish consumption advisory and a health advisory regarding PFAS foam for some waterways impacted by PFAS released by Wolverine. • Levels of PFOA and PFOS measured at the former Tannery, at the House Street Disposal Area, and at other disposal areas used by Wolverine greatly exceed the State of Michigan's water quality standards and cleanup criteria, and greatly exceed federally-issued lifetime health advisory levels. • Levels of PFOA and PFOS in groundwater, surface water, foam, sediment, and waste have been measured at elevated levels in areas and on property not owned by Wolverine, where the contamination has migrated from areas where Wolverine disposed of its PFAS-containing waste. • Analytical data from soil, surface water, foam, sediments, waste, and groundwater investigations show PFOA and PFOS at and migrating from Wolverine's properties and disposal areas at concentrations exceeding Michigan water quality standards, Part 201 groundwater and groundwater-surface water interface criteria. • Analytical data from drinking water well testing shows that residents of North Kent County were exposed to high levels of PFAS contamination that migrated from Wolverine's wastes through the groundwater into their private drinking water wells. (ECF No. 1, Page ID 8–9, ¶ 28 and 30.)	

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	• Residents are still at risk of exposure to PFAS contamination. • The use of residential filters has not abated the danger to the public health, safety, or welfare posed by Wolverine's PFAS contamination, in part because Wolverine has failed to submit an approvable filter plan, has failed to demonstrate the efficacy of the filters it has installed, and has failed to demonstrate the filters are reliable. • The geology of the area and the behavior of PFAS in the environment further support the direct link between Wolverine's wastes and the groundwater contamination affecting residents with drinking water wells and the environment in North Kent County. • The volume and concentration of the contamination from Wolverine's PFAS waste continues to exceed state cleanup standards and federal health advisory levels, and continues to pose a risk to the drinking water of residents in the area. • The movement of PFAS through soil and groundwater, the complex geology of the area, and the high levels of contamination in the soil and groundwater create conditions that have exposed residents to unacceptable levels of PFAS in drinking water, and those high levels continue to exist in the groundwater that is the source of drinking water for hundreds of residents. • State health officials have issued a health consult letter recommending a that a new, permanent water source be provided to residents in some areas where Wolverine's PFAS contamination is impacting residential drinking water wells. • Contamination migrating from areas where Wolverine disposed of PFAS-containing wastes has impacted the	

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	aquifers, making them unusable as a source of drinking water, and the contaminated groundwater poses a threat to residents. • Where drinking water wells are located in areas of contamination, county health officials have denied at least one replacement drinking water well permit because the Well Code prohibits the placement of a residential drinking water well in an area of contamination. See Mich. Admin. Code R 325.1622(1). • Contamination from Wolverine's disposal of wastes at the former Tannery and other areas is migrating into the Rogue River and other waterways at levels that exceed state water quality standards for PFOA and PFOS. (ECF No. 1, PageID 6–7, ¶¶ 22–25.) • The continuing undefined and unabated presence of high concentrations of PFAS contamination in groundwater in the area poses an unacceptable risk to the public health, safety, welfare, and to the environment. • Wolverine's operations and disposal practices caused releases of PFAS into the environment at levels that exceed Michigan's criteria.	
Wolverine: **First Defense to Claim 2:** The response costs incurred by the State are unrecoverable because they were not necessary, and any potential future costs are speculative and are unrecoverable for the same reason.	Part 201 does not regulate how cleanup outcomes are achieved. Rather, it regulates only the outcome itself. Here, the outcome of providing every affected resident with access to clean and reliable water has already been achieved. When the MDEQ (now EGLE) has implemented cleanup actions at other sites impacted by PFAS, it has not supplied bottled water at the time of sampling. Rather, it provided alternate water only after sampling results showed the presence of PFAS. Only if PFAS are detected	Recoverable response costs are an element of a plaintiffs' prima facie case under Part 201. MCL 324.20126a; *City of Detroit v. Simon*, 247 F.3d 619, 630 (6th Cir. 2001); *Saline River Props., LLC v. Johnson Controls, Inc.*, 823 F. Supp. 2d 670, 683–84 (E.D. Mich. 2011). Response costs are not recoverable if they are not necessary, and costs are not necessary when an adequate remedy has already been implemented. *City of Detroit v. Simon*, 247 F.3d 619, 630 (6th Cir. 2001) (holding that municipal plaintiff was not entitled to recover response costs that went beyond what was necessary to make property suitable for its intended use); *In re Bell Petroleum Servs., Inc.*, 3 F.3d

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	did it provide a filter, and the filters that MDEQ provided are point-of-use filters, not whole house filters. The MDEQ deems those actions adequate at the sites at which it undertakes them. By comparison, in Wolverine's sampling of over 1,500 residential wells for PFAS compounds, Wolverine offered bottled water to every resident at the time of sampling; for homes where PFOA or PFOS was detected, Wolverine provided filters, including over 500 whole house filters; Wolverine has monitored the filters, some as often as weekly, to ensure their effectiveness; it has collected thousands of verification samples from hundreds of homes, and none of the actual data gathered from over 18 months of operation has even suggested that the filters are not effective or reliable. The same whole house filtration systems have been used for similar remedial actions at other PFAS sites, including in Vermont and New York. There is no dispute that every affected resident has access to a filter, and there is no dispute that the filters are effective at removing PFOA and PFOS from drinking water. The technology (i.e., granular activated carbon) utilized in the filters Wolverine installed is identical to the technology utilized by municipal water systems, including the one operated by Plainfield Township, to address PFOA and PFOS. Residents with whole house filters already have clean water filtered by the same technology as municipal water.	889, 907 (5th Cir. 1993); *Reg'l Airport Auth. of Louisville v. LFG, LLC*, 460 F.3d 697, 706 (6th Cir. 2006); *Taylor Land Grp., L.L.C. v. BP Prod. N. Am., Inc.*, No. 294764, 2011 WL 2119670, at *5–6 (Mich. Ct. App. May 26, 2011); *RCO Eng'g, Inc. v. ACR Indus., Inc.*, 235 Mich. App. 48, 529 n.15 (2001). Failure to show a right to recover past costs forecloses the ability to obtain a declaration of liability for future costs. *City of Colton v. Am. Promotional Events, Inc.-West,* 614 F.3d 998, 1007–1008 (9th Cir. 2010) (collecting CERCLA cases); *see also Ga.-Pacific Consumer Prods. LP v. NCR Corp.,* 358 F. Supp. 3d 613, 645 (W.D. Mich. 2018) (declining to allocate future costs under CERCLA even in a case where recoverable past costs were established "because there is too much uncertainty about the costs and remediation options that may unfold over a period of many years.").

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	It is not necessary or reasonable for Plaintiffs to incur response costs or to otherwise seek a remedy to protect against a potential threat that Wolverine has already addressed and continues to address.	
***Wolverine:* Second Defense to Claim 2:** Wolverine is not the proximate cause of the complained-of harm, the harm is divisible, and Wolverine has already incurred costs in excess of its fair share.	As detailed in Wolverine's Third-Party Complaint against 3M, Plaintiffs' harm, if any, was caused, at least in part, by acts or omissions, including fraud, of 3M Company, a person over whom Wolverine had no control or any duty to control. 3M has refused to take any responsibility for its actions, while Wolverine has spent tens of millions of dollars undertaking remedial action in the affected area to ensure that every affected homeowner has access to clean and reliable water. Kent County health officials and Plainfield and Algoma Townships are actively interfering with Wolverine's remedial action. Kent County Health officials have denied at least one replacement drinking water well permit and have threatened to deny others. The Townships have publicly threatened to pass an ordinance that would ultimately prohibit the installation and use of whole house filters. Those actions by the County and Townships seek to deny affected residents a safe and effective remedy. Yet all of the affected residents can be provided with clean drinking water from their wells if this Court orders that filters are an effective remedy.	Liability should be apportioned when harm is divisible, and when liability is not divisible fault must be allocated to ensure that no party is held responsible for more than its fair share. MCL 324.20129; *Burlington Northern and Santa Fe Ry. Co. v. United States*, 556 U.S. 599, 613–19 (2009); *United States v. Consol. Coal Co.*, 345 F.3d 409, 413–14 (6th Cir. 2003); *United States v. RW Meyer, Inc*, 932 F2d 568, 572–73 (6th Cir 1991); *Ga.-Pacific Consumer Prods. LP v. NCR Corp.,* 358 F. Supp. 3d 613, 645 (W.D. Mich. 2018); *Forest City Enterprises, Inc v. Nationwide Ins Co*, 228 Mich App 57, 66–70 (1998). The Court's authority to order a remedy necessarily includes the authority to order state and local agencies to take steps to allow that remedy to be implemented, even if those steps would violate state law. 28 U.S.C. § 1651; *Washington v. Wash. State Comm. Passenger Fishing Vessel Assn.*, 443 U.S. 658 (1979).

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INTERVENING TOWNSHIPS' SECOND AMENDED COMPLAINT

AGAINST WOLVERINE WORLDWIDE, INC.

Claims and Defenses	Summary of Facts In Support	Legal Authority In Support (Statutory or Case Law)
Townships: **Claim 1:** Section 7002(a)(1)(B) of RCRA, 42 U.S.C. § 6972(a)(1)(B)—Imminent and Substantial Endangerment	**Facts—House Street Area** (1) April 1, 2019 EGLE Study (Exhibit 1) and May 21, 2019 LHC of DHHS (Exhibit 2) establishes imminent public health hazard via a groundwater plume in House Street Area due to migrating PFOA and PFOS concentrations in plume migrating from WWW's House St. Site. (Exhibit 3, WWW Response to the Townships' Requests to Admit, ¶¶ 2–6.) (2) Conditions stem from WWW's waste disposal of tannery wastes at House Street Site. (Ex. 1; Ex. 2; Ex. 3, ¶ 1.) (3) WWW generated and disposed of tannery wastes at House Street Site. (*Id.*) (4) Municipal water is necessary to eliminate any health risk posed by toxic PFAS and PFOA tannery waste. (Ex. 1; Ex. 2.) **Facts—Wolven/Jewel** (1) WWW's hydrogeologist, Rose and Westra's, RI reports. *Urgent need for present discovery because of age of potential witnesses.* (2) *Urgent need for present discovery because of age of potential witnesses.* (3) Testimony of expert epidemiologist.	**Legal Elements** (1) Conditions exist that may present an imminent and substantial endangerment to health or environment; (2) Conditions stem from handling, storage, treatment, transportation, or disposal of hazardous or solid waste; (3) Defendant has contributed to such handling, storage, treatment, transportation or disposal of hazardous or solid waste;[i] and Proposed remedy is necessary to eliminate any health risk posed by toxic waste.[ii]

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Claims and Defenses	Summary of Facts In Support	Legal Authority In Support (Statutory or Case Law)
***Wolverine:* First Defense to Claim 1:** There is no imminent and substantial endangerment, and Intervening Plaintiffs' claims are moot.	RCRA does not regulate how cleanup outcomes are achieved. Rather, it regulates only the outcome itself. Here, the outcome of providing every affected resident with access to clean and reliable water has already been achieved. When the MDEQ (now EGLE) has implemented cleanup actions at other sites impacted by PFAS, it has not supplied bottled water at the time of sampling. Rather, it provided alternate water only after sampling results showed the presence of PFAS. Only when PFAS were detected did it provide a filter, and the filters that MDEQ provided are point-of-use filters, not whole-house filters. The MDEQ deems those actions adequate at the sites at which it undertakes them. By comparison, in Wolverine's sampling of over 1,500 residential wells for PFAS compounds, Wolverine offered bottled water to every resident at the time of sampling; for homes where PFOA or PFOS was detected, Wolverine provided filters, including over 500 whole house filters; Wolverine has monitored the filters, some as often as weekly, to ensure their effectiveness; it has collected thousands of verification samples from hundreds of homes, and none of the actual data gathered from over 18 months of operation has even suggested that the filters are not effective or reliable. The same whole house filtration systems have been used for similar remedial actions at other PFAS sites, including in Vermont and New York.	Even in situations where Kent County health officials have refused to issue a well permit that would allow residents access to filtered water, Wolverine is providing homeowners with access to safe and reliable water. *See In re Nylaan Litigation*, Case No. 17-10716-CZ, at ¶ 3.a (Mich Cir. Ct. May 31, 2019) ("Despite the inconvenience to the Hulas, they do have access to safe and reliable water."). (**Attached as Exhibit A.**) Cleanup actions to address exposure pathways eliminate any imminent and substantial endangerment and bar a RCRA claim even if contaminants remain in the soil and groundwater. *Leister v. Black & Decker (U.S.), Inc.*, 117 F.3d 1414 (table) (4th Cir. 1997) (dismissing imminent and substantial endangerment claim even though contaminants were present in groundwater because filtration systems eliminated any potential threat from drinking the water); *Foster v. United States*, 922 F. Supp. 642, 662 (D.D.C. 1996) (finding no imminent and substantial endangerment because even though there was significant contamination present on the property, there was no exposure to the contamination); *Price v. United States*, 818 F. Supp. 1323, 1325 (S.D.Cal.1992) (finding no imminent and substantial endangerment because even though contamination was left on the property remedial actions had adequately addressed exposure pathways); *Tilot Oil, LLC v. BP Prod. N. Am., Inc.* 907 F. Supp. 2d 955, 966–67 (E.D. Wis. 2012) (finding no imminent and substantial endangerment because exposure to the contamination was being addressed, even though there was a risk that the ongoing remedial actions could fail); *Lucero v. Detroit Pub. Sch.*, 160 F. Supp. 2d 767 (E.D. Mich. 2001) ("Where the nonmovant has taken remedial action, the balance of harms is readjusted because the potential for harm to the movant has been eliminated."); *Warren v. Matthey*, No. CV 15-01919, 2016 WL 215232, at *7 (E.D. Pa. Jan. 19, 2016) (finding no

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Claims and Defenses	Summary of Facts In Support	Legal Authority In Support (Statutory or Case Law)
	There is no dispute that every affected resident has access to a filter, and there is no dispute that the filters are effective at removing PFOA and PFOS from drinking water. The technology (i.e., granular activated carbon) utilized in the filters Wolverine installed is identical to the technology utilized by municipal water systems, including the one operated by Plainfield Township, to address PFOA and PFOS. Residents with whole house filters already have clean water filtered by the same technology as municipal water. Kent County health officials and Plainfield and Algoma Townships are actively interfering with Wolverine's remedial action. Kent County Health officials have denied at least one replacement drinking water well permit and have threatened to deny others. The Townships have publicly threatened to pass an ordinance that would ultimately prohibit the installation and use of whole house filters. Those actions by the County and Townships seek to deny affected residents a safe and effective remedy. Yet all of the affected residents can be provided with clean drinking water from their wells if this Court orders that filters are an effective remedy.	imminent and substantial endangerment because, among other reasons, contaminated water was being filtered by a whole house filter). The Court's authority to order a remedy necessarily includes the authority to order state and local agencies to take steps to allow that remedy to be implemented, even if those steps would violate state law. 28 U.S.C. § 1651; *Washington v. Wash. State Comm. Passenger Fishing Vessel Assn.*, 443 U.S. 658 (1979).
***Wolverine:* Second Defense to Claim 1:** Money damages are unavailable under RCRA, and the relief sought by	The Townships' Complaint seeks money damages under RCRA. Any costs that the Townships have incurred or will incur are unnecessary and unreasonable because Wolverine is already undertaking remedial action in the affected area.	RCRA is not a cost-recovery statute, and a party may not recover money damages in an action under section 7002(a)(1)(B). *Meghrig v. KFC W., Inc.*, 516 U.S. 479, 484 (1996); *Walls v. Waste Res. Grp.*, 761 F.2d 311, 315–16 (6th Cir. 1985); *Saline River Properties, LLC v. Johnson Controls, Inc.*, No. 10-10507, 2010 WL 2605972, at *7 (E.D. Mich. June 25, 2010).

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Claims and Defenses	Summary of Facts In Support	Legal Authority In Support (Statutory or Case Law)
Intervening Plaintiffs would result in unjust enrichment.		Even under statutory frameworks where money damages are available, duplicative and unnecessary costs are not recoverable. *E.g.*, *Louisiana-Pac. Corp. v. Beazer Materials & Servs., Inc.*, 811 F. Supp. 1421, 1425–26 (E.D. Cal. 1993).
***Wolverine:* Third Defense to Claim 1:** Equity bars Intervening Plaintiffs from seeking equitable relief from Wolverine.	Plainfield and Algoma Townships are actively interfering with Wolverine's remedial action. Among other things, they have publicly threatened to pass an ordinance and otherwise use their police power to prohibit the installation and use of whole house filters. Those actions would deny affected residents a safe and effective remedy. Yet all of the affected residents can be provided with clean drinking water from their wells if this Court orders that filters are an effective remedy	RCRA relief is equitable. *Meghrig v. KFC W., Inc.*, 516 U.S. 479, 484 (1996); *Walls v. Waste Res. Grp.*, 761 F.2d 311, 315–16 (6th Cir. 1985); *Saline River Properties, LLC v. Johnson Controls, Inc.*, No. 10-10507, 2010 WL 2605972, at *7 (E.D. Mich. June 25, 2010). Equity bars any claim where the plaintiff's conduct is "tainted with inequitableness or bad faith relative to the matter in which he seeks relief, however improper may have been the behavior of the defendant." *Rose v. National Auction Group, Inc.*, 646 N.W.2d 455, 463 (Mich. 2002); *Orzel by Orzel v. Scott Drug Co.*, 537 N.W.2d 208, 212–13 (Mich. 1995); *McFerren v. B & B Inv. Grp.*, 655 N.W.2d 779, 783 (Mich. Ct. App. 2002). The Townships' police power does not limit this Court's authority to order a remedy. The Court's authority to order a remedy necessarily includes the authority to order state and local agencies to take steps to allow that remedy to be implemented, even if those steps would violate state law. 28 U.S.C. § 1651; *Washington v. Wash. State Comm. Passenger Fishing Vessel Assn.*, 443 U.S. 658 (1979).
***Wolverine:* Fourth Defense to Claim 1:** Intervening Plaintiffs lack standing because they have not suffered compensable harm fairly	The Townships do not have a proprietary interest in the House Street site, the tannery, Wolven/Jewell, or Northeast Gravel.	Unlike a state, a municipality may bring a RCRA claim only to vindicate its own proprietary interests. *Larwin Mortg. Inv'rs v. Suffolk Co.*, 852 F.2d 568 (Table) (6th Cir. 1988) (quoting *United States v. City of Pittsburg, Cal.*, 661 F.2d 783, 786–87 (9th Cir. 1981)); *In re Multidistrict Vehicle Air Pollution M.D.L., No. 31*, 481 F.2d 131 (9th Cir. 1973); *City of Bangor v. Citizens Commc'ns Co.*, 437 F. Supp. 2d 180, 216 (D. Me. 2006).

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Claims and Defenses	Summary of Facts In Support	Legal Authority In Support (Statutory or Case Law)
traceable to Wolverine's actions.		
***Wolverine:* Fifth Defense to Claim 1:** Intervening Plaintiffs' claims are barred, in whole or in part, by the statutory defenses to liability set forth in RCRA.	The U.S. EPA is already diligently prosecuting an action against Wolverine under section 106 of CERCLA. The U.S. EPA issued a unilateral administrative order to Wolverine on January 10, 2018, with an effective date of February 1, 2018. Wolverine sent a response letter to EPA dated February 1, 2018, indicating that it would comply with the order. Wolverine has been implementing the order ever since. Wolverine has conducted significant remedial investigation activities at House Street and the tannery, submitted final reports regarding that investigation, and submitted work plans for active environmental cleanup at the tannery and House Street sites. https://www.epa.gov/mi/wolverine-world-wide-tannery	No action may be commenced under section 7002(a)(1)(B) of RCRA if the EPA is already diligently prosecuting an action under section 106 of CERCLA. 42 U.S.C. 6972(b)(2)(B); *Carrier Corp. v. Piper*, 460 F. Supp. 2d 853, 857, 860 (W.D. Tenn. 2006) (finding that RCRA suit "would duplicate remediation efforts already underway" pursuant to the EPA's section 106 order); *LeClercq v. Lockformer Co.*, No. 00 C 7164, 2002 WL 907969, at *5 (N.D. Ill. May 6, 2002) (finding that RCRA claim was barred because EPA had entered an administrative order under § 106 of CERCLA).
***Townships:* Claim 2:** CERCLA 42 U.S.C. § 9601(14)—Release of Hazardous Substances	**Facts—House Street** (1) WWW tannery sludge contains 1-1-1 Trichchloroethane ("TCA"), which is a CERCLA hazardous material, and PFAS compounds PFOA and PFOS, which the EPA is in the process of classifying as a CERCLA hazardous material,[iii] and they have been released into the environment as part of the tannery sludge at the House St. Site. (Ex. 1; Ex. 2; WWW Third Party Complaint, ¶ 203–205, ECF No. 31 at PageID.284; Ex. 3 at ¶¶ 1–6) (2) House St. Site was used as a waste disposal site by WWW. (Ex. 3 at ¶¶ 1–6.) (3) WWW owned the House St. Site. (*Id.*)	**Legal Elements** (1) Hazardous substance has been released into the environment; (2) The site of the release is a "facility" under CERCLA; (3) Defendant is an owner or operator of facility or generator of the hazardous substance; and[v] (4) Plaintiff has incurred "necessary response costs" as those terms are used under CERCLA.

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Claims and Defenses	Summary of Facts In Support	Legal Authority In Support (Statutory or Case Law)
	(4) Townships have incurred $500,000 in water transport design services to extend municipal water to residences affected by TCA and PFAS release and are prepared to expend $62,000,000 to construct such systems. [Prein & Newhof reports] **Facts—Wolven/Jewel** (1) WWW tannery sludge contains 1-1-1 Trichchloroethane ("TCA"), which is a CERCLA hazardous material , and PFAS compounds PFOA and PFOS, which the EPA is in the process of classifying as a CERCLA hazardous material,[iv] and they have been released into the environment as part of the tannery sludge in the Wolven/Jewel gravel pit. (WWW Third Party Complaint, ¶ 203–205, ECF No. 31 at PageID.284.) (2) Wolven/Jewel gravel pit was used as a disposal site for WWW tannery waste and WWW's hydrogeological study demonstrates that the TCA and PFAS are leaching. *Urgent need for discovery*. (3) WWW is generator of tannery waste deposited at Wolven/Jewel gravel pit *Urgent need for discovery*. (4) Townships have incurred $500,000 in water transport design services to extend municipal water to residences affected by TCA and PFAS release and are prepared to expend $62,000,000 to construct such systems. [Prein & Newhof reports]	
***Wolverine:* First Defense to Claim 2:** The Townships have not incurred costs that are necessary, recoverable,	CERCLA does not regulate how cleanup outcomes are achieved. Rather, it regulates only the outcome itself. Here, the outcome of providing every affected resident with access to clean and reliable water has already been achieved.	Recoverable response costs are an element of a plaintiffs' prima facie case under CERCLA. 42 U.S.C. § 9607; *City of Detroit v. Simon*, 247 F.3d 619, 630 (6th Cir. 2001); *Saline River Props., LLC v. Johnson Controls, Inc.*, 823 F. Supp. 2d 670, 683–84 (E.D. Mich. 2011).

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Claims and Defenses	Summary of Facts In Support	Legal Authority In Support (Statutory or Case Law)
and consistent with the National Contingency Plan. Any potential future costs are speculative and are unrecoverable for the same reason.	When the MDEQ (now EGLE) has implemented cleanup actions at other sites impacted by PFAS, it has not supplied bottled water at the time of sampling. Rather, it provided alternate water only after sampling results showed the presence of PFAS. Only if PFAS are detected did it provide a filter, and the filters that MDEQ provided are point-of-use filters, not whole house filters. The MDEQ deems those actions adequate at the sites at which it undertakes them. By comparison, in Wolverine's sampling of over 1,500 residential wells for PFAS compounds, Wolverine offered bottled water to every resident at the time of sampling; for homes where PFOA or PFOS was detected, Wolverine provided filters, including over 500 whole house filters; Wolverine has monitored the filters, some as often as weekly, to ensure their effectiveness; it has collected thousands of verification samples from hundreds of homes, and none of the actual data gathered from over 18 months of operation has even suggested that the filters are not effective or reliable. The same whole house filtration systems have been used for similar remedial actions at other PFAS sites, including in Vermont and New York. There is no dispute that every affected resident has access to a filter, and there is no dispute that the filters are effective at removing PFOA and PFOS from drinking water.	Response costs are not recoverable if they are not necessary, and costs are not necessary when an adequate remedy has already been implemented. *City of Detroit v. Simon*, 247 F.3d 619, 630 (6th Cir. 2001) (holding that municipal plaintiff was not entitled to recover response costs that went beyond what was necessary to make property suitable for its intended use); *Reg'l Airport Auth. of Louisville v. LFG, LLC*, 460 F.3d 697, 706 (6th Cir. 2006); *In re Bell Petroleum Servs., Inc.*, 3 F.3d 889, 907 (5th Cir. 1993); *Louisiana-Pac. Corp. v. Beazer Materials & Servs., Inc.*, 811 F. Supp. 1421, 1425–26 (E.D. Cal. 1993) ("As a general matter, investigative costs incurred by a private party after the EPA has initiated a remedial investigation, unless authorized by the EPA, are "duplicative" and therefore not recoverable."). Failure to show that past costs were necessary and consistent with the NCP forecloses the ability to obtain a declaration of liability for future costs. *City of Colton v. Am. Promotional Events, Inc.-West,* 614 F.3d 998, 1007–1008 (9th Cir. 2010) (collecting cases); *see also Ga.-Pacific Consumer Prods. LP v. NCR Corp.,* 358 F. Supp. 3d 613, 645 (W.D. Mich. 2018) (declining to allocate future costs even in a case where recoverable past costs were established "because there is too much uncertainty about the costs and remediation options that may unfold over a period of many years.").

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Claims and Defenses	Summary of Facts In Support	Legal Authority In Support (Statutory or Case Law)
	The technology (i.e., granular activated carbon) utilized in the filters Wolverine installed is identical to the technology utilized by municipal water systems, including the one operated by Plainfield Township, to address PFOA and PFOS. Residents with whole house filters already have clean water filtered by the same technology as municipal water. It is not necessary or reasonable for Intervening Plaintiffs to incur response costs to protect against a potential threat that Wolverine has already addressed and continues to address.	
***Wolverine:* Second Defense to Claim 2:** Intervening Plaintiffs' recovery from Wolverine is barred by the inapplicability of the collateral source rule.	At least a portion of the costs incurred by the Townships was already reimbursed from other sources, such as state and federal grants or financial assistance.	The collateral source rule does not apply under CERCLA. 42 U.S.C. § 9614(b); *N.Y. State Elec. & Gas Corp. v. FirstEnergy Corp.*, 766 F.3d 212, 238 (2d Cir. 2014).
***Wolverine:* Third Defense to Claim 2:** Wolverine is not the proximate cause of the complained-of harm, and Wolverine has already incurred costs in excess of its share of liability.	As detailed in Wolverine's Third-Party Complaint against 3M, Plaintiffs' harm, if any, was caused, at least in part, by acts or omissions, including fraud, of 3M Company, a person over whom Wolverine had no control or any duty to control. 3M has refused to take any responsibility for its actions, while Wolverine has spent tens of millions of dollars undertaking remedial action in the affected area to ensure that every affected homeowner has access to clean and reliable water. Kent County health officials and Plainfield and Algoma Townships are actively interfering with Wolverine's	Liability should be apportioned when harm is divisible, and when liability is not divisible fault must be allocated to ensure that no party is held responsible for more than its fair share. *Burlington Northern and Santa Fe Ry. Co. v. United States*, 556 U.S. 599, 613–19 (2009); *United States v. Consol. Coal Co.*, 345 F.3d 409, 413–14 (6th Cir. 2003); *United States v. RW Meyer, Inc*, 932 F2d 568, 572–73 (6th Cir 1991); *Ga.-Pacific Consumer Prods. LP v. NCR Corp.,* 358 F. Supp. 3d 613, 645 (W.D. Mich. 2018). The Court's authority to order a remedy necessarily includes the authority to order state and local agencies to take steps to allow that remedy to be implemented, even if those steps would violate state law.

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Claims and Defenses	Summary of Facts In Support	Legal Authority In Support (Statutory or Case Law)
	remedial action. Kent County Health officials have denied at least one replacement drinking water well permit and have threatened to deny others. The Townships have publicly threatened to pass an ordinance that would ultimately prohibit the installation and use of whole house filters. Those actions by the County and Townships seek to deny affected residents a safe and effective remedy. Yet all of the affected residents can be provided with clean drinking water from their wells if this Court orders that filters are an effective remedy.	28 U.S.C. § 1651; *Washington v. Wash. State Comm. Passenger Fishing Vessel Assn.*, 443 U.S. 658 (1979).
Townships: **Claim 3:** Part 201 NREPA Mich. Comp. Laws § 324.20101(1)(x)(ii) Violation	**Facts—House Street** (1) House St Site was used as a waste disposal site by WWW and WWW owned the House St. Site. (Ex. 3 at ¶¶ 1–6.) (2) WWW tannery sludge contains 1-1-1 Trichchloroethane ("TCA"), which is a CERCLA hazardous material, and PFAS compounds PFOA and PFOS, which the EPA is in the process of classifying as a CERCLA hazardous material and is a hazardous material for purposes of NREPA,[vi] and they have been released into the environment as part of the tannery sludge at the House St. Site. (Ex. 1; Ex. 2; WWW Third Party Complaint, ¶ 203–205, ECF No. 31 at PageID.284; Ex. 3 at ¶¶ 1–6) (3) Townships have incurred $500,000 in water transport design services to extend municipal water to residences affected by TCA and PFAS release and are prepared to expend $62,000,000 to construct such systems. [Prein & Newhof reports] **Facts—Wolven/Jewel**	**Legal Elements** (1) Defendant is owner or operator of a facility; (2) Facility caused a release of a hazardous substance; (3) Release of hazardous substance caused necessary response costs.[viii]

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Claims and Defenses	Summary of Facts In Support	Legal Authority In Support (Statutory or Case Law)
	(1) Wolven/Jewel gravel pit was used as a disposal site for WWW tannery waste and WWW's hydrogeological study demonstrates that the TCA and PFAS are leaching. WWW is generator of tannery waste deposited at Wolven/Jewel gravel pit *Urgent need for discovery*. (2) WWW tannery sludge contains 1-1-1 Trichchloroethane ("TCA"), which is a CERCLA hazardous material, and PFAS compounds PFOA and PFOS, which the EPA is in the process of classifying as a CERCLA hazardous material, and is a hazardous material for purposes of NREPA,[vii] and they have been released into the environment as part of the tannery sludge at the Wolven/Jewel gravel pit. (WWW Third Party Complaint, ¶ 203–205, ECF No. 31 at PageID.284.) (3) Townships have incurred $500,000 in water transport design services to extend municipal water to residences affected by TCA and PFAS release and are prepared to expend $62,000,000 to construct such systems. [Prein & Newhof reports]	
Wolverine: **First Defense to Claim 3:** The response costs incurred by the Intervening Plaintiffs are unrecoverable because they were not necessary and therefore were not reasonably incurred under the circumstances, and any potential future costs are speculative and are	Part 201 does not regulate how cleanup outcomes are achieved. Rather, it regulates only the outcome itself. Here, the outcome of providing every affected resident with access to clean and reliable water has already been achieved. When the MDEQ (now EGLE) has implemented cleanup actions at other sites impacted by PFAS, it has not supplied bottled water at the time of sampling. Rather, it provided alternate water only after sampling results showed the presence of PFAS. Only when PFAS were detected did it provide a filter, and the filters that MDEQ	Recoverable response costs are an element of a plaintiffs' prima facie case under Part 201. MCL 324.20126a; *City of Detroit v. Simon*, 247 F.3d 619, 630 (6th Cir. 2001); *Saline River Props., LLC v. Johnson Controls, Inc.*, 823 F. Supp. 2d 670, 683–84 (E.D. Mich. 2011). Response costs are not recoverable if they are not necessary, and costs are not necessary when an adequate remedy has already been implemented. *City of Detroit v. Simon*, 247 F.3d 619, 630 (6th Cir. 2001) (holding that municipal plaintiff was not entitled to recover response costs that went beyond what was necessary to make property suitable for its intended use); *Reg'l Airport Auth. of Louisville v. LFG, LLC*, 460 F.3d 697, 706 (6th Cir. 2006); *Taylor Land Grp., L.L.C. v. BP*

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unrecoverable for the same reason.	provided are point-of-use filters, not whole-house filters. The MDEQ deems those actions adequate at the sites at which it undertakes them. By comparison, in Wolverine's sampling of over 1,500 residential wells for PFAS compounds, Wolverine offered bottled water to every resident at the time of sampling; for homes where PFOA or PFOS was detected, Wolverine provided filters, including over 500 whole house filters; Wolverine has monitored the filters, some as often as weekly, to ensure their effectiveness; it has collected thousands of verification samples from hundreds of homes, and none of the actual data gathered from over 18 months of operation has even suggested that the filters are not effective or reliable. The same whole house filtration systems have been used for similar remedial actions at other PFAS sites, including in Vermont and New York. There is no dispute that every affected resident has access to a filter, and there is no dispute that the filters are effective at removing PFOA and PFOS from drinking water. The technology (i.e., granular activated carbon) utilized in the filters Wolverine installed is identical to the technology utilized by municipal water systems, including the one operated by Plainfield Township, to address PFOA and PFOS. Residents with whole house filters already have clean water filtered by the same technology as municipal water.	*Prod. N. Am., Inc.*, No. 294764, 2011 WL 2119670, at *5–6 (Mich. Ct. App. May 26, 2011); *RCO Eng'g, Inc. v. ACR Indus., Inc.*, 235 Mich. App. 48, 529 n.15 (2001). Failure to show a right to recover past costs forecloses the ability to obtain a declaration of liability for future costs. *City of Colton v. Am. Promotional Events, Inc.-West,* 614 F.3d 998, 1007–1008 (9th Cir. 2010) (collecting cases); *see also Ga.-Pacific Consumer Prods. LP v. NCR Corp.,* 358 F. Supp. 3d 613, 645 (W.D. Mich. 2018) (declining to allocate future costs even in a case where recoverable past costs were established "because there is too much uncertainty about the costs and remediation options that may unfold over a period of many years.").

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	It is not necessary or reasonable for Plaintiffs to incur response costs to protect against a potential threat that Wolverine has already addressed and continues to address.	
***Wolverine:* Second Defense to Claim 3:** Intervening Plaintiffs' recovery from Wolverine is barred by the inapplicability of the collateral source rule.	At least a portion of the costs incurred by the Townships was already reimbursed from other sources, such as state and federal grants or financial assistance.	The collateral source rule does not apply under Part 201. *RCO Eng'g, Inc. v. ACR Indus., Inc.*, 235 Mich. App. 48, 61 (1999)
***Wolverine:* Third Defense to Claim 3:** Wolverine is not the proximate cause of the complained-of harm, and Wolverine has already incurred costs in excess of its share of liability.	As detailed in Wolverine's Third-Party Complaint against 3M, Plaintiffs' harm, if any, was caused, at least in part, by acts or omissions, including fraud, of 3M Company, a person over whom Wolverine had no control or any duty to control. 3M has refused to take any responsibility for its actions, while Wolverine has spent tens of millions of dollars undertaking remedial action in the affected area to ensure that every affected homeowner has access to clean and reliable water. Kent County health officials and Plainfield and Algoma Townships are actively interfering with Wolverine's remedial action. Kent County Health officials have denied at least one replacement drinking water well permit and have threatened to deny others. The Townships have publicly threatened to pass an ordinance that would ultimately prohibit the installation and use of whole house filters. Those actions by the County and Townships seek to deny affected residents a safe and	Liability should be apportioned when harm is divisible, and when liability is not divisible fault must be allocated to ensure that no party is held responsible for more than its fair share. MCL 324.20129; *Burlington Northern and Santa Fe Ry. Co. v. United States*, 556 U.S. 599, 613–19 (2009); *United States v. Consol. Coal Co.*, 345 F.3d 409, 413–14 (6th Cir. 2003); *United States v. RW Meyer, Inc*, 932 F2d 568, 572–73 (6th Cir 1991); *Ga.-Pacific Consumer Prods. LP v. NCR Corp.*, 358 F. Supp. 3d 613, 645 (W.D. Mich. 2018); *Forest City Enterprises, Inc v. Nationwide Ins Co*, 228 Mich App 57, 66–70 (1998). The Court's authority to order a remedy necessarily includes the authority to order state and local agencies to take steps to allow that remedy to be implemented, even if those steps would violate state law. 28 U.S.C. § 1651; *Washington v. Wash. State Comm. Passenger Fishing Vessel Assn.*, 443 U.S. 658 (1979).

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Claims and Defenses	Summary of Facts In Support	Legal Authority In Support (Statutory or Case Law)
	effective remedy. Yet all of the affected residents can be provided with clean drinking water from their wells if this Court orders that filters are an effective remedy.	
Townships: **Claim 4:** CERCLA 42 U.S.C. § 9613(g)(2)—Declaratory Relief	**Facts—All Sites** (1) Townships have incurred $500,000 in water transport design services to extend municipal water to residences affected by TCA and PFAS release and are prepared to expend $62,000,000 to construct such systems. [Prein & Newhof reports] and an additional cost to develop a new well field to replace Versluis well field.	"In any such action described in this subsection, the court shall enter a declaratory judgment on liability for response costs or damages that will be binding on any subsequent action or actions to recover further response costs or damages."[ix]
Wolverine: **First Defense to Claim 4:** The response costs incurred by the Intervening Plaintiffs are unrecoverable because they were not necessary and therefore were not reasonably incurred under the circumstances, and any potential future costs are speculative and are unrecoverable for the same reason.	Wolverine is already undertaking remedial action in the affected area, and as a result every affected homeowner has and will continue to have access to clean and reliable water. It is not necessary or reasonable for Intervening Plaintiffs to incur future response costs to protect against a potential threat that Wolverine has already addressed and continues to address.	For a declaratory judgment to enter for past and future costs, a plaintiff must show that its past costs were necessary and consistent with the National Contingency Plan, and the plaintiff must then establish that it will incur future costs that are similarly recoverable under CERCLA. *GenCorp, Inc. v. Olin Corp.*, 390 F.3d 433, 451 (6th Cir. 2004); *City of Colton v. Am. Promotional Events, Inc.-West,* 614 F.3d 998, 1007–1008 (9th Cir. 2010) (collecting cases); *see also Ga.-Pacific Consumer Prods. LP v. NCR Corp.,* 358 F. Supp. 3d 613, 645 (W.D. Mich. 2018).
Townships: **Claim 5:** Violations of Common Law Nuisance	**Facts—House Street Area** (1) April 1, 2019 EGLE Study and May 21, 2019 LHC of DHHS establishes imminent public health hazard via a groundwater plume in House Street Area due to migrating PFOA and PFOS concentrations in plume	**Legal Elements** (1) Owner of property (solid waste) has common law duty to abate deprivation of neighbors' security in their health on their property caused by defendant's property.

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Claims and Defenses	Summary of Facts In Support	Legal Authority In Support (Statutory or Case Law)
	migrating from WWW's House St. Dump. (Ex.1; Ex. 2; Ex. 3, ¶¶ 2–6.) (2) WWW owned the House St. Site. The House St Site was used as a waste disposal site by WWW. (Ex. 3 at ¶¶ 1–6.) Conditions stem from WWW's waste disposal of tannery wastes at House Street Site. (Ex. 1; Ex. 2; Ex. 3, ¶ 1.) WWW tannery sludge contains TCA and PFAS compounds PFOA and PFOS and they have been released into the environment as part of the tannery sludge at the House St. Site. (Ex. 1; Ex. 2; WWW Third Party Complaint, ¶ 203–205, ECF No. 31 at PageID.284; Ex. 3 at ¶¶ 1–6) (3) Townships have incurred $500,000 in water transport design services to extend municipal water to residences affected by TCA and PFAS release and are prepared to expend $62,000,000 to construct such systems. [Prein & Newhof report] (4) Municipal water is necessary to eliminate any health risk posed by toxic PFAS and PFOA tannery waste. (Ex. 1; Ex. 2.) **Facts—Wolven/Jewel** (1) Wolven/Jewel gravel pit was used as a disposal site for WWW tannery waste and WWW's hydrogeological study demonstrates that the TCA and PFAS are leaching. *Urgent need for discovery*. WWW is generator of tannery waste deposited at Wolven/Jewel gravel pit *Urgent need for discovery*. (2) Conditions stem from WWW's handling and disposal of tannery sludges at Wolven/Jewl gravel pit. *Urgent need for discovery*. WWW tannery sludge contains 1-1-1 Trichchloroethane ("TCA"), and PFAS compounds	(2) Insecurity must be due to a condition resulting from want of due care. (3) Plaintiff must have some damage that is unique. (4) Once Defendant is aware its property is depriving neighbors' security in health, it has duty to act to mitigate risk.[x]

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	PFOA and PFOS, and they have been released into the environment as part of the tannery sludge at the Wolven/Jewel gravel pit. (WWW Third Party Complaint, ¶ 203–205, ECF No. 31 at PageID.284.) (3) Townships have incurred $500,000 in water transport design services to extend municipal water to residences affected by TCA and PFAS release and are prepared to expend $62,000,000 to construct such systems. [Prein & Newhof reports] (4) Municipal water is necessary to eliminate any health risk posed by toxic PFAS and PFOA tannery waste. (Ex. 1; Ex. 2.) **Facts—Boulder Creek/Versluis** (1) Boulder Creek gravel pit was used as a disposal site for WWW tannery waste and WWW's hydrogeological study demonstrates that the TCA and PFAS are leaching. WWW is generator of tannery waste deposited at Boulder Creek pit. (2) Conditions stem from WWW's handling and disposal of tannery sludges at Boulder Creek gravel pit befouled Versluis wellfield with PFAS compounds PFOA and PFOS. Well field analysis. EGLE hydrogeological studies being completed. (3)Townships are incurring new well field research and will incur new well field development and transport costs. [Prein & Newhof reports].	

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Wolverine: **First Defense to Claim 5:** Intervening Plaintiffs' claims should be dismissed as moot because any nuisance has already been abated.	At all relevant times Wolverine complied with applicable environmental laws and industry standards, and otherwise conducted itself reasonably, prudently, in good faith, and with due care for the rights, safety and property of others. Wolverine has undertaken extensive response actions, including actions under an order issued by the EPA under section 106 of CERCLA. It has provided clean and reliable water to every affected homeowner and there is no interference with the public's health, safety, peace, comfort, or convenience.	There is no need for further remedy when a nuisance has already been abated. *See Federated Publications, Inc v. City of Lansing*, 467 Mich 98, 112 (2002). Private nuisance claims require an interference with property that is intentional and unreasonable, or unintentional and otherwise actionable under the rules governing liability for negligent, reckless, or ultrahazardous conduct. *Capitol Properties Grp., LLC v. 1247 Ctr. St., LLC*, 283 Mich. App. 422, 429 (2009).
Wolverine: **Second Defense to Claim 5:** Wolverine is not the proximate cause of the complained-of harm.	As detailed in Wolverine's Third-Party Complaint against 3M, Plaintiffs' harm, if any, was caused, at least in part, by acts or omissions, including fraud, of 3M Company, a person over whom Wolverine had no control or any duty to control. 3M has refused to take any responsibility for its actions, while Wolverine has spent tens of millions of dollars undertaking remedial action in the affected area to ensure that every affected homeowner has access to clean and reliable water. Kent County health officials and Plainfield and Algoma Townships are actively interfering with Wolverine's remedial action. Kent County Health officials have denied at least one replacement drinking water well permit and have threatened to deny others. The Townships have publicly threatened to pass an ordinance that would ultimately prohibit the installation and use of whole house filters as a remedy. Yet all of the affected residents can be provided with clean drinking water from their wells if it is determined through an order of this Court that filters are an effective remedy.	Proximate cause is a necessary element of a nuisance determination. *Adkins v. Thomas Solvent Co.*, 487 N.W.2d 715 (Mich. 1992) (rejecting nuisance claims where plaintiffs' diminution in property value was caused by the concerns of third parties rather than the direct acts of defendant); *Denny v. Garavaglia*, 52 N.W.2d 521 (Mich. 1952) (applying principles of proximate cause to determine liability in nuisance case). Equity bars any claim where the plaintiff's conduct is "tainted with inequitableness or bad faith relative to the matter in which he seeks relief, however improper may have been the behavior of the defendant." *Rose v. National Auction Group, Inc.*, 646 N.W.2d 455, 463 (Mich. 2002); *Orzel by Orzel v. Scott Drug Co.*, 537 N.W.2d 208, 212-13 (Mich. 1995); *McFerren v. B & B Inv. Grp.*, 655 N.W.2d 779, 783 (Mich. Ct. App. 2002) The Court's authority to order a remedy necessarily includes the authority to order state and local agencies to take steps to allow that remedy to be implemented, even if those steps would violate state law. 28 U.S.C. § 1651; *Washington v. Wash. State Comm. Passenger Fishing Vessel Assn.*, 443 U.S. 658 (1979).

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Wolverine: **Third Defense to Claim 5:** Intervening Plaintiffs' claims are time barred	The alleged contamination at issue in this case first occurred between approximately 1958 and 1970.	Property damage claims arising out of negligence or nuisance must be brought within three years from the time that a contaminant first enters the soil of a property. *Saline River Properties, LLC v. Johnson Controls, Inc.*, 823 F. Supp. 2d 670, 675–76 (E.D. Mich. 2011); *Henry v. Dow Chem. Co.*, 501 Mich. 965 (2018); *Trentadue v Gorton*, 479 Mich 378, 391–392 (2007); *Froling v Bloomfield Hills Country Club*, 283 Mich App 264, 288 (2009); *Connelly v Paul Ruddy's Equip Repair & Serv Co*, 388 Mich 146, 150–151 (1972); *Hicks Family Ltd. P'ship v. 1st Nat. Bank of Howell*, No. 268400, 2006 WL 2818514, at *8 (Mich. Ct. App. Oct. 3, 2006). To the extent injunctive relief is sought, the limitations period is six years. MCL 600.5813

[i] *Organic Chemical Site PROPR Group v. Total Petroleum,* 6 F. Supp. 2d 660, 665 (W.D. Mich 1998); 42 U.S.C § 6972.
[ii] *Dague v. City of Burlington,* 935 F.2d 1343, 1355 (2nd Cir. 1991).
[iii] *EPA'S Per- and Polyfluoroalkyl Substances (PFAS) Action Plan* (February 2019, EPA Publication No. 823R18004, available at https://www.epa.gov/sites/production/files/2019-02/documents/pfas_action_plan_021319_508compliant_1.pdf (accessed June 18, 2019)).
[iv] *Id.*
[v] *Kalamazoo River Study v. Rockwell International Corp,* 171 F.3d 1065, 1068 (6th Cir. 1999).
[vi] *EPA'S Per- and Polyfluoroalkyl Substances (PFAS) Action Plan.*
[vii] *Id.*
[viii] *Vill of Milford v. K-H Holding Corp.*, 390 F.3d 926, 934 (6th Cir. 2004).
[ix] 42 U.S.C. § 9613(g)(2)(B).
[x] *Kits v. Kent County Board of Supervisors,* 162 Mich 646, 652 (1910); *Bleeda v. Hickman-Williams,* 44 Mich App 29 (1972); *Adkins v. Thomas Solvent,* 440 Mich 293 (1992); *Buckeye Union Insurance v. Michigan,* 363 Mich 630, 636 (1970); *Department of Environmental Quality v. Waterous*, 279 Mich App 346 (2008).