

STATE OF MINNESOTA

FILED PSL

DISTRICT COURT

COUNTY OF HENNEPIN

11 AUG 30 PM 4:20

FOURTH JUDICIAL DISTRICT

BY: *[Signature]* DEPUTY

HENNEPIN CO. DISTRICT

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

Case Type: Other Civil  
Civil File No. 27-CV-10-28862  
Judge Margaret A. Daly

Plaintiff,

City of Lake Elmo, a Minnesota municipal  
corporation,

Plaintiff/Intervenor,

v.

3M Company,

Defendant.

**DEFENDANT 3M COMPANY'S  
ANSWER TO PLAINTIFF/INTERVENOR  
CITY OF LAKE ELMO'S COMPLAINT**

For its Answer to Plaintiff/Intervenor City of Lake Elmo's ("Lake Elmo") Complaint, Defendant 3M Company ("3M") denies each and every allegation contained in Lake Elmo's Complaint except as may be hereinafter admitted, qualified, or explained, and states and alleges as follows:

**PARTIES**

1. 3M admits the allegations contained in paragraph 1 of Lake Elmo's Complaint.
2. 3M admits the allegations contained in paragraph 2 of Lake Elmo's Complaint, except states that its principal place of business is located at 3M Center, Saint Paul, Minnesota.

**JURISDICTION AND VENUE**

3. 3M admits that Lake Elmo is a municipal corporation, but states that the remaining allegations contained in paragraph 3 of Lake Elmo's Complaint are statements of law

to which no responsive pleading is required. To the extent the statements contained in paragraph 3 of Lake Elmo's Complaint are construed to be allegations of fact, 3M denies them.

4. 3M denies the allegations contained in paragraph 4 of Lake Elmo's Complaint, and alleges that jurisdiction of this matter is proper only in the County of Washington, State of Minnesota, pursuant to Minnesota Statutes § 542.02 (2010).

### **FACTUAL BACKGROUND**

5. 3M admits that it is a Fortune 500 Company that has developed and manufactured many well-known and widely used consumer products and that it has manufacturing facilities in various locations in the United States and in other countries, including a manufacturing facility in Cottage Grove, Minnesota. 3M denies the remaining allegations contained in paragraph 5 of Lake Elmo's Complaint.

6. 3M admits that it produced certain compounds at its Cottage Grove facility that were used in a variety of industrial, commercial, and consumer applications, including, for a short period beginning in the mid-1950s, Scotchgard. 3M denies the remaining allegations contained in paragraph 6 of Lake Elmo's Complaint.

7. 3M admits that certain chemical compounds known as perfluorochemicals ("PFCs") were used in the manufacturing process of various materials at its Cottage Grove facility, including in the manufacture of Scotchgard. 3M denies any remaining allegations contained in paragraph 7 of Lake Elmo's Complaint.

8. 3M denies the allegations contained in paragraph 8 of Lake Elmo's Complaint, except admits that decades ago 3M wastes were legally disposed of at a disposal site located in Oakdale, Minnesota, and at the Washington County Landfill. 3M further admits that the Oakdale site is a Superfund site and the Washington County Landfill is a Closed Landfill Program site (as well as having been a Superfund site).

9. 3M denies the allegations contained in paragraph 9 of Lake Elmo's Complaint, except admits that 3M legally disposed of wastes at the Washington County Landfill from approximately 1971 to 1975. 3M also alleges that it is not responsible for, nor liable for, disposal, removal/remediation activities or operations at the Washington County Landfill, nor is it responsible for any of Lake Elmo's alleged damages related to any releases from that site.

10. 3M denies the allegations contained in paragraph 10 of Lake Elmo's Complaint, except admits that that it began studying the health of workers exposed to PFCs starting in the 1970s, and that scientists and laboratories outside 3M have studied PFCs since at least that time as well. 3M also admits that experimental doses of PFCs administered to animals in laboratory settings have caused certain health effects, but denies the relevance of these findings to the levels at which PFCs have been found in the environment in Washington County. 3M further admits that the Science Advisory Board to the United States Environmental Protection Agency has made certain recommendations concerning perfluorooctanoate ("PFOA"), and states that such recommendations speak for themselves.

11. 3M denies the allegations contained in paragraph 11 of Lake Elmo's Complaint, except admits that in May 2000 3M made an announcement with respect to voluntarily ceasing production of certain perfluorooctanyl compounds and that production of these compounds ceased in 2002. 3M further alleges that the United States Environmental Protection Agency has commended 3M for taking this voluntary action.

12. 3M denies the allegations contained in paragraph 12 of Lake Elmo's Complaint, except admits that in 2002 the Minnesota Department of Health ("MDH") issued interim guidelines containing Health Based Values ("HBVs") for two types of PFCs, PFOA and

perfluorooctane sulfonate (“PFOS”). 3M further admits that PFOS and PFOA have been widely studied and are well understood.

13. 3M is without information or knowledge sufficient to form a belief as to the allegations contained in paragraph 13 of Lake Elmo’s Complaint and on that basis denies the allegations.

14. 3M admits that the Minnesota Pollution Control Agency (“MPCA”), in cooperation with the MDH, has conducted certain testing of the groundwater and soil in and around the Washington County Landfill. 3M denies the remaining allegations contained in paragraph 14 of Lake Elmo’s Complaint.

15. 3M denies the allegations contained in paragraph 15 of Lake Elmo’s Complaint, except admits that PFOS and PFOA have been detected at low levels in certain wells owned by the City of Oakdale and in certain private wells in Oakdale and Lake Elmo, Minnesota.

16. 3M denies the allegations contained in paragraph 16 of Lake Elmo’s Complaint, except admits that the MPCA and/or MDH have developed the ability to test for certain PFCs other than PFOS and PFOA, and that they have tested certain public and private wells for the presence of such PFCs other than PFOS and PFOA, including perfluorobutanoate (“PFBA”).

17. 3M admits the allegations contained in paragraph 17 of Lake Elmo’s Complaint.

18. 3M denies the allegations contained in paragraph 18 of Lake Elmo’s Complaint, except admits that in 2007 the MDH lowered the interim HBV for PFOS in drinking water to 0.5 ppb and the interim HBV for PFOA in drinking water to 0.3 ppb.

19. 3M admits that Lake Elmo drilled “Well #3” in 2002, but is without knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations contained in paragraph 19 of Lake Elmo’s Complaint and therefore denies the same.

20. 3M admits that a test conducted on Well #3 in 2006 purported to report low concentrations of PFOA, PFOS, and PFBA, but 3M lacks information sufficient to allow it to assess the validity of that test result. 3M is without knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations contained in paragraph 20 of Lake Elmo's Complaint and therefore denies the same.

21. 3M denies the allegations contained in paragraph 21 of Lake Elmo's Complaint.

**COUNT ONE**  
**COMMON LAW AND STATUTORY NUISANCE**

22. 3M restates and re-alleges its answers to paragraphs 1-21 of Lake Elmo's Complaint as if herein set out in full.

23. 3M is without information or knowledge sufficient to form a belief as to the allegations contained in paragraph 23 of Lake Elmo's Complaint and on that basis denies the same.

24. The allegations contained in paragraph 24 of Lake Elmo's Complaint are statements of law to which no responsive pleading is required. To the extent the statements contained in paragraph 24 of Lake Elmo's Complaint are construed to be allegations of fact, 3M denies them.

25. 3M denies the allegations contained in paragraph 25 of Lake Elmo's Complaint.

26. 3M denies the allegations contained in paragraph 26 of Lake Elmo's Complaint.

27. 3M denies the allegations contained in paragraph 27 of Lake Elmo's Complaint.

28. 3M denies the allegations contained in paragraph 28 of Lake Elmo's Complaint.

29. The allegations contained in paragraph 29 of Lake Elmo's Complaint are statements of law to which no responsive pleading is required. To the extent the statements

contained in paragraph 29 of Lake Elmo's Complaint are construed to be allegations of fact, 3M denies the allegations.

30. 3M denies the allegations contained in paragraph 30 of Lake Elmo's Complaint.

31. 3M denies the allegations contained in paragraph 31 of Lake Elmo's Complaint.

32. 3M denies the allegations contained in paragraph 32 of Lake Elmo's Complaint.

33. 3M denies the allegations contained in paragraph 33 of Lake Elmo's Complaint.

34. 3M admits that Lake Elmo's Complaint seeks an injunction, but denies that Lake Elmo is entitled to any relief and denies the allegations contained in paragraph 34 of Lake Elmo's Complaint.

**COUNT TWO**  
**TREBLE DAMAGES UNDER MINN. STAT. § 548.05**

35. 3M restates and re-alleges its answers to paragraphs 1-34 of Lake Elmo's Complaint as if herein set out in full.

36. 3M is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 36 of Lake Elmo's Complaint and on that basis denies the same.

37. 3M alleges that paragraph 37 of Lake Elmo's Complaint is a statement of law to which no responsive pleading is required. To the extent the statements contained in paragraph 37 of Lake Elmo's Complaint are construed to be allegations of fact, 3M denies the allegations.

38. 3M denies the allegations contained in paragraph 38 of Lake Elmo's Complaint.

39. 3M denies the allegations contained in paragraph 39 of Lake Elmo's Complaint.

**COUNT THREE**  
**COMMON LAW TRESPASS**

40. 3M restates and re-alleges its answers to paragraphs 1-39 of Lake Elmo's Complaint as if herein set out in full.

41. 3M alleges that paragraph 41 of Lake Elmo's Complaint is a statement of law to which no responsive pleading is required. To the extent the statements contained in paragraph 41 of Lake Elmo's Complaint are construed to be allegations of fact, 3M is without knowledge or information sufficient to form a belief as to the truth or falsity of those allegations and on that basis denies the same.

42. 3M denies the allegations contained in paragraph 42 of Lake Elmo's Complaint.

43. 3M denies the allegations contained in paragraph 43 of Lake Elmo's Complaint.

44. 3M denies the allegations contained in paragraph 44 of Lake Elmo's Complaint.

45. 3M admits that Lake Elmo's Complaint seeks an injunction, but denies that Lake Elmo is entitled to any relief and denies the allegations contained in paragraph 45 of Lake Elmo's Complaint.

**COUNT FOUR**  
**STRICT LIABILITY FOR ABNORMALLY DANGEROUS ACTIVITIES**

46. 3M restates and re-alleges its answers to paragraphs 1-45 of Lake Elmo's Complaint as if herein set out in full.

47. 3M denies the allegations contained in paragraph 47 of Lake Elmo's Complaint.

48. 3M denies the allegations contained in paragraph 48 of Lake Elmo's Complaint.

49. 3M denies the allegations contained in paragraph 49 of Lake Elmo's Complaint.

50. 3M denies the allegations contained in paragraph 50 of Lake Elmo's Complaint.

51. 3M denies the allegations contained in paragraph 51 of Lake Elmo's Complaint.

52. 3M admits that Lake Elmo's Complaint seeks an injunction, but denies that Lake Elmo is entitled to any relief and denies the allegations contained in paragraph 52 of Lake Elmo's Complaint.

**COUNT FIVE**  
**NEGLIGENT FAILURE TO WARN OF ULTRAHAZARDOUS CONDITION**

53. 3M restates and re-alleges its answers to paragraphs 1-52 of Lake Elmo's Complaint as if herein set out in full.
54. 3M denies the allegations contained in paragraph 54 of Lake Elmo's Complaint.
55. 3M denies the allegations contained in paragraph 55 of Lake Elmo's Complaint.
56. 3M denies the allegations contained in paragraph 56 of Lake Elmo's Complaint.
57. 3M denies the allegations contained in paragraph 57 of Lake Elmo's Complaint.
58. 3M admits that Lake Elmo's Complaint seeks an injunction, but denies that Lake Elmo is entitled to any relief and denies the allegations contained in paragraph 58 of Lake Elmo's Complaint.

**COUNT SIX**  
**LIABILITY PURSUANT TO MINN. STAT. § 1031.241**

59. 3M restates and re-alleges its answers to paragraphs 1-58 of Lake Elmo's Complaint as if herein set out in full.
60. 3M is without information or knowledge sufficient to form a belief as to the allegations contained in paragraph 60 of Lake Elmo's Complaint and on that basis denies the same.
61. 3M denies the allegations contained in paragraph 61 of Lake Elmo's Complaint.
62. 3M denies the allegations contained in paragraph 62 of Lake Elmo's Complaint.
63. 3M denies the allegations contained in paragraph 63 of Lake Elmo's Complaint.

**COUNT SEVEN**  
**NEGLIGENCE**

64. 3M restates and re-alleges its answers to paragraphs 1-63 of Lake Elmo's Complaint as if herein set out in full.



65. 3M denies the allegations contained in paragraph 65 of Lake Elmo's Complaint.
66. 3M denies the allegations contained in paragraph 66 of Lake Elmo's Complaint.
67. 3M denies the allegations contained in paragraph 67 of Lake Elmo's Complaint.
68. 3M denies the allegations contained in paragraph 68 of Lake Elmo's Complaint.
69. 3M admits that Lake Elmo's Complaint seeks an injunction, but denies that Lake

Elmo is entitled to any relief and denies the allegations contained in paragraph 69 of Lake Elmo's Complaint.

**COUNT EIGHT**  
**CONVERSION**

70. 3M restates and re-alleges its answers to paragraphs 1-69 of Lake Elmo's Complaint as if herein set out in full.

71. 3M denies the allegations contained in paragraph 71 of Lake Elmo's Complaint.
72. 3M denies the allegations contained in paragraph 72 of Lake Elmo's Complaint.
73. 3M denies the allegations contained in paragraph 73 of Lake Elmo's Complaint.

**DEFENSES**

74. Lake Elmo's Complaint fails to state a claim upon which relief may be granted.
75. Lake Elmo's claims are barred by the applicable statutes of limitations.
76. Lake Elmo's claims are barred by the equitable doctrines of laches, waiver, and estoppel.
77. Lake Elmo's claimed damages were caused or contributed to by third-parties over whom 3M had no control and no legal duty to control, including agencies of the State of Minnesota. Such fault includes, but is not limited to, the actions taken by the State of Minnesota and its agencies with respect to the Washington County Landfill and the Minnesota Department

of Transportation's operation of bulldozers and other heavy equipment in and through the Oakdale disposal site during the construction of Minnesota State Highway 5.

78. Lake Elmo's claims are barred in whole or in part because 3M's conduct was in accordance with the applicable standards of care under all laws, regulations, permits, industry practice and knowledge at the time, and the activities of 3M were in accordance with such standards of care and were reasonable as a matter of law.

79. Lake Elmo's claims are barred to the extent that the State of Minnesota is asserting the same claims on Lake Elmo's behalf against 3M.

80. Lake Elmo's claims are barred because federal, state, and/or local authorities authorized, ratified, or were aware of and acquiesced in actions by 3M that are the subject of Lake Elmo's Complaint.

81. Lake Elmo's claims are barred by principles of res judicata, collateral estoppel, and/or claim splitting.

82. Lake Elmo does not have a personal property interest in the groundwater identified in the Complaint.

83. Any alleged trespass is *de minimis* and therefore not compensable.

84. Lake Elmo has failed to mitigate its alleged damages.

85. Lake Elmo's damages, if any, are subject to equitable apportionment and allocation.

86. 3M is entitled to off set from Lake Elmo's alleged damages all amounts expended for treatment of PFCs in mitigating the alleged damage.

87. Lake Elmo's claims are barred to the extent that Lake Elmo seeks to retroactively impose liability for conduct that was not actionable at the time it occurred, and 3M may not be held liable under retroactive theories not requiring proof of fault or causation.

88. Lake Elmo cannot recover more than once for the same alleged injury.

89. Lake Elmo's allegations with respect to potential future effects on drinking water or other resources and potential future damages are not ripe, are speculative, and fail to state a claim.

90. Any claim made by Lake Elmo related to the alleged disposal by 3M of PFCs at the Washington County Landfill is barred by the Closed Landfill Act and by 3M's participation in the State on Minnesota's administration of the Washington County Landfill under the Closed Landfill Program.

91. Lake Elmo lacks standing to bring some or all of the claims in the Complaint and/or to seek some or all of the relief sought in the Complaint.

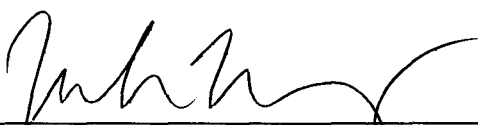
92. Lake Elmo failed to properly serve this Complaint after the Court granted it leave to intervene.

93. 3M reserves the right to supplement its Answer by adding additional defenses made known to it in the course of discovery in the matter.

**WHEREFORE**, Defendant 3M Company prays that Lake Elmo's Complaint and causes of action against it be dismissed and that 3M recover judgment in its favor and against Plaintiff, together with its costs and disbursements herein.

Dated: August 30, 2011

**MASLON EDELMAN BORMAN & BRAND, LLP**

By: 

Cooper S. Ashley (#120558)

Mark W. Lee (#184214)

Michael C. McCarthy (#230406)

Catherine H. Ahlin-Halverson (#350473)

3300 Wells Fargo Center

90 South Seventh Street

Minneapolis, MN 55402

Telephone: 612-672-8200

Facsimile: 612-672-8397

*-and-*

Delmar R. Ehrich (#148660)

Bruce Jones (#179553)

Christopher H. Dolan (#386484)

FAEGRE & BENSON LLP

2200 Wells Fargo Center

90 South Seventh Street

Minneapolis, MN 55402

Telephone: 612-766-8726

Facsimile: 612-766-1600

*Attorneys for Defendant 3M Company*

**ACKNOWLEDGMENT**

I, the undersigned, hereby acknowledge that I am familiar with the terms of Minn. Stat. § 549.211, and that costs, disbursements and reasonable attorney and witness fees may be awarded to the opposing party pursuant to Subd. 2 thereof, in the event a party or an attorney acts in bad faith; asserts a claim or defense that is frivolous and that is costly to another party; asserts an unfounded position solely to delay the order and course of the proceedings or to harass; or commits a fraud upon the court.

  
Michael C. McCarthy

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

STATE OF MINNESOTA            )  
  ) ss.  
COUNTY OF HENNEPIN         )

**AFFIDAVIT OF SERVICE**

Michele L. Theye, being duly sworn upon oath deposes and states that on August 30, 2011, she served the following documents:

1. Defendant 3M Company's Answer to Plaintiff/Intervenor City of Lake Elmo's Complaint; and
2. Affidavit of Service.

by addressing the same to:

Alan C. Williams  
Robert B. Roche  
Office of Minnesota Attorney General  
Suite 900  
445 Minnesota Street  
St. Paul, Minnesota 55101-2127

William F. Greaney  
Joanne B. Grossman  
Sarah L. Wilson  
Michael M. Maya  
Covington & Burling LLP  
1201 Pennsylvania Avenue NW  
Washington, DC 20004

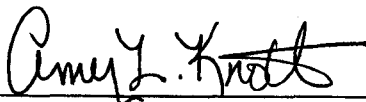
David K. Snyder  
Kevin S. Sandstrom  
Eckberg, Lammers, Briggs, Wolff  
& Vierling, P.L.L.P.  
1809 Northwestern Avenue  
Stillwater, MN 55082

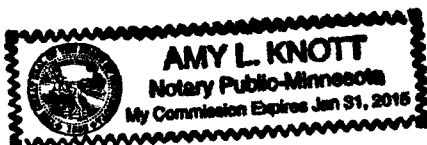
FILED P.S.I.  
11 AUG 30 PM 11:23  
BY HENRY CO. DISTRICT DEPUTY  
COURT ADMINISTRATOR

and depositing the same, with first-class postage prepaid, in the United States Mail at Minneapolis, Minnesota and via electronic mail.

  
Michele L. Theye

Subscribed and sworn to before me  
this 30th day of August, 2011

  
\_\_\_\_\_  
Notary Public



August 30, 2011

**Michael C. McCarthy**  
Direct Phone: (612) 672-8347  
Direct Fax: (612) 642-8347  
[mike.mccarthy@maslon.com](mailto:mike.mccarthy@maslon.com)

*Via Messenger*

District Court Administrator  
Hennepin County District Court  
Hennepin County Government Center  
300 South Sixth Street  
Minneapolis, MN 55487

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

Dear Court Administrator:

Enclosed herewith for filing with regard to the above-referenced matter, please find Defendant 3M Company's Answer to Plaintiff/Intervenor City of Lake Elmo's Complaint and Affidavit of Service.

By copy of this letter, we are serving the enclosed documents on all counsel. If you have any questions regarding this matter, please do not hesitate to contact me

Very truly yours,



Michael C. McCarthy

MCM:mlt:830832

Enclosures

cc: Plaintiffs' Counsel (*w/enc. – via e-mail and U.S. mail*)  
Delmar R. Ehrich (*w/enc. – via e-mail*)  
John R. Allison (*w/enc. – via e-mail*)