40 Saratoga Avenue
South Glens Falls, New York 12803-1210
Telephone (518) 793-1455 Fax (518) 793-3063

PUBLIC MEETING
7:00 PM Regular Session
August 16, 2023
MAYOR NICHOLAS BODKIN PRESIDING

Agenda

Public Forum

1. Grant Projects Update
    a. Carbon Filtration
        i. Notice of Board resolution has been submitted to the contractor.
    b. GIGP
        i. Budget Amendment
            1. Budget adjustment based on bid response to ball valves, Amount - $1,275,764.00 (decrease of $164,817.56)
    c. Sewer I&I
        i. Motion to sign Project Completion Certificate
    d. CDBG Closeout
        i. Close Bank Account

2. Motion to Approve the Bills as Audited

3. Final tax collection date per Saratoga Cty request
    a. October 15th

4. Discussion re.22-24 Main Street

5. 21-22, 22-23 Board Audit General Village Law S4-408
    a. Pursuant to Village Law Section 4-408(e), the board of trustees must audit, or cause to be audited by an officer or employee of the village or by a certified public accountant or a public accountant engaged for that purpose, the treasurer's annual financial report and supporting records. In other words, a village is not required to engage the services of an external auditor to perform an audit. Rather, the board can conduct its own audit of the village's finances and records. In the event the village does engage the services of an outside auditor, General Municipal Law § 35 requires municipalities to file with the OSC a copy of any report of an external audit or management letter received by the municipality within 10 days of receipt. Audited villages are also authorized to prepare a written response to the audit's findings and recommendations, and provide a copy of the written response to the OSC. Also, within 10 days after the filing of the audit with the clerk, public notice must be given by the clerk that an audit was undertaken and that a written response may be prepared by the village board.

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6. Common Roots Construction Update

7. Humana Health Insurance Renewal

8. NYCOM Fall Training School

9. County Waste & Recycling Customer Agreement

10. NY Rural Water Association Training

11. 2 Ton Electric Chain Hoist Quotes

12. PFOS Recovery Information Update

13. Old Business
    a. Following the completion of the two prior year AUDs, The Village's banking institution has approved our application for a Village Credit Card. (limit of $5,000)

14. New Business

15. Trustee Reports

16. Mayor's Report

Capital Projects
Journal Entry Posting

Draft #1

GIGP Meter Project 75/25

Account Name	GL Account Code	Subsididary Account	Debit	Credit	Comments
JE01					
Estimated Revenues	H0510.0000		$1,440,581		Total Revenue for project
Interfund Transfers	H5301.0000	$440,581			Amt of money from water fund
State Aid Water Capital Projects (GIGP)	H3991.0000	$1,000,000			Grant money for project
Other Debt	H5789.0000				Loan money for project
		$1,440,581	$1,440,581		
JE02					
Appropriations	H0960.0600			$1,440,581	Total appropriations for project
Engineering Fees	H1440.0200	$123,400			
Water Administration/Force Work	H8310.0200	$97,742			
Water Equipment & Capital Outlay	H8397.0200	$1,219,439			
		$1,440,581		$1,440,581	

Capital Projects
Journal Entry Posting

Draft #1

GIGP Meter Project 75/25

Account Name	GL Account Code	Subsidiary Account	Debit	Credit	Comments
JE01					
Estimated Revenues	H0510.0000		$1,275,764		Total Revenue for project
Interfund Transfers	H5301.0000	$275,764			Amt of money from water fund
State Aid Water Capital Projects (GIGP)	H3991.0000	$1,000,000			Grant money for project
Other Debt	H5789.0000				Loan money for project
		$1,275,764	$1,275,764		
JE02					
Appropriations	H0960.0600			$1,275,764	Total appropriations for project
Engineering Fees	H1440.0200	$123,400			
Water Administration/Force Work	H8310.0200	$97,742			
Water Equipment & Capital Outlay	H8397.0200	$1,054,622			
		$1,275,764		$1,275,764	

SITE INFORMATION	
ACCOUNT #	73346
SITE NAME	VILLAGE OF SOUTH GLENS FALLS
CONTACT NAME	
ADDRESS	116 1/2 SARATOGA AVE
CITY	SOUTH GLENS FALLS
STATE ZIP	NY 12803
EMAIL ADDRESS	
TELEPHONE	518-792-4033

BILLING INFORMATION	
BILLING NAME	DPW VILLAGE OF SOUTH GLEN
CONTACT	
ADDRESS	46 SARATOGA AVE
CITY	SOUTH GLENS FALLS
STATE ZIP	NY 12803
TELEPHONE	5187931455
EMAIL ADDRESS	

County Waste & Recycling

Customer Service Agreement

COUNTY WASTE
A WASTE CONNECTIONS COMPANY
PO BOX 431
CLIFTON PARK, N.Y. 12065
TEL: 518-877-7126 FAX: 518-877-7337

By: _____ (AUTHORIZED SIGNATURE)

Title: *Sales Representative*

EFFECTIVE DATE: 8/3/2023

SERVICE DESCRIPTION	TYPE ACCOUNT	SERVICE PRICE	QUANTITY	OTHER
FUEL & MATERIAL SURCHARGE	COMMERCIAL	4.53	1.00	
95 GL 1X WK COMM 1	COMMERCIAL	13.98	3.00	

The service agreement is for 60 months and the renewal period is for 60 months.

PAYMENT TERMS:

The undersigned individual signing this agreement on behalf of Customer acknowledges that he or she has read and understands the terms and conditions of this Agreement and that he or she has the authority to sign the Agreement on behalf of the Customer. **TERMS: NET 10 DAYS.** State and local taxes, government franchise fees (if applicable), administrative fees, fuel surcharges, and environmental fees also apply. Container relocation, container removal and seasonal restarts will be provided at addtitonal costs.

_____ INITIAL HERE

By: _____ (AUTHORIZED SIGNATURE) Title: _____

_____ CUSTOMER NAME (PLEASE PRINT)

8/3/2023
DATE OF AGREEMENT

COMMENTS _____

Please sign where indicated and return in the enclosed self-addressed envelope.
If you should have any questions, please call Customer Service @ 1-866-919-6499. THANK YOU!

TERMS AND CONDITIONS

ARTICLE I
SERVICES RENDERED

Customer grants to Contractor the exclusive right to collect and dispose of all of Customer's Waste Materials (as defined below) and agrees to make payments to Contractor as described herein, and Contractor agrees to furnish the services and equipment specified above, all in accordance with the terms of this Agreement.

ARTICLE II
TERM

THE INITIAL TERM (THE "INITIAL TERM") OF THIS AGREEMENT IS 60 MONTHS FROM THE EFFECTIVE DATE SET FORTH ON THE FIRST PAGE OF THIS AGREEMENT, WHICH IS THE DATE CONTRACTOR'S EQUIPMENT IS DELIVERED TO CUSTOMER'S LOCATION OR SERVICE UNDER THIS AGREEMENT COMMENCES, WHICHEVER IS EARLIER. THIS AGREEMENT SHALL AUTOMATICALLY RENEW FOR SUCCESSIVE 60 MONTHS TERMS (EACH A "RENEWAL TERM" AND TOGETHER WITH THE INITIAL TERM, THE "TERM") THEREAFTER UNLESS EITHER PARTY GIVES WRITTEN NOTICE OF TERMINATION BY U.S. CERTIFIED OR REGISTERED MAIL, POSTAGE PRE-PAID AND RETURN RECEIPT REQUESTED, TO THE OTHER PARTY AT LEAST NINETY (90) DAYS, BUT NOT MORE THAN ONE HUNDRED TWENTY (120) DAYS, PRIOR TO THE EXPIRATION OF THE INITIAL TERM OR ANY RENEWAL TERM. ANY SUCH NOTICE SHALL BE SENT TO THE OTHER PARTY'S ADDRESS SET FORTH ON THE FIRST PAGE OF THIS AGREEMENT, OR ANY CHANGE OF ADDRESS COMMUNICATED IN WRITING BY THE OTHER PARTY DURING THE TERM OF THE AGREEMENT. A RENEWAL TERM SHALL BECOME EFFECTIVE (THEREBY EXTENDING THE THEN-CURRENT TERM) UPON EITHER PARTY'S FAILURE TO GIVE NOTICE OF TERMINATION WITHIN THE TIME PERIOD SET FORTH ABOVE. NOTWITHSTANDING THE FOREGOING, CUSTOMER AGREES THAT IT SHALL NOT PROVIDE ANY SUCH NOTICE OF TERMINATION IF CONTRACTOR MEETS COMPETITIVE OFFERS MADE BY THIRD PARTIES IN WRITING FOR SIMILAR SERVICES AFTER CONTRACTOR'S REVIEW THEREOF PURSUANT TO ARTICLE XIII BELOW.

ARTICLE III
WASTE MATERIALS

The waste materials to be collected and disposed of by Contractor pursuant to this Agreement consist of all solid waste (including recyclable materials) generated or collected by Customer at the locations specified on the first page of this Agreement (the "Waste Materials"); provided, however, that the term Waste Materials specifically excludes and Customer agrees not to deposit in Contractor's equipment or place for collection by Contractor any radioactive, volatile, corrosive, highly flammable, explosive, biomedical, infectious, biohazardous, toxic or hazardous material as defined by applicable federal, state or local laws or regulations ("Excluded Waste"). Customer agrees to comply with any description of and/or procedures with respect to removal of contaminants or preparation of recyclable materials as reasonably provided by Contractor. In the event that any recyclable materials furnished to Contractor by Customer are, due to presence of contaminants, rejected by a recycling facility or otherwise are determined by Contractor not to be resalable or to have a reduced resale value, Contractor may, in addition to its other remedies, require Customer to pay Contractor, as liquidated damages and not as a penalty, the charges incurred by Contractor (plus overhead and profit) for hauling, processing and/or disposal of such materials and for the reduction in resale value of such materials. Contractor shall deliver properly prepared recyclable materials furnished to Contractor by Customer to a recycling facility owned and/or operated by Contractor or an affiliate of Contractor or a third party that Contractor understands will recycle the materials ("Third Party Facility"); provided, however, that Contractor shall not be responsible for and has not made any representation to Customer regarding the ultimate recycling of such recyclable materials by a Third Party Facility.

ARTICLE IV
TITLE

Contractor shall acquire title to the Waste Materials when they are loaded into Contractor's truck. Title to and liability for any Excluded Waste shall remain with Customer. Customer expressly agrees to defend, indemnify and hold harmless Contractor from and against any and all damages, penalties, fines, liabilities and costs (including reasonable attorneys' fees) resulting from or arising out of the deposit of Excluded Waste in Contractor's trucks, containers or other equipment.

ARTICLE V
PAYMENTS

Customer agrees to pay Contractor on a monthly basis for the services and/or equipment furnished by Contractor in accordance with the rates, charges and fees provided for herein ("Charges"). Payment shall be made by Customer to Contractor within the period of time set forth on the first page of this Agreement. Contractor may impose and Customer agrees to pay a late fee as determined by Contractor for all past due payments, and interest on all past due payments at the rate of one and one-half percent (1½%) per month, provided that no such late fee or interest charge shall exceed the maximum rate allowed therefor by applicable law. Any dispute or claim against Contractor concerning any amount invoiced by Contractor must be asserted by Customer in writing to Contractor at the address set forth on the first page of this Agreement not later than one hundred eighty (180) days following the event or circumstance giving rise to the underlying dispute or claim; the failure to abide by such time requirement shall constitute a release and waiver by Customer of any rights in respect of, and shall constitute a bar on, any claims or requests for relief by Customer on the basis of such dispute or claim. Customer will pay Contractor a standard recycling services and equipment charge set forth herein (irrespective of changing commodity values). Customer shall continue to provide, and Contractor shall continue to collect, recyclable materials from Customer in accordance with the terms of this Agreement for the Term hereof notwithstanding changing commodity values.

ARTICLE VI

RATE ADJUSTMENTS

Customer agrees that the Charges shall be increased from time to time to adjust for increases in the Consumer Price Index. Because disposal, fuel, materials and operations costs constitute a significant portion of the cost of Contractor's services provided hereunder, Customer agrees that Contractor may increase the Charges to account for any increase in such costs or any increases in transportation costs due to changes in location of the disposal facility. Customer agrees that Contractor may also increase the Charges to account for increases in the average weight per container yard of Customer's Waste Materials, increases in Contractor's costs due to changes in local, state or federal rules, ordinances or regulations applicable to Contractor's operations or the services provided hereunder, increases in taxes, fees or other governmental charges assessed against or passed through to Contractor (other than income or real property taxes), and changes in the values associated with recyclable materials. Contractor may increase Charges for reasons other than those set forth above with the consent of Customer. Such consent may be evidenced orally, in writing or by the practices and actions of the parties. In the event Contractor adjusts the Charges as provided in this Article, the parties agree that this Agreement as so adjusted will continue in full force and effect. Customer acknowledges and agrees that adjustments to the Charges might not be directly associated with increased costs of servicing Customer's specific account; rather, adjustments to the Charges might be based upon overall costs and expenses incurred by Contractor on a regional or national basis.

ARTICLE VII
SERVICE CHANGES AND AMENDMENTS

Changes to the type, size and amount of equipment, the type or frequency of service, and corresponding adjustments to the rates, may be made by agreement of the parties, evidenced orally, in writing or by the practices and actions of the parties, without affecting the validity of this Agreement and this Agreement shall be deemed amended accordingly. This Agreement shall continue in effect for the Term provided herein and shall not be affected by any changes in Customer's service address if any new service address is located within Contractor's service area. Should Customer change its service address to a location outside Contractor's service area, Customer may cancel the Agreement upon thirty (30) days' written notice to Contractor. Any other amendment to this Agreement not otherwise expressly provided for herein shall be made in writing and signed by both parties.

ARTICLE VIII
RESPONSIBILITY FOR EQUIPMENT

Any equipment furnished hereunder by Contractor shall remain the property of Contractor; however, Customer acknowledges that it has care, custody and control of the equipment while at Customer's location and accepts responsibility for all loss or damage to the equipment (except for normal wear and tear or for loss or damage resulting from Contractor's handling of the equipment) and for its contents. Customer shall not overload (by weight or volume), move, alter or install any devices on the equipment, and shall not manually or mechanically compact any materials inside the equipment, except inside compactor receiver boxes specially designed for such purpose, and shall not allow any third party to take any such actions. Customer shall pay additional charges each time that a container is overloaded (by weight or volume). Customer shall use the equipment only for its proper and intended purpose. Customer agrees to indemnify, defend and hold harmless Contractor, its employees and agents against all claims, damages, suits, penalties, fines, liabilities and costs (including reasonable attorneys' fees) for injury or death to persons or loss or damage to property arising out of Customer's use, operation or possession of the equipment. Customer agrees to provide unobstructed access to the equipment on the scheduled collection day. If the equipment is inaccessible so that the regularly scheduled pick-up cannot be made, Contractor will promptly notify Customer and afford Customer a reasonable opportunity to provide the required access; however, Contractor reserves the right to charge an additional fee for such inaccessibility and/or delay or any additional collection service required by Customer's failure to provide such access. The word "equipment" as used in this Agreement shall mean all containers used for the storage of Waste Materials, and such other on-site devices as may be specified on the first page of this Agreement.

ARTICLE IX
DAMAGE TO PAVEMENT

Customer warrants that Customer's pavement, curbing or other driving surface or any right of way reasonably necessary for Contractor to provide the services described herein are sufficient to bear the weight of all of Contractor's equipment and vehicles reasonably required to perform such services. Contractor will not be responsible for damage to any such pavement, curbing, driving surface or right of way, and Customer agrees to assume all liabilities for any such damage, which results from the weight of Contractor's vehicles providing service at Customer's location.

ARTICLE X
EARLY TERMINATION; LIQUIDATED DAMAGES

In the event Customer requests termination of this Agreement prior to the expiration of its Term other than as a result of an uncured breach by Contractor or if Contractor terminates this Agreement for Customer's breach (including nonpayment), then, in addition to such other damages as may be sustained by Contractor, Customer agrees to pay to Contractor all past due sums plus, as liquidated damages, a sum calculated as follows: (a) if the remaining Term under this Agreement is six (6) or more months, the average of Customer's most recent six (6) monthly charges multiplied by six (6); or (b) if the remaining Term under this Agreement is less than six (6) months, the average of Customer's most recent six (6) monthly charges multiplied by the number of months remaining in the Term. Notwithstanding the foregoing, if Customer suspended Contractor's collection services or reduced the frequency of Contractor's collection services by 50% or greater during the most recent six (6) month period, then Contractor may calculate liquidated damages using the average of Customer's six (6) monthly charges prior to the suspension or reduction in services, instead of Customer's most recent six (6) monthly charges. If the Term has not yet run for six (6) months, the average of Customer's monthly charges to date shall be used. Customer expressly acknowledges that in the event of an early termination of this Agreement, the anticipated loss to Contractor in such event is estimated to be the amount set forth in the foregoing liquidated damages provision and such estimated value is reasonable and is not imposed as a penalty. The parties stipulate and agree that the liquidated damages set forth in this Article will compensate Contractor for the loss of revenue attributable to the early termination of this Agreement, but the payment of these liquidated damages shall not in any way limit Contractor's rights and remedies relating to a breach of any other provision(s) of this Agreement.

Customer acknowledges and agrees that any request for termination of this Agreement prior to expiration of the Term requires an unscheduled collection of Contractor's equipment, which may take up to thirty (30) days to complete after Contractor receives from Customer: (a) a written request to terminate this Agreement; and (b) full payment of all liquidated damages and past due amounts owed by Customer to Contractor. Customer agrees that it shall

not move or allow any third party to move Contractor's equipment during the thirty (30) day period and any time prior thereto, within which Contractor has the sole and exclusive right to service and remove its equipment from Customer's service location, and hereby grants Contractor an irrevocable right and license to allow its equipment to remain on Customer's service location for such thirty (30) day period and all times prior thereto. This Article shall survive the termination or expiration of this Agreement.

ARTICLE XI
BREACH, SUSPENSION AND TERMINATION FOR CAUSE

If during the Term of this Agreement either party shall be in breach of any provision of this Agreement, the other party may suspend its performance hereunder until such breach has been cured or terminate this Agreement; provided, however, that no termination of this Agreement shall be effective until the complaining party has given written notice of such breach to the breaching party and the breaching party has failed to cure such breach within ten (10) days after its receipt of such notice. Upon any such failure to cure, the complaining party may terminate this Agreement by giving the breaching party written notice of such termination, which shall become effective upon receipt of such notice.

ARTICLE XII
ASSIGNMENT

Without the prior written consent of Contractor, which may be withheld in Contractor's sole and absolute discretion, Customer shall not take any one or more of the following actions: (a) assign or transfer this Agreement or any of its rights, or delegate any of its duties or obligations under this Agreement, whether voluntarily, by merger or operation of law, or otherwise; (b) appoint any third party agent (including without limitation any management company or broker) to exercise any rights, responsibilities, or take any action under this Agreement; or (c) request a change in Customer's billing address to any third party. Any violation of this Article by Customer shall constitute a breach of this Agreement for which Contractor may, in its sole and absolute discretion, seek damages and/or specific performance, including injunctive relief, without the requirement of establishing irreparable injury.

ARTICLE XIII
OPPORTUNITY TO PROVIDE ADDITIONAL SERVICES; RIGHT OF FIRST REFUSAL

Contractor values the opportunity to meet all of Customer's Waste Materials collection, disposal and recycling needs. Customer will provide Contractor the opportunity to meet those needs and to provide, on a competitive basis, any additional Waste Materials collection, disposal and recycling services during the Term of this Agreement. Customer also grants Contractor a right of first refusal to match any offer Customer receives (or makes) related to the provision of services to Customer similar to those covered hereunder upon expiration or termination of this Agreement for any reason, and Customer shall give Contractor prompt written notice of any such offer and a reasonable opportunity (but in any event at least five (5) business days from receipt of such notice) to match any such offer. In the event that Contractor matches such an offer, the parties hereto shall thereafter be bound by the terms of such offer. If Customer fails to comply with these right of first refusal provisions in any instance, then Customer shall pay to Contractor all resulting damages incurred by Contractor, including, without limitation, lost profits.

ARTICLE XIV
EXCUSED PERFORMANCE

Except for the payment of amounts owed hereunder, neither party hereto shall be liable for its failure to perform or delay in its performance hereunder due to contingencies beyond its reasonable control including, but not limited to, strikes, riots, compliance with laws or governmental orders, inability to access a container, fires, inclement weather and acts of God, and such failure shall not constitute a breach under this Agreement. For the avoidance of doubt, however, a law or government order, ordinance or award establishing an exclusive franchise or similar right for a service provider in Contractor's service area shall not excuse Customer's performance hereunder.

ARTICLE XV
BINDING EFFECT

This Agreement is a legally binding contract on the part of Contractor and Customer and their respective heirs, successors and permitted assigns, in accordance with the terms and conditions set out herein.

ARTICLE XVI
ATTORNEYS' FEES

In the event Customer fails to pay Contractor all amounts which become due under this Agreement (including any liquidated damages, late fees and interest assessed thereon), or fails to perform its obligations hereunder, and Contractor refers such matter to an attorney, Customer agrees to pay, in addition to all past due sums, any and all costs incurred by Contractor as a result of such action, including, to the extent permitted by law, reasonable attorneys' fees.

ARTICLE XVII
ENTIRE AGREEMENT; GOVERNING LAW; SEVERABILITY; SURVIVAL

This Agreement represents the entire understanding and agreement between the parties hereto concerning the matters described herein and supersedes any and all prior or contemporaneous agreements, whether written or oral, that may exist between the parties regarding the same. This Agreement shall be governed by the laws of the State in which Customer's service locations listed on the first page of this Agreement are situated, without regard to conflicts of law provisions, except that the agreement to arbitrate in Article XVIII shall be governed by the Federal Arbitration Act (9 U.S.C. sections 1 et seq.). If any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision hereof, and the invalid, illegal, or unenforceable provision shall be modified only to the extent necessary to make it enforceable. All agreements, representations, warranties and acknowledgments of Customer shall survive any termination or expiration of this Agreement, including, without limitation, those set forth in Articles III, IV, V, VIII, IX, X, XII, XIII, XVI and XVIII.

ARTICLE XVIII

BINDING ARBITRATION AND CLASS ACTION WAIVER

Except for Excluded Claims (as defined below), any disputes, controversies or claims arising out of or relating to this Agreement or any prior agreement between the parties hereto, the breach of such agreement(s), or any amounts paid or invoiced between the parties, shall be resolved by mandatory binding arbitration before a single arbitrator administered by the American Arbitration Association in accordance with its Commercial Arbitration Rules (collectively "Rules"), and judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. The following claims are not subject to mandatory binding arbitration (collectively, "Excluded Claims"): (A) either party's claims against the other in connection with bodily injury, real property damage or Excluded Waste; (B) Contractor's claims against Customer to collect past due Charges or liquidated damages under this Agreement or any prior agreements between the parties; (C) Contractor's pursuit of any claims or relief relating to the provisions in Articles VIII and/or X or any similar provisions in any prior agreements between the parties, and any injunctive relief sought in relation thereto; and (D) any claims or relief sought in relation to Article XII or any similar provision in any prior agreements between the parties. This agreement to arbitrate is governed by the Federal Arbitration Act.

THE PARTIES HERETO AGREE THAT ANY AND ALL DISPUTES, CONTROVERSIES OR CLAIMS OF ANY NATURE, WHETHER IN ARBITRATION OR OTHERWISE AND WHETHER RELATING TO THIS AGREEMENT OR OTHERWISE, MUST BE BROUGHT IN A PARTY'S INDIVIDUAL CAPACITY, AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS, CONSOLIDATED, COLLECTIVE OR REPRESENTATIVE PROCEEDING. ACCORDINGLY, EACH PARTY HEREBY WAIVES ANY AND ALL RIGHTS TO BRING ANY CLAIM OR ACTION AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS, CONSOLIDATED, COLLECTIVE OR REPRESENTATIVE PROCEEDING RELATING TO ANY DISPUTES, CONTROVERSIES OR CLAIMS BETWEEN THE PARTIES.

Notwithstanding anything to the contrary herein or in the Rules, any interpretation or adjudication related to this Article shall be done by a court, not an arbitrator.

ARTICLE XIX
CUSTOMER MASTER SERVICE AGREEMENTS

If Customer and Contractor or any of their respective parent companies or affiliates enter into a Master Service Agreement concerning the Waste Materials, and in the event of a conflict between the Master Service Agreement and this Agreement, the terms of this Agreement shall control, except to the extent the Master Service Agreement specifically references a provision of this Agreement, which reference shall include any applicable Article or Section reference, and the parties specifically express their intent in the Master Service Agreement to amend such provision.

PROJECT COMPLETION CERTIFICATE

SRF Project No.: C5-7505-01-00
Recipient: Village of South Glens Falls
County: Saratoga

I, the undersigned and Authorized Person of the **Village of South Glens Falls** (the "Recipient"), hereby certify as follows:

1. Unless otherwise defined herein, capitalized terms used herein shall have the meanings given to them in the Project Finance Agreement between the Corporation and the **Village of South Glens Falls** dated as of [CLOSDATE].

2. The Recipient received no Third-Party Funding that was not already disclosed to the Corporation and included in EXHIBIT E of the Project Finance Agreement.

3. The Recipient received no moneys from another source for the same costs for which it submitted a Supplemental Certificate to the Corporation.

4. All equipment and facilities paid for in whole or in part with Financing proceeds were and are being used solely for Project purposes.

5. The project has been fully completed in accordance with the requirements set forth in the Project Finance Agreement dated as of [CLOSDATE] between **Village of South Glens Falls** and the Corporation

I hereby affirm under penalty of perjury that I am an Authorized Person of **Village of South Glens Falls**, authorized to make the above certifications and that information provided on this Project Completion Certificate and all attachments, if any is true to the best of my knowledge and belief. I am aware false statements made in this Certificate are punishable pursuant to Section 210.45 of the Penal Law.

Village of South Glens Falls
By:_____
Authorized Person
Printed Name: _____
Title: _____

NEW YORK STATE ENVIRONMENTAL FACILITIES CORPORATION (EFC)
CERTIFICATION OF PROJECT COMPLETION

Recipient: **Village of South Glens Falls**
Project No.: **C5-7505-01-00**
County: **Saratoga**
Location: 34 First St, South Glens Falls , NY 12803
Name of Project: 1st Street Pump Station Upgrades

Project Description:
Contract 2G – This work consists of the site, mechanical, and architectural work associated with the 1st Street Pump Station. This includes but is not limited to providing demolition of all existing equipment, furnishing and installing new grinders with controls and all appurtenances, installing new pumps and controls with all appurtenances purchased from allowance, furnishing and installing all piping, fittings, valves, insertion valves, TS&V, restrained couplings, connections, yard hydrants, fencings, gates, access hatches, precast covers, slide gates, gratings, doors and all other appurtenances.

Contract 2E – This work consists of the electrical work associated with the 1st Street Pump Station. This includes but is not limited to providing power and control wire and conduit to the various equipment, all required demolition, removing buried fuel tank, new generator, replacing heaters and fans, and other building and site lighting and all other appurtenances.

Construction of the above project must be under the supervision of a person or firm licensed to practice professional engineering in the State of New York, as required under the Education Law. The person or firm supervising the above project must file a Certification of Project Completion within 30 days after completion of construction with the New York State Environmental Facilities Corporation, 625 Broadway, Albany, New York 12207-2997.

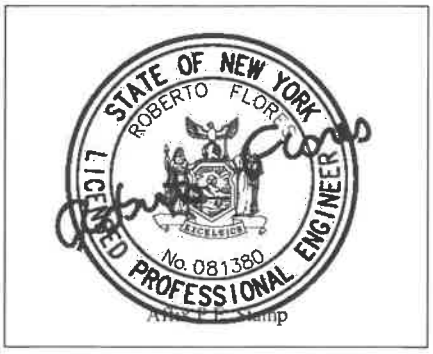
Construction Contract Title:	Construction Start Date:	Construction Substantial Completion Date:	Construction Final Completion Date:
2G	08/14/2020	08/18/2021	09/08/2021
2E	08/14/2020	08/31/2021	09/08/2021

☐ Applicable – the undersigned affirms that all components on the attached GPR Summary Sheet, identified as GPR by EFC, have been purchased, installed and are operable as described in the supporting documentation. (If applicable, please attach a summary sheet of GPR components incorporated into the project including the GPR item installed, approved GPR value, and actual GPR cost).

I certify that the construction of the above project including environmental mitigating measures, if any, was completed in accordance with the approved plans and specifications or approved amendments thereto and was under the supervision of a professional engineer licensed in New York State.

Engineer Name: Robert Flores
Engineer Title: Senior Project Manager
Engineering Firm: Delaware Engineering DPC
Eng. Firm Address: 28 Madison Ave Extension, Albany, NY, 12203

Roberto Flores
Signature Date



QUOTES RECEIVED

Purchasing (Total Project)

Date: 8/3/2023

State Contract No. N/A

Quotes received for: 2 Ton Electric Chain Hoist W/20' Chain

	Vendor	Price
	Zinto Handling Inc	$4,500.00 plus freight
*	Fastenal	$4,228.00
	Amazon	$4,228.00

Notes: Chain Hoist in shop has stopped working, can not get JET parts for this model, over 20 years old.

For all items between $500 and $2999, please provide 3 verbal quotes. For all items between $3000 and $9999, please provide 3 written/faxed quotes. Anything over $10,000 will need to go to bid.

FASTENAL®

Price Quotation
CONFIDENTIAL
08/1/2023

VILLAGE OF S. GLENS FALLS D.P.W.
116 1/2 Saratoga Ave
South Glens Falls, NY 12803-4837 USA
Phone: 518-955-1208
Email: dpwchagnon@sgfny.com
Contract #: PC70062
ATTN: Richard Garnsey

The store serving you is:
Fastenal Company
17 Blvd
Queensbury, NY 12804 USA
Phone: (518)793-3333
Fax: (518)793-2036
Email: NYSOU@stores.fastenal.com

Account #: GSNY0024
Quote #: 91431
PO #:
Job #:

Due Date:
Expiration Date: 09/1/2023

Part #	Customer Part #	Description	Quantity	Price/EA	Extended Price
99390465 4000lb WLL 20' Jet[REG] Heavy Duty Electric Chain Hoist		4000lb 20' Jet Hoist	1	$4,228.0000	$4,228.00

Subtotal (USD):	**$4,228.00**
City Tax:	**$0.00**
County Tax:	**$0.00**
State Tax:	**$0.00**
TOTAL (USD):	**$4,228.00**

Thank you!

*Shipping & Handling charges are subject to change.

PROPOSAL

BH-2307201

ZINTER HANDLING INC
4313 Route 50
Saratoga Springs, NY 12866
518-583-0853 or 800-462-1101
Fax: 518-583-1063

This offering prepared by: Brian Hackert

brian@zinterhandling.com

Confidential and Proprietary Information – Do not share with third parties

SUBMITTED TO:	South Glens Falls - DPW	DATE:	7/20/2023
STREET:		JOB NAME:	ACCO Electric Chain Hoist
CITY STATE AND ZIP CODE:		JOB LOCATION:	
PHONE:	518-955-1208 / dpwchagnon@sgfny.com	PROJECT DIRECTOR:	Rich

We hereby submit specifications and estimates for:

Quantity: One (1)
2-Ton Capacity Electric Chain Hoist with Top Hook Mount
Lift = 20' with Chain Container
2-Button Pendant with 18' of Cord Included
Voltage: 115V-1Ph-60Hz
15' of Power Cord Included
Headroom = 26.8"
Weight: 172 lbs.

Price: $4500.00 plus freight

SHIPMENT: Allow 1-2 weeks to ship ARO	
PAYMENT TO BE MADE AS FOLLOWS: Net 30 Days – pursuant to section 2.4 of T&Cs Tax: Not Included	**Freight: Prepaid and Added at cost plus 15%**
ZHI's T&Cs: This Proposal is subject to ZHI's standard terms and conditions (T&Cs) which are incorporated into this Proposal and is published on ZHI's website at: https://zinterhandling.com/about/industrial_terms_and_conditions_of_sales By accepting this Proposal, Customer accepts ZHI's T&Cs. Any attempt by Customer to modify ZHI's T&Cs is hereby rejected by ZHI.	This Proposal may be withdrawn by ZHI at any time prior to acceptance. ZHI reserves the right to reject Customer's Purchase Order if price and/or delivery has changed since the Proposal was issued.
ACCEPTANCE OF PROPOSAL:	
Customer may accept this proposal by signing below and/or by placing a purchase order. By signing this Proposal or by placing an order in response to this Proposal, Customer accepts its terms, authorizes ZHI to proceed, and agrees to the pricing and payment terms set forth in this Proposal.	
CUSTOMER'S AUTHORIZED SIGNATURE:	**DATE:**

‹ Back to results

Roll over image to zoom in

JET 2SS-1C-20 2-Ton Electric Chain Hoist, 1-Phase, 20' Lift (212000)

Visit the Jet Store

3.2 3 ratings

$4,228.00

Delivery & Support

Select to learn more

Ships from Amazon.com | Eligible for Return, Refund or Replacement within 30 days of receipt | Customer Support

Size Name: **20-Feet**

10-Feet | 15-Feet | **20-Feet**

Style: **Lift Electric Hoist**

- OVERLOAD PROTECTION: Slip clutch design prevents the hoist from lifting damaging loads above its rated capacity.
- INCREASED SAFETY: Upper and lower limiting switches prevent the load chain from over traveling.
- LONGER HOIST LIFE: Fully enclosed, all-steel plate construction, with a durable powder coat finish, keeps out moisture, dust, and debris.
- ELECTROMAGNETIC BRAKE: An industry-proven safety feature that secures the load even if power is interrupted to the hoist.
- CONTROL PENDANT: 24-volt push button controller with cable strain relief system, offers durability and reliability in industrial and commercial settings.

› See more product details

$4,228.00

FREE Inside Entryway delivery as soon as Monday, August 14, 8 AM - 11 AM

Sign in to update your location

Available to ship in 1-2 days

Qty: 1

Add to Cart

Buy Now

Payment	Secure transaction
Ships from	Amazon.com
Sold by	Amazon.com
Returns	Eligible for Return, Refund or Replacement within 30 days of receipt
Support	Free Amazon product support included
Packaging	Shows what's inside

Add a Protection Plan:

☐ 3-Year Protection for $189.99

☐ 4-Year Protection for $249.99

☐ Add a gift receipt for easy returns

Add to List

New (6) from $4,228.00 FREE Scheduled Delivery

Have one to sell?

Sell on Amazon

Buy it with

This item: JET 2SS-1C-20 2-Ton Electric Chain Hoist, 1-Phase, 20' Lift...
$4,228.00

+

Lift Sling Straps, JCHL 6.5'X2 Heavy Duty Flat Eye Lift Sling 13,000 l...
$16.99 ($8.50/Count)

+

OrangeA Heavy Duty Manual 2200LBS Capacity Plain 1 Ton...
$49.99

Total price: $4,294.98

Add all three to Cart

Some of these items ship sooner than the others.
Show details

For more information on training, visit our website at: www.nyruralwater.org

Please join us at the Turning Stone Resort & Conference Center for our... 45th Annual Technical Training Workshop & Exhibition May 20 – 22, 2024.

LIMITED ATTENDANCE
- 25 -
Please pre-register as soon as possible

Register by fax or mail to:

NEW YORK RURAL
WATER ASSOCIATION, INC.
P.O. Box 487
Claverack, NY 12513
Fax: (518) 828-0582
Phone: (518) 828-3155
E-mail: nyrwa@nyruralwater.org

Is your utility / organization a member of the New York Rural Water Association? If not, you should consider joining the over 1400 that are, and share in the benefits!
For more information, please call (518) 828-3155

NEW YORK RURAL WATER ASSOCIATION

WATER TRAINING SESSION

Fire Hydrants/Valves O&M

Date: November 8, 2023

Location: Holiday Inn
308 North Comrie Avenue
Johnstown, NY 12095

FOR: Fulton, Hamilton, Montgomery, & Saratoga Counties

MORNING SESSION

7:30 am – 8:00 am REGISTRATION

8:00 am – 8:15 am **Welcome, Introductions & Class Objectives**

8:15 am – 10:00 am **Fire Hydrant O&M**
-Review the different safety procedures.
- Establishing an effective flushing program along with a record keeping program.
-Overview

10:00 am – 12:00 pm **Complete Operation and Maintenance of Fire Hydrants**
-Cover the complete operation and maintenance of fire hydrants.
-Physical demonstration of tearing down a hydrant, reviewing each step of the process to properly operate and maintain the hydrant.
-Overview

NYS DOH is expected to grant 6.0 contact hours toward recertification.
NO HOURS FOR PARTIAL ATTENDANCE

Please Note – If you wish to cancel your registration for this session, you must do so within 3 business days prior to the session.

Fire Hydrants/Valves O&M
November 8, 2023

AFTERNOON SESSION

12:00 pm – 1:00 pm LUNCH **(on your own)**

1:00 pm – 2:00 pm **Valve O&M**
-Discuss the different safety procedures.
-Discuss establishing an effective exercising and record keeping program.
-Review the inter-workings and mechanics of today's resilient wedge gate valves.
-Overview

2:00 pm – 2:15 pm Break

2:15 pm – 3:15 pm **Remote Pressure Monitoring**
-Discuss the basics of pressure monitoring.
-The evolution of pressure monitoring and where the technology is today.
-Cover the options available in the pressure monitoring field.
-Overview

3:15 pm – 3:30 pm **Questions and Answers**

3:30 pm Closing Remarks and Certificates Issued

Speakers:
Bryan Elford, Kennedy Valve and M&H Valve

Mail registration form to:
New York Rural Water Association Inc.
PO Box 487 - Claverack, NY 12513
Fax: (518) 828-0582 or
E-mail: nyrwa@nyruralwater.org

PLEASE RETURN BY October 30, 2023
PRE-REGISTRATION FORM
November 8, 2023– *Johnstown, NY*

****Registration will not be processed if required fields (*) are not complete****
(Please use a separate form for each attendee)

Personal Information

*Name:_____

*Home Address:_____

_____

DOH Cert.#_____ DEC Cert.#_____

*System:_____

*County:_____

*Cell Phone:_____

*e-mail address:_____

Member of NYRWA YES or NO

SPDES#_____ PWSID#_____

Billing Information (Required)

*System/Company Name: _____

*Billing Address:_____

_____

*County: _____*Phone:_____

NO FEE FOR THIS SESSION
Billing information required to process registration.

SUPREME COURT OF THE STATE OF NEW YORK
SARATOGA COUNTY

----------X

VILLAGE OF SOUTH GLENS FALLS,

Plaintiff,

-against -

THE 3M COMPANY, f/k/a Minnesota Mining and Manufacturing Co., AGC CHEMICALS AMERICAS INC., AMEREX CORPORATION, ARKEMA INC., ARCHROMA U.S. INC., BASF CORPORATION, individually and as successor in interest to Ciba Inc., BUCKEYE FIRE EQUIPMENT COMPANY, CHEMDESIGN PRODUCTS INC., CHEMGUARD INC., CHEMICALS, INC., CLARIANT CORPORATION, individually and as successor in interest to Sandoz Chemical Corporation, CORTEVA, INC., individually and as successor in interest to DuPont Chemical Solutions Enterprise, DEEPWATER CHEMICALS, INC., DUPONT DE NEMOURS INC., individually and as successor in interest to DuPont Chemical Solutions Enterprise, DYNAX CORPORATION, E. I. DUPONT DE NEMOURS AND COMPANY, individually and as successor in interest to DuPont Chemical Solutions Enterprise, NATION FORD CHEMICAL COMPANY, THE CHEMOURS COMPANY, individually and as successor in interest to DuPont Chemical Solutions Enterprise, THE CHEMOURS COMPANY FC, LLC, individually and as successor in interest to DuPont Chemical Solutions Enterprise, and TYCO FIRE PRODUCTS, LP, individually and as successor in interest to The Ansul Company, and DOE DEFENDANTS 1-20, fictitious names whose present identities are unknown,

Defendants.

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Index No. _____/2023

COMPLAINT AND DEMAND FOR JURY TRIAL

Trial by jury is desired in the County of SARATOGA

Venue is designated pursuant to CPLR § 503(a) & (c) in that the cause of action happened in this county.

COMPLAINT AND DEMAND FOR JURY TRIAL

Plaintiff VILLAGE OF SOUTH GLENS FALLS ("Plaintiff"), by and through its undersigned counsel, hereby files this Complaint against Defendants, 3M COMPANY, f/k/a

Minnesota Mining and Manufacturing Co., AGC CHEMICALS AMERICAS INC., AMEREX CORPORATION, ARKEMA INC., ARCHROMA U.S. INC., BASF CORPORATION, BUCKEYE FIRE EQUIPMENT COMPANY, CHEMDESIGN PRODUCTS INC., CHEMGUARD INC., CHEMICALS, INC., CLARIANT CORPORATION, CORTEVA, INC., DEEPWATER CHEMICALS, INC., DUPONT DE NEMOURS INC., DYNAX CORPORATION, E. I. DUPONT DE NEMOURS AND COMPANY, NATION FORD CHEMICAL COMPANY, THE CHEMOURS COMPANY, THE CHEMOURS COMPANY FC, LLC, and TYCO FIRE PRODUCTS, LP, and DOE DEFENDANTS 1-20, fictitious names whose present identifies are unknown (collectively "Defendants") and alleges, upon information and belief, as follows:

INTRODUCTION

1. This action arises from the foreseeable contamination of groundwater by the use of aqueous film-forming foam ("AFFF") products that contained per- and poly-fluoroalkyl substances ("PFAS"), including perfluorooctane sulfonate ("PFOS") and perfluorooctanoic acid ("PFOA").
2. PFOS and PFOA are fluorosurfactants that repel oil, grease, and water. PFOS, PFOA, and/or their chemical precursors, are or were components of AFFF products, which are firefighting suppressant agents used in training and firefighting activities for fighting Class B fires. Class B fires include fires involving hydrocarbon fuels such as petroleum or other flammable liquids.
3. PFOS and PFOA are mobile, persist indefinitely in the environment, bioaccumulate in individual organisms and humans, and biomagnify up the food chain. PFOS and PFOA are also associated with multiple and significant adverse health effects in humans,

including but not limited to kidney cancer, testicular cancer, high cholesterol, thyroid disease, ulcerative colitis, and pregnancy-induced hypertension.

4. At various times from the 1950s through today, Defendants designed, manufactured, marketed, distributed, and/or sold AFFF products containing PFOS, PFOA, and/or their chemical precursors, and/or designed, manufactured, marketed, distributed, and/or sold the fluorosurfactants and/or perfluorinated chemicals ("PFCs") contained in AFFF (collectively, "AFFF/Component Products").

5. Defendants designed, manufactured, marketed, distributed, and/or sold AFFF/Component Products despite knowing that PFAS are toxic, persist indefinitely, and would be routinely released into the environment during fire protection, training, and response activities, even when used as directed and intended by Defendants.

6. Since its creation in the 1960s, AFFF designed, manufactured, marketed, distributed, and/or sold by Defendants, and/or that contained fluorosurfactants and/or PFCs designed, manufactured, marketed, distributed, and/or sold by Defendants, was sold to the military, fire training facilities, fire departments or airports in the area near Plaintiff's water system, which used it as directed and intended by Defendants, and subsequently released it into the environment during fire protection, training, and response activities, resulting in widespread PFAS contamination.

7. Plaintiff is the owner and operator of a water system serving approximately 3,900 residents located in and around South Glens Falls, New York.

8. Plaintiff's system draws the drinking water it provides to customers from 20 underground springs.

9. Plaintiff has detected PFAS in its underground springs.

10. On information and belief, the PFAS contamination described above is a direct and proximate result of fire protection, training, and response activities in the area near Plaintiff's water system, resulting in the migration of PFAS into Plaintiff's water supply.

11. In order to ensure that it can continue to provide clean and safe water to residences, Plaintiff has and will continue to take actions to address the above contamination of its property and its potable water supply caused by the Defendants.

12. Such actions include but are not limited to additional testing and monitoring for PFAS; planning, designing, purchasing, installing, and maintaining water filtration systems to remove these chemicals; infrastructure modifications; contingency planning; and community outreach.

13. Additionally, in order to keep providing clean drinking water to its residents Plaintiff is in the process of installing a Granular Activated Carbon ("GAC") filter to its water system.

14. The GAC system will eliminate the PFAS chemicals in the village's water, so far Plaintiff has spent approximately $1.9 million on the GAC filtration project.

1. Due to the persistent and long-term nature of PFAS contamination, Plaintiff is expected to suffer damages and incur the costs associated with these and other ongoing necessary remedial actions for many years to come.

2. Through this action, Plaintiff seeks compensatory damages for the harm done to its property and the costs associated with investigating, remediating, and monitoring its drinking water supplies contaminated with PFAS due to the use of AFFF in the area near Plaintiff's water system.

JURISDICTION AND VENUE

3. Upon information and belief, this Court has personal jurisdiction over Defendants because each of them is doing business in New York by manufacturing, distributing,

producing and marketing products, services and/or materials in this State and/or to this State.

4. At all relevant times to the Complaint, Defendants conducted business in New York and thereby availed themselves of the legal rights in New York.

5. Defendants have had systematic and continuous commercial contacts with New York to establish jurisdiction over them pursuant to CPLR § 302.

6. This Court has personal jurisdiction over the defendants as each of them are doing business in New York and engage in business in New York such that it is reasonably foreseeable that they would be subject to the jurisdiction of the courts of this State.

7. Plaintiff is a municipal corporation of the state of New York, wholly located within Saratoga County.

PARTIES

A. Plaintiff

8. Plaintiff is a municipal corporation organized under the laws of the State of New York, with its principal place of business located at 46 Saratoga Avenue, South Glens Falls, New York 12803.

B. Defendants

9. The term "Defendants" refers to all Defendants named herein jointly and severally.

i. The AFFF Defendants

10. The term **"AFFF Defendants"** refers collectively to Defendants 3M Company, Amerex Corporation, Buckeye Fire Equipment Company, Chemguard Inc., and Tyco Fire Products L.P.

11. Defendant The 3M Company f/k/a Minnesota Mining and Manufacturing Co. ("3M") is a corporation organized and existing under the laws of the State of Delaware,

with its principal place of business located at 3M Center, St. Paul, Minnesota 55144-1000.

12. Beginning before 1970 and until at least 2002, 3M designed, manufactured, marketed, distributed, and sold AFFF containing PFAS, including but not limited to PFOA and PFOS.

13. **Defendant Amerex Corporation ("Amerex")** is a corporation organized and existing under the laws of the State of Alabama, with its principal place of business located at 7595 Gadsden Highway, Trussville, AL 35173.

14. Amerex is a manufacturer of firefighting products. Beginning in 1971, it was a manufacturer of hand portable and wheeled extinguishers for commercial and industrial applications.

15. In 2011, Amerex acquired Solberg Scandinavian AS, one of the largest manufacturers of AFFF products in Europe.

16. On information and belief, beginning in 2011, Amerex designed, manufactured, marketed distributed, and sold AFFF containing PFAS, including but not limited to PFOA and PFOS.

17. **Defendant Tyco Fire Products LP ("Tyco")** is a limited partnership organized under the laws of the State of Delaware, with its principal place of business located at One Stanton Street, Marinette, Wisconsin 54143-2542.

18. Tyco is the successor in interest of The Ansul Company ("Ansul"), having acquired Ansul in 1990.

19. Beginning in or around 1975, Ansul designed, manufactured, marketed, distributed, and sold AFFF containing PFAS, including but not limited to PFOA and PFOS.

20. After Tyco acquired Ansul in 1990, Tyco/Ansul continued to design, manufacture, market, distribute, and sell AFFF products containing PFAS, including but not limited to PFOA and PFOS.

21. Defendant Chemguard, Inc. ("Chemguard") is a corporation organized under the laws of the State of Texas, with its principal place of business located at One Stanton Street, Marinette, Wisconsin 54143.

22. On information and belief, Chemguard designed, manufactured, marketed, distributed, and sold AFFF products containing PFAS, including but not limited to PFOA and PFOS.

23. On information and belief, Chemguard was acquired by Tyco International Ltd. in 2011.

24. On information and belief, Tyco International Ltd. later merged into its subsidiary Tyco International plc in 2014 to change its jurisdiction of incorporation from Switzerland to Ireland.

25. Defendant Buckeye Fire Equipment Company ("Buckeye") is a corporation organized under the laws of the State of Ohio, with its principal place of business located at 110 Kings Road, Kings Mountain, North Carolina 28086.

26. On information and belief, Buckeye designed, manufactured, marketed, distributed, and sold AFFF products containing PFAS, including but not limited to PFOA and PFOS.

27. On information and belief, the AFFF Defendants designed, manufactured, marketed, distributed, and sold AFFF products containing PFOS, PFOA, and/or their chemical precursors that were stored, handled, used, trained with, tested equipment with, otherwise discharged, and/or disposed in the vicinity of Plaintiff's drinking water supply.

ii. The Fluorosurfactant Defendants

28. The term **"Fluorosurfactant Defendants"** refers collectively to Defendants 3M, Arkema Inc., BASF Corporation, ChemDesign Products Incorporated, Chemguard Inc.,

Deepwater Chemicals, Inc., E.I. DuPont de Nemours and Company, The Chemours Company, The Chemours Company FC, LLC, DuPont de Nemours Inc., and Dynax Corporation.

29. **Defendant Arkema Inc.** is a corporation organized and existing under the laws of Pennsylvania, with its principal place of business at 900 First Avenue, King of Prussia, PA 19406.

30. Arkema Inc. develops specialty chemicals and polymers.

31. Arkema, Inc. is an operating subsidiary of Arkema France, S.A.

32. On information and belief, Arkema Inc. designed, manufactured, marketed, distributed, and sold fluorosurfactants containing PFOS, PFOA, and/or their chemical precursors for use in AFFF products.

33. Defendant BASF Corporation ("BASF") is a corporation organized under the laws of the State of Delaware, with its principal place of business located at 100 Park Avenue, Florham Park, New Jersey 07932.

34. On information and belief, BASF is the successor-in-interest to Ciba. Inc. (f/k/a Ciba Specialty Chemicals Corporation).

35. On information and belief, Ciba Inc. designed, manufactured, marketed, distributed, and sold fluorosurfactants containing PFOS, PFOA, and/or their chemical precursors for use in AFFF products.

36. Defendant ChemDesign Products Inc. ("ChemDesign") is a corporation organized under the laws of Delaware, with its principal place of business located at 2 Stanton Street, Marinette, WI, 54143.

37. On information and belief, ChemDesign designed, manufactured, marketed, distributed, and sold fluorosurfactants containing PFOS, PFOA, and/or their chemical precursors for use in AFFF products.

38. **Defendant Deepwater Chemicals, Inc. ("Deepwater")** is a corporation organized under the laws of Delaware, with its principal place of business located at 196122 E County Road 40, Woodward, OK, 73801.

39. On information and belief, Deepwater Chemicals designed, manufactured, marketed, distributed, and sold fluorosurfactants containing PFOS, PFOA, and/or their chemical precursors for use in AFFF products.

40. **Defendant Dynax Corporation ("Dynax")** is a corporation organized under the laws of the State of Delaware, with its principal place of business located at 103 Fairview Park Drive, Elmsford, New York 10523.

41. On information and belief, Dynax entered into the AFFF market on or about 1991 and quickly became a leading global producer of fluorosurfactants and fluorochemical stabilizers containing PFOS, PFOA, and/or their chemical precursors.

42. On information and belief, Dynax designed, manufactured, marketed, distributed, and sold fluorosurfactants and fluorochemical stabilizers containing PFOS, PFOA, and/or their chemical precursors for use in AFFF products.

43. **Defendant E.I. du Pont de Nemours & Company ("DuPont")** is a corporation organized under the laws of the State of Delaware, with its principal place of business located at 974 Centre Road, Wilmington, Delaware 19805.

44. **Defendant The Chemours Company ("Chemours Co.")** is a limited liability company organized under the laws of the State of Delaware, with its principal place of business located at 1007 Market Street, P.O. Box 2047, Wilmington, Delaware, 19899.

45. In 2015, DuPont spun off its performance chemicals business to Chemours Co., along with vast environmental liabilities which Chemours Co. assumed, including those related to PFOS and PFOA and fluorosurfactants. On information and belief, Chemours Co. has supplied fluorosurfactants containing PFOS and PFOA, and/or their chemical precursors to manufacturers of AFFF products.

46. On information and belief, Chemours Co. was incorporated as a subsidiary of DuPont as of April 30, 2015. From that time until July 2015, Chemours Co. was a wholly owned subsidiary of DuPont.

47. In July 2015, DuPont spun off Chemours Co. and transferred to Chemours Co. its "performance chemicals" business line, which includes its fluoroproducts business, distributing shares of Chemours Co. stock to DuPont stockholders, and Chemours Co. has since been an independent, publicly traded company.

48. **Defendant The Chemours Company FC, LLC ("Chemours FC")** is a limited liability company organized under the laws of the State of Delaware, with its principal place of business located at 1007 Market Street, Wilmington, Delaware, 19899.

49. **Defendant Corteva, Inc. ("Corteva")** is a corporation organized and existing under the laws of Delaware, with its principal place of business at 974 Centre Rd., Wilmington, Delaware 19805.

50. **Defendant Dupont de Nemours Inc. f/k/a DowDuPont, Inc. ("Dupont de Nemours Inc.")** is a corporation organized and existing under the laws of Delaware, with its

principal place of business at 974 Centre Road, Wilmington, Delaware 19805 and 2211 H.H. Dow Way, Midland, Michigan 48674.

51. On June 1, 2019, DowDuPont separated its agriculture business through the spin-off of Corteva.

52. Corteva was initially formed in February 2018. From that time until June 1, 2019, Corteva was a wholly owned subsidiary of DowDuPont.

53. On June 1, 2019, DowDuPont distributed to DowDuPont stockholders all issued and outstanding shares of Corteva common stock by way of a pro-rata dividend. Following that distribution, Corteva became the direct parent of E. I. Du Pont de Nemours & Co.

54. Corteva holds certain DowDuPont assets and liabilities, including DowDuPont's agriculture and nutritional businesses.

55. On June 1, 2019, DowDuPont, the surviving entity after the spin-off of Corteva and of another entity known as Dow, Inc., changed its name to DuPont de Nemours, Inc., to be known as DuPont ("New DuPont"). New DuPont retained assets in the specialty products business lines following the above-described spin-offs, as well as the balance of the financial assets and liabilities of E.I DuPont not assumed by Corteva.

56. Defendants E. I. Du Pont de Nemours and Company; The Chemours Company; The Chemours Company FC, LLC; Corteva, Inc.; and DuPont de Nemours, Inc. are collectively referred to as "DuPont" or the "DuPont Defendants" throughout this Complaint.

57. On information and belief, DuPont designed, manufactured, marketed, distributed, and sold fluorosurfactants containing PFOS, PFOA, and/or their chemical precursors for use in AFFF products.

58. On information and belief, 3M and Chemguard also designed, manufactured, marketed, distributed, and sold fluorosurfactants containing PFOS, PFOA, and/or their chemical precursors for use in AFFF products.

59. On information and belief, the Fluorosurfactant Defendants designed, manufactured, marketed, distributed, and sold fluorosurfactants containing PFOS, PFOA, and/or their chemical precursors for use in AFFF products that were stored, handled, used, trained with, tested equipment with, otherwise discharged, and/or disposed in the vicinity of Plaintiff's drinking water supply.

iii. The PFC Defendants

60. The term **"PFC Defendants"** refers collectively to 3M, AGC Chemicals Americas Inc., Archroma U.S. Inc., ChemDesign Products Inc., Chemicals, Inc., Clariant Corporation, Deepwater Chemicals, Inc., E. I. DuPont de Nemours and Company, The Chemours Company, The Chemours Company FC, LLC, Corteva, Inc., DuPont de Nemours Inc., and Nation Ford Chemical Company.

61. **Defendant AGC Chemicals Americas, Inc. ("AGC")** is a corporation organized and existing under the laws of Delaware, having its principal place of business at 55 East Uwchlan Avenue, Suite 201, Exton, PA 19341.

62. On information and belief, AGC Chemicals Americas, Inc. was formed in 2004 and is a subsidiary of AGC Inc., a foreign corporation organized under the laws of Japan, with its a principal place of business in Tokyo, Japan.

63. AGC manufactures specialty chemicals. It offers glass, electronic displays, and chemical products, including resins, water and oil repellants, greenhouse films, silica additives, and various fluorointermediates.

64. On information and belief, AGC designed, manufactured, marketed, distributed, and sold PFCs containing PFOS, PFOA, and/or their chemical precursors for use in manufacturing the fluorosurfactants used in AFFF products.

65. **Defendant Archroma U.S., Inc. ("Archroma")** is a corporation organized and existing under the laws of Delaware, with its a principal place of business at 5435 77 Center Drive, Charlotte, North Carolina 28217.

66. On information and belief, Archroma was formed in 2013 when Clariant Corporation divested its textile chemicals, paper specialties, and emulsions business to SK Capital Partners.

67. On information and belief, Archroma designed, manufactured, marketed, distributed, and sold PFCs containing PFOS, PFOA, and/or their chemical precursors for use in manufacturing the fluorosurfactants used in AFFF products.

68. **Defendant Chemicals, Inc. ("Chemicals, Inc.")** is a corporation organized and existing under the laws of Texas, with its principal place of business located at 12321 Hatcherville, Baytown, TX 77520.

69. On information and belief, Chemicals, Inc. supplied PFCs containing PFOS, PFOA, and/or their chemical precursors for use in manufacturing the fluorosurfactants used in AFFF products.

70. **Defendant Clariant Corporation ("Clariant")** is a corporation organized and existing under the laws of New York, with its principal place of business at 4000 Monroe Road, Charlotte, North Carolina 28205.

71. On information and belief, Clariant is the successor in interest to the specialty chemicals business of Sandoz Chemical Corporation ("Sandoz"). On information and belief, Sandoz spun off its specialty chemicals business to form Clariant in 1995.

72. On information and belief, Clariant supplied PFCs containing PFOS, PFOA, and/or their chemical precursors for use in manufacturing the fluorosurfactants used in AFFF products.

73. **Defendant Nation Ford Chemical Co. ("Nation Ford")** is a corporation organized and existing under the laws of South Carolina, with its principal place of business located at 2300 Banks Street, Fort Mill, SC 29715.

74. On information and belief, Nation Ford supplied PFCs containing PFOS, PFOA, and/or their chemical precursors for use in manufacturing the fluorosurfactants used in AFFF products.

75. On information and belief, 3M, ChemDesign, Deepwater Chemicals, and DuPont also supplied PFCs containing PFOS, PFOA, and/or their chemical precursors for use in manufacturing the fluorosurfactants used in AFFF products.

76. On information and belief, the PFC Defendants supplied PFCs containing PFOS, PFOA, and/or their chemical precursors for use in manufacturing the fluorosurfactants used in AFFF products that were stored, handled, used, trained with, tested equipment with, otherwise discharged, and/or disposed in the vicinity of Plaintiff's drinking water supply.

iv. Doe Defendants 1-20

77. Doe Defendants 1-20 are unidentified entities or persons whose names are presently unknown and whose actions, activities, omissions (a) may have permitted, caused and/or contributed to the contamination of Plaintiff's water sources or supply wells; or (b) may be vicariously responsible for entities or persons who permitted, caused and/or contributed to the

contamination of Plaintiff's water sources or supply wells; or (c) may be successors in interest to entities or persons who permitted, caused and/or permitted , contributed to the contamination of Plaintiff's water sources or supply wells. After reasonable search and investigation to ascertain the Doe Defendants actual names, the Doe Defendants' actual identities are unknown to Plaintiff as they are not linked with any of the Defendants on any public source.

78. The Doe Defendants 1-20 either in their own capacity or through a party they are liable for: (1) designed, manufactured, marketed, distributed, and/or sold AFFF products containing PFOS, PFOA, and/or their chemical precursors, and/or designed, manufactured, marketed, distributed, and/or sold the fluorosurfactants and/or PFCs contained in AFFF/Component Products; or (2) used, handled, transported, stored, discharged, disposed of, designed, manufactured, marketed, distributed, and/or sold PFOS, PFOA, and/or their chemical precursors, or other non-AFFF products containing PFOS, PFOA, and/or their chemical precursors; or (3) failed to timely perform necessary and reasonable response and remedial measures to releases of PFOS, PFOA, and/or their chemical precursors, or other non-AFFF products containing PFOS, PFOA, and/or their chemical precursors in to the environment in which Plaintiff's water supplies and well exist.

79. All Defendants, at all times material herein, acted by and through their respective agents, servants, officers and employees, actual or ostensible, who then and there were acting within the course and scope of their actual or apparent agency, authority or duties. Defendants are liable based on such activities, directly and vicariously.

80. Defendants represent all or substantially all of the market for AFFF/Component Products used in the vicinity of Plaintiff's drinking water supply.

FACTUAL ALLEGATIONS RELEVANT TO ALL CAUSES OF ACTION

A. PFOA and PFOS and Their Risk to Public Health

81. PFAS are chemical compounds containing fluorine and carbon. These substances have been used for decades in the manufacture of, among other things, household and commercial products that resist heat, stains, oil, and water. These substances are not naturally occurring and must be manufactured.

82. The two most widely studied types of these substances are PFOA and PFOS.

83. PFOA and PFOS have unique properties that cause them to be: (i) mobile and persistent, meaning that they readily spread into the environment where they break down very slowly; (ii) bioaccumulative and biomagnifying, meaning that they tend to accumulate in organisms and up the food chain; and (iii) toxic, meaning that they pose serious health risks to humans and animals.

84. PFOA and PFOS easily dissolve in water, and thus they are mobile and easily spread in the environment. PFOA and PFOS also readily contaminate soils and leach from the soil into groundwater, where they can travel significant distances.

85. PFOA and PFOS are characterized by the presence of multiple carbon-fluorine bonds, which are exceptionally strong and stable. As a result, PFOA and PFOS are thermally, chemically, and biologically stable. They resist degradation due to light, water, and biological processes.

86. Bioaccumulation occurs when an organism absorbs a substance at a rate faster than the rate at which the substance is lost by metabolism and excretion. Biomagnification occurs when the concentration of a substance in the tissues of organisms increases as the substance travels up the food chain.

87. PFOA and PFOS bioaccumulate/biomagnify in numerous ways. First, they are relatively stable once ingested, so that they bioaccumulate in individual organisms for significant periods of time. Because of this stability, any newly ingested PFOA and PFOS will be added to any PFOA and PFOS already present. In humans, PFOA and PFOS remain in the body for years.

88. PFOA and PFOS biomagnify up the food chain. This occurs, for example, when humans eat fish that have ingested PFOA and/or PFOS.

89. The chemical structure of PFOA and PFOS makes them resistant to breakdown or environmental degradation. As a result, they are persistent when released into the environment.

90. Exposure to PFAS is toxic and poses serious health risks to humans and animals.

91. PFAS are readily absorbed after consumption or inhalation and accumulate primarily in the bloodstream, kidney, and liver.

B. Defendants' Manufacture and Sale of AFFF/Component Products

92. AFFF is a type of water-based foam that was first developed in the 1960s to extinguish hydrocarbon fuel-based fires.

93. AFFF is a Class-B firefighting foam. It is mixed with water and used to extinguish fires that are difficult to fight, particularly those that involve petroleum or other flammable liquids.

94. AFFF is synthetically formed by combining fluorine-free hydrocarbon foaming agents with fluorosurfactants. When mixed with water, the resulting solution produces an aqueous film that spreads across the surface of hydrocarbon fuel. This film provides fire extinguishment and is the source of the designation aqueous film-forming foam.

95. Beginning in the 1960s, the AFFF Defendants designed, manufactured, marketed, distributed, and/or sold AFFF products that used fluorosurfactants containing either PFOS, PFOA, or the chemical precursors that degrade into PFOS and PFOA.

96. AFFF can be made without the fluorosurfactants that contain PFOA, PFOS, and/or their precursor chemicals. Fluorine-free firefighting foams, for instance, do not release PFOA, PFOS, and/or their precursor chemicals into the environment.

97. AFFF that contains fluorosurfactants, however, is better at extinguishing hydrocarbon fuel-based fires due to their surface-tension lowering properties, essentially smothering the fire and starving it of oxygen.

98. The fluorosurfactants used in 3M's AFFF products were manufactured by 3M's patented process of electrochemical fluorination ("ECF").

99. The fluorosurfactants used in other AFFF products sold by the AFFF Defendants were manufactured by the Fluorosurfactant Defendants through the process of telomerization.

100. The PFCs the Fluorosurfactant Defendants needed to manufacture those fluorosurfactants contained PFOS, PFOA, and/or their chemical precursors and were designed, manufactured, marketed, distributed and/or sold by the PFC Defendants.

101. On information and belief, the PFC and Fluorosurfactant Defendants were aware that the PFCs and fluorosurfactants they designed, manufactured, marketed, distributed, and/or sold would be used in the AFFF products designed, manufactured, marketed, distributed, and/or sold by the AFFF Defendants.

102. On information and belief, the PFC and Fluorosurfactant Defendants designed, manufactured, marketed, distributed, and/or sold the PFC and/or fluorosurfactants contained in the AFFF products discharged into the environment during fire protection,

training, and response activities conducted in the vicinity of Plaintiff's drinking water supply, resulting in widespread PFAS contamination.

103. On information and belief, the AFFF Defendants designed, manufactured, marketed, distributed, and/or sold the AFFF products discharged into the environment during fire protection, training, and response activities conducted in the vicinity of Plaintiff's drinking water supply, resulting in widespread PFAS contamination.

C. Defendants' Knowledge of the Threats to Public Health and the Environment Posed by PFOS and PFOA

104. On information and belief, by at least the 1970s 3M and DuPont knew or should have known that PFOA and PFOS are mobile and persistent, bioaccumulative and biomagnifying, and toxic.

105. On information and belief, 3M and DuPont concealed from the public and government agencies its knowledge of the threats to public health and the environment posed by PFOA and PFOS.

106. Some or all of the Defendants understood how stable the fluorinated surfactants used in AFFF are when released into the environment from their first sale to a customer, yet they failed to warn their customers or provide reasonable instruction on how to manage wastes generated from their products.

i. 1940s and 1950s: 3M, DuPont, and the Development of a Toxic Chemical Family

107. The development of this family of chemical compounds began with Defendant 3M in the 1940s. At that time, 3M's Central Research Laboratory was working with a scientist at Penn State University, Joseph H. Simons, who had developed and patented a process of preparing fluorine compounds through electrochemical fluorination ("ECF"). In 1945, 3M acquired Simons' ECF patents. It would be another three years before 3M's Central

Research developed fluorinated compounds that could be used for commercial applications. During that time, 3M scientists continuously researched and created new fluorochemicals; in the words of one researcher, "[a]lmost every day we made a new molecule which had never been on the face of the earth before."[1]

108. From the early days of its fluorochemical research, 3M recognized the very characteristics that make PFAS persistent pollutants in the environment today. For example, Simons' 1948 patent for the ECF process, which was assigned to 3M, stated that the compounds produced through ECF are non-corrosive, and of little chemical reactivity, and do not react with any of the metals at ordinary temperatures and react only with the more chemically reactive metals such as sodium, at elevated temperatures.[2] The patent also stated that the fluorochemicals produced by the ECF process do not react with other compounds or reagents due to the blanket of fluorine atoms surrounding the carbon skeleton of the molecule. 3M understood that the stability of the carbon-to-fluorine bonds prevented its fluorosurfactants from undergoing further chemical reactions or degrading under natural processes in the environment.[3]

109. 3M was also aware of the thermal stability of its fluorinated compounds prior to commercial production. Simons' ECF patent application states that the compounds produced by the ECF process were thermally stable at temperatures up to 750° C (1382°

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[1] Neil McKay, *A Chemical History of 3M: 1933-1990.* https://www.ag.state.mn.us/Office/Cases/3M/docs/PTX/PTX1365.pdf

[2] Simons, J. H., Fluorination of Organic Compounds, U.S. Patent No. 2,447,717. August 24, 1948, *available at* https://www.ag.state.mn.us/Office/Cases/3M/docs/PTX/PTX1005.pdf.

[3] Simons, J. H., 1950. Fluorocarbons and Their Production. Fluorine Chemistry, 1(12): 401-422, *available* at https://www.ag.state.mn.us/Office/Cases/3M/docs/PTX/PTX3008.pdf.

F). Additional research by 3M expanded its understanding of the thermal stability of fluorinated compounds.[4]

110. In 1949, 3M built the first manufacturing facility to expand ECF from laboratory research to commercial production, and it began to present its fluorochemical research in order to find potential uses and customers for the compounds it was manufacturing.

111. 3M soon found a customer: DuPont. In 1951, DuPont began purchasing a perfluorinated carboxylic acid (perfluorooctanoic acid or PFOA), for use in manufacturing a non-stick coating called Teflon.

112. Even then, 3M's research had already documented that PFAS accumulate in the blood of mice exposed to the chemicals in laboratory tests.[5] Also, a 1956 study by researchers at Stanford University found that PFAS bind to proteins in human blood.[6]

113. In 1964, a group of DuPont employees working in Teflon manufacturing became sick after their department was moved to a more enclosed workspace.[7] They experienced chills, fever, difficulty breathing, and a tightness in the chest—symptoms referred to variously as "polymer-fume fever," "Teflon flu," or simply, "the shakes." Polymer-fume fever was first reported in medical literature in 1951.

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[4] Bryce, T. J., 1950. Fluorocarbons - Their Properties and Wartime Development. Fluorine Chemistry, 1(13): 423-462.

[5] 1950 3M test study results with Perfluorobutyric acid. https://static.ewg.org/reports/2019/pfa-timeline/1950_Mice.pdf?_ga=2.21758526.426747500.1673645134-2012946541.1673645134.

[6] Perfluorooctanoic Acid Interactions with Human Serum Albumin, *available at* https://static.ewg.org/reports/2019/pfa-timeline/1956_Stanford.pdf?_ga=2.59569645.1994765108.1678715813-813372143.1678715813.

[7] Charles E. Lewis and Gerald R. Kerby, *An Epidemic of Polymer-Fume Fever*, 191 JAMA 375 (February 1, 1965).

ii. 1960s: AFFF's Environmental Hazards Come Into Focus

114. By at least the end of the 1960s, additional research and testing performed by 3M and DuPont indicated that fluorosurfactants, including at least PFOA, because of their unique chemical structure, were resistant to environmental degradation and would persist in the environment essentially unaltered if allowed to enter the environment.

115. One 3M employee wrote in 1964, "This chemical stability also extends itself to all types of biological processes; there are no known biological organisms that are able to attack the carbon-fluorine bond in a fluorocarbon."[8] Thus, 3M knew by the mid-1960s that its fluorosurfactants were immune to chemical and biological degradation in soils and groundwater.

116. 3M also knew by 1964, that fluorocarbon carboxylic acids and fluorocarbon sulfonic acids, when dissolved, dissociated to form highly stable perfluorocarboxylate and perfluorosulfonate ions. Later studies by 3M on the adsorption and mobility of FC-95 (the potassium salt of PFOS) and FC-143 (the ammonium salt of PFOA) in soils indicated very high solubility and very high mobility in soils for both compounds.[9]

117. Also, in a 1965 study sponsored by DuPont where rats were fed a PFAS compound over a ninety-day period the rats had liver damage and an showed an increased size in the spleen.

118. Despite early warnings of the toxic, persistent, and bioaccumulative nature of PFOS and PFOA, these chemicals began to be used in a product that would be released in large quantities directly into the environment whenever used: firefighting foam.

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[8] Bryce, H.G., Industrial and Utilitarian Aspects of Fluorine Chemistry (1964), *available* at https://www.ag.state.mn.us/Office/Cases/3M/docs/PTX/PTX3022.pdf.

[9] Technical Report Summary re : Adsorption of FC 95 and FC143 on Soil, Feb. 27, 1978, *available at* https://www.ag.state.mn.us/Office/Cases/3M/docs/PTX/PTX1158.pdf.

119. AFFF was first developed in the 1960s as a result of the U.S. Navy's research into the use of fluorosurfactants in firefighting foam to extinguish fuel-based shipboard fires.

120. In 1969, the Navy promulgated a military standard or "MilSpec" requiring contractors to use "fluorocarbon surfactants" in firefighting foam products. Since then, the Navy has revised this MilSpec multiple times, but at no time did the Navy specify the specific fluorosurfactants to be used in AFFF. The AFFF MilSpec was a "performance specification," meaning that the product manufacturers were given great flexibility with respect to designing a product that would meet the military's performance requirements.

121. Firefighting foam can be made without the fluorosurfactants that contain PFOA, PFOS, and/or their precursor chemicals.

122. When the Navy first promulgated the AFFF MilSpec, hundreds of different fluorosurfactants had already been created.

123. Nonetheless, beginning in the 1960s, the AFFF Defendants designed, manufactured, marketed, distributed, and/or sold AFFF products that used fluorosurfactants containing either PFOS, PFOA, or the chemical precursors that degrade into PFOS and PFOA.

124. From the late 1960s to 2002, Defendant 3M manufactured and sold AFFF containing PFOS under the brand name "Light Water."

125. Because 3M held the patents on the ECF process, other AFFF Defendants utilized PFAS produced through a different process, called fluorotelomerization. These fluorotelomer AFFF formulations were produced beginning in the 1970s. Although they are not made with PFOA, they contain precursors—polyfluorinated compounds that are known to degrade to compounds that include PFOA.

126. On information and belief, the AFFF Defendants designed, manufactured, marketed, distributed, and/or sold the AFFF products discharged into the environment during fire protection, training, and response activities conducted in the vicinity of Plaintiff's drinking water supply, resulting in widespread PFAS contamination.

127. The AFFF Defendants treated their foam formulations as proprietary information and did not disclose the specific chemical ingredients of their formulations to government agencies or the public.

128. Some or all of the Defendants understood how stable the fluorinated surfactants used in AFFF are when released into the environment from their first sale to a customer, yet they failed to warn their customers or provide reasonable instruction on how to manage wastes generated from their products.

iii. 1970s-1980s: Defendants Deepening Knowledge of the Risks of PFOA and PFOS

129. By at least the 1970s, as Defendants expanded the market for AFFF formulations containing PFOA and PFOS, 3M and DuPont knew or should have known that PFOA and PFOS are mobile and persistent, bioaccumulative and biomagnifying, and toxic.

130. During the 1970s, 3M also learned that the fluorosurfactants used in AFFF accumulated in the human body and were "even more toxic" than previously believed.

131. An internal memo from 3M in 1971 states that "the thesis that there is 'no natural sink' for fluorocarbons obviously demands some attention."[10] But if 3M did give this issue the attention demanded at this time, it did not share it with the public.

132. In 1975, two independent toxicologists, Dr. Warren Guy and Donald Taves, discovered that an unidentified fluorine compound had been found in human blood sampled from

[10] Memorandum from H.G. Bryce to R.M. Adams re : Ecological Aspects of Fluorocarbons, Sept. 13, 1971, *available at* https://www.ag.state.mn.us/Office/Cases/3M/docs/PTX/PTX1088.pdf.

different blood banks. Dr. Guy contacted 3M to ask if it knew of "possible sources" of the chemicals.[11] 3M's scientists concluded internally that the fluorine compounds resembled PFOS manufactured by 3M, but 3M did not share this conclusion with the independent toxicologists or anyone else outside of 3M.

133. 3M did, however, test the blood of its own workers in 1976, finding "up to 1000 times 'normal' amounts of organically bound fluorine in their blood."[12]

134. By the mid-1970s, 3M and Ansul (and possibly other Defendants) had an intimate understanding of the persistent nature of PFCs. A 1976 study, for example, observed no biodegradation of FC-95, the potassium salt of PFOS; a result 3M characterized as "unsurprising" in light of the fact that "[b]iodegradation of FC 95 is improbable because it is completely fluorinated."[13]

135. In 1977, Ansul, the AFFF manufacturer later acquired by Defendant Tyco, authored a report titled "Environmentally Improved AFFF," which acknowledged that releasing AFFF into the environment could pose potential negative impacts to groundwater quality.[14] Ansul wrote: "The purpose of this work is to explore the development of experimental AFFF formulations that would exhibit reduced impact on the environment while retaining certain fire suppression characteristic . . . improvements [to AFFF formulations] are desired in the environmental area, i.e., development of compositions that have a reduced impact on the environment without loss of fire suppression

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[11] Memorandum from G.H. Crawford to L.C. Krogh et al. re: Fluorocarbons in Human Blood Plasma, Aug. 20, 1975, *available at* https://www.ag.state.mn.us/Office/Cases/3M/docs/PTX/PTX1118.pdf.

[12] 3M Chronology – Fluorochemicals in Blood, Aug. 26, 1977, *available at* https://www.ag.state.mn.us/Office/Cases/3M/docs/PTX/PTX1144.pdf.

[13] Technical Report Summary, August 12, 1976 [3MA01252037].

[14] Ansul Co., Final Report: Environmentally Improved AFFF, N00173-76-C-0295, Marinette, WI, Dec. 13, 1977, *available at* https://apps.dtic.mil/dtic/tr/fulltext/u2/a050508.pdf.

effectiveness." Thus, Ansul knew by the mid-1970s that the environmental impact of AFFF needed to be reduced, yet there is no evidence that Ansul (or any other Defendant) ever pursued initiatives to do so.

136. A 1978 3M biodegradation study likewise reported that an "extensive study strongly suggest[ed]" one of its PFAS was "likely to persist in the environment for extended period unaltered by metabolic attack."[15] A year later, a 3M study reported that one of its fluorosurfactants "was found to be completely resistant to biological test conditions," and that it appeared waterways were the fluorosurfactant's "environmental sink."[16]

137. At the same time, several studies sponsored by 3M showed that the fluorosurfactants used in AFFF were even more toxic than previously believed. A study of subacute toxicity in rhesus monkeys, in which the monkeys were to be given doses of PFOS over ninety days, had to be redesigned and repeated "[b]ecause of unexpected early mortalities in all monkeys at all levels."[17] None of the monkeys survived past twenty days. As a summary of the study stated, PFOS "proved to be considerably more toxic to monkeys than anticipated[.]" In addition, PFOA reduced the survival rate of fathead minnow fish eggs,[18] and PFOS and PFOA

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[15] Technical Report Summary re : Fate of Fluorochemicals in the Environment, Biodegradation Studies of Fluorocarbons - II, Jan. 1, 1978, *available at* https://www.ag.state.mn.us/Office/Cases/3M/docs/PTX/PTX1153.pdf.

[16] Technical Report Summary re : Fate of Fluorochemicals in the Environment, Biodegradation Studies of Fluorocarbons - III, July 19, 1978, *available at* https://www.ag.state.mn.us/Office/Cases/3M/docs/PTX/PTX1179.pdf.

[17] Ninety-Day Subacute Rhesus Monkey Toxicity Study, Dec. 18, 1978, *available at* https://www.ag.state.mn.us/Office/Cases/3M/docs/PTX/PTX1191.pdf; Aborted FC95 Monkey Study, Jan. 2, 1979, *available at* https://www.ag.state.mn.us/Office/Cases/3M/docs/PTX/PTX1193.pdf; FC-95, FC-143 and FM-3422 – 90 Day Subacute Toxicity Studies Conducted at IRDC – Review of Final Reports and Summary, *available at* https://static.ewg.org/reports/2019/pfa-timeline/1977_Most%20Toxic.pdf?_ga=2.34744996.426747500.1673645134-2012946541.1673645134.

[18] The Effects of Continuous Aqueous Exposure to 78.03 on Hatchability of Eggs and Growth and Survival of Fry of Fathead Minnow, June 1978, *available at* https://www.ag.state.mn.us/Office/Cases/3M/docs/PTX/PTX1176.pdf.

were shown to be toxic to rats.[19] As the summary documented observed, "[b]ecause of the apparent persistence of these fluorochemicals in the body, ***the most important question remains possible long term effects***."[20]

138. In 1979, 3M also completed a comprehensive biodegradation and toxicity study covering investigations between 1975 and 1978.[21] More than a decade after 3M began selling AFFF containing fluorosurfactants it wrote: "there has been a general lack of knowledge relative to the environmental impact of these chemicals." The report ominously asked, "If these materials are not biodegradable, what is their fate in the environment?"[22]

139. In 1979, 3M and DuPont discussed 3M's discovery of high levels of PFOS in the blood of its workers. Both companies came to the same conclusion that there was "no reason" to notify the EPA of the finding.[23] 3M told the EPA in 1980 only that it had discovered PFOS in the blood of "some of our plant employees."

140. By at least the end of the 1980s, additional research and testing performed by Defendants, including at least 3M and DuPont, indicated that elevated incidence of

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[19] Acute Oral Toxicity (LD_{50}) Study in Rats (FC-143), May 5, 1978, *available at* https://www.ag.state.mn.us/Office/Cases/3M/docs/PTX/PTX1170.pdf; FC-95, FC-143 and FM-3422 – 90 Day Subacute Toxicity Studies Conducted at IRDC – Review of Final Reports and Summary, Mar. 20, 1979, *available at* https://www.ag.state.mn.us/Office/Cases/3M/docs/PTX/PTX1199.pdf.

[20] *Id.* (FC-95, FC-143 and FM-3422 – 90 Day Subacute Toxicity Studies Conducted at IRDC – Review of Final Reports and Summary, Mar. 20, 1979, *available at* https://www.ag.state.mn.us/Office/Cases/3M/docs/PTX/PTX1199.pdf.)

[21] Technical Report Summary, Final Comprehensive Report on FM 3422, Feb. 2, 1979, *available at* https://www.ag.state.mn.us/Office/Cases/3M/docs/PTX/PTX2563.pdf.

[22] 3M Internal Correspondence from R. Howell to C. Olsen re: Fluorochemicals in the Environment with attachments, *available at* https://www.ag.state.mn.us/Office/Cases/3M/docs/PTX/PTX1372.pdf.

[23] Memorandum from R.A. Prokop to J.D. Lazerte re: Disclosure of Information on Levels of Fluorochemicals in Blood, July 26, 1979, *available at* https://www.ag.state.mn.us/Office/Cases/3M/docs/PTX/PTX2723.pdf.

certain cancers and other adverse health effects, including elevated liver enzymes and birth defects, had been observed among workers exposed to such materials, including at least PFOA, but such data was not published, provided to governmental entities as required by law, or otherwise publicly disclosed at the time.

141. In 1981, DuPont tested for and found PFOA in the blood of female plant workers at its Washington Works plant in Parkersburg, West Virginia, where it had been using 3M's PFOA to manufacture Teflon since 1951. DuPont observed and documented pregnancy outcomes in exposed workers, finding two of seven children born to female plant workers between 1979 and 1981 had birth defects—one an "unconfirmed" eye and tear duct defect, and one a nostril and eye defect.[24]

142. In 1983, 3M researchers concluded that concerns about PFAS "give rise to concern for environmental safety," including "legitimate questions about the persistence, accumulation potential, and ecotoxicity of fluorochemicals in the environment."[25] That same year, 3M completed a study finding that PFOS caused the growth of cancerous tumors in rats.[26] This finding was later shared with DuPont and led them to consider whether "they may be obliged under their policy to call FC-143 a carcinogen in animals."[27]

143. In 1984, 3M documented a trend of increasing levels of PFOS in the bodies of 3M workers, leading one of the company's medical officers to warn in an internal memo: "we

[24] C-8 Blood Sampling Results, *available at* http://tiny.cc/v8z1mz.

[25] 3M Environmental Laboratory (EE & PC), Fate of Fluorochemicals - Phase II, May 20, 1983, *available at* https://www.ag.state.mn.us/Office/Cases/3M/docs/PTX/PTX1284.pdf.

[26] Two Year Oral (Diet) Toxicity/Carcinogenicity Study of Fluorochemical FC-143 in Rats, Volume 1 of 4, Aug. 29, 1987, *available at* https://www.ag.state.mn.us/Office/Cases/3M/docs/PTX/PTX1337.pdf.

[27] Memorandum from R.G. Perkins to F.D. Griffith re: Summary of the Review of the FC-143 Two-Year Feeder Study Report to be presented at the January 7, 1988 meeting with DuPont, January 5, 1988, *available at* https://www.ag.state.mn.us/Office/Cases/3M/docs/PTX/PTX1343.pdf.

must view this present trend with serious concern. It is certainly possible that . . . exposure opportunities are providing a potential uptake of fluorochemicals that exceeds excretion capabilities of the body."[28]

144. The same year, DuPont tested drinking water near its Washington Works plant and found elevated PFOA levels in the water, but, after deciding that limiting PFOA discharge from the plant would not be "economically attractive," it did nothing to reduce contamination from the plant.

iv. 1990s-2000s: With 3M and DuPont Under Scrutiny, the AFFF Market Shifts to Telomerization

145. Federal law requires chemical manufacturers and distributors to immediately notify the EPA if they have information that "reasonably supports the conclusion that such substance or mixture presents a substantial risk of injury to health or the environment." Toxic Substances Control Act ("TSCA") § 8(e), 15 U.S.C. § 2607(e).

146. Despite its decades of research, 3M waited until May 1998 to submit a report to the EPA under TSCA Section 8(e). Even in that submission, however, 3M downplayed what it knew, according to a former employee:

Just before that submission we found PFOS in the blood of eaglets—eaglets still young enough that their only food consisted of fish caught in remote lakes by their parents. This finding indicates a widespread environmental contamination and food chain transfer and probable bioaccumulation and bio-magnification. This is a very significant finding that the 8(e) reporting rule was created to collect. 3M chose to report simply that PFOS had been found in the blood of animals, which is true but omits the most significant information.[29]

147. Although 3M acknowledged, in 1998, the presence of PFOS in the blood of the general population, it insisted that it did not "believe that any reasonable basis exists to conclude

[28] Memorandum from D.E. Roach to P.F. Riehle re: Organic Fluorine Levels, Aug. 31, 1984, *available at* https://www.ag.state.mn.us/Office/Cases/3M/docs/PTX/PTX1313.pdf.

[29] Letter from R. Purdy, Mar. 28, 1999, *available at* https://www.ag.state.mn.us/Office/Cases/3M/docs/PTX/PTX1001.pdf.

that PFOS 'presents a substantial risk of injury to health or the environment.'" Internally, the message was quite different: 3M's Manager of Corporate Toxicology advised the company to replace "PFOS-based chemistry as these compounds [are] ***VERY persistent and thus insidiously toxic***."

148. In 2000, 3M, after half a century of manufacturing fluorinated chemicals through ECF, announced that it would phase out its production of several long-chain PFAS compounds, including PFOA, although it continued to manufacture other PFAS chemicals.

149. In April 2006, 3M agreed to pay EPA a penalty of more than $1.5 million after being cited for 244 violations of the TSCA, which included violations for failing to disclose studies regarding PFOS, PFOA, and other PFCs dating back decades.

150. Likewise, in December 2005, the EPA announced it was imposing the "Largest Environmental Administrative Penalty in Agency History" against DuPont based on evidence that it violated the TSCA by concealing the environmental and health effects of PFOA.

151. On information and belief, Defendants knew or should have known that AFFF containing PFOA or PFOS would very likely injure and/or threaten public health and the environment, even when used as intended or directed.

152. Defendants failed to warn of these risks to the environment and public health, including the impact of their AFFF/Component Products on the quality of unprotected water sources.

153. Defendants were all sophisticated and knowledgeable in the art and science of designing, formulating, and manufacturing AFFF/Component Products. They understood far more about the properties of their AFFF/Component Products—including the

potential hazards they posed to human health and the environment—than any of their customers. Still, Defendants declined to use their sophistication and knowledge to design safer products.

D. The Impact of PFOS and PFOA on the Environment and Human Health Is Finally Revealed

154. As discussed above, neither 3M, DuPont, nor, on information and belief, any other Defendant complied with their obligations to notify EPA about the "substantial risk of injury to health or the environment" posed by their AFFF/Component Products. *See* TSCA § 8(e).

155. Despite decades of research, 3M first shared its concerns with EPA in the late 1990s. In a May 1998 report submitted to EPA, "3M chose to report simply that PFOS had been found in the blood of animals, which is true but omits the most significant information," according to a former 3M employee.[30]

156. On information and belief, 3M began in 2000 to phase out its production of products that contained PFOS and PFOA in response to pressure from the EPA.

157. Once the truth about PFOS and PFOA was revealed, researchers began to study the environmental and health effects associated with them, including a "C8 Science Panel" formed out of a class action settlement arising from contamination from DuPont's Washington Works located in Wood County, West Virginia.

158. The C8 panel consisted of three epidemiologists specifically tasked with determining whether there was a probable link between PFOA exposure and human diseases. In 2012, the panel found probable links between PFOA and kidney cancer, testicular cancer,

[30] *Id.* Letter from R. Purdy, Mar. 28, 1999, *available at* https://www.ag.state.mn.us/Office/Cases/3M/docs/PTX/PTX1001.pdf.

ulcerative colitis, thyroid disease, pregnancy-induced hypertension (including preeclampsia), and hypercholesterolemia.

159. Human health effects associated with PFOS exposure include immune system effects, changes in liver enzymes and thyroid hormones, low birth weight, high uric acid, and high cholesterol. In laboratory testing on animals, PFOA and PFOS have caused the growth of tumors, changed hormone levels, and affected the function of the liver, thyroid, pancreas, and immune system.

160. The injuries caused by PFAS can arise months or years after exposure.

161. Even after the C8 Science Panel publicly announced that human exposure to 50 parts per trillion, or more, of PFOA in drinking water for one year or longer had "probable links" with certain human diseases, including kidney cancer, testicular cancer, ulcerative colitis, thyroid disease, preeclampsia, and medically-diagnosed high cholesterol, Defendants repeatedly assured and represented to governmental entities, their customers, and the public (and continue to do so) that the presence of PFOA in human blood at the levels found within the United States presents no risk of harm and is of no legal, toxicological, or medical significance of any kind.

162. Furthermore, Defendants have represented to and assured such governmental entities, their customers, and the public (and continue to do so) that the work of the independent C8 Science Panel was inadequate to satisfy the standards of Defendants to prove such adverse effects upon and/or any risk to humans with respect to PFOA in human blood.

163. At all relevant times, Defendants, through their acts and/or omissions, controlled, minimized, trivialized, manipulated, and/or otherwise influenced the information that was published in peer-review journals, released by any governmental entity, and/or otherwise

made available to the public relating to PFAS in human blood and any alleged adverse impacts and/or risks associated therewith, effectively preventing the public from discovering the existence and extent of any injuries/harm as alleged herein.

E. The Fire Fighting Foam Coalition

164. Following 3M's phase-out of ECF production and its AFFF product, telomerization emerged as the dominant manufacturing process for fluorosurfactants. 3M had been the dominant manufacturer in the lucrative AFFF market, and multiple companies seized the opportunity created by 3M's withdrawal. But the market opportunity presented uncertainties, as it was unclear whether regulators would view the telomer-based AFFF as posing the same hazards as 3M's PFOS-containing AFFF. The key question for regulators was whether the telomer-based AFFF would degrade to PFOA once in the environment.

165. Defendants Tyco, Chemguard, Buckeye, and others formed a group called the Fire Fighting Foam Coalition ("FFFC") to protect their business opportunity and advocate for the continued use of telomer-based AFFF. The FFFC declared that it would serve as "a single source for accurate, balanced information on environment related questions" and would "ensure that accurate information about PFOS alternatives, including telomer-based products, is disseminated in the marketplace."[31] The FFFC made several representations regarding the safety of telomer-based AFFF that were either misleading half-truths or were contrary to Defendants' internal knowledge. For example, the FFFC assured the public that "telomer based AFFF does not contain PFOS and cannot be oxidized or metabolized into PFOS."[32] This statement was true, but only because PFOS

[31] Fact Sheet on AFFF Fire Fighting Agents, *available at* https://static.ewg.org/reports/2020/pfas-firefighter-timeline/2002-03-FFFC.pdf?_ga=2.136386352.125386 1871.1649070681-2123137255.1639662520.

[32] *Id.* Fact Sheet on AFFF Fire Fighting Agents, *available at* https://static.ewg.org/reports/2020/pfas-firefighter-timeline/2002-03-FFFC.pdf?_ga=2.136386352.125386

was exclusively manufactured by 3M, and it did not mean that telomer-based AFFF was any safer.

166. The FFFC also told the EPA in 2001 that telomer-based AFFF "does not contain any PFOA-based product."[33] The issue, however, was whether telomer-based AFFF could degrade into PFOA. One company executive admitted in an internal memo that his company's AFFF "will degrade in the environment" to produce PFOA and the "question is how toxic" and how "bioaccumulative" these degraded products are.[34] But contrary to this internal acknowledgment, the FFFC publicly asserted that "telomer based fire fighting foams are not likely to be a source of PFOA in the environment."[35]

167. The EPA appointed a committee known as the Telomer Technical Workgroup to make recommendations to the agency. The president of the FFFC represented the telomer-based AFFF industry on the EPA committee. When, in 2003, the Telomer Technical Workgroup reported its conclusions and recommendations, the FFFC president was the spokesperson.

168. In what the FFFC president called a "major victory" for the industry, the EPA accepted the proposal of its Workgroup that "telomer-based fire fighting foams no longer be considered as part of the PFOA ECA process."[36] The FFFC president remarked that

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1871.1649070681-2123137255.1639662520.

[33] *Id.* Fact Sheet on AFFF Fire Fighting Agents, *available at* https://static.ewg.org/reports/2020/pfas-firefighter-timeline/2002-03-FFFC.pdf?_ga=2.136386352.125386 1871.1649070681-2123137255.1639662520.

[34] *In Re: Aqueous Film-Forming Foams Prods. Liab. Litig.*, 2:18-mn-02873-RMG:28, Email chain from John Dowling to Anne Regina re: EPA meeting: Comments (Apr. 18, 2001) attached as an exhibit to Plaintiffs' Omnibus Opposition to Defendants' Motion for Partial Summary Judgment on the Second and Third Prongs of the Government Contractor Immunity Defense, ECF 2409-112.

[35] PFOA ECA Plenary Meeting, *available at* https://static.ewg.org/reports/2020/pfas-firefighter-timeline/2003-Telomers_Safe_Email.pdf?_ga=2.12810 5996.1253861871.1649070681-2123137255.1639662520.

[36] *Id.* PFOA ECA Plenary Meeting, *available at* https://static.ewg.org/reports/2020/pfas-firefighter-timeline/2003-Telomers_Safe_Email.pdf?_ga=2.12810

"[w]hen we started this organization two years ago [in 2001], the fate of telomer based AFFF was being tied directly to the fate of PFOA and the EPA had just told the military to start searching for alternatives to AFFF."[37] The telomer-based AFFF Defendants had successfully forestalled government restrictions on their products, thereby prolonging the use of AFFF in the vicinity of Plaintiff's drinking water supply and elsewhere.

169. The fluorochemicals the Fluorosurfactant Defendants needed to manufacture those fluorosurfactants contained PFOS, PFOA, and/or their chemical precursors and were designed, manufactured, marketed, distributed and/or sold by the PFC Defendants.

170. On information and belief, the PFC and Fluorosurfactant Defendants were aware that the fluorochemicals and fluorosurfactants they designed, manufactured, marketed, distributed, and/or sold would be used in the AFFF products designed, manufactured, marketed, distributed, and/or sold by the AFFF Defendants.

171. On information and belief, the PFC and Fluorosurfactant Defendants designed, manufactured, marketed, distributed, and/or sold the fluorochemicals and/or fluorosurfactants contained in the AFFF products discharged into the environment during fire protection, training, and response activities conducted in the vicinity of Plaintiff's drinking water supply, resulting in widespread PFAS contamination.

5996.1253861871.1649070681-2123137255.1639662520.

[37] *Id.* PFOA ECA Plenary Meeting, *available at* https://static.ewg.org/reports/2020/pfas-firefighter-timeline/2003-Telomers_Safe_Email.pdf?_ga=2.12810 5996.1253861871.1649070681-2123137255.1639662520.

F. Federal, State, and International Government Agencies Call for Monitoring and Cleanup of PFAS Contamination

172. On May 2, 2012, the EPA published its Third Unregulated Contaminant Monitoring Rule ("UCMR3"), requiring public water systems nationwide to monitor for thirty contaminants of concern between 2013 and 2015, including PFOS and PFOA.[38]

173. In the May 2015 "Madrid Statement on Poly- and Perfluoroalkyl Substances (PFAS's)," scientists and other professionals from a variety of disciplines, concerned about the production and release into the environment of PFOA, called for greater regulation, restrictions, limits on the manufacture and handling of any PFOA containing product, and to develop safe non-fluorinated alternatives to these products to avoid long-term harm to human health and the environment.[39]

174. On May 25, 2016, the EPA released a lifetime health advisory level (HAL) for drinking water and health effects support documents for PFOS and PFOA.[40] The EPA developed the HAL to assist governmental officials in protecting public health when PFOS and PFOA are present in drinking water. The EPA HAL identified the concentration of PFOS and PFOA in drinking water at or below which adverse health effects are not anticipated to occur over a lifetime of exposure at 0.07 ppb or 70 ppt. The HAL was based on peer-reviewed studies of the effects of PFOS and PFOA on laboratory animals (rats and mice) and was also informed by epidemiological studies of human

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[38] *Revisions to the Unregulated Contaminant Monitoring Regulation (UCMR 3) for Public Water Systems*, 77 Fed. Reg: 26072 (May 2, 2012).

[39] Blum A, Balan SA, Scheringer M, Trier X, Goldenman G, Cousins IT, Diamond M, Fletcher T, Higgins C, Lindeman AE, Peaslee G, de Voogt P, Wang Z, Weber R. 2015. The Madrid statement on poly- and perfluoroalkyl substances (PFASs). Environ Health Perspect 123:A107–A111; http://dx.doi.org/10.1289/ehp.1509934.

[40] *See* Fed. Register, Vol. 81, No. 101, May 25, 2016, Lifetime Health Advisories and Health Effects Support Documents for Perfluorooctanoic Acid and Perfluorooctane Sulfonate.

populations exposed to PFOS. These studies indicated that exposure to PFOS and PFOA over the HAL could result in adverse health effects, including:

a. Developmental effects to fetuses during pregnancy or to breastfed infants (e.g., low birth weight, accelerated puberty, skeletal variations);

b. Cancer (testicular and kidney);

c. Liver effects (tissue damage);

d. Immune effects (e.g., antibody production and immunity);

e. Thyroid disease and other effects (e.g., cholesterol changes).

175. In 2016, the National Toxicology Program of the United States Department of Health and Human Services ("NTP") and the International Agency for Research on Cancer ("IARC") both released extensive analyses of the expanding body of research regarding the adverse effects of PFCs. The NTP concluded that both PFOA and PFOS are "presumed to be an immune hazard to humans" based on a "consistent pattern of findings" of adverse immune effects in human (epidemiology) studies and "high confidence" that PFOA and PFOS exposure was associated with suppression of immune responses in animal (toxicology) studies.[41]

176. IARC similarly concluded that there is "evidence" of "the carcinogenicity of . . . PFOA" in humans and in experimental animals, meaning that "[a] positive association has been observed between exposure to the agent and cancer for which a causal interpretation is . . . credible."[42]

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[41] *See* U.S. Dep't of Health and Human Services, Nat'l Toxicology Program, *NTP Monograph: Immunotoxicity Associated with Exposure to Perfluorooctanoic Acid or Perfluorooctane Sulfonate* (Sept. 2016), at 1, 17, 19, *available at* https://ntp.niehs.nih.gov/ntp/ohat/pfoa_pfos/pfoa_pfosmonograph_508.pdf.

[42] *See* Int'l Agency for Research on Cancer, IARC Monographs: *Some Chemicals Used as Solvents and in Polymer Manufacture* (Dec. 2016), at 27, 97, *available at*

177. California has listed PFOA and PFOS to its Proposition 65 list as a chemical known to cause reproductive toxicity under the Safe Drinking Water and Toxic Enforcement Act of 1986.[43]

178. The United States Senate and House of Representatives passed the National Defense Authorization Act in November 2017, which included $42 million to remediate PFC contamination from military bases, as well as devoting $7 million toward the Investing in Testing Act, which authorizes the Center for Disease Control and Prevention ("CDC") to conduct a study into the long-term health effects of PFOA and PFOS exposure.[44] The legislation also required that the Department of Defense submit a report on the status of developing a new military specification for AFFF that did not contain PFOS or PFOA.[45]

179. In June 2018, the Agency for Toxic Substances and Disease Registry ("ATSDR") and EPA released a draft toxicological profile for PFOS and PFOA and recommended the drinking water advisory levels be lowered to 11 ppt for PFOA and 7 ppt for PFOS.[46]

180. In December 2019, the United States Senate and House of Representatives passed the National Defense Authorization Act for Fiscal Year 2020 ("FY 2020 NDAA"), which introduced new prohibitions on the use of PFAS-containing AFFF for land-based

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http://monographs.iarc.fr/ENG/Monographs/vol110/mono110.pdf.

[43] California Office of Environmental Health Hazard Assessment, *Chemicals Listed Effective Nov. 10, 2017 as Known to the State of California to Cause Reproductive Toxicity: Perfluorooctanoic Acid (PFOA) and Perfluorooctane Sulfonate (PFOS)*, Nov. 9, 2017, *available at* https://oehha.ca.gov/proposition-65/crnr/chemicals-listed-effective-november-10-2017-known-state-california-cause.

[44] National Defense Authorization Act for Fiscal Year 2018, H.R. 2810, 115th Congress (2017), *available at* https://www.congress.gov/115/plaws/publ91/PLAW-115publ91.pdf.

[45] *Id.*; *see also* U.S. Department of Defense, *Alternatives to Aqueous Film Forming Foam Report to Congress*, June 2018, *available at* https://www.denix.osd.mil/derp/home/documents/alternatives-to-aqueous-film-forming-foam-report-to-congress/.

[46] ATSDR, *Toxicological Profile for Perfluoroalkyls: Draft for Public Comment* (June 2018), *available at* https://www.atsdr.cdc.gov/toxprofiles/tp200.pdf.

applications.[47] Section 322 of the Act introduced a timeline for the phasing out of AFFF use by the military, including by requiring the Secretary of the Navy to publish a new military specification for a fluorine-free fire-fighting agent for use at all military installations by January 31, 2023. Section 322(b) and (c) then provide that Department of Defense organizations will no longer be authorized to purchase AFFF containing more than 1 part per billion of PFAS after October 1, 2023, and that after October 1, 2024, this prohibition will extend to the use of any PFAS-containing AFFF at any military installation.

181. On February 20, 2020, the EPA announced a proposed decision to regulate PFOA and PFOS under the Safe Drinking Water Act, which the agency characterized as a "key milestone" in its efforts to "help communities address per- and polyfluoroalkyl substances (PFAS) nationwide."[48] Following a public comment period on its proposed decision, the EPA will decide whether to move forward with the process of establishing a national primary drinking water regulation for PFOA and PFOS.

182. On June 15, 2022, the EPA released new drinking water health advisory levels (HALs) for four PFAS, including new interim HALs for PFOS and PFOA that departed significantly from the 2016 EPA HAL they replaced.[49] Specifically, EPA issued HALs of 0.004 ppt for PFOA and 0.02 ppt for PFOS,[50] which collectively accounted for only a

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[47] National Defense Authorization Act for Fiscal Year 2020, S. 1790, 116th Congress (2019), *available at* https://www.govinfo.gov/content/pkg/BILLS-116s1790enr/pdf/BILLS-116s1790enr.pdf.

[48] Press Release, *EPA Announces Proposed Decision to Regulate PFOA and PFOS in Drinking Water*, Feb. 20, 2020, *available at* https://www.epa.gov/newsreleases/epa-announces-proposed-decision-regulate-pfoa-and-pfos-drinking-water.

[49] *See* Fed. Register, Vol. 87, No. 36848, June 21, 2022, Lifetime Drinking Water Health Advisories for Four Perfluoroalkyl Substances.

[50] *Id.* Fed. Register, Vol. 87, No. 36848, June 21, 2022, Lifetime Drinking Water Health Advisories for Four Perfluoroalkyl Substances.

small fraction of the combined 70 ppt HAL that preceded them. Importantly, EPA set these interim HALs at levels below which PFOS and PFOA can be measured using current analytic methods, meaning that the mere detection of PFOS or PFOA in a water provider's system would be sufficient on its own to exceed the new levels.

183. As support for its decision, EPA explained that the science had evolved since 2016 and that the new interim HALs for PFOS and PFOA were "based on human studies" that "found associations between PFOA and/or PFOS exposure and effects on the immune system, the cardiovascular system, human development (e.g., decreased birth weight), and cancer."[51] Specifically, EPA had performed updated health effects analyses for PFOS and PFOA to provide support for the drinking water regulations the agency planned to adopt for the two chemicals under the SDWA. Based on these analyses, EPA concluded that "the levels at which negative health effects could occur are much lower than previously understood when EPA issued the 2016 health advisories for PFOA and PFOS – including near zero for certain health effects."[52] For this reason, the agency determined there was a "pressing need to provide updated information on the current best available science to public health officials prior to finalization of the health effects assessment."[53]

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[51] EPA, *Drinking Water Health Advisories for PFAS Fact Sheet for Communities* at 1-2 (June 2022), *available at* https://www.epa.gov/system/files/documents/2022-06/drinking-water-ha-pfas-factsheet-communities.pdf.

[52] EPA, *Drinking Water Health Advisories for PFAS Fact Sheet for Public Water Systems* at 2 (June 2022), *available at* https://www.epa.gov/system/files/documents/2022-06/drinking-water-ha-pfas-factsheet-water-system.pdf.

[53] EPA Office of Water, EPA Doc. No. 822-R-22-003, *INTERIM Drinking Water Health Advisory: Perfluorooctanoic Acid (PFOA) CASRN 335-67-1* at 18 (June 2022), *available at* https://www.epa.gov/system/files/documents/2022-06/interim-pfoa-2022.pdf; EPA Office of Water, EPA Doc. No. 822-R-22-004, *INTERIM Drinking Water Health Advisory: CASRN 1763-23-1* at 18 (June 2022), *available at* https://www.epa.gov/system/files/documents/2022-06/interim-pfos-2022.pdf.

184. Because the referenced health analyses are still undergoing final review by EPA's Science Advisory Board, the agency has stated that the new interim HALs for PFOS and PFOA are subject to change. EPA has indicated, however, that it does not anticipate any changes resulting in revised HALs for PFOS and PFOA that are greater than the 4 ppt minimum reporting level[54] that applies to Public Water Systems.[55]

185. On September 6, 2022, EPA published a notice of proposed rulemaking seeking public comment on its plan to designate PFOS and PFOA as hazardous substances under CERCLA.[56] Pursuant to that notice, all comments from the public must be submitted by November 7, 2022.

186. On October 5, 2022, the Governor of New York signed legislation (S.8763A/A.9824A) allowing public water suppliers to revive any action, civil claim, or cause of action involving an emerging contaminant in drinking water that may have been barred because the statute of limitations had expired.

187. The legislation defines an emerging contaminant as any physical, chemical, microbiological, or radiological substance that is identified or listed as an emerging contaminant in public health or any other law, which would include the PFAS chemicals at issue in this action.

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[54] As EPA's website explains, the Minimum Reporting Level ("MRL") for Unregulated Contaminant Monitoring Rule (UCMR) 5 is the minimum quantitation level that, with 95 percent confidence, can be achieved by capable analysts at 75 percent or more of the laboratories using a specified analytical method. The MRLs in EPA's chart are based on the UCMR 5 requirement to use EPA Method 533.

[55] EPA, *Drinking Water Health Advisories for PFAS Fact Sheet for Public Water Systems* at 2 (June 2022), *available at* https://www.epa.gov/system/files/documents/2022-06/drinking-water-ha-pfas-factsheet-water-system.pdf.

[56] *See* Designation of Perfluorooctanoic Acid (PFOA) and Perfluorooctanesulfonic Acid (PFOS) as CERCLA Hazardous Substances, 87 Fed. Reg. 54415 (Sep. 6, 2022).

188. The law gives local water authorities until April 5, 2024, to pursue actions against polluters to recover the costs of treatment and filtration as a result of contamination that might otherwise be barred under the statute of limitations.

189. On January 6, 2023, the Defense Logistics Agency within the Department of Defense published a new Military Specification for "Fire Extinguishing Agent, Fluorine-Free Foam (F3) Liquid Concentrate, for Land-Based, Fresh Water Application," MIL-PRF-32725 ("F3 MilSpec") in accordance with § 332(a)(1) of the FY 2020 NDAA.[57] This new specification will govern fire extinguishing foams used by all Department of Defense organizations and will require such foams to test "non-detect" for PFAS. The specification further requires manufacturers to "certify in writing that PFAS has not intentionally been added to the concentrate."

G. Contamination of Plaintiff's Water System Caused by the Use of AFFF

190. Plaintiff is the owner and operator of a water system serving approximately 3,900 residents located in and around South Glens Falls, New York.

191. Plaintiff's system draws the drinking water it provides to customers from twenty (20) underground springs, considered groundwater under influence of surface water.

192. Plaintiff has detected PFAS in its underground springs.

193. On information and belief, the PFAS contamination described above is a direct and proximate result of fire protection, training, and response activities in the area near Plaintiff's water system, resulting in the migration of PFAS into Plaintiff's water supply.

[57] Available on the Defense Logistics Agency's website, https://quicksearch.dla.mil/qsDocDetails.aspx?ident_number=285047.

194. In order to ensure that it can continue to provide clean and safe water to residences, Plaintiff has and will continue to take actions to address the above contamination of its property and its potable water supply caused by the Defendants.

195. Such actions include but are not limited to additional testing and monitoring for PFAS; planning, designing, purchasing, installing, and maintaining water filtration systems to remove these chemicals; infrastructure modifications; contingency planning; and community outreach.

196. Additionally, in order to keep providing clean drinking water to its residents Plaintiff is in the process of installing a Granular Activated Carbon ("GAC") filter to its water system.

197. The GAC system will eliminate the PFAS chemicals in the village's water, so far Plaintiff has spent approximately $1.9 million on the GAC filtration project.

198. Due to the persistent and long-term nature of PFAS contamination, Plaintiff is expected to suffer damages and incur the costs associated with these and other ongoing necessary remedial actions for many years to come.

199. Through this action, Plaintiff seeks compensatory damages for the harm done to its property and the costs associated with investigating, remediating, and monitoring its drinking water supplies contaminated with PFAS due to the use of AFFF in the area near Plaintiff's water system.

H. AFFF Containing PFOS and PFOA Is Fungible and Commingled in the Groundwater

200. AFFF containing PFOS and/or PFOA, once it has been released to the environment, lacks characteristics that would enable identification of the company that manufactured that particular batch of AFFF or chemical feedstock.

201. A subsurface plume, even if it comes from a single location, such as a retention pond or fire training area, originates from mixed batches of AFFF and chemical feedstock coming from different manufacturers.

202. Because precise identification of the specific manufacturer of any given AFFF/Component Product that was a source of the PFAS found in Plaintiff's drinking water supply is nearly impossible, given certain exceptions, Plaintiff must pursue all Defendants, jointly and severally.

203. Defendants are also jointly and severally liable because they conspired to conceal the true toxic nature of PFOS and PFOA, to profit from the use of AFFF/Component Products containing PFOS and PFOA, at Plaintiff's expense, and to attempt to avoid liability.

MARKET SHARE LIABILITY, ALTERNATIVE LIABILITY, CONCERT OF ACTION, AND ENTERPRISE LIABILITY

204. Defendants in this action are manufacturers that control a substantial share of the market for AFFF/Component Products containing PFOS, PFOA, and/or their chemical precursors in the United States and are jointly responsible for the contamination of Plaintiff's property, including the soil, sediment, surface water, and groundwater. Market share liability attaches to all Defendants and the liability of each should be assigned according to its percentage of the market for AFFF/Component Products at issue in this Complaint.

205. Because PFAS is fungible, it is impossible to identify the exact Defendant who manufactured any given AFFF/Component Product containing PFOS, PFOA, and/or their chemical precursors found free in the air, soil or groundwater, and each of these

Defendants participated in a territory-wide and U.S. national market for AFFF/Component Products during the relevant time.

206. Concert of action liability attaches to all Defendants, each of which participated in a common plan to commit the torts alleged herein and each of which acted tortuously in pursuance of the common plan to knowingly manufacture and sell inherently dangerous AFFF/Component Products containing PFOS, PFOA, and/or their chemical precursors.

207. Enterprise liability attaches to all the named Defendants for casting defective products into the stream of commerce.

CAUSES OF ACTION

COUNT I:
DEFECTIVE DESIGN

208. Plaintiff adopts, realleges, and incorporates the allegations in paragraphs 1 through 2217 above, and further alleges the following:

209. As manufacturers of AFFF/Component Products containing PFOS, PFOA, and/or their chemical precursors, Defendants owed a duty to all persons whom its products might foreseeably harm, including Plaintiff, and not to market any product which is unreasonably dangerous in design for its reasonably anticipated use.

210. Defendants' AFFF/Component Products were unreasonably dangerous for its reasonably anticipated uses for the following reasons:

a. PFAS causes extensive groundwater contamination, even when used in its foreseeable and intended manner;

b. Even at extremely low levels, PFAS render drinking water unfit for consumption;

c. PFAS poses significant threats to public health; and

d. PFAS create real and potential environmental damage.

211. Defendants knew of these risks and failed to use reasonable care in the design of their AFFF/Component Products.

212. AFFF containing PFOS, PFOA, and/or their chemical precursors poses a greater danger to the environment and to human health than would be expected by ordinary persons such as Plaintiff and the general public.

213. At all times, Defendants were capable of making AFFF/Component Products that did not contain PFOS, PFOA, and/or their chemical precursors. Thus, reasonable alternative designs existed which were capable of preventing Plaintiff's injuries.

214. The risks posed by AFFF containing PFOS, PFOA, and/or their chemical precursors far outweigh the products' utility as a flame-control product.

215. The likelihood that Defendants' AFFF/Component Products would be spilled, discharged, disposed of, or released into the environment and contaminate Plaintiff's drinking water supply far outweighed any burden on Defendants to adopt an alternative design, and outweighed the adverse effect, if any, of such alternative design on the utility of the product.

216. As a direct and proximate result of Defendants' unreasonably dangerous design, manufacture, and sale of AFFF/Component Products containing PFOS, PFOA, and/or their chemical precursors, Plaintiff's property and water system has become contaminated with PFAS.

217. Defendants knew that it was substantially certain that their acts and omissions described above would contaminate Plaintiff's property and water system. Defendants committed each of the above-described acts and omissions knowingly, willfully, and/or

with fraud, oppression, or malice, and with conscious and/or reckless disregard for Plaintiff's health and safety, and/or property rights.

COUNT II:
FAILURE TO WARN

218. Plaintiff adopts, realleges, and incorporates the allegations in paragraphs 1 through 2312~~7~~ above, and further allegesthe following:

219. As manufacturers of AFFF/Component Products containing PFOS, PFOA, and/or their chemical precursors, Defendants had a duty to provide adequate warnings of the risks of these products to all persons whom its product might foreseeably harm, including Plaintiff and the public.

220. Defendants' AFFF/Component Products were unreasonably dangerous for its reasonably anticipated uses for the following reasons:

a. PFAS causes extensive groundwater contamination, even when used in its foreseeable and intended manner;

b. Even at extremely low levels, PFAS render drinking water unfit for consumption;

c. PFAS poses significant threats to public health; and

d. PFAS create real and potential environmental damage.

221. Defendants knew of the health and environmental risks associated with their AFFF/Component Products, and failed to provide a warning that would lead an ordinary reasonable user or handler of a product to contemplate the dangers associated with their products or an instruction that would have avoided Plaintiff's injuries.

222. Despite Defendants' knowledge of the environmental and human health hazards associated with the use and/or disposal of their AFFF/Component Products in the vicinity of drinking water supplies, including PFAS contamination of public drinking supplies and

private wells, Defendants failed to issue any warnings, instructions, recalls, or advice regarding their AFFF/Component Products to Plaintiff, governmental agencies or the public.

223. As a direct and proximate result of Defendants' failure to warn, Plaintiff's property and water system has become contaminated with PFAS.

224. Defendants knew that it was substantially certain that their acts and omissions described above would contaminate Plaintiff's property and water system. Defendants committed each of the above-described acts and omissions knowingly, willfully, and/or with fraud, oppression, or malice, and with conscious and/or reckless disregard for Plaintiff's health and safety, and/or property rights.

COUNT III:
NEGLIGENCE

225. Plaintiff adopts, realleges, and incorporates the allegations in paragraphs 1 through 2384 above, and further allegesthe following:

226. As manufacturers of AFFF/Component Products containing PFOS, PFOA, and/or their chemical precursors, Defendants owed a duty to Plaintiff and to all persons whom its products might foreseeably harm and to exercise due care in the formulation, manufacture, sale, labeling, warning, and use of PFAS-containing AFFF.

227. Defendants owed a duty to Plaintiff to act reasonably and not place inherently dangerous AFFF/Component Products into the marketplace when its release into the air, soil, and water was imminent and certain.

228. Defendants knew or should have known that PFAS were leaching from AFFF used for fire protection, training, and response activities.

229. Defendants knew or should have known that PFAS are highly soluble in water, highly mobile, extremely persistent in the environment, and high likely to contaminate water supplies if released into the environment.

230. Defendants knew or should have known that the manner in which they were designing, manufacturing, marketing, distributing, and selling their AFFF/Component Products would result in contamination of Plaintiff's property and water system with PFAS.

231. Despite the fact that Defendants knew or should have known that PFAS are toxic, can contaminate water resources and are carcinogenic, Defendants negligently:

a. designed, manufactured, formulated, handled, labeled, instructed, controlled, marketed, promoted, and/or sold AFFF/Component Products containing PFOS, PFOA, and/or their chemical precursors;

b. issued deficient instructions on how their AFFF/Component Products should be used and disposed of, thereby permitting PFAS to contaminate the groundwater in and around Plaintiff's drinking water supply;

c. failed to recall and/or warn the users of their AFFF/Component Products of the dangers of groundwater contamination as a result of standard use and disposal of their products;

d. failed and refused to issue the appropriate warning and/or recalls to the users of their AFFF/Component Products; and

e. failing to take reasonable, adequate, and sufficient steps or actions to eliminate, correct, or remedy any contamination after it occurred.

232. The magnitude of the burden on the Defendants to guard against this foreseeable harm to Plaintiff was minimal, as the practical consequences of placing this burden on the Defendants amounted to a burden to provide adequate instructions, proper labeling, and sufficient warnings about their AFFF/Component Products.

233. As manufacturers, Defendants were in the best position to provide adequate instructions, proper labeling, and sufficient warnings about their AFFF/Component Products, and to take steps to eliminate, correct, or remedy any contamination they caused.

234. As a direct and proximate result of Defendants' negligence, Plaintiff's property and water system have become contaminated with PFAS.

235. Defendants knew that it was substantially certain that their acts and omissions described above would contaminate Plaintiff's property and water system. Defendants committed each of the above-described acts and omissions knowingly, willfully, and/or with fraud, oppression, or malice, and with conscious and/or reckless disregard for Plaintiff's health and safety, and/or property rights.

COUNT IV:
PUBLIC NUISANCE

236. Plaintiff adopts, realleges, and incorporates the allegations in paragraphs 1 through 2495 above, and further allegesthe following:

237. Plaintiff provides drinking water to its residents to from its groundwater supply wells that is used for drinking, bathing, cleaning, washing, cooking, water vegetables, and other uses.

238. Because Plaintiff is a public entity, the water it provides to its residential and commercial customers is a public and commonly held resource. Members of the public

have a right to have their water remain clean, safe, and free of Defendants' toxic contamination.

239. Defendants' acts and omissions, including their manufacture, sale, supply, marketing, and defective design of, and/or failure to warn regarding PFOA and/or PFOS in their AFFF/Component Products, contaminated Plaintiff's wells, rendering water served from them unfit for human consumption and a public health hazard.

240. Consequently, Defendants substantially interfered with and caused damage to a public or common resource that endangered public property, as well as the health, safety, and comfort of a considerable number of persons. Such action creates, contributes to, or maintains a public nuisance.

241. As an owner of water production wells and purveyor of drinking water, Plaintiff suffers injuries different in kind from the community at large because it relies entirely upon its water production wells for its public service functions.

242. Defendants knew it was substantially certain that their acts and omissions described above would cause injury and damage, including PFOA and PFOS contamination of the groundwater supply. Defendants committed each of the above-described acts and omission knowingly, willfully, and with oppression, fraud, and/or malice. Such conduct was performed to promote sales of AFFF/Component Products, in conscious disregard to the probable dangerous consequences of that conduct and its reasonably foreseeable impacts on public health and welfare. Therefore, Plaintiff requests an award of punitive damages in an amount sufficient to punish these Defendants and that fairly reflects the aggravating circumstances alleged herein.

243. Defendants are jointly and severally liable for all such damages, and Plaintiff is entitled to recover all such damages and other relief as set forth below.

COUNT V:
PRIVATE NUISANCE

244. Plaintiff adopts, realleges, and incorporates the allegations in paragraphs 1 through 2573 above, and further allegesthe following:

245. Plaintiff is the owner of land, easements, and water rights that permit it to extract groundwater for use in its wells to provide drinking water to its customers.

246. Defendants' intentional, negligent, and/or reckless conduct, as alleged herein, has resulted in substantial contamination of Plaintiff's supply Wells by PFOA and PFOS, human carcinogens that cause adverse human health effects and render water undrinkable.

247. Defendants' manufacture, distribution, sale, supply, and marketing of AFFF/Component Products containing PFOA/PFOS was unreasonable because Defendants had knowledge of PFOA and PFOS's unique and dangerous chemical properties and knew that contamination of public groundwater supply wells was substantially certain to occur, but failed to provide adequate warnings of, or take any other precautionary measures to mitigate, those hazards.

248. The contamination caused, contributed to, and/or maintained by Defendants substantially and unreasonably interferes with Plaintiff's property rights to appropriate, use, and enjoy water from its wells.

249. Each defendant has caused, contributed to, and/or maintained such nuisance, and is a substantial contributor to such nuisance.

250. As a direct and proximate result of Defendants' acts and omissions as alleged herein, Plaintiff has incurred, is incurring, and will continue to incur damages related to PFOA and PFOS contamination of its wells in an amount to be proved at trial.

251. Defendants knew it was substantially certain that their acts and omissions described above would cause injury and damage, including PFOA and PFOS contamination of Plaintiff's groundwater supply. Defendants committed each of the above-described acts and omission knowingly, willfully, and with oppression, fraud, and/or malice. Such conduct was performed to promote sales of AFFF/Component Products, in conscious disregard to the probable dangerous consequences of that conduct and its reasonably foreseeable impacts on public health and welfare.

252. Therefore, Plaintiff requests an award of punitive damages in an amount sufficient to punish these Defendants and that fairly reflects the aggravating circumstances alleged herein.

253. Defendants are jointly and severally liable for all such damages, and Plaintiff is entitled to recover all such damages and other relief as set forth below.

COUNT VI:
TRESPASS

254. Plaintiff adopts, realleges, and incorporates the allegations in paragraphs 1 through 267 above, and further alleges the following:

255. Plaintiff is the owner, operator, and actual possessor of real property and improvements used for collecting drinking water.

256. Defendants designed, manufactured, distributed, marketed, and sold AFFF/Component Products with the actual knowledge and/or substantial certainty that

AFFF containing PFOS, PFOA, and/or their chemical precursors would, through normal use, release PFAS that would migrate into groundwater, causing contamination.

257. Defendants negligently, recklessly, and/or intentionally designed, manufactured, distributed, marketed, and sold AFFF/Component Products in a manner that caused PFAS to contaminate Plaintiff's property.

258. As a direct and proximate result of Defendants' trespass, Plaintiff has suffered and continues to suffer property damage requiring investigation, remediation, and monitoring costs.

259. Defendants knew that it was substantially certain that their acts and omissions described above would threaten public health and cause extensive contamination of property, including groundwater collected for drinking. Defendants committed each of the above-described acts and omissions knowingly, willfully, and/or with fraud, oppression, or malice, and with conscious and/or reckless disregard for the health and safety of others, and for Plaintiff's property rights.

COUNT VII:
VIOLATION OF THE UNIFORM FRAUDULENT CONVEYANCE ACT
(Against DuPont, Chemours Co., Chemours FC, Corteva and DuPont de Nemours, Inc.)

260. Plaintiff adopts, realleges, and incorporates the allegations in paragraphs 1 through 2639 above, and further alleges the following:

261. Plaintiff seeks equitable and other relief pursuant to the Uniform Fraudulent Conveyance Act (UFCA) as adopted by the State of New York, against DuPont, Chemours Co., Chemours FC, Corteva, and DuPont de Nemours, Inc. (collectively the "UFCA Defendants"). C.R.S. NY CLS Dr & Cr, Art 10 §§270-281.

262. The UFCA provides a "conveyance made" or "obligation incurred" is "fraudulent as to creditors as to both present and future creditors," and "without regard to his actual intent," when: (a) "the person making it is engaged or is about to engage in a business or transaction for which the property remaining in his hands after the conveyance is an unreasonably small capital," NY CLS Dr & Cr §274; (b) "the person making the conveyance or entering into the obligation intends or believes that he will incur debts beyond his ability to pay as they mature," NY CLS Dr & Cr §275; or (c) made or incurred "with actual intent, as distinguished from intent presumed in law, to hinder, delay, or defraud either present or future creditors," NY CLS Dr & Cr §276.

263. The UFCA Defendants (a) were engaged or were about to engage in a business for which the remaining assets of Chemours Co. were unreasonably small in relation to the business; (b) intended to incur, or believed or reasonably should have believed that Chemours Co. would incur, debts beyond its ability to pay as they became due; and (c) acted with actual intent to hinder, delay and defraud Plaintiff and other potential creditors.

264. UFCA Defendants engaged in acts in furtherance of a scheme to transfer the assets of DuPont out of the reach of parties such as Plaintiff that have been damaged as a result of the UFCA Defendants' conduct, omissions, and actions described in this Complaint.

265. It is primarily DuPont, rather than Chemours Co., that for decades manufactured, marketed, distributed and/or sold AFFF/Component Products containing PFOS, PFOA, and/or their chemical precursors with the superior knowledge that they were toxic, mobile, persistent, bioaccumulative, and biomagnifying, and through normal and foreseen use, would contaminate drinking water supplies.

266. As a result of the transfer of assets and liabilities described in this Complaint, the UFCA Defendants have attempted to limit the availability of assets to cover judgments for all of the liability for damages and injuries from the manufacturing, marketing, distribution and/or sale of AFFF/Component Products containing PFOS, PFOA, and/or their chemical precursors.

267. At the time of the transfer of its Performance Chemicals Business to Chemours Co., DuPont had been sued, threatened with suit and/or had knowledge of the likelihood of litigation to be filed regarding DuPont's liability for damages and injuries from the manufacturing, marketing, distribution and/or sale of AFFF/Component Products containing PFOS, PFOA, and/or their chemical precursors.

268. The UFCA Defendants acted without receiving a reasonably equivalent value in exchange for the transfer or obligation, and DuPont believed or reasonably should have believed that Chemours Co. would incur debts beyond its ability to pay as they became due.

269. At all times relevant to this action, the claims, judgment and potential judgments against Chemours Co. have potentially exceeded its ability to pay.

270. Pursuant to C.R.S. NY CLS Dr & Cr, Art 10 §§270-281, Plaintiff seeks avoidance of the transfer of DuPont's liabilities for the claims brought in this Complaint and to hold the UFCA Defendants liable for any damages or other remedies that may be awarded by the Court or jury to Plaintiff in this action.

271. Plaintiff further seeks all other rights and remedies that may be available to it under UFCA, including prejudgment remedies as available under applicable law, as may be

necessary to fully compensate Plaintiff for the damages and injuries it has suffered as alleged in this Complaint.

COUNT VIII:
PUNITIVE DAMAGES

272. Plaintiff adopts, realleges, and incorporates each and every allegation in the paragraphs 1 through 285 above, and further alleges the following:

273. Defendants engaged in willful, wanton, malicious, and or/reckless conduct that caused the foregoing damage upon Plaintiff, disregarding their protected rights.

274. Defendants' willful, wanton, malicious, and/or reckless conduct includes but is not limited to Defendants' failure to take all reasonable measures to ensure PFAS would not be released into the environment and inevitably contaminate Plaintiff's property and water supply.

275. Defendants have caused great harm to Plaintiff, acting with implied malice and an outrageously conscious disregard for Plaintiff's rights and safety, such that the imposition of punitive damages is warranted.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff demands judgment against Defendants, and each of them, jointly and severally, and request the following relief from the Court:

a. compensatory damages according to proof including, but not limited to:

   i. costs and expenses related to the past, present, and future investigation, sampling, testing, and assessment of the extent to which Plaintiff's property and water system have been contaminated with PFAS;

   ii. costs and expenses related to past, present, and future treatment and remediation of the PFAS contamination impacting Plaintiff's property and water system; and

iii. costs and expenses related to past, present, and future installation and maintenance of filtration systems to assess and evaluate PFAS contamination impacting Plaintiff's property and water system;

b. a declaration that Defendants acted with negligence, gross negligence, and/or willful, wanton, and careless disregard for the health, safety of Plaintiff;

c. an order for an award of attorney fees and costs, as provided by law;

d. pre-judgment and post-judgment interest as provided by law;

e. an order barring the transfer of DuPont's liabilities for the claims brought in this Complaint;

f. an award of punitive damages in an amount sufficient to deter Defendants' similar wrongful conduct in the future;

g. an award of consequential damages; and

h. an order for all such other relief the Court deems just and proper.

DEMAND FOR JURY TRIAL

Plaintiff, VILLAGE OF SOUTH GLENS FALLS, demands a trial by jury of all issues so triable as a matter of right.

Dated: New York, New York
August 14, 2023

Respectfully submitted,

NAPOLI SHKOLNIK

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