

**UNITED STATE DISTRICT COURT
 NORTHERN DISTRICT OF ALABAMA
 NORTHEASTERN DIVISION**

TENNESSEE RIVERKEEPER, INC.,)	
)	
Plaintiff,)	
)	
vs.)	Case No. _____
)	
3M COMPANY; BFI WASTE SYSTEMS)	
OF ALABAMA, LLC; CITY OF DECATUR,)	
ALABAMA; MUNICIPAL UTILITIES)	
BOARD OF DECATUR, MORGAN)	
COUNTY, ALABAMA; and JOHN DOES 1-10,)	
)	
Defendants.)	

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

NATURE OF THE CASE

1. This is a citizen’s suit for declaratory and injunctive relief brought pursuant to the provisions of Section 7002(a)(1)(B) of the federal Resource Conservation and Recovery Act (“RCRA”), 42 U.S.C. § 6972(a)(1)(B), to abate the imminent and substantial endangerment to health and the environment caused by Defendants’ disposal of hazardous and solid waste containing perfluorooctanoic acid (“PFOA”), perfluorooctane sulfonate (“PFOS”), and related chemicals at several locations in and around Decatur, Alabama, resulting in the contamination of groundwater, sediments, private water supplies, the Tennessee River and its tributaries, fish, and public drinking water supplies that utilize water from the Tennessee River. Despite knowledge of the significant hazards posed by these chemicals, Defendants have failed to take the steps necessary to protect health and the environment from this contamination. Due to Defendants’ violations of RCRA as alleged in this Complaint, Plaintiff seeks a declaratory judgment, injunctive relief, and the award of attorney’s fees and costs of litigation.

2. For decades, Defendant 3M Company made and/or used PFOA and PFOS – chemicals involved in the manufacture of flagship 3M “non-stick” brands like Stainmaster and Scotchgard – at the company’s Decatur, Alabama facility, one of its largest plants. However, these popular – and profitable – products double as toxic threats: Research strongly indicates PFOA and PFOS are potent carcinogens, and the chemicals have been linked to a host of other serious health issues. Even worse, the very properties that make these products popular also make them a persistent environmental problem: In essence, these “non-stick” chemicals do not stick to anything in the environment either, meaning they do not bind to anything to break down into safer components. There is thus nearly *no safe level* of these chemicals in the environment.

3. Yet, for decades, 3M Company and its co-Defendants discharged countless tons of these toxins into the environment – and, more specifically, into the Tennessee River. Perhaps worse, the Defendants have done little to clean up the contamination they have created.

4. As such, and without question, these chemicals pose significant threats to the Tennessee River, her various environmental habitats, the wildlife that calls her home, and the people who come in contact with her waters.

5. Consequently, where its members serve as both users and guardians of the Tennessee River, the Tennessee Riverkeeper now implores this court to help it do what the Defendants, the State of Alabama and the United States Environmental Protection Agency should have done over the past several decades – compel the clean up of the contamination the Defendants have caused and abate the substantial threat these pollutants pose to the Tennessee River.

JURISDICTION AND VENUE

6. This Court has subject matter jurisdiction over the RCRA claims set forth in this Complaint pursuant to Section 7002(a)(1)(B) of RCRA, 42 U.S.C. § 6972(a)(1)(B), and the federal question

statute, 28 U.S.C. § 1331. This Court also has jurisdiction to award Plaintiff all necessary injunctive relief, pursuant to Section 7002(a) of RCRA, 42 U.S.C. § 6972(a).

7. Plaintiff has complied with the pre-suit notice provisions of RCRA. Pursuant to Section 7002(b)(2)(A) of RCRA, 42 U.S.C. § 6972(b)(2)(A), on September 18, 2015, Plaintiff mailed a Notice of Intent to file suit under RCRA for abatement of the imminent and substantial endangerment to health and the environment discussed herein to Defendants, the Administrator of the U.S. Environmental Protection Agency (“EPA”), the Regional Administrator of the EPA, and the Chief of the Land Division of the Alabama Department of Environmental Management (“ADEM”) (the “September Notice,” attached hereto as Exhibit A and incorporated by reference herein).

8. More than 90 days have passed since the September Notice was served on Defendants and these agencies, and the violations complained of in the September Notice are ongoing or likely to recur, and the violations remain a present threat to human health and the environment, as of the date this Complaint is being filed.

9. EPA has not commenced, nor is it diligently prosecuting, an action under RCRA § 7003, 42 U.S.C. § 6973, to address the violations by Defendants of RCRA complained of herein.

10. EPA has not commenced, and is not diligently prosecuting, an action under Section 106 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (“CERCLA”), 42 U.S.C. § 9606, to address the violations by Defendants of RCRA complained of herein.

11. Neither EPA nor the State of Alabama is actually engaging, nor have they actually engaged, in a removal action under Section 104 of CERCLA, 42 U.S.C. § 9604, to address the violations by Defendants of RCRA complained of herein.

12. Neither EPA nor the State of Alabama is diligently proceeding with a remedial action under CERCLA, 42 U.S.C. § 9601 *et. seq.*, to address the violations by Defendants of RCRA complained of herein.

13. EPA has not obtained a court order, nor has it issued an administrative order, under RCRA Section 7003, 42 U.S.C. § 6973, or Section 106 of CERCLA, 42 U.S.C. § 9606, pursuant to which any Defendant or any other responsible party is diligently conducting a removal action, Remedial Investigation and Feasibility Study, or any remedial action that addresses the violations by Defendants of RCRA complained of herein.

14. The State of Alabama has not commenced, nor is it diligently prosecuting, an action under RCRA Section 7002(a)(1)(B), 42 U.S.C. § 6972(a)(1)(B), to address the violations by Defendants of RCRA complained of herein.

15. The State of Alabama has not incurred costs to initiate a Remedial Investigation and Feasibility Study under CERCLA Section 104, 42 U.S.C. § 9604, to address the violations by Defendants of RCRA complained of herein.

16. Venue is appropriate in the Northern District of Alabama, pursuant to Section 7002(a) of RCRA, 42 U.S.C. § 6972(a), because the violations complained of herein have and continue to occur within this judicial district.

17. Pursuant to 42 U.S.C. § 6972(b)(2)(F), upon receipt of a file stamped copy of this Complaint, Plaintiff will serve a copy of this Complaint on the Administrator of the Environmental Protection Agency and the Attorney General of the United States.

PARTIES

18. Plaintiff, Tennessee Riverkeeper, Inc. (“Riverkeeper”) is a non-profit membership corporation, with over 1,800 members, dedicated to the preservation, protection, and defense of the Tennessee River and its tributaries. Riverkeeper actively supports effective enforcement and

implementation of federal environmental laws, including RCRA, the CWA and the Alabama Water Pollution Control Act (“AWPCA”), on behalf of and for the benefit of its members.

19. Members of Riverkeeper have recreated in, on or near, or otherwise used and enjoyed, or attempted to use and enjoy, the Tennessee River, including the Wheeler Reservoir, and its tributaries, in the past, and they intend to do so in the future. They have a direct and beneficial interest in the continued protection, preservation, and enhancement of the environmental, aesthetic, and recreational values in these waters, and the quality of these waters directly affects the recreational, aesthetic and environmental interests of members of Riverkeeper. The recreational, aesthetic, and environmental interests of Riverkeeper’s members have been, are being, and will be adversely affected by the Defendants’ continued violations of RCRA as alleged in this complaint.

20. Members of Riverkeeper now recreate less on the Tennessee River, including the Wheeler Reservoir, because of the Defendants’ violations of RCRA. The violations alleged herein have had a detrimental impact on those members’ interests because the violations have adversely affected and/or diminished aquatic life and water quality in the Tennessee River, and have made the Tennessee River less suitable for fishing, boating, swimming, skiing, wading, walking, observing nature, and/or relaxing. Said members would recreate more in and around the Tennessee River but for Defendant’s violations of RCRA, and the imminent and substantial endangerment to health and the environment Defendants have thereby created. Riverkeeper members will recreate more often in or near the Tennessee River once Defendants’ violations of RCRA have been abated.

21. Riverkeeper members enjoy fishing, boating, swimming, skiing, wading, walking, observing nature, or relaxing at Wheeler Reservoir. Riverkeeper members are thus concerned that the contamination Defendants have caused and created poses a risk to their health and safety. For example, Riverkeeper members who fish at and/or near the Wheeler Reservoir are concerned that

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