



## **COMPLAINT**

Plaintiff, the TOWN OF PESHTIGO (“Town” or “Peshtigo”) by and through its undersigned counsel, hereby files this Complaint and makes these allegations based on information and belief against Defendants, TYCO FIRE PRODUCTS L.P., (“Tyco”), JOHNSON CONTROLS, INC. (“Johnson Controls”), CHEMGUARD, INC. (“Chemguard”), CHEMDESIGN, INC. (“ChemDesign”), and Does 1-100 (collectively, “Defendants”):

## **INTRODUCTION**

1. Through decades of uncontrolled use and release of toxic industrial chemicals known as per- and polyfluoroalkyl substances (“PFAS”), Defendants have contaminated and polluted sensitive natural resources, drinking water supplies, and public property in the Town of Peshtigo, Wisconsin (the “Town”).

2. Defendants’ PFAS chemicals, including without limitation perfluorooctanoic acid (“PFOA”) and perfluorooctanesulfonic acid (“PFOS”), were used and released into Town resources and property from a large facility and testing ground known as the Ansul Fire Technology Center (“AFTC” or the “Site”), a 380-acre property that serves as an active fire suppressant training, testing, research and development facility in Marinette, Wisconsin.

3. Peshtigo is a town of approximately 3,800 residents located in Marinette County in northeast Wisconsin. The Town sits on the shores of Green Bay and the Peshtigo River runs through the Town.

4. Town residents currently rely principally on privately owned groundwater wells to supply water needed for drinking, cooking, bathing, and other daily needs.

5. The Town itself also relies on groundwater to obtain drinking water for the well it owns, maintains, and operates to supply water to Town properties, such as the Town Hall and the Town Fire Station.

6. Town residents and visitors frequently use the Peshtigo River and Bay of Green Bay for recreational activities, such as fishing and swimming. Town residents and visitors likewise enjoy hunting in and around Peshtigo, and otherwise use and enjoy natural resources within the Town's jurisdiction.

7. Defendant Tyco owns and operates the AFTC Site in Marinette, Wisconsin. The Site is located north and east of Peshtigo.

8. Aqueous film-foaming foam ("AFFF"), which is used to control and extinguish liquid-based fires, was for many decades (and continues to be) manufactured, tested and used by Tyco, Chemguard, and others at the AFTC facility as part of research, development, quality testing and firefighting training activities.

9. Toxic PFAS chemicals, including PFOA and PFOS, have been present in the AFFF products used and/or released by, or pursuant to the direction or authorization, of the Defendants at the AFTC since the AFTC began operations in the 1970s.

10. PFAS are dangerous environmental contaminants. Continuous exposure to infinitesimal amounts of PFAS chemicals (measured in less than single-digit parts per trillion or "ppt") is known to cause serious health effects, including cancer, liver, thyroid, and kidney disease, immune system disruption, and pregnancy-induced hypertension, among other ailments. PFAS are also considered endocrine disruptors and neurotoxins.

11. Due to their uniquely strong chemical bonds, PFAS compounds resist environmental degradation and can persist indefinitely once introduced into waters, soils, and

other resources. They are often referred to as “forever chemicals” because they do not break down.

12. PFAS compounds are highly soluble and easily migrate in waterways and aquifers to spread contamination far and wide.

13. When consumed, PFAS compounds build up in the tissue of animals, including humans. In this way, PFAS travel up the food chain and cause chronic poisoning, concentrating to dangerous levels in predators (including humans), even where acute exposure levels are slight.

14. Their physical and chemical properties make PFAS uniquely challenging, and costly, to mitigate, eliminate, reduce, or control in the environment, as the compounds continue to circulate through groundwater systems, surface water systems, municipal stormwater and wastewater systems, and the water cycle.

15. Tyco, a successor in interest to the Ansul Company, manufactured and manufactures the Ansul brand of products, including Ansul brand AFFF that contains or breaks down into dangerous PFAS compounds in the environment.

16. Tyco acquired Defendant Chemguard in 2011. Chemguard likewise manufactured, and under Tyco’s helm manufactures, AFFF products containing or breaking down into PFAS, including for use, testing, and training at the AFTC.

17. Tyco has been manufacturing and/or using AFFF containing or breaking down into PFAS for over 50 years at its AFTC Site in Marinette County.

18. PFAS and AFFF products containing or breaking down into PFAS manufactured by Defendants Chemguard and ChemDesign were likewise used at Tyco’s AFTC facility for many years.

19. Staggering amounts of AFFF containing PFAS manufactured and used by Defendants were discharged, disposed of or released from the AFTC and onto lands and/or water in the vicinity of Peshtigo.

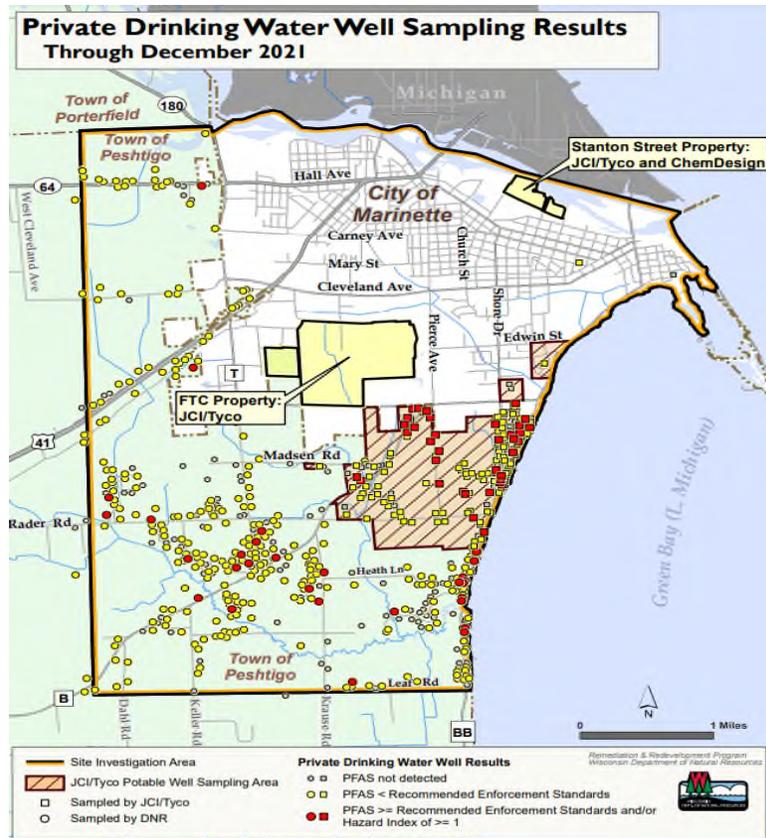
20. Upon information and belief, Tyco and Defendant Johnson Controls have had a services agreement in place since 2016 pursuant to which Johnson Controls provides certain services, including environmental consulting and management, to Tyco.

21. Since on or around September 2, 2016, Johnson Controls has authorized, supervised, directed, performed, or failed to perform the acts that resulted, in part, in the injuries complained of in this Complaint.

22. As a result of the aforementioned PFAS discharges and Johnson Controls' actions and omissions, the Town's drinking water sources, surface waters, and other natural resources and properties have been heavily contaminated with toxic PFAS compounds.

23. Indeed, over 230 of the drinking water wells in Peshtigo that were sampled for PFAS as of December 2021 evidence PFAS contamination at alarming levels, including PFOA at concentrations as high as 770 ppt and PFOS at concentration up to 41 ppt.

24. A map of tested wells in Peshtigo with recorded levels of PFAS is reproduced below:



25. As reflected in the above map, sampling conducted by both the State of Wisconsin Department of Natural Resources (“DNR”) and by defendants Tyco and Johnson Controls demonstrates the widespread presence of PFAS throughout Peshtigo.

26. The groundwater well owned, maintained, and operated by the Town for purposes of providing water to Town-owned properties is likewise at substantial risk of PFAS contamination.

27. The Town has the authority and the obligation—pursuant to Wisconsin statutory law, Wisconsin common law, and the Town of Peshtigo Code of Ordinances, among other sources of law—to protect the public health, safety, and welfare; to abate or seek abatement of public

<sup>1</sup> See <https://dnr.wisconsin.gov/topic/PFAS/Marinette.html>

nuisances; and to engage in watershed protection, soil conservation and protection, water conservation and protection, and protection of groundwater resources.

28. The breadth and severity of PFAS contamination and pollution attributable to Defendants' decades-long conduct at the AFTC poses a substantial threat and risk of harm to the Town and its residents.

29. This contamination imperils the public health, safety, and welfare, constitutes a public nuisance necessitating abatement, and undermines the Town's ability to protect and conserve natural resources, including surface waters, groundwater, and soil.

30. In light of the extensive PFAS contamination of natural resources and drinking water supplies Defendants have caused, the Town, through its Board of Supervisors, has engaged in the process of establishing a Utility District pursuant to Wis. Stat. § 66.0827, with the intent to establish a public water utility, the purpose of which is to abate the public nuisance caused by Defendants by making available to Town residents a safe, PFAS-free public water supply.

31. The DNR has publicly stated that a public water supply is the preferred method of addressing the PFAS contamination impacting the Town.

32. Ponds, streams, ditches, and other surface waters, as well as wildlife, surrounding the AFTC and in Peshtigo have also been tested for PFAS and the results have shown alarming levels of PFOA, PFOS, and other PFAS.

33. As a result, in September 2020, DNR issued a "do not consume" advisory for deer liver harvested in and around Marinette, including in Peshtigo, due to elevated PFAS contamination.

34. Further, in January 2022, DNR issued a fish consumption advisory for the Peshtigo River and Green Bay (among other waterways) due to detections of elevated PFOS levels, particularly in rock bass.

35. Signage in Peshtigo warns the public against coming in contact with, using, or accidentally consuming local surface waters.



36. Because of Tyco's and Johnson Controls' failure to properly investigate and delineate the extent of the contamination, the true extent of the contaminated groundwater plume and the potential exposure of Town residents is not fully known.

37. In short, as a direct and proximate result of Defendants' acts and omissions, the Town has suffered injury and damages from the presence of PFAS in the groundwater, surface water, soil, biota, and other natural resources and properties of the Town or under Town authority.

The Town has expended and will continue to expend considerable resources to respond to PFAS in such natural resources and properties in order to protect the public health and conserve and protect natural resources.

38. The Town brings this action against Defendants to recover all past and anticipated costs, losses, damages, and other relief arising out of the actual or potential presence of toxic PFAS in its properties and in natural resources under the Town's authority or management, or for which the Town otherwise has a responsibility to protect or conserve under Wisconsin law.

### **THE PARTIES**

39. Plaintiff the Town of Peshtigo is a body corporate and politic, duly organized under Wisconsin law and authorized to exercise village powers pursuant to Wis. Stat. § 60.22(3) by action of a town meeting pursuant to Wis. Stat. §60.10(2)(c). The Town of Peshtigo is located in Marinette County and is bordered by the City of Marinette to the north, the Town of Grover to the west, and the Bay of Green Bay to the east and south. The City of Peshtigo is surrounded by the west-central portion of the Town.

40. The Town brings this action in its governmental capacity, pursuant to its police powers, including the power to abate a public nuisance under Wis. Stat. § 823.01 and Wis. Stat. § 823.02, the power to protect and conserve environmental resources as set forth in Chapters 60 and 61 of the Wisconsin Statutes, the powers incumbent upon the Town as prospective manager and operator of a municipal water utility and in a proprietary capacity as owner, manager, and operator of Town properties at substantial risk of PFAS contamination caused by Defendants' actions and omissions.

41. Defendant Tyco, individually and as successor in interest to the Ansul Company is a foreign limited partnership with its principal office at 1400 Pennbrook Parkway, Lansdale, PA 19446. Tyco manufactured and manufactures the Ansul brand of products, including Ansul brand AFFF.

42. Upon information and belief, Defendant Tyco is the successor in interest to the corporation formerly known as the Ansul Company (“Ansul”) based on a September 25, 2009 merger between Tyco and Ansul’s successor Ansul LLC. Tyco is responsible for all of the liabilities of Ansul.

43. In this complaint, Ansul and/or Tyco as the successor in interest to Ansul will be referred to collectively as “Tyco.”

44. Defendant Johnson Controls is a domestic business with its principal office at 5757 North Green Bay Avenue, Milwaukee, Wisconsin 53209.

45. On or around September 2, 2016, Johnson Controls merged with a subsidiary of Tyco’s parent company, Tyco International plc, named Jaguar Merger Sub LLC. Johnson Controls was the surviving corporation. After the merger, Tyco International plc changed its name to Johnson Controls International plc. Johnson Controls is neither a parent nor subsidiary of Tyco.

46. Upon information and belief, since on or around September 2, 2016, Tyco and Johnson Controls have had a services agreement in which Johnson Controls provides certain services, including environmental consulting and management, to Tyco.

47. At all times relevant to the present litigation, Tyco designed, manufactured, and tested AFFF, and conducted research, development and training activities using AFFF at the AFTC.

48. Defendant Chemguard is a Wisconsin corporation having its principal place of business at One Stanton Street, Marinette, Wisconsin 54143. Chemguard was acquired by Tyco in 2011.

49. At all times relevant to the present litigation, Chemguard designed, manufactured, and tested AFFF, and conducted research, development, and training activities using AFFF at the AFTC.

50. Defendant ChemDesign is a Texas corporation having its principal place of business at 2 Stanton Street, Marinette, Wisconsin 54143.

51. At all times relevant to the present litigation, ChemDesign designed and manufactured, PFAS materials that were used in Tyco's and Chemguard's AFFF formulations, and which were used for research, development, and training purposes at the AFTC.

52. Upon information and belief, Does 1-100 were designers and manufacturers of PFAS materials that were used in AFFF formulations used for research, development, and training purposes at the AFTC. Although the identities of these Doe defendants are currently unknown, it is expected that their names will be ascertained during discovery, at which time the Town will move for leave to add those persons as defendants in this litigation.

53. Upon information and belief, each of the Defendants is responsible, whether negligently, recklessly, or intentionally, for the events and happenings referred to herein, and caused and continue to cause injuries and damages suffered by Plaintiff, as alleged, either through each Defendant's own conduct or through the conduct of their agents, servants or employees, or due to the ownership, maintenance or control of the instrumentality causing them injury, or in some other actionable manner.

54. When reference is made in this Complaint to any act or omission of any of the Defendants, it shall be deemed that the officers, directors, agents, employees, or representatives of the Defendants committed or authorized such act or omission, or failed to adequately supervise or properly control or direct their employees while engaged in the management, direction, operation, or control of the affairs of Defendants, and did so while acting within the scope of their duties, employment or agency.

55. All references to a Defendant or Defendants in this Compliant include any predecessors, successors, parents, subsidiaries, affiliates, and divisions of the named Defendants.

56. The term “Defendant” or “Defendants” refers to all Defendants named herein jointly and severally.

### **JURISDICTION AND VENUE**

57. This Court has subject matter jurisdiction pursuant to article VII, section 8 of the Wisconsin Constitution and Wis. Stat. § 801.04. This Court has personal jurisdiction over the defendants as this is an action claiming injury to persons and their property within this state arising out of acts and/or omissions within this state by the Defendants, which are corporations engaged in substantial and not isolated activities within this state. Wis. Stat. §§ 801.05 (1)(d) and (3). The events or omissions by Defendants giving rise to the claims asserted herein occurred in the State of Wisconsin and caused harm to Plaintiff, a town within Wisconsin. Wis. Stat. § 801.05.

58. Venue is proper in this Court pursuant to Wis. Stat. §§ 801.50 (2)(a) -(c) because the events or omissions by Defendants giving rise to the claims asserted herein occurred in Marinette County and caused harm to Plaintiff, which is located in Marinette County, where Defendants do substantial business, so as not to offend the traditional notions of fair play and substantial justice.

### **GENERAL ALLEGATIONS**

#### **A. PFAS ARE DANGEROUS CHEMICALS THAT THREATEN HUMAN AND ENVIRONMENTAL HEALTH AND SAFETY.**

59. Per- and polyfluoroalkyl substances (PFAS, as defined above) are a group of synthetic chemical compounds containing fluorine and carbon atoms. They are known as “surfactants” in that they reduce the surface tension of water.

60. PFAS are man-made; they do not occur naturally.

61. The two most widely studied types of PFAS are PFOA and PFOS, both synthetic, fully fluorinated organic acids with eight carbon atoms.

62. Although PFOS and PFOA are the most widely studied types of PFAS, the PFAS family includes thousands of different chemicals. Defendants have incorporated dozens of different PFAS chemicals in their AFFF product formulations, including PFOA and PFOS, among others.

63. PFAS compounds have a number of unique properties that, together, render these chemicals a grave threat to public health and the environment.

64. ***PFAS chemicals are mobile and persistent.*** They readily spread into the natural environment upon release, where they break down very slowly, if at all.

65. The compounds are characterized by multiple carbon-fluorine bonds, which are exceptionally strong and stable. As such, they are extremely persistent in the environment and resistant to metabolic and environmental degradation.

66. PFAS compounds easily dissolve in water and are thus highly mobile and readily spread in the environment. They contaminate soils and leach from the soil into groundwater, where they can travel significant distances underground.

67. ***PFAS chemicals bioaccumulate and biomagnify*** in the environment. Bioaccumulation occurs when an organism absorbs a substance at a rate faster than that at which the substance is lost by catabolism and excretion. Biomagnification is the increasing concentration of a substance in the tissues of tolerant organisms at successively higher levels in a food chain.

68. PFAS chemicals are extremely stable and persistent and as such, once ingested, tend to bioaccumulate in individual organisms for a significant period of time.

69. For example, PFOS and PFOA, among other PFAS, have been shown to accumulate to levels of concern in fish, reaching concentrations of several thousands of times higher than in water. The compounds have been detected in both wild-caught and farmed fish, presumably as a result of bioaccumulation and/or trophic transfer, i.e., biomagnification up the food chain.

70. PFOA and PFOS, among other PFAS, have also been shown to bioaccumulate in air-breathing species, including humans.

71. PFAS chemicals further bioaccumulate in the unborn and in infants by crossing the placenta from mother to fetus and by passing to infants through breast milk.

72. PFAS chemicals biomagnify up the food chain—for example, when humans eat fish that have ingested the substances. PFOS has been observed in high concentrations in various animals higher up in the food chain, including bald eagles, walrus, narwhals, and beluga whales.

73. Finally and critically, *PFAS chemicals are toxic*. Numerous studies make plain that exposure to or ingestion of these chemicals can pose serious risks to humans and to animals.

74. All PFAS exhibit one or more of the “key characteristics of carcinogenicity.” According to a March 2020 peer-reviewed study examining the properties of 26 PFAS compounds, including PFOA and PFOS, all compounds studied demonstrated one or more of the key characteristics of carcinogens, such as inducing oxidative stress, immunosuppression, inducing epigenetic alterations, influencing cell proliferation, and modulating receptor-mediated effects.

75. Human epidemiological studies, relied upon by the EPA for purposes of the agency’s health advisories on PFOA, have found associations between PFOA exposure and high

cholesterol, increased liver enzymes, decreased vaccination response, thyroid disorders, pregnancy-induced hypertension and preeclampsia, and testicular and kidney cancer.

76. Recent research conducted by the National Toxicology Program (“NTP”), a division of the National Institute for Environmental Health Sciences (“NIEHS”), has also linked exposure to extremely small amounts of PFOA to pancreatic cancer.

77. Human epidemiological studies, relied upon by the EPA for purposes of the agency’s health advisories on PFOS, found associations between PFOS exposure and high cholesterol, thyroid disease, and adverse reproductive and developmental effects, including gestational diabetes, preeclampsia, and low birth weight. The developing fetus and newborns are particularly sensitive to PFOS-induced toxicity.

78. PFOS and PFOA are toxic to laboratory animals, producing reproductive, developmental and systemic effects in laboratory tests.

79. The World Health Organization’s International Agency for Research on Cancer has found that PFOA is possibly carcinogenic to humans.

80. The EPA has found that there is suggestive evidence that PFOS and PFOA may cause cancer in humans.

81. On November 16, 2021, EPA further provided the Science Advisory Board PFAS Review Panel with recent scientific data and new analyses that indicate negative health effects may occur at much lower levels of exposure to PFOA and PFOS than had previously been understood, and that PFOA is a likely carcinogen.

82. These EPA analyses underwent peer review, and in June 2022, they formed the basis for revised health advisories for certain PFAS, and will be utilized in the development of

Maximum Contaminant Level Goals and a National Primary Drinking Water Regulation for PFOA and PFOS.

83. In June 2022, EPA announced drastically reduced health advisories for PFOA and PFOS, reducing the tolerance for these contaminants from 70 ppt to 0.004 ppt and 0.020 ppt, respectively. 0.004 ppt is 4 parts per quadrillion (“ppq”), and 0.020 ppt is 20 ppq.

84. At the same time, EPA also announced new health advisory levels for two other PFAS compounds: GenX (10 ppt) and PFBS (2,000 ppt).

85. These significant revisions to EPA’s health advisory levels strongly suggest that *any* detectable level of PFAS, particularly PFOA and PFOS, in water supplies or natural resources to which humans are exposed is cause for concern and a potential human health issue.

**B. THE REGULATORY RESPONSE TO PFAS CONTINUES TO EVOLVE.**

86. PFAS contamination is now widely understood to be a critical public health and environmental problem. This understanding, however, has only evolved recently—due, in part, to the fluorochemical industry’s withholding of public safety data.

87. Indeed, although the EPA began to investigate the safety of PFOA and PFOS in or around 1998 following some limited disclosures by the inventor of certain PFAS chemistries, 3M Company (“3M”), the agency did not begin to issue health advisories for these chemicals until January 8, 2009.

88. The 2009 EPA health advisory noted merely that “action should be taken to reduce exposure” to drinking water containing levels of PFOA and PFOS exceeding 400 ppt and 200 ppt, respectively.

89. In May 2016, the EPA significantly revised its PFOA and PFOS health advisory, recommending that drinking water concentrations for PFOA and PFOS, either singly or combined, should not exceed 70 ppt.

90. In December 2019, EPA issued revised screening levels for PFOA and PFOS in groundwater, reducing the screening level for each compound to 40 ppt.

91. Wisconsin regulators are likewise proceeding to strictly regulate PFAS. Wisconsin Admin. Code ch. NR 140 contains the State's health-based and public-welfare-based groundwater quality standards. DNR is authorized pursuant to the Code to establish groundwater standards.

92. On February 23, 2022, the Wisconsin Natural Resources Board ("WNRB"), as part of the DNR and with regulatory and policy-making powers and duties including the approval of proposed rules, approved DNR rules setting drinking water standards for PFOA and PFOS combined at 70 ppt, a proposed surface water standard of 8 ppt for PFOS in all surface waters, 20 ppt for PFOA in waters deemed public water supplies, and 95 ppt for all other surface waters. These rules took effect on August 1, 2022.

93. The EPA has confirmed that it will adopt Maximum Contamination Load standards ("MCLs") for certain PFAS, including at least PFOA and PFOS, in the near future.

94. As a step in that direction, and as alleged above, in June 2022, the EPA announced a significant further revision of the health advisory levels for two long-chain PFAS (PFOA and PFOS) and for two short-chain PFAS (GenX and PFBS). These revisions are based on recently published public health studies.

95. In particular, EPA dramatically reduced the PFOA health advisory level from 70 ppt to 0.004 ppt—a reduction by a factor of 17,500. In other words, EPA determined, based on public health studies conducted in 2021, that PFOA is dangerous to human health at concentrations *17,500* times lower than previously understood.

96. The June 2022 revisions also include a reduction of the PFOS health advisory level from 70 ppt to 0.02 ppt, and adoption of a health advisory level of 10 ppt for GenX and 2,000 ppt for PFBS.

97. On August 26, 2022, the EPA further published a proposed rule that would designate PFOA and PFOS, including their salts and structural isomers, as hazardous substances under section 102(a) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. 9602(a).

98. On September 12, 2022, DNR further announced that it would propose new public health related groundwater standards for PFOA, PFOS, PFBS, and GenX in light of EPA's June 2022 announcement concerning these PFAS compounds.

**C. THE AFTC IS THE ONLY MAJOR SOURCE OF PFAS IN PESHTIGO.**

99. Defendants' PFAS-based AFFF products have been manufactured, used, and disposed of for decades at the AFTC.

100. The AFTC is an active fire suppressant training, testing, research and development facility located at 2700 Industrial Parkway South, Marinette, Wisconsin 54143.

101. The AFTC encompasses 380 acres including a section known as the Outdoor Testing Area, consisting of 9 acres used in connection with the Fire Training School, Research and Development, and Quality Testing activities.

102. The remaining area of the site is used for equipment manufacturing, warehousing, offices, classrooms, and parking.

103. The Outdoor Testing Area was constructed in 1961. Since then it has been used to perform testing, demonstrations and training on a range of fire suppressants.

104. The AFTC has various buildings for fire testing, research and development and quality testing activities.

105. The AFTC hosts fire schools and foam schools during the summer months to train employees and customers on fire suppression techniques.

106. The Hydraulics Laboratory is used to conduct performance testing of foam systems. It has an outdoor foam monitor pad which is sloped in design so that drainage of water/foam mixture is directed back into a collection system inside the building.

107. The two Fire Test Houses have been used for indoor fire testing, including foam and foam sprinkler testing.

108. The Cold Storage has been used for foam testing activities, test enclosure extinguishment testing and nozzle testing.

109. The Center of Excellence contains a research laboratory and an instrument laboratory, which have been used for AFFF products.

110. The Warehouse is used to store AFFF and PFAS products.

111. A single firefighting event, training exercise, or product testing exercise, such as those conducted at the AFTC, may result and here has resulted in the release of thousands of gallons of foam solution laced with PFAS that then enter and contaminate the environment.

112. The area near the AFTC is drained by ditches, which appear to be hydraulically connected with the groundwater in and around Peshtigo.

113. Defendants have also used other locations in the City of Marinette and the Peshtigo area for activities related to AFFF products.

114. ChemDesign leases various buildings on Stanton Street in Marinette and manufactures the fluorosurfactants Tyco uses in its foam concentrate there.

115. Tyco rents a warehouse at 150 Pine Street in the City of Peshtigo, where it performs indoor foam proportioning of high expansion foam and foam products for research and development purposes.

116. Tyco rents a warehouse at 3100 Woleske Rd., Marinette, that is used to store containers of foam surfactants and foam concentrate.

117. Tyco manufactures AFFF. This foam consists of various materials that are blended together to make a foam agent or foam concentrate. One of the materials in the blend is a surfactant, containing fluorosurfactants, that degrades into PFOA and its salts.

118. Tyco first began testing foam concentrate at the AFTC in or around 1962.

119. At that time, this foam concentrate was manufactured by 3M, and was tested in combination with a dry chemical. Tyco became a distributor of the 3M-made foams and continued testing at the AFTC into the 1970s.

120. In 1973, Tyco partnered with a chemical manufacturer to develop a telomer-based foam concentrate. This product was introduced between 1973-1975 and then Tyco terminated its distribution of the 3M foams.

121. In 1988, Tyco began providing third party laboratory scale testing services of foam agents for end users' and distributors' annual performance evaluation requirements.

122. By the late 1970s, 3M had confirmed internally that PFOS and PFOA had been detected in human blood, *i.e.*, that the chemicals had spread far beyond the immediate site of their application, and were "more toxic than anticipated." The company, however, withheld information concerning these chemicals' toxicity from the EPA and other regulators for decades.

123. E.I. Du Pont de Nemours and Co. ("DuPont"), which had worked closely with 3M on research concerning PFOS and PFOA since at least the 1970s, likewise recognized many decades ago

that PFOA was toxic and needed to be handled with extreme care and likewise withheld this and other information from regulators and the public.

124. By the late 1970s, Tyco was also aware of environmental and toxicity concerns with respect to its AFFF products due to their inclusion of fluorosurfactants. Indeed, in 1976, the Navy awarded Tyco a contract to study the environmental characteristics of AFFF. After studying nine AFFF components, including fluorocarbon and hydrocarbon surfactants and solvents, Tyco concluded that AFFF toxicity was related to the surfactants.

125. By 1981, at the latest, Tyco had further become aware of 3M research concerning the toxicity of fluorosurfactants, such as tests that showed potential birth defects from oral ingestion of fluorinated surfactants by pregnant rats.

126. In 1999, one of 3M's chief scientists resigned over the company's failure to dedicate sufficient resources to the investigation of PFOS's harms, calling the chemical the "most onerous pollutant since PCB[.]" The scientist copied the EPA on his resignation letter.

127. In 2000, 3M "voluntarily" ceased production of certain PFAS compounds, including PFOS and PFOA, under EPA pressure.

128. Despite their knowledge of the harmful properties of PFAS chemicals, following 3M's withdrawal from the PFOA/PFOS market beginning in or around 2000, manufacturers of AFFF, including Tyco and Chemguard, made renewed commitments to protect their lucrative AFFF line of business.

129. In 2001, in response to concerns expressed by the EPA regarding the environmental viability of AFFF, a lobbying group known as the Firefighting Foam Coalition ("FFFC") was formed, partly to dispel such concerns. Tyco was a founding member of the FFFC. Both Tyco and Chemguard are current members.

130. The FFFC lobbied hard for AFFF. At conferences, in journals, and in meetings with the military, the EPA, and other regulators, it repeated a key talking point: only one PFAS chemical, PFOS, had been taken off the market. Thus, the FFFC asserted, since the FFFC members' products did not contain PFOS (but rather PFOA and other PFAS chemicals, which Tyco and others knew were equally harmful to the environment and public health), their products were safe.

131. Various AFFF manufacturers, including Tyco and Chemguard, eventually transitioned to the use of short-chain fluorotelomers with a maximum of six carbon atoms, claiming those chemicals are safer to environmental and human health than the longer-chain chemicals such as PFOA and PFOS.

132. Even if such claims were true, these AFFF manufacturers could have begun much earlier to transition from long-chain to short-chain fluorotelomers. Their failure to avail themselves of what they claim is a feasible alternative to the then-current formulations of PFAS-based AFFF that substantially mitigates the risk of human and environmental harm from AFFF products only confirms that their products based on long-chain fluorotelomers were not reasonably safe for their intended applications.

133. Tyco began initial site investigation activities at the AFTC in 1993 to delineate the extent of soil and groundwater contamination by various contaminants. Since then, several investigation phases, including a groundwater monitoring program, have been conducted.

134. Tyco performed testing at the AFTC property in 2013 and 2014 as part of the open investigation started in 1992, and the results indicated that PFOS and PFOA were present in the soil and groundwater at the Site and in off-Site potable wells.

135. The 2013 sampling showed PFOA in groundwater near the Site at levels as high as 254,000 ppt.

136. PFOS was found in groundwater at levels as high as 22,000 ppt. Other PFAS were also found in the groundwater during the 2013 sampling at similarly high levels.

137. The 2014 groundwater sampling showed PFOA at concentrations at the Site at levels of up to 22,300 ppt and PFOS at concentrations of up to 64,000 ppt. Other PFAS were also found in the groundwater during the 2014 sampling at similarly high levels.

138. In 2016, under investigation to delineate the extent of volatile organic compound (VOC) constituents, a subset of samples were further analyzed for PFAS.

139. The analysis of 38 groundwater samples from locations throughout and near the outdoor testing and training area further indicated the presence of PFAS compounds.

140. Analysis of 16 shallow soil samples in the Outdoor Testing Area also indicated the presence of PFAS compounds.

141. Groundwater and soil data from these investigation activities were submitted to the DNR in November 2016.

142. The highest level of PFOA found in groundwater during the 2016 testing was 190,000 ppt and the highest level of PFOS found in the groundwater was 12,000 ppt.

143. These concentrations were consistent with the sampling conducted in 2013 and 2014.

144. Investigation of PFAS in off-Site groundwater began in 2017.

145. This sampling identified PFAS in groundwater extending southeast, east and northeast from the Site.

146. The groundwater data collected showed that PFAS concentrations detected in off-Site groundwater is due to PFAS transport through groundwater and historical stormwater runoff to the on-Site and off-Site ditches.

147. Investigation of off-Site groundwater has included the sampling of approximately 140 private wells located predominantly to the southeast of the Site, including private wells in the Town of Peshtigo.

148. In November 2017, Tyco launched an investigation of PFAS, conducted under the oversight of the DNR and the Wisconsin Department of Health Services (“DHS”).

149. Tyco collected 98 groundwater samples and the combined PFOA and PFOS concentrations detected ranged from non-detect to 1,653 ppt.

150. Four samples of standing water within ditches on the AFTC were collected and the combined PFOA and PFOS concentrations detected ranged from 417 to 4,620 ppt.

151. In December 2017, Tyco also began testing on select private wells within the investigation area under DNR oversight.

152. That testing, the results of which Tyco presented during a January 23, 2018 public meeting in the Town of Peshtigo with DNR and DHS, showed that eight wells had combined PFOA and PFOS detections ranging from 84 to 690 ppt (i.e., above the then-current EPA HAL of 70 ppt) and another 17 wells had detections ranging from 3.9 to 49 ppt (i.e., above the now-current EPA HAL of 0.004 ppt for PFOA and 0.02 ppt for PFOS).

153. Ongoing sampling of wells within Peshtigo by both Tyco and DNR continue to show significantly elevated levels of PFAS.

154. Tyco sampled approximately 172 private drinking water wells in the area immediately adjacent to the ATFC, Tyco's self-appointed study area, also known as the "potable well sampling area" ("PWSA"), from April 2020 through March 2021.

155. PFAS were detected in 84 of these wells and 37 of the wells had concentrations of PFOA and PFOS at or above 20 ppt combined.

156. PFOA was detected at concentrations as high as 770 ppt, and PFOS at concentration as high as 41 ppt.

157. In 2020, DNR directed Tyco and Johnson Controls to expand the sampling area beyond the PWSA and sample potentially impacted water supply wells in an expanded site investigation area ("ESIA"), bordered by the Bay of Green Bay to the east, Leaf Road to the south, Pleasant View Road to the west, and the city of Marinette municipal boundary and Menominee to the north.

158. Tyco and Johnson Controls refused to conduct this sampling.

159. From late 2020 to mid-2021, DNR sampled 415 drinking water wells in the ESIA.

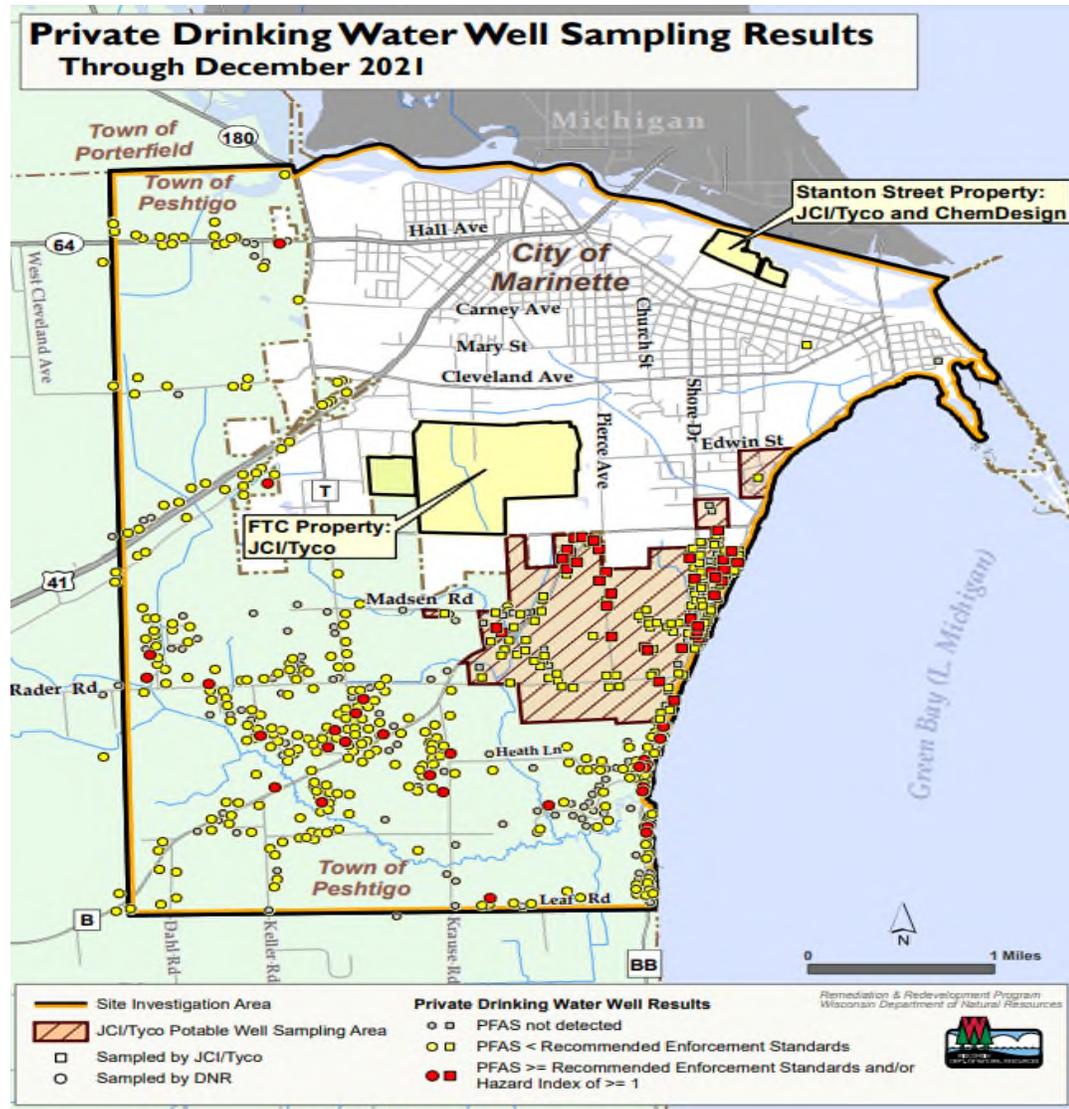
160. PFAS were detected in 330 of these wells and 30 of the wells had detections of PFAS exceeding one or more of the DHS recommended enforcement standards.

161. PFOA was detected at concentrations as high as 38 ppt, and PFOS at concentration as high as 48 ppt.

162. Beginning in March 2020, Tyco further conducted a one-time sampling of certain wells in the vicinity of 61 fields, as identified by WDNR, where biosolids were spread under a WDNR permit from wastewater treatment plants in the City of Marinette to which Tyco had discharged PFAS-containing wastewater.

163. A total of 183 wells were sampled through August 15, 2020. PFOS and/or PFOA was detected in all of the wells sampled. PFOA and PFOS, combined, was detected at concentrations of up to 2,230 ppt.

164. A map depicting the drinking water sampling results in the PWSA and ESIA is shown below.



165. The drinking water wells in the Town of Peshtigo outside of the ESIA have yet to be systematically sampled. The limited testing conducted to date, however, shows PFAS detections in the drinking water wells of Peshtigo residents outside of the ESIA.

166. In light of the demonstrated contamination in the PWSA and ESIA, Plaintiff believes that PFAS sampling in the remainder of the Town would reveal hazardous PFAS contamination of the drinking water supplies throughout the Town.

167. Ponds, streams, ditches, and other surface waters, as well as other natural resources such as wildlife, surrounding the ATFC and in Peshtigo have been tested for PFAS, and the results have shown alarming levels of PFOA and PFOS and other PFAS.

168. As a result, in September 2020, DNR issued a “do not consume” advisory for deer liver harvested in and around Marinette, including Peshtigo, due to elevated PFOS contamination.

169. Further, in January 2022, DNR issued a fish consumption advisory for the Peshtigo River and Green Bay (among other waterways) due to detections of elevated PFOS levels particularly in rock bass from these waterways.

170. Dystopian signage around the ATFC and in Peshtigo warns the public against coming in contact with, using, or accidentally consuming local surface waters.

171. Defendants have failed to properly investigate and delineate the extent of PFAS contamination emanating from the ATFC.

172. The true extent of the contaminated groundwater plume and the potential exposure of Town residents thus remains not fully known. Investigation is ongoing.

173. In short, the Town and its residents have suffered and will continue to suffer injuries as a result of Defendants’ conduct, including without limitation past and future costs to respond to PFAS concentrations in the Town’s properties and natural resources subject to its authority or responsibility, to protect the public health, and to protect and conserve environmental resources, consistent with Wisconsin law and the Town of Peshtigo Code of Ordinances.

**CAUSES OF ACTION**

**FIRST CAUSE OF ACTION:  
PUBLIC NUISANCE**

174. The Town hereby repeats, realleges, and reiterates each and every allegation in the preceding paragraphs as if fully restated herein.

175. The Town brings this claim in its governmental capacity, pursuant to its police powers, including the power to abate a public nuisance under Wis. Stat. § 823.01 and Wis. Stat. § 823.02, the power to protect and conserve environmental resources as set forth in Chapters 60 and 61 of the Wisconsin Statutes, the powers incumbent upon the Town as prospective manager and operator of a public water supply system, and in a proprietary capacity as owner, manager, and operator of Town properties at substantial risk of PFAS contamination traceable to Defendants' actions and omissions.

176. Defendants' reckless, intentional and unreasonable, abnormally dangerous, and/or negligent acts and omissions, as alleged above, resulted in the discharge of PFAS, including PFOA, into the environment, contaminating drinking water supplies, groundwater, surface water, soil, biota, and other natural resources in Peshtigo.

177. Defendants' conduct and the presence of PFAS contamination in the Town's water systems, waterways, waterbodies, and other natural resources annoys, injures, and endangers the comfort, repose, health, and safety of others, interferes with and obstructs the public's free use and comfortable enjoyment of the Town's waters for consumption, fishing, recreation, commerce, and aesthetic enjoyment, interferes with the Town's and its residents' interest in a healthy and ecologically sound environment, and is injurious to human, animal, and environmental health.

178. An ordinary person would be reasonably annoyed or disturbed by the presence of toxic PFAS that degrade water quality and marine habitats and endanger the health of fish, animals, and humans.

179. The seriousness of the environmental and human health risk far outweighs any social utility of Defendants' conduct in dumping, releasing, or discharging PFAS-based AFFF products and AFFF component products and concealing the dangers posed to human health and the environment.

180. The rights, interests, and inconvenience to the Town and general public far outweighs the rights, interests, and inconvenience to Defendants, which profited heavily from the sale of PFAS-based AFFF products and AFFF component products.

181. Defendants' conduct caused and continues to cause harm to the Town and its natural resources.

182. Until abated, the Town has suffered and will continue to suffer damage from Defendants' PFAS-based AFFF products and AFFF component products.

183. The Town suffered harm of a kind different from that suffered by members of the general public.

184. As a direct and proximate result of Defendants' creation of a public nuisance, the Town has suffered, and will suffer, monetary damages to be proven at trial.

185. Accordingly, the Town seeks from Defendants general damages and funds sufficient to abate the public nuisance created by Defendants, in an amount to be determined at trial, directly resulting from the injuries in a sufficient amount to compensate them for the injuries and losses.

**SECOND CAUSE OF ACTION:  
TRESPASS**

186. The Town hereby repeats, realleges, and reiterates each and every allegation in the preceding paragraphs as if fully restated herein.

187. The Town brings this claim in its governmental capacity, pursuant to its police powers, the power to protect and conserve environmental resources as set forth in Chapters 60 and 61 of the Wisconsin Statutes, the powers incumbent upon the Town as prospective manager and operator of a public water supply system, and in a proprietary capacity as owner, manager, and operator of Town at substantial risk of PFAS contamination traceable to Defendants' actions and omissions.

188. Defendant Tyco, as described above, is an owner of real property with the right of possession.

189. Defendants manufacture and use their products in researching and training exercises at the ATFC with knowledge that large quantities of toxic PFOA and PFOS would contaminate drinking water supplies, groundwater, surface water, soil, biota, and other natural resources in Peshtigo.

190. Defendants have been using AFFF for researching and training activities, allowing PFAS, including PFOS and PFOA, to contaminate drinking water supplies, groundwater, surface water, soil, biota, and other natural resources in Peshtigo, in varying amounts at various times.

191. At the time the above-described, affirmative, voluntary, and intentional acts were performed by Defendants, Defendants were substantially certain that large quantities of PFAS would and/or could be introduced into the Town's drinking water supplies, groundwater, surface water, soil, biota, and other natural resources and properties within the Town's purview.

192. The above-described affirmative, voluntary, and intentional acts were performed with the willful intent to cause PFAS to be dispersed into the environment.

193. Defendants' negligent, reckless, willful, and/or wanton actions and/or intentional failures to act caused an unknown quantity of PFAS to be released into the Town's drinking water supplies, groundwater, surface water, soil, biota, and other natural resources within the Town's purview.

194. The Town has not consented and does not consent to the trespass and contamination alleged herein. Defendants knew or reasonably should have known that the Plaintiff did not and does not consent to this trespass.

195. These voluntary actions resulted in the immediate and continued trespass, injury and damage to the Town.

196. Further, Defendants' actions in introducing dangerous quantities of PFAS into the Town's drinking water supplies, groundwater, surface water, soil, biota, and other natural resources and properties in Peshtigo were done with actual malice, and in wanton, willful and/or reckless disregard for Town's rights, the health of its residents, and property.

197. Additionally, and/or alternatively, Defendants' decisions to delay and the resulting delay in taking any affirmative action to eliminate, correct, and/or remedy the PFAS release and contamination after having knowledge and notice of said contamination were done with actual malice, and in wanton, willful and/or reckless disregard for the rights, health, and property of the Town.

198. Defendants' conduct caused and will continue to cause injury to the Town.

199. Defendants are under a continuing duty to act to correct and remediate the injuries their conduct has introduced, and to warn the Town and the public about the human and

environmental risks posed by their conduct, and each day on which they fail to do so constitutes a new injury to the Town.

200. As a direct and proximate result of Defendants' trespass, the Town has suffered, and will suffer, monetary damages to be proven at trial.

**THIRD CAUSE OF ACTION:  
NEGLIGENCE**

201. The Town hereby repeats, realleges, and reiterates each and every allegation in the preceding paragraphs as if fully restated herein.

202. The Town brings this claim in its governmental capacity, pursuant to its police powers, the power to protect and conserve environmental resources as set forth in Chapters 60 and 61 of the Wisconsin Statutes, the powers incumbent upon the Town as prospective manager and operator of a public water supply system, and in a proprietary capacity as owner, manager, and operator of Town properties at substantial risk of PFAS contamination traceable to Defendants' actions and omission.

203. Defendants had a duty of care to protect others against unreasonable risks resulting from the manufacture, transport, use, storage, handling and/or disposal of their PFAS-based AFFF products and AFFF component products.

204. Defendants breached their duty by failing to employ reasonable care which a reasonably prudent person should use under the circumstances by transporting, manufacturing, using, storing, handling and/or disposing of toxic PFAS, including but not limited to PFOA and PFOS, in a way that permitted their release into the drinking water supplies, groundwater, surface water, soil, biota, and other natural resources and properties in Peshtigo and by failing to timely warn of and mitigate the impact of that contamination.

205. Defendants failed to exercise ordinary care because a reasonably careful company that learned of its product's toxicity would not manufacture, use, store, handle, or improperly dispose of that product or would take reasonable steps to prevent causing environmental contamination in the use, storage, handling, or disposal of that product.

206. Upon learning of a release of toxic substances, including but not limited to PFOA and PFOS, Defendants owed Plaintiff a duty to act reasonably to remediate, contain, and eliminate the release before it contaminated and reached groundwater and other natural resources and properties in Peshtigo.

207. Defendants breached that duty by failing to timely notify the Town of any releases of toxic substances, including but not limited to PFOA and PFOS, into the environment in Peshtigo, and by failing to reasonably to remediate, contain, and eliminate the release before it contaminated and reached groundwater and other natural resources and properties in Peshtigo.

208. There is a proximate causal connection between Defendants' breach of their duties of care and the resulting harm to the Town's drinking water supplies, groundwater, surface water, soil, biota, and other natural resources and properties.

209. Defendants' negligence caused and continues to cause injury to the Town.

210. Defendants are under a continuing duty to act to correct and remediate the injuries their conduct has introduced, and to warn the Town and the public about the human and environmental risks posed by their products and conduct, and each day on which they fail to do so constitutes a new injury to the Town.

211. The Town has suffered, and will suffer, damages in amounts to be proven at trial.

**FOURTH CAUSE OF ACTION:  
ABNORMALLY DANGEROUS ACTIVITY  
AND ABSOLUTE AND STRICT LIABILITY**

212. The Town hereby repeats, realleges, and reiterates each and every allegation in the preceding paragraphs as if fully restated herein.

213. The Town brings this claim in its governmental capacity, pursuant to its police powers, the power to protect and conserve environmental resources as set forth in Chapters 60 and 61 of the Wisconsin Statutes, the powers incumbent upon the Town as prospective manager and operator of a public water supply system, and in a proprietary capacity as owner, manager, and operator of Town properties at substantial risk of PFAS contamination traceable to Defendants' actions and omission.

214. Defendants' manufacturing, operational, and disposal practices as it related to material contaminated with PFAS and/or other ultra-hazardous toxins was negligent, reckless, and/or intentional and constituted an ultra-hazardous or abnormally dangerous activity for which Defendants are strictly liable.

215. The Defendants' manufacture, use, mishandling, and disposal of material that contained PFAS was inappropriate, given PFAS's toxicity and danger to human health, at the ATFC due to the ATFC's proximity to the sources of drinking water and other natural resources and properties, including those of the Town.

216. Defendants allowed or caused these ultra-hazardous and abnormally dangerous substances to leach into the drinking water supplies, groundwater, and other natural resources and properties surrounding the ATFC, including those of the Town.

217. Defendants' manufacture, use, mishandling, and disposal of PFAS and their reckless disregard for the consequences of their actions caused the existence of a high degree of harm to the Town. Given the nature of PFAS, the likelihood of this harm was great.

218. The risk of such activities outweighs any value associated with the same. As the result of the said ultra-hazardous or abnormally dangerous activities, the Town has suffered damages and there is imminent, substantial, and impending harm to the residents, natural resources, and properties of the Town, and the Town has expended or will be forced to expend significant resources to safeguard the integrity of the Town's natural resources, properties, and the public for years and decades into the future.

219. The Town has suffered, and will suffer, damages in amounts to be proven at trial.

### **PUNITIVE DAMAGES**

220. The Town hereby repeats, realleges, and reiterates each and every allegation in the preceding paragraphs as if fully restated herein.

221. Upon information and belief, Defendants engaged in willful, wanton, malicious, and or/reckless conduct that caused the aforementioned injuries.

222. Defendants' willful, wanton, malicious, and/or reckless conduct includes but is not limited to Defendants' failure to take all reasonable measures to ensure PFAS-containing materials would be safely and effectively disposed of and not discharged into the surrounding environment and drinking water supplies.

223. Defendants have caused great harm to the drinking water supplies, groundwater, surface water, soil, biota and other natural resources and properties in Peshtigo and demonstrated an outrageous conscious disregard for these resources with implied malice, warranting the imposition of punitive damages.

224. Defendants committed each of the above-described acts and omissions knowingly, willfully, and with oppression, fraud and/or malice, in conscious disregard of the probable dangerous consequences of that conduct and its reasonably foreseeable impacts on public health and welfare.

Therefore, the Town requests an award of punitive damages in an amount enough to punish the Defendants and that fairly reflects the aggravating circumstances alleged herein. Defendants are strictly, jointly and severely liable for all such damages, and the Town is entitled to recover all such damages and other relief as set forth below.

### **PRAYER FOR RELIEF**

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

- A. Damages according to proof;
- B. An award of all past, present, and future costs to investigate, assess, analyze, monitor, remediate, restore, and/or replace natural resources and properties impaired or injured due to Defendants' conduct alleged herein;
- C. Punitive or exemplary damages sufficient to punish Defendants' use of fraudulent, malicious, or evil intent or actions and deter or warn others against commission of similar misconduct;
- D. Declaratory and injunctive relief requiring Defendants to abate and/or fund the abatement of the ongoing public nuisance, including all future abatement techniques necessary to protect the public health and the integrity and quality of public resources and properties in the Town;
- E. An order for an award of attorney fees and costs, as provided by law;
- F. An award of pre-judgment and post-judgment interest as provided by law, and
- G. An order for all such other relief the Court deems just and proper.

### **JURY DEMAND**

Plaintiff demands a trial by jury of any and all issues in this matter.

Respectfully submitted,

**THE TOWN OF PESHTIGO**

Dated: October 18, 2022

/s/ Casey P. Shorts

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