

**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

GLENN GATES and DONNA GATES, h/w	:	CLASS ACTION
	:	
On behalf of themselves and all others	:	
similarly situated	:	
	:	<b>JURY TRIAL DEMANDED</b>
Plaintiffs	:	
	:	
v.	:	
	:	
ROHM AND HAAS COMPANY	:	No.: 06-1743
and	:	
MORTON INTERNATIONAL, INC.	:	
and	:	
ROHM AND HAAS CHEMICALS, LLC	:	
and	:	
HUNTSMAN	:	
and	:	
HUNTSMAN POLYURETHANES	:	
and	:	
MODINE MANUFACTURING COMPANY	:	
	:	
Defendants	:	

**AMENDED COMPLAINT-CLASS ACTION**

Plaintiffs Glenn and Donna Gates, individually and on behalf of all others similarly situated, state and allege as follows:

**COMMON ALLEGATIONS**

**Nature of the Action**

1. This is a class action brought by and on behalf of the owners and residents of approximately 500 homes located in McCullom Lake Village, which is in McHenry, Illinois. The drinking water and air for these residents has been contaminated by cancer-causing pollutants dumped over several decades by defendants. Plaintiffs have discovered that the drinking water and air in their homes has been polluted with

dangerous chemicals, including trichloroethene (“TCE”), 1,1-dichloroethylene (“1,1-DCE”) and vinyl chloride (“VC”), suspected and known human carcinogens and mutagens, respectively. Defendants, including their subsidiaries, predecessors-in-interest and successors-in-interest, have generated and dumped these dangerous chemicals, which have commingled in the groundwater, the soil and in the air. At least five individuals, who lived as neighbors, including three individuals who lived side by side in the first row of residential homes at McCullom Lake Village, have developed malignant brain cancer all within a brief time period. Others who have lived in the neighborhood have also developed brain cancer and rare brain tumors. Still others who have spent time in McCullom Lake Village and who were exposed to toxic chemicals there have developed brain cancer. Plaintiffs seek, among other things, orders requiring defendants to abate the endangerment to health posed by the contamination; to reimburse costs plaintiffs have incurred and will incur in connection with the contamination; to provide funds to screen and monitor for cancer; and to recover compensatory and punitive damages for their injuries.

### **Plaintiffs**

2. Plaintiffs Glenn and Donna Gates, are citizens of the State of Illinois and reside in McHenry, Illinois. They own the property located at 2722 North Orchard Drive, McHenry, Illinois 60050.
3. Mr. and Mrs. Gates are long time residents of McCullom Lake Village.

### **Defendants**

4. Defendant Rohm and Haas Company (“Rohm and Haas”), is an international specialty chemicals company, with sales of approximately \$8 billion, operations in more than 27 countries and corporate headquarters located at 100 Independence Mall West, Philadelphia, Pennsylvania 19106.
5. Defendant Morton International, Inc., (“Morton”) is a wholly owned subsidiary of Rohm and Haas, with its principal place of business at 100 North Riverside Plaza, Chicago, Illinois 60606. Until January 1, 2005, Morton operated a specialty chemicals manufacturing facility at 5005 Barnard Mill Road, Ringwood, Illinois 60072, (the “Rohm/Morton Facility”). The Rohm/Morton Facility is located directly north and hydrologically and hydrogeologically up gradient of the proposed Class Area.
6. Defendant Morton manufactured specialty chemicals at the Ringwood Facility for more than 50 years.
7. Defendant Rohm and Haas Chemicals, LLC is a wholly owned subsidiary of Rohm and Haas, with its principal place of business at 5005 Barnard Mill Road, Ringwood, Illinois 60072. As of January 1, 2005, Rohm and Haas Chemicals has been operating the Rohm/Morton Facility.
8. Defendant Huntsman, is an international specialty chemicals company, with sales in excess of \$13 billion, operations in more than 22 countries and corporate headquarters located at 500 Huntsman Way, Salt Lake City, Utah 84108.
9. Defendant Huntsman Polyurethanes (“Huntsman”) is a wholly owned subsidiary of

Huntsman, with its principal place of business at 5015 Barnard Mill Road, Ringwood, Illinois 60072. Huntsman shares space on the property of the Rohm/Morton Facility and operates there a speciality chemicals manufacturing facility at 5015 Barnard Mill Road, Ringwood, Illinois 60072 (the “Huntsman Facility”).

10. Defendant Modine Manufacturing Company (“Modine”), is an international manufacturer of heating and cooling technology, with sales in excess of \$1.5 billion, operations in more than 14 countries and corporate headquarters located at 1500 DeKoven Avenue, Racine, Wisconsin 53403. At all relevant times, Modine operated a manufacturing plant at 440 Ringwood Road, Ringwood, Illinois 60072, (the “Modine Facility”). The Modine Facility is located directly north and hydrologically and hydrogeologically up gradient of the proposed Class Area.
11. Defendants’ facilities are all periodically up wind and have distributed airborne contaminants to plaintiffs’ properties during southward and winds and by diffusion during periods of calm winds.
12. Over the years defendants have spilled, leaked, and dumped massive quantities of highly toxic chemicals including TCE, 1,1-DCE and VC, suspected and known carcinogens, which have invaded the plaintiffs’ air and water supply.
13. Defendants, as well as their corporate parents, subsidiaries, predecessors in interest, and successors in interest, are all legally liable, jointly and severally for the severe harm that has been caused to plaintiffs on account of air and groundwater contamination with toxic and cancer-causing chemicals.
14. The Rohm/Morton Facility has operated as a chemical manufacturing business for more

than 50 years and continues to actively use volatile organic chemicals, primarily 1,1-DCE, in chemical manufacturing operations.

15. In June 1999, defendant Rohm and Haas acquired the Rohm/Morton Facility as part of a \$5 billion acquisition of Morton International.
16. In 2001, Rohm and Haas sold its Thermoplastic Polyurethane (TPU) business to defendant Huntsman, which included part of the Rohm/Morton Facility's operations as well as a facility in Germany.
17. The Modine Facility has operated as a manufacturing plant for more than 10 years and continues to actively use volatile organic chemicals, primarily TCE in its operations.

#### **Jurisdiction and Venue**

18. The Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1331 as this case arises under the laws of the United States. The claim in Count I seeks relief under the Comprehensive Environmental Response Compensation and Liability Act of 1980, as amended, 42 U.S.C. § 9601, et. seq. ("CERCLA") and the fraud claim in Count VI is partially based on the duties imposed by the Emergency Planning and Community Right-to-Know Act (EPCRA), 42 U.S.C. § 11046, et. Seq. ("EPCRA").
19. Pursuant to 28 U.S.C. § 1367, this Court has supplemental jurisdiction over the state law claims in Count II through VIII, which are so related to the claims in Counts I and VI, that they form part of the same case or controversy.
20. In addition, in that this is a class action, this Court has jurisdiction pursuant to 28 U.S.C. § 1332(d).
21. All defendants regularly conduct business within the Eastern District of Pennsylvania.

22. Pursuant to 28 U.S.C. § 1391(a), venue is proper in this Court because, among other things, defendant Rohm and Haas's corporate headquarters is located in Philadelphia, which is within the Eastern District of Pennsylvania.

**The Release and Migration of Chlorinated Solvents to Plaintiffs' Homes**

23. Each of the defendants has owned or operated facilities which generate or generated, and have dumped, spilled, or otherwise released chlorinated solvents, including TCE, 1,1-DCE and VC, into the soil and groundwater on their properties in Ringwood, Illinois.

24. According to the Illinois Environmental Protection Agency (IEPA), the Rohm/Morton Facility has been present at its main facility at 5005 Barnard Mill Road, Ringwood, Illinois for over 50 years and has handled and produced massive quantities of chlorinated solvents, including 1,1-DCE and VC.

25. From approximately 1962 to 1975 defendant Morton dumped liquid chemical waste into a lagoon/landfill located on the southwest portion of the sprawling Rohm/Morton Facility, which defendants named the "the Highlands."

26. An environmental assessment was initiated at the site in 1984 following the detection of elevated concentrations of ammonia nitrogen and chloride contaminating the groundwater beneath the Rohm/Morton site.

27. Between 1984 and 1985, Morton installed groundwater monitoring wells and collected and analyzed water samples.

28. The test results revealed high concentrations of volatile organic compounds ("VOCs"), including 1,1-DCE and VC, in the groundwater beneath the site.

29. Morton determined that the presence of VOCs in the groundwater was attributable to (1)

the closed lagoon/landfill (on the western part of the property) and discharge of waste water containing VOCs into the above ground retention ponds at the facility and (2) the release of a massive amount of 1,1-DCE in 1978 from a railroad tank car spill that occurred on the eastern end of the property.

30. Throughout the years, Morton and its successor Rohm and Haas continued to add monitoring wells on their property and adjacent properties to monitor the extensive groundwater contamination.
31. In 1991, Morton for the first time installed a groundwater remediation system, consisting of three recovery wells and an air stripper, to remove 1,1-DCE and other volatile contaminants from the groundwater.
32. The groundwater remediation system was not effective in containing the groundwater contamination because, among other things, it was never operated at above 25 percent of its design rate.
33. After implementation of the groundwater remediation program in 1991, the Rohm/Morton Facility continued to release substantial quantities of 1,1-DCE and VC among other chemical toxins into the environment.
34. In addition, the “air stripping” equipment at the Rohm/Morton Facility caused tens of thousands of pounds of 1,1-DCE and other volatile contaminants to be released into the air. The Rohm/Morton Facility was for many years the number two source of 1,1-DCE air discharges in the country.
35. In 1997, Morton determined that its contamination of the groundwater, referred to as the

“plume,” was commingling with chemicals being released into the groundwater from the Modine Facility.

36. In 1990, after the removal of two underground storage tanks<sup>1</sup>, Modine determined that the groundwater beneath the Modine Facility was contaminated with toxic VOCs, including TCE, cis-1,2-dichloroethene (“cis-1,2-DCE”), 1,1,1-trichloroethane (“1,1,1-TCA”), 1,1-DCE, toluene, and VC.
37. From then on Morton, Rohm and Haas, Modine and, later Huntsman began acting in concert and conspired to keep the public, particularly the residents of McCullom Lake Village, from knowing the true extent of the groundwater contamination.
38. In 1999, Morton determined that there were elevated concentrations of VOCs in both the shallow and deeper zones of the glacial outwash aquifer at the down gradient edge of the Rohm/Morton Facility, i.e. south toward McCullom Lake Village.
39. In 2000, Rohm and Haas/Morton determined that the groundwater plume extended off-site and beneath properties south of the Rohm/Morton Facility.
40. The determination that the contamination plume had extended beyond defendants’ properties was as a result of placing additional monitoring and testing wells in 2000.
41. The IEPA has never performed or ordered any independent testing of the air and groundwater, but rather has always relied on testing performed and data supplied by defendants.
42. Although never alerting the public, Rohm and Haas has acknowledged in documents

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<sup>1</sup>One tank contained naphtha and toluene and the other contained gasoline.

submitted to state authorities that the underground plume of toxic contamination extends to a distance sufficiently down gradient from the facility to reach the homes of plaintiffs and the proposed class members.

43. VOCs naturally degrade along expected chemical degradation pathways, such that, for example, TCE and 1,1-DCE naturally degrade to form related chemicals, including vinyl chloride, a known cancer causing agent in humans.
44. Other than in submissions to IEPA, none of the defendants have taken any steps to inform the public of the widespread groundwater contamination on their properties and the adjacent properties.
45. Defendants actively concealed from the public documents and information that was submitted to IEPA, such as by sending documents the Public Library in Johnsburg, Illinois instead of to the McHenry Public Library.
46. Defendants also intentionally misrepresented the true extent of the groundwater plume in their submissions to the IEPA.
47. Knowing that their chemical and manufacturing plants were up gradient from McCullom Lake Village and that the residents of that community depended on wells as their source of water, none of the defendants placed monitoring wells or air monitoring equipment directly south of the Modine and Rohm/Morton Facilities.
48. A decade and a half after confirming extensive groundwater contamination, in 2000 defendant Rohm and Haas performed a series of domestic well tests.
49. More than half of the domestic wells tested in 2000 were in Ringwood, upstream and

- upgradient from the contaminated groundwater. The other wells tested were far to the west and to the east of the groundwater contamination plume.
50. None of the defendants ever tested any domestic wells along West McCullom Lake Road or at any of the homes that are part of McCullom Lake Village.
  51. In submissions to IEPA, defendants ignored the fact that McCullom Lake Village, a residential community where hundreds of families lived within several thousand feet of the massive toxic chemical spills, was downhill, down gradient and down wind from defendants' facilities, stating only that "the main [Morton] plant is bounded by residential areas to the north and west, the railroad right of way to the east and the Modine Manufacturing Company to the south."
  52. A early as 1985 and as recently as October of 2005, it was known to the defendants that there was extensive vinyl chloride contamination of the groundwater south of the Rohm/Morton and Modine Facilities.
  53. Defendants acknowledge that 1,1 DCE and TCE have bio degraded completely to vinyl chloride as their contaminated groundwater - have left their sites.
  54. The IEPA in 2005 found that the Rohm/Morton Facility's waste water storage ponds were periodically overflowing and spilling into Dutch Creek, a tributary of the Fox River, that runs to and/or near McCullom Lake Village.
  55. In 2005, Dutch Creek tested positive for elevated concentrations of 1,1-DCE, ammonia, vinyl chloride and other noxious and toxic substances.
  56. On February 1, 2005, a massive reactor explosion occurred at the Rohm and Haas

Ringwood Facility, Building 37, during which thousands of gallons of toxic chemicals, including 1, 1 DCE spilled onto the ground, into the air, into holding lagoons and into the Dutch Creek.

57. The Occupational Health and Safety Administration cited Rohm and Haas for several serious violation of federal workplace safety regulations, including failure of their emergency response.
58. Rohm and Haas holds itself out as a good corporate citizen, a responsible member of the local community and a follower of sound principles of environmental responsibility.
59. Rohm and Haas did not notify the Ringwood/McHenry community about the February 1, 2005 toxic explosion, but rather sought to cover up and hide details of the incident.
60. 1,1-DCE, TCE and vinyl chloride are highly toxic chemicals and are classified by the EPA as cancer causing agents. Vinyl Chloride in particular has been linked to human brain cancer in epidemiological studies.
61. 1,1-DCE, TCE and VC and other hazardous substances from each of the defendants' properties have commingled and migrated, and continue to migrate, in liquid, vapor and gas form, in a groundwater plume and in the air running from defendants' properties toward and into Plaintiffs' properties and other properties in the proposed Class Area (as defined below), contaminating, infiltrating and threatening the soil, groundwater, domestic water supply and indoor and outdoor air quality of the homes in the area.
62. Plaintiffs and others in the proposed Class Area have been exposed for many years to

potentially dangerous levels of these chemicals through ingestion, dermal exposure and inhalation.

63. Defendants have taken no action to prevent contamination of the air and groundwater that serves the residents of McCullom Lake Village, and none of the defendants have, as of the date of this action, fully provided Plaintiffs or others in the Class Area with a permanent source, or even temporary source of safe water to drink and use in their homes. Nor have any defendants taken measures to fully curtail the inhalation risk from the contaminants in the homes of Plaintiffs and others in the proposed Class Area.
64. The releases and spills of hazardous substances from defendants' properties and the subsequent migration of these toxic and hazardous substances from defendants' properties to the properties of Plaintiffs and others in the proposed Class Area were a result of defendants' wrongful acts or omissions.

**The Hazardous Nature of 1,1-DCE and VC and Other Solvents  
Spilled and Released by Defendants**

65. 1,1-DCE, TCE and VC do not occur naturally in the environment.
66. 1,1-DCE, TCE and VC and the other volatile organic compounds released by defendants are dangerous substances, which have been linked to a variety of human illnesses, including cancer.
67. 1,1-DCE and TCE exposure can cause, among other things, liver and kidney damage and cancers, impaired heart function, impaired fetal development in pregnant women,

convulsions, coma and death. VC exposure can cause, among other things, liver and brain cancers.

68. The release of these chemicals by defendants presents an imminent and substantial endangerment to both Plaintiffs' health and that of others in the proposed Class Area.
69. At least five residents of McCullom Lake Village have been diagnosed with malignant brain cancer since mid-2004.
70. The statistical odds of five individuals, all neighbors, including three who lived side by side, all developing malignant brain cancer as a matter of coincidence are infinitesimally remote.
71. Even apart from the five known brain cancer cases among residents of McCullom Lake Village, there is evidence that the cancer rate among residents of McCullom Lake Village is higher than the national average.
72. These facts taken together establish the need for an appropriate medical monitoring program for past and present residents of McCullom Lake Village.

**The Harm to Plaintiffs Resulting from the Contamination**

73. As a result of the toxic contamination described above, the value of the Plaintiffs' properties and other properties in the proposed Class Area has been substantially decreased and impaired. This contamination, even if ultimately remediated, places a stigma upon these properties, which negatively affects the fair market value of their properties.
74. The releases of toxic chemicals from defendants' chemical and manufacturing operations have threatened Plaintiffs' health and others in the proposed Class Area and have

exposed them to injury and the fear of future injury, including cancer and other illness and also have adversely affected water sources for drinking and domestic use.

75. The fact that at least five McCullom Lake Village residents have been diagnosed with malignant brain cancer indicates that residents of this community, whose homes are along the underground and air migration path of toxic, cancer-causing chemicals, are at increased risk for developing cancer and other illnesses.
76. All five brain cancer cases involve men and women who were long time residents of McCullom Lake Village and who lived within blocks of one another, including three who lived side by side in the first row of residential homes on McCullom Lake Road.
77. Franklin Branham was diagnosed with glioblastoma multiforme, a kind of malignant brain cancer, in May 2004. Mr. Branham, age 63, died several weeks later, on June 18, 2004.
78. Prior to moving to McCullom Lake Road, Mr. Branham had lived for many years several blocks away, at another house within the same community and next door to class representatives Glenn and Donna Gates.
79. Mr. Branham and his wife had been residents of McCullom Lake Village for more than 35 years.
80. Several months later, in December 2004, Bryan Freund, 44, living in the middle home, was diagnosed with oligodendroglioma, a particularly rare form of malignant brain cancer.
81. Mr. Freund has lived in the McCullom Lake development for more than 20 years.
82. In January 2005, Mr. Freund's other next door neighbor to the left, Kurt Weisenberger,

- 64, was also diagnosed with oligodendroglioma.
83. Pathology records show that the genetic characteristics of the oligodendroglioma cells in both Mr. Freund and Mr. Weisenberger are identical.
  84. In April 2006, Judith Weisheit, a longtime resident of McCullom Lake Village, was diagnosed with glioblastoma multiforme.
  85. In May 2006, Sandy Wierschke, 44, a longtime and current resident of McCullom Lake Village, was diagnosed with glioblastoma multiforme.
  86. On information and belief, numerous other former and current residents of McCullom Lake Village have been diagnosed with brain cancer or rare brain tumors.
  87. Others who have spent time in McCullom Lake Village have also be diagnosed with malignant brain cancer, including:
    - a. Scott Milliman, 45, oligodendroglioma;
    - b. Brian DiBlasi, 45, oligodrendroglioma; and
    - c. Tyler Sjoblom, 55, glioblastoma multiforme.
  88. Plaintiffs' counsel is aware of other malignant brain cancer and brain tumor cases involving McCullom Lake Village residents or those who have spent time in McCullom Lake Village. These are under investigation.
  89. All of these individuals who contracted malignant brain cancer were exposed to toxic chemicals in the air, in the soil and in drinking water.
  90. The wells underneath the homes and the air in and around the homes of the individuals

who developed brain cancer were contaminated with toxic chemicals that had migrated downstream and down wind over a period of many years from defendants' manufacturing facilities.

91. As a result of the releases and the exposure to Plaintiffs and others in the proposed Class Area to these toxic chemicals, medical monitoring is necessary to detect the onset of latent diseases and illnesses.
92. As a proximate result of these toxic chemical exposures, the proposed class members are at a significantly heightened risk of developing malignant brain cancer and other illnesses.
93. Plaintiffs and the proposed Class Members are at increased risk of harm because of the defendants' negligently and recklessly dumping, leaking, and releasing known carcinogens, including 1,1-DCE and VC, into the environment and groundwater up gradient and up wind from the Class Area.
94. Within the last two years, there have been at least five cases of malignant brain cancer among residents of McCullom Lake Village.
95. The population of McCullom Lake Village, according to the 2000 Census, was 1,038 individuals.
96. For all of the 60050 zip code, which includes McCullom Lake Village, during the five-

year period 1999-2003, there were only 14 brain and nervous system cancers<sup>2</sup>, or less than three per year. There are about 50,000 people living in the 60050 zip code, so the annual incidence of brain cancer is about 5.6 brain cancers per 100,000 individuals per year.

97. Taking only the five known malignant brain cancers of the last two years in McCullom Lake Village, this works out to be 2.5 brain cancers per 1,000, or 250 brain cancers per 100,000 per year, some 50 times higher than the rate of brain and nervous system cancers for the 60050 zip code.
98. The increased risk of disease makes periodic diagnostic medical examinations reasonably necessary.
99. Monitoring and testing procedures exist that can assist in the earlier detection of brain cancers in this population, most notably neurologic examinations and MRI scans or comparable imaging studies.
100. The monitoring required here on account of defendants' conduct is not of a kind that is normally recommended for individuals absent exposure to hazardous substances because MRI scans are not part of general well-care for individuals.
101. The requested medical monitoring is reasonably necessary according to scientific and medical principles.

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<sup>2</sup>The Illinois Cancer statistics do not have a category limited to brain cancer. The category "brain and nervous system" cancers is necessarily broader than brain cancers alone because some nervous system cancers, e.g. spinal cord lesions, are not brain cancers.

102. Defendants' actions make them liable for the costs associated with a comprehensive medical monitoring program designed to determine whether any other former or current resident of McCullom Lake Village may have brain cancer.
103. This action seeks a medical monitoring program to include:
  - a. Notice to each member of the class;
  - b. Periodic screening MRIs;
  - c. Periodic neurological examinations by a qualified, board certified specialist;
  - d. Other diagnostic studies, tests or examinations as may be deemed appropriate based on further demographic and epidemiological data.
104. In addition to the need for medical monitoring, the toxic chemical releases described above have disrupted the lives of plaintiffs and the proposed class members, causing considerable stress, inconvenience and discomfort.
105. The toxic chemical releases have left Plaintiffs and others in the proposed Class Area without a reliable water source for drinking and domestic use.
106. Plaintiffs and others in the proposed Class Area have expended time and money and/or will expend time and money to respond to the toxic chemical releases, including but not limited to, purchasing bottled water and/or filtration systems, buying fans to dispense the contamination, and investigating the nature of the toxic releases.

107. Additionally, in order to secure an adequate supply of drinking water and prevent exposure to air contamination, Plaintiffs and others in the Class Area will have to expend large amounts of money to connect to the city water supply and install air monitoring equipment.

### **Class Allegations**

108. Plaintiffs bring each of the claims in this action in their own names and on behalf of a class of all persons similarly situated, pursuant to Rule 23 of the Federal Rules of Civil Procedure.

109. The Medical Monitoring Class consists of those persons who currently own property in or reside in, or in the past owned or resided in property that has been impacted by toxic contamination from defendants' properties, or on which threat of impact such exists.

110. Because of past and present exposure to toxic chemicals in the air, the soil and in the groundwater, members of the Medical Monitoring Class should have available to them a fund to pay for medical monitoring costs.

111. A second class, the Property Owners Class, consists of those persons who own or owned property in McCullom Lake Village as of the date of the filing of this action, and who have incurred or will incur costs and expenses and other financial and other losses as a result of the toxic contamination from defendants' properties.

112. The proposed Class Area for both of the above proposed classes, is located directly south of the Ringwood Plant and the approximate boundaries of the class properties are McCullom Lake Road to the north, but also including those properties on the north side of McCullom Lake Road, McCullom Lake to the south, Petersen Park to the east, and

North Ringwood Road to the west (the “proposed Class Area”). A map of the proposed Class Area is attached as Exhibit A.

113. The members of the two classes are so numerous that joinder of all members is impractical. The number of homes in the affected area, which have been or may in the future be damaged by hazardous substances, exceeds 500, and, therefore, the number of Class members also exceeds 500 people, and likely includes in excess of 1500 people.
114. There are common questions of law and fact that affect the rights of each member of the two classes, and the types of relief sought are common to the proposed classes.
115. The same conduct by each defendant had injured each member of the proposed classes. The class members are all impacted by toxic contamination of air, soil and groundwater caused by defendants, which is the predominant question in this matter.
116. A class action is superior to other available methods for the fair and efficient adjudication of the controversy. Plaintiffs’ claims are typical of the claims of both proposed classes. All are based upon the same factual and legal theories. It is the same conduct by each defendant that has injured each member of the Class.
117. The principal issue in the matter involves defendants’ conduct in disposing and releasing hazardous substances and wastes into groundwater and air which impacts numerous property owners in the Class.
118. The prosecution of separate actions by individual members of the Class would potentially result in inconsistent or varying adjudications with respect to individual members of the Class. Prosecution of separate actions would establish incompatible standards of conduct for defendants, which would dispose the interests of other members not parties to the

adjudications and would substantially impair or impede other member's ability to protect their interests.

119. Defendants' actions, which have contaminated the same air, soil and groundwater used by numerous property owners in the Class Area, make final injunctive relief with respect to this action appropriate.
120. Plaintiffs will fairly and adequately represent and protect the interests of the Class.
121. Plaintiffs are longtime residents of McCullom Lake Village and therefore are representative of those members of the Medical Monitoring Class.
122. Plaintiffs are also property owners in McCullom Lake Village and therefore are representative of the Property Owners Class.
123. Plaintiffs have retained counsel who are competent and experienced to represent the classes of plaintiffs.

**COUNT I: CERCLA COST RECOVERY, 42 U.S.C. § 9607(a)**

124. The preceding paragraphs are incorporated by reference as though set forth here in their entirety.
125. Each defendant is a "person" as defined by § 101(21) CERCLA, 42 U.S.C. § 9601 (21).
126. Each of the defendants was and/or continues to be an owner and/or "operator" of a "facility" and a portion of a "facility," within the meaning of §§ 101(2), 101(9) and 107(a) of CERCLA, 42 U.S.C., §§ 9601(20), 9601(9), 9607(a).
127. The "facilities" include each of the defendants' properties, which include the groundwater plume running from the defendants' facilities onto Plaintiffs' and the Class Members' properties.

128. The toxic substances in question, including 1,1-DCE, TCE and VC, among others, used, stored at or emanating from each of the defendants' facilities, were and are "hazardous substances," within the meaning of § 101(14) of CERCLA, 42 U.S.C. § 9601(14).
129. There have been and continue to be "releases" or "threatened releases" of hazardous substances into the environment at each of defendants' facilities and at the IEPA Superfund site, within the meaning of §§ 101(22) and 107(a) of CERCLA, 42 U.S.C. §§ 9601(22) and 9607(a). The hazardous substances released include, but are not limited to, 1,1-DCE, TCE and VC.
130. Defendants' releases have migrated towards and into Plaintiffs' properties, including Plaintiffs' water supply and the air Plaintiffs breathe. Plaintiffs themselves are not in any way responsible for the contamination.
131. Defendants are liable under § 107 of CERCLA, 42 U.S.C. § 9607(a), because they generated and disposed of hazardous substances, including 1,1-DCE, TCE and VC; they are the current or former operators of a facility; and because they owned or operated a facility when hazardous substances were stored, used, disposed, or otherwise discharged thereon.
132. As a result of the releases or threatened releases of hazardous substances, Plaintiffs and the Class have incurred and continue to incur "response" costs within the meaning of §§ 101(23)-(25) of CERCLA, 42 U.S.C. §§ 9601 (23)-(25), including, but not limited to, the retention of an environmental consultant to perform preliminary investigations of the contamination of Plaintiffs' and the Class Members' property, as well as the cost of alternative water sources. All such costs are necessary costs of response, and, to the

extent required, are consistent with the National Contingency Plan. Plaintiffs and the Class will continue to incur such response costs in the future. Plaintiffs and the Class are entitled to full reimbursement from defendants for all such costs, pursuant to §107(a) of CERCLA, 42 U.S.C. § 9607(a).

## **COUNT II: NUISANCE**

133. The preceding paragraphs are incorporated by reference as though set forth here in their entirety.
134. The contamination of the air, soil and groundwater at, in, on or beneath properties and residential properties adjacent to and in the area of said properties occurred and persists because of all defendants' acts and omissions including, but not limited to, their operation and maintenance of their facility and equipment; their handling, storage, use and disposal of hazardous substances; and/or their failure to promptly and effectively address such contamination to prevent further migration of the toxic chemical contaminants.
135. Defendants' contamination of the air, soils and groundwater and their failure to address such contamination constitutes an unreasonable, unwarranted and unlawful use of the Plaintiffs' properties and substantially interferes with Plaintiffs' and the Class Members' reasonable use, development and enjoyment of their properties.
136. As alleged above, Plaintiffs and the Class have incurred substantial damages as a result of defendants' creation and maintenance of such toxic chemical contamination, constituting a nuisance.

### **COUNT III: TRESPASS**

137. The preceding paragraphs are incorporated by reference as though set forth here in their entirety.
138. Each defendant had and has a duty not to permit or allow hazardous substances transported to, used or stored at their property to invade adjacent residential properties via air, soil vapor and groundwater migration.
139. Defendant also had a duty not to allow the continuation of this wrongful trespass.
140. Defendants have breached these duties by their wrongful acts and omissions resulting in extensive and widespread toxic chemical contamination and by their failure to take action to prevent further migration of the contamination.
141. Defendants' wrongful acts and omissions have resulted in releases of contaminants from their properties into the environment, and the migration of such contaminants at, in, on or beneath other properties in the area, without consent of the Plaintiffs or Class members.
142. The invasion of the adjacent real property exclusively possessed by Plaintiffs and the Class, by contamination released by defendants, was due to unreasonable, unwarranted, and unlawful conduct of defendants and constitutes a wrongful trespass upon the land owned by Plaintiffs and Class members.
143. As a result of defendants' wrongful trespass, the lawful rights of Plaintiffs and the Class to use and enjoy their properties have been substantially interfered with and Plaintiffs and the Class have been damaged.

#### **COUNT IV: ULTRAHAZARDOUS ACTIVITY - STRICT LIABILITY**

144. The preceding paragraphs are incorporated by reference as though set forth here in their entirety.
145. The defendants' generation and disposal of solid and hazardous substances at their facilities and operation of their facilities using solid and hazardous substances in a densely populated area, close to private drinking water wells and public lakes, constitutes an ultrahazardous activity.
146. As a direct result of the defendants' engaging in the aforementioned ultrahazardous activities, TCE, 1,1-DCE and VC and other hazardous chemicals have been released from defendants' facilities into the groundwater and air used by Plaintiffs and the Class.
147. As a direct or proximate result of the defendants engaging in the aforementioned ultrahazardous activities, the Plaintiffs and the Class have suffered exposure to toxic chemicals and as a result have suffered substantial damages.

#### **COUNT V: NEGLIGENCE**

148. The preceding paragraphs are incorporated by reference as though set forth here in their entirety.
149. Defendants had a duty to Plaintiffs and the members of the proposed classes not to permit or allow hazardous substances at the properties to invade adjacent residential properties.
150. Defendants also had a duty to promptly respond to any releases of contaminants in a manner which would prevent further migration of the contaminants, and to warn Plaintiffs of the release or threatened release of TCE, 1,1-DCE and VC and other hazardous substances into the air, the soil and the groundwater used by the Plaintiffs.

151. Defendants have breached these duties by their negligent acts and omissions in operating and maintaining their facility; maintaining their equipment; installing their equipment; their handling, storage, use and disposal of hazardous substances; their failure to promptly and effectively address such contamination to prevent further migration of the contaminants; and their failure to warn Plaintiffs of the release of threatened release.
152. As generators of solid and liquid wastes and hazardous substances and as operators of these facilities, defendants owed a duty to Plaintiffs to prevent the release of TCE, 1,1-DCE and VC and other hazardous chemicals into the air, soil and groundwater at or near Plaintiffs' homes.
153. If ordinary care had been taken, TCE, 1,1-DCE and VC and other hazardous chemicals would not have been released from defendants' facilities into the air, soil and groundwater at or near Plaintiffs' homes.
154. The release of TCE, 1,1-DCE and VC and other hazardous chemicals would not have occurred but for the negligent acts or omissions of the defendants.
155. As a direct or proximate result of these negligent acts or omissions, the Plaintiffs and the Class have been exposed to toxic chemicals via the air, soil and groundwater and as a result have suffered substantial damages.
156. Defendants' breach of their duties to Plaintiffs and the Class have caused substantial injury and damage to Plaintiffs and the Class.

**COUNT VI: CONSPIRACY, FRAUD, MISREPRESENTATION**

157. The preceding paragraphs are incorporated by reference as though set forth here in their entirety.

158. Defendants had a duty to warn Plaintiffs and the Class when they became aware that hazardous substances at their properties were migrating into adjacent residential properties via the air, soil vapors and the groundwater.
159. Defendants had a duty to warn plaintiffs when they became aware that hazardous substances at their properties were migrating toward and onto adjacent residential properties via air, soil vapor and the groundwater.
160. In addition to a common-law duty to warn, in accordance with the Emergency Planning and Community Right-to-Know Act (“EPCRA), 42 U.S.C. Sec. 11046, defendants had a duty to completely and accurately report the toxic emissions coming from their facilities.
161. Upon information and belief, defendants breached this duty by conspiring among themselves to hide and conceal the extent of the air, soil and groundwater contamination, as described above.
162. Defendants’ fraud, concealment, misrepresentation and conspiracy have caused plaintiffs to be exposed to toxic chemicals emanating from defendants’ facilities and have as a result suffered substantial injury and damages.

**COUNT VII: NEGLIGENCE BASED ON STATUTORY VIOLATION**

163. The preceding paragraphs are incorporated by reference as though set forth here in their entirety.
164. Defendants, by their actions set forth herein, have caused or threatened or allowed the discharge of contaminants into the environment so as to cause water pollution in violation of §12(a) of the Illinois Environmental Protection Act.

165. The Illinois Attorney General itself has alleged that several defendants violated Section 12(a), which was designed to protect human health and life of persons such as Plaintiffs and the Class who drink the water.
166. Defendants, by their actions set forth herein, have deposited contaminants upon the land in such place and manner as to cause water pollution hazard in violation of §12(d) of the Illinois Environmental Protection Act.
167. The Illinois Attorney General itself has alleged that several defendants violated Section 12(d), which was designed to protect human health and life of such persons as Plaintiffs and the Class who drink, and are otherwise exposed to, the water.
168. Plaintiffs' injuries, as alleged herein, including exposure to contaminated water, are the types of injuries that the Environmental Protection Act is designed to protect against.
169. As a result of the violations alleged herein, defendants' actions in causing and threatening water pollution and causing a water pollution hazard, defendants' actions constitute prima facie negligence.
170. As a direct or proximate result of these violations, defendants have caused substantial injury and damage to Plaintiffs and the Class.

**COUNT VIII: WILLFUL AND WANTON MISCONDUCT**

171. The preceding paragraphs are incorporated by reference as though set forth here in their entirety.
172. Upon information and belief, defendants have acted in a wanton and willful manner and in reckless indifference to the safety of Plaintiffs' health and property, and to the safety

of the general public, in one or more of the following ways:

- a. Defendants allowed and caused hazardous chlorinated solvents to routinely and frequently spill onto the ground over several years without appropriate safeguards to prevent or remedy such releases; and
  - b. Defendants failed to determine the impact of the contamination on their property including the air and soil in and near the homes of the proposed class members or the private water wells used by Plaintiffs and members of the proposed classes, when defendants knew or should have known of the likelihood that these private wells were contaminated.
173. As a direct and proximate result of the willful, wanton and reckless acts and/or omissions of all defendants, Plaintiffs and the Class are entitled to punitive damages.

#### **Relief Requested**

WHEREFORE, Plaintiffs request that this Court enter judgment in their favor and in favor of Plaintiffs and the Class and against defendants, and pray:

- A. That the Court certify this action as a Class Action on behalf of all others similarly situated, appoint Plaintiffs' counsel as counsel for the Class, and order that Notice be given to the Class of this action;
- B. That the Court require defendants to take all measures to abate the imminent and substantial endangerment to health and the environment as contemplated by CERCLA § 6972, including, but not limited to, paying the full costs for plaintiffs and members of the Class to be connected to city water and for testing and shielding the homes of Plaintiffs and members of the Class from further water and

airborne contaminants;

- C. That the Court enter judgment against defendants jointly and severally for all response costs incurred by Plaintiffs and others in the Class Area under CERCLA, including, but not limited to, costs of investigation, costs of connecting to municipal or city water, bottled water costs, and costs of fans, reverse osmosis and filtration systems, and declare that defendants are liable for all response costs to be incurred by Plaintiffs and others in the Class area under CERCLA;
- D. That the Court award damages incurred by Plaintiffs and others in the Class Area against defendants jointly and severally under Counts II through VIII for all damages, including, but not limited to, out of pocket damages, temporary loss of value of property, discomfort, aggravation and annoyance and permanent loss of value of property.
- E. That the Court award punitive damages against defendants jointly and severally under Count VIII.
- F. That the Court enter an order creating a court supervised fund, to be paid for by defendants, which will cover the costs of medical monitoring for Plaintiffs and others in the Class Area who wish to partake of the prescribed medical testing, screening and evaluations;
- G. That the Court order expedited discovery to determine the nature, extent and full scope of the contamination as mandated by the EPCRA;
- H. That the Court preliminarily and permanently enjoin defendants from further spillage or release of hazardous chlorinated solvents on their properties;

- I. That the Court award Plaintiffs their costs of litigation, including reasonable attorneys' and expert witness fees), as authorized by CERCLA § 6972(e); and
  - J. That the Court award Plaintiffs and the Class their costs of suit and such other and further relief as the Court deems just and proper.
174. Plaintiffs request trial by jury on all issues so triable.

**LAYSER & FREIWALD, P.C.**

BY: /s/ Aaron J. Freiwald AF 8799  
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DATED: June 9, 2006

**UNITED STATES DISTRICT COURT FOR THE**

**EASTERN DISTRICT OF PENNSYLVANIA**

GLENN GATES and DONNA GATES, h/w : CLASS ACTION  
:   
Plaintiff :   
: NO. 06-1743  
v. :   
:   
ROHM AND HAAS COMPANY, et al. :   
:   
Defendants :   
:

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**CERTIFICATE OF SERVICE**

I, AARON J. FREIWALD, ESQUIRE, hereby certify that service of a true and correct copy of the Amended Complaint was served on opposing counsel on this date, via Hand Delivery, as follows:

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BY: /s/ Aaron J. Freiwald AF 8799  
AARON J. FREIWALD, ESQUIRE

Dated: June 9, 2006