UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

CENTRAL SANITARY LANDFILL, INC., and OTTAWA COUNTY LANDFILL, INC.,	)	
Plaintiffs,	)	
vs.	)	Case No. 1:25-cv-01639
WOLVERINE WORLD WIDE, INC., and 3M COMPANY	)	Hon. Robert J. Jonker
Defendants.	)	*Oral Argument Requested*

DEFENDANT 3M COMPANY'S MEMORANDUM OF LAW
IN SUPPORT OF MOTION TO DISMISS

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INTRODUCTION

Plaintiffs Central Sanitary Landfill and Ottawa County Farms Landfill (collectively, "Plaintiffs" or "the Landfills") seek to impose "arranger" liability under the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA") and Michigan's Natural Resources and Environmental Protection Act ("NREPA") on 3M Company ("3M") for PFAS contamination allegedly traced to waste generated by Wolverine World Wide, Inc. ("Wolverine") and disposed at Plaintiffs' landfills. The Complaint's factual narrative, however, describes precisely what CERCLA and NREPA do *not* cover: a manufacturer selling a commercially valuable, new product to an industrial customer, where the customer's downstream manufacturing process generates waste. Even accepting all pleaded facts as true, 3M does not fit within CERCLA "arranger" liability (or its NREPA analogue), because Plaintiffs have not plausibly alleged that 3M took intentional steps to dispose of a hazardous substance or sold Scotchgard™ with the *goal* (as opposed to the knowledge) of disposing of a portion of the product.

The Complaint states that Scotchgard™ is a commercially available product that Wolverine purchased and used in its tannery operations "to impart water- and stain-resistant properties" to its leather products. Wolverine, not 3M, allegedly disposed of tannery waste at Plaintiffs' facilities over a period of decades, purportedly leading to PFAS in landfill leachate. In other words, the alleged "disposal" was not disposal of Scotchgard™ by 3M; it was disposal of Wolverine's manufacturing byproducts by Wolverine.

Against this background, Plaintiffs attempt to plead arranger liability by relabeling ordinary product sales and product stewardship as a disguised disposal scheme. Their theory is that 3M "arranged" for disposal because of (1) 3M's ongoing technical involvement with Wolverine through consultation about application and performance testing, product

specifications, trademark licensing, and alleged advice about waste handling; and (2) 3M's continuing to sell its original formulation of Scotchgard™ to Wolverine after announcing that it had reformulated its product and removed PFAS. Neither of these suffices to bridge the gap between a "useful product" and an "arrangement for disposal."

First, controlling precedent holds that arranger liability requires that the seller acted with the *purpose* of disposal, not that the defendant knew some disposal would occur as a result of the transaction. Plaintiffs' Complaint does not plead any objective, transaction-specific facts that would indicate that 3M acted with the intent to dispose—for example, that the material was treated as scrap or waste, sold for nominal or negative value to avoid disposal costs, delivered without regard to product quality or performance, or otherwise treated as a waste rather than a useful product. On the contrary, the Complaint avers that 3M authorized use of the Scotchgard™ trademark, required compliance with application and quality standards, required inspection and testing of treated products, and required ongoing sample submissions to monitor product quality. Those allegations are hallmarks of a company safeguarding a valuable brand and ensuring that a product is used correctly to achieve intended performance, not a company attempting to shed "waste" under the guise of sales.

Similarly, the Complaint claims that 3M's sales of its remaining stock of Scotchgard™ that contained PFAS were motivated by a desire to dispose of its product contains only general claims and legal conclusions about 3M's supposed "primary objective." These general claims are untethered to transaction terms, pricing, quality control, or any concrete indicia that 3M ever treated its own product as scrap or waste.

The Supreme Court requires that a complaint plead a plausible claim in light of "common economic experience." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 565-67 (2007). Plaintiffs'

arranger theory depends on an economically implausible premise: that 3M manufactured and sold Scotchgard™, a product Wolverine used to add value to its consumer products, primarily to "dispose" of it. Businesses do not produce and sell a product for decades with the goal of discarding it. The far more plausible conclusion from the Complaint's allegations is the straightforward one: 3M sold a useful product that Wolverine used for its intended purpose. Under those facts, governing law is clear that 3M cannot be found to have "arranged for disposal" of its own new product. The Court should therefore dismiss the Landfills' CERCLA and NREPA claims against 3M.

Defendant Wolverine is separately filing a Motion to Partially Dismiss Plaintiffs' Complaint for Failure to State a Claim Upon Which Relief May Be Granted Pursuant to F.R.C.P. 12(b)(6) that seeks to dismiss Ottawa Landfill as a defendant. Defendant 3M concurs in, and joins, that motion. 3M has not briefed that issue separately in order to limit the number and length of filings in this matter.

FACTUAL BACKGROUND

3M Company ("3M") manufactures Scotchgard™, a commercially available product used to protect fabrics or materials from stains. First Am. Complaint ECF No. 9, PageID.29, ¶ 2.[1] Prior to 2002, Scotchgard™ contained perfluorooctane sulfonic acid ("PFOS"), a member of the larger group of chemicals known as per- and polyfluoroalkyl substances ("PFAS"). *Id.* at PageID.33, 35, ¶¶ 21, 28. 3M has since reformulated Scotchgard™ to no longer contain PFOS. *See id.* at PageID.34-35, ¶¶ 26, 28.

[1] As is required for a motion to dismiss, 3M treats the facts alleged in the Complaint as true for purposes of this motion. 3M does not concede any of the Complaint's factual allegations recited or discussed in this motion.

Beginning in the 1950s, Wolverine purchased and used Scotchgard™ manufactured by 3M. *Id.* at PageID.34, ¶ 27. Wolverine used Scotchgard™ primarily in its leather tanning and finishing operations at its Rockford, Michigan tannery. *Id.* at PageID.28-29, ¶¶ 1-2. Wolverine applied Scotchgard™ to its products to impart water- and stain-resistant properties. *Id.* at PageID.29, ¶ 2. 3M subsequently announced that it was reformulating Scotchgard™ and continued to sell the previous formulation to Wolverine while the reformulated product was being brought to market. *Id.* at PageID.34-36, ¶¶ 26, 28, 31.

The First Amended Complaint makes the following allegations about 3M's sales to Wolverine:

- 3M continued to sell Scotchgard™ to Wolverine after 3M "decided to cease production of Scotchgard™ in order to deplete and dispose of existing stockpiles." *Id.* at PageID.36, ¶ 31.
- "Wolverine had a decades-long arrangement with 3M in which 3M coordinated with and advised Wolverine on the use of Scotchgard™ to make Wolverine's products resistant to water and stains." *Id.*
- "3M routinely consulted with Wolverine regarding the application of Scotchgard™ and related performance testing, the proper use and handling of Scotchgard™, and procedures for disposing of waste resulting from the application of Scotchgard™. According to Wolverine, for a period of time, 3M required Wolverine to allow 3M to inspect and study samples of the leather that Wolverine had treated with Scotchgard™, permit a representative of 3M to test Wolverine's products at random, and required Wolverine to send 3M samples of such treated products every 30 days to ensure it met 3M's product specifications." *Id.*

- "3M authorized Wolverine to use the Scotchgard™ trademark and 3M required Wolverine to comply with 3M's specified application and quality standards." *Id.*
- "3M controlled, directed, and/or advised on the use… of Scotchgard™ to Wolverine products through a process that necessarily included the generation of waste, including performing an industrial hygiene survey of Wolverine's production facilities. 3M advised Wolverine on the [] waste drainage system to use at Wolverine's production facilities and that 3M was reluctant to alter Wolverine's then-existing waste disposal practices because '[c]ustomers may ask 3M to subsidize this increased cost as it is our product that is requiring the changes.'" *Id.*
- "3M not only provided the Scotchgard™ product to Wolverine but guided the engineering of its application and disposal process when requiring Wolverine to adhere to certain production standards." *Id.*

Wolverine's use of Scotchgard™ produced tannery wastes containing PFAS. *Id.* at PageID.35, ¶ 29. Wolverine disposed of these wastes at the Central Sanitary Landfill and the Ottawa County Farms Landfill. *Id.* at PageID.38, 44, ¶¶ 38, 64. PFAS are present in the landfills' leachate wastewater. *Id.* at PageID.38, 44, ¶¶ 39, 64.

The State of Michigan subsequently conducted an investigation of sites that were contaminated as a result of Wolverine's tannery operations and filed a lawsuit against Wolverine in 2018. *Id.* at PageID.35, ¶ 30. Wolverine in turn asserted a third-party claim against 3M. *Id.* ¶ at PageID.36, ¶ 31. In 2020, Wolverine, 3M and the State of Michigan reached a settlement. *Id.* at PageID.35, ¶ 30. The First Amended Complaint in this action cites repeatedly to the third-party complaint Wolverine filed against 3M in that previous case. *See, e.g., id.* at PageID.35, ¶ 31 (citing Wolverine World Wide Inc's Third-Party Complaint, ECF No. 31, PageID.248, 284-

285, ¶¶ 29-30, 207-211, *Mich. Dep't of Env't Quality v. Wolverine World Wide, Inc.*, No. 1:18-CV-00039-JTN-SJB (W.D. Mich., Dec. 18, 2018)). 3M does not concede, however, that the Complaint in the present case accurately recites the allegations in Wolverine's previous complaint or that those allegations are true. *See* Third-Party Defendant 3M Company's Answer and Affirmative Defenses to Wolverine World Wide, Inc.'s Third-Party Complaint and Counterclaim, ECF No. 89, *Mich. Dep't of Env't Quality v. Wolverine World Wide, Inc.*, No. 1:18-CV-00039-JTN-SJB (W.D. Mich., June 20, 2019) (responding to allegations in Wolverine's previous complaint).

Following the discovery of PFAS, Central implemented water sampling and ground water monitoring wells, as well as groundwater treatment and disposal systems. *Id.* at PageID.29, 40-43, ¶¶ 5, 44-60. Similarly, Ottawa has constructed a specialty injection well to dispose of PFAS-contaminated leachate. *Id.* at PageID.30, 44-46, ¶¶ 6, 67-74. The First Amended Complaint seeks to recover certain costs associated with these measures.

STATUTORY BACKGROUND

I. CERCLA

CERCLA imposes liability on four categories of "covered persons" defined by specified types of relationship to a facility.[2] Under Section 107(a)(3) of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), liability attaches to an "arranger" of a hazardous substance for disposal. 42 U.S.C. § 9607(a)(3). An arranger is "any person who by contract, agreement, or otherwise arranged for disposal . . . of hazardous substances owned or possessed by such person, by any other party or entity, at any facility or

[2] *See* 42 U.S.C. § 9607(a)(1)-(4).

incineration vessel owned or operated by another party or entity and containing such hazardous substances." *Id.*

CERCLA does not impose liability on the basis of causation. *See Kalamazoo River Study Grp. v. Menasha Corp.*, 228 F.3d 648, 655 (6th Cir. 2000). "Congress knew how to impose liability based on causation if [it] so desired," yet it elected not to do so. *Veolia Es Special Servs. v. Hiltop Invs., Inc.*, No. 3:07-0153, 2010 WL 610094, at *4 (S.D.W.Va. Feb. 18, 2010). Accordingly, if an actor does not fit into one of the categories specified by the statute, there is no liability, even if the actor played some causal role in the release of hazardous substances (which 3M denies it has done here).

Interpreting the term "arranged for disposal" in 42 U.S.C. § 9607(a)(3), the Supreme Court has held that "*knowledge alone is insufficient to prove that an entity 'planned for' the disposal*, particularly when the disposal occurs as a peripheral result of the legitimate sale of an unused, useful product." *Burlington N. & Santa Fe Ry. Co. v. United States*, 556 U.S. 599, 612 (2009) (emphasis added). A seller of a useful product can only be liable as an arranger if it sold its product "with the intention that at least a portion of the product be disposed of during the transfer process." *See id.* The showing of intent requires "action directed to [the] specific *purpose*" of disposal, not merely that seller knew that some disposal would be an incidental result of the transaction. *See id.* at 611-12 (emphasis added). Arranger liability for sale of a product is "inappropriate . . . even if a seller 'know[s] its product will [ultimately] be leaked, spilled, dumped, or otherwise discarded.'" *Am. Premier Underwriters, Inc. v. Gen. Elec. Co.*, 14 F.4th 560, 572 (6th Cir. 2021) ("*APU*") (quoting *Burlington Northern*, 556 U.S. at 612). Additionally, disposal of a portion of product as a result of the buyer's manufacturing process is not the same as disposal during the "transfer process."

II. NREPA

Like CERCLA, Part 201 of Michigan's Natural Resources and Environmental Protection Act ("NREPA"), encourages the cleanup of hazardous substances by assigning financial liability for the cleanup. MCL 324.20126a(1)(b), *et seq.* Part 201 of NREPA closely follows CERCLA and contains many analogous provisions. Relevant here, NREPA Section 20126 contains an arranger liability provision that is virtually identical to CERCLA's, and applies to "[a] person who by contract, agreement, or otherwise arranged for disposal. . . of a hazardous substance owned or possessed by the person, by any other person, at a facility owned or operated by another person and containing the hazardous substance." MCL 324.20126(1)(d).

Michigan courts frequently rely on federal decisions applying CERCLA in interpreting analogous provisions of NREPA. Because the intent of Michigan's statutory scheme is similar to CERCLA "it is appropriate to examine federal case law interpreting similar issues." *Haworth, Inc. v. Wickes Mfg. Co.*, 210 Mich. App. 222, 228 (1995). Accordingly, Michigan courts have applied the "useful product" doctrine under NREPA. *See Cipri v. Bellingham Frozen Foods, Inc.*, 235 Mich. App. 1, 4 n.2, 11-13 (1999) (explaining the relationship of NREPA to its predecessor statute and applying "useful product" test).

STANDARD FOR MOTION TO DISMISS

A complaint should be dismissed if it fails to state a claim upon which relief can be granted. Fed. R. Civ. P. 12(b)(6). To survive a 12(b)(6) motion to dismiss, a complaint must contain "sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Twombly*, 550 U.S. at 556, 570).

If an affirmative defense appears "clearly on the face of the complaint," the complaint must be dismissed under Rule 12(b)(6). *See Kreipke v. Wayne State Univ.*, 807 F.3d 768, 784 (6th Cir. 2015) (internal citation and quotation omitted). If a complaint provides only

"conclusory allegations and a recital of the elements of a claim" and "fail[s] to allege any facts 'that may satisfy the plausibility standard from *Iqbal*,'" it should be dismissed. *Barney v. PNC Bank, Nat'l Ass'n (In re Estate of Barney)*, 714 F.3d 920, 929 (6th Cir. 2013) (citation omitted).

ARGUMENT

Even taking all the facts alleged in Plaintiffs' Complaint as true, the "useful product" doctrine squarely applies to 3M's sale of Scotchgard™ to Wolverine. It follows that the Landfills' claims under both CERCLA and NREPA fail.

I. THE LANDFILLS' CERCLA CLAIMS FAIL BECAUSE 3M SOLD WOLVERINE A USEFUL PRODUCT

The Landfills' Complaint does not allege a viable CERCLA claim against 3M as an "arranger" for disposal. Instead, the actions described in the Complaint are a textbook example of a manufacturer selling a new, useful product who is not subject to CERCLA liability. Because the Landfills have alleged no facts in their Complaint that would support a viable CERCLA claim against 3M, the Landfills' CERCLA count must be dismissed.

A. The Supreme Court and Sixth Circuit Have Found That Sellers of Useful Products Are Not "Arrangers"

In *Burlington Northern*, the Supreme Court analyzed the meaning of CERCLA's provision imposing liability on "any person who . . . arranged for disposal" of a hazardous substance. 556 U.S. at 608. *Burlington Northern* involved Shell Oil Company's sale of a pesticide, which it sold to purchasers in bulk; the pesticide was transferred from tanker trucks to bulk storage tanks, a process that led to "numerous [] failures and spills as the chemical rusted tanks and eroded valves." *Id.* at 603 n.1. The chemical was then transferred from the bulk storage tank to other types of storage, a process that also generated spills. *Id.* at 604. Shell was aware that spills occurred during this process and had a substantial role in managing that process, for example requiring inspections of its distributors' facilities. *Id.*

The Court concluded that Shell had not "arranged for disposal" of its product. *Id.* The Court explained that it did not suffice to show that Shell knew that its product would be "leaked, spilled…or otherwise discarded" to establish arranger liability. *Id.* at 612. "[K]nowledge alone is insufficient to prove that an entity 'planned for' the disposal, particularly when the disposal occurs as a peripheral result of the legitimate sale of an unused, useful product." *Id.* Arranger liability would only attach on a showing that "Shell . . . entered into the sale of [its product] with the *intention* that at least a portion of the product be disposed of during the transfer process." *Id* (emphasis added).[3]

In *APU,* the Sixth Circuit addressed another fact pattern. *APU* involved General Electric's (GE's) sale of a product called Pyranol that contained PCBs, and that served as a coolant in transformers used on trains. The Court found that GE designed transformers with release valves to relieve pressure and prevent damage to the transformer, and knew that the transformers regularly released Pyranol through those valves. The Court concluded that although "Pyranol release was both foreseeable and anticipated," the purpose of that release was not disposal, it was "to release pressure and avoid tank rupture," so GE was not arranging for disposal of Pyranol. *Id.*

The Court also found that GE's involvement in its customers' operational decisions affecting Pyranol releases was not enough to trigger arranger liability. For example, GE had stationed personnel in its customers' railyards to advise on warranties of its equipment, *id.* at 566-67, designed a "shroud to direct [Pyranol] spills [directly] onto the roadbed," *id.* at 571, and adopted a policy, "driven by financial considerations," of repairing known defects in

[3] Although the "useful product" doctrine is sometimes called the "useful product defense," *Burlington Northern* makes clear that the plaintiff bears the burden of establishing arranger liability at all times; the burden does not shift to the defendant in useful product cases.

transformers only when the transformers failed. *Id.* at 567. Although there was evidence that GE was aware of the environmental hazards of PCBs, the Court concluded that these actions did not trigger arranger liability. Even though GE's design and instructions to its customers directly and knowingly led to Pyranol releases, they were "financial" decisions, not actions motivated by disposal. *Id.* at 572. "Environmental contamination was foreseeable, not the goal." *Id.*

Other circuits have taken a similar approach to sales of new products, finding that such sales do not create arranger liability even if disposal is an integral or foreseeable consequence of the transaction. For example, in *Team Enterprises, LLC v. Western Investment Real Estate Trust*, 647 F.3d 901, 908 (9th Cir. 2011), the Ninth Circuit found that sales of new motor oil to car owners were not arrangements for disposal, holding that the useful product "defense prevents a seller of a useful product from being subject to arranger liability, *even when the product itself is a hazardous substance that requires future disposal*." (emphasis added). And in *Vine St. LLC v. Borg Warner Corp.*, 776 F.3d 312, 314 (5th Cir. 2015), the Fifth Circuit found that a seller that "played a key role in designing [a] dry cleaning facility" and its drainage system, and that sold the chemical PERC for use in that facility, was not an arranger even though it knew that the equipment it developed that prevented release of PERC was "not completely effective."

The *APU* court contrasted these cases with the facts of a previous Sixth Circuit decision, in which a business that sold solvents accepted returned, used drums of solvent that contained up to ten or fifteen gallons of residual solvent, a substantial amount in the context of fifty-five gallon drums. *United States v. Cello-Foil Products, Inc.*, 100 F.3d 1227, 1230, 1233 (6th Cir. 1996). On those facts, the Sixth Circuit found that there was an issue of material fact as to whether a business that left solvent in a used drum acted with the "purpose of disposal of unused solvents." *Id.* at 1233. In reaching this conclusion, the court relied on an earlier Sixth Circuit

decision finding that arranger liability only attached when a defendant took "an affirmative act to dispose of a hazardous substance . . . as opposed to convey a useful substance for a useful purpose." *Id.* at 1232 (quoting *AM Int'l, Inc. v. Int'l Forging Equip. Corp.*, 982 F.2d 989, 999 (6th Cir. 1993) (sale of a "useful, albeit dangerous product, to serve a particular, intended purpose" did not give rise to arranger liability without an affirmative act to dispose of the product) (citation omitted)).

Reviewing decisions across the circuit courts, the *APU* Court found that they distinguish between an "arrangement centered on a useful product" and transactions in which the material is treated as "scrap" or "waste." 14 F.4th at 573. Similarly, the Seventh Circuit has explained that in the arranger caselaw "sales of a new and useful product . . . represent one end of a continuum" and transactions in which the material is treated as waste are at the other. *NCR Corp. v. George A. Whiting Paper Co.*, 768 F.3d 682, 707 (7th Cir. 2014). In *Vine St. LLC*, the Fifth Circuit found that the defendant's sale of dry cleaning chemicals and equipment "centered around the successful operation of a dry cleaning business," which does not give rise to liability, and distinguished defendants' actions from a "subterfuge to disguise the disposal of PERC." 776 F.3d at 319. As discussed below, this case involves a new, useful product, not a "scrap" or "waste," and is squarely within the useful product doctrine.

B. This Case Is Directly Controlled by *Burlington Northern* and *APU*

The Complaint describes the sale of a new product, Scotchgard™, to Wolverine in which some waste (and therefore disposal) would necessarily occur as part of Wolverine's production process, but disposal was in no way the *purpose* of the transaction. On the contrary, the Complaint describes sales of a useful product, not "scrap" or "waste," and points to no features of the transactions that would support a contrary inference. This case is therefore directly

controlled by *Burlington Northern* and *APU*, and the Landfills' CERCLA claims must be dismissed.

1. The Complaint's Allegations Demonstrate That 3M Was Selling a Useful Product, Not Disposing of Its Product

The Complaint generally alleges that "during the period that 3M knew of the substantial risks posed by PFAS, including the period continuing after 3M's phase-out announcement in 2000, the predominant benefit of continuing to sell PFAS-containing products was the disposal of these hazardous substances" and that "[a]ny revenue generated from such sales was purely incidental to the primary objective of disposing of Scotchgard™'s hazardous waste components at no cost." First Am. Complaint PageID.48, ¶ 90. This paragraph appears not among the Complaint's factual allegations, but in the Complaint's CERCLA count, and restates the legal standard governing the useful product doctrine.

This allegation of a legal conclusion, standing alone, cannot operate to impose liability. On a motion to dismiss, courts "are not bound to accept as true a legal conclusion couched as a factual allegation." *Papasan v. Allain*, 478 U.S. 265, 286 (1986). "[M]ere speculation is insufficient" to survive a motion to dismiss; it is the plaintiff's "burden to allege [these] facts, if they indeed exist, in the first instance." *Hensley Mfg. v. ProPride, Inc.*, 579 F.3d 603, 613 (6th Cir. 2009).

Moreover, to avoid dismissal a complaint's allegations must be "plausible." *Twombly*, 550 U.S. at 556. The Complaint's claim that once 3M became aware of risks associated with PFAS, the "primary objective" of its sales of Scotchgard™ was disposal of its own product makes no economic sense. This describes an Alice in Wonderland scenario in which 3M was producing and selling Scotchgard™ *primarily* in order to dispose of it. As the Supreme Court explained in *Burlington Northern* and the Sixth Circuit explained in *APU*, many business

activities foreseeably lead to disposal of a hazardous material, but that fact alone does not transform the sale of a useful product into an arrangement for disposal. Businesses do not produce and sell a useful product whose primary function is its own disposal; products are produced to be sold and used. *See Team Enters., LLC,* 647 F.3d at 908 (in rejecting arranger liability for incidental disposal, referring to the "general presumption that persons selling useful products do so for legitimate business purposes").

The Supreme Court has made clear that a complaint must be evaluated "in light of common economic experience"; a claim that does not make economic sense is not "plausible," and must be dismissed. *Twombly,* 550 U.S. at 565-567. The Sixth Circuit has likewise found that the courts should measure a complaint in light of the parties' "economic self-interest," and should do so "before parties are forced to engage in protracted litigation and bear excessive discovery costs." *In re Travel Agent Comm'n Antitrust Litig.*, 583 F.3d 896, 909 (6th Cir. 2009); *see also PSKS, Inc. v. Leegin Creative Leather Prods., Inc.*, 615 F.3d 412, 419 (5th Cir. 2010) (applying *Twombly* and affirming dismissal of claim that "defies the basic laws of economics"); *Kalnit v. Eichler*, 264 F.3d 131, 140-41 (2d Cir. 2001) (affirming dismissal of general claims that allege economically irrational conduct).

To avoid dismissal, the Landfills must point to specific factual allegations that would support the conclusion that 3Ms's "primary objective" in selling Scotchgard™ to Wolverine was not the sale of a useful product, but disposal of its own product. *See* First Am. Complaint PageID.48, ¶ 90. The Landfills allege no such facts. 3M's sales of Scotchgard™ to Wolverine occurred over a period of over four decades. *See id.* at PageID.34-35, ¶¶ 27-28. Wolverine applied Scotchgard™ "to make Wolverine's products resistant to water and stains," and used the

Scotchgard™ trademark to market its product. *Id.* at PageID.36, ¶ 31. This reflects a stable business relationship rather than an effort by 3M to dispose of its own product.

The Landfills' Complaint alleges that 3M "authorized Wolverine to use the Scotchgard™ trademark" and "required Wolverine to comply with 3M's specified application and quality standards." *Id.* 3M "coordinated with and advised Wolverine" on the use of Scotchgard™, including "consult[ing] with Wolverine regarding the application of Scotchgard™ and related performance testing" and advice on "proper use and handling of Scotchgard™." *Id.* 3M "required Wolverine to allow 3M to inspect and study samples of the leather that Wolverine had treated with Scotchgard™," permit 3M to test Wolverine's products "at random," and "required Wolverine to send 3M samples of such treated products every 30 days to ensure it met 3M's product specifications." *Id.*

Rather than supporting the Landfills' claims, these allegations reinforce that 3M was selling a product it considered highly valuable, and sought to ensure that Wolverine used its product correctly and in a way that was consistent with 3M's Scotchgard™ brand. 3M did not treat its own product as "scrap" or "waste"—on the contrary, it sought to uphold high standards in the use of its product. *APU*, 14 F.4th at 572-74 (citing *United States v. Gen. Elec. Co.*, 670 F.3d 377, 385 (1st Cir. 2012)); *see also Ryan v. Newark Grp., Inc.*, No. 4:22-cv-40089-MRG, 2025 WL 3764916, at *21 (D. Mass. Dec. 30 2025) (finding, in a case involving alleged PFAS contamination, that Plaintiffs' allegations "support the conclusion that the biopellets are a useful product" where Plaintiffs asserted that production and sale of biopellets used as fertilizer was Defendant's "primary business").

The Complaint also alleges that 3M advised on Wolverine's waste disposal processes, but nowhere suggests that the advice in question had the "goal" of disposing of 3M's own product.

The Complaint says that 3M "consulted with Wolverine regarding . . . procedures for disposing of waste resulting from the application of Scotchgard™," "advised on the use and application of Scotchgard™ . . . through a process that necessarily included the generation of waste," and "advised Wolverine on the appropriate waste drainage system to use at Wolverine's production facilities." First Am. Complaint PageID.37, ¶ 31. These claims at most resemble the foreseeable disposal at issue in *Burlington Northern* and *APU*, and do not involve any *purpose* to dispose of 3M's product. *See Burlington Northern*, 556 U.S. at 612-613; *APU*, 14 F.4th at 571-72; *see also Vine St. LLC*, 776 F.3d at 314 (defendant's role in designing disposal systems does not give rise to arranger liability).

The Complaint claims that "3M was reluctant to alter Wolverine's then-existing waste disposal practices because '[c]ustomers may ask 3M to subsidize the increased cost as it is our product that is requiring the changes.'" First Am. Complaint PageID.37, ¶ 31. 3M's alleged consideration of its own interests in "directing the disposal process," *Id.* at PageID.37, ¶ 32, is the type of "financial" motivation that the Sixth Circuit found irrelevant in *APU*, and does not show that 3M's *purpose* was disposal of its own product. *APU*, 14 F.4th at 572.

Nor is the allegedly superior knowledge of one party relevant to the "arranger" analysis. The Landfills' complaint summarizes allegations from Wolverine's previous complaint that relate to 3M's alleged superior knowledge even though that issue has little bearing on CERCLA arranger liability; Wolverine's complaint had also included a range of common-law claims. To establish a claim for arranger liability, the Landfills must show that 3M was motivated by the

goal of disposing of its own product. Whether 3M or Wolverine had superior knowledge is irrelevant to the question of 3M's intent to dispose.[4]

Finally, it makes no difference to the analysis that 3M's product was used in Wolverine's manufacturing process, not by an end consumer as in *APU*. There is no logical reason the arranger analysis should differentiate between Wolverine's use of Scotchgard™ in a manufacturing process and use by a consumer (as in *APU*) or losses in transportation (as in *Burlington Northern*). And indeed two courts have rejected arranger liability on very similar facts, in which a new product was sold to another manufacturer in circumstances in which some incidental disposal would occur during the customer's manufacturing process. One such case involved sale of a wood preservative to a company producing treated lumber, *see Edward Hines Lumber Co. v. Vulcan Materials Co.*, 685 F. Supp. 651, 654-56 (N.D. Ill. 1988), and another involved sale of a "hazardous, but useful" chemical product by one chemical manufacturer to another, who used the chemical in its own manufacturing processes. *See United States v. Vertac Chem. Corp.*, 966 F. Supp. 1491, 1508-09 (E.D. Ark. 1997). 3M's sales of Scotchgard™ were similar business transactions, and do not give rise to arranger liability.

[4] Similarly, the Complaint's claim that "3M knew or should have known that the serious environmental risks posed by its PFAS-containing products would likely have caused some buyers to choose not to buy 3M's products," First Am. Complaint PageID.47, ¶ 88, is beside the point. That assertion is not relevant to CERCLA arranger liability, which looks to whether a transaction involved the sale of a useful product or disposal of a waste. Even supposing this allegation were correct, many transactions involve asymmetrical information but are still the sale of a useful product. In *APU*, the seller of a useful product had more information about hazardous attributes of its own product than did the buyer, but arranger liability did not apply. *APU*, 14 F.4th at 566. The fact that a transaction involves sale of a "useful, albeit dangerous product, to serve a particular, intended purpose" does not defeat the useful product doctrine. *AM Int'l, Inc.*, 982 F.2d at 999 (citation omitted).

2. The Complaint Does Not Allege Facts Showing That the Discontinuance of 3M's Prior Formulation of Scotchgard™ Transformed Sales of a Useful Product into Disposal

Businesses regularly reformulate and replace their products, creating situations in which a product remains on the market but is being discontinued. The "general presumption that persons selling useful products do so for legitimate business purposes," *Team Enters., LLC,* 647 F.3d at 908, properly extends to product reformulations. Imposing CERCLA liability simply because a product is in the process of being reformulated when sold would leave manufacturers with an impossible choice to avoid CERCLA liability: either 1) never reformulate their products; or 2) destroy all remaining product in inventory the second a reformulated product is developed. The Complaint highlights such a reformulation period when 3M had decided to discontinue production of the previous formulation of Scotchgard™ (although the Complaint does not specifically say that production had ceased at the time of the last sale to Wolverine), suggesting that during that period 3M was selling Scotchgard™ to Wolverine "in order to deplete and dispose of existing stockpiles and that neither it nor any rational customer would purchase Scotchgard™ if they knew of the environmental risks associated with it."[5] First Am. Complaint PageID.36, ¶ 31. But the Complaint also describes a 1999 letter from 3M to Wolverine that it states discussed the "risks related to PFAS" in the environment. *Id.* at PageID.37, ¶ 34. In other words, not only does the Complaint make a conclusory allegation with respect to disposal without alleging any facts that would support the Complaint's legal conclusions, the facts it does allege contradict those conclusions.

[5] The Complaint does not define the exact time period to which this argument applies, but refers generally to "the period continuing after 3M's phase-out announcement in 2000," First Am. Complaint PageID.48, ¶ 90, and states that 3M "continued to sell older formulations of Scotchgard™ to Wolverine until 2002." *Id.* at PageID.35, ¶ 28.

To establish arranger liability, the Sixth Circuit requires that a plaintiff show that the defendant took "an *affirmative act* to dispose of a hazardous substance . . . as opposed to convey a useful substance for a useful purpose." *Cello-Foil Prods., Inc.*, 100 F.3d at 1232 (quoting *AM Int'l, Inc.*, 982 F.2d at 999) (emphasis added). The Complaint suggests that after 3M decided to discontinue a particular formulation of Scotchgard™, its sales were directed at disposing of its product and were not ordinary commercial transactions. But the Complaint only discusses 3M's alleged *motivations*, and contains no allegations of objective facts about 3M's conduct indicating that it viewed its valuable product as "scrap" or "waste," *APU*, 14 F.4th at 573. For example, the Complaint contains no allegations that between 2000 and 2002 3M stopped charging market rates for the product, or even that 3M stopped producing new batches of PFOS-containing Scotchgard after its 2000 exit announcement but before the 2002 completion of its phase-out.

As the Sixth Circuit has explained, "the most probative evidence of intent will be objective evidence of what actually happened rather than evidence describing the subjective state of mind of the actor." *See Cello-Foil Prods., Inc.*, 100 F.3d at 1233. In *Cello-Foil*, for example, the court pointed to the defendants' "leaving amounts of solvents in drums . . . which Defendants knew Thomas Solvent would carry away" as potential evidence of "purposeful or intentional disposal." *Id.* at 1233-34. In other cases, courts have pointed to the price charged for the product, the seller's failure to maintain quality control, or similar features of the transaction in concluding that the seller's motivation was in fact disposal. *Compare General Electric*, 670 F.3d at 387-91 (failure to charge for product or maintain quality control demonstrated intent to dispose) *with Pneumo Abex Corp. v. High Point, Thomasville and Denton R.R. Co.*, 142 F.3d 769, 776 (4th Cir. 1998) (finding that used bearings "were a valuable product for which the [buyer] paid a competitive price").

The Court's decision in *Georgia-Pacific Consumer Products LP v. NCR Corp.*, 980 F. Supp. 2d. 821 (W.D. Mich. 2013), is inapplicable on these facts. *Georgia-Pacific* involved the sale of a recycled material, CCP broke, not the sale of a new product. 980 F. Supp. 2d. at 832. As the Supreme Court found in *Burlington Northern* and the Sixth Circuit reinforced in *APU*, "disposal that occurs as a peripheral result of the legitimate sale of an unused, useful product" will not ordinarily give rise to arranger liability. 556 U.S. at 612; *APU*, 14 F.4th at 572-73. Even if a new product has known environmental hazards, the sale of a new product is a business transaction, and disposal, even if foreseeable, will not be the *purpose* of that transaction. *See George A. Whiting Paper Co.*, 768 F.3d at 707 (in discussing CCP broke, explaining that "sales of a new and useful product . . . represent one end of a continuum" and distinguishing CCP broke as "useful, but not new").

The Complaint must be read "in light of common economic experience." *Twombly*, 550 U.S. at 565-67. 3M sold the previous formulation of Scotchgard™ to Wolverine for over four decades. 3M's decision to discontinue one formulation of Scotchgard™ and replace it with another does not change the character of the ongoing business relationship between 3M and Wolverine, nor does it change a useful product into waste.

II. BECAUSE NREPA'S USEFUL PRODUCT DOCTRINE PARALLELS THE CERCLA DOCTRINE, THE LANDFILLS' NREPA CLAIMS ALSO FAIL AS A MATTER OF LAW

Because NREPA is similar in intent and structure to CERCLA, Michigan courts look to federal cases involving the same issue for guidance. "As NREPA . . . was patterned after CERCLA, it should be construed in accordance with the federal statute." *City of Detroit v. Simon*, 247 F.3d 619, 630 (6th Cir. 2001); *Kelley ex rel. Mich. Nat.l Res. Comm'n v. Tiscornia*, 827 F. Supp. 1315, 1318 n.1 (W.D. Mich. 1993); *Taylor Land Grp., L.L.C. v. BP Prods. N. Am., Inc.*, No. 294764, 2011 WL 2119670, at *6 (Mich. Ct. App. May 26, 2011). Accordingly,

Michigan courts have interpreted "arranger" liability under Michigan law in parallel with the federal courts' interpretations of the analogous provisions under CERCLA. *See Farm Bureau Mut. Ins. Co. of Mich. v. Porter & Heckman, Inc.*, 220 Mich. App. 627, 637 (1996) (NREPA is "patterned after" CERCLA). Indeed, whether the "sale of a useful product" doctrine applies to a claim of arranger liability under NREPA is not a novel question. *See Cipri*, 235 Mich. App. at 4 n.2, 11-13 (explaining the relationship of NREPA to its predecessor statute, and applying the "useful product" test).

Although the Michigan courts have found CERCLA precedent does not control the application of NREPA where the language of the two statutes diverges, *see City of Port Huron v. Amoco Oil Co., Inc.*, 229 Mich. App. 616, 629 (1998), the arranger liability provisions of the two statutes are identical. Accordingly, as the Michigan courts have found, federal caselaw provides interpretative guidance. *See Farm Bureau Mut. Ins.*,220 Mich. App. at 654-60; *Cipri*, 235 Mich. App. at 11-13.

Plaintiffs have provided no additional facts or reasoning as to why the claims under NREPA differ from those under CERCLA. As the claims regarding CERCLA should be dismissed, so too should Plaintiffs' claims under NREPA. "As such, the analysis set forth above regarding [plaintiff's] CERCLA cost-recovery claims applies with equal force to its claims under NREPA." *ITT Indus., Inc. v. Borgwarner, Inc.*, 700 F. Supp. 2d 848, 894 (W.D. Mich. 2010).

CONCLUSION

For the reasons set forth in the foregoing Motion to Dismiss, the Landfills' CERCLA and NREPA claims against 3M should be dismissed.

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CERTIFICATE OF COMPLIANCE WITH LOCAL RULE 7.2(B)(II)

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CERTIFICATE OF SERVICE

The undersign certifies that on February 18, 2026, a copy of the foregoing was filed with the Clerk of the Court and served on counsel of record using the Court's Electronic Case Filing System.

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