

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

**CHRISTINA MODROVICH and
ROBERT BIRNER,**

on behalf of themselves and
all others similarly situated,

Case No.

Plaintiffs,

v.

**THE SHERWIN-WILLIAMS
MANUFACTURING COMPANY,**

Defendant.

PLAINTIFFS' CLASS ACTION COMPLAINT AND JURY DEMAND

INTRODUCTION

1. Plaintiffs, on behalf of themselves and all others similarly situated, bring this class action against The Sherwin-Williams Manufacturing Company, (hereinafter, "Defendant") in relation to its ownership, operation, and maintenance of the coatings manufacturing plant at 372 Cleveland St, Rochester, PA 15074 (hereinafter, the "Facility").

2. Through Defendant's operation and maintenance of the Facility, it wrongfully and tortiously released, and continues to release, substantial and unreasonable noxious odors that invade Plaintiffs' and the putative Class's properties, causing injury and damages through private nuisance, public nuisance, and negligence.

THE PARTIES

3. At all times relevant hereto, Plaintiff Christina Modrovich owns a home, where she has resided and intends to remain, at 1 Sunset Drive, Rochester, Pennsylvania. Plaintiff is a citizen of the State of Pennsylvania.

4. At all times relevant hereto, Plaintiff Robert Birner rents his home, where he has resided and intends to remain, at 634 California Ave, Apt. 1, Rochester, PA 15074. Plaintiff is a citizen of the State of Pennsylvania.

5. Defendant is an Ohio business corporation with principal place of business at 101 W Prospect Ave, Cleveland, OH 44114-1093. Thus, Defendant is a citizen of Ohio.

6. Defendant accepts service through its registered agent, Corporation Service Company, at 5235 North Front Street, Harrisburg, PA 17110.

JURISDICTION AND VENUE

7. Plaintiffs are domiciled in Pennsylvania and are citizens of Pennsylvania.

8. Upon information and belief, Defendant is a citizen of Ohio, where it is incorporated and maintains its principal place of business.

9. This Court has original jurisdiction under 28 U.S.C. § 1332(a)(1) because the amount in controversy greatly exceeds \$75,000, exclusive of interests and costs, and there is a complete diversity of citizenship between the parties.

10. Separately, and in addition to diversity jurisdiction under 28 U.S.C. § 1332(a)(1), this Court has jurisdiction pursuant to the Class Action Fairness Act (“CAFA”), 28 U.S.C. § 1332(d)(2)(a), because there are 100 or more putative class members, the aggregate amount in controversy exceeds Five Million Dollars (\$5,000,000.00) exclusive of interest and costs, and one or more members of the putative class is a citizen of a state different from any defendant.

11. The Court has personal jurisdiction over Defendant, who has at least minimum contacts with the Commonwealth of Pennsylvania because it regularly conducts substantial business in Pennsylvania through its ownership, operation, and maintenance of the Facility.

12. Venue is proper in this Court under 28 U.S.C. § 1391(b)(2), because a substantial portion of the events or omissions giving rise to Plaintiffs' claims took place in this District, and because much, if not all, of the property that is the subject of this action is situated in this District.

FACTUAL ALLEGATIONS

13. Defendant owns and operates a coatings manufacturing plant located at 372 Cleveland St, Rochester, PA 15074.

14. Defendant's Facility formulates coatings for packaging materials.¹ From its Facility, the coatings are delivered to customers, distributors, and blending facilities.

15. Coating formulation at plants like Defendant's Facility generally involves four major steps: preassembly and premix; pigment grinding/milling/dispersing; product finishing/blending; and product filling/packaging.² In the assembly and premix phase, liquid materials are assembled and mixed in containers to form a viscous material to which pigments are grinded or milled. The grinding process and equipment generally depends on the types of pigments being handled. After the pigments are sufficiently wetted and ground into isolated particles, they are dispersed in the liquid base through high-speed dispersion. Finishing products are added after this stage to achieve the desired characteristics of the coating, using organic solvents, pigments, and/or resins. At the final stage of product filling, the coating is filtered in a variety of ways depending on the end use of the product. After filtration, the coating is transferred into pails, drums, totes, tank wagons, or other containers for shipment.

¹ https://industrial.sherwin-williams.com/na/us/en/industrial-wood/find-location/location-detail.undefiend.en_US-10371510-PCG_Manufacturing_GPD.html

² https://www.epa.gov/sites/default/files/2015-08/documents/ii08_feb2005.pdf

16. It is well known that surface coating facilities like Defendant's may emit hazardous air pollutants from the solvents required in paint formulation mixing and in cleaning operations.^{3,4}

17. Emissions from Defendant's Facility include but are not limited to volatile organic compounds (VOCs), a group of potentially odorous pollutants, that the Facility emits directly into the ambient air.

18. VOCs emitted from Defendant's operations occur almost entirely from the solvents used in its paint formulations, paint thinning, and cleanup.

19. Defendant's Facility operates pursuant to Plan Approval No. 04-00034 (the "Permit"), which sets a limit on the amount of VOCs it may emit.

20. A specific condition of Defendant's Permit states that Defendant "may not permit the emission into the outdoor atmosphere of any malodorous air contaminants from any source in such a manner that the malodors are detectable outside the property of the person on whose land the source is being operated."

21. A properly operated, maintained, and managed coatings manufacturing facility will contain, capture, or otherwise prevent the emission of VOCs and other odorous pollutants into the ambient air through the adequate operation of its formulation processes, including the proper care and management of its mixing, grinding, blending, and filling equipment.

22. A properly operated, maintained, and managed coatings manufacturing facility will contain, capture, or otherwise prevent the emission of VOCs and other odorous pollutants into the ambient air through the adequate installation and/or operation of air pollution capture and removal systems including but not limited to condensers, bag houses, adsorption devices, dust collectors,

³ https://www.epa.gov/sites/default/files/2020-10/documents/c4s02_2a.pdf

⁴ https://www.epa.gov/sites/default/files/2017-06/documents/paint_manufacturing_oo_sheet.pdf

floating roofs, catalytic incinerators, thermal incinerators, scrubbers, and/or enclosed oxidizing flares.

23. A properly operated, maintained, and managed coatings manufacturing facility will contain, capture, or otherwise prevent the emission of VOCs and other odorous pollutants into the ambient air through the proper storage of materials, reclamation of solvents, cleaning, and treatment of its wastewater, and prevention of leaks and/or spills.

24. Defendant has failed to implement proper care and management of its mixing, grinding, blending, and filling equipment, thereby resulting in the offsite emission of noxious odors beyond its property.

25. Defendant has failed to install and/or operate adequate air pollution capture and removal systems at its Facility, thereby resulting in the offsite emission of noxious odors beyond its property.

26. Defendant has failed to properly store materials, reclaim solvents, clean, treat its wastewater, and/or prevent leaks or spills at its Facility, thereby resulting in the offsite emission of noxious odors beyond its property.

27. Defendant has failed to follow proper industrial practices to prevent the offsite emission of noxious odors, and has failed to capture, mitigate, and/or prevent noxious odors from escaping its Facility, thereby invading the homes and properties of Plaintiffs and the Class.

28. As a result of numerous and continuing violations, the Pennsylvania Department of Environmental Quality (PADEP) has issued numerous Notices of Violation (NOVs) to Defendant.

29. On April 5, 2022, Defendant received an NOV from PADEP for four separate violations of its Clean Air Act permits, including for “failure to comply with the particulate matter emission limitations for combustion units” and for causing or permitting “the operation of an air

contamination source subject to this chapter in a manner inconsistent with good operating practices.”

30. On April 3, 2023, Defendant received an NOV from PADEP for “failure to submit a plan approval application in accordance with the application requirements.”

31. On January 30, 2026, Defendant received an NOV from PADEP for failure to install a thermal oxidizer at its Facility and failure to perform required stack testing on its scrubbers in violation of its permit obligations.

32. Thermal oxidizers are industrial devices crucial to the mitigation of air pollution by destroying, among other things, VOCs that the Facility emits directly into the ambient air.

33. On March 24, 2026, Defendant received an NOV from PADEP for “failure to operate and maintain a source or control device in accordance with the specifications.”

34. Numerous complaints of odor have been submitted to PADEP by neighboring residents regarding the noxious odor emissions from Defendant’s Facility.

35. Numerous media reports have documented the horrible experiences of local residents due to Defendant’s noxious odor emissions.^{5,6,7}

36. Over 45 households have already communicated with Plaintiffs’ counsel documenting Defendant’s noxious odors and the nuisance that these noxious odors create for the surrounding residential neighborhoods:

- a. Plaintiff Christina Modrovich indicated that “You can smell the fumes inside the house even with windows closed. I have two kids who reside in house full time and 3 kids that visit and stay often. It’s hard for them to play outside due to smell. This has been going on since I moved in. It smells so bad you can taste it.”

⁵ <https://www.wpxi.com/news/local/beaver-county-residents-concerned-by-smell-coming-nearby-paint-plant/R5METFE52NGNBBBRUXSVET44OM/>

⁶ <https://www.cbsnews.com/pittsburgh/news/chemical-smell-rochester-county-sherwin-williams/>

⁷ <https://www.cbsnews.com/pittsburgh/news/rochester-township-meeting-sherwin-williams-smell/>

- b. Plaintiff Rober Birner reported that “My bedroom window faces that direction, at times (depending on the wind direction) I can’t open my window to enjoy fresh air, it’s a sweet smell that actually has an after taste. (Seriously thinking of moving!!).
- c. Putative Class Member Mary Birtalaw stated that “I can’t sit outside or have friends over from the smell. I have gotten sick from the smell-nausea-vomiting and even headaches. I can’t even open my windows cause the smell comes in the house. I have even went to their office and complained about the smell on multiple occasions. I can’t even enjoy walking my dog in the neighborhood cause of the odor from Sherwin Williams. My neighbor across the street has bonfires at night and we can’t even enjoy that any more due to the odor. We never had a problem with odors when Valspar owned the place where Sherwin Williams now owns.”
- d. Putative Class Member Alecia Flaharty reported “It makes it difficult to enjoy the deck I had built for outdoor enjoyment as there is a chemical smell that causes headaches and sometimes stomach upset. Sitting on the porch is the same and I can’t enjoy opened windows.”

37. The invasion of Plaintiffs’ property by Defendant’s noxious odors has interfered with Plaintiffs’ use and enjoyment of their properties, resulting in substantial damages, including adverse effects on property values.

38. Plaintiffs’ properties have been, and continue to be, physically invaded by Defendant’s noxious odor emissions.

39. The noxious odors that entered Plaintiffs’ properties originated from the Facility, where they are generated as a result of Defendant’s coating formulation processes or waste products resulting therefrom.

40. A properly maintained, operated, and/or constructed coatings manufacturing plant will not release noxious odor emissions into the surrounding residential areas.

41. Defendant’s operation, maintenance, engineering, control, and/or use of the Facility has caused noxious odors to invade the properties of Plaintiffs and other similarly situated putative class members, causing property injuries and property damage.

42. Defendant intentionally, recklessly, willfully, and/or negligently failed to properly construct, maintain, and/or operate the Facility, thereby causing the invasion of Plaintiffs' property by noxious odors on intermittent and reoccurring dates too numerous to individually recount.

43. Defendant has failed to install and/or maintain adequate technology to control the release of noxious odors. Such failures include, but are not limited to, the following:

- a. Failure to construct, operate, and/or maintain a thermal oxidizer that adequately mitigates and destroys VOCs from being released as fugitive emissions, resulting in the regular release of malodorous emissions into the atmosphere and surrounding residential areas;
- b. Failure to operate the Facility in a manner that complies with VOC emissions requirements and regulations, resulting in the regular release of malodorous emissions into the atmosphere and surrounding residential areas;
- c. Failure to install and/or operate adequate odor mitigation equipment to reduce odors from mixing, grinding, milling, dispersion, finishing, blending, and filling processes; and,
- d. Failure to properly store and/or treat its various materials, including waste materials.

CLASS ALLEGATIONS

A. Class Definition

44. Plaintiffs bring this action individually and on behalf of all persons as the Court may determine to be appropriate for class certification pursuant to Federal Rules of Civil Procedure

23. Plaintiffs seek to represent a Class of persons preliminarily defined as:

All owner-occupants or renters of residential property who are located within a one (1.0) mile radius of the Facility at any time within the applicable statute of limitations.

This proposed Class Definition is subject to modification as discovery progresses. Plaintiffs reserve the right to propose one or more sub-classes if discovery reveals that such sub-classes are appropriate.

45. This case is properly maintainable as a class action pursuant to and in accordance with Rule 23(a) of the Federal Rules of Civil Procedure in that:

- a. The Class, which includes thousands of members, is so numerous that joinder of all members is impracticable;
- b. There are substantial questions of law and fact common to the Class including those set forth in greater particularity herein;
- c. Questions of law and fact such as those enumerated below, which are all common to the Class, predominate over any questions of law or fact affecting only individual members of the Class;
- d. A class action is superior to any other type of action for the fair and efficient adjudication of the controversy;
- e. The relief sought in this class action will effectively and efficiently provide relief to all members of the Class;
- f. There are no unusual difficulties foreseen in the management of this class action; and
- g. Plaintiffs, whose claims are typical of those of the Class, through experienced counsel, will zealously and adequately represent the Class.

B. Numerosity

46. Based on available census data, there are thousands of households within the Class Area, and therefore the members of the Class are so numerous that joinder of all parties is clearly impracticable.

C. Commonality

47. Pursuant to Fed. R. Civ. P. 23(b)(3), numerous common questions of law and fact predominate over any individual questions affecting Class Members, including, but not limited to, the following:

- a. whether and how Defendant negligently, intentionally, recklessly, and/or willfully, failed to operate and maintain the Facility;
- b. whether Defendant owed any duties to Plaintiffs;
- c. which duties Defendant owed to Plaintiffs;
- d. whether and to what extent Defendant failed to exercise reasonable care in operating and maintaining the Facility;
- e. which steps Defendant have and have not taken in order to control the release of noxious odor emissions from the Facility;
- f. whether and to what extent the Facility's noxious odor emissions were dispersed in and around the Class Area;
- g. whether Defendant's Facility caused noxious odor emissions to be dispersed in and around the Class Area;
- h. whether Defendant caused owner-occupants and renters of residential property of ordinary sensibilities to suffer harm;
- i. whether it was reasonably foreseeable that Defendant's failure to properly operate and maintain the Facility would result in off-site odor emissions, including the invasion of private property interests in and around the Class Area;
- j. whether Defendant's actions were unreasonable;
- k. whether Defendant's noxious odor emissions have substantially interfered with the ability of residents of ordinary sensibilities within the Class Area to use and enjoy their private residences;
- l. whether the degree of harm suffered by Plaintiffs and the class constitutes a substantial interference with their private property rights;
- m. whether private residential property values within the Class Area have been adversely impacted; and,

n. the proper measure of damages incurred by Plaintiffs and the Class.

48. The availability of common proof as to a limited subset of the above questions of law and fact may otherwise permit issue certification under Fed. R. Civ. P. 23(c)(4).

D. Typicality

49. Plaintiffs have the same interest in this matter as all the other members of the Class, and their claims are typical of all members of the Class. If brought and prosecuted individually, the claims of each Class member would require proof of many of the same material and substantive facts, utilize the same complex evidence including expert testimony, rely upon the same legal theories, and seek the same type of relief.

50. The claims of Plaintiffs and the other Class members have a common cause, and their claims are of the same type. The claims originate from the same common source and the same failure(s) of Defendant to properly operate and maintain the Facility.

51. Class Members have suffered similar injuries and harm as a result of the invasion of their private residential properties by emissions released from Defendant's facility.

E. Adequacy of Representation

52. Plaintiffs' claims are sufficiently aligned with the interests of the absent members of the Class to ensure that the Class claims will be prosecuted with diligence and care by Plaintiffs as representatives of the Class. Plaintiffs will fairly and adequately represent the interests of the Class and do not have interests adverse to the Class.

53. Plaintiffs have retained the services of counsel who are highly experienced in complex class action litigation, and in particular class actions stemming from invasions of private property by noxious industrial emissions. Plaintiffs' counsel will vigorously prosecute this action

and will otherwise protect and fairly and adequately represent Plaintiffs and all absent Class members.

F. Class Treatment Is The Superior Method of Adjudication.

54. A class action is superior to other methods for the fair and efficient adjudication of the controversies raised in this Complaint because:

- a. Individual claims by the Class Members would be impracticable as the costs of pursuit would far exceed what any one Class Member has at stake;
- b. Little or no individual litigation has been commenced over the controversies alleged in this Complaint and individual Class Members are unlikely to have an interest in separately prosecuting and controlling individual actions;
- c. The concentration of litigation of these claims in one forum will achieve efficiency and promote judicial economy; and
- d. The proposed class action is manageable and administratively feasible.

55. Further, class treatment of Plaintiffs' claims is appropriate and necessary to ensure that common relief is available to the Class and that Class Members can vindicate their rights in a single proceeding.

56. Notice can be provided to members of the Class by U.S. Mail and/or publication.

CAUSE OF ACTION I

PRIVATE NUISANCE

57. Plaintiffs restate the allegations set forth in all previous paragraphs of this Complaint as if fully rewritten herein.

58. Defendant owed, and continues to owe, a duty to Plaintiffs and the Class to prevent and abate the unreasonable interference with, and invasion of, their private property interests.

59. The noxious odors that entered Plaintiffs' and the Class's properties originated from the Facility, which was improperly and unreasonably maintained, engineered, designed, and/or operated by Defendant.

60. The noxious odors that invade Plaintiffs' and the Class's properties are indecent and offensive to people with ordinary health and sensibilities, and they obstruct the free use of their properties so as to substantially and unreasonably interfere with the enjoyment of life and property. Such obstruction includes, but is not limited to, the following:

- a. Forcing Plaintiffs and the Class to remain inside their homes and forgo the use of their yards, porches, and other spaces, and to generally refrain from outdoor activities;
- b. Causing Plaintiffs and the Class to keep their doors and windows closed when the weather would otherwise permit;
- c. Depriving Plaintiffs and the Class of the full value of their homes and properties;
- d. Causing Plaintiffs and the Class embarrassment, inconvenience, and annoyance including, but not limited to, creating a reluctance to invite guests to their homes and preventing Plaintiffs and the Class from utilizing the outdoor areas of their respective properties.

61. Plaintiffs and the Class properties are situated in such proximity to Defendant's Facility as to constitute neighboring properties, in that they are near enough to be impacted by the tangible effects of noxious odors released from the Facility.

62. By negligently constructing, maintaining, operating, engineering, and/or controlling the Facility, thereby causing noxious odors to physically invade Plaintiffs' and the Class's properties, Defendant intentionally, knowingly, recklessly, and/or negligently created a nuisance that substantially and unreasonably interfered with Plaintiffs' and the Class's use and enjoyment of their properties.

63. As a foreseeable, direct, and proximate result of the foregoing misconduct by Defendant, Plaintiffs and the Class have suffered damages to their properties as alleged herein, including but not limited to loss of full use and enjoyment of their properties and adverse impacts on property values.

64. Plaintiffs and the Class did not consent to the invasion of their properties by noxious odors from Defendant's Facility, which is ongoing and constitutes a private nuisance.

65. Whatever social utility the Facility provides is clearly outweighed by the substantial harm suffered by Plaintiffs and the Class, who have on unusually frequent occasions been deprived of the full use and enjoyment of their properties and have been forced to endure significant loss in the use and value of their properties.

66. Defendant is liable for all damages arising from the creation and maintenance of such nuisance, including compensatory, injunctive, and/or exemplary relief.

CAUSE OF ACTION II

PUBLIC NUISANCE

67. Plaintiffs restate the allegations set forth in all previous paragraphs of this Complaint as if fully rewritten herein.

68. Plaintiffs and the Class utilize their properties as residences and reside within the Class Area.

69. The noxious odors that entered Plaintiffs' and the Class's properties originated from Defendant's Facility, which is located within the proposed Class Area.

70. By failing to reasonably design, operate, repair, and/or maintain its Facility, Defendant has caused an invasion of Plaintiffs' property by noxious odors on usually frequent occasions that are too numerous to individually list herein.

71. The noxious odors that invade Plaintiffs' and the Class's properties are indecent and offensive to Plaintiffs and the Class, and similarly indecent and offensive to individuals with ordinary sensibilities, and obstruct the free use of Plaintiffs' and class member properties so as to substantially and unreasonably interfere with the comfortable enjoyment of life and property.

72. Defendant knew that it was releasing, and continues to release, noxious odors onto neighboring properties yet failed to take reasonably adequate steps to abate the nuisance. Defendant owed and continues to owe a duty to Plaintiffs and the Class to prevent and abate the interference with, and the invasion of, their private interests.

73. Defendant, by failing to reasonably repair, operate, and/or maintain its Facility to abate the nuisance has acted, and continues to act, intentionally, negligently, and with conscious disregard to public health, safety, peace, comfort, and convenience.

74. As a foreseeable, direct, and proximate cause of Defendant's previously described conduct, Plaintiffs and the Class have suffered damages to their properties as alleged herein.

75. By releasing noxious odors that physically invaded Plaintiffs' and the Class's properties, Defendant created a nuisance that substantially and unreasonably impaired Plaintiffs' and the Class's use and enjoyment of their properties on usually frequent occasions too numerous to list individually.

76. Such substantial and unreasonable interferences include but are not limited to inability to open windows when noxious odors are present, inability to utilize outdoor spaces, and the inability for Plaintiffs and the Class to invite guests to their homes due to the embarrassment and annoyance of Emissions on Plaintiffs and the Class's respective properties.

77. The Class Area is home to a wide range of commercial and recreational activities, including but not limited to manufacturing, construction, health care, retail trade, ministry, education, dining, and lodging.

78. Plaintiffs and the Class are a limited subset of individuals in Beaver County, and the Class Area, which includes only owner/occupants and renters of residential property who live within the Class Area and fit within the Class Definition.

79. Members of the public, including but not limited to businesses, employees, commuters, tourists, visitors, minors, customers, clients, patients, and students have experienced and have been harmed by the noxious odors emitted from the Facility into public spaces. However, unlike Plaintiffs and the Class, members of the public who are outside of the Class Definition have not suffered damages of the same kind, in the form of lost property values and/or loss of use and enjoyment of their private property.

80. Apart from the private property damage incurred by Plaintiffs and the Class, Defendant's noxious odors have additionally substantially interfered with rights common to the general public, including the right to breathe uncontaminated and/or unpolluted air.

81. Plaintiffs suffered and continue to suffer special harm to private property interests, including interference with the use and enjoyment of private land and property, deprivation of full value of private property, and diminished property values. These damages are different in kind from any damages suffered by the public at-large exercising the same common right to breathe uncontaminated and/or unpolluted air.

82. Plaintiffs and the Class did not consent to the invasion of their properties by noxious odors from Defendant's Facility, which is ongoing and constitutes a private nuisance.

83. Whatever social utility the Facility provides is clearly outweighed by the substantial harm suffered by Plaintiffs and the Class, who have on unusually frequent occasions been deprived of the full use and enjoyment of their properties and have been forced to endure significant loss in the use and value of their properties.

84. Defendant's substantial and unreasonable interferences with Plaintiffs' and the Class's property rights constitutes a nuisance for which Defendant is liable to Plaintiffs and the Class for all damages arising therefrom, including compensatory, injunctive, and/or exemplary relief.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, individually and on behalf of the proposed Class, pray for judgment as follows:

- A. Certification of the proposed Class by order pursuant to Fed.R.Civ.P. 23;
- B. Designation of Plaintiffs as representatives of the proposed Class and designation of their counsel as Class Counsel;
- C. Judgment in favor of Plaintiffs and the Class as against the Defendant;
- D. An award to Plaintiffs and the Class of compensatory damages, including pre- and post-judgment interest;
- E. An award of attorney's fees and costs, including pre-and post- judgment interest;
- F. An Order holding that the entrance of the aforementioned noxious odors upon Plaintiffs' and the Class's properties constituted a nuisance;
- G. An Order holding that the Defendant was negligent in causing noxious odors to repeatedly invade and interfere with Plaintiffs' and the Class's private residential properties;
- H. An award to Plaintiffs and the Class of injunctive relief not inconsistent with the Defendant's state and federal regulatory obligations; and
- I. Such further relief that this Honorable Court deems just and proper.

JURY DEMAND

Plaintiffs hereby demand a trial by jury on all issues raised in this Complaint.

Respectfully Submitted,

/s/ Kevin Riechelson

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