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Cedar Springs' Encounter with Forever Chemicals

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January 23, 2026



Overview

- Cedar Springs' forever journey with “forever” chemicals a/k/a PFAS
- WWTPs: a core governmental function
- Complex journey: regulatory, technical, legal
- Expensive and illuminating



The Problem

- Practical Problem for WWTPs
- Regulatory and legal challenges
- Public policy



PFAS Basics

- PFAS prevalent in industry and consumer products¹
- PFAS are ubiquitous in the environment
 - Groundwater²
 - Soil³
 - Surface Water⁴
 - Ambient Air⁵
 - Precipitation⁵
- Regulated at ppt concentrations
 - According to EGLE: “1 part per trillion is equivalent to a single drop of water in 20 Olympic-sized swimming pools combined.”⁶
 - EGLE utilizes residential drinking water criteria to evaluate wastewater



PFAS in Humans

- Human blood: over 95% of participants in every study conducted by CDC since 1999 have detectable levels of PFAS⁷
- PFAS in domestic waste
 - WWTPs
 - Residential septic⁸

Permit

- Discharge permit
- Discharge site location
- Composition of influent

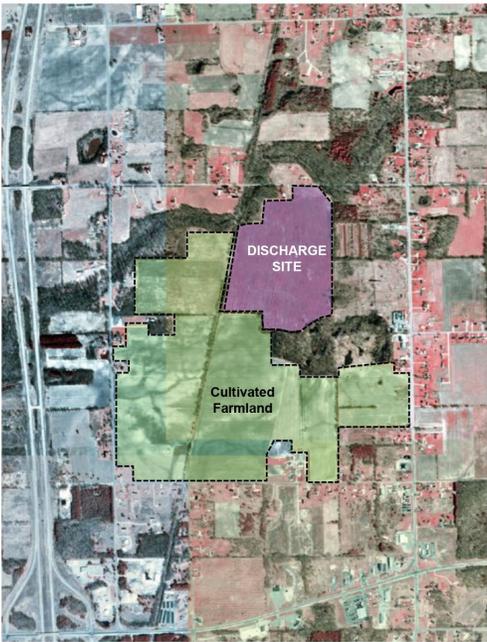
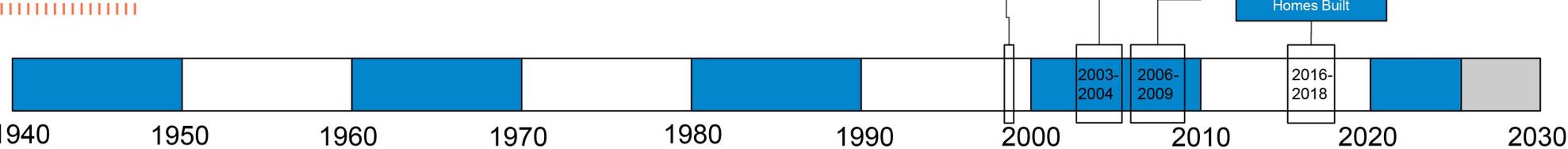




Permitting Process

- Timeline
 - 1994 permit application
 - 1996 permit issued by EGLE
 - 1999 operation commenced
 - 2004-2016 residential development south/southwest of discharge site
 - Individual wells, septic systems, community septic system, all permitted by KCHD
- Permit inspections
- Permit extensions

Land Use Development



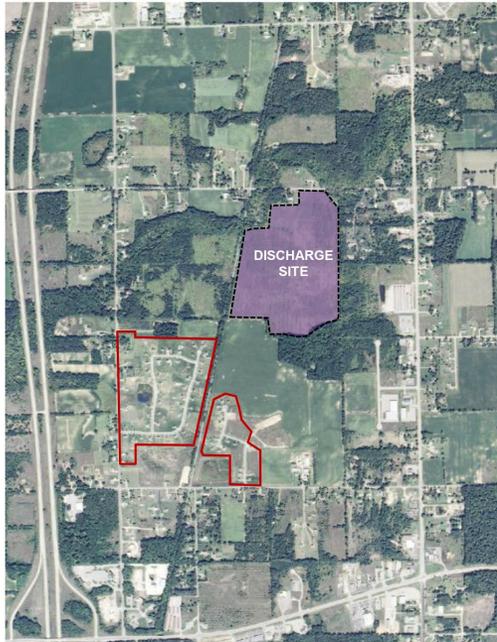
1999



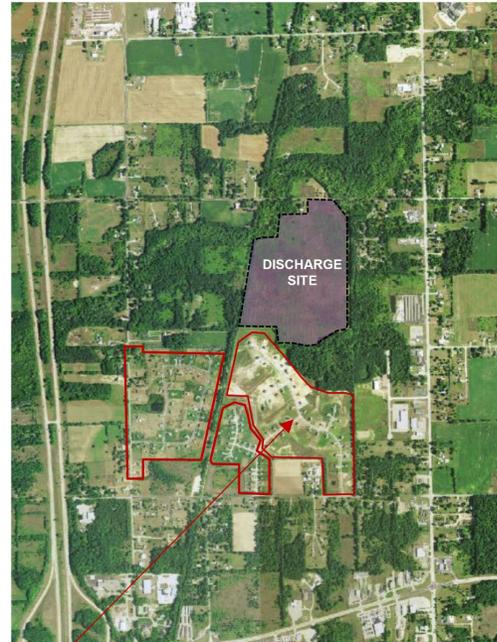
IVES FARM / MEADOWS

2005

SW Russel Ridge (ground broken)



2009



NE Russel Ridge build out in progress

2016



PFAS Discovery and Subsequent Investigations

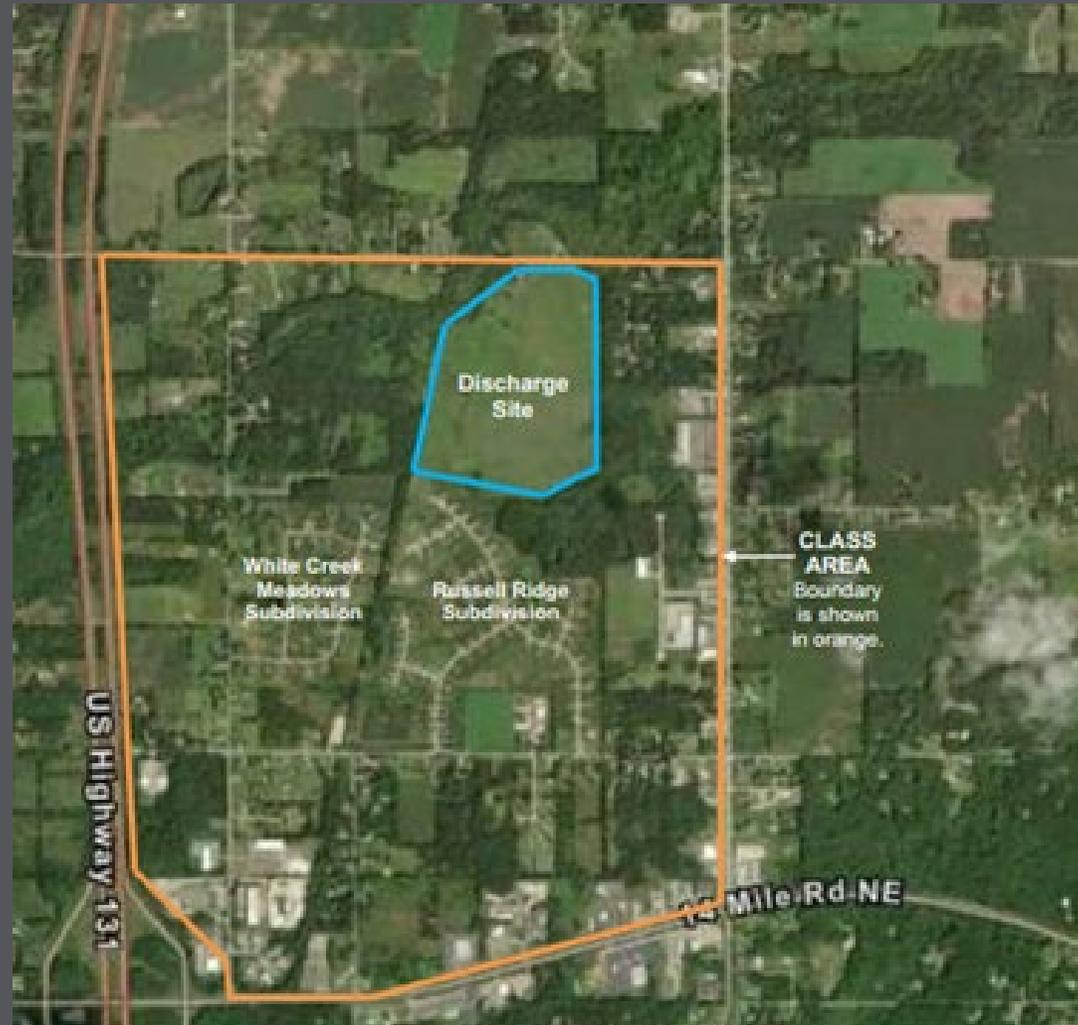
- 2017 residential well samples
- EGLE residential well samples
- Sample results



2020 EGLE VN

- City and EGLE investigations
 - Compliance MWs
 - Residential wells/filters
 - EGLE MWs
- Deep aquifer investigation
- City sewer investigation

Class Action Lawsuit October 2023



Irwin v City of Cedar Springs, Case No. 23-09947-CZ, Kent County Circuit Court.



Class Action Lawsuit October 2023

- Single count: inverse condemnation
- Plaintiffs allege the City's operation of its WWTP took class members' properties for public use without paying just compensation
- Plaintiffs alleged:
 - abuse of legitimate power by affirmative acts directly aimed at the class members' properties; and
 - defendant's actions were a substantial cause of decline of value or permanent deprivation of property.
- Sought damages based on alleged property devaluation



Defense of Lawsuit

- Key takeaways
- Motions for Summary Disposition
- City's public policy position



Court Rulings May 2025

- Granted the City's Motions for Summary Disposition
 - Court held that the plaintiffs failed to prove the elements of inverse condemnation
 - Court's public policy statement: "Allowing this lawsuit to continue would open the floodgates to future litigation against other small municipalities that could have devastating consequences."⁹
- Appeal pending with Michigan Court of Appeals
- MML Amicus Brief



Regulatory Disconnect

- WWTPs are passive receivers of PFAS
 - “Disclaimer: Private and public municipal wastewater treatment plants do not produce or use PFAS.”¹⁰
- Current WWTP technology does not allow for treatment of PFAS
 - WWTPs cannot economically reduce or destroy PFAS from wastewater¹¹
 - “Conventional wastewater treatment plants are not designed to treat for PFAS; therefore, PFAS may pass through the treatment system to surface waters (i.e. lakes, rivers, etc.) and groundwater.”¹²



Regulatory Disconnect

- “PFAS may be passed through WWTPs to lakes, streams, and groundwater.”¹³
- EGLE Guidance states that PFAS in effluent from WWTPs is not considered a groundwater discharge permit violation. “The presence of PFAS in the effluent is not a violation of the Part 22 Groundwater Discharge permit but is rather considered new effluent information.”¹⁴
- Enforcement practices
- Insurance



Summary

- Complex issues centered on a practical problem
- Public policy to protect WWTPs
- Q&A

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3. EGLE, *Concept Validation: Collecting Soil Samples to Understand the Presence and Concentrations of Per- and Polyfluoroalkyl Substances (PFAS) in Michigan Forested Areas via Composite Sampling* (Apr. 2023), <https://www.michigan.gov/pfasresponse/-/media/Project/Websites/PFAS-Response/Reports/Report-2023-04-12-Michigan-Forested-Soils.pdf>.
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12. *See supra* note 10.

13. EGLE, *Addressing PFAS From Public and Private Municipal Groundwater Discharges: Compliance Strategy*, at 1 (July 2022), <https://www.michigan.gov/egle/-/media/Project/Websites/egle/Documents/Programs/WRD/Groundwater-Discharge/PFAS-Municipal-Groundwater-Discharge-Compliance-Strategy.pdf>.

14. *Id.*, at 2.



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moving forward with you



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