

STATE OF MICHIGAN  
WAYNE COUNTY CIRCUIT COURT

MOHAMMED O. AHMED, HADEER AHMED,  
NORIEAH AHMED, SAMIRA ALASBAHI,  
WILLIAM ALI, MAHMOUD AND IBTISAM  
IBARA, and other persons similarly situated,

Class Action Plaintiffs,

v

SEVERSTAL NORTH AMERICA, INC., a  
Delaware corporation,

Defendant.

Case N<sup>o</sup>: 04-438968-CE

Hon. Michael F. Sapala

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**PLAINTIFFS' MOTION FOR CERTIFICATION OF CLASS ACTION**

April 15, 2005

Plaintiffs Mohammed Ahmed, Hadeer Ahmed, Norieah Ahmed, Samira Alasbahi, William Ali, and Mahmoud and Ibtisam Ijbara, through their attorneys, OLSON, BZDOK & HOWARD, P.C. and CALLIGARO & MEYERING, P.C., and on behalf of themselves and all other persons similarly situated (collectively, “Plaintiffs” or “the residents”), move to certify this case as a class action under MCR 3.501(B). Plaintiffs further propose manners of providing required reasonable notice to the class members. In support of this Motion for Class Certification, Plaintiffs state:

1. Plaintiffs filed this action to protect themselves, their property, and the health and property of their neighbors from air pollution caused by Defendant Severstal North America, Inc.’s (“Severstal’s”) operation of the Rouge Steel Facility, in Dearborn, Wayne County, Michigan (“Rouge Steel”).

2. At the Rouge Steel facility, Severstal emits particulates and other air pollutants that fall onto Plaintiffs’ properties and substantially pollute the air quality in their neighborhood and homes, injuring them and their property, creating a nuisance, and impairing the air in violation of the Michigan Environmental Protection Act (MEPA).<sup>1</sup>

3. Plaintiffs seek injunctive relief to abate the nuisance and MEPA violation, as well as nuisance damages.

4. Plaintiffs bring this action under MCR 3.501, on behalf of themselves and all other residents of the South Dearborn neighborhood (bound by Miller Road, Riverside Drive, the Holy Cross Cemetery, and Southern Street) who are impacted by emissions from the Rouge Steel facility.

5. The almost 5,000 residents in the neighborhood are similarly affected by Severstal’s operations of the Rouge Steel facility; they are so many that it would be impracticable to bring them all before the Court.

6. The questions to be determined by this action are questions of common and general interest to the members of the proposed class, and the issues of fact and law common to the class predominate over questions affecting individual class members.

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<sup>1</sup> Act 451 of 1994, Natural Resources and Environmental Protection Act (NREPA), Part 17, Michigan Environmental Protection Act, MCL 324.1701 - 324.1706 (MEPA).

7. The named parties' claims are typical of the class members' claims, and the class representatives will fairly and adequately assert and protect the absent class members' interests.

8. Maintenance of this action as a class action will be superior to other methods of adjudication in promoting the convenient administration of justice.

9. All putative class members will be notified of the pendency of this class action by a series of town meetings, which have already begun; by immediate publication in the local newspapers that circulate through the region; by posting in public locations; through a citizens group called the Concerned Residents of South Dearborn; through an internet site ([www.envlaw.com/dearborn.html](http://www.envlaw.com/dearborn.html)); by first-class mail and/or hand delivery to each address in the class; and/or by other methods to be decided by the Court. Notices will continue to be in both English and Arabic.

10. For these reasons, and as explained more fully below, Plaintiffs respectfully request that the Court certify this action as a class action under MCR 3.501.

**BRIEF IN SUPPORT OF  
PLAINTIFFS' MOTION FOR CERTIFICATION OF CLASS ACTION**

This is a case about one neighborhood's extraordinarily dirty air. Measured by long-term concentrations of fine particles, people living in the neighborhood described below breathe the most polluted air in the State of Michigan. Severstal's Rouge Steel facility is the largest source of particle air pollution in this most polluted neighborhood – by far the most aggravating cause of this problem. In order to combat this problem, some residents of this neighborhood have sued Severstal, and they are seeking class certification on behalf of all the residents in the neighborhood. Because Severstal's emissions are a problem for the whole neighborhood, this case should be certified as a class action.

**I. FACTUAL BACKGROUND**

**A. AIR POLLUTION IN THE SOUTH DEARBORN NEIGHBORHOOD**

The South Dearborn neighborhood (“neighborhood”) is about 580 acres, bound by Miller Road, Riverside Drive, the Holy Cross Cemetery, and Southern Street in Dearborn.<sup>2</sup> It is a residential neighborhood, home to about 4,957 people in 1,186 households and 870 families.<sup>3</sup> The people who live in the neighborhood are largely of Arabic descent, tracing back to the immigration of Middle Eastern people that came to the area to work in local industry.<sup>4</sup> The neighborhood includes people of mixed ages and occupations but who share a strong sense of community.

The neighborhood is served by an elementary and intermediate school, which sit on a common campus on Salina Street.<sup>5</sup> On the Salina school campus, in the heart of the neighborhood, the Michigan Department of Environmental Quality (MDEQ) has located an air quality monitor.<sup>6</sup>

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<sup>2</sup> See street map identifying the South Dearborn neighborhood (**Ex 1**).

<sup>3</sup> See United States Census Bureau, 2000 Census Maps and Data Sets for Blocks 2, 3, and 4, Census Tract 5735, Wayne County, Michigan (**Ex 2**).

<sup>4</sup> Patrick Belton, *In the Way of the Prophet: Ideologies and Institutions in Dearborn, Michigan, America's Muslim Capitol*, THE NEXT AMERICAN CITY (Oct. 2003) (**Ex 3-A**).

<sup>5</sup> See photographs of schools on Salina Street (**Ex 13, Photographs C-G**).

<sup>6</sup> See photograph of MDEQ air monitor at Salina schools (**Ex 13, Photograph B**);  
(continued...)

The air monitor<sup>7</sup> is funded by the Environmental Protection Agency (EPA), and is one of the most advanced such monitors in the country. The monitor collects hourly data related to meteorological conditions (wind speed, wind direction, barometric pressure, outside temperature, *etc.*), as well as periodic levels of various pollutants (particulates, metals, volatile organic compounds, *etc.*). The data from the air monitor confirms what the residents of the neighborhood have thought for years: that the air in their neighborhood is severely polluted with particulate matter.<sup>8</sup>

“Particle pollution,” or “particulate matter” (PM), refers to solid and liquid airborne particles in the ambient air. PM includes particles coarse enough to be visible to the eye (such as dust, dirt, soot, or smoke), and those that are very small and can only be seen by microscope.<sup>9</sup> Because of its characteristics, PM is regulated according to the size of the particles. The EPA has established National Ambient Air Quality Standards (NAAQS) for larger particulates, called PM<sub>10</sub> because they are less than 10 micrometers (µm) in size; and for fine particulates, called PM<sub>2.5</sub> because they are less than 2.5 µm in size. The NAAQS standard for long-term (annual) PM<sub>2.5</sub> in the ambient air is 15 micrometers per cubic meter, or µm/m<sup>3</sup>.<sup>10</sup> This means that, based on the body of epidemiological evidence, there must be less than 15 µm/m<sup>3</sup> of fine particulates in the ambient air in order to protect

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<sup>6</sup> (...continued)  
MDEQ, MICHIGAN’S 2003 ANNUAL AIR QUALITY REPORT, p. 48 (Oct. 2004) (excerpt attached as **Ex 6**; full report available at: [http://www.michigan.gov/deq/0,1607,7-135-3310\\_4104\\_4195-79055--,00.html](http://www.michigan.gov/deq/0,1607,7-135-3310_4104_4195-79055--,00.html), last viewed April 14, 2005).

<sup>7</sup> This monitor is referred to interchangeably as the Salina schools air monitor, the neighborhood monitor, and the Dearborn monitor.

<sup>8</sup> See THE DETROIT NEWS, *Metro Latinos, Arabs join forces to fight dirty air* (Nov. 22, 2004) (**Ex 3-B**); MDEQ, 2003 AIR QUALITY REPORT, pp. 51, 52, Fig. 2.5-9 (**Ex 6**); Lake Michigan Air Directors Consortium (LADCO), PM<sub>2.5</sub> IN URBAN AREAS IN THE UPPER MIDWEST, Section 2 (Feb. 12, 2004) (excerpt attached as **Ex 4**; full report available at: <http://www.ladco.org/reports/ladco/PM25doc-urban1.pdf>, last viewed April 12, 2005).

<sup>9</sup> For a diagram, see EPA, THE PARTICLE POLLUTION REPORT, CURRENT UNDERSTANDING OF AIR QUALITY AND EMISSIONS THROUGH 2003, p. 2 (Dec. 2004) (**Ex 7**).

<sup>10</sup> This is a volume measurement that is the same as “parts per million”.

the public health with an adequate margin of safety.<sup>11</sup> After years of litigation, including a decision by the United States Supreme Court, the courts have upheld the NAAQS for PM<sub>2.5</sub>.<sup>12</sup> Because the NAAQS are a pollution control standard, they can be used to prove a *prima facie* case of environmental impairment under MEPA.<sup>13</sup>

PM<sub>2.5</sub> levels at the Salina school air monitor are well above the 15 µm/m<sup>3</sup> standard. The level in 2003, the latest year compiled by MDEQ, was 19.11 µg/m<sup>3</sup>; the 3-year average of the annual arithmetic mean (which is used to establish compliance under the standard) is 19.5 µg/m<sup>3</sup>.<sup>14</sup> Not only are these PM<sub>2.5</sub> levels above the standard necessary to protect the public health, but they are the highest in Wayne County and the State of Michigan.<sup>15</sup> At times, they are the highest in EPA Region 5 (including Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin, and 35 Tribes).<sup>16</sup>

The health effects of exposure to particulates – particularly long-term exposure to fine particulates – are well documented. They include premature death, increased hospital admissions and emergency room visits, increased respiratory symptoms and disease, and decreased lung function.<sup>17</sup> In addition, high levels of particulates in the neighborhood air cause incessant problems and annoyances for neighborhood residents, who complain about having black dust constantly

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<sup>11</sup> See Clean Air Act, 42 U.S.C. § 7409(b)(1); *American Trucking Assoc v EPA*, 238 F3d 355 (DC Cir 2001) (decision on remand from United States Supreme Court, 531 US 457 (2001)).

<sup>12</sup> See *American Trucking*, 238 F3d 355.

<sup>13</sup> See, *Nemeth v Abonmarche Development Co*, 457 Mich 16, 576 NW2d 641 (1998); *Preserve The Dunes v MI Dept of Environmental Quality*, 471 Mich 508, 684 NW2d 847 (2004).

<sup>14</sup> *Id.* at p. 50, Table 2.5-2 (**Ex 6**).

<sup>15</sup> *Id.*

<sup>16</sup> Statement of John Mooney, Environmental Specialist for EPA Region 5, quoted in THE DETROIT NEWS, *Metro Latinos, Arabs join forces to fight dirty air* (**Ex 3-B**).

<sup>17</sup> See, e.g., EPA, THE PARTICLE POLLUTION REPORT, p. 3 (**Ex 7**); EPA Final Rule, *National Ambient Air Quality Standards for Particulate Matter*, 62 Fed Reg 38652 (July 19, 1997); MDEQ, 2003 AIR QUALITY REPORT, p. 41 (**Ex 6**); Dockery, *et al*, *An Association Between Air Pollution and Mortality in Six U.S. Cities*, 329 NEW ENG. J. MED. 1753 (1993); Pope, *et al*, *Particulate Air Pollution as a Predictor of Mortality in a Prospective Study of U.S. Adults*, 151 AM. J. RESP. & CRITICAL CARE MED. 669 (1995) .

covering everything outside their homes and even coming inside.<sup>18</sup> The residents breathe the dirty air at their neighborhood parks and schools, and can only really escape it by leaving the neighborhood entirely. Air pollution in the South Dearborn neighborhood is – essentially by definition – a neighborhood-wide problem.

The air pollution and its effects on the residents have been an ongoing topic of discussion and concern among people in the neighborhood, and they have complained to the regulatory agencies.<sup>19</sup> The agencies' actions – to the degree they have taken actions – have not addressed the residents' concerns, and the high particulate levels continue.<sup>20</sup> Although the EPA intends to eventually reduce PM<sub>2.5</sub> levels across the nation, the implementation schedule does not anticipate reductions in direct<sup>21</sup> emissions until 2015; even then, the EPA predicts that PM<sub>2.5</sub> levels in Wayne County will continue to exceed the annual standard.<sup>22</sup>

Faced with breathing this pollution for another 10 years in the *best case scenario*, some of the residents sought help with this problem in July 2004.<sup>23</sup> After five months of investigation, this lawsuit followed.

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<sup>18</sup> See Affidavits of named Plaintiffs (**Ex 8-A to 8-G**); see also THE DETROIT NEWS, *Metro Latinos, Arabs join forces to fight dirty air* (**Ex 3-B**); photographs of Plaintiff Mahmoud Ijbara and his home (**Ex 13, Photographs J, K**).

<sup>19</sup> Affidavits of named Plaintiffs (**Ex 8-A to 8-G**); THE DETROIT NEWS, *Metro Latinos, Arabs join forces to fight dirty air* (**Ex 3-B**); THE DETROIT NEWS, *Steel mill soot galvanizes S. Dearborn community* (Feb. 6, 2005) (**Ex 3-C**).

<sup>20</sup> *Id.*

<sup>21</sup> Direct emissions include those from sources such as the Rouge Steel facility, as compared to mobile sources such as those emitted from diesel engines, which travel interstate. See EPA, THE PARTICLE POLLUTION REPORT, p. 23 (**Ex 7**).

<sup>22</sup> *Id.* at p. 25, Fig. 20.

<sup>23</sup> Affidavit of Christopher Bzdok (**Ex 9**).

**B. DEFENDANT’S CONTRIBUTION TO THE NEIGHBORHOOD PROBLEM**

The South Dearborn neighborhood is literally in the shadow of the Ford Rouge complex.<sup>24</sup> Today, the Rouge Industrial Complex houses a power plant, a steel production facility (Severstal), an assembly plant, and other facilities. Although the neighborhood is in an industrial area, this case focuses on the Rouge Steel facility owned by Severstal because: (a) it is the biggest single source of particle pollution in the neighborhood; (b) it is the largest contributor of any local source to the pollution problem; and (c) it is consistently the aggravating cause on days when air pollution in the neighborhood is at its worst.

The Rouge Steel facility encompasses about 500 acres on the southern half of the Rouge Industrial Complex, located at 3001 Miller Road, Dearborn, Michigan. The facility is an integrated steel plant that includes several interrelated processes: iron production and preparation; steel production; product preparation; and handling and transport of raw, intermediate, and waste materials.<sup>25</sup> Severstal bought the facility and all its assets in January 2004.

Scientific analyses of data from the Salina school air monitor confirm that the Rouge Steel facility, and therefore Severstal, is the worst air polluter in the neighborhood.<sup>26</sup> An analysis by Plaintiffs’ consultant Lawrence Hands shows that when fine particulate levels at the school monitor are above the “unhealthy for sensitive groups” levels, the wind is consistently blowing from the direction of Rouge Steel.<sup>27</sup> In fact, while Rouge Steel is overwhelmingly the general source on the bad days, there is a strikingly high “spike” in the data from the precise direction of Rouge’s basic

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<sup>24</sup> See photographs of the South Dearborn neighborhood and Rouge Steel facility (**Ex 13, Photographs C, I**). Miller Road, which creates the western boundary of the Neighborhood, is also the eastern boundary of the original Ford Rouge complex, the 2,000 acres bought by Henry Ford in 1915 and the site of his visionary fully integrated car manufacturing plant. “By 1927, . . . the [Ford Rouge] complex included virtually every element needed to produce a car: blast furnaces, an open hearth mill, a steel rolling mill, a glass plant, a huge power plant and, of course, an assembly line.” See National Park Service, FORD RIVER ROUGE COMPLEX, available at <http://www.cr.nps.gov/nr/travel/detroit/d38.htm> (last visited April 9, 2005).

<sup>25</sup> See photograph of Severstal’s Rouge Steel facility (**Ex 13, Photograph A**).

<sup>26</sup> See Affidavit of Lawrence Hands (**Ex 10, Attachments B – G**); Report of Dr. Philip Hopke (**Ex 11-A**).

<sup>27</sup> Affidavit of L. Hands (**Ex 10**).

oxygen furnace, and another spike from the precise direction of the blast furnaces.<sup>28</sup> This analysis remains true when the data are corrected for wind frequency.<sup>29</sup>

A study commissioned by the Lake Michigan Area Directors Consortium (LADCO)<sup>30</sup> analyzed the available data for all the fine particulate air monitors in the Detroit area (and other cities).<sup>31</sup> That study reflects that PM<sub>2.5</sub> levels at the school monitor are consistently the highest in the region for each season.<sup>32</sup> Further, the study, which breaks out the constituents of the PM<sub>2.5</sub>, documents that the air at the school monitor contains “uncharacteristically high” peaks in soil and organic carbon particulates (associated with steel mills in general and Rouge Steel in particular) within in the air at the school monitor, as compared to area monitors.<sup>33</sup> The study concludes:

[T]he day-to-day variation in concentrations [of PM<sub>2.5</sub>] (although different in magnitude) across the Detroit urban area is similar. It should be noted, however, that there are several days when Dearborn stands out as having much higher concentrations than any other site, indicating the likely influence of local sources on these days.<sup>34</sup>

Thus, the LADCO study’s conclusions are consistent with those of Plaintiffs’ consultants.

Plaintiffs’ other expert on air pollution sources is Dr. Philip Hopke, Bayard D. Clarkson Distinguished Professor and Director of the Center for Air Resources and Engineering at Clarkson University in New York.<sup>35</sup> Dr. Hopke has been a member of the Clean Air Science Advisory

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<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

<sup>30</sup> LADCO is an organization established by the states of Illinois, Indiana, Michigan, Wisconsin, and Ohio to provide technical assessments for and assistance to its member states on problems of air quality, and a forum for its member states to discuss air quality issues. *See* www.ladco.org (last visited April 13, 2005).

<sup>31</sup> LADCO, PM<sub>2.5</sub> IN URBAN AREAS IN THE UPPER MIDWEST (**Ex 4**)

<sup>32</sup> *Id.* p. 18, Fig. 19; p. 20, Fig. 21.

<sup>33</sup> *Id.* p. 21, Fig. 22.

<sup>34</sup> *Id.* p. 16.

<sup>35</sup> *See Curriculum Vitae* of Dr. Philip K. Hopke (**Ex 11-B**).

Committee<sup>36</sup> for the EPA's Science Advisory Board since 1995 and was Chair of the Committee from October 2000 until September 2004. He is among the foremost experts on apportioning the sources of fine particulate air pollution in the world.<sup>37</sup> Before being hired by Plaintiffs' counsel, Dr. Hopke had already conducted a complex analysis of the composition and sources of fine particulates in the Detroit area.<sup>38</sup> Using state-of-the-art techniques, and data from the Salina school monitor and the air monitor in Allen Park,<sup>39</sup> Dr. Hopke pinpointed the Rouge Steel facility as the most significant source of the fine particulate problem at the neighborhood air monitor.<sup>40</sup>

Severstal will be correct when it says the area is urban and industrial. But that does not explain why the fine particulates in this neighborhood are higher than all the other urban industrial areas in Wayne County and the state.<sup>41</sup> The science shows that the Rouge Steel facility – and therefore Severstal – is the reason this neighborhood has it worse than anywhere else.

## II. LEGAL ARGUMENT

In *Paley v Coca Cola Co*, the Michigan Supreme Court described the important rationale underlying the availability of the class action in our society:

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<sup>36</sup> This Committee is created pursuant to the Clean Air Act, and is tasked to periodically review the NAAQS and advise the EPA of need for new standards or revisions to existing standards. 42 USC § 7409(d)(2)(A), (B); *see also American Trucking*, 238 F3d 355.

<sup>37</sup> Coutant, *et al*, *Compilation of Existing Studies on Source Apportionment for PM<sub>2.5</sub>* (prepared for EPA) (Aug. 22, 2003 – Second Draft Technical Report) (excerpt attached as **Ex 12**; full report available at: <http://www.epa.gov/air/oaqps/pm25/docs/compsareports.pdf>, last visited April 14, 2005).

<sup>38</sup> Report of Dr. Hopke (**Ex 11-A**).

<sup>39</sup> Both of these air monitors provide speciation data, *i.e.*, the relative composition of fine particulates in the air. *See* MDEQ, 2003 AIR QUALITY REPORT, p 53 (**Ex 6**). *Very* roughly speaking, Dr. Hopke's work models speciation data with meteorological data, incorporating various trends and other factors, to identify the likely sources of the fine particulates at a particular air monitor. *See* Report of Dr. Hopke (**Ex 11-A**).

<sup>40</sup> *Id.*

<sup>41</sup> *See* MDEQ, 2003 AIR QUALITY REPORT, p 52, Fig. 2.5-9 (**Ex 6**); LADCO, PM2.5 IN URBAN AREAS IN THE UPPER MIDWEST, pp 13-15 (**Ex 4**).

We live in a world where too many individuals often find their environment confusing, if not hostile. They feel like a number or a bit in a massive impersonal computer. All around them they are confronted by giant powers, big government, big corporations, big unions. They feel they have no control over, or even voice in what goes on. The law also seems strange and unfriendly. For too many the law seems like part of the problem instead of part of the solution. The class action certainly is not a solution to all things. But in some areas, at least, it is a breath of hope – a chance to cope. It gives scattered individuals with a common problem an instrument to try and deal with their problem. 89 Mich 583, 595; 209 NW 2d 232 (1973) (citations omitted).

Plaintiffs allege that Severstal has (1) unreasonably interfered with their health and property (nuisance); and (2) polluted and impaired the air and other natural resources (MEPA violation). This case has serious merit, as the previous discussion demonstrates. Irrespective of Severstal’s position on the merits,<sup>42</sup> however, there should be no controversy that the class action vehicle is the only rational means to adjudicate these claims.

**A. CLASS DEFINITION**

The class must be adequately defined to understand the members of the class and to ensure that the plaintiffs are members of the class. *See Zine v Chrysler Corp*, 236 Mich App 261, 287-88; 600 NW 2d 384 (1999); *Griggs v Mich Nat’l Bank*, 405 Mich 148, 168; 274 NW2d 752 (1979) (“If the membership of the group is so amorphous that it cannot be definitely ascertained, then there is no ‘class’ and the case cannot proceed on a representative basis.”). There must also be some evidence to estimate the approximate number of class members. *Zine*, 236 Mich App at 288.

In this case, Plaintiffs propose to define the class as follows:

All persons that currently reside within the geographic area bound by Miller Road, Riverside Drive, the Holy Cross Cemetery, and Southern Street, whose person, property, or use of natural resources have been injured, harmed, damaged, impaired, or impacted as a result of pollution from the Rouge Steel Facility.

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<sup>42</sup> Michigan law requires that, for class certification, the Court must accept as true the allegations in the complaint. *Neal v James*, 252 Mich App 12, 16; 651 NW2d 181 (2002) (citation omitted).

The area is a well-defined and identifiable geographic area. On a map, it looks like an island, with the Rouge Complex to the west and a cemetery to the east.<sup>43</sup> The neighborhood's demographics are essentially reflected in three United States Census Bureau maps, consisting of Block Groups 2, 3, and 4, Census Tract 5735, Wayne County.<sup>44</sup> The 2000 Census Bureau data reflects a total population of 4,957, with 1,186 households (98 vacant) and 870 families in the area.<sup>45</sup> The average family size ranges from 5.04 to 5.58 individuals.<sup>46</sup>

The named Plaintiffs are all members of the defined class: they all reside within the defined geographic area and have been harmed by the pollution in the neighborhood, and the science discussed above shows that Severstal is the worst contributor and most aggravating cause of that pollution. And air dispersion modeling commissioned by Plaintiffs' counsel shows an area roughly coextensive with the neighborhood as the area most impacted by Severstal's particulate pollution.<sup>47</sup>

## **B. CLASS ACTION STANDARDS**

MCR 3.501(A) sets forth five requirements that must be met before a court may certify a case for a class action: (1) the class is so numerous that joinder of all members is impracticable (*numerosity*); (2) there are questions of law or fact common to the members of the class that predominate over questions affecting only individual members (*commonality*); (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class (*typicality*); (4) the representative parties will fairly and adequately assert and protect the interests of the class (*adequacy*); and (5) the maintenance of the action as a class action will be superior to other available

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<sup>43</sup> See street map identifying South Dearborn neighborhood (Ex 1).

<sup>44</sup> See US Census Bureau Maps and Data (Ex 2). It should be noted that Block 4 of the Census Bureau data includes a very small area that is outside of the defined neighborhood; however, that area is industrial and therefore should not affect the relevant information for class certification purposes (*i.e.*, residential population statistics).

<sup>45</sup> *Id.*

<sup>46</sup> *Id.*

<sup>47</sup> Affidavit of L. Hands (Ex 10, Attachments I-L).

methods of adjudication in promoting the convenient administration of justice (*superiority*). When evaluating a motion for class certification, the trial court accepts the allegations made in support of the request for certification as true. *Neal v James*, 252 Mich App 12, 16; 651 NW2d 181 (2002) (citation omitted).

1. Numerosity

The first prerequisite for class certification is that the class must be so numerous as to make joinder of all members impracticable. MCR 3.501(A)(1)(a). “[T]he exact number of members need not be known, as long as general knowledge and common sense indicate that the class is large.” *Zine*, 236 Mich App at 288. The standard is not strictly tied to the number of class members, but also the impracticability of joinder of the entire class. *See Pressley v Lucas* 30 Mich App 300, 319; 186 NW 2d 412 (1971); Jonathan R. Moothart, *Class Actions in Michigan State Courts: A Primer*, 78 Mich B J 272, 273 (1999). In *Oakwood Homeowners Assoc Inc v Ford Motor Co*, the court acknowledged the impracticability of joining the 46 to 72 people that were impacted by the defendants’ air emissions. 77 Mich App 197, 258 NW2d 475 (1977). *See also Peters v Cars To Go Inc*, 184 FRD 270, 276 (WD Mich 1998)<sup>48</sup> (“a class numbering more than 40 members usually satisfies the impracticability requirement, and classes containing 100 or more members routinely satisfy the numerosity the requirement.”) (internal citations omitted).

As explained above, this action seeks to certify a class with close to 5,000 members, which includes the residents of the geographic area most directly impacted by Severstal’s emissions. The impracticality of joining all 5,000 of the class members is self-evident, and the proposed class meets the numerosity prerequisite.

2. Commonality

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<sup>48</sup> Because there is limited case law in Michigan addressing class certifications, Michigan courts may refer to federal cases construing the federal rules on class certification. *See Neal*, 252 Mich App at 15 (citation omitted); *see also Tinman v Blue Cross and Blue Shield of Michigan*, 264 Mich App 546, 692 NW2d 58, 64 (2004).

The second prerequisite for class certification is that common questions of law or fact affecting the entire class must predominate over individual questions of law and fact. MCR 3.501(A)(1)(b). This “commonality” inquiry addresses whether resolution of a common issue will advance the litigation: “[i]t is essential that the issues in the class action that are subject to generalized proof, and thus applicable to the class as a whole, predominate over those issues that are subject only to individualized proof.” *Zine*, 236 Mich App at 290 (internal quotations and citations omitted); *see also Neal*, 252 Mich App at 16-17; *Tinman v Blue Cross and Blue Shield of Michigan*, 264 Mich App 546, 692 NW2d 58 (2004) (commonality requires showing that “all members of the class had a common injury that could be demonstrated with generalized proof, rather than evidence unique to each class member. The question is whether ‘the common issues that determine liability predominate.’”) (citations and internal quotations omitted).

In *Dix v American Bankers Life Assur Co*, the Michigan Supreme Court considered whether class certification was proper in a case alleging common law fraud and Consumer Protection Act misrepresentation claims. 429 Mich 410, 416; 415 NW2d 206 (1987). The Court denied class certification for the common law fraud claims because the alleged misrepresentations were made at different times and places, and by different agents. *Id.* But on the Consumer Protection Act claims, the Court determined that while the alleged misrepresentations “may differ somewhat from plaintiff to plaintiff,” they were all “substantially similar” and “part of a common scheme,” stemming from “the same pattern of misrepresentation.” *Id.* at 418. *See also Rodriguez v Berrybrook Farms, Inc.*, 672 F Supp 1009, 1015 (WD Mich 1987) (“When the party opposing the class has engaged in some course of conduct that affects a group of persons and gives rise to a cause of action, one or more of the elements of that cause of action will be common to all of the persons affected.”).

In a case remarkably similar to the present case, the Michigan Court of Appeals in *Oakwood* considered whether to certify a class of homeowners alleging that a group of four defendants’ air emissions from their respective industrial facilities violated MEPA and amounted to a nuisance. 77 Mich App at 203. “Basically, plaintiffs’ complaint alleges that defendants have concurrently emitted and continue to emit into the atmosphere noxious aerosols, gases and particulate matter of sufficient

volume and regularity to befoul the air, damage plaintiffs' property and endanger the health of some class members." *Id.* The Court considered at length whether a "predominance" of common questions was a requirement under Michigan's then-existing class action rule. *Id.* at 209-10. Assuming that it was a requirement, the Court held that common class questions as to the defendants' liability existed and predominated: "[t]hese are questions ably suited for class resolution which would assuredly require needless duplication of proofs if each plaintiff were required to prosecute his claim apart from the rest." *Id.* at 210. The Court further determined that the plaintiffs were seeking "common relief" (a requirement under the former class action rule) in that they all sought injunctions and damages (though the actual amount of damages may have varied). *Id.* at 211.

Similarly, the Sixth Circuit recently affirmed class certification in a case very similar to the present case. *Olden v LaFarge*, 383 F3d 495 (6th Cir 2004). In that case, the plaintiff class consisted of city residents that suffered from the defendant's toxic emissions from its local cement plant. The plaintiffs sought damages for personal and property injuries, as well as injunctive relief to abate the emissions. Regarding the predominance of common issues, the Court noted that the defendant's liability – including whether it was defendant's emissions that were deposited on plaintiffs' properties (causation) and whether the emissions amounted to "significant harm" to establish nuisance – were class issues that predominated over any individual issues. *Id.* at 508-09.

Courts acknowledge the inevitable existence of some individual questions in any claim. In *Dix*, the Court noted that "no two claims are likely to be exactly similar. Almost all claims will involve disparate issues of fact and law to some degree." 429 Mich at 419. Similarly in *Oakwood*, the Court noted variations in the degree and, to a limited extent, the kind of damages resulting to the homeowners in the class from the defendants' emissions. 77 Mich App at 205. But the law does not require precisely identical questions of law and fact, only that there is more commonality than disparity:

To be clear, the question is not whether each member of the class has sustained an identical *amount* of damage because of a defendant's . . . behavior, which can be estimated, but, rather, whether "the common issues [that] determine liability predominate."

*A & M Supply Co v Microsoft Corp*, 252 Mich App 580, 600; 654 NW2d 572 (2002) (emphasis in original).

The common questions of law and fact in this case predominate over whatever individual questions may arise. The air pollution and its effects on neighborhood residents are not problems and concerns for a few individuals in the area; they are community-wide problems.<sup>49</sup> Severstal's liability under both MEPA and nuisance theories is common to all members of the class, with the only individual proofs arguably relating to the amount of individual damages under nuisance law. Common questions of fact relate to the emissions from the facility, the precautions Severstal should take to control those emissions, and the environmental and economic impacts of Severstal's emissions. Common questions of law include the analysis of feasible and prudent alternative pollution control technologies under MEPA, together with various affirmative defenses Severstal has raised.<sup>50</sup> Whether the Plaintiffs are entitled to injunctive relief, and – if so – what that injunctive relief should look like, are further questions common to the class members. Even the amount of damages may be dealt with on a class-basis through a formula or subclasses. *See Dix*, 429 Mich at 419, n 14. Thus, the key issues in this case (causation, impact, and remedy) will rely on “generalized” proof applicable to the class as a whole, as opposed to “individualized” proof. Therefore, the commonality requirement is met.

### 3. Typicality

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<sup>49</sup> Affidavits of named Plaintiffs (**Ex 8-A to 8-G**); THE DETROIT NEWS, *Metro Latinos, Arabs join forces to fight dirty air (Ex 3-B)*; *see generally* NOGA MORAG-LEVINE, CHASING THE WIND: REGULATING AIR POLLUTION IN THE COMMON LAW STATE (Princeton Univ. Press 2003) (concerning the nature of air pollution as a community concern).

<sup>50</sup> These are essentially identical to the common questions of law identified by the *Oakwood* Court: “In the present tort suit, this Court finds a substantial parity of issues regarding air pollution: (1) whether defendants’ distinct operations have violated and continue to violate local, state and Federal air pollution standards, and (2) whether the various defendants have released and continue to release contaminants which ‘substantially impair (or have impaired) the comfort or enjoyment of adjacent premises’. While other issues, of course, exist which distinguish the claimants, these can be considered separately after resolution of the foregoing common questions of liability.” 77 Mich App at 214-15 (internal quotations and citations omitted).

The third prerequisite for class certification is that the claims of the representative parties must be typical of the claims of the class. MCR 3.501(A)(1)(c). The Michigan Court of Appeals, relying on federal precedent, explained the typicality requirement as follows:

The typicality requirement . . . directs the court “to focus on whether the named representatives’ claims have the same essential characteristics as the claims of the class at large.” While factual differences between the claims do not alone preclude certification, the representative’s claim must arise from “the same event or practice or course of conduct that gives rise to the claims of the other class members and . . . [be] based on the same legal theory.” In other words, the claims, even if based on the same legal theory, must all contain a common “core of allegation.”

*Neal*, 252 Mich App at 21 (quoting *Allen v Chicago*, 828 F Supp 54 (ND Ill 1993)). Thus, a plaintiff’s claim is typical if it arises from the same event or practice or course of conduct that gives rise to the claims of other class members, and if his or her claims are based on the same legal theory. See HERBERT B. NEWBERG & ALBA CONTE, NEWBERG ON CLASS ACTIONS, § 3.13 (1992).

In this case, the claims of the seven class representatives all arise out of the same neighborhood-wide issue, *i.e.*, the dirty air. Dirty air in the neighborhood is a matter of community-wide concern that affects the named Plaintiffs just as it affects their neighbors next door and down the street. They all breathe the same polluted air; they are all plagued with the constant black dust and the attendant cleaning; and they all suffer similar concerns about the impacts of the pollution on their health.<sup>51</sup> Their claims are all based on the same MEPA and nuisance theories, and any injunctive relief afforded the named Plaintiffs will necessarily and equally inure to the benefit of their neighbors. The named Plaintiffs’ claims arise out a “common nucleus of operative facts” and the same legal theories as the absent class members’ claims, thus satisfying the typicality requirement.

#### 4. Adequacy

The fourth prerequisite for class certification is that the representative parties will fairly and adequately assert and protect the interests of the class. MCR 3.501(A)(1)(d). This prerequisite

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<sup>51</sup> Affidavits of named Plaintiffs (Ex 8-A to 8-G).

serves to “insure that the rights of the absent class members will be protected.” *Griggs*, 450 Mich at 170. To assess this requirement, Michigan courts use a two-part inquiry: first, whether the plaintiffs’ counsel is qualified to sufficiently pursue the putative class action; and second, whether the members of the class may have antagonistic or conflicting interests. *Neal*, 252 Mich App at 22.

a. *Adequacy of counsel*

The court may consider whether the plaintiff’s counsel are “qualified, experienced and generally able to conduct the proposed litigation.” *See Eisen v Carlisle & Jacquelin*, 391 F2d 555, 562 (2nd Cir 1968); *Maywalt v Parker & Parsley Petroleum Co*, 67 F3d 1072, 1078 (2nd Cir 1995). The concern is not quantitative but qualitative, and is primarily focused upon the ability to represent the absent class members. *See Simon v Westinghouse Elec Corp*, 73 FRD 480, 486 (ED Pa 1977). In addition, the lawyers must be willing and able to vigorously prosecute the action. *Neal*, 252 Mich App at 22. The most revealing indicator of whether the class counsel will adequately protect the absent class members may be the counsel’s conduct to date. *Smith v Josten’s American Yearbook Co*, 78 FRD 154, 163 (DC Kan 1978).

In this case, the proposed class is represented by two firms: OLSON, BZDOK & HOWARD, P.C., and CALLIGARO & MEYERING, P.C. OLSON, BZDOK & HOWARD, P.C. is a boutique environmental litigation firm. The firm is solely and exclusively dedicated to public interest cases, and has been for almost two decades. Christopher Bzdok, president of the firm and lead counsel for this lawsuit, has been counsel or co-counsel of record in several reported environmental cases. Mr. Bzdok is an Adjunct Professor at Michigan State University College of Law, where he teaches Environmental Law and Water Law, and is a member of the Governing Council of the Environmental Law Section of the State Bar of Michigan. Tracy Andrews spent several years as a Texas Assistant Attorney General specializing in environmental law enforcement and compliance, before moving into private practice in Michigan a year ago. OLSON, BZDOK & HOWARD, P.C. is uniquely qualified to prosecute this complex air pollution litigation on behalf of the class members.<sup>52</sup>

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<sup>52</sup> More information is at [www.envlaw.com](http://www.envlaw.com).

The firm CALLIGARO & MEYERING, P.C. is experienced in a wide range of law, including business litigation, insurance litigation, municipal law, personal injury, and real estate law. The firm is represented in this case by Stephen Chiasson and Julie Calligaro, both of whom are partners in the firm with extensive trial experience in state and federal court. In addition, both have experience in class action cases, particularly in the arena of employee wage and hour violations. Of particular relevance to this case, CALLIGARO & MEYERING, P.C. represented the South Dearborn community in a class action suit against Dearborn Industrial Generation, LLC, arising out of significant noise problems affecting the neighborhood. *See Ahmed v Dearborn Industrial Generation, LLC*, Wayne County Circuit Court Case No. 02-241296 CZ (2002) (J. Warfield Moore) (final settlement pending court approval). That case resulted in settlement requiring the defendant to undertake remedial actions to alleviate the problem. Thus, the firm CALLIGARO & MEYERING, P.C. is qualified – and has demonstrated its ability – to prosecute this class action on behalf of the neighborhood.

The undersigned counsels' actions to date demonstrate both qualifications and a commitment to vigorously prosecute this case. After being approached by community representatives, including some of the named Plaintiffs, the firms spent five months and tens of thousands of dollars investigating the case and hiring experts.<sup>53</sup> Counsel have had several meetings with the named Plaintiffs and a town meeting about the suit and are planning to have another town meeting after class certification.<sup>54</sup> Further, Counsel are providing information about the suit to, and inviting communication from, the absent class members through the case internet site.<sup>55</sup>

b. *Adequacy of class representatives*

Michigan courts require that the class representatives share common issues and interests with the class members. Class representatives must have an interest in a claim that is typical of (though not necessarily identical with) the remaining class claims; and they must vigorously prosecute the rights of the class. *See Citizens for Pre-Trial Justice v Goldfarb*, 88 Mich App 519, 527; 278 NW2d

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<sup>53</sup> Affidavit of Christopher M. Bzdok (Ex 9).

<sup>54</sup> *Id.*

<sup>55</sup> *See* [www.envlaw.com/dearborn.html](http://www.envlaw.com/dearborn.html).

653 (1979), *partially rev'd on other grounds*, 415 Mich 255 (1982) (citing *Northview Construction Co v St Clair Shores* (On Rehearing), 399 Mich 184, 249 NW2d 290 (1976)).

As discussed above, the seven named Plaintiffs share claims typical of those of the absent class members. They breathe the same air and suffer the same continual presence of particulates on their property and in their homes. Together with their neighbors, they share common interests in realizing improvements in the quality of air in the neighborhood for themselves and their families. The named Plaintiffs have shown that they will adequately represent the absent class members, who are their neighbors, by organizing a group to address the air quality issues in the neighborhood, approaching counsel to pursue legal action, and organizing and leading a community meeting about this action.<sup>56</sup> There are no antagonistic or conflicting interests among the named Plaintiffs or the absent class members. Because the class representatives – both counsel and the named parties – are qualified and have demonstrated that they will vigorously prosecute these claims, the adequacy standard is met in this case.

#### 5. Superiority

The final prerequisite for class certification is that the class action method is superior to other methods of adjudication in promoting “the convenient administration of justice.” MCR 3.501(A)(1)(e). The Court Rule provides a list of six non-exclusive criteria to be evaluated by the court in determining whether the superiority requirement. MCR 3.501(A)(2). These criteria are considered in turn below.

##### a. *Risk of Inconsistent Adjudications*

The first criterion in evaluating whether the class action vehicle is superior is:

whether the prosecution of separate actions by or against individual members of the class would create a risk of (I) inconsistent or varying adjudications with respect to individual members of the class that would confront the party opposing the class with incompatible standards of conduct; or (ii) adjudications with respect to individual members of the class that would as a practical matter be dispositive of the interests of other members not parties to the adjudications or substantially impair or impede their ability to protect their interests. MCR 3.501(A)(2)(a).

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<sup>56</sup> Affidavits of named Plaintiffs (Ex 8-A to 8-G).

Several federal courts, interpreting an identical provision in the federal rule, have noted that there is a risk of inconsistent adjudications when the parties present claims for injunctive or equitable relief. *See* Fed. R. Civ. P. 23(b)(1). In an environmental pollution case seeking injunctive relief and damages resulting from emissions of the defendant's operation of its facility, a United States District Court explained the inconsistent judgments risk:

[An injunction in this case] would undoubtedly be in the form of a complex order, addressing many specific features of plant operation. It is unlikely that two different courts would tailor a remedial order in the same fashion, and it is therefore entirely conceivable that different remedial orders would contain incompatible provisions.

*Boggs v Divested Atomic Corp*, 141 FRD 58, 67 (DC Ohio 1991). *See also Smith v Crystian*, 91 Fed Appx 952, 2004 WL 507572 (5th Cir, Mar. 16, 2004) (unpublished opinion) (**Ex 14**); *Allison v. Citgo Petroleum Corp*, 151 F 3d 402, n 16 (5th Cir 1998); NEWBERG ON CLASS ACTIONS, § 5.10 (noting the “obvious litigation benefits” of the use of the class action in environmental suits for nuisance violations seeking to enjoin polluting activity).

This case seeks injunctive relief to remedy the air pollution concerns in the neighborhood. If each of the class members were to pursue their identical claims for injunctive relief against Severstal individually, Severstal could clearly face inconsistent or varying adjudications creating incompatible standards of conduct. Alternatively, a judgment in an individual case could, as a practical matter, be dispositive of or impair the other class members' interests in seeking alternative relief. Therefore, this criterion is met.

b. *Equitable Relief*

The second criterion in the superiority inquiry is “whether final equitable or declaratory relief might be appropriate with respect to the class.” MCR 3.501(A)(2)(b). Injunctive relief requiring Defendant to abate its emissions would plainly benefit every member of the class because the air is a common neighborhood resource and any improvement in the air quality resulting from an injunction will be shared by all the residents. *See LaFarge*, 368 F3d at 510 (“[T]he plaintiffs are

asking the court to enter a permanent injunction enjoining the defendant from polluting – a conflict particularly suitable for class action adjudication.”<sup>57</sup> Thus, this criterion is met in this case.

c. *Manageability*

The third criterion in the superiority inquiry is “whether the action will be manageable as a class action.” MCR 3.501(A)(2)(c). Michigan courts consider the manageability criteria by considering the predominance of common questions, as opposed to individual issues. *See Dix*, 429 Mich at 417-19; *Lee v Grand Rapids Brd of Education*, 184 Mich App 502, 504-05; 459 NW2d 1 (1990); *A & M Supply*, 252 Mich App at 603. As discussed above, the class action mechanism clearly allows for some individual proofs, particularly in proving individual damages (though a damages formula or subclasses may be employed, which may eliminate even that level of individual proofs). *See A & M Supply*, 252 Mich App at 600-01; *Dix*, 429 Mich at 418-19, n 14. The relevant inquiry at this point is whether the existence of individual issues are “so disparate” as to make the class action unmanageable. *A & M Supply*, 252 Mich App at 602-03.

Severstal’s liabilities under MEPA and nuisance law, and the appropriate remedies, are common to each class member. The issues to be litigated are, have Defendant’s operations and existing pollution control measures (or lack thereof) created pollution and nuisance conditions in the neighborhood?; if so, how should the problems be corrected? The same evidence related to emissions, dispersion, local conditions, impacts, and abatement measures applies equally to each class member’s claims. If the residents’ claims proceeded individually instead of as a class, the Court could face approximately 5,000 identical cases, relying on the same data, the same experts presenting identical testimony and study results, and the same evidence related to the types of harms suffered by the residents. The only potentially-individual proofs might relate to the amount of personal damages suffered by the class members, and a formula or subclasses can likely be created, turning even this issue into a class determination. Given the common source and common

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<sup>57</sup> The *LaFarge* Court further noted that the injunctive relief request was critical to the plaintiffs case, where the class alleged current, irreparable harm resulting from the defendant’s activities. *Id.* at 511.

impacts at issue in this case, and the relief requested, all indicators suggest that the class action will be manageable and superior to any other method of adjudicating the class members' claims.

d. *Complexity of Issues*

The fourth criterion in the superiority inquiry is “whether in view of the complexity of the issues or the expense of litigation the separate claims of individual class members are insufficient in amount to support separate actions.” MCR 3.501(A)(2)(d). There is minimal Michigan case law interpreting this standard, and the federal class action rule does not have an equivalent requirement. *Cf* Fed. R. Civ. P. 23. One Michigan court that considered the standard acknowledged that it permits claimants with relatively small claims to proceed despite the substantial costs of litigation. *See A & M Supply*, 252 Mich App at 630 (“If the amount of overcharge passed on to consumers was large, individuals would pursue individual remedies. However, in many instances, the amount of overcharge passed on to purchasers is relatively small, providing little incentive for individual purchasers to sue on their own.”); *see also* R. Parker, *The History, Law, and Future of State Class Actions in Michigan*, 44 Wayne L Rev 135, 158 (1998).

The complexity of this case – both scientifically and legally – and the fact that the liability questions are common to each class member, weigh strongly in favor of the collective representation of the neighbors in this class action. Further, while each class member has sustained substantial damages as a result of Severstal's operations of the Rouge Steel facility, the costs to litigate this case are going to be very large. This criterion of the superiority inquiry, which allows the court to give due consideration to the relative hardship of proceeding individually, is satisfied in this case. *See Paley*, 389 Mich at 595 (“[The class action] is a kind of better slingshot for the modern David to tackle Goliath with.”) (citations omitted).

e. *Relative Expenses and Recovery*

The fifth criterion in the superiority inquiry is “whether it is probable that the amount which may be recovered by individual class members will be large enough in relation to the expense and effort of administering the action to justify a class action.” MCR 3.501(A)(2)(e). No Michigan case

was found interpreting or applying this standard, and there is no equivalent consideration in the federal class action rule. However, one commentator has described the purpose of this criterion:

Under this test, the court wants to make sure that the individual members of the class will end up with a sufficient “amount” of financial or equitable benefit to justify the expense and administrative efforts required to achieve the recovery. \* \* \* [I]t is apparent that public policy requires that courts look at factors other than absolute dollar “amount which may be recovered by individual class members.” MCR 3.501(A)(2)(e). As suggested by [*City of Detroit v Detroit United Ry*, 226 Mich 354, 197 NW 697 (1924)], the court should act so as to avoid a denial of justice.

Parker, *The History, Law, and Future of State Class Actions in Michigan*, at 159-60.

In the present action, there are almost 5,000 class members, each alleging substantial nuisance damages resulting from Defendant’s operations of the Rouge Steel facility. As explained in the named Plaintiffs’ affidavits, the residents suffer constant, daily interference and annoyance from the pollution problem in the neighborhood.<sup>58</sup> Thus, the amount of each individual’s damages would be large enough collectively to justify the class action on damages alone. When you add in the present value of injunctive relief to abate the problem, plus the future value of such injunctive relief to the neighborhood (in terms of many years of reduced cleaning supplies and labor, increased enjoyment of their property, increased property value, and long-term health benefits), the combined “amount” that the class members may collectively recover from this action more than outweighs the expense and effort of administering this action.

f. *Individual Interest in Controlling Separate Actions*

The sixth and final criterion in the superiority inquiry is “whether members of the class have a significant interest in controlling the prosecution or defense of separate actions.” MCR 3.501(A)(2)(f). Interpretation of the federal class action rule, which includes an identical criterion, explains that this inquiry requires the court to “weigh the advantages of determining the common issues by means of a class action against the individual members’ interest in separate adjudications of their rights.” WRIGHT, MILLER & KANE, FEDERAL PRACTICE AND PROCEDURE § 1780; *see* Fed. R. Civ. P. 23(b)(3)(A). Under this test, federal courts have considered the proposed class members’

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<sup>58</sup> Affidavits of named Plaintiffs (Ex 8A to 8-G).

ability and desire to pursue their own claims based on their resources and interests. *See, e.g., In re Stucco Litigation*, 1745 FRD 210 (DC NC 1997); *Commander Properties Corp v Beech Aircraft Corp*, 164 FRD 529 (DC Kan 1995).

The fundamental issues in this case (causation, impact, remedy) are common to any nuisance or MEPA claim against Severstal, whether they are pursued in a class action or individually. For the reasons described above, there are significant advantages to proceeding with a class action to determine these issues. If there are significant individual differences with respect to the amount of actual damages, and assuming no formula or sub-classing can be established to address those concerns on a class-wide basis, the Court may consider individual damages separately. Alternatively, the opt-out mechanism is available to protect such individual's interests. *See Klamberg v Roth*, 473 F Supp 544 (DC NY 1979).

This case meets each of the criteria for determining the superiority of proceeding as a class action, as well as the numerosity, commonality, typicality, and adequacy prerequisites to class certification. Therefore, this case should be certified as a class action.

### **C. NOTICE TO CLASS MEMBERS**

Michigan Court Rule 3.501(C) requires Plaintiffs to include with this motion a proposal regarding notice covering this class action. MCR 3.501(C)(2). The Court Rule requires individual written notice and/or notice provided through some method reasonably calculated to reach the class members such as by publication, broadcast, posting, or distribution through an association. *Id.*

Plaintiffs' representatives have experience with providing notice to the class members in this lawsuit, as well as in the prior class action lawsuit involving a neighborhood noise concern. Plaintiffs' counsel, together with some of the named Plaintiffs, organized a community meeting held on March 3, 2005. The meeting was held at auditorium of the Salina Intermediate School, which is a central meeting place accessible to the community. The purpose of the meeting was to provide information to the community about the pending lawsuit and its goals. The meeting was attended by many community members, and one of the named Plaintiffs (Mahmoud Ijbara) translated the

discussions between Arabic and English. The meeting was announced in the local newspaper (the ARAB AMERICAN NEWS),<sup>59</sup> and was posted at both the elementary and intermediate schools. In addition, notice of the meeting was distributed directly to community members by sending home with all students at both schools copies of the notice (in both English and Arabic).<sup>60</sup>

Further, CALLIGARO & MEYERING, P.C. represented the community in a prior noise class action lawsuit, and they were successful in providing reasonable notice to the community members through publication in local newspapers (DETROIT FREE PRESS, THE DETROIT NEWS, and the ARAB AMERICAN NEWS), and by posting information sheets in various community meeting areas, including the Yemeni Cultural Center and the meeting place of the Concerned Residents of South Dearborn.

Plaintiffs propose to provide notice of the pendency of this class action lawsuit by continuing to hold town meetings in the community; by immediate publication in the local newspapers that circulate through the region; by posting in public locations; through a citizens group called the Concerned Residents of South Dearborn; through an internet site ([www.envlaw.com/dearborn.html](http://www.envlaw.com/dearborn.html)); by first-class mail and/or hand delivery to each address in the class; and/or by other methods to be decided by the Court. The contents of the notice will meet the requirements of the Court Rule, and the notices will be in both English and Arabic, as they have been since this case started. These methods will actually notify the class members of this class action.

## CONCLUSION

For the reasons described above, Plaintiffs respectfully request that the Court enter the attached Order certifying this case as a class action.

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<sup>59</sup> Notices announcing the community meeting published in the Arab American News in both English and Arabic (Ex 5-B, 5-C).

<sup>60</sup> Notice announcing the community meeting sent home with children at the Salina schools (Ex 5-A).

**INDEX OF EXHIBITS  
IN SUPPORT OF  
PLAINTIFFS' MOTION FOR CLASS CERTIFICATION**

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<b>Ex #</b>	<b>DESCRIPTION</b>
1	Street map identifying South Dearborn Neighborhood.
2	United States Census Bureau, 2000 Census Maps and Data Sets for Blocks 2, 3, and 4, Census Tract 5735, Wayne County, Michigan
3	Related articles: <ul style="list-style-type: none"><li>A Patrick Belton, <i>In the Way of the Prophet: Ideologies and Institutions in Dearborn, Michigan, America's Muslim Capitol</i>, THE NEXT AMERICAN CITY (Oct. 2003).</li><li>B THE DETROIT NEWS, <i>Metro Latinos, Arabs join forces to fight dirty air</i> (Nov. 22, 2004).</li><li>C THE DETROIT NEWS, <i>Steel mill soot galvanizes S. Dearborn community</i> (Feb. 6, 2005).</li></ul>
4	Lake Michigan Air Directors Consortium (LADCO), PM2.5 IN URBAN AREAS IN THE UPPER MIDWEST (Feb. 12, 2004) (excerpt: sections 1 and 2 only; full report available at: <a href="http://www.ladco.org/reports/ladco/PM25doc-urban1.pdf">http://www.ladco.org/reports/ladco/PM25doc-urban1.pdf</a> , last viewed April 12, 2005).
5	Notices to Residents of the South Dearborn neighborhood regarding the pending lawsuit and March 3, 2005 community meeting: <ul style="list-style-type: none"><li>A Notice sent home with children at Salina Schools</li><li>B Notice published in the ARAB AMERICAN NEWS newspaper (English)</li><li>C Notice published in the ARAB AMERICAN NEWS newspaper (Arabic)</li></ul>
6	Michigan Department of Environmental Quality (MDEQ), MICHIGAN'S 2003 ANNUAL AIR QUALITY REPORT (Oct. 2004) (Chapter 2.5 only; full report available at: <a href="http://www.michigan.gov/deq/0,1607,7-135-3310_4104_4195-79055--,00.html">http://www.michigan.gov/deq/0,1607,7-135-3310_4104_4195-79055--,00.html</a> , last viewed April 14, 2005).
7	United States Environmental Protection Agency (EPA), THE PARTICLE POLLUTION REPORT, CURRENT UNDERSTANDING OF AIR QUALITY AND EMISSIONS THROUGH 2003 (Dec. 2004).
8	Affidavits of named Plaintiffs: <ul style="list-style-type: none"><li>A Mohammed Ahmed</li><li>B Hadeer Ahmed</li></ul>

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<b>Ex #</b>	<b>DESCRIPTION</b>
	C      Norieah Ahmed
	D      Samira Alasbahi
	E      William Ali
	F      Mahmoud Ijbara
	G      Ibtisam Ijbara
9	Affidavit of Christopher M. Bzdok
10	Affidavit of Lawrence Hands
	A <i>Curriculum Vitae</i>
	B      Dearborn Monitor - High PM 2.5 (>39) sector contribution, 2003-04 data
	C      Fig. 5, Severstal Steel - PM-2.5 dose when Dearborn hourly PM2.5>39ug/m3
	D      Dearborn Monitor - High pm 2.5 (>39) corrected for wind frequency, 2003-04 data
	E      Fig. 6, Severstal Steel - PM-2.5 dose when Dearborn hourly PM2.5>39ug/m3, Corrected for Wind Frequency
	F      PM2.5 differential >4
	G      Fig. 7, Severstal Steel - PM-2.5 dose contribution when Dearborn-Allen Park PM2.5>7ug/m3
	H      Model Input
	I      Fig. 1, Severstal Steel - Modeled PM-10 Concentrations Maximum 24-hr Average
	J      Fig. 2, Severstal Steel - Modeled PM-10 Concentrations Maximum Annual Average

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<b>Ex #</b>	<b>DESCRIPTION</b>
	K Fig. 3, Severstal Steel - Modeled PM-10 Concentrations Maximum 24-hr Average
	L Fig. 4, Severstal Steel - Modeled PM-10 Concentrations Maximum Annual Average
11	Dr. Philip K. Hopke
	A Expert Report: <i>Local Sources of Fine Particulate Matter in Dearborn, MI</i>
	B <i>Curriculum Vitae</i> of Philip K. Hopke
12	Coutant, <i>et al</i> , <i>Compilation of Existing Studies on Source Apportionment for PM<sub>2.5</sub></i> (prepared for EPA) (Aug. 22, 2003 – Second Draft Technical Report) (excerpt; full report available at: <a href="http://www.epa.gov/air/oaqps/pm25/docs/compsareports.pdf">http://www.epa.gov/air/oaqps/pm25/docs/compsareports.pdf</a> , last visited April 14, 2005).
13	Affidavit of Jeffrey Sauger with photographs:
	A Rouge Steel facility, 3001 Miller St., Dearborn, MI
	B MDEQ Air Monitor at Salina Schools, Dearborn, MI
	C Salina Elementary School with Rouge Steel facility and South Dearborn Neighborhood
	D Salina Elementary School with students
	E Salina Elementary School with students
	F Salina Elementary School and Rouge Steel
	G Salina Schools - view of Rouge Steel facility from inside classroom
	H School Bus - Rouge Steel facility in the background
	I South Dearborn neighborhood and Rouge Steel facility
	J Plaintiff Mahmoud Ijbara, cleaning soot from his garage door
	K Soot on top of trash receptacle at home of Plaintiff Mahmoud Ijbara

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<b>Ex #</b>	<b>DESCRIPTION</b>
14	<i>Smith v Crystian</i> , 91 Fed Appx 952, 2004 WL 507572 (5th Cir Mar. 16, 2004) (unpublished opinion).