STATE OF NORTH CAROLINA

COUNTY OF BLADEN

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
17 CVS 580

STATE OF NORTH CAROLINA, *ex rel.*, MICHAEL S. REGAN, SECRETARY, NORTH CAROLINA DEPARTMENT OF ENVIRONMENTAL QUALITY, Plaintiff, v. THE CHEMOURS COMPANY FC, LLC, Defendant.	)	**COMPLAINT, MOTION FOR TEMPORARY RESTRAINING ORDER, AND MOTION FOR PRELIMINARY INJUNCTIVE RELIEF**

The State of North Carolina, complaining of the Defendant, alleges and says:

PARTIES

1. Plaintiff is the sovereign State of North Carolina. This action is being brought on the relation of Michael S. Regan, Secretary of the North Carolina Department of Environmental Quality ("DEQ"), the State agency established pursuant to N.C. Gen. Stat. § 143B-279.1 *et seq.*, and vested with the statutory authority to enforce the State's environmental protection laws, including laws enacted to protect the water quality of the State. The Division of Water Resources ("DWR") is a division within DEQ and all actions taken by DWR are necessarily actions of the Plaintiff.

2. Defendant The Chemours Company FC, LLC ("Chemours"), is a Delaware limited liability company registered and doing business in North Carolina. Defendant owns and operates a facility known as the Fayetteville Works ("Facility") located at 22828 NC Highway 87 W,

Fayetteville, Bladen County, North Carolina, which is the subject of this action.

JURISDICTION

3. The Superior Court has jurisdiction over this action for injunctive relief for existing or threatened violations of various laws and rules governing the protection of water quality pursuant to N.C. Gen. Stat. § 143-215.6C. Furthermore, jurisdiction for injunctive relief sought to compel enforcement of a statute or regulation rests in the Superior Court pursuant to N.C. Gen. Stat. § 7A-245(a)(2) and N.C. Gen. Stat. § 1-493.

VENUE

4. Bladen County, North Carolina is a proper venue for this action because a significant portion of the violations or threatened violations that are the subject of this action for injunctive relief have occurred, are occurring, and may continue to occur at Chemours' Fayetteville Works facility in Bladen County. N.C. Gen. Stat. § 143-215.6C.

NATURE OF THE ACTION

5. This Action is commenced by the State of North Carolina for the purpose of seeking injunctive relief to enforce its water quality laws. Chemours has contaminated North Carolina's public water resources, including surface waters and groundwater. First, for decades Chemours has been discharging into the Cape Fear River a chemical known as "GenX" and related compounds, which EPA and various health studies have recognized may present an unreasonable risk of injury to human health and the environment. Despite its knowledge of these risks, Chemours failed to disclose and even made statements that misled DEQ as to the presence of GenX and related compounds in its process wastewater. Second, Chemours' chemical manufacturing operation has caused widespread and significant groundwater contamination, with levels of GenX

that exceed by orders of magnitude the regulatory limit set forth in North Carolina's groundwater rules and the health goal set by the North Carolina Department of Health and Human Services. The State is entitled to injunctive relief.

LEGAL BACKGROUND

The Clean Water Act and North Carolina's NPDES Program

6. The Federal Clean Water Act prohibits any person from discharging pollutants into surface waters without first obtaining an appropriate permit. 33 U.S.C. § 1311. All persons are therefore required to obtain a National Pollution Discharge Elimination System ("NDPES") permit prior to the discharge of pollutants into surface waters through a point source. 33 U.S.C. § 1342.

7. Like other federal environmental programs, the Clean Water Act was designed to incorporate principles of cooperative federalism, authorizing individual states to assume responsibility for implementation of an NPDES Program upon statutory authorization and application to the United States Environmental Protection Agency ("EPA"). 33 U.S.C. § 1342(b).

8. EPA approved North Carolina's NPDES program in 1975. North Carolina's NPDES program is carried out in part pursuant to a Memorandum of Agreement between the State and EPA. *See National Pollution Discharge Elimination System Memorandum of Agreement Between the State of NC and the US EPA Region 4* (October 15, 2007) ("MOA"), *available at* https://www.epa.gov/sites/production/files/2013-09/documents/nc-moa-npdes.pdf.

9. As recognized in the MOA, North Carolina has authority to take action to enforce violations of 33 U.S.C. § 1311 of the Clean Water Act, which prohibits the unpermitted discharge of pollutants into surface waters. MOA § VI.A.2.a; N.C. Gen. Stat. § 143-215.1.

10. North Carolina's statutes implementing the NPDES program are set forth in Article

21 of Chapter 143 of the North Carolina General Statutes.

11. North Carolina's water quality statutes and the rules adopted under them are designed to further the public policy of the State, as stated in N.C. Gen. Stat. § 143-211, "to provide for the conservation of its water and air resources . . . [and], within the context of this Article [21] and Articles 21A and 21B of this Chapter [143], to achieve and to maintain for the citizens of the State a total environment of superior quality."

12. North Carolina's primary statute for implementing its NPDES permitting program is N.C. Gen. Stat. § 143-215.1, which requires a permit from the Environmental Management Commission ("EMC") before any person can "make any outlet into waters of the state," or

> [c]ause or permit any waste, directly or indirectly, to be discharged to or in any manner intermixed with the waters of the State in violation of the water quality standards applicable to the assigned classifications or in violation of any effluent standards or limitations established for any point source, unless allowed as a condition of any permit . . . .

13. The EMC has the power to issue permits with such conditions as the EMC believes are necessary to achieve the purposes of Article 21 of Chapter 143 of the General Statutes, including NPDES permits. N.C. Gen. Stat. § 143-215.1(b). The EMC also has the power "[t]o make rules implementing Articles 21" including standards and procedures to implement North Carolina's NPDES program. N.C. Gen. Stat. § 143B-282 *et seq.*

14. The EMC has adopted rules that delegate the authority to issue NPDES permits to DWR.

15. The regulations implementing the State's NPDES permitting process are set forth in subchapter 2H of Title 15A of the North Carolina Administrative Code. Under these rules, the permit applicant has "the burden of providing sufficient evidence to reasonably ensure that the

proposed system will comply with all applicable water quality standards." 15A N.C.A.C. 2H .0112(c). These rules further provide "no permit may be issued when the imposition of conditions cannot reasonably ensure compliance with applicable water quality standards." *Id.*

16. Part of the permit applicant's burden in this regard is to disclose all relevant information, such as the presence of known constituents in a discharge that pose a potential risk to human health. The permit applicant is required to disclose "all known toxic components that can be reasonably expected to be in the discharge, including *but not limited to* those contained in a priority pollutant analysis." 15A N.C.A.C. 2H .0105(j) (emphasis added).

17. While the North Carolina Administrative Code does not contain a definition of "toxic component," North Carolina water quality regulations define "toxic substance" to include:

> any substance or combination of substances (including disease-causing agents), which after discharge and upon exposure, ingestion, inhalation, or assimilation into any organism, either directly from the environment or indirectly by ingestion through food chains, has the potential to cause death, disease, behavioral abnormalities, cancer, genetic mutations, physiological malfunctions (including malfunctions or suppression in reproduction or growth) or physical deformities in such organisms or their offspring.

15A N.C.A.C. 2B .0202(64).

18. These disclosure obligations do not cease upon issuance of a permit. Rather, they are ongoing. Pursuant to NPDES Standard Permit Condition II.E.8, "Where the Permittee becomes aware that it failed to submit any relevant facts in a permit application . . . or in any report to the Director, it shall promptly submit such facts or information." *See* NPDES Standard Permit Conditions, attached hereto and incorporated herein as Exhibit A; *see also* 40 C.F.R. 122.41(1)(8).

19. These disclosure obligations are critical, in part, because they define the scope of the Clean Water Act's "permit shield." While compliance with the express terms of an NPDES permit generally "shields" the permittee from liability for violations of 33 U.S.C. § 1311, the

permit does not shield the permittee from liability where the pollutant being discharged was not within the "reasonable contemplation" of the permitting agency when it issued the permit due to nondisclosure by the permittee. 33 U.S.C. § 1342(k); *see also Piney Run Pres. Ass'n v. Cty. Comm'rs of Carroll Cty., MD*, 268 F.3d 255, 265 (4th Cir. 2001). Indeed, EPA's guidance regarding the permit shield provides that a permit only "provides authorization and therefore a shield for . . . pollutants resulting from facility processes, waste streams and operations that have been *clearly identified* in the permit application process when discharged from specified outfalls." *EPA, Revised Policy Statement on Scope of Discharge Authorization and Shield Associated with NPDES Permits*, available at https://www3.epa.gov/npdes/pubs/owm0131.pdf (emphasis added).

20. The importance and accuracy of disclosures to the agency is underscored by the signatory requirements set forth in NPDES Permit Standard Conditions and 40 CFR 122.22, which require all "applications, reports or information submitted to [DEQ]" to be signed by a responsible official and accompanied by the following certification:

> I certify, under penalty of law, that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, *true, accurate and complete*. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations.

See Exhibit A § II.B.11.d (emphasis added).

21. The NPDES Standard Permit Conditions also impose a duty on permittees to take "all reasonable steps to minimize or prevent any discharge . . . in violation of this permit with a reasonable likelihood of adversely affecting human health or the environment." Exhibit A § II.B.2.

Surface Water Classifications and Standards

22. North Carolina's water quality program takes a three-pronged approach to protecting North Carolina's surface waters. First, it establishes surface water classifications based on the "best uses" of surface waters. *See* 15A N.C.A.C. 2B .0101; N.C. Gen. § 143-214.1(b). Second, it establishes water quality standards for each classification in Subchapter 2B of Title 15A of the North Carolina Administrative Code ("2B Rules") to protect the assigned uses of each classification. *See, e.g.*, 15A N.C.A.C. 2B .0216(1), 15A N.C.A.C. 2B .0211. And third, it assigns these classifications to individual segments of surface waters throughout the State. *See* 15A N.C.A.C. 2B .0201.

23. The relevant segment of the Cape Fear River into which the Facility's discharge flows is classified as "Class WS-IV." The best usage of WS-IV waters is defined as "a source of water supply for drinking, culinary, or food-processing purposes . . . and any other best usage specified for Class C waters." 15A N.C.A.C. 2B .0216(1). Best usage for Class C waters includes "aquatic life propagation and maintenance of biological integrity (including fishing and fish), wildlife, secondary recreation, [and] agriculture." 15A N.C.A.C. 2B .0211(1). "Sources of water pollution that preclude any of these uses on either a short term or long term basis shall be considered to be violating a water quality standard." 15A N.C.A.C. 2B .0211(2), 2B .0216(2).

24. Class C and WS-IV Waters are also subject to "Water Quality Standards for Toxic Substances." 15A N.C.A.C. 2B .0208. Pursuant to 15A N.C.A.C. 2B .0208, "the concentration of toxic substances, either alone or in combination with other wastes, in surface waters shall not render waters injurious to aquatic life or wildlife, recreational activities, public health, or impair the waters for any designated uses." Specifically, "the concentration of toxic substances shall not

exceed the level necessary to protect human health through exposure routes of fish tissue consumption, water consumption, or other route identified as appropriate for the water body." 15A N.C.A.C. 2B .0208(a)(2).

North Carolina's Groundwater Standards

25. In addition to regulating surface waters, the EMC has promulgated rules in 15A N.C.A.C. Subchapter 2L (the "2L Rules") that "establish a series of classifications and water quality standards applicable to the groundwaters of the State." 15A N.C.A.C. 2L .0101(a). "Groundwaters" are defined in the 2L Rules as "those waters occurring in the subsurface under saturated conditions." 15A N.C.A.C. 2L .0102(11).

26. The 2L Rules "are applicable to all activities or actions, intentional or accidental, which contribute to the degradation of groundwater quality, regardless of any permit issued by a governmental agency authorizing such action or activity," except in certain situations not applicable here. 15A N.C.A.C. 2L .0101(b).

27. The 2L Rules "are intended to maintain and preserve the quality of the groundwaters, prevent and abate pollution and contamination of the waters of the state, protect public health, and permit management of the groundwaters for their best usage by the citizens of North Carolina." 15A N.C.A.C. 2L .0103(a). The policy section of the 2L Rules provides further that

> [i]t is the policy of the Commission that the best usage of the groundwaters of the state is as a source of drinking water. These groundwaters generally are a potable source of drinking water without the necessity of significant treatment. It is the intent of these Rules to protect the overall high quality of North Carolina's groundwaters to the level established by the standards and to enhance and restore the quality of degraded groundwaters where feasible and necessary to protect human health and the environment, or to ensure their suitability as a future source of drinking water.

15A N.C.A.C. 2L .0103(a).

28. The policy section of the 2L Rules provides further that "[n]o person shall conduct or cause to be conducted, any activity which causes the concentration of any substance to exceed that specified in Rule .0202 of this Subchapter, except as authorized by the rules of this Subchapter." 15A N.C.A.C. 2L .0103(d).

29. "Contaminant" is defined in the 2L Rules as "any substance occurring in groundwater in concentrations which exceed the groundwater quality standards specified in Rule .0202 of the Subchapter." 15A N.C.A.C. 2L .0102(4).

30. "Natural conditions" are defined in the 2L Rules as "the physical, biological, chemical and radiological conditions which occur naturally." 15A N.C.A.C. 2L .0102(16).

31. The groundwater standards set forth in the 2L Rules are "the maximum allowable concentrations resulting from any discharge of contaminants to the land or waters of the state, which may be tolerated without creating a threat to human health or which would otherwise render the groundwater unsuitable for its intended best usage." 15A N.C.A.C. 2L .0202(a).

32. With certain exceptions not relevant here, "substances which are not naturally occurring and for which no standard is specified shall not be permitted in concentrations at or above the practical quantitation limit" in groundwaters. 15A N.C.A.C. 2L .0202(c).

33. The "practical quantitation limit" or "PQL" is defined as "the lowest concentration of a given material that can be reliably achieved among laboratories within specified limits of precision and accuracy by a given analytical method during routine laboratory analysis." 15A N.C.A.C. 2L .0102(15).

34. "Any person conducting or controlling an activity that results in the discharge of a

waste or hazardous substance or oil to the groundwaters of the State, or in proximity thereto, shall take action upon discovery to terminate and control the discharge, mitigate any hazards resulting from exposure to the pollutants and notify the Department." 15A N.C.A.C. 2L .0106(b).

35. Pursuant to the 2L Rules, "[i]nitial response required to be conducted prior to or concurrent with the assessment required" as set forth above "shall include" among other things,

> (2) abatement, containment, or control of the migration of contaminants; (3) removal, treatment, or control of any primary pollution source such as buried waste, waste stockpiles, or surficial accumulations of free products; (4) removal, treatment, or control of secondary pollution sources that would be potential continuing sources of pollutants to the groundwaters, such as contaminated soils and non-aqueous phase liquids.

15A N.C.A.C. 2L .0106(f).

Standard for Injunctive Relief Under N.C. Gen. Stat. § 143-215.6C

36. Whenever DEQ has reasonable cause to believe that any person has violated or is threatening to violate any of the provisions of the State's water quality laws or administrative rules, DEQ is authorized to "request the Attorney General to institute a civil action in the name of the State upon the relation of [DEQ] for injunctive relief to restrain the violation or threatened violation." N.C. Gen. Stat. § 143-215.6C. That section further provides that "[u]pon a determination by the court that the alleged violation of the provisions of this Part or the regulations of the Commission has occurred or is threatened, the court shall grant the relief necessary to prevent or abate the violation or threatened violation." N.C. Gen. Stat. § 143-215.6C.

37. When the State brings an action to vindicate the public interest pursuant to a statute which provides for injunctive relief to abate violations of law, the usual test for issuance of injunctions need not be met. *See State ex rel. Morgan v. Dare To Be Great, Inc.*, 15 N.C. App. 275, 189 S.E.2d 802 (1972) (negating the general rule that there will be no equitable relief if there

is an adequate remedy at law when the statutory scheme provided the State with injunctive relief under the circumstances presented). For example, the State is not required to show actual injury, such as irreparable harm, in order to obtain injunctive relief, including a preliminary injunction. *State ex rel. Edmisten v. Challenge, Inc.*, 54 N.C. App. 513, 521-22, 284 S.E.2d 333, 338-39 (1981) (explaining that irreparable harm need not be established by the State as long as the statutory conditions for issuance of a preliminary injunction exist). Rather, it must show only that the acts or practices complained of adversely affect the public interest. *See id.* An adverse effect on the public interest exists as a matter of law where the statutory conditions for issuance of injunctive relief are present, i.e., where a violation of the applicable statute or regulations exists or is threatened. *Id.* at 522, 284 S.E.2d at 339.

FACTUAL ALLEGATIONS

The Fayetteville Works Facility

38. The Chemours Company - Fayetteville Works, formerly known as the Dupont Company - Fayetteville Works, (the "Facility") is a chemical manufacturing facility with manufacturing areas operated by three separate companies, including Chemours.

39. Upon information and belief, E. I. DuPont de Nemours & Company, Inc. ("DuPont"), began its Nafion® manufacturing process at the Facility in the 1970s. Since that time, the Facility's business has expanded to include other chemical manufacturing processes.

40. The Facility discharges wastewater pursuant to National Pollutant Discharge Elimination System Permit No. NC003573 ("NPDES Permit"), the most recent version of which was issued by DWR on October 28, 2015. The NPDES Permit is attached hereto and incorporated herein as Exhibit B.

41. Upon information and belief, Chemours took ownership of the Facility and the NPDES Permit in 2015.

42. Upon information and belief, the Chemours Fluoromonomers/Nafion® Membrane Manufacturing Area produces, among other products, Chemours Nafion® Membrane and Polymer Dispersions, HFPO monomers and vinyl ether monomers. *See* NPDES Permit Application dated April 27, 2016, Supplemental Information at 3, attached hereto and incorporated herein as Exhibit C; *see also* Facility Map, attached hereto and incorporated herein as Exhibit D.

43. Upon information and belief, the Chemours Polymer Processing Aid ("PPA") Manufacturing Area produces a polymer processing aid, also referred to as "GenX." Exhibit C, Supplemental Information, at 3.

44. Upon information and belief, GenX falls within a family of chemicals known as per- and polyfluoroalkyl substances or "PFASs," which are commonly used in the manufacture of nonstick coatings and for other purposes.

45. The Facility also houses areas rented by Kuraray America Inc. for the manufacture of Butacite® and SentryGlas®. Another area is rented by DuPont—upon information and belief, Chemours' predecessor—for the manufacture of Polyvinyl Fluoride ("PVF").

46. The NPDES Permit authorizes discharge of wastewater and stormwater from the Facility through Outfalls 001 and 002. Outfall 001 is an internal outfall from the Facility's wastewater treatment plant. Outfall 002 discharges Chemours' treated wastewater into the Cape Fear River. *See* Exhibit C, at 5 (figure titled "Chemours Company – Fayetteville Works/Locations of Intake and Discharge Structures").

47. The segment of the Cape Fear River into which the Facility's wastewater is

discharged is upstream of various drinking water intakes and is classified as a WS-IV water.

48. The surface water into which the Facility's wastewater is discharged is used as a public water source that serves residents and businesses in several counties.

49. Upon information and belief, the Facility began producing GenX commercially in 2009.

50. Upon information and belief, wastewater from the GenX production process occurring in the PPA Manufacturing Area has been collected and shipped offsite for disposal since that time.

51. Upon information and belief, GenX and related compounds have also been generated as byproducts during other manufacturing processes occurring at the Facility.

52. Upon information and belief, GenX and related compounds generated as byproducts have been discharged by the Facility into the Cape Fear River since the early 1980s.

53. Upon information and belief, the onsite wastewater treatment plant at the Facility is ineffective at removing GenX and related compounds from the process wastewater that is ultimately discharged into the Cape Fear River through Outfall 002.

54. Upon information and belief, public water treatment plants such as the Sweeney Plant operated by the Cape Fear Public Utility Authority in Wilmington, are ineffective at removing GenX and related compounds from the water taken from the Cape Fear River.

55. Upon information and belief, GenX and related compounds discharged by the Facility have been and are present in public drinking water supplied to residents and businesses in several counties.

56. Upon information and belief, Chemours and DuPont have known for years that

GenX and related compounds were being generated as byproducts and discharged into surface waters of the State.

57. On August 31, 2017, EPA submitted a report to DEQ indicating that additional PFASs had been identified in the Cape Fear River and at Outfall 002, including to two perfluorethersulfonic acids ("PFESAs"). EPA's August 31, 2017 report is attached hereto and incorporated herein as Exhibit E.

58. In its report, EPA identified these compounds as "PFESA Byproduct 1" and "PFESA Byproduct 2" and stated that these compounds were likely byproducts from Chemours' Nafion® manufacturing process. Exhibit E, at 2.

59. Upon information and belief, Chemours continues to knowingly discharge wastewater containing various PFASs, including the PFESAs identified in EPA's report.

DEQ's Investigation of GenX Contamination in the Cape Fear River

60. In recent months, DEQ, in consultation with the North Carolina Department of Health and Human Services ("DHHS"), has led a state investigation into the presence of GenX and related compounds in the Cape Fear River.

61. DHHS set a health goal for exposure to GenX in drinking water of 140 nanograms per liter ("ng/L") (also referred to as parts per trillion or "ppt"). *See* DHHS Risk Assessment for GenX attached hereto and incorporated herein as Exhibit F.

62. On June 19, 2017, DEQ began collecting water samples from twelve sites along the Cape Fear River.

63. Samples collected at various locations along the Cape Fear River in June of 2017 showed that concentrations of GenX were present in the Cape Fear River at levels that were well

above the DHHS health goal of 140 ppt.

64. Upon information and belief, after discussions with DWR, on or around June 21, 2017, Chemours ceased discharging the wastewater containing GenX from the vinyl ether monomer production process and began collecting that wastewater and shipping it off-site for disposal.

65. Upon information and belief, since that time, concentrations of GenX in the Cape Fear River have steadily declined.

Chemours' Nondisclosure and Misrepresentations Relating to Its Discharge of GenX and Related Compounds Into the Cape Fear River

66. Upon information and belief, DuPont and Chemours failed to timely disclose to DWR the discharge of GenX and related compounds into the Cape Fear River.

67. In particular, none of the Dupont or Chemours NPDES permit applications referenced "GenX" or any chemical name, formula, or CAS number that would identify any GenX or related compounds in the Facility's discharge.

68. In fact, information provided by DuPont and Chemours led DWR staff to reasonably believe that GenX was not being discharged into the Cape Fear.

69. On August 26, 2010, representatives of DuPont, including environmental manager Michael Johnson, met with DEQ staff regarding DuPont's anticipated use of GenX technology at the Fayetteville Works as a replacement for the compound perfluorooctanoic acid ("PFOA"), also known as "C8."

70. The information DuPont provided indicated that the GenX compounds would be produced in a closed-loop system that would not result in the discharge of those compounds into the Cape Fear River.

71. Upon information and belief, DuPont and Chemours did not notify DWR of an actual discharge of GenX or related compounds at this meeting or in any information subsequently provided to DWR prior to 2017.

72. While DuPont no longer produces C8 or PFOA, its manufacturing history is telling.

73. On May 3, 2001, DuPont submitted an NPDES renewal application to DWR stating that it intended to begin manufacturing PFOA. The 2001 Application and the 2004 Fact Sheet for NPDES Permit Development are attached hereto and incorporated herein as Exhibits G and H.

74. During the application process, DuPont represented to DWR that:

a. PFOA does not pose a health concern to humans or animals at levels present in the workplace or environment;

b. DuPont had used PFOA for forty years with no observed health effects on workers;

c. PFOA is neither a known developmental toxin nor a known carcinogen. Exhibit G, at 4 (page titled "Potential Facility Changes"); Exhibit H, at 4.

75. Upon information and belief, EPA launched a "PFOA Stewardship Program" in January 2006 because of concerns about the impact of PFOA and long-chain PFASs on human health and the environment, including concerns about their persistence, presence in the environment and in the blood of the general U.S. population, long half-life in people, and developmental and other adverse effects in laboratory animals.

76. In 2006, DuPont began to phase out its use of PFOA as part of the PFOA Stewardship Program, aiming to completely eliminate the use and production of PFOA.

77. Upon information and belief, in 2008 DuPont submitted to EPA notices of its intent

to manufacture GenX pursuant to the Toxic Substances Control Act ("TSCA").

78. On January 28, 2009, EPA and DuPont entered into a Consent Order governing the manufacture of GenX. A publicly-available redacted version of the Consent Order is attached hereto and incorporated herein as Exhibit I.

79. The Consent Order provides that "EPA has concerns that [GenX] will persist in the environment, could bioaccumulate, and be toxic . . . to people, wild animals, and birds." Exhibit I, at vii.

80. The Consent Order also stated that EPA had "human health concerns" regarding GenX. Exhibit I, at vii. The Consent Order recognized that "uncontrolled . . . disposal of [GenX] may present an unreasonable risk of injury to human health and the environment." Exhibit I, at xv.

81. The Consent Order required DuPont to "recover and capture (destroy) or recycle [GenX] at an overall efficiency of 99% from all the effluent process streams and the air emissions (point source and fugitive)." Exhibit I, at 36.

82. At DuPont's 2010 meeting with DEQ regarding its transition from PFOA to GenX, DuPont explained that GenX would be produced in a closed-loop system that would not result in the discharge of GenX into the Cape Fear River.

83. DuPont represented that the wastewater generated from the manufacture of GenX would be collected and shipped off-site for disposal and therefore this wastewater would not be discharged into the Facility's wastewater treatment plant or into the Cape Fear River.

84. At no time during this meeting did DuPont notify DWR of an actual discharge of GenX or related compounds into the Cape Fear River.

85. On April 29, 2011, DuPont submitted an NDPES permit renewal application, which is attached hereto and incorporated herein as Exhibit J, confirming that "all process wastewater generated from [the PPA Manufacturing Area] is collected and shipped offsite for disposal" and "no process wastewater from this manufacturing facility is discharged to the site's biological [waste water treatment plant] or to the Cape Fear River." The application made no mention of GenX or related compounds being discharged into the Cape Fear River.

86. On February 6, 2012, DWR issued a renewal permit with an effective date of March 1, 2012 ("2012 Permit"). The 2012 Permit is attached hereto and incorporated herein as Exhibit K. The 2012 Permit makes no mention of GenX as part of the authorized discharge from the Facility.

87. On or around November 10, 2016, the EPA and Dr. Detlef Knappe, professor of Civil, Construction and Environmental Engineering at N.C State University, published a study that identified the presence of GenX and other PFASs in the Cape Fear River. This publication is attached hereto and incorporated herein as Exhibit L. The study indicated that levels of GenX in one sample area in the Cape Fear River were as high as approximately 4500 ng/L, Exhibit L, at 3, which is more than thirty times higher than the health goal set by DHHS.

88. On June 12, 2017, after substantial media coverage regarding the presence of GenX in the Cape Fear River, Chemours informed DEQ in a meeting that for several decades, GenX and other PFASs had been produced as byproducts at the Facility and routinely discharged into the Cape Fear River.

89. In late August, 2017, Chemours provided to DEQ—and only after DEQ's request—internal health studies on GenX compounds that had been conducted previously by DuPont or

Chemours.

90. DuPont and Chemours' ongoing misrepresentations and inadequate disclosures shielded important information from DEQ and the public, and they deterred DEQ staff from inquiring further into the nature of GenX discharges and other related activities at the Facility.

91. Had the appropriate disclosures been made, they would have justified the application of one or more different permit conditions at the time the Permit was issued, such as monitoring and reporting requirements, appropriate health-based water quality standards, effluent limits, or evaluation of alternatives to discharging GenX and other chemicals in the process wastewater at the Facility.

92. In August of 2017 EPA reported to DEQ that additional undisclosed byproducts of concern were detected in samples collected at Outfall 002, including PFESA Byproduct 1 and PFESA Byproduct 2. *See* Ex. E, at 2. Upon information and belief, these compounds are a byproduct of Chemours' Nafion® manufacturing process.

93. By letter dated August 29, 2017, attached hereto and incorporated herein as Exhibit M, DWR requested that Chemours "immediately explore any and all options to reduce or eliminate the release of these chemicals into the Cape Fear River until the State of North Carolina can review available information related to these chemicals and properly evaluate potential health effects."

94. Neither Chemours nor DuPont ever disclosed to DWR that it was discharging PFESA Byproduct 1 or PFESA Byproduct 2 into the Cape Fear River.

95. As of the time of this filing, 2017, DWR has received no indication from Chemours that it intends to cease discharging PFESA Byproduct 1 or PFESA Byproduct 2 into the Cape Fear River.

96. Since learning of the presence of GenX in the discharge from the Facility, DEQ has sent Chemours several requests for information to which Chemours has failed to fully respond, including:

a. A letter dated July 21, 2017 sent by DEQ Secretary Michael S. Regan requesting records related to the discharge of GenX and other emerging contaminants, attached hereto and incorporated herein as Exhibit N;

b. A letter dated August 16, 2017 sent by DEQ General Counsel William Lane requesting access or consent for the release of Chemours' confidential business information in the possession of EPA, attached hereto and incorporated herein as Exhibit O;

c. A letter dated August 18, 2017 sent by NPDES Permit Writer Teresa Rodriguez, requesting detailed information about the wastewater streams at the Facility, attached hereto and incorporated herein as Exhibit P; and

d. A letter dated August 29, 2017 sent by DWR Deputy Director Linda Culpepper, providing clarification and shortening the deadline for DWR's August 18 letter, attached hereto and incorporated herein as Exhibit Q.

97. The communications DEQ has received in response to these requests did not contain complete information.

Chemours' Contamination of Groundwater

98. In 2003, DuPont began a groundwater monitoring program at the Fayetteville Works, testing for various constituents including PFOA.

99. The requirement to conduct this groundwater monitoring was incorporated into the

Resource Conservation and Recovery Act Facility Investigation Workplan Outline ("RFI Workplan"), which is a part of the facility's Hazardous Waste Management Permit, No. NCD047368642-R2-M3 ("DWM Permit").

100. The DWM Permit was first issued in February of 1984 by DEQ's Division of Waste Management ("DWM") with the most recent version issued on June 23, 2015. The most recent version of the DWM Permit is attached hereto and incorporated herein as Exhibit R.

101. The DWM Permit allows the Facility to store and treat hazardous waste, including waste from the Fluoromonomers/Nafion® Membrane Manufacturing Area.

102. In 2015, following the detection of certain PFASs (in addition to PFOA) in the Cape Fear River, DEQ instructed Chemours to conduct supplemental groundwater sampling to determine whether groundwater flowing from the site was causing these concentrations in the river.

103. The groundwater sampling results showed an elevated concentration of one of these PFASs in the groundwater sample from an onsite monitoring well.

104. Chemours provided DEQ only with the PFOA groundwater sampling results, but, until July of 2017, failed to share the results showing the elevated concentration of this additional PFAS.

105. In August of 2017, DWM asked for additional groundwater sampling to occur at the Facility, including sampling for GenX.

106. Because GenX is not naturally occurring in groundwater and no numerical groundwater standard has been established for GenX, the applicable groundwater standard is the PQL. *See* 15A N.C.A.C. 2L .0202(c).

107. Samples were gathered from 14 groundwater monitoring wells and shared with three laboratories, including the National Exposure Research Laboratory of the EPA ("EPA Lab"), GEL Laboratories in Charleston, SC ("GEL"), and Test America, a private lab contracted by Chemours.

108. The data received from GEL show GenX in samples taken from 13 of the 14 monitoring wells at levels greater than the PQL of 10 ng/L, and therefore in violation of the groundwater standard set forth in the 2L Rules.

109. In fact, GenX has been detected in these 13 wells at levels ranging from 519 to 61,300 ng/L – far greater than the 140 ng/L health goal set by the DHHS and the 10 ng/L PQL. A map generated by DEQ illustrating these well locations and measured concentrations of GenX in groundwater is attached hereto and incorporated herein as Exhibit S.

110. All five wells located adjacent to the Cape Fear River have GenX levels greater than 11,800 ng/L.

111. GenX concentrations exceeding the DHHS health goal by orders of magnitude are site wide – indicating widespread groundwater contamination.

112. On September 6, 2017, DWR and DWM jointly issued Chemours a notice of violation and notice of intent to enforce for Chemours' violation of groundwater standards at the Facility. The notice of violation and notice of intent to enforce is attached hereto and incorporated herein as Exhibit T.

VIOLATIONS OF NORTH CAROLINA'S WATER QUALITY LAWS

Claim I: Violation of Groundwater Standards

113. The allegations contained in Paragraphs 1 through 112 are incorporated into this

claim as if fully set forth herein.

114. The applicable groundwater standard for GenX is the Practical Quantitation Limit or PQL, which is 10 ng/L. A memorandum dated July 13, 2017 from the EPA to Linda Culpepper, Deputy Director of DWR, documenting the PQL is attached hereto and incorporated herein as Exhibit U.

115. Concentrations of GenX in groundwater water samples taken from monitoring wells at the Facility drastically exceed applicable groundwater standards.

116. Chemours' failure to correct these violations constitutes a continuing violation of the State's water quality laws that, as a matter of law, adversely affects the public interest. *See Challenge*, 54 N.C. App. at 522, 284 S.E.2d at 339. The State is therefore entitled to preliminary and permanent injunctive relief against Chemours to prevent and abate Chemours' violation of Groundwater Standards pursuant to N.C. Gen. Stat. § 143-215.6C.

Claim II: Misrepresentation and Violation of NPDES Disclosure Requirements

117. The allegations contained in Paragraphs 1 through 116 are incorporated into this claim for relief as if fully set forth herein.

118. Upon information and belief, the process wastewater from the Fluoromonomers/Nafion® Membrane Manufacturing Area contains and has contained substances or combinations of substances which meet the definition of "toxic substance" set forth in 15A N.C.A.C. 2B .0202.

119. Upon information and belief, Chemours was aware that these substances had potential toxic effects prior to submitting its 2012 Permit Application to DWR.

120. Upon information and belief, by representing to DWR that its GenX manufacturing

process would be a closed loop system and, therefore, that GenX would not be discharged into surface waters, and withholding information regarding its discharge of GenX, Chemours knowingly misled DWR into believing that GenX was not being discharged from the Facility into surface waters.

121. Upon information and belief, Chemours violated 15A N.C.A.C. 2H .0105(j) by failing to fully disclose all known toxic components reasonably expected to be in the discharge when it submitted the 2012 Permit Application.

122. Upon information and belief, Chemours violated NPDES Permit Standard Condition II.E.8, by failing to disclose all known toxic components reasonably expected to be in the discharge after it became aware that such facts were not disclosed in the 2012 Permit Application.

123. Upon information and belief, Chemours continues to withhold relevant information regarding the contents of its wastewater discharge and the health risks associated with the chemical byproducts produced by the Facility and discharged into waters of the State.

124. Chemours' failure to correct these violations constitutes a continuing violation of the NPDES Permit and the State's water quality laws that, as a matter of law, adversely affects the public interest. *See Challenge*, 54 N.C. App. at 522, 284 S.E.2d at 339. The State is entitled to preliminary and permanent injunctive relief against Chemours to address Chemours' misrepresentations and violations of NPDES disclosure requirements pursuant to N.C. Gen. Stat. § 143-215.6C.

Claim III: Unpermitted Discharge

125. The allegations contained in Paragraphs 1 through 124 are incorporated into this

claim for relief as if fully set forth herein.

126. The presence of various toxic substances, including GenX and related compounds, were not in the reasonable contemplation of DWR when it issued the 2012 Permit.

127. Chemours has discharged these substances into the Cape Fear River in violation of its N.C. Gen. Stat. § 143-215.1.

128. Chemours's failure to correct these violations constitutes a continuing violation of the State's water quality laws that, as a matter of law, adversely affects the public interest. *See Challenge*, 54 N.C. App. at 522, 284 S.E.2d at 339.

129. The State is entitled to preliminary and permanent injunctive relief against Chemours to prevent and abate Chemours' unpermitted discharge pursuant to N.C. Gen. Stat. § 143-215.6C.

MOTION FOR TEMPORARY RESTRAINING ORDER

1. The allegations contained in Paragraphs 1 through 129 are incorporated into this Motion for Temporary Restraining Order as if fully set forth herein.

2. The State is entitled to a temporary restraining order to immediately restrain Chemours' unlawful discharge of chemical byproducts from its manufacturing processes into surface waters of the State.

3. As described above, when the State brings an action to vindicate the public interest pursuant to a statute which provides for injunctive relief to abate violations of law, the usual test for issuance of injunctions need not be met. The State is not required to show actual injury, such as irreparable harm, in order to obtain injunctive relief, including a temporary restraining order. Rather, it must show only that the acts or practices complained of adversely affect the public

interest. An adverse effect on the public interest exists as a matter of law where the statutory conditions for issuance of injunctive relief are present, i.e., where a violation of the applicable statute or regulations exists or is threatened.

4. Pursuant to N.C. Gen. Stat. 143-215.6C, "[u]pon a determination by the court that the alleged violation of the provisions of this Part or the regulations of the Commission has occurred or is threatened, the court shall grant the relief necessary to prevent or abate the violation or threatened violation."

5. Here a temporary restraining order is necessary to prevent or abate Chemours' unpermitted discharge of chemical byproducts in violation of N.C. Gen. Stat. § 143-215.1 and to address Chemours' misrepresentations relating to its discharge of GenX and related compounds.

6. Even if the Court required a further showing of irreparable harm, that test is easily met here. By failing to disclose the presence of GenX and related compounds in its discharge, and by misrepresenting that GenX and related compounds were not present in its discharge, Chemours has caused a state of public alarm and uncertainty regarding the safety of public drinking water.

7. Moreover, Chemours delayed or prevented the State from developing health-based water quality standards for the GenX and related compounds that Chemours discharged to the waters of the State. After GenX was disclosed in the Cape Fear River, the State produced a preliminary health assessment which concludes that GenX has health risks over a certain level. When GenX was first measured, it was above this health goal in surface water.

8. While the State does not yet have sufficient data to establish a health goal for these related compounds, given the health risks associated with GenX and other PFASs, the public is entitled to the protections afforded by the precautionary measures requested in this Motion.

9. Furthermore, as noted in the State's preliminary health assessment, EPA guidance indicates where contamination is found in surface water and information is lacking about other sources of exposure in the environment, environmental agencies should assume that drinking water is not the only source of exposure.

10. An immediate cessation of Chemours' discharge of recently discovered chemical byproducts is necessary to immediately put a stop to the adverse environmental impacts caused by Chemours' unlawful discharge and restore public confidence in the safety of drinking water while this litigation proceeds.

11. While not necessary to prove that a temporary restraining order should issue under N.C. Gen. Stat. § 143-215.6C, the balance of equities and the public interest strongly favor granting the temporary injunctive relief sought by this Motion.

12. Accordingly, the State requests that the Court enter a temporary restraining order directing Chemours' to: 1) immediately cease discharging the substances identified as PFESA Byproduct 1 and PFESA Byproduct 2 in Exhibit E, at p. 2, Tbl. 1, from its manufacturing process into surface waters; and 2) continue to prevent the discharge of process wastewater containing GenX into waters of the State.

PRAYER FOR RELIEF

WHEREFORE, the Plaintiff, State of North Carolina, prays that the Court grant the following relief:

1. That this verified Complaint be used as an affidavit upon which to base all orders of the Court.

2. That the Court grant a temporary restraining order requiring Chemours to

a. immediately cease discharging the substances identified as PFESA Byproduct 1 and PFESA Byproduct 2 in Exhibit E, at p. 2, Tbl. 1, from its manufacturing process into surface waters; and

b. continue to prevent the discharge of process wastewater containing GenX into waters of the State.

3. That the Court preliminarily, and upon final judgment permanently, enter a prohibitory and/or mandatory injunction requiring Chemours to:

a. Eliminate the discharge of PFASs to surface waters until such time as DEQ issues a NPDES permit authorizing such discharge or otherwise authorizes such activities;

b. Remove, treat or control any source of PFASs that has the potential to contaminate groundwater in accordance with a plan as approved by DEQ and with such conditions as DEQ shall deem necessary.

c. Complete site assessment activities and submit a plan and proposed schedule for corrective action to DEQ as required by 15A N.C.A.C. 2L .0106.

d. Take appropriate action to abate the violations of N.C. Gen. Stat. § 143-215.1, NPDES Permit and groundwater standards at the facility pursuant to a corrective action plan and schedule approved by DEQ.

e. Comply in full with DEQ's requests for information, attached hereto and incorporated herein as Exhibits N-Q.

4. That the cost of this action, including attorneys' fees, if allowable, be taxed against Chemours.

5. That this Court grant such other and further relief as the Court shall deem to be just and proper.

Respectfully submitted this the 7th day of September, 2017.

JOSH STEIN
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STATE OF NORTH CAROLINA

COUNTY OF BLADEN

VERIFICATION

Linda Culpepper, being duly sworn, deposes and says that she is the Deputy Director of the Division of Water Resources of the North Carolina Department of Environmental Quality, that she has read the foregoing COMPLAINT, MOTION FOR TEMPORARY RESTRAINING ORDER, AND MOTION FOR PRELIMINARY INJUNCTIVE RELIEF and that she is acquainted with all of the facts and circumstances stated therein; that the same is true of her own knowledge, except as to those matters and things stated and alleged upon information and belief, and as to those matters and things she believes them to be true.

Linda Culpepper

Subscribed and sworn to before me

this the 7th day of September, 2017.

Anna V. Smith

Notary Public

ANNA V. SMITH NOTARY PUBLIC WAKE COUNTY, NC

My Commission Expires: 10/22/2021