

STATE OF NORTH CAROLINA  
COUNTY OF CUMBERLAND

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
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STATE OF NORTH CAROLINA, *ex rel.* )  
JOSHUA H. STEIN, ATTORNEY )  
GENERAL, )  
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 )  
*Plaintiff,* )  
 )  
v. )  
 )  
E.I. DUPONT DE NEMOURS AND )  
COMPANY; THE CHEMOURS )  
COMPANY; THE CHEMOURS )  
COMPANY FC, LLC; CORTEVA, INC.; )  
DUPONT DE NEMOURS, INC.; and )  
BUSINESS ENTITIES 1-10, )  
 )  
*Defendants.* )

**ORIGINAL COMPLAINT**

JURY TRIAL DEMANDED

**COMPLAINT**

Plaintiff, the State of North Carolina (“Plaintiff” or the “State”), by and through its Attorney General, Joshua H. Stein, brings this action against Defendants E.I. DUPONT DE NEMOURS AND COMPANY (“Old DuPont”); THE CHEMOURS COMPANY (“Chemours”); THE CHEMOURS COMPANY FC, LLC (“Chemours FC”); CORTEVA, INC. (“Corteva”); DUPONT DE NEMOURS, INC. (“New DuPont”); and BUSINESS ENTITIES 1-10 (collectively, the “Defendants”) and alleges as follows:

**INTRODUCTION AND SUMMARY**

1. This case is brought to hold the Defendants accountable for their actions that have severely contaminated North Carolina’s environment, causing extensive harm to our State’s natural resources and creating significant risks for the people of the State. Through the Defendants’ operations at their Fayetteville Works facility located in Bladen County and Cumberland County,

they have contaminated the land, air, and water around that site, as well as the Cape Fear River Watershed, with chemicals known to pose significant risks to human health and the environment. These chemicals—per- and polyfluoroalkyl substances (“PFAS”)—are known as “forever chemicals” because they resist biodegradation, persist in the environment, and accumulate in people and other living organisms. The “forever chemicals” that Old DuPont, Chemours, and Chemours FC (collectively, the “PFAS Defendants”) have released into North Carolina’s environment have had and continue to have profoundly negative impacts on the State.

2. Exposure to certain PFAS in both humans and animals has been linked to several diseases, including some cancers, in both humans and animals. Humans may be exposed to these PFAS—among various other exposure routes—through drinking water contaminated with PFAS. Human exposure to certain PFAS is associated with kidney and testicular cancers, thyroid disease, ulcerative colitis, high cholesterol, liver damage, decreased fertility, pregnancy-induced hypertension, increased risk of asthma, and immune system impacts. By releasing these chemicals into North Carolina’s land, air, and water, the PFAS Defendants have profoundly disrupted people’s daily lives, curtailing their use and enjoyment of property and the environment and their use of valuable natural resources. The harms from PFAS contamination that originate with PFAS Defendants’ actions at the Fayetteville Works have spread from there into and through the Cape Fear River Watershed, reaching coastal North Carolina and burdening the water and the lives of those living in a region that depends on that water.

3. The PFAS Defendants have knowingly discharged vast quantities of PFAS into the air, water, sediments, and soils of Cumberland County and southeastern North Carolina. While the PFAS Defendants’ operations were contaminating North Carolina’s natural resources, the same operations were generating decades of profits for them. Plaintiff files this lawsuit to hold

Defendants accountable and recover for the harms resulting from their operations at the Fayetteville Works.

4. Throughout its 40-year history of operations at the Fayetteville Works, Old DuPont generated and released into the environment hundreds of PFAS, including perfluorooctanoic acid (“PFOA”), also referred to by DuPont as ammonium perfluorooctanoate or APFO, and PFAS compounds known by the names “GenX” and “C3 Dimer Acid.” As a result of Old DuPont’s historical and Chemours’s and Chemours FC’s past and continuing processes, emissions, and waste disposal practices, the Fayetteville Works is one of the most contaminated PFAS sites in the country. The PFAS Defendants’ actions have caused significant damage to real property and natural resources in Cumberland County, where part of the Fayetteville Works property sits. Private well testing demonstrates that Defendants have contaminated groundwater in Cumberland County. Multiple wells had exceedances of the provisional health goal for GenX or had significant concentrations of other PFAS.

5. Moreover, the Fayetteville Works is the source of substantial and widespread PFAS contamination into and around the Cape Fear River and its tributaries, resulting in contamination nearly 100 miles from the Fayetteville Works. North Carolinians along the state’s coast—nearly 100 miles away—suffer the impacts of contaminated drinking water, among other impacts on the state’s natural resources. Residents in Wilmington, North Carolina—sandwiched between the Cape Fear River and the Atlantic Ocean—have blood serum levels of PFAS compounds several times higher than national averages.

6. Not only is there significant PFAS contamination in and around the Fayetteville Works and in the Cape Fear River Watershed, but PFAS compounds have also been widely dispersed by the PFAS Defendants through air emissions from the Fayetteville Works.

Contamination linked to air emissions has been found over 20 miles away. Testing of private drinking water wells outside the Fayetteville Works has shown elevated levels of GenX nearly six miles from the Fayetteville Works, with concentrations as high as 4,000 ng/L (ng/L is equivalent to parts per trillion or “ppt”), a number that is nearly 30 times higher than the provisional health goal for drinking water set by North Carolina. Likewise, PFAS compounds from the Fayetteville Works have been located in drinking water, groundwater, surface waters, sediments, soils, air, fish, plants, and other natural resources of North Carolina over 100 miles from the Fayetteville Works.

7. The PFAS Defendants emitted GenX and related compounds into the air at levels that far exceed emission rates that they had previously reported to the North Carolina Department of Environmental Quality and its predecessor agencies (the “DEQ”). GenX air emissions from the Fayetteville Works, which are deposited on the land surface via dry and wet deposition (i.e., rainwater), constitute a significant threat to North Carolina’s natural resources. In fact, GenX has been detected in rainwater with concentrations as high as 810 ng/L at a distance of five miles from the Fayetteville Works. This adds water to the environment with contamination at levels that are more than five times greater than the current drinking water health goal. GenX has been detected in rainwater as far as 21 miles from the Fayetteville Works. The Fayetteville Works is the only known source of GenX in North Carolina.

8. From the beginning of their operations at the Fayetteville Works, the PFAS Defendants knowingly concealed the true nature of the PFAS being manufactured and discharged. Although the PFAS Defendants in recent years touted GenX as a replacement for long-chain PFOA, the PFAS Defendants actually had been producing GenX as a byproduct at the Fayetteville Works for decades. To make matters worse, Defendants used unconventional and ineffective procedures that caused the release and discharge of PFAS that they knew posed substantial risk of

harm to human health and the environment, all while concealing their actions. For example, the PFAS Defendants used a porous clay pipe to transport PFAS across the grounds of the Fayetteville Works, later discharging them directly into the Cape Fear River, a well-known source of public drinking water.

9. As Old DuPont learned that its conduct was being discovered, it worked to shield itself from responsibility for its actions—actions from which it had profited for half a century. Old DuPont began a corporate reorganization intended to shield assets from liability. Old DuPont moved its PFAS-related product lines, the Fayetteville Works itself, and the associated liabilities to Chemours and Chemours FC. All the while, Old DuPont continued to conceal from the State and the community the extent and nature of the environmental injuries its contaminants had caused.

10. During its decades of operations at the Fayetteville Works, Old DuPont emitted vast quantities of PFAS—including but not limited to GenX—with clear and unequivocal knowledge that PFAS compounds pose a substantial threat to human health and the environment, are extremely resistant to degradation, persist indefinitely in the environment, and bioaccumulate in blood. Yet Old DuPont actively concealed and misrepresented the true nature of PFAS compounds, while it used, discharged, emitted, released, and dumped vast quantities of these chemicals into North Carolina’s air, waters, and natural resources, including drinking water resources. Old DuPont’s actions were driven by an overarching intent to maximize its profits and minimize its liabilities—at the expense of the people and natural resources of North Carolina. In short, Old DuPont cared far more about its own profits than it did about the public health, safety, and environment of North Carolina.

11. Although Old DuPont knew of these dangers for decades, regulatory agencies around the world are only now coming to more fully understand the true nature and dangers of

these global contaminants. Today, the State is expending substantial public resources to investigate PFAS, including the shorter-chain replacement compounds such as GenX, and to determine their toxicity and impacts on human health and the environment, so that it can identify and locate the state's natural resources that are impacted by these "forever chemicals." Substantial additional resources will be needed over long periods of time to remediate, treat, and/or restore those impacted natural resources. Defendants, not the people of North Carolina, should bear the cost of addressing the problems that the PFAS Defendants caused.

12. Accordingly, the State seeks a judgment requiring Defendants pay all past and future costs necessary to investigate, assess, remediate, restore, and remedy the harms the PFAS Defendants caused in North Carolina as a result of operations at the Fayetteville Works. This includes, but is not limited to, any and all damages available for injuries to all natural resources; for property damages; for economic damages; for punitive damages; for restitution; for disgorgement; and for any and all other damages, costs, and equitable relief to which the State may be entitled.<sup>1</sup>

13. In addition, Old DuPont has known for decades that it faced unprecedented environmental and tort liabilities for the PFAS that it released into the environment in numerous parts of the country. For years, it has sought to hinder this State, and many other states facing substantial harm to the wellbeing of their citizens and their natural resources, from being able to recover on their eventual judgments. Defendants engaged in transactions designed to shield billions of dollars in assets from the PFAS and environmental liabilities from their creditors, such as the State. To ensure that the responsible parties can properly meet and not avoid their legal

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<sup>1</sup> Except that, in this litigation, the State does not assert claims, costs, or damages associated with aqueous film-forming foam ("AFFF"), which is a particular product that contains PFAS compounds.

obligations to pay damages for injury to the state's natural resources, the State also asks this Court to void certain transactions and enjoin New DuPont and Corteva from transferring assets that formerly belonged to Old DuPont to the extent necessary to satisfy the State's claims. Defendants should not be permitted to hide behind corporate machinations intended to avoid responsibility for the injuries they caused in North Carolina.

### **RULE 2.1 REQUEST**

14. Plaintiff gives notice that it will seek to confer with the parties, upon their appearances, regarding submission of a Joint Motion to Invoke Rule 2.1 of the General Rules of Practice for Superior and District Courts, unless the Court acts *ex mero motu* prior to submission of a Joint Motion. Plaintiff alleges that this is an exceptional civil case and will request that the case be assigned a single Superior Court Judge. Plaintiff alleges that the case is well-suited for Rule 2.1 designation because of the complex legal and factual issues involved. Among other things, this case involves contamination of a large portion of North Carolina by chemicals that scientists continue to study, seeking to further understand the scope and extent of their adverse effects on human health and the environment, as well as remedial measures to minimize their impacts on the people and ecology of the state.

### **PARTIES**

15. Plaintiff, the State of North Carolina, acting on relation of its Attorney General, Joshua H. Stein, brings this action as trustee and in its *parens patriae* capacity. Plaintiff is represented by and through the Attorney General of the State of North Carolina with principal offices at 114 West Edenton Street, Raleigh, North Carolina 27603. *See* N.C. Gen. Stat. § 114-2. The State is the trustee, for the benefit of its citizens, of all natural resources within its jurisdiction: "It shall be the policy of this State to . . . protect its land and waters for the benefit of its citizenry and to this end it shall be a proper function of the State of North Carolina and its political

subdivisions . . . to control and limit the pollution of our air and water . . . .” N.C. Const. art. XIV, § 5. The State may act in its *parens patriae* capacity to protect and promote the State’s “quasi-sovereign” interests, including its interest in the health, safety, security, and wellbeing of its residents and the integrity of its natural resources. In addition, Plaintiff brings this case in its regulatory (police power) capacity and in its capacity as an owner of real property, including submerged lands underlying surface waters directly impacted by contamination originating from the Fayetteville Works. The State asserts its fraudulent transfer claims in its capacity as a creditor.

16. Defendant E. I. du Pont de Nemours and Company (“Old DuPont”) is a corporation duly organized under the laws of the State of Delaware, with its principal place of business located at 974 Centre Road, Wilmington, Delaware 19805. Old DuPont does business throughout the United States, including conducting business in North Carolina, and is registered to do business in North Carolina with the Secretary of State. Old DuPont may be served at its principal place of business, through the North Carolina Secretary of State, or wherever it may be found.

17. Defendant The Chemours Company f/k/a The Chemours Company, LLC (“Chemours”) is a corporation duly organized under the laws of the State of Delaware, with its principal place of business located at 1007 Market Street, Wilmington, Delaware 19899. Chemours owns and operates the Fayetteville Works, which is the subject of this action. Chemours was a wholly owned subsidiary of Old DuPont.

18. In July 2015, Old DuPont completed its spinoff of Chemours as a separate public entity. In connection with the spinoff, Chemours assumed direct liability for Old DuPont’s decades-long history of causing widespread PFAS contamination in the state and elsewhere. Chemours does business throughout the United States, including conducting business in North Carolina, and is registered to do business in North Carolina with the Secretary of State. Chemours



may be served at its principal place of business, through the North Carolina Secretary of State, or wherever it may be found.

19. Defendant Chemours FC, LLC (“Chemours FC”) is a limited liability company duly organized under the laws of the State of Delaware, with its principal place of business located at 1007 Market Street, Wilmington, Delaware 19899. Chemours FC is a subsidiary of Chemours and was formed in April 2014. Chemours FC has owned the Fayetteville Works since January 2015. Chemours FC does business throughout the United States, including conducting business in North Carolina, and is registered to do business in North Carolina with the Secretary of State. Chemours FC may be served at its principal place of business, through the North Carolina Secretary of State, or wherever it may be found.

20. Defendant DuPont de Nemours, Inc., formerly known as DowDuPont Inc. (“New DuPont”) is a corporation duly organized under the laws of the State of Delaware, with its principal place of business located at 974 Centre Road, Wilmington, Delaware 19805. New DuPont does business throughout the United States, including conducting business in North Carolina. New DuPont may be served at its principal place of business, or wherever it may be found.

21. Defendant Corteva, Inc. (“Corteva”) is a corporation duly organized under the laws of the State of Delaware, with its principal place of business located at P.O. Box 80735, Chestnut Run Plaza 735, Wilmington, Delaware 19805. Corteva does business throughout the United States, including conducting business in North Carolina, and is registered to do business in North Carolina with the Secretary of State. Corteva may be served at its principal place of business, through the North Carolina Secretary of State, or wherever it may be found.

22. The true names and capacities, whether corporate, associate, partnership, or otherwise, of Defendants sued herein as BUSINESS ENTITIES 1 through 10, inclusive, are either

being withheld by Plaintiff or are unknown to Plaintiff. As such, Plaintiff references said Defendants by fictitious names. Plaintiff alleges that Defendants BUSINESS ENTITIES 1 through 10 are in some manner responsible for its injuries and losses and are named in accordance with the provisions of N.C. Gen. Stat. § 1-166. Plaintiff will amend its complaint to show the true names and capacities of such fictitiously named Defendants as is appropriate or as they are ascertained.

### **JURISDICTION**

23. The Superior Court has jurisdiction over this action for costs, damages, and injunctive relief—across North Carolina—stemming from the PFAS Defendants’ Fayetteville Works and the PFAS Defendants’ actions that led to the release of pollutants from the Fayetteville Works because the amount in controversy exceeds twenty-five thousand dollars (\$25,000). *See* N.C. Gen. Stat. § 7A.

### **VENUE**

24. Cumberland County, North Carolina is a proper venue for this action because part of the Fayetteville Works property is in Cumberland County, such that the causes of action asserted herein, or some part thereof, arose in Cumberland County. *See* N.C. Gen. Stat. § 1-77. Further, as described herein, real property and natural resources in Cumberland County have and continue to suffer injury as a result of the conduct of the PFAS Defendants. *See id.* at § 1-76.

### **FACTUAL ALLEGATIONS**

#### **A. Affected Natural Resources**

25. The natural resources of this state include all land (including submerged land), water, air, biota, and other such resources owned, managed, held in trust, or otherwise controlled by the State. The natural resources of this state include water, such as the ocean and its estuaries, all springs, streams, wetlands, and bodies of surface water or groundwater, within the boundaries of this state or otherwise subject to its jurisdiction.

26. North Carolina's habitats and ecosystems—forests, lakes, rivers, wetlands, agricultural lands, coastal estuaries, pinelands, and grasslands—have been injured by past and ongoing PFAS pollution. PFAS has been found in the groundwater, surface water, sediments, submerged lands, soils, wetlands, air, and other natural resources at and around the Fayetteville Works, as well as in water downstream in and around the Cape Fear River Watershed to the coast of North Carolina.

27. PFAS biopersist in these natural resources and damage their intrinsic (i.e., inherent existence) value and use value. The current and future residents of North Carolina have a substantial interest in a clean environment, as does the tourism industry that relies upon maintaining a clean environment to visit and enjoy.

28. The PFAS Defendants' conduct has interfered with North Carolina residents' use and enjoyment of natural resources around their homes and in their communities, including in Cumberland County. For instance, many residents of North Carolina obtain water from private wells. As of September 2019, 1,155 properties in the vicinity of the Fayetteville Works, including in Cumberland County, were tested for various PFAS. Seventeen percent of properties tested had wells with levels of GenX exceeding the State's provisional health goal. The DEQ recommended those residents stop using that water for drinking, cooking, brushing teeth, and making baby formula. Additionally, 84% of properties had wells with any one PFAS at or over 10 ppt or a total PFAS level at or over 70 ppt. Residents, including those in Cumberland County, have changed their water use drastically either as a result of their water exceeding the provisional health goal for GenX or based on other concerns about PFAS in their water. The Cape Fear River Watershed is a significant source of drinking water for North Carolinians whose drinking water intake draws

directly from the Cape Fear River downstream of the Fayetteville Works. PFAS contamination has and will likely continue to result in increased costs to consumers of water in the region.

29. Residents have also decreased or stopped activities they previously enjoyed in their communities, such as tending vegetable gardens and fishing. Based on a study conducted by the North Carolina Department of Health and Human Services (the “DHHS”), 38% of residents living within 10 miles of the Fayetteville Works reported decreasing or stopping gardening, outdoor play, fishing, swimming in local bodies of water or pools, and hiking.

### **Groundwater**

30. Groundwater—that is, water that exists beneath the Earth’s surface—is an extremely important natural resource for the people of North Carolina. More than 476-million gallons of groundwater per day are used as drinking water, irrigation, and agriculture by North Carolinians.

31. The State’s Groundwater Rules, found at 15A N.C.A.C. 2L .0103, were put in place 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 citizens of North Carolina.” *Id.* at r. 2L .0103(a). The North Carolina Environmental Management Commission has established that the “best usage of the groundwaters of the state is as a source of drinking water.” *Id.* More than 327-million gallons of groundwater per day are used as potable water by North Carolinians.

32. Private wells, which provide access to groundwater, are widely used in residential communities in the state. Wells are used for drinking water, irrigation, watering livestock, and filling swimming pools, among other things.

33. In addition to serving as a source of potable water, groundwater is an integral part of North Carolina’s overall ecosystem. Groundwater provides base flow to streams and influences

surface water quality, wetland ecological conditions, and the health of the aquatic ecosystem. Groundwater also provides cycling and nutrient movement within and among the state's bodies of water and wetlands and helps to maintain critical water levels in freshwater wetlands.

34. Groundwater and the other natural resources of North Carolina are unique resources that help sustain the state's economy.

35. PFAS compounds mobilize in and through groundwater sources. Groundwater in and around the Fayetteville Works is heavily contaminated with PFAS, including GenX. Contaminated groundwater has also migrated off-site, contaminating the Cape Fear River Basin, the state's largest river basin.

### **Surface Water**

36. Surface water is a critical ecological resource of North Carolina. The state's surface water—which includes all water in the state's rivers, lakes, streams, and wetlands—is a primary source of drinking water in the state. Over one million people rely on the Cape Fear River, in particular, as a source of drinking water.

37. Surface water in North Carolina is also used for recreational, commercial, and industrial purposes, such as swimming, boating, and fishing. The tourism and recreation industries, which are dependent on clean water and beaches, are vital to the state's economy. Surface water also provides aesthetic and ecological value, including by supporting aquatic ecosystems, nearby communities, and the citizens of the State.

38. PFAS are mobile in water and can spread great distances from the point of discharge or deposition. PFAS from the Fayetteville Works, including PFOA, GenX, Nafion byproducts 1 and 2, and hundreds of additional novel PFAS, have reached surface waters onsite and off-site, causing widespread adverse impacts in the Cape Fear River Watershed.

### **Sediments, Soils, and Submerged Lands**

39. North Carolina's land and aquatic resources are composed of unique and complex ecosystems. Sediments, soils, and submerged lands are critical components of North Carolina's ecological resources. Sediments, soils, and submerged lands sustain a wide diversity of plants and animals that are essential in a healthy ecosystem. They provide a living substrate for submerged and emergent flora, which in turn support diverse invertebrate species, wading birds, and fish and shellfish populations.

40. PFAS discharged from the Fayetteville Works, including PFOA, GenX, Nafion byproducts 1 and 2, and numerous other PFAS compounds, have reached and adversely affected sediments, soils, and submerged lands onsite and off-site, including in the Cape Fear River Basin.

### **Wetlands**

41. Wetlands are a critical component of North Carolina's ecological resources, which include land and aquatic resources composed of unique and complex ecosystems. North Carolina has approximately five-million acres of wetland area, including freshwater and coastal wetlands. Wetlands sustain a wide diversity of plants and animals that are essential in a healthy food chain. Wetlands perform many additional functions, which include the improvement of water quality, sediment trapping, and groundwater recharge. PFAS discharged at the Fayetteville Works have reached and adversely impacted wetlands.

### **Air**

42. Air resources are vital to life. Pollution of air resources can injure human health and welfare, flora and fauna, property, and water and can unreasonably interfere with the enjoyment of life and property in areas affected by such pollution. Air deposition (i.e., deposits of air contaminants on the Earth's surface) can also be a source of contamination to other types of

natural resources, including surface water, groundwater, sediments and soils, wetlands, forests, and biota.

43. Air pollution from activities at the Fayetteville Works has contaminated surrounding natural resources with PFAS, including but not limited to groundwater, surface water, and soils that, based on current testing, has been impacted over 20 miles from the Fayetteville Works.

### **Biota**

44. Biota, including the flora and fauna of the state, are critical ecological resources. North Carolina is home to more than 4,000 plant species, which include entire communities of rare flora that cannot be found anywhere else in the world. North Carolina wildlife includes nearly 1,000 species, including 120 mammal species, 160 reptile and amphibian species, more than 230 fish species, and nearly 500 species of birds. North Carolina's biodiversity provides a wealth of ecological, social, and economic goods and services that are an integral part of the ecological infrastructure for all cultural and economic activity in the state.

45. Contamination by pollutants is one of the major causes of biodiversity loss. Over 60 of North Carolina's species are at risk of extinction. Recent studies of striped bass from the Cape Fear River, a fish population in decline, revealed the highest documented rates of PFAS in any North American fish. The levels found are associated with liver and immune system changes.

46. Natural resource injuries to biota in North Carolina negatively impact not only the individual species directly involved, but the capacity of the injured ecosystems to regenerate and sustain such life into the future. PFAS discharged at the Fayetteville Works have reached and adversely impacted biota throughout the Cape Fear River Basin.

## **B. The Harmful Impact of PFAS on Human Health and the Environment**

47. PFAS are a family of organic chemical compounds containing fluorine and carbon atoms. The carbon-fluorine bond is one of the strongest bonds in chemistry and imparts to PFAS their unique chemical properties. PFAS have been used for decades to produce household and commercial products that are heat resistant, stain resistant, long lasting, and water and oil repellent.

48. The carbon-fluorine bond in PFAS does not occur naturally. All PFAS chemicals are entirely manmade and do not occur in nature. There are thousands of known and suspected PFAS chemical structures, yet because of limited availability of information and standards, regulators have only been able to thus far focus on a small subset of these chemicals.

49. PFOA has characteristics that cause extensive and long-lasting environmental contamination. Specifically, it is mobile and persistent. It is mobile in that it is more soluble than other contaminants and is readily transported through the soil and into groundwater where it can migrate long distances. And PFOA is persistent in that it does not readily biodegrade or chemically degrade in the environment. Similarly, it is not removed by conventional drinking water treatment systems. In short, once PFOA is applied, discharged, disposed of, or otherwise released onto land or into the air or water, it migrates through the environment and into groundwater, resists natural degradation, and is difficult and costly to remove.

50. PFOA also bioaccumulates, biopersist, and biomagnifies in people and other organisms. PFOA is one of the most widely studied PFAS chemicals and has been shown to be toxic at very low concentrations.

51. PFOA contamination in drinking water presents a serious threat to public health. Exposure to low concentrations of PFOA in drinking water results in increased concentrations in human blood serum that persists for years after exposure ends. Humans are also exposed through other routes, including through inhalation of contaminated air, and inhalation of household dust.



52. Newborns are particularly sensitive to PFOA's toxicity. Exposures to newborns can be higher—compared to other subpopulations—through breastmilk, or formula that has been prepared with drinking water contaminated with PFOA.

53. Exposure to PFOA in both humans and animals is linked to kidney and testicular cancer, thyroid disease, ulcerative colitis, high cholesterol, pregnancy-induced hypertension, and immune system impacts.

54. PFAS, including PFOA, enter the environment from industrial facilities like the Fayetteville Works that manufacture or use PFAS or products that degrade to PFOA, GenX, or shorter-chain PFAS compounds in the manufacture or production of other products. Releases to land, air, and water are known pathways to the environment.

55. GenX is a name for a chemical known as C3 Dimer Acid (also known as HFPO Dimer Acid). C3 Dimer Acid Fluoride (also known as HFPO Dimer Acid Fluoride) and C3 Dimer Acid Ammonium Salt (also known as HFPO Dimer Acid Ammonium Salt) both convert to GenX in the environment. GenX, C3 Dimer Acid Fluoride, and C3 Dimer Acid Ammonium Salt and/or other similar substances are collectively referred to herein as "GenX."

56. Old DuPont, in a 2010 marketing brochure, touted GenX as having "a favorable toxicological profile," but studies have shown that exposure carries some similar risks to that of PFOA. Laboratory studies on animals exposed to GenX have shown negative effects to the liver and blood, along with liver and pancreatic cancer.

57. Further, like PFOA, GenX is persistent in the environment, not readily biodegradable, and mobile in the presence of water. Old DuPont acknowledged in the same brochure referenced above that GenX "is chemically stable and, if released, would be environmentally persistent."

58. Based on available toxicity information, the DHHS set a provisional health goal for drinking water for GenX of 140 ng/L. The U.S. Environmental Protection Agency (the “EPA”) is also currently in the process of publishing a toxicity assessment for GenX.

59. There are hundreds of PFAS associated with the Fayetteville Works for which health impacts are not understood (both individually and cumulatively). Chemours has identified nearly 30 PFAS associated with the Fayetteville Works other than GenX, which include both short- and long-chain PFAS. Chemours also recently prepared a report finding over 250 previously unknown PFAS in its process and non-process wastewater and stormwater at the Fayetteville Works.

60. The conduct of the PFAS Defendants has thrust North Carolina residents into an unacceptable position with respect to their health and wellbeing from exposure to their various PFAS chemicals.

### **C. Old DuPont’s Knowledge of the Dangers of PFAS**

61. Old DuPont began using PFOA and other PFAS in the 1950s and, quickly thereafter, developed an understanding of the dangers of using these chemicals.

62. During this time, Old DuPont was aware that PFOA was toxic to animals and humans and that it bioaccumulates and biopersist in the environment. Old DuPont also knew that it had emitted and discharged PFOA and other PFAS in large quantities into the environment and that tens of thousands of people had been exposed to its PFOA, including via public and private drinking water supplies.

63. Old DuPont company scientists issued *internal* warnings about the toxicity associated with PFOA as early as 1961, including that PFOA caused adverse liver reactions in rats and dogs. Old DuPont’s Toxicology Section Chief opined that such products should be “handled with extreme care” and that contact with the skin should be “strictly avoided.”

64. In 1978, based on information it had received from 3M about elevated and persistent organic fluorine levels in workers exposed to PFOA, Old DuPont initiated a plan to review and monitor the health conditions of potentially exposed workers to assess whether any negative health effects were attributable to PFOA exposure. This monitoring plan involved obtaining blood samples from the workers and analyzing them for the presence of organic fluorine.

65. By 1979, Old DuPont had data indicating that its workers exposed to PFOA had a significantly higher incidence of health issues than did unexposed workers. Old DuPont did not report this data or the results of its worker health analysis to any government agency or community at that time.

66. The following year, Old DuPont *internally* confirmed that PFOA “is toxic,” that humans accumulate PFOA in their tissue, and that “continued exposure is not tolerable.”

67. Not only did Old DuPont know that PFOA accumulated in humans, but it was also aware that PFOA could cross the placenta from an exposed mother to her gestational child. In 1981, Old DuPont conducted a blood sampling study of pregnant or recently pregnant employees. Of the eight women in the study who worked with fluoropolymers, two—or 25%—had children with birth defects in their eyes or face, and at least one had PFOA in the umbilical cord.

68. In fact, Old DuPont had reported to the EPA in March 1982 that results from a rat study showed PFOA crossing the placenta if present in maternal blood, but Old DuPont concealed the results of the study of its own plant workers.

69. While Old DuPont knew about this toxicity danger as early as the 1960s, Old DuPont was also aware that PFAS was capable of contaminating the surrounding environment, leading to human exposure.

70. By late 1981, Old DuPont also knew that PFOA could be emitted into the air from its facilities and that those air emissions could travel beyond facility boundaries.

71. Further, no later than 1984, Old DuPont was aware that PFOA is biopersistent.

72. Old DuPont was long aware that the PFAS it was releasing from its facilities was leaching into groundwater used for public drinking water. After obtaining data on these releases and the consequent contamination near Old DuPont's plant in West Virginia, Old DuPont, in 1984, held a meeting at its corporate headquarters in Wilmington, Delaware to discuss health and environmental issues related to PFOA (the "1984 Meeting"). Old DuPont employees who attended the 1984 Meeting discussed available technologies that were capable of controlling and reducing PFOA releases from Old DuPont's manufacturing facilities, as well as potential replacement materials. Old DuPont chose not to use either available technologies or replacement materials, despite knowing PFOA's toxicity.

73. During the 1984 Meeting, the Old DuPont employees in attendance spoke of the PFOA issue as "one of corporate image, and corporate liability." They were resigned to Old DuPont's "incremental liability from this point on if we do nothing" because Old DuPont was "already liable for the past 32 years of operation." They also stated that the "legal and medical [departments within Old DuPont] will likely take the position of total elimination" of PFOA use in Old DuPont's business and that these departments had "no incentive to take any other position."

74. Old DuPont's own Epidemiology Review Board ("ERB") repeatedly raised concerns about Old DuPont's statements to the public that there were no adverse health effects associated with human exposure to PFOA. For example, in February 2006, the ERB "strongly advise[d] against any public statements asserting that PFOA does not pose any risk to health" and

questioned “the evidential basis of [Old DuPont’s] public expression asserting, with what appears to be great confidence, that PFOA does not pose a risk to health.”

75. In 2004, the EPA filed an action against Old DuPont based on its failure to disclose toxicity and exposure information for PFOA, in violation of the Toxic Substances Control Act (“TSCA”) and Resource Conservation and Recovery Act (“RCRA”). Old DuPont eventually settled the action by agreeing to pay over \$16 million in civil administrative penalties and supplemental environmental projects. EPA called the settlement the “largest civil administrative penalty EPA has ever obtained under any federal environmental statute.”

76. Old DuPont knew or should have known that their products containing PFAS would very likely injure public health and the environment. But Old DuPont chose to protect its profits to the detriment of North Carolina.

#### **D. The Fayetteville Works**

77. The Chemours Company-Fayetteville Works, formerly known as the DuPont Company-Fayetteville Works, is a chemical manufacturing facility with manufacturing areas operated by three separate companies.

78. The Fayetteville Works spans approximately 2,175 acres of real property located at 22824 NC-87 near Fayetteville. The Fayetteville Works is located 15 miles southeast of the city of Fayetteville, along the border of Bladen and Cumberland counties, and along the western edge of the Cape Fear River, which after passing by the Fayetteville Works, passes through several counties, including New Hanover County, before reaching the Atlantic Ocean.

79. Old DuPont purchased the property in 1969 and, in the early 1970s, began its Nafion manufacturing process at the Fayetteville Works, discharging PFAS known as Nafion byproducts 1 and 2. Since that time, the Fayetteville Works’ business has expanded to include other chemical manufacturing processes.

80. On February 1, 2015, Chemours, which at the time was a wholly owned subsidiary of Old DuPont, acquired the Fayetteville Works from Old DuPont.

81. Chemours FC currently owns the Fayetteville Works and has been the owner since January 2015.

82. Old DuPont has been manufacturing PFAS at the Fayetteville Works, at least as a byproduct, since at least 1980. Upon information and belief, sometime between 2000 and 2002, Old DuPont began manufacturing PFOA at the Fayetteville Works.

83. To this day, Chemours generates up to hundreds of PFAS at the Fayetteville Works.

*DuPont's Transition to GenX*

84. Old DuPont developed GenX as a substitute for PFOA and to further the PFOA phase out associated with the EPA's PFOA Stewardship Program.

85. Old DuPont had been generating and discharging a substance or group of substances, now identified as GenX, at the Fayetteville Works as a byproduct since at least 1980.

86. In 2009, in addition to its generation as a byproduct, Old DuPont began to manufacture GenX at the Fayetteville Works as a replacement for PFOA.

87. GenX is primarily used to manufacture fluoropolymers. In describing a component of the Fayetteville Works manufacturing facility, Chemours identifies GenX as a "polymer processing aid (PPA)," which is the "family of fluorocarbon surfactants used to produce Chemours Teflon and Kalrex fluoropolymers as well as sales to outside producers of fluoropolymers."

88. The manufacture of GenX was transferred to Chemours when the company was spun off from Old DuPont in 2015.

*Chemours's Nondisclosure and Misrepresentations Relating to PFOA and GenX*

89. On May 3, 2001, Old DuPont submitted a National Pollutant Discharge Elimination System ("NPDES") permit renewal application to North Carolina's Division of Water Quality,

subsequently renamed the Division of Water Resources (the “DWR”), a division of DEQ, stating that it intended to begin manufacturing PFOA at the Fayetteville Works. During the application process, Old DuPont represented that: (1) PFOA does not pose a health concern to humans or animals at levels present in the workplace or environment; (2) Old DuPont had used PFOA for 40 years with no observed health effects on workers; and (3) PFOA is neither a known developmental toxin nor a known carcinogen. Old DuPont knew or should have known its representations were false.

90. EPA launched its “PFOA Stewardship Program” in January 2006 because of concerns about the impact of PFOA and long-chain PFAS 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. Old DuPont began to phase out its use of PFOA only after EPA launched this Program.

91. In 2008, Old DuPont submitted to EPA notices pursuant to the TSCA of its intent to manufacture GenX.

92. On January 28, 2009, EPA and Old DuPont entered into a Consent Order governing the manufacture of GenX. 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.” The Consent Order also stated that EPA had “human health concerns” regarding GenX and that “uncontrolled . . . disposal of [GenX] may present an unreasonable risk of injury to human health and the environment.”

93. Due to these risks, the 2009 EPA Consent Order required Old 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).”

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

95. In particular, none of the Old DuPont or Chemours NPDES permit applications reference “GenX” or any chemical name, formula, or CAS number that identify any GenX or related compounds in the Fayetteville Works’ discharge.

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

97. On August 26, 2010, representatives of Old DuPont met with the DEQ staff regarding the company’s anticipated use of GenX technology at the Fayetteville Works as a replacement for PFOA.

98. The information Old DuPont provided indicated that the GenX would be produced in a closed-loop system that would not result in the discharge of those compounds outside the Fayetteville Works, particularly not directly into the Cape Fear River.

99. Old 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 Fayetteville Works’ wastewater treatment plant or into the Cape Fear River.

100. On April 29, 2011, Old DuPont submitted an NPDES permit renewal application confirming that “all process wastewater generated from [the PPA Manufacturing Area] is collected and shipped off-site for disposal” and that “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.

101. On February 6, 2012, DWR issued a renewal permit with an effective date of March 1, 2012 ("2012 Permit"). The 2012 Permit makes no mention of GenX as part of the authorized discharge from the Fayetteville Works.

102. On November 10, 2016, EPA and Dr. Detlef Knappe, a Professor at N.C. State University, published a study that identified the presence of GenX and other PFAS in the Cape Fear River. The study indicated that levels of GenX in one sample area in the Cape Fear River were as high as 4,500 ng/L, which is more than 30 times higher than the health goal later set by DHHS.

103. Only after substantial media coverage regarding the presence of GenX in the Cape Fear River did Chemours inform DEQ that it and Old DuPont had discharged GenX and other PFAS as byproducts for decades at the Fayetteville Works and routinely discharged those byproducts into the Cape Fear River.

104. Then, only after DEQ's request did Chemours provide internal health studies it and Old DuPont had on GenX—studies that Old DuPont or Chemours had previously conducted (without disclosing).

105. In August 2017, EPA reported to DEQ that additional undisclosed byproducts of concern were detected in samples collected at Outfall 002 at the Fayetteville Works, including PFESA Byproduct 1 and PFESA Byproduct 2. Upon information and belief, these compounds are a byproduct of Chemours's Nafion manufacturing process. Neither Chemours nor Old DuPont ever disclosed to DWR that it was discharging these byproducts into the Cape Fear River.

106. On August 29, 2017, 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.”

**E. History of Regulation, Violations, and Prior Enforcement**

107. The Fayetteville Works has both air emissions and water discharge permits, the latter of which includes discharges for process wastewater from the Fayetteville Works’ onsite wastewater treatment plant, as well as a stormwater discharge permit.

**Air Permit**

108. The Fayetteville Works is a major source of air pollution and is required to obtain and operate within a Clean Air Act Title V operating permit. *See* 42 U.S.C. § 7661 et seq.; *see also* N.C. Gen. Stat. §§ 143-215.107(a)(10), 143-215.3(c); 40 C.F.R. pt. 70, app. A. Further, the permit requires the submission of annual emissions inventories to DEQ detailing the Fayetteville Works’ actual emissions of various air pollutants into the environment for the previous calendar year. *See* 15A N.C.A.C. 2Q .0207. The accuracy of these reports is required to be certified by a responsible official from the Fayetteville Works. *See id.*

109. The purposes of North Carolina’s air quality program are set forth in N.C. Gen. Stat. § 143-215.105, which incorporates by reference the policy goals set forth in Article 21 of Chapter 143 of the North Carolina General Statutes (“Water and Air Resources”). As described in Article 21, the General Assembly intended for North Carolina’s water quality and air quality programs to provide an integrated scheme for ensuring protection of public health and natural resources. The statute provides that “water and air resources of the State belong to the people, [and] the General Assembly affirms the State’s ultimate responsibility for the preservation and development of these resources in the best interest of all its citizens and declares the prudent

utilization of these resources to be essential to the general welfare.” N.C. Gen. Stat. § 143-211(a). The statute further requires that “[s]tandards of water and air purity shall,” among other things, “be designed to protect human health, to prevent injury to plant and animal life, [and] to prevent damage to public and private property.” *Id.* § 143-211(c).

110. Starting in 2017, Chemours’s annual emissions inventories were required to include GenX. Testing revealed that Chemours was emitting into the air thousands of pounds of GenX per year. Upon information and belief, the PFAS Defendants emitted PFAS for several decades prior to GenX being included in the annual emissions inventories. Such emissions led to widespread dispersal of PFAS—GenX has been detected in rainwater sampling as far as 21 miles from the Fayetteville Works.

### **Water Permit**

111. The Fayetteville Works discharges wastewater and stormwater pursuant to NPDES Permit No. NC003573 (“NPDES Permit”), the most recent version of which was issued by DWR on October 28, 2015.

112. At that time, the NPDES Permit authorized discharge of wastewater and stormwater from the Fayetteville Works through two outfalls: Outfall 001 is an internal outfall from the Fayetteville Works’ wastewater treatment plant and Outfall 002 is an external outfall discharging Chemours’s “treated” wastewater into the Cape Fear River. Upon information and belief, the PFAS Defendants failed to treat wastewater to remove PFAS, including GenX, but discharged GenX and related compounds directly into the Cape Fear River since at least the early 1980s.

113. The segment of the Cape Fear River into which the Fayetteville Works’ wastewater discharges is upstream of various drinking water intakes and is classified as a WS-IV water, which means its “best use” is 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).

114. The surface water into which the Fayetteville Works' wastewater is discharged is used as a public water source that serves residents and businesses in several counties within the Cape Fear River Basin.

### **Violations of Permits and Rules**

115. The PFAS Defendants failed to disclose the presence of various toxic substances, including GenX and related compounds, when they applied for their NPDES Permit in 2012. Not only did they fail to disclose the presence of such compounds, but the PFAS Defendants discharged these substances into the Cape Fear River in violation of the State's Clean Water Act. *See* N.C. Gen. Stat. § 143-215.1.

116. The process wastewater from the Fluoromonomers/Nafion Membrane Manufacturing Area contains and has contained substances or combinations of substances that meet the definition of "toxic substance" set forth in the State's rules governing surface water. *See* 15A N.C.A.C. 2B .0202. DuPont was aware that these substances had potential toxic effects prior to submitting its 2012 Permit application to the DWR. Chemours was aware that these substances had potential toxic effects when it was spun off as an independent business from DuPont. By representing to the 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, DuPont and Chemours knowingly misled the DWR into believing that GenX were not being discharged from the Fayetteville Works into surface waters. DuPont committed this and other omissions with actual malice and/or with a wanton disregard of persons who may be harmed by their acts or omissions. DuPont's conduct was performed to promote sales of their products, or to reduce or eliminate expenses they would otherwise have incurred to remove PFAS from their waste streams, despite the impacts on the Fayetteville Works, the state, and its citizens relating to contamination of groundwater, surface water, and other natural resources.

117. Further, failing to disclose all known toxic components expected to be discharged violates the State's surface water rules. *See* 15A N.C.A.C. 2H .0105.

118. Old DuPont and Chemours violated conditions of its NPDES Permit 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. *See* 2012 Permit, Standard Condition II.E.8. Further, Chemours's 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.

119. The onsite wastewater treatment plant at the Fayetteville Works is ineffective at removing GenX and related compounds from the process wastewater that was discharged for decades into the Cape Fear River through Outfall 002. Public water treatment plants that use water from the Cape Fear River, downstream of the Fayetteville Works, as a source for drinking water are ineffective at removing GenX and related compounds from the water. GenX and related compounds, therefore, have been and are present in public drinking water supplied to residents and businesses in several counties.

120. Chemours and DuPont have known for years that GenX and related compounds were being generated as byproducts and discharged in the wastewater and air emissions, and ultimately into the groundwater and surface waters of the state.

121. Based on its investigation in which DEQ detected GenX emissions in groundwater and rainwater many miles from the Fayetteville Works, on April 6, 2018, North Carolina Division of Air Quality ("DAQ") sent Chemours a letter providing Chemours 60-days' notice of its intent to modify Chemours's air quality permit in order to ensure that Chemours's air emissions will no longer cause or contribute to violations of North Carolina's groundwater rules.

## **F. The State's Ongoing Investigation**

122. DEQ, in consultation with DHHS, has led a State investigation into the presence of GenX and related compounds in the Cape Fear River.

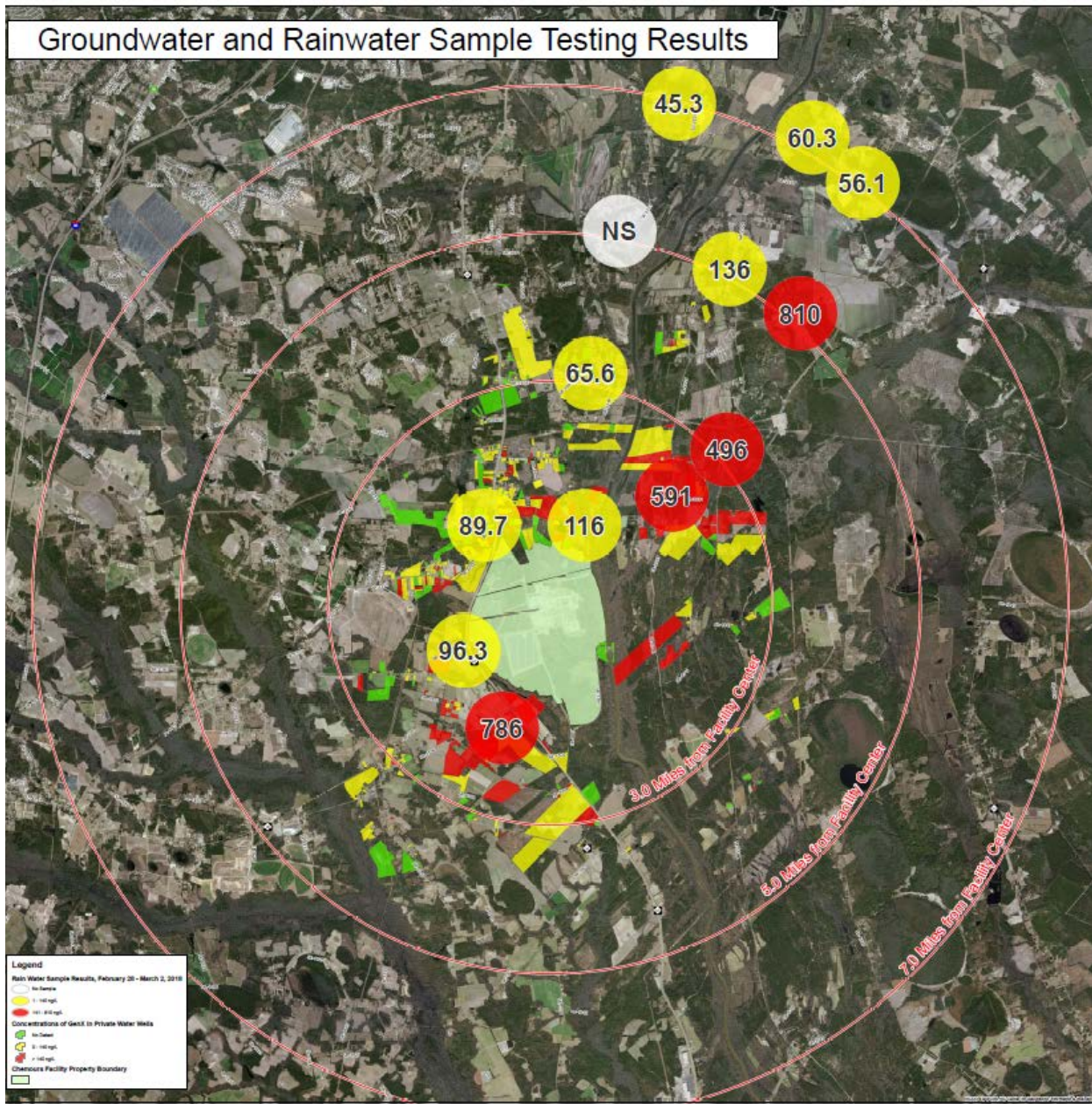
123. Concentrations of GenX and other PFAS in groundwater samples taken from private drinking water wells in the vicinity of the Fayetteville Works also exceed allowable concentrations under North Carolina's groundwater rules.

124. At least until the entry of a consent order in an injunctive action against Chemours brought by the DEQ, Chemours's air emissions contained PFAS, which was deposited onto land and, ultimately, permeated groundwater. Since entry of the consent order, contamination persists in the soil and runoff from the Fayetteville Works and continues to contribute to groundwater pollution above levels permitted under North Carolina's groundwater rules.

125. In 2017, DEQ began collecting water samples from sites along the Cape Fear River. Samples showed that concentrations of GenX were present and measured as high as 640,000 ng/L in the groundwater beneath the Fayetteville Works and 4,000 ng/L in private drinking water wells, far exceeding the DHHS provisional health goal for drinking water of 140 ng/L.

126. In conjunction with its efforts to quantify emission rates, DEQ has undertaken measures to determine the fate of GenX emitted from the Fayetteville Works in the environment. Rainwater sampling was conducted in early 2018 that showed that GenX was present in rainwater at levels exceeding the Practical Quantitation Limit ("PQL"). 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, which is "the lowest concentration that can be reliably achieved within specified limits of precision and accuracy during routine laboratory operating conditions." 15A N.C.A.C. 2L .0102-0202. The sampling included measurements of 810 ng/L five miles to the northeast of the Fayetteville Works and three samples measuring between

40 and 60 ng/L seven miles to the northeast of the Fayetteville Works. A combined rainwater sampling map and off-site groundwater contamination map (of a certain area in relative proximity to the Fayetteville Works) is reproduced below, representing contamination detected as of the time of sampling<sup>2</sup>:



*Groundwater and Rainwater Sample Testing Results: Rainwater results are shown using white, yellow, and red*

<sup>2</sup> Further testing has or may reveal additional contamination.

*circles. A white circle means “no sample”; a yellow circle means “1-140 ng/L”; and a red circle means “141-810 ng/L.” Property parcels with concentrations of GenX in private wells are shaded in green, yellow, and red. Green means “no detect”; yellow means “0-140 ng/L” and red means “greater than 140 ng/L.”*

127. There are no other facilities in North Carolina that produce or use GenX.

128. Data from the DEQ’s investigation indicate that Chemours’s emissions of GenX are a primary source of groundwater contamination in private drinking water wells and these emissions cause or contribute to violations of groundwater rules occurring beyond the Fayetteville Works’ property line. These emissions are also a source of onsite groundwater contamination.

**G. Old DuPont’s Multi-Step, Fraudulent Scheme to Isolate Its Valuable Tangible Assets from Its PFAS Liabilities**

129. Old DuPont’s and Chemours’s liabilities for PFOA and other PFAS contamination account for a substantial portion of their environmental liabilities nationwide.

130. Old DuPont sought to insulate itself from billions of dollars of legacy PFAS liabilities, especially those arising from PFOA and other PFAS contamination at chemical plants that it owned and operated throughout the country.

131. Upon information and belief, Old DuPont’s potential cumulative liability related to PFOA and other PFAS is likely billions of dollars due to the persistence, mobility, bio-accumulative properties, and toxicity of these “forever chemicals,” as well as Old DuPont’s decades-long attempt to hide the dangers of PFAS from the public.

132. For more than five decades, Old DuPont manufactured, produced, or utilized PFOA and other PFAS at plants in New Jersey and West Virginia and at the Fayetteville Works. As alleged above, throughout this time, Old DuPont was aware that PFOA was toxic, harmful to animals and humans, bio-accumulative, and bio-persistent in the environment. Old DuPont also knew that it had emitted and discharged PFOA and other PFAS in large quantities into the environment and that tens of thousands of people had been exposed to PFOA, including through



public and private drinking water supplies, which Old DuPont had contaminated. Thus, Old DuPont knew, or reasonably should have known, that it faced billions of dollars in liabilities arising from its use of PFOA.

133. For example, in 1999, members of the Tennant family, who owned property impacted by PFOA contamination adjacent to DuPont's Washington Works plant in Parkersburg, West Virginia, sued Old DuPont in West Virginia federal court.

134. Old DuPont's in-house counsel was very concerned about Old DuPont's exposure related to PFOA. In November 2000, one of Old DuPont's in-house counsel handling PFOA issues wrote to his co-counsel: "We are going to spend millions to defend these lawsuits and have the additional threat of punitive damages hanging over our head. Getting out in front and acting responsibly can undercut and reduce the potential for punitives . . . . Our story is not a good one, we continued to increase our emissions into the river in spite of internal commitments to reduce or eliminate the release of this chemical into the community and the environment because of our concern about the biopersistence of this chemical."

135. In 2005, after confidentially settling the *Tennant* case, Old DuPont agreed to pay \$10.25 million to resolve eight counts brought by the EPA alleging violations of TSCA and RCRA. Old DuPont also was required to commit an additional \$6.25 million to supplemental environmental projects. See <https://www.epa.gov/enforcement/reference-news-release-epa-settles-pfoa-case-against-dupont-largest-environmental>.

136. Also in 2005, Old DuPont finalized a settlement of a class action lawsuit, which had been filed on behalf of 70,000 residents of Ohio and West Virginia who had been exposed to PFOA that DuPont had discharged from Washington Works, for total class member benefits valued at over \$300 million. Under the terms of the settlement, Old DuPont agreed to fund a panel

of scientists (the “Science Panel”) to confirm which if any diseases were linked to PFOA exposure, to filter local water for as long as PFOA concentrations exceeded regulatory thresholds, and to pay up to \$235 million for ongoing medical monitoring of the affected community for diseases that the Science Panel confirmed to be linked to PFOA exposures (the “Linked Diseases”). The settlement also provided that any class members who developed one or more of the Linked Diseases would be entitled to sue for personal injury and punitive damages, and DuPont could not contest that the class members’ exposure to PFOA could cause those Linked Diseases.

137. By 2012, the Science Panel had confirmed that several human diseases had “probable links” to PFOA exposure, including high cholesterol, ulcerative colitis, pregnancy-induced hypertension, thyroid disease, testicular cancer, and kidney cancer.

138. Following the completion of the Science Panel’s work in 2012, more than 3,500 individual personal injury and punitive damage claims were filed against DuPont in Ohio and West Virginia by class members who had been diagnosed with one or more of the Linked Diseases under the terms of the 2005 class settlement. These claims were consolidated in the federal multidistrict litigation styled *In Re: E. I. du Pont de Nemours and Company C-8 Personal Injury Litigation* (MDL No. 2433) in the United States District Court for the Southern District of Ohio. Forty “bellwether” trials were scheduled to take place in 2015 and 2016.

139. Old DuPont knew that it faced substantial exposure at these trials, as well as liability related to PFOA and other PFAS contamination at other sites throughout the country, including the Fayetteville Works, and that its liability was likely billions of dollars.

140. In light of this significant exposure, upon information and belief, by 2013, Old DuPont’s management began to consider restructuring the company in order to, among other

things, avoid responsibility for the widespread environmental harm that Old DuPont's PFAS had caused and shield billions of dollars in assets from these substantial liabilities.

141. In or about 2013, Old DuPont and The Dow Chemical Company ("Old Dow") began discussions about a possible "merger of equals."

142. Old DuPont's management decided to pursue a strategy specifically designed to isolate Old DuPont's massive legacy liabilities from its valuable tangible assets in order to shield those assets from creditors and entice Old Dow to pursue the proposed merger.

143. Old DuPont engaged in a three-part plan, which in summary proceeded as follows:

144. The first step in Old DuPont's plan was to transfer its Performance Chemicals Business (which included Teflon and other products, the manufacture of which involved the use of PFOA and other PFAS) into its wholly owned subsidiary, Chemours. And then, in July 2015, Old DuPont "spun-off" Chemours as a separate public entity and saddled Chemours with Old DuPont's massive legacy liabilities (the "Chemours Spinoff").

145. Old DuPont knew that Chemours was undercapitalized and could not satisfy the massive liabilities that it caused Chemours to assume. Old DuPont also knew that the Chemours Spinoff alone would not isolate its own assets from its PFAS liabilities and that DuPont still faced direct liability for its own conduct.

146. Accordingly, Old DuPont moved on to the next step of its plan, designed to further distance itself from the exposure it had created over its decades-long bad conduct with regard to the environment and PFAS.

147. The second step involved Old DuPont and Old Dow entering into an "Agreement and Plan of Merger" in December 2015, pursuant to which Old DuPont and Old Dow merged with

subsidiaries of a newly formed holding company, DowDuPont, Inc. (“DowDuPont”). Old DuPont and Old Dow became subsidiaries of DowDuPont.

148. Then, through a series of subsequent agreements, DowDuPont engaged in numerous business segment and product line “realignments” and “divestitures.” The net effect of these transactions was to transfer, either directly or indirectly, a substantial portion of Old DuPont’s assets to DowDuPont.

149. The third step involved DowDuPont spinning off two new companies: (i) Corteva, which currently holds Old DuPont as a subsidiary, and (ii) Dow, Inc. (“New Dow”), which currently holds Old Dow. DowDuPont was then renamed DuPont de Nemours, Inc. (i.e., New DuPont).

150. As a result of these transactions, between December 2014 (pre-Chemours Spinoff) and December 2019 (post-Dow merger), the value of Old DuPont’s tangible assets decreased by \$20.85 billion.

151. New DuPont and New Dow now hold the vast majority of the tangible assets that Old DuPont formerly owned.

152. Many of the details about these transactions are hidden from the public in confidential schedules and exhibits to the various agreements. Upon information and belief, Old DuPont, New DuPont, and Corteva have intentionally buried these details in an attempt to hide from potential judgment creditors, like the State, details regarding where Old DuPont’s valuable assets went and the inadequate consideration that Old DuPont received in return.

153. In greater detail, the restructuring was implemented as follows:

### **Step 1: The Chemours Spinoff**

154. Prior to July 1, 2015, Chemours was a wholly owned subsidiary of Old DuPont. On July 1, 2015, Old DuPont completed the spinoff of its Performance Chemicals Business, and Chemours became a separate, publicly traded entity.

155. The Performance Chemicals Business included the business units that had manufactured, used, and discharged PFOA into the environment.

156. To effectuate the Chemours Spinoff, Old DuPont and Chemours entered into the June 26, 2015 Separation Agreement (the “Chemours Separation Agreement”).

157. Pursuant to the Chemours Separation Agreement, Old DuPont agreed to transfer to Chemours all businesses and assets related to the Performance Chemicals Business, including 37 active chemical plants. Upon information and belief, the Fayetteville Works was one of the 37 sites referenced in the Separation Agreement and one or more schedules to that Agreement.

158. Old DuPont completed a significant internal reorganization prior to the Chemours Spinoff to ensure the transfer of all of its Performance Chemicals Business assets to Chemours.

159. At the same time, Chemours accepted a broad assumption of Old DuPont’s massive liabilities relating to DuPont’s Performance Chemicals Business, including those arising from its discharge of contaminants, such as PFOA and other PFAS, into the environment. The specific details regarding the nature and value of probable maximum loss, and anticipated timing of the liabilities that Chemours assumed, are set forth in the nonpublic schedules and exhibits to the Chemours Separation Agreement.

160. Notwithstanding the billions of dollars in environmental and PFAS liabilities that Chemours would face, on July 1, 2015, Chemours transferred to Old DuPont approximately \$3.4 billion as a cash dividend, along with a “distribution in kind” of promissory notes with an aggregate principal amount of \$507 million.

161. Thus, in total, Chemours distributed approximately \$3.9 billion to Old DuPont. Chemours funded these distributions by entering into approximately \$3.995 billion of financing transactions on May 12, 2015. Also, Chemours distributed common stock to Old DuPont shareholders on July 1, 2015.

162. The Chemours Separation Agreement requires Chemours to indemnify Old DuPont against, and assume for itself, all “Chemours Liabilities,” which include Old DuPont’s liabilities relating to and arising from its decades of emitting pollution, including PFOA, into the environment from its dozens of facilities.

163. Notably, Chemours sued Old DuPont in Delaware state court in 2019, alleging among other things, that if (i) the full value of Old DuPont’s PFAS and environmental liabilities were properly estimated, and (ii) the liabilities that the Chemours Separation Agreement imposes were not limited by a court, then Chemours would have been insolvent at the time it was spun off from Old DuPont.

164. It is apparent that Old DuPont’s goal with respect to the Chemours Spinoff was to segregate a large portion of Old DuPont’s legacy environmental liabilities, including liabilities related to its PFAS chemicals and products and, in so doing, shield Old DuPont.

165. Not surprisingly, given Old DuPont’s extraction of nearly \$4 billion from Chemours immediately prior to the Spinoff, Chemours was thinly capitalized and unable to satisfy the substantial liabilities that it assumed from Old DuPont.

166. At the end of 2015, following the Chemours Spinoff, Chemours reported that it had total assets of \$6.298 billion and total liabilities of \$6.168 billion, yielding a total net worth of \$130 million.

167. However, Chemours significantly underestimated its liabilities, including the liabilities that it had assumed from Old DuPont with respect to PFAS and that Old DuPont and Chemours knew or should have known would be billions of dollars in addition to other environmental liabilities for other contaminants discharged at DuPont and Chemours facilities.

168. Had the full extent of Old DuPont's legacy liabilities been taken into account, as they should have been, at the time of the Chemours Spinoff, Chemours would have been rendered insolvent at that time.

### **Step 2: The Old Dow/Old DuPont "Merger"**

169. After the Chemours Spinoff, Old DuPont publicly claimed that the PFAS liabilities associated with the Performance Chemicals Business that Old DuPont had transferred to Chemours rested solely with Chemours, and not with Old DuPont.

170. Of course, Old DuPont could not contractually discharge all of its historical liabilities through the Chemours Spinoff, and Old DuPont remained liable for the liabilities it had caused and Chemours had assumed. So Old DuPont moved to the next phase of its fraudulent scheme.

171. On December 11, 2015, less than six months following the Chemours Spinoff, Old DuPont and Old Dow announced that they would combine in an "all-stock merger of equals" and that the combined company would be named DowDuPont, Inc. ("the Dow-DuPont Merger"). As a result of the Dow-DuPont Merger, and in accordance with the Dow-DuPont Merger Agreement, Old Dow and Old DuPont each became wholly owned subsidiaries of DowDuPont.

### **Step 3: The Shuffling, Reorganization, and Transfer of Valuable Assets Away from Old DuPont and Separation of Corteva and New Dow**

172. Following the Dow-DuPont Merger, DowDuPont engaged in numerous business segment and product line "realignments" and "divestitures." The net effect of these transactions

has been the transfer, either directly or indirectly, of a substantial portion of Old DuPont's assets out of the company.

173. While, again, the details of these transactions remain hidden from the State and other judgment creditors, it is apparent that the transactions were intended to frustrate and hinder creditors with claims against Old DuPont, including with respect to its PFAS liabilities.

174. Old DuPont's assets, including its remaining business segments and product lines, were transferred either directly or indirectly to DowDuPont, which reshuffled the assets and combined them with the assets of Old Dow and then reorganized the combined assets into three distinct divisions: (i) the "Agriculture Business," (ii) the "Specialty Products Business," and (iii) the "Materials Science Business."

175. While the precise composition of these divisions, including many details of the specific transactions, the transfer of business segments, and the divestiture of product lines during this time, are not publicly available, it is apparent that Old DuPont transferred a substantial portion of its valuable assets to DowDuPont for far less than the assets were worth.

176. DowDuPont then incorporated, and ultimately spun off, Corteva and New Dow, to hold two of the three newly formed business lines.

177. The April 1, 2019 Separation and Distribution Agreement among Corteva, New Dow, and DowDuPont (the "DowDuPont Separation Agreement") governs the separations of Corteva and New Dow. The agreement generally allocates the assets primarily related to the respective business divisions to Corteva (Agriculture Business), New Dow (Materials Science Business), and New DuPont (Specialty Products Business). New DuPont also retained several "noncore" business segments and product lines that once belonged to Old DuPont.

178. The separation of New Dow was completed on or about April 1, 2019.



179. On or about May 2, 2019, DowDuPont consolidated the Agricultural Business line into Old DuPont, and then, on or about May 31, 2019, it “contributed” Old DuPont to Corteva. The following day, on June 1, 2019, DowDuPont spun off Corteva as an independent public company. On or about June 1, 2019, DowDuPont changed its registered name to Du Pont de Nemours, Inc. (i.e., New DuPont).

180. Pursuant to the DowDuPont Separation Agreement, Corteva and New DuPont assumed direct financial liability of Old DuPont, including liability that was *not* related to the Agriculture, Materials Science, or Specialty Products Businesses, including upon information and belief, Old DuPont’s legacy PFAS liabilities. These assumed PFAS liabilities are allocated on a pro rata basis between Corteva and New DuPont pursuant to the DowDuPont Separation Agreement, such that, after both companies have satisfied certain conditions, liabilities are allocated 71% to New DuPont and 29% to Corteva.

181. While New DuPont and Corteva have buried the details in nonpublic schedules, upon information and belief, this allocation applies to Old DuPont’s legacy liabilities for PFAS contamination and its former Performance Chemicals Business, including the State’s claims in this case. The State can therefore bring claims against New DuPont and Corteva directly for Old DuPont’s contamination of the state’s natural resources.

**The Effect of the Years-Long Scheme to Defraud the State and Avoid Financial Responsibility for Legacy Liabilities**

182. The net result of these transactions was to strip away valuable tangible assets from Old DuPont and transfer those assets to New DuPont and Corteva for far less than the assets were worth. As a result, Old DuPont was left with substantially fewer tangible assets than it had prior to the restructuring.

183. In addition, Old DuPont owes a debt to Corteva of approximately \$4 billion. Recent SEC filings demonstrate the substantial deterioration of Old DuPont's finances and the drastic change in its financial condition before and after the above transactions.

184. For example, for the year ended 2014, prior to the Chemours Spinoff, Old DuPont reported \$3.6 billion in net income and \$3.7 billion in cash provided by operating activities. For the year ended 2019, just months after the Corteva separation, however, Old DuPont reported a net loss of \$1 billion and only \$996 million in cash provided by operating activities. That is a decrease of 128% in net income and a decrease of 73% in annual operating cash flow.

185. The value of Old DuPont's tangible assets further underscores Old DuPont's precarious financial situation. For the year ended 2014, prior to the Chemours Spinoff, Old DuPont owned nearly \$41 billion in tangible assets. For the year ended 2019, Old DuPont owned just under \$21 billion in tangible assets.

186. Moreover, Old DuPont's reported liabilities for the same period totaled \$21.869 billion. DuPont's tangible net worth had declined to *negative* \$1.125 billion.

187. In addition, the State cannot take comfort in the "allocation" of liabilities to New DuPont and Corteva. Neither of those Defendants has publicly conceded that it assumed Old DuPont's historical environmental and PFAS liabilities. And it is far from clear that either entity will be able to satisfy future judgments.

188. Indeed, New DuPont is in the process of divesting tangible assets that it received from Old DuPont and for which Old DuPont has received less than reasonably equivalent value.

189. New DuPont has received or will receive significant proceeds on the sales of Old DuPont's former business segments and product lines.

190. As just one example, in December 15, 2019, New DuPont agreed to sell the Nutrition and Biosciences business to International Flavors & Fragrances for \$26.2 billion, and that transaction is scheduled to close in early 2021.

191. Corteva—to which 29% of PFAS liabilities are “allocated” under the DowDuPont Separation Agreement once certain conditions are satisfied—holds as its primary tangible asset the debt owed to it by Old DuPont. But Old DuPont does not have sufficient tangible assets to satisfy this debt obligation.

### **SCOPE OF ACTION**

192. Through this action, Plaintiffs are not seeking damages, remediation, or restoration with respect to AFFF contamination. AFFF is a product that contains PFAS compounds but is not within the scope of this litigation.

193. Further, the State does not seek civil penalties or injunctive relief for the claims released by the Consent Order entered between the State and Chemours, as spelled out in Section J of that Order.

194. The State seeks that Defendants pay all costs necessary to investigate, locate, assess, and address PFAS and other hazardous substances, pollution, and contamination that has emanated, been released, or been discharged from the Fayetteville Works and across a broad swath of North Carolina.

195. The State and public have suffered broad damages as a result of the PFAS Defendants’ discharges of these chemicals. The State has and will expend significant costs in responding to this widespread contamination and providing necessary related public services, such as health investigations and consumption advisories. Likewise, the State has and will suffer lost income, fees, and taxes as a result of the impacts this contamination has on the natural resources, businesses, and people of North Carolina.

196. The State seeks from Defendants all damages to which the State is entitled to recover, including all costs necessary to investigate, remediate, assess, restore, and remedy the harms the PFAS Defendants caused in North Carolina as a result of operations at the Fayetteville Works, including any and all damages available for injuries to all natural resources, property damages, economic damages, punitive damages, restitution, disgorgement, and any and all other damages, costs, and equitable relief to which it may be entitled.

### **FIRST CAUSE OF ACTION**

#### **(Negligence – As Against the PFAS Defendants)**

197. Plaintiff repeats each allegation of Paragraphs 1 through 196 above as though fully set forth in its entirety herein.

198. At all times relevant to this Complaint, the PFAS Defendants negligently caused the contamination of the environment, including but not limited to land, water, air, biota, other natural resources, and habitats and ecosystems in the State of North Carolina, including at and around the Fayetteville Works and the greater Cape Fear River Watershed.

199. The PFAS Defendants had a duty to ensure that GenX and other PFAS were not released into the environment, where it would contaminate North Carolina's natural resources and pose a threat to the health of its residents.

200. The PFAS Defendants failed to timely, fully, and adequately warn or notify North Carolina of the contamination.

201. The presence and hazards of PFAS and GenX in the environment were foreseeable, known, or obvious to the PFAS Defendants but were not known or obvious to North Carolina or its citizens. Despite the PFAS Defendants' actual knowledge that it was emitting GenX and other PFAS from the Fayetteville Works, the PFAS Defendants failed to prevent the emissions and spread of the contamination.

202. At all times relevant to this Complaint, the PFAS Defendants had a duty, among other things to:

a. Take adequate and timely precautions to prevent PFAS from being released and contaminating the environment, including the land, water, air, biota, other natural resources, and the habitats and ecosystems in North Carolina;

b. Remove the PFAS from the land, water, air, biota, other natural resources, and the habitats and ecosystems including the contamination at and around the Fayetteville Works;

c. Adequately and timely warn federal, State, and local regulators and authorities, and potentially affected members of the public, of the presence of, and threats posed by, releases of PFAS into the environment; and

d. Handle, treat, store, and dispose of PFAS in a manner that would not create a nuisance or an imminent and substantial endangerment to human health or the environment.

203. The PFAS Defendants breached the above-named duties.

204. The PFAS Defendants also owed a duty to North Carolina to operate the Fayetteville Works in a manner that would not violate applicable legal requirements, including the North Carolina Water and Air Pollution Control Act and the Groundwater Standards. The PFAS Defendants' violations of these statutes and rules constitute negligence per se and/or prima facie evidence of negligence.

205. The PFAS Defendants' conscious disregard for the rights of North Carolina and the safety of its citizens has caused and continues to cause substantial harm to North Carolina and the property and natural resources it holds in trust for its citizens and will likely cause substantial harm in the future.

206. As a proximate result of the PFAS Defendants' negligent, wanton, and reckless acts or omissions, natural resources in North Carolina have been contaminated by PFAS, and North Carolina has suffered and will continue to suffer damages as described herein.

207. The PFAS Defendants are liable for all direct and consequential damages as described *infra* (including, inter alia, past and future costs, special damages, and punitive damages).

208. Upon information and belief, Corteva and New DuPont assumed Old DuPont's liability described above.

## **SECOND CAUSE OF ACTION**

### **(Trespass – As Against the PFAS Defendants)**

209. Plaintiff repeats each allegation of Paragraphs 1 through 196 above as though fully set forth in its entirety herein.

210. Groundwater, surface water, sediment, wetlands, and biota are natural resources of the state held in trust by the State for the benefit of the public. Water resources are owned by the State for the benefit of its citizens.

211. The State owns lands throughout the state, including properties in the Cape Fear River Basin that have been contaminated by pollution originating at the Fayetteville Works.

212. The State brings this claim as the owner of public lands and/or other real property, as the trustee of natural resources held in trust for the benefit of the public, and in its *parens patriae* capacity. By the foregoing conduct, the PFAS Defendants intentionally discharged, caused, and continue to cause PFAS to contaminate air, groundwater, surface water, soils, sediments, biota, and other property owned or held in trust by North Carolina on behalf of its citizens. This contamination was or should have been reasonably foreseeable to the PFAS Defendants. The PFAS Defendants intentionally contaminated North Carolina's natural resources and property.

213. North Carolina never authorized this invasion of its natural resources and property.

214. The presence of PFAS in North Carolina's natural resources and property, including its air, groundwater, surface water, soils, sediments, and biota, constitutes a continuing trespass. The PFAS Defendants' conscious disregard of the rights of North Carolina and the safety of its citizens has caused substantial harm to North Carolina, its natural resources, and its public trust property and will very likely cause further substantial harm.

215. As a direct and proximate result of the PFAS Defendants' continuing trespass and engaging in the above-mentioned activities, and the resultant releases of PFAS that trespassed upon the State's public trust property, North Carolina has suffered direct and consequential damages as described herein.

216. Upon information and belief, Corteva and New DuPont assumed Old DuPont's liability described above.

### **THIRD CAUSE OF ACTION**

#### **(Public Nuisance – As Against the PFAS Defendants)**

217. Plaintiff repeats each allegation of Paragraphs 1 through 196 above as though fully set forth in its entirety herein.

218. The PFAS Defendants have caused and threatened to cause, and continue to cause and threaten to cause, environmental contamination by allowing PFAS to enter into the air, soil, sediments, biota, surface water, groundwater, and property held in trust by North Carolina, rendering these natural resources unfit for their uses.

219. North Carolina was and is entitled to the full use and enjoyment of the natural resources it holds in trust for its citizens. These natural resources include, among other things, air, soil, sediments, biota, surface water, and groundwater. North Carolina and its citizens have been

deprived of the use and enjoyment of its natural resources by the PFAS Defendants' acts and omissions.

220. The PFAS Defendants' acts and omissions affect a substantial number of people—the community at large—who use these public trust natural resources for commercial, subsistence, passive use, and recreational purposes and interferes with the rights of the public to clean and safe natural resources and the environment, including but not limited to the right to safe, uncontaminated drinking water.

221. The gravity of the environmental and human health risks created by the PFAS Defendants' conduct and the PFAS Defendants' concealment of the dangers to human health and the environment far outweigh any social utility of the PFAS Defendants' conduct.

222. The actions of the PFAS Defendants have caused and/or allowed an unreasonable interference with the health, wealth, welfare, and property of the public and constitute a common law public nuisance for which the PFAS Defendants are liable and subject to injunctive relief prohibiting the creation and continuance of said nuisance, and North Carolina is entitled to all direct and consequential damages as described herein. Defendants are also liable for any other relief that will abate and remediate the nuisance and its short-term and long-term effects.

223. Upon information and belief, Corteva and New DuPont assumed Old DuPont's liability described above.

#### **FOURTH CAUSE OF ACTION**

##### **(Fraud – As Against the PFAS Defendants)**

224. Plaintiff repeats each allegation of Paragraphs 1 through 196 above as though fully set forth in its entirety herein.

225. For decades, the PFAS Defendants knew that PFAS posed human health and environmental risks. However, the PFAS Defendants failed to disclose the truth and instead misled



the State and regulators with false statements about the dangers of PFAS. Further, the PFAS Defendants concealed information regarding (1) PFOA's health effects from the State when it submitted its 2001 NPDES renewal application, (2) their discharge of GenX and related compounds into the Cape Fear River, (3) that the wastewater generated from the manufacture of GenX was contained within a closed-loop system and it did not leave the Fayetteville Works, (4) that all process wastewater from the PPA manufacturing area was being collected and shipped off-site for disposal, (5) that no process wastewater from the PPA manufacturing area was being discharged to the onsite waste water treatment plant, (6) that the PFAS Defendants had internal health studies on GenX, and (7) that the PFAS Defendants were discharging PFESA Byproduct 1 and PFESA Byproduct 2 into the Cape Fear River.

226. Despite an obligation to disclose, the PFAS Defendants concealed this information to avoid regulation, to avoid the requirement to obtain a permit to discharge GenX and other PFAS compounds, and to reduce costs and increase profits, as well as to deceive the State.

227. By failing to disclose the full extent of discharges, the PFAS Defendants intended to deceive the State.

228. Due to the PFAS Defendants' failure to disclose this information to the State, the State was unaware of the discharges the PFAS Defendants made and their associated harms.

229. As a result of this deception, the discharges of GenX and associated compounds were not regulated or prevented altogether and did result in damage to the air, soil, sediments, biota, surface water, groundwater, and property held in trust by North Carolina.

230. Upon information and belief, Corteva and New DuPont assumed Old DuPont's liability described above.

## **FIFTH CAUSE OF ACTION**

### **(Actual Fraudulent Transfer in Relation to the Chemours Spinoff - As Against Old DuPont, Chemours, Corteva, and New DuPont)**

231. Plaintiff repeats each allegation of Paragraphs 1 through 196 above as though fully set forth in its entirety herein.

232. The State is and was a creditor of Chemours at all relevant times.

233. Through its participation in the Chemours Spinoff, as detailed above, Chemours transferred valuable assets to Old DuPont, including the \$3.9 billion dividend (the “Chemours Transfers”), while simultaneously assuming significant liabilities pursuant to the Separation Agreement (the “Assumed Liabilities”).

234. The Chemours Transfers and Assumed Liabilities were made for the benefit of Old DuPont.

235. At the time that the Chemours Transfers were made and the Assumed Liabilities were assumed, and until the Chemours Spinoff was complete, Old DuPont was in a position to control Chemours.

236. Chemours made the Chemours Transfers and incurred the Assumed Liabilities with the actual intent to hinder, delay, and defraud the creditors or future creditors of Chemours.

237. The State has been harmed as a result of the Chemours Transfers.

238. Upon information and belief, Corteva and New DuPont assumed Old DuPont’s liability described above.

239. Under Del. Code tit. 6 §§ 1301 to 1312 and N.C. Gen. Stat. §§ 39-23.4, -23.5, and -23.7, the State is entitled to void the Chemours Transfers and to recover property or value transferred to Old DuPont.

## SIXTH CAUSE OF ACTION

### **(Constructive Fraudulent Transfer in Relation to the Chemours Spinoff – As Against Old DuPont, Chemours, Corteva, and New DuPont)**

240. Plaintiff repeats each allegation of Paragraphs 1 through 196 above as though fully set forth in its entirety herein.

241. The State is and was a creditor of Chemours at all relevant times.

242. Chemours did not receive reasonably equivalent value from Old DuPont in exchange for the Chemours Transfers and Assumed Liabilities.

243. Each of the Chemours Transfers and Chemours's assumption of the Assumed Liabilities was made to or for the benefit of Old DuPont.

244. At the time that the Chemours Transfers were made and the Assumed Liabilities were assumed, and until the Spinoff was complete, Old DuPont was in a position to control Chemours.

245. Chemours made the Chemours Transfers and assumed the Assumed Liabilities when it was engaged or about to be engaged in a business for which its remaining assets were unreasonably small in relation to its business.

246. Chemours was insolvent at the time or became insolvent as a result of the Chemours Transfers and its assumption of the Assumed Liabilities.

247. At the time that the Chemours Transfers were made and Chemours assumed the Assumed Liabilities, Old DuPont and Chemours intended Chemours to incur or believed or reasonably should have believed that Chemours would incur debts beyond its ability to pay as they became due.

248. The State has been harmed as a result of the Chemours Transfers.

249. Upon information and belief, Corteva and New DuPont assumed Old DuPont's liability described above.

250. Under Del. Code tit. 6 §§ 1301 to 1312 and N.C. Gen. Stat. §§ 39-23.4, -23.5, and -23.7, the State is entitled to void the Chemours Transfers and to recover property or value transferred to Old DuPont.

### **SEVENTH CAUSE OF ACTION**

#### **(Actual Fraudulent Transfer in Relation to the Dow-DuPont Merger and Subsequent Restructurings, Asset Transfers, and Separations – As Against Old DuPont, New DuPont, and Corteva)**

251. Plaintiff repeats each allegation of Paragraphs 1 through 196 above as though fully set forth in its entirety herein.

252. The State is and was a creditor of Old DuPont at all relevant times.

253. Through its participation in the Dow-DuPont Merger, and through the separations of New DuPont, New Dow, and Corteva, Old DuPont sold or transferred, directly or indirectly, valuable assets and business lines to Corteva and New DuPont (the "Old DuPont Transfers").

254. The Old DuPont Transfers were made for the benefit of New DuPont and/or Corteva.

255. At the time that the Old DuPont Transfers were made, New DuPont was in a position to control Old DuPont and Corteva.

256. Old DuPont, New DuPont, and Corteva acted with the actual intent to hinder, delay, and defraud creditors or future creditors.

257. The State has been harmed as a result of the Old DuPont Transfers.

258. Old DuPont engaged in acts in furtherance of a scheme to transfer its assets out of the reach of parties such as the State that have been damaged as a result of the actions described in this Complaint.

259. Under Del. Code tit. 6 §§ 1301 to 1312 and N.C. Gen. Stat. §§ 39-23.4, -23.5, and -23.7, the State is entitled to void the Old DuPont Transfers and to recover property and value transferred to New DuPont and Corteva.

260. The State also seeks to enjoin New DuPont and Corteva, as transferees, from distributing, transferring, capitalizing, or otherwise disposing of any proceeds from the sale of any business lines, segments, divisions, or other assets that formerly belonged to Old DuPont, and seeks a constructive trust over such proceeds for the benefit of the State.

### **EIGHTH CAUSE OF ACTION**

#### **(Constructive Fraudulent Transfer in Relation to the Dow-DuPont Merger and Subsequent Restructurings, Asset Transfers, and Separations – As Against Old DuPont, New DuPont, and Corteva)**

261. Plaintiff repeats each allegation of Paragraphs 1 through 196 above as though fully set forth in its entirety herein.

262. The State is and was a creditor of Old DuPont at all relevant times.

263. Old DuPont did not receive reasonably equivalent value from New DuPont and Corteva in exchange for the Old DuPont Transfers.

264. Each of the Old DuPont Transfers was made to or for the benefit of New DuPont and/or Corteva.

265. At the time that the Old DuPont Transfers were made, New DuPont was in a position to control Old DuPont and Corteva.

266. Old DuPont made the Old DuPont Transfers when it was engaged or about to be engaged in a business for which its remaining assets were unreasonably small in relation to its business.

267. Old DuPont was insolvent at the time or became insolvent as a result of the Old DuPont Transfers.

268. At the time that the Old DuPont Transfers were made, Old DuPont intended to incur, or believed, or reasonably should have believed that it would incur debts beyond its ability to pay as they became due.

269. The State has been harmed as a result of the Old DuPont Transfers.

270. Under Del. Code tit. §§ 1301 to 1312 and N.C. Gen. Stat. §§ 39-23.4, -23.5, and -23.7, the State is entitled to void the Old DuPont Transfers and to recover property or value transferred to New DuPont and Corteva.

271. The State also seeks to enjoin New DuPont and Corteva, as transferees, from distributing, transferring, capitalizing, or otherwise disposing of any proceeds from the sale of any business lines, segments, divisions, or other assets that formerly belonged to Old DuPont, and seeks a constructive trust over such proceeds for the benefit of the State.

### **JURY DEMAND**

The State demands trial by jury on all issues so triable. The jury fee has been paid.

### **REQUEST FOR RELIEF**


**WHEREFORE**, the State respectfully requests that this Court enter judgment against Defendants:

1. Awarding damages to the State for all costs necessary to investigate, remediate, assess, restore, and remedy the harms the PFAS Defendants caused in North Carolina as a result of the PFAS Defendants' operations at the Fayetteville Works, including any and all damages available for injuries to all natural resources, property damages, economic damages, punitive damages, restitution, disgorgement, and any and all other damages, costs, and equitable relief to which it may be entitled;

2. Granting equitable relief to cure DuPont's and Chemours's deceptive practices and ordering disgorgement of DuPont's and Chemours's profits from its unfair and deceptive acts and practices;
3. Ordering that the State is entitled to avoid the Old DuPont Transfers and the Chemours Transfers to the extent necessary to satisfy the Plaintiff's claims;
4. Enjoining New DuPont from distributing, transferring, capitalizing, or otherwise disposing of any proceeds from the sale of any business lines, segments, divisions, or other assets that formerly belonged to Old DuPont;
5. Imposing a constructive trust over any such proceeds for the benefit of the State;
6. Awarding Plaintiff prejudgment interest and attorneys' fees and costs; and
7. Awarding Plaintiff any and all other relief as this Court deems appropriate and just.

This is the 13th day of October, 2020.

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