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October 5, 2017

Chairman J. D. Solomon
Environmental Management Commission
512 North Salisbury Street
Raleigh, NC 27604

Via Hand Delivery:

Dear Chairman Solomon:

Please find enclosed a Request for a Declaratory Ruling in the case of State of North Carolina, ex rel. Michael S. Regan, Secretary of the North Carolina Department of Environmental Quality v. The Chemours Company FC, LLC, 17 CVS 580 and the settlement approved by Judge Sasser on September 8, 2017.

Also please be aware that on September 27, 2017 I filed a PETITION FOR A CONTESTED CASE HEARING with the Office of Administrative Hearings (OAH) on this matter

I look forward to seeing the law followed and a speedy resolution of this matter.

Respectfully,



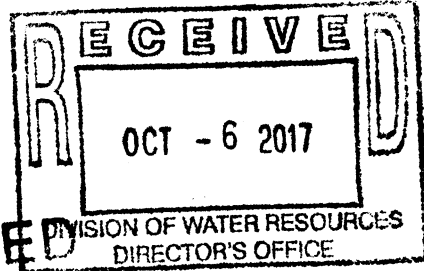
Col Francis X. De Luca USMCR(Ret)

Cc NCDEQ Division of Water Resources, Director Stanley Zimmerman

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STATE OF NORTH CAROLINA
ENVIRONMENTAL MANAGEMENT COMMISSION
RALEIGH, NC

BEFORE THE NORTH CAROLINA ENVIRONMENTAL MANAGEMENT COMMISSION

In the Matter of)
Request for Declaratory Ruling by) REQUEST FOR
Col Francis X. De Luca USMCR(Ret),) DECLARATORY RULING

Petitioner.

Pursuant to N.C.G.S. Sections 150B-4 and 143B-282.1 and 15A N.C.A.C. 21.0601 *et seq*, Francis X. De Luca respectfully requests that the Environmental Management Commission (the "EMC") issue a declaratory ruling directing the Department of Environmental Quality ("DEQ") to request that the Bladen County Superior Court Judge Douglas Sasser void the Partial Consent Order ("Consent Order"), filed in connection with State of North Carolina, ex rel. Michael S. Regan, Secretary of the North Carolina Department of Environmental Quality v. The Chemours Company FC, LLC, 17 CVS 580 and approved by Judge Sasser on September 8, 2017.

1. PETITIONER

The Petitioner is Francis X. De Luca, of 805 Spring Forest Rd, Suite 100 Raleigh, NC 27609.

2. NATURE OF THE REQUEST

Acting with the authority delegated to it by the EMC, DEQ fraudulently presented the Consent Order to Judge Sasser as a binding obligation of the State of North Carolina. Relying on DEQ's false representation, Judge Sasser approved the Consent Order and allowed it to be filed in the Superior Court. DEQ acted with full knowledge that it had failed to follow the public participation procedures required by NCGS Section 143-215.2 and the Rules adopted pursuant thereto, 15A NCAC .02H .1201 *et seq*. DEQ's actions also caused the State to violate the National Pollution Discharge Elimination System ("NPDES") Memorandum of Agreement Between the State of NC and the US EPA Region 4 (October 15, 2007) ("MOA"), pursuant to which EPA delegated NPDES program enforcement to North Carolina. Sections III.A.6 and IV of the MOA require the State to follow the public participation procedures of the Federal Clean Water Act (CWA) contained in 40 CFR 123.27(d)(2)(iii). The North Carolina statutes and rules, the MOA and the CWA all require a 45 day notice and a 30 day public comment period before the DEQ can enter into a valid consent order.

3. RULING REQUESTED

Petitioner seeks a ruling that directs DEQ to file a motion with Judge Sasser of the Superior Court of Bladen County seeking to void the Consent Order.

4. PETITIONER'S STANDING

DEQ's failure to follow the law has deprived Petitioner of his right to comment on the Consent Order and have his comments considered in determining whether the Consent Order is in the best interest of the citizens of North Carolina, which includes Petitioner. The terms of the Consent Order waive all rights of the State to pursue damages against The Chemours Company FC, LLC ("Chemours") for illegal discharge of pollutants into State waters in exchange

only for Chemours promise to exert its best efforts to comply with existing State and Federal law. Waiving a valuable right to compensation for illegal contamination of State waters for no consideration aggrieves all citizens of North Carolina, including Petitioner. Petitioner is particularly aggrieved in that he took action to pursue a citizen suit under the CWA on July 28, 2017, by submitting a 60-day notice letter to Chemours. Many of the concerns raised in Petitioner's notice letter to Chemours were raised in the State's complaint (the "Complaint") filed in connection with the above-reference case, on September 7, 2017. The Consent Order, filed just one day after the Complaint, purports to settle matters raised in Petitioner's notice letter for no consideration. Contemporaneous with the Consent Order filing with the Court, a Chemours lawyer contacted Petitioner to tell him of the filing of the Consent Order and to inform him that the filing meant that he would no longer be able to pursue a citizen's suit under CWA. The rush to file the Consent Order in violation of the notice and comment period requirement thus appears to be a conspiracy between DEQ and Chemours specifically designed to deny Petitioner his right to a hearing in Federal Court.

5. CONSEQUENCES OF FAILURE TO ISSUE THE DECLARATORY RULING REQUESTED

- a. Unless the Consent Order is declared void by Judge Sasser, Petitioner will be denied his day in Federal Court.
- b. The Cape Fear Public Utilities Authority, which sent a 60 day letter to Chemours on August 2, 2017, will be denied its day in Federal Court.
- c. Petitioner and all other citizens will be denied their right under State law, to have their comments considered by DEQ in determining whether the Consent Order is in their best interests and those of their fellow State citizens.
- d. The Consent Order will impoverish the State financially and erode respect for its environmental laws because the Consent Order waives all rights to pursue damages and fines from Chemours for polluting the waters of the State in return for no consideration.
- e. The State will continue in violation of the MOA, thus giving the Federal Government the power to rescind its grant of power to the State to implement the NPDES program. Losing control of the NPDES program will severely diminish the power of the citizens of North Carolina to ensure and promote the safety of the waters of North Carolina and compromise the EMC's ability to fulfill its statutory duty to protect, preserve, and enhance the water resources of the State.

6. DRAFT OF THE PROPOSED RULING

Petitioner requests that the EMC direct DEQ to file a motion with the Bladen County Superior Court to declare the Consent Order void because it was entered into in violation of North Carolina law. The motion should explain that the Consent Order is a "consent order" governed by NCGS Section 143-215.2. The Historical Note to 15A NCAC 02H .1202 provides that for this purpose "Consent Order" or "Special Order by Consent" means a directive of the Commission [EMC] where the Commission enters into an agreement with the person responsible for water or air pollution to achieve some stipulated actions designed to reduce, eliminate, or prevent air or water quality degradation." The statute itself provides that "[t]he Commission [EMC] is authorized to enter into consent special orders, assurances of voluntary compliance or other similar documents by agreement with the person responsible for pollution of the water, subject to the provisions of subsection (a1) of this section regarding proposed orders, and the consent order, when entered into by the Commission after public review, shall have the same force and effect as a special order of the Commission issued pursuant to hearing." NCGS Section 143-215.2(a). Subsection (a1) requires a public notice and comment period and the Rules adopted by the EMC, 15A NCAC .02H .1201 et seq provide detailed rules to be followed in providing the

notice and soliciting and using public comments in arriving at a final order. Only when these procedures are followed by the EMC, or its delegate, DEQ, may it enter into a order. Since none of these required actions were taken, DEQ was not authorized to present the Consent Order to Judge Sasser as a binding commitment of the State and thus it should be voided by the court.

7. REQUEST FOR ORAL ARGUMENT

Petitioner requests the opportunity for argument before the EMC. The presentation of an invalid order to a State court by an agent of the EMC, and the possible revocation of the State's right to implement the NPDES program are important issues which require extra attention by the EMC.

Respectfully submitted, this the 5th of October 2017, by


Col Francis X. De Luca USMCR(Ret)