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September 5, 2017

VIA ELECTRONIC MAIL AND OVERNIGHT DELIVERY

Mr. Ellis H. McGaughy  
Plant Manager  
The Chemours Company  
22828 NC Highway 87W  
Fayetteville, North Carolina 28306-7332

Subject: 60-Day Notice of Intent to Suspend NPDES Permit NC0003573  
The Chemours Company, Fayetteville Works

Dear Mr. McGaughy:

Pursuant to 15A NCAC 2H .0112(b)(4) and 2H .0114(a), the North Carolina Department of Environmental Quality (DEQ), Division of Water Resources (DWR) hereby provides notice of its intent to suspend NPDES Permit NC0003573 (Permit) in 60 days.

Under 15A NCAC 2H .0112(b)(4) and 2H .0114(a), DWR is authorized to suspend a permit on multiple bases, including for “obtaining a permit by misrepresentation or failure to disclose fully all relevant facts.” These rules further authorize DWR to suspend a permit based on the criteria in 40 CFR 122.62, which incorporates the provisions of 40 CFR 122.64. The criteria for suspension incorporated from 40 CFR 122.64 include “[t]he permittee’s failure in the application or during the permit issuance process to disclose fully all relevant facts, or the permittee’s misrepresentation of any relevant facts at any time.” The criteria listed in 40 CFR 122.62 also authorize DWR to suspend a permit based on the receipt of new information that was not available at the time of permit issuance and “would have justified the application of different permit conditions at the time of issuance.”

Based on our review of the history of NPDES Permit NC0003573 for the Chemours Fayetteville Works, there is sufficient cause to suspend the Permit under the provisions cited in this letter. We have found no evidence in the permit file indicating that Chemours or DuPont (Chemours’ predecessor) disclosed the discharge to surface water of GenX compounds at the Fayetteville Works. In particular, the NPDES permit renewal applications submitted to DWR contain no reference to “GenX” or to any chemical name, formula, or CAS number that would identify any GenX compounds in the discharge.

In fact, the information provided by DuPont and Chemours led DWR staff to reasonably believe that no discharge of GenX had occurred. On August 26, 2010, representatives of DuPont, met



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with DEQ representatives. During that meeting, the DuPont representatives provided an update on the anticipated use of GenX technology at the Fayetteville Works as a replacement for the perfluorinated compound PFOA. However, the information DuPont provided indicated that the GenX compounds would be produced in a closed-loop system that would not result in the discharge of those compounds into the Cape Fear River. DEQ has found no evidence of DuPont notifying DEQ of an actual discharge of GenX compounds at this meeting or in any information provided to DEQ subsequently by either DuPont or Chemours. Further, DuPont and Chemours did not provide to DEQ any health studies related to the GenX compounds.

On June 12, 2017, after substantial media coverage regarding the presence of GenX in the Cape Fear River, Chemours informed DEQ in a meeting that for several decades, GenX compounds had been produced as byproducts at the Fayetteville Works, and GenX had been routinely discharged into the river. Similarly, it was not until 2017 – and only at DEQ’s insistence – that Chemours provided DEQ with the health studies on GenX compounds that had been conducted previously by DuPont or Chemours.

In short, prior to 2017:

- DuPont and Chemours failed to notify DEQ that GenX compounds had been discharged into the Cape Fear River,
- DuPont and Chemours led DEQ to believe that GenX production was occurring in a closed loop system that would not result in discharges to the Cape Fear River, and
- DuPont and Chemours failed to provide DEQ with any health studies relating to GenX.

DuPont and Chemours’ ongoing misrepresentations and inadequate disclosures, which have only recently come to light, shielded important information from DEQ and the public. They also deterred DEQ staff from inquiring further into the nature of GenX discharges and other related activities at the Fayetteville Works. Had the appropriate disclosures been made, it would have justified the application of one or more different permit conditions at the time the Permit was issued, such as monitoring and reporting requirements, appropriate health-based water quality standards, effluent limits, or evaluation of alternatives to discharging GenX compounds and other chemicals in the process wastewater at the Fayetteville Works.

Based on these circumstances, DWR has determined that it will suspend the Permit unless Chemours complies with all of the following actions:

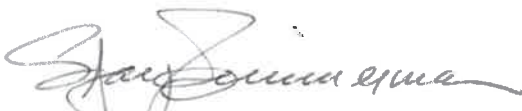
- (1) Continue to prevent Chemours’ discharge of all GenX compounds into the Cape Fear River;
- (2) By September 8, 2017, cease Chemours’ discharge of process wastewater into the Cape Fear River of the chemicals with formulas of  $C_7HF_{13}O_5S$  and  $C_7H_2F_{14}O_5S$  with respective CAS Numbers 29311-67-9 and 749836-20-2 (identified by EPA as Nafion byproducts and 1 and 2);

- (3) By October 20, 2017, cease Chemours' discharge of process wastewater into the Cape Fear River of any other perfluorinated or polyfluorinated compound without an effluent limit in the Permit; and
- (4) Provide complete responses to all outstanding requests for information issued to Chemours by DEQ according to the deadlines previously set by DEQ, including the July 21, 2017 letter from DEQ Secretary Michael Regan (requesting records in related to the discharge of GenX and other emerging contaminants); the August 16, 2017 letter from William Lane (requesting access or consent for the release of Chemours confidential business information in the possession of EPA); the August 18, 2017 letter from Teresa Rodriguez (requesting detailed information about wastewater streams at the Fayetteville Works); and the August 29, 2017 letter from Linda Culpepper (providing clarification and shortening the deadline for DWR's August 18 letter). Copies of these requests are attached. DEQ acknowledges the receipt of responses from Chemours on August 18, August 25, and September 1, 2017, but notes that those responses do not provide complete information.

DEQ will use this information along with any other relevant toxicological and epidemiological data, study results, and calculations to evaluate the potential establishment of appropriate permit conditions in accordance with 15A NCAC 02B regulations that are protective of human health and aquatic life for compounds identified in items (2) and (3) above.

Pursuant to N.C.G.S. § 150B-3(b), DWR will provide an opportunity for Chemours to show compliance with all lawful requirements for retention of the permit. Please contact me to schedule a meeting.

Sincerely,



S. Jay Zimmerman, P.G.  
Director, Division of Water Resources

cc: Michael Johnson, Chemours