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March 12, 2020

VIA ELECTRONIC MAIL

The Honorable Sheila Holman
Assistant Secretary for the Environment
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Re: Comments on the Corrective Action Plan dated December 31, 2019. pursuant to the Consent Order Paragraph 16, *State of North Carolina, ex rel., Michael S. Regan, Secretary, North Carolina Dept. of Env'tl. Quality v. The Chemours Company FC, LLC*, No. 17-CVS-580

Dear Assistant Secretary Holman:

We are the Court-appointed interim co-lead counsel for the putative Class in *Carey v. E.I. du Pont de Nemours & Co.*, No. 7:17-CV-00189-D, currently pending in the U.S. District Court for the Eastern District of North Carolina. The *Carey* action plaintiffs (“Plaintiffs”) seek to hold Chemours and its predecessor, DuPont, liable for polluting North Carolina residents’ bodies and property with GenX and other Per- and Polyfluoroalkyl Substance (“PFAS”) compounds originating from Chemours’ Fayetteville Works plant, thereby endangering these residents’ health. Plaintiffs seek to represent several putative classes of individuals—including property owners who receive their water from wells as well as property owners who receive their water from public utilities—whose health and property have been injured by Chemours’ and DuPont’s wrongful contamination of the Cape Fear River area with PFAS.

On behalf of those putative Classes, Plaintiffs respectfully submit the attached comments in response to the December 31, 2019, Corrective Action Plan (“CAP”), prepared by Geosyntec Consultants of NC, P.C. (“Geosyntec”) for The Chemours Company FC, LLC (“Chemours”). The CAP was prepared pursuant to the February 2019 Consent Order (“CO” or “Consent Order”) in the above-referenced matter brought by the State of North Carolina against Chemours for its unlawful contamination (the “DEQ Action”).

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The CAP is regrettably deficient in numerous respects. As explained in the attached Comments, the CAP's proposed remedies do not and will not address the full extent of the PFAS contamination originating from Chemours' Fayetteville Works plant, and fail to adequately protect the human health of residential users of municipal water supplies drawn from the Cape Fear River, including in New Hanover, Brunswick, Pender, and Columbus Counties, who are putative class members in the *Carey* action. In brief:

- **ISSUE:** The CAP offers no protection to downstream residential consumers (“DRCs”) who obtain water from public utilities and whose water remains contaminated with PFAS above the Consent Order’s Action Level. During the summer and fall of 2019, experts working for the putative class counsel collected and analyzed drinking-water samples from 27 residences in Brunswick, Columbus, New Hanover, and Pender Counties serviced by municipal water. *All of the samples collected from these residences exceed the Consent Order’s Action Level—i.e.,* the threshold for triggering Chemours’ obligation to install reverse-osmosis (“RO”) filters pursuant to Consent Order ¶ 20. Despite the fact that municipal water customers’ water has PFAS concentrations exceeding the Consent Order’s 10/70 Action Levels, the remedies proposed in the CAP will not prevent PFAS from contaminating DRC’s properties and water supplies for years to come, leaving these citizens’ homes and bodies exposed to harmful toxins for the indefinite future.
 - **RECOMMENDATION:** Pursuant to Consent Order ¶ 16 which requires Chemours to “comply with the requirements of the 2L Rules and guidance provided by [the North Carolina Department of Environmental Quality (“DEQ”)]”, Consent Order ¶ 16 (*see* 15A NCAC 02L .0103 (“2L Rules”)), and in order to treat equally all North Carolina residents who have been harmed by Chemours’ illegal behavior, DEQ should compel Chemours to pay for (a) the acquisition, installation, operation, and maintenance of three under-sink RO systems for each residence in the municipal water supply districts where tap water has been found to exceed the 10/70 Action Levels, and (b) bottled water pending the installation of such systems.
- **ISSUE:** Chemours admits that it does not know when or whether its remedies will effectively abate PFAS contamination above the 10/70 Action Levels. Chemours’ proposed remedies in the CAP are inadequate to prevent PFAS from contaminating DRCs’ residences above the 10/70 Action Levels for years to come. Specifically, for PFAS that continue to migrate into the Cape Fear River from the contaminated Fayetteville Works facility, Chemours has *not even completed* investigating—let alone implemented—any measures necessary to abate or prevent ongoing PFAS contamination. All of the ten remedial actions proposed in the CAP are expected to take between 5 and 10 years, and likely longer, to complete. Moreover, Chemours *admits* that it does not know whether its long-term remedies will be effective, stating that “the proposed long-term groundwater remedy is *still highly conceptual*,” that “*it is not presently possible to conclude with*

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confidence whether this alternative is economically feasible,” and that “[t]he state of knowledge regarding the fate and transport properties, toxicological characteristics, and *potential remedial approaches* for PFAS and Table 3+ PFAS *are continuing to evolve and advance.*” See CAP at xvii & p. 1.

- **RECOMMENDATION:** Pursuant to Consent Order ¶ 16, the requirements of the 2L Rules, and in order to treat equally all North Carolina residents who have been harmed by Chemours’ illegal behavior, DEQ should compel Chemours to pay for (a) the acquisition, installation, operation, and maintenance of three under-sink RO systems for each residence in the municipal water supply districts where tap water has been found to exceed the 10/70 Action Levels, and (b) bottled water pending the installation of such systems.
- **ISSUE: Chemours suggests that remediation may be impossible.** In the CAP, Chemours openly states that, in the future, “NCDEQ and Chemours may need to consider alternate cleanup standards,” and that the appropriate standard is one that alleviates Chemours’ obligations in light of the costliness of remediation. See CAP at 58 (stating that the goal of corrective action is “restoration to the level of the standards, *or as closely thereto as is economically and technologically feasible*”).
 - **RECOMMENDATION:** It is Chemours’ legal obligation under the Consent Order to “submit . . . a plan demonstrating maximum reductions in PFAS loading” within two years, or a longer plan “if significantly greater reductions can be achieved.” See Consent Order ¶ 12. Although the Consent Order acknowledges that the economic and technological feasibility of Chemours’ remediation are important considerations, DEQ cannot allow Chemours to use that as an escape hatch to avoid its obligations to achieve and demonstrate maximum PFAS reductions to ensure that all North Carolina residents can drink and use water free of Chemours’ harmful PFAS contamination.
- **ISSUE: Chemours fails to propose any plan to remediate groundwater and PFAS-contaminated land outside of Fayetteville Works.** PFAS will continue to migrate to groundwater and into the Cape Fear River even if Chemours manages to remediate contamination from its Fayetteville Works facility. This is because (as Chemours admits) its PFAS air emissions have contaminated over 70 square miles of the Cape Fear watershed, and this contamination has vertically migrated from the soil into groundwater that flows directly into the Cape Fear River. Chemours presents no plan to address this extensive contamination, suggesting instead that it cannot be addressed at all. See CAP p. 58 (“the costs for on and off-site remediation . . . would exceed billions to potentially tens of billions of dollars and the timeframe would be on the order of multiple decades.”). Instead of addressing this contamination, Chemours simply states that it’s too expensive, and *proposes no reduction in PFAS loadings to the Cape Fear River from aerial deposition*

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outside Fayetteville Works. Consequently PFAS will continue to impact surrounding and downstream water users for decades.

- **RECOMMENDATION:** DEQ should require Chemours to present a plan for reducing PFAS loadings to the groundwater and Cape Fear River over the Cape Fear River watershed, and until such loadings are decreased, compel Chemours to pay for (a) the acquisition, installation, operation, and maintenance of three under-sink RO systems for each residence in the municipal water supply districts where tap water has been found to exceed the 10/70 Action Levels, and (b) bottled water pending the installation of such systems.

ISSUE: Chemours' risk assessment is flawed, biased, and inadequate to comply with the requirements of the Consent Order. Chemours has yet to complete satisfactory risk assessments as required by Consent Order ¶ 14. In particular, Chemours has neither quantified the risks of PFAS exposure to DRCs and all other individuals affected by Chemours' contamination nor complied with Consent Order ¶ 14's requirement to establish that Attachments B and C PFAS do not pose an unacceptable risk to human health. Chemours has also failed to calculate toxicity values (and risks) for 19 out of 20 PFAS, focusing all of its efforts on GenX, the one PFAS for which DuPont and Chemours have produced at least *some* toxicity evaluations. In addition, Chemours' analysis fails to (a) follow standard U.S. Environmental Protection Agency ("EPA") guidance for deriving toxicity values; (b) adequately address the past decade of scientific literature on GenX's toxicity; (c) properly weigh and account for the toxicity and human health risks of GenX, including immunotoxicity; and (d) account for all necessary risks and toxicity information associated with drinking contaminated water. Chemours also manipulates its conclusions by making improper and scientifically unsound assumptions that mask the true risks associated with drinking PFAS-contaminated water and fail to account for exposure risks to sensitive subpopulations.

- **RECOMMENDATION:** DEQ should require Chemours to rectify all of these deficiencies, recalculate the risks posed to DRCs, and design remedial actions, including the provision of RO and bottled water to achieve these objectives.

In sum, in addition to failing to comply with the Consent Order requirements, the CAP demonstrates conclusively that Chemours has no plan to remediate the PFAS contamination it has caused in the immediate or even long term. Property owners and individuals who rely on the Cape Fear River for their water cannot wait the many years—if not decades—that will be required before PFAS contamination drops below acceptable levels. It is therefore critical that Chemours address the consequences of its actions now.

For the reasons set forth below, Plaintiffs respectfully request that DEQ compel Chemours to pay for the acquisition, installation, operation and maintenance of three under-sink RO systems for each residence in the municipal water supply districts where tap water was found to exceed the 10/70 Action Levels (described below), and bottled water pending the installation of such systems.

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Plaintiffs believe that this relief, which they are also seeking as part of their pending case against Chemours and DuPont, is needed to remediate damage resulting from the trespasses upon their persons and properties resulting from the unauthorized release of PFAS into the drinking water supply, and to address ongoing threats to their health resulting from exposure to PFAS at levels found in the water supply in the area.

Respectfully submitted,

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