

STATE OF NORTH CAROLINA
COUNTY OF BLADEN

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

STATE OF NORTH CAROLINA, *ex rel.*,)
MICHAEL S. REGAN, SECRETARY,)
NORTH CAROLINA DEPARTMENT OF)
ENVIRONMENTAL QUALITY,)
)
Plaintiff,)
)
CAPE FEAR RIVER WATCH,)
)
Plaintiff-Intervenor,)
)
)
v.)

THE CHEMOURS COMPANY FC, LLC,
Defendant.

PLAINTIFF’S MOTION FOR ENTRY OF ADDENDUM TO CONSENT ORDER
PARAGRAPH 12

Plaintiff the State of North Carolina upon the relation of Michael S. Regan, Secretary of the North Carolina Department of Environmental Quality (“DEQ”), through the undersigned counsel, hereby submits this Motion for Entry of Addendum to Consent Order Paragraph 12 (“Addendum”). The Addendum has been signed by Plaintiff DEQ, Defendant The Chemours Company FC, LLC (“Chemours”) and Intervenor Cape Fear River Watch.

Entry of this Addendum is required pursuant to Paragraph 12 of the Consent Order entered by this Court on February 25, 2019 in this matter. The Addendum is attached hereto as **Exhibit A**. All parties consent to entry of the Addendum. In support of this Motion, Plaintiff shows the following:

Background

1. Since June of 2017, DEQ has been leading a State investigation into the presence of GenX and other per- and polyfluoroalkyl substances or “PFAS” in surface waters, groundwater, air, and public and private drinking water in the lower Cape Fear region.

2. On September 7, 2017, DEQ filed a Verified Complaint, Motion for Temporary Restraining Order, and Motion for Preliminary Injunctive Relief against Chemours, alleging various violations of North Carolina’s surface water and groundwater laws relating to release of GenX and other PFAS into the environment from Chemours’ Fayetteville Works Facility (“Facility”).

3. On September 8, 2017, the Court entered a Partial Consent Order, which required Chemours to continue certain measures to prevent the discharge of wastewater containing GenX into surface waters and to commence additional measures to prevent the discharge of wastewater containing other PFAS.

4. Despite these measures, GenX and other PFAS continued to be present at elevated levels in Chemours’ wastewater. In addition, DEQ’s investigation expanded to focus not only on Chemours’ process wastewater but also on Chemours’ air emissions, which DEQ suspected could be linked to the presence of PFAS in groundwater offsite.

5. On November 15, 2017, DEQ and Chemours entered into a stipulation (“November 15, 2017 Stipulation”) in which DEQ committed to give the public notice of any potential settlement and solicit comment on the same.

6. On April 10, 2018, DEQ served Chemours with a Verified Amended Complaint and Motion for Preliminary Injunctive Relief supplementing the original Complaint with new

information and additional alleged violations. The Amended Complaint sought an order requiring Chemours to cease and abate its violations of North Carolina's surface water and groundwater laws, including violations of North Carolina's groundwater rules arising from Chemours' emissions of PFAS into the atmosphere.

7. On November 21, 2018, DEQ, Chemours, and Cape Fear River Watch reached agreement on the Proposed Consent Order ("PCO") lodged with the Court on November 28, 2018. DEQ put the PCO out to public notice on November 21, 2018 for a thirty (30) day public comment period. On December 21, 2018, DEQ extended the public comment period by seventeen days until January 7, 2019. In response to public comments, DEQ revised the PCO.

8. On February 25, 2019, the Court entered the revised Consent Order signed by all parties.

Paragraph 12 of the Consent Order Requires Entry of this Addendum

9. Paragraph 12 of the Consent Order required Chemours to submit to DEQ and Cape Fear River Watch a plan demonstrating the maximum reductions in PFAS loading from the Fayetteville Works Facility (including loading from contaminated stormwater, non-process wastewater, and groundwater) to surface waters that are economically and technologically feasible, and can be achieved within a two-year period.

10. Chemours was required to support the plan by interim benchmarks to ensure continuous progress in reduction of PFAS loading and that, if significantly greater reductions can be achieved in a longer implementation period, Chemours was permitted to propose, in addition, an implementation period of up to five years supported by interim benchmarks to ensure continuous progress in reduction of PFAS loading.

11. The Consent Order required Chemours to share the plan with downstream public utilities who would have the opportunity to meet with DEQ staff to discuss the plan.

12. DEQ and Cape Fear River Watch were required to review the plan developed by Chemours and work with Chemours in good faith to determine if the PFAS reduction targets identified by Chemours represent the maximum reductions that are economically and technologically feasible, and can be implemented over a two-year period (or longer as proposed in an alternate plan), or whether the Parties can identify and agree upon further reductions.

13. Paragraph 12 provides that if the parties reach agreement regarding additional PFAS reductions they would move “to amend this Consent Order to incorporate any agreed upon reductions as enforceable requirements of this Consent Order as well as stipulated penalties for non-compliance.”

14. On August 26, 2019, Chemours submitted a “Cape Fear River PFAS Loading Reduction Plan” for the purpose of satisfying its commitments under Paragraph 12 of the Consent Order.

15. DEQ and Cape Fear River Watch reviewed the PFAS Loading Reduction Plan and, on September 26, 2019 and October 23, 2019, sent letters to Chemours taking the position that the Plan must be supplemented and revised in order to satisfy the requirements of Paragraph 12 of the Consent Order.

16. All downstream drinking water utilities were also given an opportunity to meet with DEQ and discuss the plan and supplemental report prior to the Addendum being developed. Cape Fear Public Utility Authority (“CFPUA”) did request to meet and they provided comments on the plan in September 2019. These comments were shared with Chemours.

17. On November 4, 2019, Chemours submitted to DEQ and Cape Fear River Watch a “Cape Fear River PFAS Loading Reduction Plan – Supplemental Information Report” (“Supplemental Information Report”) to address the matters identified by DEQ and Cape Fear River Watch in their September 26, 2019 letter.

18. On December 19, 2019, DEQ and Cape Fear River Watch sent letters to Chemours requesting additional information regarding the Supplemental Information Report.

19. On January 31, 2020, Chemours sent letters responding to DEQ’s and Cape Fear River Watch’s letters regarding the Supplemental Information Report.

20. The parties engaged in lengthy, technical negotiations. By August 13, 2020, they reached agreement on the set of measures outlined below to reduce PFAS loading to surface waters and downstream water intakes that satisfy the requirements of Paragraph 12 of the Consent Order.

21. On August 17, 2020, the Addendum was released for public notice and comment. DEQ received 22 comments. Approximately half of the comments were supportive of the Addendum, or supportive with some additional comments. DEQ has reviewed the comments and is currently preparing written responses.

22. On August 18, 2020, the Addendum was lodged with the Court

Terms of the Addendum

23. Among other crucial measures, under the Addendum:

- a. Chemours must treat four identified ‘seeps’ in two phases. First, as an interim measure, Chemours must install in situ treatment systems to remove PFAS from the seeps at an efficiency of 80%. The first seep remediation system will be installed in mid-November 2020 with all four systems being completed in April

2021. Second, on a long-term basis Chemours must reduce PFAS loading from dry weather flow from the seeps at an overall rate of 99%. PFAS loading from dry weather flow plus rain events of .5 inches or less must be reduced by 95%.

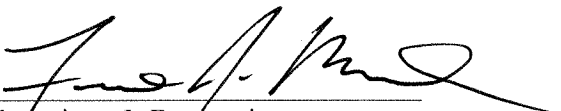
- b. Chemours must install an approximately 1.5-mile-long subsurface barrier wall and groundwater extraction system to prevent contaminated groundwater from under the facility from migrating into surface water. The barrier wall and groundwater extraction system must be operational in March 2023. All contaminated groundwater pumped from behind the barrier wall must be treated at a PFAS removal efficiency of 99%.
- c. Chemours must install a treatment system to capture and treat contaminated stormwater from a manufacturing area at the site at a PFAS removal efficiency of 99%. The stormwater treatment system must be operational in June 2021.
- d. Failure to meet the schedules or achieve the removal goals will result in financial penalties, including
 - i. Failure to meet the construction schedule for the interim measures will result in fines of \$5,000 per day for the first 14 days and \$10,000/day thereafter until construction is complete.
 - ii. Failure to meet the barrier wall installation schedule results in a \$150,000 fine followed by \$20,000 per week until installation is complete.
 - iii. Failure to meet the barrier wall's 95% mass loading goal in the initial demonstration results in a \$500,000 fine, with a \$100,000 fine for failure to meet any of the four subsequent demonstrations.

24. The measures described in the Addendum are critical to reduce PFAS loading to the Cape Fear River and downstream drinking water intakes on an accelerated basis. The Addendum is lawful and appropriate, and has been agreed to by all Parties.

WHEREFORE, Plaintiff requests that the Court enter the Addendum attached hereto as **Exhibit A.**

Respectfully submitted, this the 5th day of October, 2020.

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CERTIFICATE OF SERVICE

The undersigned certifies that this PLAINTIFF'S MOTION FOR ENTRY OF ADDENDUM TO CONSENT ORDER PARAGRAPH 12 were served on counsel listed below electronically and by depositing a copy in the United States Mail, first class postage prepaid, addressed as follows:

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Counsel for Defendant The Chemours Company FC, LLC

The undersigned certifies that this PLAINTIFF'S MOTION FOR ENTRY OF ADDENDUM TO CONSENT ORDER PARAGRAPH 12 were served on counsel listed below electronically:

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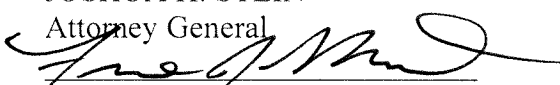
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This the 5th day of October 2020.

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Special Deputy Attorney General