

STATE OF NORTH CAROLINA  
COUNTY OF BLADEN

IN THE OFFICE OF  
ADMINISTRATIVE HEARINGS  
22 EHR 03913

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THE CHEMOURS COMPANY FC, LLC,

Petitioner,

v.

NORTH CAROLINA DEPARTMENT OF  
ENVIRONMENTAL QUALITY,

Respondent,

and

CAPE FEAR PUBLIC UTILITY  
AUTHORITY,

Respondent-Intervenor

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**SETTLEMENT AGREEMENT**

Petitioner The Chemours Company FC, LLC (“Petitioner” or “Chemours”), Respondent The North Carolina Department of Environmental Quality (“Respondent” or “DEQ”) and Respondent-Intervenor Cape Fear Public Utility Authority (“CFPUA”) hereby enter into this Settlement Agreement (“Agreement”) in order to resolve the above-captioned matter.

Whereas this matter arose out of the issuance by DEQ of a Final NPDES Permit NC0090042 (“NPDES Permit”) dated September 15, 2022, and Chemours’s filing of a Petition for a Contested Case Hearing seeking review of the NPDES Permit. Chemours, DEQ and CFPUA shall be referred to collectively herein as the “Parties.”

Whereas Chemours owns and operates a chemical manufacturing facility at 22828 NC Highway 87 West, Fayetteville, Bladen County, North Carolina.

Whereas pursuant to the Addendum to Consent Order Paragraph 12 (“Consent Order Addendum”) among Chemours, DEQ, and Cape Fear River Watch, entered by the Bladen County Superior Court on October 12, 2020, Chemours is required to construct a barrier wall and groundwater extraction and treatment system at its Fayetteville Works facility. The Consent Order Addendum states: “The system shall be designed so that extracted groundwater shall be treated through a treatment system that removes PFAS compounds (as measured by concentrations of indicator parameters GenX, PMPA, and PFMOAA) at a minimum removal efficiency of 99%.” Because the treatment system will discharge treated water through Outfall 004 to the Cape Fear River, its operation requires an NPDES permit.

Whereas Chemours designed the treatment system to meet the minimum 99% removal efficiency requirement in the Consent Order Addendum and in June 2021 submitted to DEQ for review and approval an NPDES permit application for the treatment system based on that design.

Whereas on September 15, 2022, DEQ issued the final NPDES Permit, containing interim and final effluent limits for HFPO-DA (GenX), PMPA, and PFMOAA requiring greater than 99% removal based on DEQ’s view that such limits are achievable and reflect technology-based effluent limits in accordance with applicable laws and regulations based on analysis of a similar treatment system currently in operation at the site.

Whereas Chemours takes the position that, while the system as designed and optimized may be able to meet each of the final discharge limits for the specified PFAS compounds, compliance with the final limits for PMPA and PFMOAA cannot be assured without further assessment after the system is constructed and becomes operational, given the uniqueness and complexity of the system, including treatment of groundwater from approximately 70 different

extraction wells and treatment of surface water (including stormwater) from multiple seeps and weeps.

Whereas DEQ finds and Chemours and CFPUA agree that it is in the public interest that Chemours proceeds with the construction and operation of the barrier wall and groundwater extraction and treatment system pursuant to the Consent Order Addendum and NPDES Permit to reduce remaining PFAS loadings to the Cape Fear River expeditiously.

Whereas following settlement discussions, the Parties have agreed to settle this matter on the terms set out herein (i) to facilitate the expeditious construction and operation of the barrier wall and groundwater extraction and treatment system with the design developed by Chemours (the “Treatment System”), (ii) to provide for reductions in PFAS loadings to the Cape Fear River, (iii) to provide an agreed upon process that will be utilized by Chemours and DEQ to facilitate construction and operation of the Treatment System, which shall be operated in a manner that maximizes the reduction in PFAS discharged to the Cape Fear River, and (iv) to avoid the expense and burden of further litigation.

Now, therefore, the Parties agree as follows:

1. For the initial six months after commencement of discharge (the “Optimization Period”), Chemours agrees that it will optimize operation of the Treatment System and make such modifications as are technologically feasible to the Treatment System to reduce PFAS discharges to the Cape Fear River and to meet all requirements of the NPDES Permit. In order to meet this obligation Chemours shall, at a minimum, implement each of the following items if it contributes to meeting the final permit limits and does not compromise the overall performance of the Treatment System:
  - a. Optimize the carbon change out schedule;

- b. Optimize the pH of the influent; and
- c. Install additional equipment to enhance PFAS removal by the Treatment System, including a fourth granular activated carbon (GAC) vessel, if necessary to meet the final permit limits and if such installation is feasible during the Optimization Period.

By no later than seven months after commencement of discharge, Chemours shall submit to DEQ and CFPUA an updated operation and maintenance plan incorporating optimization procedures and technological improvements identified during the Optimization Period.

2. Beginning forty-five days after commencement of discharge, Chemours shall submit to DEQ and CFPUA monthly reports documenting the optimization actions and technological improvements that have been considered and implemented pursuant to Paragraph 1. The fourth monthly report shall include an assessment of whether Chemours projects that actions considered and taken during the Optimization Period will ensure compliance with the final effluent limits for PMPA and PFMOAA. This assessment shall be updated in all subsequent reports. Reporting shall continue until either (1) compliance with the final effluent limits for PMPA and PFMOAA have been achieved or (2) the application for a permit modification pursuant to Paragraph 4 has been submitted, provided that Chemours will continue to provide such information upon request from DEQ.

3. DEQ agrees that, in determining whether to issue a notice of violation or civil penalty assessment in connection with any violations of the final effluent limits for PMPA and PFMOAA, DEQ has enforcement discretion and that, in exercising that enforcement discretion, it is appropriate for DEQ to consider: (i) that operation of this Treatment System removes PFAS that would otherwise flow to the Cape Fear River from contaminated groundwater and surface water at the site, and that the system was installed pursuant to the Consent Order and Addendum, which

required the system to be designed to remove PFAS at a minimum efficiency of 99%; (ii) that continued operation of the Treatment System is necessary and environmentally beneficial to ensure that the barrier wall functions as a hydrological barrier to contaminated groundwater that would otherwise flow to the Cape Fear River untreated; (iii) whether Chemours has demonstrated to DEQ that it has expeditiously taken appropriate technologically feasible steps to comply with the final PMPA and PFMOAA limits and continues to do so on an ongoing basis, including (but not limited to) by fully complying with Paragraph 1 of this Agreement; (iv) whether Chemours has demonstrated to DEQ that compliance with the final effluent limits for PMPA and PFMOAA is not technologically feasible within the time frame established in the NPDES Permit as evidenced by performance of the system, as optimized and enhanced in accordance with Paragraph 1; (v) the degree of non-compliance with the final limits for PMPA and PFMOAA; (vi) whether Chemours has demonstrated that it is otherwise in full compliance with the NPDES Permit; and (vii) whether Chemours has submitted a complete application as contemplated by Paragraph 4 within two months of the final effluent limits for PMPA and PFMOAA taking effect.

4. In the event that Chemours demonstrates to DEQ that compliance with the final effluent limits for PMPA and PFMOAA is not technologically feasible within the time frame established in the NPDES Permit as evidenced by performance of the system, as optimized and enhanced in accordance with Paragraph 1, Chemours may submit an application for a modification to the NPDES Permit pursuant to applicable rules and regulations, including a technology-based effluent limit analysis pursuant to 40 CFR § 125.3 using system operational data as well as an updated technology review, that achieves the final effluent limits for PMPA and PFMOAA, or such modified limits as are technologically feasible, through the use of additional technology, systems, or processes not included in the Treatment System (as optimized and enhanced in accordance with

Paragraph 1), and a revised deadline for such compliance that allows for implementation of such system improvements. DEQ agrees to review and act timely on a permit modification application submitted under this Paragraph in accordance with applicable law. Nothing in this paragraph shall be construed to indicate that DEQ, upon receiving such an application, would agree that compliance with the final effluent limits for PMPA and PFMOAA are not technologically feasible.

5. Subject to the acknowledgments set forth in Paragraph 3 above, nothing in this Agreement shall limit the ability of DEQ to take enforcement action. Nothing herein limits Chemours's defenses to any such enforcement action, including the ability to file a Petition for a Contested Case Hearing.

6. Within five days of execution of this Agreement, Chemours shall dismiss its Petition for a Contested Case Hearing without prejudice in the above-captioned matter. Pursuant to North Carolina Rule of Civil Procedure 41, the Parties agree that Chemours may submit a new Petition for a Contested Case Hearing within one year from the date of dismissal of the pending Petition and that such submission shall be considered timely, provided that any re-filed Petition would not affect Chemours's or DEQ's obligations under this Agreement. The Parties otherwise reserve all their rights, claims, and defenses with respect to any re-filed Petition.

7. This Agreement shall not affect Chemours's obligations to comply with the Consent Order or Addendum. DEQ and Chemours reserve all their rights and defenses with respect thereto.

8. The Parties agree and acknowledge that they have reviewed, negotiated, and agreed to the terms herein as a result of an arms' length transaction entered in good faith. No inference or presumption shall be made against the drafter of this document as to the meaning of any term herein.

9. The Parties agree and acknowledge that the consideration for this settlement is the promises contained herein and that this Agreement contains the whole agreement between them regarding the Petition for Contested Case Hearing and does not pertain to any other disputes or proceedings between the parties.

10. This Agreement shall be construed and interpreted in accordance with the laws of the State of North Carolina, without giving effect to North Carolina's rules concerning conflicts of laws. The exclusive venue for enforcement of this Agreement is North Carolina.

11. This Agreement shall become effective immediately following execution by each of the Parties. In the interests of time and efficiency, the signature pages may be delivered separately to the Parties. Scanned and e-mailed execution are as valid as original execution. Thereafter, all copies of the Agreement and executed signature pages shall constitute an original.

12. The Parties agree that each shall bear its own costs related to any disputes resolved by this Agreement. No Party shall apply for attorney fees or costs under any rule or law, and no Party shall be liable for any attorney fees, costs, or expenses incurred by the other.

13. This Agreement shall be binding upon the Parties, their successors and assigns, upon execution by the undersigned, who represent and warrant that they are authorized to enter into this Agreement on behalf of the Parties hereto.

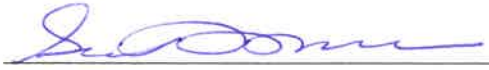
14. This Agreement is entered into knowingly, intelligently, and voluntarily.

*[Signature Page to Follow]*

**THE CHEMOURS COMPANY FC, LLC**

**NC DEPARTMENT OF ENVIRONMENTAL QUALITY**

By: \_\_\_\_\_  
Dawn M. Hughes  
Plant Manager  
Chemours – Fayetteville Works

By:   
Sushma Masemore, P.E.  
Assistant Secretary

Date: \_\_\_\_\_

Date: 11/14/2022

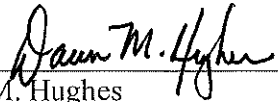
**CAPE FEAR PUBLIC UTILITY AUTHORITY**

By: \_\_\_\_\_  
Kenneth Waldroup  
Executive Director

Date: \_\_\_\_\_



**THE CHEMOURS COMPANY FC, LLC**

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Dawn M. Hughes  
Plant Manager  
Chemours – Fayetteville Works

Date: 11-14-2022

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