



ROY COOPER
Governor
MICHAEL S. REGAN
Secretary
S. JAY ZIMMERMAN
Director

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



State of North Carolina | Environmental Quality

1611 Mail Service Center | Raleigh, North Carolina 27699-1611

919-707-9000

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:

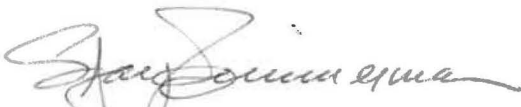
- (1) Continue to prevent Chemours’ discharge of all GenX compounds into the Cape Fear River;
- (2) By September 8, 2017, cease Chemours’ discharge of process wastewater into the Cape Fear River of the chemicals with formulas of $C_7HF_{13}O_5S$ and $C_7H_2F_{14}O_5S$ with respective CAS Numbers 29311-67-9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



ROY COOPER
Governor

MICHAEL S. REGAN
Secretary

July 21, 2017

Mr. Ellis H. McGaughy
Plant Manager
The Chemours Company FC, LLC
DBA, Chemours Company- Fayetteville Works
22828 NC Highway 87 West
Fayetteville, North Carolina 28306-7332

Dear Mr. McGaughy:

The presence of GenX and other emerging contaminants in the Cape Fear River is an issue of significant concern in the Cape Fear River watershed. The North Carolina Department of Environmental Quality (DEQ), in collaboration with the North Carolina Department of Health and Human Services (DHHS), is investigating this important issue.

It is our understanding that Chemours (and previously DuPont) has been discharging GenX into the Cape Fear River dating back to the 1980's. As previously requested, and in conjunction with our review of your pending NPDES renewal application and pursuant to NCGS 143-215.1(c)(1), please submit to DEQ any and all records in the possession of Chemours related to the discharge of GenX and other emerging contaminants. This includes records pertaining to production levels of GenX and other products for which emerging contaminants are a byproduct; discharge levels of emerging contaminants into the Cape Fear River or anywhere else; and sampling data in your possession related to discharge of GenX and other emerging contaminants recently and in the past. Finally, I ask that you immediately inform DEQ of any records relevant to this request that you are aware of but that are not in the possession of Chemours.

Please submit the requested information as soon as possible, but no more than 14 days from the date of this letter to:

NC Dept. of Environmental Quality
Division of Water Resources
ATTN: Linda Culpepper
1636 Mail Service Center
Raleigh, NC 27699-1636

Thank you for your cooperation on this matter.

Sincerely,

A handwritten signature in black ink that reads "Michael S. Regan". The signature is written in a cursive, flowing style.

Michael Regan
Secretary



Environmental
Quality

ROY COOPER
Governor

MICHAEL S. REGAN
Secretary

WILLIAM F. LANE
General Counsel

August 16, 2017

R. Steven DeGeorge, Esq.
Robinson, Bradshaw, & Hinson, P.A.
101 N. Tryon Street, Suite 1900
Charlotte, North Carolina 28246

RE: DEQ Request for Information, including Confidential Business Information

Dear Mr. DeGeorge:

We received your letter dated August 2, 2017, that you submitted on behalf of Chemours. In your letter, you requested clarification on DEQ's intended meeting of "emerging contaminants." For purposes of this inquiry, DEQ's reference to "emerging contaminants" includes the following analytes:

	FORMULA	CAS No. (if available)
Monoether PFECAs	C ₃ HF ₅ O ₃	
	C ₄ HF ₇ O ₃	
	C ₅ HF ₉ O ₃	863090-89-5
	C ₆ HF ₁₁ O ₃	13252-13-6
	C ₇ HF ₁₃ O ₃	
	C ₈ HF ₁₅ O ₃	
Polyether PFECAs	C ₇ HF ₁₃ O ₇	39492-91-6
	C ₆ HF ₁₁ O ₆	39492-90-5
	C ₅ HF ₉ O ₅	39492-89-2
	C ₄ HF ₇ O ₄	39492-88-1
PFESAs	C ₇ HF ₁₃ O ₅ S	66796-30-3
	C ₇ H ₂ F ₁₄ O ₅ S	
Other	CF ₂ O	
	CF ₂	
PFOS	C ₈ HF ₁₇ O ₃ S	1763-23-1
PFOA (free acid)	C ₈ HF ₁₅ O ₂	335-67-1
All chemicals identified in the handout that was provided by Chemours to DEQ during a site visit on July 27, 2017.		



R. Steven DeGeorge, Esq.
August 16, 2017
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Please provide the information requested in our letter of July 21, 2017 by August 30, 2017 and sooner if possible.

Additionally, and as we discussed in last week's meeting, the State of North Carolina has requested that Chemours provide access to information that has been submitted to EPA as Confidential Business Information (CBI). The State reiterates its request for Chemours to provide DEQ with the following information, or alternatively, to give consent for EPA to provide such information to DEQ:

- Information, including CBI, submitted to EPA by Chemours or its predecessors related to the TSCA chemical registration for manufacturing of GenX at the Fayetteville, North Carolina facility;
- Information, including CBI, submitted to EPA by Chemours or its predecessors related to all TSCA chemical registrations at the Fayetteville, North Carolina facility;
- All chemical analyses, including CBI, conducted by Chemours or its predecessors for all manufacturing areas and wastewater outfalls 001 and 002 described in the current NPDES permit; and
- All human health, toxicity, and aquatic life studies or related information, including CBI, submitted to EPA by Chemours or its predecessors relating to chemical processes at the Fayetteville facility.

Please provide a response to this request for TSCA related information by August 23, 2017, indicating whether Chemours will provide the requested information or consent to EPA's release of this information to DEQ.

Thank you for your attention to this important matter.

Sincerely,



William F. Lane

cc: Linda Culpepper, Division of Water Resources



ROY COOPER
Governor

MICHAEL S. REGAN
Secretary

S. JAY ZIMMERMAN
Director

August 18, 2017

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

Subject: Request for Additional Information
NPDES Application NC0003573
Fayetteville Works

Dear Mr. McGaughy:

The Division has reviewed your application for the subject permit. To enable us to complete our review in accordance with N.C.G.S. 143-215.1 and 15A NCAC 2H.0105, please provide additional or revised information to address the following comments:

1. Revise the renewal application to update the description of the wastewaters discharged to the WWTP addressing the removal of all process wastewaters containing HFPO dimer acid and any other changes since the application was submitted in 2016.
2. Sample and provide test results from Outfalls 001 and 002 for pH, TSS, COD, PFOA, PFOS, manufacturing operations specific organics, metals, all the chemicals on the handout provided to DEQ on the July 27, 2017 site visit, and PFECAs compounds. The PFECAs compounds at a minimum shall include the list provided in the August 16, 2017 letter to R. Steven DeGeorge, Esq. Sampling shall be performed during dry weather.
3. Provide a flow schematic of Chemours process areas showing sumps, quench baths, and all points of discharge to the WWTP. The schematic should reflect actual average flows. Estimated peak flows can be submitted on a separate schematic.
4. Provide a description and characterization of the wastewaters from each point of discharge to the WWTP. The wastewater characterization shall include an analysis of pH, TSS, COD, PFOA, PFOS, manufacturing operations specific organics, metals, and PFECAs compounds. Specifically, testing shall be performed at each discharge point for the parameters listed above and the chemicals on the list provided to DEQ on the July 27, 2017 site visit, if believed to be present at that discharge point.
5. If not all the manufacturing processes are running during the time of sampling, identify the processes that were sampled and submit a schedule to sample so that wastewaters from all manufacturing processes that run-in campaigns are tested. Submit this data to DEQ as it is received from the laboratory.
6. Provide a revised mass flow balance schematic that reflects the actual long-term average discharge from Outfalls 001 and 002. Estimates on peak flows can be provided separately.
7. Provide a revised flow balance for the DuPont wastewater treatment discharges including flows from water treatment units as well as process wastewater flows.
8. Provide an electronic copy of the site's BMP plan addressing spill response procedures.

Historical sampling data, no greater than 4.5 years old, may be submitted provided it is representative of the current wastewaters being discharged.

Please provide your response within 60 calendar days. All the responses shall be submitted to:

NC DEQ / Division of Water Resources / Water Quality Permitting Section

ATTENTION: NPDES Complex Permitting

1617 Mail Service Center

Raleigh, North Carolina 27699-1617

If you have any questions, please contact me at 919-807-6387 or email at Teresa.rodriguez@ncdenr.gov.

Sincerely,

Teresa Rodriguez
NPDES Complex Unit
Division of Water Resources/NCDENR

cc: Linda Culpepper, Division of Water Resources



ROY COOPER
Governor
 MICHAEL S. REGAN
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 S. JAY ZIMMERMAN
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August 29, 2017

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

Subject: Request for Additional Information
 NPDES Application NC0003573
 Fayetteville Works

Dear Mr. McGaughy:

As a follow up to our Department of Environmental Quality (DEQ) August 18, 2017 letter issued by Teresa Rodriguez we are providing clarity on our request for additional information:

- Item 2 – Sample and test results should include all the chemicals listed in the August 16, 2017 letter from DEQ to R. Steven DeGeorge, Esq.
- Item 4 – In providing a description and characterization of the wastewaters from each point of discharge to the wastewater treatment plant (WWTP), provide the requested information available for the following chemicals by Friday September 1, 2017:

	<u>FORMULA</u>	<u>CAS No.</u>
Monoether PFECA	C ₃ HF ₅ O ₃	674-13-5
Polyether PFECAs	C ₅ HF ₉ O ₅	39492-89-2
	C ₄ HF ₇ O ₄	39492-88-1
PFESAs	C ₇ HF ₁₃ O ₅ S	66796-30-3
	C ₇ H ₂ F ₁₄ O ₅ S	749836-20-2

Our expectation is that your analytical methods are capable of detecting and quantifying levels of these constituents in units of ng/L.

Further, DEQ requests Chemours provide all other requested sample analysis information in an expedited manner by September 18, 2017. Please submit the requested information to:

NC DEQ / Division of Water Resources / Water Quality Permitting Section
 ATTENTION: NPDES Complex Permitting
 1617 Mail Service Center
 Raleigh, North Carolina 27699-1617



Mr. Ellis H. McGaughy

August 29, 2017

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If you should have any questions, please contact me at 919-707-9014 or via email at linda.culpepper@ncdenr.gov.

Sincerely,

A handwritten signature in black ink, appearing to read 'L. Culpepper', with a long horizontal flourish extending to the right.

Linda Culpepper

Deputy Director

Division of Water Resources

cc: Teresa Rodriguez