STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS

FIFTH JUDICIAL CIRCUIT

THE STATE OF SOUTH CAROLINA, *ex. rel*. Alan M. Wilson, in his official capacity as Attorney General of the State of South Carolina,

Plaintiff,

vs.

3M COMPANY; EIDP, INC., *f/k/a* E.I. DUPONT DE NEMOURS AND COMPANY ("Old DuPont"); THE CHEMOURS COMPANY ("Chemours"); THE CHEMOURS COMPANY FC, LLC ("Chemours FC"); CORTEVA, INC. ("Corteva"); and DUPONT DE NEMOURS, INC. ("New DuPont"),

Defendants.

Civil Action No.: 2023-CP-40-_____

SUMMONS
(JURY TRIAL REQUESTED)

TO: THE ABOVE-NAMED DEFENDANTS:

YOU ARE HEREBY SUMMONED and required to Answer the Complaint in the above-captioned matter, a copy of which is served upon you, and to serve a copy of your Answer upon undersigned counsel for the Plaintiff at the OFFICE OF THE ATTORNEY GENERAL OF SOUTH CAROLINA at Post Office Box 11549, Columbia, South Carolina 29211, within thirty (30) days of service, exclusive of the date of service. If you fail to respond to this Complaint within the time prescribed above, judgment by default will be rendered against you for the relief demanded in the Complaint.

s/ Alan M. Wilson

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Columbia, South Carolina
August 7, 2023

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Defendants.

Civil Action No.: 2023-CP-40-_____

COMPLAINT
(JURY TRIAL REQUESTED)

COMPLAINT

The State of South Carolina, by and through its Attorney General Alan M. Wilson ("Plaintiff" or the "State"), as trustee of State natural resources and in its *parens patriae* capacity on behalf of its citizens, makes the following allegations against Defendants 3M COMPANY; EIDP, INC., *formerly known as* E.I. DUPONT DE NEMOURS AND COMPANY ("Old DuPont"); THE CHEMOURS COMPANY ("Chemours"); THE CHEMOURS COMPANY FC, LLC ("Chemours FC"); CORTEVA, INC. ("Corteva"); and DUPONT DE NEMOURS, INC. ("New DuPont") (collectively, "Defendants").

INTRODUCTION AND SUMMARY

1. The State of South Carolina brings this action to hold some of the world's largest

chemical companies accountable for their widespread contamination of the State's natural resources, including the drinking water upon which South Carolinians depend, with toxic per- and polyfluoroalkyl substances ("PFAS").

2. PFAS are a group of synthetic chemicals compounds that do not occur naturally in the environment, and which contain carbon-fluoride bonds. The carbon-fluoride bond is one of the strongest bonds in chemistry and is responsible for the chemicals' non-stick and stain-repellent qualities, but also certain undesirable and dangerous qualities, such as its mobility and persistence in the environment.

3. PFAS compounds include, but are not limited to, the following:

a. Perfluorooctanoic acid ("PFOA");

b. perfluorooctanesulfonic acid ("PFOS");

c. perfluorononanoic acid ("PFNA"),;

d. perfluorohexanesulfonic acid ("PFHxS");

e. the ammonium salt of hexafluoropropylene oxide dimer acid (HFPO-DA) ("GenX");

f. perfluoroheptanoic acid ("PFHpA"); and

g. perfluorobutanesulfonic acid ("PFBS").[1]

4. Defendants designed, manufactured, marketed, and sold PFAS for use in a wide array of consumer products sold and consumed in the State of South Carolina. PFAS are found in products that South Carolinians use in their homes every day, such as food packaging, non-stick cookware, and stain repellant upholstery and carpeting.

[1] This is not an exhaustive list.

5. Defendants also designed, manufactured, marketed, and sold PFAS for a variety of industrial uses in the State of South Carolina, including textile, electronics, and automotive manufacturing.

6. PFAS enters the environment, including the State's waterways, from the normal and foreseeable disposal of consumer and commercial products containing PFAS and from industrial releases into the air, water, and soil.

7. Despite knowing for decades that PFAS chemicals are toxic, Defendants have misled the public and government regulators by consistently and publicly denying that their PFAS products presented any harm to human health or the environment.

8. By purposefully sending toxic chemicals into South Carolina while misleading the public and commercial and industrial users about their properties and known risks, the Defendants have caused widespread contamination and injuries to State natural resources. PFOS, PFOA, PFNA, PFHxS, GenX, PFHpA, and PFBS contaminate South Carolina's drinking water, groundwater, surface water, wildlife, soil, and sediment.

9. PFAS are known as "forever chemicals" because they are mobile and persistent in the environment. PFAS spread quickly because they easily dissolve in water, and they persist in the environment because they have strong and stable carbon-fluorine bonds that resist natural degradation processes. Once present in the environment, PFAS are difficult and costly to remove.

10. PFAS are toxic to animal health. Even at low levels, ongoing exposure results in build-up (bioaccumulation) of PFAS within the body. PFAS can also biomagnify, meaning that its concentration within the body increases as animals are consumed up the food chain.

11. PFAS contamination in South Carolina presents a serious threat to public health. PFAS are toxic to humans, even at extremely low levels (measured in parts per trillion, or ppt). PFAS exposure through contaminated food or drinking water is associated with numerous adverse

health effects, including high cholesterol, increased liver enzymes, decreased vaccination response, thyroid disorders, pregnancy-induced hypertension, preeclampsia, and testicular and kidney cancer.

12. On June 15, 2022, the Environmental Protection Agency ("EPA") lowered the Health Advisory Limits for PFOA and PFOS. The new interim Health Advisory Limits are .004 ppt for PFOA and .02 for PFOS. In March 2023, the EPA released proposed drinking water standards for PFOA, PFOS, PFNA, PFHxS, GenX, and PFBS pursuant to the Safe Water Drinking Act. *See*, 8 Fed. Red. 18638 (Mar. 29, 2023). At that time, the EPA proposed to establish Maximum Contaminant Levels ("MCLs") for PFOA and PFOS at 4 ppt, which is the lowest amount that can be reliably measured based on currently available technologies.

13. The South Carolina Department of Health and Environmental Control ("DHEC") has not developed an independent health advisory for PFOA, PFOS, PFNA, PFHxS, GenX, PFHpA or PFBS, but defers to the EPA's health advisories and proposed Maximum Contaminant Levels ("MCLs") under the Clean Water Act, which are enforceable drinking water standards. Additionally, DHEC relies upon the EPA's regional screening levels ("RSLs") and Regional Removal Management Levels ("RMLs").

14. DHEC recently launched an investigation of PFAS contamination throughout the State. Through the investigation, DHEC has discovered that PFAS contamination is ubiquitous, having been found in most environmental media, including soil and sediment, groundwater, surface water, and biota.

15. DHEC is aware of the presence of PFAS in sludge from wastewater treatment plants. Biosolids from sludge at wastewater treatment plants are often used as a soil additive at agricultural sites or in commercial products. PFAS contamination though these pathways has greatly expanded the breadth of PFAS contamination in the State.

16. DHEC's investigation has focused on community public water systems ("Community Drinking Water Assessment"), lakes, rivers, streams, and fish tissue ("Ambient Surface Water Assessment"), private wells ("Private Drinking Water Assessment"), and sludge from wastewater treatment facilities used as a soil amendment or additive ("Wastewater Sludge Assessment").

17. The State of South Carolina has the authority and responsibility to protect, conserve, and manage State natural resources for present and future generations of South Carolinians. To that end, the State brings this action to ensure that the Defendants, who knowingly and intentionally contaminated the State of South Carolina with their toxic chemicals, bear the costs of PFAS clean-up, rather than the State and its taxpayers.

18. The State seeks damages for the costs of investigation, monitoring, abatement, containment, treatment, and removal of PFAS from the State's natural resources and property, and punitive damages for Defendants' egregious conduct. The State also seeks compensation for the products' damage to the natural resources and the concomitant reduction in value, use, and enjoyment of the same. The State also seeks injunctive relief to prevent further contamination and civil penalties to deter Defendants from engaging in this conduct in the future.

I. SCOPE OF ACTION

19. This Complaint alleges claims based on contamination and injury caused by the seven specific PFAS chemicals listed above (PFOS, PFOA, PFNA, PFHxS, GenX, PFHpA, and PFBS), as well as their precursors, acids, salts, ionic forms, and byproducts resulting from breakdown or degradation.

20. **PFAS as defined in this Complaint expressly excludes Aqueous Film Forming Foam ("AFFF"), a firefighting material that contains PFAS. The State is not seeking to**

recover through this Complaint any relief for contamination or injury related to AFFF or AFFF products used at airports, military bases, or certain industrial locations.

21. While certain natural resources in the State may be contaminated by PFAS from AFFF, such contamination is separable from PFAS contamination caused by consumer, textile, and other non-AFFF sources.

22. The State also is not seeking to recover through this Complaint any relief for personal injuries or diminution in private property values.

II. PARTIES

PLAINTIFF

23. Plaintiff is the State of South Carolina, as represented by and through Alan M. Wilson, the Attorney General of the State of South Carolina, with its principal office at 1000 Assembly Street, Columbia, SC 29201.

24. The State brings this action in its capacity as sovereign, as trustee of State natural resources, and as owner of property (or of substantial interests in property) contaminated and injured by Defendants, and pursuant to its authority to protect the public interest.

25. The State also brings this action based upon its statutory authority to protect State natural resources and property, and its common law police power. This power includes, but is not limited to, its power to prevent pollution of the State's natural resources and property, to prevent nuisances, and to prevent and abate hazards to public health, safety, welfare, and the environment.

26. In this Complaint, the term "State's natural resources and property" refers to all natural resources or property for which the State seeks damages, which may include fish, wildlife, biota, air, surface water, groundwater, wetlands, drinking water supplies, State-held public lands, and State-owned lands.

DEFENDANTS

27. Defendants are manufacturers, marketers, distributors, sellers, and/or promoters of PFAS and PFAS-containing products. The following Defendants, at times relevant to this action, manufactured, marketed, distributed and/or otherwise sold (directly or indirectly) PFAS that each such Defendant knew or should have known would be delivered into areas affecting the State's natural resources and property, or otherwise did business in the State. Moreover, Defendants caused the contamination of South Carolina's natural resources and property.

28. Defendant **3M Company** is a Delaware Corporation with its principal place of business located at 3M Center, St. Paul, Minnesota 55144. 3M conducts business throughout the United States and has systematically and continuously done business in South Carolina for the entire tenure of the acts giving rise to these claims, including the manufacture and distribution of PFOA and/or PFAS chemicals used in South Carolina. Moreover, Defendant 3M is registered to do business in the State of South Carolina and, upon information and belief, the PFAS manufactured by Defendant 3M contaminates the State's natural resources and property.

29. Defendant **EIDP, Inc., *f/k/a* E.I. du Pont de Nemours and Company** ("Old DuPont") is a Delaware corporation with its principal place of business at 974 Centre Road, Wilmington, Delaware 19805. Old DuPont has owned manufacturing facilities in South Carolina for decades and has systematically and continuously done business in South Carolina for the entire tenure of the acts giving rise to these claims including the manufacture and distribution of PFOA and/or PFAS chemicals used in South Carolina. Moreover, Defendant Old DuPont is registered to do business in the State of South Carolina and, upon information and belief, the PFAS manufactured by Defendant Old DuPont contaminates the State's natural resources and property.

30. Defendant **The Chemours Company** ("Chemours") is a Delaware corporation with its principal place of business at 1007 Market Street, Wilmington, Delaware 19899.

Chemours has systematically and continuously done business in South Carolina including the manufacture and distribution of PFAS chemicals used in South Carolina. Moreover, Defendant Chemours is registered to do business in the State of South Carolina and, upon information and belief, the PFAS manufactured by Defendant Chemours contaminates the State's natural resources and property.

31. Chemours was incorporated as a subsidiary of Old DuPont as of April 30, 2015. From that April to July 2015, Chemours was a wholly-owned subsidiary of Old DuPont. In July 2015, Old DuPont spun off Chemours and transferred to Chemours its "performance chemicals" business line, which includes its fluoro products business. Old DuPont distributed shares of Chemours stock to Old DuPont stockholders, and Chemours has since been an independent, publicly traded company.

32. Defendant **The Chemours Company FC, LLC ("**Chemours FC"**)** is a Delaware corporation with its principal place of business at 1007 Market Street, Wilmington, Delaware. Chemours FC operates as a subsidiary of Chemours and manufactures fluoropolymer resins. Chemours FC has systematically and continuously done business in South Carolina, including the manufacture and distribution of PFAS chemicals used in South Carolina. Moreover, Defendant Chemours FC is registered to do business in the State of South Carolina and, upon information and belief, the PFAS manufactured by Defendant Chemours FC contaminates the State's natural resources and property.

33. The Chemours Company and The Chemours Company FC, LLC are collectively referred to throughout this Complaint as "Chemours."

34. Old DuPont merged with The Dow Chemical Company in August 2017 to create DowDuPont Inc. ("DowDuPont"). Old DuPont and The Dow Chemical Company each merged with wholly-owned subsidiaries of DowDuPont and, as a result, became subsidiaries of

DowDuPont. Since that time, DowDuPont has effected a series of separation transactions to separate its businesses into three independent, publicly traded companies for each of its agriculture, materials science, and specialty products businesses.

35. Defendant **Corteva, Inc.** ("Corteva") is a Delaware corporation with its principal place of business at 974 Centre Road, Wilmington, Delaware. Corteva has systematically and continuously done business in South Carolina including the manufacture and distribution of PFAS chemicals used in South Carolina. Moreover, Defendant Corteva is registered to do business in the State of South Carolina and, upon information and belief, PFAS manufactured by Defendant Corteva contaminates the State's natural resources and property.

36. Corteva was formed in February 2018, and was a wholly owned subsidiary of DowDuPont until June 1, 2019, when DowDuPont separated its agriculture business through the spin-off of Corteva.

37. On June 1, 2019, DowDuPont distributed to DowDuPont stockholders all issued and outstanding shares of Corteva common stock by way of a pro rata dividend. Following that distribution, Corteva is the direct parent of Old DuPont (*i.e.*, EIDP, Inc.) and holds certain DowDuPont assets and liabilities, including DowDuPont's agriculture and nutritional businesses.

38. Defendant **DuPont de Nemours, Inc.** (f/k/a DowDuPont Inc.) is a Delaware corporation with its principal place of business at 974 Centre Road, Wilmington, Delaware 19805. On June 1, 2019, DowDuPont, the surviving entity after the spin-off of Corteva, Inc. and of another entity known as Dow, Inc., changed its name to DuPont de Nemours, Inc., to be known as DuPont ("New DuPont"). New DuPont retained assets in the specialty products business lines following the above-described spin-offs, as well as the balance of the financial assets and liabilities of Old DuPont not assumed by Corteva. Moreover, Defendant DuPont de Nemours is registered to do business in the State of South Carolina and, upon information and belief, the PFAS manufactured

by Defendant DuPont de Nemours contaminates the State's natural resources and property.

39. Defendants EIDP, Inc.; The Chemours Company; The Chemours Company FC, LLC; Corteva, Inc.; and DuPont de Nemours, Inc. are collectively referred to as "DuPont" throughout this Complaint.

40. All Defendants and/or their predecessors or successors in liability: (a) designed, manufactured, formulated, promoted, marketed, sold, and/or otherwise supplied (directly or indirectly) PFAS and/or products containing PFAS that were delivered into areas affecting the State's natural resources and property, such that PFAS has contaminated, injured, and threatens the State's natural resources and property; (b) acted with actual or constructive knowledge that PFAS and/or products containing PFAS would be delivered into areas affecting the State's natural resources and property; (c) are legally responsible for and committed each of the multiple tortious and wrongful acts alleged in this Complaint; and (d) promoted PFAS and/or products containing PFAS, despite the availability of reasonable alternatives and their actual or constructive knowledge that the pollution alleged in this Complaint would be the inevitable result of their conduct.

41. To the extent any act or omission of any Defendant is alleged in this Complaint, the officers, directors, agents, employees, or representatives of each such Defendant committed or authorized each such act or omission, or failed to adequately supervise or properly control or direct their employees while engaged in the management, direction, operation, or control of the affairs of such Defendants, and did so while acting within the scope of their duties, employment, or agency.

42. Any and all references to a Defendant or Defendants in this Complaint include any predecessors, successors, parents, subsidiaries, affiliates, and divisions of the named Defendants.

III. JURISDICTION AND VENUE

43. The Plaintiff State of South Carolina has oversight and care obligations for all of

the public waterways, byways, natural areas, human habitat, and public health within the borders of the State. Plaintiff has standing to bring this lawsuit to recover the costs incurred or that will be incurred in efforts to remove forever chemicals found in South Carolina. This Court may exercise jurisdiction over Defendants because they either are or at the relevant time were: authorized to do business in South Carolina, registered with the South Carolina Secretary of State, transacting sufficient business with sufficient minimum contacts in South Carolina, or otherwise intentionally availing themselves of the South Carolina market through the manufacturing, marketing, distribution, and/or sale of PFAS and PFAS-containing products in South Carolina so as to satisfy minimum contacts and to render the exercise of jurisdiction over Defendants by the South Carolina courts consistent with traditional notions of fair play and substantial justice.

44. Accordingly, the State brings this action, by and through its Attorney General in its sovereign capacity, in order to protect the interests of the State and its citizens. The Attorney General brings this action pursuant to his constitutional, statutory, and common law authority, including the authority granted to him by the State of South Carolina Unfair Trade Practices Act.

45. Venue is proper in this Court because the State is the plaintiff, and the State's natural resources and property have been contaminated, injured, and damaged by Defendants' PFAS contamination in Richland County, and other counties throughout the State.

IV. DEFENDANTS HAVE CAUSED PFAS CONTAMINATIONAND INJURY IN SOUTH CAROLINA

A. 3M Has Known for Decades of PFAS Health and Environmental Risks.

46. 3M was the primary manufacturer of PFAS chemicals in the United States from the 1940s through the early 2000s.

47. 3M was the only known manufacturer of PFOS and PFHxS in the United States.

48. 3M was a major manufacturer of PFOA.

49. 3M manufactured PFOA and PFOS as raw chemical materials for use in 3M products and products made by third parties. Additionally, 3M has used these chemicals in brand-name products such as Scotchgard.

50. 3M manufactured PFAS by electrochemical fluorination beginning in the 1940s.

51. The electrochemical fluorination process results in a product that contains and/or breaks down into compounds containing PFOS, PFOA, PFNA, PFHxS, GenX, PFHpA, and/or PFBS, among other PFAS.

52. 3M marketed and sold PFAS and products containing PFAS throughout the United States, including in South Carolina.

53. 3M supplied PFAS to third parties for use in manufacturing, including but not limited to DuPont, throughout the United States, including in South Carolina.

54. 3M supplied PFAS to manufacturers in South Carolina, including DuPont.

55. 3M and DuPont were the only companies to manufacture PFOA in the United States.

56. Upon information and belief, 3M was aware as early as the 1950s of PFAS contamination and accumulation in surface and groundwater, accumulation in and toxicity to humans and animals, and general resistance to biodegradation.

57. Throughout the mid and late 1900s, 3M actively researched and concealed knowledge of PFAS hazards from the public and government, until, in the early 2000s, upon pressure from the EPA, 3M phased out PFAS products.

58. Despite this knowledge, 3M continued manufacture, market, distribute, and/or sell PFAS and products containing PFAS as safe and acceptable for their intended purposes. Even as recently as 2018, 3M continued to claim publicly and falsely that PFAS is not hazardous or toxic to the environment or human health.

59. In the 1970s, 3M began monitoring the blood of its employees for PFAS because 3M was concerned about the health effects of PFAS, and in 1976, confirmed that PFAS chemicals were in fact in its workers' blood. For example, 3M measured fluorochemicals in the blood of workers at its PFAS-manufacturing plant in Cottage Grove, Minnesota at "1,000 times normal."[2]

60. In 1975, 3M found PFOA to have a "'universal' presence" in its human plasma in samples taken from several locations in the United States.[3]

61. Since PFOA is not naturally occurring, these findings in the human body reasonably should have alerted 3M that its products were likely dangerous to humans—a possibility that 3M considered internally but did not share outside the company.

62. These findings also should have alerted 3M that PFOA is mobile, persistent, bio-accumulative, and biomagnifying, as those characteristics would explain the presence of PFOA in blood from 3M's products.

63. In 1978, 3M studied, and independent experts confirmed, the risks of PFAS. A 3M internal report from 1978 warned that PFOS and PFOA "are likely to persist in the environment for extended periods." That same study found that two common PFAS compounds, including PFOA, were found "to be completely resistant to biodegradation" under the test conditions.[4]

64. Results of a 90-day animal study conducted by 3M in 1978 indicated that PFAS "should be regarded as toxic," and those aware of the results "urgently recommended that all

[2] 3M Interoffice Correspondence from L. C. Krogh to J.D. La Zerte, 3M, re: Presentation to Corporate Responsibility Committee on Progress – Fluorochemicals in Blood (October 19, 1977), available at https://www.ag.state.mn.us/Office/Cases/3M/docs/PTX/PTX1145.pdf (last accessed July 28, 2023).
[3] G.H. Crawford to L.C. Krogh et al., Record of a Telephone Conversation with William Guy of The University of Florida re: Fluorocarbon in Blood Samples from Texas and New York (August 20, 1975), available at https://www.ag.state.mn.us/Office/Cases/3M/docs/PTX/PTX1118.pdf (last accessed July 28, 2023).
[4] 3M Technical Report Summary, Biodegradation Studies of Fluorocarbons - III by Reiner to Bacon (July 19, 1978), available at https://www.ag.state.mn.us/Office/Cases/3M/docs/PTX/PTX1179.pdf (last accessed July 28, 2023).

reasonable steps be taken immediately to reduce exposure of employees to these compounds."[5]

65. Despite these warnings and recommendations, 3M decided not to disclose the findings of its investigation.

66. A 1979 memo from M.T. Case, a former employee within 3M's medical department in Corporate Toxicology and Regulatory Services, stated that he believed it "paramount to begin now an assessment of the potential (if any) of long term (carcinogenic) effects for these compounds which are known to persist for a long time in the body and thereby give long-term chronic exposure."[6]

67. At a meeting among 3M employees in June of 1979 discussing the "Fluorochemicals in Blood Program," an outside researcher named Dr. H.C. Hodge recommended that "[r]eduction in exposure [of 3M employees to fluorochemicals] should have top priority," that further testing be conducted, and that "[i]t should be determined if FC-807 [a PFAS chemical marketed in the Scotchban family] or its metabolites are present in man, what level they are present, and the degree of persistence (half-life) of these materials."[7]

68. In 1983, 3M scientists concluded that test results on PFAS "give rise to concern for environmental safety," including "legitimate questions about the persistence, accumulation potential, and ecotoxicity of fluorochemicals in the environment."[8]

69. In a December 1988 email, a 3M employee stated, "I don't think it is in 3M's long-term interest to perpetuate the myth that these fluorochemical surfactants are biodegradable.

[5] 3M Interoffice Correspondence from Prokop re: Meeting Minutes - Review of Animal Studies (May 17, 1978), available at https://www.ag.state.mn.us/Office/Cases/3M/docs/PTX/PTX1174.pdf (last accessed August 1, 2023).
[6] 3M Riker Laboratories Interoffice Correspondence from M. T. Case to R. A. Nelson re: Fluorochemical Chronic Toxicity (July 6, 1979), available at https://www.ag.state.mn.us/Office/Cases/3M/docs/PTX/PTX1212.pdf (last accessed August 1, 2023).
[7] 3M Interoffice Correspondence re: Meeting Minutes - Meeting with H.C. Hodge (June 7, 1979), available at https://www.ag.state.mn.us/Office/Cases/3M/docs/PTX/PTX1210.pdf (last accessed August 1, 2023).
[8] E.A. Reiner, Ed., Fate of Fluorochemicals - Phase II, 3M ENVIRONMENTAL LABORATORY (May 20, 1983), available at https://www.ag.state.mn.us/Office/Cases/3M/docs/PTX/PTX1282.pdf (last accessed August 1, 2023).

It is probable that this misconception will eventually be discovered, and when that happens, 3M will likely be embarrassed, and we and our customers may be fined and forced to immediately withdraw products from the market."[9]

70. In 1997, 3M provided DuPont with a Material Safety Data Sheet for FC-118 Fluorad Brand Fluorochemical Surfactant, which included a warning that stated: "CANCER: WARNING: Contains a chemical which can cause cancer. (3825-26-1) (1983 and 1993 studies conducted jointly by 3M and DuPont).[10]

71. In 1998, a 3M scientist, Dr. Richard Purdy conducted a risk assessment of potential adverse effects on marine animals, like birds and the fish they consume, from PFOS in the food chain and informed 3M of his findings. Dr. Purdy concluded there was a significant risk of harm of food chain transfer, and that "the levels we are seeing in eagles and other biota is likely to climb each year."[11]

72. 3M's practices were concerning to its own employees. In March 1999, 3M environmental scientist Dr. Purdy, who had conducted the 1998 study on marine animals, resigned from 3M in a letter expressing his "profound disappointment" with "3M's handling of the environmental risks associated with the manufacture and use of" PFOS. Dr. Purdy described PFOS as "the most insidious pollutant since PCB," and stated, "it is probably more damaging than PCB because it does not degrade, whereas PCB does; it is more toxic to wildlife." Dr. Purdy described his attempts to discuss the dangers of the chemical with the company, and 3M's refusal to act. Dr. Purdy further stated that "3M continues to make and sell these chemicals though the

[9] Lori Swanson, Former Attorney General of Minnesota, Testimony Before the Committee on Oversight and Reform, Subcommittee on Environment, United States House of Representatives (Sept. 10, 2019), at Exhibit H, https://www.congress.gov/116/meeting/house/109902/witnesses/HHRG-116-GO28-Wstate-SwansonL-20190910.pdf (hereinafter "Swanson Testimony").
[10] Swanson Testimony, at 3, Exhibit A.
[11] Richard E. Purdy, *Email to Georjean Adams re: Risk to the environment due to the presence of PFOS* (Dec. 3, 1998, 11:53AM) https://static.ewg.org/reports/2019/pfa-timeline/1998_Food-Chain.pdf. (last accessed August 1, 2023).

company knows of an ecological risk assessment [he] did that indicates there is a better than 100% probability that perfluorooctanesulfonate [PFOS] is biomagnifying in the food chain and harming sea mammals…3M told those of us working on the fluorochemical project not to write down our thoughts or have email discussions on issues because of how our speculations could be viewed in a legal discovery process." Finally, Dr. Purdy stated, "I can no longer participate in the process that 3M has established for the management of PFOS and precursors. For me it is unethical to be concerned with markets, legal defensibility and image over environmental safety."[12]

73. 3M informed the EPA in May 1998 that PFOS had been found in the blood of animals but did not disclose the extent and concerning nature of its decades-long research on PFAS. Dr. Purdy noted that disclosure to the EPA omitted the most significant information, which was that 3M had discovered "widespread environmental contamination and food chain transfer and probable bioaccumulation and bio-magnification."[13]

74. In 2000, following pressure from the EPA, 3M announced it would phase out PFOS products and issued a press release asserting "our products are safe," citing the company's "principles of responsible environmental management" as the reason to cease production.[14]

75. The EPA issued a contradictory press release on the same day, stating 3M had provided data indicating PPOS "chemicals are very persistent in the environment, have a strong tendency to accumulate in human and animal tissues and could potentially pose a risk to human health and the environment over the long term."[15]

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[12] Swanson Testimony, at Exhibit B.
[13] *Id.*
[14] Press Release, *3M Phasing Out Some of its Specialty Materials*, 3M (May 16, 2000), available at https://www.ag.state.mn.us/Office/Cases/3M/docs/PTX/PTX1694.pdf (last accessed August 1, 2023).
[15] Press Release, *EPA and 3M Announce Phase Out of PFOS*, EPA (May 16, 2000), available at https://www.epa.gov/archive/epapages/newsroom_archive/newsreleases/33aa946e6cb11f35852568e1005246b4.html (last accessed August 1, 2023).

76. 3M controlled and distorted the scientific literature on PFAS, including, hiring "independent" scientists to publicly refute unfavorable research.[16]

77. In 2006, the EPA cited 3M for 244 violations of the Toxic Substances Control Act, accusing 3M of failing to notify the agency about new chemicals and of late reporting of "substantial risk information."[17] 3M was fined $1.52 million for these violations.[18]

78. Based upon their decades of research, 3M knew or should have known that, in their intended and/or common use, PFAS (including products containing PFAS and PFAS used in industrial processes) would injure and/or threaten public health and the environment in South Carolina.

B. DuPont Has Known for Decades of PFAS Health and Environmental Risks.

79. DuPont began purchasing PFOA from 3M in 1951 for use in manufacturing DuPont's brand-name Teflon products. Teflon is commonly known for its use as a coating for non-stick cookware.

80. DuPont has used PFAS in other brand-name products including Stainmaster.

81. DuPont marketed and sold PFAS and products containing PFAS throughout the United States, including in South Carolina.

82. DuPont supplied PFAS to third parties for use in manufacturing, including to numerous textile plants throughout the State of South Carolina.

83. Although DuPont knew about the health and environmental risks of PFAS since the early science in the mid-1900s, DuPont began manufacturing its own PFAS chemicals in 2002 for use in manufacturing when 3M phased out production of PFOA.

[16] Swanson Testimony, at Exhibit K.
[17] Press Release, *3M Company Settlement*, EPA (April 25, 2006), available at https://www.epa.gov/enforcement/3m-company-settlement (last accessed August 1, 2023).
[18] *Id.*

84. 3M and DuPont were the only companies to manufacture PFOA in the United States.

85. DuPont continued to manufacture, market, and sell PFOA until 2013.

86. Like 3M, DuPont has known for decades of the health and environmental risks of PFAS. Instead of warning the public, users, and consumers about such risks, DuPont covered up this information and promoted PFAS and PFAS-containing products as safe.

87. In approximately 1951, DuPont started using PFOA in making Teflon at its Washington Works manufacturing plant in Parkersburg, West Virginia. As early as 1954, employees at DuPont's Washington Works plant reported that C8 (another name for PFOA) might be toxic.

88. DuPont was sufficiently concerned about the complaints that it delayed marketing Teflon containing PFOA to the public. However, despite their concerns, DuPont began selling Teflon products in 1961.

89. As early as 1966, DuPont was aware that PFOA could leach into groundwater.

90. In 1978, DuPont's Medical Director, Dr. Bruce Karrh, published an article in the Bulletin of the New York Academy of Medicine in which he acknowledged DuPont's "duty to 'to discover and reveal the unvarnished facts about health hazards…' and "that a company 'should be candid, and lay all the facts on the table. This is the only responsible and ethical way to go.'"[19]

91. By 1979, DuPont had data indicating that its workers who were exposed to PFOA had a significantly higher frequency of health issues compared to unexposed workers but failed to report

[19] Shannon Lerner, *The Teflon Toxin*, THE INTERCEPT (Aug. 11, 2015), available at https://theintercept.com/2015/.08/11/dupont-chemistry-deception/ (last accessed August 1, 2023).

this data to any government agency or any community where it used PFOA.

92. In 1981, DuPont doctors recommended moving female employees "of childbearing potential" off PFAS production lines in its Parkersburg, WV plant and other facilities that produced Teflon.[20] This recommendation was based on a study 3M had reported which discovered birth defects in rats.[21] The DuPont doctors documented that 3M's rat studies potentially aligned with abnormal outcomes in DuPont employee pregnancies.[22] It was later documented that employees exposed to PFAS at the Parkersburg plant had children with birth defects at rates above the general population average.[23]

93. By at least the mid-1980s, DuPont was aware that "'continued exposure [to PFOA] is not tolerable,'" and that PFOA accumulates and persists in the human body.[24]

94. In 1981, DuPont monitored female employees who had been exposed to PFOA to study if their children were born with abnormalities. Initial data showed that two of the eight babies born to women who worked with Teflon had eye and nostril deformities. These figures were "significant enough to suggest that C8 exposure caused the problems."[25] DuPont abandoned the study rather than inform regulators, its own employees, or the public.[26]

95. In 1984, DuPont held a meeting at its corporate headquarters in Wilmington, Delaware to discuss health and environmental issues related to PFOA. The corporate managers

[20] Dr. Frank A. Ubel, Recommendation Regarding Fluorochemical Exposure to Females of Childbearing Potential, M.D. (April 17, 1981), available at https://www.ag.state.mn.us/Office/Cases/3M/docs/PTX/PTX1254.pdf (last accessed August 1, 2023); Ammonium Perfluorooctanoate (FC-143) C-8 Compounds, Intraoffice Correspondence from Dr. Bruce Karrh, M.D. to C. De Martino (March 25, 1981), available at https://www.documentcloud.org/documents/2782027-KarrhMemo (last accessed August 1, 2023).
[21] Karrh, *supra* note 20.
[22] *Id.*
[23] Ken Ward, Jr., *DuPont Proposed, Dropped '81 Study of C8, Birth Defects*, THE CHARLESTON GAZETTE (July 10, 2005), available at https://www.fluoridealert.org/wp-content/pesticides/2005/effect.pfos.class.news.169.html (last accessed August 1, 2023).
[24] Lerner, *supra* note 19.
[25] *Id.*
[26] Ward, *supra* note 23.

expressed concern about "C-8 exposures off plant as well as to our customers and the communities in which they operate." The corporate managers admitted internally that "none of the options developed are … economically attractive and would essentially put the long-term viability of this business segment on the line." The DuPont corporate managers predicted that the medical and legal departments "will likely take a position of total elimination," of PFOA but instead decided that "corporate image, and corporate liability" would drive decisions about PFOA. And the corporate managers admitted that it was too late to address past liability: "Liability was further defined as the incremental liability from this point on if we do nothing as we are already liable for the past 32 years of operation."[27] DuPont did not disclose the information discussed at the 1984 meeting to the EPA, the State, or the general public. DuPont began manufacturing PFOA itself in the early 2000s and continued to use PFOA for almost another 30 years.

96. Upon information and belief, DuPont began treating PFOA as early as 1988 as a possible human carcinogen.

97. In a 2005 *Washington Post* article, DuPont Spokesperson Clifton Webb is quoted saying: "[b]ased on an evaluation of human health and toxicology studies, DuPont believes that the weight of evidence suggests that PFOA exposure does not cause cancer in humans and does not pose a risk to the general public. To date, no human health effects are known to be caused by PFOA, even in workers who have significantly higher exposure levels than the general population."[28]

98. Notwithstanding its internal knowledge of PFOA's health and environmental risks

[27] Schmid, J.A., Personal & Confidential Memorandum, re: C-8 Meeting Summary (May 23, 1984), Wilmington, Del., available at https://static.ewg.org/files/dupont_elim_PFOA_1984.pdf (last accessed August 3, 2023) (hereinafter "The DuPont Memo").

[28] Juliet Eilperin, *Compound in Teflon a 'Likely Carcinogen'*, THE WASHINGTON POST (June 29, 2005), available at https://www.washingtonpost.com/archive/politics/2005/06/29/compound-in-teflon-a-likely-carcinogen/5cca31d1-0c50-4c56-948a-c27d300d4dd6/ (last accessed August 3, 2023).

beginning as early as the 1950s, DuPont publicly stated in 2003 that "[w]e are confident that there are no health effects associated with C-8 exposure," and that "C-8 is not a human health issue."[29]

99. DuPont's own Epidemiology Review Board ("ERB") repeatedly raised concerns about DuPont's practice of stating publicly that there were no adverse health effects associated with human exposure to PFOA. In February 2006, the ERB "strongly advise[d] against any public statements asserting that PFOA does not pose any risk to health" and "question[ed] the evidential basis of DuPont's public expression asserting, with what appears to be great confidence, that PFOA does not pose a risk to health."[30]

100. By December 2005, the EPA uncovered evidence that DuPont had concealed the environmental and health effects of C8 for more than two decades. In response, EPA levied a $16.5 million administrative penalty on DuPont, which at that time was the largest civil administrative penalty the EPA had ever imposed under any federal environmental statute. At approximately the time this penalty was issued, DuPont was making around $1 billion a year in revenue from products containing C8.

101. Also in 2005, Old DuPont settled a class action lawsuit filed on behalf of 70,000 residents of Ohio and West Virginia. Under the terms of the settlement, Old DuPont agreed to fund a panel of scientists to determine if any diseases were linked to PFOA exposure, to filter local water for as long as C-8 concentrations exceeded regulatory thresholds, and to set aside funds for ongoing medical monitoring of the affected community. After 8 years, the C-8 Science Panel found several significant diseases, including cancer, with a probable link to PFOA.

102. In October 2006, contrary to ERB's advice, DuPont's chief medical officer issued

[29] Washington Works Media Update, DUPONT (March 18, 2003), available at https://static.ewg.org/reports/2003/pfcs/dupontpresentation.pdf (last accessed August 3, 2023).
[30] Tom L. Beauchamp, et al., Memorandum to Michael Kaplan re: Epidemiology Review Board and PFOA (February 24, 2006), available at https://static.ewg.org/files/ERB_February2006.pdf (last accessed August 3, 2023).

a press release stating that "'there are no human health effects known to be caused by PFOA.'"[31]

103. Upon information and belief, as late as March 2009, DuPont falsely claimed that PFOA in drinking water was completely safe, despite DuPont's knowledge about the toxicity of PFAS.

C. Defendants Failed to Act on Their Knowledge of the Health and Environmental Risks of PFAS.

104. Despite their knowledge that PFAS posed environmental and human health risks, and despite the availability of reasonable alternatives, Defendants failed to warn customers, users, the public or the State, and failed to take any other appropriate precautionary measures to prevent or mitigate such risks. Instead, Defendants promoted PFAS, and products containing PFAS, as environmentally sound products appropriate for widespread use.

105. At all times relevant to this litigation, Defendants knew or should have known that PFAS contamination and injury to State natural resources and property was the natural and inevitable consequence of their PFAS-related business activities. Defendants knew PFAS is insoluble, recalcitrant to biodegradation and bioremediation, and that the normal and foreseen use of PFAS in industrial processes, and in consumer, household, and commercial products, including in South Carolina would cause PFAS to bioaccumulate in people and the environment, causing widespread contamination.

106. Defendants possess and have always possessed vastly superior knowledge, resources, experience, and other advantages, than anyone or any agency, regarding the manufacture, distribution, nature, and properties of PFAS and PFAS-containing products, and PFAS chain

[31] Press Release, *DuPont Concludes Washington Works Employee PFOA Study*, DUPONT (October 17, 2006), available at https://us.vocuspr.com/Newsroom/Query.aspx?SiteName=DupontNew&Entity=PRAsset&SF_PRAsset_PRAssetID_EQ=103587&XSL=PressRelease&Cache=False (last accessed August 3, 2023).

degradation and evolution.

107. By virtue of their tremendous economic power and analytical resources, including the employment of scientists, Defendants have at all relevant times been in a position to know, identify, and confirm the threat PFAS posed and poses to people and State natural resources and property.

108. At all relevant times, Defendants, individually and/or collectively, have had the resources and ability to fund or sponsor any study, investigation, testing, and/or other research of any kind of the nature Defendants claim is necessary to confirm and/or prove that the presence of any one and/or combination of PFAS in human blood causes any disease and/or adverse health impact of any kind in humans, presents any risk of harm to humans, and/or is of any legal, toxicological, or medical significance to humans, according to standards Defendants deem acceptable.

109. At all relevant times, Defendants, through their acts and/or omissions, controlled, minimized, trivialized, manipulated, and/or otherwise influenced the information that was published in peer-review journals, released by any governmental entity, and/or otherwise made available to the public relating to PFAS in human blood and any alleged adverse impacts and/or risks associated therewith, effectively preventing the State from discovering the existence and extent of any harm as alleged herein.

110. At all relevant times, Defendants, through their acts and/or omissions, took steps to attack, challenge, discredit, and/or otherwise undermine any scientific studies, findings, statements, and/or other information that proposed, alleged, suggested, or even implied any potential adverse environmental damage and health effects or risks and/or any other fact of any legal, toxicological, or medical significance associated with the presence of PFAS in the environment and human blood.

111. At all relevant times, Defendants, through their acts and/or omissions, concealed and/or withheld information from their customers, governmental entities, and the public that would have properly and fully alerted South Carolina to the environmental, toxicological, medical, or other

significant risks from PFAS contamination.

112. At all relevant times, Defendants encouraged the continued and even further increased use and release into the environment of PFAS, including into South Carolina, by their customers and others, and tried to encourage and foster the increased and further use of PFAS, including in South Carolina, in connection with as many products/uses and applications as possible, despite knowledge of the toxicity, persistence, and bioaccumulation concerns associated with such activities.

113. Despite their explicit knowledge of the dangers of PFAS, Defendants deliberately and intentionally concealed the dangers of PFAS from governmental entities, including the State of South Carolina and its agencies, and the public at large to protect profits and avoid public responsibility for injuries and damage caused by their toxic products.

114. Defendants' negligent, intentional, and reckless actions have contaminated and injured, and continue to contaminate and injure, the environment and natural resources of South Carolina, harmed South Carolina property, and placed South Carolina at risk.

115. In addition, by virtue of this superior knowledge, and/or by virtue of Defendants' partial, incorrect and misleading statements regarding the nature and impacts of PFAS, Defendants had a duty to disclose the truth and to act in accordance with the truth about PFAS.

116. Defendants knew, or should have known, that PFAS, including PFOS, PFOA, PFNA, PFHxS, GenX, PFHpA, and/or PFBS, would contaminate and injure the environment through their manufacturing, marketing, distribution, and sales of PFAS chemicals and consumer, household, and other commercial products and materials containing PFAS.

117. Defendants knew, or should have known, that their manufacturing, marketing, distribution, and sales of PFOS, PFOA, PFNA, PFHxS, GenX, PFHpA, and/or PFBS and/or products containing PFOS, PFOA, PFNA, PFHxS, GenX, PFHpA, and/or PFBS including in South Carolina, would result in contamination and injury of the State's natural resources and property.

V. OLD DUPONT'S SPINOFF OF THE CHEMOURS AND CORTEVA ENTITIES

118. In 2014 and 2015, Old DuPont (*i.e.*, defendant EIDP, Inc.) created and transferred its assets and liabilities, including those related to PFAS product lines, to The Chemours Company as a wholly owned subsidiary.

119. At that time, upon information and belief, DuPont and Chemours knew, based on the financial situation of the product lines included in the spinoff, that Chemours was undercapitalized.

120. In undertaking Old DuPont's obligations and liabilities, Chemours completely indemnified Old DuPont and completely substituted DuPont in all primarily associated performance chemicals liabilities, including those originating before the spinoff.[32]

121. Until the spinoff was complete, Chemours was controlled by DuPont's Board of Directors as a wholly-owned subsidiary.

122. Under the Separation Agreement, The Chemours Company agreed to indemnify Old DuPont against, and assumed for itself, all "Chemours Liabilities," which is defined broadly to include, among other things, "any and all liabilities relating," "primarily to, arising primarily out of or resulting primarily from, the operation of or conduct of the [Performance Chemicals] Business at any time." This indemnification is uncapped and does not have a survival period.[33]

123. The Chemours Company agreed to indemnify Old DuPont from, and assume all, environmental liabilities that arose prior to the spinoff if they were "primarily associated" with the Performance Chemicals Business. Such liabilities were deemed "primarily associated" if Old DuPont reasonably determined that 50.1% of the liabilities were attributable to the Performance Chemicals

[32] *See generally Separation Agreement by and between E.I. Du Pont De Nemours and Company and The Chemours Company*, at 57, (June 26, 2015), available at https://www.sec.gov/Archives/edgar/data/30554/000003055415000065/exhibit21separationagreeme.htm (last accessed August 3, 2023) (hereinafter "Separation Agreement").
[33] *Id.* at 10–11.

Business.[34]

124. The Chemours Company agreed to indemnify Old DuPont against and assume for itself the Performance Chemical Business's liabilities regardless of: (i) when or where such liabilities arose; (ii) whether the facts upon which they are based occurred prior to, on, or subsequent to the effective date of the spinoff; (iii) where or against whom such liabilities are asserted or determined; (iv) whether arising from or alleged to arise from negligence, gross negligence, recklessness, violation of law, fraud or misrepresentation by any member of the Old DuPont group or the Chemours group; and (v) which entity is named in any action associated with any liability.[35] The Chemours Company also agreed to use its best efforts to be fully substituted for Old DuPont with respect to "any order, decree, judgment, agreement or Action with respect to Chemours Assumed Environmental Liabilities…."[36]

125. At the time of the July 2015 spin-off, Old DuPont was well aware of its potential liabilities related to PFAS contamination throughout the United States.[37]

126. Once the spinoff was complete, seven new members of The Chemours Company board were appointed, for an eight-member board of directors of the new public company. The negotiations concerning the spinoff were conducted and the related decisions were made while the board was still controlled by Old DuPont. The new independent board appointed upon the completion of the spinoff did not take part in the negotiations of the terms of the separation.[38]

127. In 2015 when DuPont transferred its Performance Chemicals Business to The Chemours Company, Old DuPont had been sued, threatened with suit, and/or had knowledge of the

[34] *Id.* at 7, 53–65.
[35] *Id.* at 29.
[36] *Id.* at 63.
[37] *See, e.g.,* The DuPont Memo, *supra* note 2727.
[38] *The Chemours Co. v. DowDuPont, Inc., Corteva, Inc., and E.I. Du Pont de Nemours & Co.*, C.A. No. 2019-0351-SG, at ¶ 35 (Del. Cha. Aug. 14, 2019) (verified first amended complaint by Chemours against the other DuPont entities regarding the spinoff and extent of Chemours' exposure to DuPont's historical liabilities) (hereinafter "Spin-Off Case").

likelihood of litigation to be filed regarding Old DuPont's liability for damages and injuries from the manufacture of PFAS compounds and products that contain PFAS compounds.[39]

128. The effect of creating The Chemours Company was to segregate a large portion of Old DuPont's environmental liabilities, including liabilities related to its PFAS chemicals and products.

129. A second spin-off company, Corteva, was created in 2018. Corteva is an agriculture science company that holds other legacy Old DuPont operations and some PFAS liabilities.

130. Corteva was undercapitalized, under DuPont's control, and is not a distinct or unique business operation.

131. Like The Chemours Company, the effect of creating Corteva was to segregate a large portion of Old Dupont's environmental liabilities, including liabilities related to its PFAS chemicals and products.

132. The consolidation of Old DuPont's performance chemical liabilities in these spinoff entities has potentially limited the availability of funds arising out of Old DuPont's liability.

VI. STATE NATURAL RESOURCES AND PROPERTY INJURIES

133. PFOS, PFOA, PFNA, PFHxS, GenX, PFHpA, and PFBS have been found in and around State natural resources and property, including groundwater, surface waters, soil, sediments, and wildlife in locations throughout South Carolina.

134. On May 25, 2016, the EPA established a drinking water lifetime health advisory (i.e., consuming two and a half (2.5) liters of water per day for 70 years) for PFOA and PFOS. This health advisory was at 70 parts per trillion ("ppt") for either of those individual chemicals or for both in

[39] *See e.g., In re E.I. du Pont de Nemours & Co. C-8 Personal Inj. Litig.*, No. 1-13-MD-2433 (S.D. Ohio) (active MDL regarding injuries associated with contamination near the DuPont-Chemours Washington Works Plant, Parkersburg, WV, petition for certiorari to the U.S. Supreme Court currently pending).

combination. After further research, the EPA issued interim health advisories on June 5, 2022, drastically lowering the current health advisory level of PFOA to .004 ppt and the level of PFOS to .02 ppt, essentially undetectable with current testing methods.

135. On March 14, 2023, EPA proposed a new National Primary Drinking Water Regulation for six (6) PFAS, including PFOA, PFOS, PFNA, GenX, PFHxS, and PFBS. As proposed, this regulation establishes Maximum Contaminant Levels (MCLs) of 4.0 ppt for PFOA and 4.0 ppt for PFOS. This regulation also proposes a combined MCL for PFNA, PFHxS, PFBS, and GenX based upon the combined toxicity of those compounds in drinking water.

136. Numerous locations in South Carolina are contaminated and injured by PFOS, PFOA, PFNA, PFHxS, GenX, PFHpA, and PFBS far in excess of the EPA's current health advisory levels and proposed MCLs, including but not limited to the following:

a. All eight (8) of the major river basins in South Carolina—the Broad, Catawba, Edisto, Pee Dee, Saluda, Salkehatchie, Santee, and the Savannah—contain ambient levels of PFAS exceeding the March 2023 MCLs proposed by EPA. Specifically, DHEC has detected at least one exceedance of the proposed MCLs at sixty nine percent (69%) of stations where ambient water was sampled across the State's major river basins from July 2022 to March 2023.[40]

b. PFOS, PFOA, PFNA, PFHxS, GenX, PFHpA, and/or PFBS have contributed to widespread PFAS contamination in the Pocotaligo River near Manning, South Carolina with readings of 7,663 ppt; in the Big Generostee Creek near Anderson, South Carolina with readings of 754 ppt; in the Chinquapin Creek along the

[40] The above percentage is based on sampling conducted by DHEC at one hundred forty-two stations throughout the State. Ninety-eight (98) of the stations sampled have had at least one MCL exceedance for PFOA, PFOS, or PFNA, GenX, PFHxS, and PFBS in combination. DHEC's ambient surface water data through March 2023 is made public at https://scdhec.gov/environment/polyfluoroalkyl-substances-pfas/pfas-bureau-water (last accessed June 30, 2023).

Lexington-Aiken county border with readings of 382 ppt; in Lake Conestee south of Greenville, South Carolina with readings of 328 ppt; in Fishing Creek located in Chester County with readings of 306 ppt; in Buffalo Creek near Union, South Carolina with readings of 264 ppt; and in Log Branch between Allendale and the Savannah River site with readings of 133 ppt.[41]

c. Of the forty-four (44) Surface Water-Sourced Community Drinking Water Systems serving more than two million South Carolinians DHEC sampled in August 2020, thirty-one (31) had detectable levels of PFOA exceeding the June 2022 health advisory levels established by the EPA. Similarly, thirty-four (34) community drinking water systems had detectable levels[42] of PFOS exceeding the June 2022 health advisory levels established by the EPA.[43] Additionally, DHEC found the presence of PFHxS in four (4) community drinking water systems as well as the presence of PFHpA in four (4) separate community drinking water systems.[44]

d. Of the eleven (11) drinking water systems that provided PFAS data to DHEC, nine (9) regional water systems had detectable levels[45] of either PFOA or PFOS which exceed the June 2022 health advisory levels established by the EPA.[46] It is important

[41] The readings listed are the sum of the twenty-six PFAS analyzed by DHEC, with PFOS, PFOA, PFNA, PFHxS, GenX, PFHpA, and PFBS making up a majority of the totals.

[42] Current sampling methods approved by EPA cannot detect PFOA and PFOS down to EPA's June 2022 health advisory levels for those compounds (.004 ppt and .02 ppt respectively). As a result, additional water systems in the August 2020 sampling data may have had PFOA and PFOS above the health advisory level that could not be detected. Furthermore, many of the same water systems had PFOA and PFOS levels in exceedance of EPA's May 2023 proposed MCLs.

[43] *SCDHEC PFOA and PFOS Data from Surface Water-Sourced Community Drinking Water Systems*, August 2020, available at https://scdhec.gov/sites/default/files/media/document/BOW_PFAS_Table1.pdf (last accessed December 30, 2022).

[44] *SCDHEC Other PFAS Data (excluding PFOA and PFOS) Data from Surface Water-Sourced Community Drinking Water Systems, August 2020*, available at https://scdhec.gov/sites/default/files/media/document/BOW_PFAS_Table2.pdf (last accessed December 30, 2022).

[45] *See Water-Sourced Community Drinking Water Systems*, *supra* note 43.

[46] *PFOA and PFOS Data from SCDHEC Sampling of Surface Water Sourced Community Drinking Water Systems that Provided PFAS Data to SCDHEC*, available at https://scdhec.gov/sites/default/files/media/document/BOW_PFAS_Table7A_0.pdf (last accessed December 31, 2022).

to note that all samples were collected from finished water from each well by DHEC staff immediately prior to entering the distribution system. Additionally, from its sampling of eleven (11) different drinking water systems, DHEC identified PFNA in four (4) regional water utility systems, PFHxS in six (6) regional water utility systems, and PFHpA in seven (7) regional water utility systems.

e. South Carolina's Groundwater-Sourced Community Drinking Water Systems are likewise contaminated and injured by PFAS. Approximately eight percent (8%) of samples collected by DHEC at public water supply wells from 2020 to present have had detectable levels exceeding EPA's proposed MCLs for PFOA, PFOS, or PFNA, GenX, PFHxS, and PFBS in combination.

137. Publicly available data from sampling conducted by DHEC has also revealed chemical pollution in private well systems in the State. Specifically, DHEC identified the presence of each of the following forever chemicals: PFOS, PFOA, PFNA, PFHxS, GenX, and PFHpA. Some samples revealed PFOA levels of 1,700, 3,100 and 8,100 parts per trillion, multiples higher than the EPA's current health advisory limit or proposed MCL.

138. Interaction (in the food chain, by ingestion or by absorption) with contaminated resources, is hazardous to human, plant, and animal life, therefore, PFAS contamination has injured State natural resources and/or adversely impacted their beneficial public trust uses including those for drinking water, recreation, and fishing.

139. PFAS contamination and injury has substantially damaged the intrinsic value of these State natural resources.

140. South Carolina and its citizens have been deprived of the full use, enjoyment, and benefit of the State's public trust resources, and the intrinsic values of such State natural resources have been substantially harmed by PFOS, PFOA, PFNA, PFHxS, GenX, PFHpA, and PFBS.

141. The State's natural resources and property have been contaminated and injured by PFOS, PFOA, PFNA, PFHxS, GenX, PFHpA and PFBS through foreseeable releases from, for example, the following:

a. Solid waste facilities;

b. Hazardous waste contaminated sites;

c. Wastewater disposal sites;

d. Wastewater treatment facilities;

e. Biosolid and sludge processing and application sites, and septage land spreading; and

f. Residential or domestic septic systems; and

g. Use and disposal of numerous consumer, household, and commercial products.

The State is not alleging damages from PFAS releases from airports, military bases, or certain industrial locations in this Complaint.

142. Defendants' acts or omissions caused and/or were a substantial factor in bringing about the contamination of the State's natural resources and property.

143. Defendants failed to disclose the environmental and health risks of PFAS that were known or should have been known to them, to the owners or operators of sites from which PFOS, PFOA, PFNA, PFHxS, GenX, PFHpA, and/or PFBS, have been released, to consumers, users, or to the State. As a result, the risks associated with PFAS were unknown to the users of consumer, household, and commercial products containing PFOS, PFOA, PFNA, PFHxS, GenX, PFHpA, and/or PFBS, were unknown to the State, and were generally unknown to those other than Defendants who could have reduced or limited the PFAS contamination and injury described above. As manufacturers, marketers, and sellers of PFAS, Defendants were in the best position to reduce the risk of harm of their products.

144. Despite their explicit knowledge of the dangers of PFAS, Defendants deliberately and

intentionally concealed the dangers of PFAS to protect profits and avoid public responsibility for injuries and damages caused by their toxic products. South Carolina has suffered the consequences of Defendants' actions.

145. Even more troubling, Defendants actively engaged in a campaign to promote perfluorochemicals as safe to manufacture and use and to distort scientific evidence concerning potential harms associated with perfluorochemicals.

A. Groundwater

146. Groundwater is a precious, limited, and invaluable State natural resource that South Carolinians rely upon for drinking water, irrigation, and other important purposes.

147. State natural resources, including groundwater, are vital to the health, safety, and welfare of South Carolina citizens, and to the State's economy and ecology.

148. DHEC has detected Defendants' PFOA, PFOS, PFNA, PFHxS, GenX, PFHpA, and/or PFBS chemicals in drinking water drawn from groundwater at numerous sites, showing contamination, and therefore, injury.

149. Ongoing testing continues to reveal further PFAS contamination and injury of groundwater throughout South Carolina.

B. Surface Waters

150. Surface waters are also precious, limited, and invaluable State natural resources that are used for drinking water, irrigation, recreation such as swimming and fishing, and ecological and other important purposes.

151. South Carolinians also rely upon surface waters as sources for drinking water.

152. The State's tourism and recreation industries are dependent upon clean water, including surface waters.

153. Surface waters also are commercially, recreationally, aesthetically, and ecologically

important to the State and its citizens, and support aquatic ecosystems, and biota such as fish.

154. DHEC sampling has detected Defendants' PFOS, PFOA, PFNA, PFHxS, GenX, PFHpA, and/or PFBS chemical contamination in the State's surface waters.

155. Ongoing testing continues to reveal further PFAS contamination and injury of surface waters throughout South Carolina.

C. Wildlife, Soils, and Sediments

156. Wildlife is a precious, limited, and invaluable State natural resource. South Carolina's fish and other wildlife provide a significant economic benefit to the State, including through recreation and tourism.

157. Soils and sediments are interconnected with State natural resource health are important as habitat for wildlife. Contaminants in soils and sediments may migrate to groundwater. A healthy and functioning ecosystem depends upon the interplay between non-impaired soils, sediments, and wildlife.

158. Defendants' PFOS, PFOA, PFNA, PFHxS, GenX, PFHpA, and/or PFBS have contaminated and injured soils and sediments in locations through the State.

159. Additional testing is expected to reveal further PFAS contamination and injury of soils and sediments in locations throughout South Carolina.

160. Defendants' PFOS, PFOA, PFNA, PFHxS, GenX, PFHpA, and/or PFBS have contaminated and injured oysters, fish, and crabs in South Carolina. DHEC's continues to sample watersheds to evaluate the full extent of this contamination.

161. South Carolina's biodiversity is vital to its ecology, economy, and culture. Injuries to wildlife affect not only individual organisms, but entire ecosystems.

D. PFAS Contamination Caused by Defendants Must be Addressed.

162. PFAS has contaminated State natural resources and property throughout the State.

This contamination injures these resources, threatens State citizens' health, safety, and welfare, and interferes with the use of these precious resources.

163. Because PFAS is resistant to biodegradation and insoluble, PFAS continues to move through groundwater, surface waters, and soils, and other natural resources, causing initial contamination in new locations, and further contaminating already injured areas.

164. Defendants' acts and omissions directly and proximately caused and continue to cause PFAS to intrude into and contaminate and injure these natural resources and property.

165. There are preliminary remedial techniques for removing PFAS from environmental media, drinking water, and soils, but treatment is costly.

166. Without remediation and treatment, PFAS will continue to spread through the State's natural resources and property.

167. PFAS contamination levels in State natural resources including surface water, groundwater, wetlands, and drinking water typically fluctuate over time as PFAS moves through groundwater and with seasonal precipitation changes. PFAS levels can fluctuate at a single PFAS contamination site over time. For this reason, the only way to be certain that PFAS no longer exists in State natural resources such as groundwater or drinking water is to mitigate the PFAS.

168. Without treatment, PFAS "forever chemicals" will contaminate and injure South Carolina indefinitely.

169. Because of the injury PFAS have caused and are causing to State natural resources, Defendants must remediate, mitigate, and/or treat PFAS contamination and restore these natural resources, and the State is entitled to compensation for interim and permanent losses to its natural resources, as well as any costs it incurs in restoring its natural resources.

VII. CAUSES OF ACTION

FOR A FIRST CAUSE OF ACTION
Public Nuisance
(All Defendants)

170. The State realleges and reaffirms each and every allegation set forth in all preceding paragraphs as if fully restated in this section.

171. Defendants have manufactured, marketed, distributed, promoted, and/or sold PFOS, PFOA, PFNA, PFHxS, GenX, PFHpA, and/or PFBS and/or products containing PFOS, PFOA, PFNA, PFHxS, GenX, PFHpA, and/or PFBS in a manner that created or participated in creating a public nuisance that unreasonably endangers or injures the property, health, safety, and welfare of the general public and the State of South Carolina causing inconvenience and annoyance.

172. Defendants, by their negligent, reckless, and willful acts and omissions set forth herein, have, among other things, knowingly unleashed long-lasting PFOS, PFOA, PFNA, PFHxS, GenX, PFHpA, and/or PFBS contamination of State natural resources and property throughout South Carolina. Defendants' PFOS, PFOA, PFNA, PFHxS, GenX, PFHpA, and/or PFBS continues to spread in South Carolina.

173. Each Defendant has caused, contributed to, maintained, and/or participated in a public nuisance by substantially and unreasonably interfering with, obstructing and/or threatening, among other things, (i) South Carolinians' common public rights to enjoy State natural resources and property free from unacceptable health risk, pollution, and contamination, and (ii) the State's authority and public trust abilities to protect, conserve, and manage the State's natural resources.

174. Among other things, each Defendant is a substantial contributor to this public nuisance as follows:

a. Defendants manufactured, marketed, distributed, promoted, sold, and/or otherwise placed into the stream of commerce PFOS, PFOA, PFNA, PFHxS, GenX, PFHpA, and/or PFBS and/or products containing PFOS, PFOA, PFNA, PFHxS, GenX,

PFHpA, and/or PFBS when they knew, or reasonably should have known, that PFOS, PFOA, PFNA, PFHxS, GenX, PFHpA, and/or PFBS would escape from industrial processes and household, consumer, and commercial products and contaminate State natural resources and property and endanger human health;

b. Defendants manufactured, marketed, distributed, promoted, sold, and/or otherwise placed into the stream of commerce PFOS, PFOA, PFNA, PFHxS, GenX, PFHpA, and/or PFBS and/or products containing PFOS, PFOA, PFNA, PFHxS, GenX, PFHpA, and/or PFBS that were delivered into the State (and areas affecting the State's natural resources and property), when they knew, or reasonably should have known, that PFOS, PFOA, PFNA, PFHxS, GenX, PFHpA, and/or PFBS would be released readily into the environment during the normal, intended, and foreseeable uses of PFOS, PFOA, PFNA, PFHxS, GenX, PFHpA, and/or PFBS and products containing PFOS, PFOA, PFNA, PFHxS, GenX, PFHpA, and/or PFBS, and when released, PFOS, PFOA, PFNA, PFHxS, GenX, PFHpA, and/or PFBS would persist in the environment and not break down, contaminate State natural resources and property, including soils, sediments, groundwater, surface waters, wildlife, and drinking water supplies, and, ultimately, be difficult and costly to remove; and

c. Defendants manufactured, marketed, distributed, promoted, sold, and/or otherwise placed into the stream of commerce PFOS, PFOA, PFNA, PFHxS, GenX, PFHpA, and/or PFBS and/or products containing PFOS, PFOA, PFNA, PFHxS, GenX, PFHpA, and/or PFBS that were delivered into the State (and areas affecting the State's natural resources and property), when they knew, or reasonably should have known, that PFOS, PFOA, PFNA, PFHxS, GenX, PFHpA, and/or PFBS posed substantial risks to human health.

175. Defendants also had first-hand knowledge and experience regarding releases of PFAS to the environment, including groundwater and other natural resources, because each of them owned, operated, and/or controlled PFAS manufacturing facilities and/or facilities using PFAS where PFAS was released into the surrounding environment and caused substantial contamination.

176. Despite their knowledge that contamination of the State's natural resources and property with PFOS, PFOA, PFNA, PFHxS, GenX, PFHpA, and/or PFBS was the inevitable consequence of their conduct, Defendants failed to provide adequate warnings or special instructions, failed to take any other reasonable precautionary measures to prevent or mitigate such contamination, and/or affirmatively misrepresented the hazards of PFOS, PFOA, PFNA, PFHxS, GenX, PFHpA, and/or PFBS in their product information and/or instructions for use.

177. Defendants knew, or in the exercise of reasonable care should have known, that the introduction and use of PFOS, PFOA, PFNA, PFHxS, GenX, PFHpA, and/or PFBS would and has unreasonably and seriously endangered, injured, and interfered with the ordinary comfort, use, and enjoyment of natural resources and property relied upon by the State and its citizens.

178. Defendants have caused, contributed to, maintained, and/or participated in a public nuisance that has caused substantial injury to the State's natural resources and property. The public nuisance has caused and/or threatens to cause substantial injury to property directly owned by the State.

179. Contamination of the State's natural resources and property with PFOS, PFOA, PFNA, PFHxS, GenX, PFHpA, and/or PFBS is ongoing. PFOS, PFOA, PFNA, PFHxS, GenX, PFHpA, and/or PFBS continue to threaten, and migrate into, and enter the State's natural resources and property, and cause new contamination in new locations.

180. As a direct and proximate result of Defendants' acts and omissions, the State's natural resources and property are contaminated with PFOS, PFOA, PFNA, PFHxS, GenX, PFHpA, and/or

PFBS. The State has incurred, is incurring, and will incur, investigation, remediation, cleanup, restoration, removal, treatment, monitoring, and other costs and expenses related to contamination of the State's natural resources and property, for which Defendants are jointly and severally liable.

FOR A SECOND CAUSE OF ACTION
Private Nuisance
(All Defendants)

181. The State realleges and reaffirms each and every allegation set forth in all preceding paragraphs as if fully restated in this section.

182. The State's property and public trust resources have been contaminated by PFOS, PFOA, PFNA, PFHxS, GenX, PFHpA, and/or PFBS as a direct and proximate result of the intentional and unreasonable, negligent and reckless conduct of Defendants, all as alleged in this Complaint. These resources and property include State Parks, beds and banks of surface water bodies, water wells, and resources held in trust by the State, such as groundwater.

183. As a direct and proximate result of Defendants' acts and omissions creating the above-described nuisance, the State has suffered injuries from contamination of State-owned property and public trust resources. Defendants' acts and omissions have substantially, intentionally, and unreasonably interfered with, obstructed, violated, and/or threatened, among other things, the State's interests in its property and public trust resources. This harm far outweighs any utility or benefit derived from this intentional conduct.

184. As a direct and proximate result of Defendants' acts and omissions, the State's property and public trust resources were and are contaminated with PFOS, PFOA, PFNA, PFHxS, GenX, PFHpA, and/or PFBS. The State has incurred, is incurring, and will incur, investigation, remediation, cleanup, restoration, removal, treatment, monitoring and/or other costs and expenses related to contamination of the State's property and public trust resources, for which Defendants are

jointly and severally liable.

FOR A THIRD CAUSE OF ACTION
Trespass
(All Defendants)

185. The State realleges and reaffirms each and every allegation set forth in all preceding paragraphs as if fully restated in this section.

186. The State has significant property interests in its natural resources. These property rights and interests include, but are not limited to, the State's public trust and authority in protecting such natural resources from contamination and injury.

187. A trustee by definition is authorized to take action to protect trust property as if the trustee were the owner of the property.

188. The State also brings this action in its *parens patriae* capacity on behalf of its citizens to protect quasi-sovereign interests, including the integrity of the State's natural resources. The State in its *parens patriae* capacity seeks relief for the invasion of its citizens' possessory interests by PFOS, PFOA, PFNA, PFHxS, GenX, PFHpA, and/or PFBS contamination.

189. The State never authorized Defendant's invasion of its natural resources and property with PFOS, PFOA, PFNA, PFHxS, GenX, PFHpA, and/or PFBS.

190. Defendants knew, or in the exercise of reasonable care should have known, that PFOS, PFOA, PFNA, PFHxS, GenX, PFHpA, and/or PFBS are hazardous to natural resources and property, including groundwater, surface water, and public water systems.

191. Defendants' acts and omissions directly and proximately caused and continue to cause PFAS to intrude onto and contaminate State natural resources and property, including water systems, surface water, groundwater systems, and zones of influence of the areas that supply production wells within the State.

192. At the time of Defendants' acts and omissions, Defendants knew with substantial certainty that PFOS, PFOA, PFNA, PFHxS, GenX, PFHpA, and/or PFBS would reach onto and contaminate State natural resources and property. Defendants' knowledge was based on their understanding of the properties of PFOS, PFOA, PFNA, PFHxS, GenX, PFHpA, and/or PFBS, their research and experience regarding PFOS, PFOA, PFNA, PFHxS, GenX, PFHpA, and/or PFBS contamination at their own facilities where they manufactured and/or used PFOS, PFOA, PFNA, PFHxS, GenX, PFHpA, and/or PFBS, and other conduct alleged in this Complaint. Despite this knowledge, Defendants manufactured, marketed, distributed, promoted, and/or sold PFOS, PFOA, PFNA, PFHxS, GenX, PFHpA, and/or PFBS and/or products containing PFOS, PFOA, PFNA, PFHxS, GenX, PFHpA, and/or PFBS ultimately harming the State.

193. As a direct and proximate result of the trespass, the State has been damaged and is entitled to compensatory damages for the costs of investigation, remediation, and treatment, damages for loss of use and enjoyment of State natural resources and property, cost of restoring State natural resources and property to their original conditions as if the trespass had not occurred, and/or other relief the State may elect at trial.

194. As a direct and proximate result of Defendants' acts and omissions, the State's natural resources and property are contaminated with PFOS, PFOA, PFNA, PFHxS, GenX, PFHpA, and/or PFBS. The State has incurred, is incurring, and will incur, investigation, remediation, cleanup, restoration, removal, treatment, monitoring, and other costs and expenses related to contamination of the State's natural resources and property, for which Defendants are jointly and severally liable.

FOR A FOURTH CAUSE OF ACTION
Violation of the South Carolina Unfair Trade Practice Act
(All Defendants)

195. The State realleges and reaffirms each and every allegation set forth in all preceding paragraphs as if fully restated in this section.

196. The State brings this claim under the South Carolina Unfair Trade Practices Act ("SCUTPA"), asserting a claim under sections 39-5-50 and 39-5-110 of the South Carolina Code.

197. Section 39-5-10, et. seq. of the South Carolina Code prohibits unfair or deceptive acts or practices in the conduct of any trade or commerce.

198. Defendants' manufacturing, marketing, promotion, distribution, and sale of PFAS constitute "trade" or "commerce" within the meaning of SCUTPA.

199. Defendants engaged in unfair and/or deceptive acts or practices within the meaning of section 39-5-20 of the South Carolina Code by, *inter alia*, representing that the PFAS Defendants manufactured were safe while misrepresenting and omitting risks and the harmful effects associated with PFAS.

200. Defendants' misrepresentations are deceptive because they have the capacity to mislead a substantial number of consumers.

201. An act or practice may be unfair if it offends public policy; is immoral, unethical, oppressive, unconscionable, or causes injury to consumers. Defendants' acts or practices as alleged in this Complaint are unfair.

202. Defendants' unfair and deceptive conduct in the manufacturing, marketing, promotion, distribution, and sale of PFAS affects the public interest. Moreover, Defendants' acts or practices regarding South Carolina as alleged herein are capable of repetition.

203. Defendants knew or reasonably should have known that their conduct violated SCUTPA and therefore is willful for purposes of section 39-5-110 of the South Carolina Code, justifying civil penalties.

204. The State seeks all remedies available under SCUTPA including, without limitation,

the following:

a. Injunctive and other equitable relief pursuant to section 39-5-50(a) of the South Carolina Code;

b. Restoration of all ascertainable losses under section 39-5-50(b) of the South Carolina Code to any person or entity who suffered them as a result of Defendants' conduct;

c. Civil penalties in an amount up to $5,000.00 per violation with every unfair or deceptive act or practice by Defendants constituting a separate and distinct violation; and

d. Costs and attorneys' fees pursuant to section 1-7-85 of the South Carolina Code.

VIII. PRAYER FOR RELIEF

The State of South Carolina respectfully requests that the Court provide the State with the following relief against all Defendants as follows:

A. Permanently enjoin Defendants, pursuant to section 39-5-50(a) of the South Carolina Code from engaging in any acts that violated SCUTPA, including, but not limited to, the unfair or deceptive acts or practices alleged herein;

B. Order Defendants to restore to all persons and entities all ascertainable losses suffered as a result of Defendants' violations of SCUTPA;

C. Order Defendants to pay civil penalties in the amount of $5,000.00, pursuant to section 39-5-110(a) of the South Carolina Code, for each and every willful violation of the SCUTPA;

D. Order Defendants to pay attorneys' fees and costs pursuant to section 1-7-85 of the South Carolina Code for violations of SCUTPA;

E. Award compensatory damages to the State of South Carolina arising from PFAS contamination and injury of State natural resources and property, including groundwater, surface

waters, drinking water supplies, biota, wildlife including fish, and their associated soils, sediments, and uses, and other State natural resources and property, according to proof, including, but not limited to:

(i) natural resource damages;

(ii) loss-of use damages;

(iii) costs of investigation;

(iv) costs of testing and monitoring;

(v) costs of providing water from an alternate source;

(vi) costs of installing and maintaining wellhead treatment;

(vii) costs of installing and maintaining a wellhead protection program;

(viii) costs of installing and maintaining an early warning system to detect PFAS before it reaches wells;

(ix) costs of mitigating and remediating PFAS from natural resources including groundwater, surface waters, soils, sediments, and other natural resources;

(x) costs of mitigating and remediating PFAS contamination at release sites;

(xi) any other costs or other expenditures incurred to address PFAS contamination and injury; and

(xii) interest on the damages according to law;

F. Order Defendants to abate the continuing nuisance and trespass by funding the removal of PFAS from State natural resources and property;

G. Award punitive damages in an amount to be determined at trial for Defendants' reckless and willful disregard for the property and natural resources of the State of South Carolina to impress upon the Defendants' the seriousness of its misconduct and to deter similar misconduct in the future;

H. Award prejudgment interest; and

I. Any other and further relief as the Court deems just, proper, and equitable.

Respectfully submitted,

s/Alan M. Wilson

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