

Index of Enclosed Documents RE: Washington Works CWA Compliance

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Administrative Order on Consent
April 24, 2023



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
FOUR PENN CENTER – 1600 JOHN F. KENNEDY BLVD.
PHILADELPHIA, PENNSYLVANIA 19103-2852**

In the Matter of:

The Chemours Company FC, LLC
1007 Market Street
Wilmington, DE 19801
Respondent

**ADMINISTRATIVE ORDER
ON CONSENT**

Proceeding Under Section 309(a) of the
Clean Water Act, 33 U.S.C. § 1319(a)

EPA Docket No. CWA-03-2023-0025DN

Facility located at:
Washington Works
8480 DuPont Road
Washington, WV 26181

I. STATUTORY AND REGULATORY BACKGROUND

1. The United States Environmental Protection Agency, Region III (“EPA”) makes the following findings of fact and conclusions of law below and thus issues this Administrative Compliance Order on Consent (“Order”) pursuant to the authority vested in the Administrator of EPA under Section 309(a) of the Clean Water Act (“CWA” or “Act”), 33 U.S.C. § 1319(a). The Administrator delegated this authority to the Regional Administrator of EPA Region III, who further delegated it to the Director, Enforcement & Compliance Assurance Division, Region III.
2. EPA has jurisdiction over the above-captioned matter.
3. Respondent, The Chemours Company FC, LLC (“Chemours”), has agreed to the issuance of this Consent Order.
4. Section 309(a) of the Act, 33 U.S.C. § 1319(a), provides, *inter alia*, that whenever on the basis of any information available, the Administrator finds that any person is in violation of Section 301 of the Act, 33 U.S.C. § 1311, or any permit condition or limitation implementing certain CWA sections in a permit issued under Section 402 of the Act, 33 U.S.C. § 1342, the Administrator shall issue an order requiring such person to comply with such section or requirement.

5. **“Discharge of a pollutant” means “[a]ny addition of any ‘pollutant’ or combination of pollutants to ‘waters of the United States’ from any ‘point source’.”** 40 C.F.R. § 122.2. *See also Section 502(12) of the Act, 33 U.S.C. § 1362(12).*
6. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant from a point source into waters of the United States except in compliance with, *inter alia*, a **permit issued pursuant to the National Pollutant Discharge Elimination System (“NPDES”)** program under Section 402 of the Act, 33 U.S.C. § 1342.
7. Section 402(a) of the Act, 33 U.S.C. § 1342(a), provides that the Administrator of EPA may issue permits under the NPDES program for the discharge of pollutants from point sources to waters of the United States, to ensure compliance with the requirements of the CWA. The discharges are subject to specific terms and conditions, as prescribed in the permit. *See also* Section 301 of the Act, 33 U.S.C. § 1311.
8. Section 402(p) of the Act, 33 U.S.C. § 1342(p), and 40 C.F.R. Sections 122.21 and 122.26 provide for the regulation of stormwater discharges pursuant to NPDES permitting requirements under Section 402(a) of the Act, 33 U.S.C. § 1342(a).
9. **“Stormwater” is defined as “stormwater runoff, snow melt runoff and surface runoff and drainage.”** 40 C.F.R. § 122.26(b)(13).
10. An NPDES permit is required for discharges of stormwater associated with industrial activity. Section 402(p) of the Act, 33 U.S.C. § 1342(p); 40 C.F.R. § 122.26(a); 40 C.F.R. § 122.21.
11. Facilities under Standard Industrial Classification 2869 (Industrial Organic Chemicals) are **engaged in “industrial activity.”** 40 C.F.R. § 122.26(b)(14)(xi).
12. EPA approved West Virginia to administer the NPDES program in the State on May 10, 1982.
13. Pursuant to the authority of the Act, the NPDES program approval, and the West Virginia Water Pollution Control Law, West Virginia issued West Virginia National Pollutant Discharge Elimination System (“WV NPDES”) Permit No. WV0001279 to Chemours (an operating subsidiary of The Chemours Company), on July 30, 2018, with an effective date of September 1, 2018, and an expiration date of July 29, 2023 (“**2018 Permit**”).
14. The 2018 Permit authorizes terms for the discharge of stormwater and industrial wastewater at the **Chemours Washington Works facility** (“Facility”) for certain specified pollutants in accordance with the provisions of the 2018 Permit. The 2018 Permit requires the permittee to comply with all conditions in the Permit.
15. The 2018 Permit classified the Facility under Standard Industrial Classification (“SIC”) Code 2869 (“**Industrial Organic Chemicals**”), and NAICS Code 32519 (“**Other Basic**

Organic Chemical Manufacturing”).

16. EPA has consulted with the West Virginia Department of Environmental Protection (“WVDEP”) **regarding this Order**. Subsequent to the Effective Date of this Order, EPA will provide a copy of this fully executed Order to the appropriate WVDEP official.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

17. At all times relevant to this Order, Chemours was the owner and operator of the Washington Works Site located at 8480 DuPont Road, Parkersburg, West Virginia 26181 (“Facility”). DuPont de Nemours, Inc. (“DuPont”) and Kuraray Co. Ltd. (“Kuraray”) are tenants on the property.
18. Chemours is a limited liability company and a “person” within the meaning of Section 502(5) of the Act, 33 U.S.C. § 1362(5).
19. Section 502(6) of the Act, 33 U.S.C. § 1362(6), defines the term “pollutant” to include, *inter alia*: solid waste, sewage, garbage, chemical wastes, biological materials, radioactive materials, and industrial waste discharged into water. Parameters cited in this Order -- including per- and polyfluoroalkyl substances (“PFAS”) such as ammonium perfluorooctanoate (and related compound perfluorooctanoic acid (“PFOA”)) and HFPO Dimer Acid (also known as HFPO-DA and C3 Dimer Acid/Salt) are “pollutants” within the meaning of Section 502(6) of the Act, 33 U.S.C. § 1362(6).
20. Section 502(14) of the Act, 33 U.S.C. § 1362(14), defines the term “point source” to mean “any discernible, confined and discrete conveyance [...]” Outlets at the Facility are discernible, confined and discrete conveyances and are, therefore, “point sources” within the meaning of Section 502(14) of the Act, 33 U.S.C. § 1362(14).
21. The Facility is located along the southeastern bank of the Ohio River and has Outlets that discharge directly to either the Ohio River, Page Run or Coal Hollow. Both Page Run and Coal Hollow are hydrologically connected tributaries of the Ohio River. The Ohio River, Page Run and Coal Hollow are, therefore, “navigable waters” as that term is defined in Section 502(7) of the Act, 33 U.S.C. § 1362(7).
22. Chemours operates multiple separate manufacturing units at the Facility that produce a variety of organic chemical products. **Chemours’ manufacturing operations at the Facility** include fluoropolymer production. HFPO Dimer Acid is a processing aid used in the manufacture of fluoropolymers at the Facility. PFOA was used in the past as a processing aid at the Facility. In addition, Chemours accepts wastewater at the Facility from its onsite tenants DuPont and Kuraray into **Chemours’** primary biological treatment system. Chemours also operates non-biological/physical treatment systems via Outlet 002. Wastewater received from onsite tenants is permitted under the 2018 Permit.
23. The 2018 Permit authorizes discharges of industrial wastewater (cooling water, process

water, groundwater, filter backwash wastewater, stormwater runoff, steam condensate, boiler blowdown, pump seal water, or a combination thereof) under specified conditions and limitations. The 2018 Permit authorizes discharges of specific wastewaters under specified conditions at the following Outlets at the Facility (*see* Exhibits 1 and 2 for Outlet maps and drainage areas):

- a. A combination of non-contact cooling water, stormwater, groundwater, and filter backwash wastewater via Outlet 001.
 - b. A combination of process wastewater, non-contact cooling water, steam condensate, boiler blowdown and stormwater via Outlet 002.
 - c. A combination of non-contact cooling water, stormwater, and steam condensate wastewater via Outlet 003.
 - d. A combination of process wastewater, non-contact cooling water, steam condensate, sanitary wastewater, cooling tower blowdown, and stormwater via Outlet 005.
 - e. A combination of non-contact cooling water, stormwater, and steam condensate wastewater via Outlet 006.
 - f. A combination of non-contact cooling water and stormwater via Outlet 007.
 - g. The direct discharge of pump seal water via Outlet 013 and Outlet 028 into Page Run, a tributary of the Ohio River.
 - h. The direct discharge of untreated stormwater via Outlets 016, 019, 026, 030-034, and 036.
 - i. The direct discharge of untreated stormwater via Outlet 011 into Coal Hollow, a tributary to the Ohio River, and via Outlets 022, 023, and 025 into Page Run, a tributary of the Ohio River.
24. In August 2018, prior to the September 1, 2018 effective date of the 2018 Permit, Chemours discharged PFAS, including 6:2 Fluorotelomer Sulfonate, Perfluoro-2-methoxyacetic Acid, Perfluorobutane Sulfonic Acid, Perfluorobutanoic Acid, Perfluorodecanoic Acid, Perfluorododecanoic Acid, Perfluoroheptanoic Acid, Perfluorohexadecanoic Acid, Perfluorohexane Sulfonic Acid, Perfluorohexanoic Acid, Perfluorononanoic Acid, Perfluorooctadecanoic Acid, Perfluorooctane Sulfonic Acid, Perfluoropentane sulfonic Acid, Perfluoropentanoic Acid, Perfluorotetradecanoic Acid, Perfluorotridecanoic Acid, Perfluoroundecanoic Acid, from Outlet 002 or Outlet 005 in concentrations up to 870 parts per trillion (ppt).
25. In November 2018, after the September 1, 2018 effective date of the 2018 Permit, Chemours discharged PFAS, including 6:2 Fluorotelomer Sulfonate, 8:2 Fluorotelomer

Sulfonate, Perfluorobutanoic Acid, and Perfluoropentanoic Acid, from Outlet 001, Outlet 002, or Outlet 005 in concentrations up to 360 ppt.

26. At all times relevant to this Order, Chemours has also regularly discharged HFPO Dimer Acid to the Ohio River from Outlet 002 and Outlet 005 at the Facility.
27. On November 27-29, 2018, an EPA compliance inspection team inspected the Facility for compliance with its NPDES permit and the CWA (“Inspection”).
28. The 2018 Permit provided for interim limits on PFOA and HFPO Dimer Acid discharges from certain outlets effective immediately, with more stringent final limits on PFOA and HFPO Dimer Acid discharges that took effect on January 1, 2022.
29. Based on observations made at the November 27-29, 2018 Inspection, Chemours’ various information request letter responses, and information exchanged by the parties over the last several years, EPA has identified a number of violations of the 2018 Permit and Section 301 of the Clean Water Act, 33 U.S.C. § 1311, including the following.

Count 1
NPDES Discharge Exceedances of PFOA and HFPO Dimer Acid

30. The allegations in the preceding paragraphs are incorporated by reference.
31. Part A of the 2018 Permit includes discharge limitations for certain industrial discharges, stormwater discharges, and a combination thereof from permitted outlets.
32. According to the discharge monitoring reports (“DMRs”) submitted by Respondent to WVDEP during the period of September 30, 2018 through March 31, 2023, Respondent had the following NPDES Exceedances:

Table 1: NPDES Exceedances of PFOA and HFPO-DA

Monitoring Period Date	Outlet	Parameter Description	Limit Type	DMR Value	DMR Value Unit	Limit Value	Limit Value Unit	% Exceedance
9/30/2018	005	PFOA	DAILY MX	2.3	µg/l	2	µg/l	15
1/31/2019	002	HFPO Dimer Acid	DAILY MX	120	µg/l	32	µg/l	275
1/31/2019	002	HFPO Dimer Acid	MO AVG	38.1	µg/l	9	µg/l	323
6/30/2019	005	HFPO Dimer Acid	DAILY MX	57	µg/l	43	µg/l	33
6/30/2019	005	HFPO Dimer Acid	MO AVG	19.33	µg/l	15	µg/l	29
7/31/2019	005	HFPO Dimer Acid	DAILY MX	45	µg/l	43	µg/l	5
7/31/2019	005	HFPO Dimer Acid	MO AVG	18.89	µg/l	15	µg/l	26
10/31/2020	002	HFPO Dimer Acid	DAILY MX	33	µg/l	32	µg/l	3
10/31/2020	002	HFPO Dimer Acid	MO AVG	9.51	µg/l	9	µg/l	6
10/31/2020	005	PFOA	DAILY MX	3.3	µg/l	2	µg/l	65

1/31/2021	002	HFPO Dimer Acid	MO AVG	11.26	µg/l	9	µg/l	25
2/28/2021	002	HFPO Dimer Acid	MO AVG	10.3	µg/l	9	µg/l	14
4/30/2021	002	HFPO Dimer Acid	DAILY MX	52	µg/l	32	µg/l	63
2/28/2022	001	HFPO Dimer Acid	MO AVG	3.3	µg/l	1.4	µg/l	136
2/28/2022	001	HFPO Dimer Acid	DAILY MX	3.3	µg/l	2	µg/l	65
2/28/2022	002	HFPO Dimer Acid	MO AVG	1.55	µg/l	1.4	µg/l	11
2/28/2022	002	HFPO Dimer Acid	DAILY MX	5.5	µg/l	2.3	µg/l	139
2/28/2022	006	HFPO Dimer Acid	MO AVG	1.8	µg/l	0.14	µg/l	1185
2/28/2022	006	HFPO Dimer Acid	DAILY MX	1.8	µg/l	0.204	µg/l	782
3/31/2022	002	HFPO Dimer Acid	MO AVG	2.26	µg/l	1.4	µg/l	61
3/31/2022	002	HFPO Dimer Acid	DAILY MX	7.9	µg/l	2.3	µg/l	243
3/31/2022	006	HFPO Dimer Acid	MO AVG	1	µg/l	0.14	µg/l	614
3/31/2022	006	HFPO Dimer Acid	DAILY MX	1	µg/l	0.204	µg/l	390
4/30/2022	002	HFPO Dimer Acid	DAILY MX	4.1	µg/l	2.3	µg/l	78
4/30/2022	006	HFPO Dimer Acid	MO AVG	2.9	µg/l	0.14	µg/l	1971
4/30/2022	006	HFPO Dimer Acid	DAILY MX	2.9	µg/l	0.204	µg/l	1322
5/31/2022	001	HFPO Dimer Acid	DAILY MX	7.1	µg/l	2	µg/l	255
5/31/2022	006	HFPO Dimer Acid	DAILY MX	1.7	µg/l	0.204	µg/l	733
5/31/2022	006	HFPO Dimer Acid	MO AVG	1.7	µg/l	0.14	µg/l	1114
6/30/2022	002	HFPO Dimer Acid	DAILY MX	4.5	µg/l	2.3	µg/l	96
6/30/2022	006	HFPO Dimer Acid	MO AVG	1.6	µg/l	0.14	µg/l	1043
6/30/2022	006	HFPO Dimer Acid	DAILY MX	1.6	µg/l	0.204	µg/l	684
7/31/2022	001	HFPO Dimer Acid	MO AVG	10.25	µg/l	1.4	µg/l	632
7/31/2022	001	HFPO Dimer Acid	DAILY MX	18	µg/l	2	µg/l	800
7/31/2022	002	PFOA	MO AVG	10.6	µg/l	2	µg/l	430
7/31/2022	002	PFOA	DAILY MX	28	µg/l	3.3	µg/l	748
7/31/2022	002	HFPO Dimer Acid	MO AVG	10.6	µg/l	1.4	µg/l	657
7/31/2022	002	HFPO Dimer Acid	DAILY MX	28	µg/l	2.3	µg/l	1117
7/31/2022	006	HFPO Dimer Acid	DAILY MX	3	µg/l	0.204	µg/l	1371
7/31/2022	006	HFPO Dimer Acid	MO AVG	3	µg/l	0.14	µg/l	2043
8/31/2022	006	HFPO Dimer Acid	MO AVG	1.3	µg/l	0.14	µg/l	829
8/31/2022	006	HFPO Dimer Acid	DAILY MX	1.3	µg/l	0.204	µg/l	537
9/30/2022	002	HFPO Dimer Acid	DAILY MX	74	µg/l	2.3	µg/l	3117
9/30/2022	002	HFPO Dimer Acid	MO AVG	15.4	µg/l	1.4	µg/l	1000
10/31/2022	001	HFPO Dimer Acid	MO AVG	1.63	µg/l	1.4	µg/l	16
10/31/2022	001	HFPO Dimer Acid	DAILY MX	2.8	µg/l	2	µg/l	40
10/31/2022	002	PFOA	DAILY MX	11.5	µg/l	3.3	µg/l	248
10/31/2022	002	PFOA	MO AVG	3.1	µg/l	2	µg/l	55
11/30/2022	005	HFPO Dimer Acid	DAILY MX	2.48	µg/l	2.3	µg/l	8
12/31/2022	001	HFPO Dimer Acid	DAILY MX	13	µg/l	2	µg/l	550
12/31/2022	001	HFPO Dimer Acid	MO AVG	13	µg/l	1.4	µg/l	829
12/31/2022	002	HFPO Dimer Acid	MO AVG	2.1	µg/l	1.4	µg/l	50

12/31/2022	002	HFPO Dimer Acid	DAILY MX	5.77	µg/l	2.3	µg/l	151
12/31/2022	006	HFPO Dimer Acid	MO AVG	2.17	µg/l	0.14	µg/l	1450
12/31/2022	006	HFPO Dimer Acid	DAILY MX	2.17	µg/l	0.204	µg/l	964
1/31/2023	001	HFPO Dimer Acid	DAILY MX	5.94	µg/l	2	µg/l	197
1/31/2023	001	HFPO Dimer Acid	MO AVG	5.94	µg/l	1.4	µg/l	324
1/31/2023	002	HFPO Dimer Acid	MO AVG	2.92	µg/l	1.4	µg/l	109
1/31/2023	002	HFPO Dimer Acid	DAILY MX	3.94	µg/l	2.3	µg/l	71
1/31/2023	006	HFPO Dimer Acid	DAILY MX	1.28	µg/l	0.204	µg/l	527
1/31/2023	006	HFPO Dimer Acid	MO AVG	1.28	µg/l	0.14	µg/l	814
2/28/2023	001	HFPO Dimer Acid	DAILY MX	10.4	µg/l	2	µg/l	420
2/28/2023	001	HFPO Dimer Acid	MO AVG	10.4	µg/l	1.4	µg/l	643
2/28/2023	006	HFPO Dimer Acid	DAILY MX	1.81	µg/l	0.204	µg/l	787
2/28/2023	006	HFPO Dimer Acid	MO AVG	1.81	µg/l	0.14	µg/l	1193
3/31/2023	001	HFPO Dimer Acid	DAILY MX	6.35	µg/l	2	µg/l	217
3/31/2023	001	HFPO Dimer Acid	MO AVG	6.35	µg/l	1.4	µg/l	354
3/31/2023	006	HFPO Dimer Acid	DAILY MX	2.87	µg/l	0.204	µg/l	1307
3/31/2023	006	HFPO Dimer Acid	MO AVG	2.87	µg/l	0.14	µg/l	1950

33. The discharge exceedances in Table 1 reported by Respondent are violations of the 2018 Permit and Sections 301 and 402 of the Act, 33 U.S.C. §§ 1311 and 1342.

Count 2

Failure to Properly Operate and Maintain all Facilities and Systems

34. The allegations in the preceding paragraphs are incorporated herein by reference.
35. Appendix A.II.1 of the 2018 Permit requires that “the permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of this permit.”
36. At the Inspection, the team observed a partially uncovered grate leading directly to Outlet 002 that was located near a staging area for waste containing HFPO Dimer Acid. There was evidence of staining on the ground near the grate. The grate and piping were not plugged, allowing for some of the waste to end up in Outlet 002.
37. At the Inspection, the team observed an inlet covered by a grate outside of Building 514 which houses the Polymer Processing Aid Abatement Process Line 1 Treatment process. The grate was partially covered by a rubber mat. The inlet was located near an area used to stage filter press waste containing HFPO Dimer Acid from Line 1. The Facility representatives indicated that the filter press waste is typically fully saturated with liquid and also contains a significant amount of standing liquid. Additionally, the Inspection team observed evidence of staining on the ground near the roll-off bin and the garage door,

indicating that material may have been historically spilled in this area. The Inspection team also observed that the liner inside the roll-off bin appeared to have rips and tears. The Facility representatives indicated that the inlet leads directly to Outlet 002 and is normally covered with the rubber mat to prevent any splashes or spills from the roll-off bin that occur when the roll-off bin is moved from entering the grate. The uncovered corner of the grate at the time of the Inspection was the corner closest to the filter press waste. Facility representatives indicated that the grate was periodically vacuumed out to remove solids.

38. The Inspection team observed staining on the ground in the storage yard near where the facility stores roll-off bins holding filter press waste containing HFPO Dimer Acid, indicating a potential historic spill of material from the roll-off bins. Additionally, Chemours had **previously conducted soil sampling in this area and concluded “both PFOA and HFPO-DA were detected in soil, mainly in the samples located adjacent to the southern edge of the East Truck Pad [where the roll-off bins are stored], indicating that a release has occurred.”**
39. The Inspection team observed that the Facility was storing roll-off bins holding filter press waste containing HFPO Dimer Acid from the **polymer processing aid (“PPA”)** Abatement Process in an unpaved, gravel-lined storage yard located on the eastern side of the Facility property. The Inspection team observed that these bins were all covered but stored on a slope. There was evidence of ground staining in the area surrounding the roll-off bins. In addition, there was standing water behind the roll-off bins in the direction that the bins were angled (i.e., downslope). The Inspection team observed that the liner of the roll-off bin being actively filled at the filter press had rips and was pulling away from the sides of the bin. There was also liquid accumulated in the bin such that it pooled in certain areas.
40. Stormwater from the area where the roll-off bins were located in the storage yard is discharged, untreated, through Outlet 011, as shown on the Stormwater Outlet and Drainage Map in Appendix E of the Inspection report. Outlet 011 has the highest levels of HFPO Dimer Acid reported for all outlets in the **Facility’s September 2018 through March 2020 DMRs**. The **Facility’s 2018 Permit** does not have numeric limits for HFPO Dimer Acid discharges from Outlet 011 but requires Chemours to sample this Outlet quarterly for HFPO Dimer Acid.
41. The observations stated in this Count 2 indicate a failure to properly operate and maintain Facility systems installed or used for compliance with the Permit.
42. **Respondent’s failure to properly operate and maintain all Facility systems installed or used for compliance with the Permit is a violation of the 2018 Permit and Sections 301 and 402 of the Act, 33 U.S.C. §§ 1311 and 1342.**

III. ORDER

AND NOW, pursuant to section 309(a) of the Act, 33 U.S.C. § 1319(a), having taken into account the seriousness of the violations, Respondent is hereby ORDERED to take the following

steps:

43. Subject to and in compliance with this Order, the Respondent shall take all actions necessary to comply with the Clean Water Act, including, but not limited to, complying with all requirements of the 2018 Permit (or subsequent NPDES permits or NPDES permit modifications, including permit compliance schedules, issued by WVDEP).
44. Respondent shall implement the Sampling Plan, attached hereto as Exhibit 3, to characterize the nature of the stormwater runoff and effluent wastewater leaving the Facility by conducting specified PFAS sampling to identify and quantify PFAS discharges at each permitted Outlet. The Sampling Plan provides for the characterization of PFAS in both stormwater and wastewater, including but not limited to PFAS that are already listed in the 2018 Permit, and includes:
 - i. Monitoring at all outlets using draft EPA Methods 1621 (for absorbable organic fluorine) and 1633;
 - ii. Total oxidizable precursor assay; and
 - iii. Non-targeted PFAS analysis.
45. All sampling results shall be submitted to EPA and WVDEP. Following review of the sampling results submitted pursuant to this Section, EPA, in consultation with WVDEP, may seek, pursuant to this Order, additional actions to characterize or monitor the discharge of PFAS from the Facility.
46. Within 120 days of the Effective Date of this Order, Respondent shall submit an Alternatives Analysis and Implementation Plan for the treatment of HFPO Dimer Acid and PFOA to ensure that such discharges meet numeric effluent limits at each of Outlets 001, 002, 005, and 006. The time for submission of the Plan may be extended by agreement of the Parties, including in the event that there are not sufficient wet weather conditions during such time to allow for necessary sampling. The analysis for each Outlet shall include:
 - i. A characterization of the discharges at each Outlet, including the quality and quantity of process water and stormwater.
 - ii. A discussion of available alternatives, including a cost analysis, to achieve compliance with the 2018 Permit (or subsequent NPDES permits or NPDES permit modifications issued by WVDEP) at such Outlet. The alternatives to be considered shall include use of additional technologies capable of meeting existing effluent limits (which shall include, but not be limited to, ion exchange, granular activated carbon, reverse osmosis, and any additional current technologies capable of treating PFAS); and may also include use of enhanced facility management practices that would prevent or minimize the amount of PFOA or HFPO Dimer Acid that can reach and be discharged from such Outlet.
 - iii. Selection of the recommended alternative, a justification and any supporting documentation, and implementation/construction schedule.
 - iv. A draft sampling plan to evaluate the removal efficiency of PFAS for the selected treatment technology.

47. Upon review and approval by EPA of Respondent's Alternatives Analysis and Implementation Plan, Respondent will implement the Plan according to the approved schedule.
48. Within 30 days of the Effective Date of this Order, Respondent shall submit electronically for EPA's review and comment:
- a. Respondent's existing Standard Operating Procedures (SOPs) relating to the management of wastewater for the Local Landfill granular activated carbon "GAC" System, W9 Line 1 GAC System, Dryer Belt Wash Water GAC System, PPA Recovery System, Permeate GAC System, and Ranney Well GAC System, describing proper operation and maintenance of the Facility, including maintenance schedules, source control measures, ongoing good housekeeping practices, and frequency of inspections; and
 - b. Respondent's revised Storm Water Pollution Prevention Plan ("SWPPP"), which Respondent submitted as part of its NPDES Permit renewal application on February 24, 2023. Upon review and comment by EPA in consultation with WVDEP, Respondent shall update its SWPPP to address EPA's comments, and shall implement the updated SWPPP within 30 days.
49. At all times material hereto, Respondent shall ensure compliance with the recordkeeping requirements in the SWPPP and the 2018 Permit.

IV. PROCEDURES FOR SUBMISSIONS

50. Respondent shall include with all documents required to be submitted by this Order and any Request for Termination a certification signed by a responsible officer, as defined in 40 CFR § 122.22(d), that reads as follows:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

Signed _____
Title _____

51. Any submission or communication relating to this Order shall be submitted via electronic transmission to:

Chad Harsh (3ED32)
Enforcement and Compliance Assurance Division
U.S. EPA, Region III
Philadelphia, PA 19103
harsh.chad@epa.gov

and

Pamela J. Lazos
Senior Assistant Regional Counsel (3RC40)
U.S. EPA, Region III
Philadelphia, PA 19103
lazos.pamela@epa.gov
and
R3_ORC_mailbox@epa.gov
[attn: Pamela J. Lazos, Dkt. No. CWA-03-2022-0076DN]

52. For each submission required pursuant to this Order, EPA will review the submission and provide comments. If EPA comments on a submission, Respondent agrees to respond in writing within 30 calendar days, unless EPA agrees in writing to a longer period.
53. Respondent may assert a business confidentiality claim covering part or all of the information which this Order requires it to submit to EPA, but only to the extent and only in the manner described in Part 2 Subpart B of Title 40 of the C.F.R. The EPA will disclose information submitted under a confidentiality claim only as provided in Part 2 Subpart B of Title 40 of the C.F.R. Information which is effluent data or a standard or limitation is not eligible for confidential treatment pursuant to 40 C.F.R. 2.302(e). If Respondent does not assert a confidentiality claim, EPA may make the submitted information available to the public without further notice to Respondent. Respondent may not withhold information relevant to this Order from EPA on the grounds that it is confidential business information.

V. GENERAL PROVISIONS

54. The intent of this Order is to address the violations described herein. EPA reserves the right to commence action against any person, including Chemours, in response to any condition which EPA determines may present an imminent and substantial endangerment to the public health, public welfare, or the environment. Chemours reserves its rights and defenses with respect to any such action.
55. EPA reserves any existing rights and remedies available to it under the CWA, 33 U.S.C. § 1251, *et seq.*, the regulations promulgated thereunder, and any other federal laws or regulations for which EPA has jurisdiction, including, without limitation, the right to seek, pursuant to applicable enforcement authority, additional actions to characterize, monitor, or control the discharge of PFAS from the outlets at the Facility. Further, EPA reserves any rights and remedies available to it under the CWA, the regulations promulgated thereunder,

and any other federal laws or regulations for which EPA has jurisdiction, to enforce the provisions of this Order, following its Effective Date (as defined below).

56. This Order does not constitute a waiver or modification of the terms or conditions of the **Respondent's NPDES Permit. Compliance with the terms and conditions of this Order** does not relieve Respondent of its obligations to comply with any applicable federal, state, or local law, regulation or permit. The terms of this Order, including any attached appendices, may be modified only by a subsequent written agreement signed by Respondent and EPA.
57. Respondent waives any and all remedies, claims for relief and otherwise available rights to judicial or administrative review that Respondent may have with respect to any issue of fact or law set forth in this Order, including any right of judicial review pursuant to Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§ 701-706. Notwithstanding the foregoing, Respondent does not admit any finding of fact herein.
58. EPA reserves all existing inspection authority otherwise available to EPA pursuant to Section 308 of the CWA, 33 U.S.C. § 1318, or pursuant to any other statute or law.
59. The undersigned representative of Respondent certifies that he or she is fully authorized by the party represented to enter into the terms and conditions of this Order and to execute and legally bind the party.
60. For the purpose of this proceeding only, Respondent admits each jurisdictional allegation set forth in this Order. Respondent agrees not to contest the jurisdiction of EPA with respect to the execution or enforcement of this Order.
61. For purposes of this proceeding only, Respondent hereby expressly waives its right to contest the allegations set forth in this Order except as expressly provided herein, including but not limited to Paragraph 60 regarding admission to jurisdictional allegations, and this waiver is not intended to be, nor should it be interpreted to be, an admission of fact or waiver of defenses in any proceeding brought by a third party against Respondent or any other action or proceeding brought by EPA or the United States.
62. In any subsequent administrative or judicial proceeding initiated by the EPA or the United States for injunctive relief, civil penalties, or other relief relating to the Washington Works Facility, Chemours will not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim preclusion, claim splitting, or other defenses based upon any contention that the claims raised by the EPA or the United States in the subsequent proceeding were or should have been brought in the instant matter.
63. **Respondent shall bear its own costs and attorney's fees in connection with this Order.**
64. By signing this Order, Respondent acknowledges that this Order will be available to the public and represents that, to the best of Respondent's knowledge and belief, this Order does not contain any confidential business information or personally identifiable

information from Respondent.

65. Respondent certifies that any information or representation it has supplied or made to EPA concerning this matter was, at the time of submission true, accurate, and complete and that there has been no material change regarding the truthfulness, accuracy or completeness of such information or representation. EPA shall have the right to institute further actions to recover appropriate relief if EPA obtains evidence that any information provided and/or representations made by Respondent to the EPA regarding matters relevant to this Order, **including information about respondent's ability to pay a penalty, are false or, in any material respect, inaccurate.** This right shall be in addition to all other rights and causes of action that EPA may have, civil or criminal, under law or equity in such event. Respondent and its officers, directors and agents are aware that the submission of false or misleading information to the United States government may subject a person to separate civil and/or criminal liability.
66. This Order shall apply to and be binding upon the Respondent and the officers, directors, employees, contractors, successors, agents and assigns of Respondent.
67. If Respondent becomes aware, or reasonably should have become aware, of any event that **causes or may cause a delay in Respondent's compliance with any of the deadlines set forth** in this Order, Respondent shall notify EPA in writing within ten (10) calendar days after **Respondent's knowledge of such delay or potential for delay, describing in detail the specific cause or causes of the delay and the measures taken to minimize the delay.** If the anticipated length of the delay, the measures to be taken to minimize the delay, and the **timetable for the implementation of such measures are known, Respondent's notice shall contain such information. If such information is not then known, Respondent's notice shall include a schedule of the date(s) by which Respondent expects to have such information and be able to provide it to EPA.** Such notification shall be deemed submitted after notification is electronically transmitted and EPA has acknowledged receipt of the electronic transmission. Upon receipt of such notification, EPA will determine whether to extend the time for compliance with the deadline and provide Respondent with a response, in writing. If EPA agrees that the delay was unavoidable, EPA will provide a revised compliance date. Such an extension shall not alter the schedule for performance or completion of any other tasks required by this Order unless these tasks are unavoidably affected by the delay. Respondent shall implement all reasonable measures to avoid or minimize any such delay. Failure to notify EPA within the time period set forth shall **constitute a waiver of any claim that circumstances beyond Respondent's control have prevented compliance with this Order.** Notification, by itself, shall not excuse delay.
68. For purposes of the identification requirement in Section 162(f)(2)(A)(ii) of the Internal Revenue Code, 26 U.S.C. § 162(f)(2)(A)(ii), and 26 C.F.R. § 162-21(b)(2), performance of Section III of this Order is restitution, remediation, or required to come into compliance with the law.

VI. TERMINATION AND SATISFACTION

69. After the completion of all items in Section III, above, Respondent shall submit to EPA a

Request for Termination of this Order.

70. EPA reserves the right to unilaterally terminate this Order in its unreviewable discretion.

71. EPA shall provide Respondent with written notification of termination of this Order.

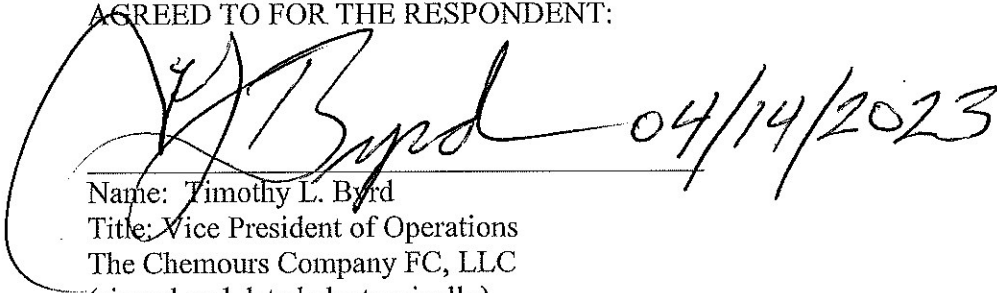
VII. EFFECTIVE DATE

72. This Order is effective upon **Respondent's receipt of a** fully executed document.

SO ORDERED:

Karen Melvin
Director, Enforcement & Compliance Assurance Division
U.S. EPA Region III
(signed and dated electronically)

AGREED TO FOR THE RESPONDENT:



Name: Timothy L. Byrd
Title: Vice President of Operations
The Chemours Company FC, LLC
(signed and dated electronically)

Exhibit 1

Map and Drainage Areas of Outlets 001-007

Exhibit 2

Map and Drainage Areas of Outlets 011-036

Executive Summary of Alternatives Analysis and Implementation Plan

August 24, 2023

Alternatives Analysis & Implementation Plan for Outfalls 001, 002, 005 and 006

Chemours Washington Works

Prepared for

**The Chemours Company, FC LLC
8480 Dupont Rd
Washington, WV, 26181**

Prepared by

*Geosyntec Consultants, Inc.
10200 Forest Green Blvd., Suite 112
Louisville, Kentucky, 40223*

and

*AECOM
248 Chapman Road, Suite 101
Newark, Delaware 19702*

Project Numbers TR1088 and 60707746

August 24, 2023

EXECUTIVE SUMMARY

Geosyntec Consultants, Inc., (Geosyntec) and AECOM Technical Services, Inc., (AECOM) have prepared this Alternatives Analysis and Implementation Plan (AA&IP) for The Chemours Company, FC, LLC (Chemours) Washington Works facility in Washington, West Virginia (WV; the Site). This AA&IP has been prepared pursuant to paragraph 46 of the Administrative Order on Consent (AOC; EPA Docket No. CWA-03-2023-0025DN) between Chemours and the United States Environmental Protection Agency (EPA) Region III.

This AA&IP describes proposed actions, for EPA to review and approve, that Chemours will perform at the Site to support discharges from Outlets 001, 002, 005 and 006 (the outlets; shown in Figure ES-1) meeting the Site's 2018 West Virginia National Pollutant Discharge Elimination System (NPDES) permit (No. WV0001279) numeric effluent limits for hexafluoropropylene oxide dimer acid (HFPO-DA) and perfluorooctanoic acid (PFOA).

Available data for HFPO-DA and PFOA at the four outlets, which are Site discharge points that serve as NPDES compliance monitoring locations, were utilized for development of the AA&IP. Furthermore, between April 2022 and June 2023, Chemours collected additional characterization data for HFPO-DA and PFOA to support this analysis. In total, between the four outlets, 356 additional samples were collected (and analyzed for HFPO-DA and PFOA), which included between 30 samples (Outlet 006) and 134 samples (Outlet 002). Results from collected samples were classified into dry and wet weather categories. This sampling included:

- Combined stormwater and dry weather flows from collection systems draining to Outlets 001, 002, 005, and 006 during eight dry weather and nine wet weather sampling events, at three to eight locations within each outlet collection system;
- Stormwater-only flows from the Outlet 002 collection system during three wet weather sampling events, at six sample locations; and
- Dry weather (process) flows from collection systems draining to Outlets 002 and 005 during five sampling events, at six process flow sampling locations for each outlet.

This AA&IP is focused on identifying controllable water flows that may cause exceedances of 2018 NPDES permit effluent limits at the outlets. Alternative implementation scenarios were developed and evaluated, based on their ability to meet permit effluent limits at the outlets and feasibility of implementation. Preferred alternatives were then selected for each outlet.

Table ES-1 below summarizes the types/sources of flow to each outlet, conclusions based on analysis of available data, and the selected alternatives to support meeting permit limits. Flows captured for a certain outlet may potentially be combined with other flows for treatment, and the treated water may potentially be discharged at a different outlet (or infiltrated) depending upon the outcome of the final approval and design. The preferred alternative for each outlet that is selected for implementation is expected to result in consistently meeting the 2018 NPDES permit limits for HFPO-DA and PFOA following completion of implementation. This is based on a combination of quantitative analyses performed for development of this AA&IP, as documented herein, and

conservative assumptions such as using maximum and 95th percentile concentration values in the assessment. Additionally, non-quantified planned and in-progress actions at the Site are expected to contribute further to water quality improvement in discharges from the outlets over time. Example actions include modifications to the facility's Stormwater Pollution Prevention Plan (SWPPP) and installation of a tertiary granular activated carbon (GAC) air abatement system in the polytetrafluoroethylene (PTFE) and perfluoroalkoxy alkane (PFA) areas.

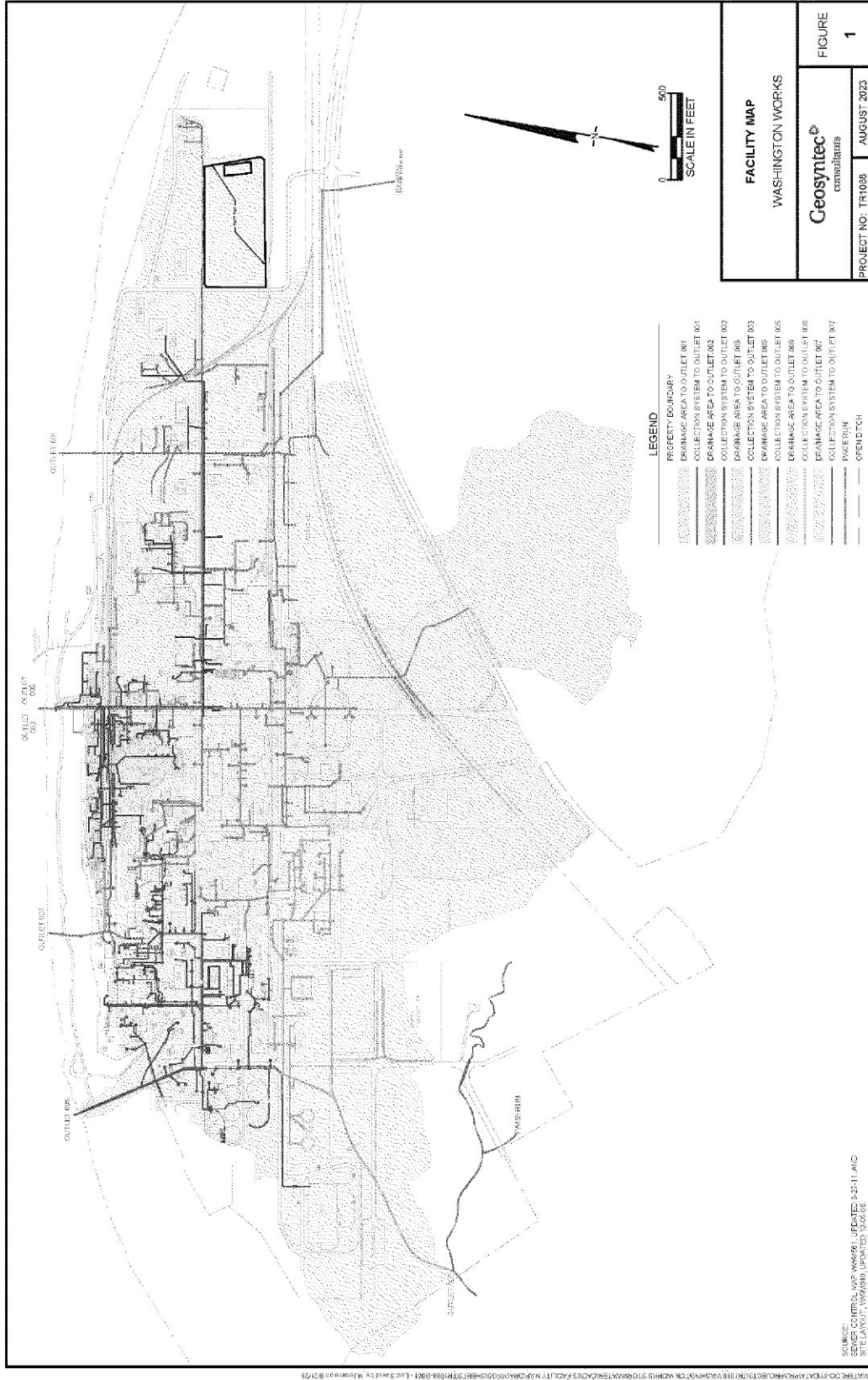


Figure ES-1: Site Outlets and Combined Stormwater and Dry Weather Flow Collection System

Table ES-1: Summary of Findings and Selected Alternatives at Outlets 001, 002, 005, and 006

Outlet	Average Flow (MGD)	Outlet Flow Description	Observations Based on Available Data	Alternative Proposed for Implementation	
				Description	Estimated Average Annual Mass Load Reduction ¹
001	0.33	Predominately stormwater (with minor dry weather flows)	- Stormwater contributes the majority of flow and loading to the outlet. - Recent exceedances of permit limits have occurred. - To address exceedances of permit limits, stormwater mitigation is recommended.	Utilize the Site's existing onsite groundwater capture system and add treatment for groundwater extracted from the East and West Field wells. Continue onsite groundwater capture to prevent off-site migration (or exfiltration to surface waters). Capture and infiltrate outlet flows (predominately stormwater) and extract and treat groundwater flows ² . Surge flows ³ are discharged via Outlet 001.	98% HFPO-DA 99% PFOA
002	8.7	Predominately dry weather flows (with minor stormwater contributions)	- Concentrations at the outlet are significantly higher in wet weather compared to dry weather. - Recent exceedances of permit limits have occurred, more often in wet weather compared to dry weather. - Although a minor flow contribution, stormwater is a significant source of loading to the outlet. - Network legs to locations 002-03 and 002-12 contribute significant loading to the outlet, most notably in wet weather, but also during dry weather. - Stormwater-only concentrations vary spatially throughout the drainage area. - To address exceedances of permit limits, mitigation of some stormwater and some dry weather flows is recommended.	Capture and treat combined stormwater and dry weather flows from network legs 002-03 and 002-12 ² . Surge flows ³ are discharged via Outlet 002.	79% HFPO-DA 62% PFOA

Outlet	Average Flow (MGD)	Outlet Flow Description	Observations Based on Available Data	Alternative Proposed for Implementation	
				Description	Estimated Average Annual Mass Load Reduction ¹
005	47	Predominately dry weather flows (with minor stormwater contributions)	- Concentrations of HFPO-DA and PFOA at the outlet are similar in wet weather and dry weather. - The four recent exceedances since November 2021 have occurred, more often in dry weather. - Several process flows were found to contribute loading to the outlet. - To address exceedances of permit limits, mitigation of certain dry weather (process) flows is recommended.	Divert and treat dry weather (process) flows from the PTFE FP Knock-Out Pot, Building 22 Sump, and Granular Line 1 Sump	43 – 63% (HFPO-DA) ⁴
006	0.21	Predominately stormwater (with minor dry weather flows)	- Recent exceedances of permit limits have occurred. - Stormwater contributes the majority of flow and loading to the outlet. - To address exceedances of permit limits, stormwater mitigation is recommended.	Utilize the Site's existing onsite groundwater capture system and add treatment for groundwater extracted from the East and West Field wells. Continue onsite groundwater capture to prevent off-site migration (or exfiltration to surface waters). Capture and infiltrate outlet flows (predominately stormwater) and extract and treat groundwater flows ² . Surge flows ³ are discharged via Outlet 005, such that discharges to Page Run via Outlet 006 are eliminated.	To Outlet 006: 100% reduction For redirected flows to Outlet 005: 96% HFPO-DA 97% PFOA

Notes for Table ES-1:

- MGD = million gallons per day
- Dry weather flows occur independent of stormwater and can include process wastewater, manufacturing contact water streams, non-contact cooling water (NCCW), steam condensate, cooling tower blowdown, and boiler blowdown.

¹ Based on daily estimates of loading at the outlet during the 32-year POR modeled in the hydrologic model. The average of the high loading estimate (based on the 95th percentile concentrations at the outlet and maximum concentrations at other sample internal locations within the outlet network) and average loading estimate (based on average concentrations at the outlet and other internal sample locations), both before and after treatment or infiltration, was used in this calculation. Further optimization analysis during the design phase, including hydrologic model calibration, incorporation of additional data, and modeling of additional sizing criteria (i.e., design storms), may determine that slightly different sizing criteria and mass loading removal also result in meeting permit limits. Estimates may be underestimates, as benefits of treating groundwater from East and West Field Wells are not incorporated into this analysis.

² As planning and design progresses, refinements will be made to the combination of withdrawal/diversion locations from the outlet networks, and at which sizing criteria (i.e., design storm), could result in most efficiently achieving functionally equivalent mass loading removal and ability to meet permit limits.

³ For the purposes of the AA&IP, surge flows are high flows during larger storms (larger than the design storm) that exceed infiltration (i.e., dry well) capacity or treatment system design and/or equalization storage flowrates and are therefore discharged untreated.

⁴ Insufficient data currently available to estimate mass loading reduction for PFOA.

For Outlets 001 and 006, where infiltration of outlet flows (which are predominantly stormwater) is proposed for implementation, flows will be infiltrated to groundwater via dry wells, then be captured by the groundwater extraction systems and treated prior to use in Site processes. The result will both prevent these captured stormwater loads from reaching the outlets and provide additional dry weather treatment of these groundwater flows. Overall, this infiltration and groundwater treatment alternative is estimated to reduce HFPO-DA loads by approximately 23 lb/year, in comparison to 7 lb/year for the alternative to treat only stormwater from Outlets 001 and 006. This is a tripling of the expected mass reduction with benefits also seen at Outlets 002 and 005 which would discharge this treated groundwater after use at the Site. Additionally, reuse of the treated groundwater would offset other Site water needs, and the proposed treatment system(s) would likely have improved operability due to the stable flow and water characteristics.

Groundwater modeling has shown that the Site groundwater extraction network (consisting of the West Well Field, Gallery Well, Ranney Well and East Well Field) hydraulically contains groundwater onsite, preventing exfiltration to nearby surface waters, such as the Ohio River). Extraction of groundwater at sufficient rates to maintain hydraulic containment will be continued. Volumes proposed for infiltration are small compared to groundwater volumes extracted (135 million gallons infiltrated from both Outlets 001 and 006 versus 2,300 million gallons per year extracted), and modeling has indicated that groundwater containment will be maintained, accounting for infiltrated water volumes from Outlets 001 and 006.

Four available treatment technologies were evaluated, including granular activated carbon (GAC), ion exchange (IX), regenerable ion exchange (Regen-IX), and reverse osmosis (RO). RO and IX were not advanced, due to challenges with disposing of or treating the significant amounts of concentrated liquid wastes from RO treatment and the improbability that IX would outperform GAC without incorporating onsite regeneration capabilities. GAC and Regen-IX were both advanced for future treatability testing. The sorptive treatment mechanisms of GAC and IX are routinely used in treatment for a variety of contaminant matrices, and both have proven ability to consistently reduce concentrations of PFOA and HFPO-DA in similar water streams. An adsorptive treatment mechanism (e.g., GAC, Regen-IX) will be selected for implementation after treatability testing during the future pre-design phase.

The selected alternatives for the four outlets will be implemented expeditiously. First, Chemours intends to implement short-term measures prior to completion of the schedule outlined below that are anticipated to result in water quality benefits. These include treating process flows from the Building 22 sump, subject to regulatory approval as appropriate (which is part of the selected alternative for Outlet 005, as described in this AA&IP). Additionally, Chemours will continue to implement improved source control/good housekeeping measures that are outlined in the Site's SWPPP, which has been recently updated.

The full implementation of the proposed plan will follow the necessary steps outlined below, which are anticipated to require approximately 31 months in total following EPA approval of this AA&IP. The exact duration is uncertain due to the early stages of alternative design and permitting, resulting in a range in the estimated time to completion, and subject to factors such as permit

approvals, supply chain availabilities and other factors. Elements for each Outlet will be advanced, and certain components of the project may be completed and operational (e.g., stormwater infiltration to limit discharges to Outlets 001 and 006) before the full 31 months have elapsed.

The implementation plan consists of the following steps:

- **Design: estimated duration 14 months**
Potentially includes treatability studies using Site-specific water samples, treatment technology selection, additional water quality and flowrate characterization to support design, treatment siting and flow optimization, dry well placement and design assessment, and hydrologic model calibration, hydrologic and hydraulic analysis, progressing mechanical, civil, and electrical design elements, conducting surveys, determining materials and specifications for the treatment technologies, developing construction documents, and assessing the relevant codes and required permits.
- **Bidding and Contracting: estimated duration 5 months**
Includes preparing the requests for proposals, evaluating bids, selecting vendors, and awarding contracts.
- **Permitting: estimated duration 9 months (coincident with detailed design, bidding and contracting)**
May include land disturbance permits, NPDES permits or permit modifications, building permits, electrical inspection permits, well permits, underground injection control permits, amongst other permits.
- **Construction: estimated duration 10 months**
Involves Site and conveyance system preparation and treatment system installation and assembly, including considerations for civil, electrical, and mechanical construction, timing with Site operation shutdowns.
- **Commissioning: estimated duration 2 months**
Commissioning, functional checkout, and startup processes in a phased approach.

After system construction and commissioning, performance monitoring sampling will be conducted to evaluate the removal efficiency of HPFO-DA and PFOA for the selected treatment technology as provided in the AOC. Performance monitoring will include measurements of flow and water quality at treatment system(s) influent and effluent locations. Additionally, pursuant to the Site NPDES permit, Chemours will continue to evaluate flows and concentrations of HFPO-DA and PFOA at Outlets 001, 002, 005, and 006.

Letter from EPA to Chemours
December 23, 2024



REGION 3

PHILADELPHIA, PA 19103

SENT VIA ELECTRONIC MAIL

James W. Hollingsworth, Plant Manager
The Chemours Company, Washington Works
8480 DuPont Road
PO Box 1217
Washington, WV 26181

**Re: The Chemours Company FC, LLC, Administrative Order on Consent
EPA Docket No. CWA-03-2023-0025DN**

Dear Mr. Hollingsworth,

The Environmental Protection Agency, Region 3 ("EPA"), in consultation with the West Virginia Department of Environmental Protection ("WVDEP"), is providing this response to the Alternatives Analysis and Implementation Plan ("AA&IP" or "Plan") submitted by the Chemours Company FC, LLC ("Chemours") dated August 24, 2023. The Plan was required to be submitted per Paragraph 46 of the Administrative Order on Consent filed on April 26, 2023 ("Order"), EPA Docket No. CWA-03-2023-0025DN (the "Order"), pursuant to Section 309(a) of the Clean Water Act, 33 U.S.C. § 1319(a).

Paragraph 52 of the Order states that the EPA will review each submission required pursuant to the Order and provide comments. Upon receipt of comments from the EPA on a submission, Chemours has agreed to respond in writing within 30 calendar days, unless the EPA agrees in writing to a longer period.

After discussions with Chemours and review of the AA&IP for Outlets 001, 002, 005 and 006, additional documents, historical information, and publications, the EPA provides the following comments on Chemours' submission.

Groundwater Infiltration Concerns

The EPA, in consultation with WVDEP, does not accept shallow underground injection as a viable treatment option for Outlets 001 and 006.

Based on recent discussions about treatment alternatives included in the Plan, the EPA understands that Chemours is no longer considering this option. In any event, underground injection presents several problems making it unapprovable.

First, underground injection of waters containing PFOA or HFPO-DA would risk exceeding the maximum contaminant levels for PFOA and HFPO-DA in groundwater and would be impermissible under state laws protecting groundwater quality. See W. Va. Code § 22-12-4(b). Therefore, Chemours would not be able to obtain approval for an underground injection control permit. Second, existing groundwater hydrology data is insufficient for an accurate assessment of groundwater flow on and off the Washington Works site. Third, existing groundwater hydrology data is also insufficient to assess the proposed treatment's ability to contain and treat PFOA and HFPO-DA. Furthermore, there are significant concerns regarding the degree to which groundwater is confined onsite and would remain confined after injection occurs.

Outlet 001

Chemours Preferred Alternative: Alternative 4, capture and infiltrate Outlet 001 flows and treat extracted groundwater from the East and West Field wells.

Alternative 4 is **rejected**.

The EPA's Comments: As described above, infiltration of PFAS-contaminated water to groundwater is not a viable option. Alternative 3, capture and treat Outlet 001 flows, should be advanced. This alternative was identified as capable of meeting effluent limits and is implementable. Chemours should develop and provide to the EPA for approval: technology evaluation and selection, specific design plans, and a project-specific implementation plan to complete the project.

Outlet 002

Chemours Preferred Alternative: Alternative 2c, treating outfall leg 002-03 and 002-12.

Alternative 2c is **conditionally accepted**.

The EPA's Comments: Alternative 2c is projected to meet permit effluent limits. Chemours should develop and provide to the EPA for approval: technology evaluation and selection, specific design plans, and a project-specific implementation plan to complete the project.

Additionally, treating additional drainage legs will provide additional reduction of PFAS discharges with a limited increase in cost. Chemours should consider treating additional drainage legs and may include such plans in Alternative 2c for the EPA's approval.

Outlet 005

Chemours Preferred Alternative: Alternative 1d, treatment of combined flows from the PTFE FP Knock-Out Pot, Building 22 Sump, and Granular Line 1 Sump.

Alternative 1d is **conditionally accepted**.

Re: *The Chemours Company FC, LLC, Administrative Order on Consent*
EPA Docket No. CWA-03-2023-0025DN

The EPA's Comments: Chemours should develop and provide to the EPA for approval: technology evaluation and selection, specific design plans, and a project-specific implementation plan to complete the project.

Outlet 006

Chemours Preferred Alternative: Alternative 2, capture and infiltrate Outlet 006 flows up to wet weather sizing criteria, discharge surge flows (i.e., untreated) to Outlet 005 to eliminate Outlet 006 discharges to Page Run, manage groundwater to prevent offsite migration, and treat extracted groundwater from the East and West Field wells.

Alternative 2 is **rejected**.

The EPA's Comments: As described above, infiltration of PFAS-contaminated water to groundwater is not a viable option. A new alternative or a revised Alternative 1 should be proposed. Any new or revised alternative must meet effluent limits at Outlet 006. Moving the discharge to a different outlet is not a viable option because Chemours' existing administratively extended NPDES permit cannot be modified. Chemours should develop and provide to the EPA for approval: a revised or new alternative, technology evaluation and selection, specific design plans, and a project-specific implementation plan to complete the project.

The EPA is committed to ensuring that the Washington Works facility implements a long-term, comprehensive plan that focuses on PFAS removal from the facility's discharges. To avoid continual revisions of the Plan, the EPA deliberated and developed this response in coordination with WVDEP.

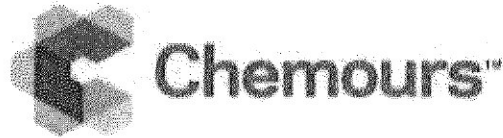
Please submit your written response within 30 calendar days to Erin DeSandro at desandro.erin@epa.gov. If you would like to discuss this response or any new alternative, please contact Ms. DeSandro at 215-814-2125 or by email.

Sincerely,

Jessica Duffy, Section Chief
NPDES Section 2, Water Branch
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency, Region 3

cc: Todd Coomes, Chemours, Washington Works (todd.coomes@chemours.com)
Erik W. Sims, Chemours, Washington Works (erik.sims@chemours.com)
Erin DeSandro, EPA Region 3 (desandro.erin@epa.gov)
Brad Wright, WVDEP (brad.m.wright@wv.gov)

Letter from Chemours to EPA
January 22, 2025



The Chemours Company
304-863-4000
8480 DuPont Road
PO Box 1217
Washington, WV 26181

January 22, 2025

Jessica Duffy, Section Chief
NPDES Section 2, Water Branch
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency, Region 3
1600 John F. Kennedy Boulevard
Philadelphia, PA 19013

Erin DeSandro
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency, Region 3
1600 John F. Kennedy Boulevard
Philadelphia, PA 19013

**Re: The Chemours Company FC, LLC, Administrative Order on Consent
EPA Docket No. CWA-03-2023-0025DN**

Dear Ms. Duffy and Ms. DeSandro,

This is in response to Ms. Duffy's December 23, 2024 letter concerning the Alternatives Analysis and Implementation Plan submitted by Chemours pursuant to the above-referenced Administrative Order on Consent relating to the Chemours Washington Works facility in West Virginia.

By way of background, Chemours entered into the Administrative Order on Consent ("AOC") on April 26, 2023, to address ongoing compliance issues under its existing NPDES permit (West Virginia National Pollutant Discharge Elimination System Permit No. WV0001279), issued by the West Virginia Department of Environmental Protection ("WVDEP") in 2018. The AOC required, among other things, that Chemours submit an Alternatives Analysis and Implementation Plan (the "Plan") within 120 days of the AOC. Chemours explored alternatives for the further treatment of HFPO Dimer Acid and PFOA to ensure that discharges of those substances meet numeric effluent limits at each of Outlets 001, 002, 005 and 006. Chemours submitted the required response within 120 days on August 24, 2023. While EPA has provided some informal feedback on Chemours suggested alternatives, it did not provide any formal or complete comments until December 23, 2024, 16 months following the submission of our response.

In the interim, Chemours has now submitted its revised application for a renewal of its NPDES permit. That revised application was submitted on December 20, 2024 and is now pending with WVDEP. The revised application that was recently submitted relates to a permit renewal

application that was submitted to WVDEP on February 24, 2023, in advance of the expiration of the permit. That revised permit renewal application contains a detailed proposal concerning the requirements that should be contained in the renewed permit and how Chemours proposes to meet those requirements. In particular, the application sets forth Chemours' proposed approach for technology-based effluent limits (TBELs) and water quality-based effluent limits (WQBELs) for the facility. Chemours refers EPA to that submittal and incorporates it by reference. See Attachment 25 ("Summary of Proposed Permit Approach for HFPO-DA and PFOA") and Attachment 25C ("Treatment of Process Wastewaters: Factors for Technology-Based Effluent Limits"). Attachment 25C describes the addition or modification of five wastewater treatment systems at the facility for the reduction of HFPO Dimer Acid and PFOA discharges and summarizes the proposed changes. Section 7, and in particular Table 10, sets forth the proposed schedule for these modifications.

We note that the principal concern raised in your December 23, 2024 response to the initial Plan is with respect to Chemours' prior proposal to utilize shallow underground injection as a treatment option for Outlets 001 and 006. As you will note in your review of the recently submitted revised permit renewal application (and, by incorporation, the revised Plan), Chemours no longer proposes to utilize groundwater infiltration. We believe that all the other treatment technologies proposed in the revised permit renewal application and revised Plan are consistent with the comments contained in your letter, which conditionally approved the other proposed technologies.

Your letter states that "To avoid continual revisions of the Plan, the EPA deliberated and developed this response in coordination with WVDEP." We appreciate that coordination and agree that it will be essential in finalizing an appropriate path forward to address the water discharge issues at Washington Works in a coordinated manner. In that regard, we assume that your letter was prepared and transmitted before you had a chance to review the details of the recently submitted revised permit renewal application. Now that that revised application has been submitted and incorporated as our revised Plan, we propose a joint meeting among Chemours, EPA and WVDEP to discuss a path forward for finalizing the Plan and the review and issuance of the renewal permit, which are closely intertwined.

Please let me know if you have any questions on this submission. We appreciate the Agency's efforts to finalize a Plan that will allow Chemours to further reduce its PFAS discharges at Washington Works.

Sincerely,



James W. Hollingsworth
Plant Manager, Washington Works
The Chemours Company
James.W.Hollingsworth@Chemours.com
(304) 863-4083 (Office)

Cc: Brad Wright, WVDEP (brad.m.wright@wv.gov)

Chad Harsh, Enforcement and Compliance Assurance Division U.S. EPA, Region III,
(harsh.chad@epa.gov)

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Enclosures:

- Attachment 25, including Attachments 25A through 25K, of Chemours' Revised Permit Renewal Application.

Letter from Chemours to EPA
March 4, 2025



The Chemours Company
Washington Works
8480 DuPont Road
PO Box 1217
Washington, WV 26181

March 4, 2025

BY EMAIL

Jessica Duffy, Section Chief
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Enforcement and Compliance Assurance Division
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U.S. Environmental Protection Agency
Washington, D.C. 20004
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**Re: The Chemours Company FC, LLC, Administrative Order on Consent EPA
Docket No. CWA-03-2023-0025DN**

Dear Ms. Duffy, Ms. DeSandro, and Mr. Bahk,

This is a follow up to Chemours' January 22, 2025 letter in which the company provided, as EPA requested in Ms. Duffy's December 23, 2024 letter, a revised Alternatives Analysis and Implementation Plan (the "Plan") pursuant to the above-referenced Administrative Order on Consent ("AOC") relating to the Chemours Washington Works facility in West Virginia. Chemours' Plan is incorporated into the revised NPDES permit application that was submitted to West Virginia Department of Environmental Protection ("WVDEP") on the same date. We ask that you promptly approve our submission under the AOC so that Chemours, WVDEP and EPA can move forward expeditiously with reviewing the NPDES application and implementing the projects identified in the Plan and thereby address the remaining compliance issues with its existing NPDES permit (West Virginia

US 253875621v8

National Pollutant Discharge Elimination System Permit No. WV0001279), issued by the WVDEP in 2018.

Chemours's efforts to resolve its ongoing compliance issues began before even the first violation arose. Indeed, Chemours first flagged for WVDEP and EPA in 2021 that it would have difficulty complying during rain events with the stricter limits for PFOA and HFPO-DA at a number of outfalls due to be become effective in 2022 under the permit. As you know, Chemours entered into the AOC with EPA on April 26, 2023, for the specific purpose of addressing ongoing compliance issues. The AOC required, among other things¹, that Chemours submit an Alternatives Analysis and Implementation Plan within 120 days of the AOC. Chemours submitted the required response within 120 days on August 24, 2023. While EPA provided some informal feedback on Chemours' Plan, it did not provide any formal or complete comments until December 23, 2024, 16 months following the submission of Chemours' response. At that time, EPA conditionally accepted portions of the Plan, rejected others, and asked that Chemours respond to EPA's comments on the Plan within 30 days. Chemours responded within 30 days, on January 22, 2025, and provided an updated Plan that does not rely on the approaches that EPA had rejected.

We have had no response from EPA on the Plan. Chemours believes that implementation of the Plan would resolve the ongoing compliance issues related to the current permit. Moreover, as EPA has suggested, Chemours has assessed ways in which it can expedite the implementation of the proposed projects. Chemours is prepared, subject to any necessary agreement from WVDEP, to commence such work prior to the issuance of a renewed permit, with the goal of completion within two years, before the three year period provided in the revised NPDES application. This time period assumes near-term approval as some of the work is seasonal dependent.

As you are aware, the compliance issues that were the basis of the AOC have resulted in a citizens suit action in the United States District Court for the Southern District of West Virginia, in which the plaintiff, the West Virginia Rivers Coalition is now asking the Court for a preliminary injunction. In its motion, the WVRC makes clear that it has resulted from delays in the AOC process. It states that "Chemours timely submitted its proposed plan, but a year later EPA still had not approved it and PFAS violations were continuing" so it "notified Chemours, WVDEP, and EPA in April 2024 that it intended to file a citizen suit." Further inaction by EPA led to the filing of the complaint in December 2024 and the motion for preliminary injunction last week. This is all disappointing to Chemours as avoiding litigation over these compliance issues was the very reason Chemours in good faith entered into the AOC.

¹The AOC also required Chemours to implement an EPA-approved Sampling Plan, attached to the AOC, to conduct additional analysis to further understand the presence of PFAS in stormwater and effluent discharged from the facility. That sampling and analysis program has been substantially completed.

Chemours requests that EPA promptly approve the Plan so that Chemours can begin to implement it.

Thank you for your attention to this important matter.

Sincerely,

/s/ James W. Hollingsworth
James W. Hollingsworth
Plant Manager, Washington Works
The Chemours Company
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Todd Coomes, Chemours
Joel Gross, Arnold & Porter
Allison Rumsey, Arnold & Porter

Letter from EPA to Chemours
March 24, 2025



REGION 3

PHILADELPHIA, PA 19103

VIA ELECTRONIC MAIL

James W. Hollingsworth, Plant Manager
The Chemours Company, Washington Works
8480 DuPont Road
PO Box 1217
Washington, West Virginia 26181

**Re: The Chemours Company FC, LLC, Administrative Order on Consent
EPA Docket No. CWA-03-2023-0025DN**

Dear Mr. Hollingsworth,

By letter, dated March 4, 2025, Chemours asked the EPA to promptly approve the Revised Alternatives Analysis and Implementation Plan ("AAIP") it submitted on January 22, 2025. Chemours stated that the revised AAIP incorporates its revised NPDES permit application submitted to the West Virginia Department of Environmental Protection ("WVDEP"). As we have discussed, Chemours' compliance with the Administrative Order on Consent ("AOC") and with effluent limits in its current NPDES permit must be addressed independent of the permit renewal process. Submission of a permit application does not meet the requirements of Chemours' obligations under the AOC, and therefore, the Revised AAIP submitted by Chemours is disapproved. Pursuant to Paragraph 52 of the AOC, Chemours must respond within 30 days of this disapproval.

Please contact Erin DeSandro at desandro.erin@epa.gov or (215) 814-2125 if you have any questions concerning this letter.

Sincerely,
**JESSICA
DUFFY**

Digitally signed by
JESSICA DUFFY
Date: 2025.03.24
07:49:56 -04'00'

Jessica Duffy, Section Chief
NPDES Section 2, Water Branch
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency, Region 3

cc: Todd Coomes, Chemours, Washington Works (todd.coomes@chemours.com)
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**West Virginia Rivers Coalition's Preliminary-
Injunction Memorandum of Law**

February 2, 2025

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF WEST VIRGINIA
AT CHARLESTON

WEST VIRGINIA RIVERS
COALITION, INC.,

Plaintiff,

v.

Civil Action No. 2:24-cv-00701

THE CHEMOURS COMPANY FC, LLC,

Defendant.

PLAINTIFF'S MEMORANDUM IN SUPPORT OF ITS
MOTION FOR A PRELIMINARY INJUNCTION

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INTRODUCTION

Defendant The Chemours Company FC, LLC (“Chemours”) discharges wastewater containing per- and polyfluoroalkyl substances (“PFAS”), including hexafluoropropylene oxide dimer acid (“HFPO-DA,” sometimes called “GenX”) from its Washington Works Plant in Washington, West Virginia, into the Ohio River, a source of drinking water for millions of people. PFAS, like HFPO-DA, are called “forever chemicals” because of their prolonged persistence in the environment. Ctr. for Env’t Health v. Regan, 103 F.4th 1027, 1031 (4th Cir. 2024); see also 89 Fed. Reg. 32532, 32557 (Apr. 26, 2024) (“HFPO-DA is environmentally persistent.”). PFAS, including HFPO-DA, are toxic to human health. Id. at 32544. Individuals can be exposed to PFAS in drinking water. Id. at 32543. The U.S. Environmental Protection Agency (“EPA”) has established extremely low standards for PFAS concentrations in drinking water, with the HFPO-DA limit set at 10 parts per trillion (“ppt”). Id. at 32532.

Chemours is violating its discharge limits in its current Clean Water Act (“CWA”) permit for the Washington Works Plant for several chemicals, including HFPO-DA, by large amounts. In November 2024, Chemours exceeded its average monthly HFPO-DA limit at Outlets 002 and 005 by 454% and 166%, respectively. Ex. 1 at 12–13. That pollution spike was so large that it was noticeable approximately 270 river miles downstream in Cincinnati’s drinking water intake—a system which serves over a million people. Ex. 2. Chemours admits that its current treatment system is incapable of ensuring permit compliance and has asked the West Virginia Department of Environmental Protection (“WVDEP”) and EPA to give it a three-year compliance schedule to upgrade that system. Ex. 3 at 1–2 (Chemours 2024 Permit App. Att. 25); Ex. 4 at 24 tbl. 10 (Att. 25c). The schedule would

¹ EPA acknowledges that GenX and HFPO-DA are interchangeable terms. See 88 Fed. Reg. 18638, 18643 (Mar. 29, 2023) (“EPA is issuing a preliminary regulatory determination to regulate . . . hexafluoropropylene oxide dimer acid (HFPO–DA) and its ammonium salt (also known as a GenX chemicals).”).

begin on the effective date of its new permit, which WVDEP has not yet even drafted. Ex. 4 at 24. It took WVDEP ten years to reissue this permit the last time it expired. Compare Ex. 5 (2003 permit with 2008 expiration date) with Ex. 6 at 12 (2018 permit renewal). In effect, then, such a schedule would allow Chemours to maintain its full manufacturing output and continue violating its permit limits for toxic HFPO-DA for at least three years, and likely for many more. To remedy this unconscionable delay in treatment, while at the same time avoiding any potential conflict with the planned treatment upgrade, Plaintiff asks the Court to issue a preliminary injunction granting a limited form of interim relief to protect the public from additional PFAS exposure.

Chemours's permit provides that "[i]t shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit." Ex. 6 at 97 (Appx. A, Part II.2). Federal regulations contain the same language. 40 C.F.R. § 122.41(c). Chemours's process wastewater discharges at Outlets 002 and 005 are a major contributor of the HFPO-DA in its discharges, and usage of that chemical is under Chemours's control and proportional to amount of fluoropolymers the plant produces. This Court should therefore prohibit Chemours from violating its permit limits for HFPO-DA at Outlets 002 and 005 by any means necessary, including (1) cutting back the production that generates process wastewater containing HFPO-DA, and/or (2) sending process wastewater off-site for disposal by deep-well injection or incineration, as Chemours does for its PFAS-contaminated wastewater at its Fayetteville, NC plant.² West Virginians deserve no less protection from PFAS than do North Carolinians. Without an injunction, Chemours will effectively have an unlimited license to pollute the Ohio River and downstream drinking water indefinitely.

² EPA, Multi-Industry Per- and Polyfluoroalkyl Substances (PFAS) Study –2021 Preliminary Report at 5-5, available at https://www.epa.gov/system/files/documents/2021-09/multi-industry-pfas-study-preliminary-2021-report_508_2021.09.08.pdf (also attached as Ex. 7).

STATUTORY BACKGROUND

The CWA prohibits any person from discharging any pollutant without specific authorization. 33 U.S.C. § 1311(a). The purpose of the CWA is to “restore and maintain the . . . integrity of the Nation’s waters.” County of Maui v. Haw. Wildlife Fund, 590 U.S. 165, 170 (2020) (citation omitted). The CWA does this “by insisting that a person wishing to discharge any pollution into navigable waters first obtain EPA’s permission to do so.” Id. (citations omitted). Under the CWA, permittees who violate their National Pollutant Discharge Elimination System (“NPDES”) permits are subject to federal and state enforcement action. 33 U.S.C. §§ 1319, 1342(b)(7). In addition, citizens may sue any person who violates any term or condition in an NPDES permit, subject to two limitations. Id. §§ 1365(a)(1), (f)(6). First, the citizen must give 60 days’ advance notice of his intent to file suit to EPA, the State, and the violator. Id. § 1365(b)(1)(A). Second, a citizen may not sue if EPA or the State bring certain types of judicial or administrative enforcement actions. Id. §§ 1365(b)(1)(B), 1319(g)(6)(A). Assuming those limitations are satisfied, citizens can seek both injunctive relief from the district court and civil penalties from the polluter.

STATEMENT OF FACTS

Chemours holds WV/NPDES Permit Number WV0001279, which regulates discharges into the Ohio River from its Washington Works Plant in Washington, West Virginia. Ex. 6. That permit was reissued in 2018, has been administratively extended since 2023, and is still in effect. Ex. 8. In the fact sheet accompanying that permit, WVDEP stated that “Outlets 002 and 005 in WV/NPDES Permit No. WV0001279 contain the process wastewaters associated with the HFPO-DA compound and the previously used PFOA compound.” Ex. 9 at 14. WVDEP further explained that it was basing the HFPO-DA permit limits on a drinking water health goal of 140 ppt “to be protective of the State’s narrative water quality criteria for human health and the designated uses of the Ohio River.” Id. at 15.

In the second half of 2024, Chemours consistently violated its average permit limit for HFPO-DA at Outlets 002 and 005, as shown by its DMRs (Ex. 1) and Chemours's own admissions (Ex. 10). Those violations are summarized in the following table:

Month	Outlet	Limit (ug/l)	DMR (ug/l)	% Limit
May	002	1.4	2.63	88
June	002	1.4	1.47	5
July	002	1.4	1.47	5
Aug	002	1.4	1.79	28
Nov	002	1.4	7.76	454
Dec	002	1.4	2.05	46
*	*	*	*	*
July	005	1.1	1.36	24
Aug	005	1.1	2.09	90
Sept	005	1.1	1.52	38
Oct	005	1.1	1.43	30
Nov	005	1.1	2.93	166
Dec	005	1.1	2.55	132

The Greater Cincinnati Water Works (“GCWW”) utility, which supplies drinking water to 1.1 million customers and is 270 river miles downstream from Chemours’s outlets on the Ohio River,³ has detected increased levels of HFPO-DA in every intake sample since July 2024, with concentrations as high as 17 ppt. Ex. 2 ¶ 7 (Swertfeger Decl.). Those increased concentrations correspond to increased Chemours HFPO-DA discharges during that same time period. *Id.* ¶ 10, figs. 1–2. GWCC’s treatment system is much less effective at removing HFPO-DA than other PFAS, and GWCC is concerned that the increase in HFPO-DA discharges “may present an increased public health risk to communities . . . that utilize the Ohio River as the source of their drinking water.” *Id.* ¶¶ 11–12. Louisville, which is

³ Chemours’s Outlets 002 and 005 are at Ohio River Mile 190.2 and 190.8, respectively. Ex. 6 at 1. Cincinnati’s drinking water intake is at River Mile 460. *See* ORSANCO, Assessment of Ohio River Water Quality Conditions at 27 (Mar. 2022), available at https://www.orsanco.org/wp-content/uploads/2016/07/ORSANCO_2022_305b_Report.pdf (also attached as Ex. 11).

over 400 river miles downstream,⁴ has experienced a similar increase in HFPO-DA levels in the fourth quarter of 2024, with levels reaching 52 ppt at one point in December. See Ex. 12 (Goodmann Decl.). Louisville has also attributed the increase in HFPO-DA concentrations in the Ohio River at its intake to Chemours's discharges. Id. ¶¶ 8–9.

In its December 2024 application for a renewed and modified NPDES permit, Chemours states that it plans to upgrade its wastewater treatment systems to reduce its maximum permissible discharges of HFPO-DA from 225 pounds a year to 74 pounds a year. Ex. 13 at 6 tbl. 4 (Att. 25b); Ex. 14 at 9 (Att. 25f). As a part of that application, Chemours submitted the following mass loading analysis of its HFPO-DA discharges:

Table 4. Allowable Permitted Site Loading by Outlet

Outlet	Existing 95th Monthly Average Flow (MGD)	Current HFPO-DA AML (ng/L)	Current PFOA AML (ng/L)	Permitted HFPO-DA Load (lbs/yr)	Permitted PFOA Load (lbs/yr)
005	50	1,100	300	168	46
002	6.4	1,400	2,000	27	39
007	1.8	1,400 ¹	2,000 ¹	7.7	11
003	4.4	1,400 ¹	2,000	19	27
011	0.018	33,000 ³	600 ³	1.8	0.03
001	0.19	1,400	2,000	0.85	1.2
006	0.10	140	70 ²	0.043	0.021
030, 031, 032, 033, 034, 036, 016, 019	0.018	7,500 ³	930 ³	0.42	0.051
022, 023, 025	0.048	990 ³	280 ³	0.14	0.041
Total	63	-	-	225	124

Ex. 13 at 6 tbl. 4. According to that analysis, Outlets 002 and 005 comprise most of the average discharge flow from the plant—56.4 million gallons per day (“MGD”) out of a total of 63 MGD, or 89.5%. Id. Those two outlets are also responsible for most of the permitted loading of HFPO-DA that can be discharged from the plant—195 pounds out of the total of 225 pounds, or 86.7%. Id.

Within those two outfalls, process water comprises 4.6 MGD of the 56.4 MGD, or 8.2%. Ex. 13 at 4 tbl. 3. As shown in the table below, that process water contributes an average of 75.6

⁴ Louisville's drinking water intake is at River Mile 600. See Ex. 11 at 27.

pounds/year of the total loading of 195 pounds/year of HFPO-DA, or 38.8%. Thus, this small amount of process water contains a relatively large portion of the total HFPO-DA that Chemours discharges. Those facts are shown by the following excerpts from Attachment 25b, Table 3:

Flow Stream	95th Percentile Flow (mgd)	HFPO-DA Existing Load (lbs/yr)	PFOA Existing Load (lbs/yr)
Bldg. 162 Targeted Process (process wastewater)	0.07	0.6	0.1
B514 W9 Line 1 (process wastewater)	0.2	3.5	0.0
Monomer Neut. Tank (process wastewater)	0.2	1.7	0.3
Dryer Belt Wash Water (process wastewater)	0.3	0.5	0.0
Other Process Water	2.0	3.9	1.7
B22 Sump (process wastewater)	0.06	38	0.2
Granular Sump (process wastewater)	0.16	16.9	0.1
B184 Sump (process wastewater)	0.16	2.8	0.0
FP KO Pot (process wastewater)	0.0	2.7	0.0
W9 Permeate (process wastewater)	0.26	4.0	0.0
Other Process Water	1.2	1.0	8.0
Total	4.6	75.6	10.4

Ex. 13 at 4 tbl. 3.

Chemours uses HFPO-DA to manufacture fluoropolymers:

Chemours uses HFPO-DA and its ammonium salt as a patented polymerization aid in the manufacture of fluoropolymers. . . . HFPO-Dimer Acid is an aid used in the fluoropolymer manufacturing process to reduce the surface tension in the process, allowing the polymer particles to grow larger. The process is completed through heating or chemical treatment to remove residual HFPO-Dimer Acid (polymerization aid). The majority of the HFPO-Dimer Acid is then recovered and recycled for use in subsequent fluoropolymer polymerization processes. . . . HFPO-Dimer Acid is a critical part of the manufacturing process for Chemours' fluoropolymers.

Ex. 15. Thus, Chemours can control how much HFPO-DA it uses and how much it recovers. By reducing the amount of fluoropolymers that it manufactures, Chemours could simultaneously reduce its use of HFPO-DA, thereby also reducing discharges of that chemical to the Ohio River. Eliminating

or reducing the load of HFPO-DA in process water flowing to Outlets 002 and 005 would significantly reduce the overall amount of HFPO-DA discharged by the Plant.⁵

The remaining HFPO-DA discharged by Chemours is contained in stormwater discharges that are related to the amount of rain falling on the site. Possible interim reductions in stormwater contributions may need further investigation. But the process wastewater discharges are entirely within Chemours's control. That water is generated by its manufacturing processes and can be reduced or eliminated until those upgrades are completed, either by reducing production or sending the water off-site for disposal, as Chemours does at its Fayetteville, NC plant.⁶

EPA issued an Administrative Order on Consent ("AOC") in April 2023 against Chemours Washington Works for its PFAS discharges in violation of the CWA. Ex. 18. That AOC did not impose any penalties but required, among other things, that Chemours submit a compliance plan within 120 days. Id. Chemours timely submitted its proposed plan, Ex. 16, but a year later EPA still had not approved it and PFAS violations were continuing. As a result, Plaintiff notified Chemours, WVDEP, and EPA in April 2024 that it intended to file a citizen suit. Plaintiff then learned that EPA and Chemours were engaging in settlement discussions. But with no resolution to that process in

⁵ In 2024, Chemours constructed a treatment system expected to remove 99% of the HFPO-DA loading from its Building 22 ("B22"), which it estimates to be 38 pounds per year. Ex. 3 at 3; Ex. 13 at 4; Ex. 4 at 11. But even when operational, the B22 System will not be sufficient to achieve permit compliance by itself. Ex. 16 at 31.

⁶ According to EPA, Chemours's Washington Works is one of six U.S. facilities that manufacture PFAS. See Ex. 7 at 5-3. That plant manufactures fluoropolymers and fluorotelomers. Id. At its Fayetteville, NC plant, which also manufactures PFAS, Chemours captures and disposes of all of its PFAS-contaminated process water off-site by deep well injection or incineration. Id. at 5-5. In its Consent Order Progress Report for Fourth Quarter 2024 for that plant, Chemours stated that "Chemours does not discharge its process wastewater and instead collects and ships its process wastewater offsite for disposal or recycles treated water internally within several manufacturing processes." Chemours, Consent Order Progress Report For Fourth Quarter 2024 at 5, available at https://www.chemours.com/en/-/media/files/corporate/fayetteville-works/28_ncdeq_4q2024-quarterly-co-progress-report_01232025.pdf?rev=b8f936cd299c4af982662f66ee28d5b1&hash=5F41AF406CA64CCAFA2C5D1E3AE40904 (also attached as Ex. 17).

December 2024, Plaintiffs filed this action. After doing so, Plaintiff learned that Chemours sought a three-year compliance schedule in its new permit application, Ex. 4 at 24, the Biden EPA rejected Chemours's April 2023 proposed compliance plan, Ex. 19, and the Trump EPA froze all environmental enforcement actions. Plaintiff also learned that Louisville and Cincinnati have recently begun detecting Chemours's HFPO-DA discharges downstream in their drinking water intakes such that their source water exceeds the 10 ppt drinking water standard set by EPA. Exs. 2, 12. In light of those alarming developments, a preliminary injunction is necessary.

ARGUMENT

I. Plaintiffs Have Standing to Sue

Section 505(g) of the CWA authorizes the filing of a citizen suit by “any person or persons having an interest which is or may be adversely affected.” 33 U.S.C. § 1365(g). This provision confers standing to the limits of the U.S. Constitution. PIRG v. Powell Duffryn Terminals, Inc., 913 F.2d 64, 70 n.3 (3d Cir. 1990); see also Middlesex County Sewerage Auth. v. Nat'l Sea Clammers Ass'n, 453 U.S. 1, 16 (1981). To have constitutional standing, a plaintiff must suffer an actual or threatened injury-in-fact that is fairly traceable to the challenged action by the defendant and is likely to be redressed by a favorable decision. Friends of the Earth, Inc. v. Laidlaw Env't Servs. (TOC), Inc., 528 U.S. 167, 180–81 (2000).

A. Plaintiff's Member Has Suffered an Actual or Threatened Injury in Fact

Environmental plaintiffs satisfy constitutional standing requirements when their members have suffered an injury to their aesthetic, health, environmental or recreational interests. Friends of the Earth, Inc. v. Gaston Copper Recycling Corp., 204 F.3d 149, 154 (4th Cir. 2000); see also Laidlaw, 528 U.S. at 183. A threatened injury is sufficient. Clapper v. Amnesty Int'l USA, 568 U.S. 398, 409 (2013). Plaintiff's member Charlise Robinson obtains her household domestic water from the Lubeck Public Service District water system, which is downstream from Chemours's plant. Ex. 20 ¶¶ 4, 7

(Robinson Decl.). Since 2018, she has refrained from drinking and cooking with that water, but uses it to a limited extent for brushing her teeth and cleaning. Id. ¶¶ 16–17. In its permit application, Chemours used Lubeck as the compliance point to define its proposing mixing zone and protect public drinking water. Ex. 3 at 5; Ex. 21 at 2–3 (Attachment 25d). Ms. Robinson is suffering ongoing and threatened injury from past and continuing exposure to PFAS in her household water from Chemours’s unlawful discharges.

B. Plaintiff’s Member’s Injuries Are “Fairly Traceable” to Defendant’s Conduct

To satisfy the traceability prong, the Fourth Circuit has explained that “a plaintiff must merely show that a defendant discharges a pollutant that causes or contributes to the kind of injuries alleged in the specific geographic area of concern.” Gaston Copper, 204 F.3d at 161 (internal quotation marks omitted). As this Court has recognized, the traceability prong for standing is met when plaintiff’s member claims that her injuries result from excessive pollutants in the same stream into which defendant discharges those pollutants. OVEC v. Marfork Coal, No. 5:12-cv-1464, 2013 WL 4509601, at *5 (S.D. W. Va. Aug. 23, 2013). Ms. Robinson’s injuries are fairly traceable to Chemours’s excessive HFPO-DA discharges into the Ohio River because Chemours admits that its HFPO-DA treatment and compliance strategy is designed to protect Lubeck’s public water supply downstream from those discharges. Ex. 3 at 5; Ex. 21 at 2–3.

C. Plaintiff’s Member’s Injuries Are Redressable by a Favorable Ruling from This Court

An environmental plaintiff satisfies the redressability prong of standing when it shows that it is likely that injunctive relief will remedy its injury. Gaston Copper, 204 F.3d at 154. Importantly, however, it need not show that an injunction would restore the watershed to a pristine state. OVEC v. Hobet Mining, LLC, 702 F. Supp. 2d 644, 652 (S.D. W. Va. 2010) (citing Student Pub. Int. Rsch. Grp. of N.J., Inc. v. Ga-Pac. Corp., 615 F. Supp. 1419, 1424 (D.N.J. 1985)). It is enough that the risk of injury is reduced. Massachusetts v. EPA, 549 U.S. 497, 521 (2007). Plaintiff satisfies the

redressability requirement because reducing HDPO-DA in Chemours's discharges will reduce the risk of exposure to that chemical in its member's household water.

D. Plaintiff Has Representational Standing to Sue on Behalf of Its Member

An organization has representational standing when (1) at least one of its members would have standing to sue in his or her own right, (2) the organization's purpose is germane to the interests it seeks to protect, and (3) there is no need for the direct participation of the individual members in the action. Gaston Copper, 204 F.3d at 155. Charlise Robinson is a member of the West Virginia Rivers Coalition ("WVRC"). Ex. 20. The action is germane to WVRC's purposes. Id. Lastly, because this action is one for injunctive and declaratory relief and not for monetary damages, individual members are not required to participate in the action. PIRG, 913 F.2d at 70; OVEC v. Fola Coal Co., 274 F. Supp. 3d 378, 387 (S.D. W. Va. 2017).

II. This Court Has Subject Matter Jurisdiction Over Chemours's Permit Violations

Plaintiff also satisfies the jurisdictional prerequisites for the commencement and prosecution of a citizen suit against Chemours for its CWA violations. Plaintiff sent the required 60-day notice letter in April 2024 (Ex. 22) and waited more than 60 days thereafter to file suit in December 2024 (ECF No. 1). See 33 U.S.C. § 1365(b)(1)(A). No federal or state agency has filed a judicial action against Chemours for the same violations. Ex. 23 (Demmerle Decl.). EPA's April 2023 AOC against Chemours does not meet the requirements for preclusion under § 1319(g)(6) of the CWA because it did not impose any penalties. See United States v. Smithfield Foods, Inc., 191 F.3d 516, 526 (4th Cir. 1999); Sierra Club v. Powellton Coal Co., 662 F. Supp. 2d 514, 523–31 (S.D. W. Va. 2009); Save Our Bays & Beaches v. City & County of Honolulu, 904 F. Supp. 1098, 1128–29 (D. Haw. 1994).

Furthermore, Plaintiff satisfies the jurisdictional standard set forth in Chesapeake Bay Foundation, Inc. v. Gwaltney of Smithfield, 484 U.S. 49 (1987). In that case, the Supreme Court held that, to invoke the jurisdiction of the federal courts, citizen plaintiffs must "allege a state of either

continuous or intermittent violation—that is, a reasonable likelihood that a past polluter will continue to pollute in the future.” *Id.* at 57. On remand from the Supreme Court in *Gwaltney*, the Fourth Circuit held that the plaintiffs could establish jurisdiction under this standard “either (1) by proving violations that continue on or after the date the complaint is filed, or (2) by adducing evidence from which a reasonable trier of fact could find a continuing likelihood of a recurrence in intermittent or sporadic violations.” 844 F.2d 170, 171–72 (4th Cir. 1988).

Plaintiff filed its complaint on December 5, 2024. ECF No. 1. The DMR for that month shows both average and daily maximum limit violations for HFPO-DA at Outlets 002 and 005. Ex. 1 at 14–16. The sampling that establishes those violations occurred on December 5 and 19, 2024. Ex. 10 at 19. The DMR for January 2025 also shows average and daily maximum limit violations for HFPO-DA at Outlet 005. Ex. 1 at 17. The first *Gwaltney* test is therefore satisfied and this Court has subject matter jurisdiction over Chemours’s HFPO-DA violations.

III. This Court Should Enjoin Chemours’s Ongoing Violations of the Clean Water Act

A plaintiff seeking a preliminary injunction must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest. *Real Truth About Obama, Inc. v. Fed. Election Comm’n*, 575 F.3d 342, 346 (4th Cir. 2009). All four factors are satisfied here.

A. Plaintiff Is Likely to Succeed on the Merits

Section 505(a)(1) of the CWA authorizes citizens to bring suit for violation of any “effluent standard or limitation.” 33 U.S.C. § 1365(a). Section 505(f)(7), in turn, defines “effluent standard or limitation” to include “a permit or condition thereof issued under Section 402.” *Id.* § 1365(f)(7). The Court has the power to require compliance with those permit conditions. *Id.* § 1365(a).

Enforcement of the CWA is “intentionally straightforward.” *OVEC v. Bluestone Coal Corp.*, No. 1:19-cv-576, 2020 WL 4284804, at *5 (S.D. W. Va. July 27, 2020) (internal quotation omitted).

The CWA's legislative history shows that Congress intended to expedite enforcement actions, such as this one. The Senate report on the 1972 CWA stated that "[e]nforcement of violations of requirements of this Act should be based on a minimum of discretionary decisionmaking or delay" and that "the issue before the courts would be a factual one of whether there had been compliance." S. Rep. No. 414, 92nd Cong., 2nd Sess. (1972) at 64, 80 reprinted in 1972 U.S. Code Cong. & Ad. News at 3730, 3746.

The CWA achieves the goal of expedited enforcement in two ways. First, it places the burden of measuring and reporting pollutant levels on permit holders. *See, e.g., Powellton Coal Co.*, 662 F. Supp. 2d at 516. Enforcement is thus made easy and inexpensive because evidence of violations must be compiled and documented by the permit holders themselves. *Bluestone Coal*, 2020 WL 4284804, at *5 (internal citation omitted). Second, the CWA imposes strict liability for permit violations. *See, e.g., Sierra Club v. W. Va. Dep't of Env't Prot.*, 64 F.4th 487, 503 (4th Cir. 2023). A discharger's culpability or good faith does not excuse a violation. *United States v. CPS Chem. Co.*, 779 F. Supp. 437, 442 (E.D. Ark. 1991). Consequently, a violation of a permit requirement by a discharger is an automatic violation of the CWA. *PIRG v. Rice*, 774 F. Supp. 317, 325 (D.N.J. 1991). When determining liability under the CWA, "[a]ll the court . . . is called upon to do is compare the allowable quantities of pollution listed in the permits with the available statistics on actual pollution." *OVEC v. Hobet Min., LLC*, 723 F. Supp. 2d 886, 896 (S.D. W. Va. 2010).

As established above, Chemours has reported violating its permit limits for HFPO-DA at Outlets 002 and 005 throughout 2024 and at Outlet 005 in January 2025. Exs. 1, 10. DMRs are binding admissions that may be used to establish liability under the CWA. *Hobet Min.*, 723 F. Supp. 2d at 923. Consequently, Plaintiff is all-but-certain to succeed on its claim that Chemours's HFPO-DA exceedances are violations of its NPDES permit and the CWA.

B. Plaintiff and the Environment Are Likely to Suffer Irreparable Harm If a Preliminary Injunction Is Not Granted

Plaintiff and the environment are likely to suffer irreparable harm without a preliminary injunction. Because Congress has expressly granted citizens a right of action to enforce the CWA and Plaintiff has shown “a distinct and palpable injury,” Plaintiff “may invoke the general public interest in support of their claim.” Warth v. Seldin, 422 U.S. 490, 501 (1975). Here, Plaintiff is protecting the general public interest in the Ohio River and clean drinking water. See Powell Duffryn, 913 F.2d at 73.

“Environmental injury, by its nature, can seldom be adequately remedied by money damages and is often permanent or at least of long duration, i.e., irreparable.” Amoco Prod. Co. v. Vill. of Gambell, 480 U.S. 531, 545 (1987); see also Sierra Club v. U.S. Army Corps of Eng’rs, 981 F.3d 251, 264 (4th Cir. 2020) (same). PFAS are “long duration” pollutants. EPA has explained that “PFAS tend to break down slowly and persist in the environment, and consequently, they can accumulate in the environment . . . over time.” 89 Fed. Reg. at 32532. As the Fourth Circuit has recognized, they are “known as forever chemicals.” Regan, 103 F.4th at 1031. That characteristic of persistence applies to HFPO-DA—EPA specifically found that HFPO-DA has “similar persistence in the environment as longer chain PFAS, such as PFOA and PFOS.”⁷ Chemours, too, admits that “HFPO-DA . . . has been documented to persist in the environment.”⁸ Additionally, EPA found that HFPO-DA is “more mobile than longer chain PFAS, leading to the potential to result in exposure at greater distances than legacy PFAS in off-site transport or in ground water.” Ex. 24 at 2.

EPA has also explained the serious danger that PFAS exposure poses to human health:

⁷ EPA, Human Health Toxicity Assessment for GenX Chemicals Fact Sheet at 2 (Mar. 2023), available at <https://www.epa.gov/system/files/documents/2023-03/GenX-Toxicity-Assessment-factsheet-March-2023-update.pdf> (also attached as Ex. 24).

⁸ Chemours, Submission of Site Associated PFAS Fate and Transport Study Pursuant to Consent Order Paragraph 27 at 10 (June 24, 2019) (attached as Ex. 25)

The adverse health effects associated with exposure to such PFAS include (but are not limited to): effects on the liver (e.g., liver cell death), growth and development (e.g., low birth weight), hormone levels, kidney, the immune system (reduced response to vaccines), lipid levels (e.g., high cholesterol), the nervous system, and reproduction, as well as increased risk of certain types of cancer.

89 Fed. Reg. at 32537. EPA found similar effects from HFPO-DA exposure specifically, including “health effects . . . on the liver, kidneys, the immune system, [and] development of offspring” with the liver being especially vulnerable to HFPO-DA exposure. Ex. 24 at 2. EPA believed “there [wa]s sufficient evidence to list the HFPO-DA . . . on the [Toxics Release Inventory] pursuant to EPCRA section 313(d)(2)(B)(ii) for serious or irreversible reproductive dysfunctions and other chronic effects on the liver, development, hematological system, and immune system after oral exposure.” 89 Fed. Reg. 81776, 81785 (Oct. 8, 2024). Moreover, the West Virginia State Legislature has also recognized that PFAS, including HFPO-DA, “are known to cause . . . adverse health effects.” W. Va. Code § 22-11C-1(a)(1).

By Chemours’s own admissions, it is discharging excessive amounts of HFPO-DA into the Ohio River and will be for at least the next three years. Exs. 1, 3, 4, 10. HFPO-DA contamination is the quintessential example of harm “of long duration, i.e. irreparable” (Amoco, 480 U.S. at 545), since it lasts “forever.” Courts have found irreparable harm in similar circumstances. See, e.g., Idaho Conservation League v. Atlanta Gold Corp., 879 F. Supp. 2d 1148, 1158–60 (D. Idaho 2012) (finding likelihood of irreparable harm from the discharge of “water containing arsenic in amounts well in excess of applicable effluent limitations”); PIRG v. Powell Duffryn Terminals, Inc., 720 F. Supp. 1158, 1168 (D.N.J. 1989), aff’d in relevant part, 913 F.2d 64 (3d Cir. 1990). This Court found irreparable harm sufficient to issue an injunction when a mining company was continually violating its limits for toxic selenium, which “contribut[ed] to the degradation of” the watershed. Hobet Min., 723 F. Supp. 2d at 924–25. The same is true here—Chemours is continually violating its limits for HFPO-DA, which EPA and West Virginia acknowledge is a toxic substance. Further, WVDEP set the current

permit limit for HFPO-DA at a level necessary to protect drinking water from the Ohio River and public health. Ex. 9 at 15. Consequently, violations of that limit will cause irreparable harm to the designated use of the Ohio River as a water source for Plaintiff's member and the public at large who use downstream public water systems along the Ohio River.

Chemours's violations of its HFPO-DA limits under the CWA also threaten to make it more difficult and expensive for municipalities to comply with EPA's maximum contaminant level ("MCL") under the Safe Drinking Water Act of 10 ppt for HFPO-DA concentrations in drinking water. See generally 89 Fed. Reg. at 32532. The EPA determined that "people who drink water containing HFPO-DA in excess of the MCL over many years may have increased health risks," like the ones discussed above. See id. at 32620.

Untreated source water from the Ohio River is already close to exceeding or actually exceeding the MCL for HFPO-DA. For instance, in September 2022, Chemours measured HFPO-DA at 14 ppt just upstream of the Lubeck Public Service District's drinking water facility. Ex. 26. In 2023, the Little Hocking Water Association, whose source water is infiltrated by the Ohio River, detected HFPO-DA in its wellfield (before the water enters its treatment system) and found that those levels "have increased over ten-fold since [their] initial detection" in 2018. Ex. 27 at 7. Since the 2018 measurement was 32 ppt, the 2024 measurement was more than 320 ppt, or more than 32 times higher than what EPA has determined is safe.⁹ In addition, since July 2024, there is evidence of elevated HFPO-DA levels up to 52 ppt in drinking water intakes in the Ohio River over 270 and 400 miles downstream in Cincinnati and Louisville, respectively. Exs. 2, 12. Such elevated levels of HFPO-DA in source drinking water (before treatment) also indicate that irreparable harm is likely. See Atlanta Gold Corp.,

⁹ According to a publicly available EPA document, in 2018, the untreated source water at the Little Hocking Water Association had HPFO-DA levels of 32 ppt. Ex. 28. Little Hocking's treated water is currently below the 10 ppt MCL but only because it uses an expensive granulated activated carbon ("GAC") system. Ex. 27.

879 F. Supp. 2d at 1158–60 (finding sufficient harm to issue an injunction when there is a “significant possibility that harm to human health may result if the discharges continue unabated” and even if “municipal suppliers eventually remove the toxins from the water before it enters household taps.”); see also United States v. Hartsell, 127 F.3d 343, 351–52 (4th Cir. 1997) (explaining that the CWA reasonably imposes more stringent limits than those under the SDWA because “the regulated pollutants [under the CWA] could harm waterways and aquatic life, and could introduce chemicals which hamper treatment facilities’ ability to treat waste water, even at levels where they might not directly harm humans.”).

C. The Balance of Equities Favors Plaintiff

“If [irreparable] injury is sufficiently likely, . . . the balance of harms will usually favor the issuance of an injunction to protect the environment.” Amoco, 480 U.S. at 545, cited in S.C. Dep’t of Wildlife & Marine Res. v. Marsh, 866 F.2d 97, 100 (4th Cir. 1989). Chemours’s HFPO-DA permit limit is based on protecting water quality standards and drinking water uses along the Ohio River. Ex. 9 at 15.¹⁰ Achieving water quality standards is “one of the [CWA’s] central objectives.” Arkansas v. Oklahoma, 503 U.S. 91, 106 (1992). This Court has found that protecting water uses “is the overriding purpose of West Virginia’s water quality standards and the goal of the state’s permit requirements.” OVEC v. Elk Run Coal Co., 24 F. Supp. 3d 532, 579 (S.D. W. Va. 2014).

Accordingly, the irreparable harm that would result from allowing Defendant to continue to discharge unlawful concentrations of HFPO-DA into the Ohio River outweighs any financial loss that Defendant might incur from compliance with an injunction from this Court. “Mere injuries, however substantial, in terms of money,” are rarely cognizable in the equitable balance. See Roe v. Dep’t of Def., 947 F.3d 207, 228 (4th Cir. 2020) (cleaned up). “Harm to environment outweighs a defendant’s

¹⁰ WVDEP set these limits based on a now-outdated 140 ppt standard for drinking water. Ex. 9 at 14. Thus, Chemours’ violations of its 2018 permit limits are particularly concerning in light of the much lower 10 ppt standard set by EPA in 2024 for HFPO-DA in drinking water.

financial interests, particularly where violations are of a longstanding and continual nature.” Atlanta Gold Corp., 879 F. Supp. 2d at 1161–62 (CWA citizen suit). As established above, Chemours’s HFPO-DA violations are longstanding and continuing. In balancing the equities, financial harms are less important because “[m]oney can be earned, lost, and earned again.” OVEC v. U.S. Army Corps of Eng’rs, 528 F. Supp. 2d 625, 632 (S.D. W. Va. 2007). When it enacted the CWA, Congress made the clear choice in favor of protecting the environment even where industry’s “capacity to comply would be stretched to the limit.” 1972 U.S. Code Cong. & Admin. News at 3711. Congress anticipated that compliance “would cause economic hardship and plant closings.” Student Pub. Int. Rsch. Grp. of N.J., Inc. v. Fritzsche, Dodge & Olcott, Inc., 579 F. Supp. 1528, 1537 (D.N.J. 1984), aff’d, 759 F.2d 1131 (3d Cir. 1985). Accordingly, Congress decided that compliance with water quality based effluent limitations is required regardless of cost. See U.S. Steel Corp. v. Train, 556 F.2d 822, 838 (7th Cir. 1977); OVEC v. Apogee Coal Co., 555 F. Supp. 2d 640, 649 (S.D. W. Va. 2008); cf. United States v. Mun. Auth. of Union Twp., 150 F.3d 259, 266 (3d Cir. 1998) (upholding court order requiring polluter to disgorge profits made from failing to reduce production to comply with CWA permit).

Consistent with this Congressional determination, EPA’s NPDES regulations provide that “[i]t shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.” 40 C.F.R. § 122.41(c). Chemours’s permit echoes that same language. Ex. 6 at 97 (Appx. A, Part II.2). The Court therefore cannot consider Chemours’s economic loss, if any, if it has to halt or reduce production to comply with its permit.

Moreover, a violator’s failure to close its plant or slow its production “in the face of undisputed knowledge that continued operation would result in continued violations, reflects a certain degree of willfulness” with respect to its NPDES permit noncompliance. Chesapeake Bay Found. v. Gwaltney of Smithfield, Ltd., 611 F. Supp. 1542, 1561 (E.D. Va. 1985), aff’d sub nom. 791 F.2d 304 (4th Cir.

1986), vacated, 484 U.S. 49 (1987). “[I]f a regulated entity is incapable of operating in compliance with its permits, the ‘one simple and straightforward way . . . to avoid paying civil penalties’ is to ‘cease[] operations until it [is] able to’ do so.” Env’t Tex. Citizen Lobby, Inc. v. ExxonMobil Corp., 824 F.3d 507, 526 (5th Cir. 2016) (quoting Atl. States Legal Found., Inc. v. Tyson Foods, Inc., 897 F.2d 1128, 1141–42 (11th Cir. 1990)). Chemours has done the opposite—instead of reducing or ceasing production to come into compliance with its permit obligations, Chemours has recently increased production by adding a new finishing line with additional PFAS discharges into the Ohio River, Ex. 4 at 21,¹¹ and intends to add yet another additional line according to its December 2024 permit application, Ex. 3 at 8. Chemours has gotten itself into this position, and “[i]t would seem elementary that a party may not claim equity in his own defaults.” Long v. Robinson, 432 F.2d 977, 981 (4th Cir. 1970). The balance of equities therefore favors Plaintiff.

D. A Preliminary Injunction Is in the Public Interest

Finally, this preliminary injunction is in the public interest. Protecting water quality is “a critical public interest that profoundly outweighs a company’s bottom line.” OVEC v. Fola Coal Co., No. 2:13-21588, 2016 WL 3190255, at *11 (S.D. W. Va. June 7, 2016) (citing Atlanta Gold Corp., 879 F. Supp. 2d at 62). Protecting human health is also undoubtedly in the public interest, and, as discussed above, HFPO-DA has dire human health consequences that downstream water systems are already grappling with. See Exs. 2, 12, 27.¹² But the “forever” nature of HFPO-DA also means that

¹¹ In December 2024, HFPO-DA concentrations at an internal monitoring point of the effluent from that new finishing line were as high as 132,000,000 ppt, which was only reduced to 25,500 ppt at another internal monitoring point after treatment with GAC. See Ex. 29 (DMRs from Outlets 118 and 108 for WV/NPDES Permit Number WV0117986).

¹² Although Little Hocking, Cincinnati, and Louisville are known to have HFPO-DA problems, at least 7 other public drinking water systems on the Ohio River between Parkersburg and Louisville are also at risk—Huntington, WV; Ashland, KY; Ironton, OH; Russell, KY; Portsmouth, OH; Maysville, KY; and Northern Kentucky Water, KY. See Ex. 11 at 27.

Chemours's violations today could also have long-term human health consequences. Thus, preliminarily enjoining Chemours's conduct will protect the public downstream of Chemours until treatment is installed.

Furthermore, when it enacted the PFAS Protection Act, the West Virginia Legislature declared that "[i]t is in the public interest for West Virginia to reduce toxic chemicals such as PFAS chemicals in drinking water supplies to protect the health of West Virginians and strengthen the state's economy." W. Va. Code § 22-11C-1(a)(11).¹³ Thus, the West Virginia Legislature has determined that reducing HFPO-DA discharges is in the public interest, both from a health and economic standpoint. That declaration is "well-nigh conclusive." Berman v. Parker, 348 U.S. 26, 32 (1954).

* * *

In sum, all four Real Truth factors support issuing preliminary injunctive relief requiring Chemours to comply with its HFPO-DA limits at Outlets 002 and 005 and eliminate its violations of West Virginia water quality standards.

IV. Only a Nominal Bond Should Be Required

Under Rule 65(c), the Court must fix a bond "in such sum as the court deems proper." The Fourth Circuit has held that a district court has discretion in setting the bond amount, and can even waive it, but "it is not free to disregard the bond requirement altogether." Pashby v. Delia, 709 F.3d 307, 332 (4th Cir. 2013). This Court has set bonds as low as \$100. Sogefi USA, Inc. v. Interplex Sunbelt, Inc., 538 F. Supp. 3d 620, 631 (S.D. W. Va. 2021) (Chambers, J.) (\$100); Ohio Valley Env't Coalition, Inc. v. U.S. Army Corps of Eng'rs, No. 3:11-cv-0149, 2011 WL 13161422, at *2 (S.D.W. Va. Mar. 9, 2011) (Chambers, J.) (\$500); OVEC v. Bulen, No. 3:03-cv-2281, Dkt. No. 39 (S.D. W. Va. Apr. 6, 2004) (Goodwin, J.) (\$100). And just last week the U.S. District Court for the District of

¹³ The PFAS Protection Act defines "PFAS" to include HFPO-DA, id. § 22-11C-1(a)(1), and explains that PFAS are "known to cause . . . adverse health effects," id. § 22-11C-1(a)(5).

Maryland “set a nominal bond of zero dollars under Rule 65(c).” Nat’l Ass’n of Diversity Officers in Higher Educ. v. Trump, No. 1:25-cv-00333-ABA, 2025 WL 573764, at *29 (D. Md. Feb. 21, 2025).

Congress empowered the public to enforce NPDES permits through injunctive relief. 33 U.S.C. § 1365(a). Placing a hurdle in the form of a more-than-nominal bond to equitable relief in such cases would be contrary to the public interest. See Moltan Co. v. Eagle-Picher Indus., Inc., 55 F.3d 1171, 1176 (6th Cir. 1995), cited in Pashby, 709 F.3d at 332; Div. No. 1, Detroit, Bhd. of Locomotive Eng’rs v. Consol. Rail Corp., 844 F.2d 1218, 1227 (6th Cir. 1988). Because Plaintiff brings this case in the public interest and to further Congress’s express goals, the Court should require only a nominal bond of no more than \$500.

CONCLUSION

For these reasons, the Court should issue a preliminary injunction that prohibits Chemours from violating its permit limits for HFPO-DA at Outlets 002 and 005 by any means necessary, including (1) reducing the production that generates process wastewater containing HFPO-DA, and/or (2) sending that wastewater off-site for disposal by deep-well injection or incineration.

DATED: February 25, 2025

Respectfully submitted,

/s/ Derek Teaney

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF WEST VIRGINIA
AT CHARLESTON

WEST VIRGINIA RIVERS
COALITION, INC.,

Plaintiff,

v.

Civil Action No. 2:24-cv-00701

THE CHEMOURS COMPANY FC, LLC,

Defendant.

CERTIFICATE OF SERVICE

I, Derek O. Teaney, do hereby certify that, on February 25, 2025, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF filing system, which will notify the following participants:

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**Chemours' Response in Opposition to Plaintiff's
Motion for a Preliminary Injunction**

March 11, 2025

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
AT CHARLESTON**

WEST VIRGINIA RIVERS COALITION,
INC.,

Plaintiff,

v.

THE CHEMOURS COMPANY FC, LLC,

Defendant.

Civil Action No. 2:24-cv-00701

**DEFENDANT’S RESPONSE IN OPPOSITION TO PLAINTIFF’S MOTION FOR A
PRELIMINARY INJUNCTION**

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Defendant The Chemours Company FC, LLC (“Chemours”) submits this Memorandum of Law in opposition to West Virginia Rivers Coalition’s Motion for a Preliminary Injunction. Also submitted herewith are the Declarations of Catherine Boston, Andrew Hartten, James Hollingsworth, and Katelyn R. Walck. Chemours respectfully requests that the Court deny Plaintiff’s motion.

INTRODUCTION

With speculative assertions of harms that do not exist, Plaintiff seeks extraordinary relief that would dramatically undermine Chemours’ integral role in the national and global supply chain. Yes, Chemours has had exceedances of its permit discharge limits for HFPO-DA, a PFAS, primarily during wet weather conditions. *But* three overarching points bear special emphasis:

- Chemours has been working—and will continue to work—with its regulators, the Environmental Protection Agency (“EPA”) and the West Virginia Department of Environmental Protection (“WVDEP”), neither of which has sought emergency relief, to address these permit exceedances. Most importantly, Chemours consented to a 2023 EPA Administrative Order on Consent (“AOC”), which is designed to address, and is addressing, the precise exceedances that Plaintiff complains about. An application for a new water discharge permit, which will achieve further HFPO-DA reductions, is pending before and being actively processed by WVDEP.
- *Second*, recent sampling data show that the concentration of HFPO-DA is at indisputably safe levels in the Ohio River and in downstream providers’ treated water. Plaintiff’s member who is relied upon for associational standing gets her drinking water not from the Ohio River but from a groundwater-sourced public water system that already has treatment in place, provided by Chemours, which delivers safe, clean water.

- *Third*, Plaintiff’s motion makes clear that the fundamental reason Plaintiff believes an emergency now exists—that is, the reason Plaintiff is asking this Court to short-circuit the ongoing administrative process despite the fact that the same environmental conditions existed a year ago—is the new Federal Administration. ECF No. 8 at 8 (“the Trump EPA froze all environmental enforcement actions”). A change in Administration does not create an emergency for Plaintiff’s purpose in this matter or change Chemours’ commitment to completing the AOC.

Turning to the specifics of the relief being sought, a preliminary injunction is inappropriate for a number of reasons.

First, Plaintiff does not have standing because the relief it seeks will not remedy its alleged injury. The sought-after injunction applies to Outlets 002 and 005, channels that discharge wastewater from Washington Works to the Ohio River. But, as referenced above, Plaintiff’s member Charlise Robinson (relied on by Plaintiff to establish standing) gets her household water *not from the Ohio River* but from the Lubeck Public Services District—which (i) uses groundwater wells and (ii) is already utilizing filtration provided by Chemours which treats for PFAS all the water it delivers to Ms. Robinson.

Second, Plaintiff will not suffer irreparable harm without an injunction. The three-year delay between Chemours’ first permit violation and Plaintiff’s preliminary-injunction motion is telling. Moreover, EPA promulgated in 2024 a Maximum Contaminant Level (“MCL”) for HFPO-DA under the Safe Drinking Water Act. That limit is intended to protect public health. Crucially, HFPO-DA levels in Plaintiff’s member’s water supply are *under EPA’s Maximum Contaminant Level*. Additionally, Chemours has actively been working for six years to reduce HFPO-DA in its effluent and to resolve these issues. The company has installed abatement projects, one of which

was just completed in February 2025. And as part of the 2023 AOC with EPA that Chemours voluntarily agreed to, the company has proposed a compliance plan with further concrete abatement projects that would, once approved, bring the company into compliance, potentially in less than two years.

Third, an injunction works against the public interest. Washington Works is the workplace of hundreds of employees and contractors. One form of Plaintiff's requested relief, reducing production (which Plaintiff has not demonstrated would achieve permit limits in wet weather), would scale down Washington Works's operations, disrupting workers' livelihoods. Scaled-down operations would also damage the medical-device, pharmaceutical, semiconductor, communications, and electric-vehicle sectors, which rely on Chemours to supply essential materials used to produce crucial products for those industries. Those products make modern society—from open heart surgery to electric vehicles—possible. The other form of Plaintiff's desired relief, massive off-site disposal of wastewater via a continuous supply of tanker trucks or rail cars moving around the country, is simply impossible. The fact that Plaintiff suggests such a fanciful option is a reminder of why evaluation of compliance options should be left to regulators.

Fourth, for the same reasons that underlie the irreparable-harm and public-interest prongs, the balance of equities strongly weighs in Chemours' favor. One of Plaintiff's proposed solutions would have massive economic impact on Chemours, the community surrounding Washington Works, and the national and global economies more generally. The other is simply not possible. Neither of Plaintiff's proposals would address the reality that Chemours' HFPO-DA permit exceedances from Outlets 002 and 005 are heavily correlated with precipitation events. In contrast, Chemours' plan to come into compliance pursuant to its AOC with EPA will address Plaintiff's concern in an orderly, achievable manner.

Finally, Plaintiff has failed to show likelihood of success on the merits. Plaintiff must show that it is likely to succeed in pursuing its sought-after relief in its Complaint, including showing standing and entitlement to a permanent injunction. *See* Compl. at 11 (“Relief Requested”). As noted, Chemours and EPA are already administering an AOC process to resolve permit exceedances. Plaintiff has failed to explain why it is likely to receive a permanent injunction given this AOC process and Chemours’ ongoing efforts to reduce HFPO-DA concentrations in discharges, including through its submitted water discharge permit revision.

BACKGROUND

Plaintiff has long known of this case’s facts and only felt that a complaint was necessary and that injunctive relief was urgent following the 2024 Presidential election. Plaintiff provided its citizen suit notice letter in April 2024. It filed its Complaint on December 5, 2024, served the Complaint on January 9, 2025, and moved for a preliminary injunction on February 25, 2025. ECF Nos. 1, 7. Plaintiff seeks declaratory and injunctive relief and civil penalties, alleging that Chemours violated the Federal Clean Water Act at its Washington Works facility. Compl. ¶ 1 (hereinafter ECF No. 1). Plaintiff principally asserts that Chemours discharged per- and polyfluoroalkyl substances (“PFAS”) from four Washington Works outlets to the Ohio River in excess of limits in Chemours’ National Pollutant Discharge Elimination System (“NPDES”) Permit effective September 2018. ECF No. 1 ¶¶ 26, 31–35; ECF No. 7-6. The Permit sets effluent limits on two PFAS compounds, PFOA and HFPO-DA, which progressively become more stringent under a prescribed schedule. *See* ECF No. 7-6 at 7, 12, 16–17, 21–22, 25. Plaintiff alleges that Chemours first exceeded the most stringent HFPO-DA and PFOA limits—which became effective in January 2022—in February 2022 and July 2022, respectively. ECF No. 1 ¶ 35; ECF No. 1-1 at 2–3.

Plaintiff now claims that it will suffer irreparable harm unless the Court issues a preliminary injunction “prohibit[ing] Chemours from violating its permit limits for HFPO-DA at Outlets 002 and 005.” ECF No. 8 at 20. According to Plaintiff, Chemours must either (1) scale down operations that generate process wastewater containing HFPO-DA or (2) transport the wastewater away from the site for disposal. *Id.*

Chemours Identified the Possible Compliance Issues and Has Consistently Worked to Meet the 2018 NPDES Permit’s PFAS Limits

Chemours’ predecessor, DuPont, voluntarily transitioned in 2013 from the use of PFOA to HFPO-DA as a polymer processing aid at Washington Works under a Voluntary Stewardship Program organized by EPA to reduce PFOA usage. Ex. 1, Hollingsworth Decl. ¶ 11. HFPO-DA was chosen because it has a more favorable toxicological profile than PFOA. *Id.* at ¶ 10. EPA approved the manufacture of HFPO-DA in 2009 under the Toxic Substances Control Act. *Id.* When it switched from using PFOA to HFPO-DA, DuPont entered into a Consent Order with WVDEP. The Consent Order imposed a limit on the amount of HFPO-DA that Washington Works could discharge to the Ohio River. DuPont and Chemours complied with that limit.

Complying with the 2018 Permit’s much lower HFPO-DA limits has proven to be technologically challenging, particularly for stormwater. The most stringent limits took effect January 1, 2022. *See, e.g.*, Ex. 2, Nov. 2021 Email to K. Emery. The limits prohibit Chemours from discharging effluent with HFPO-DA concentrations greater than 2.3 micrograms per liter from each of Outlets 002 and 005 on any given day. *See* ECF No. 7-6 at 12, 22. The new limits are a significant decrease from the original allowable concentrations. Prior to January 2022, Chemours’ daily HFPO-DA limit for Outlet 002 was 32 micrograms per liter, 14 times greater

than the new benchmark. *Id.* at 12. Chemours' daily HFPO-DA limit for Outlet 005 was 43 micrograms per liter, 18 times greater than the new limit. *Id.* at 22.

Chemours has been proactive in working to meet the new limits. The company promptly identified PFAS abatement projects after issuance of the Permit, proposing treatment systems for Outlets 001, 002, 003, 005, and 006. Ex. 1, ¶ 15. Within weeks of WVDEP issuing the 2018 Permit, Chemours hired consultant AECOM to identify abatement projects to meet the effluent limits. *Id.* at ¶ 16. By 2019, Chemours started designing abatement projects based on AECOM's advice. *Id.* at ¶ 17. By 2020, Chemours undertook a formal progress review and determined based on sampling results to stop one project and move forward with five projects. *Id.* at ¶ 18. Chemours regularly provided status updates to WVDEP summarizing the abatement efforts. *Id.* at ¶ 19. By the end of 2020, the company estimated that it would achieve compliance with the upcoming PFOA limits. *Id.* at ¶ 20. Less certain was compliance, specifically during wet weather, with the HFPO-DA limits. *Id.* at ¶ 21.

Chemours notified WVDEP in April 2021 that complying with the HFPO-DA limits during stormwater events by September 2021 (the original effective date for the most stringent limits) would not be attainable. *Id.* at ¶ 22. Chemours sought a compliance-deadline extension. *Id.* at ¶ 21. The company further explained that the COVID-19 pandemic had caused unexpected delays from equipment suppliers beyond Chemours' control. *Id.* at ¶¶ 21, 23–24. In light of such challenges, Chemours received a deadline extension to December 31, 2021. *Id.* at ¶ 26.

Meanwhile, Chemours continued its abatement efforts, *id.* at ¶ 27, meeting with WVDEP and EPA in September, October, and December 2021. The company reiterated that it needed additional time beyond December 31st to implement HFPO-DA abatement systems and to meet the stringent HFPO-DA restrictions. Ex. 3, Sept. 2021 "Chemours Washington Works NPDES

Permit” Presentation at 5. Air deposition, the settling of HFPO-DA emissions to the ground, posed challenges in wet weather. Ex. 1, ¶ 25. Chemours assured the agencies that it recognized—and was addressing—challenges from air deposition and wet weather by installing tertiary air emissions abatement systems to further reduce air deposition. Ex. 3 at 5. Without a compliance-deadline extension, Chemours forecasted that it would violate the HFPO-DA limits taking effect January 1, 2022, despite the company’s best efforts to come into compliance. Ex. 1, ¶ 30.

As Chemours anticipated, discharges from Washington Works first exceeded the new HFPO-DA Permit limits in early February 2022 after days of rain and snowmelt. Ex. 4, Feb. 2022 Letter to WVDEP Regarding Exceedances. The company promptly informed the appropriate government officials about the exceedances. *Id.*

After continued discussion in 2022 and early 2023, EPA and Chemours reached agreement in April 2023 on the AOC “to address the violations.” ECF No. 7-18 at 11. The AOC prescribes a process for Chemours to come into compliance with the Clean Water Act and the Permit. *Id.* at 8–10. It requires Chemours to (1) implement a sampling plan characterizing PFAS in Washington Works’s stormwater and wastewater (which is completed), (2) submit to EPA an Alternatives Analysis and Implementation Plan (“Plan”) within 120 days to ensure discharges stay within Permit limits, and (3) implement the plan under a set schedule once EPA approves it. *Id.*

Chemours submitted its Plan to EPA in August 2023 with its proposal for coming into compliance with the Permit. ECF No. 7-16. There was no formal response from EPA until December 24, 2024, when it, in consultation with WVDEP, conditionally approved parts of the Plan and rejected other parts. Ex. 1, ¶ 34. The parts rejected were based on proposed management of sudden volumes of contaminated stormwater through infiltration into a hydrologically contained groundwater aquifer followed by subsequent treatment. ECF No. 7-19. EPA requested a revised

plan within 30 days. *Id.* at 3. Accordingly, Chemours submitted a revised Plan in January 2025, which did not rely on groundwater infiltration. Ex. 5, Revised Plan Letter. Chemours also sent a follow-up letter to EPA on March 4, 2025, asking for EPA’s expedited approval of Chemours’ revised Plan. Ex. 1, ¶ 34. Chemours committed to begin work promptly upon EPA approval of the Plan, expecting to finish within two years. *Id.* at ¶ 34, Attachment A (“We ask that you promptly approve our submission . . . so that Chemours, WVDEP and EPA can move forward expeditiously with . . . implementing the projects identified in the Plan”). The company now awaits EPA’s response. EPA has expressed an intent to finalize the Plan quickly, stating in its December 2024 letter that it wishes “[t]o avoid continual revisions of the Plan.” ECF No. 7-19 at 3. The Plan’s proposed projects are expected to bring the company into compliance with the 2018 Permit and to reduce HFPO-DA levels even further than currently required. *See* Ex. 5.

While Chemours has been actively working to resolve the exceedances with EPA, it also has submitted to WVDEP a NPDES Permit renewal application. Ex. 1, ¶ 36. The company submitted the initial application on February 24, 2023 and revised the application in December 2024 to align it with the proposed Plan. *See* ECF Nos. 7-3, 7-4.

Chemours’ efforts over the last six years have resulted in new abatement technology installed at Washington Works. Recently, Chemours received WVDEP’s authorization to implement the B-22 Sump Treatment Project, a project that further reduces HFPO-DA concentrations in Outfall 005 discharges. Ex. 6, May 2024 Consent Order. The B-22 Sump Treatment Project became operational in February 2025. Ex. 1, ¶ 35.

ARGUMENT

I. Plaintiff Does Not Have Article III Standing Because an Injunction Would Not Redress Plaintiff’s Alleged Injury.

Plaintiff is not properly before the Court. Sampling analyses of water downstream of

Washington Works show that no harm is occurring, despite Plaintiff's insistence that imminent injury will befall it without an injunction. *Compare* Ex. 7, Boston Decl. ¶¶ 12, 20–22, 27 with ECF No. 8. Moreover, the desired relief—which pertains specifically to Outlets 002 and 005—will not cure Plaintiff's speculative injury. ECF No. 8 at 20. The water provider noted in Plaintiff's motion gets its water from the groundwater, not directly from the Ohio River where Outlets 002 and 005 discharge effluent. Ex. 8, Hartten Decl. ¶ 18; ECF No. 1 at ¶¶ 32–33.

Under Article III of the Constitution, a plaintiff must establish standing to sue for each form of relief sought. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560–61 (1992); *Jonathan R. v. Morrissey*, No. 3:19-cv-00710, 2025 WL 655811, at *2 (S.D.W. Va. Feb. 28, 2025). Plaintiff is an organization, which may have standing to sue based on injury to itself or as the representative of its members who have been harmed. *Friends of the Earth, Inc. v. Gaston Copper Recycling Corp.*, 204 F.3d 149, 155 (4th Cir. 2000). Here, Plaintiff purports to represent its members. ECF No. 8 at 8–9. An organization has representational standing when, *inter alia*, at least one of its members has individual Article III standing. *Friends of the Earth, Inc. v. Laidlaw Env't Servs., Inc.*, 528 U.S. 167, 181 (2000). To have such standing, a member must show that she “suffered or [is] imminently threatened with a concrete and particularized ‘injury in fact’ that is fairly traceable to the challenged action of the defendant and likely to be redressed by a favorable judicial decision.” *Lexmark Int’l, Inc. v. Static Control Components, Inc.*, 572 U.S. 118, 125 (2014).

The redressability element requires that it be likely, not merely speculative, that a favorable decision will remedy the alleged injury. *Lujan*, 504 U.S. at 561. “To determine whether an injury is redressable, a court will consider the relationship between ‘the judicial relief requested’ and the ‘injury’ suffered.” *California v. Texas*, 593 U.S. 659, 671 (2021). Notably, “[i]n environmental cases, the ‘relevant showing for purposes of Article III standing . . . is not injury to the environment

but injury to the plaintiff.” *Ohio Valley Env’t Coal., Inc. v. Marfork Coal Co.*, 966 F. Supp. 2d 667, 672–73 (S.D.W. Va. 2013).

Lastly, Plaintiff cannot rely on statutory standing alone to bypass the Article III standing requirement. The Supreme Court abrogated the view that the violation of a statutory right “automatically satisfies the injury-in-fact requirement whenever a statute . . . authorize[s] [a] person to sue to vindicate that right. Article III standing requires a concrete injury even in the context of a statutory violation.” *Spokeo, Inc. v. Robins*, 578 U.S. 330, 341 (2016).

Here, Plaintiff has moved for a preliminary injunction as a representative of its member, Charlise Robinson, and must show that Ms. Robinson’s alleged injury will likely be redressed by the sought-after relief. ECF No. 8 at 8–9; *Lujan*, 504 U.S. at 561. Ms. Robinson’s alleged injury is fear of PFAS exposure from her household water. ECF No. 8 at 8–9. But Ms. Robinson gets her water from the Lubeck Public Services District (“Lubeck”), which in turn gets its water from groundwater, not directly from the Ohio River where Chemours discharges its effluent. ECF No. 8 at 8; Ex. 8, ¶ 18 (referring to the “Lubeck well field”). Moreover, Lubeck already has a granular activated carbon filtration system to filter out PFAS. Ex. 8, ¶¶ 10, 24, 27. Accordingly, Ms. Robinson suffers no injury from direct discharge from the site’s outlets, and any alleged harm is not redressable by the injunction sought.¹

To elaborate, although river water containing Washington Works’s discharges passes along the river edge near Lubeck’s well field, the groundwater supplying Lubeck’s system contains historical PFAS contamination presumably from permitted site emissions as well as other sources

¹ If Ms. Robinson alleges a medical condition resulting from past PFOA exposure, she can seek redress under the *Leach* Settlement Agreement, notwithstanding that the multi-district litigation established for such claims was recently dissolved. ECF No. 7-20 at ¶ 4; *In re: E.I. du Pont de Nemours & Co. C-8 Pers. Inj. Litig.*, No. 2:13-md-2433, 2025 WL 474225 (S.D. Ohio Feb. 12, 2025).

to the Ohio River. *Id.* at ¶ 18. Thus, PFAS compounds, including PFOA and HFPO-DA, reach the groundwater supplying Lubeck slowly over time as they migrate through soil. *Id.*

Because of that existing contamination, DuPont entered into a settlement in 2005 that required it to install a granular activated carbon treatment system at Lubeck. *Id.* at ¶ 10. The treatment system became operational in June 2007, and pursuant to an agreement with Lubeck, Chemours, as DuPont’s successor, has monitored and maintained the filtration system monthly. *Id.* at ¶¶ 24, 27. When Chemours monitors the system, it analyzes samples for 18 PFAS, including HFPO-DA. *Id.* at ¶ 28. Based on 2023 and 2024 samples, Lubeck’s treated water has annual average HFPO-DA concentrations well below EPA’s 10-nanograms-per-liter MCL for HFPO-DA. *See* Ex. 7, ¶¶ 20, 27; 40 C.F.R. § 141.61(c)(2). The MCL is a conservative limit designed to protect public health. Ex. 7, ¶ 15. (For a full explanation of why there are no potential adverse human health effects from HFPO-DA in Lubeck’s system, see generally Exhibit 7, a toxicology analysis from Catherine Boston, a board-certified toxicologist with over fifteen years of experience.²)

Plaintiff has thus failed to show injury in fact and redressability and, by extension, standing to seek a preliminary injunction.

II. A Preliminary Injunction Is Not Appropriate.

A. Legal Standard – Preliminary Injunctions

A preliminary injunction is an extraordinary remedy. *Di Biase v. SPX Corp.*, 872 F.3d 224, 230 (4th Cir. 2017). The burden on the party seeking a preliminary injunction is “exceedingly high.” *Mahmoud v. McKnight*, 102 F.4th 191, 203 (4th Cir. 2024). To obtain a preliminary injunction, Plaintiff must show that (1) it is likely to succeed on the merits; (2) it is likely to suffer

² Chemours acknowledges that, in the Spring of 2024, it discovered a valve malfunction in the Lubeck filtration system, which it promptly fixed and now systematically monitors. Ex. 8, ¶¶ 32–38. The short-term spike in HFPO-DA was not of a sufficient duration or magnitude to result in a risk to human health. Ex. 7, ¶¶ 23–27.

irreparable harm if preliminary relief is not granted; (3) the balance of equities favors it; and (4) an injunction is in the public interest. *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). Each of the *Winter* factors must be established independently. *Pashby v. Delia*, 709 F.3d 307, 321 (4th Cir. 2013); *USA Farm Labor, Inc. v. Micone*, No. 23-2108, 2025 WL 586339, at *4 (4th Cir. Feb. 24, 2025) (same). Plaintiff’s failure to satisfy any one of the factors permits the Court to deny an injunction without evaluating the remaining factors. *Vitkus v. Blinken*, 79 F.4th 352, 361 (4th Cir. 2023). Plaintiff has failed to demonstrate all four prongs.

B. Irreparable Harm Will Not Befall Plaintiff in the Absence of a Preliminary Injunction Because Water Samples Already Show No Harm.

Plaintiff attempts to skirt its obligation to show that it will suffer irreparable harm without an injunction and suggests that showing injury to “the environment” and to “the general public interest” suffices to meet its irreparable-harm burden. ECF No. 8 at 13. Plaintiff is incorrect. *See Courtland Co. v. Union Carbide Corp.*, No. 2:21-cv-00101, 2021 WL 1255416, at *24–25 (S.D.W. Va. Apr. 5, 2021) (holding that a showing of environmental harm, without a corresponding showing “that the plaintiff itself will be irreparably harmed,” is not enough to secure a preliminary injunction). Thus, Plaintiff must specifically show irreparable harm to itself. The closest Plaintiff gets is a statement about one of its members. Plaintiff states, “violations of th[e] [permit] limit [for HFPO-DA] will cause irreparable harm to the designated use of the Ohio River as a water source for Plaintiff’s member.” ECF No. 8 at 14–15. Because the only member that Plaintiff names in its Memorandum of Law is Charlise Robinson, *see* ECF No. 8, Chemours assumes that the reference to “Plaintiff’s member” is a reference to Ms. Robinson. For several reasons, Plaintiff has failed to show that Ms. Robinson, and the West Virginia Rivers Coalition more broadly, will suffer irreparable harm without injunctive relief.

First, Chemours already monitors and maintains granular activated carbon filtration systems at Lubeck, Ms. Robinson’s water supplier. Ex. 8, ¶ 24. Samples of Lubeck’s treated water from 2023 and 2024 show the water’s annual average HFPO-DA concentrations are well below 10 nanograms per liter. Ex. 7, ¶¶ 20, 27. The MCL for HFPO-DA in treated water that EPA established in 2024 for protecting human health is 10 nanograms per liter (measured in annual averages). *Id.* at ¶¶ 15, 17; 40 C.F.R. § 141.61(c)(2). Plaintiff, by reference to Ms. Robinson, is therefore claiming that it will suffer irreparable harm without immediate injunctive relief *even though Ms. Robinson’s treated water is already under the 10-nanograms-per-liter limit intended to protect public health*. Moreover, when EPA established the HFPO-DA level in 2024, it gave public water systems five years—until 2029—to meet the limit. Far from imposing irreparable harm, the water that Ms. Robinson drinks is currently compliant with contaminant levels that do not become legally enforceable for another *four years*.

Second, the annual average concentration of HFPO-DA in the Ohio River’s water just downstream of Washington Works, too, is below the MCL—at somewhere around 1.9 nanograms per liter to 3.1 nanograms per liter. Ex. 7, ¶¶ 21–22. Accordingly, the evidence refutes Plaintiff’s contention that Chemours’ discharges are endangering the Ohio River as a drinking water source.

Third, Chemours, EPA, and WVDEP are, and have been, working to reduce HFPO-DA concentrations in Washington Works’s effluent. Ex. 1, ¶¶ 15–19, 22, 27–29, 32–36. Most recently, the B-22 Sump Treatment Project became operational in February 2025. *Id.* at ¶ 35. Additionally, Chemours, EPA, and WVDEP are advancing the Plan required under the AOC between Chemours and EPA; the Plan’s project proposals will bring the company into compliance with its 2018 Permit limits. *Id.* at ¶¶ 32–34. In short, various projects and processes are already underway to address the Permit exceedances that occur primarily during wet weather.

Fourth, Plaintiff waited years to bring this action and to move for an injunction, which undermines its claim that irreparable harm will befall Plaintiff without immediate relief. Plaintiff alleges that Chemours first exceeded the most stringent HFPO-DA Permit limits in February 2022. ECF No. 1 ¶ 35; ECF No. 1-1 at 2. Plaintiff then waited 34 months—nearly three years—to file its Complaint. ECF No. 1. Plaintiff then waited two and a half months to file its preliminary-injunction motion. ECF No. 7; *see Mary Ferrell Found., Inc. v. Biden*, No. 22-cv-06176-RS, 2023 WL 4551066, at *10 (N.D. Cal. July 14, 2023) (denying preliminary-injunction motion where movant “waited years . . . to file suit and did not move for a preliminary injunction until several months later”). Plaintiff admits that a primary motivation for bringing this action is not any alleged environmental harm, but a speculative fear that the new Administration will not resolve Chemours’ exceedances. *See* ECF No. 8 at 8. Plaintiff’s fear is not only an insufficient basis for showing irreparable harm, but is also baseless given that Chemours is continuing to work with EPA and WVDEP to install projects that will achieve compliance. *See* Ex. 1, ¶ 34 (Attachment A).

Plaintiff additionally refers to two public water systems downstream of Washington Works: the Greater Cincinnati Water Works and a Louisville, Kentucky system. ECF No. 8 at 4–5, 15. Plaintiff does not rely on the Cincinnati or Louisville systems to establish standing. *See generally id.* Instead, Plaintiff asserts that the Cincinnati and Louisville systems have detected increased HFPO-DA levels in recent months, levels that they allege “correspond to” Washington Work’s HFPO-DA discharges. *Id.* at 4–5.

Cincinnati and Louisville are urban areas hundreds of miles downstream from Washington Works, as Plaintiff concedes. *Id.* Despite the 270-mile and 400-mile gaps between Washington Works and these systems, Plaintiff does not offer a fate-and-transport expert or analysis that explains how, despite the long distance, there would seem to be no dilution, but rather

concentration, of HFPO-DA in the River. *See generally id.* In other words, Plaintiff offers no explanation other than conjecture correlating Washington Works’s wastewater discharges and the systems’ HFPO-DA detections hundreds of miles downriver.

Furthermore, both Cincinnati and Louisville have equipment that removes contaminants, including PFAS, to levels below EPA’s HFPO-DA MCL. Cincinnati’s 2024 Water Quality Report shows HFPO-DA levels in finished water between non-detect and 6 nanograms per liter. *See* <https://www.cincinnati-oh.gov/water/water-quality-and-treatment/water-quality-reports/2024-water-quality-report-updated-march-2025/> at 7–8. Similarly, Louisville’s communications to customers state that “current research shows levels of PFAS that are below the EPA’s proposed regulation.” *See* <https://louisvillewater.com/your-water/water-quality/pfas/>. Finally, the Cincinnati and Louisville systems, and the other drinking water systems along the Ohio River that Plaintiff mentions in footnote 12 of its motion, are members of a defined class of nationwide water utilities that settled drinking water-related claims against Chemours as well as other co-defendants. This settlement provides payment for future water treatment costs at eligible systems unless the individual system chose to opt out. *See Aqueous Film-Forming Foam (AFFF) Prods. Liab. Litig. (MDL 2873)*, Master Dkt. No. 2:18-MN-2873-RMG, 2024 WL 489326 (D.S.C. Feb. 8, 2024) (discussing settlement agreements in the MDL).

C. A Preliminary Injunction Is Not in the Public Interest Because an Injunction Will Negatively Affect Washington Works’s Employees, Customers, and the Public.

The injunction sought is not in the public interest for multiple reasons. Plaintiff proposes two forms of injunctive relief: (1) “reducing the production that generates process wastewater containing HFPO-DA” or (2) “sending that wastewater off-site for disposal.” ECF No. 8 at 20.

The second proposal is simply not feasible. Ex. 1, ¶¶ 80–84. Plaintiff compares apples to oranges, suggesting that Chemours could transport wastewater off-site because the company has

already done so for process wastewater at its North Carolina-based Fayetteville Works facility. ECF No. 8 at 7. When Chemours began transporting process wastewater offsite from Fayetteville Works, it needed about 10 trucks daily, from dawn to dusk, to haul the process wastewater to a deep well in Texas. *See* Ex. 1, ¶ 84. In contrast, Washington Works would require more than 884 trucks or 221 rail cars to haul its approximately 4.6 million gallons of process wastewater generated each day. *Id.* at ¶ 83. The trucks and rail cars would need to move the wastewater to an off-site facility, likely at great distance, taking days to return. *See id.* at ¶¶ 81–84. Washington Works is not constructed to allow for such processing, and there would be neither enough trucks and rail cars available nor hours in the day to undertake the project. *Id.* Putting aside the infeasibility of hiring thousands of trucks or hundreds of rail cars daily, the traffic impacts—and air-pollution impacts from vehicle emissions—would be substantial. *See Coal. to March on the RNC v. City of Milwaukee*, No. 24-cv-0704-bhl, 2024 WL 3358149, at *21 (E.D. Wis. July 8, 2024) (denying a preliminary injunction in part because an injunction would put at risk “orderly traffic regulation”).

As off-site disposal is not feasible, the only remaining proposal proffered by Plaintiff is reducing production. *See* ECF No. 8 at 20. Washington Works is the largest chemical manufacturing facility in West Virginia, employing over 400 employees, and 148 contractors, in its fluoropolymer processes alone. *See* Ex. 1, ¶ 86. Scaling down production will reduce the demand for labor, thus reducing jobs. *Id.* Substantially trimming such a large facility’s operations could harm Wood County and the local community’s interests in maintaining employment and preserving job opportunities. *See Micone*, 2025 WL 586339, at *4–5 (affirming the denial of a preliminary injunction that, if granted, would have affected workers’ wages).

Finally, Washington Works is not only important to Wood County, West Virginia; it also makes products that are critical to the United States. The processing units at issue—the PFA Line

1, FEP, PTFE Fine Powder, and PTFE Granular operations—create vital products for the medical-device, electric-vehicle, and semiconductor-manufacturing sectors, to name a few. Ex. 1, ¶¶ 38–79. Washington Works is the only facility in the country that produces Perfluoroalkoxy (“PFA”), a product needed for chip fabrication at all semiconductor manufacturing facilities. Ex. 9, Walck Decl. ¶¶ 9–11. The domestic semiconductor industry relies on the facility’s PFA production. *Id.* at ¶ 16. An injunction affecting Outlets 002 and 005 would disrupt the PFA operations; a shutdown of those operations would cause an immediate shortage of multiple kilotons of PFA per year in the semiconductor market—impacting national security and the economy. *Id.* at ¶¶ 11, 17. Washington Works also produces FEP, a material inserted into medical devices including pharmaceutical stoppers, syringe plungers, and inhalers, and PTFE, which is used in medical guide catheters that are essential for performing minimally invasive surgeries. Ex. 1, ¶¶ 47–48, 54–56, 58–60, 67–69. Injunctive relief will inevitably disrupt the supply of such products, putting at risk people who need FEP-equipped devices for their health or would otherwise need to undergo riskier surgical procedures should PTFE-coated guide catheters become less accessible. *Id.* at ¶¶ 58–60, 69; *See Hybritech Inc. v. Abbott Lab’ys*, No. CV 86-7461/AK (PX), 1987 WL 123997, at *21 (C.D. Cal. July 14, 1987) (noting that an injunction impairing the supply of medical test kits would not be in the public interest).

Plaintiff omits key considerations in making its public-interest argument. An injunction, Plaintiff argues, would serve the public interest by “[p]rotecting water quality,” “[p]rotecting human health,” and “strengthen[ing] the state’s economy.” ECF No. 8 at 18–19. Not only is there no threat to human health given that the levels in any drinking water are below the MCLs, scaling down operations at the State’s largest chemical manufacturing plant is likely to harm the State’s

economy: reduced operations at the facility means reduced labor demand, which in turn means fewer jobs and overall less spending in the State. *See, e.g.*, Ex. 9, ¶ 19; Ex. 1, ¶ 86.

D. The Balance of the Equities Weighs in Chemours' Favor Because Plaintiff Faces No Harm in the Absence of an Injunction, and an Injunction Would Burden Chemours, Its Employees, and Its Customers.

The harm to Chemours from a preliminary injunction outweighs any harm to Plaintiff from the absence of an injunction—especially in light of the demonstrated lack of harm here. *See* Section II.B. above. To evaluate the balance of the equities, courts weigh potential harm to the movant in the absence of injunctive relief against potential harm to the nonmovant from an injunction. *See Mountain Valley Pipeline, LLC v. W. Pocahontas Props. Ltd. P'ship*, 918 F.3d 353, 366 (4th Cir. 2019); *Courtland Co.*, 2021 WL 1255416, at *26 (same).

In *Courtland*, the balance-of-equities analysis weighed in the nonmovant's favor. *Id.* at *27. There, a property owner brought a Clean Water Act citizen suit against its neighbor, alleging that the neighbor illegally discharged contaminants to navigable waters. *Id.* at *1–3. The claimant moved for a temporary restraining order pertaining to the discharges. *Id.* at *6. The court reasoned that, on one hand, the movant's property allegedly contained “somewhere between 15 and 70 years' worth” of contamination from the neighbor's discharges, so any additional harm to the movant in the absence of temporary relief would “seem[] to pale in comparison” and would be “difficult to estimate.” *Id.* at *27. On the other hand, the movant's desired restraining order would have forced the neighbor to swiftly eliminate its discharges, despite the fact that “developing . . . a comprehensive study and plan to eliminate and remediate such discharges would require much more time.” *Id.* The equities, this Court held, tipped in the nonmovant's favor. *Id.*

Here, Plaintiff's insistence that immediate injunctive relief is warranted is not supported: sampling data show that the Lubeck system's treated water (which is treated by Chemours) and the Ohio River's water just downstream of Washington Works are both already under the EPA's

10-nanograms-per-liter MCL for HFPO-DA. Ex. 7, ¶¶ 20–22, 27. Therefore, in the absence of a preliminary injunction, Plaintiff (i) will be left with treated water for its member that is already under EPA’s HFPO-DA MCL from groundwater and (ii) can expect that the EPA-led AOC process will result in even further reductions in HFPO-DA discharges.

Harm in the event of an injunction to Chemours, its employees and contractors, the community surrounding Washington Works, and the world more generally outweighs any harm to Plaintiff in the absence of an injunction. If the Court granted Plaintiff’s desired relief and required scaling down of Washington Works’s operations, even assuming such scaling down would result in Permit compliance,³ Chemours and its employees, contractors, customers, and other stakeholders would suffer multiple types of loss, as discussed in the public-interest section above. Plaintiff incorrectly argues that the Court cannot consider Chemours’ economic harm in the balance-of-the-equities analysis. ECF No. 8 at 17. It provides no support for the proposition that regulations that bar a defense in an enforcement action also prevent the Court from considering economic loss to Chemours in evaluating a preliminary-injunction motion that, under applicable law, requires the Court to balance the equities.

E. Plaintiff Has Failed to Show Likelihood of Success on the Merits Because Permanent Injunctive Relief Is Unlikely Where Chemours, EPA, and WVDEP Are Already Addressing Exceedances.

To analyze success on the merits, courts often evaluate movants’ complaints holistically, looking not only at asserted causes of action but also at requested relief. *See, e.g., GMRI, Inc. v. Garrett*, No. 3:14–0866, 2014 WL 1351126, at *2 (S.D.W. Va. Apr. 4, 2014) (“The Court finds that GMRI is likely to succeed on the merits of its Complaint—that is, GMRI is likely to succeed

³ While it would be reasonable to expect lower production to reduce the overall mass of discharges, Plaintiff does not explain how reducing production will result in meaningfully fewer HFPO-DA exceedances, which typically occur during wet weather unrelated to production.

in obtaining declaratory and permanent injunctive relief”); *DJR Assocs., LLC v. Hammonds*, 241 F. Supp. 3d 1208, 1229 (N.D. Ala. 2017) (“ChemStation has a substantial likelihood of succeeding in obtaining permanent injunctive relief”); *Fed. Deposit Ins. Corp. v. Jackson-Shaw Partners No. 46, Ltd.*, No. CIV. 92–20556 SW, 1994 WL 695376, at *3 (N.D. Cal. Dec. 8, 1994) (“[T]he Court cannot conclude that FDIC is likely to succeed in obtaining a permanent injunction”).

Here, Plaintiff misses the mark when it argues that it “is all-but-certain to succeed on its claim that Chemours’s HFPO-DA exceedances are violations of its NPDES permit and the CWA.” ECF No. 8 at 12. Under the merits analysis from cases like *GMRI*, Plaintiff must additionally show likelihood of success in securing desired relief, particularly the injunctive relief sought in its Complaint. *See* ECF No. 1 at 11 (“Relief Requested”). Permanent injunctive relief requires a showing of standing and irreparable harm. *Courtland Co. v. Union Carbide Corp.*, Nos. 2:19-cv-00894, 2:21-cv-00487, 2024 WL 4339600, at *21 (S.D.W. Va. Sept. 27, 2024) (noting that a Clean Water Act claimant failed to make the necessary showing for injunctive relief where “the record [wa]s devoid of any evidence that it or the public will suffer irreparable harm”). Plaintiff, as noted above, fails to show standing and harm here, particularly in light of (1) water sampling data from the Lubeck system and from the Ohio River which show low annual levels of HFPO-DA which are protective of public health according to EPA’s MCL and (2) the compliance process already established by EPA’s AOC, which is well underway. *See* the irreparable-harm analysis above in Section II.B.; *see also Jonathan R. v. Morrissey*, No. 3:19-cv-00710, 2025 WL 655811, at *2 (S.D.W. Va. Feb. 28, 2025) (declining to “assume the responsibilities of those who were elected to lead”).

CONCLUSION

For the reasons stated above, Chemours respectfully requests that the Court deny Plaintiff’s Motion for a Preliminary Injunction.

The Chemours Company FC, LLC

By: Spilman Thomas & Battle, PLLC

/s/ Clifford F. Kinney, Jr.

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**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
AT CHARLESTON**

WEST VIRGINIA RIVERS COALITION, INC.,

Plaintiff,

v.

Civil Action No. 2:24-cv-00701

THE CHEMOURS COMPANY FC, LLC,

Defendant.

CERTIFICATE OF SERVICE

I, Clifford F. Kinney, Jr., hereby certify that on March 11, 2025 I electronically filed the foregoing “**Defendant’s Response in Opposition to Plaintiff’s Motion for a Preliminary Injunction**” via the Court’s CM/ECF electronic filing system, which will send notification to all e-filing participants in this action.

/s/ Clifford F. Kinney, Jr.

Clifford F. Kinney, Jr. (WV State Bar No. 6220)

**Declaration of James Hollingsworth in
Support of Chemours' Response in Opposition
March 11, 2025**

Exhibit 1

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
AT CHARLESTON**

WEST VIRGINIA RIVERS COALITION, INC.,

Plaintiff,

v.

Civil Action No. 2:24-cv-00701

THE CHEMOURS COMPANY FC, LLC,

Defendant.

**DECLARATION OF JAMES HOLLINGSWORTH IN
SUPPORT OF CHEMOURS' RESPONSE IN OPPOSITION TO
PLAINTIFF'S MOTION FOR A PRELIMINARY INJUNCTION**

I, James Hollingsworth, do hereby certify, and affirm, based on my personal knowledge unless otherwise stated, that the following facts and things are true and correct to the best of my knowledge:

1. I am a resident of Wood County, West Virginia.
2. I am over the age of 18, and I am competent to make this Declaration.
3. I make this Declaration in support of The Chemours Company FC LLC's ("Chemours") Response in Opposition to Plaintiff's Motion for a Preliminary Injunction.
4. I have Bachelors of Science degrees in both Chemistry and Chemical Engineering from West Virginia Institute of Technology.
5. I have been the Plant Manager at the Chemours Washington Works chemical manufacturing facility in Wood County, West Virginia since June of 2022. Before that, I was Operations Director at Washington Works. As the Plant Manager and Operations Director, I am familiar with all of the commercial and operational aspects of the Washington Works.

6. Since 2015, Washington Works has been owned and operated by Chemours.

7. The West Virginia Department of Environmental Protection (“WVDEP”) issued Chemours a National Pollutant Discharge Elimination System (“NPDES”) permit in July 2018 for the company’s Washington Works facility in Wood County, West Virginia.

8. The NPDES permit took effect in September 2018.

9. The NPDES permit imposed effluent concentration limits on various compounds discharged from Washington Works, including on perfluorooctanoic Acid (“PFOA”) and hexafluoropropylene oxide dimer acid (“HFPO-DA”), both of which are per- and polyfluoroalkyl substances (“PFAS”).

10. HFPO-DA is used in Chemours’ polymerization aid technology package (commonly known as GenX). HFPO-DA is one of the most studied PFAS and GenX was formally approved by EPA under the Toxic Substances Control Act in 2009 before being put into use. There is over a decade of scientific data about HFPO-DA that confirm its safety profile. Multiple studies demonstrate that it does not bioaccumulate and, if incidental exposure were to occur, it is rapidly eliminated from the body.

11. PFOA is not used in any process utilized by Chemours. PFOA was used at Washington Works when the plant was previously operated by E.I. DuPont de Nemours & Company. Its use was terminated at Washington Works in 2013, as part of a voluntary stewardship program led by EPA to reduce or eliminate PFOA usage before Chemours became an independent company in 2015.

12. The NPDES permit issued by WVDEP in 2018 contained a compliance schedule, providing limits gradually becoming more stringent over time.

13. In particular, the permit imposed an interim maximum daily HFPO-DA concentration limit on Outlet 002 of 32 micrograms per liter. On Outlet 005, the permit imposed an interim maximum daily HFPO-DA concentration limit of 43 micrograms per liter. The interim limits applied from September 2018 to August 2021.

14. The permit's final HFPO-DA concentration limits were set to take effect in September 2021. At each of Outlets 002 and 005, the reduced daily HFPO-DA concentration limits were 2.3 micrograms per liter.

15. In 2018, as soon as the permit was issued, Chemours promptly identified abatement projects to reduce PFOA and HFPO-DA in Washington Works's effluent, proposing treatment systems for Outlets 001, 002, 003, 005, and 006.

16. Within weeks of WVDEP issuing the 2018 permit, Chemours hired consultant AECOM to help identify abatement projects to meet the effluent limits.

17. By 2019, Chemours started designing abatement projects using AECOM's advice.

18. By 2020, Chemours undertook a formal progress review and determined, based on sampling results, to move forward with five PFAS abatement projects.

19. Chemours regularly provided status updates to WVDEP summarizing the abatement efforts at Washington Works.

20. By the end of 2020, Chemours estimated that it would achieve compliance with the upcoming final PFOA limits.

21. Less certain was compliance with the lower HFPO-DA limits. Both the COVID-19 pandemic and wet weather events created obstacles, as explained below, that forced Chemours to seek a compliance-deadline extension.

22. Chemours notified WVDEP in April and September 2021 that complying with the HFPO-DA limits set to take effect in September 2021 (later extended to January 1, 2022) would not be attainable, especially during wet weather.

23. One obstacle, the COVID-19 pandemic, caused unexpected delays beyond Chemours's control.

24. For instance, the pandemic delayed Calgon Carbon beds required for the proposed Dryer Belt Wash Water Treatment Project by two months. Delays also stalled delivery of valves for the same project by approximately five months.

25. Another obstacle, wet weather, caused—and continues to cause—increased amounts of HFPO-DA to discharge through Washington Works's Outlets, including outlets 002 and 005. This is due, in part, to air deposition of permitted HFPO-DA air emissions that partially settle back to the ground. Wet weather events like rainfall carry the settled HFPO-DA to Washington Works's Outlets, causing an increased amount of HFPO-DA to discharge to the Ohio River.

26. In light of these obstacles, Chemours received a compliance-deadline extension. The interim limits were extended to December 31, 2022, and the new effective date of the lower HFPO-DA limits was January 1, 2022.

27. Chemours continued its abatement efforts in the interim time.

28. However, Chemours reiterated to regulators that it needed additional time beyond December 31, 2021 to implement HFPO-DA abatement systems to continuously comply with the stricter HFPO-DA limits.

29. Chemours informed WVDEP and the United States Environmental Protection Agency ("EPA") that it recognized and was addressing challenges from air deposition and wet

weather. To this, Chemours installed tertiary air emissions abatement systems to further reduce air deposition of PFOA and HFPO-DA.

30. Without a compliance-deadline extension, Chemours forecasted that it would have exceedances of the HFPO-DA limits taking effect January 1, 2022, despite the company's best efforts to come into compliance.

31. As anticipated, discharges from Washington Works first exceeded the new HFPO-DA permit limits in early February 2022 after days of rain and snowmelt.

32. To address the exceedances, Chemours and EPA entered into an April 2023 Administrative Order on Consent ("AOC"), and Chemours and EPA are continuing to follow the AOC's terms to bring Washington Works into compliance with Chemours' NPDES permit. [ECF No. 7-18].

33. Specifically, the AOC required that Chemours submit to EPA an "Alternatives Analysis and Implementation Plan" within 120 days for the treatment of HFPO Dimer Acid and PFOA to ensure that such discharges meet numeric effluent limits at each of Outlets 001, 002, 005, and 006." The analysis was to include among other things: "i. A characterization of the discharges at each Outlet, including the quality and quantity of process water and stormwater; ii. A discussion of available alternatives, including a cost analysis, to achieve compliance with the 2018 Permit . . . at such Outlet. . . . and iii. Selection of the recommended alternative, a justification and any supporting documentation, and implementation/construction schedule."

34. Pursuant to the AOC, Chemours submitted its plan to EPA in August 2023. EPA formally responded more than a year later on December 24, 2024, conditionally accepting in part and rejecting in part Chemours's proposed plan. Chemours submitted a revised plan taking into

account EPA's comments in January 2025. Chemours sent a follow-up letter to EPA regarding the plan in March 2025. (Attachment A). The plan contains the following project proposals:

- a. The Contact Wastewater Treatment System ("CWTS")-A, which consists of granular activated carbon vessels in series to treat process wastewater prior to discharge through Outlet 005;
- b. The CWTS-B, a carbon bed-based treatment system as a polishing step for process wastewater from two sources before being discharged. The system consists of granular activated carbon vessels in series prior to discharge to the BioPond;
- c. The Dryer Belt Wash Water System, which already contains a granular activated carbon filtration system but which will contain another carbon vessel to achieve desired removal efficiencies prior to discharge through Outlet 002;
- d. The B-22 Treatment System, another carbon bed-based system to treat wastewater from the B-22 sump before discharging to the BioPond and ultimately to Outlet 005. Three granular activated carbon vessels in series treat the wastewater, followed by a fourth carbon vessel as a spare to treat wastewater while changeouts of the first three vessels occur; and
- e. The PFA Line 2 and 3 Finishing System, a system that—like the B-22 Treatment System—contains three carbon vessels followed by a fourth spare vessel.

35. Chemours simultaneously continues on-the-ground abatement efforts. As part of its permitting discussions with the agencies, Chemours proposed the B-22 Sump Treatment Project in March 2024, a project that further reduces HFPO-DA concentrations in Outfall 005 discharges.

After receiving WVDEP's approval for the B22 Sump Treatment Project in August 2024, Chemours began operating that treatment project in February 2025.

36. Chemours has also submitted to WVDEP a renewal application for its NPDES permit. Chemours submitted the renewal application in February 2023 and submitted a revised application in December 2024 to align the application with proposals in Chemours's Alternatives Analysis and Implementation Plan. The revised permit application contains proposals that, if approved, will bring Chemours into compliance with existing discharge limits (from the 2018 permit) as well as potential future discharge limits (from the expected renewed NPDES permit).

37. I understand that plaintiff West Virginia Rivers Coalition, Inc. ("Plaintiff") filed a Motion for a Preliminary Injunction in this case asking the Court to enter an Order that prohibits Chemours from violating its NPDES permit limits for HFPO-DA at Outlets 002 and 005 "by any means necessary, including (1) cutting back the production that generates process wastewater containing HFPO-DA, and/or (2) sending process wastewater off-site for disposal by deep-well injection or incineration."

38. The following Washington Works processing units generate process wastewater containing HFPO-DA that flow to Outlets 002 and 005 (the "Subject Operations"):

- PFA Line 1;
- FEP;
- PTFE Fine Powder; and
- PTFE Granular.

39. PFA refers to Perfluoroalkoxy, a specific type of moldable fluoropolymer.

40. At Washington Works, Chemours currently manufactures PFA from two PFA finishing lines. PFA Finishing Line 1 is regulated by the NPDES permit at issue (WV/NPDES Permit Number WV0001279), while PFA Finishing Line 2 is regulated by a separate permit (WV/NPDES Permit Number WV 0117986) and does not discharge through outlets 002 or 005.

Nevertheless, the reactors that feed PFA Finishing Line 2 are permitted through WV/NPDES Permit Number WV0001279 and discharge through outlets 002 and 005. Therefore, if Chemours cannot operate the PFA reactors that discharge through outlets 002 and 005, it is likely that PFA Finishing Line 2 also could not run.

41. Washington Works is the only facility in the United States that produces PFA.

42. Products manufactured from PFA offer continuous operating temperatures up to 500°F (260°C) and provide superior chemical resistance at high temperatures, excellent low-temperature toughness, and exceptional flame resistance. These attributes make PFA an ideal choice for component development such as tubing, valves, fittings, filters, wires, and cables in end-market applications that are rapidly advancing, including semiconductor manufacturing, aerospace, consumer electronics, automotive, oil and gas, chemical processing, and wireless communications.

43. PFA's chemical inertness and high purity is especially well suited for the semiconductor or chip fabrication processes. Due to its unique combination of properties, including resistance to chemical, thermal, and physical degradation, PFA can withstand the extreme conditions and exacting purity requirements of the semiconductor chip manufacturing process. This performance in harsh environments allows for incredibly long equipment service life, enabling chip manufacturers to maximize yields, increase fabrication reliability and uptime, and ensure the safe, high-volume manufacture of semiconductor chips.

44. All semiconductor fabrication facilities, commonly referred to as "fabs," require significant amounts of PFA.

45. PFA-based infrastructure and equipment is used throughout many semiconductor-manufacturing processes, including in the manufacture, transport, and storage of high-purity

chemicals; bulk chemical distribution; wet etching, stripping, and cleaning; chemical mechanical planarization/polishing; and wafer handling and transport. Semiconductor manufacturers and upstream equipment manufacturers use PFA in a variety of applications. Without the use of PFA, semiconductor manufacturers would be at risk of dangerous fluid and gas leaks as well as particle contamination that is detrimental to semiconductor production yields. There are currently no viable substitutions or alternatives for PFA, that can deliver the performance and quality needed for advanced semiconductor manufacturing. PFA is an absolute requirement to enable the ultra-clean environments necessary for semiconductor fabrication.

46. The PFA resins that are produced at Washington Works are a critical piece of the domestic semiconductor value chain. PFA-based components are used in numerous critical applications across the semiconductor ecosystem including in wafer fabrication equipment and fab chemical delivery systems, as well as in upstream high-purity chemical production, transportation, and storage. These fluid handling systems and wafer fabrication equipment are then installed in semiconductor fabs around the country and used to manufacture semiconductor chips.

47. FEP stands for fluorinated ethylene propylene. FEP is a fluoropolymer resin with excellent physical, chemical, and electrical properties used in applications where resistance to chemicals and elevated temperatures is essential or serviceability at extremely low temperatures is desired.

48. More than five kilotons of FEP were produced at Washington Works and sold in 2024.

49. Eighty percent (80%) of the Washington Works FEP sold in 2024 was sold in the United States in support of U.S. business.

50. FEP is primarily sold into the communication cable industry for production of local area network cables which are the backbone of modern communication and data networks.

51. FEP has fire-resistant properties offering significant safety advantages in its ability to resist ignition and limit the spread of flames making it an ideal choice for data centers, healthcare facilities, and industrial sites. FEP is engineered to produce consistent insulation and jacketing that ensures cable producers are able to meet safety standards set by the National Fire Protection Agency.

52. The shutdown or substantial downsizing of Chemours' FEP operation at Washington Works would cause a shortage of FEP to the plenum wire and cable market and significant impact to the American economy.

53. There is only one other producer of FEP in the United States. Chemours believes that the available capacity of this additional FEP producer would not be able to offset the shortage of supply caused by a Chemours site shutdown or substantial downsizing. The only other country that has significant capacity of FEP readily available in the world is the People's Republic of China, therefore, a shutdown or slowdown at Washington Works would leave American businesses with no other choice but to turn to China for supply. Safety and reliability of Chinese produced FEP would have to be evaluated by American cable producers to ensure that it satisfies strict NFPA requirements.

54. Although communication cable is the primary application for FEP, other critical industries that rely on FEP due to its unique combination of properties include aerospace, automotive, electronics, medical and pharmaceutical, and chemical manufacturing and processing. Chemours believes that these industries would also be significantly impacted by a Chemours site shutdown or substantial downsizing, and American businesses would need to look

to China for supply and experience disruption to their businesses as they work through qualification efforts to ensure safety, reliability, and performance of their end products can be maintained with an alternative supplier.

55. FEP produced at Washington Works is also sent to another Chemours facility, located in Mechelen, Belgium, where the FEP is used to make FEP Coatings. FEP Coatings are used on medical guidewires that enable minimally invasive surgeries by guiding other devices such as stents and tools to the proper location in the body for placement or a procedure. The FEP Coatings provide a lubricious, smooth, and biologically inert coating that enables the guidewire to move through the body while minimizing trauma to the surrounding tissue.

56. FEP Coatings are used in metered dose inhalers, which are medical devices that deliver a specific amount of aerosolized medication to a recipient's lungs. Devices using Chemours' FEP coatings include both maintenance and rescue inhalers for individuals afflicted with asthma or chronic obstructive pulmonary disease ("COPD").

57. Medical devices approved by the U.S. Food and Drug Administration ("FDA") are particularly vulnerable to supply chain disruptions because each device, including the various components that make up the device, must navigate a rigorous approval process. Should a material used in a component of a medical device become unavailable, the manufacturer of the medical device must identify and rigorously test potential replacement materials, document any changes in properties of those materials, and submit filings to FDA proving that the devices made from the replacement materials are "substantially equivalent" to the previously approved device. This medical device qualification process is costly and time-consuming.

58. Accordingly, removal or significant downsizing of FEP production from Washington Works, and the resulting downstream disruption to FEP Coatings, would likely create

a shortage of metered dose inhalers, directly impacting individuals who rely on them – many on a daily basis. Likewise, a shutdown or slowdown of FEP production would impact the availability of coated guidewires for the prolonged time period needed for medical suppliers to find suitable alternatives and qualify the use of those alternative supplies into their devices. This in turn could cause patients to have critical procedures delayed.

59. FEP is also used to make films that are applied to the underside of pharmaceutical vial stoppers and pre-filled syringe plungers to create a barrier between the drug substance and the stopper material. Most typically, this material is used for complex pharmaceuticals with very sensitive chemistry. The FEP film is used to protect the drug substance from “leachables” present in the stopper material – typically a butyl rubber. While other materials can and do serve this purpose, they do not provide a sufficient barrier at extreme temperatures, such as those that were required for the Covid-19 vaccine. Some drug chemistries may also be incompatible with other stopper materials. While it is unlikely that the removal of this material from the market would impact drug development, as other polymers, such as Chemours’ ETFE would remain available, the removal of FEP films would create challenges for production of existing pharmaceuticals that have only qualified stoppers or plungers with FEP films.

60. If Washington Works is unable to produce FEP film in planned quantities, it is likely that some drugs would need to temporarily come off the market, or be in short supply, for a period of 6-12 months. Notably, this has the potential to impact vaccination prior to the 2025-2026 winter flu/covid season, depending on each vaccine manufacturers’ prior packaging choices. Stoppers and plungers made from Chemours materials are preferred in the industry due to our filing of a “drug master file” (DMF) for some of the materials. DMFs are used provide confidential information to the FDA regarding the manufacturing practices for a material, helping the FDA

ensure that materials are safe, without disclosing confidential information directly to the customer. DMFs, while not disclosing information to a customer, provide a level of confidence to the industry that their packaging materials are manufactured to adequate safety standards and with appropriate manufacturing standards.

61. Teflon™ Fluoropolymer Foam Resin (FFR) is a fluoropolymer resin that is made using both PFA and FEP. FFR reduces the dielectric constant of insulating cable, enabling lightning-fast data transmission with minimal distortion, and facilitate the manufacture of lighter, smaller wires and cables.

62. More than 500 tons of FFR were produced at Washington Works and sold in 2024.

63. Thirty-six percent (36%) of FFR sold in 2024 was sold into the United States in support of U.S. businesses.

64. FFR is primarily sold into the electronics and communication cable markets for specialty cables with the most demanding performance requirements such as the requirements for high-speed data centers.

65. Chemours believes that it is the only producer of FFR resin that can meet the requirements of the industry with no competitive offering commercially available in the world.

66. Chemours estimates that the demand for data center cable will increase due to the A.I. boom. The shutdown or substantial downsizing of Chemours' Washington Works' FFR operation would impact the establishment of necessary high-speed data center infrastructure and delay the United States and the world's technological advancement as alternative materials of construction would need to be developed and qualified for use.

67. PTFE stands for polytetrafluoroethylene. Washington Works produces PTFE in both fine powder and granular forms.

68. PTFE is the preferred fluoropolymer for many applications, including breathable hydrophobic membranes, hoses used in automotive and aerospace applications, and high-performance wires and cables. PTFE fine powder sales in the United States support the aerospace and aircraft industry (20%), consumer textiles (18%), medical and pharmaceutical industries (10%), and automotive (9%).

69. PTFE produced at Washington Works is a critical component of many medical devices, including guide catheters. Guide catheters are used to facilitate procedures inside the body, typically the circulatory system. The guide catheters form a tunnel from the outside of a patient's body to the inside, which allows access to areas such as the heart for the installation of devices such as pacemakers or the replacement of a valve. Without these devices, the only alternatives for many patients is traditional open heart surgery, which comes with many disadvantages including large incisions, prolonged recovery time, and increased infection risk. These drawbacks also place a significant burden on the healthcare system, increasing total costs and increasing the occupancy of hospital beds for recovery.

70. Approximately 2.5 kilotons of PTFE fine powder produced at Washington Works was sold in 2024. Over 80% of these PTFE sales were to U.S. customers.

71. There is only one other producer of PTFE fine powder in the United States. Chemours believes that the available capacity of the other domestic PTFE fine powder producer would not be able to offset the shortage of supply caused by a Chemours site shutdown or substantial downsizing. Other countries with potential capacity to replace the volume of PTFE fine powder produced at Washington Works include China, Japan, and India.

72. PTFE fine powder is also used as battery binder to produce battery electrodes through a "dry" coating process.

73. Historically, battery electrodes have been made through a “wet” solvent-based process, which involves the use of hazardous solvents and significant energy consumption through the drying / solvent evaporation step. PTFE is the critical material enabling this newer “dry” process. The dry process has a significant positive impact on the environment through the elimination of the use of hazardous solvents (e.g. NMP) and on battery production costs through the reduced physical footprint needed per unit output of battery capacity. Accordingly, PTFE is crucial for US battery manufacturers to be competitive with manufacturers in Asia (predominantly the Peoples Republic of China).

74. All grades of PTFE do not perform the same when used in the “dry process.” The performance highly depends on both the characteristics of the PTFE itself as well as the other battery cell components that are mixed with it to create the battery electrodes. Therefore, any effort to qualify and implement an alternate supply of PTFE is expected to be highly disruptive to the cell manufacturer – both in terms of technical difficulty and resources/time required to make adjustments to their process.

75. Stopping or substantial downsizing of the PTFE fine powder lines at Washington Works would likely result in immediate original equipment manufacturer (“OEM”) shutdown of domestic battery production and would likely force US OEMs and battery manufacturers to increase their dependence on non-US supply chains (Asia/China).

76. PTFE granular increases processing flexibility for molding different products and shapes, such as rods, tubes, and sheets.

77. Approximately 1.4 kilotons of PTFE granular produced at Washington Works was sold in 2024. Approximately 60% of the PTFE granular produced at Washington Works is sold to U.S. customers.

78. PTFE sales in the U.S. support the chemical manufacturing industry (37%), semiconductor industry (24%), electrical components (7%) and the aerospace and aircraft industry (7%).

79. There is only one other producer of PTFE granular in the United States. Chemours believes that the available capacity of the other domestic PTFE granular producer would not be able to offset the shortage of supply caused by a Chemours site shutdown or substantial downsizing. Other countries with potential capacity to replace the volume of PTFE granular produced at Washington Works include China, Japan, and India.

80. I understand that Plaintiff has suggested that the Court should order Chemours to send its Washington Works' process wastewater that flows to Outlets 002 and 005 off-site for disposal by deep-well injection or incineration as Chemours does at its Fayetteville, North Carolina facility. Plaintiff correctly notes that on average approximately 4.6 million gallons of process water flow through outlets 002 and 005 daily. [ECF No. 8 at 7, citing ECF No. 7-13 at 4, table 3]. For several reasons, that is impossible.

81. First, the 4.6 million gallons of daily process water is generated at multiple points and comingles with a much larger volume of water – approximately 51.8 million gallons per day – from other sources such as non-contact cooling water and stormwater, before it discharges through outlets 002 and 005. Separating these streams of process water from the other flows – to the extent it is technologically feasible – would require extensive analysis, engineering, and construction/retrofitting of numerous areas of Washington Works.

82. Second, the Washington Works site is not set up for tanker truck or rail transportation of large volumes of process wastewater, including the physical infrastructure that would be required to store this volume of water onsite while it awaits loading as well as the infrastructure to safely and efficiently move that stored water to numerous tanker trucks or rail cars.

83. Third, even if the Washington Works site was set up for truck or rail transportation of large volumes of process wastewater, there are not enough trucks or rail cars to do the job. To capture and dispose of approximately 4.6 million gallons of process water daily, Chemours estimates that it would need more than 884 trucks per day or 221 rail cars per day. Based on Chemours' experience in the industry, those trucks and railcars simply do not exist.

84. Fourth, even if the Washington Works site was set up for truck or rail transportation of large volumes of process wastewater and the trucks and/or rail were available, there simply are not enough hours in the day to do the job. Chemours' experience at its Fayetteville Works site shows that it takes approximately one hour to load a single truck, or four hours to load a single railcar. Accordingly, it is not possible to load the expected 4.6 million gallons of process wastewater that flows to Outlets 002 and 005 daily.

85. For the reasons set out in the Declaration of Andrew Hartten, I understand that even if Chemours totally stops production at the Subject Operations, there will still likely be violations of Chemours' NPDES permit limits for HFPO-DA at Outlets 002 and 005 during precipitation events.

86. If Chemours is forced to stop production at the Subject Operations, 404 Chemours employees will lose their jobs and approximately 148 contactors will be displaced. Those jobs account for more than \$1 million per week in salaries, wages, and benefits, and approximately \$160,000 per week in contract services spend.

I declare under penalty of perjury that the foregoing is true and correct. Executed on March 11, 2025.



James W. Hollingsworth
Plant Manager, Washington Works
The Chemours Company

**West Virginia Rivers Coalition's Reply Brief in
Support of its Motion for a Preliminary Injunction
March 18, 2025**

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF WEST VIRGINIA
AT CHARLESTON**

**WEST VIRGINIA RIVERS
COALITION, INC.,**

Plaintiff,

v.

Civil Action No. 2:24-cv-00701

THE CHEMOURS COMPANY FC, LLC,

Defendant.

**PLAINTIFF'S REPLY IN SUPPORT OF ITS
MOTION FOR A PRELIMINARY INJUNCTION**

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INTRODUCTION

Chemours admits that it “has had exceedances of its permit discharge limits for HFPO-DA.” ECF No. 17 at 1 (hereinafter “Br.”). It admits that it will continue violating those limits until it upgrades its treatment system, which “is expected to bring the company into compliance with the 2018 permit.” Br. at 8. The upgrade will take at least two years. *Id.* That “time period assumes near-term [EPA] approval as some of the work is seasonal dependent.” ECF No. 17-1 at 22. The actual compliance date is unknown and unenforceable, however, because as of March 4, 2025, Chemours has “had no response from EPA on the [compliance] Plan.” *Id.* Meanwhile, the media reports the Trump Administration has indefinitely frozen all of EPA’s enforcement litigation.¹ Thus, Chemours’s compliance plan is vaporware.²

In the face of this noncompliance and inaction, Chemours argues that it has no obligation to do anything to improve its interim compliance, such as reducing production. Chemours admits that the amount of HFPO-DA that it discharges is scaled to its production rate: “it would be reasonable to expect lower production to reduce the overall mass of discharges.” Br. at 19 n.3. But Chemours rejects any production decrease on the ground that it is too big and its products are too important to change its business in any way. *Id.* at 16–18. That argument flies in the face of Chemours’s NPDES permit, which expressly states that “[i]t shall not be a defense for [Chemours] in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.” ECF No. 7-6 at 97. Chemours wrongly believes that its permit is a paper tiger and this condition is superfluous.

¹ Reuters, [Trump administration halts environmental litigation, sidelines lawyers, sources say](https://www.aol.com/news/trump-administration-halts-environmental-litigation-211750389.html) (Jan. 24, 2024), available at <https://www.aol.com/news/trump-administration-halts-environmental-litigation-211750389.html>.

² In the computer context, “vaporware” is a touted product that “has not and may never become available.” Vaporware, Merriam-Webster, <https://www.merriam-webster.com/dictionary/vaporware>.

To justify its noncompliance, Chemours argues that its illegal discharges are harmless: “no harm is occurring,” Br. at 9; Plaintiff’s member “suffers no injury,” *id.* at 10; and drinking water complies with the maximum contaminant level (“MCL”) under the Safe Drinking Water Act (“SDWA”), *id.* at 13. Chemours reaches those conclusions only by misinterpreting the 10 parts per trillion (“ppt”) threshold (see generally Declaration of Jennifer Schlezinger, Ph.D., attached as Plaintiff’s Reply Exhibit 1) and improperly reframing Plaintiff’s action as an SDWA enforcement action. But this is a citizen suit under the Clean Water Act (“CWA”), and cognizable harm must be measured by that statute’s purpose and structure. When it issued the permit, the West Virginia Department of Environmental Protection (“WVDEP”) concluded that the HFPO-DA limits in Chemours’s CWA permit were necessary “to be protective of the State’s narrative water quality criteria for human health and the designated uses of the Ohio River.” ECF No. 7-9 at 16. The Supreme Court recently observed that water quality-based effluent limitations—like Chemours’s HFPO-DA limitations—are “set without regard to cost or technology availability” and “permit only those discharges that may be made without unduly impairing water quality.” City & County of San Francisco v. EPA, 145 S.Ct. 704, 712 (2025) (internal quotation marks omitted). Those limitations are designed to ensure that water quality standards are actually achieved. *Id.* at 715. As a result, any violation of Chemours’s HFPO-DA limits necessarily threatens human health and harms the river’s designated use and the environment. Chemours is also barred from collaterally attacking its permit limits and conditions in this enforcement action.

Because Chemours is unwilling to achieve compliance on a meaningful timeframe, this Court should enjoin Chemours from violating its permit limits for HFPO-DA at Outlets 002 and 005 by any means necessary.

ARGUMENT

I. Plaintiff Has Standing

In evaluating a plaintiff's evidence of standing at the preliminary injunction stage, "the court must take such evidence as true and draw all reasonable inferences therefrom in a light most favorable to the plaintiff." Courtland Co., Inc. v. Union Carbide Corp., No. 2:21-CV-00101, 2021 WL 1255416, at *10 (S.D. W. Va. Apr. 5, 2021) (citations omitted). Plaintiff's evidence is that its member, Charlise Robinson, has been injured by her exposure to HFPO-DA in the household water she obtains from the Lubeck Public Service District and that she is reasonably concerned about that exposure. ECF No. 7-20 ¶¶ 7–22. Chemours admits that HFPO-DA from its plant is present in the Ohio River and in Lubeck's water. Br. at 11, 13. But Chemours argues that Plaintiff cannot satisfy the injury and redressability requirements for standing because Lubeck does not draw its drinking water from the Ohio River and Lubeck's treated water complies with the annual average standard of the SDWA MCL for HFPO-DA.³ Id. at 9–10. The first argument is factually incorrect and the second is legally irrelevant.

Chemours claims that Lubeck "gets its water from the groundwater, not directly from the Ohio River." Br. at 9. Not so. Chemours's litigation position is contradicted by Chemours's own permit application, which stated that "[a] USGS study reports that about 39% of the volume pumped by Lubeck is derived from induced infiltration from the Ohio River." ECF No. 7-14 at 7–8 & n.5. The USGS study cited by Chemours specifically found that:

Part of the flow to the Lubeck well field also is derived directly from the Ohio River, which could be a source of contaminants. . . . Of approximately 665,000 gal of water pumped daily from the Lubeck well field, about 261,600 gal (39 percent) is derived

³ At bottom, Chemours's argument appears to be that, because it has already been required to install and maintain treatment systems to protect public health at downstream water systems, its NPDES permit violations are unenforceable.

from induced infiltration from the Ohio River and about 403,400 gal (61 percent) is derived from the capture of ground water in the alluvium.⁴

Chemours had to certify under penalty of perjury that this information in its permit application is true, accurate, and complete. W. Va. Code St. R. § 47-10-4.6.d. It is therefore bound by that statement in its application.

As to the second argument, Chemours cites no case holding that standing to sue under the CWA requires the violation of a public health standard in addition to a violation of a CWA permit limit, and there is none. The rule in this Circuit is that when “discharge restrictions are set at the level necessary to protect the designated uses of the receiving waterways, their violation necessarily means that these uses may be harmed.” Friends of the Earth, Inc. v. Gaston Copper Recycling Corp., 204 F.3d 149, 157 (4th Cir. 2000). WVDEP set Chemours’s HFPO-DA permit limits “at the level necessary to be protective of the State’s narrative water quality criteria for public health and the designated uses of the Ohio River.” ECF No. 7-9 at 16. Consequently, violations of those limits necessarily cause potential harm to the health of individuals who are exposed to the contaminated water, such as Ms. Robinson, regardless of whether Chemours has also violated the MCL under the SDWA.

Ms. Robinson’s injury is also based on the fact—a fact that Chemours concedes (Br. at 11 n.2)—that Lubeck’s PFAS treatment system is imperfect. It can and does fail. During its last recognized failure, HFPO-DA-contaminated drinking water was distributed to Lubeck’s customers, with concentrations reaching at least 33 ppt, far above the MCL. ECF No. 17-7 ¶ 25; see also Pl.’s Reply Ex. 1 ¶ 17 (Dr. Schlezinger Decl.). Ms. Robinson was notified about those failures, and they adversely affected her quality of life. ECF No. 7-20 ¶ 20. That alone is a sufficient Article III injury.

⁴ USGS, Geohydrology and Simulation of Ground-Water Flow in Ohio River Alluvial Aquifers near Point Pleasant, Lubeck, Parkersburg, Vienna, Moundsville, and Glendale, West Virginia: Scientific Investigations Report 2004-5088 at 24 (2004) (attached as Pl.’s Reply Ex. 2).

In any event, Plaintiff's rebuttal expert on the toxicological effects from PFAS exposure, Dr. Jennifer Schlezinger, has also determined that the levels of HFPO-DA found in Lubeck drinking water from 2023 and 2024 were enough to increase risks to human health. Pl.'s Reply Ex. 1 ¶¶ 11, 17, 20–24 (Dr. Schlezinger Decl.).

Moreover, Chemours's redressability argument is implicitly an attack on its HFPO-DA permit limits because it is claiming that there is no actionable CWA violation unless the exceedance also causes a violation of the MCL for HFPO-DA under the SDWA. In effect, Chemours is claiming that its permit limit is the CWA limit plus the SDWA limit. But courts "will not consider collateral attacks on the validity of permit conditions in the course of an enforcement action or citizen suit, whether those attacks arise offensively or defensively." Puget Soundkeeper All. v. Port of Tacoma, 104 F.4th 95, 105 (9th Cir. 2024); see also OVEC v. Fola Coal Co., LLC, No. 2:12-cv-3750, 2013 WL 6709957, at *13 (S.D. W. Va. Dec. 19, 2013). Furthermore, accepting Chemours's argument would impermissibly "raise the standing hurdle higher than the necessary showing for success on the merits." Friends of the Earth, Inc. v. Laidlaw Envtl. Servs. (TOC), Inc., 528 U.S. 167, 181 (2000).

In any event, Plaintiff does not need to show any actual harm to the health of its member or the public to demonstrate standing. An increased risk of harm is sufficient. Ecological Rights Found. v. Pac. Lumber Co., 230 F.3d 1141, 1151 (9th Cir. 2000). "Redressability merely requires a plaintiff show that a favorable decision will lessen or reduce the pollution released into a body of water." OVEC v. Hobet Min., LLC, 702 F. Supp. 2d 644, 651–52 (S.D. W. Va. 2010). "The prevention of an even trifling violation which is sufficient to establish injury and traceability is likely to satisfy redressability." Id.

Nor must Plaintiff show that the requested relief would fix the entire problem. Courts have recognized that "complete redressability" is not required, and that a plaintiff need only show that a favorable decision would alleviate its injury "to some extent." S. Envtl. Law Ctr. v. Bernhardt, 432

F. Supp. 3d 626, 634 (W.D. Va. 2020) (citing Consumer Data Indus. Ass'n v. King, 678 F.3d 898, 902 (10th Cir. 2012), which in turn cites Massachusetts v. EPA, 549 U.S. 497, 526 (2007)); see also Hobet Min., 702 F. Supp. 2d at 652 n.3 (discussing the doctrine of incremental redressability); Citizens for a Better Env't v. Caterpillar, 30 F. Supp. 2d 1053, 1071–72 (C.D. Ill. 1998) (finding redressability because plaintiff's citizen suit would “begin to redress” the river's environmental problems). “[T]he ability ‘to effectuate a partial remedy’ satisfies the redressability requirement.” Uzuegbunam v. Preczewski, 592 U.S. 279, 291 (2021). Redressability is established when a favorable decision “would amount to a significant increase in the likelihood that the plaintiff would obtain relief that directly redresses the injury suffered.” Utah v. Evans, 536 U.S. 452, 464 (2002). Consequently, if Chemours were required to reduce its HFPO-DA discharges by any amount, such as by reducing its production rate or sending some process wastewater offsite for disposal, Plaintiff's risk of exposure to HFPO-DA would be lessened and its injuries would be redressed.

II. Plaintiff Is Entitled to a Preliminary Injunction

Plaintiff is seeking a preliminary injunction to enforce a water-quality based effluent limitation in Chemours's NPDES permit under the CWA, “whose purpose it is to protect the waters of Appalachia and nation and their healthfulness, wildlife, and natural beauty.” S. Appalachian Mtn. Stewards v. A & G Coal. Corp., 758 F.3d 560, 569 (4th Cir. 2014). The NPDES permitting program is the “centerpiece of the CWA.” Am. Iron & Steel Inst. v. EPA, 115 F.3d 979, 990 (D.C. Cir. 1997). The HFPO-DA limits in that permit are based on West Virginia narrative water quality standards. ECF No. 7-9 at 16. Section “301(b)(1)(C) [of the CWA] expressly identifies the achievement of state water quality standards as one of the Act's central objectives.” Arkansas v. Oklahoma, 503 U.S. 91, 106 (1992). The Supreme Court has stated that the CWA “permits the district court to order that relief it considers necessary to secure prompt compliance with the Act. That relief can include, but is not limited to, an order of immediate cessation.” Weinberger v. Romero-Barcelo, 456 U.S. 305, 320 (1982).

A. Plaintiff Is Certain to Succeed on the Merits

Chemours admits that it “has had exceedances of its permit discharge limits for HFPO-DA.” Br. at 1. It also admits that those exceedances will continue until it upgrades its treatment plant, which will take years. *Id.* at 8. It offers no argument why those past and continuing exceedances are not violations of its permit and the CWA. *Id.* at 20. Instead, it tries to obfuscate the first preliminary injunction factor by combining it with the other factors. *Id.* at 19–20. That is incorrect.

In this Circuit, “courts considering whether to impose preliminary injunctions must separately consider each Winter factor.” *Pashby v. Delia*, 709 F.3d 307, 321 (4th Cir. 2013). In the case on which Chemours primarily relies, this Court analyzed them separately. *GMRI, Inc. v. Garrett*, No. 3:14-cv-0866, 2014 WL 1351126, at *2 (S.D. W. Va. Apr. 4, 2014) (“The Court finds that all four of the requirements for preliminary injunctive relief are met in this case and that, therefore, preliminary injunctive relief is warranted.”). Indeed, in *GMRI*, this Court’s evaluation of the movant’s likelihood of success examined only the elements of liability for the claim. Chemours’s attempt to conflate the factors is therefore wrong as a matter of law, and Plaintiff’s likelihood of success on the merits is uncontested.⁵

⁵ Chemours also suggests that Plaintiff is not likely to succeed on the merits because of “the compliance process already established by EPA’s [Administrative Order on Consent].” Br. at 20. But that administrative action is irrelevant to the merits because it does not meet the requirements for preclusion under § 1319(g)(6) of the CWA because it did not impose any penalties. See *United States v. Smithfield Foods, Inc.*, 191 F.3d 516, 526 (4th Cir. 1999); *Sierra Club v. Powellton Coal Co., LLC*, 662 F. Supp. 2d 514, 523–31 (S.D. W. Va. 2009); *Save Our Bays & Beaches v. City & County of Honolulu*, 904 F. Supp. 1098, 1128–29 (D. Haw. 1994). Congress expressly contemplated citizen enforcement of the CWA in such circumstances. *OVEC v. Hobet Min., LLC*, 723 F. Supp. 2d 886, 920 (S.D. W. Va. 2010).

B. Irreparable Harm is Occurring and Will Continue to Occur

1. In CWA Citizen Suits, Irreparable Harm Can Be Harm to the Plaintiff or the Public

Chemours argues that the only measure of irreparable harm is harm to the plaintiff, not harm to the environment and the public. Br. at 12. The only decision that Chemours cites to support that contention is Courtland Co. v. Union Carbide Corp., No. 2:21-cv-00101, 2021 WL 1255416, at *24–25 (S.D. W. Va. Apr. 5, 2021). But Judge Copenhaver’s statement about irreparable harm in that decision was dicta because he denied injunctive relief on other grounds—lack of standing and a defective pre-suit notice. Id. at *9–24. In a later ruling in a related case involving the same parties, he stated—twice—that a party can obtain an injunction in an environmental citizen suit where it shows that “it or the public has suffered an irreparable injury.” Courtland Co. v. Union Carbide Corp., No. 2:19-cv-00894, 2024 WL 4339600, at *5–6 (S.D. W. Va. Sept. 27, 2024) (emphasis added). That view is consistent with how the Fourth Circuit has defined and applied the irreparable harm factor. See Hazardous Waste Treatment Council v. State of S.C., 945 F.2d 781, 788 (4th Cir. 1991) (evaluating whether “the absence of a new facility to handle waste, including out-of-state waste, would create irreparable harm, not only to HWTC but to the public, because of the possible creation of additional untreated waste”); see also E. Tenn. Nat. Gas Co. v. Sage, 361 F.3d 808, 829 (4th Cir. 2004) (finding irreparable harm sufficient to support preliminary injunction based on, inter alia, “negative impacts” on natural gas consumers and hindrances to economic development in the absence of an injunction).

Moreover, it is consistent with longstanding Supreme Court precedent. In Sierra Club v. Morton, the Supreme Court held that, although injury to a litigant is necessary to establish standing, “once review is properly invoked, that person may argue the public interest in support of his claim.” 405 U.S. 727, 737 (1972); see also id. at 740 n.15 (“The test of [private] injury in fact goes only to the question of standing to obtain judicial review. Once this standing is established, the party may assert

the interests of the general public in support of his claims for equitable relief.”). And in Warth v. Seldin, the Supreme Court held that, so long as a litigant establishes injury to itself, it may invoke the general public interest where “Congress has granted a right of action.” 42 U.S. 490, 501 (1975). Congress granted such a right of action in the Clean Water Act. Pub. Int. Rsch. Grp. of N.J., Inc. v. Powell Duffryn Terminals Inc., 913 F.3d 64, 73 (3d Cir. 1990); see also Challenge v. Moniz, 218 F. Supp. 3d 1171, 1179–80 (E.D. Wash. 2016) (RCRA citizen suit). Plaintiff can therefore invoke harm to the public and the environment in support of its claim of irreparable harm.

Significantly, in this case, the harm to the public and the environment extends hundreds of miles downstream and affects millions of people who draw their drinking water from the Ohio River. See Pl.’s Reply Ex. 3 ¶¶ 20–25 (Dr. Hoagland Decl.) (opining that the nature of HFPO-DA and the 2021 ORSANCO study cited by Chemours establishes that HFPO-DA from Chemours’s discharges can travel downstream at least as far as Louisville, Kentucky). It is extraordinary that the protectors of the public drinking water systems in Cincinnati and Louisville have been so concerned with Chemours’s HFPO-DA discharges that they submitted declarations supporting Plaintiff’s motion. ECF Nos. 7-2 & 7-12. Those systems serve nearly two million people. Id. And Chemours’s violations have only gotten worse in recent months. Pl.’s Reply Ex. 3 ¶ 23 (Dr. Hoagland Decl.).

Chemours does not dispute that its permit limits for HFPO-DA are based on West Virginia water quality standards. Rather, Chemours argues that neither Plaintiff’s member nor the public can suffer any irreparable harm unless the amount of HFPO-DA in drinking water exceeds the SDWA MCL of 10 ppt on an annual average. However, the courts have consistently held that violations of water quality-based effluent limitations—like Chemours’s HFPO-DA limits—constitute irreparable injury to the environment and the public in CWA citizen suits. OVEC v. Fola Coal Co., LLC, No. 2:13-cv-21588, 2016 WL 3190255, at *10 (S.D. W. Va. June 7, 2016) (violations of narrative water-quality based limit prohibiting biological impairment of streams); Hobet Min., 723 F. Supp. 2d at 924

(violations of numerical water quality-based limits for selenium); OVEC v. Apogee Coal Co., LLC, 555 F. Supp. 2d 640, 648 (S.D. W. Va. 2008) (same); Pub. Int. Rsch. Grp. of N.J., Inc. v. Rice, 774 F. Supp. 317, 328–29 (D.N.J. 1991) (violations of numerical water quality-based limits for nutrients, chlorine and dissolved oxygen); see also Sierra Club v. U.S. Army Corps of Eng’rs, 645 F.3d 978, 995 (8th Cir. 2011) (recognizing that “irreparable harm to the environment necessarily means harm” to an environmental organization’s interests). As a result, harm to the Ohio River’s designated use as a drinking water source constitutes irreparable harm to the West Virginia Rivers Coalition and the public. OVEC v. Apogee Coal Co., LLC, 555 F. Supp. 2d 640, 648 (S.D. W. Va. 2008) (holding violations of permit limits cause irreparable harm to environmental plaintiffs whose members use the receiving waters).

Chemours ignores the most on-point decision: Idaho Conservation League v. Atlanta Gold Corp., 879 F. Supp. 2d 1148, 1159 (D. Idaho 2012). In that case, the defendant mining company exceeded its water quality-based permit limits for arsenic. Id. at 1156, 1158–59. The court found irreparable harm even though “there is no evidence that the untreated waters of Montezuma Creek or the Middle Fork of the Boise River serve as a source of drinking water for Atlanta, Idaho or any other downstream community, and therefore no evidence that AGC’s discharges are currently causing or contributing to a serious public health problem.” Id. at 1159–60. The court concluded that “this makes no difference with respect to the Court’s analysis on injunctive relief. Harm to the environment exists, even if municipal suppliers eventually remove the toxins from the water before it enters household taps.” Id. at 1160.

2. Irreparable Harm Already Exists and Does Not Depend on Finding a SDWA MCL Violation

Chemours does not dispute that HFPO-DA is a toxic, forever chemical. Rather, Chemours insists that, because people may not yet be drinking water with an annual average HFPO-DA

concentration in excess of the SDWA MCL for that toxin, Plaintiff cannot show irreparable harm. That is wrong both factually and legally, and Chemours is trying to impermissibly impose in this CWA citizen suit a threshold more suited to a toxic torts case, where a plaintiff must show actual exposure to a harmful substance at unsafe levels.

Factually, Chemours admits that the Lubeck treatment system failed in March 2024, which directly affected Plaintiff's member. Br. at 11 n.2. Further, as seen in Lubeck's data, Lubeck customers were exposed to drinking water that exceeded the MCL during three separate "significant and sustained contamination events" over the past two years. Pl.'s Reply Ex. 1 ¶ 17 (Dr. Schlezinger Decl.). According to Dr. Schlezinger, those exposures increase health risks to Lubeck water users, including Ms. Robinson, particularly because those users may already have a high body burden of PFAS (due to past contamination from the same Washington Works facility), and combined interactions of different PFAS compounds "produce combined toxicity that is greater than the toxicity of each individual PFAS." *Id.* ¶¶ 17, 20–23.

As a legal matter, a violation of a Clean Water Act water quality-based effluent limitation causes irreparable harm regardless of whether there are also violations of an SDWA standard. As the Fourth Circuit has explained, the CWA reasonably imposes more stringent limits than those under the SDWA because "the regulated pollutants [under the CWA] could harm waterways and aquatic life, and could introduce chemicals which hamper treatment facilities' ability to treat wastewater, even at levels where they might not directly harm humans." *United States v. Hartsell*, 127 F.3d 343, 351–52 (4th Cir. 1997). "It is not necessary for Plaintiffs to establish that an immediate and catastrophic threat to public health exists before a federal Court can step in and order a defendant to stop its illegal discharges." *Atlanta Gold Corp.*, 879 F. Supp. 2d at 1160. In other words, preliminary injunctions need not be last minute remedies. *Mountain Valley Pipeline v. 6.56 Acres of Land*, 915 F.3d 197, 217 (4th Cir. 2019).

Furthermore, although Chemours contends (Br. at 13) that HFPO-DA concentrations in the Ohio River are low, the data paint a more alarming picture. For instance, in September 2022, Chemours measured HFPO-DA at concentrations of 14 to 15 ppt along the east bank of the Ohio just upstream of the Lubeck Public Service District drinking water facility. ECF No. 7-26; Pl.’s Reply Ex. 3 ¶¶ 32 (Dr. Hoagland Decl.). Chemours’s toxicologist ignored those data, instead using lower values obtained from sampling the middle of the river channel to calculate her annual average. Pl.’s Reply Ex. 3 ¶¶ 31. Chemours’s annual average ignores the “cross sectional variability in HFPO-DA concentrations” at its downstream sampling location, which results from incomplete mixing across the channel. Id.

Chemours’s declarant Mr. Hartten points to ORSANCO’s monitoring of HFPO-DA in the Ohio River downstream of Washington Works in 2021, in an effort to imply that there is no connection between downstream HFPO-DA concentrations and Chemours’s discharges. ECF No. 17-8 ¶¶ 20–22. That is wrong. Dr. Hoagland explains that the values Mr. Hartten cites are attributable to differences in river flow rates on the various sampling dates and to the fact that Chemours’s HFPO-DA discharges precipitously dropped before ORSANCO’s second sampling round. Pl.’s Reply Ex. 3 ¶¶ 19 & 22. Chemours’s role in HFPO-DA concentrations downstream of its plant is further corroborated by the fact that, during ORSANCO’s 2021 sampling campaign, it detected no HFPO-DA in the Ohio River upstream from the Washington Works facility. Id. ¶¶ 12–13.

On brief, Chemours questions whether concentrations of HFPO-DA are “concentrating” at long distances from Washington Works. Br. at 14–15. But, as Dr. Hoagland explains, “HFPO-DA concentrations in the Ohio River are a function of both the concentrations of HFPO-DA from sources discharging to the Ohio River, as well as the streamflow of the Ohio River at the time of sampling.” Pl.’s Reply Ex. 3 ¶ 19. Dr. Hoagland concludes that the HFPO-DA levels found in the

Ohio River at Louisville, Kentucky, by ORSANCO are, at least in part, attributable to Chemours's discharges. Id. ¶¶ 24–25.

Chemours next touts its “work” with regulators to reduce HFPO-DA, including the new B22 Sump treatment, as evidence that irreparable harm is not occurring. But EPA's administrative action has been pending for just shy of two years with no results, ECF No. 7-18, EPA recently rejected key components of Chemours's proposed plan under the administrative action, ECF No. 7-19, Chemours has not heard from the EPA since that rejection, Br. at 8, and, by its own admission, Chemours's compliance with its 2018 permit limits is, at best, two years away, id. at 3. Furthermore, Chemours admits that its new B22 treatment system will not result in permit compliance. See ECF No. 7-16 at 31.

Finally, Chemours asserts that Plaintiff's delay in seeking a preliminary injunction undermines Plaintiff's claims of irreparable harm. Br. at 14. Not so. “[A] plaintiff need not challenge an illegal act immediately after it happens; it may wait until it can estimate whether the act threatens it with irreparable harm.” Steves & Sons, Inc. v. JELD-WEN, Inc., 988 F.3d 690, 718 (4th Cir. 2021) (internal quotation omitted). Furthermore, “delay may be excused where the party seeking a preliminary injunction delays only in the reasonable belief that negotiations may resolve the dispute.” Lanin v. Borough of Tenaflly, 515 F. App'x 114, 118 (3d Cir. 2013) (unpublished opinion). Plaintiff acted reasonably in waiting to pursue injunctive relief until the circumstances established that (1) Chemours's negotiations in 2023 through 2024 with federal and state enforcers would not diligently put an end to Chemours's unlawful discharges, (2) Chemours told WVDEP in December 2024 that it wanted a three-year compliance schedule, and (3) Cincinnati and Louisville officials informed Plaintiff in January 2025 that recent spikes in HFPO-DA discharges from Chemours's facility were showing up in the domestic water source for millions of people hundreds of miles downstream. The ongoing environmental harm from Chemours's permit violations for a forever chemical is still irreparable,

regardless of any delay. PennEnvironment v. PPG Indus., Inc., No. 12-cv-342, 2014 WL 6982461, at *15 (W.D. Pa. Dec. 10, 2014) (“[H]arm to the environment has been classified as irreparable. That harm did not become reparable (or ‘less immediate’) because of Plaintiffs’ delay in filing for a preliminary injunction, whatever the reason.”). Further, “given the ample potential justifications for [Plaintiff’s] delay,” the irreparable environmental harm from Chemours’s toxic discharges should “override[] any concern about delay.” Ctr. for Individual Freedom, Inc. v. Ireland, 613 F. Supp. 2d 777, 806–07 (S.D. W. Va. 2009).

* * *

At bottom, Chemours is arguing that this Court cannot enjoin its unlawful HFPO-DA discharges unless and until enough HFPO-DA breaks through the water treatment systems it had to install the last time it polluted the Ohio River to send drinking water concentrations above 10 ppt on an annual average. But the law does not so constrain this Court’s equitable powers. Weinberger, 456 U.S. at 320. And health risks are presently increasing for water consumers downstream. Pl.’s Reply Ex. 1 ¶¶ 11, 17, 20–24 (Dr. Schlezinger Decl.). The irreparable harm to drinking water sources that Chemours is causing must stop.

C. The Balance of Harms Favors Clean Drinking Water Sources Over Corporate Profits

The harm to Plaintiff, the public, and the environment from Chemours’s continuing permit violations is contamination of the Ohio River with excessive amounts of a toxic “forever chemical.” The only harm that Chemours seeks to balance in its favor is its claimed economic harm from not being able to continue using and discharging that chemical. Br. at 18–19. In balancing the equities, financial harms are less important because “[m]oney can be earned, lost, and earned again.” OVEC v. U.S. Army Corps of Eng’rs, 528 F. Supp. 2d 625, 632 (S.D. W. Va. 2007). Regardless, Chemours’s harm is self-inflicted, because in 2013 Chemours chose to use HFPO-DA as a substitute for the even

more toxic PFOA that it had used previously. Br. at 5. Chemours then failed to take all necessary actions to comply with its permit limits for that chemical by WVDEP's January 1, 2022 deadline. Id.

The Fourth Circuit has recognized that “self-inflicted harm may be discounted or ignored altogether in the preliminary-injunction analysis.” Mountain Valley Pipeline, 915 F.3d at 219. That rule is based on the principle that “a party may not claim equity in his own defaults.” Long v. Robinson, 432 F.2d 977, 981 (4th Cir. 1970). Chemours's economic harm is not cognizable because it is the result of its own chemical selection and failed chemical treatment. Thus, the economic impacts that Chemours points to are ones it should have already faced had it taken its permit limits for HFPO-DA seriously; instead, it fumbled the ball and externalized its problems onto the Ohio River and the public at large. Chemours cannot now insist that the monetary cost of reducing its current discharges justifies permitting it to discharge a recognized toxic chemical into the drinking water supply for millions of Americans. Chemours, “having made its bed, it must now lie in it.” Project Control Servs., Inc. v. Westinghouse Savannah River Co., 35 F. App'x 359, 366 (4th Cir. 2002) (unpublished opinion).

Chemours's arguments based on its claimed economic losses are also irrelevant because its permit clearly bars consideration of its costs of reduced production. ECF No. 7-6 at 97. If it is no defense that Chemours would have to reduce production to achieve compliance, it is also no defense that Chemours would have to incur costs and cut output to achieve compliance. Reducing production necessarily involves incurring costs and cutting output. By categorically refusing to do so, Chemours is either violating this permit condition or collaterally attacking it. Chemours is strictly liable for permit violations. Stoddard v. Western Carolina Regional Sewer Auth., 784 F.2d 1200, 1208 (4th Cir.1986) (“Liability under the Clean Water Act is a form of strict liability.”). Collateral attacks on an NPDES

permit in an enforcement action are prohibited. Puget Soundkeeper, 104 F.4th at 105. By failing to challenge its 2018 permit in state court, it “forever lost its right to do so.” Id. at 106.⁶

Chemours argues that Courtland supports its position. Br. at 18. It does not. In that case, Judge Copenhaver denied a TRO and held that the balance of equities favored the defendant. The court reasoned that the harm to the plaintiff from the incremental addition of unpermitted discharges during the 14-day TRO period was outweighed by the cost to the defendant of immediately eliminating and remediating those discharges. Courtland, 2021 WL 1255416, at *27. Judge Copenhaver “agree[d] with the plaintiff that a Clean Water Act violator should not escape the costs – even high costs – of its violation,” but viewed a TRO as a “blunt instrument” to achieve that goal in a very short time frame. Id.

Plaintiff is seeking a preliminary injunction, not a TRO, and is not seeking to require Chemours to comply within 14 days. Like the defendant in Courtland, Chemours should not escape the costs of CWA compliance. Plaintiff is asking the Court to require Chemours to take interim steps to improve compliance with its permit limit within a reasonable time and well before the end of its proposed three-year compliance schedule. When the Court balances the harms, the equities tip strongly in favor of that approach.

⁶ Even assuming arguendo that production costs could be considered, Chemours has not shown that any reduction in production (even a small amount) is infeasible. Not all of Chemours’ end users are in critically important industries. Some of the products made with HFPO-DA are used for ordinary products. For example, products manufactured from PFA are used in “consumer electronics, automotive, oil and gas, chemical processing, and wireless applications.” ECF No. 17-1 at 8 ¶ 42. At a minimum, the Court should require Chemours to establish the percentage of end uses that are not critical and reduce its production by an amount proportional to those uses. “The essence of equity jurisdiction has been the power of the Chancellor ... to mould each decree to the necessities of the particular case.” SAS Inst., Inc. v. World Programming Ltd., 952 F.3d 513, 527 (4th Cir. 2020) (quoting Hecht Co. v. Bowles, 321 U.S. 321, 329 (1944)).

D. An Injunction Is in the Public Interest

As this Court has noted, protecting water quality is “a critical public interest that profoundly outweighs a company’s bottom line.” OVEC v. Fola Coal Co., No. 2:13-cv-21588, 2016 WL 3190255, at *11 (S.D. W. Va. June 7, 2016). Chemours argues the opposite—that the public interest requires it to continue its illegal discharges of HFPO-DA without any interim controls. Br. at 15–18. That argument defies logic and is unsupported by case law.

Plaintiff raised two possible methods of making interim reductions in those discharges—reduced production or offsite disposal. Chemours does not deny that reducing production would improve its permit compliance⁷ and admits that it is “reasonable to expect lower production to reduce the overall mass of discharges.” Br. at 19 & n.3. Chemours argues that such reductions are impracticable because they would impose high social costs in the form of reduced jobs and reduced supplies of critically important products. Id. at 16–17.

But Congress has already weighed the public interests in jobs and domestic manufacturing against the public interest in clean water and found that the former yields to the latter. As the Supreme Court has observed, “Congress foresaw and accepted the economic hardship, including the closing of some plants, that effluent limitations [under the Clean Water Act] would cause.” EPA v. Nat’l Crushed Stone Ass’n, 449 U.S. 64, 79 (1980). Moreover, that Congressional determination is embedded in Chemours’s permit: “it shall not be a defense for [Chemours] in an enforcement action that it would

⁷ Chemours claims that its HFPO-DA violations are tied to wet weather events. Br. at 1, 3, 6, 19 n.3. But the correlation it describes is “weak.” Pl.’s Reply Ex. 3 ¶ 28 (Dr. Hoagland Decl.) A review of Chemours’s own charts shows that there were HFPO-DA violations on January 3, 2025, when there was no rainfall, and on multiple other occasions when there was minimal precipitation. ECF No. 17-8 at 14; see also Pl.’s Reply Ex. 3 ¶¶ 27–29 (Dr. Hoagland Decl.). Further, Chemours admits that HFPO-DA violations during wet weather are due in part to “[a]ir deposition, the settling of HFPO-DA emissions to the ground.” Br. at 7. This air deposition of HFPO-DA comes from the stacks associated with Chemours’s facility. Curtailing production from the facility will reduce the amount of air deposition, thus reducing or eliminating Chemours’s violations during wet weather events.

have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.” ECF No. 7-6 at 97. That language is mandatory and unequivocal. That condition effectively prohibits this Court concluding that halting or reducing production to comply is not in the public interest.

The West Virginia Legislature has also already weighed the public interest in the PFAS Protection Act, determining that it is “in the public interest . . . to reduce toxic chemicals in drinking water supplies to . . . strengthen the state’s economy.” W. Va. Code § 22-11C-1(a)(12) (emphasis added). “[W]hen the legislature has spoken, the public interest has been declared in terms well-nigh conclusive.” Berman v. Parker, 348 U.S. 26, 32 (1954). The Ohio River is a drinking water supply for millions of people, including many West Virginians, ECF No. 7-11 at 27, and HFPO-DA is toxic, ECF No. 8 at 13–14. Thus, according to the Legislature, enjoining Chemours’s toxic discharges will strengthen the state economy.

Chemours alludes to national security concerns from reducing its production. Br. at 16–17. That argument is an illusion based on unsupported beliefs, not credible evidence. See, e.g., ECF No. 17-1 ¶¶ 53–54, 65, 71, 79 (“Chemours believes . . .”); ECF No. 17-9 ¶¶ 11–18.⁸ Chemours’s declarants do not identify any knowledge, education, or experience to qualify them to analyze national security. Although the rules of evidence are relaxed at the preliminary injunction stage, the Court must still evaluate the weight of the evidence before it, and “statements based on belief rather than personal knowledge may be discounted.” Imagine Medispa, LLC v. Transformations, Inc., 999 F. Supp. 2d 862, 869 (S.D. W. Va. 2014) (citing Federal Practice & Procedure § 2949); see also G.G. ex rel. Grimm v. Gloucester County Sch. Bd., 822 F.3d 709, 725 (4th Cir. 2016), vacated and remanded on other

⁸ For example, Chemours’s chief Perfluoroalkoxy marketer brags that Chemours’s product “has been identified as vital to the U.S. national security and economy.” ECF No. 17-9 ¶ 11. But her passive voice hides the identity of exactly who—beyond Chemours itself—regards Chemours’s manufacturing to be a matter of national security.

grounds, 580 U.S. 1168 (2017) (recognizing that, even though the Federal Rules of Evidence may be relaxed at the preliminary injunction stage, the nature of the evidence still informs the weight the court should give the evidence). Because Chemours's declarants rely only on their unsubstantiated beliefs, the Court should discount their testimony as nothing more than puffery and hyperbole.

Finally, while Chemours also protests (Br. at 15–16) that transporting all 4.6 million gallons of its process wastewater offsite would be infeasible, that all-or-nothing approach is a strawman. The real issue is whether it is feasible to transport any substantial amount of process wastewater offsite for disposal. On that issue, Chemours concedes that it has been feasible to send 10 truckloads of wastewater every day from its North Carolina plant to a deep well in Texas, over a thousand miles away. Br. at 16. A truck holds about 5,200 gallons, so 10 trucks can carry about 52,000 gallons a day.⁹ A large portion of Chemours's HFPO-DA loading is in a small percentage of the total 4.6 million gallons of process wastewater. The flow at the B22 sump is about 60,000 gallons per day and that waste stream contains 38 pounds of HFPO-DA per year. ECF No. 8 at 6 (citing ECF No. 7-13 at 4 tbl. 3). The flow at the Granular Sump is 160,000 gallons per day and that waste stream contains 16.9 pounds of HFPO-DA per year. *Id.* Three other wastewater streams are 20,000, 20,000, and 30,000 gallons per day and those three together contain 5.7 pounds of HFPO-DA per year. *Id.* Chemours has not shown that it is infeasible to send any of these wastewater streams off-site for disposal, and their total or partial elimination would make a substantial reduction in the total process wastewater loading of 75.6 pounds per year. *Id.*

The public interest in protecting water quality supports, at a minimum, a preliminary injunction requiring Chemours to take some interim steps such as these to improve its permit compliance.

⁹ 4.6 million gallons divided by 884 trucks equals 5203 gallons. Br. at 16.

III. No Bond Should Be Required

Chemours has not made any argument that a bond should be required under Rule 65(c). As a result, it has waived the bond requirement and the Court need not impose any bond. “A bond is not mandatory and can be waived.” Hernandez v. Montes, No. 5:18-CV-5-D, 2018 WL 405977, at *2 (E.D.N.C. Jan. 12, 2018); see also Poindexter v. Strach, 324 F. Supp. 3d 625, 636 (E.D.N.C. 2018) (waiving bond requirement when plaintiff’s request for no bond was unopposed).

CONCLUSION

The Court should issue a preliminary injunction that prohibits Chemours from violating its permit limits for HFPO-DA at Outlets 002 and 005 by any means necessary, including (1) reducing the production that generates process wastewater containing HFPO-DA, and/or (2) sending that wastewater off-site for disposal by deep-well injection or incineration.

DATED: March 18, 2025

Respectfully submitted,

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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF WEST VIRGINIA
AT CHARLESTON**

**WEST VIRGINIA RIVERS
COALITION, INC.,**

Plaintiff,

v.

Civil Action No. 2:24-cv-00701

THE CHEMOURS COMPANY FC, LLC,

Defendant.

CERTIFICATE OF SERVICE

I, Derek O. Teaney, do hereby certify that, on March 18, 2025, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF filing system, which will notify the following participants:

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