

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NORTH CAROLINA  
SOUTHERN DIVISION**

Case No. 7:17-cv-00195-D

Case No. 7:17-cv-00209-D

CAPE FEAR PUBLIC UTILITY )  
AUTHORITY, BRUNSWICK COUNTY, )  
LOWER CAPE FEAR WATER & SEWER )  
AUTHORITY, and TOWN OF )  
WRIGHTSVILLE BEACH, )  
 )  
Plaintiffs, )  
 )  
v. )  
 )  
THE CHEMOURS COMPANY FC, LLC, )  
E. I. DU PONT DE NEMOURS AND )  
COMPANY, and THE CHEMOURS )  
COMPANY, )  
 )  
Defendants. )  
 )  
\_\_\_\_\_ )

**MEMORANDUM OF LAW IN  
SUPPORT OF MOTION TO  
INTERVENE AND OBJECT TO  
DEFENDANTS' MOTION TO  
MAINTAIN MATERIALS UNDER  
SEAL**

[Fed. R. Civ. P. 5.2(d)  
Local Civil Rule 7.1, 79.2  
CM/ECF Policy Manual § V.G.1.]

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## **EXHIBIT LIST**

Exhibit 1 – Amended Complaint, *North Carolina v. The Chemours Company FC, LLC* (Apr. 9, 2018).

Exhibit 2 – Press Release: *Chemours Schedules Information Sessions on Planned Product Expansion* (Sept. 2, 2022).

Exhibit 3 – Letter from The Chemours Company, to Marcos Orellana, et al., United Nations Human Rights Council (Nov. 21, 2023).

Cape Fear River Watch, Environmental Justice Community Action Network, and North Carolina Coastal Federation (collectively “Conservation and Community Groups”), by and through undersigned counsel, hereby move to intervene in the above-captioned case for the limited purpose of objecting to Defendants’, The Chemours Company FC, LLC, The Chemours Company, and EIDP, Inc. (collectively “Chemours and DuPont” or “the companies”), Motion to Maintain Materials Under Seal [D.E. 465]. Pursuant to Rule 5.2(d) of the Federal Rules of Civil Procedure, Rule 79.2 of the Local Civil Rules, and section V.G.1. of the CM/ECF Policy Manual, Conservation and Community Groups simultaneously move to object to maintaining seal of the records appearing on the docket at [D.E. 351, 352, 353, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 371, 372, 373, 374, 375, 376, 377, 379, 381, 383, 385, 386, 387, 388, 389, 390, 453, 456]. For the reasons below, Conservation and Community Groups respectfully request this Court grant their Motion to Intervene and Object to Defendants’ Motion to Maintain Materials Under Seal and order Defendants to unseal their documents.

## **I. INTRODUCTION**

This motion should be granted because the documents at issue are protected by the First Amendment. The public and Conservation and Community Groups have a fundamental right to access Chemours’ and DuPont’s documents, and the companies have failed to meet their burden to hide these documents from the public. After contaminating the drinking water, air, soil, and food for more than half-a-million North Carolinians for decades, the companies have no right to conceal essential documents related to their own pollution, including information on sampling data, air and wastewater treatment options, toxicology, and the public’s exposure to their toxic chemicals.

To this day, the state of North Carolina continues to find thousands of new drinking water wells contaminated by these companies. Not only that, but Chemours is also planning a massive expansion of its Fayetteville Works Facility (“facility”) that will further put North Carolinians at risk. It is vital that the Chemours’ and DuPont’s documents be made public.

## **II. FACTUAL BACKGROUND**

### **A. For decades, Chemours and DuPont contaminated the drinking water, air, soil, and food across Eastern North Carolina.**

Beginning in the 1980s, Chemours and DuPont pumped toxic per- and polyfluoroalkyl substances (“PFAS”) from the Fayetteville Works Facility (“facility”) into the air, water, and soil in Eastern North Carolina. The companies’ pollution has caused one of the worst public health crises the state has ever seen.

PFAS are a class of thousands of man-made chemicals that pose a significant threat to human health at extremely low concentrations. PFAS bioaccumulate (or build up) in the human body and can cause harmful health impacts, including developmental effects to fetuses and infants, kidney and testicular cancer, liver malfunction, hypothyroidism, high cholesterol, ulcerative colitis, decreased immune response to vaccines, reduced hormone levels, delayed puberty, lower birth weight and size, and fertility issues, among other things. The U.S. Environmental Protection Agency (“EPA”) has made clear that PFAS are harmful to human health and should be kept out of drinking water. *See* PFAS National Primary Drinking Water Regulation, 89 Fed. Reg. 32532, 32567 (Apr. 26, 2024) (setting a maximum contaminant level goal for two PFAS at 0 parts per trillion (“ppt”)).

In June 2017, communities in Eastern North Carolina woke to a news headline exposing that Chemours (and before that, DuPont) had been silently dumping toxic PFAS into the Cape

Fear River—the drinking water supply for Wilmington, North Carolina and surrounding counties—for decades. Together, the companies contaminated the drinking water supplies for more than 500,000 North Carolinians. The city of Wilmington’s drinking water intake had documented levels of GenX (one type of PFAS with known, harmful health impacts) as high as 4,500 ppt—450 times higher than what EPA now considers safe. Total PFAS concentrations at Wilmington’s drinking water intake were documented as high as 130,000 ppt.

Not only did the companies defile the public drinking water for thousands of homes, schools, and churches, Chemours and DuPont released PFAS-laden air emissions for years, which polluted more than 10,000 private drinking water wells across at least eight counties in the state.<sup>1</sup> Given the extent of the companies’ pollution, 150,000 residences in two additional counties are now being screened for drinking water well contamination.<sup>2</sup>

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<sup>1</sup> Chemours, Consent Order Progress Report For Fourth Quarter 2024 (Jan. 23, 2025), [https://www.chemours.com/en/-/media/files/corporate/fayetteville-works/28\\_ncdeq\\_4q2024-quarterly-co-progress-report\\_01232025.pdf?rev=b8f936cd299c4af982662f66ee28d5b1&hash=5F41AF406CA64CCAFA2C5D1E3AE40904](https://www.chemours.com/en/-/media/files/corporate/fayetteville-works/28_ncdeq_4q2024-quarterly-co-progress-report_01232025.pdf?rev=b8f936cd299c4af982662f66ee28d5b1&hash=5F41AF406CA64CCAFA2C5D1E3AE40904). The Court “may properly take judicial notice of ‘matters of public record.’” *Goldfarb v. Mayor & City Council of Baltimore*, 791 F.3d 500, 508 (4th Cir. 2015) (quoting *Philips v. Pitt Cnty. Mem’l Hosp.*, 572 F.3d 176, 180 (4th Cir. 2009)); *see also* Fed. R. Evid. 201.

<sup>2</sup> *NC DEQ Directs Chemours to Significantly Expand Well Testing*, N.C. Dep’t Env’t Quality (Mar. 10, 2025), <https://www.deq.nc.gov/news/press-releases/2025/03/10/nc-deq-directs-chemours-significantly-expand-well-testing>.



Chemours' and DuPont's chemicals are also in the air that people breathe,<sup>3</sup> in residents' blood,<sup>4</sup> the dust in people's homes,<sup>5</sup> fish that people eat,<sup>6</sup> domestic pets,<sup>7</sup> and local food products (such as berries, squash, tomatoes, and lettuce).<sup>8</sup> And as new research and sampling data is revealed each year, the public continues to learn more about both the scope of the companies' contamination and the severity of its harm.

Sadly, the damage caused by DuPont's and Chemours' pollution will reverberate for generations. PFAS stay in the blood of mothers and are transferred to babies during their time in the womb and through breastmilk. *See* 89 Fed. Reg. at 32537. Children who are not even born yet may suffer from the PFAS chemicals that the companies pumped from their facility.

Adding insult to injury, Chemours and DuPont hid their pollution from the public and the state of North Carolina for years before researchers and news outlets uncovered the story. *See* Exhibit 1, Am. Compl., *North Carolina v. The Chemours Company FC, LLC* (Apr. 9, 2018).

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<sup>3</sup> Jiaqi Zhou et al., *Legacy and Emerging Airborne Per- and Polyfluoroalkyl Substances (PFAS) Collected on PM<sub>2.5</sub> Filters in Close Proximity to a Fluoropolymer Manufacturing Facility*, 24 *Env't Sci. Process & Impacts* 2272–2283 (Dec. 2022), <https://doi.org/10.1039/D2EM00358A>.

<sup>4</sup> Nadine Kotlarz et al., *Measurement of Novel, Drinking Water-Associated PFAS in Blood From Adults and Children in Wilmington, North Carolina*, 128 *Env't Health Persp.* 077005 (July 2020), <https://doi.org/10.1289/EHP6837>.

<sup>5</sup> Susie Proctor et al., *Per- and Polyfluoroalkyl Ether Acid (PFEA) Concentrations in Indoor Dust Are Higher in Homes Closer to a Fluorochemical Manufacturing Facility*, XX *Env't Sci. & Tech* XX-XX (Mar. 31, 2025), <https://doi.org/10.1021/acs.est.4c07043>.

<sup>6</sup> Presentation, Preliminary PFAS Study in a Privately-Owned Man-Made Lake, N.C. Dep't Env't Quality (June 18, 2018), at slides 6–7, <https://www.deq.nc.gov/ncdeq-man-made-lake-preliminary-pfas-study/download>.

<sup>7</sup> Kylie D. Rock et al., *Domestic Dogs and Horses as Sentinels of Per- and Polyfluoroalkyl Substance Exposure and Associated Health Biomarkers in Gray's Creek North Carolina*, 57 *Env't Sci. & Tech.* 9567–9579 (June 20, 2023), <https://doi.org/10.1021/acs.est.3c01146>.

<sup>8</sup> Pingping Meng et al., *Residential Garden Produce Harvested Near a Fluorochemical Manufacturer in North Carolina Can Be An Important Fluoroether Exposure Pathway*, 72 *J. Agric. & Food Chemistry* 26874–26883 (Nov. 20, 2024), <https://doi.org/10.1021/acs.jafc.4c06177>.

**B. Conservation and Community Groups have spent years advocating to protect communities from DuPont's and Chemours' toxic PFAS pollution.**

Since Chemours' and DuPont's PFAS pollution was uncovered, Conservation and Community Groups have worked tirelessly to protect their members and communities from the companies' contamination. This work is invaluable to these organizations' missions.

Cape Fear River Watch, for example, filed lawsuits against both the North Carolina Department of Environmental Quality ("Department") and Chemours to address the PFAS from the facility. Those lawsuits resulted in a Consent Order requiring Chemours to significantly reduce the PFAS coming from the company's air emissions, wastewater, and groundwater ("2019 Consent Order"). Years later, Cape Fear River Watch continues to monitor Chemours' performance under the 2019 Consent Order to protect nearby and downstream communities. The organization further petitioned EPA to require Chemours to conduct testing on 54 PFAS chemicals manufactured at the company's facility to determine the impact of Chemours' chemicals on the health of their members, their families, and others in the community. Through countless public comments, letters, meetings, public hearings, and other actions, Cape Fear River Watch advocates at the local, state, and federal level for stronger protections against PFAS.

Likewise, the Environmental Justice Community Action Network advocates for the control of PFAS pollution spreading through communities in Sampson County through litigation and public comments. In the last few years, the organization discovered that community members living near the Sampson County landfill had high levels of PFAS in their drinking water wells—in part, because Chemours and DuPont had dumped their PFAS-laden sludge into the landfill. Many of Chemours' PFAS had also been found in surface waters near the landfill where the organization's members fish and hunt. The Environmental Justice Community Action

Network filed a lawsuit against the landfill, highlighting violations of federal laws, and the organization continues to advocate for strong protections against PFAS within the state.

North Carolina Coastal Federation has similarly worked over the past eight years to advocate on behalf of affected communities—to protect them from past and potential future PFAS pollution coming from the Fayetteville Works Facility.

**C. Conservation and Community Groups continue to advocate against Chemours' pollution, including by opposing the company's plans to expand its PFAS manufacturing.**

Despite causing one of the largest public health crises in North Carolina's history, Chemours continues to seek permission to release—and even increase—its toxic pollution. As such, it is essential for the public to have access to the information Chemours and DuPont are hiding, including information regarding the characteristics and toxicity of companies' chemicals, byproducts of their manufacturing processes, air and wastewater treatment options, and any other information related to the companies' PFAS pollution and/or the facility.

In the fall of 2022, Chemours announced its plan to expand its PFAS manufacturing operations at the Fayetteville Works Facility, and it later submitted an application to the Department for an air permit that would allow it to expand.<sup>9</sup> Although Chemours advertised to the public in its press release that there would be no “projected increases” of its pollution, *see* Exhibit 2, Press Release: *Chemours Schedules Information Sessions on Planned Product Expansion* (Sept. 2, 2022), at 1, analysis of the company's current air permit application shows otherwise. According to its application, the company has asked for permission to release up to an

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<sup>9</sup> See ERM NC, Inc., *Air Permit Application, Vinyl Ethers Expansion and Hydrolysis Line (Updated)* (Jan. 2024), <https://edocs.deq.nc.gov/AirQuality/DocView.aspx?id=476464&dbid=0&repo=AirQuality&cr=1> [hereinafter Chemours, Expansion Application].

additional 2,510 pounds of PFAS into the air each year<sup>10</sup>—pollution that could again threaten the groundwater and drinking water wells throughout the region. After Chemours announced its expansion in 2022, generating extensive news coverage,<sup>11</sup> community members gathered to protest the company’s plans. Chemours’ application for its air permit is still pending, and the public and Conservation and Community Groups will have opportunities to provide input on any draft air permit. It is therefore crucial that the public, as well as the Department, have access to comprehensive information on Chemours’ expansion plans, its chemicals, and emission control technologies.

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<sup>10</sup> See Chemours, Expansion Application, *supra* note 9. This figure was calculated by adding the total Post-Mod Potential Emissions (in pounds per year) for each fluorinated organic compound, identified in the Project Emissions Summary, and subtracting the total CY2021 Actual Emissions (in pounds per year) for those same compounds. Conservation and Community Groups included HFPO-DA (or GenX) in their calculations because it is a PFAS, even though Chemours wrongly omitted HFPO-DA as a fluorinated organic compound (or PFAS) from its Project Emissions Summary. *Id.* at App. C, Project Emissions Summary.

<sup>11</sup> See, e.g., Greg Barnes, *Chemours Expansion Plants Infuriate Environmentalists*, N.C. Health News (Sept. 9, 2022), <https://www.northcarolinahealthnews.org/2022/09/09/chemours-expansion-plans-infuriate-environmentalists/>; Jason Brady, *Chemours to Hold 2 Public Meetings on Planned Expansion*, City View (Sept. 18, 2022), <https://www.cityviewnc.com/stories/chemours-to-hold-2-public-meetings-on-planned-expansion/>; Liz McLaughlin, *Outrage Over Chemours’ Plans to Expand Production After Widespread Chemical Pollution in NC Drinking Water*, WRAL News (Sept. 20, 2022), <https://www.wral.com/story/outrage-over-chemours-plans-to-expand-production-after-widespread-chemical-pollution-in-nc-drinking-water/20485049/>; Myron Pitts, *Chemours Advances With Fayetteville Site Expansion; Residents Skeptical*, The Fayetteville Observer (Sept. 22, 2022), <https://www.fayobserver.com/story/news/2022/09/22/chemours-fayetteville-site-on-track-expansion-despite-past-troubles/69495575007/>; Lisa Sorg, *Chemours Plants to Expand Its Fayetteville Works Site, But Hasn’t Cleaned Up Existing Contamination*, NC Newline (Sept. 22, 2022), <https://ncnewline.com/2022/09/22/chemours-plans-to-expand-its-fayetteville-works-site-but-hasnt-cleaned-up-existing-contamination/>; Trista Talton, *‘Absolute Gall’: Chemours’ Expansion Plan Angers Residents*, Coastal Review (Sept. 23, 2022), <https://coastalreview.org/2022/09/absolute-gall-chemours-expansion-plan-angers-residents/>; Matthew Prensky, *GenX Water Crisis: Public Says No To Chemours’ Expansion Plan, Anger Toward Company Grows*, Star News Online (Sept. 28, 2022), <https://www.starnewsonline.com/story/news/2022/09/29/angry-over-genx-crisis-public-voices-opposition-chemours-expansion-plan/69508334007/>; *Chemours Submits Modifications to Air Emissions Permit in Preparation For Expansion*, Port City Daily (Nov. 4, 2022), <https://portcitydaily.com/local-news/2022/11/04/chemours-submits-modifications-to-air-emissions-permit-in-preparation-for-expansion/>.

Even more, Chemours' has submitted two pending permit applications for wastewater outfalls from its facility. Collectively, the outfalls release millions of gallons of wastewater per day into the Cape Fear River upstream of the drinking water intakes for more than 500,000 North Carolinians. Conservation and Community Groups are reviewing Chemours' application materials and preparing for the opportunity to engage on draft permits related to these wastewater outfalls. It is critical that the public has the information it needs to assess Chemours' pollution, including environmental and/or health risks from these wastewater discharges, as well as any discharge and treatment alternatives.

Further, on top of the toxic pollution already produced at its Fayetteville facility, Chemours has previously attempted to import up to four million pounds of GenX from the Netherlands into the Fayetteville facility. The company did so without informing the public and was stopped only after EPA discovered an error in Chemours' import documents. It is certainly possible the company is again attempting to import this waste and putting the health and safety of nearby North Carolinians at further risk by increasing the amount of PFAS waste handled at its facility.

Finally, new information continuously comes to light regarding the extent and severity of the companies' pollution. As Chemours continues to sample further out from its facility (pursuant to the 2019 Consent Order), the company continues to find new polluted private drinking water wells. Not only that, but there are also continuously new studies that provide impacted families with additional information about the way in which the companies' pollution may have harmed their health. For instance, just last year, studies were released on specific

health impacts of Chemours' chemicals<sup>12</sup> and additional sources of exposure for community members.<sup>13</sup>

In light of the ongoing pollution (and that Chemours is trying to *increase* its toxic pollution with its planned expansion), the public, Conservation and Community Groups, and their members have a serious need for Chemours' and DuPont's documents.

**D. DuPont's and Chemours' motion to seal includes thousands of pages of documents that are vital to the public.**

DuPont and Chemours are attempting to seal up to 21,000 pages of documents that directly impact Conservation and Community Groups' mission, their members, the public, and even the lives of future generations. The companies' own motion admits that the documents are littered with information on Chemours' and DuPont's PFAS pollution, sampling data, air and wastewater treatment options, toxicology and health impacts associated with PFAS, environmental and human health concerns, and the public's exposure to their toxic chemicals. For instance, Chemours seeks to seal, among other things:

- "Research into toxicological data," *e.g.*, [D.E. 466-1 at 2, 8, 36]<sup>14</sup>;
- Information relevant to "product safety, environmental and human health questions," *e.g.*, [D.E. 466-1 at 2];
- Communications regarding "exposure assessments and toxicity studies" related to DuPont's "products and constituent components," *e.g.*, [D.E. 466-1 at 32, 33, 34, 47];
- Documents containing DuPont's "environmental assessment and toxicology research," *e.g.*, [D.E. 466-1 at 36, 38];

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<sup>12</sup> Justin M. Conley et al., *Maternal and Neonatal Effects of Maternal Oral Exposure to Perfluoro-2-methoxyacetic Acid (PFMOAA) During Pregnancy and Early Lactation in the Sprague-Dawley Rat*, 58 *Env't Sci. & Tech* 1064–1075 (Jan. 1, 2024), <https://doi.org/10.1021/acs.est.3c08559>.

<sup>13</sup> Meng, *supra* note 8.

<sup>14</sup> Page number citations for docket entries are to the ECF-stamped page.

- Documents containing information on the companies’ “environmental and toxicological hazard assessment and medical monitoring programs,” *e.g.*, [D.E. 466-1 at 36, 37, 38, 39];
- Information regarding the companies’ “investigation of PFAS in the environment,” *e.g.*, [D.E. 466-1 at 16, 6];
- Various documents related to pollution treatment and abatement technologies, *e.g.*, [D.E. 466-1 at 4, 11, 17, 18, 29, 30, 37, 43, 44, 47, 49];
- Information describing the “current state of wastewater discharge, emissions, options and strategies for improving those discharges and emissions,” *e.g.*, [D.E. 466-1 at 13, 22]; and
- A “list of chemical compounds associated with Fayetteville works production,” *e.g.*, [D.E. 466-1 at 47, 48].

These and other documents are necessary for the public to understand the impacts to their own health and property values and the potential for subsequent harm from the companies’ past, current, and future air, water, and soil pollution.

The public also has an interest in other documents that Chemours and DuPont are attempting to conceal, in large part due to the companies’ own actions and statements. Chemours and DuPont are attempting to hide a multitude of information related to their pollution, business, and the facility—information that Chemours itself has used to justify its expansion plans and to defend itself against human rights violations. Such information includes business strategies, operations, and opportunities; the companies’ chemical products and characteristics; alternative and replacement chemistries; Toxic Substances Control Act submissions and negotiations; knowledge of the companies’ PFAS pollution; and Chemours’ response to scientific research and/or media coverage of its pollution. While Chemours tries to withhold this information as confidential, proprietary, or trade secrets, as discussed below, Chemours repeatedly has made all of this information the public’s business.

First, Chemours has justified its request to expand its PFAS manufacturing (and associated pollution) by claiming that its operations are necessary for a green-energy economy and national security. In its press statements to the public about its expansion, Chemours discusses its chemical products, regulatory and business strategies, and alleged need for its chemical products as justification for expanding its facility. For instance, Chemours advertises that its expansion is “to support an increase in domestic production in the semiconductor, transportation, clean energy, consumer electronics, and communications industries.” Exhibit 2 at 1. It boasts producing “materials critical to economic growth in industries across North Carolina and the United States,” that it is “the only U.S. producer” of the fluoropolymer used for semiconductors, and that its facility “plays an integral role” in the supply chain and is essential for U.S. “national security.” *Id.* Chemours further claims that its facility is “the only U.S. manufacturing location” for specific membranes used “for the production of green (renewable) hydrogen, a clean fuel...with no carbon emissions.” *Id.* Because the company has used this information to justify a massive expansion of its facility (and likely increase in pollution) to the public, it cannot now argue that thousands of pages of documents regarding the company’s business strategies, operations, and opportunities are now confidential and irrelevant to the public. *See, e.g.*, [D.E. 466 at 5–6; D.E. 466-1 at 4, 7, 16, 19, 20, 21, 23, 28, 29, 38, 39, 48].

Second, when experts on the United Nations Human Rights Council expressed alarm over potential human rights violations due to the pollution coming from the Fayetteville facility, Chemours defended itself using the categories of information it now wants to hide from the public. *See* Exhibit 3, Letter from The Chemours Company, to Marcos Orellana, et al., United Nations Human Rights Council (Nov. 21, 2023). Chemours spouted about its chemical products and their characteristics, strategic direction of its business, position within the industry and



global economy, treatment advances, and other information regarding its business, chemicals, and facility. For instance, Chemours boasted to the United Nations Human Rights Council about its installation of treatment at its facility and suggested repeatedly that its chemicals were not harmful to human health. *See e.g., id.* at 3, 4, 7–8, 10–11. Chemours further argues that its PFAS chemicals are uniquely positioned to serve global needs, stating in its letter that the “unique combination of properties” “set [the company’s fluoropolymer chemicals] apart and make them vital to the sectors and industries they serve.” *Id.* at 5. The company cannot, on the one hand, argue that all of this information is relevant to whether it committed human rights violations, and, on the other hand, claim that all of this information is confidential and should be concealed from the public. [D.E. 466 at 5–7; *see also, e.g.*, D.E. 466-1 at 4, 9, 19, 20, 21, 22, 28, 29, 36].

Third, Chemours and DuPont have made information regarding alternative or replacement chemistries or products the public’s business, [D.E. 466-1 at 5, 7, 11, 17, 18, 24, 30–36, 39, 40, 43–44, 49], as well as any information related to the companies’ submissions under the Toxic Substances Control Act, including their request to EPA to begin manufacturing GenX, [D.E. 466-1 at 8, 15, 16 27, 29, 30, 31]. This is because the companies have previously swapped out high-profile chemical compounds with new ones that are similarly harmful. Indeed, this is precisely what led to this public health crisis in Eastern North Carolina. In 2006, recognizing the dangers of PFOA, EPA asked DuPont and others to voluntarily phase out their use of PFOA and gave the companies nearly a decade to do so. The companies took advantage of the lack of comprehensive regulation on PFAS chemicals and simply shifted to using a structurally similar compound: GenX. It was with GenX and other “replacement” PFAS that DuPont and Chemours silently contaminated the drinking water, air, and soil of Eastern North Carolina. *See Exhibit 1* at 17–21, 23–27, 27–31. Chemours further stated publicly in its response

to the United Nation Human Rights Council that EPA allegedly approved manufacture of GenX “based on extensive studies showing that it did not bioaccumulate and has a favorable toxicological profile,” Exhibit 3 at 2, and that GenX “was selected as a replacement for PFOA” because “it has an entirely different toxicity profile,” *id.* at 7. Given its history, Chemours cannot tout such public statements without making public the information regarding its alternative and replacement chemistries, and its Toxic Substances Control Act submissions and negotiations.

Finally, any information related to the company’s knowledge of its PFAS pollution and its response to scientific research or media coverage of its pollution is the public’s business. *See, e.g.*, [D.E. 466-1 at 6, 9, 10, 15, 17, 18]. Chemours has stated that when news regarding its pollution was uncovered, “Chemours was already evaluating alternatives for additional equipment to abate PFAS discharges” and that the company “immediately took action to respond to the public concerns[.]” Exhibit 3 at 9. The company made these public statements, in part, to convince the public that it should be trusted in the future—that any expansion of its facility will not threaten future public health and safety. It is crucial that Conservation and Community Groups and the public are able to fact-check such statements by reviewing Chemours’ documents.

Chemours and DuPont have repeatedly and intentionally made various issues regarding their chemicals, business, pollution, and the facility the public’s concern. The public, including Conservation and Community Groups, therefore has a dire interest in *all* categories of Chemours’ and DuPont’s documents that the companies are now attempting to seal.

### **III. ARGUMENT**

At the outset, Conservation and Community Groups emphasize that it is not the public's burden to prove they have sufficient interest in Chemours' and DuPont's documents.

Conservation and Community Groups provide the background above to put the companies' motion to seal into context. Namely, that Chemours and DuPont want to conceal essential information that directly affects the lives of half-a-million people they have harmed with toxic pollution—pollution that the companies intentionally hid from the public and regulators for decades. And Chemours does this as the company asks communities to trust it despite the catastrophic harm it has caused, to accept a massive expansion of the facility which still sits in (and defiles) these communities' own backyards, and to believe that this expansion will not cause further harm to their families.

The public has both a First Amendment and common law right of access to Chemours' and DuPont's judicial records. Under either right, the companies must show an interest sufficient to overcome a presumption of public access for all documents the companies seek to seal. The companies must also show why any alternatives to sealing will not protect their interests. They have failed to do this, and Chemours' and DuPont's documents must be unsealed.

#### **A. The rules provide the opportunity for the public and interested parties to object, including Conservation and Community Groups.**

Conservation and Community Groups should be given the opportunity to object to the companies' attempt to hide their documents from the public. Members of the public hold a First Amendment and common law right to access judicial proceedings and documents submitted in conjunction with those proceedings. *United States ex rel. Oberg v. Nelnet, Inc.*, 105 F.4th 161,

171–72 (4th Cir. 2024).<sup>15</sup> To protect these rights, the Fourth Circuit has established procedural requirements that courts must comply with when presented with a motion to seal. This includes providing public notice of the sealing request and “a *reasonable opportunity for the public to voice objections* to the motion.” *Doe v. Pub. Citizen*, 749 F.3d 246, 273 (4th Cir. 2014) (emphasis added) (citing *In re Knight Pub. Co.*, 743 F.2d 231, 234–35 (4th Cir. 1984)).<sup>16</sup>

Members of the public may intervene in a judicial proceeding to object to the sealing of judicial records.<sup>17</sup> See *Stone v. Univ. of Md. Med. Sys. Corp.*, 855 F.2d 178, 181 (4th Cir. 1988); *Rushford v. New Yorker Mag., Inc.*, 846 F.2d 249, 252 (4th Cir. 1988); *Rosenfeld v. Montgomery Cnty. Pub. Sch.*, 25 F. App’x 123, 131–32 (4th Cir. 2001); *United States v. Moussaoui*, 65 F. App’x 881, 885, 891 (4th Cir. 2003); *Va. Dep’t of State Police v. Washington Post*, 386 F.3d 567, 572 (4th Cir. 2004); *Pub. Citizen*, 749 F.3d at 262. This requirement ensures that “the decision to seal records will not be made lightly.” *Stone*, 855 F.2d at 182.

Conservation and Community Groups should therefore be given the opportunity to object to Chemours’ and DuPont’s motion to seal up to 21,000 pages of documents—documents that the public not only has a constitutional right to access (as discussed below), but also has a crucial need for. This is especially true given the companies’ role in causing a public health and

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<sup>15</sup> Section V.G.1.(a)(ii) of the Policy Manual also identifies Conservation and Community Groups’ and the public’s First Amendment and common law right of access to judicial records.

<sup>16</sup> See also *Practice Preferences – The Honorable United States District Judge James C. Dever III*, U.S. Dist. Ct. E. Dist. of N.C., <https://www.nced.uscourts.gov/judges/deverpref.aspx> (last visited Apr. 10, 2025) (“The Court will grant the Motion to Seal only after providing adequate notice to the public and opportunity for interested parties to object . . .”).

<sup>17</sup> In the event that the Court determines that permissive intervention under Fed. R. Civ. P. 24(b) is the appropriate procedural vehicle for Conservation and Community Groups to object to the companies’ Motion to Maintain Materials Under Seal, Conservation and Community Groups easily meet the standard for permissive intervention. *Flynt v. Lombardi*, 782 F.3d 963, 967 (8th Cir. 2015); see also *Jessup v. Luther*, 227 F.3d 993, 997–99 (7th Cir. 2000); *Beckman Indus., Inc. v. Int’l Ins. Co.*, 966 F.2d 470, 472–73 (9th Cir. 1992).

environmental crisis that has spanned one-fifth of the state of North Carolina—and given Chemours’ plans to significantly expand its PFAS manufacturing operations at its facility.

**B. The public has a First Amendment right to DuPont’s and Chemours’ documents, and the companies have not met their burden to overcome that right.**

Conservation and Community Groups have a First Amendment right to access Chemours’ and DuPont’s documents, and the companies have failed to meet the high burden of overcoming this fundamental right. Because the open nature of trials is a principle that has been recognized since the beginning of our legal tradition, *see Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 580 n.17, (1980), the public has a fundamental constitutional right to access documents filed in judicial proceedings. *Rushford*, 846 F.2d at 253. The Fourth Circuit has repeatedly and unconditionally held that the First Amendment right to access attaches to “documents filed in connection with a summary judgement motion in a civil case.” *Id.*; *see also Va. Dep’t of State Police*, 386 F.3d at 578; *Pub. Citizen*, 749 F.3d at 267; *Oberg*, 105 F.4th at 171–72. This is true whether or not a court relies on the documents filed in resolving the summary judgment motion. *Oberg*, 105 F.4th at 172. This is also true for documents that were under protective order during pre-trial discovery. *Id.* (explaining that where a protective order may have been appropriate to facilitate the exchange of information during discovery, once documents are made part of a dispositive summary judgement motion, they “lose their status of being raw fruits of discovery” and the public’s First Amendment right “attaches immediately upon their filing”). Thus, Conservation and Community Groups’ First Amendment rights attach to each document filed in conjunction with the drinking water utilities’ summary judgment motion.

DuPont and Chemours have also moved to maintain the seal of two additional judicial records that are protected under the public’s First Amendment right to access records. These are

(1) Exhibit I to Defendants’ Memorandum of Law in Support of their Motion to Withdraw or Amend Requests for Admission, [D.E. 453], and (2) Defendants’ Statement in Opposition to Plaintiffs’ Joint Statement of Material Facts under Local Rule 56.1(a)(2), [D.E. 456]. Because both records recite the same type of information that the companies seek to hide in the documents filed with the drinking water utilities’ summary judgment motion, [D.E. 466 at 6, 8], the First Amendment standard likewise applies to these records.

To seal their documents, DuPont and Chemours must meet a very high burden. The companies must demonstrate that restricting public access to the documents is “necessitated by a compelling government interest,” and that the restriction is “narrowly tailored to serve that interest.” *Pub. Citizen*, 749 F.3d at 266 (quoting *In re Washington Post Co.*, 807 F.2d 383, 390 (4th Cir. 1986)). The companies have failed to demonstrate that here.

The Fourth Circuit has found a compelling government interest that justifies sealing in only very limited circumstances—none of which are relevant here. They include ensuring a defendant’s right to a fair criminal trial, protecting the privacy rights of trial participants (such as victims or witnesses), and preventing national security risks. *Pub. Citizen*, 749 F.3d at 269. Documents that merely “carry the potential for embarrassing or injurious revelations about a corporation’s image” do not present a compelling government interest sufficient to overcome the First Amendment right of access, “notwithstanding the negative publicity those documents may shower upon a company.” *Id.* A company’s preferences for which documentation it would prefer to remain confidential also has no bearing on a court’s First Amendment right to access analysis. *See Dew v. E.I. DuPont Nemours & Co.*, No. 5:18-CV-00073-D, 2024 WL 4906068, at \*3 (E.D.N.C. Nov. 27, 2024). It is therefore immaterial that DuPont or Chemours did not intend for many of their documents to be made public. *Contra* [D.E. 466-1] (irrelevantly advocating that

numerous documents must be sealed simply because the companies determined they were “intended to remain internal”). Not only do the companies fail to have a compelling government interest in sealing the documents, but they also ask the Court to blanket-seal up to 21,000 pages of documents attached to the drinking water utilities’ motion for summary judgment and additional records. [D.E. 466 at 2, 6]. In no way is the companies’ request “narrowly tailored” to serve any interest, as required. *Pub. Citizen*, 749 F.3d at 266. Granting a request that is not narrowly tailored violates the public’s (including Conservation and Community Groups’) First Amendment right to these documents.

Because the First Amendment protects the public’s right to access the Chemours’ and DuPont’s documents, and the companies have not shown a compelling government interest in sealing the documents or narrowly tailored their request, their motion must be denied.

**C. DuPont and Chemours have not even met their burden to overcome the public’s common law right to their documents.**

Conservation and Community Groups have a First Amendment right to Chemours’ and DuPont’s documents given that they have been filed with a motion for summary judgment. But the companies have not even shown that they can overcome the public’s common law right to access their documents. *Nixon v. Warner Commc’ns, Inc.*, 435 U.S. 589, 597 (1978) (establishing common law right of access to judicial records); *see also Rushford*, 846 F.2d at 253.

To overcome the presumption of the public’s common law right to access judicial records, a party bears the burden of showing that “some significant interest” outweighs the public’s right to access. *Rushford*, 846 F.2d at 253. Courts consider three factors in this balancing test: (1) “whether the records are sought for improper purposes;” (2) “whether release would enhance the public’s understanding of an important historical event;” (3) and “whether the public has already had access to the information contained in the records.” *In re Knight Pub. Co.*,

743 F.2d at 235 (citing *Nixon*, 435 U.S. at 597–608). Each of these three factors weigh in favor of unsealing the companies’ documents. Even more, the Fourth Circuit has stated, “We are unaware . . . of *any case* in which a court has found a company’s bare allegation of reputational harm” to be an interest sufficient to defeat the common law presumption of access. *See Pub. Citizen*, 749 F.3d at 269 (emphasis added).

As discussed, the public requires these records for legitimate purposes, including but not limited to understanding impacts to their own health and even the health of their future generations, gaining knowledge about Chemours’ planned expansion and its potential effect on nearby and surrounding communities, and advocating for protections against the companies’ harmful chemical pollution. Second, release of these records would greatly enhance the public’s understanding of a public health and environmental crisis that was a half-century in the making before it was exposed in June 2017. The public continues to grapple with the harm caused by DuPont’s and Chemours’ PFAS pollution as new studies and sampling data reveal additional information about the scope and severity of the contamination.

Finally, the public already has access to many of the categories of information in the companies’ documents—in large part because the companies have touted their PFAS chemistries, products, and business strategies in public forums as a means of broadcasting their goodwill. *See* Section II(D). Chemours has had to do this because it has violated the public trust, and the company is desperate to promote its facility expansion as a positive step for North Carolina and the country. The public also has access to some information regarding the toxicological effects of the companies’ chemicals (also due to the companies’ public statements



and Chemours' lawsuit against EPA's health advisory for GenX<sup>18</sup>), available treatment technologies (because it was mandated by the 2019 Consent Order), and sampling data (also mandated by the 2019 Consent Order). But as evidenced by the extensive list in Exhibit A of the companies' memorandum in support of their Motion to Maintain Materials Under Seal, DuPont and Chemours wish to hide thousands of pages of information from the public related to these categories of essential information, including on their chemical products, Fayetteville site, treatment options, and toxicological data. [D.E. 466-1]. The companies must not be allowed to cherry-pick when and what information they decide to present to the public regarding their chemicals and their pollution to protect their public image. This type of secrecy is what first resulted in this public health disaster.

**D. If the Court determines that the companies have met the high burden for hiding any of the information in these documents, they must be required to redact them line-by-line.**

Chemours and DuPont have not shown that they have enough of an interest to override the public and Conservation and Community Group's First Amendment or common law right to access their documents. If, however, the Court determines that the companies have met this burden for some discrete information within those documents, the Fourth Circuit mandates that less drastic alternatives to blanket sealing of documents must be considered to protect the public's right to access. *In re U.S. for an Ord. Pursuant to 18 U.S.C. Section 2703(D)*, 707 F.3d 283, 294 (4th Cir. 2013). Importantly, the Fourth Circuit has "*never* permitted wholesale sealing of documents based upon unsubstantiated or speculative claims of harm, let alone harm to a company's reputation." *Pub. Citizen*, 749 F.3d at 270 (emphasis added). Rather, a "strong

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<sup>18</sup> See Petitioner's Final Brief, *Chemours Co. FC, LLC v. United States Env't Prot. Agency*, 109 F.4th 179 (3d Cir. 2024) (No. 22-2287), 2023 WL 5277319.

interest” in keeping confidential any “proprietary and trade-secret information” only justifies a “partial sealing of court records.” *Id.* And any concealing of information protected by the public’s First Amendment right to access must be “narrowly tailored” to serve any interest. *Pub. Citizen*, 749 F.3d at 266. Thus, Chemours and DuPont must be required to redact the relevant lines of its documents—and only those lines, leaving the rest of their documents available for the public. *See In re U.S. for an Ord. Pursuant to 18 U.S.C. Section 2703(D)*, 707 F.3d at 294; *Moussaoui*, 65 F. App’x at 889 (“[S]ealing an entire document is inappropriate when selective redaction will adequately protect the interests involved.”).

Based on the companies’ filing, nearly all the categories of information they wish to conceal must be kept public. Not only have they made all this information the public’s business through their own statements and actions, *see* Section II(D), but courts have made clear that nearly all their reasons for hiding their documents are immaterial. For instance, documents that merely “carry the potential for embarrassing or injurious revelations about a corporation’s image” cannot overcome the First Amendment right of access, regardless of any “negative publicity those documents may shower upon a company.” *Pub. Citizen*, 749 F.3d at 269. Nearly all the documents that the companies argue would cause “competitive harm” do not appear to contain proprietary or trade secret information. Instead, they seem to just be embarrassing documents that may lead to negative publicity for the companies. *E.g.*, [D.E. 466-1 at 6] (“This is an internal DuPont email exchange concerning a preliminary evaluation of a publication about the presence of PFCs in the Cape Fear River and strategizing the company’s response to the same.”). This does not overcome the public’s right to access. It is also not enough that Chemours or DuPont have previously designated certain documents as “confidential” or “highly confidential,” [D.E. 466 at 3], or that the companies did not intend for certain documents to

be made public, *see* [D.E. 466-1] (seeking documents to be sealed simply because they were “intended to remain internal”). *See Dew*, 2024 WL 4906068, at \*3 (determining that sealing is not justified simply due to “a unilateral decision to designate a document as confidential . . .”).

Finally, it is irrelevant that it would take the companies time to review and redact specific lines within their documents—particularly given the years of grave pain and suffering the companies have caused (and will continue to cause) to hundreds of thousands of North Carolinians.

#### **IV. CONCLUSION**

Chemours boasts in its public statements that the company has “transformed” the Fayetteville Works Facility into one that is “the best of its kind in the world,” and that it did this “with transparency and openness towards the surrounding community.” Exhibit 3 at 8–9. It claims that the company has “worked hard to ensure that every conversation is factual, informative, and a true two-way dialogue.” *Id.* at 16. But now, Chemours and DuPont work to hide up to 21,000 pages of documents that are critical for the public—documents that will help communities understand the harm the facility has caused, and will continue to cause, to their own health, their property values, and even the lives of future generations.

Conservation and Community Groups respectfully request that their Motion to Intervene and Object to Defendants’ Motion to Materials Under Seal be granted, and the companies’ documents be unsealed.

Respectfully submitted this the 14th day of April, 2025.

/s/ Jean Zhuang  
Jean Zhuang  
N.C. State Bar No. 51082  
Email: jzhuang@selc.org

Hannah M. Nelson  
N.C. State Bar No. 56565  
Email: hnelson@selc.org

SOUTHERN ENVIRONMENTAL  
LAW CENTER  
136 East Rosemary Street, Suite 500  
Tel.: (919) 967-1450  
Fax: (919) 929-9421  
*Attorneys for Cape Fear River  
Watch, Environmental Justice  
Community Action Network, and  
North Carolina Coastal Federation*

### **CERTIFICATE OF SERVICE**

I hereby certify that on this 14th day of April, 2025, I electronically filed the foregoing **MEMORANDUM OF LAW IN SUPPORT OF MOTION TO INTERVENE AND OBJECT TO DEFENDANTS' MOTION TO MAINTAIN MATERIALS UNDER SEAL** with the Clerk of Court using the CM/ECF System, which will send notification of such filing to the users registered on the Court's CM/ECF System.

/s/ Jean Zhuang  
Jean Zhuang