

No. 25-

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IN THE  
**Supreme Court of the United States**

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STATE OF MARYLAND, PETITIONER,

v.

3M COMPANY, RESPONDENT.

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STATE OF SOUTH CAROLINA EX REL. ALAN M. WILSON,  
IN HIS OFFICIAL CAPACITY AS ATTORNEY GENERAL OF THE  
STATE OF SOUTH CAROLINA, PETITIONER,

v.

3M COMPANY, RESPONDENT.

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**On Petition For Writ Of Certiorari  
To The United States Court Of Appeals  
For The Fourth Circuit**

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**APPENDIX TO PETITION  
FOR WRIT OF CERTIORARI**

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1a

**PUBLISHED**

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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**No. 24-1218**

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STATE OF MARYLAND,  
Plaintiff–Appellee,  
v.

3M COMPANY,  
Defendant–Appellant,

and

CORTEVA INC.; DUPONT DE NEMOURS INC.;  
EIDP, INC., f/k/a E.I. Dupont De Nemours &  
Company, Incorporated; CHEMOURS COMPANY,  
Defendants.

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Appeal from the United States District Court for the  
District of Maryland, at Baltimore. Richard D. Ben-  
nett, Senior U.S. District Judge. (1:23-cv-01836-RDB)

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**No: 24-1270**

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In re: AQUEOUS FILM-FORMING FOAMS PROD-  
UCTS LIABILITY LITIGATION,

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STATE OF SOUTH CAROLINA EX REL ALAN  
WILSON, in his official capacity as Attorney General  
of the State of South Carolina,

Plaintiff–Appellee,

v.

3M COMPANY,  
Defendant–Appellant,

and

CORTEVA INC.; DUPONT DE NEMOURS INC.,  
New DuPont; EIDP, INC., f/k/a E. I. DuPont De  
Nemours & Company, Old DuPont; THE  
CHEMOURS COMPANY; THE CHEMOURS  
COMPANY FC, LLC,

Defendants.

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Appeal from the United States District Court for the  
District of South Carolina, at Charleston. Richard M.  
Gergel, U.S. District Judge. (2:23-cv-05979-RMG)

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Argued: October 30, 2024      Decided: March 7, 2025

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Before AGEE and RUSHING, Circuit Judges, and  
FLOYD, Senior Circuit Judge.

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Vacated and remanded by published opinion. Judge  
Agee wrote the opinion, in which Judge Rushing  
joined. Senior Judge Floyd wrote a dissenting opinion.

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AGEE, Circuit Judge:

In this consolidated appeal, 3M Company challenges the denial of its attempts to remove two mirroring lawsuits brought in state court by Maryland and South Carolina (collectively, “the States”) to federal court under 28 U.S.C. § 1442(a)(1). When a private entity like 3M invokes that provision—commonly referred to as the federal officer removal statute—as its basis for removal, it must plausibly allege, among other elements, that the conduct charged in the complaint was taken for or in relation to asserted federal authority. *See Anne Arundel Cnty. v. BP P.L.C.*, 94 F.4th 343, 347–48 (4th Cir. 2024).

This appeal asks if 3M satisfied that requirement by plausibly alleging that its production of aqueous film-forming foam (“AFFF”) for the United States military related to the charged conduct despite the States’

attempts to disclaim that conduct from the scope of their complaints. The district courts credited the States' respective disclaimers, and on that basis rejected 3M's bids for federal officer removal. For the reasons discussed below, we disagree with their conclusion. We therefore vacate the district courts' decisions and remand for further consideration as to whether 3M has satisfied the other elements needed to avail itself of a federal forum under § 1442(a)(1).

## I.

### A.

Some states have initiated litigation to hold chemical manufacturers responsible for damaging the environment with certain manmade chemicals. Specifically, companies like 3M are being sued for their use of a class of synthetical chemicals—per- and polyfluoroalkyl substances (“PFAS”)—in their production of consumer and industrial products.

PFAS have useful properties, including that they help repel heat, stains, and other harsh factors, and are used in a wide range of goods like non-stick cookware and upholstery shields that are sold directly to consumers. PFAS are also used in industrial products including, as relevant here, 3M's AFFF, a widely used firefighting foam.

One of 3M's AFFF customers was the United States military, which deemed AFFF valuable enough to use on military bases, airfields, and naval vessels to fight fuel fires. The manufacture and sale of AFFF to the military is governed by rigorous specifications administered by the Department of Defense, through the Naval Sea Systems Command, which—until recently—required the use of certain PFAS in AFFF. Before the military could procure AFFF from a private man-

ufacturer like 3M, the AFFF had to be examined to ensure it met the military’s specifications. And 3M’s AFFF evidently passed DOD muster, because 3M manufactured and sold PFAS-containing AFFF to the United States military for more than three decades. For clarity, we refer to the PFAS-containing AFFF 3M produced for the military as “Military AFFF.”

Their useful qualities notwithstanding, PFAS could pose a serious threat to the environment. PFAS dissolve easily in water due to their chemical makeup, spread quickly and broadly, and may remain in the environment indefinitely. In addition, PFAS can be noxious to animals and other living organisms, and substantial exposure to the chemical compounds could lead to significant health issues in humans.

## B.

In 2023, the States commenced PFAS-related litigation by filing lawsuits targeting 3M and other manufacturers for their role in allegedly contaminating Maryland and South Carolina’s respective waterways by using PFAS in the production of their products.

### 1.

Maryland filed two overlapping lawsuits in state court against 3M for its alleged contamination of Maryland waters, bringing the same seven state-law causes of action against 3M in both complaints.<sup>1</sup> The only meaningful difference in the complaints is that

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<sup>1</sup> The causes of action against 3M are: (1) Strict Products Liability—Defective Design; (2) Strict Products Liability—Failure to Warn; (3) Public Nuisance; (4) Trespass; (5) Negligence; (6) Violation of Environment Article, Title 9, Subtitle 3; and (7) Violation of Environment Article, Title 9, Subtitle 4.

one was directed toward 3M's PFAS production through its manufacture of AFFF generally—Military AFFF and otherwise—while the other was directed towards 3M's production of other PFAS-containing products and specifically excluded any AFFF. *E.g.*, J.A. 46 (“Through this [non-AFFF] complaint] the State does not, however, seek any remediation . . . related to any PFAS contamination caused by AFFF . . . . The State's claims with respect to AFFF are the subject of a separate action.”).

3M promptly removed the non-AFFF suit to the District of Maryland under the federal officer removal statute.<sup>2</sup> According to 3M, removal of that action was proper despite Maryland's disclaimer because the PFAS from 3M's non-AFFF products indistinguishably commingled with the PFAS from 3M's Military AFFF. To the extent the PFAS contamination came from Military AFFF, 3M intended to raise the government contractor defense. And because the PFAS from both sources were commingled, PFAS from 3M's Military AFFF “inseparably contributed to any alleged ‘non-AFFF’ PFAS contamination.” J.A. 21. Maryland, in turn, moved to remand the non-AFFF complaint to state court, arguing that 3M had no basis for removal under 28 U.S.C. § 1442(a)(1).<sup>3</sup>

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<sup>2</sup> In both States' lawsuits, 3M also removed the AFFF complaint to federal court. The States did not move to remand the AFFF complaints, nor is the removal of those complaints at issue in this case.

We also note that 3M also initially raised federal enclave jurisdiction as a ground for removal in the States' non-AFFF lawsuits, but no longer pursues removal on that basis.

<sup>3</sup> We also note that once it removed the case, 3M also moved to transfer this complaint to the AFFF Products Liability Litigation MDL. The MDL Panel denied transfer but reasoned that “if it becomes clearer that [Maryland's] AFFF and non-AFFF actions

The district court agreed with Maryland. In so deciding, it gave Maryland’s disclaimer dispositive effect, reasoning that by virtue of the disclaimer, the non-AFFF complaint was limited in scope and precluded a connection between 3M’s PFAS contamination and its federal authority. Consequently, the district court determined that any possible federal defense would not be present. *Maryland v. 3M Co.*, No. 23-cv-1836, 2024 WL 1152568, at \*3 (D. Md. Feb. 12, 2024) (“[T]he explicit exclusion of AFFF from this lawsuit renders it impossible for [3M] to be held liable for damages stemming from its actions under federal authority, and so the requisite connection or association is missing.” (cleaned up)). It thus remanded the non-AFFF complaint to state court.

## 2.

Similar to Maryland’s strategy, South Carolina also filed two PFAS contamination lawsuits in state court, bringing exclusively state-law claims against 3M.<sup>4</sup> And like Maryland, South Carolina’s otherwise overlapping complaints were bifurcated on the basis that one was directed towards 3M’s PFAS production through AFFF products, while the other was directed to remediate pollution from 3M’s non-AFFF PFAS production. *E.g.*, J.A. 275–76 (“PFAS as defined in this Complaint expressly excludes [AFFF]. . . . The State is not seeking to recover through this Complaint any relief for contamination or injury related to AFFF

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involve the same ground or surface waters,” transfer may eventually be appropriate. J.A. 219.

<sup>4</sup> The stated causes of action are: (1) Public Nuisance; (2) Private Nuisance; (3) Trespass; and (4) Violation of the South Carolina Unfair Trade Practice Act.

or AFFF products used at airports, military bases, or certain industrial locations.”).

3M again invoked § 1442(a)(1) to remove South Carolina’s non-AFFF complaint to the District of South Carolina for the same reasons asserted in the Maryland case. South Carolina then moved to remand to state court on similar grounds used by Maryland: that the scope of its complaint, considering its disclaimer, expressly excluded any connection to AFFF and therefore 3M’s federal work. As in the Maryland case, the South Carolina district court agreed with the state and found that the disclaimer effectively precluded federal officer removal. *South Carolina v. 3M Co.*, No. 2:23-cv-05979, 2024 WL 1470056, at \*3 (D.S.C. Feb. 29, 2024) (concluding that the “disclaimers moot 3M’s government contractor defense because, whether or not 3M meets the requirements for the defense, it cannot be held liable in this case for PFAS contamination originating from AFFF,” and that “the charged conduct here is not connected to the alleged federal authority”). Finding no basis for removal, it remanded the non-AFFF case to state court.

\* \* \* \*

3M timely appealed both remand decisions and we consolidated the appeals for review. We have jurisdiction under 28 U.S.C. § 1447(d). *Cnty. Bd. of Arlington Cnty. v. Express Scripts Pharmacy, Inc.*, 996 F.3d 243, 250 (4th Cir. 2021).

## II.

Because they involve issues of subject matter jurisdiction, we review the district courts’ decisions on whether to sustain federal officer removal de novo. *Anne Arundel Cnty.*, 94 F.4th at 347. The removing party bears the burden of convincing us that the ac-

tions belong in federal court. *W. Va. State Univ. Bd. of Governors v. Dow Chem. Co.*, 23 F.4th 288, 297 (4th Cir. 2022). To carry that burden, it must file a notice that includes “a short and plain statement of the grounds for removal,” 28 U.S.C. § 1446(a), meaning there must be “a plausible allegation” that federal jurisdiction is proper, *Dart Cherokee Basin Operating Co. v. Owens*, 574 U.S. 81, 89 (2014) (explaining that a § 1446 notice of removal is analyzed under the same scrutiny as Rule 8’s pleading requirements).

We recite some of 28 U.S.C. § 1442(a)(1)’s guiding principles before applying them to 3M’s appeals.

#### A.

By enacting the federal officer removal statute, Congress “promise[d] a federal forum for any action against an ‘officer (or any person acting under that officer) of the United States or of any agency thereof, in an official or individual capacity, for or relating to any act under color of such office.’” *BP P.L.C. v. Mayor & City Council of Balt.*, 593 U.S. 230, 234–35 (2021) (quoting 28 U.S.C. § 1442(a)(1)). The statute’s purpose is to give effect to the legislative principle that those acting at the federal government’s direction should be able to defend themselves in federal—not state—court, lest states be able to stymy the federal government’s operations. *See Willingham v. Morgan*, 395 U.S. 402, 405–06 (1969) (recounting the statute’s history); *Watson v. Phillip Morris Cos.*, 551 U.S. 142, 147–48 (2007) (same, and explaining how that purpose extends to protecting private parties who assist the federal government). Coextensive with the “legislatively-spawned value judgment that a federal forum should be available when particular litigation implicates a cognizable federal interest,” § 1442(a)(1) is meant “to ensure a federal forum in any case where a

federal official or private actors acting on that official's behalf may raise a defense arising out of his official duties." *Gov't of Puerto Rico v. Express Scripts, Inc.*, 119 F.4th 174, 185 (1st Cir. 2024) (cleaned up); see also *Willingham*, 395 U.S. at 406–407.

Accordingly, § 1442(a)(1)'s promise of a federal forum is necessarily broad.<sup>5</sup> So rather than “narrow, grudging interpretation[s] of the statute,” *Jefferson Cnty. v. Acker*, 527 U.S. 423, 431 (1999) (quoting *Willingham*, 395 U.S. at 407), “the statute must be ‘liberally construed,’” *Watson*, 551 U.S. at 147 (quoting *Colorado v. Symes*, 286 U.S. 510, 517 (1932)). And under that broad scope, the general rules guiding removal—including that a defendant may remove a case from state to federal court only if the federal court had original jurisdiction to hear the case, see 28 U.S.C. § 1441(a)—are inapplicable. *Cf. Willingham*, 395 U.S. at 406 (“[T]he right of removal under § 1442(a)(1) is made absolute whenever a suit in a state court is for any act ‘under color’ of federal office, regardless of whether the suit could originally have been brought in a federal court.”). Similarly, “the ordinary presumption against removal does not apply” to federal officer removal. *Cnty. Bd. of Arlington Cnty.*, 996 F.3d at 251

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<sup>5</sup> Indeed, as one of our sister circuits recognized in recounting the statute's history, Congress has shown a steady inclination towards broadening the statute. See *Latiolais v. Huntington Ingalls, Inc.*, 951 F.3d 286, 290 (5th Cir. 2020) (“Some version of this statute has been in effect since 1815. . . . Over time, though, Congress has broadened the removal statute repeatedly.”). Particularly relevant to this appeal, Congress saw fit to amend the federal officer removal statute in 2011 to “broaden[] the universe of acts that enable federal removal, such that there need be only a connection or association between the act in question and the federal office.” *Sawyer v. Foster Wheeler LLC*, 860 F.3d 249, 258 (4th Cir. 2017) (cleaned up).

(cleaned up). General removal principles are, in other words, inverted when § 1442(a)(1) is at issue.

To that end, when a plaintiff sues a defendant that can plausibly invoke removal under § 1442(a)(1), he relinquishes his otherwise ubiquitous power to select a state forum instead of a federal one by writing his complaint a certain way. Generally, of course, a “plaintiff is the master of the complaint,” and “the well-pleaded-complaint rule enables him, by eschewing claims based on federal law, to have the cause heard in state court.” *Holmes Grp. v. Vornado Air Circulation Sys., Inc.*, 535 U.S. 826, 831 (2002) (cleaned up). But the federal officer removal statute “is an exception to the well-pleaded complaint rule” insofar as it “allows suits against federal officers to be removed despite the nonfederal cast of the complaint, and reflects a congressional policy that federal officers, and indeed the Federal Government itself, require the protection of a federal forum.” *Kircher v. Putnam Funds Tr.*, 547 U.S. 633, 644 n.12 (2006) (cleaned up); *see also Jefferson Cnty.*, 527 U.S. at 431 (“Under the federal officer removal statute, suits against federal officers may be removed despite the nonfederal cast of the complaint.”).

With those principles in hand, we apply them to this appeal.

## B.

3M may sustain removal under § 1442(a)(1) if it plausibly alleges “(1) that it acted under a federal officer, (2) that it has a colorable federal defense, and (3) that the charged conduct was carried out for or in relation to the asserted official authority.” *Anne Arundel Cnty.*, 94 F.4th at 347–48 (internal quotations omitted). The district courts found that 3M had not met its burden as to the third element based on the States’ disclaimers,

which purported to establish that they were not charging 3M with conduct that was related to its production and sale of Military AFFF. For the reasons discussed below, we hold that finding is erroneous.

## 1.

To satisfy the third element under the federal officer removal statute, often referred to as the nexus or connection requirement, “a defendant must show it is being sued for an act or acts that it claims were done under—or related to acts done under—federal authority.” *Anne Arundel Cnty.*, 94 F.4th at 349. In considering whether the relevant conduct relates to a contractor’s federal work, “[w]e credit *Defendants’* theory of the case when determining whether there is such a connection or association.” *Cnty. Bd. of Arlington Cnty.*, 996 F.3d at 256 (quoting *Isaacson v. Dow Chem. Co.*, 517 F.3d 129, 137 (2d Cir. 2008) (emphasis added)); see *Jefferson Cnty.*, 527 U.S. at 432. Importantly, a removing defendant need not establish “an airtight case on the merits in order to show the required causal connection.” *Jefferson Cnty.*, 527 U.S. at 432. That said, a proponent for removal decidedly does not satisfy the nexus element by alleging only that the “plaintiff’s entire civil action in a general sense” is related to the defendant’s federal work. *Anne Arundel Cnty.*, 94 F.4th at 348.

We first reject the notion that the States’ purported disclaimers of 3M’s federal conduct were dispositive. The States invite us to credit their disclaimers, just as the district courts did. They contend those complaints were tailored to preclude any connection to 3M’s federal conduct by excluding AFFF as a source of the relevant PFAS contamination. Under their theory, we should credit how they defined the charged conduct which, by definition, excludes 3M’s production and sale

of Military AFFF, thus severing 3M's alleged federal connection. But that theory ignores the unique lens through which we consider federal officer removal.

Two general points illustrate why we cannot accept the States' attempts to immunize their complaints from federal officer removal with their purported disclaimers in this case. First, as we have noted, a plaintiff in the § 1442(a)(1) removal context is no longer the master of its complaint in the sense that it cannot preempt removal to a federal court merely because the complaint is glossed only in state law. Instead, we look to a defendant's well-pleaded facts of removal to see if it is entitled to a federal forum despite the "non-federal cast of the complaint." *Kircher*, 547 U.S. at 644 n.12. Second, in this context we must credit a removing defendant's theory of the case as to whether the conduct with which it has been charged is related to its federal work. *Cnty. Bd. of Arlington Cnty.*, 996 F.3d at 256. Under these principles, we cannot blindly accept the States' theory of charged conduct and the connection to 3M's federal work.

As our sister circuits agree, "[a] disclaimer that requires a state court to determine the nexus 'between the charged conduct and federal authority' is not a valid means of precluding removal." *Gov't of Puerto Rico*, 119 F.4th at 188 (quoting *Willingham*, 395 U.S. at 409); *Baker v. Atl. Richfield Co.*, 962 F.3d 937, 945 n.3 (7th Cir. 2020) (rejecting plaintiffs' similar attempted disclaimer where the underlying dispute was a pollutant's source, because the defendant "allege[d] that its Freon-12 production [for the government] resulted in waste streams that contained lead and arsenic," which were "the two main toxins [plaintiffs] claim harmed them"). We likewise decline to give dispositive effect to the States' disclaimers.

The States fight this conclusion by pointing to *Wood v. Crane Co.*, 764 F.3d 316 (4th Cir. 2014), a case where we accepted a plaintiff's disclaimer as to a potential federal source of his mesothelioma as a jurisdictional chess move to keep his case in state court. In *Wood*, the plaintiff sued the Crane Company for exposing him to asbestos while working with asbestos-containing valves *and* gaskets that Crane produced for the Navy. *Id.* at 318. Crane invoked federal officer removal on the basis that it could assert a federal contractor defense as to the valves, but did not make the same contention with respect to the gaskets. *Id.* at 318–19. After the plaintiff disclaimed any claims related to the valves, the district court remanded the case to state court, and only then did Crane assert that the gaskets also served as a proper ground for federal officer removal because they also contributed to the plaintiff's injury and were produced as part of Crane's federal work. *Id.* at 319–20. We upheld the remand because Crane's federal officer removal claim based on the gaskets was untimely under 28 U.S.C. § 1446(b). *See id.* at 321–22.

But *Wood* does not bear the weight the States assign to it. There, Crane's only timely theory of removal was entirely different than that which 3M asserts here. Crane's notice of removal alleged that one source of an indivisible injury gave rise to federal officer removal but failed to timely contest that that federal connection was inextricably linked to its federal conduct and ensuing indivisible injury. *See id.* at 322–24. For *Wood* to control here, 3M's allegation that PFAS from its Military AFFF production and its non-AFFF production were inextricably linked would have had to be untimely. It was not. Put another way, Crane's theory of the case that could have otherwise invalidated the plaintiff's disclaimer was never properly be-

fore us such that we could consider or ultimately credit it. That difference alone renders *Wood* inapposite.

At bottom, the States' artful pleading does not trump 3M's theory for removal here. Accordingly, the States' disclaimers are not dispositive to whether the third element for establishing removal has been satisfied. The district courts erred in holding otherwise.

That said, our conclusion that the States' disclaimers are not dispositive does not necessarily mean that 3M has satisfied the third element; it still bears the burden of showing that it satisfied the requisite nexus. Accordingly, we ask if, under 3M's theory of the case, it plausibly alleged that its charged conduct was related to its federal work. *See Anne Arundel Cnty.*, 94 F.4th at 349. Under that theory, the nexus element would be satisfied because PFAS from different sources commingle to the point that it is impossible to identify the precise source of a contaminant once those chemicals seep into the relevant waterways. Some of the PFAS contamination charged by the States came from Military AFFF, so any remediation would necessarily implicate work that 3M did for the federal government.

Though it may not be an "airtight case on the merits," it does not have to be, *Jefferson Cnty.*, 527 U.S. at 432, and we conclude that 3M's theory of connection holds sufficient water to establish this element under the federal officer removal statute's broad scope. Both States plead general PFAS contamination near military bases where 3M alleges it sold Military AFFF. On this record, we have no trouble considering as plausible 3M's allegations that some of the PFAS contamination at issue even in the non-AFFF complaints may come from their Military AFFF production.

3M identifies two pertinent questions that highlight how the charged conduct relates to its federal work. First, deciding whether certain PFAS contamination came from 3M's Military AFFF or from its non-AFFF products presents a challenging causation question—one that 3M argues is impossible to bifurcate—that will ultimately fall to a factfinder. Second, assuming that causation question can be answered, the same factfinder must then apportion how much of a given sample of PFAS contamination came from Military AFFF compared to non-AFFF products. Whatever factfinder ultimately decides liability in this case will have to disentangle those questions. The need to unravel such challenging questions in this case establishes that 3M's federal work is inextricably related to the charged conduct. *See Baker*, 962 F.3d at 943–45.

*Baker* indicates that a company like 3M satisfies the nexus element for removal if the factfinder will need to identify the sources of pollutants where the company has been charged with polluting the environment through manufacturing some products for the federal government. In *Baker*, residents of a housing complex sued a host of industrial manufacturing companies for contaminating the soil around the site with harmful chemicals. *Id.* at 940. The plaintiffs argued that the relevant pollution came from the chemical companies' general consumer operations, while the chemical companies invoked federal officer removal on the basis that some of the pollution came from their production of goods for the federal government during World War II. *Id.* The residents opposed removal on the ground that the companies failed to establish the nexus requirement because they had not shown that the plaintiffs' injuries were caused by the companies' federal work. *See*

*id.* at 943–44. The Seventh Circuit disagreed and concluded that the companies established the nexus element because the plaintiffs’ “questions about whether the Companies’ pollution that allegedly caused the Residents’ injuries flowed from the Companies’ specific wartime production for the federal government or from their more general manufacturing operations outside those confines” were “*merits questions* that a federal court should decide.” *Baker*, 962 F.3d at 944 (citing *Willingham*, 395 U.S. at 409) (emphasis in original).

Because 3M has plausibly alleged that the PFAS intermingled to the point that it is impossible to identify their source, we can plausibly infer that 3M’s Military AFFF contributed to at least a “portion of their relevant conduct.” *Id.* at 945. Thus, “[g]iving [it] the benefit of all reasonable inferences from the facts alleged,” we conclude that 3M has satisfied the nexus requirement. *Id.* After all, the federal officer removal statute’s purpose is to provide a federal forum “when particular litigation implicates a cognizable federal interest,” like holding a government contractor liable for producing products for, and in line with the specifications, of the United States military. *Gov’t of Puerto Rico*, 119 F.4th at 185 (internal quotations omitted). Where the parties dispute difficult factual questions about that federal interest, a contractor acting at the government’s direction “should have the opportunity to present their version of the facts to a federal, not a state, court.” *Willingham*, 395 U.S. at 409; *Gov’t of Puerto Rico*, 119 F.4th at 189 (“To the extent the parties raise factual disputes about the scope of a defendant’s federal obligations, Congress gave federal officers ‘the protection of a federal forum’ in which to resolve those disputes.” (quoting *Willingham*, 395 U.S. at 407)).

If, on the other hand, a plaintiff concedes that those kinds of difficult questions are unnecessary for purposes of establishing liability, it may remain in state court. See *Illinois ex rel. Raoul v. 3M Co.*, 111 F.4th 846, 849 (7th Cir. 2024). In *Raoul*, Illinois sued 3M for PFAS contamination emanating from a single facility, disclaiming contamination from any other facility. *Id.* at 847–48. 3M removed the suit under 28 U.S.C. § 1442(a)(1), alleging that some of the same PFAS contamination could have come from Military AFFF that was being stored at a military arsenal twenty-five miles up the river. *Id.* at 848. But Illinois “clearly and unequivocally conceded at oral argument that it would not seek relief against 3M for mixed PFAS contamination” and “expressly agreed that a factfinder will not need to apportion the PFAS contamination between sources.” *Id.* at 849. That concession meant that “[i]f even a morsel of contamination [was] not from PFAS produced at the [non-military] Facility, . . . the State’s recovery [was] barred.” *Id.* The Seventh Circuit affirmed the district court’s remand to state court, concluding the case fell “outside the scope of *Baker*” because Illinois’ concession mooted the causation and apportionment questions 3M now cites.<sup>6</sup> *Id.*

*Raoul* was published after briefing in this appeal concluded, but both parties submitted letters addressing it under Fed. R. App. P. 28(j). Soon thereafter, we asked the States whether they intended to make a similar concession as Illinois did in *Raoul* such that their recovery would be barred if “even a morsel of

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<sup>6</sup> The *Raoul* court determined that Illinois’ concession meant that 3M failed the “colorable federal defense” element of federal officer removal. *Raoul*, 111 F.4th at 849. However, its reasoning is sound in comparing it with the relevant parts of *Baker* discussed previously.

contamination” derived from Military AFFF. ECF No. 52. The States made clear they did not so concede, instead arguing that such a concession was unnecessary because, despite the inevitable presence of the causation and apportionment questions in state proceedings, there was still “no federal connection to the non-AFFF PFAS contamination that is the charged conduct in these lawsuits.” ECF No. 53.

For the reasons just discussed, we disagree with the States. In *Raoul*, “100% of th[e] contamination must [have been] sourced from” the single, geographically limited facility for the state to recover. 111 F.4th at 849. As a result, no state factfinder would need to “apportion the PFAS contamination between sources.” *Id.* But here, the States envision recovering for mixed PFAS contamination from numerous geographic locations. Even if they cannot ultimately recover for PFAS contamination from Military AFFF based on the scope of their complaints, a factfinder must, unlike in *Raoul*, still decide the important causation and allocation questions. And as stated, those are merits questions that belong in federal court. *Cf. Gov’t of Puerto Rico*, 119 F.4th at 189; *Baker*, 962 F.3d at 944.

In sum, we hold that 3M’s Military AFFF production is inextricably related to the States’ general allegations of PFAS contamination, notwithstanding their attempts to draw a line between 3M’s federal and non-federal work.

## 2.

Now satisfied that 3M meets the nexus element of the federal officer removal statute, “we turn to whether the case should be remanded to the district court for a ruling on the remaining two requirements for federal officer removal”—that it (1) acted under a fed-

eral officer and (2) has a colorable federal defense—or if we should conduct the rest of the analysis in the first instance, as 3M requests. *Cnty. Bd. of Arlington Cnty.*, 996 F.3d at 254. That decision is discretionary, but we believe it best here to follow the general rule that “federal appellate courts should not consider issues that were not first addressed by the district court.” *Id.* (citing *Bakker v. Grutman*, 942 F.3d 236, 242 (4th Cir. 1991)). In *County Board of Arlington County*, we went on to consider the remaining federal officer removal elements despite the district court not having done so under the “unique circumstances” of that appeal, including the fact that the other elements had “been fully briefed.” *Id.* Because similarly unique circumstances are not present here, we will not exercise the same discretion and will leave it to the district courts to consider whether 3M is otherwise entitled to federal officer removal in each case.

We note that this case is likely one where “the acting-under and causal-nexus prongs . . . collapse into a single requirement.” *Mayor & City Council of Balt. v. BP P.L.C.*, 31 F.4th 178, 228 (4th Cir. 2022) (cleaned up). But though the district courts mentioned the colorable defense element, their findings on that element stemmed entirely from their decisions—which we now hold were misguided—to give the States’ disclaimers dispositive effect. *See Maryland v. 3M Co.*, 2024 WL 1152568, at \*3 (noting that “3M fail[ed] to demonstrate the . . . colorable federal defense to sustain removal to federal court,” because the State “abandoned any claims in this case that would allow 3M to utilize the government contractor defense”); *South Carolina v. 3M Co.*, 2024 WL 1470056, at \*3 (reasoning that “the disclaimers moot 3M’s government contractor defense because, whether or not 3M meets the requirement for the defense, it cannot be held liable in this

case for PFAS contamination originating from AFFF”). The States’ briefing before us did the same thing, and even 3M’s briefing on these important remaining elements was perfunctory. And the parties did not touch on the colorable federal defense at oral argument. This is not a case where the remaining elements have been robustly engaged throughout the process.

Instead of deciding these issues for the first time without the benefit of full briefing, we find the better course is to allow the district courts to decide in the first instance whether 3M plausibly alleged a colorable federal defense in each case with the understanding that 3M satisfied the nexus element for removal.

### III.

Despite the States’ artful crafting of their complaints, 3M’s notices of removal plausibly alleged that the conduct for which the States sued them is at least related to the company’s federal work. We therefore vacate the district courts’ decisions and remand for consideration of whether 3M satisfied the other elements needed for federal officer removal, should the States continue to challenge removal, as well as such other necessary proceedings consistent with this opinion.

### VACATED AND REMANDED

FLOYD, Senior Circuit Judge, Dissenting:

Maryland and South Carolina sought remediation for alleged harm to natural resources within their boundaries due to 3M’s production of products containing PFAS. Each state filed two actions: one alleged harm from production of PFAS-containing firefighting foam used at military installations and commercial airports, referred to generally as AFFF; the other alleged harm from non-AFFF sources including “food

packaging, carpeting, cookware, clothing, and upholstery” manufactured for the consumer market. J.A. 43. 3M removed both suits to district court. The district court then remanded the States’ non-AFFF suits, which raise exclusively state law claims, to state court because it found the States’ disclaimers on recovery from AFFF effective.

The majority vacates those remand orders, holding that, under 3M’s theory of the case, the non-AFFF suits are sufficiently “relat[ed] to” acts taken under federal authority within the meaning of the relevant removal statute, 28 U.S.C. § 1442(a)(1). However, I would affirm the district court’s remand orders. I respectfully dissent.

I agree with the majority that the federal officer removal statute serves an important purpose in our courts. It functions to “protect against the interference with federal operations that would ensue if a state were able to arrest federal officers and agents acting within the scope of their authority and bring them to trial in a state court for an alleged state-law offense.” *Mayor and City Council of Baltimore v. BP P.L.C.*, 952 F.3d 452, 461 (4th Cir. 2020) (noting avoidance of prejudice against unpopular federal law or federal officials, impediments to enforcement of federal law, or inability to assert federal defenses as goals of statute), *vacated on other grounds*, 593 U.S. 230 (2021). And I too acknowledge that the statute must be “liberally construed” and that the “ordinary ‘presumption against removal’ does not apply.” *Id.* (quoting *Betzner v. Boeing Co.*, 910 F.3d 1010, 1014 (7th Cir. 2018)).

Even so, I believe the district court properly granted the States’ motions to remand these cases to state court. While our Court and others have recognized that a broad range of conduct satisfies the nexus re-

quirement for purposes of federal officer removal jurisdiction, I would not read the removal statute to sweep so broadly to include the States' non-AFFF claims in the present consolidated appeals.

My view is guided by the factual dissimilarities between other cases considering the nexus issue and the one before us, starting with *Baker v. Atlantic Richfield Co.*, 962 F.3d 937 (7th Cir. 2020). In *Baker*, the complained-of contaminants—lead and arsenic—were components of the Freon-12 that removing defendants had produced for the federal government during World War II. *See id.* at 945 n.3. The plaintiffs sought to disclaim relief from harm alleged to have occurred during the defendants' wartime production and leave open only the possibility of recovery for lead and arsenic pollution generated outside that time frame. *See id.* at 945. Unlike the State plaintiffs before us, the *Baker* plaintiffs sought to excise recovery for a particular period of defendants' conduct (which resulted in lead and arsenic pollution) and to recover only for that same pollution produced at the same facility at different times, when the facility was not manufacturing products for the federal government. *See id.* In other words, I think the case we decide today is distinguishable from *Baker* because South Carolina and Maryland seek to recover from harm resulting from a discrete category of consumer products unrelated to 3M's federal conduct of manufacturing firefighting foam to military specifications.\*<sup>7</sup>

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\* More recently, the Seventh Circuit decided *Illinois ex rel. Raoul v. 3M Co.*, 111 F.4th 846 (7th Cir. 2024). *Raoul* presented similar facts to the case before us, except for a disclaimer of relief related to mixed PFAS contamination—a disclaimer the plaintiffs in this case did not make. *See id.* at 848–49. The *Raoul* court permitted the case to remain in state court because the disclaimer foreclosed the possibility of a “colorable federal defense.” *Id.* at

Other decisions ruling on this aspect of federal officer removal likewise reveal stronger links “between the charged conduct and asserted official authority” than the one here. *Baker*, 962 F.3d at 943. In *Latiolais v. Huntington Ingalls, Inc.*, an en banc Fifth Circuit held that the defendant shipyard seeking removal showed that the nexus requirement was satisfied. 951 F.3d 286, 296 (5th Cir. 2020). The plaintiff, Latiolais, worked as a machinist at the shipyard and alleged his mesothelioma was caused by asbestos exposure when the defendant refurbished a U.S. Navy ship pursuant to a federal contract. *See id.* at 289–90. The court rejected the plaintiff’s argument that the asbestos exposure did not meet the nexus requirement because the defendant “performed the refurbishment and, allegedly, the installation of asbestos pursuant to directions of the U.S. Navy.” *Id.* at 296. The First Circuit also declined to credit the Commonwealth of Puerto Rico’s purported disclaimer of “relief relating to any federal program” in defendant Caremark’s prescription drug rebate negotiations, which plaintiff Puerto Rico contended improperly inflated the price of insulin and other medications. *Gov’t of Puerto Rico v. Express Scripts, Inc.*, 119 F.4th 174, 181–82 (1st Cir. 2024). The court recognized that Caremark’s negotiations concerned private insurance plans and federally administered insurance plans at the same time; there were no federal-only negotiations, and no way to separate them for purposes of recovery. *See id.* at 191–92. Therefore, the Commonwealth’s claims remained in federal court. *Id.* at 194.

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849. But I disagree with the implicit holding in *Raoul* that the nexus requirement was satisfied under the facts of that case for the same reasons I disagree with the outcome here: the tenuous connection between the non-AFFF claims and actions taken under federal authority.

Finally, our most recent discussion of this issue: *Sawyer v. Foster Wheeler LLC*, 860 F.3d 249 (4th Cir. 2017). In *Sawyer*, we reversed the district court’s order remanding the litigation to state court. *Id.* at 252–53. Like the *Latiolais* plaintiff, the *Sawyer* plaintiff was employed at a shipyard, worked on U.S. Navy vessels, and was allegedly exposed to asbestos during that time. *Id.* His estate brought an action in state court against Foster Wheeler, a boiler manufacturer, alleging that it had failed to warn him of the dangers of asbestos used in the boilers. *Id.* However, in assessing whether this conduct “relate[d] to” an act taken under federal authority, 28 U.S.C. § 1442(a)(1), we determined it was sufficiently related because “the Navy dictated the content of warnings” on the boilers and Foster Wheeler installed them according to Navy requirements. *Sawyer*, 860 F.3d at 258.

I am concerned that today’s decision will sweep lawsuits properly before state courts into federal fora, at least to the extent it concerns a given claim’s nexus to acts under federal authority. The decisions outlined above share an important attribute: the complained-of conduct could not be separated from the relevant federal authority. *See Baker*, 962 F.3d at 945 n.3 (lead and arsenic pollution from facility where government-contractor produced same pollution); *see also Express Scripts*, 119 F.4th at 191 (pharmaceutical price negotiations were not separated into “federal” and “non-federal” components); *Latiolais*, 951 F.3d at 289–90 (asbestos exposure from work on Navy ship at shipyard); *Sawyer*, 860 F.3d at 258 (same). In this case, 3M seeks to remove a claim seeking recovery for pollution from products made for and sold on the consumer market; the majority concludes that the causal nexus is satisfied because the resulting pollutants are commingled in the environment. I believe that this con-

nection is too tenuous to support removal jurisdiction—while some of the pollution may be commingled, that does little to alter the fact that the non-AFFF PFAS pollution is caused by 3M’s manufacturing activities that are entirely unrelated to its work as a government contractor.

As I see it, the court reads the nexus requirement so broadly as to move toward foreclosing state courtrooms to plaintiffs bringing state-law claims against defendants, when those defendants in turn identify even the slightest connection between the claims at issue at work they have performed as government contractors. But “[o]ur federal system trusts state courts to hear most cases—even big, important ones that raise federal defenses.” *City of Hoboken v. Chevron Corp.*, 45 F.4th 699, 705 (3d Cir. 2022). Given what I see as the scant connection shown between 3M’s production of consumer products and its AFFF production, I would trust the courts of Maryland and South Carolina to hear these cases and ensure any liability is apportioned properly.

Because I do not think the alleged non-AFFF PFAS pollution providing the basis for the State’s claims sufficiently relates to 3M’s acts performed for the federal government, I would affirm the district court’s remand orders. The majority does not, and so I respectfully dissent.

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND**

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Civil Action No. RDB-23-1836

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STATE OF MARYLAND,

*Plaintiff,*

v.

3M COMPANY, *et al.*,

*Defendants.*

**MEMORANDUM ORDER**

This case was brought by the State of Maryland (“the State”) against 3M Company (“3M”) and other defendants in the Circuit Court for Baltimore City. It was removed to this Court by 3M, alleging that this Court had jurisdiction under the federal officer removal statute, 28 U.S.C. § 1442(a)(1), and that federal enclave jurisdiction provided an alternative basis for removal under 28 U.S.C. §§ 1331 and 1441(a). (ECF No. 1 at 3.) The Complaint (ECF No. 5), which is one of a series of complaints brought nationwide, alleges that substances are responsible for groundwater and air contamination. Specifically, the Complaint focuses on per- and polyfluoroalkyl substances (“PFAS”), which allegedly leach into groundwater and contaminate drinking water supplies. The Complaint specifically excludes aqueous film-forming foam (“AFFF”), which are used at airports and military bases to extinguish liquid fuel fires. The State of Maryland brought a separate complaint regarding AFFF that was subject to multidistrict litigation (“MDL”) and has now been transferred out of this District. In this case (the non-AFFF PFAS case), this Court previously granted a

stay awaiting a determination of whether Defendant 3M's motion to transfer under MDL would be granted. The Judicial Panel on Multidistrict Litigation ("JPML") issued an Order denying transfer on October 4, 2023. (ECF No. 44.)

Because transfer was denied, the State's Motion to Remand to the Circuit Court for Baltimore City (ECF No. 23) must now be addressed. The issues regarding vacating this Court's stay order are now moot. The State argues that "neither basis that 3M presents—the federal-officer removal statute, 28 U.S.C. § 1442(a) (1), and/or the assertion that the case arose on 'federal enclaves'—" adequately provide a basis for removal. (ECF No. 23-1 at 5.)<sup>1</sup> The parties' submissions have been reviewed and no hearing is necessary. *See* Local Rule 105.6 (D. Md. 2023). For the reasons that follow, the State's Motion to Remand to the Circuit Court for Baltimore City (ECF No. 23) is GRANTED and this case is REMANDED to the Circuit Court of Maryland for Baltimore City.

## BACKGROUND

The facts set forth below are viewed in the light most favorable to Plaintiff, as Defendant 3M bears the burden of demonstrating that removal is proper. *Strawn v. AT&T Mobility, LLC*, 530 F.3d 293, 297 (4th Cir. 2008). The State of Maryland brought "this action against Defendants to address widespread contamination of its natural resources—particularly the drinking water supplies upon which its citizens depend—with toxic per- and polyfluoroalkyl substances ('PFAS'), including but not limited to perfluorooctane sulfonic acid

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<sup>1</sup> Unless otherwise indicated, this Memorandum Order cites to the ECF generated page number rather than the page number at the bottom of the parties' various submissions.

(‘PFOS’) and perfluorooctanoic acid (‘PFOA’).” (ECF No. 5 ¶ 1.) “PFAS are highly fluorinated synthetic chemical compounds that include carbon chains containing at least one carbon atom on which all hydrogen atoms are replaced by fluorine atoms.” (*Id.* ¶ 29.) Defendants are manufacturers who have allegedly “designed, manufactured, marketed, and sold products that contain PFAS (‘PFAS Products’),” including “food packaging, carpeting, cookware, clothing, and upholstery.” (*Id.* ¶ 2–3.) According to the Complaint, “[t]he PFAS family, including PFOS and PFOA, has characteristics that cause extensive and long-lasting environmental contamination.” (*Id.* ¶ 30.) Defendants allegedly “knew for decades that their PFAS were toxic and posed significant risks to human health and the environment,” and they allegedly “knew specifically that their PFAS were reaching drinking water supplies and accumulating in people’s bodies as they were exposed to the chemicals over time.” (*Id.* ¶ 4–5.) The Complaint alleges that Defendants “have caused significant PFAS contamination in the State’s drinking water, groundwater, surface water, soil, sediment, wildlife, other natural resources, and property held in trust or otherwise owned by the State.” (*Id.* ¶ 8.) The Complaint further alleges “that exposure to PFAS may lead to significant negative health effects,” including decreased fertility, developmental delays, increased risk of some cancers, hormonal changes, and increased cholesterol levels. (*Id.* ¶ 10.)

On May 30, 2023, “[t]he State filed the instant Complaint in the Circuit Court for Baltimore City, seeking damages to cover the costs of PFAS-related environmental restoration, remediation, and testing, and also equitable relief for abatement.” (ECF No. 23-1 at 7.) The 11-count Complaint raised state-law claims for products liability, public nuisance, trespass, negli-

gence, violations of Maryland’s Environmental Article, and fraudulent transfer. (ECF No. 5.) The Complaint included a footnote explaining that the term PFAS, as used in the Complaint, does not “include aqueous film-forming foam (‘AFFF’) or fluorosurfactants that were designed for and specifically incorporated into AFFF, which are the subject of a separate action.” (*Id.* at 3 n.2.) Accordingly, the Complaint alleges that the State, in this action, does not “seek any remediation, restoration, damages, or any other relief related to any PFAS contamination caused by AFFF or fluorosurfactants when used as ingredients of AFFF. The State’s claims with respect to AFFF are the subject of a separate action.” (*Id.* ¶ 13.)

On July 10, 2023, Defendant 3M filed a notice of removal from the Circuit Court for Baltimore City. (ECF No. 1.) On August 1, 2023, Defendant 3M moved to stay this action pending a transfer decision by the Judicial Panel on Multidistrict Litigation (“JPML”). (ECF No. 17.) This Court granted the motion to stay on August 2, 2023. (ECF No. 18.) On August 9, 2023, the State moved for reconsideration on this Court’s stay order while also moving to remand the case back to state court. (ECF No. 23.) On October 4, 2023, the JPML denied 3M’s motion to transfer. (ECF No. 44.) Accordingly, the State’s motion for reconsideration is now moot, and the Motion to Remand is ripe for review.

### STANDARD OF REVIEW

A defendant in a state civil action may remove the case to federal court if the federal court can exercise original jurisdiction over at least one of the asserted claims. 28 U.S.C. § 1441(a)-(c). Additionally, the federal officer removal statute, 28 U.S.C. § 1442(a)(1), authorizes removal of “[a] civil action or criminal prosecution that is commenced in a State court and that is against

or directed to . . . [t]he United States or any agency thereof or any officer (or any person acting under the officer) of the United States or of any agency thereof, in an official or individual capacity, for or relating to any act under color of such office.” 28 U.S.C. § 1442(a)(1). Once an action is removed to federal court, the plaintiff may file a motion to remand the case to state court if there is a contention that jurisdiction is defective. 28 U.S.C. § 1447(c). When considering motions to remand, courts must interpret the federal officer removal statute broadly. *See Arizona v. Manypenny*, 451 U.S. 232, 242 (1981) (citing *Willingham v. Morgan*, 395 U.S. 402, 407 (1969)). It is well established that the party seeking removal bears the burden of establishing jurisdiction in the federal court. *Johnson v. Advance America*, 549 F.3d 932, 935 (4th Cir. 2008).

## ANALYSIS

### I. Federal Officer Removal

To sustain removal under Section 1442, a defendant must satisfy three elements. First, the defendant must demonstrate that it is “an officer of the United States or ‘acting under’ a federal officer within the meaning of the statute.” *Mayor and City Council of Balt. v. BP P.L.C.*, 388 F. Supp. 3d 538, 567 (D. Md. 2019) (citing *Sawyer v. Foster Wheeler LLC*, 860 F.3d 249, 254 (4th Cir. 2017)). Second, the defendant must establish a causal nexus between its challenged conduct and official authority by showing that the conduct occurred “for or relating to” official federal authority. *Id.* (citing 28 U.S.C. § 1442(a)(1)). Finally, the defendant must also assert “a colorable federal defense.” *Id.* (citing *Sawyer*, 395 U.S. at 254). While the court must construe facts alleged in support of the defendant’s colorable federal defense as true, the

defendant bears the burden to allege facts sufficient to allow the court to conclude that such a defense is plausible. *North Carolina v. Ivory*, 906 F.2d 999, 1001 (4th Cir. 1990); *Jefferson Cnty. v. Acker*, 527 U.S. 423, 432 (1999). “The central purpose of the federal officer removal statute is to protect the federal government and its operations from potential interference by the states through proceedings in state court.” *Illinois ex rel. Raoul v. 3M Co.*, No. 422CV04075SLDJEH, 2023 WL 6160610, at \*2 (C.D. Ill. Sept. 21, 2023) (citing *Watson v. Philip Morris Cos.*, 551 U.S. 142, 150 (2007)).

3M attempts to sustain federal officer removal under the government contractor defense. “A government contractor is entitled to removal under Section 1442 when” it satisfies the federal officer removal requirements. *Northrop Grumman Tech. Servs., Inc. v. DynCorp Int’l LLC*, 865 F.3d 181, 186 (4th Cir. 2017). The third element for removal, “a colorable federal defense,” may be met by the government contractor defense, which exempts government contractors from liability for design defects in military equipment “when (1) the United States approved reasonably precise specifications; (2) the equipment conformed to those specifications; and (3) the supplier warned the United States about the dangers in the use of the equipment that were known to the supplier but not to the United States.” *Boyle v. United Techs. Corp.*, 487 U.S. 500, 512 (1988). However, “[s]imply asserting a federal defense is not, on its own, sufficient to show removal jurisdiction under § 1442(a)(1). Rather, § 1442(a)(1) also requires that the plaintiff’s claims have a nexus to the defendant’s acts under federal authority.” *New Hampshire v. 3M Co.*, 665 F. Supp. 3d 215, 229 (D.N.H. 2023) (citing *Jefferson Cnty., Ala. v. Acker*, 527 U.S. 423, 431 (1999)).

3M’s government contractor defense relies on its production of MilSpec AFFF, which is AFFF “that 3M and others developed and sold to the U.S. military in accordance with rigorous military specifications (‘Mil-Spec’) issued by the Department of Defense (‘DoD’).” (ECF No. 1 ¶ 2.) In this case, 3M has expressly disclaimed “any relief . . . related to any PFAS contamination caused by AFFF or fluorosurfactants when used as ingredients of AFFF.” (ECF No. 5 ¶ 13.) That includes 3M’s alleged basis for removal, MilSpec AFFF—a chemical that 3M asserts it had official authority to manufacture. By excluding MilSpec AFFF and all other types of AFFF from its Complaint, the State has abandoned any claims in this case that would allow 3M to utilize the government contractor defense. The State’s disclaimer here is effective. In three identical cases, federal courts have remanded to state court due to similar disclaimers. *See New Hampshire v. 3M Co.*, 665 F. Supp. 3d 215, 220 (D.N.H. 2023) (“The State disclaimed in this suit recovery for harm from AFFF contamination, which eliminates any connection between the State’s claims in this suit and 3M’s production of MilSpec AFFF.”); *Maine v. 3M Co.*, No. 2:23-CV-00210-JAW, 2023 WL 4758816, at \*10 (D. Me. July 26, 2023) (“[T]he federal officer defense will not be applicable in the State’s Non-AFFF lawsuit because the State by its express disclaimer has imposed upon itself a burden to demonstrate that its claim involves Non-AFFF sources.”); *Illinois ex rel. Raoul v. 3M Co.*, No. 422CV04075SLDJEH, 2023 WL 6160610, at \*2 (C.D. Ill. Sept. 21, 2023) (“By renouncing all claims stemming from a contractor’s work for the federal government, it no longer becomes necessary to assert the federal government contractor defense.”). Those courts found that “[c]ourts have consistently granted motions to remand where the plaintiff expressly disclaimed the claims upon which federal

officer removal was based.” *Illinois*, 2023 WL 6150510, at \*5 (quoting *Reinbold v. Advanced Auto Parts, Inc.*, No. 18-CV-605-SMY-DGW, 2018 WL 3036026, at \*2 (S.D. Ill. June 19, 2018)); *see also Maine*, 2023 WL 4758816, at \*10 (“Where express disclaimers are made, ‘federal courts have consistently granted motions to remand where the plaintiff expressly disclaimed the claims upon which federal officer removal was based.’” (quoting *Dougherty v. A O Smith Corp.*, No. CV 13-1972-SLR-SRF, 2014 WL 3542243, at \*10 (D. Del. July 16, 2014))).

Because the State has expressly disclaimed any AFFF-related claims, 3M cannot establish the requisite nexus between charged conduct and asserted official authority. *Northrop*, 865 F.3d at 186. In this case, as in *New Hampshire*, *Maine*, and *Illinois*, the explicit exclusion of AFFF from this lawsuit renders it “impossible for Defendant to be held liable for damages stemming from its actions under federal authority, and so the requisite connection or association is missing.” *Illinois*, 2023 WL 6150510, at \*6. 3M therefore fails to demonstrate the requisite nexus or colorable federal defense to sustain removal to federal court under the federal officer removal statute. Accordingly, the State’s Motion to Remand (ECF No. 23) shall be GRANTED and this case shall be REMANDED to the Circuit Court for Baltimore City.

## II. Federal Enclave Jurisdiction

As an alternative basis for removal, 3M asserts that the State’s claims in this case “have arisen in part on federal enclaves,” thereby allowing federal enclave jurisdiction. (ECF No. 1 ¶ 5.) Federal enclave jurisdiction provides original federal jurisdiction, which therefore would allow removal under 28 U.S.C. § 1441(a). “[F]ederal-question jurisdiction tied to federal enclaves

‘generally requires “that *all* pertinent events t[ake] place on a federal enclave.’” *Mayor & City Council of Baltimore v. BP P.L.C.*, 31 F.4th 178, 219 (4th Cir. 2022) (second alteration in original) (quoting *Bd. of Cnty. Cmm’rs of Boulder Cnty. v. Suncor Energy (U.S.A.) Inc.*, 25 F.4th 1238, 1271 (10th Cir. 2022)). However, 3M fails to demonstrate that all pertinent events related to the issues in this case occurred on a federal enclave. Instead, it asserts only that “[s]ome federal facilities in Maryland . . . are or were federal enclaves when AFFF and/or other PFAS or PFAS-containing products were released from such facilities.” (ECF No. 1 ¶ 59.) The fact some of the State’s claims may have arisen in part from some federal enclaves is insufficient to grant federal enclave jurisdiction. Quite simply, 3M’s allegations are insufficient to meet the requirements for federal enclave jurisdiction. *See Rhode Island v. Shell Oil Prod. Co.*, 35 F.4th 44, 58 (1st Cir. 2022) (finding allegation that “a big chunk” of pertinent events occurred on federal enclaves insufficient for federal enclave jurisdiction). Moreover, in this case, as in *Maine*, even if some of the claims arose in part from locations that “could fit within federal enclave jurisdiction, the State has disclaimed any AFFF claims, including those arising from a federal enclave, so the argument circles back to the State’s disclaimer.” *Maine*, 2023 WL 4758816, at \*10. 3M therefore cannot remove under the basis of federal enclave jurisdiction. Accordingly, this case shall be REMANDED to the Circuit Court for Baltimore City.

## CONCLUSION

For the reasons stated above, it is this 12th day of February, 2024, hereby ORDERED that:

1. Plaintiff’s Motion to Remand to the Circuit Court for Baltimore City (ECF No. 23) is GRANTED;

2. This case shall be REMANDED to the Circuit Court for Baltimore City;
3. The Clerk shall CLOSE this case; and
4. A copy of this Memorandum Order shall be sent to counsel of record.

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Richard D. Bennett  
United States Senior District Judge

**IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH CAROLINA  
CHARLESTON DIVISION**

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IN RE: AQUEOUS FILM-FORMING FOAMS  
PRODUCTS LIABILITY LITIGATION

MDL No. 2:18-mn-2873-RMG

**This Order Relates To**

*State of South Carolina v. 3M Company et al.*,  
No. 2:23-cv-05979-RMG

Before the Court is the State of South Carolina's motion to remand its claims to South Carolina state court. (Dkt. No. 8).<sup>1</sup> For the reasons set forth below, the motion is granted.

**I. Background**

South Carolina brought this suit in state court against Defendants 3M Company, Corteva, Inc, Dupont De Nemours Inc., E.I. Dupont De Nemours and Company, The Chemours Company, and The Chemours Company FC, LLC asserting state law claims for public nuisance, private nuisance, trespass, and violation of the South Carolina Unfair Trade Practices Act. (Dkt. No. 1-1 at 3, 37-45). South Carolina alleges that Defendants supplied products containing certain per- and polyfluoroalkyl substances, which are commonly known as PFAS or PFAS compounds, that contaminated the State's natural resources and property, including South Carolina drinking water. (*Id.* at 3-4).

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<sup>1</sup> Unless otherwise noted, citations are to the docket in C.A. No. 2:23-5979-RMG.

In this suit, South Carolina specifically disclaimed recovery for PFAS contamination from Aqueous Film Forming Foam, or AFFF. (*Id.* at 7-8). South Carolina filed a separate case expressly seeking recovery for PFAS contamination caused by AFFF. (*South Carolina v. 3M Co.*, 23-cv-5734 (D.S.C. Nov. 9 2023), Dkt. No. 1-1).

3M removed this matter, invoking federal officer removal under 28 U.S.C. § 1442(a)(1) and federal enclave jurisdiction under § 1441(a). (Dkt. No. 1 at 3-4). 3M argues federal officer removal is proper because some of the contamination at issue in this case overlaps with, or has commingled with, PFAS contamination from AFFF products that 3M supplied to the United States military per a military-created specification, referred to as MilSpec AFFF. (*Id.* at 8). 3M intends to assert the federal government contractor defense for PFAS contamination that originated from MilSpec AFFF and argues that the assertion of that defense entitles it to a federal forum. (*Id.* at 2). 3M also argues that federal enclave removal is proper because PFAS from AFFF and non-AFFF products were released from military facilities in South Carolina that are federal enclaves. (*Id.* at 28-29).

South Carolina now moves to remand this case to state court, arguing that 3M has not met the requirements for federal officer removal or federal enclave removal because the State disclaimed recovery for PFAS contamination from AFFF products in this suit. (Dkt. No. 8). 3M filed a response in opposition to the motion (Dkt. No. 11), and South Carolina replied (Dkt. No. 12). The matter is now ripe for the Court's review.

## II. Standard

As the party that invoked the Court's jurisdiction, 3M bears the burden of establishing that the case was properly removed from state court. *Mulcahey v. Columbia Organic Chem. Co.*, 29 F.3d 148, 151 (4th Cir. 1994); *see also Bennett v. Bally Mfg. Corp.*, 785 F. Supp. 559, 560 (D.S.C. 1992). The Court should strictly construe removal jurisdiction because it "raises federalism concerns." *Mulcahey*, 29 F.3d at 151 (citing *Shamrock Oil & Gas Corp. v. Sheets*, 313 U.S. 100 (1941)); *see also S.C. v. Boehringer Ingelheim Roxane, Inc.*, No. 3:07-cv-00665-CMC, 2007 WL 1232156, at \*1 (D.S.C. Apr. 26, 2007). Doubts as to the Court's jurisdiction should weigh in favor of remanding to state court. *Mulcahey*, 29 F.3d at 151.

## III. Discussion

### A. Federal Officer Removal

3M argues that federal officer removal is proper because it intends to assert the federal government contractor defense for PFAS contamination originating from the use, storage, and/or disposal of MilSpec AFFF.

The federal officer removal statute authorizes removal to federal court of any civil action or criminal prosecution commenced in state court against "any officer (or any person acting under that officer) of the United States or of any agency thereof, in an official or individual capacity, for or relating to any act under color of such office." 28 U.S.C. § 1442(a)(1). Thus, a private defendant, such as a government contractor, who seeks to remove a case under § 1441(a)(1) must show (1) that it was a "person acting under" a federal officer, *see e.g., Watson v. Philip Morris Cos.*, 551 U.S. 142, 147 (2007); *Ripley v. Foster Wheeler LLC*, 841

F.3d 207, 209 (4th Cir. 2016); (2) that it has a “colorable federal defense,” *Jefferson Cnty. v. Acker*, 527 U.S. 423, 431 (1999); and (3) that the charged conduct was carried out for or in relation to the asserted official authority, *see* 28 U.S.C. § 1442(a)(1). “In imposing these requirements, the statute aims to protect the Federal Government from interference with its ‘operations,’ primarily by providing ‘a federal forum for a federal defense.’” *Sawyer v. Foster Wheeler LLC*, 860 F.3d 249, 254 (4th Cir. 2017) (quoting *Watson*, 551 U.S. at 147). In reviewing removal on a motion to remand, the Court should reject a “narrow, grudging interpretation of the statute, recognizing that one of the most important reasons for removal is to have the validity of the defense of official immunity tried in federal court.” *Acker*, 527 U.S. at 431.

The requirement that a claim be “for or in relation to” the alleged federal authority is a “nexus” requirement, but not a causation requirement. *Moore v. Elec. Boat Corp.*, 25 F.4th 30, 34 & n.2 (1st Cir. 2022); *see also Sawyer v. Foster Wheeler LLC*, 860 F.3d 249, 258 (4th Cir. 2017). “[T]here need be only ‘a connection or association between the act in question and the federal office.’” *Sawyer*, F.3d at 258 (citation omitted).

Addressing motions to remand in similar non-AFFF, PFAS lawsuits, two district courts in the First Circuit and one district court in the Seventh Circuit found that federal officer removal is not proper by concluding that the AFFF disclaimer eliminates the connection between the claims and 3M’s production of Mil-Spec AFFF for the United States military. *New Hampshire v. 3M Co.*, 665 F.Supp.3d 215, 227 (D.N.H. 2023) (“The State disclaimed in this suit recovery for harm from AFFF contamination, which eliminates any connection between the State’s claims in this suit

and 3M's production of MilSpec AFFF."); *Maine v. 3M Co.*, No. 2:23-cv-00210-JAW, 2023 WL 4758816 at \*10 (D. Me. July 26, 2023) ("Here, the State's disclaimer is express, unambiguous, and plain, and in the Court's view, fits within the category of express disclaimers courts have found effective to justify a remand order."); *Illinois ex rel. Raoul v. 3M Co.*, — F.Supp.3d—, 4:22-cv-04075-SLD-JEH, 2023 WL 6160610, at \*6 (C.D. Ill. Sept. 21, 2023) ("Permitting Defendant to remove this suit under the federal officer removal statute when the federal government contractor defense is irrelevant to the eventual resolution of the case and any PFAS it produced as a military contractor is explicitly excluded from this suit would defeat the purpose of the statute. It is thus impossible for Defendant to be held liable for damages stemming from its actions under federal authority, and so the requisite connection or association is missing."). Those courts reasoned that 3M would not be able to raise its federal officer defense because, due to the states' disclaimers, 3M could not be held liable for contamination that stemmed from an AFFF source. *New Hampshire*, F.Supp.3d at 228 ("[Regardless of whether 3M's AFFF conformed to a specification required by the United States military or whether 3M appropriately warned the government about the dangers of PFAS, 3M cannot be liable in this case for contamination resulting from its alleged supply of MilSpec AFFF."); *Maine*, 2023 WL 4758816, at \*10 ("[T]he federal officer defense will not be applicable in the State's Non-AFFF lawsuit because the State by its express disclaimer has imposed upon itself a burden to demonstrate that its claim involves Non-AFFF sources."); *Raoul*, 2023 WL 6160610, at \*6 ("[O]nce Defendant shows that a certain portion of the contamination stemmed from MilSpec AFFF . . . , that contamination is eliminated from the case, whether or not that MilSpec AFFF was produced ac-

ording to rigorous military specifications and the government was warned of any dangers of which it was unaware.”).

The Court here agrees that the disclaimers moot 3M’s government contractor defense because, whether or not 3M meets the requirements for the defense, it cannot be held liable in this case for PFAS contamination originating from AFFF. Because it does not matter that 3M acted in accordance with federal authority, the charged conduct here is not connected to the alleged federal authority. Accordingly, there is no nexus and federal officer removal is not available.

## **B. Federal Enclave Jurisdiction**

The federal enclave doctrine arises out of Congress’s constitutional authority to “exercise exclusive legislation” over the District of Columbia “and to exercise like authority over all places purchased by the consent of the legislature of the state in which the same shall be, for the erection of forts, magazines, arsenals, dockyards, and other needful buildings.” U.S. Const. art. I, § 8, cl. 17. A federal enclave is a “portion of land over which the United States government exercises federal legislative jurisdiction.” *Brookhaven Sci. Assocs., LLC v. Donaldson*, No. 04 Civ. 4013 (LAP), 2007 WL 2319141, at \*5 (S.D.N.Y. Aug. 9, 2007); *see also Stokes v. Adair*, 265 F.2d 662, 666 (4th Cir. 1959). “[F]ederal-question jurisdiction tied to federal enclaves ‘generally requires ‘that *all* pertinent events take place on a federal enclave.’” *Mayor and City Council of Baltimore v. BP P.L.C.*, 31 F.4th 178, 219 (4th Cir. 2022).

3M argues that, even for non-AFFF claims, the Court could assume jurisdiction “over the State’s claims to the extent they arose on federal enclaves”

and “exercise supplemental jurisdiction over the rest of the State’s case” under 28 U.S.C. § 1367. (Dkt. No. 11 at 30).

To support its argument 3M relies on a case in this MDL where the State of New York brought claims related to the use of AFFF on a U.S. Air Force base and other sites. *In re: AFFF*, 2019 WL 2807266, at \*4 (D.S.C. May 24, 2019). This Court held that removal was proper as to the claims arising out of AFFF product use and contamination from the Air Force base and exercised supplemental jurisdiction over claims related to the other sites. *Id.* The Court noted, however, that it “may decline to exercise its jurisdiction where tort claims arising from [the other sites] ‘predominate’ over the claim arising from [the Air Force base], or for other ‘compelling reasons.’” *Id.* (quoting 28 U.S.C. § 1367(c)).

Assuming that some of South Carolina’s claims arose on federal enclaves, the Court here declines to exercise supplemental jurisdiction over the non-federal enclave claims. The Court finds that the claims arising from the parts of the State that are not considered federal enclaves “predominate” over the claims arising from military facilities. Additionally, the Court finds that South Carolina’s disclaimer of any AFFF claims, which includes those arising from MilSpec AFFF use and storage on military bases, is a compelling reason to decline supplemental jurisdiction. Accordingly, federal enclave removal is not available.

#### **IV. Conclusion**

For the foregoing reasons, the South Carolina’s motion to remand (Dkt. No. 8) is **GRANTED**. This mat-

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ter is **REMANDED** to Richland County Court of Common Pleas.

s/Richard Mark Gergel  
Richard Mark Gergel  
United States District Judge

February 29, 2024  
Charleston, South Carolina

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FILED: May 28, 2025

**UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT**

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No. 24-1218 (L)  
(1:23-cv-01836-RDB)

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STATE OF MARYLAND

Plaintiff–Appellee

v.

3M COMPANY

Defendant–Appellant

and

CORTEVA INC.; DUPONT DE NEMOURS INC.;  
EIDP, INC., f/k/a E.I. Dupont De Nemours &  
Company, Incorporated; CHEMOURS COMPANY

Defendants

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No. 24-1270  
(2:18-mn-02873-RMG)  
(2:23-cv-05979-RMG)

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In re: AQUEOUS FILM-FORMING FOAMS  
PRODUCTS LIABILITY LITIGATION

STATE OF SOUTH CAROLINA EX REL ALAN  
WILSON, in his official capacity as Attorney General  
of the State of South Carolina

Plaintiff–Appellee

v.

3M COMPANY

Defendant–Appellant

and

CORTEVA INC.; DUPONT DE NEMOURS INC.,  
New DuPont; EIDP, INC., f/k/a E. I. DuPont  
De Nemours & Company, Old DuPont;  
THE CHEMOURS COMPANY;  
THE CHEMOURS COMPANY FC, LLC  
Defendants

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O R D E R

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The petition for rehearing en banc was circulated to the full court. No judge requested a poll under Fed. R. App. P. 40. Accordingly, the court denies the petition for rehearing en banc.

For the Court

/s/ Nwamaka Anowi, Clerk

**STATUTORY PROVISIONS INVOLVED**

28 U.S.C.A. § 1442

§ 1442. Federal officers or agencies  
sued or prosecuted

**(a)** A civil action or criminal prosecution that is commenced in a State court and that is against or directed to any of the following may be removed by them to the district court of the United States for the district and division embracing the place wherein it is pending:

**(1)** The United States or any agency thereof or any officer (or any person acting under that officer) of the United States or of any agency thereof, in an official or individual capacity, for or relating to any act under color of such office or on account of any right, title or authority claimed under any Act of Congress for the apprehension or punishment of criminals or the collection of the revenue.

**(2)** A property holder whose title is derived from any such officer, where such action or prosecution affects the validity of any law of the United States.

**(3)** Any officer of the courts of the United States, for or relating to any act under color of office or in the performance of his duties;

**(4)** Any officer of either House of Congress, for or relating to any act in the discharge of his official duty under an order of such House.

**(b)** A personal action commenced in any State court by an alien against any citizen of a State who is, or at the time the alleged action accrued was, a civil officer of the United States and is a nonresident of such State, wherein jurisdiction is obtained by the State court by personal service of process, may be removed by the defendant to the district court of the United States for

the district and division in which the defendant was served with process.

**(c)** Solely for purposes of determining the propriety of removal under subsection (a), a law enforcement officer, who is the defendant in a criminal prosecution, shall be deemed to have been acting under the color of his office if the officer—

- (1)** protected an individual in the presence of the officer from a crime of violence;
- (2)** provided immediate assistance to an individual who suffered, or who was threatened with, bodily harm; or
- (3)** prevented the escape of any individual who the officer reasonably believed to have committed, or was about to commit, in the presence of the officer, a crime of violence that resulted in, or was likely to result in, death or serious bodily injury.

**(d)** In this section, the following definitions apply:

- (1)** The terms “civil action” and “criminal prosecution” include any proceeding (whether or not ancillary to another proceeding) to the extent that in such proceeding a judicial order, including a subpoena for testimony or documents, is sought or issued. If removal is sought for a proceeding described in the previous sentence, and there is no other basis for removal, only that proceeding may be removed to the district court.
- (2)** The term “crime of violence” has the meaning given that term in section 16 of title 18.
- (3)** The term “law enforcement officer” means any employee described in subparagraph (A), (B), or (C) of section 8401(17) of title 5 and any special agent

in the Diplomatic Security Service of the Department of State.

**(4)** The term “serious bodily injury” has the meaning given that term in section 1365 of title 18.

**(5)** The term “State” includes the District of Columbia, United States territories and insular possessions, and Indian country (as defined in section 1151 of title 18).

**(6)** The term “State court” includes the Superior Court of the District of Columbia, a court of a United States territory or insular possession, and a tribal court.



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**IN THE CIRCUIT COURT  
FOR BALTIMORE CITY**

Case No.

COMPLAINT

JURY TRIAL DEMANDED

FILED May 30, 2023

STATE OF MARYLAND,  
200 Saint Paul Place  
Baltimore, Maryland 21202  
*Plaintiff,*

v.

3M COMPANY,  
3M Center  
St. Paul, Minnesota 55144-1000,

Serve on:  
CSC-Lawyers Incorporating  
Service Company  
7 St. Paul Street, Suite 820  
Baltimore, Maryland 21202

*and*

CORTEVA, INC.,  
974 Centre Road  
Wilmington, Delaware 19805,

Serve on:  
The Corporation Trust, Inc.  
2405 York Road, Suite 201,  
Lutherville Timonium,  
Maryland 21093-2264

*and*

DUPONT DE NEMOURS, INC.,  
974 Centre Road  
Wilmington, Delaware 19805,

Serve on:  
The Corporation Trust Company  
Corporation Trust Center  
1209 Orange Street  
Wilmington, Delaware 19801

*and*

EIDP, INC., *F/K/A* E.I. DU PONT  
DE NEMOURS AND COMPANY,  
974 Centre Road  
Wilmington, Delaware 19805,

Serve on:  
The Corporation Trust, Inc.  
2405 York Road, Suite 201  
Lutherville Timonium,  
Maryland 21093-2264

*and*

THE CHEMOURS COMPANY,  
1007 Market Street  
Wilmington, Delaware 19899,

Serve on:  
The Corporation Trust Inc.  
351 West Camden Street  
Baltimore, Maryland 21201-7912

*Defendants.*

\* \* \* \* \*

**COMPLAINT**

Plaintiff, the State of Maryland (the “State”), by and through Anthony G. Brown, Attorney General of Maryland, and counsel, on behalf of the Maryland Depart-

ment of Environment (the “Department” or “MDE”), and the Maryland Department of Health (“MDH”), and the Maryland Department of Natural Resources (“DNR”), files this Complaint against the above-named Defendants and in support thereof alleges as follows:

## INTRODUCTION

1. The State brings this action against Defendants to address widespread contamination of its natural resources—particularly the drinking water supplies upon which its citizens depend—with toxic per- and polyfluoroalkyl substances (“PFAS”), including but not limited to perfluorooctane sulfonic acid (“PFOS”) and perfluorooctanoic acid (“PFOA”).<sup>1</sup>

2. Defendants are among the world’s largest chemical manufacturers, and they are responsible for the PFAS contamination within Maryland. They designed, manufactured, marketed, and sold products that contain PFAS (“PFAS Products”),<sup>2</sup> which have

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<sup>1</sup> Although this action focuses on PFOS and PFOA, the State reserves the right to seek relief related to additional PFAS that are found to have contaminated its resources, based on continuing investigation and scientific developments. At the time of this Complaint’s filing, the United States Environmental Protection Agency (“EPA”) has proposed national drinking water regulations for both PFOS and PFOA, but also for PFBS (Perfluorobutane sulfonic acid), PFHxS (Perfluorohexane sulfonic acid), PFNA (Perfluorononanoic acid), and HFPO-DA (Hexafluoropropylene oxide dimer acid, also known as “GenX”). MDE and the Maryland Department of Health are monitoring these developments closely.

<sup>2</sup> As used in this Complaint, the term “PFAS Products” means PFAS and those products that contain PFAS or release PFAS into the environment. The term does not, however, include aqueous film-forming foam (“AFFF”) or fluorosurfactants that were designed for and specifically incorporated into AFFF, which are the subject of a separate action.

entered the State's environment through multiple pathways, contaminated its resources, and put its residents' health at risk.

3. Defendants' PFAS have been used since the 1940s to make countless consumer and commercial products that were marketed for their resistance to grease, stains, heat, and other harsh elements. Among other items, Defendants' PFAS were used to make and were present in food packaging, carpeting, cookware, clothing, and upholstery, including in products branded under household names like Teflon and Scotchgard. Defendants sold these PFAS Products in Maryland and throughout the country, generating significant profits.

4. At the same time Defendants were profiting from the sale of these PFAS Products, they knew for decades that their PFAS were toxic and posed significant risks to human health and the environment. Internal documents reveal that Defendants had determined that their PFAS chemicals were harmful and were accumulating in the human blood supply. Defendants did not warn of the dangers posed by their PFAS Products, but instead concealed those dangers to protect their corporate image and limit their liability.

5. Defendants knew specifically that their PFAS were reaching drinking water supplies and accumulating in people's bodies as they were exposed to the chemicals over time. They also knew that PFAS, now commonly referred to as "forever" chemicals, were persistent and would remain in the environment for hundreds or even thousands of years, leaving a toxic legacy for future generations.

6. Because of Defendants' profit-driven effort to conceal these risks from federal and state regulators

and the public more broadly, the public health and environmental consequences of Defendants' manufacture, marketing, and sale of PFAS Products in Maryland and elsewhere have only recently come to light. Only through lawsuits like this one were Defendants eventually compelled to disclose what they have long known about the dangers of their PFAS Products.

7. As details of those risks began to be disclosed, states and the federal government have initiated their own investigations into the risks posed by these PFAS Products and the extent of contamination that they have caused. Those investigations remain ongoing, but initial results show that Defendants' PFAS Products have been introduced into the environment in many different ways, including through discharges and emissions from industrial facilities, the use and disposal of PFAS-containing products, landfills receiving PFAS-containing waste, and wastewater treatment facilities containing PFAS-contaminated waste streams. The magnitude and ubiquity of these sources of contamination compound the challenge and expense of remediating the harm that Defendants have caused.

8. Defendants' unlawful and tortious acts and omissions with respect to their PFAS Products have caused significant PFAS contamination in the State's drinking water, groundwater, surface water, soil, sediment, wildlife, other natural resources, and property held in trust or otherwise owned by the State.

9. In the meantime, Marylanders have been and continue to be exposed to PFAS through drinking contaminated water, eating contaminated fish and animals, ingesting contaminated soil or dust, consuming food packaged in PFAS-containing materials, and using products treated with PFAS, among other ways.

10. Federal regulatory investigations have concluded that exposure to PFAS may lead to significant negative health effects, including but not limited to: “Reproductive effects such as decreased fertility or increased high blood pressure in pregnant women; developmental effects or delays in children including low birth weight, accelerated puberty, bone variations, or behavioral changes; increased risk of some cancers, including prostate, kidney, and testicular cancers; reduced ability of the body’s immune system to fight infections, including reduced vaccine response; interference with the body’s natural hormones; [and] increased cholesterol levels and/or risk of obesity.” Environmental Protection Agency, *Our Current Understanding of the Human Health and Environmental Risks of PFAS*, <https://www.epa.gov/pfas/our-current-understanding-human-health-and-environmental-risks-pfas> (last visited May 22, 2023).

11. Although Defendants knew that their PFAS Products would release PFAS into the environment, endanger people and natural resources, and require significant expense to remediate, they concealed that information and affirmatively contradicted it in public statements and marketing campaigns designed to enrich themselves at the public’s expense.

12. Because of Defendants’ concealment, the State was unaware for decades of the risks posed by PFAS. As news about PFAS risks spread, the State began its own investigation into the extent of this PFAS contamination. As that investigation unfolds, the State will inevitably learn of more contamination from PFAS Products, increasing the cost necessary to investigate, treat, and remediate the contamination that Defendants have caused. Given that Defendants created and profited from this environmental hazard, Defendants,

and not Maryland's citizens, must pay to address the PFAS contamination throughout the State.

## SCOPE OF THE ACTION

13. The State brings this action to hold Defendants fully accountable for the harms done to Maryland, its citizens, and its natural resources from Defendants' PFAS Products. Through this action the State does not, however, seek any remediation, restoration, damages, or any other relief related to any PFAS contamination caused by AFFF or fluorosurfactants when used as ingredients of AFFF. The State's claims with respect to AFFF are the subject of a separate action.

## PARTIES

### *The State of Maryland as Plaintiff*

14. The State brings this action (a) directly in its own right, (b) in its *parens patriae* capacity, and (c) as trustee of Maryland's natural resources.

15. The State holds significant direct property interests in natural resources of the State and State-owned lands, but also has an interest as a sovereign and natural resource trustee in protecting the natural resources of the State from contamination. The contamination of the natural resources of the State by PFAS constitutes injury to the person and property of the State's citizens and to the natural resources of the State, which are held in trust by the State on behalf of all its citizens. The State may for the common good exercise all the authority necessary to protect its interests and those of its citizens.

16. The State, as the public trustee, is empowered to bring suit to protect the corpus of the trust, i.e., the natural resources, for the beneficiaries of the trust,

i.e., the public. Protection of the natural resources of the State is a matter of public concern in which the State has an interest apart from that of particular individuals who may be affected. Pollution of the natural resources of the State with PFAS has negatively affected a substantial segment of the State's population.

17. The State brings this action pursuant to its police powers, which include but are not limited to its powers to prevent and abate pollution of the natural resources of the State, to prevent and abate nuisances, and to prevent and abate hazards to the environment and to the public health, safety, and welfare.

18. The State, through its Attorney General, also brings this action under Title 9 of the Environment Article, which empowers the Secretary of the Environment, through the Attorney General, to bring suit against any person who "discharge[s] any pollutant into the waters of this State" without a permit. Md. Code Ann., Env't §§ 9-322, 9-339(a).

19. The responsibilities of the Attorney General include the investigation, commencement, and prosecution of civil suits on the part of the State. *See* Maryland Constitution, Art. V, § 3. "[T]he Attorney General has general charge of the legal business of the State." Md. Code Ann., State Gov't § 6-106.

20. As a result of Defendants' acts and omissions as alleged herein, the State has suffered and will continue to suffer injuries to its natural resources and has incurred and will continue to incur costs to define the extent of PFAS contamination throughout the State; to monitor, treat, remediate, and remove PFAS; and to provide oversight of such activities.

***Defendants***

21. Defendant 3M Company (“3M”) is a Delaware Corporation qualified to do business in Maryland. Its principal place of business is 3M Center, St. Paul, Minnesota 55144-1000. 3M manufactured, marketed, and sold PFAS Products that were used or otherwise released in the State.

22. Defendant EIDP, Inc. (“Old DuPont”), f/k/a E. I. du Pont de Nemours and Company, is a Delaware corporation qualified to do business in Maryland. Its principal place of business is at 974 Centre Road, Wilmington, Delaware 19805. Old DuPont manufactured, marketed, and/or sold PFAS Products that were used or otherwise released in the State.

23. Defendant The Chemours Company is a Delaware corporation qualified to do business in Maryland. Its principal place of business is at 1007 Market Street, Wilmington, Delaware 19899. In 2015, Old DuPont spun off its performance chemicals business to Chemours, along with vast environmental liabilities. In connection with these transfers, Chemours assumed certain Old DuPont liabilities, including those relating to PFAS.

24. Defendant Corteva, Inc. is a Delaware corporation qualified to do business in Maryland. Its principal place of business is at 974 Centre Road, Wilmington, Delaware 19805. In 2019, DuPont de Nemours, Inc. spun off a new, publicly-traded company, Corteva, which currently holds Old DuPont as a subsidiary. In connection with these transfers, Corteva assumed certain Old DuPont liabilities, including those relating to PFAS.

25. Defendant DuPont de Nemours, Inc. (“New DuPont”), f/k/a DowDuPont Inc., is a Delaware corporation. Its principal place of business is at 974 Centre

Road, Wilmington, Delaware 19805. In 2015, after Old DuPont spun off Chemours, Old DuPont merged with The Dow Chemical Company and transferred Old DuPont's historic assets and liabilities to other entities, including New DuPont. In connection with these transfers, New DuPont assumed certain Old DuPont liabilities, including those relating to PFAS.

## **JURISDICTION AND VENUE**

26. This Court has subject matter jurisdiction over this matter under § 1-501 of the Courts and Judicial Proceedings Article and Maryland Rule 2-305(b) because this civil action seeks and demands money damages in an amount that exceeds \$75,000.00.

27. This Court has personal jurisdiction over Defendants because they will be served with process in Maryland; are organized under the laws of Maryland; transact business in Maryland; perform work in Maryland; contract to supply goods in Maryland; manufacture products or performed services in Maryland; caused tortious injury in Maryland; engage in persistent courses of conduct in Maryland; derive substantial revenue from manufactured goods, products, or services used or consumed in Maryland; and/or have interests in or use real property in Maryland.

28. Venue is proper in this Court as to all Defendants under §§ 6-201 and 6-202 of the Courts and Judicial Proceedings Article.

## **FACTUAL ALLEGATIONS**

### **A. PFAS Endangers Maryland's Environment and Citizens.**

29. PFAS are highly fluorinated synthetic chemical compounds that include carbon chains containing at least one carbon atom on which all hydrogen atoms

are replaced by fluorine atoms. The carbon-fluorine bond is one of the strongest bonds in chemistry and imparts to PFAS their unique chemical properties. The carbon-fluorine bond in PFAS generally does not occur in nature.

30. The PFAS family, including PFOS and PFOA, has characteristics that cause extensive and long-lasting environmental contamination.

31. PFAS are mobile and persistent in the environment. Once introduced into the environment, PFAS quickly spread because they easily dissolve in water. PFAS also persist in the environment indefinitely because of their multiple carbon-fluorine bonds, which are exceptionally strong and stable, and are resistant to metabolic and environmental degradation processes. Similarly, removal of PFAS from drinking water sources requires specialized, and expensive, drinking water treatment systems. In short, once PFAS are used, they migrate through the environment, resist natural degradation, contaminate groundwater and drinking water, and are difficult and costly to remove.

32. PFAS bioaccumulate and biopersist in animals and are toxic to their health. Because several PFAS, including PFOS and PFOA, are excreted from individual organisms only slowly, ongoing low-level exposure results in a buildup of PFAS within the body. Thus, PFAS can also biomagnify, meaning that their concentration in organic tissue increases as they are consumed up the food chain.

33. PFAS are toxic and cause significant adverse effects to human health. The presence of these chemicals in drinking water presents a serious threat to public health. For example, PFOS exposure is associ-

ated with numerous adverse health effects in humans, including increases in serum lipids, i.e., high cholesterol; decreases in antibody response to vaccines; increases in risk of childhood infections; and adverse reproductive and developmental consequences, along with high blood pressure and preeclampsia during pregnancy. PFOA exposure is associated with many of these same adverse health effects as well as decreased birthweight, testicular and kidney cancers, ulcerative colitis, and thyroid disease.

34. Even low doses of PFAS can result in adverse health effects for humans and animals.

35. On June 15, 2022, EPA lowered the Health Advisory Limits for PFOA and PFOS. The new interim Health Advisory Limits are 0.004 parts per trillion (“ppt”) for PFOA and 0.02 ppt for PFOS. In March 2023, EPA released proposed drinking water standards for PFOS and PFOA, pursuant to the Safe Drinking Water Act. *See* 8 Fed. Reg. 18638 (Mar. 29, 2023). EPA proposed to establish maximum contaminant levels for PFOS and PFOA at 4 ppt, the lowest amount that can be reliably measured today based on available technology.

36. PFAS can enter the environment in a variety of ways, compounding the problem the State currently faces.

37. PFAS enter the environment from industrial facilities that manufacture or use PFAS. Industries understood to be sources of PFAS include, among others, textile and leather processing, paper mills, metal finishers, wire manufacturers, plating facilities, and manufacturers and facilities using fluorosurfactants, resins, molds, plastics, photolithography, and semi-

conductors. PFAS are released from these facilities to land, in water, and through air emissions.

38. PFAS also enter the environment through the normal use and disposal of PFAS Products. Landfills receive consumer goods, industrial wastes, sewage sludge, and construction and demolition debris, all of which can contain PFAS. PFAS in all landfills, active and closed, can leach from these wastes into groundwater and surface water. PFAS may also be released from landfills in fugitive dust or emitted directly to the atmosphere. Landfills constructed before 1990 that received industrial and construction waste deposits have a higher potential for PFAS releases because they were not required to be constructed with flexible membrane liners or other leachate-control measures. Nationwide studies in the United States, as well as studies in Canada and Europe, have shown high levels of PFAS in landfill leachate.

39. Municipal and industrial wastewater treatment plants are also repositories for industrial and consumer waste containing PFAS. These facilities provide multiple pathways for PFAS to contaminate groundwater and surface water, including by point source discharges of effluent, leakage or unintended releases from sewerage or surface impoundments, air emissions, and disposal of biosolids or other byproducts generated during the treatment process. This results in further discharges of PFAS to water and introduces PFAS into biosolids used in agriculture and various other purposes.

40. The PFAS that make it into Maryland's environment will remain in Maryland and continue to contaminate its resources, unless and until they are treated, removed, or otherwise cleaned up. The State

is taking this action in an effort to meet the challenge of addressing PFAS in Maryland's environment.

## **B. Defendants' History Manufacturing and Selling PFAS Products.**

41. 3M and DuPont sold a wide variety of PFAS Products in Maryland and throughout the United States.

42. Starting in the 1940s and through the early 2000s, 3M was the primary manufacturer of PFAS in the United States.

43. Further, 3M was the only manufacturer of PFOS in the United States.

44. Beginning in the 1940s, 3M manufactured PFOS and PFOA through a process known as electrochemical fluorination. Electrochemical fluorination produces a "branched" form of the chemicals that distinguishes them from PFAS produced through other processes. PFOA is also known as "C-8" due to its eight-carbon chain structure.

45. 3M manufactured PFOS and PFOA to make products used in a wide variety of commercial and household applications, including food packaging, textile treatments, and fluorosurfactants and additives. Among these products are those branded with the name "Scotchgard," which was marketed as providing stain-resistant properties. In addition to marketing and selling its own PFAS Products, 3M sold its PFOS and PFOA to third parties to use in their own products.

46. Old DuPont has also had extensive experience with PFAS. Beginning in the early 1950s, Old DuPont purchased PFOA from 3M so that it could produce and sell various products, including a wide variety of prod-

ucts containing polytetrafluoroethylene (“PTFE”), a fluoropolymer that DuPont marketed under the household trade name “Teflon.” DuPont used PTFE in a wide range of other applications too, including as a processing aid, with the result that PFOA has been present in some Old DuPont products for decades.

47. DuPont’s use of PFOA expanded over time such that the company utilized it to make a growing number of products employed across wide sectors of consumer and industrial applications, including food packaging, carpeting, clothing, upholstery, and paints, as well as treatment and cleaning products.

48. When 3M ceased manufacturing PFOA in the early 2000s, and DuPont no longer had a supplier for this chemical, DuPont chose to begin manufacturing the chemical itself in the mid-2000s.

49. DuPont manufactured PFOA using a telomerization process, which produces a linear form of PFOA, as opposed to the branched form of PFOA previously manufactured by 3M.

50. DuPont claims that it phased out the manufacture and use of PFOA by 2015.

**1. Defendants Knew, or Should Have Known, of the Harm Caused by their PFAS Products, and Attempted to Conceal Negative Information About These Chemicals.**

51. 3M internally studied PFAS for decades and accumulated sufficient knowledge to understand that PFAS were toxic and would adversely affect the environment and human health.

52. As early as the 1950s, 3M began testing the physiological and toxicological properties of PFAS. Based on these internal studies, 3M knew that PFAS were toxic to humans and harmful to the environment.

53. In the 1950s, 3M also knew that PFAS had the ability to move throughout groundwater, and that PFAS bioaccumulate in humans and animals.

54. By 1956, 3M's PFAS were found to bind to proteins in human blood, resulting in bioaccumulation of those compounds in the human body.

55. 3M knew as early as 1960 that its PFAS waste could leach into groundwater and otherwise enter the environment. An internal 3M memorandum from 1960 described 3M's understanding that such wastes "[would] eventually reach the water table and pollute domestic wells."

56. As early as 1963, 3M knew that its PFAS products were highly stable in the environment and did not degrade after disposal. A 1963 report by 3M described PFAS as being stable in the environment, "completely resistant to biological attack," and "toxic." At around the same time, 3M also tested for PFAS in well water and confirmed the presence of surfactant pollution in wells.

57. By the 1970s, 3M had become concerned about the risks posed to the general population by exposure to 3M's fluorochemicals.

58. By no later than 1970, 3M was aware that its PFAS products were hazardous to marine life. Around this time, 3M abandoned a study of its fluorochemicals after the company's release of the chemicals during the study caused severe pollution of nearby surface waters.

59. In 1975, 3M found there was a “universal presence” of PFAS in blood serum samples taken from across the United States. Since PFAS are not naturally occurring, this finding reasonably alerted 3M to the high likelihood that its products were a source of this PFAS—a scenario 3M discussed internally but did not share outside the company. This finding also alerted 3M to the likelihood that PFAS are mobile, persistent, bioaccumulative, and biomagnifying, as those characteristics would explain the presence of PFAS in human blood.

60. As early as 1976, 3M began monitoring for the presence of PFAS within the blood of its employees because the company was concerned about PFAS’s health effects.

61. In 1978, 3M conducted PFOS and PFOA studies in monkeys and rats. All monkeys died within the first few days or weeks after being given food contaminated with PFOS. The studies also showed that PFOS and PFOA affected the liver and gastrointestinal tract of the species tested. The company concluded that PFAS “should be regarded as toxic” and “urgently recommended that all reasonable steps be taken immediately to reduce exposure of employees to these compounds.”

62. In 1979, another 3M report concerning PFAS toxicity stated that the synthetic compounds were “more toxic than anticipated” and recommended that “lifetime rodent studies . . . be undertaken as soon as possible.” Despite these warnings and recommendations, 3M decided to not publish the findings of this investigation.

63. At a 1979 meeting among 3M employees about the “Fluorochemicals in Blood Program,” an outside researcher, Dr. H.C. Hodge, noted that “[r]eduction in

exposure [to 3M employees to fluorochemicals] should have top priority” and recommended that further testing be conducted. According to Dr. Hodge, “[i]t should be determined if FC-807 [a PFAS chemical] or its metabolites are present in man, what level they are present, and the degree of persistence (half-life) of these materials.”

64. In the late 1970s, 3M studied the fate and transport characteristics of PFOS in the environment, including in surface water and biota. The resulting report from 1979 drew a direct line between effluent from 3M’s Decatur, Alabama, plant and fluorochemicals bioaccumulating in fish tissue taken from the Tennessee River adjacent to the 3M plant.

65. According to a 3M environmental specialist who resigned his position in 1991 due to the company’s inaction over PFOS’s environmental impacts, 3M had resisted calls from its own ecotoxicologists going back to 1979 to perform an ecological risk assessment on PFOS and similar chemicals. At the time of the specialist’s resignation, 3M continued its resistance to assessing the ecological risks of PFAS.

66. In 1981, 3M moved 25 female employees “of childbearing potential” off production lines at its Decatur, Alabama, plant “[a]s a precautionary measure.” This was based on internal research showing that PFAS compounds were causing birth defects in rats. Yet 3M did not alert the public or regulatory agencies of its concerns about the effects of exposure to PFAS.

67. In 1983, 3M scientists opined that concerns about PFAS “give rise to legitimate questions about the persistence, accumulation potential, and ecotoxicity of fluorochemicals in the environment.”

68. In 1984, 3M's internal analyses confirmed that fluorochemicals were likely bioaccumulating in 3M's employees.

69. Despite its understanding of the hazards associated with the PFAS in its products, 3M concealed the information it had and actively sought to suppress scientific research on the hazards associated with PFAS, mounting a campaign to control the scientific dialogue on the fate, exposure, analytics, and effects to human health and the ecological risks of PFAS.

70. 3M engaged in a variety of tactics to deceive others and to hide the negative effects of PFAS. For example, a former 3M employee disclosed that 3M, in a May 1998 report that it submitted to EPA, "chose to report simply that PFOS had been found in the blood of animals, which is true but omits the most significant information." And in 1999, Dr. Rich Purdy, a former environmental specialist with 3M, wrote a letter detailing, among other things (i) 3M's tactics to prevent research into the adverse effects of its PFOS, (ii) 3M's submission of misinformation about its PFOS to EPA, (iii) 3M's failure to disclose substantial risks associated with its PFOS to EPA, (iv) 3M's failure to inform the public of the widespread dispersal of its PFOS in the environment and population, (v) 3M's production of chemicals it knew posed an ecological risk and a danger to the food chain, and (vi) 3M's attempts to keep its workers from discussing the problems with the company's fluorochemical projects to prevent their discussions from being used in the legal process.

71. Dr. Purdy described PFOS as "the most insidious pollutant since PCB [polychlorinated biphenyl]. It is probably more damaging than PCB because it does not degrade, whereas PCB does; it is more toxic to wildlife;

and its sink in the environment appears to be biota and not soil and sediment, as is the case with PCB.”

72. Despite its knowledge of the risks associated with exposures to its PFAS products, when 3M announced in 2000 that it would phase out its PFOS, PFOA, and related products, it falsely asserted “our products are safe,” instead of disclosing what it knew about the substantial threat posed by PFOS and PFOA.

73. Even after it ceased manufacturing PFAS, 3M worked to control and distort the science on PFAS and the dangers that they presented to human health and the environment. For example, 3M provided millions of dollars in grants to a professor, John Giesy, who publicly presented himself as independent, but who behind the scenes actually worked for 3M. Mr. Giesy’s goal, as expressed in a 2008 email, was to “keep ‘bad’ papers [regarding PFAS] out of the literature [because] otherwise in litigation situations they can be a large obstacle to refute.”

74. In fact, as recently as November 2018, 3M publicly stated that “the vast body of scientific evidence does not show that PFOS or PFOA cause adverse health effects in humans at current exposure levels, or even at the historically higher levels found in blood.” And in 2019, 3M publicly claimed: “We do not believe that PFOS and PFOA cause harm to human health at levels that are typically found in the environment” and, “We do not believe there is a public health issue related to PFOA and PFOS.” These statements contradict decades of research demonstrating the serious health and environmental effects of PFAS, including internal studies conducted by 3M’s own scientists.

75. Old DuPont began using PFOA in the 1950s, and only shortly thereafter developed an understanding of the dangers associated with PFAS.

76. Old DuPont scientists issued internal warnings about the toxicity associated with its PFOA products as early as 1961, including that PFOA caused adverse liver reactions in rats and dogs. Old DuPont's Toxicology Section Chief opined that such products should be "handled with extreme care" and that contact with the skin should be "strictly avoided."

77. By 1976, DuPont knew about research showing the presence of organic fluorine in blood bank samples in the United States, which the researchers thought could be a potential result of human exposure to PFOA.

78. In 1978, based on information it received from 3M about elevated and persistent organic fluorine levels in workers exposed to PFOA, Old DuPont initiated a plan to review and monitor the health conditions of potentially exposed workers in order to assess whether any negative health effects were attributable to PFOA exposure. This monitoring plan involved obtaining blood samples from the workers and analyzing the samples for the presence of fluorine.

79. By 1979, Old DuPont had data indicating that its workers exposed to PFOA had a significantly higher incidence of health issues than did unexposed workers. Old DuPont did not share these data or the results of its worker health analysis with the general public or government entities, including the State.

80. The following year, Old DuPont internally confirmed, but did not make public, that PFOA "is toxic," that humans accumulate PFOA in their tissues, and that "continued exposure is not tolerable."

81. Not only did Old DuPont know that PFOA accumulated in humans, it was also aware that PFOA could cross the placenta from an exposed mother to her gestational child. In 1981, Old DuPont conducted a blood sampling study of pregnant or recently pregnant employees. Of the eight women in the study who worked with fluoropolymers, two—or 25%—had children with birth defects in their eyes or face, and at least one had PFOA in the umbilical cord.

82. Old DuPont reported to EPA in March 1982 that results from a rat study showed PFOA crossing the placenta if present in maternal blood, but it concealed the results of the study of its own plant workers, which revealed the same risk in humans.

83. In addition to its knowledge of PFOA's toxicity danger, Old DuPont was also aware that PFAS were capable of contaminating the surrounding environment, leading to human exposure. Old DuPont was aware, no later than 1984, that PFOA is biopersistent.

84. Old DuPont was long aware that the PFAS it was releasing from its facilities could leach into groundwater used for public drinking water. After obtaining data on these releases and the consequent contamination near Old DuPont's Washington Works plant in West Virginia, Old DuPont held a meeting at its corporate headquarters in Wilmington, Delaware in 1984 to discuss health and environmental issues related to PFOA. Old DuPont employees in attendance spoke of the PFOA issue as "one of corporate image, and corporate liability." They were resigned to Old DuPont's "incremental liability from this point on if we do nothing" because Old DuPont was "already liable for the past 32 years of operation." They also stated that the "legal and medical [departments within Old DuPont] will likely take the position of total elim-

ination” of PFOA use in Old DuPont’s business and that these departments had “no incentive to take any other position.”

85. As early as 1988, DuPont began treating PFOA internally as a possible human carcinogen.

86. In 1999, DuPont received preliminary results from a monkey health study showing that PFOA caused monkeys to lose weight and increased their liver size. Even monkeys given the lowest doses suffered liver enlargement, and one was so ill it had to be euthanized.

87. In 2000, John R. Bowman, a DuPont in-house counsel for PFOA issues, wrote an email to several colleagues: “I think we are more vulnerable than the MTBE defendants [manufacturers of another dangerous groundwater contaminant] because many states have adopted a drinking water guideline for MTBE and it is not biopersistent. My gut tells me the biopersistence issue will kill us because of an overwhelming public attitude that anything biopersistent is harmful.”

88. In a 2001 email, DuPont in-house lawyer Bernard Reilly described DuPont’s response to the PFOA or “C-8” issue as “a debacle at best.” Reflecting on a late 2001 meeting with EPA concerning PFAS contamination in Parkersburg, West Virginia, Reilly wrote of DuPont: “[T]he business did not want to deal with this issue in the 1990s, and now it is in their face, and some still are clueless. Very poor leadership, the worst I have seen in the face of a serious issue since I have been with DuPont.”

89. Notwithstanding its decades of internal knowledge of PFOA’s health and environmental risks, DuPont publicly stated in 2003 that “[w]e are confident that there are no health effects associated

with C-8 exposure,” and that “C-8 is not a human health issue.”

90. Old DuPont’s own Epidemiology Review Board (“ERB”) repeatedly raised concerns about Old DuPont’s statements to the public that there were no adverse health effects associated with human exposure to PFOA. For example, in February 2006, the ERB “strongly advise[d] against any public statements asserting that PFOA does not pose any risk to health” and questioned “the evidential basis of [Old DuPont’s] public expression asserting, with what appears to be great confidence, that PFOA does not pose a risk to health.” Contrary to ERB’s advice, DuPont’s chief medical officer issued a press release just months later, stating that “there are no health effects known to be caused by PFOA.” An ERB member criticized the press release because it “appear[ed] written to leave the impression ‘don’t worry.’”

91. In 2004, EPA filed an administrative enforcement action against Old DuPont based on its failure to disclose toxicity and exposure information for PFOA, in violation of the federal Toxic Substances Control Act (“TSCA”) and Resource Conservation and Recovery Act (“RCRA”). Old DuPont eventually settled the lawsuit by agreeing to pay more than \$16 million in civil administrative penalties and undertake supplemental environmental projects. EPA called the settlement the “largest civil administrative penalty EPA has ever obtained under any federal environmental statute.”

92. Despite its knowledge regarding PFOA’s toxicity, Old DuPont continued to claim that PFOA posed no health risks and, in fact, chose to manufacture the chemical itself in or about 2002, after 3M’s phased out its manufacture of the chemical.

### C. Maryland's Affected Natural Resources.

93. Maryland law establishes the State's right and obligation to protect its natural resources. As set forth by the statutory sections below, the State is the steward of its environment.

94. "The protection, preservation, and enhancement of the State's diverse environment is necessary for the maintenance of the public health and welfare and the continued viability of the economy of the State and is a matter of the highest public priority." Md. Code Ann., Nat. Res. § 1-302(b).

95. Pursuant to statute, "[e]ach person has a fundamental and inalienable right to a healthful environment[.]" *Id.* § 1-302(d).

96. "Because the quality of the waters of this State is vital to the public and private interests of its citizens and because pollution constitutes a menace to public health and welfare, creates public nuisances, is harmful to wildlife, fish and aquatic life, and impairs domestic, agricultural, industrial, recreational, and other legitimate beneficial uses of water, and the problem of water pollution in this State is closely related to the problem of water pollution in adjoining states, it is State public policy to improve, conserve, and manage the quality of the waters of the State and to protect, maintain, and improve the quality of water for public supplies, propagation of wildlife, fish and aquatic life, and domestic, agricultural, industrial, recreational, and other legitimate beneficial uses." Env't § 4-402.

97. The "quality of the waters of this State is vital to the interests of the citizens of this State[.]" *Id.* § 9-302. "[B]ecause pollution is a menace to public health and welfare, creates public nuisances, harms . . . and impairs domestic, agricultural . . . and other legitimate

beneficial uses of water . . . it is the policy of this State: (1) To improve, conserve, and manage the quality of the waters of this State; (2) To protect, maintain, and improve the quality of water for public supplies . . . and (3) To provide that no waste is discharged into any waters of this State . . . to protect the legitimate beneficial uses of the waters of this State.” *Id.* 25

98. “The General Assembly determines and finds that lands and waters comprising the watersheds of the State are great natural assets and resources.” *Id.* § 4-101.

99. “It is the policy of the State of Maryland to: . . . (3) Protect the State’s natural resources, including the fish and wildlife of the Potomac River, the Chesapeake Bay, and all other waters and waterways of the State.” *Id.* § 5-5B-03.

100. The “waters of the State” include both surface and underground waters within the boundaries of the State or subject to its jurisdiction. *See id.* § 5-101.

101. “The General Assembly finds that nontidal wetlands play important roles in the preservation and protection of the Chesapeake Bay and other waters of the State.” *Id.* § 5-902.

102. “The General Assembly [also] declares that the Chesapeake Bay and the tidewater portions of its tributaries are a great natural asset and resource to the State and its counties.” *Id.* § 5-1101(b).

103. Under the Maryland Environmental Standing Act, the “General Assembly finds and declares that the natural resources . . . of the State of Maryland are in danger of irreparable harm occasioned by the use and exploitation of the physical environment. It further finds that improper use and exploi-

tation constitute an invasion of the *right of every resident of Maryland to an environment free from pollution* to the extent possible. It further finds that the courts of the State of Maryland are an appropriate forum for seeking the protection of the environment and that an unreasonably strict procedural definition of ‘standing to sue’ in environmental matters is not in the public interest.” Nat. Res. § 1-502 (emphasis added).

104. PFAS contamination from PFAS Products has injured and continues to injure the waters and property of the State and the property, health, safety, and welfare of Maryland’s citizens.

105. The State owns lands throughout Maryland that it maintains for the benefit of the public, such as parks and wildlife management areas.

106. The State holds its waters in trust for the State’s citizens and has an obligation to protect public interests in these waters though, among other things, maintaining the environmental quality of its waters.

107. The State’s natural resources include its waters, such as springs, streams, wetlands, groundwater, ocean waters, and estuaries, within its boundaries or otherwise subject to its jurisdiction.

108. Natural resources and State-owned properties have been injured by past and ongoing contamination caused by PFAS attributable to PFAS Products.

109. PFAS have been found in groundwater, surface water, sediments, and soils throughout Maryland, and the State anticipates that additional PFAS contamination of natural resources will be uncovered as its investigation continues.

110. PFAS contamination persists in the State's natural resources, i.e., it will not break down in the environment; damages their intrinsic, i.e., existence and passive use, value; and impairs the public benefits derived from access to, use, and enjoyment of the State's natural resources.

111. The current and future residents of the State have a substantial interest in having natural resources uncontaminated by PFAS, as do the tourism, recreation, fishing, and other industries that rely upon maintaining a clean environment for their businesses, patrons, and tourists to visit and enjoy.

## **1. Groundwater**

112. Groundwater is a critical and finite ecological natural resource for the people of the State, as the State relies on groundwater for drinking, irrigation, and agriculture.

113. Maryland relies on groundwater for drinking water supplies. Groundwater is the most commonly used source of water supply, and some regions of the State (Southern Maryland and the Eastern Shore) rely exclusively on groundwater for their water needs. That is nearly 3,153 of the State's 3,242 public water systems rely exclusively on groundwater.

114. In addition to serving as a source of water for drinking, agriculture, and other uses, groundwater is an integral part of the overall ecosystem in the State. Groundwater provides base flow to streams and influences surface water quality, wetland ecological conditions, and the health of aquatic ecosystems. Groundwater also keeps water in rivers during times of drought.

115. Groundwater promotes the movement of water and nutrients within and among the State's bodies of water and wetlands, prevents saltwater intrusion, provides groundwater stabilization, and helps to maintain critical water levels in freshwater wetlands.

116. Groundwater and the State's other natural resources are unique resources that help sustain the State's economy.

117. PFAS contamination mobilizes in and through groundwater sources to reach areas beyond the initial source of contamination. This contamination adversely affects the groundwater.

118. The State's investigation has revealed elevated levels of PFAS in groundwater and specifically in potable groundwater.

119. The State's investigation of contamination from PFAS Products in groundwater in Maryland is ongoing.

## **2. Surface Water**

120. Surface water is a critical ecological resource of the State. Approximately 10% of the Community Water Systems (around 50 systems) in Maryland rely on surface water, yet these surface water systems serve about 80% of the population *using public water systems*.

121. Surface water in Maryland is also used for recreational, industrial, agricultural, and other commercial purposes. Specific uses include swimming, boating, and recreational fishing and crabbing, commercial fishing and crabbing, and oyster farming.

122. Surface water also provides aesthetic and ecological values, including supporting aquatic eco-

systems, nearby communities, and the residents of the State.

123. PFAS are mobile and persistent in water and can spread great distances from the point of discharge. PFAS contamination has reached and adversely affected surface water throughout the State.

124. Investigation of contamination from PFAS Products in the State is ongoing.

### **3. Coastal Resources and Estuaries**

125. Maryland has over 3,000 miles of shoreline, most of which is along Chesapeake Bay and its tidal tributaries and the Atlantic Ocean.

126. Chesapeake Bay is the largest estuary in the United States. Estuaries are partially enclosed bodies of water surrounding coastal habitats where salt-water from the ocean mixes with fresh water from rivers and streams within the State. They provide habitat for many kinds of marine life and commercially important species including striped bass, blue crabs, and oysters.

127. PFAS have contaminated estuaries and surrounding lands. These coastal habitats and estuaries are some of the most imperiled marine habitats due to the contamination caused by PFAS and they serve as long-term reservoirs of PFAS, where PFAS are stored and released over time, impacting the estuaries and increasing PFAS concentrations in the cells and tissues of the shellfish and other wildlife that people eat.

128. The State is continuing its investigation of contamination from PFAS Products in the coastal areas, estuaries, and surrounding lands in the State.

#### **4. Sediments, Soils, and Submerged Land**

129. Given the nature of PFAS contamination, the State believes that widespread contamination of sediments, soils, and submerged lands exists in Maryland. Investigation of contamination from PFAS Products in sediments, soils, and submerged lands in the State is ongoing.

130. PFAS contamination in the State has reached and adversely affected soil and sediment throughout the State. Additionally, PFAS in the soil column serve as a continuing source of contamination of groundwater and other resources of the State. PFAS in sediments, as well as in surface water, support the potential increase of PFAS concentrations in fish.

#### **5. Biota**

131. Biota, including the State's flora and fauna, are critical ecological resources.

132. PFAS contamination threatens animal and plant species because PFAS can cause damage to the liver and immune system of animals and has been shown to damage cell structure and organelle functions in plants.

133. Natural resource injuries to biota in the State negatively impact not only the individual species directly involved, but also the capacity of the injured ecosystems to regenerate and sustain life into the future.

134. PFAS contamination has reached and adversely affected biota in the State. The State's investigation of contamination from PFAS Products in biota in Maryland is ongoing.

**D. Defendants' PFAS Products Have Contaminated the State's Natural Resources, Including Sources of Drinking Water, and Defendants Are Liable for Costs to Remediate and Restore Those Resources.**

135. The State's natural resources have been contaminated with PFAS from Defendants' PFAS Products as a result of Defendants' acts and omissions. Defendants' manufacturing, marketing, and sale of PFAS have introduced these chemicals into the environment and caused the contamination of the State's groundwater, surface water, drinking water, and other resources, and exposed the State's citizens to substantial health risks.

136. The State's investigation of this contamination source is continuing. Investigation is necessary to ascertain the full scope of this contamination and to return the natural resources impacted to levels that are safe for human health and the environment and to the condition in which they existed prior to the impact of these contaminants.

137. Defendants are liable for the cost of investigation, remediation, and restoration of all the property, soils, sediments, waters, and other natural resources contaminated with their PFAS, as well as for the State's loss of past, present, and future uses of such contaminated natural resources.

138. Most critically, PFAS contamination of groundwater and surface water is impacting the State's drinking water sources. Defendants are liable for all of the costs necessary to investigate and treat in perpetuity any and all drinking water wells and sources of drinking water impacted by their PFAS.

139. In late 2019, MDE began to increase its efforts to better understand, communicate, and manage PFAS risks in Maryland through the implementation of a multi-phased approach to assessing PFAS in drinking water sources across the State. MDE collected over 1,000 drinking water samples from 431 federally-regulated community water systems, which are water systems that deliver drinking water to the same customers throughout the year.

140. During Phase 1 of the MDE study, conducted from September 2020 to February 2021, samples of finished water were collected from 129 water treatment plants and were tested for PFAS under EPA Method 537.1 by the Maryland Department of Health Laboratories Administration. “Finished water” is water that has passed through a water treatment plant and that has undergone all treatment processes. The 129 water treatment plants sampled during Phase 1 serve 59 community water systems and provide drinking water to 4.3 million people, approximately 70% of Maryland’s population.

141. For Phase 1, a total of 131 initial finished water samples were collected from the 129 water treatment plants. Of the 131 initial finished water samples analyzed:

- 98 samples (~75%) measured quantifiable levels of PFOA+PFOS in finished water;
- 2 samples (~1.5%) measured PFOA+PFOS greater than 70 ppt (i.e., the 2016 the EPA health advisory limit for PFOA+PFOS);
- 2 samples (~1.5%) measured PFOA+PFOS between 35 ppt and 70 ppt; and

- 23 samples (~17%) measured PFOA+PFOS levels between 10 ppt and 35 ppt.

142. If results for initial finished water samples measured PFOA+PFOS concentrations greater than the EPA's health advisory limit of 70 ppt, then MDE asked the affected community water system to take its water treatment plant immediately out of service until additional sample collection and treatment implementation could be conducted.

143. Phase 2 of MDE's study, which was conducted from March 2021 through May 2021, focused on the collection and testing of drinking water sources that were identified as potentially being at a higher relative risk for PFAS contamination, including whether the source of the drinking water was from surface water or groundwater in unconfined or semi-confined aquifers and the frequency a water system's customers receive their drinking water, i.e., customers receiving water from the same community water systems every day.

144. Under Phase 2, 167 samples were collected from 65 community water systems. Those 65 systems represent approximately 14% of Maryland's federally regulated community water systems and provide drinking water to approximately 81,000 people (or about 1.3% of Maryland's population).

145. Of the 167 samples of groundwater, 141 were withdrawn from an unconfined or semi-confined aquifer. MDE focused on unconfined or semi-confined aquifers because, unlike confined aquifers, they are not "confined" by layers of clay that protect the aquifer from external pollutants, including PFAS, making these the most vulnerable sources of drinking water.

146. In addition, the vast majority of those 141 samples were taken from untreated groundwater; whereas only 4 were taken at the entrance to the distribution system.

147. Of the 137 initial groundwater samples with-drawing from an unconfined or semi-confined aquifer (excluding 4 initial point of entry samples):

- 71 samples (~51.82%) measured quantifiable levels of PFOA+PFOS;
- 1 sample (~0.73%) measured quantifiable levels of PFOA+PFOS between 35 and 70 ppt;
- 1 sample (0.73%) measured quantifiable levels of PFOA+PFOS between 28 and 35 ppt;
- 13 samples (9.49%) measured quantifiable levels of PFOA+PFOS between 10 and 28 ppt; and
- 56 samples (40.88%) had detectable levels of PFOA+PFOS below 10 ppt.

148. Between the sampling conducted under phases 1 and 2, MDE has tested drinking water for PFAS in water that is provided to more than 70% of the population of Maryland.

149. In August 2021, MDE initiated the third phase of its public water sampling study to evaluate the occurrence of PFAS in drinking water.

150. During this phase, 759 drinking water samples were collected and tested. Samples collected under Phase 3 consisted of both finished and untreated water from a variety of groundwater sources with-drawing from confined, semi-confined, and unconfined aquifers, springs, and one surface water source.

151. The Phase 3 results detected PFOA in 70% of the samples of unconfined groundwater and in 63% of the samples of semi-confined groundwater. PFOS was detected in 64% of the unconfined groundwater samples and in 38% of the semi-confined groundwater samples. Spring water also had high levels of PFOA and PFOS.

152. In November 2022, MDE completed a fourth phase of sampling focused on previously sampled systems that had detected PFOA and PFOS in drinking water. MDE collected 228 samples from 126 resampled community water systems. The samples are currently being analyzed.

153. In addition to testing its drinking water to identify PFAS impacts, MDE is also in the process of testing wastewater in municipal wastewater treatment plants to identify impacts from PFAS Products.

154. The Maryland Department of Agriculture is also required to study the use of PFAS in pesticides in the State and report the results of its study to the Governor and the General Assembly by November 2023.

## **E. Maryland's Prohibition of PFAS Products.**

155. Maryland has already acted to ban the intentional inclusion of PFAS in certain products to which its citizens are exposed.

156. Under § 9-1902(d) of the Environment Article, “[o]n or after January 1, 2024, a manufacturer or distributor may not manufacture or knowingly sell, offer for sale, or distribute for sale or use in the State a food package or food packaging component designed and intended for direct food contact to which PFAS chemicals were intentionally added.”

157. Additionally, “[o]n or after January 1, 2024, a person may not manufacture or knowingly sell, offer for sale, or distribute for sale or use in the State a rug or carpet to which PFAS chemicals have been intentionally added.” Env’t § 6-1604.l(b).

**F. Old DuPont’s Multi-Step, Years-Long Fraudulent Scheme to Isolate Its Valuable Tangible Assets from Its PFAS Liabilities and Hinder Creditors.**

158. As EPA, states, and private plaintiffs became aware of the hazards presented by PFAS, Old DuPont, beginning in or about 2013 and continuing through at least June 2019, planned and executed a series of corporate restructurings designed to separate its valuable assets from its billions of dollars of legacy environmental liabilities, especially those arising from PFOA and other PFAS contamination;

159. Old DuPont’s potential cumulative liability related to PFOA and other PFAS likely amounts to billions of dollars due to the persistence, mobility, bioaccumulative properties, and toxicity of these “forever” compounds, as well as Old DuPont’s decades-long attempt to hide the dangers of PFAS from the public.

160. For more than five decades, Old DuPont manufactured, produced, or utilized PFOA and other PFAS at plants in New Jersey, West Virginia, and North Carolina, among others. As alleged above, throughout this time, Old DuPont was aware that PFOA was toxic, harmful to animals and humans, bioaccumulative, and persistent in the environment. Old DuPont also knew that it had emitted and discharged PFOA and other PFAS in large quantities into the environment and that scores of people had been exposed to PFOA, including through public and private drinking water

supplies, like those in Maryland, which Old DuPont had contaminated. Thus, Old DuPont knew, or reasonably should have known, that it faced billions of dollars in liabilities arising from its use of PFAS.

161. Beginning at least in 1999 and continuing to the present, Old DuPont has faced mounting litigation arising from its historic manufacture, production and use of PFAS. In 1999, members of the Tennant family, who owned property affected by contamination from a landfill that had accepted PFOA wastes from Old DuPont's nearby Washington Works plant, sued Old DuPont in West Virginia federal court.

162. Old DuPont's in-house counsel were very concerned about Old DuPont's exposure to liability related to PFOA. In November 2000, one of Old DuPont's in-house lawyers handling PFOA issues wrote to his co-counsel: "We are going to spend millions to defend these lawsuits and have the additional threat of punitive damages hanging over our head. Getting out in front and acting responsibly can undercut and reduce the potential for punitives. Our story is not a good one, we continued to increase our emissions into the river in spite of internal commitments to reduce or eliminate the release of this chemical into the community and the environment because of our concern about the biopersistence of this chemical."

163. In 2005, after settling the Tennant case, Old DuPont settled claims brought by EPA for violations of TSCA and RCRA related to its failure to disclose toxicity and exposure information for PFOA, as discussed in ¶ 91.

164. Also in 2005, a West Virginia court entered a final order approving a 2004 settlement of a class action lawsuit filed against Old DuPont on behalf of

70,000 Ohio and West Virginia residents who had been exposed to PFOA that Old DuPont had discharged from Washington Works.

165. Under the terms of the settlement, which provided class benefits in excess of \$300 million, Old DuPont agreed to fund a panel of scientists (the “Science Panel”) to confirm which diseases were linked to PFOA exposure, to filter local water from impacted public and private drinking water supplies, and to pay up to \$235 million for medical monitoring of the affected community for any diseases that the Science Panel linked to PFOA exposure. The settlement also provided that any class members who developed the diseases linked by the Science Panel would be entitled to sue for personal injury, and Old DuPont agreed not to contest the fact that the class members’ exposure to PFOA could cause each of the linked diseases.

166. By 2012, after seven years of studies, the Science Panel confirmed “probable links” between exposure to PFOA and the following serious human diseases: medically diagnosed high cholesterol, ulcerative colitis, pregnancy induced hypertension, thyroid disease, testicular cancer, and kidney cancer.

167. After the Science Panel confirmed such probable links with human disease, more than 3,500 personal-injury claims were filed against Old DuPont in Ohio and West Virginia by class members with one or more of those linked diseases under the terms of the 2005 class settlement. In 2013, these claims were consolidated in federal multidistrict litigation styled *In Re: E. I. du Pont de Nemours and Company C-8 Personal Injury Litigation* (MDL No. 2433) in the U.S. District Court for the Southern District of Ohio (the “Ohio MDL”). Forty bellwether trials were scheduled to take place in 2015 and 2016.

168. The first three trials in the Ohio MDL ended in plaintiffs' verdicts. Each jury awarded damages in a larger amount than the one before it: the first awarded \$1.6 million; the second awarded \$5.6 million; and the third awarded \$12.5 million. The second and third jury awards included punitive damages. Old DuPont then settled the remaining, pending claims for \$670.7 million dollars.

169. Old DuPont knew or should have known that it faced substantial exposure at these trials, as well as liability related to PFOA and other PFAS contamination caused by its manufacturing operations at other sites throughout the country, its releases and disposal of PFAS chemicals globally, and for toxic PFAS chemicals in its own products and the myriad products into which its toxic PFAS were incorporated, and that its liability likely measured in the billions of dollars.

170. Anticipating this significant liability exposure, Old DuPont convened an internal initiative known as "Project Beta" in or about 2013 for Old DuPont's management to consider restructuring the company in order to, among other things, avoid responsibility for the widespread environmental harm that Old DuPont's PFAS had caused and shield billions of dollars in assets from these substantial liabilities.

171. In furtherance of possible restructuring opportunities, including potential mergers, Old DuPont and The Dow Chemical Company ("Old Dow") began to discuss a possible "merger of equals" in or about 2013.

172. However, neither Old Dow nor any other rational merger partner would agree to a transaction that would result in exposing it to the substantial PFAS and environmental liabilities that Old DuPont faced.

173. Accordingly, Old DuPont's management decided to pursue a multi-year corporate restructuring specifically orchestrated to isolate Old DuPont's massive legacy liabilities from its valuable tangible assets in an attempt to shield those assets from creditors and entice Old Dow to pursue the proposed merger.

174. Old DuPont engaged in a coordinated three-part restructuring plan that consisted of (i) Old DuPont's attempt to cast off its massive environmental liabilities onto Chemours and spinning off Chemours as a separate publicly-traded company, (ii) the creation of New DuPont to facilitate a purported merger with Old Dow, and (iii) a series of internal restructurings and divestitures that culminated with the spinoff of Old DuPont to its newly-formed parent, Corteva.

175. The first step in Old DuPont's fraudulent scheme was to transfer its performance chemicals business, which included Teflon and other products ("Performance Chemicals Business"), into its wholly-owned subsidiary, Chemours. Then, in July 2015, Old DuPont "spun-off" Chemours as a separate public entity and saddled Chemours with Old DuPont's massive legacy liabilities (the "Chemours Spinoff").

176. Old DuPont knew that Chemours was undercapitalized and could not satisfy the massive liabilities that it caused Chemours to assume. Old DuPont also knew that the Chemours Spinoff alone would not insulate its own assets from its PFAS liabilities as Old DuPont still faced direct liability for its own conduct.

177. The second step in the scheme involved Old DuPont and Old Dow entering into an "Agreement and Plan of Merger" in December 2015, pursuant to which Old DuPont and Old Dow merged with subsidiaries of a newly-formed holding company, DowDu-

Pont, Inc. (“DowDuPont”), which was created for the sole purpose of effectuating the merger. Old DuPont and Old Dow became subsidiaries of DowDuPont.

178. In the third step, DowDuPont engaged in numerous business segment and product line “realignments” and “divestitures,” which culminated in DowDuPont spinning off two new publicly-traded companies: (i) Corteva, which currently holds Old DuPont as a subsidiary, and (ii.) Dow, Inc. (“New Dow”), which currently holds Old Dow. DowDuPont was then renamed DuPont de Nemours, Inc., i.e., New DuPont.

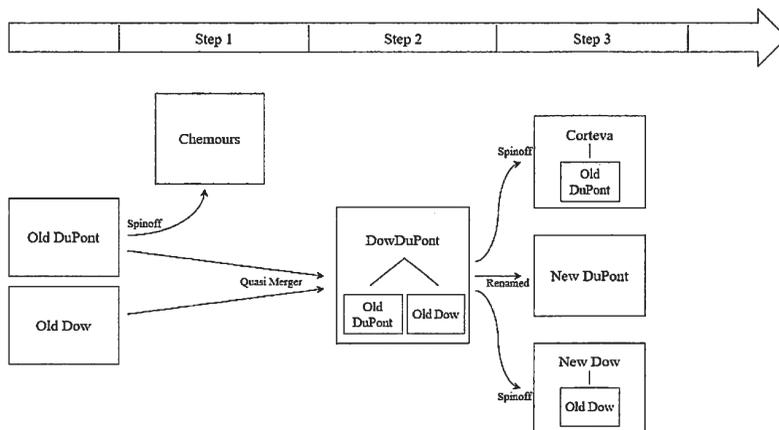
179. Old DuPont’s restructuring, beginning with the spinoff of Chemours in 2015, and ending with the spinoff of Corteva on June 1, 2019, was designed to separate Old DuPont’s massive historic PFAS liabilities from its valuable, non-PFAS assets and thereby hinder; delay, and defraud creditors.

180. As a result of this restructuring, between December 2014, i.e., before the Chemours Spinoff, and December 2019, i.e., after the Dow merger, the value of Old DuPont’s tangible assets decreased by \$20.85 billion, or by approximately one-half.

181. New DuPont and Corteva now hold a significant portion of the tangible assets that Old DuPont formerly owned.

182. Many of the details about these transactions are hidden from the public in confidential schedules and exhibits to the various restructuring agreements. Old DuPont, New DuPont, and Corteva likely intentionally have acted to hide from creditors the details about where Old DuPont’s valuable assets went and the inadequate consideration that Old DuPont received in return.

183. The below graphic depicts the restructuring as it progressed through each of the three steps:



184. In greater detail, the restructuring scheme was implemented as follows.

### 1. Step 1: The Chemours Spinoff

185. In February 2014, Old DuPont formed Chemours as a wholly-owned subsidiary.

186. On April 30, 2015, Chemours was converted from a limited liability company to a corporation named "The Chemours Company."

187. On July 1, 2015, Old DuPont completed the spinoff of Chemours, and Chemours became a separate, publicly-traded entity.

188. At the time of the spinoff, the Performance Chemicals Business consisted of Old DuPont's Titanium Technologies, Chemical Solutions, and Fluoroproducts segments, including business units that had manufactured, used, and discharged PFOA into the environment.

189. Prior to the spinoff, Chemours's Board of Directors was dominated by Old DuPont employees. As a result, during the period of time that the terms of its separation from Old DuPont were being negotiated, Chemours did not have an independent Board of Directors or management independent of Old DuPont.

190. To effectuate the Chemours Spinoff, Old DuPont and Chemours entered into a June 26, 2015 Separation Agreement (the "Chemours Separation Agreement").

191. Pursuant to the Chemours Separation Agreement, Old DuPont agreed to transfer to Chemours all businesses and assets related to the Performance Chemicals Business, including 37 active chemical plants.

192. At the same time, Chemours accepted a broad assumption of Old DuPont's massive liabilities relating to Old DuPont's Performance Chemicals Business. The specific details regarding the nature and value of probable maximum loss and the anticipated timing of the liabilities that Chemours assumed are set forth in the nonpublic schedules and exhibits to the Chemours Separation Agreement.

193. Notwithstanding the billions of dollars in environmental and PFAS liabilities that Chemours would face, on July 1, 2015, Old DuPont caused Chemours to transfer to Old DuPont approximately \$3.4 billion as a cash dividend, along with a "distribution in kind" of promissory notes with an aggregate principal amount of \$507 million.

194. Thus, in total, Chemours distributed approximately \$3.9 billion to Old DuPont. Old DuPont required Chemours to fund these distributions through financing transactions, including senior secured term loans

and senior unsecured notes totaling approximately \$3.995 billion entered into on May 12, 2015. Additionally, Chemours distributed approximately \$3 billion in common stock to Old DuPont's shareholders on July 1, 2015 (181 million shares at \$16.51 per share price).

195. Accordingly, most of the valuable assets that Chemours may have had at the time of the Chemours Spinoff were unavailable to creditors with current or future PFAS claims, like those of the State, and Old DuPont stripped Chemours's value for itself and its shareholders. Old DuPont, however, only transferred \$4.1 billion in net assets to Chemours.

196. In addition to requiring Chemours to assume billions of dollars of Old DuPont's PFAS liabilities, the Chemours Separation Agreement includes an indemnification of Old DuPont in connection with those liabilities, which is uncapped and does not have a survival period.

197. Specifically, the Chemours Separation Agreement requires Chemours to indemnify Old DuPont against, and assume for itself, all "Chemours Liabilities," which are defined broadly to include, among other things, "any and all Liabilities relating . . . primarily to, arising primarily out of or resulting primarily from, the operation or conduct of the Chemours Business, as conducted at any time prior to, at or after the Effective Date . . . including . . . any and all Chemours Assumed Environmental Liabilities," which includes Old DuPont's historic liabilities relating to and arising from its decades of emitting pollution, including PFOA, into the environment from its dozens of facilities.

198. Under the Chemours Separation Agreement, Chemours must indemnify Old DuPont against, and assume for itself, the Chemours Liabilities regardless

of (i) when or where such liabilities arose; (ii) whether the facts upon which they are based occurred prior to, on, or subsequent to the effective date of the spinoff; (iii) where or against whom such liabilities are asserted or determined; (iv) whether arising from or alleged to arise from negligence, gross negligence, recklessness, violation of law, fraud, or misrepresentation by any member of the Old DuPont group or the Chemours group; (v) the accuracy of the maximum probable loss values assigned to such liabilities; and (vi) which entity is named in any action associated with any liability.

199. The Chemours Separation Agreement also requires Chemours to indemnify Old DuPont from, and assume all, environmental liabilities that arose prior to the Chemours Spinoff if they were “primarily associated” with the Performance Chemicals Business.

200. In addition, Chemours agreed to use its best efforts to be fully substituted for Old DuPont with respect to “any order, decree, judgment, agreement or Action with respect to Chemours Assumed Environmental Liabilities.”

201. There was no meaningful, arms-length negotiation of the Chemours Separation Agreement and Old DuPont largely dictated its terms.

202. The Chemours Spinoff was so one-sided that Chemours, in May 2019, sued Old DuPont, New DuPont, and Corteva in Delaware Chancery Court. *See The Chemours Company v. DowDuPont, et al.*, C.A. No. 2019-0351 (Del. Ch. Ct., filed May 13, 2019).

203. In its Amended Complaint, which was verified by Chemours’ s current Chief Executive Officer Mark Newman, Chemours alleged that the primary motivation for the Chemours Spinoff, the subsequent cre-

ation of New DuPont, and the final separation of Cor-teva was to enable Old DuPont to “wash its hands of its environmental liabilities.”

204. Chemours also alleged, among other things, that if (i) the full value of Old DuPont’s PFAS and environmental liabilities was properly estimated and (ii) the Delaware court did not limit the liability that the Chemours Separation Agreement imposed on it, then Chemours would have been insolvent at the time it was spun off from Old DuPont.

205. Chemours alleged that Old DuPont refused to allow any procedural protections for Chemours in the negotiations, and Old DuPont and its outside counsel prepared all the documents to effectuate the Chemours Spinoff. Indeed, during the period in which the terms of commercial agreements between Chemours and Old DuPont were negotiated, Chemours did not have an independent board of directors or management independent of Old DuPont.

206. Old DuPont’s apparent goal with respect to the Chemours Spinoff was to segregate a large portion of Old DuPont’s legacy environmental liabilities, including liabilities related to its PFAS chemicals and products, and in so doing, shield Old DuPont.

207. Given Old DuPont’s extraction of nearly \$4 billion from Chemours immediately prior to the Chemours Spinoff, Chemours was thinly capitalized and unable to satisfy the substantial liabilities that it assumed from Old DuPont. Chemours notably disclosed in public filings with the U.S. Securities and Exchange Commission (“SEC”) that its “significant indebtedness” arising from its separation from Old DuPont restricted its current and future operations.

208. Shortly after the Chemours Spinoff, market analysts described Chemours as “a bankruptcy waiting to happen” and a company “purposely designed for bankruptcy.”

209. At the end of December 2014, Chemours reported it had total assets of \$5.959 billion and total liabilities of \$2.286 billion. At the end of 2015, following the Chemours Spinoff, Chemours reported that it had total assets of \$6.298 billion and total liabilities of \$6.168 billion, yielding a total net worth of \$130 million.

210. For the year 2015, Chemours reported \$454 million in “other accrued liabilities,” which in turn included \$11 million for accrued litigation and \$68 million for environmental remediation. Chemours separately reported \$553 million in “other liabilities,” which included an additional \$223 million for environmental remediation and \$58 million for accrued litigation.

211. Chemours significantly underestimated its liabilities, including the liabilities that it had assumed from Old DuPont with respect to PFAS, which Old DuPont and Chemours knew or should have known would be billions of dollars in addition to other environmental liabilities for other contaminants discharged at Old DuPont and Chemours facilities.

212. For example, in 2017, Chemours and Old DuPont amended the Chemours Separation Agreement in connection with the settlement of the personal injury multidistrict litigation brought by thousands of residents who had been exposed to PFOA from Old DuPont’s Washington Works plant. Per the amendment, Chemours paid \$320.35 million to the plaintiffs in the settlement on August 21, 2017, and Old DuPont paid an additional \$320.35 million on September 1, 2017.

213. Had the full extent of Old DuPont's legacy liabilities been taken into account, as it should have been at the time of the Chemours Spinoff, Chemours would have had negative equity (that is, total liabilities greater than total assets), not only on a tangible basis, but also on a total equity basis, and Chemours would have been rendered insolvent at that time.

## **2. Step 2: The Old Dow/Old DuPont "Merger"**

214. After the Chemours Spinoff, Old DuPont took the position that it was somehow no longer responsible for the widespread PFAS contamination that it had caused over several decades.

215. Old DuPont could not contractually discharge all of its historical liabilities through the Chemours Spinoff, however, and Old DuPont remained liable for the liabilities it had caused and Chemours had assumed.

216. Old DuPont knew that it could not escape liability and would still face exposure for PFAS liabilities, including for potentially massive punitive damages. So Old DuPont moved to the next phase of its fraudulent scheme.

217. On December 11, 2015, less than six months after the Chemours Spinoff, Old DuPont and Old Dow announced that their respective boards had approved an agreement "under which the companies [would] combine in an all-stock merger of equals" and that the combined company would be named DowDuPont, Inc. (the "Dow-DuPont Merger"). The companies disclosed that they intended to separate the combined companies' businesses into three publicly-traded companies through further spinoffs, each of which would occur 18-to-24 months following the closing of the merger.

218. To effectuate the transaction, Old DuPont and Old Dow entered into an Agreement and Plan of Merger (the “Dow-DuPont Merger Agreement”) that provided for (i) the formation of a new holding company Diamond-Orion HoldCo, Inc., later named DowDuPont, and then renamed DuPont de Nemours, Inc., i.e., New DuPont, and (ii) the creation of two new merger subsidiaries into which Old Dow and Old DuPont each would merge.

219. Thus, as a result of the merger, and in accordance with the DowDuPont Merger Agreement, Old Dow and Old DuPont each became wholly-owned subsidiaries of DowDuPont.

220. Although Old DuPont and Old Dow referred to the transaction as a “merger of equals,” the two companies did not actually merge at all, likely because doing so would have infected Old Dow with all of Old DuPont’s historical PFAS liabilities. Rather, Old DuPont and Old Dow became affiliated sister companies that were each owned by the newly-formed DowDuPont. DowDuPont was aware of Old DuPont’s historical PFAS liabilities.

221. The corporate organization following the “merger” is depicted under “Step 2” in the graphic depicted in ¶ 183.

### **3. Step 3: The Shuffling, Reorganization, and Transfer of Valuable Assets Away from Old DuPont and Separation of Corteva and New Dow**

222. Following the Dow-DuPont Merger, DowDuPont underwent a significant internal reorganization and engaged in numerous business segment and product line “realignments” and “divestitures.” The net ef-

fect of these transactions has been the transfer, either directly or indirectly, of a substantial portion of Old DuPont's assets out of the company.

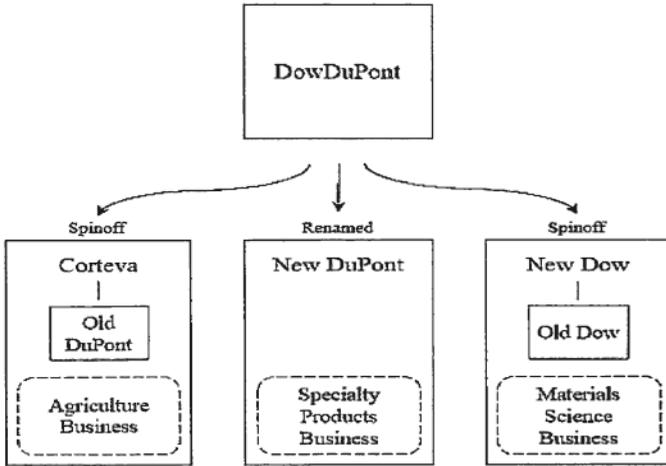
223. The transactions were intended further to frustrate and hinder creditors with claims against Old DuPont, including with respect to its substantial environmental and PFAS liabilities.

224. Old DuPont's assets, including its remaining business segments and product lines, were transferred either directly or indirectly to DowDuPont, which reshuffled the assets and combined them with the assets of Old Dow, and then reorganized the combined assets into three distinct divisions: (i) the "Agriculture Business," (ii) the "Specialty Products Business," and (iii) the "Materials Science Business."

225. While the precise composition of these divisions, including many details of the specific transactions, the transfer of business segments, and the divestiture of product lines during this time, are not publicly available, Old DuPont apparently transferred a substantial portion of its valuable assets to DowDuPont, for far less than the assets were worth.

226. Once the assets of Old DuPont and Old Dow were combined and reorganized, DowDuPont incorporated two new companies to hold two of the three newly-formed business lines: (i) Corteva, which became the parent holding company of Old DuPont, which in turn holds the Agriculture Business, and (ii) New Dow, which became the parent holding company of Old Dow, and which holds the Materials Science Business. DowDuPont retained the Specialty Products Business and prepared to spin off Corteva and New Dow into separate, publicly-traded companies.

227. The below graphic depicts the structure of DowDuPont after the internal reorganization and realignment (and notes the planned disposition of the new companies):



228. The mechanics of the separations are governed by the April 1, 2019 Separation and Distribution Agreement among Corteva, New Dow, and DowDuPont (the “DowDuPont Separation Agreement”).

229. The DowDuPont Separation Agreement generally allocates the assets primarily related to the respective business divisions to Corteva (Agriculture Business), New Dow (Materials Science Business), and New DuPont (Specialty Products Business). New DuPont also retained several “non-core” business segments and product lines that once belonged to Old DuPont.

230. Similarly, Corteva, New Dow, and New DuPont each retained the liabilities primarily related to the business divisions that they retained. In particular, (i) Corteva retained and assumed the liabilities related to the Agriculture Business, (ii) New DuPont retained and assumed the liabilities related to the Specialty Products Business; and (iii) New Dow re-

tained and assumed the liabilities related to the Materials Science Business.

231. Corteva and New DuPont also assumed direct financial liability of Old DuPont that was not related to the Agriculture, Materials Science, or Specialty Products Businesses, including its PFAS liabilities. These assumed PFAS liabilities are allocated between Corteva and New DuPont pursuant to the DowDuPont Separation Agreement.

232. This “allocation” applies to Old DuPont’s legacy liabilities for PFAS contamination and its former Performance Chemicals Business, including the State’s claims in this case.

233. While New DuPont and Corteva have buried the details in nonpublic schedules, New DuPont and Corteva each assumed these liabilities under the DowDuPont Separation Agreement, along with other liabilities related to Old DuPont’s discontinued and divested businesses. The State can therefore bring claims against New DuPont and Corteva directly for Old DuPont’s contamination of and damage to the State’s natural resources.

234. The separation of New Dow was completed on or about April 1, 2019, when DowDuPont distributed all of New Dow’s common stock to DowDuPont stockholders as a pro rata dividend.

235. DowDuPont then consolidated the Agricultural Business line into Old DuPont and “contributed” Old DuPont to Corteva.

236. On June 1, 2019, DowDuPont spun off Corteva as an independent public company, when DowDuPont distributed all of Corteva’s common stock to DowDuPont stockholders as a pro rata dividend.

237. Corteva now holds 100% of the outstanding common stock of Old DuPont.

238. The corporate structures of New DuPont, New Dow and Old Dow, and Corteva and Old DuPont, respectively, following the separations are depicted in Step 3 of the graphic in ¶ 183.

239. Also, on or about June 1, 2019, DowDuPont changed its registered name to DuPont de Nemours, Inc., i.e., New DuPont.

240. On or about January 1, 2023, Old DuPont changed its registered name to EIDP, Inc.

**G. The Effect of the Years-Long Conspiracy to Defraud the State and Other Creditors and Avoid Financial Responsibility for Legacy Liabilities.**

241. The net result of these transactions, including the June 1, 2019, Corteva spinoff, was to strip away valuable tangible assets from Old DuPont and transfer those assets to New DuPont and Corteva for far less than the assets are worth.

242. Old DuPont estimated that the Dow-DuPont Merger created “goodwill” worth billions of dollars. When the Corteva separation was complete, a portion of this “goodwill” was assigned to Old DuPont in order to prop up its balance sheet. But in reality, Old DuPont was left with substantially fewer tangible assets than it had prior to the restructuring.

243. In addition, Old DuPont owes a debt to Corteva of approximately \$4 billion. SEC filings demonstrate the substantial deterioration of Old DuPont’s finances and the drastic change in its financial condition before and after the above transactions.

244. For example, for the fiscal year ending 2014, prior to the Chemours Spinoff, Old DuPont reported \$3.6 billion in net income and \$3.7 billion in cash provided by operating activities. For the 2019 fiscal year, just months after the Corteva separation, however, Old DuPont reported a net loss of \$1 billion and only \$996 million in cash provided by operating activities. That is a decrease of 128% in net income and a decrease of 73% in annual operating cash flow.

245. Additionally, Old DuPont reported a significant decrease in Income from Continuing Operations Before Income Taxes (also known as Earnings Before Tax, or “EBT”). Old DuPont reported \$4.9 billion in EBT for the period ending December 31, 2014. For the period ending December 31, 2019, Old DuPont reported EBT of negative \$422 million.

246. Also, for the fiscal year ending in 2014, prior to the Chemours Spinoff, Old DuPont owned nearly \$41 billion in tangible assets. For the fiscal year ended 2019, Old DuPont owned just under \$21 billion in tangible assets.

247. That means in the five-year period over which the restructuring occurred, when Old DuPont knew that it faced billions of dollars in environmental and PFAS liabilities, Old DuPont transferred or divested approximately half of its tangible assets, totaling \$20 billion.

248. As of September 2019, just after the Corteva spinoff, Old DuPont reported \$43.251 billion in assets. But almost \$21.835 billion of these assets were comprised of intangible assets, including “goodwill” from its successive restructuring activities.

249. At the same time, Old DuPont reported liabilities totaling \$22.060 billion. Thus, when the Corteva

spinoff was complete, Old DuPont's tangible net worth, excluding its intangible assets, was negative \$644 million.

250. In addition, neither New DuPont nor Corteva has publicly conceded that they assumed Old DuPont's historical environmental and PFAS liabilities. And it is unclear whether either entity will be able to satisfy future judgments.

251. Indeed, New DuPont, to which PFAS liabilities are allocated under the DowDuPont Separation Agreement, has divested numerous business segments and product lines, including tangible assets that it received from Old DuPont and for which Old DuPont has received less than reasonably equivalent value and is in the process of divesting more.

252. Old DuPont's parent holding company, Corteva, to which PFAS liabilities are also allocated under the DowDuPont Separation Agreement once certain conditions are satisfied holds as its primary tangible asset the intercompany debt owed to it by its wholly owned subsidiary, Old DuPont. But Old DuPont does not have sufficient tangible assets to satisfy this debt obligation.

253. The Chemours Spinoff, the Dow-DuPont Merger, and the final separation of Corteva were part of a single coordinated fraudulent scheme to hinder, delay, and defraud Old DuPont's creditors. The Chemours Spinoff constitutes a fraudulent transfer, which entitles the State, among other things, to void the transaction and recover property or value transferred from Chemours in the transaction. The Dow-DuPont Merger and separation of Corteva from New DuPont likewise constitute a fraudulent transfer that entitles

the State, among other things, to recover property and value transferred to New DuPont and Corteva.

**COUNT I**  
**STRICT PRODUCTS LIABILITY—**  
**DEFECTIVE DESIGN**

254. The State incorporates by reference the preceding paragraphs as though fully set forth herein.

255. Defendants designed, manufactured, marketed, and sold PFAS Products that were transported, stored, used, handled, released, spilled, and/or disposed of in Maryland during the relevant period.

256. As designers, manufacturers, marketers, and sellers of PFAS Products, Defendants had a duty to make and sell products that are reasonably fit, suitable, and safe for their intended or reasonably foreseeable uses. Defendants owed that duty both to reasonably foreseeable users of their products and also to any person or property that might reasonably be expected to come into contact with those products.

257. Defendants' PFAS Products were used in a reasonably foreseeable manner and without substantial change in the condition of such products. These products were defective and unfit for their reasonable use at the time they left Defendants' possession or control. Defendants' PFAS Products foreseeably contaminated groundwater, surface water, sediments, soils, biota, and other natural resources throughout Maryland.

258. Defendants knew, or reasonably should have known, that their manufacture, marketing, and/or sale, as well as their customers' transport, storage, use, handling, release, spilling, and/or disposal of PFAS Products in an intended or reasonably foresee-

able manner would result in the release of PFAS into Maryland's environment.

259. PFAS Products used throughout Maryland have injured and are continuing to injure groundwater, surface water, sediments, soils, biota, and other natural resources throughout Maryland. Defendants' PFAS Products were defective in design and unreasonably dangerous because, among other things:

a. Defendants' PFAS Products cause extensive and persistent PFAS contamination when used in a reasonably foreseeable and intended manner;

b. PFAS released into the environment from Defendants' PFAS Products cause contamination in groundwater and surface water that are the sources of drinking water and pose significant threats to public health and welfare; and

c. Defendants failed to disclose reasonable, appropriate, or adequate scientific studies to evaluate the environmental fate and transport and potential ecological and human health effects of PFAS.

260. At all times relevant to this action, the PFAS Products that Defendants designed, manufactured, marketed, and sold were dangerous to an extent beyond that which would be contemplated by the ordinary consumer;

261. At all times relevant to this action, the foreseeable risk to the environment and public health and welfare posed by Defendants' PFAS Products outweighed the cost to Defendants of reducing or eliminating such risk.

262. At all times relevant to this action, Defendants knew or should have known about reasonably safer and feasible alternatives to their PFAS Products, and

the omission of such alternative designs rendered their PFAS Products not reasonably safe. While Defendants have recently transitioned to short-chain PFAS-based PFAS Products, which they claim are safer, they could have made this transition earlier. Moreover, PFAS Products can be designed with fluorine-free compounds, which do not contain or break down into PFAS.

263. As a direct and proximate result of the defects in Defendants' design, manufacture, marketing, and sale of PFAS Products, groundwater, surface water, sediments, soils, biota, and other natural resources throughout Maryland have become contaminated with PFAS, causing the State and its citizens significant injury and damage.

264. As a direct and proximate result of Defendants' acts and omissions, as alleged herein, the State has incurred, is incurring, and will continue to incur damages in an amount to be proved at trial related to PFAS contamination of groundwater, surface water, sediment, soils, biota, and other natural resources throughout Maryland where Defendants' PFAS Products were transported, stored, used, handled, released, spilled, and/or disposed.

265. As a further direct and proximate result of Defendants' acts and omissions as alleged herein, State has incurred, and will continue to incur, investigation, cleanup and removal, restoration, treatment, monitoring, and other costs and expenses related to contamination of the groundwater, surface water, sediments, soils, biota, and other natural resources throughout Maryland.

266. Defendants knew it was substantially certain that their acts and omissions described above would cause the contamination and harms described herein.

267. The PFAS Products were in a defective condition when they left Defendants' possession or control.

268. The State and its citizens did not voluntarily expose themselves to the risks posed by PFAS Products while realizing the dangers.

269. The State and its citizens did not unreasonably or knowingly expose themselves to the risk posed by PFAS Products.

270. Defendants committed each of the above-described acts and omissions with actual malice or with a wanton and willful disregard of persons who foreseeably might be harmed by those acts or omissions.

271. Defendants are strictly liable for all such damages, and the State is entitled to recover all such damages and other relief as set forth below.

272. New DuPont and Corteva assumed Old DuPont's design defect liability described above.

**COUNT II**  
**STRICT PRODUCTS LIABILITY—**  
**FAILURE TO WARN**

273. The State incorporates by reference the preceding paragraphs as though fully set forth herein.

274. As designers, manufacturers, marketers, and sellers of PFAS Products, Defendants had a strict duty to the State and to those who were foreseeably at risk of being harmed by PFAS Products to warn users of those products and the State of the foreseeable harms associated with them.

275. Defendants had a duty to warn the State about the dangers of their PFAS Products because, among other things, the State is the trustee, for the benefit of

its citizens, of all natural resources within its jurisdiction; because the State is charged with enforcing the State's environmental laws and regulations; and because the State maintains sovereign and "quasi-sovereign" interests in the well-being of its residents; and the State has proprietary interests in lands that it owns.

276. Defendants inadequately warned of the likelihood that PFAS would be released into the environment during the normal use of Defendants' PFAS Products and of the widespread, toxic, and persistent effects of such releases. Defendants failed to provide such warnings to (i) users and buyers of their PFAS Products; (ii) the State; and (iii) others to which it was reasonably foreseeable Defendants' PFAS Products would cause harm. To the extent Defendants provided any warnings about their products, those were not warnings that a reasonably prudent person in the same or similar circumstances would have provided with respect to the danger posed by PFAS Products, and the warnings did not convey adequate information on the dangers of PFAS Products containing these chemicals to the mind of a reasonably foreseeable or ordinary user or bystander.

277. To the extent Defendants provided any warnings about their PFAS Products, those were not warnings that a reasonably prudent person in the same or similar circumstances would have provided with respect to the danger posed by the products. Any such warnings were not clear and did not convey sufficient information about the dangers of the chemicals within PFAS Products to alert an ordinary or reasonably foreseeable user or bystander.

278. Despite the fact that Defendants knew or should have known about the risks of PFAS Products, Defendants withheld such knowledge from the State,

regulators, and the public. Moreover, Defendants affirmatively distorted and/or suppressed their knowledge and the scientific evidence linking their products to the unreasonable dangers they pose.

279. At no time relevant to this action did Defendants warn users and buyers of their PFAS Products, the State, and others whom Defendants should have reasonably foreseen would use their PFAS Products or be harmed by them, that Defendants' PFAS Products would release PFAS into the environment during the products' normal use. Defendants further failed to warn these entities and individuals of the widespread, toxic, and persistent effects of such releases.

280. Defendants' PFAS Products were in the same condition when they were purchased and/or used as they were when they left Defendants' control. Defendants' customers used the PFAS Products in a reasonably foreseeable manner and without any substantial change in the condition of the products.

281. Had Defendants provided adequate warnings about the hazards associated with their PFAS Products, the users and buyers of the Products, the State, and others who would reasonably foreseeably transport, store, use, release, dispose, and/or otherwise handle or be harmed by the PFAS Products would have heeded those warnings.

282. As a direct and proximate result of Defendants' failure to warn of the hazards of PFAS Products, the groundwater, surface water, sediments, soils, biota, and other natural resources throughout Maryland have become contaminated with PFAS.

283. As a direct and proximate result of Defendants' acts and omissions, the State has incurred, is incurring, and will continue to incur in the future

damages related to PFAS contamination in an amount to be proven at trial.

284. Defendants knew it was substantially certain that their acts and omissions described above would cause the State's injury and damage.

285. Defendants committed each of the above-described acts and omissions with actual malice or with a wanton and willful disregard of persons who foreseeably might be harmed by those acts or omissions.

286. Defendants are strictly liable for all such damages, and the State is entitled to recover all such damages and other relief as set forth below.

287. New DuPont and Corteva assumed Old DuPont's failure to warn liability described above.

### **COUNT III PUBLIC NUISANCE**

288. The State incorporates by reference the preceding paragraphs as though fully set forth herein.

289. Groundwater, surface water, sediments, soils, and biota are natural resources of the State held in trust by the State.

290. The use, enjoyment, and existence of uncontaminated natural resources is a right common to the general public.

291. The contamination of the groundwater, surface water, sediment, soils, and biota throughout Maryland where Defendants' PFAS Products have come to be located constitutes a physical invasion of the State's natural resources and, on information and belief, the State's real property and an unreasonable and substantial interference, both actual and potential, with

(i) the exercise of the public's common right to these natural resources; (ii) the State's special property and statutory status and obligations regarding the natural resources of the State; (iii) the State's ability to protect, conserve, and manage the natural resources of the State, which are by law precious and invaluable public resources held by the State in trust for the benefit of the public; and (iv) the rights of the people of the State to enjoy their natural resources free from interference by pollution and contamination.

292. As long as these natural resources throughout Maryland remain contaminated by Defendants' PFAS Products, which are present due to Defendants' conduct, the public nuisance continues.

293. Until these natural resources are restored to their pre-injury quality, Defendants are liable for the creation and continued presence of a public nuisance in contravention of the public's common right to clean natural resources.

294. The discharge of PFAS from PFAS Products into drinking water constitutes a public nuisance because such discharges create a "condition that is dangerous to health and safety" including a "contaminated water supply" and an "inadequately protected water supply." Md. Code Ann. Health-Gen. § 20-301(a).

295. Defendants marketed PFAS Products to their customers knowing that the use of their PFAS Products utilized exactly as marketed for their intended use would create a public nuisance. Likewise, well after Defendants understood the mobile, persistent, bio-accumulative, and toxic nature of PFAS in the environment, Defendants never instructed their customers to stop using the PFAS Products in their possession or that they needed to specially dispose of PFAS Prod-

ucts so as to not further contaminate the natural resources of the State.

296. Defendants committed each of the above-described acts and omissions with actual malice or with a wanton and willful disregard of persons who foreseeably might be harmed by those acts or omissions.

297. New DuPont and Corteva assumed Old DuPont's nuisance liability described above.

#### **COUNT IV TRESPASS**

298. The State incorporates by reference the preceding paragraphs as though fully set forth herein.

299. Defendants' intentional and/or negligent conduct caused PFAS Products to enter, invade, intrude upon, injure, trespass, and threaten to trespass upon the State's possessory interest in properties it owns, including but not limited to State lands, parks, wild-life management areas, tidal bodies of water, and certain lakes.

300. PFAS Products manufactured and/or supplied by Defendants continue to be located on or in the State's property.

301. Defendants intended to manufacture PFAS Products containing PFAS and/or their precursors and knew with substantial certainty that their acts would contaminate the State's property.

302. Defendants are therefore liable for trespass and continued trespass.

303. Defendants did not and do not have authority, privilege, or permission to trespass upon the aforesaid possessory property interests.

304. The State has never consented to the trespasses alleged herein.

305. Defendants have refused and failed to terminate their trespasses, despite being put on notice to do so by the State through its policies, statutes, regulations, orders, and other means.

306. Defendants' trespass is of a continuing nature and has produced a long lasting negative effect upon the property of the State, as Defendants knew or had reason to know at all times relevant hereto.

307. Based on their conduct, Defendants have, at all times relevant to this action, created, caused, maintained, continued, substantially contributed to, substantially participated in, and/or assisted in the creation of such trespass. Based on their knowledge of the properties and manner of distribution, use, and storage of PFAS Products, as alleged herein, Defendants were or should have been aware that as a result of their conduct, contamination of the State's property was inevitable or substantially certain to result.

308. As a direct and proximate cause of Defendants' conduct, the State has suffered and continues to suffer damages from Defendants' conduct and the presence of PFAS Products in the State's property, including without limitation costs to assess, investigate, monitor, analyze and remediate contamination, costs to prevent PFAS Products from injuring additional property of the State, and costs to restore and replace the State's impacted natural resources whose use has been lost or degraded.

309. As a direct and proximate result of Defendants' acts and omissions, the State has incurred and suffered, and will continue to incur and suffer, substantial costs and damages for which Defendants are liable.

310. New DuPont and Corteva assumed Old DuPont's trespass liability described above.

**COUNT V  
NEGLIGENCE**

311. The State incorporates by reference the preceding paragraphs as though fully set forth herein.

312. Defendants had a duty to the State to ensure that PFAS were not released as a result of the transport, storage, use, handling, release, spilling, and/or disposal of their PFAS Products and did not injure groundwater, surface water, sediment, soils, and biota in Maryland.

313. Defendants had a duty to the State to exercise due care in the design, manufacture, marketing, sale, testing, labeling, and instructions for use of their PFAS Products.

314. Defendants breached these duties, by among other things failing to conform to the requisite standard of care.

315. Groundwater, surface water, sediments, soils, biota, and other natural resources throughout Maryland where Defendants' PFAS Products have come to be located have become contaminated with PFAS as a direct and proximate result of Defendants' negligence in designing PFAS Products and in failing to warn PFAS Products purchasers, the State, and others whom Defendants should have reasonably foreseen would transport, store, use, handle, release, spill, and/or dispose, or be harmed by the PFAS Products.

316. As a direct and proximate result of the contamination of the environment from Defendants' PFAS Products, the State has incurred, is incurring,

and will continue to incur investigation, clean up and removal, treatment, monitoring, and restoration costs and expenses for which Defendants are liable.

317. Defendants committed each of the above-described acts and omissions with actual malice or with a wanton and willful disregard of persons who foreseeably might be harmed by those acts or omissions.

318. New DuPont and Corteva assumed Old DuPont's negligence liability described above.

**COUNT VI  
ENVIRONMENT ARTICLE, TITLE 9,  
SUBTITLE 3 CLAIM**

319. The State incorporates by reference the preceding paragraphs as though set forth at length herein.

320. The Secretary of MDE “[h]as supervision and control over the sanitary and physical condition of the waters of this State to protect public health and comfort[.]” Env’t § 9-252(b).

321. Pursuant to § 9-322 of the Environment Article, “a person may not discharge any pollutant into the waters of this State” without a permit.

322. “Discharge’ means: (1) The addition, introduction, leaking, spilling, or emitting of a pollutant into the waters of this State; or (2) The placing of a pollutant in a location where the pollutant is likely to pollute.” *Id.* § 9-101(b).

323. “Pollutant” includes “[a]ny . . . liquid, gaseous, solid, or other substance that will pollute any waters of this State.” *Id.* § 9-101(g). “Pollution’ means any contamination or other alteration of the physical, chemical, or biological properties of any waters of this State, including a change in . . . taste, color, turbidity,

or odor of the waters or the discharge or deposit of any . . . liquid . . . or other substance into any waters of this State that will render the waters harmful or detrimental to: (1) Public health, safety, or welfare; (2) Domestic, commercial, industrial, agricultural, recreational, or other legitimate beneficial uses; (3) Livestock, wild animals, or birds; or (4) Fish or other aquatic life.” *Id.* § 9-101(h).

324. The “Department may bring an action for an injunction against any person who violates any provision of [Subtitle 3] or any rule, regulation, order, or permit adopted or issued by the Department under [Subtitle 3].” *Id.* § 9-339(a). The “court shall grant an injunction without requiring a showing of a lack of an adequate remedy at law.” *Id.* § 9-339(c).

325. Defendants are responsible for discharges of PFAS Products into the waters of the State. As Defendants violated and continue to violate Title 9, Subtitle 3 by discharging PFAS products throughout the State, the Department is empowered to seek an injunction ordering Defendants to investigate and fully delineate horizontally and vertically the full extent of all contamination for which the Defendants are responsible and to ensure the cleanup of such contamination so that the waters of the State are in the same state they existed prior to the discharges. *Id.* §§ 9-339(c); 9-302(b) (1) (“To improve, conserve, and manage the quality of the waters of this State”); 9-302(b)(2) (“To protect, maintain, and improve the quality of the water. . .”).

326. Because Defendants discharged PFAS Products into the waters of this State, they “shall reimburse the Department for the reasonable costs incurred by the Department in conducting environmental health monitoring or testing, including the costs of collecting and analyzing soil samples, surface water

samples, or groundwater samples for the purpose of assessing the effect on public health and the environment of the [Defendants'] discharge[s].” *Id.* § 9-342.2; *see* COMAR 26.14.01.04.

327. New DuPont and Corteva assumed Old DuPont’s liability described above.

**COUNT VII**  
**ENVIRONMENT ARTICLE, TITLE 9,**  
**SUBTITLE 4 CLAIM**

328. The State incorporates by reference the preceding paragraphs as though set forth at length herein.

329. PFAS Products are “dangerous contaminant[s]” because when they are “present in a public water system, they present an imminent and substantial danger to the health of individuals.” Env’t § 9-405(a).

330. Upon receipt of information that PFAS Products “[are] present in or likely to enter a public water system,” the Secretary of MOE “may take any action necessary to protect the health of the individuals whose health is or would be endangered” by the PFAS Products. *Id.* § 9-405(b)(1). The actions the Secretary may take include suing “for injunctive or other appropriate relief.” *Id.* § 9-405(b)(2)(ii).

331. To stop PFAS Products from entering public water systems, the Secretary may seek an injunction that orders Defendants to investigate and fully delineate horizontally and vertically the full extent of all contamination for which the Defendants are responsible and to ensure the cleanup so that the water is in the same state it was in prior to the discharges.

332. New DuPont and Corteva assumed Old DuPont’s liability described above.

**COUNT VIII**  
**ACTUAL FRAUDULENT TRANSFER IN**  
**RELATION TO CHEMOURS SPINOFF**  
**(Old DuPont, Chemours, New DuPont,**  
**and Corteva Only)**

333. The State incorporates the preceding paragraphs as though fully set forth herein.

334. The State seeks equitable and other relief against Old DuPont and Chemours under §§ 15-201 to -214 of the Commercial Law Article and Delaware Code title 6, §§ 1301 to 1312.

335. Under Commercial Law § 15-207 and Delaware Code title 6, § 1304(a)(l), a transaction made by a debtor “with actual intent . . . to hinder, delay, or defraud any present or future creditor” is voidable as to the creditor’s claim.

336. Under Commercial Law § 15-201 and Delaware Code title 6, §§ 1301(3), (4), a “creditor” is “a person who has any claim, whether matured or unmatured, liquidated or unliquidated, absolute, fixed, or contingent.”

337. The State is and was a creditor of Chemours at all relevant times.

338. Through its participation in the Chemours Spinoff, as detailed above, Chemours transferred valuable assets to DuPont, including the \$3.9 billion dividend (the “Chemours Transfers”), while simultaneously assuming significant liabilities pursuant to the Separation Agreement (the “Chemours Assumed Liabilities”).

339. The Chemours Transfers and Chemours Assumed Liabilities were made to or for the benefit of Old DuPont.

340. At the time that the Chemours Transfers were made and the Chemours Assumed Liabilities were assumed, and until the Chemours Spinoff was complete, Old DuPont was in a position to, and in fact did, control and dominate Chemours.

341. Old DuPont and Chemours acted with the actual intent to hinder, delay, and defraud creditors or future creditors such as the State.

342. The State has been harmed as a result of the Chemours Transfers.

343. Old DuPont and Chemours engaged in acts in furtherance of a scheme to transfer its assets out of the reach of parties such as the State that have been damaged as a result of the actions described in this Complaint.

344. Pursuant to Commercial Law §§ 15-201 to -214 and Delaware Code title 6, §§ 1301 to 1312, the State seeks to avoid the Chemours Transfers and to recover property or value that Chemours transferred to Old DuPont.

345. Pursuant to Commercial Law §§ 15-201 to -214 and Delaware Code title 6, §§ 1301 to 1312, the State also seeks to enjoin Old DuPont, as transferee, from distributing, transferring, capitalizing, or otherwise disposing of any property or value that Chemours transferred to Old DuPont, and seeks a constructive trust over such property or value for the benefit of the State.

346. Upon information and belief, Corteva and New DuPont assumed Old DuPont's liability described above.

347. The State further reserves such other rights and remedies that may be available under Commer-

cial Law §§ 15-201 to -214 and Delaware Code title 6, §§ 1301 to 1312, as may be necessary to fully compensate the State for the damages and injuries suffered as alleged in this Complaint.

**COUNT IX**  
**CONSTRUCTIVE FRAUDULENT TRANSFER**  
**IN RELATION TO CHEMOURS SPINOFF**  
**(Old DuPont, Chemours, New DuPont,**  
**and Corteva Only)**

348. The State incorporates by reference the preceding paragraphs as though fully set forth herein.

349. The State seeks equitable and other relief against Old DuPont and Chemours under §§ 15-201 to -214 of the Commercial Law Article and Delaware Code title 6, §§ 1301 to 1312.

350. Under Commercial Law §§ 15-204, 15-205, 15-206, and Delaware Code title 6, §§ 1304(a)(2), 1305(a), a transaction made by a debtor “without a fair consideration” is voidable if the debtor (i) “is engaged or is about to engage in a business or a transaction for which the property remaining in his hands after the conveyance is an unreasonably small capital”; (ii) “intends or believes that he will incur debts beyond his ability to pay as they mature”; or (iii) “is rendered insolvent by” the transaction.

351. Chemours did not receive a fair or reasonably equivalent value from Old DuPont in exchange for the Chemours Transfers and Chemours Assumed Liabilities.

352. Each of the Chemours Transfers and Chemours’ assumption of the Chemours Assumed Liabilities was made to or for the benefit of Old DuPont.

353. At the time that the Chemours Transfers were made and the Chemours Assumed Liabilities were assumed, and until the Spinoff was complete, Old DuPont was in a position to, and in fact did, control and dominate Chemours.

354. Chemours made the Chemours Transfers and assumed the Chemours Assumed Liabilities when it was engaged or about to be engaged in a business for which its remaining assets were unreasonably small in relation to its business and debt obligations.

355. Chemours was insolvent at the time or became insolvent as a result of the Chemours Transfers and its assumption of the Chemours Assumed Liabilities.

356. At the time that the Chemours Transfers were made and Chemours assumed the Chemours Assumed Liabilities, Chemours intended to incur, or believed or reasonably should have believed that it would incur debts beyond its ability to pay as they became due.

357. The State has been harmed as a result of the Chemours Transfers.

358. Pursuant to Commercial Law §§ 15-201 to -214 and Delaware Code title 6, §§ 1301 to 1312, the State seeks to void the Chemours Transfers and to recover property or value transferred to Old DuPont.

359. Pursuant to Commercial Law §§ 15-201 to -214 and Delaware Code title 6, §§ 1301 to 1312, the State also seeks to enjoin Old DuPont, as transferee, from distributing, transferring, capitalizing, or otherwise disposing of any property or value that Chemours transferred to Old DuPont, and seeks a constructive trust over such property or value for the benefit of the State.

360. Upon information and belief, Corteva and New DuPont assumed Old DuPont's liability described above.

361. The State further reserves such other rights and remedies that may be available under Commercial Law §§ 15-201 to -214 and Delaware Code title 6, §§ 1301 to 1312 as may be necessary to fully compensate the State for the damages and injuries suffered as alleged in this Complaint.

**COUNT X**  
**ACTUAL FRAUDULENT TRANSFER IN**  
**RELATION TO THE DOW-DUPONT MERGER**  
**AND SUBSEQUENT REORGANIZATIONS,**  
**DIVESTITURES, AND SEPARATION**  
**OF CORTEVA**  
**(Old DuPont, New DuPont, and Corteva Only)**

362. The State incorporates by reference the preceding paragraphs as though fully set forth herein.

363. The State seeks equitable and other relief against Old DuPont, New DuPont, and Corteva under §§ 15-201 to -214 of the Commercial Law Article and Delaware Code title 6, §§ 1301 to 1312.

364. The State is and was a creditor of Old DuPont at all relevant times.

365. Old DuPont knew that the Chemours Spinoff alone would not isolate its valuable assets and business lines from the Chemours Assumed Liabilities. Thus, the Chemours Spinoff was the first step in the overall scheme to separate Old DuPont's assets from its massive liabilities. Through the Dow-DuPont Merger and the subsequent reorganizations, divestitures, and separation of Corteva, Old DuPont sold or transferred, directly or indirectly, valuable assets and

business lines to Corteva and New DuPont (the “Old DuPont Transfers”).

366. The Old DuPont Transfers were made for the benefit of New DuPont or Corteva.

367. At the time that the Old DuPont Transfers were made, New DuPont was in a position to, and in fact did, control and dominate Old DuPont and Corteva.

368. Old DuPont, New DuPont, and Corteva acted with the actual intent to hinder, delay and defraud creditors or future creditors such as the State.

369. The State has been harmed as a result of the Old DuPont Transfers.

370. Old DuPont engaged in acts in furtherance of a scheme to transfer its assets out of the reach of parties such as the State that has been damaged as a result of the actions described in this Complaint.

371. Pursuant to Commercial Law §§ 15-201 to -214 and Delaware Code title 6, §§ 1301 to 1312, the State seeks to void the Old DuPont Transfers and to recover property or value transferred to New DuPont and Corteva.

372. Pursuant to Commercial Law §§ 15-201 to -214 and Delaware Code title 6, §§ 1301 to 1312, the State also seeks to enjoin New DuPont and Corteva, as transferees, from distributing, transferring, capitalizing, or otherwise disposing of any proceeds from the sale of any business lines, segments, divisions, or other assets that formerly belonged to Old DuPont, and seek a constructive trust over such proceeds for the benefit of the State.

373. The State further reserves such other rights and remedies that may be available under Commer-

cial Law §§ 15-201 to -214 and Delaware Code title 6, §§ 1301 to 1312 as may be necessary to fully compensate the State for the damages and injuries suffered as alleged in this Complaint.

**COUNT XI**  
**CONSTRUCTIVE FRAUDULENT TRANSFER**  
**IN RELATION TO THE DOW-DUPONT**  
**MERGER AND SUBSEQUENT**  
**REORGANIZATIONS, DIVESTITURES,**  
**AND SEPARATION OF CORTEVA**  
**(Old DuPont, New DuPont, and Corteva Only)**

374. The State incorporates by reference the preceding paragraphs as though fully set forth herein.

375. The State seeks equitable and other relief against Old DuPont, New DuPont, and Corteva under §§ 15-201 to -214 of the Commercial Law Article and Delaware Code title 6, §§ 1301 to 1312.

376. Old DuPont knew that the Chemours Spinoff alone would not isolate its valuable assets and business lines from the Chemours Assumed Liabilities. Thus, the Chemours Spinoff was the first step in the overall scheme to separate Old DuPont's assets from its massive liabilities. Through the Dow-DuPont Merger and the subsequent reorganizations, divestitures, and separation of Corteva, Old DuPont engaged in the Old DuPont Transfers.

377. Old DuPont did not receive a fair or reasonably equivalent value from New DuPont and Corteva in exchange for the Old DuPont Transfers.

378. Each of the Old DuPont Transfers was made to or for the benefit of New DuPont or Corteva.

379. At the time that the Old DuPont Transfers were made, New DuPont was in a position to, and in fact did, control and dominate Old DuPont and Corteva.

380. Old DuPont made the Old DuPont Transfers when it was engaged or about to be engaged in a business for which its remaining assets were unreasonably small in relation to its business.

381. Old DuPont was insolvent at the time or became insolvent as a result of the Old DuPont Transfers.

382. At the time that the Old DuPont Transfers were made, Old DuPont intended to incur, or believed or reasonably should have believed that it would incur debts beyond its ability to pay as they became due.

383. The State has been harmed as a result of the Old DuPont Transfers.

384. Pursuant to Commercial Law §§ 15-201 to -214 and Delaware Code title 6, §§ 1301 to 1312, the State seeks to void the Old DuPont Transfers and to recover property or value transferred to New DuPont and Corteva.

385. Pursuant to Commercial Law §§ 15-201 to -214 and Delaware Code title 6, §§ 1301 to 1312, the State also seeks to enjoin New DuPont and Corteva, as transferees, from distributing, transferring, capitalizing, or otherwise disposing of any proceeds from the sale of any business lines, segments, divisions, or other assets that formerly belonged to Old DuPont, and seeks a constructive trust over such proceeds for the benefit of the State.

386. The State further reserves such other rights and remedies that may be available under Commercial Law §§ 15-201 to -214 and Delaware Code title 6, §§ 1301 to 1312, as may be necessary to fully compen-

sate the State for the damages and injuries suffered as alleged in this Complaint.

**PRAYER FOR RELIEF**

**WHEREFORE**, the State requests that this Court enter judgment against Defendants as follows:

a. Finding Defendants liable for all costs, in an amount that exceeds \$75,000.00, to investigate, clean up and remove, restore, treat, monitor, and otherwise respond to PFAS contamination throughout Maryland where Defendants' PFAS Products were transported, stored, used, handled, released, spilled, and/or disposed so the contaminated natural resources are restored to their original condition;

b. Finding Defendants liable for all damages, in an amount that exceeds \$75,000.00, to compensate the citizens of the State for the lost use and value of its natural resources during all times of injury caused by PFAS Products and for such orders as may be necessary to provide full relief to address risks to the State, including, but not limited to, the costs of:

i. Past and future testing of natural resources throughout Maryland where Defendants' PFAS Products were transported, stored, used, handled, released, spilled, and/or disposed and, thus, likely caused PFAS contamination;

ii. Past and future treatment of all natural resources throughout Maryland where Defendants' PFAS Products were transported, stored, used, handled, released, spilled, and/or disposed and which contain detectable levels of PFAS until restored to non-detectable levels; and

- iii. Past and future monitoring of the State's natural resources throughout Maryland where Defendants' PFAS Products were transported, stored, used, handled, released, spilled, and/or disposed as long as there is a detectable presence of PFAS, and restoration of such natural resources to their pre-discharge condition;
  
- c. Ordering Defendants to pay for all costs, in an amount that exceeds \$75,000.00, related to the investigation, cleanup, restoration, treatment, and monitoring of PFAS contamination of the State's natural resources attributable to Defendants' PFAS Products;
  
- d. Ordering Defendants to pay all damages to the State, in an amount that exceeds \$75,000.00, at least equal to the full cost of restoring the State's natural resources to their original condition prior to the PFAS contamination attributable to Defendants' PFAS Products;
  
- e. Ordering Defendants to pay all compensatory damages, in an amount that exceeds \$75,000.00, for economic damages and for the lost value (including lost use) of the State's natural resources as a result of the PFAS contamination attributable to Defendants' PFAS Products of such natural resources;
  
- f. Ordering Defendants to pay all other damages sustained by the State in its public trustee, *parens patriae*, and regulatory capacities as a direct and proximate result of Defendants' acts and omissions alleged herein;
  
- g. Entering an order against Defendants to abate or mitigate the PFAS contamination that they caused by their PFAS Products throughout the State;

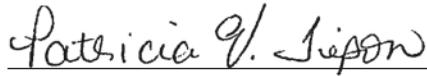
- h. Voiding the Old DuPont Transfers to the extent necessary to satisfy the State's claims;
- i. Voiding the Chemours Transfers to the extent necessary to satisfy the State's claims;
- j. Awarding the State punitive damages in an amount to be determined by the trier of fact;
- k. Awarding the State costs and fees in this action, including reasonable attorneys' fees, incurred in prosecuting this action, together with prejudgment interest, to the full extent permitted by law; and.
- l. Awarding the State such other relief as this Court deems appropriate.

**DEMAND FOR JURY TRIAL**

The State demands trial by jury of all issues so triable.

Respectfully submitted,

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Attorney General of Maryland



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133a

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May 30, 2023

IN THE CIRCUIT COURT FOR Baltimore City

(City/County)

CIVIL – NON-DOMESTIC CASE INFORMATION SHEET

DIRECTIONS

**Plaintiff:** This Information Report must be completed and attached to the complaint filed with the Clerk of Court unless your case is exempted from the requirement by the Chief Justice of the Supreme Court of Maryland pursuant to Rule 2-111(a).  
**Defendant:** You must file an Information Report as required by Rule 2-323(h).

**THIS INFORMATION REPORT CANNOT BE ACCEPTED AS A PLEADING**

FORM FILED BY:  PLAINTIFF  DEFENDANT CASE NUMBER \_\_\_\_\_

CASE NAME: State of Maryland vs. 3M Company, Corteva, Inc., et al. (Clerk to insert)

PARTY'S NAME: MD Dep't of Envtl. MD Dep't of Nat'l Res., MD Dep't of Hlth. PHONE: 410-537-3000 (Plaintiff) (Defendant)

PARTY'S ADDRESS: 1800 Washington Blvd., Baltimore, Maryland 21230

PARTY'S E-MAIL: patricia.tipon@maryland.gov

If represented by an attorney:  
 PARTY'S ATTORNEY'S NAME: Patricia Tipon and Julie Kuspa PHONE: 410-537-3061 & 3352  
 PARTY'S ATTORNEY'S ADDRESS: 1800 Washington Blvd, Suite 6048, Baltimore Maryland 21230  
 PARTY'S ATTORNEY'S E-MAIL: patricia.tipon@maryland.gov; julie.kuspa@maryland.gov

JURY DEMAND?  Yes  No

RELATED CASE PENDING?  Yes  No If yes, Case #(s), if known: \_\_\_\_\_

ANTICIPATED LENGTH OF TRIAL?: \_\_\_\_\_ hours >30 \_\_\_\_\_ days

PLEADING TYPE  
 New Case:  Original  Administrative Appeal  Appeal  
 Existing Case:  Post-Judgment  Amendment  
 If filing in an existing case, skip Case Category/Subcategory section -- go to Relief section.

IF NEW CASE: CASE CATEGORY/SUBCATEGORY (Check one box.)

<p><b>TORTS</b></p> <p><input type="checkbox"/> Asbestos</p> <p><input type="checkbox"/> Assault and Battery</p> <p><input checked="" type="checkbox"/> Business and Commercial</p> <p><input type="checkbox"/> Conspiracy</p> <p><input type="checkbox"/> Conversion</p> <p><input type="checkbox"/> Defamation</p> <p><input type="checkbox"/> False Arrest/Imprisonment</p> <p><input checked="" type="checkbox"/> Fraud</p> <p><input type="checkbox"/> Lead Paint -- DOB of Youngest Plt;</p> <p><input type="checkbox"/> Loss of Consortium</p> <p><input type="checkbox"/> Malicious Prosecution</p> <p><input type="checkbox"/> Malpractice-Medical</p> <p><input type="checkbox"/> Malpractice-Professional</p> <p><input type="checkbox"/> Misrepresentation</p> <p><input type="checkbox"/> Motor Tort</p> <p><input checked="" type="checkbox"/> Negligence</p> <p><input checked="" type="checkbox"/> Nuisance</p> <p><input type="checkbox"/> Premises Liability</p> <p><input checked="" type="checkbox"/> Product Liability</p> <p><input type="checkbox"/> Specific Performance</p> <p><input checked="" type="checkbox"/> Toxic Tort</p> <p><input checked="" type="checkbox"/> Trespass</p> <p><input type="checkbox"/> Wrongful Death</p> <p><b>CONTRACT</b></p> <p><input type="checkbox"/> Asbestos</p> <p><input type="checkbox"/> Breach</p> <p><input type="checkbox"/> Business and Commercial</p> <p><input type="checkbox"/> Confessed Judgment (Cont'd)</p> <p><input type="checkbox"/> Construction</p> <p><input type="checkbox"/> Debt</p> <p><input type="checkbox"/> Fraud</p>	<p><input type="checkbox"/> Government</p> <p><input type="checkbox"/> Insurance</p> <p><input type="checkbox"/> Product Liability</p> <p><b>PROPERTY</b></p> <p><input type="checkbox"/> Adverse Possession</p> <p><input type="checkbox"/> Breach of Lease</p> <p><input type="checkbox"/> Detinue</p> <p><input type="checkbox"/> Distress/Distrain</p> <p><input type="checkbox"/> Ejectment</p> <p><input type="checkbox"/> Forcible Entry/Detainer</p> <p><input type="checkbox"/> Foreclosure</p> <p><input type="checkbox"/> Commercial</p> <p><input type="checkbox"/> Residential</p> <p><input type="checkbox"/> Currency or Vehicle</p> <p><input type="checkbox"/> Deed of Trust</p> <p><input type="checkbox"/> Land Installments</p> <p><input type="checkbox"/> Lien</p> <p><input type="checkbox"/> Mortgage</p> <p><input type="checkbox"/> Right of Redemption</p> <p><input type="checkbox"/> Statement Condo</p> <p><input type="checkbox"/> Forfeiture of Property / Personal Item</p> <p><input checked="" type="checkbox"/> Fraudulent Conveyance</p> <p><input type="checkbox"/> Landlord-Tenant</p> <p><input type="checkbox"/> Lis Pendens</p> <p><input type="checkbox"/> Mechanic's Lien</p> <p><input type="checkbox"/> Ownership</p> <p><input type="checkbox"/> Partition/Sale in Lieu</p> <p><input type="checkbox"/> Quiet Title</p> <p><input type="checkbox"/> Rent Escrow</p> <p><input type="checkbox"/> Return of Seized Property</p> <p><input type="checkbox"/> Right of Redemption</p> <p><input type="checkbox"/> Tenant Holding Over</p>	<p><b>PUBLIC LAW</b></p> <p><input type="checkbox"/> Attorney Grievance</p> <p><input type="checkbox"/> Bond Forfeiture Remission</p> <p><input type="checkbox"/> Civil Rights</p> <p><input type="checkbox"/> County/Mnecpl Code/Ord</p> <p><input type="checkbox"/> Election Law</p> <p><input type="checkbox"/> Eminent Domain/Condemn.</p> <p><input checked="" type="checkbox"/> Environment</p> <p><input type="checkbox"/> Error Coram Nobis</p> <p><input type="checkbox"/> Habeas Corpus</p> <p><input type="checkbox"/> Mandamus</p> <p><input type="checkbox"/> Prisoner Rights</p> <p><input type="checkbox"/> Public Info. Act Records</p> <p><input type="checkbox"/> Quarantine/Isolation</p> <p><input type="checkbox"/> Writ of Certiorari</p> <p><b>EMPLOYMENT</b></p> <p><input type="checkbox"/> ADA</p> <p><input type="checkbox"/> Conspiracy</p> <p><input type="checkbox"/> EEO/HR</p> <p><input type="checkbox"/> FLSA</p> <p><input type="checkbox"/> FMLA</p> <p><input type="checkbox"/> Worker's Compensation</p> <p><input type="checkbox"/> Wrongful Termination</p> <p><b>INDEPENDENT PROCEEDINGS</b></p> <p><input type="checkbox"/> Assumption of Jurisdiction</p> <p><input type="checkbox"/> Authorized Sale</p> <p><input type="checkbox"/> Attorney Appointment</p> <p><input type="checkbox"/> Body Attachment Issuance</p> <p><input type="checkbox"/> Commission Issuance</p>	<p><input type="checkbox"/> Constructive Trust</p> <p><input type="checkbox"/> Contempt</p> <p><input type="checkbox"/> Deposition Notice</p> <p><input type="checkbox"/> Dist Ct Mtn Appeal</p> <p><input type="checkbox"/> Financial</p> <p><input type="checkbox"/> Grand Jury/Petit Jury</p> <p><input type="checkbox"/> Miscellaneous</p> <p><input type="checkbox"/> Perpetuate</p> <p>Testimony/Evidence</p> <p><input type="checkbox"/> Prod. of Documents Req.</p> <p><input type="checkbox"/> Receivership</p> <p><input type="checkbox"/> Sentence Transfer</p> <p><input type="checkbox"/> Set Aside Deed</p> <p><input type="checkbox"/> Special Adm. - Atty</p> <p><input type="checkbox"/> Subpoena Issue/Quash</p> <p><input type="checkbox"/> Trust Established</p> <p><input type="checkbox"/> Trustee Substitution/Removal</p> <p><input type="checkbox"/> Witness Appearance-Compel</p> <p><b>PEACE ORDER</b></p> <p><input type="checkbox"/> Peace Order</p> <p><b>EQUITY</b></p> <p><input type="checkbox"/> Declaratory Judgment</p> <p><input checked="" type="checkbox"/> Equitable Relief</p> <p><input checked="" type="checkbox"/> Injunctive Relief</p> <p><input type="checkbox"/> Mandamus</p> <p><b>OTHER</b></p> <p><input type="checkbox"/> Accounting</p> <p><input type="checkbox"/> Friendly Suit</p> <p><input type="checkbox"/> Grantor in Possession</p> <p><input type="checkbox"/> Maryland Insurance Administration</p> <p><input type="checkbox"/> Miscellaneous</p> <p><input type="checkbox"/> Specific Transaction</p> <p><input type="checkbox"/> Structured Settlements</p>
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IF NEW OR EXISTING CASE: RELIEF (Check All that Apply)			
<input type="checkbox"/> Abatement <input type="checkbox"/> Administrative Action <input type="checkbox"/> Appointment of Receiver <input type="checkbox"/> Arbitration <input type="checkbox"/> Asset Determination <input type="checkbox"/> Attachment b/f Judgment <input type="checkbox"/> Cease & Desist Order <input type="checkbox"/> Condemn Bldg <input type="checkbox"/> Contempt <input checked="" type="checkbox"/> Court Costs/Fees <input checked="" type="checkbox"/> Damages-Compensatory <input checked="" type="checkbox"/> Damages-Punitive	<input type="checkbox"/> Earnings Withholding <input type="checkbox"/> Enrollment <input type="checkbox"/> Expungement <input type="checkbox"/> Financial Exploitation <input type="checkbox"/> Findings of Fact <input type="checkbox"/> Foreclosure <input checked="" type="checkbox"/> Injunction <input type="checkbox"/> Judgment-Affidavit <input checked="" type="checkbox"/> Judgment-Attorney Fees <input type="checkbox"/> Judgment-Confessed <input type="checkbox"/> Judgment-Consent <input type="checkbox"/> Judgment-Declaratory	<input type="checkbox"/> Judgment-Default <input checked="" type="checkbox"/> Judgment-Interest <input type="checkbox"/> Judgment-Summary <input checked="" type="checkbox"/> Liability <input type="checkbox"/> Oral Examination <input checked="" type="checkbox"/> Order <input type="checkbox"/> Ownership of Property <input type="checkbox"/> Partition of Property <input type="checkbox"/> Peace Order <input type="checkbox"/> Possession <input type="checkbox"/> Production of Records <input type="checkbox"/> Quarantine/Isolation Order	<input type="checkbox"/> Reinstatement of Employment <input type="checkbox"/> Return of Property <input type="checkbox"/> Sale of Property <input type="checkbox"/> Specific Performance <input type="checkbox"/> Writ-Error Coram Nobis <input type="checkbox"/> Writ-Execution <input type="checkbox"/> Writ-Garnish Property <input type="checkbox"/> Writ-Garnish Wages <input type="checkbox"/> Writ-Habeas Corpus <input type="checkbox"/> Writ-Mandamus <input type="checkbox"/> Writ-Possession
<p><i>If you indicated Liability above, mark one of the following. This information is <u>not</u> an admission and may not be used for any purpose other than Track Assignment.</i></p> <p> <input type="checkbox"/> Liability is conceded.                        <input type="checkbox"/> Liability is not conceded, but is not seriously in dispute.                        <input checked="" type="checkbox"/> Liability is seriously in dispute.                 </p>			
MONETARY DAMAGES (Do not include Attorney's Fees, Interest, or Court Costs)			
<input type="checkbox"/> Under \$10,000 <input type="checkbox"/> \$10,000 - \$30,000 <input type="checkbox"/> \$30,000 - \$100,000 <input checked="" type="checkbox"/> Over \$100,000			
<input type="checkbox"/> Medical Bills \$ _____ <input type="checkbox"/> Wage Loss \$ _____ <input type="checkbox"/> Property Damages \$ _____			
ALTERNATIVE DISPUTE RESOLUTION INFORMATION			
Is this case appropriate for referral to an ADR process under Md. Rule 17-101? (Check all that apply)			
A. Mediation <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		C. Settlement Conference <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	
B. Arbitration <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		D. Neutral Evaluation <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
SPECIAL REQUIREMENTS			
<input type="checkbox"/> If a Spoken Language Interpreter is needed, check here and attach form CC-DC-041			
<input type="checkbox"/> If you require an accommodation for a disability under the Americans with Disabilities Act, check here and attach form CC-DC-049			
ESTIMATED LENGTH OF TRIAL			
<i>With the exception of Baltimore County and Baltimore City, please fill in the estimated LENGTH OF TRIAL.</i>			
<i>(Case will be tracked accordingly)</i>			
<input type="checkbox"/> 1/2 day of trial or less		<input type="checkbox"/> 3 days of trial time	
<input type="checkbox"/> 1 day of trial time		<input type="checkbox"/> More than 3 days of trial time	
<input type="checkbox"/> 2 days of trial time			
BUSINESS AND TECHNOLOGY CASE MANAGEMENT PROGRAM			
<i>For all jurisdictions, if Business and Technology track designation under Md. Rule 16-308 is requested, attach a duplicate copy of complaint and check one of the tracks below.</i>			
<input type="checkbox"/> Expedited - Trial within 7 months of Defendant's response		<input type="checkbox"/> Standard - Trial within 18 months of Defendant's response	
EMERGENCY RELIEF REQUESTED			

<b>COMPLEX SCIENCE AND/OR TECHNOLOGICAL CASE MANAGEMENT PROGRAM (ASTAR)</b>	
<i>FOR PURPOSES OF POSSIBLE SPECIAL ASSIGNMENT TO ASTAR RESOURCES JUDGES under Md. Rule 16-302, attach a duplicate copy of complaint and check whether assignment to an ASTAR is requested.</i>	
<input type="checkbox"/> <b>Expedited</b> - Trial within 7 months of Defendant's response	<input type="checkbox"/> <b>Standard</b> - Trial within 18 months of Defendant's response
<b>IF YOU ARE FILING YOUR COMPLAINT IN BALTIMORE CITY OR BALTIMORE COUNTY, PLEASE FILL OUT THE APPROPRIATE BOX BELOW.</b>	
<b>CIRCUIT COURT FOR BALTIMORE CITY (CHECK ONLY ONE)</b>	
<input type="checkbox"/> Expedited	Trial 60 to 120 days from notice. Non-jury matters.
<input type="checkbox"/> Civil-Short	Trial 210 days from first answer.
<input type="checkbox"/> Civil-Standard	Trial 360 days from first answer.
<input checked="" type="checkbox"/> Custom	Scheduling order entered by individual judge.
<input type="checkbox"/> Asbestos	Special scheduling order.
<input type="checkbox"/> Lead Paint	Fill in: Birth Date of youngest plaintiff _____.
<input type="checkbox"/> Tax Sale Foreclosures	Special scheduling order.
<input type="checkbox"/> Mortgage Foreclosures	No scheduling order.
<b>CIRCUIT COURT FOR BALTIMORE COUNTY</b>	
<input type="checkbox"/> Expedited (Trial Date-90 days)	Attachment Before Judgment, Declaratory Judgment (Simple), Administrative Appeals, District Court Appeals and Jury Trial Prayers, Guardianship, Injunction, Mandamus.
<input type="checkbox"/> Standard (Trial Date-240 days)	Condemnation, Confessed Judgments (Vacated), Contract, Employment Related Cases, Fraud and Misrepresentation, International Tort, Motor Tort, Other Personal Injury, Workers' Compensation Cases.
<input type="checkbox"/> Extended Standard (Trial Date-345 days)	Asbestos, Lender Liability, Professional Malpractice, Serious Motor Tort or Personal Injury Cases (medical expenses and wage loss of \$100,000, expert and out-of-state witnesses (parties), and trial of five or more days), State Insolvency.
<input type="checkbox"/> Complex (Trial Date-450 days)	Class Actions, Designated Toxic Tort, Major Construction Contracts, Major Product Liabilities, Other Complex Cases.

May 30, 2023 \_\_\_\_\_ Date  
 1800 Washington Blvd., Suite 6048 \_\_\_\_\_ Address  
 Baltimore \_\_\_\_\_ MD \_\_\_\_\_ 21230 \_\_\_\_\_ City State Zip Code

  
 Signature of Attorney / Party \_\_\_\_\_ 0806170244 Attorney Number  
 Patricia V. Tipon \_\_\_\_\_ Printed Name

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND  
NORTHERN DIVISION**

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Case No. 1:23-cv-1836

**NOTICE OF REMOVAL  
JURY TRIAL DEMANDED**

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STATE OF MARYLAND,

*Plaintiff,*

v.

3M COMPANY, CORTEVA, INC., DUPONT DE  
NEMOURS, INC., EIDP, INC., F/K/A E. I. DU PONT  
DE NEMOURS AND COMPANY, and  
THE CHEMOURS COMPANY,

*Defendants.*

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Defendant 3M Company (“3M”), by undersigned counsel, hereby gives notice of the removal of this action, pursuant to 28 U.S.C. §§ 1331, 1441, 1442(a)(1), and 1446, from the Circuit Court for Baltimore City, Maryland, to the United States District Court for the District of Maryland, Northern Division. As grounds for removal, 3M states as follows.

**PRELIMINARY STATEMENT**

1. Plaintiff State of Maryland (“State”) seeks to hold 3M and other Defendants liable based on their alleged conduct in designing, manufacturing, marketing, and/or selling per- and polyfluoroalkyl substances (“PFAS”) and PFAS-containing products, which purportedly have resulted in alleged contami-

nation of the State's natural resources and property, including drinking water supplies. *See* Complaint ¶¶ 1-12. (The Complaint and Summons are attached as Exhibit 1).

2. The alleged PFAS contamination in Maryland likely has resulted at least in part from the use, storage, and/or disposal of PFAS-containing aqueous film-forming foams ("AFFF") that 3M and others developed and sold to the U.S. military in accordance with rigorous military specifications ("MilSpec") issued by the Department of Defense ("DoD"). AFFF is a firefighting foam that is highly effective for extinguishing fuel-based fires. The alleged PFAS contamination at issue in this action plausibly overlaps and is commingled with PFAS from AFFF use at military facilities. In fact, the State has filed a putatively separate action (the "AFFF case") expressly seeking to recover for alleged PFAS contamination of the State's natural resources and property from AFFF used at military facilities in Maryland. *See* Complaint, *State of Maryland v. 3M Co., et al.*, Case No. 24-C-23-002528 (Md. Cir. Ct. Baltimore Cnty.) ("AFFF Complaint") (attached as Exhibit 2).<sup>1</sup> To the extent that the State's alleged injuries in this action arise from MilSpec AFFF, 3M intends to assert the federal government contractor defense recognized in *Boyle v. United Technologies Corp.*, 487 U.S. 500 (1988), which bars the State from establishing tort liability for the design and manufacture of MilSpec AFFF and for the provision of warnings for the product.

3. Under the federal officer removal statute, 28 U.S.C. § 1442(a)(1), 3M is entitled to remove this ac-

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<sup>1</sup> References herein to the "Complaint" (as opposed to the "AFFF Complaint") are to the complaint in this action. 3M is also removing the State's AFFF case to this Court and it has been assigned Case No. 1:23-cv-01834 (D. Md.).

tion to have its federal defense adjudicated in a federal forum. Such removal “fulfills the federal officer removal statute’s purpose of protecting persons who, through contractual relationships with the Government, perform jobs that the Government otherwise would have performed.” *Isaacson v. Dow Chem. Co.*, 517 F.3d 129, 133 (2d Cir. 2008).

4. Although the Complaint purports to allege that the State does not “seek any remediation, restoration, damages, or any other relief related to any PFAS contamination caused by AFFF,” Complaint ¶ 13, the State’s requests for relief nevertheless encompass damages attributable to PFAS-containing MilSpec AFFF. In any case, the State cannot prevent 3M “from raising the production of MilSpec AFFF as a defense or an alternate theory” of the State’s damages. *Nessel v. Chemguard, Inc.*, No. 1:20-cv-1080, 2021 WL 744683, at \*3 (W.D. Mich. Jan. 6, 2021). As a result, 3M is entitled to a federal forum to litigate its defense, including the nature and scope of the State’s putative disavowal of any relief related to AFFF. The State’s effort to split its claims does not and cannot limit 3M’s available defenses in this case or 3M’s entitlement to assert a federal government contractor defense.

5. In addition, the State’s alleged injuries have arisen in part from the use and release of AFFF on federal enclaves. “Federal courts have federal question jurisdiction over tort claims that arise on ‘federal enclaves.’” *Durham v. Lockheed Martin Corp.*, 445 F.3d 1247, 1250 (9th Cir. 2006). Because the State’s alleged claims arose in part on federal enclaves, the claims involve a federal question, and 3M is entitled to remove the action under 28 U.S.C. §§ 1331 and 1441(a).

## BACKGROUND

6. This action is one of two putatively separate actions that the State filed against 3M and other Defendants based on substantially similar allegations to recover damages for alleged PFAS contamination of natural resources and property across the State. *See* Complaint (Exhibit 1), AFFF Complaint (Exhibit 2).

7. The State filed both this PFAS action and a putative AFFF-only PFAS action on May 30, 2023, in the Circuit Court for Baltimore City, Maryland. This action was assigned Case No. 24-C-23-002529. The AFFF case was assigned Case No. 24-C-23-002528.

8. In this action, the State generally alleges that Defendants, including 3M, have designed, manufactured, marketed, distributed, and/or sold PFAS and PFAS-containing products, including in Maryland. *See, e.g.*, Complaint ¶¶ 2-3, 21-25, 41-49. The State further alleges that Defendants' PFAS have caused contamination of the State's natural resources and property in Maryland, including the State's groundwater, surface waters, coastal resources and estuaries, sediments, soils, submerged land, and biota "throughout Maryland." *E.g., id.* ¶ 109; *see also, e.g., id.* ¶¶ 112-134. The Complaint specifically asserts that "[m]ost critically," the alleged PFAS contamination is impacting "the State's drinking water sources." *Id.* ¶ 138. The State asserts claims against 3M and other Defendants for strict products liability—defective design (*id.*, Count I); strict products liability—failure to warn (*id.*, Count II); public nuisance (*id.*, Count III); trespass (*id.*, Count IV); and negligence (*id.*, Count V). The State also brings claims against 3M and other Defendants under Environment Article, Title 9, Subtitle 3 (*id.*, Count VI), and Environment

Article, Title 9, Subtitle 4 (*id.*, Count VII).<sup>2</sup> Among other relief, the Complaint seeks all damages to investigate, clean up, remove, restore, treat, monitor, and respond to PFAS contamination throughout Maryland from Defendants' PFAS products, and to compensate the State for the lost use and value of its natural resources. *Id.* at p. 79.

9. The AFFF Complaint is based on substantially similar allegations of PFAS contamination of natural resources (including drinking water supplies) throughout Maryland, and it asserts the same causes of action and requests for relief. *See, e.g.*, AFFF Complaint ¶¶ 99-148, 259-337, & pp. 85-86. The State's AFFF Complaint generally alleges that Defendants, including 3M, have designed, manufactured, marketed, distributed, and/or sold PFAS-containing AFFF products which have caused contamination of the State's natural resources and property. *Id.* ¶¶ 1-10. The AFFF Complaint explicitly alleges that Defendants (including 3M) sold AFFF for use by the U.S. military in Maryland, *id.* ¶ 44, and that sites of AFFF-related PFAS contamination in the State include military installations, *id.* ¶ 150. The AFFF Complaint specifically identifies military installations in Maryland where there is allegedly PFAS contamination from AFFF, including but not limited to "the Naval Research Lab, Chesapeake Bay Detachment; Joint Base Andrews; Fort Meade; former Fort Meade Tipton Airfield; Webster Field Annex of Naval Air Station Patuxent River; Maryland Air National Guard at Martin State Airport; the former Navy Bayhead Annex in Annapolis; the former Naval Research Lab in White Oak;

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<sup>2</sup> The Complaint also asserts actual and constructive fraudulent transfer claims against Defendants other than 3M. *See* Complaint, Counts VIII to XI.

Aberdeen Proving Ground; Naval Air Station Patuxent River; and the former Brandywine Defense Reutilization and Marketing Office.” *Id.*

10. Both of the State’s actions seek to recover for damages from two of the same PFAS chemicals that the State alleges to have been used by Defendants in the manufacture of AFFF: perfluorooctanoic acid (“PFOA”) and perfluorooctane sulfonic acid (“PFOS”). See Complaint ¶ 1 & n.1; AFFF Complaint ¶¶ 1-2.

### **THE PROCEDURAL REQUIREMENTS FOR REMOVAL ARE MET**

11. Venue for the removal of this action is proper in this Court pursuant to 28 U.S.C. §§ 100(1) and 1441(a) because the City of Baltimore is located within the District of Maryland, Northern Division.

12. 3M is not required to notify or obtain the consent of any other Defendant in this action in order to remove the State’s action as a whole under § 1442(a) (1). See, e.g., *Durham*, 445 F.3d at 1253; *Linden v. Chase Manhattan Corp.*, No. 99 Civ. 3970(LLS), 1999 WL 518836, at \*1 (S.D.N.Y. July 21, 1999); *Torres v. CBS News*, 854 F. Supp. 245, 246 n.2 (S.D.N.Y. 1994).

13. Pursuant to 28 U.S.C. § 1446(a) and Local Rule 103, true and accurate copies of the Complaint and Summons are attached hereto as Exhibit 1. True and accurate copies of other process, pleadings, and orders served on 3M are attached hereto as Exhibit 3. A true and accurate copy of the state-court docket sheet is attached hereto as Exhibit 4.

14. 3M was served with the Complaint and Summons on June 9, 2023. This Notice of Removal is timely filed in accordance with 28 U.S.C. § 1446(b).

15. Pursuant to 28 U.S.C. § 1446(d), 3M is serving a copy of this Notice of Removal upon all other parties to this case and is filing a copy with the Clerk of the Circuit Court for Baltimore City.

16. By filing a Notice of Removal in this matter, 3M does not waive the rights of any Defendant to object to service of process, the sufficiency of process, jurisdiction over the person, or venue; and 3M specifically reserves the rights of all Defendants to assert any defenses and/or objections to which they may be entitled.

17. 3M reserves the right to amend or supplement this Notice of Removal.

18. If any question arises as to the propriety of the removal of this action, 3M requests the opportunity to present a brief and oral argument in support of removal.

**REMOVAL IS PROPER UNDER THE FEDERAL  
OFFICER REMOVAL STATUTE,  
28 U.S.C. § 1442(a)(1)**

19. Removal here is proper under the federal officer removal statute, 28 U.S.C. § 1442(a)(1), which provides for removal of an action relating to a defendant's acts undertaken at the direction of a federal officer. Removal is appropriate under this provision where the removing defendant establishes that: (a) it is a "person" within the meaning of the statute; (b) it acted under federal authority; (c) its actions taken pursuant to a federal officer's direction have a causal nexus with plaintiff's claims or injuries or are otherwise related to the lawsuit; and (d) it can assert a "colorable" federal defense. *See Mesa v. California*, 489 U.S. 121, 124-25, 129-31, 133-35 (1989); *see also Cnty. Bd. of Arlington Cnty., Va. v. Express Scripts Pharmacy, Inc.*,

996 F.3d 243, 254 (4th Cir. 2021); *Sawyer v. Foster Wheeler LLC*, 860 F.3d 249, 254 (4th Cir. 2017); *Cuomo v. Crane Co.*, 771 F.3d 113, 115 (2d Cir. 2014); *Isaacson*, 517 F.3d at 135.

20. Removal rights under the federal officer removal statute are much broader than under the general removal statute, 28 U.S.C. § 1441. Suits against defendants acting on behalf of federal officers “may be removed despite the nonfederal cast of the complaint; the federal-question element is met if the defense depends on federal law.” *Jefferson County v. Acker*, 527 U.S. 423, 431 (1999). This is because § 1442(a)(1) protects “the government’s need to provide a federal forum for its officers and those who are ‘acting under’ a federal office.” *Albrecht v. A.O. Smith Water Prods.*, No. 11 Civ. 5990(BSJ), 2011 WL 5109532, at \*3 (S.D.N.Y. Oct. 21, 2011). This important federal policy “should not be frustrated by a narrow, grudging interpretation of [§] 1442(a)(1).” *Willingham v. Morgan*, 395 U.S. 402, 407 (1969). To the contrary, § 1442 as a whole must be “liberally construed” in favor of removal. *Durham*, 445 F.3d at 1252 (quoting *Colorado v. Symes*, 286 U.S. 510, 517 (1932)).

21. All requirements for removal under § 1442(a)(1) are satisfied where, as here, the notice of removal alleges that the plaintiff’s injuries are—at least in part—caused by or related to MilSpec AFFF. *See, e.g., Nessel*, 2021 WL 744683, at \*3 (denying motion to remand in PFAS case against AFFF manufacturers because, notwithstanding plaintiffs’ assertion “that they do not seek resolution of any claims related to MilSpec AFFF, . . . Plaintiffs cannot decide what defense Defendants might present”); *Ayo v. 3M Co.*, No. 18-CV-0373(JS)(AYS), 2018 WL 4781145 (E.D.N.Y. Sept. 30, 2018) (denying motion to remand and finding that fed-

eral officer removal was proper in a lawsuit against AFFF manufacturers of MilSpec AFFF). The court overseeing the *In re Aqueous Film-Forming Foams Products Liability Litigation* multi-district litigation (“MDL”) has also found on multiple occasions that removal under § 1442 is proper where the notice of removal alleges that the plaintiff’s injuries are caused, at least in part, by MilSpec AFFF. *See In re AFFF Prods. Liab. Litig.*, 2019 WL 2807266, at \*2-3 (D.S.C. May 24, 2019) (“*AFFF I*”); Order at 3-5, *In re AFFF Prods. Liab. Litig.*, MDL No. 2:18-mn-2873-RMG, ECF No. 320 (D.S.C. Sept. 27, 2019) (“*AFFF II*”); Order at 3-6, *In re AFFF Prods. Liab. Litig.*, MDL No. 2:18-mn-2873-RMG, ECF No. 325 (D.S.C. Oct. 1, 2019) (“*AFFF III*”). Given its experience with the claims and defenses in the AFFF litigation, the MDL Court’s holdings clearly demonstrate that this case, too, has been properly removed to federal court.<sup>3</sup>

### A. MilSpec AFFF

22. In the late 1960s/early 1970s, the U.S. military began using MilSpec AFFF on military bases, airfields, and Navy ships—settings where fuel fires are inevitable and potentially devastating—to train its personnel, put out fires, save lives, and protect property. Indeed, the U.S. Naval Research Laboratory developed AFFF (with some assistance from industry participants), and its researchers were granted the first AFFF patent in 1966.<sup>4</sup> Decades later, the Naval Research Laboratory described the development of

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<sup>3</sup> Following removal, 3M intends to designate this action for transfer to the MDL. 3M intends to designate the State’s AFFF case for transfer to the MDL as well.

<sup>4</sup> U.S. Patent No. 3,258,423 (filed Sept. 4, 1963; published June 28, 1966).

AFFF as “one of the most far-reaching benefits to worldwide aviation safety.”<sup>5</sup>

23. The manufacture and sale of MilSpec AFFF is governed by rigorous military specifications created and administered by Naval Sea Systems Command. The applicable specification, Mil-F-24385, was first promulgated in 1969, and has been revised a number of times since then.<sup>6</sup> All MilSpec AFFF products must be “qualified for listing on the applicable Qualified Products List” prior to military procurement.<sup>7</sup> Prior to such listing, “a manufacturer’s . . . products are examined, tested, and approved to be in conformance with specification requirements.”<sup>8</sup> The MilSpec designates Naval Sea Systems Command as the agency responsible for applying these criteria and determining whether AFFF products satisfy the MilSpec’s requirements. After a product is added to the Qualified Products List, “[c]riteria for retention of qualification are applied on a periodic basis to ensure continued integrity of the qualification status.”<sup>9</sup> Naval Sea Systems Command “reserves the right to perform any of the [quality assurance] inspections set forth in the specification where such inspections are deemed necessary

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<sup>5</sup> U.S. Navy, NRL/MR/1001-06-8951, *The U.S. Naval Research Laboratory (1923–2005): Fulfilling the Roosevelts’ Vision for American Naval Power 37* (2006) (“Fulfilling the Roosevelts’ Vision”), <https://permanent.fdlp.gov/gpo125428/roosevelts.pdf>.

<sup>6</sup> The 1969 MilSpec and all its revisions and amendments through the April 2020 amendment (MIL-PRF-24385F(4)) are available at <https://tinyurl.com/yxwotjpg>.

<sup>7</sup> MIL-PRF-24385F(4) § 3.1 (2020).

<sup>8</sup> DoD, SD-6, *Provisions Governing Qualification 1* (Feb. 2014), <https://tinyurl.com/y5asm5bw>.

<sup>9</sup> DoD, SD-6, *supra* note 8, at 1.

to ensure supplies and services conform to prescribed requirements.”<sup>10</sup>

24. From its inception until recently, the MilSpec included the express requirement that MilSpec AFFF contain “fluorocarbon surfactants”—the class of PFAS chemicals that includes PFOA and PFOS.<sup>11</sup> Even today, the AFFF MilSpec expressly contemplates the presence of PFOA and PFOS (subject to recently imposed limits) in AFFF formulations.<sup>12</sup> Indeed, the AFFF MilSpec recognizes that it is not yet technically feasible for manufacturers to completely eliminate PFOA and PFOS “while still meeting all other military specification requirements.”<sup>13</sup>

25. 3M manufactured and sold PFAS-containing MilSpec AFFF to the U.S. military for over three decades pursuant to contracts with the United States. One or more AFFF products manufactured by 3M were on the Navy’s Qualified Products List for MilSpec AFFF from 1970 until 2010 (even though 3M had phased out production of AFFF beginning in 2000).<sup>14</sup>

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<sup>10</sup> See, e.g., MIL-PRF-24385F(4) § 4.1 (2020).

<sup>11</sup> See Mil-F-24385 § 3.2 (1969); MIL-PRF-24385F(2) § 3.2 (2017). In May 2019, the MilSpec was revised to drop the explicit requirement that the surfactants in the product be “fluorocarbon.” See MIL-PRF-24385F(3) § 3.2 (2019). But under current technology, the only AFFF products capable of meeting the MilSpec’s stringent performance requirements—and the only ones listed on the military’s Qualified Product List—are those containing fluorocarbon surfactants. Thus, as a practical matter, the MilSpec still requires fluorocarbon surfactants.

<sup>12</sup> See MIL-PRF-24385F(4) § 6.6 & Tables 1, 3 (2020).

<sup>13</sup> *Id.* § 6.6.

<sup>14</sup> See MIL-F-24385 QPL/QPD History for Type 3 AFFF (Oct. 24, 2014); MIL-F-24385 QPL/QPD History for Type 6 AFFF (Oct. 24, 2014) (both available at *In re AFFF Prods. Liab. Litig.*, No.

The U.S. military used MilSpec AFFF acquired from 3M at military facilities throughout the United States, including in Maryland, as alleged in the AFFF Complaint (¶ 44).

### **B. The Alleged PFAS Contamination Plausibly Derives From MilSpec AFFF**

26. Upon information and belief, the PFAS chemicals that allegedly are contaminating the State's natural resources and property derive at least in part from the use, storage, and/or disposal of MilSpec AFFF at military facilities and elsewhere across Maryland. Accordingly, the State's claims to recover for the alleged PFAS contamination arise in part from MilSpec AFFF.

27. Although the Complaint purports to allege that the State in this case is not seeking any relief for PFAS contamination from PFAS-containing AFFF, *see* Complaint ¶ 13, the State's claims nonetheless relate to alleged PFAS contamination that is—at least in part—plausibly caused by or related to MilSpec AFFF (no less than non-AFFF sources of PFAS). To begin with, the State itself expressly alleges in its AFFF Complaint that the claimed PFAS contamination of the State's natural resources and property stems from use of AFFF at numerous U.S. military facilities across Maryland where MilSpec AFFF would have been used, including but not limited to “the Naval Research Lab, Chesapeake Bay Detachment; Joint Base Andrews; Fort Meade; former Fort Meade Tipton Airfield; Webster Field Annex of Naval Air Station Patuxent River; Maryland Air National Guard at Martin State Airport; the former Navy Bayhead Annex in Annapolis; the former Naval Research Lab in White Oak;

Aberdeen Proving Ground; Naval Air Station Patuxent River; and the former Brandywine Defense Reutilization and Marketing Office.” AFFF Complaint ¶ 150; *see also id.* ¶ 8 (“To date, investigations have focused on military bases in Maryland. AFFF-related contamination at these sites has migrated to and polluted groundwater and surface water and has adversely affected biota in the surrounding areas.”); *id.* ¶¶ 143, 149, 151-153. The Complaint in *this* action seeks to recover for contamination from the same PFAS chemicals allegedly contained in MilSpec AFFF (PFOA and PFOS). *Compare* Complaint ¶ 1, *with* AFFF Complaint ¶¶ 1-2.

28. Further, the Complaint in this action seeks to recover for PFAS contamination throughout Maryland of the same natural resources at issue in the putative AFFF action that were allegedly contaminated with PFAS from MilSpec AFFF, including groundwater, surface water, coastal resources and estuaries, sediments, soils, submerged lands, and biota (including plants and animals). *Compare, e.g.,* Complaint ¶¶ 112-134, *with* AFFF Complaint ¶¶ 118-148. To take just a few specific examples, both complaints reference Chesapeake Bay, *compare* Complaint ¶¶ 99-102, 125-126, *with* AFFF Complaint ¶¶ 105-108, 131-132; and both reference the same allegedly impacted species of wildlife in Chesapeake Bay, *compare* Complaint ¶ 126 (“striped bass, blue crabs, and oysters”), *with* AFFF Complaint ¶ 134 (“striped bass, blue crabs, and oysters”). The PFAS contamination of natural resources at issue here thus overlaps with what the State itself alleges to be PFAS contamination from MilSpec AFFF used at military facilities in Maryland.

29. The Complaint further alleges that, “[m]ost critically,” the alleged PFAS contamination in Mary-

land is impacting “the State’s drinking water sources.” Complaint ¶ 138. But the State’s AFFF Complaint alleges that drinking water sources in Maryland have been contaminated by AFFF. *See* AFFF Complaint ¶ 157. Moreover, in the *In re AFFF* MDL, over a dozen municipalities in Maryland have sued 3M and other Defendants to recover for contamination of their drinking water supplies that they allege to have resulted from the use of AFFF, including the use of Mil-Spec AFFF at military facilities in Maryland. *See, e.g.,* Amended Complaint ¶¶ 143-44, *Mayor & City Council of Baltimore v. 3M Co., et al.*, No. 2:22-cv-04312 (D.S.C.) (“There are numerous facilities using Defendants’ AFFF products in and near Baltimore. For example, Defendants’ AFFF products have been used and released at . . . military bases and installations, such as the Aberdeen Proving Ground, Bainbridge Naval Training Center Port Deposit, and George G. Meade Army Base. . .”).

30. In addition, the Complaint in this action describes the State’s investigation of PFAS in Maryland drinking water sources beginning in 2019, *see* Complaint ¶¶ 139-152, and the State specifically seeks damages for the costs of its investigation of PFAS, *see, e.g., id.* ¶ 137. But the State alleges, in its AFFF Complaint, that its investigations of PFAS in Maryland have “focused on military bases in Maryland, revealing multiple sites where AFFF was used that are contaminated with PFAS.” AFFF Complaint ¶ 8. For instance, the Complaint in this case describes the State’s “Phase 1” drinking water sampling which studied PFAS levels for 129 drinking water supplies in Maryland, *see* Complaint ¶¶ 140-141, but the Phase 1 Report issued by the Maryland Department of the Environment (“MDE”) explained that it prioritized its sampling activities based on its understanding that

“military installations . . . with known historical usage of aqueous film forming foams could present a larger potential risk to drinking water sources than other potential PFAS sources.”<sup>15</sup> Moreover, the Phase 1 sampling identified elevated PFOS and PFOA levels at the Town of Hampstead and the City of Westminster,<sup>16</sup> but those two municipalities have filed lawsuits against 3M and other Defendants in the *In re AFFF* MDL alleging that the claimed PFAS contamination there resulted at least in part from the use of AFFF during exercises at the Carroll County Airport, which allegedly has supported and continues to support the U.S. military. See Complaint ¶¶ 182-184, *Town of Hampstead v. 3M Co., et al.*, No. 2:22-cv-00407 (D.S.C.); Complaint ¶¶ 186-188, *Mayor & Common Council of Westminster v. 3M Co., et al.*, No. 2:21-cv-03241 (D.S.C.).

31. Moreover, upon information and belief, PFAS from MilSpec AFFF and PFAS from the non-AFFF sources putatively at issue in this action are plausibly commingled across Maryland, and PFAS deriving from MilSpec AFFF use at military facilities inseparably contributed to any alleged “non-AFFF” PFAS contamination. The State itself alleges in both of its cases that PFAS “mobilize in and through groundwater

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<sup>15</sup> MDE, Phase 1 Report at 11, [https://mde.maryland.gov/programs/water/water\\_supply/Documents/PFAS\\_Public\\_Water\\_System\\_Study-Phase1Report.pdf](https://mde.maryland.gov/programs/water/water_supply/Documents/PFAS_Public_Water_System_Study-Phase1Report.pdf). MDE’s publicly-available reports do not draw any material distinction between PFAS from AFFF and PFAS from other sources. See *id.* at 3 (remarking that PFAS are used in numerous products and “firefighting foams” are one of numerous such products); see generally MDE, *Maryland and PFAS*, <https://mde.maryland.gov/PublicHealth/Pages/PFAS-Landing-Page.aspx> (discussing MDE PFAS investigation).

<sup>16</sup> See Phase 1 Report—Appendix: Phase 1 Results Table, [https://mde.maryland.gov/programs/water/water\\_supply/Documents/PFAS\\_PWS\\_StudyP1-Appendix1\\_PFASPhase1Results.pdf](https://mde.maryland.gov/programs/water/water_supply/Documents/PFAS_PWS_StudyP1-Appendix1_PFASPhase1Results.pdf).

sources to reach areas beyond the initial source of contamination,” thus “adversely affect[ing] the groundwater.” Complaint ¶ 117; *accord* AFFF Complaint ¶ 123. The State also alleges in both of its cases that PFAS “are mobile and persistent in water and can spread great distances from the point of discharge,” thus “reach[ing] surface water throughout the State.” Complaint ¶ 123; *accord* AFFF Complaint ¶ 129. The State’s complaints in both cases contain virtually identical allegations, causes of action, and requests for relief concerning alleged PFAS contamination of the same natural resources across the State. *Compare, e.g.*, Complaint ¶¶ 31-35, 112-134, 254-332, *with* AFFF Complaint ¶¶ 40-43, 118-148, 259-337. Consistent with those allegations, PFAS from MilSpec AFFF and from non-AFFF PFAS sources plausibly cross-contaminated the natural resources that are at issue in both the State’s two cases.

32. In fact, PFAS from MilSpec AFFF at military facilities in Maryland plausibly has impacted sites of putatively “non-PFAS” contamination referenced in the Complaint in this action, such as industrial facilities, landfills, wastewater treatment plants, and drinking water supplies near such allegedly non-AFFF PFAS sources. *See, e.g.*, Complaint ¶¶ 37-39. PFAS from MilSpec AFFF thus plausibly has commingled with PFAS from non-AFFF sources at such sites.

33. For instance, the State’s AFFF Complaint alleges PFAS contamination in groundwater, surface water, soil, and sediment at Joint Base Andrews, *see* AFFF Complaint ¶ 152, and identifies Joint Base Andrews as a known site of AFFF use, *see id.* ¶¶ 8, 143. But PFAS released from MilSpec AFFF use at Joint Base Andrews plausibly spread from there to other areas where it would have commingled with PFAS from

non-AFFF sources. As detailed in a 2018 Site Inspection Report, Joint Base Andrews is located at a “groundwater recharge” area (*i.e.*, where water seeps into the ground to replenish the groundwater), and the flow of both the groundwater and the surface water runoff is in multiple directions, including toward the Potomac River to the west and the Patuxent River (a tributary of Chesapeake Bay) to the east.<sup>17</sup> The Site Inspection Report identifies numerous groundwater and surface-water pathways whereby PFAS from Mil-Spec AFFF sites at Joint Base Andrews could have migrated off-site to locations—such as to the Potomac River and Patuxent River—where PFAS plausibly commingled with PFAS from the non-AFFF sources putatively encompassed by the Complaint here.<sup>18</sup> In fact, the Complaint here references both the Potomac River and Chesapeake Bay (where the Patuxent River flows). *See* Complaint ¶¶ 99, 101-102, 125-126.

34. The AFFF Complaint also alleges PFAS contamination at Fort Meade and the adjacent former Fort Meade Tipton Airfield. AFFF Complaint ¶ 150. But there were multiple, unlined “sanitary landfills” on the site of the Fort Meade Tipton Airfield.<sup>19</sup> PFAS from both MilSpec AFFF and non-AFFF sources plausibly commingled at those landfills. On the one hand,

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<sup>17</sup> Final Site Inspections Report of Fire Fighting Foam Usage at Joint Base Andrews at 50, 53 (May 2018), *available at* <https://ar.afcec-cloud.af.mil/Search>.

<sup>18</sup> *Id.* at 49-57.

<sup>19</sup> Final Preliminary Assessment and Site Inspection of Per- and Polyfluoroalkyl Substances, Fort George G. Meade and Phoenix Military Reservation, Maryland at 28-29 (Aug. 2022), *available at* [https://home.army.mil/meade/application/files/1016/6558/7315/Fort\\_Meade\\_PFAS\\_Preliminary\\_Assessment\\_PASI\\_Report\\_Sept2022.pdf](https://home.army.mil/meade/application/files/1016/6558/7315/Fort_Meade_PFAS_Preliminary_Assessment_PASI_Report_Sept2022.pdf).

AFFF likely migrated to those landfills from fire training areas and/or AFFF-related waste likely was disposed there.<sup>20</sup> On the other hand, non-AFFF PFAS waste likely was disposed there as well. *See, e.g.*, Complaint ¶ 38 (“Landfills receive consumer goods, industrial wastes, sewage sludge, and construction and demolition debris, all of which can contain PFAS.”).

35. Another MilSpec AFFF site identified in the AFFF Complaint—Maryland Air National Guard at Martin State Airport (*see* AFFF Complaint ¶ 150)—is in fact located *directly adjacent* to a Lockheed Martin facility (the Middle River Complex) where there have been investigations of PFAS deriving from non-AFFF sources.<sup>21</sup> Specifically, PFAS were applied at the Lockheed Martin facility in “metal plating operations” (an industrial process whereby a thin metal coating is added to the surface of a product).<sup>22</sup> As stated in Lockheed Martin’s description of the PFAS investigations at that location, the investigations included consideration of both “groundwater samples addressing the former fire training area” and “groundwater samples addressing the former metal plating areas”—in other words, they encompassed PFAS from both AFFF sources and non-AFFF sources (and in fact, PFAS concentrations were detected at nearly all of the locations sampled).<sup>23</sup>

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<sup>20</sup> *See id.* at 19 (AFFF-waste was dumped at landfills); *id.* at 20 (noting adjacent fire-training areas).

<sup>21</sup> Lockheed Martin, PFAS Fact Sheet: Middle River Complex and Martin State Airport at (Mar. 2021), <https://www.lockheed-martin.com/content/dam/lockheed-martin/eo/documents/remediation/middle-river/pfas-factsheet-2021.pdf>.

<sup>22</sup> *Id.* at 1.

<sup>23</sup> *Id.* at 3.

36. Because the Complaint in this action seeks broadly to recover for alleged natural resource damages from PFAS across the State, and because (as stated above) PFAS from MilSpec AFFF and non-AFFF sources have commingled at various locations across Maryland, the State's claims in this case encompass alleged PFAS contamination that plausibly derives at least in part from MilSpec AFFF. Upon information and belief, the alleged PFAS contamination of the State's groundwater, surface waters, and other natural resources, either in whole or in part, plausibly could have resulted from commingling of PFAS from MilSpec AFFF and PFAS from other AFFF and non-AFFF sources in Maryland. Likewise, other damages sought by the State, such as the costs of investigating and monitoring PFAS across Maryland (*see, e.g.*, Complaint at pp. 79-80; AFFF Complaint at pp. 85-86), are attributable in part to the fact that MilSpec AFFF historically has been used at military facilities as well as elsewhere in Maryland.

37. Because the alleged PFAS contamination for which the State seeks recovery in this action is (in part) plausibly attributable and/or related to MilSpec AFFF use at military facilities in Maryland, 3M is entitled to remove this case as a whole pursuant to federal officer jurisdiction.<sup>24</sup> That is because “[i]t is en-

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<sup>24</sup> PFAS in Maryland also plausibly derives from the use of MilSpec AFFF at large civilian airports, so-called “Part 139” airports. Part 139 airports have historically used MilSpec AFFF and, beginning in 2006, the U.S. government required Part 139 airports to use AFFF meeting MilSpec standards. *See* FAA Part 139 CertAlert 06-02, Aqueous Film Forming Foam (AFFF) meeting MIL-F-24385 (Feb. 8, 2006). The State alleges that PFAS contamination in Maryland stems in part from AFFF use at airports. *See* AFFF Complaint ¶¶ 44. Maryland has three Part 139 airports. *See* Part 139 Airport Certification Status List (Excel

tirely possible that Plaintiffs' injuries occurred from actions taken while Defendants were acting under color of federal office: namely, MilSpec AFFF." *Nessel*, 2021 WL 744683, at \*3. At a minimum, 3M is entitled to raise "the production of MilSpec AFFF as a defense or alternative theory" and, on that basis, to remove this case as a whole to federal court. *Id.*

38. Federal officer removal is appropriate notwithstanding the State's attempt to allege that AFFF is not at issue in this case, because the State's claimed damages from PFAS are plausibly due in part to PFAS from MilSpec AFFF that overlap and are commingled with the alleged PFAS contamination from non-AFFF sources. *See Nessel*, 2021 WL 744683, at \*3 (denying State of Michigan's motion to remand and concluding that federal officer removal was proper notwithstanding the complaint's allegation that Michigan was not seeking relief for MilSpec AFFF; "The Court finds that Plaintiffs' artful pleading does not obviate the facts on the ground."); *AFFF III*, at 2-5 (acknowledging that the plaintiff had disavowed any claim to recover for damages from MilSpec AFFF, but denying the plaintiff's motion to remand and concluding that federal officer removal was proper because defendants showed that the contamination of the plaintiff's water supply was plausibly attributable to PFAS releases from the use of MilSpec AFFF).

**C. All the Requirements of 28 U.S.C.  
§ 1442(a)(1) Are Satisfied**

**1. The “Person” Requirement Is Satisfied**

39. The first requirement for removal under the federal officer removal statute is satisfied here because 3M (a corporation) meets the definition of “person” under the statute. For purposes of § 1442(a)(1), the term “person” includes corporations. *Papp v. Fore-Kast Sales Co.*, 842 F.3d 805, 812 (3d Cir. 2016) (quoting 1 U.S.C. § 1); *accord Isaacson*, 517 F.3d at 135-36.

**2. The “Acting Under” Requirement Is Satisfied**

40. The second requirement (“acting under” a federal officer) is satisfied when an entity assists or helps carry out the duties or tasks of a federal officer. *Watson v. Philip Morris Co., Inc.*, 551 U.S. 142, 152 (2007); *Papp*, 842 F.3d at 812. The phrase “acting under” is to be “liberally construed in favor of the entity seeking removal.” *Sawyer v. Foster Wheeler LLC*, 860 F.3d 249, 255 (4th Cir. 2017) (internal quotation marks omitted). Federal courts “have explicitly rejected the notion that a defendant could only be ‘acting under’ a federal officer if the complained-of conduct was done at the specific behest of the federal officer or agency.” *Papp*, 842 F.3d at 813. Rather, “courts have unhesitatingly treated the ‘acting under’ requirement as satisfied where a contractor seeks to remove a case involving injuries arising from equipment that it *manufactured for the government*.” *Sawyer*, 860 F.3d at 255.

41. The requirement of “acting under” a federal officer is met here because the alleged PFAS contamination at issue in this action stems in part from MilSpec

AFFF, a vital product provided by 3M that otherwise “the Government would have had to produce itself.” *Isaacson*, 517 F.3d at 137. MilSpec AFFF is a mission-critical military and aviation safety product that, without the support of private contractors, the government would have to produce for itself. *See Ayo*, 2018 WL 4781145, at \*9 (describing MilSpec AFFF as a “mission-critical” and “life-saving product” used by all branches of the U.S. armed forces and NATO members (internal quotation marks omitted)); *cf. Isaacson*, 517 F.3d at 137. The Naval Research Laboratory states that, “[a]lthough [it] was responsible for the original concepts and formulations, it was necessary to elicit the aid of the chemical industry to synthesize the fluorinated intermediates and agents to achieve improvements in formulations.”<sup>25</sup> Accordingly, the military has long depended upon outside contractors like 3M to develop and supply AFFF. *See Nessel*, 2021 WL 744683, at \*3 (holding that AFFF manufacturers were “acting under” a federal officer in connection with the manufacture and sale of MilSpec AFFF); *Ayo*, 2018 WL 4781145, at \*8-9 (same); *see also AFFF I*, 2019 WL 2807266, at \*2 (finding that the “acting under” requirement was satisfied because defendant demonstrated that it was manufacturing AFFF under the guidance of the U.S. military); *AFFF II*, at 3-5; *AFFF III*, at 3-6.

42. In designing, manufacturing, and supplying the MilSpec AFFF at issue, 3M acted under the direction and control of federal officers. Specifically, 3M acted in accordance with detailed specifications, promulgated by Naval Sea Systems Command, that govern AFFF formulation, performance, testing, storage, inspection, packaging, and labeling. Further, MilSpec AFFF products were subject to various tests by the

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<sup>25</sup> Fulfilling the Roosevelts’ Vision at 37.

U.S. Navy before and after being approved for use by the military and for inclusion on the Qualified Products List maintained by the DoD.<sup>26</sup> 3M has satisfied the “acting under” requirement. *See, e.g., Nessel*, 2021 WL 744683, at \*3; *Ayo*, 2018 WL 4781145, at \*8-9.

### ***3. The “Under Color Of Federal Office” Requirement Is Satisfied***

43. The third requirement, that the defendant’s actions were taken “under color of federal office,” requires a “nexus” between plaintiff’s claims and the defendant’s acts undertaken at the direction of a federal officer. As with the “acting under” requirement, “[t]he hurdle erected by this requirement is quite low.” *Isaacson*, 517 F.3d at 137. To meet this requirement, “there need be only *a connection or association* between the act in question and the federal office.” *Sawyer*, 860 F.3d at 258 (internal quotation marks omitted) (explaining that 28 U.S.C. § 1442 permits removal of actions “for *or relating to* any act under color of [federal] office”); *Papp*, 842 F.3d at 813; *Isaacson*, 517 F.3d at 137-38 (explaining that it is sufficient if the act that allegedly caused or contributed to the plaintiff’s injuries occurred while the defendant was performing its official duties).<sup>27</sup>

44. Here, the State’s claims against 3M for alleged PFAS contamination of natural resources and property are for or relate to (at least in part) 3M’s design, manufacture, and sale of MilSpec AFFF—which was

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<sup>26</sup> *See* DoD, SD-6, *supra* note 8, at 1.

<sup>27</sup> The “acting under” and “under color of” prongs overlap. Both “are satisfied if the actions subject to suit resulted directly from government specifications or direction.” *Albrecht*, 2011 WL 5109532, at \*5.

designed and manufactured according to DoD military specifications, and which has been used, stored, and/or released at military facilities (and elsewhere) in Maryland. *See supra* ¶¶ 26-38. As a result, the State’s claims against 3M relate to their acts taken under color of federal office. *See Ayo*, 2018 WL 4781145, at \*9 (“[T]here is evidence of a ‘casual connection’ between the use of PFCs in AFFF and the design and manufacture of AFFF for the government.”); *AFFF I*, 2019 WL 2807266, at \*3 (nexus element satisfied where “[Plaintiff]’s claims arise out of use of AFFF products . . . for which the U.S. military imposes MilSpec standards.”); *AFFF II*, at 5 (nexus element satisfied where AFFF products, “for which the military imposes MilSpec standards,” were the alleged cause of plaintiff’s injuries); *AFFF III*, at 5-6 (same).

45. Courts “credit Defendants’ theory of the case” when determining whether the requisite nexus exists. *Isaacson*, 517 F.3d at 137; *accord Nessel*, 2021 WL 744683, at \*3 (noting that “Plaintiffs cannot decide what defense Defendants might present”). As averred in this Notice of Removal, the State’s alleged injuries plausibly arise at least in part from MilSpec AFFF. The State’s claims sufficiently relate to 3M’s actions under color of federal office.

#### ***4. The “Colorable Federal Defense” Requirement Is Satisfied***

46. The fourth requirement (“colorable federal defense”) is satisfied by 3M’s assertion of the government contractor defense.

47. At the removal stage, a defendant need only show that its government contractor defense is colorable; that is, “that the defense was ‘legitimate and [could] reasonably be asserted, given the facts pre-

sented and the current law.” *Papp*, 842 F.3d at 815 (alteration in original) (citation omitted). “A defendant ‘need not win his case before he can have it removed.’” *Id.* (quoting *Willingham*, 395 U.S. at 407); *see also Isaacson*, 517 F.3d at 139 (“To be ‘colorable,’ the defense need not be ‘clearly sustainable,’ as the purpose of the statute is to secure that the validity of the defense will be tried in federal court.” (citation omitted)). At the removal stage, the inquiry “is purely jurisdictional, and neither the parties nor the district courts should be required to engage in fact-intensive motion practice, pre-discovery, to determine the threshold jurisdictional issue.” *Cuomo*, 771 F.3d at 116; *see also Kraus v. Alcatel-Lucent*, No. 18-2119, 2018 WL 3585088, at \*2 (E.D. Pa. July 25, 2018) (“A court does not ‘determine credibility, weigh the quantum of evidence or discredit the source of the defense’ at this stage. Instead, [the court] only determine[s] whether there are sufficient facts alleged to raise a colorable defense.” (internal citation omitted)). Moreover, “this inquiry is undertaken whilst viewing the facts in the light most favorable to Defendants.” *Hagen v. Benjamin Foster Co.*, 739 F. Supp. 2d 770, 783–84 (E.D. Pa. 2010). “Precisely in those cases where a plaintiff challenges the factual sufficiency of the defendant’s defense, the defendant should ‘have the opportunity to present [his] version of the facts to a federal, not a state, court.’” *Cuomo*, 771 F.3d at 116 (quoting *Willingham*, 395 U.S. at 409).

48. Under the government contractor defense, the defendant is not liable for the design or manufacture of equipment or supplies (or for warnings relating to them) “when (1) the United States approved reasonably precise specifications; (2) the equipment conformed to those specifications; and (3) the supplier warned the United States about the dangers in the

use of the equipment that were known to the supplier but not to the United States.” *Boyle*, 487 U.S. at 512.

49. The requirement of “reasonably precise specifications” can be met by evidence showing either (a) that the government’s participation in the design of the product “amount[ed] to more than a rubber stamping,” or (b) that the government continued to purchase or use a product after the government became aware that the product contained the alleged defect. *Ramey v. Martin-Baker Aircraft Co. Ltd.*, 874 F.2d 946, 950 (4th Cir. 1989). Naval Sea Systems Command participated in the design of MilSpec AFFF, and its role was not a mere “rubber stamping.” It created (and has updated) detailed specifications governing the product’s formulation, performance, testing, storage, inspection, packaging, and labeling.<sup>28</sup> Those specifications are “reasonably precise,” including in requiring the use of PFAS.<sup>29</sup> In addition, in the past and continuing to the present, the DoD has purchased and used MilSpec AFFF with awareness of the product’s PFAS content and of the alleged risks associated with PFAS in the product. *See Ayo*, 2018 WL 4781145, at \*12 (“That the DoD knows of the alleged risks of PFC-based AFFF products but continues to purchase them supports the position that the government approved reasonably precise specifications for the claimed defective design.”).

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<sup>28</sup> *See* Mil-F-24385 (1969) and subsequent revisions and amendments, cited in note 6, *supra*.

<sup>29</sup> As noted earlier, until 2019 the specification expressly required that MilSpec AFFF contain “fluorocarbon surfactants,” all of which are members of the PFAS family. Even since that express requirement was removed from the specification, the use of PFAS has been implicitly mandated because PFAS-containing surfactants are the only kind that allow AFFF to meet the performance requirements of the specification.

50. With respect to the second requirement, 3M's products have appeared on the DoD Qualified Products List,<sup>30</sup> which could have happened only if Naval Sea Systems Command had first determined that they conformed to the MilSpec. *See Ayo*, 2018 WL 4781145, at \*13 (“There is also colorable evidence . . . that Manufacturing Defendants’ AFFF products conformed to the government’s reasonably precise specifications.”); *AFFF I*, 2019 WL 2807266, at \*3 (finding that defendant demonstrated a colorable defense “where it contends that its AFFF products were manufactured according to the U.S. military’s MilSpec specifications”).

51. Regarding the third requirement, the U.S. government was sufficiently informed regarding alleged product-related “dangers,” *Boyle*, 487 U.S. at 512, to exercise its discretionary authority in specifying and procuring MilSpec AFFF. The military specifications have long included testing protocols and requirements for toxicity, chemical oxygen, and biological demand. Indeed, it is clear that the United States has long understood that AFFF contains PFAS and may contain or break down into PFOS and/or PFOA; that AFFF constituents can migrate through the soil and potentially reach groundwater; and that it has been reported that this may raise environmental or human health issues.<sup>31</sup> For example, as early as October 1980, a report supported by the U.S. Navy Civil Engineering Laboratory, U.S. Air Force Engineering Service Center, and the U.S. Army Medical Research and Devel-

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<sup>30</sup> *See* MIL-F-24385 QPL/QPD History for Type 3 AFFF (Oct. 24, 2014); MIL-F-24385 QPL/QPD History for Type 6 AFFF (Oct. 24, 2014) (both available at *In re AFFF Prods. Liab. Litig.*, No. 2:18-mn-02873, ECF No. 1969-24 (D.S.C.)).

<sup>31</sup> *See, e.g.*, EPA, *Revised Draft Hazard Assessment of Perfluorooctanoic Acid and Its Salts* 1-6 (Nov. 4, 2002).

opment Command stated that AFFF contained fluorocarbons and that “[a]ll of the constituents resulting from firefighting exercises are considered to have adverse effects environmentally.”<sup>32</sup> In June 1991, the Air Force stated that past Air Force fire training activities resulted in “adverse environmental impact,” including “soil contamination” and the “potential” for “groundwater contamination.”<sup>33</sup> By no later than 2001, DoD was aware of data purportedly showing PFAS compounds in MilSpec AFFF to be “toxic” and “persistent.”<sup>34</sup> In 2002, the United States Environmental Protection Agency issued a draft hazard assessment for PFOA, which reviewed in detail, among other data, human epidemiological studies and animal toxicology studies pertaining to alleged associations between PFOA and cancer.<sup>35</sup> More recently, in a November 2017 report to Congress, the DoD acknowledged the concerns raised by the EPA regarding PFOS and PFOA. Nonetheless, it still described AFFF containing PFOS or PFOA as a “mission critical product [that] saves lives and protects assets by quickly extinguishing petroleum-based fires.”<sup>36</sup> Indeed, Naval Sea Systems Command continues to require that MilSpec

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<sup>32</sup> See Edward S. K. Chian et al., *Membrane Treatment of Aqueous Film Forming Foam (AFFF) Wastes for Recovery of Its Active Ingredients* 1 (Oct. 1980), <https://apps.dtic.mil/dtic/tr/fulltext/u2/a136612.pdf>.

<sup>33</sup> USAF, Engineering Technical Letter ETL 91-4: Site Selection Criteria for Fire Protection Training Areas 2 (June 14, 1991).

<sup>34</sup> EPA Presentation on Activities/Issues on Fluorosurfactants, March 16, 2001 (available at *In re AFFF Prods. Liab. Litig.*, No. 2:18-mn-02873, ECF No. 1971-2 (D.S.C.)).

<sup>35</sup> See EPA, Revised Draft Hazard Assessment, *supra* note 31.

<sup>36</sup> DoD, *Aqueous Film Forming Foam Report to Congress* 1-2 (Oct. 2017) (pub. Nov. 3, 2017), <https://tinyurl.com/wshcww4>.

AFFF contain “surfactants,”<sup>37</sup> and recognizes that PFAS, including PFOS and PFOA, will be present (subject to recently imposed limits for PFOS and PFOA) in AFFF formulations.<sup>38</sup> See *Ayo*, 2018 WL 4781145, at \*12 (“That the DoD knows of the alleged risks of PFC-based AFFF products but continues to purchase them supports the position that the government approved reasonably precise specifications for the claimed defective design.”); *AFFF I*, 2019 WL 2807266, at \*3 (“As to whether [defendant] adequately informed the U.S. military of dangers associated with its AFFF products of which the military was not already aware, [defendant] points to materials such as a November 2017 Department of Defense report to Congress, in which the agency acknowledged the [EPA]’s stated concerns with PFOS/PFOA in drinking water. . .”).

52. At minimum, these facts constitute colorable evidence that Naval Sea Systems Command “made a discretionary determination” regarding the formulation of MilSpec AFFF after weighing the fire-suppression benefits against the alleged risks. See *In re “Agent Orange” Prod. Liab. Litig.*, 517 F.3d 76, 90 (2d Cir. 2008); see also *Albrecht*, 2011 WL 5109532, at \*5 (“A defendant is not required to warn the government where ‘the government knew as much or more than the defendant contractor about the hazards of the product.’” (citation omitted)). Where, as here, the government has exercised “discretionary authority over areas of significant federal interest such as military procurement,” the government contractor defense ap-

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<sup>37</sup> MIL-PRF-24385F(4) § 3.2 (2020).

<sup>38</sup> *Id.* § 6.6 & Tables I, III; see also David Vergun, *DOD Officials Discuss Fire-Fighting Foam Replacement, Remediation Efforts* (Sept. 16, 2020), <https://tinyurl.com/ty5ku8hp>.

plies. *In re “Agent Orange” Prod. Liab. Litig.*, 517 F.3d at 89-90; *see also Ayo*, 2018 WL 4781145, at \*13.

53. 3M’s use of PFAS in MilSpec AFFF was required by military specifications. By seeking to impose tort liability on 3M for alleged injuries to the State that were caused in whole or in part by 3M’s compliance with military specifications, the State is attempting to use state tort law to attack design choices dictated by the military. The government contractor defense precludes such an attack. *See Boyle*, 487 U.S. at 509.

54. The MDL Court, based on an extensive record, has found that the government contractor defense asserted by 3M and other AFFF manufacturers presents genuine issues of fact for trial. *See In re Aqueous Film-Forming Foams Prods. Liab. Litig.*, 2022 WL 4291357, at \*12, 15 (D.S.C. Sept. 16, 2022). A defense that presents triable issues is by definition better than merely “colorable.”

55. Accordingly, 3M is entitled to remove this action to federal court pursuant to the federal officer removal statute, 28 U.S.C. § 1442(a)(1).

**IN ADDITION, BECAUSE THE STATE’S  
CLAIMS AROSE IN PART ON FEDERAL  
ENCLAVES, THIS COURT HAS JURISDICTION  
UNDER 28 U.S.C. § 1331, AND REMOVAL IS  
PROPER UNDER 28 U.S.C. § 1441(a)**

56. Removal of this action is also proper because the State’s alleged claims arose in part on federal enclaves. To that extent, the claims are governed by federal law and are subject to this Court’s original jurisdiction under 28 U.S.C. § 1331. Thus, this action is removable under 28 U.S.C. § 1441(a).

57. The Constitution confers on Congress the power “[t]o exercise exclusive legislation” over the District of Columbia “and to exercise like authority over all places purchased by the consent of the legislature of the state in which the same shall be, for the erection of forts, magazines, arsenals, dockyards, and other needful buildings.” U.S. Const. art. I, § 8, cl. 17. “It has long been settled that where lands for such a purpose are purchased by the United States with the consent of the State legislature, the jurisdiction theretofore residing in the state passes, in virtue of the constitutional provision, to the United States, thereby making the jurisdiction of the latter the sole jurisdiction.” *Surplus Trading Co. v. Cook*, 281 U.S. 647, 652 (1930). Lands acquired in this way and made subject to sole federal legislative jurisdiction are termed federal enclaves. *Brookhaven Sci. Assocs., LLC v. Donaldson*, 2007 WL 2319141, at \*5 (S.D.N.Y. Aug.9, 2007). Because the United States exercises sole lawmaking authority over a federal enclave, the law applicable to that enclave is—by definition—federal law, although such federal law may incorporate state-law rules of decision. *See, e.g., Mater v. Holley*, 200 F.2d 123, 124 (5th Cir. 1952) (“[A]ny law existing in territory over which the United States has ‘exclusive’ sovereignty must derive its authority and force from the United States and is for that reason federal law”); *Macomber v. Bose*, 401 F.2d 545, 546 (9th Cir. 1968) (“State law theretofore applicable within the [ceded] area was assimilated as federal law, to remain in effect until changed by Congress. Rights arising under such assimilated law, arise under federal law and are properly the subject of federal jurisdiction.”); *Brookhaven Sci. Assocs.*, 2007 WL 2319141, at \*5 (“[W]hen an area becomes a federal enclave, the state law in effect at the time of cession becomes federal law and is the applicable law unless Congress provides otherwise.”).

58. Accordingly, it is settled that federal courts have federal-question jurisdiction under 28 U.S.C. § 1331 as to actions involving tort claims that arise on federal enclaves. *See, e.g., Durham*, 445 F.3d at 1250; *Akin v. Ashland Chemical Co.*, 156 F.3d 1030, 1034 (10th Cir. 1998); *Jones v. John Crane-Houdaille, Inc.*, 2012 WL 1197391, at \*1 (D. Md. Apr. 6, 2012) (“A suit based on events occurring in a federal enclave . . . must necessarily arise under federal law and implicates federal question jurisdiction under § 1331.”). It follows that such actions, if originally filed in state court, may be removed to federal court under 28 U.S.C. § 1441(a). *See, e.g., Allison v. Boeing Laser Tech. Servs.*, 689 F.3d 1234, 1236 (10th Cir. 2012); *Fuller v. Tenn. Valley Auth.*, 2007 WL 2077639 at \*2 (E.D. Tenn. 2007).

59. Some federal facilities in Maryland, including some of the federal facilities that are discussed above (¶ 150), are or were federal enclaves when AFFF and/or other PFAS or PFAS-containing products were released from such facilities. For instance, Joint Base Andrews and Fort Meade are and were federal enclaves. *See United States v. Robson*, 391 F. Supp. 2d 383, 385 (D. Md. 2005) (Joint Base Andrews); *Baltimore Gas & Elec. Co. v. United States*, 133 F. Supp. 2d 721, 744 (D. Md. 2001) (Fort Meade).

60. Because the State’s claims for alleged PFAS contamination arose in part from the use, storage, or disposal of AFFF and/or other PFAS or PFAS-containing products on one or more federal enclaves, this Court has original jurisdiction over the action pursuant to 28 U.S.C. §§ 1331 and 1367, and removal of the action is proper under 28 U.S.C. § 1441(a).

\* \* \* \* \*

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WHEREFORE, 3M hereby removes this action from the Circuit Court of Baltimore City, Maryland, to this Court.

Respectfully submitted,

/s/ Katherine Monks Bleicher

Katherine Monks Bleicher

(admitted to D. Md.; Bar No. 19870)

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*Counsel for 3M Company*

July 10, 2023

**CERTIFICATE OF SERVICE**

I hereby certify that on July 10, 2023, I caused a true and correct copy of the foregoing document, with its exhibits, to be served upon the following parties by First Class Mail and/or by Email, as indicated below.

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AND COMPANY  
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THE CHEMOURS COMPANY  
c/o The Corporation Trust Inc.  
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/s/ Katherine Monks Bleicher  
Katherine Monks Bleicher



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**EXHIBIT 2**

**IN THE CIRCUIT COURT FOR  
BALTIMORE CITY**

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FILED MAY 30, 2023  
CIVIL DIV.  
CIRCUIT COURT FOR BALTIMORE CITY

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**COMPLAINT  
JURY TRIAL DEMANDED**

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STATE OF MARYLAND,  
200 Saint Paul Place  
Baltimore, Maryland 21202

*Plaintiff,*

v.

3M COMPANY,  
3M Center  
St. Paul, Minnesota 55144-1000,

Serve on:  
CSC-Lawyers Incorporating  
Service Company  
7 St. Paul Street, Suite 820,  
Baltimore, Maryland 21202

*and*

ARKEMA INC.,  
900 First Avenue,  
King of Prussia, Pennsylvania 19406,

Serve on:  
CSC-Lawyers Incorporating  
Service Company  
7 St. Paul Street, Suite 820  
Baltimore, Maryland 21202

*and*

BASF CORPORATION,  
100 Park Avenue, Florham Park  
New Jersey 07932,

Serve on:  
The Corporation Trust Company  
Corporation Trust Center  
1209 Orange Street  
Wilmington, Delaware 19801

*and*

BUCKEYE FIRE EQUIPMENT COMPANY,  
110 Kings Road,  
Kings Mountain, North Carolina 28086,

Serve on:  
Kevin J. Bower  
110 Kings Road  
Kings Mountain, North Carolina 28086

*and*

CARRIER FIRE & SECURITY  
AMERICAS CORPORATION,  
13995 Pasteur Boulevard  
Palm Beach Gardens, Florida 33418,

Serve on:  
United Agent Group, Inc.  
801 US Highway 1  
North Palm Beach, Florida 33408

*and*

CARRIER GLOBAL CORPORATION,  
13995 Pasteur Boulevard  
Palm Beach Gardens, Florida 33418,

Serve on:  
United Agent Group, Inc.  
801 US Highway 1  
North Palm Beach, Florida 33408

*and*

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CHEMGUARD, INC.,  
One Stanton Street  
Marinette, Wisconsin 54143-2542,

Serve on:  
Wael T. Elkoshairi  
1 Keystone Court  
Gaithersburg, Maryland 20878

*and*

CORTEVA, INC.,  
974 Centre Road  
Wilmington, Delaware 19805,

Serve on:  
The Corporation Trust, Inc.  
2405 York Road, Suite 201  
Lutherville Timonium, Maryland 21093-2264

*and*

DUPONT DE NEMOURS, INC.,  
974 Centre Road  
Wilmington, Delaware 19805,

Serve on:  
The Corporation Trust Company  
Corporation Trust Center  
1209 Orange Street  
Wilmington, Delaware 19801

*and*

DYNAX CORPORATION,  
79 Westchester Avenue  
Pound Ridge, New York 10576,

Serve on:  
CN Search L.L.C.  
28 Crystal Street  
Wethersfield, Connecticut 06109

*and*

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EIDP, INC., F/K/A E.I. DU PONT  
DE NEMOURS AND COMPANY,  
974 Centre Road  
Wilmington, Delaware 19805,

Serve on:  
The Corporation Trust, Inc.  
2405 York Road, Suite 201  
Lutherville Timonium, Maryland  
21093-2264

*and*

NATIONAL FOAM, INC.,  
141 Junny Road  
Angier, North Carolina 27501,

Serve on:  
CT Corporation System  
160 Mine Lake Ct, Suite 200  
Raleigh, North Carolina 27615

*and*

THE CHEMOURS COMPANY,  
1007 Market Street  
Wilmington, Delaware 19899,

Serve on:  
The Corporation Trust Inc.  
351 West Camden Street  
Baltimore, Maryland 21201-7912

*and*

TYCO FIRE PRODUCTS LP,  
One Stanton Street  
Marinette, Wisconsin 54143-2542,

Serve on:  
The Corporation Trust, Inc.  
2405 York Road, Suite 201  
Lutherville Timonium, Maryland 21093-2264

*Defendants.*

## COMPLAINT

Plaintiff, the State of Maryland (the “State”), by and through Anthony G. Brown, Attorney General of Maryland, and counsel, on behalf of the Maryland Department of Environment (the “Department” or “MDE”), the Maryland Department of Health (“MDH”), and the Maryland Department of Natural Resources (“DNR”), files this Complaint against the above-named Defendants and in support thereof alleges as follows:

### INTRODUCTION

1. Through this action, the State seeks damages, remediation, restoration, and other relief to address the environmental contamination and public health harm caused by Defendants’ use of toxic per- and poly-fluoroalkyl substances (“PFAS”) in aqueous film-forming foam (“AFFF”).

2. For decades, Defendants knew of the dangers of PFAS, including the perfluorooctane sulfonic acid (“PFOS”) and perfluorooctanoic acid (“PFOA”) that were present in AFFF and discharged into the environment during firefighting training and emergency response activities at military bases, airports, fire training academies, refinery and terminal facilities, and other locations, including within Maryland.

3. Despite this knowledge, Defendants continued to manufacture, market, and sell their AFFF to the United States government, the State, local governments, businesses, and others for use in Maryland and elsewhere, without disclosing the significant risks of these chemicals to human health and the environment, all in the pursuit of enormous profits.

4. The U.S. Environmental Protection Agency (“EPA”) has concluded that exposure to PFAS may

lead to significant negative health effects, including but not limited to: “Reproductive effects such as decreased fertility or increased high blood pressure in pregnant women; developmental effects or delays in children including low birth weight, accelerated puberty, bone variations, or behavioral changes; increased risk of some cancers, including prostate, kidney, and testicular cancers; reduced ability of the body’s immune system to fight infections, including reduced vaccine response; interference with the body’s natural hormones; [and] increased cholesterol levels and/or risk of obesity.” *Our Current Understanding of the Human Health and Environmental Risks of PFAS*, Environmental Protection Agency, <https://www.epa.gov/pfas/our-current-understanding-human-health-and-environmental-risks-pfas> (last visited May 22, 2023).

5. Although Defendants knew that their AFFF and PFAS-containing fluorochemicals and fluorosurfactants used to make AFFF (collectively, “AFFF Products”) would release PFAS into the environment, harm people and natural resources, and require immense costs to remediate, they concealed information about the chemicals’ negative health effects and affirmatively contradicted it in public statements and marketing campaigns to enrich themselves.

6. Defendants’ tortious and unlawful acts and omissions have caused significant PFAS contamination of the State’s drinking water, groundwater, surface water, soil, sediment, wildlife, other natural resources, and property held in trust or otherwise owned by the State. These toxic and persistent “forever chemicals” require massive effort and expense to investigate, treat, and remove from the State’s natural resources, property held in trust, and property otherwise owned by the State.

7. Because of Defendants' concealment, the State is only now in a position to begin to understand the extent of this PFAS contamination in Maryland. Addressing the threat to human health and the environment that Defendants have caused will require substantial effort and expense focused on investigating, treating, and remediating PFAS contamination. Defendants that created and profited from the creation of this environmental hazard, and not Maryland's citizens, must pay to address the PFAS contamination throughout the State.

8. To date, investigations have focused on military bases in Maryland, revealing multiple sites where AFFF was used and that are contaminated with PFAS. Several military bases, including the Naval Research Lab, Chesapeake Beach Detachment, and Joint Base Andrews, are confirmed sources of PFAS contamination. AFFF-related contamination at these sites has migrated to and polluted groundwater and surface water and has adversely affected biota in the surrounding areas. Further investigation will identify additional sites and resources affected by AFFF Products, likely including airports, refineries, terminals, ports, and firefighting training sites.

9. The State brings this action to hold Defendants accountable for the harms done to Maryland, its citizens, and its natural resources from Defendants' AFFF Products.

10. Through this action, the State is not seeking damages, remediation, restoration or any other relief with respect to any contamination from PFAS that is not related to the manufacture and use of AFFF, as damages from those compounds that are not from the manufacture and use of AFFF are the subject of a separate action.

**PARTIES*****The State of Maryland as Plaintiff***

11. The State brings this action (a) directly in its own right, (b) in its *parens patriae* capacity, and (c) as trustee of Maryland's natural resources.

12. The State holds significant direct property interests in natural resources of the State and State-owned lands, but also has an interest as a sovereign and natural resource trustee in protecting the natural resources of the State from contamination. The contamination of the natural resources of the State by PFOS and PFOA constitutes injury to the persons and property of the State's citizens and to the natural resources of the State, which are held in trust by the State on behalf of all its citizens. The State may for the common good exercise all the authority necessary to protect its interests and those of its citizens.

13. The State, as the public trustee, is empowered to bring suit to protect the corpus of the trust, i.e., the natural resources, for the beneficiaries of the trust, i.e., the public. Protection of the natural resources of the State is a matter of public concern in which the State has an interest apart from that of particular individuals who may be affected. Pollution of the natural resources of the State with PFOS and PFOA has negatively affected a substantial segment of the State and its population.

14. The State brings this action pursuant to its police powers, which include but are not limited to, its powers to prevent and abate pollution of the natural resources of the State, to prevent and abate nuisances, and to prevent and abate hazards to the environment and to the public health, safety, and welfare.

15. The State, through its Attorney General, also brings this action under Title 9 of the Environment Article, which empowers the Secretary of MDE, through the Attorney General, to bring suit against any person who “discharge[s] any pollutant into the waters of this State” without a permit. Md. Code Ann., Env’t §§ 9-322, 9-339(a).

16. The responsibilities of the Attorney General include the investigation, commencement, and prosecution of civil suits on the part of the State. *See* Maryland Constitution, Art. V, § 3. “[T]he Attorney General has general charge of the legal business of the State.” Md. Code Ann., State Gov’t § 6-106.

17. As a result of Defendants’ acts and omissions as alleged herein, the State has suffered and will continue to suffer injuries to its natural resources and has incurred and will continue to incur costs to define the extent of PFOS and PFOA contamination throughout the State, as well as to monitor, treat, remediate, and remove PFOS and PFOA and to provide oversight of such activities.

### ***Defendants***

18. At all relevant times, Defendants together controlled all, or substantially all, of the market for AFFF in Maryland.

19. Defendant 3M Company is a Delaware Corporation qualified to do business in Maryland. Its principal place of business is 3M Center, St. Paul, Minnesota 55144-1000. 3M manufactured, marketed, and sold AFFF that was used or otherwise released in the State.

20. Defendant Arkema Inc. is a Pennsylvania corporation qualified to do business in Maryland. Its principal place of business is at 900 First Avenue,

King of Prussia, Pennsylvania 19406. Arkema is a successor in interest to Atochem North America Inc., Elf Atochem North America, Inc., and Atofina Chemicals, Inc. Arkema and/or its predecessors have manufactured, marketed, and/or sold fluorosurfactants used to manufacture AFFF that was used and otherwise released in the State.

21. Defendant BASF Corporation is a Delaware corporation qualified to do business in Maryland. Its principal place of business is at 100 Park Avenue, Florham Park, New Jersey 07932. On information and belief, BASF is the successor in interest to Ciba Inc. f/k/a Ciba Specialty Chemicals Corporation. On information and belief, Ciba Inc. manufactured, marketed, and/or sold fluorosurfactants used to manufacture AFFF that was used and otherwise released in the State.

22. Defendant Buckeye Fire Equipment Company is an Ohio corporation. Its principal place of business is at 110 Kings Road, Kings Mountain, North Carolina 28086. Buckeye has manufactured, marketed, and/or sold AFFF that was used or otherwise released in the State.

23. Defendant Chemguard, Inc. is a Texas corporation that has forfeited its right to do business in Maryland. Its principal place of business is at One Stanton Street, Marinette, Wisconsin 54143-2542. Chemguard has manufactured, marketed, and/or sold AFFF containing PFAS that was used or otherwise released in the State. Further, Chemguard has manufactured, marketed, and/or sold fluorosurfactants used to manufacture AFFF that was used or otherwise released in the State.

24. Defendant Dynax Corporation is a Delaware corporation. Its principal place of business is at 79

Westchester Avenue, Pound Ridge, New York 10576. Dynax has manufactured, marketed, and/or sold fluorosurfactants used to manufacture AFFF that was used or otherwise released in the State.

25. Defendant EIDP, Inc. (“Old DuPont”), f/k/a E. I. du Pont de Nemours and Company, is a Delaware corporation qualified to do business in Maryland. Its principal place of business is at 974 Centre Road, Wilmington, Delaware 19805. Old DuPont has manufactured, marketed, and/or sold fluorochemicals and/or fluorosurfactants used to manufacture AFFF that was used or otherwise released in the State.

26. Defendant The Chemours Company is a Delaware corporation qualified to do business in Maryland. Its principal place of business is at 1007 Market Street, Wilmington, Delaware 19899. In 2015, Old DuPont spun off its performance chemicals business to Chemours, along with vast environmental liabilities. Chemours has manufactured, marketed, and/or sold fluorosurfactants used to manufacture AFFF that was used or otherwise released in the State.

27. Defendant Corteva, Inc. is a Delaware corporation qualified to do business in Maryland. Its principal place of business is at 974 Centre Road, Wilmington, Delaware 19805. In 2019, DuPont de Nemours, Inc. spun off a new, publicly traded company, Corteva, which currently holds Old DuPont as a subsidiary. In connection with these transfers, Corteva assumed certain Old DuPont liabilities, including those relating to PFAS.

28. Defendant DuPont de Nemours, Inc. (“New DuPont”), f/k/a DowDuPont Inc., is a Delaware corporation. Its principal place of business is at 974 Centre Road, Wilmington, Delaware 19805. In 2015, after Old DuPont spun off Chemours, Old DuPont merged

with The Dow Chemical Company and transferred Old DuPont's historic liabilities and assets to other entities, including New DuPont. In connection with these transfers, New DuPont assumed certain Old DuPont liabilities, including those relating to PFAS. New DuPont does business throughout the United States, including in Maryland.

29. Defendant Carrier Global Corporation (“Carrier”) is a Delaware corporation. Its principal place of business is at 13995 Pasteur Boulevard, Palm Beach Gardens, Florida 33418. Carrier is the indirect owner of Kidde-Fenwal, Inc.,<sup>1</sup> which is the successor in interest to Kidde Fire Fighting, Inc. (f/k/a Chubb National Foam, Inc. f/k/a National Foam System, Inc.) (collectively, “Kidde”). Kidde manufactured, marketed, and/or sold AFFF that was used or otherwise released in the State. Before it was owned by Carrier, United Technologies Corporation was Kidde's ultimate parent company. On or around April 3, 2020, United Technologies Corporation completed the spinoff of one of its reportable segments into Carrier, a separate publicly traded company. Pursuant to the Separation and Distribution Agreement By And Among United Technologies Corporation, Carrier Global Corporation and Otis Worldwide Corporation, Carrier assumed certain liabilities, including those related to the business operated by Kidde. Carrier's operations are classified into three segments: HVAC, Refrigeration, and Fire & Security. Carrier's Fire & Security products and services are sold under brand names that include

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<sup>1</sup> On May 14, 2023, Kidde-Fenwal, Inc. filed for bankruptcy in the case captioned *In re Kidde-Fenwal, Inc.*, Case No. 23-10638-LSS (D. Del. Bankr.). In light of the automatic stay of claims against Kidde-Fenwal, Inc. pursuant to 11 U.S.C. § 362, Kidde-Fenwal, Inc. is not named as a defendant herein.

Chubb and Kidde. At all relevant times, Carrier conducted business throughout the United States, including in Maryland. Carrier, through Kidde, manufactured, marketed, and/or sold AFFF that was used and otherwise released in the State.

30. Defendant Carrier Fire & Security Americas Corporation is a Delaware corporation. Its principal place of business is at 13995 Pasteur Boulevard, Palm Beach Gardens, Florida 33418. Carrier Fire is the indirect parent of Kidde. Following the spinoff transaction described above, Carrier Fire is also the successor in interest to UTC Fire & Security Americas Corporation, Inc., which previously owned Kidde as a subsidiary prior to April 2020. Carrier Fire, through Kidde, manufactured, marketed, and/or sold AFFF that was used or otherwise released in the State.

31. Defendant National Foam, Inc. is a Delaware corporation. Its principal place of business is at 141 Junny Road, Angier, North Carolina 27501. National Foam manufactures the Angus brand of products and is the successor in interest to Angus Fire Armour Corporation (collectively, “National Foam/Angus Fire”). National Foam/Angus Fire has manufactured, marketed, and/or sold AFFF used and otherwise released in the State.

32. Defendant Tyco Fire Products LP is a Delaware limited partnership qualified to do business in Maryland. Its principal place of business is at One Stanton Street, Marinette, Wisconsin 54143-2542. Tyco manufactures the Ansul brand of products and is the successor in interest to Ansul Company (together, “Tyco/Ansul”). Tyco/Ansul manufactured, marketed, and/or sold AFFF that was used and otherwise released in the State.

## JURISDICTION AND VENUE

33. This Court has subject matter jurisdiction over this matter under § 1-501 of the Courts and Judicial Proceedings Article and Maryland Rule 2-305(b) because this civil action seeks and demands money damages in excess of \$75,000.00.

34. This Court has personal jurisdiction over Defendants because they will be served with process in Maryland; are organized under the laws of Maryland; maintain their principal place of business in Maryland; transact business in Maryland; perform work in Maryland; contract to supply goods in Maryland; manufacture products or performed services in Maryland; caused tortious injury in Maryland; engage in persistent courses of conduct in Maryland; derive substantial revenue from manufactured goods, products, or services used or consumed in Maryland; and/or have interests in or use real property in Maryland.

35. Venue is proper in this Court as to all Defendants under §§ 6-201 and 6-202 of the Courts and Judicial Proceedings Article.

## FACTUAL ALLEGATIONS

### **A. The Harmful Impacts of AFFF on the Environment, Animals, and Human Health**

36. AFFF is a fire-suppressing foam used to extinguish flammable liquid fires, including jet-fuel fires, aviation-related fires, hangar fires, ship fires, and chemical fires, and is routinely used to train firefighters and test firefighting equipment.

37. When used as intended during a firefighting event or training exercise, AFFF can cause hundreds, if not thousands, of gallons of foamy water laced with

PFAS to enter the environment in a variety of ways, including but not limited to, through air, soils, sediment, surface water, and groundwater.

38. AFFF contains PFAS, which are highly fluorinated synthetic chemical compounds that include carbon chains containing at least one carbon atom on which all hydrogen atoms are replaced by fluorine atoms. The carbon-fluorine bond is one of the strongest bonds in chemistry and imparts to PFAS their unique chemical properties. The carbon-fluorine bond in PFAS generally does not occur in nature.

39. The PFAS family, including PFOS and PFOA, has characteristics that cause extensive and long-lasting environmental contamination, giving it the commonly used moniker, “forever chemicals.”

40. PFAS are mobile and persistent in the environment. Once introduced into the environment, PFAS quickly spread because they easily dissolve in water. PFAS also persist in the environment indefinitely because their multiple carbon-fluorine bonds, which are exceptionally strong and stable, are resistant to metabolic and environmental degradation processes. Similarly, removal of PFAS from drinking water sources requires specialized, and expensive, drinking water treatment systems. In short, once PFAS are used, they migrate through the environment, resist natural degradation, contaminate groundwater and drinking water, and are difficult and costly to remove.

41. PFAS bioaccumulate and biopersist in animals and are toxic to their health. Because several PFAS, including PFOS and PFOA, are excreted from individual organisms only slowly, ongoing low-level exposure results in a buildup of PFAS within the body. Thus, PFAS also can biomagnify, meaning that their con-

centration in organic tissue increases as they are consumed up the food chain.

42. PFAS are toxic and cause significant adverse effects to human health. The presence of these chemicals in drinking water presents a serious threat to public health. For example, PFOS exposure is associated with numerous adverse health effects in humans, including increases in serum lipids (i.e., high cholesterol); decreases in antibody response to vaccines; increases in risk of childhood infections; and adverse reproductive and developmental consequences, along with pregnancy-induced hypertension and preeclampsia. PFOA exposure is associated with many of these same adverse health effects but also with decreased birthweight, testicular and kidney cancers, ulcerative colitis, and thyroid disease.

43. The federal government has recently taken regulatory steps to address the risks presented by PFOS and PFOA. On June 15, 2022, EPA lowered the Health Advisory Limits for PFOA and PFOS. The new interim Health Advisory Limits are 0.004 parts per trillion (“ppt”) for PFOA and 0.02 ppt for PFOS. In March 2023, EPA released proposed drinking water standards for PFOS and PFOA, pursuant to the Safe Drinking Water Act. 88 Fed. Reg. 18638 (Mar. 29, 2023). EPA proposed to establish maximum contaminant levels for PFOS and PFOA at 4 ppt, the lowest amount that can be reliably measured today based on available technology.

## **B. Defendants’ History Manufacturing and Selling AFFF Products**

44. For decades, Defendants have advertised, offered for sale, and sold AFFF Products to federal, state, and territory government entities, including the

military, counties, municipalities, airports, fire departments, and other governmental or quasi-governmental entities, for use in the State.

45. 3M began to produce PFOS and PFOA by electrochemical fluorination in the 1940s. In the 1960s, 3M used its fluorination process to develop AFFF. 3M manufactured, marketed, and sold AFFF from the 1960s to the early 2000s; 3M is the largest single manufacturer of AFFF.

46. Other Defendants subsequently began manufacturing AFFF. National Foam and Tyco/Ansul began to manufacture, market, and sell AFFF in the 1970s; Angus Fire and Chemguard began to manufacture, market, and sell AFFF in the 1990s; and Buckeye began to manufacture, market, and sell AFFF in the 2000s.

47. Other Defendants manufactured the fluorosurfactants used to make AFFF. Arkema's predecessors supplied fluorosurfactants for AFFF beginning in the 1970s; Ciba Corporation ("Ciba") supplied fluorosurfactants used to manufacture AFFF beginning in the 1970s; and Dynax supplied fluorosurfactants used to manufacture AFFF beginning in the 1990s.

48. Still other Defendants acquired the business of supplying fluorosurfactants for AFFF through corporate acquisitions. Chemguard acquired Ciba's fluorosurfactants business in 2003, after which it took on the supply of fluorosurfactants used to manufacture AFFF. Old DuPont acquired Arkema's predecessors' fluorosurfactants business in 2002, after which it too supplied fluorosurfactants used to manufacture AFFF. Later, after Chemours' spinoff from Old DuPont, Chemours continued to supply fluorosurfactants used to manufacture AFFF.

49. At varying times, Defendant Old DuPont more generally supplied the fluorochemicals used to make AFFF.

50. From the 1960s through 2001, the U.S. Department of Defense purchased AFFF exclusively from 3M and Tyco/Ansul.

51. In 2000, 3M announced it was phasing out its manufacture of PFOS, PFOA, and related products, including AFFF. In communications with EPA at that time, 3M stated that it had “concluded that . . . other business opportunities were more deserving of the company’s energies and attention.” In its press release announcing the phase out, 3M stated, “our products are safe” and that 3M’s decision was “based on [its] principles of responsible environmental management.” 3M further stated that “the presence of these materials at . . . very low levels does not pose a human health or environmental risk.” 3M made no mention in its press releases or regulatory statements of the risks to human health and the environment posed by the chemicals, although those risks were known to it at the time.

52. After 3M exited the AFFF market, other Defendants continued to manufacture and sell AFFF Products that contained PFAS. Indeed, Old DuPont saw an opportunity to obtain a share of the AFFF market when 3M exited, even though Old DuPont had decades of evidence that PFAS were highly toxic and dangerous in the environment.

53. 3M manufactured its AFFF Products through an electrochemical fluorination process that makes it possible to “fingerprint” the PFAS that originated in 3M products.

54. The remaining Defendants’ AFFF Products contain or break down into PFAS, i.e., PFOA, but they

were created using a telomerization process, which makes it very difficult to chemically trace the PFOA as being manufactured, distributed, or sold by a particular Defendant. Due to this fungibility, these Defendants are in the best position to identify the original manufacturer of the AFFF Products released at any particular site.

55. Any inability of the State to identify the original manufacturer of the specific AFFF Products released into the State's natural resources in particular instances at particular sites is a result of the fungibility of the products and not as a result of any action or inaction by the State.

56. Defendants knew their customers stored large stockpiles of AFFF Products. In fact, Defendants marketed their AFFF Products by promoting their long shelf life. Even after Defendants fully understood the toxicity of PFAS—and their deleterious impacts when released into the environment through the intended use of AFFF Products as Defendants had marketed them to be used—Defendants concealed the true nature of PFAS.

57. Even while Defendants phased out production or transitioned to other formulas, they did not act to remove their harmful products from the market, advise their customers that they should not use AFFF Products that contained PFAS, or advise their customers that they needed to properly dispose of their stockpiles of AFFF Products or how to do so. Nor did Defendants warn their customers or the State that the use of AFFF Products would harm the environment, endanger human health, or result in substantial costs to investigate and clean up groundwater contamination and injuries to other natural resources.

58. Accordingly, for many years after their original sale, AFFF Products were still being applied directly to the ground and washed into sediments, soils, and waters of the State, harming the environment and endangering human health.

**1. 3M Knew, or Should Have Known, of the Harm Caused by PFAS, and 3M Attempted to Suppress Negative Information About These Chemicals.**

59. 3M has known for decades that the PFAS contained in its AFFF are toxic and adversely affect the environment and human health.

60. By 1956, studies showed that 3M's PFAS were found to bind to proteins in human blood, resulting in bioaccumulation of those compounds in the human body.

61. 3M knew as early as 1960 that its PFAS waste could leach into groundwater and otherwise enter the environment. An internal 3M memorandum from 1960 described 3M's understanding that such wastes "[would] eventually reach the water table and pollute domestic wells."

62. As early as 1963, 3M knew that its PFAS products were highly stable in the environment and did not degrade after disposal.

63. By no later than 1970, 3M was aware that its PFAS products were hazardous to marine life. Around this time, 3M abandoned a study of its fluorochemicals after the company's release of the chemicals during the study caused severe pollution of nearby surface waters.

64. By the 1970s, 3M had become concerned about the risks posed to the general population by exposure to 3M's fluorochemicals.

65. In 1975, 3M found there was a "universal presence" of PFAS (PFOA and/or PFOS) in blood serum samples taken from across the United States. Since PFAS are not naturally occurring, this finding reasonably alerted 3M to the high likelihood that its products were a source of this PFAS—a scenario 3M discussed internally but did not share outside the company. This finding also alerted 3M to the likelihood that PFAS are mobile, persistent, bioaccumulative, and biomagnifying, as those characteristics would explain the presence of PFAS in human blood.

66. As early as 1976, 3M began monitoring for the presence of PFAS within the blood of its employees because the company was concerned about the health effects of PFAS.

67. In 1978, 3M conducted PFOS and PFOA studies in monkeys and rats. All monkeys died within the first few days or weeks after being given food contaminated with PFOS. The studies also showed that PFOS and PFOA affected the liver and gastrointestinal tract of the species tested.

68. In the late 1970s, 3M studied the fate and transport characteristics of PFOS in the environment, including in surface water and biota. A 1979 report drew a direct line between effluent from 3M's Decatur, Alabama plant and fluorochemicals bioaccumulating in fish tissue taken from the Tennessee River adjacent to the 3M plant.

69. According to a 3M environmental specialist who resigned his position due to the company's inaction over PFOS's environmental impacts, 3M had resisted

calls from its own ecotoxicologists going back to 1979 to perform an ecological risk assessment on PFOS and similar chemicals. At the time of the specialist's resignation in 1999, 3M continued its resistance.

70. In 1983, 3M scientists opined that concerns about PFAS "give rise to legitimate questions about the persistence, accumulation potential, and ecotoxicity of fluorochemicals in the environment."

71. In 1984, 3M's internal analyses demonstrated that fluorochemicals were likely bioaccumulating in 3M's employees.

72. Despite its understanding of the hazards associated with the PFAS in its products, 3M actively sought to suppress scientific research on the hazards associated with them and mounted a campaign to control the scientific dialogue on the fate, exposure, analytics, and effects to human health and the ecological risks of PFAS.

73. At least one scientist funded by 3M saw his goal as "keep[ing] 'bad' papers [regarding PFAS] out of the literature" because "in litigation situations," those articles "can be a large obstacle to refute."

74. 3M used a variety of tactics to deceive others and to hide the negative effects of PFAS. For example, in 1999, Dr. Rich Purdy, a former environmental specialist with 3M, wrote a letter detailing, among other things (i) 3M's tactics to prevent research into the adverse effects of its PFOS, (ii) 3M's submission of misinformation about its PFOS to EPA, (iii) 3M's failure to disclose substantial risks associated with its PFOS to EPA, (iv) 3M's failure to inform the public of the widespread dispersal of its PFOS in the environment and population, (v) 3M's production of chemicals it knew posed an ecological risk and a danger to

the food chain, and (vi) 3M's attempts to keep its workers from discussing the problems with the company's fluorochemical projects to prevent their discussions from being used in the legal process.

75. Dr. Purdy described PFOS as "the most insidious pollutant since PCB [polychlorinated biphenyl]. It is probably more damaging than PCB because it does not degrade, whereas PCB does; it is more toxic to wildlife; and its sink in the environment appears to be biota and not soil and sediment, as is the case with PCB."

76. Despite its knowledge of the risks associated with exposures to its PFAS products, when 3M announced it would phase out its PFOS, PFOA, and related products (including AFFF) in 2000, it falsely asserted "our products are safe," instead of disclosing what it knew about the substantial threat posed by PFOS and PFOA.

77. 3M knew, or should have known, that its AFFF, in its intended use, would release PFAS that would dissolve in water; reach water systems and the environment in the State; resist degradation; bioaccumulate and biomagnify; and harm ecological, animal, and human health in the State due to their toxicity. Such knowledge was accessible to 3M, but not to the State until 3M's acts and omissions came to light and the State developed its own understanding of the toxicity of PFAS.

## **2. Old DuPont Knew, or Should Have Known, of the Harms Caused by PFOA, and It Concealed Its Knowledge from Regulators and Users of AFFF Products.**

78. In the 1950s, Old DuPont began using PFOA and other PFAS in its specialty chemical productions applications, including household products like Tef-

lon, and quickly thereafter developed an understanding of the dangers of using these chemicals.

79. During this time, Old DuPont was aware that PFOA was toxic to animals and humans and that it bioaccumulates and persists in the environment. Old DuPont also knew that the PFAS present in Teflon and its other specialty chemical products would proliferate and contaminate the environment. Old DuPont was further aware that industrial facilities related to products like Teflon emitted and discharged PFOA and other PFAS in large quantities into the environment and that scores of people had been exposed to its PFAS, including via public and private drinking water supplies.

80. Old DuPont scientists issued internal warnings about the toxicity associated with its PFOA products as early as 1961, including that PFOA caused adverse liver reactions in rats and dogs. Old DuPont's Toxicology Section Chief opined that such products should be "handled with extreme care" and that contact with the skin should be "strictly avoided."

81. In 1978, based on information it received from 3M about elevated and persistent organic fluorine levels in workers exposed to PFOA, Old DuPont initiated a plan to review and monitor the health conditions of potentially exposed workers in order to assess whether any negative health effects were attributable to PFOA exposure. This monitoring plan involved obtaining blood samples from the workers and analyzing the samples for the presence of fluorine.

82. By 1979, Old DuPont had data indicating that its workers exposed to PFOA had a significantly higher incidence of health issues than did unexposed workers. Old DuPont did not share these data or the re-

sults of its worker health analysis with the general public or government entities, including the State, at that time.

83. The following year, Old DuPont internally confirmed, but did not make public, that PFOA “is toxic,” that humans accumulate PFOA in their tissues, and that “continued exposure is not tolerable.”

84. Not only did Old DuPont know that PFOA accumulated in humans, it was also aware that PFOA could cross the placenta from an exposed mother to her gestational child. In 1981, Old DuPont conducted a blood sampling study of pregnant or recently pregnant employees. Of the eight women in the study who worked with fluoropolymers, two—or 25%—had children with birth defects in their eyes or face, and at least one had PFOA in the umbilical cord.

85. Old DuPont reported to EPA in March 1982 that results from a rat study showed PFOA crossing the placenta if present in maternal blood, but Old DuPont concealed the results of the study of its own plant workers.

86. In addition to its knowledge of PFOA’s toxicity danger, Old DuPont was also aware that PFAS were capable of contaminating the surrounding environment, leading to human exposure. Old DuPont was aware, no later than 1984, that PFOA is biopersistent.

87. Old DuPont was long aware that the PFAS it was releasing from its facilities could leach into groundwater used for public drinking water. After obtaining data on these releases and the consequent contamination near Old DuPont’s Washington Works plant in West Virginia, Old DuPont held a 1984 meeting at its corporate headquarters in Wilmington, Delaware to discuss health and environmental issues related to

PFOA. Old DuPont employees in attendance spoke of the PFOA issue as “one of corporate image, and corporate liability.” They were resigned to Old DuPont’s “incremental liability from this point on if we do nothing” because Old DuPont was “already liable for the past 32 years of operation.” They also stated that the “legal and medical [departments within Old DuPont] will likely take the position of total elimination” of PFOA use in Old DuPont’s business and that these departments had “no incentive to take any other position.”

88. Old DuPont’s own Epidemiology Review Board (“ERB”) repeatedly raised concerns about Old DuPont’s statements to the public that there were no adverse health effects associated with human exposure to PFOA. For example, in February 2006, the ERB “strongly advise[d] against any public statements asserting that PFOA does not pose any risk to health” and questioned “the evidential basis of [Old DuPont’s] public expression asserting, with what appears to be great confidence, that PFOA does not pose a risk to health.”

89. In 2004, EPA filed an administrative enforcement action against Old DuPont based on its failure to disclose toxicity and exposure information for PFOA, in violation of the federal Toxic Substances Control Act (“TSCA”) and Resource Conservation and Recovery Act (“RCRA”). Old DuPont eventually settled the lawsuit by agreeing to pay over \$16 million in civil administrative penalties and undertake supplemental environmental projects. EPA called the settlement the “largest civil administrative penalty EPA has ever obtained under any federal environmental statute.”

90. Despite its knowledge regarding PFOA’s toxicity, Old DuPont continued to claim that PFOA posed no health risks and, in fact, entered the market for the sale of AFFF after 3M announced its phase out of

PFOA and PFOS in 2000 (due to its knowledge of the compounds' toxicity and threats of further enforcement action by EPA). In 2008, Old DuPont literature was quoted in an Industrial Fire World magazine article regarding AFFF as stating that Old DuPont "believes the weight of evidence indicates that PFOA exposure does not pose a health risk to the general public" because "there are no human health effects known to be caused by PFOA."

### **3. Old DuPont Worked in Concert with Other Defendants and the Firefighting Foam Coalition to Protect AFFF Products from Scrutiny.**

91. The Firefighting Foam Coalition ("FFFC"), a Virginia-based national AFFF trade group, was formed in 2001 to advocate for AFFF's continued viability. National Foam, Kidde-Fenwal, Tyco/Ansul, Chemguard, Dynax, Old DuPont, and Chemours (collectively, "FFFC Members") were members of the FFFC, as were others in the industry. Through their involvement in the FFFC and other trade associations and groups, FFFC Members shared knowledge and information regarding PFOA and its precursors released from AFFF Products among themselves but did not share that information with the general public or governmental entities, including the State.

92. FFFC Members worked together to protect AFFF Products from scrutiny, including by coordinating their messaging on PFOA's toxicological profile and on their AFFF Products' contribution of PFOA into the environment. All of this was done as a part of the FFFC's efforts to shield its members and the AFFF industry from the detrimental impact of the public and government entities learning the truth about the harms of PFOA to the environment and human health.

FFFC Members regularly published newsletters promoting their AFFF Products, while also regularly attending trade group conferences to disseminate misleading messaging.

93. FFFC Members' coordinated messaging and publishing efforts were meant to dispel concerns about the impact AFFF Products had on the environment and human health. They worked in concert to conceal from the general public and governmental entities, including the State, the risks of their AFFF Products and the PFOA and its precursors contained therein.

94. FFFC Members repeated the same messaging for years, with the result that only one PFAS chemical—PFOS, which FFFC Members' products did not contain—was taken off the market.

95. FFFC Members knew, however, that their messaging regarding their AFFF Products was false. Each of the FFFC Members knew that PFOA was released directly into the environment from the use of their AFFF Products and that PFOA presented a similar threat to the environment and public health as that posed by PFOS. While FFFC Members knew this, it was not similarly understood by the public and government entities, including the State.

#### **4. The Remaining Defendants Knew, or Should Have Known, of the Harm Caused by the Release of PFOA from Their AFFF Products.**

96. The remaining Defendants, i.e., all Defendants that are not 3M, Old DuPont, or the FFFC Members, knew, or should have known, that their AFFF Products containing PFAS would harm the environment

and human health when used in their common and/or intended use.

97. The remaining Defendants knew, or should have known, that their AFFF Products released PFAS that would dissolve in water; reach water systems and the environment in the State; resist degradation; bioaccumulate and biomagnify; and harm ecological, animal, and human health in the State.

98. The State, by contrast, did not have access to such information and thus was not made aware of the dangers that the Defendants' AFFF Products presented.

### **C. Maryland's Affected Natural Resources**

99. Maryland law establishes the State's right and obligation to protect its natural resources. As set forth by the statutory sections below, the State is the steward of its environment.

100. "The protection, preservation, and enhancement of the State's diverse environment is necessary for the maintenance of the public health and welfare and the continued viability of the economy of the State and is a matter of the highest public priority." Md. Code Ann., Nat. Res. § 1-302(b).

101. Pursuant to statute, "[e]ach person has a fundamental and inalienable right to a healthful environment[.]" *Id.* § 1-302(d).

102. "Because the quality of the waters of this State is vital to the public and private interests of its citizens and because pollution constitutes a menace to public health and welfare, creates public nuisances, is harmful to wildlife, fish and aquatic life, and impairs domestic, agricultural, industrial, recreational, and other legitimate beneficial uses of water, and the prob-

lem of water pollution in this State is closely related to the problem of water pollution in adjoining states, it is State public policy to improve, conserve, and manage the quality of the waters of the State and to protect, maintain, and improve the quality of water for public supplies, propagation of wildlife, fish and aquatic life, and domestic, agricultural, industrial, recreational, and other legitimate beneficial uses.” Env’t § 4-402.

103. The “quality of the waters of this State is vital to the interests of the citizens of this State[.]” *Id.* § 9-302. “[B]ecause pollution is a menace to public health and welfare, creates public nuisances, harms . . . and impairs domestic, agricultural . . . and other legitimate beneficial uses of water . . . it is the policy of this State: (1) To improve, conserve, and manage the quality of the waters of this State; (2) To protect, maintain, and improve the quality of water for public supplies . . . and (3) To provide that no waste is discharged into any waters of this State . . . to protect the legitimate beneficial uses of the waters of this State.” *Id.*

104. “The General Assembly determines and finds that lands and waters comprising the watersheds of the State are great natural assets and resources.” *Id.* § 4-101.

105. “It is the policy of the State of Maryland to: . . . (3) Protect the State’s natural resources, including the fish and wildlife of the Potomac River, the Chesapeake Bay, and all other waters and waterways of the State.” *Id.* § 5-5B-03.

106. The “waters of the State” include both surface and underground waters within the boundaries of the State or subject to its jurisdiction. *See id.* § 5-101.

107. “The General Assembly finds that nontidal wetlands play important roles in the preservation and

protection of the Chesapeake Bay and other waters of the State.” *Id.* § 5-902.

108. “The General Assembly [also] declares that the Chesapeake Bay and the tidewater portions of its tributaries are a great natural asset and resource to the State and its counties.” *Id.* § 5-1101(b).

109. Under the Maryland Environmental Standing Act, the “General Assembly finds and declares that the natural resources . . . of the State of Maryland are in danger of irreparable harm occasioned by the use and exploitation of the physical environment. It further finds that improper use and exploitation constitute an invasion of the *right of every resident of Maryland to an environment free from pollution* to the extent possible. It further finds that the courts of the State of Maryland are an appropriate forum for seeking the protection of the environment and that an unreasonably strict procedural definition of ‘standing to sue’ in environmental matters is not in the public interest.” Nat. Res. § 1-502 (emphasis added).

110. PFOS and PFOA contamination from AFFF Products has injured and continues to injure the waters and property of the State and the property, health, safety, and welfare of Maryland’s citizens.

111. The State owns lands throughout Maryland that it maintains for the benefit of the public, such as parks and wildlife management areas, as well as airports, ports, and firefighting training facilities.

112. The State holds its waters in trust for the State’s citizens and has an obligation to protect public interests in these waters through, among other things, maintaining the environmental quality of its waters.

113. The State's natural resources include its waters, such as springs, streams, wetlands, groundwater, ocean waters, and estuaries, within its boundaries or otherwise subject to its jurisdiction.

114. Natural resources and State-owned properties have been injured by past and ongoing contamination caused by PFAS attributable to AFFF Products.

115. PFAS attributable to AFFF Products have been found in groundwater, surface water, sediments, and soils in the State where AFFF Products were used, stored, disposed of, or otherwise discharged. Furthermore, the State anticipates that additional contamination of natural resources from PFAS attributable to Defendants' AFFF Products will be uncovered as its investigation continues.

116. Contamination from PFAS attributable to AFFF Products persists in the State's natural resources, i.e., it does not break down in the environment; damages their intrinsic, i.e., existence and passive use, value; and impairs the public benefits derived from access to, use, and enjoyment of the State's natural resources.

117. The current and future residents of the State have a substantial interest in having natural resources uncontaminated by PFAS, as do the tourism, recreation, fishing, and other industries that rely on maintaining a clean environment for their businesses, patrons, and tourists to visit and enjoy.

## **1. Groundwater**

118. Groundwater is a critical and finite ecological natural resource for the people of the State, as the State relies on groundwater for drinking, irrigation, and agriculture.

119. Maryland relies on groundwater for drinking water supplies. Groundwater is the most commonly used source of water supply, and some regions of the State (Southern Maryland and the Eastern Shore) rely exclusively on groundwater for their water needs. That is, nearly 3,153 of the State's 3,242 public water systems rely exclusively on groundwater. Approximately one-third of Marylanders rely on groundwater as their source of drinking water.

120. In addition to serving as a source of water for drinking, agriculture, and other uses, groundwater is an integral part of the overall ecosystem in the State. Groundwater provides base flow to streams and influences surface water quality, wetland ecological conditions, and the health of aquatic ecosystems. Groundwater also keeps water in rivers during times of drought.

121. Groundwater promotes the movement of water and nutrients within and among the State's bodies of water and wetlands, prevents saltwater intrusion, provides groundwater stabilization, and helps to maintain critical water levels in freshwater wetlands.

122. Groundwater and the State's other natural resources are unique resources that help sustain the State's economy.

123. AFFF Products are a significant source of PFAS contamination in groundwater; they mobilize in and through groundwater sources to reach areas beyond the location of the AFFF Products' use. This contamination adversely affects the groundwater.

124. Investigations in the State have revealed elevated levels of PFAS in the groundwater and specifically in potable groundwater.

125. Investigation of contamination from AFFF Products in groundwater in the State is ongoing.

## **2. Surface Water**

126. Surface water is a critical ecological resource of the State. Approximately 10% of the Community Water Systems (around 50 systems) in Maryland rely on surface water, yet these surface water systems serve about 80% of the population *using public water systems*.

127. Surface water in the State is also used for recreational, industrial, agricultural, and other commercial purposes. Specific uses include swimming, boating, recreational fishing and crabbing, commercial fishing and crabbing, and oyster farming.

128. Surface water additionally provides aesthetic and ecological values, including supporting aquatic ecosystems, nearby communities, and the residents of the State.

129. PFAS are mobile and persistent in surface water and can spread great distances from the point of discharge. PFAS contamination attributable to the use of AFFF Products in the State has reached and adversely affected surface water throughout the State.

130. Investigation of contamination from AFFF Products in surface water in the State is ongoing.

## **3. Coastal Resources and Estuaries**

131. Maryland has more than 3,000 miles of shoreline, most of which is along Chesapeake Bay and its tidal tributaries and the Atlantic Ocean.

132. Chesapeake Bay is the largest estuary in the United States.

133. Estuaries are partially enclosed bodies of water surrounding coastal habitats where saltwater from the ocean mixes with fresh water from rivers and streams within the State.

134. Estuaries provide habitat for many kinds of marine life and commercially important species including striped bass, blue crabs, and oysters.

135. Use of AFFF Products at locations in the State have resulted in PFAS contamination of the State's estuaries and surrounding lands. These coastal habitats and estuaries are some of the most imperiled marine habitats due to the contamination caused by AFFF Products and they serve as long-term reservoirs of PFAS, where PFAS are stored and released over time, impacting the estuaries and increasing PFAS concentrations in the cells and tissues of the shellfish and other wildlife that people consume.

136. The State is continuing its investigation of AFFF Products-related PFAS contamination in the coastal areas, estuaries, and surrounding lands in the State.

#### **4. Sediments, Soils, and Submerged Land**

137. The State's sediments, soils, and submerged lands are critical components of the State's ecological resources. Sediments, soils, and submerged lands sustain a wide diversity of plants and animals that are essential to a healthy ecosystem. They provide a living substrate for submerged and emergent flora, which in turn support diverse invertebrate species, wading birds, and fish and shellfish populations.

138. PFAS contamination attributable to the use of AFFF Products in the State has reached and adversely affected soil and sediment throughout the State.

Additionally, PFAS in the soil column serve as a continuing source of contamination of groundwater and other resources of the State. PFAS in sediments, as well as in surface water, support the potential increase of PFAS concentrations in fish.

139. Investigation of contamination from AFFF Products in sediments, soils, and submerged lands in the State is ongoing.

## **5. Biota**

140. Biota, including the State's flora and fauna, are critical ecological resources.

141. Contamination attributable to PFAS from AFFF Products poses a risk to plants and animals because PFAS can cause damage to the liver and immune system in animals and has been shown to damage cell structure and organelle functions in plants.

142. Natural resource injuries to biota in the State negatively impact not only the individual species directly involved, but also the capacity of the injured ecosystems to regenerate and sustain life into the future.

143. Moreover, impacts to fish within the State likely due to AFFF Products have been documented. For example, on October 26, 2020, MDE collected Sunfish and Yellow Bullhead Catfish samples from locations in Piscataway Creek in Prince George's County because Joint Base Andrews, which is located adjacent to the upper reaches of the creek, is a known source of AFFF, and an area near the mouth of Piscataway Creek is popular for recreational fishing. The results from the fish tissue collection showed elevated

levels of PFOS in Sunfish collected west of Route 210 in the nontidal portion of the creek.

144. Because this warranted further investigation, fish tissue and water samples were collected from the area in 2021 to, among other things, validate the 2020 measurements in Sunfish. MDE found elevated concentrations of PFOS in non-tidal Redbreast Sunfish, Yellow Bullhead Catfish, and tidal Largemouth Bass, leading to Maryland's first fish consumption advisory based on PFAS.

145. The MDE Piscataway Fish Consumption Advisory for PFOS states that “adults and children should consume no more than 1 meal per month of Redbreast Sunfish from the affected area. MDE also recommends consumption of no more than 7 meals per month (for children only) of Yellow Bullhead Catfish. Finally, MDE recommends that adults should limit their consumption of Largemouth Bass to 3 meals per month, and children should be limited to 2 meals per month.”

146. The advisories concerning Redbreast Sunfish and Largemouth Bass represent two of the five “avoid” advisories for PFOS, and they are the only two such advisories issued for the general population. The other “avoid” advisories were issued only for children under six.

147. PFAS contamination attributable to Defendants' AFFF Products has reached and adversely affected biota in the State, such as fish and osprey that live in and depend on water bodies contaminated with PFAS from AFFF Products.

148. Investigation of AFFF Products-related contamination in biota in the State is ongoing.

**D. AFFF Products Have Resulted in PFAS Contamination in the State, Including Sources of Drinking Water, and Defendants Are Liable for Costs to Remediate and Restore Contaminated Natural Resources.**

149. The State's natural resources have been contaminated with PFAS through the use of AFFF Products, and investigation of that contamination is ongoing. Defendants' manufacturing, marketing, and selling of AFFF Products in the State, including to the U.S. military, have been a substantial factor in causing PFAS contamination and injuries to the natural resources of the State. As investigation continues, additional locations are identified, and on- and offsite AFFF Products-related contamination is delineated, it is expected that significant further PFAS contamination from AFFF Products will be discovered.

150. Investigation thus far has revealed contamination at military bases including: the Naval Research Lab, Chesapeake Bay Detachment; Joint Base Andrews; Fort Meade; former Fort Meade Tipton Airfield; Webster Field Annex of Naval Air Station Patuxent River; Maryland Air National Guard at Martin State Airport; the former Navy Bayhead Annex in Annapolis; the former Naval Research Lab in White Oak; Aberdeen Proving Ground; Naval Air Station Patuxent River; and the former Brandywine Defense Reutilization and Marketing Office.

151. At Naval Research Lab, Chesapeake Bay Detachment, for example, the Navy reportedly tested the use of AFFF at the site beginning in 1968. In 2017, the Navy conducted a site investigation and discovered a large PFAS plume in the shallow aquifer. Groundwater sampling results found up to 234,000 ppt of PFOS.

PFAS have been detected in private drinking water wells offsite.

152. At Joint Base Andrews, a site investigation found surface soil of up to 17,000,000 ppt PFOS and up to 150,000 ppt PFOA; subsurface soil up to 21,000 ppt PFOS and up to 5,900 ppt PFOA; groundwater of up to 38,400 ppt PFOS and PFOA combined; surface water up to 8,510 ppt PFOS and PFOA combined; and sediment up to 27,000 ppt PFOS and up to 610 ppt PFOA. As alleged above in ¶¶ 143-46, testing in Piscataway Creek revealed PFAS contamination, and a fish consumption advisory was issued.

153. As investigation of AFFF Products-related contamination continues at military bases, at other types of sites, and in impacted natural resources, further contamination is anticipated to be found. This investigation is necessary to ascertain the scope of AFFF Products-related contamination and to return the affected natural resources to levels that are safe for human health and the environment and to the condition they were in prior to the impact of these contaminants.

154. Each Defendant has caused PFAS contamination in the State through the manufacture, marketing, and sale of AFFF Products.

155. Each Defendant's AFFF Products are a substantial factor in causing the injury inflicted on the State's natural resources.

156. Defendants are liable for the cost of investigation, remediation, and restoration of all the property, soils, sediments, waters, and other natural resources contaminated with PFAS from AFFF Products, as well as for the State's loss of past, present, and future uses of such contaminated natural resources.

157. PFAS contamination in groundwater and surface water is likewise affecting the State's drinking water sources. Defendants are liable for all of the costs necessary to investigate and treat (in perpetuity) any and all drinking water wells and sources of drinking water adversely affected by PFAS from AFFF Products in the State.

### **E. The Regulation of AFFF Within the State of Maryland**

158. Maryland began regulating AFFF in 2020, with the enactment of Chapter 276 of the General Assembly's legislative session that year.

159. Under current Maryland law, and with certain limited exceptions, i.e., at airports, ports, refineries, chemical plants, terminals, and when AFFF is required to be used by federal law, "on or after January 1, 2024, a person may not use, manufacture, or knowingly sell, offer for sale, or distribute for sale or use Class B fire-fighting foam that contains intentionally added PFAS chemicals in the State." Env't § 6-1603(a).

160. Under § 6-1603(c) of the Environment Article, "(1) A person that is authorized . . . to use Class B fire-fighting foam that contains intentionally added PFAS chemicals: (i) May not release the foam directly into the environment, including through unsealed ground, soakage pits, waterways, or uncontrolled drains; and (ii) Shall: 1. Fully contain all releases on site; 2. Implement containment measures, including bunds and ponds, that are controlled and impervious to PFAS chemicals and do not allow firewater, wastewater, runoff, and other wastes to be released into the environment, including soils, groundwater, waterways, and stormwater; 3. Dispose of all firewater, wastewater, runoff, and other wastes in a way that prevents

releases into the environment; 4. Within 5 days after a release in violation of item (i) of this paragraph, report the release to the Department [of the Environment], including information on the identity of the foam, the quantity used, the total PFAS concentration, and the form of any waste that contains PFAS chemicals; and 5. Maintain documentation on any measures taken under this paragraph.” *Id.* § 6-1603(c).

161. Moreover, “(1) On request of a fire department in the State, the Department shall take back from the fire department Class B fire-fighting foam that contains intentionally added PFAS chemicals. (2) The Department shall dispose of fire-fighting foam received under this subsection in a manner consistent with this subtitle. (3) For fiscal year 2024, the Governor shall include in the annual budget bill an appropriation of \$500,000 to the Department for the purpose of taking back and disposing of fire-fighting foam under this section.” *Id.* § 6-1603(e).

162. Finally, “[a] person may not dispose of a Class B fire-fighting foam that contains intentionally added PFAS chemicals: (1) Using incineration, including by burning, combustion, pyrolysis, gasification, thermal oxidation, acid recovery furnace or oxidizer, ore roaster, cement kiln, lightweight aggregate kiln, industrial furnace boiler, and process heater; or (2) In a landfill.” *Id.* § 6-1604.

## **F. Old DuPont’s Multi-Step, Years-Long Fraudulent Scheme to Isolate Its Valuable Tangible Assets from Its PFAS Liabilities and Hinder Creditors**

163. As EPA, states, and private plaintiffs became aware of the hazards presented by the presence of PFAS in AFFF, Old DuPont, beginning in or about 2013 and

continuing through at least June 2019, planned and executed a series of corporate restructurings designed to separate its valuable assets from its billions of dollars of legacy environmental liabilities, especially those arising from PFOA and other PFAS contamination.

164. Old DuPont's potential cumulative liability related to PFOA and other PFAS, including PFAS-containing AFFF, is likely billions of dollars due to the persistence, mobility, bioaccumulative properties, and toxicity of these "forever" compounds, as well as Old DuPont's decades-long attempt to hide the dangers of PFAS from the public.

165. For more than five decades, Old DuPont manufactured, produced, or utilized PFOA and other PFAS at plants in New Jersey, West Virginia, and North Carolina, among others. As alleged above, throughout this time, Old DuPont was aware that PFOA was toxic, harmful to animals and humans, bioaccumulative, and persistent in the environment. Old DuPont also knew that it had emitted and discharged PFOA and other PFAS in large quantities into the environment and that scores of people had been exposed to PFOA, including through public and private drinking water supplies, like those in Maryland, which Old DuPont had contaminated. Thus, Old DuPont knew, or reasonably should have known, that it faced billions of dollars in liabilities arising from its use of PFAS, including PFAS-containing AFFF.

166. Beginning, at least, in 1999 and continuing to the present, Old DuPont has faced mounting litigation arising from its historic manufacture, production and use of PFAS. In 1999, members of the Tennant family, who owned property affected by contamination from a landfill that had accepted PFOA wastes

from Old DuPont's nearby Washington Works plant, sued Old DuPont in West Virginia federal court.

167. Old DuPont's in-house counsel were very concerned about Old DuPont's exposure to liability related to PFOA. In November 2000, one of Old DuPont's in-house lawyers handling PFOA issues wrote to his co-counsel: "We are going to spend millions to defend these lawsuits and have the additional threat of punitive damages hanging over our head. Getting out in front and acting responsibly can undercut and reduce the potential for punitives. Our story is not a good one, we continued to increase our emissions into the river in spite of internal commitments to reduce or eliminate the release of this chemical into the community and the environment because of our concern about the biopersistence of this chemical."

168. In 2005, after settling the Tennant case, Old DuPont settled claims brought by EPA for violations of TSCA and RCRA related to its failure to disclose toxicity and exposure information for PFOA, as discussed in ¶ 89.

169. Also in 2005, a West Virginia court entered a final order approving a 2004 settlement of a class action lawsuit filed against Old DuPont on behalf of 70,000 Ohio and West Virginia residents who had been exposed to PFOA that Old DuPont had discharged from Washington Works.

170. Under the terms of the settlement, which provided class benefits in excess of \$300 million, Old DuPont agreed to fund a panel of scientists (the "Science Panel") to confirm which diseases were linked to PFOA exposure, to filter local water from impacted public and private drinking water supplies, and to pay up to \$235 million for medical monitoring of the affected

community for any diseases that the Science Panel linked to PFOA exposure. The settlement also provided that any class members who developed the diseases linked by the Science Panel would be entitled to sue for personal injury, and Old DuPont agreed not to contest the fact that the class members' exposure to PFOA could cause each of the linked diseases.

171. By 2012, after seven years of studies, the Science Panel confirmed "probable links" between exposure to PFOA and the following serious human diseases: medically diagnosed high cholesterol, ulcerative colitis, pregnancy induced hypertension, thyroid disease, testicular cancer, and kidney cancer.

172. After the Science Panel confirmed such probable links with human disease, more than 3,500 personal injury claims were filed against Old DuPont in Ohio and West Virginia by class members with one or more of those linked diseases under the terms of the 2005 class settlement. In 2013, these claims were consolidated in federal multidistrict litigation styled *In Re: E. I. du Pont de Nemours and Company C-8 Personal Injury Litigation* (MDL No. 2433) in the U.S. District Court for the Southern District of Ohio (the "Ohio MDL"). Forty bellwether trials were scheduled to take place in 2015 and 2016.

173. The first three trials in the Ohio MDL ended in plaintiffs' verdicts. Each jury awarded damages in a larger amount than the one before it: the first awarded \$1.6 million; the second awarded \$5.6 million; and the third awarded \$12.5 million. The second and third jury awards included punitive damages. Old DuPont then settled the remaining, pending claims for \$670.7 million dollars.

174. Old DuPont knew or should have known that it faced substantial exposure at these trials, as well as

liability related to PFOA and other PFAS contamination caused by its manufacturing operations at other sites throughout the country, its releases and disposal of PFAS chemicals globally, and for toxic PFAS chemicals in its own products and the myriad products into which its toxic PFAS were incorporated, and that its liability likely measured in the billions of dollars.

175. Anticipating this significant liability exposure, Old DuPont convened an internal initiative known as “Project Beta” in or about 2013 for Old DuPont’s management to consider restructuring the company in order to, among other things, avoid responsibility for the widespread environmental harm that Old DuPont’s PFAS had caused and shield billions of dollars in assets from these substantial liabilities.

176. In furtherance of possible restructuring opportunities, including potential mergers, Old DuPont and The Dow Chemical Company (“Old Dow”) began to discuss a possible “merger of equals” in or about 2013.

177. However, neither Old Dow nor any other rational merger partner would agree to a transaction that would result in exposing it to the substantial PFAS and environmental liabilities that Old DuPont faced.

178. Accordingly, Old DuPont’s management decided to pursue a multi-year corporate restructuring specifically orchestrated to isolate Old DuPont’s massive legacy liabilities from its valuable tangible assets in an attempt to shield those assets from creditors and entice Old Dow to pursue the proposed merger.

179. Old DuPont engaged in a coordinated three-part restructuring plan that consisted of (i) Old DuPont’s attempt to cast off its massive environmental liabilities onto Chemours and spinning off Chemours as a separate publicly traded company, (ii) the cre-

ation of New DuPont to facilitate a purported merger with Old Dow, and (iii) a series of internal restructurings and divestitures that culminated with the spinoff of Old DuPont to its newly formed parent, Corteva.

180. The first step in Old DuPont's fraudulent scheme was to transfer its performance chemicals business, which included Teflon and other products ("Performance Chemicals Business"), into its wholly owned subsidiary, Chemours. And then, in July 2015, Old DuPont "spun-off" Chemours as a separate public entity and saddled Chemours with Old DuPont's massive legacy liabilities (the "Chemours Spinoff").

181. Old DuPont knew that Chemours was undercapitalized and could not satisfy the massive liabilities that it caused Chemours to assume. Old DuPont also knew that the Chemours Spinoff alone would not insulate its own assets from its PFAS liabilities as Old DuPont still faced direct liability for its own conduct.

182. The second step in the scheme involved Old DuPont and Old Dow entering into an "Agreement and Plan of Merger" in December 2015, pursuant to which Old DuPont and Old Dow merged with subsidiaries of a newly formed holding company, DowDuPont, Inc. ("DowDuPont"), which was created for the sole purpose of effectuating the merger. Old DuPont and Old Dow became subsidiaries of DowDuPont.

183. In the third step, DowDuPont engaged in numerous business segment and product line "realignments" and "divestitures," which culminated in DowDuPont spinning off two new publicly traded companies: (i) Corteva, which currently holds Old DuPont as a subsidiary, and (ii) Dow, Inc. ("New Dow"), which currently holds Old Dow. DowDuPont was then renamed DuPont de Nemours, Inc., i.e., New DuPont.

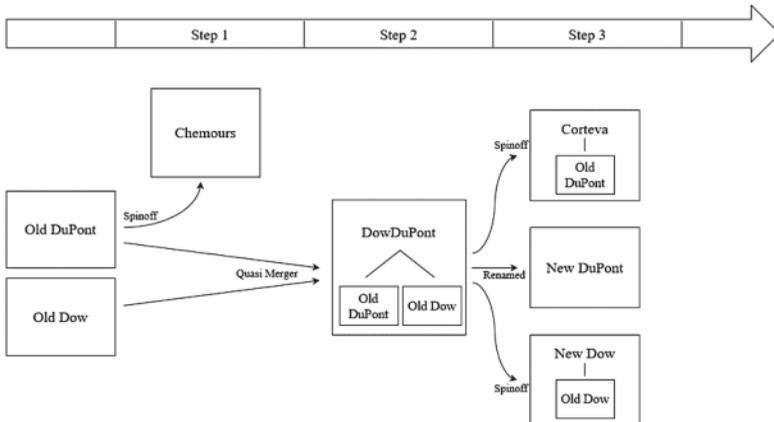
184. Old DuPont's restructuring, beginning with the spinoff of Chemours in 2015, and ending with the spinoff of Corteva on June 1, 2019, was designed to separate Old DuPont's massive historic PFAS liabilities from its valuable, non-PFAS assets and thereby hinder, delay, and defraud creditors.

185. As a result of this restructuring, between December 2014, i.e., before the Chemours Spinoff, and December 2019, i.e., after the Dow merger, the value of Old DuPont's tangible assets decreased by \$20.85 billion, or by approximately one-half.

186. New DuPont and Corteva now hold a significant portion of the tangible assets that Old DuPont formerly owned.

187. Many of the details about these transactions are hidden from the public in confidential schedules and exhibits to the various restructuring agreements. Old DuPont, New DuPont, and Corteva, likely intentionally, have acted to hide from creditors the details about where Old DuPont's valuable assets went and the inadequate consideration that Old DuPont received in return.

188. The below graphic depicts the restructuring as it progressed through each of the three steps:



189. In greater detail, the restructuring scheme was implemented as follows:

### **1. Step 1: The Chemours Spinoff**

190. In February 2014, Old DuPont formed Chemours as a wholly owned subsidiary.

191. On April 30, 2015, Chemours was converted from a limited liability company to a corporation named “The Chemours Company.”

192. On July 1, 2015, Old DuPont completed the spinoff of Chemours, and Chemours became a separate, publicly traded entity.

193. At the time of the spinoff, the Performance Chemicals Business consisted of Old DuPont’s Titanium Technologies, Chemical Solutions, and Fluoroproducts segments, including business units that had manufactured, used, and discharged PFOA into the environment.

194. Prior to the spinoff, Chemours’s Board of Directors was dominated by Old DuPont employees. As a result, during the period of time that the terms of its separation from Old DuPont were being negotiated, Chemours did not have an independent Board of Directors or management independent of Old DuPont.

195. To effectuate the Chemours Spinoff, Old DuPont and Chemours entered into a June 26, 2015, Separation Agreement (the “Chemours Separation Agreement”).

196. Pursuant to the Chemours Separation Agreement, Old DuPont agreed to transfer to Chemours all businesses and assets related to the Performance Chemicals Business, including 37 active chemical plants.

197. At the same time, Chemours accepted a broad assumption of Old DuPont's massive liabilities relating to Old DuPont's Performance Chemicals Business. The specific details regarding the nature and value of probable maximum loss and the anticipated timing of the liabilities that Chemours assumed are set forth in the nonpublic schedules and exhibits to the Chemours Separation Agreement.

198. Notwithstanding the billions of dollars in environmental and PFAS liabilities that Chemours would face, on July 1, 2015, Old DuPont caused Chemours to transfer to Old DuPont approximately \$3.4 billion as a cash dividend, along with a "distribution in kind" of promissory notes with an aggregate principal amount of \$507 million.

199. Thus, in total, Chemours distributed approximately \$3.9 billion to Old DuPont. Old DuPont required Chemours to fund these distributions through financing transactions, including senior secured term loans and senior unsecured notes totaling approximately \$3.995 billion, entered into on May 12, 2015. Also, Chemours distributed approximately \$3 billion in common stock to Old DuPont's shareholders on July 1, 2015 (181 million shares at \$16.51 per share price).

200. Accordingly, most of the valuable assets that Chemours may have had at the time of the Chemours Spinoff were unavailable to creditors with current or future PFAS claims, like those of the State, and Old DuPont stripped Chemours's value for itself and its shareholders. Old DuPont, however, only transferred \$4.1 billion in net assets to Chemours.

201. In addition to requiring Chemours to assume billions of dollars of Old DuPont's PFAS liabilities, the Chemours Separation Agreement includes an indem-

nification of Old DuPont in connection with those liabilities, which is uncapped and does not have a survival period.

202. Specifically, the Chemours Separation Agreement requires Chemours to indemnify Old DuPont against, and assume for itself, all “Chemours Liabilities,” which are defined broadly to include, among other things, “any and all Liabilities relating . . . primarily to, arising primarily out of or resulting primarily from, the operation or conduct of the Chemours Business, as conducted at any time prior to, at or after the Effective Date . . . including . . . any and all Chemours Assumed Environmental Liabilities,” which includes Old DuPont’s historic liabilities relating to and arising from its decades of emitting pollution, including PFOA, into the environment from its dozens of facilities.

203. Under the Chemours Separation Agreement, Chemours must indemnify Old DuPont against, and assume for itself, the Chemours Liabilities regardless of (i) when or where such liabilities arose; (ii) whether the facts upon which they are based occurred prior to, on, or subsequent to the effective date of the spinoff; (iii) where or against whom such liabilities are asserted or determined; (iv) whether arising from or alleged to arise from negligence, gross negligence, recklessness, violation of law, fraud, or misrepresentation by any member of the Old DuPont group or the Chemours group; (v) the accuracy of the maximum probable loss values assigned to such liabilities; and (vi) which entity is named in any action associated with any liability.

204. The Chemours Separation Agreement also requires Chemours to indemnify Old DuPont from, and assume all, environmental liabilities that arose prior to the Chemours Spinoff if they were “primarily associated” with the Performance Chemicals Business.

205. In addition, Chemours agreed to use its best efforts to be fully substituted for Old DuPont with respect to “any order, decree, judgment, agreement or Action with respect to Chemours Assumed Environmental Liabilities.”

206. There was no meaningful, arms-length negotiation of the Chemours Separation Agreement and Old DuPont largely dictated its terms.

207. The Chemours Spinoff was so one-sided that Chemours, in May 2019, sued Old DuPont, New DuPont, and Corteva in Delaware Chancery Court. *See The Chemours Company v. DowDuPont, et al.*, C.A. No. 2019-0351 (Del. Ch. Ct., filed May 13, 2019).

208. In its Amended Complaint, which was verified by Chemours’s current Chief Executive Officer, Mark Newman, Chemours alleged that the primary motivation for the Chemours Spinoff, the subsequent creation of New DuPont, and the final separation of Corteva was to enable Old DuPont to “wash its hands of its environmental liabilities.”

209. Chemours also alleged, among other things, that if (i) the full value of Old DuPont’s PFAS and environmental liabilities were properly estimated and (ii) the Delaware court did not limit the liability that the Chemours Separation Agreement imposed on it, then Chemours would have been insolvent at the time it was spun off from Old DuPont.

210. Chemours alleged that Old DuPont refused to allow any procedural protections for Chemours in the negotiations, and Old DuPont and its outside counsel prepared all the documents to effectuate the Chemours Spinoff. Indeed, during the period in which the terms of the commercial agreements between Chemours and Old DuPont were negotiated, Chemours

did not have an independent board of directors or management independent of Old DuPont.

211. Old DuPont's apparent goal with respect to the Chemours Spinoff was to segregate a large portion of Old DuPont's legacy environmental liabilities, including liabilities related to its PFAS chemicals and products such as PFAS-containing AFFF, and in so doing, shield Old DuPont.

212. Given Old DuPont's extraction of nearly \$4 billion from Chemours immediately prior to the Chemours Spinoff, Chemours was thinly capitalized and unable to satisfy the substantial liabilities that it assumed from Old DuPont. Indeed, Chemours disclosed in public filings with the U.S. Securities and Exchange Commission ("SEC") that its "significant indebtedness" arising from its separation from Old DuPont restricted its current and future operations.

213. Shortly after the Chemours Spinoff, market analysts described Chemours as "a bankruptcy waiting to happen" and a company "purposely designed for bankruptcy."

214. At the end of December 2014, Chemours reported it had total assets of \$5.959 billion and total liabilities of \$2.286 billion. At the end of 2015, following the Chemours Spinoff, Chemours reported that it had total assets of \$6.298 billion and total liabilities of \$6.168 billion, yielding a total net worth of \$130 million.

215. For the year 2015, Chemours reported \$454 million in "other accrued liabilities," which in turn included \$11 million for accrued litigation and \$68 million for environmental remediation. Chemours separately reported \$553 million in "other liabilities," which included an additional \$223 million for environmental remediation and \$58 million for accrued litigation.

216. Chemours significantly underestimated its liabilities, including the liabilities that it had assumed from Old DuPont with respect to PFAS, which Old DuPont and Chemours knew or should have known would be billions of dollars in addition to other environmental liabilities for other contaminants discharged at Old DuPont and Chemours facilities.

217. For example, in 2017, Chemours and Old DuPont amended the Chemours Separation Agreement in connection with the settlement of the personal injury multidistrict litigation brought by thousands of residents who had been exposed to PFOA from Old DuPont's Washington Works plant. Per the amendment, Chemours paid \$320.35 million to the plaintiffs in the settlement on August 21, 2017, and Old DuPont paid an additional \$320.35 million on September 1, 2017.

218. Had the full extent of Old DuPont's legacy liabilities been taken into account, as they should have been at the time of the Chemours Spinoff, Chemours would have had negative equity (that is, total liabilities greater than total assets), not only on a tangible basis, but also on a total equity basis, and Chemours would have been rendered insolvent at that time.

## **2. Step 2: The Old Dow/Old DuPont "Merger"**

219. After the Chemours Spinoff, Old DuPont took the position that it was somehow no longer responsible for the widespread PFAS contamination that it had caused over several decades.

220. Old DuPont could not contractually discharge all of its historical liabilities through the Chemours Spinoff, however, and Old DuPont remained liable for the liabilities it had caused and Chemours had assumed.

221. Old DuPont knew that it could not escape liability and would still face exposure for PFAS liabilities, including for potentially massive punitive damages. So Old DuPont moved to the next phase of its fraudulent scheme.

222. On December 11, 2015, less than six months after the Chemours Spinoff, Old DuPont and Old Dow announced that their respective boards had approved an agreement “under which the companies [would] combine in an all-stock merger of equals” and that the combined company would be named DowDuPont, Inc. (the “Dow-DuPont Merger”). The companies disclosed that they intended to separate the combined companies’ businesses into three publicly traded companies through further spinoffs, each of which would occur 18-to-24 months following the closing of the merger.

223. To effectuate the transaction, Old DuPont and Old Dow entered into an Agreement and Plan of Merger (the “Dow-DuPont Merger Agreement”) that provided for (i) the formation of a new holding company Diamond-Orion HoldCo, Inc., later named DowDuPont, and then renamed DuPont de Nemours, Inc., i.e., New DuPont, and (ii) the creation of two new merger subsidiaries into which Old Dow and Old DuPont each would merge.

224. Thus, as a result of the merger, and in accordance with the DowDuPont Merger Agreement, Old Dow and Old DuPont each became wholly owned subsidiaries of DowDuPont.

225. Although Old DuPont and Old Dow referred to the transaction as a “merger of equals,” the two companies did not actually merge at all, likely because doing so would have infected Old Dow with all of Old DuPont’s historical PFAS liabilities. Rather, Old Du-

Pont and Old Dow became affiliated sister companies that were each owned by the newly formed DowDuPont. DowDuPont was aware of Old DuPont's historical PFAS liabilities.

226. The corporate organization following the "merger" is depicted under "Step 2" in the graphic depicted in ¶ 188.

### **3. Step 3: The Shuffling, Reorganization, and Transfer of Valuable Assets Away from Old DuPont and Separation of Corteva and New Dow**

227. Following the Dow-DuPont Merger, DowDuPont underwent a significant internal reorganization and engaged in numerous business segment and product line "realignments" and "divestitures." The net effect of these transactions has been the transfer, either directly or indirectly, of a substantial portion of Old DuPont's assets out of the company.

228. The transactions were intended further to frustrate and hinder creditors with claims against Old DuPont, including with respect to its substantial environmental and PFAS liabilities.

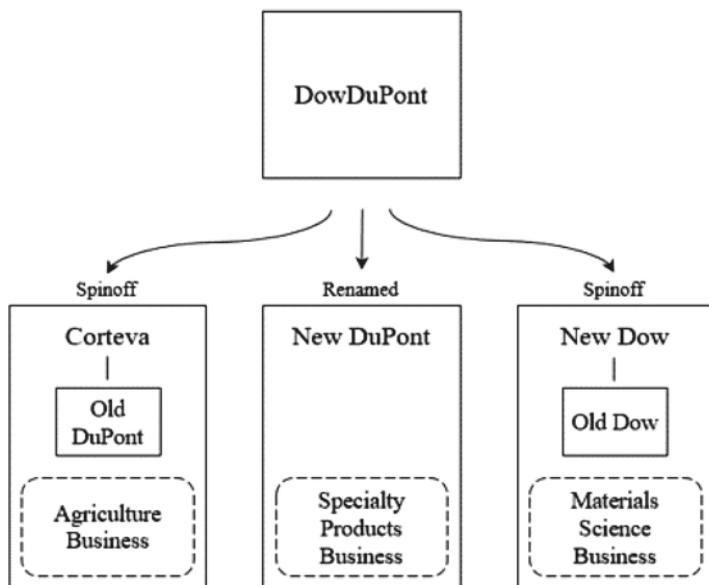
229. Old DuPont's assets, including its remaining business segments and product lines, were transferred either directly or indirectly to DowDuPont, which reshuffled the assets and combined them with the assets of Old Dow, and then reorganized the combined assets into three distinct divisions: (i) the "Agriculture Business," (ii) the "Specialty Products Business," and (iii) the "Materials Science Business."

230. While the precise composition of these divisions, including many details of the specific transactions, the transfer of business segments, and the di-

vestiture of product lines during this time, are not publicly available, it appears that Old DuPont transferred a substantial portion of its valuable assets to DowDuPont, for far less than the assets were worth.

231. Once the assets of Old DuPont and Old Dow were combined and reorganized, DowDuPont incorporated two new companies to hold two of the three newly formed business lines: (i) Corteva, which became the parent holding company of Old DuPont, which in turn holds the Agriculture Business, and (ii) New Dow, which became the parent holding company of Old Dow, and which holds the Materials Science Business. DowDuPont retained the Specialty Products Business and prepared to spin off Corteva and New Dow into separate, publicly traded companies.

232. The below graphic depicts the structure of DowDuPont after the internal reorganization and realignment (and notes the planned disposition of the new companies):



233. The mechanics of the separations are governed by the April 1, 2019, Separation and Distribution Agreement among Corteva, New Dow, and DowDuPont (the “DowDuPont Separation Agreement”).

234. The DowDuPont Separation Agreement generally allocates the assets primarily related to the respective business divisions to Corteva (Agriculture Business), New Dow (Materials Science Business), and New DuPont (Specialty Products Business). New DuPont also retained several “non-core” business segments and product lines that once belonged to Old DuPont.

235. Similarly, Corteva, New Dow, and New DuPont each retained the liabilities primarily related to the business divisions that they retained. In particular, (i) Corteva retained and assumed the liabilities related to the Agriculture Business, (ii) New DuPont retained and assumed the liabilities related to the Specialty Products Business, and (iii) New Dow retained and assumed the liabilities related to the Materials Science Business.

236. Corteva and New DuPont also assumed direct financial liability of Old DuPont that was not related to the Agriculture, Materials Science, or Specialty Products Businesses, including its PFAS liabilities. These assumed PFAS liabilities are allocated between Corteva and New DuPont pursuant to the DowDuPont Separation Agreement.

237. This “allocation” applies to Old DuPont’s legacy liabilities for PFAS contamination and its former Performance Chemicals Business, including the State’s claims in this case.

238. While New DuPont and Corteva have buried the details in nonpublic schedules, New DuPont and Corteva each assumed these liabilities under the DowDuPont Separation Agreement, along with other liabilities related to Old DuPont's discontinued and divested businesses. The State can therefore bring claims against New DuPont and Corteva directly for Old DuPont's contamination of and damage to the State's natural resources.

239. The separation of New Dow was completed on or about April 1, 2019, when DowDuPont distributed all of New Dow's common stock to DowDuPont stockholders as a pro rata dividend.

240. DowDuPont then consolidated the Agricultural Business line into Old DuPont and "contributed" Old DuPont to Corteva.

241. On June 1, 2019, DowDuPont spun off Corteva as an independent public company, when DowDuPont distributed all of Corteva's common stock to DowDuPont stockholders as a pro rata dividend.

242. Corteva now holds 100% of the outstanding common stock of Old DuPont.

243. The corporate structures of New DuPont, New Dow and Old Dow, and Corteva and Old DuPont, respectively, following the separations are depicted in Step 3 of the graphic in ¶ 188.

244. Also, on or about June 1, 2019, DowDuPont changed its registered name to DuPont de Nemours, Inc., i.e., New DuPont.

245. On or about January 1, 2023, Old DuPont changed its registered name to EIDP, Inc.

**G. The Effect of the Years-Long Conspiracy to Defraud the State and Other Creditors and Avoid Financial Responsibility for Legacy Liabilities**

246. The net result of these transactions, including the June 1, 2019, Corteva spinoff, was to strip away valuable tangible assets from Old DuPont and transfer those assets to New DuPont and Corteva for far less than the assets are worth.

247. Old DuPont estimated that the Dow-DuPont Merger created “goodwill” worth billions of dollars. When the Corteva separation was complete, a portion of this “goodwill” was assigned to Old DuPont in order to prop up its balance sheet. But, in reality, Old DuPont was left with substantially fewer tangible assets than it had prior to the restructuring.

248. In addition, Old DuPont owes a debt to Corteva of approximately \$4 billion. SEC filings demonstrate the substantial deterioration of Old DuPont’s finances and the drastic change in its financial condition before and after the above transactions.

249. For example, for the fiscal year ending 2014, prior to the Chemours Spinoff, Old DuPont reported \$3.6 billion in net income and \$3.7 billion in cash provided by operating activities. For the 2019 fiscal year, just months after the Corteva separation, however, Old DuPont reported a net loss of \$1 billion and only \$996 million in cash provided by operating activities. That is a decrease of 128% in net income and a decrease of 73% in annual operating cash flow.

250. Additionally, Old DuPont reported a significant decrease in Income from Continuing Operations Before Income Taxes (also known as Earnings Before Tax or “EBT”). Old DuPont reported \$4.9 billion in

EBT for the period ending December 31, 2014. For the period ending December 31, 2019, Old DuPont reported EBT of negative \$422 million.

251. Also, for the fiscal year ending in 2014, prior to the Chemours Spinoff, Old DuPont owned nearly \$41 billion in tangible assets. For the fiscal year ending in 2019, Old DuPont owned just under \$21 billion in tangible assets.

252. That means in the five-year period over which the restructuring occurred, when Old DuPont knew that it faced billions of dollars in environmental and PFAS liabilities, Old DuPont transferred or divested approximately half of its tangible assets, totaling \$20 billion.

253. As of September 2019, just after the Corteva spinoff, Old DuPont reported \$43.251 billion in assets. But almost \$21.835 billion of these assets were composed of intangible assets, including “goodwill” from its successive restructuring activities.

254. At the same time, Old DuPont reported liabilities totaling \$22.060 billion. Thus, when the Corteva spinoff was complete, Old DuPont’s tangible net worth (excluding its intangible assets) was negative \$644 million.

255. In addition, neither New DuPont nor Corteva has publicly conceded that they assumed Old DuPont’s historical environmental and PFAS liabilities. And it is unclear whether either entity will be able to satisfy future judgments.

256. Indeed, New DuPont, to which PFAS liabilities are allocated under the DowDuPont Separation Agreement, has divested numerous business seg-

ments and product lines, including tangible assets that it received from Old DuPont and for which Old DuPont has received less than reasonably equivalent value and is in the process of divesting more.

257. Old DuPont's parent holding company, Corteva, to which PFAS liabilities are also allocated under the DowDuPont Separation Agreement once certain conditions are satisfied, holds as its primary tangible asset the intercompany debt owed to it by its wholly owned subsidiary, Old DuPont. But Old DuPont does not have sufficient tangible assets to satisfy this debt obligation.

258. The Chemours Spinoff, the Dow-DuPont Merger, and the final separation of Corteva were part of a single coordinated fraudulent scheme to hinder, delay, and defraud Old DuPont's creditors. The Chemours Spinoff constitutes a fraudulent transfer, which entitles the State, among other things, to void the transaction and recover property or value transferred from Chemours in the transaction. The Dow-DuPont Merger and separation of Corteva from New DuPont likewise constitutes a fraudulent transfer that entitles the State, among other things, to recover property and value transferred to New DuPont and Corteva.

**COUNT I**  
**STRICT PRODUCTS LIABILITY—**  
**DEFECTIVE DESIGN**

259. The State incorporates by reference the preceding paragraphs as though fully set forth herein.

260. Defendants designed, manufactured, marketed, and sold AFFF Products containing PFOS, PFOA, and/or their precursors that were transported, stored,

used, handled, released, spilled, and/or disposed of in Maryland during the relevant period.

261. As designers, manufacturers, marketers, and sellers of AFFF Products, Defendants had a duty to make and sell products that are reasonably fit, suitable, and safe for their intended or reasonably foreseeable uses. Defendants owed that duty both to reasonably foreseeable users of their products and also to any person or property that might reasonably be expected to come into contact with those products.

262. Defendants' AFFF Products containing PFOS, PFOA, and/or their precursors were used in a reasonably foreseeable manner and without substantial change in the condition of such products. These products were defective and unfit for their reasonable use at the time they left Defendants' possession or control. Defendants' AFFF Products foreseeably contaminated groundwater, surface water, sediments, soils, biota, and other natural resources at and around the sites where they were used.

263. Defendants knew, or reasonably should have known, that their manufacture, marketing, and/or sale, as well as their customers' transport, storage, use, handling, release, spilling, and/or disposal of AFFF Products in an intended or reasonably foreseeable manner would result in the release of PFOS and PFOA into the environment, including at various locations in Maryland.

264. AFFF Products containing PFOS, PFOA, and/or their precursors used at various sites in Maryland have injured and are continuing to injure groundwater, surface water, sediments, soils, biota, and other natural resources at and/or around these sites. Defen-

dants' AFFF Products were defective in design and unreasonably dangerous because, among other things:

a. Defendants' AFFF Products cause extensive and persistent PFOS and PFOA contamination when used in a reasonably foreseeable and intended manner;

b. PFOS and PFOA released into the environment from Defendants' AFFF Products cause contamination in groundwater and surface water that are the sources of drinking water and pose significant threats to public health and welfare; and

c. Defendants failed to disclose reasonable, appropriate, or adequate scientific studies to evaluate the environmental fate and transport and potential ecological and human health effects of PFOS and PFOA.

265. At all times relevant to this action, the AFFF Products that Defendants designed, manufactured, marketed, and sold were dangerous to an extent beyond that which would be contemplated by the ordinary consumer.

266. At all times relevant to this action, the foreseeable risk to the environment and public health and welfare posed by Defendants' AFFF Products containing PFOS, PFOA, and/or their precursors outweighed the cost to Defendants of reducing or eliminating such risk.

267. At all times relevant to this action, Defendants knew or should have known about reasonably safer and feasible alternatives to their AFFF Products, and the omission of such alternative designs rendered their AFFF Products not reasonably safe. While Defendants have recently transitioned to short-chain

PFAS-based AFFF Products, which they claim are safer, they could have made this transition earlier. Moreover, AFFF Products can be designed with fluorine-free compounds, which do not contain or break down into PFAS.

268. As a direct and proximate result of the defects in Defendants' design, manufacture, marketing, and sale of AFFF Products containing PFOS, PFOA, and/or their precursors, groundwater, surface water, sediments, soils, biota, and other natural resources at and/or near the various sites throughout Maryland where the AFFF Products were used have become contaminated with PFOS and/or PFOA, causing the State and its citizens significant injury and damage.

269. As a direct and proximate result of Defendants' acts and omissions, as alleged herein, the State has incurred, is incurring, and will continue to incur damages in an amount to be proved at trial related to PFOS and PFOA contamination of groundwater, surface water, sediment, soils, biota, and other natural resources at and/or near the various sites throughout Maryland where Defendants' AFFF Products were transported, stored, used, handled, released, spilled, and/or disposed.

270. As a further direct and proximate result of Defendants' acts and omissions, the State has incurred, and will continue to incur, investigation, cleanup and removal, restoration, treatment, monitoring, and other costs and expenses related to contamination of the groundwater, surface water, sediments, soils, biota, and other natural resources at and/or near the various sites throughout Maryland where Defendants' AFFF Products were transported, stored, used, handled, released, spilled, and/or disposed, for which Defendants are strictly liable.

271. Defendants knew it was substantially certain that their acts and omissions described above would cause the contamination and harms described herein.

272. The AFFF Products were in a defective condition when they left Defendants' possession or control.

273. The State and its citizens did not voluntarily expose themselves to the risks posed by AFFF Products while realizing the dangers.

274. The State and its citizens did not unreasonably or knowingly expose themselves to the risk posed by AFFF Products.

275. Defendants committed each of the above-described acts and omissions with actual malice or with a wanton and willful disregard of persons who foreseeably might be harmed by those acts or omissions.

276. Defendants are strictly liable for all such damages, and the State is entitled to recover all such damages and other relief as set forth below.

277. New DuPont and Corteva assumed Old DuPont's design defect liability described above.

**COUNT II**  
**STRICT PRODUCTS LIABILITY—**  
**FAILURE TO WARN**

278. The State incorporates by reference the preceding paragraphs as though fully set forth herein.

279. As designers, manufacturers, marketers, and sellers of AFFF Products containing PFOS, PFOA, and/or their precursors, Defendants had a strict duty to the State and to those who were foreseeably at risk of being harmed by AFFF Products to warn users of

those products and the State of the foreseeable harms associated with them.

280. Defendants had a duty to warn the State about the dangers of their AFFF Products because, among other things, the State is the trustee, for the benefit of its citizens, of all natural resources within its jurisdiction; the State is charged with enforcing the State's environmental laws and regulations; the State maintains sovereign and "quasi-sovereign" interests in the wellbeing of its residents; and the State has proprietary interests in lands that it owns.

281. Defendants inadequately warned of the likelihood that PFOS and/or PFOA would be released into the environment during the normal use of Defendants' AFFF Products and of the widespread, toxic, and persistent effects of such releases. Defendants failed to provide such warnings to (i) users and buyers of their AFFF Products containing PFOS, PFOA, and/or their precursors; (ii) the State; and (iii) others to which it was reasonably foreseeable Defendants' AFFF Products would cause harm.

282. To the extent Defendants provided any warnings about their products, those were not warnings that a reasonably prudent person in the same or similar circumstances would have provided with respect to the danger posed by AFFF Products containing PFOS, PFOA, and/or their precursors. Any such warnings were not clear and they did not convey sufficient information about the dangers of AFFF Products containing these chemicals to alert an ordinary or reasonably foreseeable user or bystander.

283. Despite the fact that Defendants knew or should have known about the risks of AFFF Products containing PFOS, PFOA, and/or their precursors, De-

fendants withheld such knowledge from the State, regulators, and the public. Moreover, Defendants affirmatively distorted and/or suppressed their knowledge and the scientific evidence linking their products to the unreasonable dangers they pose.

284. At no time relevant to this action did Defendants warn users and buyers of their AFFF Products, the State, and others whom Defendants should have reasonably foreseen would use their AFFF Products or be harmed by them, that Defendants' AFFF Products would release PFOS and/or PFOA into the environment during the AFFF Products' normal use. Defendants further failed to warn these entities and individuals of the widespread, toxic, and persistent effects of such releases.

285. Defendants' AFFF Products were in the same condition when they were purchased and/or used as they were when they left Defendants' control. Defendants' customers used the AFFF Products in a reasonably foreseeable manner and without any substantial change in the condition of the products.

286. Had Defendants provided adequate warnings about the hazards associated with their AFFF Products, the users and buyers of the products, the State, and others who would reasonably foreseeably transport, store, use, release, dispose, and/or otherwise handle or be harmed by the AFFF Products would have heeded those warnings.

287. As a direct and proximate result of Defendants' failure to warn of the hazards of AFFF Products containing PFOS, PFOA, and/or their precursors, the groundwater, surface water, sediments, soils, biota, and other natural resources at and around various sites throughout Maryland where Defendants' AFFF

Products were transported, stored, used, handled, released, spilled, and/or disposed have become contaminated with PFOS and PFOA.

288. As a direct and proximate result of Defendants' acts and omissions, the State has incurred, is incurring, and will continue to incur in the future damages related to PFOS and PFOA contamination from AFFF Products in an amount to be proven at trial.

289. Defendants knew it was substantially certain that their acts and omissions described above would cause the State's injury and damage.

290. Defendants committed each of the above-described acts and omissions with actual malice or with a wanton and willful disregard of persons who foreseeably might be harmed by those acts or omissions.

291. Defendants are strictly liable for all such damages, and the State is entitled to recover all such damages and other relief as set forth below.

292. New DuPont and Corteva assumed Old DuPont's failure to warn liability described above.

### **COUNT III PUBLIC NUISANCE**

293. The State incorporates by reference the preceding paragraphs as though fully set forth herein.

294. Groundwater, surface water, sediments, soils, and biota are natural resources of the State held in trust by the State for the benefit of the public.

295. The use, enjoyment, and existence of uncontaminated natural resources is a right common to the general public.

296. The contamination of the groundwater, surface water, sediment, soils, and biota at and around the various sites throughout Maryland where Defendants' AFFF Products were transported, stored, used, handled, released, spilled, and/or disposed constitutes a physical invasion of the State's natural resources and, on information and belief, the State's real property in the vicinity of these sites and an unreasonable and substantial interference, both actual and potential, with (i) the exercise of the public's common right to these natural resources; (ii) the State's special property and statutory status and obligations regarding the natural resources of the State; (iii) the State's ability to protect, conserve, and manage the natural resources of the State, which are by law precious and invaluable public resources held by the State in trust for the benefit of the public; and (iv) the rights of the people of the State to enjoy their natural resources free from interference by pollution and contamination.

297. As long as the natural resources at and around these various sites throughout Maryland remain contaminated by PFAS from Defendants' AFFF Products, which are present due to Defendants' conduct, the public nuisance continues.

298. Until these natural resources are restored to their pre-injury quality, Defendants are liable for the creation and continued presence of a public nuisance in contravention of the public's common right to clean natural resources.

299. The discharge of PFOS and PFOA from AFFF Products into drinking water constitutes a public nuisance, including because such discharges create a "condition that is dangerous to health and safety" including a "contaminated water supply" and an "inad-

equately protected water supply.” Md. Code Ann., Health-Gen. § 20-301(a).

300. Defendants marketed AFFF Products to their customers, including Maryland governmental entities, knowing that the use of their AFFF Products, utilized exactly as marketed for their intended use, would create a public nuisance. Likewise, well after Defendants understood the mobile, persistent, bioaccumulative, and toxic nature of PFOS and PFOA in the environment, Defendants never instructed their customers, including governmental entities in Maryland, to stop using the AFFF Products in their possession or that they needed to specially dispose of AFFF Products so as to not further contaminate the natural resources of the State.

301. Defendants committed each of the above-described acts and omissions with actual malice or with a wanton and willful disregard of persons who foreseeably might be harmed by those acts or omissions.

302. New DuPont and Corteva assumed Old DuPont’s nuisance liability described above.

#### **COUNT IV TRESPASS**

303. The State incorporates by reference the preceding paragraphs as though fully set forth herein.

304. Defendants’ intentional and/or negligent conduct caused AFFF Products containing PFOA, PFOS, and/or their precursors, to enter, invade, intrude upon, injure, trespass, and threaten to trespass upon the State’s possessory interest in properties it owns, including but not limited to State lands, parks, wildlife management areas, tidal bodies of water, and certain lakes.

305. AFFF Products containing PFOA, PFOS, and/or their precursors, manufactured and/or supplied by Defendants continue to be located on or in the State's property.

306. Defendants intended to manufacture AFFF Products containing PFOA, PFOS, and/or their precursors, and knew with substantial certainty that their acts would contaminate the State's property.

307. Defendants are therefore liable for trespass and continued trespass.

308. Defendants did not and do not have authority, privilege, or permission to trespass upon the aforesaid possessory property interests.

309. The State has never consented to the trespasses alleged herein.

310. Defendants have refused and failed to terminate their trespasses, despite being put on notice to do so by the State through its policies, statutes, regulations, orders, and other means.

311. Defendants' trespass is of a continuing nature and has produced a long-lasting negative effect upon the property of the State, as Defendants knew or had reason to know at all times relevant hereto.

312. Based on their conduct, Defendants have, at all times relevant to this action, created, caused, maintained, continued, substantially contributed to, substantially participated in, and/or assisted in the creation of such trespass. Based on their knowledge of the properties and manner of distribution and storage of AFFF Products containing PFOA, PFOS, and/or their precursors, as alleged herein, Defendants were or should have been aware that as a result of their conduct, contamination of the State's

property was inevitable or substantially certain to result.

313. As a direct and proximate cause of Defendants' conduct, the State has suffered and continued to suffer damages from Defendants' conduct and the presence of AFFF Products containing PFOA, PFOS, and/or their precursors, in the State's property, including without limitation costs to assess, investigate, monitor, analyze and remediate contamination, costs to prevent AFFF Products from injuring additional property of the State, and costs to restore and replace the State's impacted natural resources whose use has been lost or degraded.

314. As a direct and proximate result of Defendants' acts and omissions, the State has incurred and suffered, and will continue to incur and suffer, substantial costs and damages for which Defendants are liable.

315. New DuPont and Corteva assumed Old DuPont's trespass liability described above.

## **COUNT V NEGLIGENCE**

316. The State incorporates by reference the preceding paragraphs as though fully set forth herein.

317. Defendants had a duty to the State to ensure that PFOS and/or PFOA were not released as a result of the transport, storage, use, handling, release, spilling, and/or disposal of their AFFF Products and did not injure groundwater, surface water, sediment, soils, and biota in Maryland.

318. Defendants had a duty to the State to exercise due care in the design, manufacture, marketing, sale,

testing, labeling, and instructions for use of their AFFF Products containing PFOS, PFOA, and/or their precursors.

319. Defendants breached these duties, by among other things, failing to conform to the requisite standard of care.

320. Groundwater, surface water, sediments, soils, biota, and other natural resources at and around various sites throughout Maryland where Defendants' AFFF Products were transported, stored, used, handled, released, spilled, and/or disposed of have become contaminated with PFOS and PFOA as a direct and proximate result of Defendants' negligence in designing AFFF Products and in failing to warn AFFF Products purchasers, the State, and others whom Defendants should have reasonably foreseen would transport, store, use, handle, release, spill, and/or dispose, or be harmed by the AFFF Products.

321. As a direct and proximate result of the contamination of the environment from Defendants' AFFF Products containing PFOA, PFOS, and/or their precursors, the State has incurred, is incurring, and will continue to incur investigation, clean up and removal, treatment, monitoring, and restoration costs and expenses for which Defendants are liable.

322. Defendants committed each of the above-described acts and omissions with actual malice or with a wanton and willful disregard of persons who foreseeably might be harmed by those acts or omissions.

323. New DuPont and Corteva assumed Old DuPont's negligence liability described above.

**COUNT VI**  
**ENVIRONMENT ARTICLE, TITLE 9,**  
**SUBTITLE 3 CLAIM**

324. The State incorporates by reference the preceding paragraphs as though fully set forth herein.

325. The Secretary of MDE “[h]as supervision and control over the sanitary and physical condition of the waters of this State to protect public health and comfort[.]” Env’t § 9-252(b).

326. Pursuant to § 9-322 of the Environment Article, “a person may not discharge any pollutant into the waters of this State” without a permit.

327. “‘Discharge’ means: (1) The addition, introduction, leaking, spilling, or emitting of a pollutant into the waters of this State; or (2) The placing of a pollutant in a location where the pollutant is likely to pollute.” *Id.* § 9-101(b).

328. “Pollutant” includes “[a]ny . . . liquid, gaseous, solid, or other substance that will pollute any waters of this State.” *Id.* § 9-101(g). “Pollution” means any contamination or other alteration of the physical, chemical, or biological properties of any waters of this State, including a change in . . . taste, color, turbidity, or odor of the waters or the discharge or deposit of any . . . liquid . . . or other substance into any waters of this State that will render the waters harmful or detrimental to: (1) Public health, safety, or welfare; (2) Domestic, commercial, industrial, agricultural, recreational, or other legitimate beneficial uses; (3) Livestock, wild animals, or birds; or (4) Fish or other aquatic life.” *Id.* § 9-101(h).

329. The “Department may bring an action for an injunction against any person who violates any provi-

sion of [Subtitle 3] or any rule, regulation, order, or permit adopted or issued by the Department under [Subtitle 3].” *Id.* § 9-339(a). The “court shall grant an injunction without requiring a showing of a lack of an adequate remedy at law.” *Id.* § 9-339(c).

330. Defendants are responsible for discharges of AFFF Products containing PFOA, PFOS, and/or their precursors, into the waters of the State. Each Defendant’s acts and/or omissions caused one or more discharges of AFFF Products into the waters of the State. As Defendants violated and continue to violate Title 9, Subtitle 3 by discharging AFFF products throughout the State, the Department is empowered to seek an injunction ordering Defendants to investigate and fully delineate horizontally and vertically the full extent of all contamination for which the Defendants are responsible and to ensure the cleanup of such contamination so that the waters of the State are in the same state they were in prior to the discharges. *Id.* § 9-339(c); 9-302(b)(1) (“To improve, conserve, and manage the quality of the waters of this State”); 9-302(b)(2) (“To protect, maintain, and improve the quality of the water. . .”).

331. Because Defendants discharged AFFF Products containing PFOA, PFOS, and/or their precursors, into the waters of this State, they “shall reimburse the Department for the reasonable costs incurred by the Department in conducting environmental health monitoring or testing, including the costs of collecting and analyzing soil samples, surface water samples, or groundwater samples for the purpose of assessing the effect on public health and the environment of the [Defendants’] discharge[s].” *Id.* § 9-342.2; *see* COMAR 26.14.01.04.

332. New DuPont and Corteva assumed Old DuPont’s liability described above.

**COUNT VII**  
**ENVIRONMENT ARTICLE, TITLE 9,**  
**SUBTITLE 4 CLAIM**

333. The State incorporates by reference the preceding paragraphs as though fully set forth herein.

334. AFFF Products containing PFOA, PFOS, and/or their precursors, are “dangerous contaminant[s]” because when they are “present in a public water system, they present an imminent and substantial danger to the health of individuals.” Env’t § 9-405(a).

335. Upon receipt of information that AFFF Products “[are] present in or likely to enter a public water system,” the Secretary of the Maryland Department of Environment “may take any action necessary to protect the health of the individuals whose health is or would be endangered” by the AFFF Products. *Id.* § 9-405(b)(1). The actions the Secretary may take include suing “for injunctive or other appropriate relief.” *Id.* § 9-405(b)(2)(ii).

336. In order to stop AFFF Products containing PFOA, PFOS, and/or their precursors, from entering public water systems, the Secretary may seek an injunction that orders Defendants to investigate and fully delineate horizontally and vertically the full extent of all contamination for which the Defendants are responsible and to ensure the cleanup so that the groundwater is in the same state it was in prior to the discharges.

337. New DuPont and Corteva assumed Old DuPont’s liability described above.

**COUNT VIII**  
**ACTUAL FRAUDULENT TRANSFER IN**  
**RELATION TO CHEMOURS SPINOFF**  
**(Old DuPont, Chemours, New DuPont,**  
**and Corteva Only)**

338. The State incorporates the preceding paragraphs as though fully set forth herein.

339. The State seeks equitable and other relief against Old DuPont and Chemours under §§ 15-201 to -214 of the Commercial Law Article and Delaware Code title 6, §§ 1301 to 1312.

340. Under Commercial Law § 15-207 and Delaware Code title 6 § 1304(a)(1), a transaction made by a debtor “with actual intent . . . to hinder, delay, or defraud any present or future creditor” is voidable as to the creditor’s claim.

341. Under Commercial Law § 15-201 and Delaware Code title 6 §§ 1301(3), (4), a “creditor” is “a person who has any claim, whether matured or unmatured, liquidated or unliquidated, absolute, fixed, or contingent.”

342. The State is and was a creditor of Chemours at all relevant times.

343. Through its participation in the Chemours Spinoff, as detailed above, Chemours transferred valuable assets to DuPont, including the \$3.9 billion dividend (the “Chemours Transfers”), while simultaneously assuming significant liabilities pursuant to the Separation Agreement (the “Chemours Assumed Liabilities”).

344. The Chemours Transfers and Chemours Assumed Liabilities were made for the benefit of Old DuPont.

345. At the time that the Chemours Transfers were made and the Chemours Assumed Liabilities were assumed, and until the Chemours Spinoff was complete, Old DuPont was in a position to, and in fact did, control and dominate Chemours.

346. Old DuPont and Chemours acted with the actual intent to hinder, delay, and defraud creditors or future creditors such as the State.

347. The State has been harmed as a result of the Chemours Transfers.

348. Old DuPont and Chemours engaged in acts in furtherance of a scheme to transfer its assets out of the reach of parties such as the State that have been damaged as a result of the actions described in this Complaint.

349. Pursuant to Commercial Law §§ 15-201 to -214 and Delaware Code title 6, §§ 1301 to 1312, the State seeks to void the Chemours Transfers and to recover property or value that Chemours transferred to Old DuPont.

350. Pursuant to Commercial Law §§ 15-201 to -214 and Delaware Code title 6, §§ 1301 to 1312, the State also seeks to enjoin Old DuPont, as transferee, from distributing, transferring, capitalizing, or otherwise disposing of any property or value that Chemours transferred to Old DuPont, and seeks a constructive trust over such property or value for the benefit of the State.

351. Upon information and belief, Corteva and New DuPont assumed Old DuPont's liability described above.

352. The State further reserves such other rights and remedies that may be available under Commercial Law §§ 15-201 to -214 and Delaware Code title 6, §§ 1301 to 1312 as may be necessary to fully compen-

sate the State for the damages and injuries suffered as alleged in this Complaint.

**COUNT IX**  
**CONSTRUCTIVE FRAUDULENT TRANSFER**  
**IN RELATION TO CHEMOURS SPINOFF**  
**(Old DuPont, Chemours, New DuPont,**  
**and Corteva Only)**

353. The State incorporates by reference the preceding paragraphs as though fully set forth herein.

354. The State seeks equitable and other relief pursuant Commercial Law §§ 15-201 to -214 and Delaware Code title 6, §§ 1301 to 1312 against Old DuPont and Chemours.

355. Under Commercial Law §§ 15-204, 15-205, 15-206 and Delaware Code title 6, §§ 1304(a)(2), 1305(a), a transaction made by a debtor “without a fair consideration” is voidable if the debtor (i) “is engaged or is about to engage in a business or a transaction for which the property remaining in his hands after the conveyance is an unreasonably small capital”; (ii) “intends or believes that he will incur debts beyond his ability to pay as they mature”; or (iii) “is rendered insolvent by” the transaction.

356. Chemours did not receive a fair or reasonably equivalent value from Old DuPont in exchange for the Chemours Transfers and Chemours Assumed Liabilities.

357. Each of the Chemours Transfers and Chemours’ assumption of the Chemours Assumed Liabilities was made to or for the benefit of Old DuPont.

358. At the time that the Chemours Transfers were made and the Chemours Assumed Liabilities were as-

sumed, and until the Spinoff was complete, Old DuPont was in a position to, and in fact did, control and dominate Chemours.

359. Chemours made the Chemours Transfers and assumed the Chemours Assumed Liabilities when it was engaged or about to be engaged in a business for which its remaining assets were unreasonably small in relation to its business and debt obligations.

360. Chemours was insolvent at the time or became insolvent as a result of the Chemours Transfers and its assumption of the Chemours Assumed Liabilities.

361. At the time that the Chemours Transfers were made and Chemours assumed the Chemours Assumed Liabilities, Chemours intended to incur, or believed or reasonably should have believed that it would incur debts beyond its ability to pay as they became due.

362. The State has been harmed as a result of the Chemours Transfers.

363. Pursuant to Commercial Law §§ 15-201 to -214 and Delaware Code title 6, §§ 1301 to 1312, the State seeks to void the Chemours Transfers and to recover property or value transferred to Old DuPont.

364. Pursuant to Commercial Law §§ 15-201 to -214 and Delaware Code title 6, §§ 1301 to 1312, the State also seeks to enjoin Old DuPont, as transferee, from distributing, transferring, capitalizing, or otherwise disposing of any property or value that Chemours transferred to Old DuPont, and seeks a constructive trust over such property or value for the benefit of the State.

365. Upon information and belief, Corteva and New DuPont assumed Old DuPont's liability described above.

366. The State further reserves such other rights and remedies that may be available under Commercial Law §§ 15-201 to -214 and Delaware Code title 6, §§ 1301 to 1312 as may be necessary to fully compensate the State for the damages and injuries suffered as alleged in this Complaint.

**COUNT X**  
**ACTUAL FRAUDULENT TRANSFER IN**  
**RELATION TO THE DOW-DUPONT MERGER**  
**AND SUBSEQUENT REORGANIZATIONS,**  
**DIVESTITURES, AND SEPARATION**  
**OF CORTEVA**  
**(Old DuPont, New DuPont, and Corteva Only)**

367. The State incorporates by reference the preceding paragraphs as though fully set forth herein.

368. The State seeks equitable and other relief pursuant to Commercial Law §§ 15-201 to -214 and Delaware Code title 6, §§ 1301 to 1312, against Old DuPont, New DuPont, and Corteva.

369. The State is and was a creditor of Old DuPont at all relevant times.

370. Old DuPont knew that the Chemours Spinoff alone would not isolate its valuable assets and business lines from the Chemours Assumed Liabilities. Thus, the Chemours Spinoff was the first step in the overall scheme to separate Old DuPont's assets from its massive liabilities. Through the Dow-DuPont Merger and the subsequent reorganizations, divestitures, and separation of Corteva, Old DuPont sold or transferred, directly or indirectly, valuable assets and business lines to Corteva and New DuPont (the "Old DuPont Transfers").

371. The Old DuPont Transfers were made for the benefit of New DuPont or Corteva.

372. At the time that the Old DuPont Transfers were made, New DuPont was in a position to, and in fact did, control and dominate Old DuPont and Corteva.

373. Old DuPont, New DuPont, and Corteva acted with the actual intent to hinder, delay and defraud creditors or future creditors such as the State.

374. The State has been harmed as a result of the Old DuPont Transfers.

375. Old DuPont engaged in acts in furtherance of a scheme to transfer its assets out of the reach of parties such as the State that has been damaged as a result of the actions described in this Complaint.

376. Pursuant to Commercial Law §§ 15-201 to -214 and Delaware Code title 6, §§ 1301 to 1312, the State seeks to void the Old DuPont Transfers and to recover property or value transferred to New DuPont and Corteva.

377. Pursuant to Commercial Law §§ 15-201 to -214 and Delaware Code title 6, §§ 1301 to 1312, the State also seeks to enjoin New DuPont and Corteva, as transferees, from distributing, transferring, capitalizing, or otherwise disposing of any proceeds from the sale of any business lines, segments, divisions, or other assets that formerly belonged to Old DuPont, and seek a constructive trust over such proceeds for the benefit of the State.

378. The State further reserves such other rights and remedies that may be available under Commercial Law §§ 15-201 to -214 and Delaware Code title 6, §§ 1301 to 1312 as may be necessary to fully compen-

sate the State for the damages and injuries suffered as alleged in this Complaint.

**COUNT XI  
CONSTRUCTIVE FRAUDULENT TRANSFER  
IN RELATION TO THE DOW-DUPONT  
MERGER AND SUBSEQUENT  
REORGANIZATIONS, DIVESTITURES, AND  
SEPARATION OF CORTEVA  
(Old DuPont, New DuPont, and Corteva Only)**

379. The State incorporates by reference the preceding paragraphs as though fully set forth herein.

380. The State seeks equitable and other relief pursuant to the Commercial Law §§ 15-201 to -214 and Delaware Code title 6, §§ 1301 to 1312 against Old DuPont, New DuPont, and Corteva.

381. Old DuPont did not receive a fair or reasonably equivalent value from New DuPont and Corteva in exchange for the Old DuPont Transfers.

382. Each of the Old DuPont Transfers was made to or for the benefit of New DuPont or Corteva.

383. At the time that the Old DuPont Transfers were made, New DuPont was in a position to, and in fact did, control and dominate Old DuPont and Corteva.

384. Old DuPont made the Old DuPont Transfers when it was engaged or about to be engaged in a business for which its remaining assets were unreasonably small in relation to its business.

385. Old DuPont was insolvent at the time or became insolvent as a result of the Old DuPont Transfers.

386. At the time that the Old DuPont Transfers were made, Old DuPont intended to incur, or believed

or reasonably should have believed that it would incur debts beyond its ability to pay as they became due.

387. The State has been harmed as a result of the Old DuPont Transfers.

388. Pursuant to Commercial Law §§ 15-201 to -214 and Delaware Code title 6, §§ 1301 to 1312, the State seeks to void the Old DuPont Transfers and to recover property or value transferred to New DuPont and Corteva.

389. Pursuant to Commercial Law §§ 15-201 to -214 and Delaware Code title 6, §§ 1301 to 1312, the State also seeks to enjoin New DuPont and Corteva, as transferees, from distributing, transferring, capitalizing, or otherwise disposing of any proceeds from the sale of any business lines, segments, divisions, or other assets that formerly belonged to Old DuPont, and seeks a constructive trust over such proceeds for the benefit of the State.

390. The State further reserves such other rights and remedies that may be available under Commercial Law §§ 15-201 to -214 and Delaware Code title 6, §§ 1301 to 1312, as may be necessary to fully compensate the State for the damages and injuries suffered as alleged in this Complaint.

### **PRAYER FOR RELIEF**

**WHEREFORE**, the State requests that this Court enter judgment against Defendants as follows:

a. Finding Defendants liable for all costs, in an amount that exceeds \$75,000.00, (i) to collect, return, and dispose of existing stocks of Defendants' AFFF Products; (ii) to investigate, clean up and remove, restore, treat, monitor, and otherwise respond to PFOS

and PFOA contamination at and around the sites throughout Maryland where Defendants' AFFF Products were transported, stored, used, handled, released, spilled, and/or disposed so the contaminated natural resources are restored to their original condition;

b. Finding Defendants liable for all damages, in an amount that exceeds \$75,000.00, to compensate the citizens of Maryland for the lost use and value of its natural resources during all times of injury caused by AFFF Products, and for such orders as may be necessary to provide full relief to address risks to the State, including, but not limited to, the costs of:

i. Past and future testing of natural resources at and around the sites throughout Maryland where Defendants' AFFF Products were transported, stored, used, handled, released, spilled, and/or disposed and, thus, likely caused PFOS and/or PFOA contamination;

ii. Past and future treatment of all natural resources at and around the sites throughout Maryland where Defendants' AFFF Products were transported, stored, used, handled, released, spilled, and/or disposed and which contain detectable levels of PFOS and/or PFOA until restored to non-detectable levels; and

iii. Past and future monitoring of the State's natural resources at and around the sites throughout Maryland where Defendants' AFFF Products were transported, stored, used, handled, released, spilled, and/or disposed as long as there is a detectable presence of PFOS and/or PFOA, and restoration of such natural resources to their pre-discharge condition;

c. Ordering Defendants to pay for all costs, in an amount that exceeds \$75,000.00, related to the inves-

tigation, cleanup, restoration, treatment, and monitoring of PFOS and/or PFOA contamination of the State's natural resources attributable to Defendants' AFFF Products;

d. Ordering Defendants to pay all damages to the State in an amount that exceeds \$75,000.00 and at least equal to the full cost of restoring the State's natural resources to their original condition prior to the PFOS and/or PFOA contamination attributable to Defendants' AFFF Products;

e. Ordering Defendants to pay all compensatory damages, in an amount that exceeds \$75,000.00, for economic damages and for the lost value (including lost use) of the State's natural resources as a result of the PFOS and/or PFOA contamination attributable to Defendants' AFFF Products of such natural resources;

f. Ordering Defendants to pay all other damages sustained by the State in its public trustee, *parens patriae*, and regulatory capacities as a direct and proximate result of Defendants' acts and omissions alleged herein with respect to AFFF Products, in an amount that exceeds \$75,000.00;

g. Entering an order against Defendants to abate or mitigate the PFOS and/or PFOA contamination that they caused through their AFFF Products at and around sites within the State;

h. Ordering Defendants to pay for all costs related to the collection, return, and disposal of existing stocks of Defendants' AFFF Products, in an amount that exceeds \$75,000.00;

i. Voiding the Old DuPont Transfers to the extent necessary to satisfy the State's claims;

j. Voiding the Chemours Transfers to the extent necessary to satisfy the State's claims;

k. Awarding the State punitive damages in an amount to be determined by the trier of fact;

l. Awarding the State costs and fees in this action, including reasonable attorneys' fees, incurred in prosecuting this action, together with prejudgment interest, to the full extent permitted by law; and

m. Awarding the State such other relief as this Court deems appropriate.

### **DEMAND FOR JURY TRIAL**

The State demands trial by jury of all issues so triable.

Respectfully submitted,

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Attorney General of Maryland



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May 30, 2023

261a

**STATE OF SOUTH CAROLINA  
COUNTY OF RICHLAND  
IN THE COURT OF COMMON PLEAS  
FIFTH JUDICIAL CIRCUIT**

\_\_\_\_\_  
Civil Action No.: 2023-CP-40-\_\_\_\_\_

**SUMMONS  
(JURY TRIAL REQUESTED)**

\_\_\_\_\_

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

vs.

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

TO: THE ABOVE-NAMED DEFENDANTS:

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

dered against you for the relief demanded in the Complaint.

s/ Alan M. Wilson

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Chief Deputy Attorney General

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***ATTORNEYS FOR PLAINTIFF***

Columbia, South Carolina

August 7, 2023

**STATE OF SOUTH CAROLINA  
COUNTY OF RICHLAND  
IN THE COURT OF COMMON PLEAS  
FIFTH JUDICIAL CIRCUIT**

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Civil Action No.: 2023-CP-40-\_\_\_\_\_

**COMPLAINT  
(JURY TRIAL REQUESTED)**

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

Plaintiff,

vs.

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

Defendants.

**COMPLAINT**

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

## INTRODUCTION AND SUMMARY

1. The State of South Carolina brings this action to hold some of the world's largest chemical companies accountable for their widespread contamination of the State's natural resources, including the drinking water upon which South Carolinians depend, with toxic per- and polyfluoroalkyl substances ("PFAS").

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

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

- a. Perfluorooctanoic acid ("PFOA");
- b. perfluorooctanesulfonic acid ("PFOS");
- c. perfluorononanoic acid ("PFNA");;
- d. perfluorohexanesulfonic acid ("PFHxS");
- e. the ammonium salt of hexafluoropropylene oxide dimer acid (HFPO-DA) ("GenX");
- f. perfluoroheptanoic acid ("PFHpA"); and
- g. perfluorobutanesulfonic acid ("PFBS").<sup>1</sup>

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

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<sup>1</sup> This is not an exhaustive list.

aging, non-stick cookware, and stain repellent upholstery and carpeting.

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

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

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

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

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

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

11. PFAS contamination in South Carolina presents a serious threat to public health. PFAS are toxic to humans, even at extremely low levels (measured in parts per trillion, or ppt). PFAS exposure through contaminated food or drinking water is associated with numerous adverse health effects, including high cholesterol, increased liver enzymes, decreased vaccination response, thyroid disorders, pregnancy-induced hypertension, preeclampsia, and testicular and kidney cancer.

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

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

screening levels (“RSLs”) and Regional Removal Management Levels (“RMLs”).

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

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

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

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

18. The State seeks damages for the costs of investigation, monitoring, abatement, containment, treat-

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

## I. SCOPE OF ACTION

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

**20. PFAS as defined in this Complaint expressly excludes Aqueous Film Forming Foam ("AFFF"), a firefighting material that contains PFAS. The State is not seeking to recover through this Complaint any relief for contamination or injury related to AFFF or AFFF products used at airports, military bases, or certain industrial locations.**

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

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

## II. PARTIES

### PLAINTIFF

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

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

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

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

### DEFENDANTS

27. Defendants are manufacturers, marketers, distributors, sellers, and/or promoters of PFAS and PFAS-containing products. The following Defendants, at times relevant to this action, manufactured, mar-

keted, distributed and/or otherwise sold (directly or indirectly) PFAS that each such Defendant knew or should have known would be delivered into areas affecting the State's natural resources and property, or otherwise did business in the State. Moreover, Defendants caused the contamination of South Carolina's natural resources and property.

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

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

30. Defendant **The Chemours Company** (“Chemours”) is a Delaware corporation with its principal place of business at 1007 Market Street, Wilmington, Delaware 19899. Chemours has systematically and continuously done business in South Carolina including the manufacture and distribution of PFAS chemicals used in South Carolina. Moreover, Defendant Chemours is registered to do business in the State of South Carolina and, upon information and belief, the PFAS manufactured by Defendant Chemours contaminates the State’s natural resources and property.

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

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

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

34. Old DuPont merged with The Dow Chemical Company in August 2017 to create DowDuPont Inc. (“DowDuPont”). Old DuPont and The Dow Chemical Company each merged with wholly-owned subsidiaries of DowDuPont and, as a result, became subsidiaries of DowDuPont. Since that time, DowDuPont has effected a series of separation transactions to separate its businesses into three independent, publicly traded companies for each of its agriculture, materials science, and specialty products businesses.

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

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

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

cluding DowDuPont's agriculture and nutritional businesses.

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

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

40. All Defendants and/or their predecessors or successors in liability: (a) designed, manufactured, formulated, promoted, marketed, sold, and/or otherwise supplied (directly or indirectly) PFAS and/or products containing PFAS that were delivered into areas affecting the State's natural resources and property, such that PFAS has contaminated, injured, and threatens the State's natural resources and property; (b) acted with actual or constructive knowledge that PFAS and/or products containing PFAS would be delivered into areas affecting the State's natural resources and property; (c) are legally responsible for

and committed each of the multiple tortious and wrongful acts alleged in this Complaint; and (d) promoted PFAS and/or products containing PFAS, despite the availability of reasonable alternatives and their actual or constructive knowledge that the pollution alleged in this Complaint would be the inevitable result of their conduct.

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

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

### **III. JURISDICTION AND VENUE**

43. The Plaintiff State of South Carolina has oversight and care obligations for all of the public waterways, byways, natural areas, human habitat, and public health within the borders of the State. Plaintiff has standing to bring this lawsuit to recover the costs incurred or that will be incurred in efforts to remove forever chemicals found in South Carolina. This Court may exercise jurisdiction over Defendants because they either are or at the relevant time were: authorized to do business in South Carolina, registered with the South Carolina Secretary of State, transacting sufficient business with sufficient mini-

minimum contacts in South Carolina, or otherwise intentionally availing themselves of the South Carolina market through the manufacturing, marketing, distribution, and/or sale of PFAS and PFAS-containing products in South Carolina so as to satisfy minimum contacts and to render the exercise of jurisdiction over Defendants by the South Carolina courts consistent with traditional notions of fair play and substantial justice.

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

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

#### **IV. DEFENDANTS HAVE CAUSED PFAS CONTAMINATION AND INJURY IN SOUTH CAROLINA**

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

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

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

48. 3M was a major manufacturer of PFOA.

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

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

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

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

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

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

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

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

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

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

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

60. In 1975, 3M found PFOA to have a "universal presence" in its human plasma in samples taken from several locations in the United States.<sup>3</sup>

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

62. These findings also should have alerted 3M that PFOA is mobile, persistent, bio-accumulative, and

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<sup>2</sup> 3M Interoffice Correspondence from L. C. Krogh to J.D. La Zerte, 3M, re: Presentation to Corporate Responsibility Committee on Progress — Fluorochemicals in Blood (October 19, 1977), available at <https://www.ag.state.mn.us/Office/Cases/3M/docs/PTX/PTX1145.pdf> (last accessed July 28, 2023).

<sup>3</sup> G.H. Crawford to L.C. Krogh et al., Record of a Telephone Conversation with William Guy of The University of Florida re: Fluorocarbon in Blood Samples from Texas and New York (August 20, 1975), available at <https://www.ag.state.mn.us/Office/Cases/3M/docs/PTX/PTX1118.pdf> (last accessed July 28, 2023).

biomagnifying, as those characteristics would explain the presence of PFOA in blood from 3M's products.

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

64. Results of a 90-day animal study conducted by 3M in 1978 indicated that PFAS “should be regarded as toxic,” and those aware of the results “urgently recommended that all reasonable steps be taken immediately to reduce exposure of employees to these compounds.”<sup>5</sup>

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

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

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<sup>4</sup> 3M Technical Report Summary, Biodegradation Studies of Fluorocarbons-III by Reiner to Bacon (July 19, 1978), available at <https://www.ag.state.mn.us/Office/Cases/3M/docs/PTX/PTX1179.pdf> (last accessed July 28, 2023).

<sup>5</sup> 3M Interoffice Correspondence from Prokop re: Meeting Minutes — Review of Animal Studies (May 17, 1978), available at <https://www.ag.state.mn.us/Office/Cases/3M/docs/PTX/PTX1174.pdf> (last accessed August 1, 2023).

for a long time in the body and thereby give long-term chronic exposure.”<sup>6</sup>

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

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

69. In a December 1988 email, a 3M employee stated, “I don’t think it is in 3M’s long-term interest to perpetuate the myth that these fluorochemical surfactants are biodegradable. It is probable that this misconception will eventually be discovered, and when that happens, 3M will likely be embarrassed, and we

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<sup>6</sup> 3M Riker Laboratories Interoffice Correspondence from M. T. Case to R. A. Nelson re: Fluorochemical Chronic Toxicity (July 6, 1979), available at <https://www.ag.state.mn.us/Office/Cases/3M/docs/PTX/PTX1212.pdf> (last accessed August 1, 2023).

<sup>7</sup> 3M Interoffice Correspondence re: Meeting Minutes — Meeting with H.C. Hodge (June 7, 1979), available at <https://www.ag.state.mn.us/Office/Cases/3M/docs/PTX/PTX1210.pdf> (last accessed August 1, 2023).

<sup>8</sup> E.A. Reiner, Ed., Fate of Fluorochemicals — Phase II, 3M ENVIRONMENTAL LABORATORY (May 20, 1983), available at <https://www.ag.state.mn.us/Office/Cases/3M/docs/PTX/PTX1282.pdf> (last accessed August 1, 2023).

and our customers may be fined and forced to immediately withdraw products from the market.”<sup>9</sup>

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

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

72. 3M’s practices were concerning to its own employees. In March 1999, 3M environmental scientist Dr. Purdy, who had conducted the 1998 study on marine animals, resigned from 3M in a letter expressing his “profound disappointment” with “3M’s handling of the environmental risks associated with the manufacture and use of” PFOS. Dr. Purdy described PFOS as

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<sup>9</sup> Lori Swanson, Former Attorney General of Minnesota, Testimony Before the Committee on Oversight and Reform, Subcommittee on Environment, United States House of Representatives (Sept. 10, 2019), at Exhibit H, <https://www.congress.gov/116/meeting/house/109902/witnesses/HHRG-116-GO28-Wstate-SwansonL-20190910.pdf> (hereinafter “Swanson Testimony”).

<sup>10</sup> Swanson Testimony, at 3, Exhibit A.

<sup>11</sup> Richard E. Purdy, *Email to Georjean Adams re: Risk to the environment due to the presence of PFOS* (Dec. 3, 1998, 11:53AM) [https://static.ewg.org/reports/2019/pfa-timeline/1998\\_Food-Chain.pdf](https://static.ewg.org/reports/2019/pfa-timeline/1998_Food-Chain.pdf). (last accessed August 1, 2023).

“the most insidious pollutant since PCB,” and stated, “it is probably more damaging than PCB because it does not degrade, whereas PCB does; it is more toxic to wildlife.” Dr. Purdy described his attempts to discuss the dangers of the chemical with the company, and 3M’s refusal to act. Dr. Purdy further stated that “3M continues to make and sell these chemicals though the company knows of an ecological risk assessment [he] did that indicates there is a better than 100% probability that perfluorooctanesulfonate [PFOS] is biomagnifying in the food chain and harming sea mammals . . . 3M told those of us working on the fluorochemical project not to write down our thoughts or have email discussions on issues because of how our speculations could be viewed in a legal discovery process.” Finally, Dr. Purdy stated, “I can no longer participate in the process that 3M has established for the management of PFOS and precursors. For me it is unethical to be concerned with markets, legal defensibility and image over environmental safety.”<sup>12</sup>

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

74. In 2000, following pressure from the EPA, 3M announced it would phase out PFOS products and issued a press release asserting “our products are safe,” citing

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<sup>12</sup> Swanson Testimony, at Exhibit B.

<sup>13</sup> *Id.*

the company's "principles of responsible environmental management" as the reason to cease production.<sup>14</sup>

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

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

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

78. Based upon their decades of research, 3M knew or should have known that, in their intended and/or common use, PFAS (including products containing

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<sup>14</sup> Press Release, *3M Phasing Out Some of its Specialty Materials*, 3M (May 16, 2000), available at <https://www.ag.state.mn.us/Office/Cases/3M/docs/PTX/PTX1694.pdf> (last accessed August 1, 2023).

<sup>15</sup> Press Release, *EPA and 3M Announce Phase Out of PFOS*, EPA (May 16, 2000), available at [https://www.epa.gov/archive/epapages/newsroom\\_archive/newsreleases/33aa946e6cb11f35852568e1005246b4.html](https://www.epa.gov/archive/epapages/newsroom_archive/newsreleases/33aa946e6cb11f35852568e1005246b4.html) (last accessed August 1, 2023).

<sup>16</sup> Swanson Testimony, at Exhibit K.

<sup>17</sup> Press Release, *3M Company Settlement*, EPA (April 25, 2006), available at <https://www.epa.gov/enforcement/3m-company-settlement> (last accessed August 1, 2023).

<sup>18</sup> *Id.*

PFAS and PFAS used in industrial processes) would injure and/or threaten public health and the environment in South Carolina.

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

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

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

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

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

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

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

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

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

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

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

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

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

91. By 1979, DuPont had data indicating that its workers who were exposed to PFOA had a significantly higher frequency of health issues compared to unexposed workers but failed to report this data to any government agency or any community where it used PFOA.

92. In 1981, DuPont doctors recommended moving female employees "of childbearing potential" off PFAS production lines in its Parkersburg, WV plant and other facilities that produced Teflon.<sup>20</sup> This recom-

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

<sup>20</sup> Dr. Frank A. Ubel, Recommendation Regarding Fluorochemical Exposure to Females of Childbearing Potential, M.D. (April

mentation was based on a study 3M had reported which discovered birth defects in rats.<sup>21</sup> The DuPont doctors documented that 3M's rat studies potentially aligned with abnormal outcomes in DuPont employee pregnancies.<sup>22</sup> It was later documented that employees exposed to PFAS at the Parkersburg plant had children with birth defects at rates above the general population average.<sup>23</sup>

93. By at least the mid-1980s, DuPont was aware that “‘continued exposure [to PFOA] is not tolerable,’” and that PFOA accumulates and persists in the human body.<sup>24</sup>

94. In 1981, DuPont monitored female employees who had been exposed to PFOA to study if their children were born with abnormalities. Initial data showed that two of the eight babies born to women who worked with Teflon had eye and nostril deformities. These figures were “significant enough to suggest that C8 exposure caused the problems.”<sup>25</sup> DuPont

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17, 1981), available at <https://www.ag.state.mn.us/Office/Cases/3M/docs/PTX/PTX1254.pdf> (last accessed August 1, 2023); Ammonium Perfluorooctanoate (FC-143) C-8 Compounds, Intraoffice Correspondence from Dr. Bruce Karrh, M.D. to C. De Martino (March 25, 1981), available at <https://www.documentcloud.org/documents/2782027-KarrhMemo> (last accessed August 1, 2023).

<sup>21</sup> Karrh, *supra* note 20.

<sup>22</sup> *Id.*

<sup>23</sup> Ken Ward, Jr., *DuPont Proposed, Dropped '81 Study of C8, Birth Defects*, THE CHARLESTON GAZETTE (July 10, 2005), available at <https://www.fluoridealert.org/wp-content/pesticides/2005/effect.pfos.class.news.169.html> (last accessed August 1, 2023).

<sup>24</sup> Lerner, *supra* note 19.

<sup>25</sup> *Id.*

abandoned the study rather than inform regulators, its own employees, or the public.<sup>26</sup>

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

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

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<sup>26</sup> Ward, *supra* note 23.

<sup>27</sup> Schmid, J.A., Personal & Confidential Memorandum, re: C-8 Meeting Summary (May 23, 1984), Wilmington, Del., available at [https://static.ewg.org/files/dupont\\_elim\\_PFOA\\_1984.pdf](https://static.ewg.org/files/dupont_elim_PFOA_1984.pdf) (last accessed August 3, 2023) (hereinafter “The DuPont Memo”).

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

98. Notwithstanding its internal knowledge of PFOA’s health and environmental risks beginning as early as the 1950s, DuPont publicly stated in 2003 that “[w]e are confident that there are no health effects associated with C-8 exposure,” and that “C-8 is not a human health issue.”<sup>29</sup>

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

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

<sup>29</sup> Washington Works Media Update, DUPONT (March 18, 2003), available at <https://static.ewg.org/reports/2003/pfcs/dupontpresentation.pdf> (last accessed August 3, 2023).

<sup>30</sup> Tom L. Beauchamp, et al., Memorandum to Michael Kaplan re: Epidemiology Review Board and PFOA (February 24, 2006),

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

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

102. In October 2006, contrary to ERB's advice, DuPont's chief medical officer issued a press release stating that "there are no human health effects known to be caused by PFOA."<sup>31</sup>

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available at [https://static.ewg.org/files/ERB\\_February2006.pdf](https://static.ewg.org/files/ERB_February2006.pdf) (last accessed August 3, 2023).

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

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

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

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

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

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

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

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

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

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

with the presence of PFAS in the environment and human blood.

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

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

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

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

115. In addition, by virtue of this superior knowledge, and/or by virtue of Defendants' partial, incorrect and misleading statements regarding the nature

and impacts of PFAS, Defendants had a duty to disclose the truth and to act in accordance with the truth about PFAS.

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

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

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

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

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

120. In undertaking Old DuPont's obligations and liabilities, Chemours completely indemnified Old DuPont and completely substituted DuPont in all pri-

marily associated performance chemicals liabilities, including those originating before the spinoff.<sup>32</sup>

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

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

123. The Chemours Company agreed to indemnify Old DuPont from, and assume all, environmental liabilities that arose prior to the spinoff if they were “primarily associated” with the Performance Chemicals Business. Such liabilities were deemed “primarily associated” if Old DuPont reasonably determined that 50.1% of the liabilities were attributable to the Performance Chemicals Business.<sup>34</sup>

124. The Chemours Company agreed to indemnify Old DuPont against and assume for itself the Performance Chemical Business’s liabilities regardless of: (i)

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<sup>32</sup> See generally *Separation Agreement by and between E.I. Du Pont De Nemours and Company and The Chemours Company*, at 57, (June 26, 2015), available at <https://www.sec.gov/Archives/edgar/data/30554/000003055415000065/exhibit21separationagreeme.htm> (last accessed August 3, 2023) (hereinafter “Separation Agreement”).

<sup>33</sup> *Id.* at 10–11.

<sup>34</sup> *Id.* at 7, 53–65.

when or where such liabilities arose; (ii) whether the facts upon which they are based occurred prior to, on, or subsequent to the effective date of the spinoff; (iii) where or against whom such liabilities are asserted or determined; (iv) whether arising from or alleged to arise from negligence, gross negligence, recklessness, violation of law, fraud or misrepresentation by any member of the Old DuPont group or the Chemours group; and (v) which entity is named in any action associated with any liability.<sup>35</sup> The Chemours Company also agreed to use its best efforts to be fully substituted for Old DuPont with respect to “any order, decree, judgment, agreement or Action with respect to Chemours Assumed Environmental Liabilities. . . .”<sup>36</sup>

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

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

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<sup>35</sup> *Id.* at 29.

<sup>36</sup> *Id.* at 63.

<sup>37</sup> *See, e.g.*, The DuPont Memo, *supra* note 2727.

<sup>38</sup> *The Chemours Co. v. DowDuPont, Inc., Corteva, Inc., and E.I. Du Pont de Nemours & Co.*, C.A. No. 2019-0351-SG, at ¶ 35 (Del. Cha. Aug. 14, 2019) (verified first amended complaint by Chemours against the other DuPont entities regarding the spinoff and extent of Chemours’ exposure to DuPont’s historical lia-

127. In 2015 when DuPont transferred its Performance Chemicals Business to The Chemours Company, Old DuPont had been sued, threatened with suit, and/or had knowledge of the likelihood of litigation to be filed regarding Old DuPont's liability for damages and injuries from the manufacture of PFAS compounds and products that contain PFAS compounds.<sup>39</sup>

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

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

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

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

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

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ilities) (hereinafter "Spin-Off Case").

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

## VI. STATE NATURAL RESOURCES AND PROPERTY INJURIES

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

134. On May 25, 2016, the EPA established a drinking water lifetime health advisory (i.e., consuming two and a half (2.5) liters of water per day for 70 years) for PFOA and PFOS. This health advisory was at 70 parts per trillion (“ppt”) for either of those individual chemicals or for both in combination. After further research, the EPA issued interim health advisories on June 5, 2022, drastically lowering the current health advisory level of PFOA to .004 ppt and the level of PFOS to .02 ppt, essentially undetectable with current testing methods.

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

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

- a. All eight (8) of the major river basins in South Carolina—the Broad, Catawba, Edisto, Pee Dee, Sa-

luda, Salkehatchie, Santee, and the Savannah—contain ambient levels of PFAS exceeding the March 2023 MCLs proposed by EPA. Specifically, DHEC has detected at least one exceedance of the proposed MCLs at sixty nine percent (69%) of stations where ambient water was sampled across the State’s major river basins from July 2022 to March 2023.<sup>40</sup>

b. PFOS, PFOA, PFNA, PFHxS, GenX, PFHpA, and/or PFBS have contributed to widespread PFAS contamination in the Pocotaligo River near Manning, South Carolina with readings of 7,663 ppt; in the Big Generostee Creek near Anderson, South Carolina with readings of 754 ppt; in the Chinquapin Creek along the Lexington-Aiken county border with readings of 382 ppt; in Lake Conestee south of Greenville, South Carolina with readings of 328 ppt; in Fishing Creek located in Chester County with readings of 306 ppt; in Buffalo Creek near Union, South Carolina with readings of 264 ppt; and in Log Branch between Allendale and the Savannah River site with readings of 133 ppt.<sup>41</sup>

c. Of the forty-four (44) Surface Water-Sourced Community Drinking Water Systems serving more than two million South Carolinians DHEC sampled

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

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

in August 2020, thirty-one (31) had detectable levels of PFOA exceeding the June 2022 health advisory levels established by the EPA. Similarly, thirty-four (34) community drinking water systems had detectable levels<sup>42</sup> of PFOS exceeding the June 2022 health advisory levels established by the EPA.<sup>43</sup> Additionally, DHEC found the presence of PFHxS in four (4) community drinking water systems as well as the presence of PFHpA in four (4) separate community drinking water systems.<sup>44</sup>

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

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

<sup>43</sup> *SCDHEC PFOA and PFOS Data from Surface Water-Sourced Community Drinking Water Systems, August 2020*, available at [https://scdhec.gov/sites/default/files/media/document/BOW\\_PFAS\\_Table1.pdf](https://scdhec.gov/sites/default/files/media/document/BOW_PFAS_Table1.pdf) (last accessed December 30, 2022).

<sup>44</sup> *SCDHEC Other PFAS Data (excluding PFOA and PFOS) Data from Surface Water-Sourced Community Drinking Water Systems, August 2020*, available at [https://scdhec.gov/sites/default/files/media/document/BOW\\_PFAS\\_Table2.pdf](https://scdhec.gov/sites/default/files/media/document/BOW_PFAS_Table2.pdf) (last accessed December 30, 2022).

<sup>45</sup> See *Water-Sourced Community Drinking Water Systems*, *supra* note 43.

<sup>46</sup> *PFOA and PFOS Data from SCDHEC Sampling of Surface Water Sourced Community Drinking Water Systems that Provid-*

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

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

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

138. Interaction (in the food chain, by ingestion or by absorption) with contaminated resources, is hazardous to human, plant, and animal life, therefore, PFAS contamination has injured State natural resources and/or adversely impacted their beneficial

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*ed PFAS Data to SCDHEC*, available at [https://scdhec.gov/sites/default/files/media/document/BOW\\_PFAS\\_Table7A\\_0.pdf](https://scdhec.gov/sites/default/files/media/document/BOW_PFAS_Table7A_0.pdf) (last accessed December 31, 2022).

public trust uses including those for drinking water, recreation, and fishing.

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

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

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

- a. Solid waste facilities;
- b. Hazardous waste contaminated sites;
- c. Wastewater disposal sites;
- d. Wastewater treatment facilities;
- e. Biosolid and sludge processing and application sites, and septage land spreading; and
- f. Residential or domestic septic systems; and
- g. Use and disposal of numerous consumer, household, and commercial products.

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

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

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

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

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

## **A. Groundwater**

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

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

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

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

## **B. Surface Waters**

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

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

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

153. Surface waters also are commercially, recreationally, aesthetically, and ecologically important to the State and its citizens, and support aquatic ecosystems, and biota such as fish.

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

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

### **C. Wildlife, Soils, and Sediments**

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

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

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

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

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

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

**D. PFAS Contamination Caused by Defendants Must be Addressed.**

162. PFAS has contaminated State natural resources and property throughout the State. This contamination injures these resources, threatens State citizens' health, safety, and welfare, and interferes with the use of these precious resources.

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

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

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

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

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

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

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

## **VII. CAUSES OF ACTION**

### **FOR A FIRST CAUSE OF ACTION**

#### **Public Nuisance (All Defendants)**

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

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

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

173. Each Defendant has caused, contributed to, maintained, and/or participated in a public nuisance

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

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

- a. Defendants manufactured, marketed, distributed, promoted, sold, and/or otherwise placed into the stream of commerce PFOS, PFOA, PFNA, PFHxS, GenX, PFHpA, and/or PFBS and/or products containing PFOS, PFOA, PFNA, PFHxS, GenX, PFHpA, and/or PFBS when they knew, or reasonably should have known, that PFOS, PFOA, PFNA, PFHxS, GenX, PFHpA, and/or PFBS would escape from industrial processes and household, consumer, and commercial products and contaminate State natural resources and property and endanger human health;
- b. Defendants manufactured, marketed, distributed, promoted, sold, and/or otherwise placed into the stream of commerce PFOS, PFOA, PFNA, PFHxS, GenX, PFHpA, and/or PFBS and/or products containing PFOS, PFOA, PFNA, PFHxS, GenX, PFHpA, and/or PFBS that were delivered into the State (and areas affecting the State's natural resources and property), when they knew, or reasonably should have known, that PFOS, PFOA, PFNA, PFHxS, GenX, PFHpA, and/or PFBS would be released readily into the environment during the normal, intended, and foreseeable uses of PFOS, PFOA, PFNA, PFHxS, GenX, PFHpA, and/or PFBS and products

containing PFOS, PFOA, PFNA, PFHxS, GenX, PFHpA, and/or PFBS, and when released, PFOS, PFOA, PFNA, PFHxS, GenX, PFHpA, and/or PFBS would persist in the environment and not break down, contaminate State natural resources and property, including soils, sediments, groundwater, surface waters, wildlife, and drinking water supplies, and, ultimately, be difficult and costly to remove; and

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

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

176. Despite their knowledge that contamination of the State's natural resources and property with PFOS, PFOA, PFNA, PFHxS, GenX, PFHpA, and/or PFBS was the inevitable consequence of their conduct, Defendants failed to provide adequate warnings or special instructions, failed to take any other reasonable

precautionary measures to prevent or mitigate such contamination, and/or affirmatively misrepresented the hazards of PFOS, PFOA, PFNA, PFHxS, GenX, PFHpA, and/or PFBS in their product information and/or instructions for use.

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

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

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

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

sources and property, for which Defendants are jointly and severally liable.

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

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

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

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

184. As a direct and proximate result of Defendants' acts and omissions, the State's property and public trust resources were and are contaminated with PFOS, PFOA, PFNA, PFHxS, GenX, PFHpA, and/or PFBS. The State has incurred, is incurring,

and will incur, investigation, remediation, cleanup, restoration, removal, treatment, monitoring and/or other costs and expenses related to contamination of the State's property and public trust resources, for which Defendants are jointly and severally liable.

### **FOR A THIRD CAUSE OF ACTION**

#### **Trespass** **(All Defendants)**

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

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

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

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

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

190. Defendants knew, or in the exercise of reasonable care should have known, that PFOS, PFOA,

PFNA, PFHxS, GenX, PFHpA, and/or PFBS are hazardous to natural resources and property, including groundwater, surface water, and public water systems.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- a. Injunctive and other equitable relief pursuant to section 39-5-50(a) of the South Carolina Code;
- b. Restoration of all ascertainable losses under section 39-5-50(b) of the South Carolina Code to any person or entity who suffered them as a result of Defendants' conduct;
- c. Civil penalties in an amount up to \$5,000.00 per violation with every unfair or deceptive act or practice by Defendants constituting a separate and distinct violation; and
- d. Costs and attorneys' fees pursuant to section 1-7-85 of the South Carolina Code.

**VIII. PRAYER FOR RELIEF**

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

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

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

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

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

E. Award compensatory damages to the State of South Carolina arising from PFAS contamination and injury of State natural resources and property, including groundwater, surface waters, drinking water supplies, biota, wildlife including fish, and their associated soils, sediments, and uses, and other State natural resources and property, according to proof, including, but not limited to:

- (i) natural resource damages;
- (ii) loss-of use damages;
- (iii) costs of investigation;
- (iv) costs of testing and monitoring;

- (v) costs of providing water from an alternate source;
- (vi) costs of installing and maintaining well-head treatment;
- (vii) costs of installing and maintaining a well-head protection program;
- (viii) costs of installing and maintaining an early warning system to detect PFAS before it reaches wells;
- (ix) costs of mitigating and remediating PFAS from natural resources including ground-water, surface waters, soils, sediments, and other natural resources;
- (x) costs of mitigating and remediating PFAS contamination at release sites;
- (xi) any other costs or other expenditures incurred to address PFAS contamination and injury; and
- (xii) interest on the damages according to law;

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

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

H. Award prejudgment interest; and

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

Respectfully submitted,

s/Alan M. Wilson

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**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA  
COLUMBIA DIVISION**

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MDL NO. 2873

Master Docket No. 2:18-mn-02873-RMG

JUDGE RICHARD GERGEL

Case No. 2:23-cv-05979-RMG

JURY TRIAL DEMANDED

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

Plaintiff,

v.

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

Defendants.

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**NOTICE OF REMOVAL**

Defendant 3M Company (“3M”), by undersigned counsel, hereby gives notice of the removal of this action, pursuant to 28 U.S.C. §§ 1331, 1441, 1442(a)(1), and 1446, from the Court of Common Pleas for the Fifth Judicial Circuit, Richland County, South Carolina, to the United States District Court for the District of South Carolina, Columbia Division. As grounds for removal, 3M states as follows.

## PRELIMINARY STATEMENT

1. Plaintiff The State of South Carolina (“State”) seeks to hold 3M and other Defendants liable based on their alleged conduct in designing, manufacturing, marketing, and/or selling per- and polyfluoroalkyl substances (“PFAS”) and PFAS-containing products, which purportedly have resulted in alleged contamination of the State’s natural resources and property, including community drinking water supplies. *See* Complaint ¶¶ 1-18 (attached as Exhibit 1).

2. The alleged PFAS contamination in South Carolina plausibly has resulted at least in part from the use, storage, and/or disposal of PFAS-containing aqueous film-forming foams (“AFFF”) that 3M and others developed and sold to the U.S. military in accordance with rigorous military specifications (“MilSpec”) issued by the Department of Defense (“DoD”). AFFF is a firefighting foam that is highly effective for extinguishing fuel-based fires. The alleged PFAS contamination at issue in this action plausibly overlaps and is commingled with PFAS from AFFF use at military facilities. In fact, the State has filed a putatively separate action (the “AFFF case”) expressly seeking to recover for alleged PFAS contamination of the State’s natural resources and property from AFFF used at military facilities in South Carolina, and that case is currently pending in the *In re AFFF Products Liability Litigation* MDL (“MDL”). *See* Complaint, *The State of South Carolina v. 3M Co., et al.*, No. 2:23-cv-05734-RMG (D.S.C.), ECF No. 1-1 (“AFFF Complaint”) (attached as Exhibit 2).<sup>1</sup> As to the alleged PFAS contamination at issue in this case that plausibly resulted

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<sup>1</sup> References to “Complaint” (as opposed to “AFFF Complaint”) are to the complaint in this action.

from the use, storage, and/or disposal of MilSpec AFFF, 3M intends to assert the federal government contractor defense recognized in *Boyle v. United Technologies Corp.*, 487 U.S. 500 (1988), which bars the State from establishing, among other things, liability for the design and manufacture of MilSpec AFFF and for the provision of warnings for the product.

3. Under the federal officer removal statute, 28 U.S.C. § 1442(a)(1), 3M is entitled to remove this action to have its federal defense adjudicated in a federal forum. Such removal “fulfills the federal officer removal statute’s purpose of protecting persons who, through contractual relationships with the Government, perform jobs that the Government otherwise would have performed.” *Isaacson v. Dow Chem. Co.*, 517 F.3d 129, 133 (2d Cir. 2008).

4. Although the State purports to allege in this action that the State “is not seeking to recover through this Complaint any relief for contamination or injury related to AFFF or AFFF products used at airports, military bases, or certain industrial locations,” Complaint ¶ 20, nevertheless the State’s requests for relief here encompass damages attributable to PFAS-containing MilSpec AFFF, including damages attributable to potential PFAS contamination sites across South Carolina where PFAS from MilSpec AFFF plausibly has commingled with PFAS from non-AFFF sources. Indeed, the State’s own environmental agency, the South Carolina Department of Health and Environmental Control (“SCDHEC”), has classified AFFF use at DoD and other federal facilities as having the highest “Impact Rank” of all potential sources of PFAS in surface waters in South Carolina;<sup>2</sup> and the

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<sup>2</sup> See SCDHEC, Strategy to Assess the Impact of Polyfluoroal-

Complaint in this action (no less than the AFFF Complaint) expressly encompasses alleged PFAS contamination of the State’s surface waters, including all eight river basins. See Complaint ¶¶ 136, 150-155. In any case, the State cannot prevent 3M “from raising the production of MilSpec AFFF as a defense or an alternate theory” of the State’s damages. *Nessel v. Chemguard, Inc.*, No. 1:20-cv-1080, 2021 WL 744683, at \*3 (W.D. Mich. Jan. 6, 2021); see also Order at 3-6, *In re AFFF Prods. Liab. Litig.*, No. 2:18-mn-2873 (D.S.C.) (“*In re AFFF*”), ECF No. 325 (Oct. 1, 2019) (“*Ridgewood Water*”) (denying motion to remand putative non-MilSpec AFFF case). As a result, 3M is entitled to a federal forum to litigate its defense, including the nature and scope of the State’s putative disclaimer of any relief related to AFFF. The State’s effort to split its claims between putative AFFF and non-AFFF actions does not and cannot limit either 3M’s available defenses in this case or 3M’s entitlement to assert a federal government contractor defense.

5. In addition, the State’s alleged injuries have arisen in part from the use and release of PFAS and/or PFAS-containing products (including but not limited to AFFF) on federal enclaves. “Federal courts have federal question jurisdiction over tort claims that arise on ‘federal enclaves.’” *Durham v. Lockheed Martin Corp.*, 445 F.3d 1247, 1250 (9th Cir. 2006). Because the State’s alleged claims arose in part on federal enclaves, the claims involve a federal question, and 3M is entitled to remove the action under 28 U.S.C. §§ 1331 and 1441(a).

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kyl Substances on Ambient Surface Waters in South Carolina at 7 (Apr. 30, 2021) (“*SCDHEC PFAS Surface Water Strategy*”), [https://scdhec.gov/sites/default/files/media/document/BOW\\_PFAS\\_SurfaceWaterStrategy\\_0.pdf](https://scdhec.gov/sites/default/files/media/document/BOW_PFAS_SurfaceWaterStrategy_0.pdf).

## BACKGROUND

6. This action is one of two putatively separate but related actions that the State has filed against 3M and other Defendants based on substantially similar allegations to recover damages for alleged PFAS contamination of natural resources and property across the State.

7. On August 7, 2023, the State filed this putative “non-AFFF” PFAS action in the Court of Common Pleas for the Fifth Judicial Circuit, Richland County, South Carolina, bearing Case No. 2023CP4004111. *See* Complaint (Exhibit 1). On October 17, 2023, the State also filed its putative AFFF action in the Court of Common Pleas for the Fifth Judicial Circuit, Richland County, South Carolina, bearing Case No. 2023CP4005532. *See* Complaint (Exhibit 2). The putative AFFF action was removed to this Court based on federal officer jurisdiction and federal enclave jurisdiction, and is currently pending in the *In re AFFF* MDL. *See* Notice of Removal, *The State of South Carolina v. 3M Co., et al.*, No. 2:23-cv-05734 (D.S.C.), ECF No. 1.

8. In this putative “non-AFFF” action, the State generally alleges that Defendants, including 3M, have designed, manufactured, marketed, distributed, and/or sold PFAS and PFAS-containing products, including in South Carolina. *See, e.g.*, Complaint ¶¶ 4-5, 27, 40. The State further alleges that Defendants’ PFAS have caused contamination of the State’s natural resources and property in South Carolina, including the State’s groundwater, surface waters, wildlife, soils, and sediments “throughout the State.” *E.g., id.* ¶¶ 162; *see also id.* ¶¶ 133-161. The Complaint specifically asserts that, based on investigations by SCDHEC, the alleged PFAS contamination has impacted “[a]ll eight (8) of the major river basins in South Carolina” and

numerous “Surface Water-Sourced Community Water Systems” across South Carolina. *Id.* ¶¶ 136(a), (c). The State asserts claims against 3M and other Defendants for public nuisance (*id.*, First Cause of Action); private nuisance (*id.*, Second Cause of Action); trespass (*id.*, Third Cause of Action); and violation of the South Carolina Unfair Trade Practices Act (*id.*, Fourth Cause of Action). Among other relief, the Complaint seeks “damages for the cost of investigation, monitoring, abatement, containment, treatment, and removal of PFAS from the State’s natural resources and property, and punitive damages” as well as “compensation for the products’ damage to the natural resources and the concomitant reduction in value, use, and enjoyment of the same.” *Id.* ¶ 18; *see id.* at pp. 42-43.

9. The State’s AFFF Complaint is based on substantially similar allegations of PFAS contamination of natural resources (including *inter alia* surface waters and drinking water supplies) throughout South Carolina, and it asserts some of the same causes of action and requests for relief. *See, e.g.*, AFFF Complaint ¶¶ 11, 17, 130-151, 173-205, & pp. 42-44. The AFFF Complaint generally alleges that Defendants, including 3M, have designed, manufactured, marketed, distributed, and/or sold PFAS-containing AFFF products that have caused contamination of the State’s natural resources and property. *Id.* ¶¶ 1-10. The AFFF Complaint alleges that Defendants (including 3M) manufactured MilSpec AFFF for the DoD, *id.* ¶ 49, and that “PFAS contamination consistent with AFFF formulations” has been identified “in areas surrounding military sites” in South Carolina, *id.* ¶ 135. The AFFF Complaint identifies military installations in South Carolina where there is allegedly PFAS contamination from AFFF, including “the Marine Corps Recruit Depot Parris Island, Marine Corps Air Sta-

tion Beaufort, Charleston Naval Complex, Joint Base Charleston Air . . . , Myrtle Beach Air Force Base . . . , Shaw Air Force Base, McCrady Training Center, [and] McEntire Joint National Guard Base.” *Id.* ¶ 142.

10. Both of the State’s actions seek damages allegedly resulting from at least two of the same PFAS chemicals used by Defendants in the manufacture of AFFF: perfluorooctanoic acid (“PFOA”) and perfluorooctane sulfonic acid (“PFOS”). *See* Complaint ¶ 2; AFFF Complaint ¶ 2. Although the State alleges that PFAS contamination from AFFF “is separable from” PFAS contamination from “non-AFFF” sources, Complaint ¶ 21, the State does not explain how to separate alleged contamination from some of the very same PFAS chemicals between AFFF and non-AFFF contamination of surface waters, groundwater, and other natural resources.

### **THE PROCEDURAL REQUIREMENTS FOR REMOVAL ARE MET**

11. Venue for the removal of this action is proper in this Court pursuant to 28 U.S.C. §§ 121(2) and 1441(a) because the Court of Common Pleas for the Fifth Judicial Circuit, Richland County, South Carolina, is located within the District of South Carolina, Columbia Division. This action is related to cases in the *In re AFFF* MDL pending in this Court—including the State’s own putative AFFF case that is pending in the *In re AFFF* MDL.

12. 3M is not required to notify or obtain the consent of any other Defendant in this action in order to remove the State’s action as a whole under § 1442(a) (1). *See, e.g., Durham*, 445 F.3d at 1253; *Linden v. Chase Manhattan Corp.*, No. 99 Civ. 3970(LLS), 1999 WL 518836, at \*1 (S.D.N.Y. July 21, 1999);

*Torres v. CBS News*, 854 F. Supp. 245, 246 n.2 (S.D.N.Y. 1994).

13. Pursuant to 28 U.S.C. § 1446(a), true and accurate copies of the Complaint and Summons are attached hereto as Exhibit 1. True and accurate copies of other process, pleadings, and orders served on 3M are attached hereto as Exhibit 3.

14. 3M was served with the Complaint and Summons on November 1, 2023. This Notice of Removal is timely filed in accordance with 28 U.S.C. § 1446(b).

15. Pursuant to 28 U.S.C. § 1446(d), 3M is serving a copy of this Notice of Removal upon all other parties to this case and is filing a copy with the Clerk of the Court of Common Pleas for the Fifth Judicial Circuit, Richland County, South Carolina.

16. By filing a Notice of Removal in this matter, 3M does not waive the rights of any Defendant to object to service of process, the sufficiency of process, jurisdiction over the person, or venue; and 3M specifically reserves the rights of all Defendants to assert any defenses and/or objections to which they may be entitled.

17. 3M reserves the right to amend or supplement this Notice of Removal.

18. If any question arises as to the propriety of the removal of this action, 3M requests the opportunity to present a brief and oral argument in support of removal.

**REMOVAL IS PROPER UNDER THE  
FEDERAL OFFICER REMOVAL STATUTE,  
28 U.S.C. § 1442(a)(1)**

19. Removal here is proper under the federal officer removal statute, 28 U.S.C. § 1442(a)(1), which pro-

vides for removal of an action relating to a defendant's acts undertaken at the direction of a federal officer. Removal is appropriate under this provision where the removing defendant establishes that: (a) it is a "person" within the meaning of the statute; (b) it acted under federal authority; (c) its actions taken pursuant to a federal officer's direction have a causal nexus with plaintiff's claims or injuries or are otherwise related to the lawsuit; and (d) it can assert a "colorable" federal defense. *See Mesa v. California*, 489 U.S. 121, 124-25, 129-31, 133-35 (1989); *see also Cnty. Bd. of Arlington Cnty., Va. v. Express Scripts Pharmacy, Inc.*, 996 F.3d 243, 254 (4th Cir. 2021); *Sawyer v. Foster Wheeler LLC*, 860 F.3d 249, 254 (4th Cir. 2017); *Cuomo v. Crane Co.*, 771 F.3d 113, 115 (2d Cir. 2014); *Isaacson*, 517 F.3d at 135.

20. Removal rights under the federal officer removal statute are much broader than under the general removal statute, 28 U.S.C. § 1441. Suits against defendants acting on behalf of federal officers "may be removed despite the nonfederal cast of the complaint; the federal-question element is met if the defense depends on federal law." *Jefferson County v. Acker*, 527 U.S. 423, 431 (1999). This is because § 1442(a)(1) protects "the government's need to provide a federal forum for its officers and those who are 'acting under' a federal office." *Albrecht v. A.O. Smith Water Prods.*, No. 11 Civ. 5990(BSJ), 2011 WL 5109532, at \*3 (S.D.N.Y. Oct. 21, 2011). This important federal policy "should not be frustrated by a narrow, grudging interpretation of [§] 1442(a)(1)." *Willingham v. Morgan*, 395 U.S. 402, 407 (1969). To the contrary, § 1442 as a whole must be "liberally construed" in favor of removal. *Durham*, 445 F.3d at 1252 (quoting *Colorado v. Symes*, 286 U.S. 510, 517 (1932)).

21. All requirements for removal under § 1442(a)(1) are satisfied where, as here, the notice of removal alleges that the plaintiff's injuries are—at least in part—caused by or related to MilSpec AFFF. *See, e.g., Nessel*, 2021 WL 744683, at \*3 (denying motion to remand in PFAS case against AFFF manufacturers because, notwithstanding plaintiffs' assertion “that they do not seek resolution of any claims related to MilSpec AFFF, . . . Plaintiffs cannot decide what defense Defendants might present”); *Ayo v. 3M Co.*, No. 18-CV-0373(JS)(AYS), 2018 WL 4781145 (E.D.N.Y. Sept. 30, 2018) (denying motion to remand because federal officer removal was proper in lawsuit against manufacturers of MilSpec AFFF). In the *In re AFFF* MDL, the Court has found on multiple occasions that removal under § 1442 is proper where the notice of removal alleges that the plaintiff's injuries are caused, at least in part, by MilSpec AFFF. *See In re AFFF*, 2019 WL 2807266, at \*2-3 (D.S.C. May 24, 2019) (“*AFFF I*”); Order at 3-5, *In re AFFF*, ECF No. 320 (Sept. 27, 2019) (“*AFFF II*”); *Ridgewood Water* at 3-6. Likewise, this case has been properly removed to this Court based on federal officer jurisdiction.

### A. MilSpec AFFF

22. In the late 1960s/early 1970s, the U.S. military began using MilSpec AFFF on military bases, airfields, and Navy ships—settings where fuel fires are inevitable and potentially devastating—to train its personnel, put out fires, save lives, and protect property. Indeed, the U.S. Naval Research Laboratory developed AFFF (with some assistance from industry participants), and its researchers were granted the first AFFF patent in 1966.<sup>3</sup> Decades later, the Naval

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<sup>3</sup> U.S. Patent No. 3,258,423 (filed Sept. 4, 1963; published June 28, 1966).

Research Laboratory described the development of AFFF as “one of the most far-reaching benefits to worldwide aviation safety.”<sup>4</sup>

23. The design, manufacture, and sale of MilSpec AFFF is governed by rigorous military specifications created and administered by Naval Sea Systems Command, part of the DoD. *See* Complaint ¶ 49. The applicable specification, Mil-F-24385, was first promulgated in 1969, and has been revised a number of times since then.<sup>5</sup> All MilSpec AFFF products must be “qualified for listing on the applicable Qualified Products List” prior to military procurement.<sup>6</sup> Prior to such listing, “a manufacturer’s . . . products are examined, tested, and approved to be in conformance with specification requirements.”<sup>7</sup> The MilSpec designates Naval Sea Systems Command as the agency responsible for applying these criteria and determining whether AFFF products satisfy the MilSpec’s requirements. After a product is added to the Qualified Products List, “[c]riteria for retention of qualification are applied on a periodic basis to ensure continued integrity of the qualification status.”<sup>8</sup> Naval Sea Systems Command “reserves the right to perform any of the [quality assurance] inspections set forth in the specification

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<sup>4</sup> U.S. Navy, NRL/MR/1001-06-8951, The U.S. Naval Research Laboratory (1923–2005): Fulfilling the Roosevelts’ Vision for American Naval Power 37 (2006) (“Fulfilling the Roosevelts’ Vision”), <https://permanent.fdlp.gov/gpo125428/roosevelts.pdf>.

<sup>5</sup> The 1969 MilSpec and all its revisions and amendments through the April 2020 amendment (MIL-PRF-24385F(4)) are available at <https://tinyurl.com/yxwotjpg>.

<sup>6</sup> MIL-PRF-24385F(4) § 3.1 (2020).

<sup>7</sup> DoD, SD-6, Provisions Governing Qualification 1 (Feb. 2014), <https://tinyurl.com/y5asm5bw>.

<sup>8</sup> DoD, SD-6, *supra* note 7, at 1.

where such inspections are deemed necessary to ensure supplies and services conform to prescribed requirements.”<sup>9</sup>

24. From its inception until recently, the MilSpec included the express requirement that MilSpec AFFF contain “fluorocarbon surfactants”—the class of PFAS chemicals that includes PFOA and PFOS.<sup>10</sup> Even today, the AFFF MilSpec expressly contemplates the presence of PFOA and PFOS (subject to recently imposed limits) in AFFF formulations.<sup>11</sup> Indeed, the AFFF MilSpec recognizes that it is not yet technically feasible for manufacturers to completely eliminate PFOA and PFOS from AFFF “while still meeting all other military specification requirements.”<sup>12</sup>

25. 3M manufactured and sold PFAS-containing MilSpec AFFF to the U.S. military for over three decades pursuant to contracts with the United States. One or more AFFF products manufactured by 3M were on the Navy’s Qualified Products List for MilSpec AFFF from 1970 until 2010 (even though 3M had phased out production of AFFF beginning in 2000).<sup>13</sup>

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<sup>9</sup> See, e.g., MIL-PRF-24385F(4) § 4.1 (2020).

<sup>10</sup> See Mil-F-24385 § 3.2 (1969); MIL-PRF-24385F(2) § 3.2 (2017). In May 2019, the MilSpec was revised to drop the explicit requirement that the surfactants in the product be “fluorocarbon.” See MIL-PRF-24385F(3) § 3.2 (2019). But under current technology, the only AFFF products capable of meeting the MilSpec’s stringent performance requirements—and the only ones listed on the military’s Qualified Product List—are those containing fluorocarbon surfactants. Thus, as a practical matter, the MilSpec still requires fluorocarbon surfactants.

<sup>11</sup> See MIL-PRF-24385F(4) § 6.6 & Tables 1, 3 (2020).

<sup>12</sup> *Id.* § 6.6.

<sup>13</sup> See MIL-F-24385 QPL/QPD History for Type 3 AFFF (Oct. 24, 2014); MIL-F-24385 QPL/QPD History for Type 6 AFFF (Oct.

The U.S. military used MilSpec AFFF throughout the United States, including in South Carolina.

**B. The Alleged PFAS Contamination  
Plausibly Derives From MilSpec AFFF**

26. Upon information and belief based on the State's own allegations of alleged statewide contamination of various resources and properties, the PFAS chemicals that allegedly are contaminating the State's natural resources and property derive at least in part from the use, storage, and/or disposal of MilSpec AFFF at military facilities and elsewhere across South Carolina. Accordingly, the State's claims to recover for the alleged PFAS contamination are related to or arise in part from MilSpec AFFF.

27. Although the Complaint purports to allege that the State in this case is not seeking any relief for PFAS contamination from PFAS-containing AFFF used at military facilities or elsewhere in South Carolina, *see* Complaint ¶¶ 20, 141, the State's claims nonetheless relate to alleged PFAS contamination that is—at least in part—plausibly caused by or related to MilSpec AFFF (and not just non-AFFF sources of PFAS). To begin with, the State itself expressly alleges in its AFFF Complaint that PFAS contamination of the State's natural resources and property stems from AFFF-related PFAS detected at numerous U.S. military facilities in South Carolina where MilSpec AFFF would have been used, including but not limited to “the Marine Corps Recruit Depot Parris Island, Marine Corps Air Station Beaufort, Charleston Naval Complex, Joint Base Charleston Air . . . , Myrtle Beach

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24, 2014) (both available at *In re AFFF Prods. Liab. Litig.*, No. 2:18-mn-02873, ECF No. 1969-24 (D.S.C.)).

Air Force Base . . . , Shaw Air Force Base, McCrady Training Center, [and] McEntire Joint National Guard Base.” AFFF Complaint ¶ 142. The Complaint in *this* putative non-AFFF action seeks to recover for contamination from the same PFAS chemicals allegedly contained in MilSpec AFFF and at issue in the AFFF Complaint: namely, PFOA and PFOS. *Compare* Complaint ¶ 2, *with* AFFF Complaint ¶ 2.

28. Further, the Complaint seeks to recover for PFAS contamination throughout South Carolina of the same natural resources at issue in the putative AFFF action that allegedly have been contaminated with PFAS from MilSpec AFFF, including groundwater, surface water, wildlife, soils, and sediments. *Compare, e.g.*, Complaint ¶¶ 26, 146-155, *with* AFFF Complaint ¶¶ 17, 130-151. For instance, both complaints reference the same alleged PFAS contamination in “ambient surface water” (*e.g.*, rivers) across South Carolina that purportedly has been detected by SCDHEC. *Compare* Complaint ¶¶ 16, 136(a) & n.40, *with* AFFF Complaint ¶¶ 131, 135. Moreover, the SCDHEC has ranked AFFF use at DoD facilities in South Carolina as among the most impactful sources of potential PFAS contamination of surface waters.<sup>14</sup> Thus, the PFAS contamination of natural resources and properties at issue here overlaps with what the State itself recognizes to be PFAS contamination from MilSpec AFFF used at military facilities in South Carolina. *See* AFFF Complaint ¶ 142. To take one specific example, the Complaint here expressly encompasses PFAS contamination “in Lake Conestee south of Greenville, South Carolina.” Complaint ¶ 136(b). But the vicinity of Conestee Lake to the south of Greenville, South Carolina

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<sup>14</sup> SCDHEC PFAS Surface Water Strategy, cited *supra* note 2, at 7.

is also the location of the Army Aviation Support Facility Upstate, where MilSpec AFFF was used for fire-training exercises and other activities. See Army National Guard, *Final Preliminary Assessment Report Army Aviation Support Facility Upstate, Greenville, South Carolina* at 5, 11-16 (Oct. 2020), available at <https://www.nationalguard.mil/Leadership/Joint-Staff/Personal-Staff/Public-Affairs/Community-Engagement/Environmental/PFAS-Library/South-Carolina/FileId/304479/>. And especially since the State's complaints encompass alleged contamination occurring over many decades, the plausible overlap of alleged PFAS contamination from MilSpec AFFF and non-AFFF sources is more than sufficient to remove this putative non-AFFF case. 3M is entitled to litigate the nature and extent of any sources of alleged contamination in federal court.

29. The Complaint here further alleges PFAS contamination of community drinking water systems across South Carolina, see, e.g., Complaint ¶ 136(c)—including, for instance, contamination of the Edisto River from which the City of Charleston draws its drinking water, *id.* ¶ 136(a). But in the *In re AFFF* MDL, the City of Charleston has itself filed a putative class action against 3M and other Defendants on behalf of water providers to recover for contamination of their drinking water supplies that they allege to have resulted from AFFF use. See Complaint ¶¶ 10-11, *Comm'rs. of Pub. Works of the City of Charleston d/b/a Charleston Water Sys. v. 3M Co., et al.*, No. 2:23-cv-01357 (D.S.C.), ECF No. 1; see also *id.* ¶ 23 (alleging that Charleston draws water from the Edisto River). Other water providers in South Carolina have similarly filed lawsuits in the *In re AFFF* MDL alleging AFFF contamination of drinking water sources drawing from surface water sources that the State

names in the Complaint here. *Compare, e.g.*, Complaint ¶ 136(c) (naming Catawba River), *with* Complaint ¶¶ 10-11, 23, *City Council of Rock Hill v. 3M Co., et al.*, No. 2:23-cv-01637 (D.S.C.), ECF No. 1 (alleging AFFF contamination of water system drawing from Catawba River).

30. The Complaint also alleges PFAS contamination resulting from “sludge from wastewater treatment plants” that are then “used as a soil additive at agricultural sites or in commercial products.” Complaint ¶ 15. But in another putative class action against 3M and other Defendants in the *In re AFFF MDL* that the City of Charleston has brought on behalf of wastewater service providers, the City of Charleston alleges that PFAS contamination of wastewater and biosolids throughout South Carolina has resulted from AFFF use. *See* Complaint ¶¶ 8-11, *Comm’rs. of Pub. Works of the City of Charleston d/b/a Charleston Water Sys. v. 3M Co., et al.*, No. 2:23-cv-01075 (D.S.C.), ECF No. 1. Those allegations show that PFAS deriving from the use of AFFF in South Carolina, including MilSpec AFFF, plausibly has impacted the areas of PFAS contamination alleged in the Complaint here.

31. In addition, the Complaint in this action describes SCDHEC’s investigation of PFAS in South Carolina and specifically seeks damages for the costs of that investigation. *See, e.g.*, Complaint ¶¶ 14, 16, 18. But the State alleges, in its AFFF Complaint, that AFFF use is likely the cause of the alleged contamination detected by SCDHEC, and the State is also seeking the costs of its investigation in its AFFF Complaint. *See, e.g.*, AFFF Complaint ¶¶ 11, 134-135, 138. Moreover, the State alleges that it is seeking costs that it “will incur” for investigation of alleged PFAS

contamination in the future, *e.g.*, Complaint ¶ 180; *see also, e.g.*, AFFF Complaint ¶ 184, but there is no way the State can credibly say that such future investigation is unrelated to MilSpec AFFF when the investigation is not complete.

32. Upon information and belief, PFAS from MilSpec AFFF and PFAS from the non-AFFF sources putatively at issue in this action are plausibly commingled across South Carolina, and PFAS deriving from MilSpec AFFF use at military facilities inseparably contributed to any alleged “non-AFFF” PFAS contamination. The State itself alleges in both this putative non-AFFF case and its AFFF case that PFAS are “mobile” in the environment and may “migrate” and “spread” to contaminate new natural resources. *E.g.*, Complaint ¶¶ 62, 166, 179; AFFF Complaint ¶¶ 46, 143, 150. Moreover, the State’s complaints in both cases contain substantially similar allegations, causes of action, and requests for relief concerning alleged contamination of the same statewide natural resources to which PFAS allegedly has spread. *Compare, e.g.*, Complaint ¶¶ 133-169, 171-204, *with* AFFF Complaint ¶¶ 130-151, 173-205. Consistent with those allegations, PFAS from MilSpec AFFF and from non-AFFF PFAS sources plausibly cross-contaminated at least some of the natural resources that are at issue in both of the State’s two cases.

33. PFAS from MilSpec AFFF used at military facilities in South Carolina thus plausibly has impacted the sites expressly referenced in this Complaint, including the “major river basins in South Carolina,” Complaint ¶ 136(a), as well as other putatively “non-PFAS” contamination sites at issue in this case such as wastewater facilities where biosolids sludge accumulates, *see, e.g.*, Complaint ¶ 141. PFAS from Mil-

Spec AFFF therefore plausibly has *commingled* with PFAS from non-AFFF sources in South Carolina, so that the State's effort to recover for alleged "non-AFFF" PFAS contamination in this action provides 3M with a basis to assert its federal government contractor defense related to any alleged injury from MilSpec AFFF.

34. Indeed, the AFFF Complaint incorporates maps showing the locations of U.S. military sites (among other sites) where AFFF is known or suspected to have been used in South Carolina and adjacent states, *see* AFFF Complaint ¶¶ 130-142, and it can be seen that one or more of those AFFF sites is located either within or in the vicinity of most or all of the "eight (8) major river basins in South Carolina" that the Complaint puts at issue in *this* action, Complaint ¶ 136(a); *see* AFFF Complaint at p. 30 (showing map identifying sites of known or suspected AFFF use that include U.S. military sites); *id.* at p. 31 (overlying map of AFFF sites onto map showing the eight major river basins in South Carolina). Upon information and belief, there exist pathways by which PFAS from AFFF use could migrate off of the military sites to impact the surrounding surface waters and groundwater. *See, e.g.,* Aerostar, *Final Recommendation Letter for Additional Activities during Phase I PFAS Remedial Investigation, Shaw Air Force Base, Sumter County, South Carolina* at 16-21 (Sept. 30, 2022), *available at* <https://ar.afcec-cloud.af.mil/> (Shaw AFB, SC, AR#4234) ("*Shaw AFB Letter*") (concluding that PFAS from AFFF migrated off-base from Shaw Air Force Base to groundwater and surface waters); SCDHEC, *Shaw AFB Near-Contiguous Off-Base Wells*, [https://scdhec.gov/sites/default/files/media/document/PFAS%20DW%20data%20SAFB%20April%2029\\_0.pdf](https://scdhec.gov/sites/default/files/media/document/PFAS%20DW%20data%20SAFB%20April%2029_0.pdf) (showing off-base PFAS levels near Shaw Air Force Base); Air National Guard, *Final Perfluorinated Compounds Preliminary Assessment Site Visit*

*Report, McEntire Joint National Guard Base, Eastover, South Carolina* at 7, 14 (May 2016), *available at* <https://ar.afcec-cloud.af.mil/> (McEntire Air Guard Base, SC AR#474919 (describing AFFF releases at McEntire Joint National Guard Base entering storm water sewers that flow to surrounding surface waters); Naval Facilities Engineering Systems Command (“NAVFAC”), *Draft Final Site Inspection Report for Per and Polyfluoroalkyl Substances Revision 1 MCAS Beaufort SC* at 17, 26-27 (Apr. 2023), *available at* [https://administrative-records.navfac.navy.mil/Public\\_Documents/MID\\_ATLANTIC/BEAUFORT\\_MCAS/M60169\\_003689.pdf](https://administrative-records.navfac.navy.mil/Public_Documents/MID_ATLANTIC/BEAUFORT_MCAS/M60169_003689.pdf) (describing AFFF release at Marine Corps Air Station Beaufort and discharge to surrounding surface waters). Once PFAS from AFFF use has migrated off-base to the surrounding surface waters and groundwater, the PFAS plausibly commingles with and plausibly becomes indistinguishable from PFAS from other non-AFFF sources across South Carolina—such as the application of biosolids or the disposal of non-AFFF PFAS waste that also plausibly have impacted the same surface waters and groundwater, as alleged by the State in the Complaint. *See* Complaint ¶ 141; *see also, e.g., Shaw AFB Letter* at Figures 4 & 7b (showing fire-training areas at Shaw Air Force Base to be adjacent to former sludge spreading areas).

35. Because the Complaint in this action seeks broadly to recover for alleged natural resource damages from PFAS across the State, and because (as stated above) PFAS from MilSpec AFFF and non-AFFF sources have commingled at various locations across South Carolina, the State’s claims in this case encompass alleged PFAS contamination that plausibly derives at least in part from MilSpec AFFF. Upon information and belief, the alleged PFAS contamination of the State’s groundwater, surface waters, and

other natural resources, either in whole or in part, plausibly resulted from commingling of PFAS from MilSpec AFFF and PFAS from other AFFF and non-AFFF sources in South Carolina. Likewise, other damages sought by the State, such as the costs of investigating and monitoring PFAS across South Carolina (*see, e.g.*, Complaint at p. 43; AFFF Complaint at p. 43), are attributable in part to the fact that MilSpec AFFF historically has been used at military facilities and elsewhere in South Carolina.

36. Because the alleged PFAS contamination at issue in this action is (in part) plausibly attributable and/or related to MilSpec AFFF use at military or other facilities in South Carolina, 3M is entitled to remove this case as a whole pursuant to federal officer jurisdiction.<sup>15</sup> That is because “[i]t is entirely possible that Plaintiffs’ injuries occurred from actions taken while Defendants were acting under color of federal office: namely, MilSpec AFFF.” *Nessel*, 2021 WL 744683, at \*3. At a minimum, 3M is entitled to raise “the produc-

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<sup>15</sup> PFAS in South Carolina also plausibly derives from the use of MilSpec AFFF at large civilian airports, so-called “Part 139” airports. Part 139 airports have historically used MilSpec AFFF and, beginning in 2006, the U.S. government required Part 139 airports to use AFFF meeting MilSpec standards. *See* FAA Part 139 CertAlert 06-02, Aqueous Film Forming Foam (AFFF) meeting MIL-F-24385 (Feb. 8, 2006); *see also* AFFF Complaint ¶ 50. The State expressly alleges that PFAS contamination in South Carolina stems in part from AFFF use at four airports (Charleston International Airport, Myrtle Beach International Airport, Columbia Metropolitan Airport, and Greenville-Spartanburg International Airport). *See* AFFF Complaint ¶ 142. All of those airports are Part 139 airports that have been required to use MilSpec AFFF. *See* Part 139 Airport Certification Status List (Excel file), *available at* [https://www.faa.gov/airports/airport\\_safety/part139\\_cert/part\\_139\\_airport\\_certification\\_status\\_list](https://www.faa.gov/airports/airport_safety/part139_cert/part_139_airport_certification_status_list).

tion of MilSpec AFFF as a defense or alternative theory,” and on that basis, may remove this case. *Id.*

37. Federal officer removal is appropriate notwithstanding the State’s attempt to allege that AFFF is not at issue in this case, because the State’s claimed damages from PFAS are plausibly due in part to PFAS from MilSpec AFFF that overlap and are commingled with the alleged PFAS contamination from non-AFFF sources. *See Nessel*, 2021 WL 744683, at \*3 (denying State of Michigan’s motion to remand and concluding that federal officer removal was proper notwithstanding the complaint’s allegation that Michigan was not seeking relief for MilSpec AFFF; “The Court finds that Plaintiffs’ artful pleading does not obviate the facts on the ground.”); *Ridgewood Water* at 2-5 (acknowledging that the plaintiff had disavowed any claim to recover for damages from MilSpec AFFF, but denying the plaintiff’s motion to remand and concluding that federal officer removal was proper because defendants showed that the contamination of the plaintiff’s water supply was plausibly attributable to PFAS from the use of MilSpec AFFF).

**C. All the Requirements of 28 U.S.C. § 1442(a)(1) Are Satisfied**

***1. The “Person” Requirement Is Satisfied***

38. The first requirement for removal under the federal officer removal statute is satisfied here because 3M (a corporation) meets the definition of “person” under the statute. For purposes of § 1442(a)(1), the term “person” includes corporations. *Papp v. Fore-Kast Sales Co.*, 842 F.3d 805, 812 (3d Cir. 2016) (quoting 1 U.S.C. § 1); *accord Isaacson*, 517 F.3d at 135-36.

## 2. *The “Acting Under” Requirement Is Satisfied*

39. The second requirement (“acting under” a federal officer) is satisfied when an entity assists or helps carry out the duties or tasks of a federal officer. *Watson v. Philip Morris Co., Inc.*, 551 U.S. 142, 152 (2007); *Papp*, 842 F.3d at 812. The phrase “acting under” is to be “liberally construed in favor of the entity seeking removal.” *Sawyer v. Foster Wheeler LLC*, 860 F.3d 249, 255 (4th Cir. 2017) (internal quotation marks omitted). Federal courts “have explicitly rejected the notion that a defendant could only be ‘acting under’ a federal officer if the complained-of conduct was done at the specific behest of the federal officer or agency.” *Papp*, 842 F.3d at 813. Rather, “courts have unhesitatingly treated the ‘acting under’ requirement as satisfied where a contractor seeks to remove a case involving injuries arising from equipment that it *manufactured for the government*.” *Sawyer*, 860 F.3d at 255.

40. The requirement of “acting under” a federal officer is met here because the alleged PFAS contamination at issue in this action stems in part from MilSpec AFFF, a vital product provided by 3M that otherwise “the Government would have had to produce itself.” *Isaacson*, 517 F.3d at 137. MilSpec AFFF is a mission-critical military and aviation safety product that, without the support of private contractors, the government would have to produce for itself. *See Ayo*, 2018 WL 4781145, at \*9 (describing MilSpec AFFF as a “mission-critical” and “life-saving product” used by all branches of the U.S. armed forces and NATO members (internal quotation marks omitted)); *cf. Isaacson*, 517 F.3d at 137. The Naval Research Laboratory states that, “[a]lthough [it] was responsible for the original concepts and formulations, it was necessary

to elicit the aid of the chemical industry to synthesize the fluorinated intermediates and agents to achieve improvements in formulations.”<sup>16</sup> Accordingly, the military has long depended upon outside contractors like 3M to develop and supply AFFF.

41. In designing, manufacturing, and supplying the MilSpec AFFF at issue, 3M acted under the direction and control of federal officers. Specifically, 3M acted in accordance with detailed specifications, promulgated by Naval Sea Systems Command, that govern AFFF formulation, performance, testing, storage, inspection, packaging, and labeling. Further, MilSpec AFFF products were subject to various tests by the U.S. Navy before and after being approved for use by the military and for inclusion on the Qualified Products List maintained by the DoD.<sup>17</sup>

42. For these reasons, as the Court previously concluded in the *In re AFFF* MDL, 3M has satisfied the “acting under” requirement. *See AFFF I*, 2019 WL 2807266, at \*2 (finding that the “acting under” requirement was satisfied because defendant demonstrated that it was manufacturing MilSpec AFFF under the guidance of the U.S. military); *AFFF II*, at 3-5 (same); *Ridgewood Water* at 3-5 (same); *see also Nes- sel*, 2021 WL 744683, at \*3 (holding that AFFF manufacturers were “acting under” a federal officer in connection with the manufacture and sale of MilSpec AFFF); *Ayo*, 2018 WL 4781145, at \*8-9 (same).

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<sup>16</sup> Fulfilling the Roosevelts’ Vision at 37.

<sup>17</sup> *See DoD, SD-6, supra* note 7, at 1.

### 3. *The “Under Color Of Federal Office” Requirement Is Satisfied*

43. The third requirement, that the defendant’s actions were taken “under color of federal office,” requires a “nexus” between plaintiff’s claims and the defendant’s acts undertaken at the direction of a federal officer. As with the “acting under” requirement, “[t]he hurdle erected by this requirement is quite low.” *Isaacson*, 517 F.3d at 137. To meet this requirement, “there need be only *a connection or association* between the act in question and the federal office.” *Sawyer*, 860 F.3d at 258 (internal quotation marks omitted) (explaining that 28 U.S.C. § 1442 permits removal of actions “for or relating to any act under color of [federal] office”); *Papp*, 842 F.3d at 813; *Isaacson*, 517 F.3d at 137-38 (explaining that it is sufficient if the act that allegedly caused the plaintiff’s injuries occurred while the defendant was performing its official duties).<sup>18</sup>

44. Here, the State’s claims against 3M for alleged PFAS contamination of natural resources and property are for or relate to (at least in part) 3M’s design, manufacture, and sale of MilSpec AFFF—which was designed and manufactured according to DoD military specifications, and which has been used, stored, and/or released at military facilities and elsewhere in South Carolina. *See* Sect. B, *supra*. As a result, the State’s claims against 3M relate to their acts taken under color of federal office. *See AFFF I*, 2019 WL 2807266, at \*3 (nexus element satisfied where “[Plaintiff]’s claims arise out of use of AFFF products . . . for which the U.S. military imposes MilSpec standards.”); *AFFF II*, at 5

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<sup>18</sup> The “acting under” and “under color of” prongs overlap. Both “are satisfied if the actions subject to suit resulted directly from government specifications or direction.” *Albrecht*, 2011 WL 5109532, at \*5.

(nexus element satisfied where AFFF products, “for which the military imposes MilSpec standards,” were the alleged cause of plaintiff’s injuries); *Ridgewood Water* at 5-6 (same); *see also Ayo*, 2018 WL 4781145, at \*9 (“[T]here is evidence of a ‘casual connection’ between the use of PFCs in AFFF and the design and manufacture of AFFF for the government.”).

45. Courts “credit Defendants’ theory of the case” when determining whether the requisite nexus exists. *Isaacson*, 517 F.3d at 137; *accord Nessel*, 2021 WL 744683, at \*3 (noting that “Plaintiffs cannot decide what defense Defendants might present”). As averred in this Notice of Removal, the State’s alleged injuries plausibly arise at least in part from MilSpec AFFF. The State’s claims sufficiently relate to 3M’s actions under color of federal office.

#### ***4. The “Colorable Federal Defense” Requirement Is Satisfied***

46. The fourth requirement (“colorable federal defense”) is satisfied by 3M’s assertion of the government contractor defense.

47. At the removal stage, a defendant need only show that its government contractor defense is colorable; that is, “that the defense was ‘legitimate and [could] reasonably be asserted, given the facts presented and the current law.’” *Papp*, 842 F.3d at 815 (alteration in original) (citation omitted). “A defendant ‘need not win his case before he can have it removed.’” *Id.* (quoting *Willingham*, 395 U.S. at 407); *see also Isaacson*, 517 F.3d at 139 (“To be ‘colorable,’ the defense need not be ‘clearly sustainable,’ as the purpose of the statute is to secure that the validity of the defense will be tried in federal court.” (citation omitted)). At the removal stage, the inquiry “is purely

jurisdictional, and neither the parties nor the district courts should be required to engage in fact-intensive motion practice, pre-discovery, to determine the threshold jurisdictional issue.” *Cuomo*, 771 F.3d at 116; *see also Kraus v. Alcatel-Lucent*, No. 18-2119, 2018 WL 3585088, at \*2 (E.D. Pa. July 25, 2018) (“A court does not ‘determine credibility, weigh the quantum of evidence or discredit the source of the defense’ at this stage. Instead, [the court] only determine[s] whether there are sufficient facts alleged to raise a colorable defense.” (internal citation omitted)). Moreover, “this inquiry is undertaken whilst viewing the facts in the light most favorable to Defendants.” *Hagen v. Benjamin Foster Co.*, 739 F. Supp. 2d 770, 783–84 (E.D. Pa. 2010). “Precisely in those cases where a plaintiff challenges the factual sufficiency of the defendant’s defense, the defendant should ‘have the opportunity to present [his] version of the facts to a federal, not a state, court.’” *Cuomo*, 771 F.3d at 116 (quoting *Willingham*, 395 U.S. at 409).

48. Under the government contractor defense, the defendant is not liable for the design or manufacture of equipment or supplies (or for warnings relating to them) “when (1) the United States approved reasonably precise specifications; (2) the equipment conformed to those specifications; and (3) the supplier warned the United States about the dangers in the use of the equipment that were known to the supplier but not to the United States.” *Boyle*, 487 U.S. at 512.

49. The requirement of “reasonably precise specifications” can be met by evidence showing either (a) that the government’s participation in the design of the product “amount[ed] to more than a rubber stamping,” or (b) that the government continued to purchase or use a product after the government became aware

that the product contained the alleged defect. *Ramey v. Martin-Baker Aircraft Co. Ltd.*, 874 F.2d 946, 950 (4th Cir. 1989). Naval Sea Systems Command participated in the design of MilSpec AFFF, and its role was not a mere “rubber stamping.” It created (and has updated) detailed specifications governing the product’s formulation, performance, testing, storage, inspection, packaging, and labeling.<sup>19</sup> Those specifications are “reasonably precise,” including in requiring the use of PFAS.<sup>20</sup> In addition, in the past and continuing to the present, the DoD has purchased and used MilSpec AFFF with awareness of the product’s PFAS content and of the alleged risks associated with PFAS in the product. *See AFFF I*, 2019 WL 2807266, at \*3 (noting that a colorable defense was alleged where AFFF MilSpec “included specifications for the chemical class that includes PFOS/PFOA”); *Ayo*, 2018 WL 4781145, at \*12 (“That the DoD knows of the alleged risks of PFC-based AFFF products but continues to purchase them supports the position that the government approved reasonably precise specifications for the claimed defective design.”).

50. With respect to the second requirement, 3M’s products have appeared on the DoD Qualified Products List,<sup>21</sup> which could have happened only if Naval

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<sup>19</sup> *See* Mil-F-24385 (1969) and subsequent revisions and amendments, cited in note 5, *supra*.

<sup>20</sup> As noted earlier, until 2019 the specification expressly required that MilSpec AFFF contain “fluorocarbon surfactants,” all of which are members of the PFAS family. Even since that express requirement was removed from the specification, the use of PFAS has been implicitly mandated because PFAS-containing surfactants are the only kind that allow AFFF to meet the performance requirements of the specification.

<sup>21</sup> *See* MIL-F-24385 QPL/QPD History for Type 3 AFFF (Oct.

Sea Systems Command had first determined that they conformed to the MilSpec. *See AFFF I*, 2019 WL 2807266, at \*3 (finding that defendant demonstrated a colorable defense “where it contends that its AFFF products were manufactured according to the U.S. military’s MilSpec specifications”); *Ayo*, 2018 WL 4781145, at \*13 (“There is also colorable evidence . . . that Manufacturing Defendants’ AFFF products conformed to the government’s reasonably precise specifications.”).

51. Regarding the third requirement, the U.S. government was sufficiently informed regarding alleged product-related “dangers,” *Boyle*, 487 U.S. at 512, to exercise its discretionary authority in specifying and procuring MilSpec AFFF. The military specifications have long included testing protocols and requirements for toxicity, chemical oxygen, and biological demand. Indeed, it is clear that the United States has long understood that AFFF contains PFAS and may contain or break down into PFOS and/or PFOA; that AFFF constituents can migrate through the soil and potentially reach groundwater; and that it has been reported that this may raise environmental or human health issues.<sup>22</sup> For example, as early as October 1980, a report supported by the U.S. Navy Civil Engineering Laboratory, U.S. Air Force Engineering Service Center, and the U.S. Army Medical Research and Development Command stated that AFFF contained fluorocarbons and that “[a]ll of the constituents resulting from firefighting exercises are considered to have ad-

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24, 2014); MIL-F-24385 QPL/QPD History for Type 6 AFFF (Oct. 24, 2014) (both available at *In re AFFF Prods. Liab. Litig.*, No. 2:18-mn-02873, ECF No. 1969-24 (D.S.C.)).

<sup>22</sup> *See, e.g., EPA, Revised Draft Hazard Assessment of Perfluorooctanoic Acid and Its Salts 1-6* (Nov. 4, 2002).

verse effects environmentally.”<sup>23</sup> In June 1991, the Air Force stated that past Air Force fire training activities resulted in “adverse environmental impact,” including “soil contamination” and the “potential” for “groundwater contamination.”<sup>24</sup> By no later than 2001, DoD was aware of data purportedly showing PFAS compounds in MilSpec AFFF to be “toxic” and “persistent.”<sup>25</sup> In 2002, the United States Environmental Protection Agency issued a draft hazard assessment for PFOA, which reviewed in detail, among other data, human epidemiological studies and animal toxicology studies pertaining to alleged associations between PFOA and cancer.<sup>26</sup> More recently, in a November 2017 report to Congress, the DoD acknowledged the concerns raised by the EPA regarding PFOS and PFOA. Nonetheless, it still described AFFF containing PFOS or PFOA as a “mission critical product [that] saves lives and protects assets by quickly extinguishing petroleum-based fires.”<sup>27</sup> Indeed, Naval Sea Systems Command continues to require that MilSpec AFFF contain “surfactants,”<sup>28</sup> and recognizes that PFAS, including PFOS and PFOA, will be present

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<sup>23</sup> See Edward S. K. Chian et al., *Membrane Treatment of Aqueous Film Forming Foam (AFFF) Wastes for Recovery of Its Active Ingredients* 1 (Oct. 1980), <https://apps.dtic.mil/dtic/tr/fulltext/u2/a136612.pdf>.

<sup>24</sup> USAF, Engineering Technical Letter ETL 91-4: Site Selection Criteria for Fire Protection Training Areas 2 (June 14, 1991).

<sup>25</sup> EPA Presentation on Activities/Issues on Fluorosurfactants, March 16, 2001 (available at *In re AFFF Prods. Liab. Litig.*, No. 2:18-mn-02873, ECF No. 1971-2 (D.S.C.)).

<sup>26</sup> See EPA, Revised Draft Hazard Assessment, *supra* note 22.

<sup>27</sup> DoD, *Aqueous Film Forming Foam Report to Congress* 1-2 (Oct. 2017) (pub. Nov. 3, 2017), <https://tinyurl.com/wshcww4>.

<sup>28</sup> MIL-PRF-24385F(4) § 3.2 (2020).

(subject to recently imposed limits for PFOS and PFOA) in AFFF formulations.<sup>29</sup> See *AFFF I*, 2019 WL 2807266, at \*3 (“As to whether [defendant] adequately informed the U.S. military of dangers associated with its AFFF products of which the military was not already aware, [defendant] points to materials such as a November 2017 Department of Defense report to Congress, in which the agency acknowledged the [EPA]’s stated concerns with PFOS/PFOA in drinking water”); *Ayo*, 2018 WL 4781145, at \*12 (“That the DoD knows of the alleged risks of PFC-based AFFF products but continues to purchase them supports the position that the government approved reasonably precise specifications for the claimed defective design.”).

52. At minimum, these facts constitute colorable evidence that Naval Sea Systems Command “made a discretionary determination” regarding the formulation of MilSpec AFFF after weighing the fire-suppression benefits against the alleged risks. See *In re “Agent Orange” Prod. Liab. Litig.*, 517 F.3d 76, 90 (2d Cir. 2008); see also *Albrecht*, 2011 WL 5109532, at \*5 (“A defendant is not required to warn the government where ‘the government knew as much or more than the defendant contractor about the hazards of the product.’” (citation omitted)). Where, as here, the government has exercised “discretionary authority over areas of significant federal interest such as military procurement,” the government contractor defense applies. *In re “Agent Orange” Prod. Liab. Litig.*, 517 F.3d at 89-90; see also *Ayo*, 2018 WL 4781145, at \*13.

53. 3M’s use of PFAS in MilSpec AFFF was required by military specifications. By seeking to im-

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<sup>29</sup> *Id.* § 6.6 & Tables I, III; see also David Vergun, *DOD Officials Discuss Fire-Fighting Foam Replacement, Remediation Efforts* (Sept. 16, 2020), <https://tinyurl.com/ty5ku8hp>.

pose tort liability on 3M for alleged injuries to the State that were caused in whole or in part by 3M's compliance with military specifications, the State is attempting to use state tort law to attack design choices dictated by the military. The government contractor defense precludes such an attack. *See Boyle*, 487 U.S. at 509.

54. In the *In re AFFF* MDL, the Court has found—based on an extensive record—that the government contractor defense asserted by 3M and other AFFF manufacturers presents genuine issues of fact for trial. *See In re AFFF*, 2022 WL 4291357, at \*12, 15 (D.S.C. Sept. 16, 2022). A defense that presents triable issues is by definition better than merely “colorable.”

55. Accordingly, 3M is entitled to remove this action to federal court pursuant to the federal officer removal statute, 28 U.S.C. § 1442(a)(1).

**IN ADDITION, BECAUSE THE STATE'S  
CLAIMS AROSE IN PART ON FEDERAL  
ENCLAVES, THIS COURT HAS JURISDICTION  
UNDER 28 U.S.C. § 1331, AND REMOVAL IS  
PROPER UNDER 28 U.S.C. § 1441(a)**

56. Removal of this action is also proper because the State's alleged claims arose in part on federal enclaves. To that extent, the claims are governed by federal law and are subject to this Court's original jurisdiction under 28 U.S.C. § 1331. Thus, this action is removable under 28 U.S.C. § 1441(a). *See AFFF I*, 2019 WL 2807266, at \*3-4 (finding that removal of AFFF case filed by New York was proper under 28 U.S.C. § 1441(a) because the Court “has jurisdiction pursuant to 28 U.S.C. § 1331(a) over New York's tort claims relating to AFFF product use and contamination at Griffiss Air Force Base, a federal enclave, and

has supplemental jurisdiction over the claims relating to the other alleged contamination sites”).

57. The Constitution confers on Congress the power “[t]o exercise exclusive legislation” over the District of Columbia “and to exercise like authority over all places purchased by the consent of the legislature of the state in which the same shall be, for the erection of forts, magazines, arsenals, dockyards, and other needful buildings.” U.S. Const. art. I, § 8, cl. 17. “It has long been settled that where lands for such a purpose are purchased by the United States with the consent of the State legislature, the jurisdiction theretofore residing in the state passes, in virtue of the constitutional provision, to the United States, thereby making the jurisdiction of the latter the sole jurisdiction.” *Surplus Trading Co. v. Cook*, 281 U.S. 647, 652 (1930). Lands acquired in this way and made subject to sole federal legislative jurisdiction are termed federal enclaves. *Brookhaven Sci. Assocs., LLC v. Donaldson*, 2007 WL 2319141, at \*5 (S.D.N.Y. Aug.9, 2007). Because the United States exercises sole lawmaking authority over a federal enclave, the law applicable to that enclave is—by definition—federal law, although such federal law may incorporate state-law rules of decision. *See, e.g., Mater v. Holley*, 200 F.2d 123, 124 (5th Cir. 1952) (“[A]ny law existing in territory over which the United States has ‘exclusive’ sovereignty must derive its authority and force from the United States and is for that reason federal law”); *Macomber v. Bose*, 401 F.2d 545, 546 (9th Cir. 1968) (“State law theretofore applicable within the [ceded] area was assimilated as federal law, to remain in effect until changed by Congress. Rights arising under such assimilated law, arise under federal law and are properly the subject of federal jurisdiction.”); *Brookhaven Sci. Assocs.*, 2007 WL 2319141, at \*5 (“[W]hen an area

becomes a federal enclave, the state law in effect at the time of cession becomes federal law and is the applicable law unless Congress provides otherwise.”).

58. Accordingly, it is settled that federal courts have federal-question jurisdiction under 28 U.S.C. § 1331 as to actions involving tort claims that arise on federal enclaves. *See, e.g., Durham*, 445 F.3d at 1250; *Akin v. Ashland Chemical Co.*, 156 F.3d 1030, 1034 (10th Cir. 1998); *Jones v. John Crane-Houdaille, Inc.*, 2012 WL 1197391, at \*1 (D. Md. Apr. 6, 2012) (“A suit based on events occurring in a federal enclave . . . must necessarily arise under federal law and implicates federal question jurisdiction under § 1331.”). It follows that such actions, if originally filed in state court, may be removed to federal court under 28 U.S.C. § 1441(a). *See, e.g., Allison v. Boeing Laser Tech. Servs.*, 689 F.3d 1234, 1236 (10th Cir. 2012); *Fuller v. Tenn. Valley Auth.*, 2007 WL 2077639 at \*2 (E.D. Tenn. 2007).

59. Some federal facilities in South Carolina, including some of the federal facilities identified by the State’s AFFF Complaint (¶ 142), are or were federal enclaves when AFFF and/or other PFAS or PFAS-containing products were released from such facilities. For instance, the Charleston Naval Complex is and was a federal enclave. *See In re Welding Rod Prods.*, No. 1:03-CV-17000, 2005 WL 147081, at \*7 (N.D. Ohio Jan. 13, 2005) (Charleston Naval Shipyard); *see also Jarman v. Beaufort-Jasper Water & Sewer Auth.*, 9:15-cv-00356-DCN, 2017 WL 1881330, at \*1 (D.S.C. May 9, 2017) (identifying Parris Island as a federal enclave); Office of the Attorney General, State of South Carolina, Letter to the Honorable Wade S. Kalb Jr., 1986 WL 289800 (May 29, 1986) (identifying Shaw Air Force Base as a federal enclave).

60. Moreover, federal enclave jurisdiction exists even for the State's claims that may arise from *non-AFFF* PFAS sources on military facilities, so the State cannot argue that its putative AFFF disclaimer bars federal enclave jurisdiction. The U.S. military has acknowledged non-AFFF PFAS releases from its facilities, including PFAS releases relating to metal plating processes. *See, e.g., NAVFAC, Interim Per- and Polyfluoroalkyl Substances (PFAS) Site Guidance for NAVFAC Remedial Project Managers (RPMs)* (Nov. 2020), at 5, [https://www.secnnav.navy.mil/eie/Policies%20and%20Guidance%20Docs/2020%20November%2024%20Final%20NAVFAC%20Interim%20PFAS%20Guidance%20FAQs%20\(5\).pdf](https://www.secnnav.navy.mil/eie/Policies%20and%20Guidance%20Docs/2020%20November%2024%20Final%20NAVFAC%20Interim%20PFAS%20Guidance%20FAQs%20(5).pdf) (“PFAS may have been used . . . at hard chrome plating shops”); *id.* at 10 (“PFASs could also be found in a variety of other materials/processes” other than AFFF at Navy facilities). Upon information and belief, PFAS use at DoD facilities in South Carolina in applications such as metal plating has contributed to the PFAS contamination alleged in this case. For instance, PFAS contamination attributable to metal plating has been detected at the Former Charleston Naval Complex. *See NAVFAC, Final Basewide Per- and Polyfluoroalkyl Substances in Groundwater and Water Well Search Technical Summary Report Volume 1 of 4, Former Charleston Naval Complex* at 6-1 to 6-2 (Mar. 2020), available at [https://administrative-records.navy.mil/Public\\_Documents/SOUTHEAST/CHARLESTON\\_CNC/N61165\\_005985\\_REDACTED.pdf](https://administrative-records.navy.mil/Public_Documents/SOUTHEAST/CHARLESTON_CNC/N61165_005985_REDACTED.pdf) (identifying an “old plating shop” as a “site of potential PFAS contamination”); *see also id.* at 1-2.

61. Because the State's claims for alleged PFAS contamination arose in part from the use, storage, or disposal of AFFF and/or other PFAS or PFAS-containing products on one or more federal enclaves, this

Court has original jurisdiction over the action pursuant to 28 U.S.C. §§ 1331 and 1367, and removal of the action is proper under 28 U.S.C. § 1441(a).

\* \* \* \* \*

WHEREFORE, 3M hereby removes this action from the Court of Common Pleas for the Fifth Judicial Circuit, Richland County, South Carolina, to the United States District Court for the District of South Carolina, Columbia Division.

Respectfully submitted,

s/Brian C. Duffy

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November 21, 2023

**CERTIFICATE OF SERVICE**

I hereby certify that on November 21, 2023, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to counsel of record. I further certify that I caused a true and correct copy of the foregoing document to be served upon the following parties by First Class Mail and/or by Email, as indicated below:

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355a

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s/ Brian C. Duffy  
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**EXHIBIT 2**

**STATE OF SOUTH CAROLINA  
COUNTY OF RICHLAND  
IN THE COURT OF COMMON PLEAS  
FIFTH JUDICIAL CIRCUIT**

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Civil Action No.: 2023-CP-40-\_\_\_\_\_

**SUMMONS  
(JURY TRIAL REQUESTED)**

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

vs.

3M COMPANY (f/k/a Minnesota Mining and  
Manufacturing Co.); BUCKEYE FIRE EQUIPMENT  
COMPANY; CHEMGUARD, INC.; CORTEVA, INC.;  
DUPONT DE NEMOURS, INC.; EIDP, INC. (f/k/a  
E.I. DUPONT DE NEMOURS AND COMPANY);  
NATIONAL FOAM, INC.; THE CHEMOURS  
COMPANY; THE CHEMOURS COMPANY FC, LLC;  
and TYCO FIRE PRODUCTS LP,  
Defendants.

TO: THE ABOVE-NAMED DEFENDANTS:

YOU ARE HEREBY SUMMONED and required to  
Answer the Complaint in the above-captioned matter,  
a copy of which is served upon you, and to serve a copy  
of your Answer upon undersigned counsel for the  
Plaintiff at the OFFICE OF THE ATTORNEY GEN-  
ERAL OF SOUTH CAROLINA at Post Office Box  
11549, Columbia, South Carolina 29211, within thirty

(30) days of service, exclusive of the date of service. If you fail to respond to this Complaint within the time prescribed above, judgment by default will be rendered against you for the relief demanded in the Complaint.

s/ Alan M. Wilson

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***ATTORNEYS FOR PLAINTIFF***

Columbia, South Carolina

October 17, 2023

**STATE OF SOUTH CAROLINA  
COUNTY OF RICHLAND  
IN THE COURT OF COMMON PLEAS  
FIFTH JUDICIAL CIRCUIT**

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Civil Action No.: 2023-CP-40-\_\_\_\_\_

**COMPLAINT  
(JURY TRIAL REQUESTED)**

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

vs.

3M COMPANY (f/k/a Minnesota Mining and  
Manufacturing Co.); BUCKEYE FIRE EQUIPMENT  
COMPANY; CHEMGUARD, INC.; CORTEVA, INC.;  
DUPONT DE NEMOURS, INC.; EIDP, INC. (f/k/a  
E.I. DUPONT DE NEMOURS AND COMPANY);  
NATIONAL FOAM, INC.; THE CHEMOURS  
COMPANY; THE CHEMOURS COMPANY FC, LLC;  
and TYCO FIRE PRODUCTS LP,  
Defendants.

The State of South Carolina, by and through its Attorney General Alan M. Wilson (“Plaintiff” or the “State”), as trustee of State natural resources, as owner of State property, and in its *parens patriae* capacity on behalf of its citizens, makes the following allegations against Defendants 3M Company (f/k/a Minnesota Mining and Manufacturing Co.); Buckeye Fire Equipment Company; Chemguard, Inc.; Corteva, Inc.; DuPont de Nemours, Inc.; EIDP, INC. (f/k/a E. I. DuPont De Nemours and Company); National Foam, Inc.; The Chemours Company; The Chemours Com-

pany FC, LLC; and Tyco Fire Products LP (individually and as successor-in-interest to The Ansul Company), (collectively, “Defendants”).

## INTRODUCTION

1. The State of South Carolina brings this action to protect and restore the State’s natural resources and environment from contamination caused by the Defendants’ manufacture, sale, distribution, and use of aqueous film-forming foam (AFFF) products. South Carolina’s natural resources are vital to the State’s citizens and economy.

2. Defendants are manufacturers and distributors of Aqueous Film Forming Foam (“AFFF”), a firefighting foam that contains per- and polyfluoroalkyl substances (“PFAS”). AFFF historically contained perfluorooctane sulfonate (PFOS) and its chemical relatives, many formulations still contain perfluorooctanoic acid (PFOA) and other PFAS-family compounds, and modern formulations contain varying types of PFAS and may contain PFOA as a manufacturing byproduct.<sup>1</sup> AFFF is commonly used at firefighting training centers, airports, ship and shore installations, and other places where fire may greatly endanger human life and property.

3. PFAS are a group of man-made, long chain carbon compounds known as “forever chemicals” due to their resistance to biodegradation and their propensi-

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<sup>1</sup> *Aqueous Film Forming Foam (AFFF)*, ALASKA DEPARTMENT OF ENVIRONMENTAL CONSERVATION, <https://dec.alaska.gov/spar/csp/pfas/firefighting-foam/> (last accessed August 21, 2023); *Firefighting Foams*, INTERSTATE TECHNOLOGY REGULATORY COUNCIL (ITRC), available at <https://pfas-1.itrcweb.org/3-firefighting-foams/> (last accessed August 23, 2023).

ty to bioaccumulate and biomagnify. PFAS spread quickly because they easily dissolve in water, and they persist in the environment because they have strong and stable carbon-fluorine bonds that resist natural degradation processes. Once present in the environment, PFAS are difficult and costly to remove and present health hazards to humans and animals.

4. PFAS contamination in South Carolina presents a serious threat to public health. PFAS are toxic to humans, even at extremely low levels (measured in parts per trillion, or ppt). PFAS exposure through contaminated food or drinking water is associated with numerous adverse health effects, including high cholesterol, increased liver enzymes, decreased vaccination response, thyroid disorders, pregnancy-induced hypertension, preeclampsia, and testicular and kidney cancer.

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

6. The South Carolina Department of Health and Environmental Control (“DHEC”) has not developed an independent health advisory for PFOA, PFOS, PFNA, PFHxS, GenX, PFHpA or PFBS, but defers to the EPA’s health advisories and proposed Maximum Contaminant Levels (“MCLs”) under the Safe Drink-

ing Water Act, which are enforceable drinking water standards. Additionally, DHEC relies upon the EPA's regional screening levels ("RSLs") and Regional Removal Management Levels ("RMLs").

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

8. People and animals can suffer exposure to harmful PFAS through ingestion, inhalation, and surface contact.<sup>2</sup>

9. The State believes runoff and wastewater discharge from sites using AFFF is a significant contributing factor in the widespread contamination found across South Carolina, and that PFAS-containing AFFF is more likely than not the cause of PFAS chemicals' presence found in samples collected from the direct vicinity of sites where AFFF is and has been used.

10. For decades, Defendants profited from the formulation, manufacture, sale, and distribution of AFFF to known destinations in South Carolina and Defendants' products have contaminated South Carolina's natural resources and property.

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<sup>2</sup> See Katherine E. Pelch, et al., *PFAS Health Effects Database: Protocol for a Systematic Evidence Map*, 130 ENVIRONMENTAL INTERNATIONAL 104861, (September 2019), available at <https://www.sciencedirect.com/science/article/pii/S0160412019305380> (last accessed September 25, 2023) (providing a summary of currently available scientific research on health effects related to PFAS through both an article and a live web-database, PFASToxDatabase, sponsored by The Endocrine Disruption Exchange).

## SCOPE OF ACTION

11. Plaintiff brings this action to recover any and all past and future compensatory and/or consequential damages for the investigation, remediation, removal, disposal, treatment, and monitoring of the ongoing contamination of its natural resources and property, including groundwater, surface water, lands and water sources, water supplies, treatment system, piping and distribution system, infrastructures, facilities, and properties caused and/or created by Defendants' AFFF products, and the reduction in value, use, and enjoyment of these resources and property. The State seeks injunctive relief to prevent further contamination and civil penalties to deter Defendants from engaging in this conduct in the future. The State also seeks punitive damages for the Defendants' egregious conduct, attorneys' fees and costs, as well as any and all other damages available as a result of the actions and/or inactions of Defendants.

**12. This action is specifically confined to the recovery of damages as a result of AFFF contamination and does not attempt to address or seek damages caused by other forms of PFAS pollution. Discovery, coupled with facts already known about the distribution and use of AFFF, will allow Plaintiff to draw this distinction to the appropriate legal standards.**

13. This matter does **not** involve any PFAS contamination at issue in the matter of the *State of South Carolina v. 3M Company, et. al.*, 2023-CP-40-04111, currently pending in the Court of Common Pleas for Richland County. Plaintiff has identified different contamination at distinct sites in each action. The contamination and sites at issue in this Complaint are distinct from those sites at issue in the other action and some of

the Defendants named in this Complaint are distinct from those named in the other pending action.

## **PARTIES**

### **PLAINTIFF**

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

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

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

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

### **DEFENDANTS**

18. Upon information and belief, at all times relevant to this action, the following Defendants designed, manufactured, formulated, marketed, distributed,

sold, and/or assumed or acquired liabilities for the manufacture and/or sale of AFFF products that each Defendant knew or should have known would be placed in commerce or otherwise used and subsequently contaminate South Carolina's natural resources and property.

19. Defendant **3M Company** (f/k/a Minnesota Mining and Manufacturing Company) ("3M") is a Delaware corporation authorized to conduct business in South Carolina, with its principal place of business located at 3M Center, St. Paul, Minnesota 55144. Upon information and belief, 3M is the only company that manufactured and/or sold AFFF containing PFOS in the United States, including South Carolina. 3M's PFAS-containing AFFF products, which it designed, formulated, manufactured, marketed, transported, and sold, were stored, used, handled, trained with, used in testing, spilled, or otherwise discharged into South Carolina's environment, ultimately contaminating the State's natural resources and property.

20. Defendant **EIDP, Inc. (f/k/a E. I. DuPont De Nemours and Company)** ("Old DuPont") is a Delaware corporation with its principal place of business located at 974 Centre Road, Wilmington, Delaware 19805. Old DuPont is registered to do business in South Carolina. Upon information and belief, Old DuPont designed, formulated, manufactured, marketed, promoted, distributed, and/or sold fluorochemicals and/or fluorosurfactants containing PFAS used to manufacture AFFF that was transported, stored, used, handled, trained with, used in testing, spilled, or otherwise discharged into South Carolina's environment, ultimately contaminating the State's natural resources and property.

21. Defendant **The Chemours Company** (“Chemours”) is a Delaware corporation with its principal place of business located at 1007 Market Street, Wilmington, DE 19899. Chemours is registered to do business in the State of South Carolina. Upon information and belief, Chemours’ AFFF products contaminate South Carolina’s natural resources and property.

22. In 2015, Old DuPont spun off its “performance chemicals” business to Chemours, along with certain environmental liabilities.

23. Defendant **The Chemours Company FC, LLC** (“Chemours FC”), successor-in-interest to DuPont Chemical Solutions Enterprise, is a Delaware limited liability company with its principal place of business located at 1007 Market Street Wilmington, DE, 19899. Chemours FC is registered to do business in South Carolina. Upon information and belief, Chemours FC’s AFFF products contaminate South Carolina’s natural resources and property.

24. The Chemours Company and The Chemours Company FC, LLC are collectively referred to throughout this Complaint as “Chemours.”

25. In August 2017, Old DuPont merged with The Dow Chemical Company to create DowDuPont Inc. (“DowDuPont”). Old DuPont and The Dow Chemical Company each merged with wholly-owned subsidiaries of DowDuPont and, as a result, became subsidiaries of DowDuPont. Since that time, DowDuPont has effected a series of separation transactions to separate its businesses into three independent, publicly traded companies for each of its agriculture, materials science, and specialty products businesses.

26. Defendant **Corteva, Inc.** (“Corteva”) is a Delaware corporation with its principal place of business

located at 974 Centre Road, Wilmington, DE 19805. In 2019, New DuPont (DuPont de Nemours, Inc.) spun off Corteva as a new publicly traded company, which currently holds Old DuPont (EIDP, Inc.) as a subsidiary. Upon information and belief, in connection with these transfers, Corteva assumed certain Old DuPont liabilities—including those related to AFFF. Corteva was registered to do business in South Carolina until it was administratively dissolved in 2021.

27. Defendant **DuPont de Nemours, Inc. (f/k/a/ DowDuPont, Inc.)** (“New DuPont”) is a Delaware corporation with its principal place of business located at 974 Centre Road, Building 730, Wilmington, DE 19805. On June 1, 2019, DowDuPont, the surviving entity after the spinoff of Defendant Corteva and of another entity known as Dow, Inc., changed its name to DuPont de Nemours, Inc., to be known as DuPont (“New DuPont”). New DuPont retained assets in the specialty products business lines following the above-described spinoffs, as well as the balance of the financial assets and liabilities of Old DuPont not assumed by Corteva. Moreover, New DuPont is registered to do business in the State of South Carolina. Upon information and belief, New Dupont’s AFFF products contaminate South Carolina’s natural resources and property.

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

29. Defendant **Tyco Fire Products LP** (“Tyco”) is a Delaware limited partnership with its principal place of business at 1400 Pennbrook Parkway, Lansdale, PA 19446. Tyco acquired Defendant Chemguard in 2011. Tyco is registered to do business in South Carolina and, upon information and belief, its AFFF

products contaminate South Carolina's natural resources and property.

30. Tyco is the successor-in-interest to The Ansul Company ("Ansul") and manufactures the Ansul brand of products (Ansul and/or Tyco as the successor-in-interest to Ansul will be referred to collectively as "Tyco/Ansul"). Upon information and belief, Tyco/Ansul avails itself of doing business in South Carolina, and its AFFF products contaminate South Carolina's natural resources and property.

31. Defendant **Chemguard, Inc.** ("Chemguard") is a Texas corporation with its principal place of business located at One Stanton Street, Marinette, Wisconsin 54143. Upon information and belief, Chemguard avails itself of doing business in South Carolina and Chemguard's AFFF products contaminate South Carolina's natural resources and property. Johnson Controls is Chemguard's parent company, through Johnson Controls' parentage of Defendant Tyco.<sup>3</sup>

32. Upon information and belief, Chemguard acquired Williams Fire and Hazard Control, Inc. ("WFHC"). Upon information and belief, WFHC has and continues to sell and/or distribute AFFF in South Carolina and its AFFF products contaminate South Carolina's natural resources and property.

33. Defendant **National Foam, Inc.** ("National Foam") is a Delaware corporation with its principal

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<sup>3</sup> Press Release, *Tyco International to Acquire Chemguard, Inc., a Leading Provider of Fire Suppression Products and Specialty Chemicals*, CISION PR NEWSWIRE (July 19, 2011), available at <https://www.prnewswire.com/news-releases/tyco-international-to-acquire-chemguard-inc-a-leading-provider-of-fire-suppression-products-and-specialty-chemicals-125804493.html> (last accessed September 26, 2023).

place of business located at 141 Junny Road, Angier, North Carolina 27501. National Foam, Inc. is a subsidiary of Angus International Safety Group, Ltd. Upon information and belief, National Foam, Inc. manufactures the Angus brand of AFFF products. Upon information and belief, National Foam, Inc. has availed itself of doing business in South Carolina and its AFFF products contaminate South Carolina's natural resources and property.

34. Defendant **Buckeye Fire Equipment Company** ("Buckeye") is an Ohio corporation with its principal place of business at 110 Kings Road, Mountain, North Carolina 28086. Buckeye is registered to do business in South Carolina and, upon information and belief, its AFFF products contaminate South Carolina's natural resources and property.

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

36. All references to a Defendant or Defendants in this Complaint include any predecessors, successors,

parents, subsidiaries, affiliates and divisions of the named Defendants.

37. When the term “Defendants” is used alone, it refers to all Defendants named in this Complaint jointly and severally. When reference is made to any act or omission of a Defendant, it shall be deemed to mean that the officers, directors, agents, employees, or representatives of the Defendant committed or authorized such act or omission, or failed to adequately supervise or properly control or direct their employees while engaged in the management, direction, operation or control of the affairs of the Defendant, and did so while acting within the scope of their employment or agency.

### **JURISDICTION AND VENUE**

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

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

40. Plaintiff, the State of South Carolina, through its Attorney General, is the appropriate party to bring this action to protect and preserve natural resources, estab-

lish a uniform statewide plan for addressing contamination caused by AFFF, and establish a means and method to recover, store, and distribute funds retrieved from the Defendants who profited from activity that inevitably led to damage to the State of South Carolina.

41. This Court may exercise jurisdiction over Defendants because they either are or at the relevant times were: authorized to do business in South Carolina, registered with the South Carolina Secretary of State, transacting sufficient business with sufficient minimum contacts in South Carolina, or otherwise intentionally availing themselves of the South Carolina market through the manufacturing, marketing, distribution, and/or sale of AFFF products in South Carolina so as to satisfy minimum contacts and to render the exercise of jurisdiction over Defendants by the South Carolina courts consistent with traditional notions of fair play and substantial justice.

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

## **STATEMENT OF FACTS**

### **AFFF HISTORY, DEVELOPMENT, AND CHARACTERISTICS**

43. Aqueous film forming foam (AFFF) was developed in the 1960s to fight very hot and dangerous fires, commonly those with liquid fuel sources, known as Class B fires.

44. AFFF is predominantly used, stored at, and transported to and from places that are likely to suffer

liquid fuel-based fires, like airports, military sites, chemical facilities, and firefighting training centers.

45. At a basic level, PFAS, which are created by bonding fluorine and carbon atoms in a chain, react with other AFFF ingredients to form a film that sits between the air and the combustible liquid, suffocating the fire and preventing the fuel from spreading. Fluorinated surfactants (PFAS) are used in AFFF because they reduce surface tension, helping the foam suffocate the fire.

46. The carbon-fluorine bond is very strong, which makes AFFF an efficient firefighting agent, but also makes PFAS chemicals resistant to biodegradation, highly water soluble, easily mobile in the environment, and easily able to enter sediments and organisms, moving up the food chain and bioaccumulating.

47. Some PFAS, known as C8, have eight carbon atoms in the chain and are now understood to be environmentally persistent and toxic to organisms. Other PFAS, C6, have six carbon atoms in the chain. Science is developing that shows C6 behaves similarly to C8 in the environment and may be similarly toxic.<sup>4</sup>

48. AFFF containing PFAS came into widespread use before the public and consumers became aware of the associated health risks, however, the Defen-

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<sup>4</sup> *Guidance Leaflet: PFOA in Fire-Fighting Foams*, ENVIRONMENTAL PROTECTION AGENCY OF IRELAND, available at <https://www.epa.ie/publications/monitoring—assessment/waste/65203287-PFOA-EPA-Factsheet-Final.pdf> (last accessed August 23, 2023); *The Science: Types of PFAS*, FIDRA, available at <https://www.pfasfree.org.uk/about-pfas/pfas-science-the-basics#:~:text=PFOA%20and%20PFOS%2C%20are%20'long,as%20the%20ones%20they%20replace> (last accessed August 23, 2023).

dants were aware of health risks long before regulators and the public.

49. The United States Department of Defense maintains Military Specification MIL-F-24385F (“Mil-Spec”), which is under the control of the Navy, as a performance standard for AFFF products required to be used at military installations, onboard ships, and in other government uses.<sup>5</sup>

50. AFFF meeting the MilSpec is commonly used in civilian applications at airports, industrial facilities, and other civilian locations subject to Class B fires.

51. The AFFF products designed, manufactured, marketed, distributed, and/or sold by Defendants contain or did contain PFOS, PFOA, or chemical precursors, derivatives, or related PFAS chemicals resulting from manufacturing and product usage.

### **3M’S ROLE IN AFFF CONTAMINATION**

52. AFFF came onto the market in the early 1960s and was developed by the Department of Defense and 3M, using 3M’s PFOS as an ingredient.

53. PFOS and its chemical precursors were manufactured using 3M’s patented electrochemical fluorination process (“ECF”).<sup>6</sup> The ECF process creates a prod-

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<sup>5</sup> Ronald S. Sheinson, et al., *The Future of Aqueous Film Forming Foam (AFFF): Performance Parameters and Requirements*, NAVAL RESEARCH LABORATORY AND NAVAL SEA SYSTEMS COMMAND, U.S. DEPT. OF DEFENSE, available at [https://www.nist.gov/system/files/documents/el/fire\\_research/R0201327.pdf](https://www.nist.gov/system/files/documents/el/fire_research/R0201327.pdf) (last accessed August 23, 2023).

<sup>6</sup> Simons, J. H., *Electrochemical Process of Making Fluorine-Containing Carbon-Compounds*, U.S. PATENT OFFICE, Patent No. 2,519,983 (August 22, 1950), available at <https://www.ag.state.mn.us/Office/Cases/3M/docs/PTX/PTX1010.pdf>.

uct that includes PFOS, among other PFAS.<sup>7</sup> The PFAS are added to preservatives and other ingredients to form a concentrate that, when mixed with water, foams.

54. 3M was the only Defendant to make AFFF containing PFOS, marketed as “Light Water,” and did so from the 1960s until it stopped producing that formulation in 2002 after pressure from the EPA.<sup>8</sup>

55. For decades, 3M manufactured, designed, marketed, distributed, and sold AFFF and the raw materials for production of AFFF within the United States, including in South Carolina. Chemicals known to appear in 3M’s AFFF products contaminate the State of South Carolina.

## DUPONT AND OTHER DEFENDANTS’ ROLES IN AFFF CONTAMINATION

56. All AFFF formulations other than 3M’s contain PFAS created through telomerization, rather than ECF. Telomerization produces fluorotelomer PFAS that are chemical precursors to and may degrade into PFOA.<sup>9</sup> These long-chain (C8) formulations have largely been replaced with short-chain formulations (C6) (known as “modern fluorotelomer foams”) that

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<sup>7</sup> See ITRC, *supra* note 1.

<sup>8</sup> See *id.* See also Lauren Kirchner, *Massive Court Case Suggests ‘Forever Chemical’ Manufacturers Hid Health Risks for Decades*, CONSUMER REPORTS (updated June 23, 2023), available at <https://www.consumerreports.org/toxic-chemicals-substances/case-suggests-forever-chemical-manufacturers-hid-health-risk-a8896667936/> (last accessed August 23, 2023); Press Release, *EPA and 3M Announce Phase Out of PFOS*, EPA (May 16, 2000), available at [https://www.epa.gov/archive/epapages/newsroom\\_archive/newsreleases/33aa946e6cb11f35852568e1005246b4.html](https://www.epa.gov/archive/epapages/newsroom_archive/newsreleases/33aa946e6cb11f35852568e1005246b4.html) (last accessed August 23, 2023).

<sup>9</sup> See ITRC, *supra* note 1.

still contain PFAS and may contain low levels of PFOA as a manufacturing byproduct.<sup>10</sup>

57. Although C6 was promoted as less dangerous than C8, C6 foams still contain PFAS that can contaminate the environment and cause health problems.<sup>11</sup>

58. Upon information and belief, between the mid-1960s and 2016, National Foam formulated, manufactured, marketed, sold, and transported in commerce various AFFF formulations, including fluoroprotein foam and alcohol-resistant foam, all of which contained C8 PFAS variants that have been discovered in South Carolina. In 2016, National Foam transitioned to C6 formulations, which still contain PFAS that pose a risk to the environment.<sup>12</sup>

59. Tyco/Ansul manufactured, designed, marketed, distributed, and/or sold AFFF containing PFOA and/or its chemical precursors within the United States, including South Carolina.<sup>13</sup>

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<sup>10</sup> See *id.* See also Marzeih Shojaei, et al., *Novel Per- and Polyfluoroalkyl Substances in an Active-Use C6-Based Aqueous Film Forming Foam*, 3 J. HAZARDOUS MATERIALS LETTERS 100061 (November 2022), available at <https://doi.org/10.1016/j.hazl.2022.100061> (last accessed September 26, 2023).

<sup>11</sup> See ITRC, *supra* note 1.

<sup>12</sup> See *History*, NATIONAL FOAM, available at <https://national-foam.com/about-us/history/> (last accessed August 24, 2023).

<sup>13</sup> Press Release, *Tyco Fire Protection Products to Exit Fluorinated Firefighting Foam (AFFF) Market by June 2024*, JOHNSON CONTROLS (July 18, 2023), available at <https://www.johnsoncontrols.com/media-center/news/press-releases/2023/07/18/tyco-fire-protection-products-to-exit-fluorinated-firefighting-foam-afff-market-by-june-2024> (last accessed September 26, 2023).

60. Upon information and belief, by the late 1970s, Tyco/Ansul was aware of its AFFF products' toxicity.

61. Upon information and belief, by the 1980s, Chemguard began to manufacture, design, market, distribute, and/or sell AFFF containing PFOA and/or its chemical precursors within the United States, and fluorosurfactants containing PFOA and/or its chemical precursors for use in the production of AFFF within the United States, including South Carolina.

62. Upon information and belief, by the 1990s, Buckeye began to manufacture, design, market, distribute, and/or sell AFFF containing PFOA and/or its chemical precursors within the United States, including South Carolina.

63. Upon information and belief, Class B fire suppressants can be made without PFOA, PFOS, or their precursor chemicals. Fluorine-free foams do not release PFOA, PFOS, and/or their precursor chemicals into the environment.

64. Use of Defendants' AFFF products allowed PFOA, PFOS, and/or their precursor chemicals to enter into and onto the State's natural resources and property. These compounds migrated through the subsurface and into the groundwater, thereby ultimately contaminating the surface water, soil, sediment, and groundwater as well as causing other extensive and ongoing damage to the State's natural resources and property.

65. These chemicals have caused and continue to cause injury and damage to the State's natural resources and property.

**THE DEFENDANTS WERE AWARE OF THE DANGERS AFFF CHEMICALS PRESENT TO HUMAN HEALTH AND THE ENVIRONMENT.**

66. 3M knew PFAS chemicals in AFFF were dangerous and failed to properly inform regulators and consumers.

67. Among Defendants, 3M exclusively manufactured PFOS, which was the primary PFAS used in its AFFF formulations from the 1960s through 2002. PFOA and its related chemicals also appeared in 3M's AFFF formulations during that time.

68. 3M marketed and sold AFFF products throughout the United States, including in South Carolina.

69. 3M supplied AFFF to third parties for use at sites throughout the State of South Carolina.

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

71. Upon information and belief, in the 1970s, 3M was aware of toxicology testing of its "Light Water" line of PFAS-containing AFFF which caused fish to drown and was otherwise so hazardous to marine life that the test program was abandoned to avoid severe local stream pollution.<sup>14</sup>

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<sup>14</sup> *Correspondence from S.I. Kalkstein, President of Chemical Concentrates Corporation, to the National Fire Protection Association* (June 15, 1970), available at <https://www.ag.state.mn.us/Office/Cases/3M/docs/PTX/PTX1083.pdf> (last accessed August 28, 2023) (3M and DuPont were members of the National Fire Protection Association).

72. Throughout the mid and late 1900s, 3M actively researched and concealed knowledge of PFAS hazards from the public and government, until, in 2002, upon pressure from the EPA, 3M phased out its AFFF products line.

73. However, as recently as 2018, 3M continued to claim publicly and falsely that PFAS is not hazardous or toxic to the environment or human health.

74. In the 1970s, 3M began monitoring the blood of its employees for PFAS because 3M was concerned about the health effects of PFAS, and in 1976, confirmed that PFAS chemicals were in fact in its workers' blood.<sup>15</sup>

75. In 1975, 3M found PFOA to have a “universal presence” in its human plasma in samples taken from several locations in the United States.<sup>16</sup>

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

77. These findings also should have alerted 3M that PFOA is mobile, persistent, bio-accumulative, and

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<sup>15</sup> *Interoffice Correspondence from L. C. Krogh to J.D. La Zerte re: Presentation to Corporate Responsibility Committee on Progress—Fluorochemicals in Blood*, 3M (October 19, 1977), available at <https://www.ag.state.mn.us/Office/Cases/3M/docs/PTX/PTX1145.pdf> (last accessed August 24, 2023).

<sup>16</sup> G.H. Crawford to L.C. Krogh et al., *Record of a Telephone Conversation with William Guy of The University of Florida re: Fluorocarbon in Blood Samples from Texas and New York*, 3M (August 20, 1975), available at <https://www.ag.state.mn.us/Office/Cases/3M/docs/PTX/PTX1118.pdf> (last accessed August 24, 2023).

biomagnifying, as those characteristics would explain the presence of PFOA in blood from 3M's products.

78. In 1978, 3M studied, and independent experts confirmed, the risks of PFAS. A 3M internal report from 1978 warned that PFOS and PFOA “are likely to persist in the environment for extended periods.” That same study found that two common PFAS compounds, including PFOA, were found “to be completely resistant to biodegradation” under the test conditions.<sup>17</sup>

79. Results of a 90-day animal study conducted by 3M in 1978 indicated that PFAS “should be regarded as toxic,” and those aware of the results “urgently recommended that all reasonable steps be taken immediately to reduce exposure of employees to these compounds.”<sup>18</sup>

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

81. A 1979 memo from M.T. Case, a former employee within 3M's medical department in Corporate Toxicology and Regulatory Services, stated that he believed it “paramount to begin now an assessment of the potential (if any) of long term (carcinogenic) effects for these compounds which are known to persist

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<sup>17</sup> Technical Report Summary, *Biodegradation Studies of Fluorocarbons—III* by Reiner to Bacon, 3M (July 19, 1978), available at <https://www.ag.state.mn.us/Office/Cases/3M/docs/PTX/PTX1179.pdf> (last accessed August 24, 2023).

<sup>18</sup> *Interoffice Correspondence from Prokop re: Meeting Minutes—Review of Animal Studies*, 3M (May 17, 1978), available at <https://www.ag.state.mn.us/Office/Cases/3M/docs/PTX/PTX1174.pdf> (last accessed August 24, 2023).

for a long time in the body and thereby give long-term chronic exposure.”<sup>19</sup>

82. At a meeting among 3M employees in June 1979 discussing the “Fluorochemicals in Blood Program,” an outside researcher named Dr. H.C. Hodge recommended that “[r]eduction in exposure [of 3M employees to fluorochemicals] should have top priority,” that further testing be conducted, and that “[i]t should be determined if FC-807 [a PFAS chemical marketed in the Scotchban family and related to those appearing in AFFF] or its metabolites are present in man, what level they are present, and the degree of persistence (half-life) of these materials.”<sup>20</sup>

83. In 1983, 3M scientists concluded that test results on PFAS “give rise to concern for environmental safety,” including “legitimate questions about the persistence, accumulation potential, and ecotoxicity of fluorochemicals in the environment.”<sup>21</sup>

84. In a December 1988 email, a 3M employee stated, “I don’t think it is in 3M’s long-term interest to perpetuate the myth that these fluorochemical surfactants are biodegradable. It is probable that this mis-

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<sup>19</sup> *Riker Laboratories Interoffice Correspondence from M. T. Case to R. A. Nelson re: Fluorochemical Chronic Toxicity*, 3M (July 6, 1979), available at <https://www.ag.state.mn.us/Office/Cases/3M/docs/PTX/PTX1212.pdf> (last accessed August 24, 2023).

<sup>20</sup> *Interoffice Correspondence re: Meeting Minutes—Meeting with H.C. Hodge*, 3M (June 7, 1979), available at <https://www.ag.state.mn.us/Office/Cases/3M/docs/PTX/PTX1210.pdf> (last accessed August 24, 2023).

<sup>21</sup> E.A. Reiner, Ed., *Fate of Fluorochemicals—Phase II*, 3M ENVIRONMENTAL LABORATORY (May 20, 1983), available at <https://www.ag.state.mn.us/Office/Cases/3M/docs/PTX/PTX1282.pdf> (last accessed August 24, 2023).

conception will eventually be discovered, and when that happens, 3M will likely be embarrassed, and we and our customers may be fined and forced to immediately withdraw products from the market.”<sup>22</sup>

85. In 1997, 3M provided DuPont with a Material Safety Data Sheet for FC-118 Fluorad Brand Fluorochemical Surfactant, which included a warning that stated: “CANCER: WARNING: Contains a chemical which can cause cancer. (3825-26-1) (1983 and 1993 studies conducted jointly by 3M and DuPont).”<sup>23</sup> While FC-118 was not, Plaintiff believes, a chemical used in AFFF, it is a PFAS related to those appearing in AFFF.

86. In 1998, a 3M scientist, Dr. Richard Purdy conducted a risk assessment of potential adverse effects on marine animals, like birds and the fish they consume, from PFOS in the food chain and informed 3M of his findings. Dr. Purdy concluded there was a significant risk of harm of food chain transfer, and that “the levels we are seeing in eagles and other biota is likely to climb each year.”<sup>24</sup>

87. 3M’s practices were concerning to its own employees. In March 1999, 3M environmental scientist, Dr. Purdy, who had conducted the 1998 study on ma-

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<sup>22</sup> Lori Swanson, Former Attorney General of Minnesota, Testimony Before the Committee on Oversight and Reform, SUBCOMMITTEE ON ENVIRONMENT, UNITED STATES HOUSE OF REPRESENTATIVES, at Exhibit H, (Sept. 10, 2019), <https://www.congress.gov/116/meeting/house/109902/witnesses/HHRG-116-GO28-Wstate-SwansonL-20190910.pdf> (hereinafter “Swanson Testimony”).

<sup>23</sup> Swanson Testimony, at 3, Exhibit A.

<sup>24</sup> Richard E. Purdy, *Email to Georjean Adams re: Risk to the environment due to the presence of PFOS* (Dec. 3, 1998, 11:53AM) [https://static.ewg.org/reports/2019/pfa-timeline/1998\\_Food-Chain.pdf](https://static.ewg.org/reports/2019/pfa-timeline/1998_Food-Chain.pdf) (last accessed August 24, 2023).

rine animals, resigned from 3M in a letter expressing his “profound disappointment” with “3M’s handling of the environmental risks associated with the manufacture and use of” PFOS. Dr. Purdy described PFOS as “the most insidious pollutant since PCB,” and stated, “it is probably more damaging than PCB because it does not degrade, whereas PCB does; it is more toxic to wildlife.” Dr. Purdy described his attempts to discuss the dangers of the chemical with the company, and 3M’s refusal to act. Dr. Purdy further stated that “3M continues to make and sell these chemicals though the company knows of an ecological risk assessment [he] did that indicates there is a better than 100% probability that perfluorooctanesulfonate [PFOS] is biomagnifying in the food chain and harming sea mammals . . . 3M told those of us working on the fluorochemical project not to write down our thoughts or have email discussions on issues because of how our speculations could be viewed in a legal discovery process.” Finally, Dr. Purdy stated, “I can no longer participate in the process that 3M has established for the management of PFOS and precursors. For me it is unethical to be concerned with markets, legal defensibility and image over environmental safety.”<sup>25</sup>

88. 3M informed the EPA in May 1998 that PFOS had been found in the blood of animals but did not disclose the extent and concerning nature of its decades-long research on PFAS. Dr. Purdy noted that disclosure to the EPA omitted the most significant information, which was that 3M had discovered “widespread environmental contamination and food chain transfer and probable bioaccumulation and biomagnification.”<sup>26</sup>

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<sup>25</sup> Swanson Testimony, at Exhibit B.

<sup>26</sup> *Id.*

89. In 2000, following pressure from the EPA, 3M announced it would phase out PFOS products and issued a press release asserting “our products are safe,” citing the company’s “principles of responsible environmental management” as the reason to cease production.<sup>27</sup>

90. The EPA issued a contradictory press release on the same day, stating 3M had provided data indicating PFOS “chemicals are very persistent in the environment, have a strong tendency to accumulate in human and animal tissues and could potentially pose a risk to human health and the environment over the long term.”<sup>28</sup>

91. In addition to concealing its knowledge of PFAS risks, 3M controlled and distorted the scientific literature on PFAS, including, hiring “independent” scientists to publicly refute unfavorable research.<sup>29</sup>

92. In 2006, the EPA cited 3M for 244 violations of the Toxic Substances Control Act, accusing 3M of failing to notify the agency about new chemicals and of late reporting of “substantial risk information.”<sup>30</sup> 3M was fined \$1.52 million for these violations.<sup>31</sup>

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<sup>27</sup> Press Release, *3M Phasing Out Some of its Specialty Materials*, 3M (May 16, 2000), available at <https://www.ag.state.mn.us/Office/Cases/3M/docs/PTX/PTX1694.pdf> (last accessed August 24, 2023).

<sup>28</sup> Press Release, *EPA and 3M Announce Phase Out of PFOS*, EPA (May 16, 2000), available at [https://www.epa.gov/archive/epapages/newsroom\\_archive/newsreleases/33aa946e6cb11f35852568e1005246b4.html](https://www.epa.gov/archive/epapages/newsroom_archive/newsreleases/33aa946e6cb11f35852568e1005246b4.html) (last accessed August 24, 2023).

<sup>29</sup> Swanson Testimony, at Exhibit K.

<sup>30</sup> Press Release, *3M Company Settlement*, EPA (April 25, 2006), available at <https://www.epa.gov/enforcement/3m-company-settlement> (last accessed August 24, 2023).

<sup>31</sup> *Id.*

93. Based upon their decades of research, 3M knew or should have known that AFFF, which included PFAS on which 3M had significant information, would contaminate the environment and present a public health crisis in South Carolina.

**DUPONT KNEW PFAS CHEMICALS IN AFFF WERE DANGEROUS AND FAILED TO PROPERLY INFORM REGULATORS AND CONSUMERS.**

94. DuPont's AFFF formulations were made using fluorotelomer PFAS, where PFOA was not an ingredient, but which contain PFOA's chemical precursors and may degrade into PFOA.

95. DuPont marketed and sold AFFF products throughout the United States, including in South Carolina.

96. DuPont supplied AFFF to third parties for use at sites throughout the State of South Carolina.

97. Although DuPont knew about the health and environmental risks of PFAS since the early science in the mid-1900s, DuPont formulated, manufactured, sold, and transported its own AFFF formulas starting in the 1970s and continuing through today.

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

99. In approximately 1951, DuPont started using PFOA in making Teflon at its Washington Works manufacturing plant in Parkersburg, West Virginia. As early as 1954, employees at DuPont's Washington

Works plant reported that C8 (another name for PFOA) might be toxic. PFOA is commonly found in AFFF formulations.

100. Upon information and belief, as early as 1966, DuPont was aware that PFOA could leach into ground-water.

101. In 1978, DuPont's Medical Director, Dr. Bruce Karrh, published an article in the Bulletin of the New York Academy of Medicine in which he acknowledged DuPont's "duty to 'to discover and reveal the unvarnished facts about health hazards . . . ' and "that a company 'should be candid, and lay all the facts on the table. This is the only responsible and ethical way to go.'"<sup>32</sup>

102. By 1979, DuPont had data indicating that its workers who were exposed to PFOA had a significantly higher frequency of health issues compared to unexposed workers but failed to report this data to any government agency or any community where it used PFOA.

103. In 1981, DuPont doctors recommended moving female employees "of childbearing potential" that handled PFOA-containing products off production lines in its Parkersburg, WV plant and other facilities.<sup>33</sup> This recommendation was based on a study 3M

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<sup>32</sup> Shannon Lerner, *The Teflon Toxin*, THE INTERCEPT (Aug. 11, 2015), available at <https://theintercept.com/2015/08/11/dupont-chemistry-deception/> (last accessed August 25, 2023).

<sup>33</sup> Dr. Frank A. Ubel, *Recommendation Regarding Fluorochemical Exposure to Females of Childbearing Potential*, DUPONT (April 17, 1981), available at <https://www.ag.state.mn.us/Office/Cases/3M/docs/PTX/PTX1254.pdf> (last accessed August 25, 2023); *Intraoffice Correspondence from Dr. Bruce Karrh, M.D. to C. De Martino, Ammonium Perfluorooctanoate (FC-143) C-8 Compounds*, DUPONT (March 25, 1981), available at <https://www.documentcloud.org/documents/2782027-KarrhMemo> (last

had reported which discovered birth defects in rats.<sup>34</sup> The DuPont doctors documented that 3M's rat studies potentially aligned with abnormal outcomes in DuPont employee pregnancies.<sup>35</sup> It was later documented that employees exposed to PFAS at the Parkersburg plant had children with birth defects at rates above the general population average.<sup>36</sup>

104. By at least the mid-1980s, DuPont was aware that “continued exposure [to PFOA] is not tolerable,” and that PFOA accumulates and persists in the human body.<sup>37</sup>

105. In 1981, DuPont monitored female employees who had been exposed to PFOA to study if their children were born with abnormalities. Initial data showed that two of the eight babies born to women who worked with PFOA-containing products had eye and nostril deformities. These figures were “significant enough to suggest that C8 exposure caused the problems.”<sup>38</sup> DuPont abandoned the study rather than inform regulators, its own employees, or the public.<sup>39</sup>

106. In 1984, DuPont held a meeting at its corporate headquarters in Wilmington, Delaware to dis-

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accessed August 25, 2023).

<sup>34</sup> Karrh, *supra* note 33.

<sup>35</sup> *Id.*

<sup>36</sup> Ken Ward, Jr., *DuPont Proposed, Dropped '81 Study of C8, Birth Defects*, THE CHARLESTON GAZETTE (July 10, 2005), available at <https://www.fluoridealert.org/wp-content/pesticides/2005/effect.pfos.class.news.169.html> (last accessed August 25, 2023).

<sup>37</sup> Lerner, *supra* note 32.

<sup>38</sup> *Id.*

<sup>39</sup> Ward, *supra* note 36.

cuss health and environmental issues related to PFOA. The corporate managers expressed concern about “C-8 exposures off plant as well as to our customers and the communities in which they operate.” The corporate managers admitted internally that “none of the options developed are . . . economically attractive and would essentially put the long-term viability of this business segment on the line.” The DuPont corporate managers predicted that the medical and legal departments “will likely take a position of total elimination,” of PFOA but instead decided that “corporate image, and corporate liability” would drive decisions about PFOA. And the corporate managers admitted that it was too late to address past liability: “Liability was further defined as the incremental liability from this point on if we do nothing as we are already liable for the past 32 years of operation.”<sup>40</sup> DuPont did not disclose the information discussed at the 1984 meeting to the EPA, the State, or the general public.

107. Upon information and belief, DuPont began treating PFOA as early as 1988 as a possible human carcinogen but did not disclose that knowledge to the public and, in fact, publicly stated PFOA was not carcinogenic.

108. Notwithstanding its internal knowledge of PFOA’s health and environmental risks beginning as early as the 1950s, DuPont publicly stated in 2003 that “[w]e are confident that there are no health ef-

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<sup>40</sup> Schmid, J.A., *Personal & Confidential Memorandum, re: C-8 Meeting Summary*, DUPONT (May 23, 1984), Wilmington, Del., available at [https://static.ewg.org/files/dupont\\_elim\\_PFOA\\_1984.pdf](https://static.ewg.org/files/dupont_elim_PFOA_1984.pdf) (last accessed August 25, 2023) (hereinafter “The DuPont Memo”).

fects associated with C-8 exposure,” and that “C-8 is not a human health issue.”<sup>41</sup>

109. In a 2005 *Washington Post* article, DuPont Spokesperson Clifton Webb is quoted saying: “[b]ased on an evaluation of human health and toxicology studies, DuPont believes that the weight of evidence suggests that PFOA exposure does not cause cancer in humans and does not pose a risk to the general public. To date, no human health effects are known to be caused by PFOA, even in workers who have significantly higher exposure levels than the general population.”<sup>42</sup>

110. DuPont’s own Epidemiology Review Board (“ERB”) repeatedly raised concerns about DuPont’s practice of stating publicly that there were no adverse health effects associated with human exposure to PFOA. In February 2006, the ERB “strongly advise[d] against any public statements asserting that PFOA does not pose any risk to health” and “question[ed] the evidential basis of DuPont’s public expression asserting, with what appears to be great confidence, that PFOA does not pose a risk to health.”<sup>43</sup>

111. In October 2006, contrary to ERB’s advice, DuPont’s chief medical officer issued a press release stat-

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<sup>41</sup> *Washington Works Media Update*, DUPONT (March 18, 2003), available at <https://static.ewg.org/reports/2003/pfcs/dupont-presentation.pdf> (last accessed August 25, 2023).

<sup>42</sup> Juliet Eilperin, *Compound in Teflon a ‘Likely Carcinogen’*, THE WASHINGTON POST (June 29, 2005), available at <https://www.washingtonpost.com/archive/politics/2005/06/29/compound-in-teflon-a-likely-carcinogen/5cca31d1-0c50-4c56-948a-c27d300d4dd6/> (last accessed August 25, 2023).

<sup>43</sup> Tom L. Beauchamp, et al., *Memorandum to Michael Kaplan re: Epidemiology Review Board and PFOA*, DUPONT (February 24, 2006), available at [https://static.ewg.org/files/ERB\\_February2006.pdf](https://static.ewg.org/files/ERB_February2006.pdf) (last accessed August 25, 2023).

ing that “there are no human health effects known to be caused by PFOA.”<sup>44</sup>

112. In December 2005, the EPA uncovered evidence that DuPont had concealed the environmental and health effects of C8 for more than two decades. In response, EPA levied a \$16.5 million administrative penalty on DuPont, which at that time was the largest civil administrative penalty the EPA had ever imposed under any federal environmental statute.<sup>45</sup> At approximately the time this penalty was issued, DuPont was making around \$1 billion a year in revenue from products containing C8.

113. Also in 2005, Old DuPont settled a class action lawsuit filed on behalf of 70,000 residents of Ohio and West Virginia. Under the terms of the settlement, Old DuPont agreed to fund a panel of scientists to determine if any diseases were linked to PFOA exposure, to filter local water for as long as C8 concentrations exceeded regulatory thresholds, and to set aside funds for ongoing medical monitoring of the affected community. After 8 years, the C8 Science Panel found several significant diseases, including cancer, with a probable link to PFOA.

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<sup>44</sup> Press Release, *DuPont Concludes Washington Works Employee PFOA Study*, DUPONT (October 17, 2006), available at [https://us.vocuspr.com/Newsroom/Query.aspx?SiteName=DupontNew&Entity=PRAsset&SF\\_PRAsset\\_PRAssetID\\_EQ=103587&XSL=PressRelease&Cache=False](https://us.vocuspr.com/Newsroom/Query.aspx?SiteName=DupontNew&Entity=PRAsset&SF_PRAsset_PRAssetID_EQ=103587&XSL=PressRelease&Cache=False) (last accessed August 25, 2023).

<sup>45</sup> Michael Janofsky, *DuPont to Pay \$16.5 Million for Unreported Risks*, THE NEW YORK TIMES (December 15, 2005), available at <https://www.nytimes.com/2005/12/15/politics/dupont-to-pay-165-million-for-unreported-risks.html#:~:text=WASHINGTON%2C%20Dec.,making%20Teflon%20and%20other%20plastics> (last accessed August 25, 2023).

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

115. DuPont and its entities made and continue to make AFFF that contains dangerous PFAS chemicals and contributing to contamination of and injury to South Carolina's environment, creating a risk to public health.

### **ALL DEFENDANTS KNEW OF THE DANGERS OF PFAS.**

116. After 3M exited the AFFF market in the United States in 2002, taking PFOS foam out of production, the remaining AFFF manufacturer Defendants continued to manufacture and sell AFFF containing PFOA and/or its chemical precursors.

117. Tyco/Ansul, Chemguard, Buckeye, and National Foam/Angus knew, or at the very least should have known, that their AFFF products would harm the environment and human health, including causing harm to the State of South Carolina.

118. Each Defendant is an expert in the field of AFFF manufacturing and/or the materials needed to manufacture AFFF. Each Defendant has detailed information and understanding about the chemical compounds that form AFFF products.

119. The Fire Fighting Foam Coalition ("FFFC"), an AFFF trade group, was formed in 2001 to advocate for AFFF's continued viability.<sup>46</sup>

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<sup>46</sup> Fire Fighting Foam Coalition, <https://www.ffc.org/> (last accessed August 28, 2023).

120. Upon information and belief, all Defendants except 3M, were or still are members of the FFFC.

121. Through their involvement in the FFFC, as well as a variety of other trade associations and groups, the Defendants shared knowledge and information regarding AFFF's environmental effects.

122. The FFFC's efforts were designed to shield its members and the AFFF industry from the public and regulators learning about the harms of PFOA to human health and the environment.

123. These Defendants worked together to protect AFFF from scrutiny.

124. Upon information and belief, these Defendants' close cooperation included public messaging on PFOA's toxicological profile. These Defendants regularly published newsletters and attended conferences bolstering their AFFF products.

125. These coordinated efforts were meant to dispel concerns about the impact AFFF had on the environment and human health and these Defendants worked in concert to conceal known risks of their AFFF from the government and public.

126. Upon information and belief, these Defendants knew the use of their AFFF products presented a threat to human health and the environment.

127. While this was known to these Defendants, it was not fully understood by the users of AFFF, the public, and Plaintiff.

128. Upon information and belief, notwithstanding this knowledge, Defendants designed, manufactured, marketed, distributed, and/or sold AFFF products and issued instructions on how AFFF products should be

used and disposed of (including washing AFFF into the soil or wastewater system), thus improperly permitting PFOA and/or PFOS to contaminate the surface water, soil, and groundwater in and around the State's natural resources and property.

129. As a direct result of Defendants' acts and omissions alleged in this Complaint, the State's natural resources and property have been and will continue to be contaminated with PFAS, including PFOA and PFOS, creating an environmental hazard, that will grow unless the contamination is remediated. As a direct and proximate result of Defendants' actions and/or inactions, Plaintiffs must assess, evaluate, investigate, monitor, remove, clean up, correct, treat, and remediate PFOA and PFOS and other PFAS occurring in AFFF products' contamination to the State's natural resources and property at significant expense, loss and damage. Defendants failed to evaluate and test such AFFF products adequately and thoroughly to determine their potential human health and environmental impacts before they sold the products. They also had a duty and breached that duty to minimize the environmental harm caused by AFFF products.

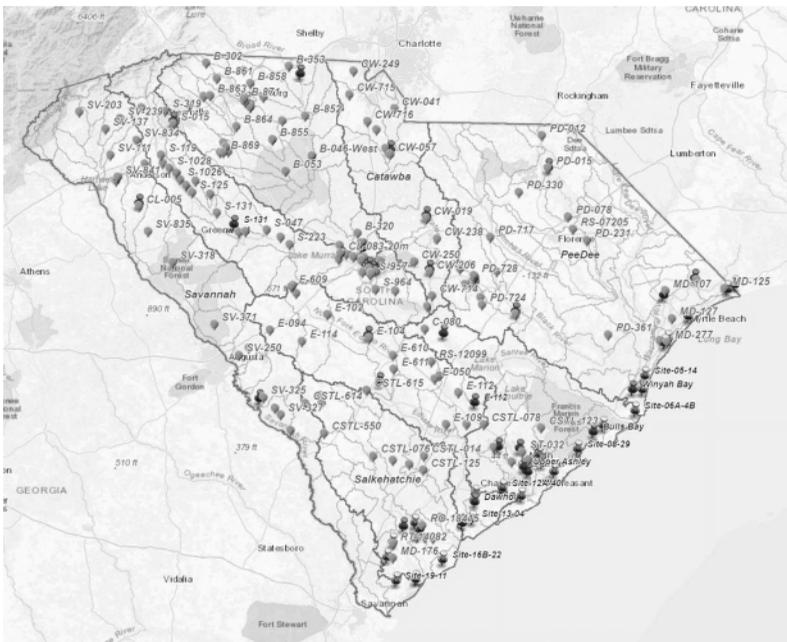
**THE STATE OF SOUTH CAROLINA IS  
CONTAMINATED, INJURED, AND DAMAGED  
BY AFFF PRODUCTS.**

130. The South Carolina Department of Health and Environmental Control ("DHEC") and other State agencies have been investigating PFAS contamination throughout the State. The State has expended significant resources on this ongoing effort.

131. This research has equipped the Plaintiff with significant data, enabling a better-defined picture of the expected trailing damages from known contami-

nating behaviors. A portion of this data has been used to create a map which displays the discovery in ambient surface water of 26 distinct PFAS compounds including the 6 chemical products for which the Environmental Protection Agency (“EPA”) has proposed Maximum Contaminant Levels (“MCLs”) (surface water sampling sites are indicated by orange pins).<sup>47</sup>

132. Figure 1.



133. The same map shows tissue sampling locations for blue crab, freshwater fish, and oysters, indi-

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<sup>47</sup> *Ambient Surface Water Project*, DHEC, available at <https://gis.dhec.sc.gov/gisportal/apps/webappviewer/index.html?id=162b8d1e7fdf459db7ff6b251671651f> (last accessed August 22, 2023) (interactive map with pins indicating sampling sites for surface water, freshwater fish, oyster, and blue crab) (hereinafter “Figure 1”).

cated with blue, green, and gray pins, respectively.<sup>48</sup> 77 fish samples had been collected at 21 different sites as of August 2023 and all but one sample indicated the presence of PFAS chemicals.<sup>49</sup> PFAS chemicals were discovered in 26 of the 30 samples collected from 24 different oyster sampling sites, and in all 10 of the blue crab samples collected at 8 different sampling sites as of August 2023.<sup>50</sup> DHEC notes PFOS is the most prevalent freshwater fish contaminant. As mentioned, PFOS is the principal PFAS chemical occurring in AFFF and PFOS, PFOA, and other PFAS regulated by the EPA's standards appear in AFFF products.

134. Investigating, monitoring, remediating, and rehabilitating the specific natural resources surrounding AFFF-using sites requires a concerted and uniform stakeholder effort. This will be costly, and the cost should be borne by the Defendants who profited from the manufacture, sale and distribution of AFFF products.

135. DHEC's ambient sampling data supports the Plaintiff's belief that AFFF wastewater and runoff are likely the sources of PFAS chemical presence near AFFF-using sites.<sup>51</sup> For example, testing in areas surrounding military sites, airstrips, and/or firefighting training facilities reveals PFAS contamination consis-

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<sup>48</sup> Figure 1. As DHEC continues testing, more pins will be added to the map and data for existing pins will be expanded.

<sup>49</sup> *Ambient Surface Water Project—Tissue Data*, DHEC, available at <https://gis.dhec.sc.gov/gisportal/apps/webappviewer/index.html?id=162b8d1e7fdf459db7ff6b251671651f> (last accessed August 22, 2023) (spreadsheet available for download).

<sup>50</sup> *Id.*

<sup>51</sup> *Id.*

tent with AFFF formulations.<sup>52</sup> Testing performed with the same processes at other locations with no known AFFF-using sites nearby shows different contamination characteristics.<sup>53</sup>

136. In addition to the information published by DHEC, Environmental Working Group, a nonprofit environmental research entity, identifies PFAS presence indicative of AFFF-caused contamination near several sites known to use AFFF in South Carolina.<sup>54</sup>

137. Figure 2.




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<sup>52</sup> *Id.*

<sup>53</sup> *Id.*

<sup>54</sup> Figure 2. *PFAS Contamination in the U.S.*, ENVIRONMENTAL WORKING GROUP, available at [https://www.ewg.org/interactive-maps/pfas\\_contamination/map/](https://www.ewg.org/interactive-maps/pfas_contamination/map/) (last accessed August 22, 2023) (Purple dots indicate suspected AFFF-caused contamination, light blue dots indicate PFAS contamination in drinking water supplies above the EPA's proposed limits, and dark blue dots indicate PFAS contamination in drinking water supplies below the EPA's proposed limits. Orange dots indicate other known PFAS contamination sites.).

138. An overlay (Figure 3) of the EWG contamination map and the DHEC contamination map indicates an association between AFFF-using sites and chemicals known to appear in AFFF. Upon information and belief, AFFF is the most probable source of contamination at these testing locations.

139. Figure 3.



140. The science surrounding AFFF contamination tracking is evolving and improving. Discerning the most probable source of PFAS contamination in a given area can be accomplished through a combination of tools including analysis of the molecular structure of the product, the proximity to known industrial contamination, and the migration and travel behavior of the compounds.

141. Defendants were at all times relevant to this action aware that the natural and probable conse-

quence of AFFF use at any location is that chemicals from the AFFF would contaminate surrounding areas. Plaintiff asserts that, upon information and belief, contamination at these locations is more likely than not caused by AFFF use.

142. AFFF chemicals have appeared in testing and contaminate the surface waters, groundwater, wetlands, soil, and natural resources at and around specific sites, including but not limited to: the Marine Corps Recruit Depot Parris Island, Marine Corps Air Station Beaufort, Charleston Naval Complex, Joint Base Charleston Air, Charleston International Airport, Myrtle Beach Air Force Base, Myrtle Beach International Airport, Shaw Air Force Base, McCrady Training Center, McEntire Joint National Guard Base, Columbia Metropolitan Airport, Greenville-Spartanburg International Airport, and The South Carolina Fire Academy.<sup>55</sup> The State anticipates more sites to be discovered as testing continues.

143. PFOA, PFOS, and other PFAS chemicals found in AFFF are highly water soluble, which increases the rate at which they spread throughout the environment, contaminating soil, groundwater, and surface water. Their mobility is made more dangerous by their persistence in the environment and resistance to biologic, environmental, or photo-degradation.<sup>56</sup>

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<sup>55</sup> See *Strategy to Assess the Impact of Per- and Polyfluoroalkyl Substances on Ambient Surface Waters in South Carolina*, DHEC BUREAU OF WATER (April 30, 2021), available at [https://scdhec.gov/sites/default/files/media/document/BOW\\_PFAS\\_SurfaceWaterStrategy\\_0.pdf](https://scdhec.gov/sites/default/files/media/document/BOW_PFAS_SurfaceWaterStrategy_0.pdf) (last accessed August 25, 2023).

<sup>56</sup> See *Drinking Water Health Advisory for Perfluorooctanoic Acid (PFOA)*, EPA, Doc. No.: 822-R-16-005, at 16 (May 2016); *Drinking Water Health Advisory for Perfluorooctane Sulfonate (PFOS)*, EPA, Doc. No.: 822-R-16-004, at 16 (May 2016).

144. PFOA, PFOS, and other PFAS chemicals found in AFFF are readily absorbed in animal and human tissues after ingestion and accumulate in the serum, kidney, and liver. They have been found globally in water, soil, air, as well as in human food supplies, breast milk, umbilical cord blood, and human serum.<sup>57</sup>

145. PFOA, PFOS, and other PFAS chemicals found in AFFF are persistent in the human body. Even short-term exposure can cause PFAS to accumulate and persist in the body for years, increasing with additional exposures.<sup>58</sup>

146. The EPA advises that exposure to PFOA, PFOS, and other PFAS chemicals found in AFFF over certain levels may cause “effects on the immune system, the cardiovascular system, human development (e.g., low birth weight) . . . cancer . . . effects on the liver, the kidney . . . the thyroid[, and] reproductive system.”<sup>59</sup>

147. The EPA also warns “there is suggestive evidence of carcinogenic potential for PFOS in humans.”<sup>60</sup>

148. The EPA further states “drinking water can be an additional source [of PFOA/PFOS in the body] in . . . communities where these chemicals have contami-

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<sup>57</sup> See EPA Doc. No.: 822-R-16-005, at 18–20, 25–27; EPA Document Number: 822-R-16-004, at 19–21, 26–28.

<sup>58</sup> See EPA Doc. No.: 822-R-16-005, at 55; EPA Doc. No.: 822-R-16-004 at 55.

<sup>59</sup> See *Drinking Water Health Advisories for PFAS: Fact Sheet for Communities*, EPA, 2022 INTERIM HEALTH ADVISORIES, available at <https://www.epa.gov/system/files/documents/2022-06/drinking-water-ha-pfas-factsheet-communities.pdf> (last accessed August 23, 2023).

<sup>60</sup> *Health Effects Support Document for Perfluorooctane Sulfonate (PFOS)*, EPA, Doc. No.: 822-R-16-002, at 3-114 (May 2016).

nated water supplies. Such contamination is typically localized and associated with a specific facility, for example, . . . an airfield at which [the chemicals] were used for firefighting.”<sup>61</sup>

149. Defendants designed, manufactured, formulated, marketed, distributed, sold, and/or assumed or acquired liabilities for the manufacture and/or sale of AFFF with the knowledge that these toxic compounds would be released into the environment even when released, stored, used, cleaned up, and/or disposed of as directed or intended by Defendants.

150. The use of Defendants’ AFFF products allowed PFOA, PFOS, and other PFAS chemicals to enter the State’s natural resources and property and migrate through the subsurface and into the groundwater, ultimately contaminating the surface water, ground water, soil, sediment, and plant life as well as causing other extensive and ongoing damage to the State’s natural resources and property.

151. At all times pertinent herein, Plaintiff did not know, nor should Plaintiff have known, of the ongoing contamination of its natural resources and property through the use, release, storage, and/or disposal of Defendants’ AFFF products.

## **DUPONT RESTRUCTURED ITS BUSINESS TO AVOID LIABILITY.**

152. By 2013, Old DuPont faced mounting liabilities arising out of its long-running manufacture, use, marketing, distribution, and sale of PFAS-containing products throughout the United States. These liabilities

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<sup>61</sup> *Fact Sheet PFOA & PFOS Drinking Water Health Advisories*, EPA Doc. No.: 800-F-16-003, at 1 (November 2016).

ties included, among other things, clean-up costs, remediation obligations, tort damages, natural resources damages, and potential punitive damages.

153. Upon information and belief, by 2013, in order to shield its assets from these liabilities, Old DuPont began a complex series of corporate restructurings and spinoffs.

154. In 2014 and 2015, Old DuPont (*i.e.*, defendant EIDP, Inc.) created and transferred its assets and liabilities, including those related to AFFF product lines (known as “performance chemicals”), to The Chemours Company as a wholly owned subsidiary.

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

156. In undertaking Old DuPont’s obligations and liabilities, Chemours completely indemnified Old DuPont and completely substituted DuPont in all primarily associated performance chemicals liabilities, including those originating before the spinoff.<sup>62</sup>

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

158. Under the Separation Agreement, The Chemours Company agreed to indemnify Old DuPont against, and assumed for itself, all “Chemours Liabili-

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<sup>62</sup> See generally *Separation Agreement by and between E.I. Du Pont De Nemours and Company and The Chemours Company*, at 57, (June 26, 2015), available at <https://www.sec.gov/Archives/edgar/data/30554/000003055415000065/exhibit21separationagreeme.htm> (last accessed August 25, 2023) (hereinafter “Separation Agreement”).

ties,” which is defined broadly to include, among other things, “any and all liabilities relating,” “primarily to, arising primarily out of or resulting primarily from, the operation of or conduct of the [performance chemicals] Business at any time.” This indemnification is uncapped and does not have a survival period.<sup>63</sup>

159. The Chemours Company agreed to indemnify Old DuPont from, and assume all, environmental liabilities that arose prior to the spinoff if they were “primarily associated” with the performance chemicals business. Such liabilities were deemed “primarily associated” if Old DuPont reasonably determined that 50.1% of the liabilities were attributable to the performance chemicals business.<sup>64</sup>

160. The Chemours Company agreed to indemnify Old DuPont against and assume for itself the performance chemical business’s liabilities regardless of: (i) when or where such liabilities arose; (ii) whether the facts upon which they are based occurred prior to, on, or subsequent to the effective date of the spinoff; (iii) where or against whom such liabilities are asserted or determined; (iv) whether arising from or alleged to arise from negligence, gross negligence, recklessness, violation of law, fraud or misrepresentation by any member of the Old DuPont group or the Chemours group; and (v) which entity is named in any action associated with any liability.<sup>65</sup> The Chemours Company also agreed to use its best efforts to be fully substituted for Old DuPont with respect to “any order, de-

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<sup>63</sup> *Id.* at 10–11.

<sup>64</sup> *Id.* at 7, 53–65.

<sup>65</sup> *Id.* at 29.

cree, judgment, agreement or Action with respect to Chemours Assumed Environmental Liabilities . . . .”<sup>66</sup>

161. At the time of the July 2015 Chemours spinoff, Old DuPont was well aware of its potential liabilities related to AFFF contamination throughout the United States.<sup>67</sup>

162. Once the spinoff was complete, seven new members of The Chemours Company board were appointed, for an eight-member board of directors of the new public company. The negotiations concerning the spinoff were conducted and the related decisions were made while the board was still controlled by Old DuPont. The new independent board appointed upon the completion of the spinoff did not take part in the negotiations of the terms of the separation.<sup>68</sup>

163. In 2015 when DuPont transferred its performance chemicals business to The Chemours Company, Old DuPont had been sued, threatened with suit, and/or had knowledge of the likelihood of litigation to be filed regarding Old DuPont’s liability for damages and injuries from the manufacture of PFAS compounds and products that contain PFAS compounds, including AFFF.<sup>69</sup>

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<sup>66</sup> *Id.* at 63.

<sup>67</sup> *See, e.g.*, The DuPont Memo, *supra* note 40.

<sup>68</sup> *The Chemours Co. v. DowDuPont, Inc., Corteva, Inc., and E.I. Du Pont de Nemours & Co.*, C.A. No. 2019-0351-SG, at ¶ 35 (Del. Cha. Aug. 14, 2019) (verified first amended complaint by Chemours against the other DuPont entities regarding the spinoff and extent of Chemours’ exposure to DuPont’s historical liabilities) (hereinafter “Spinoff Case”).

<sup>69</sup> *See e.g., In re E.I. du Pont de Nemours & Co. C-8 Personal Inj. Litig.*, No. 1-13-MD-2433 (S.D. Ohio) (MDL regarding injuries associated with contamination near the DuPont-Chemours

164. The Chemours Company's creation attempted to segregate a large portion of Old DuPont's environmental liabilities, including liabilities related to its AFFF chemicals and products.

165. In or around December 2015, Old DuPont entered into an agreement with Dow, Inc. ("Old Dow") pursuant to which Old DuPont and Old Dow merged with subsidiaries of a newly formed holding company, DowDuPont, Inc. ("DowDuPont"), which was created solely for the purpose of effectuating the merger. Old DuPont and Old Dow became subsidiaries of DowDuPont.

166. Following its creation, DowDuPont engaged in a number of realignments and divestitures, the details of which remain largely hidden from Plaintiff and other creditors, intended to frustrate and/or hinder creditors with claims against Old DuPont. Upon information and belief, the net effect of these transactions was the transfer, directly or indirectly, of a substantial portion of Old DuPont's assets to DowDuPont for far less than these assets were worth.

167. In 2018 and 2019, DowDuPont completed its transformation and spun off two new publicly traded companies, Corteva, Inc. and Dow, Inc. ("New Dow"). DowDuPont was then renamed DuPont de Nemours, Inc. ("New DuPont").

168. Upon information and belief, Corteva currently holds Old DuPont as a subsidiary.

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Washington Works Plant, Parkersburg, WV, petition for certiorari to the U.S. Supreme Court pending at the time this complaint was filed).

169. Corteva is an agriculture science company that holds other legacy Old DuPont operations and some PFAS liabilities.

170. Upon information and belief Corteva was undercapitalized at its creation, remains under DuPont's control, and is not a distinct or unique business operation.

171. Like The Chemours Company, creating Corteva was an attempt to segregate a large portion of Old Dupont's environmental liabilities, including liabilities related to its AFFF chemicals and products.

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

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

173. Defendants designed, manufactured, distributed, marketed, sold, and/or assumed or acquired liabilities for the manufacture and/or sale of AFFF products in a manner that created, or participated in creating, a public nuisance that unreasonably and substantially interferes with the use and enjoyment of the State's natural resources and property, and unreasonably endangers or injures the health, safety, and comfort of the general public and Plaintiff, causing inconvenience and annoyance.

174. The unreasonable and substantial interference with the use and enjoyment of the State's natural resources and property includes but is not limited to: the contamination of State ground water, surface water,

soil, air, and wildlife with PFOS, PFOA, and other PFAS appearing in AFFF; and the exposure to known toxic chemicals manufactured and/or sold by Defendants.

175. The presence of PFOS, PFOA, and other PFAS appearing in AFFF causes significant costs, inconvenience, and annoyance to Plaintiff, who is charged with, among other things, protecting the State's natural resources and property.

176. The contamination affects a substantial number of people who rely upon the State's natural resources and property for commercial and recreational purposes and interferes with the rights of the public at large to clean and safe water resources and environment.

177. The seriousness of the environmental and human health risk far outweighs any social utility of Defendants' conduct in manufacturing AFFF products and concealing the dangers those Products posed to human health and the environment.

178. As a result of the actual and threatened PFOS, PFOA, and AFFF-related contamination caused by Defendants' conduct, Plaintiff has suffered, and will continue to suffer, harm that is different from the type of harm suffered by the general public, and Plaintiff has incurred, and will continue to incur, substantial costs to remove the contamination from its natural resources and property.

179. Plaintiff did not consent to the conduct that resulted in the contamination of its natural resources and property.

180. Each Defendant's conduct was a substantial factor in causing the harm to Plaintiff.

181. Defendants have, by their acts and omissions set forth above, among other things, knowingly un-

leashed long-lasting and ongoing PFOS, PFOA, and AFFF-related contamination, and threat of PFOS, PFOA, and AFFF-related contamination, upon the State's natural resources and property.

182. Defendants knew or, in the exercise of reasonable care, should have known that the use and introduction of their AFFF products into the environment would endanger, and has continuously, unreasonably and seriously endangered and interfered with the ordinary safety, use, benefit, and enjoyment of the State's natural resources and property.

183. Defendants committed each of the above-described acts or omissions willfully and/or deliberately and with a conscious, reckless and outrageous indifference to the health, safety and welfare of others, including Plaintiff. Such conduct was performed to promote the sales of Defendants' AFFF products, in conscious disregard to the probable dangerous consequences of that conduct and its reasonably foreseeable impacts on the environment and the public's health, safety, and welfare. Therefore, Plaintiff requests an award of punitive damages in an amount sufficient to punish Defendants and that fairly reflects the aggravating circumstances alleged herein.

184. As a direct and proximate result of Defendants' above-described acts and omissions, Plaintiff has incurred, continues to incur, and/or will incur costs and damages related to the PFAS contamination of its natural resources and property. As a result, Plaintiff seeks recovery of any and all past, present and future compensatory and/or consequential damages for the investigation, monitoring, treatment, testing, remediation, removal, filtration, and/or disposal of the PFAS contamination of its natural resources and property, operating, maintenance and consulting costs, attorneys'

fees and costs, as well as any and all other damages available as a result of the actions and/or inactions of Defendants as described herein.

**FOR A SECOND CAUSE OF ACTION  
TRESPASS  
(All Defendants)**

185. Plaintiff has significant property interests in the natural resources of the State. These property interests include, but are not limited to, the State's public trust and *parens patriae* interests and authority in protecting such natural resources from contamination and injury.

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

187. The State also brings this action in its *parens patriae* capacity on behalf of its citizens to protect quasi-sovereign interests, including the integrity of the State's natural resources.

188. The State never authorized Defendant's invasion of its natural resources and property with PFAS.

189. The State owns in fee certain property within the State, including lands and water wells.

190. Defendants knew, or in the exercise of reasonable care should have known, that AFFF products are hazardous to natural resources and property, including groundwater, surface water, and public water systems, and including the property and interests of the State.

191. Defendants' acts and omissions directly and proximately caused and continue to cause PFAS to intrude onto and contaminate State natural resources

and property, including water systems, surface water, groundwater systems, and zones of influence of the areas that supply production wells within the State.

192. At the time of Defendants' acts and omissions, Defendants knew with substantial certainty that PFAS contained in AFFF would reach onto and contaminate State natural resources and property, including water systems, surface water, groundwater systems, and zones of influence of the areas that supply production wells within the State. Defendants' knowledge was based on their knowledge of the properties of AFFF, their knowledge and experience regarding PFAS contamination at their own facilities where they manufactured and/or used AFFF, and other conduct alleged in this Complaint. Despite this knowledge, Defendants manufactured, marketed, distributed, promoted, and/or sold AFFF products containing PFAS with a profit motive in a way that has harmed the State.

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

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

195. As a further direct and proximate result of Defendants' acts and omissions, the State has sustained and will sustain other substantial expenses and damages, including damages for loss of use and enjoyment, for which Defendants are jointly and severally liable.

196. Defendants' acts and omissions have caused and/or threatened to cause injuries to the State's natural resources and property that are indivisible.

**FOR A THIRD CAUSE OF ACTION  
VIOLATION OF THE SOUTH CAROLINA  
UNFAIR TRADE PRACTICES ACT  
(All Defendants)**

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

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

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

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

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

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

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

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

205. The State seeks all remedies available under SCUTPA including, without limitation, the following:

- a. Injunctive and other equitable relief pursuant to section 39-5-50(a) of the South Carolina Code;
- b. Restoration of all ascertainable losses under section 39-5-50(b) of the South Carolina Code to any person or entity who suffered them as a result of Defendants' conduct;
- c. Civil penalties in an amount up to \$5,000.00 per violation with every unfair or deceptive act or practice by Defendants constituting a separate and distinct violation; and
- d. Costs and attorneys' fees pursuant to section 1-7-85 of the South Carolina Code.

**PRAYER FOR RELIEF**

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

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

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

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

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

E. Award compensatory damages to the State of South Carolina arising from AFFF contamination and injury of State natural resources and property, including groundwater, surface water, drinking water supplies, biota, wildlife including fish, and their associated soils, sediments, and uses, and other State natural resources and property, according to proof, including, but not limited to:

- (i) natural resource damages;
- (ii) loss-of use damages;
- (iii) costs of investigation;
- (iv) costs of testing and monitoring;

- (v) costs of providing water from an alternate source;
- (vi) costs of installing and maintaining well-head treatment;
- (vii) costs of installing and maintaining a well-head protection program;
- (viii) costs of installing and maintaining an early warning system to detect PFAS before it reaches wells;
- (ix) costs of mitigating and remediating PFAS from natural resources including groundwater, surface waters, soils, sediments, and other natural resources;
- (x) costs of mitigating and remediating PFAS contamination at release sites;
- (xi) any other costs or other expenditures incurred to address PFAS contamination and injury; and
- (xii) interest on the damages according to law;

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

G. Award punitive damages pursuant to S.C. Code Ann. § 15-33-135, in an amount to be determined at trial for Defendants' reckless and willful disregard for the property and natural resources of the State of South Carolina to impress upon the Defendants' the seriousness of its misconduct and to deter similar misconduct in the future;

H. Award prejudgment interest; and

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

Respectfully submitted,



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