

STATE OF NORTH CAROLINA  
COUNTY OF BLADEN

IN THE OFFICE OF  
ADMINISTRATIVE HEARINGS  
22 EHR 03913

THE CHEMOURS COMPANY FC, LLC, )  
)  
Petitioner, )  
)  
v. )  
)  
NORTH CAROLINA DEPARTMENT OF )  
ENVIRONMENTAL QUALITY, )  
)  
Respondent. )  
)

**MOTION TO INTERVENE  
OF CAPE FEAR PUBLIC  
UTILITY AUTHORITY**

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NOW COMES Cape Fear Public Utility Authority (CFPUA), by and through undersigned counsel and pursuant to N.C. Gen. Stat. § 150B-23, Rule 24 of the North Carolina Rules of Civil Procedure, and 26 NCAC 3.0117, and hereby files this Motion to Intervene, seeking to intervene as a party in the above-captioned contested case, with all of the rights of a party (Respondent-Intervenor), in order to protect its rights and defend NPDES Permit NC0090042 issued by Respondent North Carolina Department of Environmental Quality (DEQ) to Petitioner The Chemours Company FC, LLC (Chemours) on September 15, 2022 (NPDES Permit).

In support of this Motion, CFPUA respectfully shows the following:

**INTRODUCTION**

1. CFPUA has been and continues to be directly and negatively impacted by past, current, and ongoing discharges of per- and polyfluoroalkyl substances (PFAS) from the Fayetteville Works facility owned and operated by Chemours.
2. The NPDES Permit allows Chemours to discharge wastewater from a groundwater extraction and treatment system that is planned to be completed in March 2023 and is predicted by Chemours to result in significant reductions in PFAS loading to the Cape Fear River (Treatment

System). However, because Chemours has filed a contested case petition to initiate this administrative challenge of the NPDES Permit that is necessary for the Treatment System to begin operation and to reduce PFAS loading to the Cape Fear River, PFAS reductions will be delayed and perhaps lessened—depending on the outcome of this litigation, and CFPUA will be harmed as a result.

3. Delay in the construction and operation of the Treatment System and the resulting delay in the reduction of ongoing PFAS contamination in the Cape Fear River caused by the operation of the Fayetteville Works facility, will harm CFPUA. CFPUA needs the NPDES Permit to be timely upheld and implemented as issued so that the much-needed Treatment System may be timely completed and operation initiated to reduce loading of PFAS to the Cape Fear River, lower contamination levels at CFPUA water intakes, and lower water treatment costs incurred by CFPUA. Any remand of the NPDES Permit to DEQ for the time-consuming process of reconsideration and reissuance with reduced restrictions on PFAS discharges would cause increased water treatment costs for CFPUA.

4. For these reasons, CFPUA seeks to intervene in this contested case proceeding to defend DEQ's issuance of the NPDES Permit and the terms thereof in order to protect itself and its customers from the direct and immediate harm associated with any further delays in the construction and operation of the Treatment System and any reductions in the NPDES Permit restrictions on PFAS discharges.

### **PARTIES**

5. CFPUA is a public utility authority created by New Hanover County and the City of Wilmington pursuant to N.C. Gen. Stat. Ch. 162A, and is vested with authority to sue in its own name. N.C. Gen. Stat. § 162A-6. CFPUA exercises public and essential governmental functions to

provide for the public health and welfare of its customers, including by providing potable water for residents of and businesses located in New Hanover County and the City of Wilmington.

6. Petitioner Chemours is a Delaware limited liability company registered to do business in North Carolina and the current owner and operator of the Fayetteville Works manufacturing facility located in Bladen County, North Carolina.

7. Respondent DEQ is an agency of the State of North Carolina established pursuant to N.C. Gen. Stat. § 143B-279.1 *et seq.* and is vested with the statutory authority to enforce the State's environmental protection laws, including laws enacted and rules adopted to protect the water quality of the State. N.C. Gen. Stat. Ch. 143, Art. 21.

## **NPDES PERMIT BACKGROUND**

### **A. North Carolina NPDES Permit Program**

8. The federal Clean Water Act, 33 U.S.C. § 1251 *et seq.*, prohibits the discharge of any pollutant from a point source into waters of the United States without a permit. 33 U.S.C. § 1311. A person proposing to discharge pollutants into surface waters is required to obtain a National Pollution Discharge Elimination System (NPDES) permit prior to the discharge. 33 U.S.C. § 1342.

9. The Clean Water Act and subsequent congressional actions and United States Environmental Protection Agency (EPA) approval have resulted in the delegation of authority to the state of North Carolina to implement the NPDES program in the state. 33 U.S.C. § 1342(b). The state NPDES program is currently carried out, in part, pursuant to a 2007 Memorandum of Agreement between the State and EPA, and is administered and enforced by DEQ. N.C. Gen. Stat. Ch. 143, Art. 21; N.C. Gen. Stat. §§ 143B-282 *et seq.*; N.C. Gen. Stat. § 143-215.1; 15A NCAC Subch. 2H.

**B. Chemours Treatment System and NPDES Permit**

10. As stated in its Petition, Chemours is constructing the Treatment System at its Fayetteville Works facility to reduce discharges of PFAS to the Cape Fear River. Pet. at 1. Because the Treatment System will discharge treated water containing PFAS and other pollutants into North Carolina surface waters (including the Cape Fear River), Chemours is required to obtain an NPDES permit from DEQ authorizing the discharges. Pet. at 1.

11. In June 2021, Chemours applied to DEQ for an NPDES permit authorizing discharges of PFAS and other pollutants from the proposed Treatment System to the Cape Fear River. Pet. at 2. In March 2022, DEQ issued for public comment a draft NPDES permit for Chemours's proposed Treatment System. Pet. at 2.

12. On May 2, 2022, CFPUA timely submitted to DEQ comments on the draft NPDES permit stating that certain requirements and conditions of the draft permit would be inadequate to protect the health of downstream river water users and would place unreasonable economic burdens on CFPUA and individuals residing and businesses located in the lower Cape Fear River basin rather than appropriately placing those economic burdens on Chemours.

13. DEQ issued the NPDES Permit on September 15, 2022, to be effective on November 1, 2022. Pet. at 1-2. A copy of the NPDES Permit is attached to Chemours's Petition. Pet. Ex. A.

14. Chemours filed its Petition for Contested Case on October 14, 2022, challenging DEQ's issuance of the NPDES Permit.

## FACTUAL BACKGROUND

### A. Releases of PFAS from Fayetteville Works facility into the environment

15. Chemours owns and operates Fayetteville Works, a chemical manufacturing facility located on the Cape Fear River south of Fayetteville in Bladen County. For over 40 years, the Fayetteville Works facility has been manufacturing, using, and discharging certain PFAS, which are manmade compounds used for various consumer and commercial purposes that are toxic, persistent (they do not break down in the environment), and accumulate in the body.<sup>1</sup>

16. Chemours has contaminated and continues to contaminate air, surface water, and groundwater in the lower Cape Fear River region of North Carolina through its discharges of PFAS from the Fayetteville Works facility. As a result, soil and stream sediment in the Cape Fear River and its tributaries, and regional groundwater are heavily contaminated with PFAS, which, in turn, is continuously released into the Cape Fear River through stream flow, groundwater migration, and rainwater runoff.

17. During the course of its operations over the past 40 years, the Fayetteville Works facility has released thousands of tons of PFAS into groundwater, soils, sediments, and surface waters, affecting hundreds of thousands of people living in the lower Cape Fear River region of North Carolina. DEQ has determined that Chemours is responsible for groundwater contamination

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<sup>1</sup> At this time, it is not possible to identify all of the PFAS that have been or are currently being discharged from the Fayetteville Works facility, in part because there are by-product fluorochemicals that have never been identified or quantified by Chemours or its predecessor entity. In 2020, Chemours conducted a non-targeted analysis that identified a total of 257 potential unique unknown PFAS in samples taken from process and non-process wastewater at the Fayetteville Works facility. The Chemours Company FC, LLC, *PFAS Non-Targeted Analysis and Methods Interim Report* (June 30, 2020). To date, Chemours has only identified a small fraction of these compounds. See The Chemours Company FC, LLC, *PFAS Non-Targeted Analysis and Methods Interim Report #5* (June 22, 2022).

in Bladen County. DEQ has detected levels of PFAS in groundwater that exceed by multiple orders of magnitude both the regulatory limits of North Carolina's groundwater rules and the provisional health goals set by the North Carolina Department of Health and Human Services (DHHS). Elevated concentrations of PFAS originating from the Fayetteville Works facility have been found in private drinking water wells more than 55 miles from the Fayetteville Works facility.<sup>2</sup> In addition, DEQ has determined that Chemours is responsible for groundwater contamination in four downstream counties, including New Hanover County. It is evident that the primary source of surface water and groundwater contamination in and around the Fayetteville Works facility and downstream in the lower Cape Fear River is Chemours's past and ongoing emissions of PFAS into the atmosphere and the deposition of those chemicals onto land and into waters of the State.

**B. State enforcement action and consent orders**

18. On September 7, 2017, following an extensive investigation, the State of North Carolina filed an enforcement action against Chemours in Bladen County Superior Court, alleging that for decades Chemours and its predecessor, E. I. DuPont de Nemours & Company, Inc. (DuPont), unlawfully discharged PFAS products, intermediaries, and byproducts from their manufacturing processes at Fayetteville Works into the air, soil, groundwater, and surface water around the Fayetteville Works facility. *State of North Carolina, ex rel., Regan v. The Chemours Company FC, LLC*, Case No. 17 CVS 580. In its complaint, the State alleged, among other things, that: (a) since at least 2009 DuPont was aware of EPA's concern about the toxic effects of PFAS; (b) Chemours and DuPont knew for years that PFAS were being discharged from Fayetteville Works into nearby surface waters; (c) water samples collected at various times from the Cape Fear

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<sup>2</sup> Prior to the discovery of extensive PFAS contamination in New Hanover County, contamination from the Fayetteville Works facility was assumed to extend no more than 18 miles.

River showed concentrations of certain PFAS chemicals in the river water in excess of the DHHS health goals; (d) the surface waters into which the Fayetteville Works facility discharges PFAS-contaminated wastewater are used as a public water supply source for several downstream counties; and (e) PFAS discharges from the facility have been and are present in public drinking water supplied to residents and businesses in the downstream counties. The State sought relief against Chemours to prevent and abate Chemours's unpermitted discharges of PFAS.

19. On April 9, 2018, the State filed an amended complaint against Chemours in which the State asserted many of the same allegations it alleged in the original complaint regarding Chemours's knowing discharges of PFAS from the Fayetteville Works facility into the Cape Fear River, the toxic effects of PFAS on human health and the environment, the use of the river water as a public water supply source for downstream residents and businesses, and the presence of PFAS in public drinking water. The State's amended complaint also alleged that: (a) the State had obtained additional evidence of the extent of the contamination caused by Chemours's release of PFAS into the environment; (b) the migration of groundwater from the Fayetteville Works facility was a significant, ongoing source of PFAS loading in the Cape Fear River; and (c) air emissions from the facility were a major source of groundwater contamination, both on-site and off-site.

20. On February 25, 2019, the Bladen County Superior Court entered a Consent Order requiring that Chemours undertake remedial measures to address historic and ongoing PFAS discharges from the Fayetteville Works facility to the environment. On October 12, 2020, the Court entered an Addendum to the Consent Order, which required that Chemours undertake additional remedial measures to address the ongoing PFAS contamination, including measures to reduce PFAS discharges from stormwater, non-process wastewater, groundwater seeps, and onsite groundwater.

21. The Consent Order Addendum, among other things, requires Chemours to construct a barrier wall and groundwater extraction and treatment system—the Treatment System, which must “be designed so that extracted groundwater shall be treated through a treatment system that removes PFAS compounds . . . at a minimum removal efficiency of 99%.” Consent Order Addendum ¶ 3.b.ii (emphasis added). The Consent Order Addendum requires Chemours to complete installation and commence operation of the Treatment System no later than March 15, 2023.

22. Even after the entry of the Consent Order and Addendum, Chemours has demonstrated a lack of commitment to address the release of PFAS from Fayetteville Works into the environment. For example, the Consent Order Addendum set forth deadlines for Chemours to complete construction of PFAS treatment systems at four different groundwater seeps identified at the site; and yet Chemours has failed to comply with the required construction schedule for each of the four groundwater seeps.

23. Since 2017, during the time the State was investigating the PFAS contamination originating at Chemours’s Fayetteville Works facility, CFPUA has communicated to DEQ that Chemours should be required to provide prompt and comprehensive relief to downstream users of river water. DEQ is well aware (as is Chemours) that CFPUA intakes Cape Fear River water, and, after treatment, supplies it for use by some 200,000 residents and businesses in New Hanover County. As DEQ and Chemours are also aware, until very recently CFPUA’s water treatment plant did not have the capability to treat and remove all PFAS pollutants from the water that CFPUA intakes into its water treatment and distribution systems.



**C. CFPUA's interests in the Cape Fear River and the NPDES Permit**

24. CFPUA operates a raw water intake located on the Cape Fear River downstream of Chemours' Fayetteville Works facility. CFPUA draws most of its raw water from the Cape Fear River downstream of Fayetteville Works. CFPUA also owns and operates the Sweeney Water Treatment Plant (the Sweeney Plant) and distribution system that treats raw water drawn from the Cape Fear River and then distributes the clean, potable water to approximately 200,000 individuals and the businesses within its service area in New Hanover County (including the City of Wilmington).

25. CFPUA has undoubted interests relating to PFAS contamination in the Cape Fear River and the requirements imposed on Chemours to respond to and remediate the contamination. CFPUA is a riparian owner of property on the Cape Fear River and is the direct recipient and user of PFAS-contaminated river water. It withdraws PFAS-contaminated raw water from the river, treats the water, and distributes the finished water for potable uses to residents and businesses located in Wilmington and New Hanover County. The PFAS contaminants in the river water have made it significantly more difficult and expensive for CFPUA to treat the water. The Sweeney Plant did not (until quite recently) have the capability to treat and consistently remove PFAS from raw river water.

26. Since Chemours has refused to take any significant action to protect downstream river water users from exposure to PFAS in the Cape Fear River, CFPUA has been forced, on its own and at its expense, to evaluate remediation technologies that remove all or substantially all PFAS contaminants from river water. After conducting pilot testing on treatment options, CFPUA determined that the addition of a granular activated carbon filter (GAC) system would be the best

option for treating the Cape Fear River water taken into its treatment system sufficiently to protect its customers and staff from all (or almost all) PFAS exposure.

27. CFPUA has now designed and constructed a GAC system for its plant. The CFPUA GAC system just became fully operational approximately two weeks ago. The system can treat up to 44 million gallons per day and, thus far, has removed PFAS from Cape Fear River water taken into the CFPUA system to non-detect levels.<sup>3</sup> To date, CFPUA has incurred an estimated cost of approximately \$49 million to evaluate, design, construct, and test the GAC system, and estimates it will cost between three and five million dollars each year to operate the system—depending upon the levels of PFAS in the Cape Fear River water taken into the CFPUA system from the river. CFPUA had to build and operate the GAC system because Chemours’s failure to take action to provide prompt relief to CFPUA and its customers left no other option.

28. CFPUA has been and continues to be directly and negatively impacted by PFAS discharges from the Fayetteville Works facility into the air, surface water, and groundwater in the Cape Fear River basin. Independent research demonstrates that up to 88 percent of PFAS loading experienced at the CFPUA’s raw water intake is sourced from Chemours’s Fayetteville Works facility.<sup>4</sup>

29. Though the CFPUA GAC system is now operational, the adverse impacts to CFPUA from PFAS in the Cape Fear River have not ended. Levels of total PFAS contaminants in raw river water regularly exceed 130 ppt (ng/L). The higher the PFAS levels in the river, the more

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<sup>3</sup> Cape Fear Public Utility Authority, *NO PFAS DETECTED IN SWEENEY TREATED WATER AS CFPUA ACTIVATES NEW GAC FILTERS*, (Oct. 11, 2022), <https://www.cfpua.org/CivicAlerts.aspx?AID=1411>.

<sup>4</sup> Petre, M.A. et al., *Per-and polyfluoroalkyl substances (PFAS) in the river discharge: Modeling loads upstream and downstream of a PFAS manufacturing plant in the Cape Fear watershed, North Carolina*, 831 *The Science of the Total Environment* 154763 (2022), available at <https://doi.org/10.1016/j.scitotenv.2022.154763>.

quickly the GAC filters degrade and become less capable of removing PFAS effectively from the raw water. Thus, CFPUA will be required to monitor river water and adjust its treatment operations for the indefinite future to continue to remove PFAS from the water and to limit the risk of PFAS contaminants remaining in its treated finished water. Treatment costs for this system are directly related to the PFAS pollution loading in the Cape Fear River. CFPUA expects it will incur an estimated \$5 million annually to operate and maintain its GAC system and monitor for PFAS in the raw river water and the treated finished water at current loadings. Implementation of the NPDES Permit, as written, will significantly reduce the cost-burden imposed by Chemours on CFPUA and its customers.

30. In addition to its primary water treatment plant, CFPUA owns and operates groundwater extraction wells that supplement its drinking water distribution in New Hanover County. PFAS sampling of these wells indicates an increasing PFAS impact on the groundwater extracted from these wells and a probable need for PFAS treatment at multiple locations. Indeed, DEQ has concluded that many of the private wells in New Hanover County are impacted by Chemours's historic releases and has required Chemours to provide bottled water and under-sink treatment systems for each impacted well user. PFAS treatment at these smaller CFPUA water extraction and treatment systems will cost millions of dollars in construction and annual operating costs at each location, and any increase in PFAS discharges at Chemours's Fayetteville Works facility (or any delay in implementing remediation systems at the facility) will only exacerbate these additional problems.

31. Although DEQ did not adopt the specific recommendations contained in CFPUA's May 2, 2020 comments on the draft NPDES permit circulated for public comment, DEQ did change and significantly reduce the effluent mass and concentration limits Chemours must meet

to discharge its Treatment System wastewaters into the Cape Fear River. This reduction in PFAS concentration and mass levels allowed to be discharged pursuant to the final NPDES Permit will result in a significant reduction in operating costs for CFPUA's new GAC treatment system, and CFPUA hopes it will eventually reduce the groundwater PFAS concentrations found in the New Hanover County groundwater that CFPUA's supplemental groundwater wells draw from.

32. As described above, CFPUA has built a GAC treatment system that can treat up to 44 million gallons per day. At Chemours's request, CFPUA provided Chemours's engineering consultants access to all of CFPUA's GAC system construction plans in February 2020, more than a year before Chemours submitted its NPDES permit application that proposed a GAC system (Chemours GAC) treatment plant for Outfall 004 to treat only 2.38 million gallons per day. Chemours is now complaining in its Petition that it should not even have to design a treatment system that can meet the effluent limits in the final NPDES Permit. If Chemours has its way, it will pass costs of treatment of Chemours's contamination to CFPUA.

33. While Chemours has asserted publicly that it was taking immediate actions to reduce the concentration and mass discharging into the Cape Fear River (and reaching CFPUA's water treatment plant), the actions taken by Chemours since 2017 have resulted in only a small reduction in the PFAS loading. And in fact, CFPUA has seen an increase in both concentration and mass of one particular PFAS chemical (PFMOAA), a PFAS chemical that Chemours's consultants believe mostly originates from the contaminated groundwater at the Fayetteville Works facility. PFMOAA is currently the most problematic PFAS chemical for CFPUA to treat in its new GAC treatment system because it causes the quickest breakthrough of the GAC filters, requiring filter replacement on an accelerated schedule.

34. Although not provided in the manner CFPUA proposed in its May 2, 2022 comments on the draft NPDES permit for Chemours's Treatment System, CFPUA recognizes that the final NPDES Permit, as issued, sets discharge limits that should provide for significant reduction of PFAS mass and concentration. This reduction will result in a significant decrease in the amount of PFAS that CFPUA will be required to treat and remove in its water treatment facilities, which will reduce CFPUA's future water treatment plant operating costs by millions of dollars annually. Chemours's challenge of the NPDES Permit threatens to delay the completion of the Treatment System and delay and lessen the corresponding expected reductions in PFAS loading to the Cape Fear River, both of which will cause harm and increased costs and expenses to CFPUA.

35. CFPUA simply cannot afford any further delay in the construction of the remedial measures required by the Consent Order Addendum, or any reduction in the PFAS effluent limitations in the NPDES Permit. CFPUA and its customers have waited long enough for Chemours to fully resolve past, current and ongoing PFAS contamination in the Cape Fear River caused by the operation of the Fayetteville Works facility. Thus, CFPUA has determined it is in its and its customers' best interest to support the final NPDES Permit (as issued), so the remediation system required by the final permit for this highly contaminated Chemours facility can be implemented as soon as possible with the discharge limits in the final NPDES Permit. Delay and/or increasing PFAS limits in the NPDES Permit will directly cause CFPUA to incur significant increased costs and expenses to operate its GAC treatment system to remove PFAS contamination.

36. Accordingly, CFPUA supports the terms and conditions of the final NPDES Permit, as issued by DEQ, though its reasons for doing so differ from those of DEQ, and it will incur

increased costs and expense should the NPDES Permit be overturned and/or delayed, whereas DEQ will not be similarly harmed.

### **CFPUA’S RIGHT TO INTERVENE**

37. CFPUA seeks to intervene in this contested case as a Respondent-Intervenor to support DEQ’s issuance of the NPDES Permit and to oppose Chemours’s Petition for a Contested Case. CFPUA has a right to intervene as a party in this contested case pursuant to N.C. Gen. Stat. § 150B-23(d), Rule 24 of the North Carolina Rules of Civil Procedure, and 26 NCAC 3.0117. N.C. Gen. Stat. § 150B-23(d) establishes a right to intervene in the manner provided in Rule 24 of the North Carolina Rules of Civil Procedure. *Holly Ridge Assocs., LLC v. N. Carolina Dep’t of Env’t & Nat. Res.*, 361 N.C. 531, 536, 648 S.E.2d 830, 834 (2007).

#### **A. Intervention of right**

38. CFPUA is entitled to intervene as a party as of right under Rule 24(a)(2), which authorizes intervention “[w]hen the applicant claims an interest relating to the property or the transaction which is the subject of the action and he is so situated that the disposition of the action may as a practical matter impair or impede his ability to protect that interest, unless the applicant’s interest is adequately represented by existing parties.”

39. CFPUA has direct and immediate interests relating to the property or transaction at issue in this contested case because: (a) the PFAS contamination in the Cape Fear River is adversely impacting CFPUA and its customers and the requirements of the NPDES Permit, when implemented, will significantly reduce ongoing PFAS loading to the Cape Fear River; and (b) the reduction in PFMOAA alone will result in operational savings in the range of \$3,000,000 a year for the CFPUA GAC plant and may prevent further increases in PFAS in the groundwater that supplies CFPUA’s supplemental wells. CFPUA and those 200,000 people to whom it delivers

potable water have as much stake as anyone in the water quality of the Cape Fear River and the terms and conditions of the NPDES Permit that are intended to address and limit PFAS loading to the river.

40. Petitioner asserts the NPDES Permit was issued in error and seeks a ruling that would revise and weaken the permit's requirements and limitations on PFAS discharges. If CFPUA is not permitted to intervene and defend the issuance of the NPDES Permit, the disposition of this contested case without CFPUA's involvement will impair and impede its ability to protect its interests in the NPDES Permit and the PFAS-reduction actions the NPDES Permit requires. For example, if the NPDES Permit is determined to be contrary to law or if some of the terms and conditions of the Permit are weakened, thus increasing PFAS contamination in the river water taken into CFPUA's system and CFPUA's treatment costs. *See* Rule 24(a)(2).

41. CFPUA's interests in this contested case are not adequately represented by the existing parties. *See Trbovich v. United Mine Workers of Am.*, 404 U.S. 528, 538 n.10 (1972) ("The requirement of [Rule 24(a)(2)] is satisfied if the applicant shows that representation of his interest 'may be' inadequate; and the burden of making that showing should be treated as minimal.")<sup>5</sup>

42. Petitioner does not represent CFPUA's interests because Petitioner seeks to reverse DEQ's decision to issue the NPDES Permit.

43. Nor does DEQ adequately represent CFPUA's interests. Although both parties are seeking to defend the legality and validity of the NPDES Permit, DEQ's interests are not the same as CFPUA's. DEQ is a governmental body whose interests lie in the effective implementation and administration of North Carolina's water quality laws. CFPUA's interests are both narrower and

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<sup>5</sup> Because Rule 24 is virtually identical to Rule 24 of the Federal Rules of Civil Procedure, North Carolina courts have looked to federal court decisions for guidance. *Harvey Fertilizer & Gas Co. v. Pitt Cnty.*, 153 N.C. App. 81, 87, 568 S.E.2d 923, 927 (2002).

different in key respects. CFPUA has direct interests in the subject matter of this contested case (the Cape Fear River contamination and the NPDES Permit) as described in this Motion, and the facts show that the State will not adequately assert or protect CFPUA's interests in this contested case:

(a) First, CFPUA has separate and distinct interests from DEQ, whose sole litigation interest is to protect the public welfare and environment as well as the interests of citizenry at large. As a water provider to over 200,000 residents, CFPUA would suffer direct and immediate damages from a delay in the issuance of the NPDES Permit and/or increase in the PFAS limits in the permit, which would not be borne by DEQ. CFPUA has and continues to incur costs responding to, and attempting to remove or limit, the PFAS chemicals in the Cape Fear River water that it withdraws from the river, treats, and then distributes to its customers. DEQ's interests do not align with CFPUA's interest on the issue of the economic injury caused by Chemours's discharges of PFAS from its Fayetteville Works facility, and the outcome of this contested case will directly impact CFPUA's economic interests, including the costs of operating its GAC system, which are impacted by the level of PFAS allowed to be discharged by the NPDES Permit.

(b) Second, the history of DEQ's management of Chemours activities, by itself, shows CFPUA's interests are not aligned with or protected by the State. Since the State filed its original enforcement action in 2017, DEQ has negotiated three different settlement agreements with Chemours: the Partial Consent Order; the Consent Order; and the Addendum. None of those agreements have adequately protected CFPUA's interests or otherwise required Chemours to provide prompt and comprehensive relief to downstream users of contaminated river water. CFPUA has consistently objected to the terms and



conditions of each of these settlement agreements. These historical facts prove that DEQ has different interests and will not adequately account for or protect CFPUA's interests.

44. Though the NPDES Permit does not address CFPUA's interests in the manner CFPUA recommended, CFPUA seeks to intervene as a party to protect the final NPDES Permit as issued, to press this litigation forward in an expedited manner to avoid undue delay (and associated additional costs to CFPUA), and to ensure that its separate interests are considered by the existing parties in any future negotiations they may have to resolve any differences between them regarding the final NPDES Permit as issued. If mediation or negotiations by the existing parties in this contested case, without CFPUA's participation, were to result in any relaxation of effluent limits established in the final NPDES Permit, CFPUA likely would find it necessary to challenge any revised, less stringent permit by a separate and new contested case petition. Under these circumstances, CFPUA's intervention as a party is a matter of right. *See, e.g., Bailey & Assocs., Inc. v. Wilmington Bd. of Adjustment*, 202 N.C. App. 177, 188, 689 S.E.2d 576, 585 (2010) (intervenor-respondents in proceeding by developer challenging determination by board of adjustment not adequately represented by city since developer would "gain or lose by direct operation of the judgment" (quoting *Northwestern Bank v. Robertson*, 25 N.C. App. 424, 426, 213 S.E.2d 363, 365 (1975))); *Letendre v. Currituck Cnty.*, 261 N.C. App. 537, 817 S.E.2d 920 (2018) (table decision), *writ denied, temporary stay dissolved*, 372 N.C. 59, 822 S.E.2d 638 (2019) (intervenor-respondent landowners not adequately represented by county whose litigation interests are to protect public welfare and interests of general citizenry); *In re Sierra Club*, 945 F.2d 776, 780 (4th Cir. 1991) (intervenor-defendant environmental groups not adequately represented by state environmental agency tasked with representing all citizens of the state, including interests of citizens who may be proponents of new hazardous waste facilities at issue).

45. CFPUA has direct and immediate interests in the property and transaction at issue, the disposition of this action may impair or impede CFPUA's ability to protect those interests, including, but not limited to, the provision of clean, affordable drinking water to its customers, and CFPUA's interests are not adequately represented by the existing or potential parties to this case. CFPUA is entitled to intervene as a matter of right pursuant to Rule 24(a)(2).

**B. Permissive Intervention**

46. In addition to CFPUA's intervention as of right under Rule 24(a), the Court may exercise its discretion to permit CFPUA to intervene under Rule 24(b) of the North Carolina Rules of Civil Procedure. Rule 24(b) provides for intervention when "an applicant's claim or defense and the main action have a question of law or fact in common."

47. Petitioner argues that DEQ erred in issuing the NPDES Permit, while CFPUA and DEQ assert that the agency acted properly and in compliance with applicable law. Therefore, the claims and arguments of Petitioner, DEQ, and CFPUA have questions of law and/or fact in common. CFPUA is entitled to permissive intervention under Rule 24(b).

48. Finally, this Motion to Intervene is timely. Petitioner Chemours filed its Petition for Contested Case on October 14, 2022. CFPUA is filing this motion to intervene less than two weeks later. This contested case has just begun, and CFPUA has sought to intervene promptly upon learning of its initiation. To CFPUA's knowledge, no prehearing statements have been served or filed, discovery has not yet begun, and no mediation has yet occurred. The existing parties will not be prejudiced if CFPUA is allowed to intervene, and intervention is clearly timely here. *See Hamilton v. Freeman*, 147 N.C. App. 195, 201, 554 S.E.2d 856, 859 (2001) ("A motion to intervene is rarely denied as untimely prior to the entry of judgment[.]").

49. DEQ supports this Motion to Intervene. On October 26, 2022, counsel for CFPUA contacted Petitioner's counsel by telephone for its position on this motion. As of the time of this filing, Petitioner has not yet determined its response.

WHEREFORE, based upon the foregoing showing of good cause, CFPUA respectfully requests that an order be entered granting this Motion to Intervene and allowing CFPUA to intervene as a respondent-intervenor in this contested case with all of the rights of a party to participate fully and for all purposes in all aspects and proceedings in this case. This Motion is only a motion to intervene and is not a motion to dismiss or for other relief.

Respectfully submitted, this the 27th day of October, 2022.

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**CERTIFICATE OF SERVICE**

I certify that on this date the foregoing **MOTION TO INTERVENE** has been served by the OAH electronic filing system on counsel for the parties who have appeared in this matter.

This the 27th day of October, 2022.

/s/ Cordon M. Smart