

THE STATE OF NEW HAMPSHIRE

HILLSBOROUGH, SS.  
NORTHERN DISTRICT

SUPERIOR COURT

STATE OF NEW HAMPSHIRE,

Plaintiff,

vs.

3M COMPANY, E. I. DU PONT DE NEMOURS AND COMPANY  
and THE CHEMOURS COMPANY L.L.C.

Defendants.

**COMPLAINT**

Plaintiff, the State of New Hampshire, as trustee of the State's surface and groundwater, as steward of the State's fish, wildlife, and marine resources, and in its *parens patriae* capacity, by and through the New Hampshire Attorney General, files this Complaint against the above-named Defendants and alleges as follows:

**STATEMENT OF THE CASE**

1. The State brings this action in order to address widespread contamination of the natural resources of the State, including lands, waters, and wildlife, with the synthetic per- and polyfluoroalkyl substances (“PFAS”) perfluorooctanesulfonic acid (“PFOS”), perfluorooctanoic acid (“PFOA”), perfluorononanoic acid (“PFNA”) and perfluorohexanesulfonic acid (“PFHxS”). In this complaint the terms PFOS, PFOA, PFNA and PFHxS are intended to include those compounds themselves (including all of their salts and ionic states as well as the acid forms of the molecules) and their chemical precursors.

2. As used in this Complaint, the term “natural resources” includes the ocean and its tidal estuaries, wetlands, springs, streams, rivers, lakes, ponds, and other bodies of surface or ground water, whether natural or artificial, within the boundaries of this State or subject to its jurisdiction, and further includes all land, fish, shellfish, wildlife, other biota and other such resources owned, managed, held in trust or otherwise preserved or protected by the State.

3. The State is trustee of the surface waters and groundwaters located within or flowing through the boundaries of the State.

4. The State is also the steward of fish, wildlife and marine resources within the State.

5. The State owns certain lands in fee within the State, holds title to the beds of great ponds and tidal waters and holds easement interests in other lands to protect the conservation and natural resource values of the lands.

6. The contamination of groundwater and surface water, fish, wildlife, marine resources, and other natural resources with PFOS, PFOA, PFNA and/or PFHxS has damaged the value and use (including, but not limited to, beneficial and existence uses) of the State’s natural resources.

7. In addition, the State has a sovereign or a quasi-sovereign interest in the quality of surface and groundwater resources in the State as well as fish, wildlife, marine resources, and other natural resources in the State.

8. The contamination of groundwater and surface water, fish, wildlife, marine resources, and other natural resources with PFOS, PFOA, PFNA and/or PFHxS has injured many thousands of New Hampshire citizens throughout the State. *As parens patriae*, the State has an interest in ensuring that groundwater, surface water, fish, wildlife, marine resources, and other

natural resources can be safely used and enjoyed by its citizens and that the health and well-being of its citizens is not harmed by such use.

9. As an example of the harm this contamination has had on State resources and its subsequent impact to the State's citizens, over 700 homes needed to be connected to new water infrastructure in Merrimack, Litchfield, Bedford, and Manchester alone to ensure access to safe drinking water.

10. In addition, PFOS, PFOA, PFNA and/or PFHxS contamination from several unlined landfills in the State have resulted in significant impacts to surface waters.

11. PFAS has impacted groundwater above current standards in every county in the State.

12. As such, the State can seek to remedy, and hereby does seek to remedy, these injuries over which it has at least a quasi-sovereign interest in its capacity as *parens patriae*.

13. Defendants in this action are major chemical companies that manufactured PFOS, PFOA, PFNA and/or PFHxS that entered into the stream of the State's commerce, were used by the State, municipalities, businesses, and citizens, and have contaminated the State's land, waters, sediments, wildlife, marine resources and other natural resources.

14. Defendants' manufacture, distribution, and sale of PFOS, PFOA, PFNA and/or PFHxS and products that contain these PFAS compounds has caused, and continues to cause, widespread injury to the State's groundwater and surface water, fish, wildlife, marine resources, and other natural resources, as well as its citizens.

15. Defendants knew or should have known that PFOS, PFOA, PFNA and/or PFHxS would cause injury to groundwater and surface water, fish, wildlife, marine resources, and other natural resources of the State, as well as its citizens.

16. Defendants knew or should have known that PFOS, PFOA, PFNA and/or PFHxS would be released into the environment.

17. Defendants knew or should have known that such releases would injure the State's groundwater and surface water, fish, wildlife, marine resources, and other natural resources, thereby injuring public health and welfare, as has occurred and is continuing to occur within the State.

18. Defendants knew or should have known that such releases would make groundwater and surface water unfit for drinking and potentially render certain biota such as fish and game unfit for consumption.

19. Defendants knew or should have known that PFOS, PFOA, PFNA and/or PFHxS, when released into the environment, would bioaccumulate in people, biota and the food web in general and thereby threaten public health and welfare and the environment, as has occurred and is continuing to occur within the State.

20. The Defendants' products were defective in design in a manner that was unreasonably dangerous to users or consumers including the State and its citizens on whose behalf it acts as *parens patriae*.

21. The defective products were sold by the Defendants who are in business of selling such products.

22. The use of the products was reasonably foreseeable by the Defendants.

23. The products caused injury to users or consumers including the State and its citizens on whose behalf it acts as *parens patriae*, or the property of users and consumers.

24. The losses, damages and harms suffered by the State described herein would not have occurred but for the conduct of the Defendants, and the Defendants' conduct was a substantial factor in causing the losses, damages and harms.

25. The Defendants failed to warn of the dangers of their products.

26. Accordingly, the State is bringing this action to require Defendants to pay all of the costs, expenses, and damages associated with the Defendants' acts and omissions as alleged in this Complaint, including but not limited to such costs, expenses and damages for: (1) the investigation, remediation, cleanup, restoration, removal, treatment and monitoring related to the contamination of the State's property and its groundwater and surface water, fish, wildlife, marine resources, and other natural resources; (2) the provision of potable drinking water where drinking water supplies have been or will be contaminated; (3) implementation of treatment technologies necessary to eliminate further injury to soil, groundwater and surface water, sediment, fish, wildlife, marine resources, and other natural resources and to human health and the environment; (4) costs associated with safely and properly disposing of the products and wastes that may contain PFOS, PFOA, PFNA and/or PFHxS; (5) costs associated with safely and properly handling and disposing of landfill leachate; (6) costs associated with the proper pretreatment of industrial wastewaters and management of industrial pretreatment programs that operate wastewater treatment facilities; (7) costs associated with the management of contaminated soil and groundwater associated with construction of roads, utilities and structures; (8) costs associated with the testing for and evaluation and treatment of contamination in public and private wells; (9) costs associated with the testing and evaluation of crops to determine if they contain unsafe levels of PFOS, PFOA, PFNA and/or PFHxS; (10) implementation of treatment technologies to eliminate impacts from stormwater runoff contaminated with PFOS,

PFOA, PFNA and/or PFHxS; and (11) all such other costs and expenses that have been or will be incurred as a result of the Defendants' acts or omissions as alleged in this Complaint.

27. Finally, the State is also seeking from Defendants all damages to which the State is entitled to recover, including damages for injuries to groundwater and surface water, fish, wildlife, marine resources, and other natural resources and all other damages, costs, attorneys' fees and equitable relief to which it may be entitled.

### **SCOPE OF THIS ACTION**

28. The State asserts the causes of action described in this Complaint in its capacity as sovereign, as trustee of public trust resources, as an owner of property or interests in property impacted by the Defendants' products, and pursuant to its authority to act as *parens patriae* as described above.

29. Through this action, the State is not seeking damages, remediation, restoration or any other relief with respect to any contamination related to Aqueous Film-Forming Foam, which is a specialized category of products that contain PFAS compounds, as that is the subject of a separate action.

### **THE PARTIES**

30. Plaintiff State of New Hampshire is represented by and through the Attorney General of the State of New Hampshire with principal offices at 33 Capitol Street, Concord, New Hampshire.

31. Defendant 3M Company (f/k/a Minnesota Mining and Manufacturing Company) ("3M") is a corporation organized and existing under the laws of the state of Delaware, having its principal place of business at 3M Center, St. Paul, Minnesota 55133.

32. 3M does business throughout the United States, including conducting business in New Hampshire, and is registered to do business in New Hampshire with the Secretary of State.

33. Defendant E. I. du Pont de Nemours and Company (“DuPont”) is a corporation duly organized under the laws of the State of Delaware, with its principal place of business located at 974 Centre Road, Wilmington, Delaware 19805.

34. DuPont does business throughout the United States, including conducting business in New Hampshire, and is registered to do business in New Hampshire with the Secretary of State.

35. Defendant The Chemours Company L.L.C. (“Chemours”) is a corporation duly organized under the laws of the State of Delaware, with its principal place of business located at 1007 Market Street, Wilmington, Delaware 19899. In 2015, DuPont spun off its performance chemicals business to Chemours, along with certain environmental liabilities.

36. Chemours does business throughout the United States, including conducting business in New Hampshire, and is registered to do business in New Hampshire with the Secretary of State.

37. This Complaint refers to DuPont and Chemours collectively as “DuPont.”

#### **JURISDICTION AND VENUE**

38. This Court has jurisdiction over this matter pursuant to RSA 491:7. Venue is proper in this Court because the largest areas of contamination in the State detected thus far have occurred in the towns of Merrimack and Litchfield in Hillsborough County.

#### **THE PFAS COMPOUNDS**

39. PFAS are a family of chemical compounds containing fluorine and carbon atoms.

40. PFAS have been used for decades in industrial settings and also in the production of household and commercial products that are heat resistant, stain resistant, long lasting, and water and oil repellent.
41. The PFAS family of chemicals are entirely human-made and do not exist in nature.
42. PFOS, PFOA, PFNA and PFHxS have characteristics that cause extensive and persistent environmental contamination.
43. Specifically, PFOS, PFOA, PFNA and PFHxS are persistent, toxic and bioaccumulative as well as mobile.
44. PFOS, PFOA, PFNA and PFHxS are mobile in that they are soluble and do not easily adsorb (stick) to soil particles.
45. PFOS, PFOA, PFNA and PFHxS are readily transported through the air as well as the soil and into groundwater where they can migrate long distances.
46. PFOS, PFOA, PFNA and PFHxS are persistent in that they do not readily biodegrade or chemically degrade in the environment or in conventional treatment systems for drinking water or wastewater.
47. PFOS, PFOA, PFNA and PFHxS are thermally, chemically, and biologically stable in the environment and resistant to biodegradation, atmospheric photo-oxidation, direct photolysis, and hydrolysis.
48. Once these PFAS compounds are applied, discharged, disposed of, or otherwise released onto land or into the air, soil, sediments or water, they migrate through the environment and into groundwater, surface water, fish, wildlife, marine resources, and other natural resources.



49. These compounds resist natural degradation and are difficult and costly to remove from soil and water.

50. PFOS, PFOA, PFNA and PFHxS bioaccumulate, biopersist, and biomagnify in the food web including in people and other organisms.

51. Exposure to certain PFAS has been associated with several negative health outcomes in both humans and animals, including but not limited to:

- a. Altered growth, learning and behavior of infants and older children;
- b. Lowering a woman's chance of getting pregnant;
- c. Interference with the body's natural hormones;
- d. Increased cholesterol levels;
- e. Modulation of the immune system;
- f. Increased risk of certain cancers; and
- g. Increased risk of ulcerative colitis.

52. Contamination from PFOS, PFOA, PFNA and/or PFHxS presents a threat to public health and natural resources.

53. In addition to drinking contaminated water, humans can be exposed to PFOS, PFOA, PFNA and PFHxS through inhalation, ingestion of contaminated food, and dermal contact.

54. PFOS, PFOA, PFNA and PFHxS enter the environment from industrial facilities that use PFAS in the manufacture or production of other products.

55. Releases to land, air and water from industrial sites are known pathways to the environment.

56. PFOS, PFOA, PFNA and PFHxS may also enter the environment when released from PFAS-containing consumer and commercial products during their use and disposal.

57. PFAS compounds may become concentrated in sludge at wastewater treatment facilities ("WWTFs") and septage from septic systems.

58. Biosolids from sludge at WWTFs and septage from septic systems are often used as soil or soil additives either directly from a WWTF at agricultural sites or in the production of potting soil and similar products commercially available from wholesale or retail sources.

59. The State currently does not have the funding or infrastructure needed to properly and safely dispose of PFAS contaminated wastewater solids.

60. Defendants have known of health and environmental risks associated with PFAS compounds for decades.

61. Defendants' manufacture, distribution and/or sale of PFOS, PFOA, PFNA and/or PFHxS resulted in the release of PFOS, PFOA, PFNA and/or PFHxS into the environment.

62. Through their involvement and/or participation in the creation of consumer or other commercial products and materials and related training and instructional materials and activities, Defendants knew, foresaw, and/or should have known and/or foreseen that PFOS, PFOA, PFNA and/or PFHxS would contaminate the environment.

63. Defendants were and/or should have been aware, knew and/or should have known, and/or foresaw and/or should have foreseen that their marketing, development, manufacture, distribution, release, training of users of, production of instructional materials about, sale and/or use of PFOS, PFOA, PFNA and/or PFHxS containing materials, including in New Hampshire, would result in the contamination of the State's groundwater, surface water, fish, wildlife, marine resources, and other natural resources and real property.

64. The Defendants' products were unreasonably dangerous and the Defendants failed to warn of this danger.

### **3M COMPANY'S MANUFACTURE AND DISTRIBUTION OF PFAS**

65. For most of the past seven decades through the early 2000s, 3M was the primary manufacturer of PFAS chemistry in the United States.

66. 3M was the only known manufacturer of PFOS and PFHxS in the United States.

67. 3M began producing PFOA and PFOS as raw materials or ingredients that it used to produce other products, or that it sold to third parties for use in other products.

68. 3M produced PFAS by electrochemical fluorination beginning in the 1940s.

69. This process results in a product that contains and/or breaks down into compounds containing PFOS, PFOA, PFNA and/or PFHxS.

70. 3M went on to market PFAS and products containing PFAS, and it shipped PFAS to manufacturers, including DuPont, throughout the United States, including in New Hampshire.

### **DUPONT'S USE AND MANUFACTURE OF PFOA**

71. Beginning in 1951, DuPont began purchasing PFOA from 3M for use in the manufacturing process for DuPont's name-brand product Teflon®, commonly known for its use as a coating for non-stick cookware.

72. DuPont has also used PFAS in other name-brand products such as Stainmaster®.

73. Although DuPont was fully aware that PFOA was a dangerous and toxic chemical for decades, it began producing its own PFAS compounds for use in its manufacturing processes as 3M phased out production of PFOA.

74. DuPont continued to manufacture, use, distribute and sell PFAS until its phase out in 2015.

### **3M's KNOWLEDGE OF THE DANGERS OF PFAS**

75. In the 1950s, based on its own internal studies, 3M concluded that PFAS are “toxic.”
76. 3M knew as early as the mid-1950s that PFAS bioaccumulate in humans and animals.
77. By the early 1960s, 3M understood that some PFAS are stable and persist in the environment and that they do not degrade.
78. 3M knew as early as 1960 that chemical wastes from its PFAS manufacturing facilities that were dumped to landfills could leach into groundwater and otherwise enter the environment. An internal memo from 1960 described 3M's understanding that such wastes “[would] eventually reach the water table and pollute domestic wells.”
79. As early as 1963, 3M was aware that its PFAS products were stable in the environment and would not degrade after disposal.
80. 3M began monitoring the blood of its employees for PFAS, as early as 1976, because 3M was concerned about health effects of PFAS.
81. 3M documents from 1977 relating to these worker tests further confirm that PFAS bioaccumulate.
82. By at least 1970, 3M was aware that its PFAS products were hazardous to marine life.
83. One study of 3M's PFAS around this time had to be abandoned to avoid severe local pollution of nearby surface waters.
84. In 1975, 3M found there was a “universal presence” of PFOA in blood serum samples taken from across the United States.

85. Since PFOA is not naturally occurring, this finding reasonably should have alerted 3M to the likelihood that its products were a source of this PFOA—a possibility that 3M considered internally but did not share outside the company.

86. This finding also should have alerted 3M to the likelihood that PFOA is mobile, persistent, bioaccumulative, and biomagnifying, as those characteristics would explain the presence of PFOA in blood from 3M's products.

87. Other studies by 3M in 1978 showed that PFOA and PFOS are toxic to monkeys.

88. In the late 1970s, 3M studied the fate and transport characteristics of PFOS in the environment, including in surface water and biota.

89. A 1979 report drew a direct line between effluent from 3M's Decatur, Alabama plant and PFAS bioaccumulating in fish tissue taken from the Tennessee River.

90. 3M resisted calls from its own ecotoxicologists going back to 1979 to perform an ecological risk assessment on PFOS and similar chemicals.

91. 3M's own ecotoxicologists continued raising concerns to 3M until at least 1999.

92. In 1983, 3M scientists opined that concerns about PFAS "give rise to legitimate questions about the persistence, accumulation potential, and ecotoxicity of [PFAS] in the environment."

93. In 1984, 3M's internal analyses demonstrated that PFAS were likely bioaccumulating in 3M fluorochemical employees.

94. 3M's own employees recognized that 3M was concealing known dangers relating to PFAS. For example, in a 1999 resignation letter, an employee stated that "I can no longer participate in the process that 3M has established for the management of [PFAS.] For me, it is

unethical to be concerned with markets, legal defensibility and image over environmental safety.”

95. In response to pressure from the United States Environmental Protection Agency (“EPA”), 3M began to phase out production of PFOS and PFOA products in 2000.

96. On May 16, 2000, 3M issued a news release asserting that “our products are safe,” citing the company’s “principles of responsible environmental management” as the reason to cease production.

97. On the same day as 3M’s phase out announcement, an EPA press release stated: “3M data supplied to EPA indicated that these 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.”

98. In a memo explaining its decision, EPA stated that PFOS “appears to combine Persistence, Bioaccumulation, and Toxicity property to an extraordinary degree.”

99. 3M knew or should have known that in their intended and/or common use, products containing PFAS would very likely injure and/or threaten public health and the environment in New Hampshire.

100. Despite overwhelming studies to the contrary, 3M, to this day, publicly claims that “[w]e do not believe that PFOS and PFOA cause harm to human health at levels that are typically found in the environment” and that “[w]e do not believe there is a public health issue related to PFOA and PFOS.”

#### **DUPONT’S KNOWLEDGE OF THE DANGERS OF PFAS**

101. DuPont company scientists issued internal warnings about the toxicity associated with their PFOA products as early as 1961.

102. 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."

103. In 1978, based on information it received from 3M about elevated and persistent fluorine levels in workers exposed to PFOA, DuPont initiated a plan to review and monitor the health conditions of potentially exposed workers in order to assess whether any negative health effects could be attributed to PFOA exposure.

104. This monitoring plan involved obtaining blood samples from the workers and analyzing them for the presence of fluorine.

105. By 1979, DuPont had data indicating that its workers exposed to PFOA had a significantly higher incidence of health issues than did unexposed workers.

106. DuPont did not report this data or the results of its worker health analysis to any government agency or community.

107. The following year, DuPont internally confirmed that PFOA "is toxic," that humans accumulate PFOA in their tissue, and that "continued exposure is not tolerable."

108. Not only did DuPont know that PFOA accumulates in humans, but it was also aware that PFOA could cross the placenta from an exposed mother to her gestational child.

109. In fact, DuPont had reported to EPA in March 1982 that results from a rat study showed PFOA crossing the placenta if present in maternal blood, but DuPont concealed the results of internal studies of its own plant workers.

110. While DuPont knew about this toxicity danger as early as the 1960s, DuPont also was aware that PFAS was capable of contaminating the surrounding environment and causing human exposure.

111. By late 1981, DuPont also knew that PFOA could be emitted into the air from its facilities, and that those air emissions could travel beyond the facility boundaries and enter the environment and natural resources.

112. Further, no later than 1984, DuPont was aware that PFOA is biopersistent.

113. DuPont was long aware that the PFAS it was releasing from its facilities was leaching into groundwater used for public drinking water.

114. After obtaining data on these releases and the consequent contamination near DuPont's plant in West Virginia, DuPont, in 1984, held a meeting at its corporate headquarters in Wilmington, Delaware, to discuss health and environmental issues related to PFOA (the "1984 Meeting").

115. DuPont employees who attended the 1984 Meeting discussed available technologies that were capable of controlling and reducing PFOA releases from its manufacturing facilities, as well as potential replacement materials.

116. DuPont chose not to use either available technologies or replacement materials, despite knowing of PFOA's toxicity.

117. During the 1984 Meeting, DuPont employees in attendance spoke of the PFOA issue as "one of corporate image, and corporate liability."

118. They were resigned to DuPont's "incremental liability from this point on if we do nothing" because DuPont was "already liable for the past 32 years of operation."

119. They also stated that the "legal and medical [departments within DuPont] will likely take the position of total elimination" of PFOA use in DuPont's business, and that these departments had "no incentive to take any other position."



120. DuPont's own Epidemiology Review Board ("ERB") repeatedly raised concerns about DuPont's statements to the public that there were no adverse health effects associated with human exposure to PFOA.

121. 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 [DuPont's] public expression asserting, with what appears to be great confidence, that PFOA does not pose a risk to health."

122. In 2004, the U.S. EPA filed an action against DuPont based on its failure to disclose toxicity and exposure information for PFOA, in violation of federal environmental laws.

123. DuPont eventually settled the action by agreeing to pay over \$16 million in civil administrative penalties and supplemental environmental projects.

124. The U.S. EPA called the settlement the "largest civil administrative penalty EPA has ever obtained under any federal environmental statute."

125. DuPont knew or should have known that in their intended and/or common use, products containing PFAS would very likely injure and/or threaten public health and the environment in New Hampshire.

#### **DUPONT'S SPINOFF OF CHEMOURS**

126. In February 2014, DuPont formed The Chemours Company as a wholly-owned subsidiary.

127. In July 2015, DuPont used Chemours to spin off its "performance chemicals" business line.

128. At the time of the spinoff, the performance chemicals division consisted of DuPont's Titanium Technologies, Chemical Solutions and Fluorochemicals segments (the "Performance Chemicals Business").

129. Until the spinoff was complete, Chemours was a wholly-owned subsidiary of DuPont. Although Chemours had a separate board, the board was controlled by DuPont employees.

130. Prior to the spinoff of Chemours, in 2005, DuPont agreed to pay \$10.25 million to resolve eight counts brought by the United States Environmental Protection Agency ("EPA") alleging violations of the Toxic Substances Control Act ("TSCA") and the Resource Conservation and Recovery Act ("RCRA") concerning the toxicity of PFAS compounds. At the time, it was the largest such penalty in history.

131. DuPont also promised to phase out production and use of PFOA by 2015.

132. Also in 2005, DuPont settled a class action lawsuit filed on behalf of 70,000 residents of Ohio and West Virginia for \$343 million.

133. Under the terms of the 2005 class action settlement, 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 \$235 million for ongoing medical monitoring of the affected community.

134. After 8 years, the C-8 Science Panel found several significant diseases, including cancer, linked to PFOA.

135. Thereafter, more than 3,500 personal injury claims were filed in Ohio and West Virginia as part of the 2005 settlement that were consolidated into a multidistrict litigation court in Ohio (the "Ohio MDL").

136. Juries in three bellwether trials returned multi-million dollar verdicts against DuPont, awarding compensatory damages and, in two cases, punitive damages to plaintiffs who claimed PFOA exposure caused their illnesses.

137. Once the spinoff was complete, seven new members of the Chemours board were appointed, for an eight member board of directors of the new public company.

138. The new independent board appointed upon the completion of the spinoff did not take part in the negotiations of the terms of the separation.

139. In addition to the transfer of assets, Chemours accepted broad assumption of liabilities for DuPont's historical use, manufacture, and discharge of PFAS, although the specific details regarding the liabilities that Chemours assumed are set forth in the non-public schedules.

140. Within the publicly available information about the transfer is the fact that Chemours agreed to indemnify 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."

141. Chemours agreed to indemnify 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 DuPont group or the Chemours group; and (v) which entity is named in any action associated with any liability.

142. Chemours agreed to indemnify DuPont from, and assume all, environmental liabilities that arose prior to the spinoff if they were “primarily associated” with the Performance Chemicals Business.

143. Such liabilities were deemed “primarily associated” if DuPont reasonably determined that 50.1% of the liabilities were attributable to the Performance Chemicals Business.

144. Among the environmental liabilities assumed by Chemours was litigation over benzene, a carcinogen released from some of DuPont’s plants.

145. In December 2015, a Texas jury awarded \$8.4 million to a painter who developed leukemia after using paints with benzene for years, with at least 27 more benzene cases pending as of September 30, 2016.

146. Chemours is also obligated to clean-up Pompton Lakes, New Jersey, where DuPont manufactured explosives from 1902 to 1994, and where lead salts, mercury, volatile organic compounds, explosive powders, chlorinated solvents, and detonated blasting caps still contaminate groundwater and soil. Chemours’ SEC filings estimate that the remediation, which began in 1985, may cost as much as \$119 million to complete.

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

148. In addition to the assumption of such liabilities, Chemours also provided broad indemnification to DuPont in connection with these liabilities, which is uncapped and does not have a survival period.

149. The effect of the spinoff of Chemours was to segregate a large portion of DuPont's environmental liabilities, including liabilities related to its PFAS chemicals and products.

150. The consolidation of DuPont's performance chemical liabilities has potentially limited the availability of funds arising out of DuPont's liability.

151. As Chemours explained in its November 2016 SEC filing: "[s]ignificant unfavorable outcomes in a number of cases in the [Ohio] MDL could have a material adverse effect on Chemours consolidated financial position, results of operations or liquidity."

152. On February 13, 2017, DuPont and Chemours, agreed to pay \$671 million to resolve the Ohio MDL.

153. Chemours also agreed to pay \$25 million for future PFOA costs not covered by the settlement for each of the next five years (up to an additional \$125 million).

154. DuPont also agreed to cover additional amounts up to \$25 million for five years.

155. At the time of the transfer of its Performance Chemicals Business to Chemours, DuPont had been sued, threatened with suit and/or had knowledge of the likelihood of litigation to be filed regarding DuPont's liability for damages and injuries from the manufacture of PFAS compounds and products that contain PFAS compounds.

#### **AFFECTED RESOURCES**

156. PFOS, PFOA, PFNA and/or PFHxS have been found in soil, groundwater, surface water, sediments, fish, wildlife, marine resources, biota, and other natural resources in locations throughout New Hampshire.

157. The trust resources described above have been diminished in quality or have been rendered unfit for public trust purposes (e.g., beneficial use such as drinking, swimming, and fishing, as well as existence value).

158. New Hampshire citizens have been deprived of safe drinking water due to the presence of PFOS, PFOA, PFNA and/or PFHxS in the State's groundwater and surface waters.

159. Groundwater, surface water, fish, wildlife, marine resources, and other natural resources also possess intrinsic (*i.e.*, inherent existence) values which have been injured by the presence of PFOS, PFOA, PFNA and/or PFHxS.

160. New Hampshire has been deprived of the full use and enjoyment of its public trust resources, and the intrinsic values of its natural resources has been diminished, due to the presence of PFOS, PFOA, PFNA and/or PFHxS.

161. Groundwater, surface water, fish, wildlife, marine resources, and other natural resources have been impacted by PFOS, PFOA, PFNA and/or PFHxS from multiple release mechanisms, including but not limited to releases from:

- a. Solid waste facilities;
- b. Hazardous waste contaminated sites;
- c. Oil contaminated sites;
- d. Wastewater disposal to surface and groundwater;
- e. Biosolid and sludge processing and application sites and septage land spreading;
- f. Air deposition; and
- g. Use and disposal of numerous commercial and consumer products.

162. The Defendants' acts or omissions have caused or contributed to these releases.

163. Because of the Defendants' failure to disclose risks known to them or risks they should have known about, the risks associated with PFAS were unknown to the owners or operators of sites from which PFOS, PFOA, PFNA and/or PFHxS have been released as well as to the State.

164. Because of the Defendants' failure to disclose risks known to them or risks they should have known about, the risks associated with PFAS were unknown to the users of commercial and consumer products that contained PFOS, PFOA, PFNA and/or PFHxS, were unknown to the State, and were generally unknown to those other than the Defendants who could have effectively limited the damages described above.

165. The Defendants' products were unreasonably dangerous and the Defendants failed to warn of this danger.

166. In addition to existing remediation methods, new and expensive methods of remediation and treatment will be necessary to address the type and character of the contamination described above.

#### Groundwater

167. Groundwater—that is, water that exists beneath the Earth's surface—is an extremely important natural resource for the people of New Hampshire.

168. Most of New Hampshire's drinking water, whether from public water systems or private wells, comes from groundwater sources.

169. Approximately 46% of New Hampshire's population obtains its drinking water from private wells.

170. Groundwater is also used to irrigate agricultural crops and to provide drinking water to animals raised for human consumption in New Hampshire.

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

172. Defendants' PFOS, PFOA, PFNA and/or PFHxS have reached and adversely affected groundwater throughout New Hampshire.

### Surface Water

173. Surface waters are a critical ecological resource of New Hampshire. New Hampshire's surface water is a source of drinking water in the State.

174. Approximately fifty surface water resources are used as sources of public drinking water in New Hampshire.

175. Surface water is also used to irrigate agricultural crops and provide drinking water to animals raised for human consumption in New Hampshire.

176. Surface water in New Hampshire is also used for other commercial and recreational purposes, such as swimming, fishing, and the harvest of marine resources.

177. The tourism and recreation industries, which are vital to the State's economy, are dependent on clean water.

178. Surface waters also provide commercial, recreational, aesthetic, and ecological value, including by supporting aquatic ecosystems, fish and marine resources, nearby communities and the citizens and visitors in the State.

179. Defendants' PFOS, PFOA, PFNA and/or PFHxS have reached and adversely affected surface waters throughout New Hampshire.

### Biota

180. Biota, including the flora and fauna of the State, are critical ecological resources. New Hampshire is home to more than 400 endangered or threatened plant species and is home for more than 500 species of vertebrate animals.

181. Several threatened and endangered raptor species have difficulty breeding because of the bioaccumulation of toxic compounds.

182. PFOS has been detected in the eggs of loons in New Hampshire.



183. It is the duty of the State, through its Fish and Game Commissioners, to be the stewards of the fish, wildlife, and marine resources of the state of New Hampshire.

184. New Hampshire's biodiversity provides a wealth of ecological, social, and economic goods and services that are an integral part of the ecological infrastructure for cultural and economic activity in the State.

185. Injuries to biota in New Hampshire negatively impact not only the individual species directly involved, but the capacity of the injured ecosystems to regenerate and sustain such life into the future.

186. New Hampshire's fish, marine resources, and wild game provide a source of food, as well as a significant economic benefit to the State through hunting and fishing licensing.

187. New Hampshire's wildlife and other natural resources provide significant economic benefits to the State through tourism and recreation.

188. Defendants' PFOS, PFOA, PFNA and/or PFHxS have reached and adversely impacted biota resources throughout the State.

**FIRST CAUSE OF ACTION**  
**NEGLIGENCE**

189. The State repeats and restates the allegations set forth in all the previous paragraphs of this Complaint as if fully set forth herein.

190. Defendants had a duty to the State to exercise due care in the design, manufacture, formulation, handling, control, disposal, promotion, marketing, distribution, sale, testing, labeling, use, provision of product information and instructions for the use and disposal of PFOS, PFOA, PFNA and/or PFHxS and products containing PFOS, PFOA, PFNA and/or PFHxS.

191. Defendants breached their duty of care in that they negligently, carelessly, and/or recklessly designed, manufactured, formulated, handled, labeled, provided product information

and/or instructions for use and disposal of, marketed, promoted, sold, supplied and/or otherwise distributed PFOS, PFOA, PFNA and/or PFHxS and products containing PFOS, PFOA, PFNA and/or PFHxS and directly and proximately caused PFOS, PFOA, PFNA and/or PFHxS to contaminate the State's property and its groundwater, surface waters, fish, wildlife, marine resources and other natural resources thereby causing a threat to human health and the environment.

192. Defendants designed, manufactured, formulated, handled, labeled, provided product information and/or instructions for use and disposal of, marketed, promoted, sold, supplied and/or otherwise distributed PFOS, PFOA, PFNA and/or PFHxS and/or products containing PFOS, PFOA, PFNA and/or PFHxS to downstream handlers, when they knew, or should have known, that PFOS, PFOA, PFNA and/or PFHxS would: (i) be released into the environment from industrial, commercial and consumer uses and sources in the State; (ii) be released and contaminate the State's property, groundwater, surface waters, fish, wildlife, marine resources and other natural resources; and (iii) threaten the health and welfare of the State's citizens.

193. Despite their knowledge that contamination with PFOS, PFOA, PFNA and/or PFHxS was the inevitable consequence of their conduct as alleged herein, Defendants failed to provide reasonable warnings or special instructions, failed to take other reasonable precautionary measures to prevent or mitigate such contamination, and/or affirmatively misrepresented the hazards of PFOS, PFOA, PFNA and/or PFHxS in their product information and/or instructions for use.

194. As a direct and proximate result of the Defendants' acts and omissions as alleged herein, the State and its citizens, which it represents *parens patriae*, have suffered monetary losses and damages in amounts to be proven at trial.

195. Defendants are strictly, jointly and severally liable for the damages described above.

**SECOND CAUSE OF ACTION**  
**DEFECTIVE DESIGN**

196. The State repeats and restates the allegations set forth in all the previous paragraphs of this Complaint as if fully set forth herein.

197. For the reasons described above, Defendants' PFOS, PFOA, PFNA and PFHxS were defectively designed and were thereby unreasonably dangerous to users and consumers and/or their property, and the environment, at the time the products left Defendants' control.

198. Defendants failed to inform users, consumers, intermediaries, the State, and any party that could have effectively reduced the risk of harm related to using PFOS, PFOA, PFNA and PFHxS of the products' character and the care required to use and dispose of the products safely.

199. At all times relevant to this action, PFOS, PFOA, PFNA and PFHxS were used in a manner in which they were foreseeably intended to be used.

200. As a direct and proximate result of the Defendants' acts and omissions as alleged herein, the State and its citizens, which it represents *parens patriae*, have suffered monetary losses and damages in amounts to be proven at trial.

201. As a further direct and proximate result of Defendants' conduct, the State, in its capacity as trustee over its surface waters and groundwater, fish, wildlife, and marine resources, has suffered and continues to suffer damage from Defendants' conduct and the presence of

PFOS, PFOA, PFNA and PFHxS in the State's surface waters and groundwater, fish, wildlife, marine resources and other natural resources, including without limitation costs to assess, investigate, monitor, analyze, and remediate PFOS, PFOA, PFNA and PFHxS, to prevent PFOS, PFOA, PFNA and PFHxS from injuring additional public trust resources, and to restore or replace the State's impacted surface waters and groundwater, fish, wildlife, and marine resources whose use has been lost or degraded.

202. Defendants are strictly, jointly and severally liable for the damages described above.

**THIRD CAUSE OF ACTION**  
**FAILURE TO WARN**

203. The State repeats and restates the allegations set forth in all the previous paragraphs of this Complaint as if fully set forth herein.

204. Defendants represented, asserted, claimed and warranted that PFOS, PFOA, PFNA and/or PFHxS and products containing PFOS, PFOA, PFNA and/or PFHxS and/or their precursors did not require any different or special handling or precautions.

205. Products containing PFOS, PFOA, PFNA and/or PFHxS manufactured and/or supplied by the Defendants are defective and unreasonably dangerous products.

206. Defendants failed to provide adequate or effective warnings of the risks of PFOS, PFOA, PFNA and/or PFHxS, and/or products containing PFOS, PFOA, PFNA and/or PFHxS and/or their precursors, to users, consumer, intermediaries, the State, and any party that could have effectively reduced the risk of harm related to using PFOS, PFOA, PFNA and/or PFHxS, of the products' character and the care required to use and dispose of the products safely.

207. PFOS, PFOA, PFNA and/or PFHxS and/or products containing PFOS, PFOA, PFNA and/or PFHxS, manufactured and/or supplied by the Defendants were used in a manner in which they were foreseeably intended to be used.

208. As a direct and proximate result of the Defendants' acts and omissions as alleged herein, the State and its citizens, which it represents *parens patriae*, have suffered monetary losses and damages in amounts to be proven at trial.

209. As a further direct and proximate result of Defendants' conduct, the State, in its capacity as trustee over its surface waters and groundwater, fish, wildlife, and marine resources has suffered and continues to suffer damage from Defendants' conduct and the presence of PFOS, PFOA, PFNA and PFHxS in the State's surface waters and groundwater, fish, wildlife, marine resources and other natural resources, including without limitation costs to assess, investigate, monitor, analyze, and remediate PFOS, PFOA, PFNA and PFHxS, to prevent PFOS, PFOA, PFNA and PFHxS from injuring additional public trust resources, and to restore or replace the State's impacted surface waters and groundwater, fish, wildlife, and marine resources whose use has been lost or degraded.

210. Defendants are strictly, jointly and severally liable for the damages described above.

**FOURTH CAUSE OF ACTION**  
**TRESPASS**

211. The State repeats and restates the allegations set forth in all the previous paragraphs of this Complaint as if fully set forth herein.

212. The PFOS, PFOA, PFNA and PFHxS manufactured and/or supplied by the Defendants affecting the State's property and its groundwater, surface waters, fish, wildlife,

marine resources and other natural resources constitutes a physical invasion of property without permission or license.

213. The trespass of PFOS, PFOA, PFNA and/or PFHxS alleged herein has varied over time and has not ceased.

214. PFOS, PFOA, PFNA and/or PFHxS manufactured and/or supplied by the Defendants continues to be located on or in the State's property and its groundwater, surface water, fish, wildlife, marine resources and other natural resources.

215. Defendants intended to manufacture PFOS, PFOA, PFNA and/or PFHxS and products that contain PFOS, PFOA, PFNA and/or PFHxS and the Defendants knew with substantial certainty that their acts would contaminate the State's property and its surface waters and groundwater, fish, wildlife, marine resources and other natural resources.

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

217. The State has not consented to and does not consent to the trespass alleged herein.

218. The State brings this claim as the owner of property and interests in property, as well as in both its public trustee and *parens patriae* capacities.

219. The State has a duty to protect and restore its natural resources and protect the health and comfort of its inhabitants.

220. In its *parens patriae* capacity, the State may protect its quasi-sovereign interests, including the State's interest in the well-being of its populace, as well as the populace's interest in the integrity of the State's natural resources.

221. Accordingly, the State is bringing this action for the invasion of its own and a substantial number of its residents' possessory interests in the State's natural resources.

222. As long as the State's property and natural resources remain contaminated due to Defendants' conduct, the trespass continues.

223. As a direct and proximate result of the Defendants' acts and omissions as alleged herein, the State and its populace, which it represents *parens patriae*, have suffered monetary losses and damages in amounts to be proven at trial.

224. As a direct and proximate result of the Defendants' acts and omissions as alleged herein, the State is further entitled to an order requiring the Defendants to abate their ongoing trespass and a further order requiring the Defendants to conduct such investigation, remediation, cleanup, restoration, removal, treatment and monitoring actions as are necessary to prevent further trespasses and damages to the State's property and groundwater, surface waters, fish, wildlife, marine resources and other natural resources.

225. Defendants are strictly, jointly and severally liable for the damages described above.

**FIFTH CAUSE OF ACTION**  
**PUBLIC TRUST DOCTRINE**

226. The State repeats and restates the allegations set forth in all the previous paragraphs of this Complaint as if fully set forth herein.

227. The State is the trustee of a public trust, the corpus of which includes, but is not limited to, the State's surface waters and groundwater, fish, wildlife, and marine resources.

228. As a direct and proximate result of Defendants' conduct, as set out above, the State's surface waters and groundwater, fish, wildlife, marine resources and other natural resources have been contaminated and/or impaired by PFOS, PFOA, PFNA and/or PFHxS supplied and/or manufactured by the Defendants, and their beneficial uses and very existence have been degraded or eliminated.

229. As a further direct and proximate result of Defendants' conduct, the State, in its capacity as trustee over its surface waters and groundwater, fish, wildlife, and marine resources has suffered and continues to suffer damage from Defendants' conduct and the presence of PFOS, PFOA, PFNA and PFHxS in the State's surface waters and groundwater, fish, wildlife, marine resources and other natural resources, including without limitation costs to assess, investigate, monitor, analyze, and remediate PFOS, PFOA, PFNA and PFHxS, to prevent PFOS, PFOA, PFNA and PFHxS from injuring additional public trust resources, and to restore or replace the State's impacted surface waters and groundwater, fish, wildlife, and marine resources whose use has been lost or degraded.

**SIXTH CAUSE OF ACTION**  
**FRAUDULENT TRANSFER (DUPONT AND CHEMOURS ONLY)**

230. The State repeats and restates the allegations set forth in all the previous paragraphs of this Complaint as if fully set forth herein.

231. The State seeks equitable and other relief pursuant to the Uniform Fraudulent Transfer Act, RSA 545-A, against DuPont.

232. As a result of the transfer of assets and liabilities described in this Complaint, DuPont limited the availability of assets to cover judgements for all of the liability for damages and injuries from the manufacture of PFAS compounds and products that contain PFAS compounds.

233. DuPont has (a) acted with actual intent to hinder, delay and defraud parties or (b) without receiving a reasonably equivalent value in exchange for the transfer or obligation, and (i) was engaged or was about to engage in a business for which the remaining assets of Chemours were unreasonably small in relation to the business or (ii) intended to incur, or believed or



reasonably should have believed that it would incur, debts beyond his ability to pay as they became due.

234. DuPont engaged in acts in furtherance of a scheme to transfer its assets out of the reach of parties such as the State of New Hampshire that have been damaged as a result of the DuPont's actions described in this Complaint.

235. It is primarily DuPont, rather than Chemours, that for decades used, marketed and sold PFAS compounds with the superior knowledge that they were toxic, mobile, persistent, bioaccumulative, and biomagnifying and impacting the State's groundwater, surface water, fish, wildlife, marine resources, and other natural resources.

236. At the time of the transfer of its Performance Chemicals Business to Chemours, DuPont had been sued, threatened with suit and/or had knowledge of the likelihood of litigation to be filed regarding DuPont's liability for damages and injuries from the manufacture of PFAS compounds and products that contain PFAS compounds.

237. DuPont and Chemours acted without receiving a reasonably equivalent value in exchange for the transfer or obligation, and DuPont believed or reasonably should have believed that it would incur, debts beyond Chemours' ability to pay as they became due.

238. At all times relevant to this action, Chemours has been insolvent because the claims, judgment and potential judgments against it exceed Chemours' ability to pay.

239. Pursuant to RSA 545-A:7, the State seeks to avoid the transfer of DuPont's liabilities for the claims brought in this Complaint and to hold DuPont liable for any damages or other remedies that may be awarded by the Court or jury under this Complaint.

240. The State further reserves such other rights and remedies that may be available to it under RSA 547-A as may be necessary to fully compensate the State for the damages and injuries it has suffered as alleged in this Complaint.

**SEVENTH CAUSE OF ACTION**  
**ENHANCED COMPENSATORY DAMAGES**

241. The State repeats and restates the allegations set forth in all the previous paragraphs of this Complaint as if fully set forth herein.

242. The wrongful acts of Defendants described herein were committed intentionally, wantonly, maliciously and/or oppressively.

243. Accordingly, Plaintiff is entitled to enhanced compensatory damages awarded in each Count alleged in this Complaint.

**PRAYER FOR RELIEF**

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

A. Finding Defendants liable, jointly and severally, for all costs to investigate, clean up, restore, treat, monitor, and otherwise respond to contamination of the State's property and its groundwater, surface water, fish, wildlife, marine resources, and other natural resources so that such resources are restored to their original condition and are fit for their intended and natural uses, and for all damages to compensate the citizens of New Hampshire for the lost use and value of these resources during all times of injury caused by PFOS, PFOA, PFNA and/or PFHxS, and for such orders as may be necessary to provide full relief to address risks to the State, including the costs associated with:

- (1) the investigation, remediation, cleanup, restoration, removal, treatment and monitoring related to the contamination of the State's property and its groundwater and surface water, fish, wildlife, marine resources, and other natural resources;
- (2) the provision of potable drinking water where drinking water supplies have been or will be contaminated;
- (3) the implementation of treatment technologies necessary to eliminate further injury to soil, groundwater and surface water, sediment, fish, wildlife, marine resources, and other natural resources and to human health and the environment;
- (4) the safe and proper disposal of the products and wastes that may contain PFOS, PFOA, PFNA and/or PFHxS;
- (5) the safe and proper handling and disposing of landfill leachate;
- (6) the proper pretreatment of industrial wastewaters and management of industrial pretreatment programs that operate wastewater treatment facilities;
- (7) the management of contaminated soil and groundwater associated with construction of roads, utilities and structures;
- (8) the testing for and evaluation and treatment of contamination in public and private wells;
- (9) the testing and evaluation of crops to determine if they contain unsafe levels of PFOS, PFOA, PFNA and/or PFHxS;
- (10) the implementation of treatment technologies to eliminate impacts from stormwater runoff contaminated with PFOS, PFOA, PFNA and/or PFHxS; and
- (11) all such other costs and expenses that have been or will be incurred as a result of the Defendants' acts or omissions as alleged in this Complaint.

B. Ordering Defendants to pay all costs related to the investigation, cleanup, restoration, treatment, and monitoring of PFOS, PFOA, PFNA and/or PFHxS contamination of the State's property and its groundwater, surface water, fish, wildlife, marine resources, and other natural resources;

C. Ordering Defendants to pay all damages in an amount at least equal to the full cost of restoring the State's property and its groundwater, surface water, fish, wildlife, marine resources, and other natural resources to their original condition prior to the PFOS, PFOA, PFNA and/or PFHxS contamination;

D. Ordering Defendants to pay all compensatory damages for the lost value (including lost use and existence value) of the State's property and its groundwater, surface water, fish, wildlife, marine resources, and other natural resources as a result of the PFOS, PFOA, PFNA and/or PFHxS contamination of such natural resources;

E. Ordering Defendants to pay all other damages sustained by the State in its public trustee and *parens patriae* capacities as a direct and proximate result of the Defendants' acts and omissions alleged herein;

F. Ordering that the State is entitled to avoid the transfer of DuPont's liabilities to Chemours and put the State in the position it would have been had the transfer not occurred;

G. Awarding the State enhanced compensatory damages in an amount to be determined at trial;

H. Awarding the State its costs and fees in this action, including attorneys' fees, incurred in prosecuting this action, together with prejudgment interest, to the full extent permitted by law; and

I. Awarding the State such other relief as this Court deems appropriate.

DEMAND FOR JURY

The State seeks a trial by jury on all counts and requests for relief in this Complaint.

Respectfully submitted,

STATE OF NEW HAMPSHIRE

By its attorney,  
GORDON J. MACDONALD  
ATTORNEY GENERAL

Date: May 29, 2019

By: /s/ K. Allen Brooks

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