

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4

In the Matter of:

The Chemours Company- Fayetteville Works
The Chemours Company FC, LLC
22828 NC Highway 87 West
Fayetteville, North Carolina 28306-7332
EPA ID No.: NCD047368642

Respondent.

Docket No. RCRA-04-2020-2119
Proceeding Under Section 3008(a) of the
Resource Conservation and Recovery Act,
42 U.S.C. § 6928(a)

CONSENT AGREEMENT

I. NATURE OF ACTION

1. This is an administrative enforcement proceeding brought under Section 3008(a) of the Resource Conservation and Recovery Act, 42 U.S.C. § 6928(a) (RCRA or the Act) and Sections 22.13(b) and 22.18 of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules), as codified at Title 40 of the Code of Federal Regulations (C.F.R.), Part 22, ordering compliance with the requirements of the North Carolina Solid Waste Management Law (NCSWML), N.C.G.S. §§ 130A-17 to -28 and 130A-290 to -310.22 [Subtitle C of RCRA, 42 U.S.C. §§ 6921 *et seq.*], and the regulations promulgated pursuant thereto and set forth at the North Carolina Hazardous Waste Management Rules (NCHWMR), 15A NCAC 13A .0101 to .0119 [40 C.F.R. Parts 260 through 270, 273 and 279]. This action seeks injunctive relief pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), for violations of Sections 130A-294 (c) and (g) of the NCSWML, N.C.G.S. § 130A-294 (c) and (g) [Section 3005 of RCRA, 42 U.S.C. § 6925] and the NCHWMR, 15A NCAC 13A .0113 [40 C.F.R. Part 270].
2. This Consent Agreement and the attached Final Order shall collectively be referred to as the CAFO.
3. Having found that settlement is consistent with the provisions and objectives of the Act and applicable regulations, the Parties have agreed to settle this action pursuant to 40 C.F.R. § 22.18 and consent to the entry of this CAFO without adjudication of any issues of law or fact herein.

II. PARTIES

4. Complainant is the Chief of the Chemical Safety and Land Enforcement Branch, Enforcement and Compliance Assurance Division, United States Environmental Protection Agency Region 4,

who has been delegated the authority on behalf of the Administrator of the EPA to enter into this CAFO pursuant to 40 C.F.R. Part 22 and Section 3008(a) of the Act.

5. Respondent is The Chemours Company FC, LLC a limited liability company doing business in the State of North Carolina, and a wholly-owned subsidiary of The Chemours Company. This proceeding pertains to Respondent's Fayetteville Works facility located at 22828 NC Highway 87 W, Fayetteville, North Carolina 28306-7332 (Facility).

III. GOVERNING LAW

6. Pursuant to Section 3006(b) of RCRA, 42 U.S.C. § 6926(b), the State of North Carolina (State) has received final authorization to carry out a hazardous waste program in lieu of the federal program set forth in RCRA. The requirements of the authorized State program are found in the NCSWML at N.C.G.S. §§ 130A-17 to -28 and 130A-290 to -310.22 [Subtitle C of RCRA, 42 U.S.C. §§ 6921 *et seq.*], and the NCHWMR at 15A NCAC 13A .0101 to .0119 [40 C.F.R. Parts 260 through 270, 273 and 279].
7. Pursuant to Section 3006(g) of RCRA, 42 U.S.C. § 6926(g), the requirements established by the Hazardous and Solid Waste Amendments of 1984 (HSWA), Pub. L. 98-616, are immediately effective in all states regardless of their authorization status and are implemented by the EPA until a state is granted final authorization with respect to those requirements. The State has received final authorization for certain portions of HSWA, including those recited herein.
8. Although the EPA has granted the State authority to enforce its own hazardous waste program, the EPA retains jurisdiction and authority to initiate an independent enforcement action pursuant to Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2). This authority is exercised by the EPA in the manner set forth in the Memorandum of Agreement between the EPA and the State.
9. As the State's authorized hazardous waste program operates in lieu of the federal RCRA program, the citations for the violations of those authorized provisions alleged herein will be to the authorized State program; however, for ease of reference, the federal citations will follow in brackets.
10. Pursuant to Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2), Complainant has given notice of this action to the State before issuance of this CAFO.
11. Sections 130A-294 (c) and (g) of the NCSWML, N.C.G.S. § 130A-294 (c) and (g) [Section 3005 of RCRA, 42 U.S.C. § 6925], set forth the requirement that a facility treating, storing, or disposing of hazardous waste must have a permit or interim status. The implementing regulations for this requirement are found at 15A NCAC 13A .0109 (permitted) and 15A NCAC 13A .0110 (interim status) [40 C.F.R. Parts 264 (permitted) and 265 (interim status)].
12. Pursuant to 15A NCAC 13A .0106 [40 C.F.R. § 261.2], a "solid waste" is any discarded material that is not otherwise excluded from the regulations.
13. Pursuant to 15A NCAC 13A .0106 [40 C.F.R. § 261.3], a solid waste is a "hazardous waste" if it meets any of the criteria set forth in 15A NCAC 13A .0106 [40 C.F.R. § 261.3(a)(2)] and is not otherwise excluded from regulation as a hazardous waste by 15A NCAC 13A .0106 [40 C.F.R. § 261.4(b)].

14. Pursuant to 15A NCAC 13A .0106 [40 C.F.R. §§ 261.3(a)(2)(i) and 261.20], solid wastes that exhibit any of the characteristics identified in Ga. Comp. R. and Regs. 391-3-11-.07(1) [40 C.F.R. §§ 261.21-24] are characteristic hazardous wastes and are identified with the EPA Hazardous Waste Numbers D001 through D043.
15. Pursuant to 15A NCAC 13A .0106 [40 C.F.R. §§ 261.22(a)], a solid waste exhibits the characteristic of corrosivity if a representative sample of an aqueous waste has a pH less than or equal to 2 or greater than or equal to 12.5, as determined by a pH meter using Method 9040C in “Test Methods for Evaluating Solid Waste, Physical/Chemical Methods,” EPA Publication SW-846, as incorporated by reference in §260.11 of this chapter.
16. Pursuant to 15A NCAC 13A .0106 [40 C.F.R. §§ 261.22(b)], a solid waste that exhibits the characteristic of corrosivity is a hazardous waste identified with the EPA Hazardous Waste Number D002.
17. Pursuant to 15A NCAC 13A .0102 [40 C.F.R. § 260.10], a “facility” includes “all contiguous land, and structures, other appurtenances, and improvements on the land, used for treating, storing, or disposing of hazardous waste.”
18. Pursuant to 15A NCAC 13A .0102 [40 C.F.R. § 260.10], a “person” includes a corporation.
19. Pursuant to 15A NCAC 13A .0102 [40 C.F.R. § 260.10], an “owner” is “the person who owns a facility or part of a facility” and an “operator” is “the person responsible for the overall operation of a facility.”
20. Pursuant to 15A NCAC 13A .0113 [40 C.F.R. § 270.30], the owner and/or operator of a facility which treats, stores, or disposes of hazardous waste must comply with all conditions of its hazardous waste management permit.

IV. FINDINGS OF FACTS

21. Respondent manufactures Nafion™ membranes and fluoromonomers, among other specialty chemical products at the Facility.
22. Respondent’s Facility is located at 22828 NC Highway 87 West, Fayetteville, North Carolina 28306-7332.
23. On September 28, 2012, the North Carolina Department of Environment and Natural Resource, now the North Carolina Department of Environmental Quality (NCDEQ), issued the Facility a hazardous waste operating permit, Permit No. NCD047368642-R2-M3 (RCRA Permit), last modified July 1, 2015, and effective until September 8, 2022.
24. Pursuant to General Condition II.C of the RCRA Permit, Respondent is not permitted to accept shipments of hazardous waste from off-site sources.
25. On December 19, 2018, the EPA sent a Notice of Temporary Objection to Chemours Netherlands B.V. Dordrecht (Chemours-Dordrecht) in response to Chemours-Dordrecht’s request (EC Notice ID: NL608356; EPA Notice 020936/11I/18) to import spent fluorine containing surfactant waste from Chemours-Dordrecht to Respondent’s Facility. A final Notice of Objection to this activity was issued by the Agency on January 6, 2020.

26. In response to the EPA’s objection notice, on February 7, 2020, Respondent provided the EPA with additional information pertaining to shipments of spent fluorine containing surfactant waste received from off-site sources at the Facility, including property sheets for the off-site waste shipments received in FY2017 and FY2018.
27. As identified in the following table, based on the information provided by Respondent on February 7, 2020, Respondent accepted shipments of spent fluorine containing surfactant waste that exhibited the characteristic of corrosivity (D002), from an off-site source at the Facility, on at least two occasions:

Lot No. (YEAR)	Type	pH
1805990006 (2018)	FRD902NLREC	12.5
1611990002 (2017)	FRD902NLREC	2.0

V. ALLEGED VIOLATIONS

28. Respondent is a “person” as defined in 15A NCAC 13A .0102 [40 C.F.R. § 260.10].
29. Respondent is the “owner” and “operator” of a “facility” located at 22828 NC Highway 87 W, Fayetteville, North Carolina 28306-7332, as those terms are defined in 15A NCAC 13A .0102 [40 C.F.R. § 260.10].
30. The EPA alleges that Respondent failed to comply with permit condition II.C of the RCRA Permit, and therefore violated Sections 130A-294 (c) and (g) of the NCSWML, N.C.G.S. § 130A-294 (c) and (g) [Section 3005 of RCRA, 42 U.S.C. § 6925], and NCHWMR 15A NCAC 13A .0113 [40 C.F.R. Part 270.30], by accepting at the Facility hazardous waste from off-site sources.

VI. STIPULATIONS

31. The issuance of this CAFO simultaneously commences and concludes this proceeding. 40 C.F.R. § 22.13(b).
32. For the purpose of this proceeding, as required by 40 C.F.R. § 22.18(b)(2), Respondent:
 - a. admits that the EPA has jurisdiction over the subject matter alleged in this CAFO;
 - b. neither admits nor denies the factual allegations set forth in Section IV (Findings of Facts) of this CAFO;
 - c. consents to the conditions specified in this CAFO;
 - d. consents to the issuance of this compliance order;
 - e. waives any right to contest the allegations set forth in Section V (Alleged Violations) of this CAFO; and

- f. waives its rights to appeal the Final Order accompanying this CAFO.
33. For the purpose of this proceeding only, Respondent:
- a. agrees that this CAFO states a claim upon which relief may be granted against Respondent;
 - b. acknowledges that this CAFO constitutes an enforcement action for purposes of considering Respondent's compliance history in any subsequent enforcement actions;
 - c. waives any and all remedies, claims for relief, and otherwise available rights to judicial or administrative review that Respondent may have with respect to any issue of fact or law set forth in this CAFO, including any right of judicial review under Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§ 701-706;
 - d. waives any rights it may possess at law or in equity to challenge the authority of the EPA to bring a civil action in a United States District Court to compel compliance with the CAFO, and to seek a penalty for such noncompliance, and agrees that federal law shall govern in any such civil action;
 - e. waives any right it may have pursuant to 40 C.F.R. § 22.8 to be present during any discussions with, or to be served with and reply to, any memorandum or communication addressed to the EPA officials where the purpose of such discussion, memorandum, or communication is to persuade such official to accept and issue this CAFO; and
 - f. agrees to comply with the terms of this CAFO.
34. By executing this CAFO, Respondent certifies to the best of its knowledge that Respondent is currently in compliance with all relevant requirements of the Act and its implementing regulations, and that all violations alleged herein, which are neither admitted nor denied, have been corrected.
35. In accordance with 40 C.F.R. § 22.5, the individuals named in the certificate of service are authorized to receive service related to this proceeding, and the parties agree to receive service by electronic means.

VII. PAYMENT OF CIVIL PENALTY

36. No civil penalty is assessed in this CAFO. The EPA reserves the right to pursue civil penalties for the violations alleged herein at some later date and Respondent reserves all rights to oppose any such claim and present any defenses thereto.

VIII. STATEMENT OF PURPOSE

37. The mutual objectives of the EPA and Respondent in entering into this CAFO are for the Respondent to develop and implement a plan to properly characterize all spent fluorine containing surfactant wastes directed to the Facility from off-site sources to ensure Respondent does not accept hazardous waste for recovery.

IX. WORK TO BE PERFORMED

38. Within ten (10) calendar days of the effective date of this CAFO, Respondent shall develop and submit to the EPA and NCDEQ a document that identifies and describes standard operating procedures implemented by the Facility to ensure that complete and accurate waste profile determinations are prepared for all spent fluorine containing surfactant wastes and that no hazardous waste is accepted for reclamation. At a minimum, the document shall:
- a. Describe in detail the sampling and analysis procedures implemented by the Facility to ensure a complete characterization of each off-site waste container is available to make a decision regarding its acceptance prior to initiating shipment to the Facility for reclamation. The characterization shall determine and create an accurate record and profile of each off-site waste container that includes, at a minimum, characteristics such as corrosivity, toxicity, reactivity, ignitability, as determined in a manner consistent with the EPA's Test Methods for Evaluating Solid Waste: Physical/Chemical Methods (known as Method SW-846), and any other criteria used to assure that the spent surfactant is suitable for reclamation at the Facility;
 - b. Describe in detail the sampling and analysis, quality assurance and quality control (including confirmatory sampling), tracking and recordkeeping procedures and criteria implemented by the Facility to ensure the off-site spent surfactant characterization data are consistent with the Facility's standard operating procedures prior to acceptance.
39. In the event that the off-site wastes are discovered to be hazardous, Respondent shall notify both the EPA and NCDEQ within 24-hours of learning that the off-site wastes are hazardous. In its notification, Respondent shall provide a copy of the relevant movement documents, and propose remedial actions to return, reroute and/or otherwise manage the hazardous waste in compliance with RCRA.
40. Respondent shall submit the document required pursuant to Section IX to:

Javier E. García
Chemical Safety and Land Enforcement Branch
Enforcement & Compliance Assurance Division
U.S. Environmental Protection Agency, Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960
garcia.javier@epa.gov

and

Julie S. Woosley, Chief
Hazardous Waste Section
Division of Waste Management
North Carolina Department of Environmental Quality
646 Mail Service Center
Raleigh, North Carolina 27699-1646
julie.woosley@ncdenr.gov

X. EFFECT OF CAFO

41. Full compliance with the terms of this CAFO, shall not in any case affect the right of the EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. 40 C.F.R. § 22.18(c).
42. Any violation of this CAFO may result in a civil penalty for each day of continued noncompliance with the CAFO and/or the suspension or revocation of any federal or state permit issued to the violator, as provided in Section 3008(c) of the Act, 42 U.S.C § 6928(c).
43. Nothing in this CAFO shall relieve Respondent of the duty to comply with all applicable provisions of the Act and other federal, state, or local laws or statutes, nor shall it restrict the EPA's authority to seek compliance with any applicable laws or regulations, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state, or local permit, except as expressly provided herein.
44. Nothing herein shall be construed to limit the power of the EPA to undertake any action against Respondent or any person in response to conditions that may present an imminent and substantial endangerment as provided under the Act.
45. The terms, conditions, and compliance requirements of this CAFO may not be modified or amended except upon the written agreement of both Parties, and approval of the Regional Judicial Officer.
46. The provisions of this CAFO shall apply to and be binding upon Respondent and its officers, directors, employees, agents, trustees, servants, authorized representatives, successors, and assigns. Respondent shall cause all persons, including independent contractors, contractors, and consultants acting under or for Respondent, to comply with the provisions hereof in connection with any activity subject to this CAFO.
47. Any change in the legal status of the Respondent, or change in ownership, partnership, corporate or legal status relating to the Facility, will not in any way alter Respondent's obligations and responsibilities under this CAFO.
48. By signing this Consent Agreement, Respondent acknowledges that this CAFO will be available to the public and agrees that this CAFO does not contain any confidential business information or personally identifiable information.
49. By signing this Consent Agreement, the Complainant and the undersigned representative of Respondent each certify that he or she is fully authorized to execute and enter into the terms and conditions of this CAFO and has the legal capacity to bind the party he or she represents to this CAFO.
50. By signing this Consent Agreement, both Parties agree that each party's obligations under this CAFO constitute sufficient consideration for the other party's obligations.
51. By signing this Consent Agreement, Respondent certifies that the information it has supplied concerning this matter true, accurate, and complete for each such submission, response, and statement. Respondent acknowledges that there are significant penalties for submitting false or misleading information, including the possibility of fines and imprisonment for knowing submission of such information, under 18 U.S.C. § 1001. The EPA is aware that Respondent

alleges previously submitted data to have been erroneous and corrected on February 7, 2020, and agrees that that error, now corrected, is not actionable under this paragraph.

52. Notwithstanding any other provision of this CAFO, an enforcement action may be brought pursuant to Section 7003 of RCRA, 42 U.S.C. § 6973, or any other statutory authority, should the EPA find that the handling, storage, treatment, transportation, or disposal of solid waste or hazardous waste from Respondent's Facility may present an imminent and substantial endangerment to human health or the environment.
53. Complainant reserves the right to pursue enforcement against Respondent for penalties for the violations set forth in this CAFO, or for violations of this CAFO. Nothing in this CAFO shall constitute or be construed as a release from any civil or criminal claim, cause of action, or demand in law or equity for any liability Respondent may have arising out of, or relating in any way to, the storage, transportation, release, or disposal of any solid or hazardous waste, hazardous constituents, hazardous substances, pollutants or contaminants found at, taken to, or taken from Respondent's Facility.
54. EPA reserves the right to revoke this CAFO if and to the extent that the EPA finds, after signing this CAFO, that any information provided by Respondent was knowingly and materially false or inaccurate at the time such information was provided to the EPA. The EPA shall give Respondent notice of its intent to revoke, which shall not be effective until received by Respondent in writing.
55. Each party shall bear its own attorney's fees, costs, and disbursements incurred in this proceeding.
56. It is the intent of the parties that the provisions of this CAFO are severable. If any provision or authority of this CAFO or the application of this CAFO to any party or circumstances is held by any judicial or administrative authority to be invalid or unenforceable, the application of such provisions to other parties or circumstances and the remainder of the CAFO shall remain in force and shall not be affected thereby.
57. This CAFO is not intended to be nor shall it be construed to be a permit. The parties acknowledge and agree that compliance with the terms of this CAFO shall not relieve Respondent of its obligations to comply with RCRA or any other applicable local, State, federal or international laws and regulations.
58. In any action brought to enforce the terms of this CAFO, Respondent shall bear the burden of proving any defenses.
59. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive or other appropriate relief relating to the Facility, including the collection of a penalty, Respondent shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon the contention that the claims raised by the United States in the subsequent proceeding were or should have been raised in the present matter.

XI. TERMINATION

60. This CAFO will terminate a) when Respondent notifies Complainant that Respondent is no longer accepting waste from off-site sources for reclamation; b) when the terms of this CAFO with regard to management of off-site wastes are superseded by another agreement between the Parties; or c) when Complainant takes judicial action against Respondent under RCRA, whichever occurs first.

XII. EFFECTIVE DATE

61. This CAFO shall become effective after execution of the Final Order by the Regional Judicial Officer, on the date of filing with the Hearing Clerk.

[Remainder of Page Intentionally Left Blank

Complainant and Respondent will Each Sign on Separate Pages.]

The foregoing Consent Agreement In the Matter of **The Chemours Company- Fayetteville Works**
Docket No. RCRA-04-2020-2119, is Hereby Stipulated, Agreed, and Approved for Entry.

FOR RESPONDENT:



12/18/2020

Signature

Date

Name: Sheryl A. Telford

Title: VP EHS & Corporate Responsibility

Address: The Chemours Company
1007 Market Street -- 12095
Wilmington, Delaware 19899

The foregoing Consent Agreement In the Matter of **The Chemours Company- Fayetteville Works**
Docket No. RCRA-04-2020-2119, is Hereby Stipulated, Agreed, and Approved for Entry.

FOR COMPLAINANT:

Kimberly L. Bingham
Chief
Chemical Safety and Land Enforcement Branch
Enforcement & Compliance Assurance Division
U.S. Environmental Protection Agency, Region 4

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4

In the Matter of:

The Chemours Company- Fayetteville Works
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22828 NC Highway 87 W
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EPA ID No.: NCD047368642

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The Regional Judicial Officer is authorized to ratify this Consent Agreement which memorializes a settlement between Complainant and Respondent. 40 C.F.R. §§ 22.4(b) and 22.18(b)(3). The foregoing Consent Agreement is, therefore, hereby approved, ratified and incorporated by reference into this Final Order in accordance with the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits*, 40 C.F.R. Part 22.

The Respondent is hereby ORDERED to comply with all of the terms of the foregoing Consent Agreement effective immediately upon filing of this Consent Agreement and Final Order with the Regional Hearing Clerk. This Final Order disposes of this matter pursuant to 40 C.F.R. §§ 22.18 and 22.31.

BEING AGREED, IT IS SO ORDERED.

Tanya Floyd
Regional Judicial Officer

CERTIFICATE OF SERVICE

I certify that the foregoing “Consent Agreement” and “Final Order,” in the Matter of **The Chemours Company- Fayetteville Works Docket No. RCRA-04-2020-2119**, were filed and copies of the same were emailed to the parties as indicated below.

Via email to all parties at the following email addresses:

To Respondent: Sheryl A. Telford
SHERYL.A.TELFORD@chemours.com
VP EHS & Corporate Responsibility
The Chemours Company
1007 Market Street – 12095
Wilmington, Delaware 19899

Allison Rumsey, Partner
Arnold & Porter
Allison.Rumsey@Arnoldporter.com
601 Massachusetts Ave., NW
Washington, D.C. 20001-3743
(202) 942-5095

To EPA: Javier E. García, Senior Enforcement Officer
garcia.javier@epa.gov
(404) 562-8616

and

Roberto X. Busó, Associate Regional Counsel
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U.S. Environmental Protection Agency, Region 4
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