SOAH DOCKET NO. 582-24-22552
TCEQ DOCKET NO. 2023-1591-MWD

APPLICATION OF CORIX UTILITIES (TEXAS) INC. FOR TPDES PERMIT NO. WQ0013977001	**§**	**BEFORE THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY**

ENVIRONMENTAL STEWARDSHIP'S AMENDED EXCEPTIONS TO THE PROPOSAL FOR DECISION

May 27, 2025

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TO THE HONORABLE COMMISSIONERS:

Protestant Environmental Stewardship ("ES") files these Amended Exceptions[1] to the Proposal for Decision and urges the Commission to deny the Application by Corix Utilities (Texas) Inc. ("Applicant" or "Corix") for Major Amendment to Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0013977001 (the "Application"). For support, ES respectfully offers the following:

I. Introduction

Environmental Stewardship excepts to the ALJ's acceptance of less precise default data to set standards and monitor water quality on segments of the Colorado River that have been designated as exceptional aquatic-life use segments. This designated standard is the highest water quality standard in the State of Texas. As such, all procedures, processes, and data that are used to conserve and protect this high standard must be commensurate with the quantitative and narrative water quality measures that are expected to be found in these segments.

[1] Environmental Stewardship filed its Exceptions earlier today, but after the filing was completed, it became apparent that the draft that was filed was a rough draft. These Amended Exceptions include minor corrections and editorial revisions, but do not revise the substance of the earlier-filed Exceptions.

Corix seeks permission to increase the quantity of wastewater discharged from its facility within McKinney Roughs Nature Area from a current volume of 0.05 million gallons per day (mgd) to an ultimate quantity of 0.51 mgd. Were the Commission to authorize this requested permit amendment, Corix's discharge would be ten times larger than the currently authorized discharge. Yet, the PFD and the Proposed Order fail to include any conditions that ensure protection of water quality—even though evidence presented during the hearing indicates that the receiving waters are already experiencing water quality degradation.

II. Water Quality

A. Tier 1 Antidegradation Review

The Tier 1 Antidegradation review requires that existing uses and water quality sufficient to protect those uses must be maintained. 30 Tex. Admin. Code § 307.5(b)(1).

The wastewater effluent would be discharged into an unnamed tributary of the Colorado River within the McKinney Roughs Nature Park and reaches the Colorado River only about a mile downstream. This area of the Colorado River has been designated by the TCEQ as Segment 1428; the discharge would enter the Colorado River in Assessment Unit 1428_01, which is the most downstream assessment unit in the segment.

TCEQ Rule 307.10(1) designates that Segment 1428 has exceptional aquatic life uses, primary contact recreation, and public water supply. Any permit issued by the Commission must therefore ensure that exceptional aquatic life and contact recreation uses will be protected. But the permit proposed for issuance here fails to achieve this.

1. The PFD misapplies the parties' evidentiary burdens and gives short shrift to the evidence presented by Protestant.

The PFD acknowledges that Corix bears the burden of proof, but then proceeds to characterize Protestant's evidence—"two photographs of algal growth" in water that is not yet on the State's inventory of impaired water—as inadequate to satisfy the Protestant's burden of establishing that the water quality uses will be impaired. PFD, p. 23 & Finding of Fact 36 of Proposed Order ("Photographs of algae in the unnamed tributary and the Colorado River do not establish that the water quality uses will be impaired."). This analysis and characterization of Protestant's evidence is inaccurate.

As an initial matter, Environmental Stewardship was not tasked, here, with proving that existing uses will not be protected. The burden of proof on the ultimate merits of the contested issues remains, at all times, with the Applicant, Corix. That is, Corix must establish by a preponderance of the evidence that the Application would not violate applicable requirements and that the permit, if issued consistent with the Draft Permit, would protect human health and safety and the environment. A protesting party's burden, then, is similar to one of production rather than proof in the sense of ultimate persuasion, under Texas Government Code Section 2003.047(i-2).

Here, Environmental Stewardship satisfied its burden of production, and it did so by introducing more than only two photos of algal growth. Environmental Stewardship presented sufficient evidence to rebut any presumption that Segment 1428's exceptional aquatic life uses would be protected and maintained. Indeed, TCEQ's own data demonstrate that the receiving waters are already experiencing degradation. The additional

pollution that would be authorized by the Draft Permit is likely to worsen existing receiving water quality. Corix failed to prove otherwise, and the ED failed to include any special permit conditions that would address this degradation of water quality.

2. Environmental Stewardship's evidence demonstrated degradation of water quality in the receiving waters—thus, satisfying its burden of production.

Contrary to statements in the PFD and the Proposed Order, Environmental Stewardship presented evidence consisting of more than only two photos regarding this issue. Environmental Stewardship's evidence satisfied its burden of production, thus rebutting the prima facie presumption. Importantly, Environmental Stewardship was not required to "establish that the water quality uses will be impaired," as suggested by the PFD and the Proposed Order. *See* Proposed Order, FOF 36. The burden of establishing that water quality uses will be protected lies with Corix. That is, Corix bore the burden of establishing by a preponderance of the evidence that exceptional aquatic life and contact recreation uses will be protected —which it failed to do.

The Tier 1 anti-degradation review requires that existing uses and water quality sufficient to maintain those existing uses must be maintained. For purposes of this regulation, "existing uses" includes more than just the uses that the waters are capable of attaining in their current state. Rather, existing uses includes, "a use that is currently being supported by a specific water body or that was attained on or after November 28, 1975." 30 Tex. Admin. Code § 307.3(27).

Segment 1428 of the Colorado River has designated uses of primary contact recreation, public water supply, exceptional aquatic life use, and a minimum dissolved

oxygen level of 6.0 mg/L. The evidence established that in 1992, the State of Texas listed no concerns for Assessment Unit 1428_01 for Contact Recreation, Fish Community, Macrobenthic community, Nitrate, Ortho-phosphorus or Total Phosphorus. Similarly, before 2000, the State identified no water quality concerns related to nutrients, fish, or macrobenthic communities for Segment 1428.

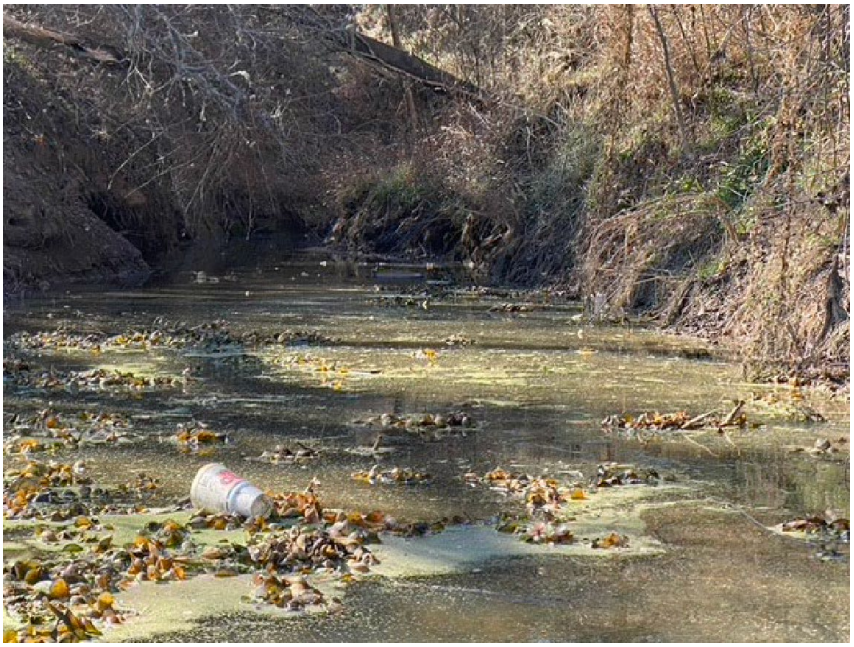
In the last 20 years, however, Segment 1428 of the Colorado River has experienced water quality degradation as evidenced by photos of algal growth, along with other evidence.

Beginning in 2002, Assessment Unit 1428_01 was listed as of concern for Fish Community, Macro-benthic community, Nitrate concentrations, and Ortho-Phosphorus.

In addition, in 2024, the Lower Colorado River Authority performed an Aquatic Life Use monitoring program that documented significant algal growth within the receiving segment of the Colorado River. The 2024 assessment indicates that Assessment Unit 1428_01 is still of concern for Fish Community, Macro-benthic community, Nitrate concentrations, and Ortho-Phosphorus. The study further indicated that during the critical period in July of 2024, the fish presence only reflected high aquatic life uses, while the habitat characteristics were indicative of only intermediate aquatic life uses.

The photos of algal growth referenced in the PFD demonstrated that at the time of the hearing, the receiving water of the Colorado River *continued* to experience water quality degradation—consistent with the LCRA monitoring study—as evidenced by the significant algal growth shown in the photos. The photos were taken near and downstream of the confluence of the unnamed tributary and the Colorado River—indicating that the

specific receiving waters that are relevant in this matter are continuing to experience water quality degradation. The Draft Permit, authorizing a ten-fold increase in wastewater discharge, includes no provisions that would ensure protection of water quality or that would ensure that the water quality were returned to historic exceptional aquatic life uses.



Confluence of Unnamed Tributary and Colorado River
January 23, 2025
Ex. ES-1, p. 2

Aquatic Vegetation Present Shortly Downstream of Confluence of Unnamed Tributary and Colorado River
January 23, 2025
Ex. ES-1, p. 3

These two photos, alone, perhaps do not rise to the level of establishing by a preponderance of evidence that water quality uses in the receiving waters will be impaired (though Environmental Stewardship maintains that they do rebut the prima facie presumption).[2] But these two photographs, taken together with other evidence in the record—including expert testimony by Dr. Ross and Dr. MacLeod, eyewitness testimony by Mr. Martin (who has fished in the receiving waters once or twice per month for the last

[2] Environmental Stewardship does not concede that the two photographs alone are inadequate to satisfy its burden of production. The PFD, however, indicates that more is required, but does not explain how much evidence is enough to satisfy a protesting party's burden of production. Would 10 photos have been adequate? Would 50 photos have been better? Would a video recording have been more convincing to the ALJ? Environmental Stewardship produced two photos, together with testimony by two experts, eyewitness factual testimony, and LCRA's monitoring study. But Environmental Stewardship would have produced even more photographic evidence if there were some legal standard or legal basis indicating that two photographs are inadequate to satisfy a protesting party's burden of production. No such legal standard was cited in the PFD.

50 years), and the LCRA monitoring study—demonstrate that water quality uses are currently not being attained or protected. This is a factor that was not considered by the ED in preparing the Draft Permit or by Corix in preparing its Application. And so, this evidence was sufficient to rebut any presumption that the Draft Permit would protect existing uses attained on or after November 28, 1975.

That the receiving water is not on the State's inventory of impaired water is not indicative that the Tier 1 review has been satisfied. Nor is it indicative that the receiving water is not experiencing degradation of water quality. Permits that are adequately protective of water quality and historical uses—permits that satisfy TCEQ's rules—should prevent a receiving water from degradation that results in being added to the State's inventory of impaired water. The PFD and the Proposed Order suggest that impairment is a necessary prerequisite before TCEQ or the applicant is required to analyze whether water quality degradation is already occurring, but there is no legal support for this arbitrary standard.

In this case, Environmental Stewardship produced evidence indicating that the receiving waters, here, are experiencing degradation, and yet, the Draft Permit does nothing to protect the receiving waters from further degradation of water quality resulting from the proposed ten-fold increase in authorized wastewater discharge. The Draft Permit fails to include conditions that will ensure achievement of the receiving waters' historically higher exceptional aquatic life use. Environmental Stewardship satisfied its burden of production; Corix failed to satisfy its burden of proof.

The PFD and Proposed Order's misapplication of the Protestant's evidentiary burden here, and its mischaracterization of the evidence presented by Protestant to satisfy its burden, have resulted in an erroneous decision.

3. Dissolved Oxygen modeling was based on unreliable assumptions.

As with other issues discussed in these Exceptions, on this issue, the PFD once again places a more onerous evidentiary burden on Environmental Stewardship than is justified by applicable statutes and TCEQ rules. A proper application of the parties' respective evidentiary burdens would have led to the conclusion that the modeling used to demonstrate compliance with the dissolved oxygen standards was based on unreliable and factually indefensible assumptions, rendering any conclusions based on that modeling erroneous.

The Executive Director evaluated compliance of the permit with the dissolved oxygen standards utilizing the QUAL-TX model. Ex. ED-JM-3. For the unnamed tributary into which the effluent would initially discharge, the model used default hydraulic coefficients. The PFD and Proposed Order conclude that these default coefficients were appropriate. Proposed Order, FOF 30. But the analysis in the PFD does not support this finding; nor does the evidence in the record.

Dr. Ross testified, on behalf of Environmental Stewardship, that the DO modeling used unrealistic assumptions for the unnamed tributary. In particular, she testified that the modeling used coefficients that would reflect a 23.6-foot-wide stream for the entire length of the tributary. But the tributary is approximately 12 feet wide. In fact, there is a culvert only a few feet wide just downstream of the discharge, which is only a foot or two across.

Ex. AR (Administrative Record), Tab D, at p. 33. The use of the default assumptions resulted in a prediction of unrealistic results, according to Dr. Ross.

TCEQ's staff witness, Mr. Michalk, agreed with Dr. Ross' critique of the model's reliance on default assumptions. The PFD acknowledges this: "Mr. Michalk agreed with Dr. Ross that the modeling of the unnamed tributary used default hydraulic coefficients that might not match the actual conditions of the stream." PFD, p. 17. Corix did not dispute Dr. Ross' critique; nor did Corix offer any evidence to demonstrate that the default assumptions approximated existing conditions in the unnamed tributary so as to render the default assumptions reliable. In short, there is no dispute that the default assumptions used to model the unnamed tributary failed to reflect existing conditions and thus predicted unreliable and unrealistic results.

Environmental Stewardship thus produced sufficient evidence to rebut the prima facie presumption on this issue, and Corix was tasked with establishing by a preponderance of evidence that the draft permit and proposed discharge would not contribute to a violation of TCEQ's DO standards. Corix failed to satisfy its burden. Corix presented no evidence indicating that the default hydraulic coefficient assumptions in the QUAL-TX model were sufficiently reliable to produce realistic results regarding the unnamed tributary.

Nevertheless, the PFD concludes that "for the unnamed tributary, the evidence shows that while the default assumptions may not match precisely, they are based on established TCEQ standards." But this fails to address the central question presented here: whether the Draft Permit and Corix's proposed discharge will comply with TCEQ's DO standards. The only evidence presented on this issue for the unnamed tributary was the

QUAL-TX model—and even the PFD acknowledges that the model relied on unrealistic assumptions that fail to reflect, or even approximate, actual conditions. Thus, the modeling results do not prove that DO standards have been satisfied here for the unnamed tributary. This is particularly troubling considering that the receiving waters here are designated as having the highest water quality standards in the state: exceptional aquatic-life use. Default modeling assumptions that are perhaps representative of waters throughout the state simply do not provide reliable and realistic data for purposes of ensuring that the proposed discharge into these receiving waters does not result in a violation of DO standards.

Similarly, for Segment 1428 of the Colorado River, the model failed to use realistic assumptions. For instance, the QUAL-TX model is capable of modeling algae and nutrients, but TCEQ staff did not elect to implement these model components. Ex. ES-200, 8:23-25. Further, the model does not account for the impacts of algal blooms. Ex. ES-200, 9:24 – 10:2. The PFD fails to address these deficiencies; nor does it explain why the model should nevertheless be considered sufficiently reliable to conclude that the proposed discharge will not contribute to a violation of DO standards.

B. <u>Tier 2 Antidegradation Review</u>

Segment 1428 of the Colorado River is designated as subject to primary contact recreation use and exceptional aquatic life use. 30 Tex. Admin. Code § 307.10(1). Accordingly, the receiving waters of the Colorado River are "fishable/swimmable," and subject to the requirements of a Tier 2 review.

While the requirement for a demonstration of social or economic necessity is not required for a lowering of water quality by less than a "de minimis" extent, the regulations

for a Tier 2 anti-degradation review seek to ensure that a water body does not die a "death of a thousand cuts" – in other words a situation where numerous "de minimis" discharges result in the degradation of a receiving water body, even if any single discharge would not, by itself, lower water quality by a more than de minimis extent. Thus, the baseline conditions for determining whether degradation will occur are the highest water quality sustained in the receiving waters since November 28, 1975. 30 Tex. Admin. Code § 307.5(c)(2)(B). In this case, Corix and the ED relied on current existing conditions for purposes of establishing baseline conditions.

TCEQ's Procedures to Implement the Texas Surface Water Quality Standards (commonly referred to as the "IPs") provide, "Baseline conditions are estimated from existing conditions, as indicated by the latest edition of the Texas Water Quality Inventory or other available information, *unless there is information indicating that degradation in ambient water quality has occurred in the receiving waters since November 28, 1975*." Ex. ED-JL-3, internal p. 63 (emphasis added); *see also* 30 Tex. Admin. Code § 307.5(c)(2)(B) ("The highest water quality sustained since November 28, 1975 (in accordance with EPA Standards Regulation 40 Code of Federal Regulations Part 131) defines baseline conditions for determinations of degradation.").

1. Environmental Stewardship produced sufficient evidence to satisfy its evidentiary burden and rebut the prima facie presumption.

On this issue, the PFD again imposes on Environmental Stewardship a higher burden of proof than the law requires. Environmental Stewardship was required only to produce sufficient evidence to rebut the prima facie demonstration. But Corix bore the

burden of establishing by a preponderance of the evidence that the Application and Draft Permit comply with TCEQ's Tier 2 Antidegradation review. Once Environmental Stewardship produced sufficient evidence to rebut the prima facie presumption, Corix had to do more than simply rely on the administrative record.

To satisfy TCEQ's Tier 2 standard, the first step is to ensure reliable baseline conditions. Corix and the ED did not comply with 30 Tex. Admin. Code § 307.5(c)(2)(B) and the IPs to establish baseline conditions. No party presented evidence indicating that *existing* conditions are reliable for determining a proper baseline for the receiving waters in this matter. And the PFD does not cite to any evidence indicating that baseline conditions based on current conditions are reliable and based on sound foundational data. In fact, there is abundant information indicating that degradation in ambient water quality has occurred in the receiving waters since November 28, 1975.

Nonetheless, the PFD claims as did TCEQ staff that "to get a proper and adequate baseline we would have to go back in time and conduct studies," and that the data on existing conditions is what TCEQ knows about the baseline. In other words, the baseline data used by the Executive Director, and relied upon by the ALJ, is not based on conditions that are the highest ambient water quality sustained since 1975; it is based on existing conditions only. PFD, p. 27. Of course, difficulty in determining the correct baseline conditions does not excuse the use of baseline conditions that are known to be wrong.

Environmental Stewardship presented evidence indicating that this data based on current information or existing conditions does not reliably reflect baseline conditions consistent with the applicable rules and guidance, and so, Environmental Stewardship

satisfied its burden of production and rebutted the prima facie presumption. As described above, the evidence presented by Environmental Stewardship demonstrated that since 1992, this Assessment Unit 1428_01 had no concern for Contact Recreation, Fish Community, Macrobenthic community, Nitrate, Ortho-phosphorus or Total Phosphorus. Ex. ES-203. Beginning in 2002, this assessment unit was listed as of concern for Fish Community, Macro-benthic community, Nitrate concentrations, and Ortho-Phosphorus. Ex. ES-203. The 2024 LCRA monitoring study indicates that this assessment unit is still of concern for Fish Community, Macro-benthic community, Nitrate concentrations, and Ortho-Phosphorus. This listing history indicates that degradation of the receiving waters has occurred since 1975.

Data gathered at the nearest upstream sampling station confirms this lowering of water quality. TCEQ Sampling Point 1466 is just upstream of the area of the Colorado River receiving the discharge. Ex. ES-3, p. 8; Tr. Vol. 1, 114:11-17. In 2023, LCRA reported that there are "significant trends" in increasing concentrations of Chloride, Total Suspended Solids, and Chlorophyll-a at this location. Ex. ES-3, p. 12. Corix's expert witness, Mr. Price, conceded that data gathered by LCRA show an increase over time in Chlorophyll-a.

In short, Environmental Stewardship produced abundant evidence indicating that degradation in the ambient waters of the Colorado River has occurred since November 28, 1975. The change in the quality of the receiving waters from having no concern for nutrients and fish population to a status where concerns exist proves that degradation in ambient water quality has occurred in the receiving waters since November 28, 1975.

According to TCEQ's IPs, this means that existing conditions should not be used as baseline data: "Baseline conditions are estimated from existing conditions . . . *unless there is information indicating that degradation in ambient water quality has occurred in the receiving waters since November 28, 1975*." Ex. ED-JL-3 (emphasis added). Reliance on existing conditions for purposes of establishing baseline conditions—despite evidence indicating that degradation to water quality has occurred since 1975—violates TCEQ's Antidegradation rules. Environmental Stewardship satisfied its burden.

2. Corix bore the burden of proving compliance with TCEQ's Tier 2 Antidegradation standards.

Once Environmental Stewardship presented its evidence indicating that data based on current information or existing conditions does not reliably reflect baseline conditions consistent with the applicable rules and guidance, Environmental Stewardship satisfied its burden and rebutted the prima facie presumption. At that point, the burden should have shifted to Corix to demonstrate compliance with the Tier 2 Antidegradation standards. That is, Corix bore the burden of proving accurate and reliable baseline conditions—baseline conditions that are based on information *other than* unreliable existing conditions. That this information is not easily acquired is no excuse for failing to comply with this requirement.

3. The PFD misplaces the evidentiary burden on Environmental Stewardship, instead of requiring Corix to prove compliance with Tier 2 standards by a preponderance of the evidence.

The IPs apply to TCEQ staff and permit applicants, and the IPs do not allow reliance on existing conditions for purposes of establishing baseline conditions, where, as here,

there is information indicating degradation in water quality has occurred since 1975. This is Corix's burden; Corix must comply with TCEQ rules and the IPs.[3] Yet, the PFD misplaces this burden on Environmental Stewardship instead of on Corix: "Nor has it [Environmental Stewardship] shown what that baseline was." PFD, pp. 27-28. And the PFD maintains that Environmental Stewardship was required to prove that the discharge would cause more than de minimis degradation. PFD, p. 28. This was error.

Environmental Stewardship satisfied its burden of production; Corix maintained the burden of proving compliance with TCEQ's Antidegradation rules. It failed to do so—choosing instead to continue to rely on the existing conditions as baseline conditions, even when the evidence presented established that doing so was not allowed. Because baseline conditions are the starting point for a *de minimis* determination, Corix also failed to demonstrate that water quality has been lowered by less than a de minimis amount since Corix did not use a proper baseline for that determination.

This failure to acknowledge evidence demonstrating that existing conditions are not proper baseline conditions for purposes of the Tier 2 Antidegradation review distinguishes this case from *Save Our Springs Alliance, Inc. v. Texas Commission on Environmental Quality*, No. 23-0282, 2025 WL 1085176 (Tex. 2025)—cited in the PFD. In that case, no party disputed that existing conditions were proper for purposes of establishing baseline conditions. Here, there is ample evidence in the record indicating that existing conditions are not proper baseline conditions.

[3] Exhibit ES-205 provides evidence of how baseline conditions are properly established, based on historical data.

Because the PFD improperly placed the burden of proof of compliance with TCEQ's Tier 2 Antidegradation review on Environmental Stewardship, instead of on Corix, the PFD reached the wrong conclusion. Corix failed to satisfy its burden of proof here. And so, the permit should be denied.

C. Contaminants of Emerging Concern, Including PFAS

Corix's proposed discharge will contain per- and polyfluoralkyl substances ("PFAS"), otherwise known as "forever chemicals," which are potentially toxic to humans and wildlife, and the Colorado River already exhibits high levels of these chemicals. Issuance of the permit without regard for these impacts violates the requirements of the TSWQS that waters not be toxic to aquatic life, as set forth at 30 Tex. Admin. Code §§ 307.4(d) and 307.6(b)(4).

The PFD acknowledges that no party disputed that Contaminants of Emerging Concern ("CECs"), such as PFAS, are toxic. It also acknowledges that TCEQ water quality standards require that State waters be maintained in a state that is not toxic to humans or wildlife. PFD, p. 33. Yet, the PFD claims that Environmental Stewardship was required to prove that the CECs and PFAS in Corix's discharge would meet the definition of toxicity. PFD, p. 33. This was not Environmental Stewardship's burden. Corix bore the burden of establishing compliance with TCEQ's rules, including that waters not be toxic to aquatic life.

Moreover, it is beyond dispute that CECs and PFAS in Corix's discharge have a reasonable potential to result in toxicity to aquatic organisms, in violation of TCEQ's rules. If there were any dispute about this, the State's Original Petition against 3M Company and

other defendants, filed in the district court of Johnson County in December 2024 reveals that the State is well aware of the risks and environmental harms presented by CECs and PFAS. *See* Attachment A (Ex. ES-5, offer of proof). Thus, it was Corix's burden to demonstrate that such harms, resulting from the toxic CECs and PFAS in its discharge would not occur here were its requested permit issued.

III. Conclusion

For the reasons set forth above, Environmental Stewardship respectfully requests that the Commission deny Corix's Application, because Corix has not met its burden and has not demonstrated that its Application meets the applicable statutory and regulatory requirements. Environmental Stewardship further requests such other and further relief to which it may be justly entitled.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that, on May 27, 2025, a true and correct copy of the foregoing document was served upon the following counsel of record via electronic service.

/s/ Eric Allmon
Eric Allmon

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ATTACHMENT A

SOAH DOCKET NO. 582-24-22552
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APPLICATION OF CORIX UTILITIES (TEXAS) INC. FOR TPDES PERMIT NO. WQ0013977001	**§**	**BEFORE THE STATE OFFICE**
	§	**OF**
	§	**ADMINISTRATIVE HEARINGS**

EXHIBIT ES-5

OFFER OF PROOF

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Filed: 12/11/2024 10:24 AM
David R. Lloyd, District Clerk
Johnson County, Texas
By: Amaris Montemayor, Deputy

IN THE DISTRICT COURT OF
JOHNSON COUNTY, TEXAS

STATE OF TEXAS, *Plaintiff*, v. 3M COMPANY; CORTEVA, INC., DUPONT DE NEMOURS, INC., and EIDP, INC. F/K/A E. I. DU PONT DE NEMOURS AND COMPANY, *Defendants*.	§ § § § § § § § § § §	DISTRICT COURT JUDICIAL DISTRICT CAUSE NO. DC-C202400996

PLAINTIFF'S ORIGINAL PETITION

TO THE HONORABLE DISTRICT JUDGE:

Plaintiff, STATE OF TEXAS, acting by and through the Attorney General of Texas, KEN PAXTON (the "State"), complains of Defendants 3M COMPANY ("3M"); CORTEVA, INC. ("Corteva"); DUPONT DE NEMOURS AND CO., INC. ("New DuPont"); and EIDP, INC. F/K/A E. I. DU PONT DE NEMOURS AND COMPANY ("Old DuPont") (collectively, "Defendants") and would respectfully show Defendants have engaged in deceptive trade practices by failing to disclose health risks and environmental harms associated with their products, and representing and/or implying their products were "safe" in a false, deceptive, or misleading manner, in violation of the Texas Deceptive Trade Practices–Consumer Protection Act, Tex. Bus. & Com. Code §§ 17.41–17.63 ("DTPA").

INTRODUCTION

1. For decades, Defendants manufactured, marketed, and sold a wide array of consumer products containing per- and polyfluoroalkyl substances ("PFAS"), including perfluorooctane sulfonic acid ("PFOS") and perfluorooctanoic acid ("PFOA"). Defendants

marketed these products in Texas and elsewhere to consumers as having remarkable benefits such as resistance to heat, oil, stains, grease, and water. Defendants' PFAS-containing materials included products used in or on food packaging, carpeting, cookware, upholstery, cosmetics, and many other consumer products, which Defendants sold to Texas consumers under well-known brand names including Teflon® and Scotchgard®.

2. But Defendants knew for much of this time, during which they profited immensely from the sale of their products, that PFAS pose risks to people's health and impact the environment. For example, PFAS are "persistent, bioaccumulative and toxic" ("PBT"), and exposure in humans may be associated with diseases such as cancer and decreased vaccine response. Further, PFAS, once introduced into the environment, accumulate in fish, game, and other animal and plant life, contaminate drinking water and other natural resources, and accumulate in the blood of humans. Defendants knew of these risks, knew they could not contain PFAS in their consumer products, and – as early as the 1970s – knew that their PFAS chemistry was already building-up in the blood of most Americans. Nonetheless, Defendants concealed these substantial risks from consumers and the State, and for decades, they even affirmatively claimed their products were "safe."

I. DISCOVERY

3. The discovery in this case should be conducted under Level 3 pursuant to Texas Rule of Civil Procedure 190.4.

4. This case is not subject to the restrictions of expedited discovery under Texas Rule of Civil Procedure 169 because the State's claims include non-monetary injunctive relief.

5. In addition to the claims for non-monetary injunctive relief, the State seeks monetary relief of $1,000,000 or more, including civil penalties, attorneys' fees, and costs.

II. JURISDICTION

6. This action is brought by the Attorney General, Ken Paxton, in the name of the State of Texas, through his Consumer Protection Division and in the public interest under the authority granted by § 17.47 of the DTPA upon the grounds that Defendants have engaged in false, deceptive, and misleading acts and practices in the course of trade and commerce as defined in, and declared unlawful by, §§ 17.46(a) and (b) of the DTPA. In enforcement suits filed pursuant to § 17.47 of the DTPA, the Attorney General is further authorized to seek civil penalties, redress for consumers, and injunctive relief. The Attorney General may also seek reasonable attorneys' fees and court costs for prosecuting this action, as authorized by Texas Government Code § 402.006(c).

III. SCOPE OF THIS ACTION

7. Through this action, the State is not seeking any relief with respect to the manufacture, marketing, or sale of Aqueous Film-Forming Foam—a specific category of products that contain PFAS—as that is the subject of a separate action.

IV. DEFENDANTS

8. Defendant 3M Company is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business located at 3M Center, St. Paul, Minnesota 55144-1000. 3M is registered to do business in Texas and may be served through Corporation Service Company d/b/a CSC-Lawyers Incorporating Service Company, 211 E. 7th Street, Suite 620, Austin, Texas 78701-3136, or wherever it may be found.

9. Defendant EIDP, Inc. (*i.e.*, Old DuPont), f/k/a E. I. du Pont de Nemours and Company, is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business located at 974 Centre Road, Wilmington, Delaware 19805 and

9330 Zionsville Road, Indianapolis, Indiana. In 2015, facing billions of dollars in liabilities arising from its use of PFAS, Defendant Old DuPont began engaging in a series of transactions meant to distance its valuable assets from the liability created by its actions in unleashing and marketing these products to the public, ultimately resulting in the creation of New DuPont and Corteva. Old DuPont may be served through the Texas Secretary of State, P.O. Box 12079, Austin, Texas 78711.

10. Defendant DuPont de Nemours, Inc., d/b/a DuPont (*i.e.*, New DuPont), is a Delaware corporation with its principal place of business located at 974 Centre Road Building 730, Wilmington, Delaware 19805. In 2015, Old DuPont created New DuPont to facilitate a merger with third party The Dow Chemical Company ("Old Dow") and serve as a holding company for the combined assets of the two companies. In connection with a series of subsequent transactions in 2019, New DuPont assumed certain Old DuPont liabilities—including those relating to PFAS. New DuPont does business throughout the United States, including in the State of Texas. New DuPont may be served through the Texas Secretary of State, P.O. Box 12079, Austin, Texas 78711.

11. Defendant Corteva, Inc. is a corporation organized and existing under the laws of the State of Delaware, with its principal places of business located at 974 Centre Road, Wilmington, Delaware 19805 and 9330 Zionsville Road, Indianapolis, Indiana 46268. In 2019, New DuPont spun off a new, publicly traded company, Corteva, which currently holds Old DuPont as a subsidiary. In connection with this transfer, Corteva assumed certain of Old DuPont's liabilities—including those relating to PFAS. Corteva is registered to do business in Texas and may be served through CT Corporation System, 1999 Bryan Street, Ste. 900, Dallas, Texas 75201-3136, or wherever it may be found.

V. VENUE

12. Venue of this suit lies in Johnson County, Texas, pursuant to DTPA § 17.47(b), because transactions forming the basis of this suit occurred in Johnson County, Texas, and Defendants have done business in Johnson County, Texas.

VI. PUBLIC INTEREST

13. Plaintiff has reason to believe that Defendants are engaging in, have engaged in, or are about to engage in, the unlawful acts or practices set forth below. Plaintiff has further reason to believe Defendants have caused injury, loss, and damage to the State of Texas, and have caused adverse effects to the lawful conduct of trade and commerce, thereby directly or indirectly affecting the people of this State. The allegations herein focus on two specific types of PBT PFAS–PFOS and PFOA.

14. PFOS exposure is associated with numerous adverse health effects in humans, including increases in serum lipids (*i.e.*, high cholesterol); decreases in antibody response to vaccines; increases in risk of childhood infections; adverse reproductive and developmental effects; and pregnancy-induced hypertension and preeclampsia. PFOA exposure is associated with, among other things, decreased birthweight, testicular and kidney cancers, ulcerative colitis, medically diagnosed high cholesterol, and thyroid disease.

15. Therefore, the Consumer Protection Division of the Office of the Attorney General of the State of Texas is of the opinion that these proceedings are in the public interest.

VII. TRADE AND COMMERCE

16. Defendants have, at all times described below, engaged in trade and commerce as defined by § 17.45(6) of the DTPA.

VIII. ACTS OF AGENTS

17. Whenever in this Petition it is alleged that Defendants did any act, it is meant that Defendants performed or participated in the act or Defendants' officers, agents, or employees performed or participated in the act on behalf of and under the authority of Defendants.

IX. APPLICABLE LAW

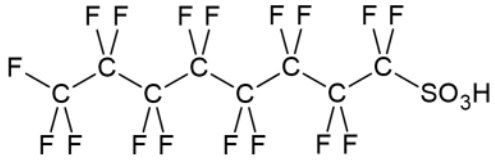
18. The DTPA prohibits "false, misleading, or deceptive acts or practices in the conduct of any trade or commerce. " DTPA § 17.46(a).

19. Section 17.47 of the DTPA authorizes the Consumer Protection Division to bring an action for temporary and permanent injunction whenever it has reason to believe that any person is engaged in, has engaged in, or is about to engage in any act or practice declared unlawful by the DTPA.

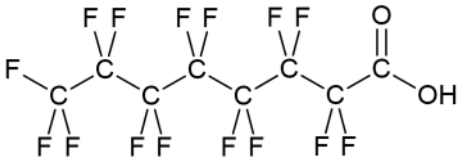
X. FACTUAL ALLEGATIONS

PFOS and PFOA

20. PFAS are a family of human-made chemical compounds containing a carbon chain on which all hydrogen atoms are replaced by fluorine atoms. The carbon-fluorine bond is the strongest bonds in organic chemistry and the many carbon-fluorine bonds in PFAS impart their unique chemical properties. Figure 1 below shows the chemical structures of PFOS and PFOA.



Perfluorooctane Sulfonic Acid ("PFOS")



Perfluorooctanoic Acid ("PFOA")

Figure 1

21. 3M developed PFOS and PFOA in the 1940s. Old DuPont, in 1951, began manufacturing products containing PFOA. Old DuPont purchased PFOA from 3M.

22. Defendants marketed products containing harmful PFAS chemicals for over 70 years and were aware of the harmful effects of PFAS chemicals for over 50 years. Despite this knowledge, Defendants continued to market PFAS products and chemicals in Texas and elsewhere as safe for consumer use, misrepresent their environmental and biological risks, and conceal risks of harm from the public.

23. For decades, advertisements included images of family home life in and around these products, were marketed to women cooking for their families, and specifically promoted the value of the products for households with children and pets. These advertisements did not disclose material information regarding the harms of the chemicals, and through the context and claims of the advertisements, misrepresented their safety for household and family use.

Defendants' Manufacture, Marketing, and Sale of PFAS-Containing Products

Old DuPont's Deception Relating to PFAS Products

24. Old DuPont began using PFOA and other PFAS in its specialty chemical production applications, including household applications and products, like Teflon® and Stainmaster®. Old DuPont advertised Teflon® as a protective non-stick coating for cookware and Stainmaster® as a soil and stain repellant for fabrics and textile products. For instance, Old DuPont released Stainmaster® Carpet in 1986. Old DuPont advertised this product as being helpful for families with children and pets, which is particularly concerning due to the additional exposure for children, who spend more time on or near the floor.

25. Old DuPont also manufactured and advertised Zonyl® as a cheaper and less labor-intensive alternative to wax-paper food packaging beginning in the 1960s. On information and

belief, this material has been used for fast food packaging and microwave popcorn bags, among other consumer uses.

26. On information and belief, the Teflon® PTFE chemical has been used in a wide variety of cosmetics, to make them long-lasting and easier to apply.

27. As early as the 1960s, Old DuPont was aware that PFOA is toxic to animals and humans and that it bioaccumulates and persists in the environment. Old DuPont also knew that Teflon®, and associated industrial facilities, emitted and discharged large quantities of PFOA and other PFAS into the environment and that many people had been exposed to its PFAS, including via public and private drinking water supplies. Yet, it continued to develop and market products for consumers as safe and without revealing this knowledge that would have been material information to consumers' purchasing decisions.

28. Old DuPont's scientists issued internal warnings about PFOA toxicity as early as 1961, including warnings that PFOA caused adverse liver reactions in rats and dogs. Old DuPont's Toxicology Section Chief opined that such products should be "handled with extreme care" and that contact with the skin should be "strictly avoided." However, advertisements from the 1970s promoted family and household use of Teflon® pans through "women [who] test[ed] pans like these in their own homes"—touting the "preference" of Teflon® by these women and the implied safety for family and household use while failing to disclose the already known dangers associated with PFAS.

29. In 1978, based on information it received from 3M about elevated and persistent organic fluorine levels in workers exposed to PFOA, Old DuPont initiated a plan to review and monitor the health conditions of potentially exposed workers to assess whether any negative

health effects were attributable to PFOA exposure. This monitoring plan involved obtaining and analyzing the blood samples from its workers for the presence of fluorine.

30. By 1979, Old DuPont had data indicating that, not only was organic fluorine/PFOA building up in the blood of its exposed workers (and was, thus, "biopersistent"), but those workers exposed to PFOA had a significantly higher incidence of health issues than did unexposed workers. Old DuPont did not share this data or the results of its worker health analysis with the general public or government entities, including the State of Texas, at that time.

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

32. At around this same time, Old DuPont, on information and belief, was releasing advertisements encouraging families not to worry, because they had Teflon® carpet protector.

33. Not only did Old DuPont know that PFOA accumulated in humans, it was also aware that PFOA could cross the placenta from an exposed mother to her gestational child. In 1981, Old DuPont conducted a blood sampling study of pregnant or recently pregnant employees. Of the eight women in the study who worked with Teflon®, two—or 25%—had children with

birth defects in their eyes or face, and at least one had PFOA in the umbilical cord. Instead of addressing this concern, in the same year Old DuPont communicated to its employees that "there is no known evidence that our employees have been exposed to C8 levels that pose adverse health effects." C8 refers to PFAS like PFOA and PFOS with an eight-carbon chain structure. It also quietly moved female employees away from areas where PFAS may have been present.

34. Old DuPont selectively reported to the United States Environmental Protection Agency ("EPA") in March of 1982 that results from a *rat* study showed PFOA crossing the placenta if present in maternal blood, but Old DuPont concealed the results of its own study of its *human* workers.

35. Not only did Old DuPont know about PFOA's toxicity danger as early as the 1960s, but it was also aware that PFAS were capable of contaminating the surrounding environment, leading to human exposure. For example, no later than 1984, Old DuPont was aware that PFOA released from its manufacturing operations was contaminating local drinking water supplies, but said nothing to regulators or the impacted communities.

36. Old DuPont was long aware that the PFAS it was releasing from its facilities could leach into groundwater used for public drinking water—a fact that could both impact its corporate image, as discussed below, and materially impact consumers' purchasing decisions. Old DuPont held a meeting at its corporate headquarters in Wilmington, Delaware in 1984 to discuss health and environmental issues related to PFOA, and employees spoke of the PFOA issue as "one of corporate image, and corporate liability." They were resigned to Old DuPont's "incremental liability from this point on if we do nothing" because Old DuPont was "already liable for the past 32 years of operation." They also stated that the "legal and medical [departments within Old DuPont] will likely take the position of total elimination" of PFOA use

in Old DuPont's business and that these departments had "no incentive to take any other position." Nevertheless, Old DuPont not only decided to keep using and releasing PFOA, marketing brands containing PFOA, but affirmatively misrepresented to regulators, the scientific community, and the public that its PFOA releases presented no risks to human health or the environment.

PERSONAL & CONFIDENTIAL

TO: T. M. KEMP
T. L. SCHRENK

FROM: J. A. SCHMID

C-8 MEETING SUMMARY
5/22/84 - WILMINGTON

THE REVIEW WAS HELD WITH BESPERKA, BENNETT, RIDDICK, GLEASON, HEGENBARTH, SERENBETZ, RAINES, KENNEDY, VON SCHRILTZ, AND INGALLS IN ATTENDENCE. COPIES OF THE CHARTS USED ARE ATTACHED.

THERE WAS A CONSENSUS THAT C-8, BASED ON ALL THE INFORMATION AVAILABLE FROM WITHIN THE COMPANY AND FROM 3M, DOES NOT POSE A HEALTH HAZARD AT LOW LEVEL CHRONIC EXPOSURE.

THERE WAS AGREEMENT THAT A DEPARTMENTAL POSITION NEEDED TO BE DEVELOPED CONCERNING THE CONTINUATION OF WORK DIRECTED AT ELIMINATION OF C-8 EXPOSURES OFF PLANT AS WELL AS TO OUR CUSTOMERS AND THE COMMUNITIES IN WHICH THEY OPERATE.

THERE WAS CONSENSUS REACHED THAT THE ISSUE WHICH WILL DECIDE FUTURE ACTION IS ONE OF CORPORATE IMAGE, AND CORPORATE LIABILITY. LIABILITY WAS FURTHER DEFINED AS THE INCREMENTAL LIABILITY FROM THIS POINT ON IF WE DO NOTHING AS WE ARE ALREADY LIABLE FOR THE PAST 32 YEARS OF OPERATION. CORPORATE IMAGE DISCUSSION CENTERED AROUND THE PERCEIVED DILIGENCE VERSUS OUR POLICIES IF WE ELECTED TO STOP WORK.

CURRENTLY, NONE OF THE OPTIONS DEVELOPED ARE, FROM A FINE POWDER BUSSINESS STANDPOINT, ECONOMICALY ATTRACTIVE AND WOULD ESSENTIALLY PUT THE LONG TERM VIABILITY OF THIS BUSSINESS SEGMENT ON THE LINE. FROM A BROADER CORPORATE VIEWPOINT THE COSTS ARE SMALL.

THE BASIS FOR A DECISION AT THIS POINT IS SUBJECTIVE AND IS MADE MORE DIFFICULT BY OUR CURRENT UNDERSTANDING OF TECHNOLOGY AND COST, AND THE IMPACT ON THE FINE POWDER BUSSINESS. IT'S NOT AN EASY AND OBVIOUS DICISION AS FOR EXAMPLE TBSA WAS.

RJZ009986

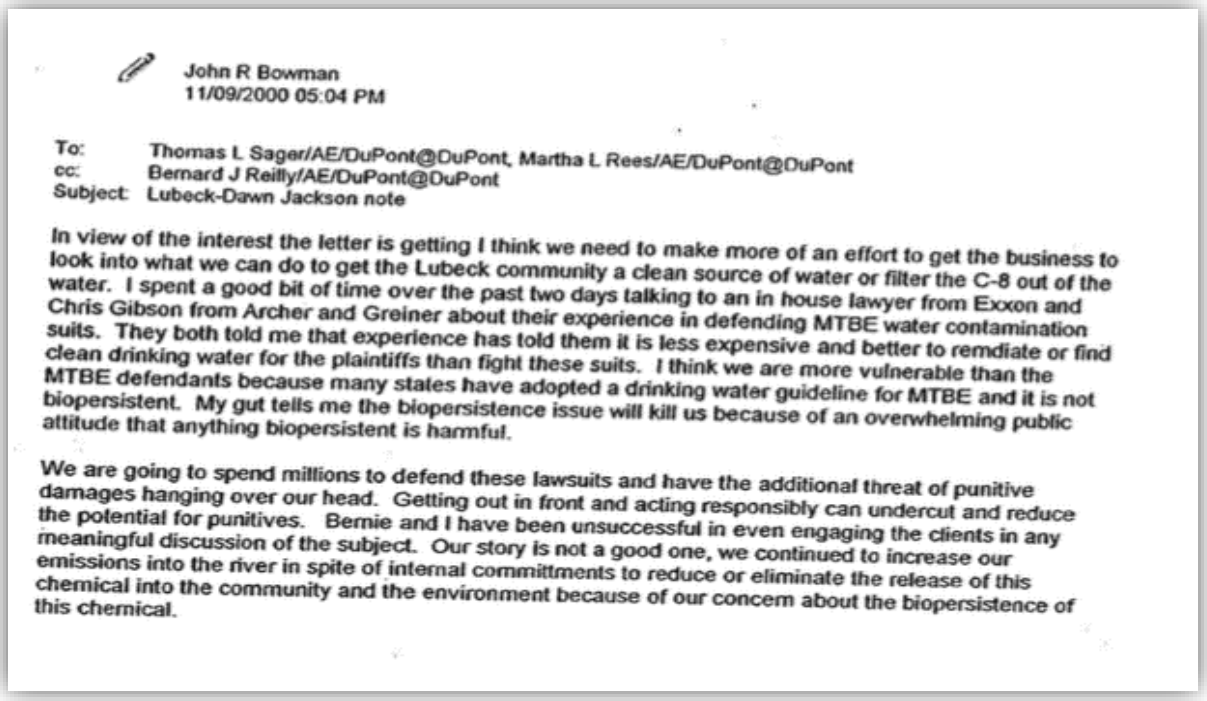
37. Despite knowledge of potential health hazards and contamination, Old DuPont introduced Stainmaster® carpet to the public in 1986, spending $10 million on the first campaign of national advertisements. Old DuPont marketed Stainmaster® carpet as safe for families and targeted families with babies in particular, through advertisements such as those below, whose misleading messages DuPont aimed to get into every American household.


Stainmaster Xtra Life*.
You Don't Have to Baby It.
Xtra Life
DUPONT
STAINMASTER
CARPET
Now there really is a carpet that passes the Terrible Toddler Test – yet looks good enough for any room. Stainmaster Xtra Life Carpet stands up to foot traffic better because it resists matting and crushing*. It has superior stain resistance, too. It's certified and warranted by DuPont*. And it comes in a wide range of styles and colors. See it today. And remember: it never has to be babied.
BARRY DECORATORS
Haddonfield, NJ
(609) 429-5044
Cherry Hill, NJ
(609) 795-0766
BOB WAGNER'S MILL CARPET
Downingtown, PA
(215) 269-7808
West Chester, PA
(215) 430-4004
FEASTERVILLE FLOOR COVERING
418 W. Street Road
Feasterville, PA
(215) 355-2510
LOMAX RUG CO. &
NO WAX VINYL OUTLET
2940 Jasper Street
Philadelphia, PA
(215) 739-6110
PALA TILE & CARPET
1804 Kirkwood Highway
Wilmington, DE
(302) 998-0585
ROY LOMAS CARPET
2150 Detweiler Road
Kulpsville, PA
(215) 256-9575

38. However, infants and toddlers in homes with Stainmaster® carpets are consistently exposed to PFAS. According to the Centers for Disease Control and Prevention, infants and toddlers are at increased risk of ingesting these chemicals through hand to mouth transfer of PFAS from carpets. Similarly, the EPA reported that children are particularly susceptible to inhaling PFAS in carpets, with inhalation levels reaching 32,500 pg/cm^3.

39. Old DuPont also continued to advertise its Teflon® brand for household use, touting nonstick benefits but failing to disclose to consumers the serious adverse effects of PFAS. On information and belief, the advertisements below are from the 1990s.

40. In 2000, the email below from Old DuPont employees demonstrated that the company was aware that biopersistence is an important consumer issue due to "an overwhelming public attitude that anything biopersistent is harmful," yet they continued to conceal the biopersistence of PFAS in chemical products such as Teflon®.



John R Bowman
11/09/2000 05:04 PM

To: Thomas L Sager/AE/DuPont@DuPont, Martha L Rees/AE/DuPont@DuPont
cc: Bernard J Reilly/AE/DuPont@DuPont
Subject: Lubeck-Dawn Jackson note

In view of the interest the letter is getting I think we need to make more of an effort to get the business to look into what we can do to get the Lubeck community a clean source of water or filter the C-8 out of the water. I spent a good bit of time over the past two days talking to an in house lawyer from Exxon and Chris Gibson from Archer and Greiner about their experience in defending MTBE water contamination suits. They both told me that experience has told them it is less expensive and better to remdiate or find clean drinking water for the plaintiffs than fight these suits. I think we are more vulnerable than the MTBE defendants because many states have adopted a drinking water guideline for MTBE and it is not biopersistent. My gut tells me the biopersistence issue will kill us because of an overwhelming public attitude that anything biopersistent is harmful.

We are going to spend millions to defend these lawsuits and have the additional threat of punitive damages hanging over our head. Getting out in front and acting responsibly can undercut and reduce the potential for punitives. Bernie and I have been unsuccessful in even engaging the clients in any meaningful discussion of the subject. Our story is not a good one, we continued to increase our emissions into the river in spite of internal committments to reduce or eliminate the release of this chemical into the community and the environment because of our concern about the biopersistence of this chemical.

41. Old DuPont also began to assemble a litigation defense team, which included hiring an outside consulting company called the Weinberg Group. In a 2003 letter to Old DuPont, the Weinberg Group recommended that Old DuPont "implement a strategy at the outset which discourages government agencies, the plaintiff's bar, and misguided environmental groups from pursuing this matter any further . . . ." The strategy would include "facilitating the publication of papers and articles dispelling the alleged nexus between PFOA and teratogenicity as well as other claimed harm" and "establish[ing] not only that PFOA is safe over a range of serum concentration levels, but that it offers real health benefits . . . ."

42. In 2004, EPA filed an administrative enforcement action against Old DuPont based on its failure to disclose toxicity and exposure information for PFOA in violation of the federal Toxic Substances Control Act ("TSCA") and Resource Conservation and Recovery Act ("RCRA"). Old DuPont eventually settled the lawsuit by agreeing to pay over $16 million in civil

administrative penalties and conduct supplemental environmental projects. EPA called the settlement the "largest civil administrative penalty EPA has ever obtained under any federal environmental statute."

43. Old DuPont's own Epidemiology Review Board ("ERB") repeatedly raised concerns about Old DuPont's statements to the public that there were no adverse health effects associated with human exposure to PFOA. For example, in February 2006, the ERB "strongly advise[d] against any public statements asserting that PFOA does not pose any risk to health" and questioned "the evidential basis of [Old DuPont's] public expression asserting, with what appears to be great confidence, that PFOA does not pose a risk to health."

44. In February 2006, the New York Times noted that DuPont ran full page advertisements in its newspaper and other newspapers continuing to state that Teflon® is safe. Below is the advertisement, which claims that Teflon® has been "safely used for 40 years" and continues to omit that PFOA exposure was known to Old DuPont to cause harm to humans.


THE NEW YORK TIMES, FRIDAY, FEBRUARY 3, 2006
A9
Teflon®
Non-Stick Coating
is Safe.
DuPont
Teflon
Convenient. Tested. Trusted.
The facts are these:
• Your cookware coated with Teflon® non-stick is safe. Cookware coated with Teflon® has been safely used for more than 40 years.
• Cookware with Teflon® non-stick coating shows no detectable levels of PFOA, according to independent studies and published research conducted under normal cooking conditions. There has been a lot of confusion about PFOA, a common chemical used in the manufacture of non-stick coatings. Cooking with pans coated with Teflon® non-stick does not release PFOA into your food.
• The government is studying PFOA, not Teflon®. DuPont has been recognized by the U.S. Environmental Protection Agency for our leadership in reducing PFOA emissions. The EPA has consistently said there is no reason to stop using non-stick cookware.
Trust the brand that has been used in homes for over 40 years: Teflon®. To learn more, please go to Teflon.com.
DUPONT
The miracles of science™

45. Despite its knowledge regarding PFOA's toxicity, Old DuPont continued to claim that PFOA posed no health risks. On information and belief, Old DuPont continued to market and sell Teflon® containing PFOA until 2007. Old DuPont knew these statements were not true but did not correct them.

46. Old DuPont advertised consumer brands using PFAS chemicals as safe for home use in a variety of contexts. On information and belief, all of the advertisements throughout this section promoted products containing PFAS chemicals. The advertisements, which include television advertisements, range in time from the 1960s to the early 2000s.

3M's Deception Related to PFAS Products

47. 3M has known for decades that the PFAS contained in its products, such as PFOS, are toxic and adversely affect the environment and human health. Despite this knowledge, 3M has advertised brands, such as Scotchgard, as consumer-friendly and safe for families.

48. 3M advertised Scotchgard Protector in the mid-1950s as a coating that could be used to protect fabrics from water and other fluids. From 1970 to 2002, paper and carpet treatments were the most common use of PFOS substances.

49. On information and belief, 3M's Scotchban paper protector was used for non-food packaging as early as the 1950s, and was later used in food paper packaging around 1970. Paper mills would apply Scotchban solution to make paper cups, cake mixes, pet food, and more as the grease and water resistant chemicals would not impact the appearance or other properties of the paper.

50. By 1956, 3M's PFAS were found to bind to proteins in human blood, resulting in bioaccumulation of those compounds in the human body. 3M knew as early as 1960 that its PFAS waste could leach into groundwater and otherwise enter the environment. An internal 3M

memorandum from 1960 described 3M's understanding that such wastes "[would] eventually reach the water table and pollute domestic wells." As early as 1963, 3M knew that its PFAS were highly stable in the environment and did not degrade after disposal. Despite this knowledge, 3M continued to market its products to customers, misrepresented them as safe for household and family use, and failed to disclose information regarding potential health and environmental issues to consumers to make educated purchasing decisions.

51. For instance, this advertisement from 1961 promotes the benefits of Scotchgard products to families and children in the household without disclosing the known pollutant effects.

52. The advertisement below, on information and belief from 1965, advertises the benefits of Scotchgard on a furniture company's products – especially when it comes to young children. Ironically, the advertisement states "live dangerously," but it implies that your furniture

will be safer with Scotchgard and that your children may safely use it. 3M's logo and Scotchgard trademark are both present in this ad.

53. This advertisement, on information and belief from 1967, shows a large family and friends with children and babies, and says the mother sprays "everything she wants to protect" with Scotchgard. This clearly conveys the product is safe for family and household use.

54. By the 1970s, 3M had become concerned about the risks posed to the general population by exposure to 3M's fluorochemicals. In fact, around this time, 3M abandoned a study of its fluorochemicals after the company's release of said chemicals during the study caused

severe pollution of nearby surface waters. In 1975, 3M found there was a "universal presence" of PFAS (PFOA and PFOS) in blood serum samples taken from individuals across the United States. Since PFAS are not naturally occurring, this finding reasonably alerted 3M to the high likelihood that its products were a source of this PFAS—a scenario 3M discussed internally, but did not share outside the company. This finding also alerted 3M to the likelihood that PFAS are mobile, persistent and bioaccumulative because these characteristics would explain the presence of PFAS in human blood. Yet, 3M continued to conceal these facts from the public who could have used this information to make educated purchasing decisions.

55. As early as 1976, 3M began monitoring the blood of its employees for PFAS because the company was concerned about their effect on human health. In 1978, 3M conducted PFOS and PFOA studies in monkeys and rats. All monkeys died within the first few days or weeks after being given food contaminated with PFOS. The studies also showed that PFOS and PFOA affected the liver and gastrointestinal tract of the species tested. In the late 1970s, 3M studied the fate and transport characteristics of PFOS in the environment, including in surface water and biota. A 1979 report drew a direct line between effluent from 3M's Decatur, Alabama plant and fluorochemicals bioaccumulating in fish tissue taken from the Tennessee River adjacent to the 3M plant. 3M did not reveal the harms to these animals to consumers, facts which could have impacted their purchasing decision, and instead continued to assure consumers that the products were safe.

56. In 1981, on information and belief, this advertisement from 3M shows a mother and child from the 1960s and the 1980s, and says that Scotchgard "makes living a little easier." In actuality, 3M already had studied its employees' blood and performed other studies due to concerns regarding health effects.

57. In 1983, 3M's scientists opined that concerns about PFAS "give rise to legitimate questions about the persistence, accumulation potential, and ecotoxicity of fluorochemicals in the environment." In 1984, 3M's internal analyses proved that fluorochemicals were likely bioaccumulating in 3M's employees.

58. In the 1980s, despite concerns regarding PFAS's negative impact on animal health, on information and belief, 3M continued to advertise Scotchgard on television without disclosing serious potential health risks, and instead touted benefits to the household. On information and belief, advertisements such as the one below showed common household stains

and how Scotchgard can protect a household, saying it "keeps ordinary spills from becoming extraordinary stains."

59. According to a 3M environmental specialist, Rich Purdy, who resigned from his position due to the company's inaction over PFOS's environmental impacts, PFOS is "the most insidious pollutant since PCB" because it is "does not degrade," and is "more toxic." The specialist claimed that 3M omitted "the most significant information" from its report to the EPA and continues to sell PFOS despite knowledge that PFOS is "biomagnifying in the food chain and harming sea mammals." Purdy further discussed concerns that 3M had asked scientists not to put their thoughts in writing due to the "legal discovery process." Ultimately, he concluded "it is unethical to be concerned with markets, legal defensibility, and image over environmental safety." 3M had resisted calls from its own ecotoxicologists going back to 1979 to perform an

ecological risk assessment on PFOS and similar chemicals. At the time of the specialist's resignation in 1999, 3M continued its resistance.

60. Despite its understanding of the hazards associated with the PFAS in its products, 3M suppressed scientific research on the hazards associated with them and mounted a campaign to control the scientific dialogue on the fate, exposure, analytics, effects to human health, and ecological risks of PFAS. At least one scientist funded by 3M saw his goal as "keep[ing] 'bad' papers [regarding PFAS] out of the literature" because "in litigation situations," those articles "can be a large obstacle to refute." Thus, 3M deceived others and hid the negative effects of PFAS. For example, Dr. Rich Purdy wrote a letter detailing, without limitation: (1) 3M's tactics to prevent research into the adverse effects of its PFOS, (2) 3M's submission of misinformation about its PFOS to the EPA, (3) 3M's failure to disclose substantial risks associated with its PFOS to the EPA, (4) 3M's failure to inform the public of the widespread dispersal of its PFOS in the environment and population, (5) 3M's production of chemicals it knew posed an ecological risk and a danger to the food chain, and (6) 3M's attempts to keep its workers from discussing the problems with the company's fluorochemical projects to prevent their discussions from being used in the legal process.

61. By the late 1990s, 3M's own toxicologist had calculated a "safe" level for PFOS in human blood to be 1.05 parts per billion at a time when 3M was well aware that the average level of PFOS being found in the blood of the general population of the United States was approximately 30 times higher than this "safe" blood level. Yet, 3M did not disclose that information to regulatory authorities or the public to make consumer purchasing decisions relating to 3M's PFAS products.

62. Despite its knowledge of the risks associated with exposures to its PFAS products, when 3M announced that it would phase out its PFOS, PFOA, and related products in 2000, it falsely asserted "our products are safe," instead of disclosing what it knew about the substantial threat posed by PFOS and PFOA. 3M also claimed to the press that it "was a complete surprise that [PFOS] was in the blood bank supplies" when they had been on notice of this issue for years.

TOP OF THE NEWS

EPA says it pressured 3M over Scotchgard chemical

DAVID BARBOZA NEW YORK TIMES

CHICAGO

The Environmental Protection Agency said Thursday that it had pressed 3M Co. to come up with a solution after the company's own tests had shown that a chemical compound used in Scotchgard products could pose a risk to human health and the environment.

The EPA account differs from that of 3M, which said earlier this week that it had decided to stop making the chemical used in Scotchgard and many other products by the end of the year because the tests showed that the chemical compounds failed to decompose in the environment.

Officials of 3M say they have no evidence that the chemicals pose a long-term threat to human health.

The company said it negotiated with the EPA but its decision was voluntary and there was never a discussion of a recall of the products.

On Tuesday, Charles Reich, 3M's executive vice president for specialty material markets, said, "Our decision to phase out production is based on our principles of responsible environmental management."

The EPA confirmed that the agency had not issued an ultimatum to 3M.

While the EPA said it did not see an immediate safety risk for consumers using products now on the market, agency officials said they grew concerned about potential long-term health risks to humans after a 3M study showed that the chemical, perfluorooctanyl sulfonate, lingered for years in human blood and animal tissue and that high doses were known to kill laboratory rats.

"The results raised a number of concerns," said Stephen Johnson, who works in the office of prevention, pesticides and toxic substances at the EPA.

"What it suggests to us is that there are potentially long-term consequences. But we don't have evidence it is unsafe now."

Officials of 3M, however, say they are absolutely confident that their products are safe, and that there are no long-term consequences to human health.

"This isn't a health issue now, and it won't be a health issue," said Larry Zobel, the medical director at 3M, which is based in Maplewood, Minn.

"To the question of whether this builds up in humans, it would have to be a long time, like hundreds of thousands of years to be a threat," he said.

The EPA said its decision to press 3M rested on four concerns: the compound is persistent in the environment; it appears in wildlife and human tissue around the world; it appears in human blood samples taken from around the world; and, based on the study of laboratory rats, it has the potential to harm humans.

3M Co. said Tuesday that it would pull some Scotchgard products off the market because of concerns over a key ingredient. EPA officials said they grew concerned about potential long-term health risks to humans after a 3M study showed that the chemical, perfluorooctanyl sulfonate, lingered for years in human blood and animal tissue.

The EPA said it was first alerted to the study of laboratory rats shortly after it was conducted in 1998.

In that study, male and female rats were given doses of the chemical and then mated. When a pregnant rat continued to get regular doses of about 3.2 milligrams per kilogram of body weight, most of the offspring died within four days.

"With all that information, we finally talked to 3M and said that raises a number of concerns. What are you going to do?" said Johnson at the EPA.

There is still a difference of interpretation, however.

Officials of 3M said the doses given to the rats were extremely high, but EPA officials said that few other chemicals would have as severe an effect.

"This is fairly toxic stuff in rats," one EPA official said. "There's clear evidence it presents a problem in rats."

But 3M said it had not yet determined the cause of death in the rats nor how humans or animals ingested the chemicals so that it appeared in tissue or blood samples.

"That's a very interesting question," Zobel said. "We can't say how it gets into anybody's blood."

As a result of that uncertainty, and the persistence of the compound in the environment, 3M said it would do away with the chemistry by the end of the year.

63. 3M continued to mislead the public and stated that its decision was simply made to "reallocat[e] resources," and still marketed its products as safe for consumer and family use.

64. Aftermarket consumer use to treat home items for stain and water resistance is especially concerning because chemicals are even more likely to transfer from the products

during application or use to indoor air and dust. Even treated fabrics, like a carpet or upholstered chair coated with Scotchgard, could create exposure. Advertisements demonstrate that 3M's marketing did not disclose the harms of its products, and in fact misrepresented them as safe for use by families. Advertisements show families gathered together using Scotchgard products, or common household uses of the products, making claims such as "You can relax." On information and belief, similar advertisements continued throughout the lifespan of the Scotchgard PFOS product.

65. On September 10, 2019, 3M's Senior Vice President for Corporate Affairs, Denise Rutherford, testified in a Congressional Hearing before the Committee on Oversight and Reform of the United States House of Representatives Subcommittee on the Environment. Rutherford stated that "[m]any of [3M's] products are essential to making people's lives better." More troublingly, Rutherford falsely asserted that "the weight of scientific evidence has not established that PFOS, PFOA, or other PFAS cause adverse human health effects. Public health agencies and independent science review panels, while acknowledging certain possible associations, agree with that basic fact."

66. 3M continued engaging in deceptive practices in 2022, coinciding with its announcement that it would phase out all of its PFAS products by 2025. 3M represented that "PFAS can be safely made and used," and that its "products are safe for their intended uses." Not only did 3M make statements it knew to be false, but it omitted material information relating to the health hazards of their products.

67. As of the filing of this Complaint, 3M has not stopped its deceptive advertisements, and continues promoting that its "products, including those containing PFAS, are safe and effective for their intended uses in everyday life."

Old DuPont's Multi-Step, Years-Long Scheme Resulting in New Companies Assuming PFAS Liabilities

68. In or about 2013, Old DuPont began planning a series of corporate restructurings designed to separate its valuable assets from its billions of dollars of legacy liabilities—especially those arising from its historical use of PFOA and other PFAS.

69. For more than five decades, Old DuPont manufactured, produced, or utilized PFOA and other PFAS at plants in New Jersey, West Virginia, and North Carolina, among others. By 2013, Old DuPont knew it was facing an avalanche of claims related to its PFAS business.

70. For example, a 2012 study—funded by Old DuPont pursuant to a 2005 class action settlement—confirmed "probable links" between PFOA exposure and several serious human diseases: medically diagnosed high cholesterol, ulcerative colitis, pregnancy induced hypertension, thyroid disease, testicular cancer, and kidney cancer. As a result, more than 3,500 class members with one or more of those linked diseases filed personal injury claims against Old DuPont. Under the terms of the 2005 class settlement, Old DuPont had agreed not to contest the fact that the class members' exposure to PFOA could have caused each of the linked diseases, significantly limiting Old DuPont's available defenses to liability.

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

72. At the same time, Old DuPont and Old Dow were discussing a possible "merger of equals." But no rational merger partner, including Old Dow, would agree to a transaction that would expose it to the substantial PFAS and environmental liabilities that Old DuPont faced.

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

74. Old DuPont engaged in a coordinated three-part restructuring plan that consisted of (i) Old DuPont's attempt to cast off its massive performance chemicals liabilities onto Chemours, its then newly-formed wholly owned subsidiary, and spinning off Chemours as a separate publicly traded company; (ii) the creation of New DuPont to facilitate a purported merger with Old Dow; and (iii) a series of internal restructurings and divestitures that resulted in the spinoff of Old DuPont to its newly formed parent, Corteva. In the end, New DuPont and Corteva assumed Old DuPont's liabilities related to, among other things, its use and manufacture of PFAS chemicals, and are directly liable for Old DuPont's conduct at issue in this case.

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

i. Step 1: The Chemours Spinoff

76. The first step in Old DuPont's scheme was to create Chemours as a wholly owned subsidiary and transfer its performance chemicals business, which included Teflon® and other products associated with Old DuPont's historic use of PFOA ("Performance Chemicals Business") to Chemours. Then, on July 1, 2015, Old DuPont spun off Chemours as a separate public entity and saddled Chemours with Old DuPont's massive legacy liabilities (the "Chemours Spinoff").

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

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

79. Chemours, in turn, broadly assumed Old DuPont's massive liabilities relating to Old DuPont's Performance Chemicals Business and other unrelated business lines, set forth in detail in the nonpublic schedules and exhibits to the Chemours Separation Agreement.

80. Specifically, the Chemours Separation Agreement requires Chemours to indemnify Old DuPont against, and assume for itself, all "Chemours Liabilities," which are defined broadly to include, among other things, "any and all Liabilities relating . . . primarily to, arising primarily out of or resulting primarily from, the operation or conduct of the Chemours Business, as conducted at any time prior to, at or after the Effective Date," which includes Old DuPont's historic liabilities relating to and arising from its marketing and operation of the Performance Chemicals Business, such as its liabilities arising from PFAS.

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

82. Notwithstanding the billions of dollars in PFAS liabilities that Chemours would face, on July 1, 2015, Old DuPont caused Chemours to transfer to Old DuPont approximately $3.4 billion as a cash dividend, along with a "distribution in kind" of promissory notes with an aggregate principal amount of $507 million. In total, Old DuPont extracted approximately $3.9 billion from Chemours.

83. Old DuPont required Chemours to fund these distributions through financing transactions, including senior secured term loans and senior unsecured notes totaling approximately $3.995 billion, on May 12, 2015.

84. Old DuPont, however, transferred only $4.1 billion in net assets to Chemours. At the end of 2015, Chemours reported a total net worth of just $130 million. But Chemours's estimated liabilities—which at the time totaled $6.168 billion—vastly underestimated the true value of its liabilities, including the PFAS liabilities it had assumed from Old DuPont, which Chemours knew or should have known would cost it billions of dollars.

85. In fact, Old DuPont spun off Chemours into a state of insolvency. Indeed, Old DuPont left Chemours so undercapitalized that in May 2019, Chemours sued Old DuPont, New DuPont, and Corteva in Delaware Chancery Court. *See The Chemours Company v. DowDuPont, et al.*, C.A. No. 2019-0351 (Del. Ch. Ct., filed May 13, 2019). Chemours alleged, among other things, that if (i) the full value of Old DuPont's potential PFAS liabilities was properly estimated and (ii) Chemours were required to satisfy all the potential liabilities DuPont transferred to it, then Chemours would have been insolvent at the time it was spun off from Old DuPont.

ii. Step 2: The Old Dow/Old DuPont "Merger"

86. After the Chemours Spinoff, Old DuPont took the untenable position that it was somehow no longer responsible for the widespread PFAS liabilities that it had accrued over several decades. Of course, Old DuPont could not contractually discharge all of its historical liabilities through the Chemours Spinoff, and Old DuPont remained liable for the liabilities it had caused and Chemours had assumed.

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

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

89. To effectuate the transaction, Old DuPont and Old Dow entered into an Agreement and Plan of Merger (the "DowDuPont Merger Agreement") that provided for the formation of a new holding company renamed first as DowDuPont and then renamed again as DuPont de Nemours, Inc. (*i.e.*, New DuPont), of which Old DuPont and Old Dow became wholly owned subsidiaries.

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

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

91. Following the DowDuPont Merger, DowDuPont underwent a significant internal reorganization and engaged in numerous business segment and product line "realignments" and "divestitures." The net effect of these transactions has been the transfer, either directly or indirectly, of a substantial portion of Old DuPont's assets out of the company, frustrating Old DuPont's creditors, including with respect to its substantial PFAS liabilities.

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

93. DowDuPont then incorporated two companies (i) Corteva and (ii) New Dow. In accordance with the merger plan, each of these three companies received one of the three business divisions associated with Old DuPont's and Old Dow's historic assets, and was subsequently separated as an independent, publicly traded company.

94. The mechanics of the separations are governed by the April 1, 2019 Separation and Distribution Agreement among Corteva, New Dow, and DowDuPont (the "DowDuPont Separation Agreement") and a subsequent June 1, 2019 Letter Agreement between Corteva and DowDuPont (the "Letter Agreement").

95. The DowDuPont Separation Agreement allocated the assets and liabilities primarily related to the respective business divisions between the three companies: DowDuPont retained the assets and liabilities associated with the Specialty Products Business and several "non-core" business segments and product lines that once belonged to Old DuPont; Corteva

received the assets and liabilities associated with the Agriculture Business; and New Dow received the assets and liabilities associated with the Materials Science Business.

96. DowDuPont also "contributed" Old DuPont to Corteva, and Old DuPont remains a wholly-owned subsidiary of Corteva to this day.

97. Pursuant to the DowDuPont Separation Agreement and Letter Agreement, Corteva and New DuPont also assumed direct financial liability for legacy liabilities arising from Old DuPont's historic use of PFOA and other PFAS and its former Performance Chemicals Business, *i.e.*, the same liabilities that DuPont had caused Chemours to assume in 2015. While New DuPont and Corteva initially tried to bury the details in nonpublic schedules, New DuPont and Corteva's express assumption of Old DuPont's historic liabilities has been revealed through other litigation, and includes all liability associated with PFAS. The State of Texas can therefore bring claims against New DuPont and Corteva directly for Old DuPont's deceptive marketing of consumer PFAS-containing brands.

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

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

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

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

102. The net result of these transactions was to strip away valuable tangible assets from Old DuPont—once available to satisfy successful claims brought by potential plaintiffs such as the State of Texas—and transfer those assets to New DuPont and Corteva for far less than the assets are worth.

103. Many details about these transactions were hidden from the public in confidential schedules and exhibits to the DowDuPont Separation Agreement and the Letter Agreement. Old DuPont, New DuPont, and Corteva buried these details in an apparent attempt to hide from creditors, like the State of Texas, where Old DuPont's valuable assets went and the inadequate consideration that Old DuPont received in return. Moreover, neither New DuPont nor Corteva has publicly conceded that they assumed Old DuPont's liabilities arising from its historic use of PFOA and other PFAS. However, certain courts have required New DuPont and Corteva to disclose the nonpublic portions of the restructuring agreements—including the DowDuPont Separation Agreement and Letter Agreement. Under the plain language of those agreements, New DuPont and Corteva contractually assumed Old DuPont's liabilities arising from its historic use of PFOA and other PFAS, and are therefore directly liable for Texas's claims against Old DuPont in this case.

104. Indeed, several courts have held that New DuPont and Corteva contractually assumed Old DuPont's PFAS liabilities. The North Carolina Supreme Court, for example, held that New DuPont and Corteva expressly assumed Old DuPont's PFAS liabilities pursuant to the DowDuPont Separation Agreement and Letter Agreement. *See State ex rel. Stein v. E. I. Du Pont De Nemours & Co.*, 382 N.C. 549, 563 (N.C. 2022) ("Corteva and New DuPont expressly assumed Old DuPont's PFAS liabilities, including those liabilities arising in North Carolina"). The trial court subsequently entered summary judgment against New DuPont and Corteva on the

issue of their contractual assumption of the PFAS liabilities of Old DuPont. *See State ex rel. Stein v. E.I. du Pont de Nemours & Co.*, No. 20 CVS 5612, 2024 WL 472553, at *6 (N.C. Super. Feb. 7, 2024).

XI. COUNT I: VIOLATIONS OF THE DTPA

105. The State of Texas incorporates Paragraphs 1 through 104, as is fully set forth herein.

106. Defendants have engaged in false, misleading, or deceptive acts or practices in the conduct of trade or commerce, in violation of DTPA § 17.46(a).

107. Defendants represented that their goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities which they do not have, in violation of DTPA § 17.46(b)(5).

108. Defendants represented that goods or services are of a particular standard, quality, or grade, or that goods are of a particular style or model, when they were another, in violation of DTPA § 17.46(b)(7).

109. Defendants failed to disclose information concerning goods or services which was known at the time of the transaction, and such failure to disclose this information was intended to induce the consumer into a transaction into which the consumer would not have entered had the information been disclosed, in violation of DTPA § 17.46(b)(24).

110. New DuPont and Corteva agreed to assume Old DuPont's liabilities described above.[1]

[1] Note that this transaction is being challenged as a fraudulent transfer in numerous actions across the country, for example in *The State of Texas v. 3M Company, et al*., Case No. 2:23-cv-04294.

XII. PRAYER

111. WHEREFORE, PREMISES CONSIDERED, the State of Texas prays that Defendants be cited according to the law to appear and answer herein; that after due notice and hearing, a TEMPORARY INJUNCTION be issued; and that after due notice and trial, a PERMANENT INJUNCTION be issued. The State of Texas prays that the Court will issue an ORDER enjoining Defendants, their officers, agents, servants, employees, and any other persons in active concert or participation with Defendants from the following:

A. Misrepresenting the safety or human health risks of chemicals sold by you;

B. Failing to clearly and conspicuously disclose human health risks with products sold by you;

C. Selling or offering for sale any goods which contain PFAS chemicals known by you to create health and safety concerns to users of those goods;

D. Causing goods in the stream of commerce to include any PFAS chemicals which are known by you to create health and safety concerns to the users of those goods; and

E. Advertising or marketing any goods using the direct or implied representation that goods are safe for household or consumer use, if such goods are known by you to include chemicals that create health risks to the users of those goods.

112. Plaintiff further requests that this Court award money damages.

113. Plaintiff further requests that Defendants be ordered to pay to the State of Texas:

A. Civil penalties of up to $10,000.00 per violation of the DTPA;

B. Pre-judgment and post-judgment interest on all awards of restitution, damages, or civil penalties, as provided by law;

C. All costs of Court, costs of investigation, and reasonable attorney's fees pursuant to Texas Government Code § 402.006(c); and

D. Decree that all of Defendants' fines, penalties or forfeitures are not dischargeable in bankruptcy. *See* 11 U.S.C. § 523(a)(7).

114. Plaintiff prays for all further relief, at law or inequity, to which it is justly entitled.

Dated: December 11, 2024

Respectfully Submitted,

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SOAH DOCKET NO. 582-24-22552
TCEQ DOCKET NO. 2023-1591-MWD

APPLICATION OF CORIX UTILITIES (TEXAS) INC. FOR TPDES PERMIT NO. WQ0013977001	**§**	**BEFORE THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY**

ENVIRONMENTAL STEWARDSHIP'S EXCEPTIONS TO THE PROPOSAL FOR DECISION

May 27, 2025

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TO THE HONORABLE COMMISSIONERS:

Protestant Environmental Stewardship ("ES") files these Exceptions to the Proposal for Decision and urges the Commission to deny the Application by Corix Utilities (Texas) Inc. ("Applicant" or "Corix") for Major Amendment to Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0013977001 (the "Application"). For support, ES respectfully offers the following:

I. Introduction

Environmental Stewardship excepts to the ALJ's acceptance of less precise default data to set standards and monitor water quality on segments of the Colorado River that have been designated as exceptional aquatic-life use segments. This designated standard is the highest water quality standard in the State of Texas. As such, all procedures, processes, and data that are used to conserve and protect this high standard must be commensurate with the quantitative and narrative water quality measures that are expected to be found in these segments.

Corix seeks permission to increase the quantity of wastewater discharged from its facility within McKinney Roughs Nature Area from a current volume of 0.05 million

gallons per day (mgd) to an ultimate quantity of 0.51 mgd. Were the Commission to authorize this requested permit amendment, Corix's discharge would be ten times larger than the currently authorized discharge. Yet, the PFD and the Proposed Order fail to include any conditions that ensure protection of water quality—even though evidence presented during the hearing indicates that the receiving waters are already experiencing water quality degradation.

II. Water Quality

A. Tier 1 Antidegradation Review

The Tier 1 Antidegradation review requires that existing uses and water quality sufficient to protect those uses must be maintained. 30 Tex. Admin. Code § 307.5(b)(1).

The wastewater effluent would be discharged into an unnamed tributary of the Colorado River within the McKinney Roughs Nature Park and reaches the Colorado River only about a mile downstream. This area of the Colorado River has been designated by the TCEQ as Segment 1428; the discharge would enter the Colorado River in Assessment Unit 1428_01, which is the most downstream assessment unit in the segment.

TCEQ Rule 307.10(1) designates that Segment 1428 has exceptional aquatic life uses, primary contact recreation, and public water supply. Any permit issued by the Commission must therefore ensure that exceptional aquatic life and contact recreation uses will be protected. But the permit proposed for issuance here fails to achieve this.

1. The PFD misapplies the parties' evidentiary burdens and gives short shrift to the evidence presented by Protestant.

The PFD acknowledges that Corix bears the burden of proof, but then proceeds to characterize Protestant's evidence—"two photographs of algal growth" in water that is not yet on the State's inventory of impaired water—as inadequate to satisfy the Protestant's burden of establishing that the water quality uses will be impaired. PFD, p. 23 & Finding of Fact 36 of Proposed Order ("Photographs of algae in the unnamed tributary and the Colorado River do not establish that the water quality uses will be impaired."). This analysis and characterization of Protestant's evidence is inaccurate.

As an initial matter, Environmental Stewardship was not tasked, here, with proving that existing uses will not be protected. The burden of proof on the ultimate merits of the contested issues remains, at all times, with the Applicant, Corix. That is, Corix must establish by a preponderance of the evidence that the Application would not violate applicable requirements and that the permit, if issued consistent with the Draft Permit, would protect human health and safety and the environment. A protesting party's burden, then, is similar to one of production rather than proof in the sense of ultimate persuasion, under Texas Government Code Section 2003.047(i-2).

Here, Environmental Stewardship satisfied its burden of production, and it did so by introducing more than only two photos of algal growth. Environmental Stewardship presented sufficient evidence to rebut any presumption that Segment 1428's exceptional aquatic life uses would be protected and maintained. Indeed, TCEQ's own data demonstrate that the receiving waters are already experiencing degradation. The additional

pollution that would be authorized by the Draft Permit is likely to worsen existing receiving water quality. Corix failed to prove otherwise, and the ED failed to include any special permit conditions that would address this degradation of water quality.

2. Environmental Stewardship's evidence demonstrated degradation of water quality in the receiving waters—thus, satisfying its burden of production.

Contrary to statements in the PFD and the Proposed Order, Environmental Stewardship presented evidence consisting of more than only two photos regarding this issue. Environmental Stewardship's evidence satisfied its burden of production, thus rebutting the prima facie presumption. Importantly, Environmental Stewardship was not required to "establish that the water quality uses will be impaired," as suggested by the PFD and the Proposed Order. *See* Proposed Order, FOF 36. The burden of establishing that water quality uses will be protected lies with Corix. That is, Corix bore the burden of establishing by a preponderance of the evidence that exceptional aquatic life and contact recreation uses will be protected —which it failed to do.

The Tier 1 anti-degradation review requires that existing uses and water quality sufficient to maintain those existing uses must be maintained. For purposes of this regulation, "existing uses" includes more than just the uses that the waters are capable of attaining in their current state. Rather, existing uses includes, "a use that is currently being supported by a specific water body or that was attained on or after November 28, 1975." 30 Tex. Admin. Code § 307.3(27).

Segment 1428 of the Colorado River has designated uses of primary contact recreation, public water supply, exceptional aquatic life use, and a minimum dissolved

oxygen level of 6.0 mg/L. The evidence established that in 1992, the State of Texas listed no concerns for Assessment Unit 1428_01 for Contact Recreation, Fish Community, Macrobenthic community, Nitrate, Ortho-phosphorus or Total Phosphorus. Similarly, before 2000, the State identified no water quality concerns related to nutrients, fish, or macrobenthic communities for Segment 1428.

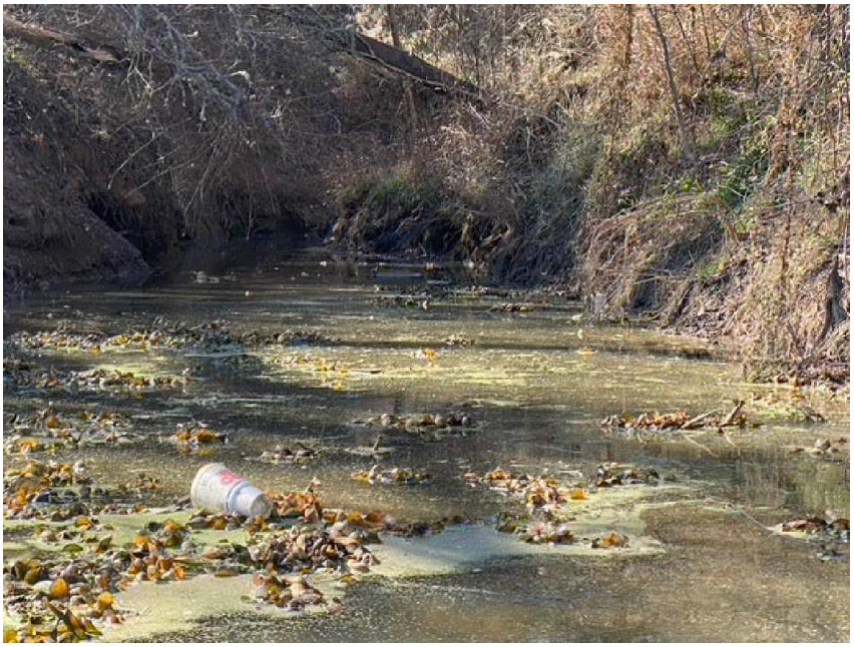
In the last 20 years, however, Segment 1428 of the Colorado River has experienced water quality degradation as evidenced by photos of algal growth, along with other evidence.

Beginning in 2002, Assessment Unit 1428_01 was listed as of concern for Fish Community, Macro-benthic community, Nitrate concentrations, and Ortho-Phosphorus.

In addition, in 2024, the Lower Colorado River Authority performed an Aquatic Life Use monitoring program that documented significant algal growth within the receiving segment of the Colorado River. The 2024 assessment indicates that Assessment Unit 1428_01 is still of concern for Fish Community, Macro-benthic community, Nitrate concentrations, and Ortho-Phosphorus. The study further indicated that during the critical period in July of 2024, the fish presence only reflected high aquatic life uses, while the habitat characteristics were indicative of only intermediate aquatic life uses.

The photos of algal growth referenced in the PFD demonstrated that at the time of the hearing, the receiving water of the Colorado River *continued* to experience water quality degradation—consistent with the LCRA monitoring study—as evidenced by the significant algal growth shown in the photos. The photos were taken near and downstream of the confluence of the unnamed tributary and the Colorado River—indicating that the

specific receiving waters that are relevant in this matter are continuing to experience water quality degradation. The Draft Permit, authorizing a ten-fold increase in wastewater discharge, includes no provisions that would ensure protection of water quality or that would ensure that the water quality were returned to historic exceptional aquatic life uses.



Confluence of Unnamed Tributary and Colorado River
January 23, 2025
Ex. ES-1, p. 2

Aquatic Vegetation Present Shortly Downstream of Confluence of Unnamed Tributary and Colorado River
January 23, 2025
Ex. ES-1, p. 3

These two photos, alone, perhaps do not rise to the level of establishing by a preponderance of evidence that water quality uses in the receiving waters will be impaired (though Environmental Stewardship maintains that they do rebut the prima facie presumption).[1] But these two photographs, taken together with other evidence in the record—including expert testimony by Dr. Ross and Dr. MacLeod, eyewitness testimony by Mr. Martin, and the LCRA monitoring study—demonstrate that water quality uses are currently not being attained or protected. This is a factor that was not considered by the ED

[1] Environmental Stewardship does not concede that the two photographs alone are inadequate to satisfy its burden of production. The PFD, however, indicates that more is required, but does not explain how much evidence is enough to satisfy a protesting party's burden of production. Would 10 photos have been adequate? Would 50 photos have been better? Would a video recording have been more convincing to the ALJ? Environmental Stewardship produced two photos, together with testimony by two experts, eyewitness factual testimony, and LCRA's monitoring study. But Environmental Stewardship would have produced even more photographic evidence if there were some legal standard or legal basis indicating that two photographs are inadequate to satisfy a protesting party's burden of production. No such legal standard was cited in the PFD.

in preparing the Draft Permit or by Corix in preparing its Application. And so, this evidence was sufficient to rebut any presumption that the Draft Permit would protect existing uses attained on or after November 28, 1975.

That the receiving water is not on the State's inventory of impaired water is not indicative that the Tier 1 review has been satisfied. Nor is it indicative that the receiving water is not experiencing degradation of water quality. Permits that are adequately protective of water quality and historical uses—permits that satisfy TCEQ's rules—should prevent a receiving water from degradation that results in being added to the State's inventory of impaired water. The PFD and the Proposed Order suggest that impairment is a necessary prerequisite before TCEQ or the applicant is required to analyze whether water quality degradation is already occurring, but there is no legal support for this arbitrary standard.

In this case, Environmental Stewardship produced evidence indicating that the receiving waters, here, are experiencing degradation, and yet, the Draft Permit does nothing to protect the receiving waters from further degradation of water quality resulting from the proposed ten-fold increase in authorized wastewater discharge. The Draft Permit fails to include conditions that will ensure achievement of the receiving waters' historically higher exceptional aquatic life use. Environmental Stewardship satisfied its burden of production; Corix failed to satisfy its burden of proof.

The PFD and Proposed Order's misapplication of the Protestant's evidentiary burden here, and its mischaracterization of the evidence presented by Protestant to satisfy its burden, have resulted in an erroneous decision.

3. Dissolved Oxygen Modeling

As with other issues discussed in these Exceptions, on this issue, the PFD once again places a more onerous evidentiary burden on Environmental Stewardship than is justified by applicable statutes and TCEQ rules. A proper application of the parties' respective evidentiary burdens would have led to the conclusion that the modeling used to demonstrate compliance with the dissolved oxygen standards was based on unreliable and factually indefensible assumptions, rendering any conclusions based on that modeling erroneous.

The Executive Director evaluated compliance of the permit with the dissolved oxygen standards utilizing the QUAL-TX model. Ex. ED-JM-3. For the unnamed tributary into which the effluent would initially discharge, the model used default hydraulic coefficients. The PFD and Proposed Order concludes that these default coefficients were appropriate. Proposed Order, FOF 30. But the analysis in the PFD does not support this finding; nor does the evidence in the record.

Dr. Ross testified, on behalf of Environmental Stewardship, that the DO modeling used unrealistic assumptions for the unnamed tributary. In particular, she testified that the modeling used coefficients that would reflect a 23.6-foot-wide stream for the entire length of the tributary. But the tributary is approximately 12 feet wide. In fact, there is a culvert only a few feet wide just downstream of the discharge, which is only a foot or two across. Ex. AR (Administrative Record), Tab D, at p. 33. The use of the default assumptions resulted in a prediction of unrealistic results, according to Dr. Ross.

TCEQ's staff witness, Mr. Michalk, agreed with Dr. Ross' critique of the model's reliance on default assumptions. The PFD acknowledges this: "Mr. Michalk agreed with Dr. Ross that the modeling of the unnamed tributary used default hydraulic coefficients that might not match the actual conditions of the stream." PFD, p. 17. Corix did not dispute Dr. Ross' critique; nor did Corix offer any evidence to demonstrate that the default assumptions approximated existing conditions in the unnamed tributary so as to render the default assumptions reliable. In short, there is no dispute that the default assumptions used to model the unnamed tributary failed to reflect existing conditions and thus predicted unreliable and unrealistic results.

Environmental Stewardship thus produced sufficient evidence to rebut the prima facie presumption on this issue, and Corix was tasked with establishing by a preponderance of evidence that the draft permit and proposed discharge would not contribute to a violation of TCEQ's DO standards. Corix failed to satisfy its burden. Corix presented no evidence indicating that the default hydraulic coefficient assumptions in the QUAL-TX model were sufficiently reliable to produce realistic results regarding the unnamed tributary.

Nevertheless, the PFD concludes that "for the unnamed tributary, the evidence shows that while the default assumptions may not match precisely, they are based on established TCEQ standards." But this fails to address the central question presented here: whether the Draft Permit and Corix's proposed discharge will comply with TCEQ's DO standards. The only evidence presented on this issue for the unnamed tributary was the QUAL-TX model—and even the PFD acknowledges that the model relied on unrealistic assumptions that fail to reflect, or even approximate, actual conditions. Thus, the modeling

results do not prove that DO standards have been satisfied here for the unnamed tributary. This is particularly troubling considering that the receiving waters here are designated as having the highest water quality standards in the state: exceptional aquatic-life use. Default modeling assumptions that are perhaps representative of waters throughout the state simply do not provide reliable and realistic data for purposes of ensuring that the proposed discharge into these receiving waters does not result in a violation of DO standards.

Similarly, for Segment 1428 of the Colorado River, the model failed to use realistic assumptions. For instance, the QUAL-TX model is capable of modeling algae and nutrients, but TCEQ staff did not elect to implement these model components. Ex. ES-200, 8:23-25. Further, the model does not account for the impacts of algal blooms. Ex. ES-200, 9:24 – 10:2. The PFD fails to address these deficiencies; nor does it explain why the model should nevertheless be considered sufficiently reliable to conclude that the proposed discharge will not contribute to a violation of DO standards.

B. <u>Tier 2 Antidegradation Review</u>

Segment 1428 of the Colorado River is designated as subject to primary contact recreation use and exceptional aquatic life use. 30 Tex. Admin. Code § 307.10(1). Accordingly, the receiving waters of the Colorado River are "fishable/swimmable," and subject to the requirements of a Tier 2 review.

While the requirement for a demonstration of social or economic necessity is not required for a lowering of water quality by less than a "de minimis" extent, the regulations for a Tier 2 anti-degradation review seek to ensure that a water body does not die a "death of a thousand cuts" – in other words a situation where numerous "de minimis" discharges

result in the degradation of a receiving water body, even if any single discharge would not, by itself, lower water quality by a more than de minimis extent. Thus, the baseline conditions for determining whether degradation will occur are the highest water quality sustained in the receiving waters since November 28, 1975. 30 Tex. Admin. Code § 307.5(c)(2)(B).

TCEQ's Procedures to Implement the Texas Surface Water Quality Standards (commonly referred to as the "IPs") provide, "Baseline conditions are estimated from existing conditions, as indicated by the latest edition of the Texas Water Quality Inventory or other available information, *unless there is information indicating that degradation in ambient water quality has occurred in the receiving waters since November 28, 1975*." Ex. ED-JL-3, internal p. 63 (emphasis added).

On this issue, the PFD again imposes on Environmental Stewardship a higher burden of proof than the law requires. Environmental Stewardship was required only to produce sufficient evidence to rebut the prima facie demonstration. But Corix bore the burden of establishing by a preponderance of the evidence that the Application and Draft Permit comply with TCEQ's Tier 2 Antidegradation review. Once Environmental Stewardship produced sufficient evidence to rebut the prima facie presumption, Corix had to do more than simply rely on the administrative record.

To satisfy TCEQ's Tier 2 standard, the first step is to ensure reliable baseline conditions. In this case, Corix and the ED relied on the IPs to establish baseline conditions. No party presented evidence indicating that the IPs are reliable for determining a proper baseline for the receiving waters in this matter. In fact, the PFD does not cite to any

evidence indicating that baseline conditions based on the IPs are reliable and based on sound foundational data.

To the contrary, the PFD acknowledges that TCEQ staff admitted, in testimony, that "to get a proper and adequate baseline we would have to go back in time and conduct studies," and that the data on existing conditions is what TCEQ knows about the baseline. In other words, the baseline data is not based on conditions that existed in 1975; it is based on existing conditions only. PFD, p. 27.

Thus, once Environmental Stewardship presented evidence indicating that this data based on current information or existing conditions does not reliably reflect baseline conditions, Environmental Stewardship satisfied its burden and rebutted the prima facie presumption. In fact, the IPs acknowledge this: the IPs do not allow the use of existing conditions to serve as baseline when there is information indicating that degradation in ambient water quality has occurred in the receiving waters since November 28, 1975. At that point, the burden should have shifted to Corix to demonstrate compliance with the Tier 2 Antidegradation standards.

Environmental Stewardship satisfied its burden of production here, rebutting the prima facie demonstration. As described above, the evidence presented by Environmental Stewardship demonstrated that since 1992, this Assessment Unit 1428_01 had no concern for Contact Recreation, Fish Community, Macrobenthic community, Nitrate, Ortho-phosphorus or Total Phosphorus. Ex. ES-203. Beginning in 2002, this assessment unit was listed as of concern for Fish Community, Macro-benthic community, Nitrate concentrations, and Ortho-Phosphorus. Ex. ES-203. The 2024 LCRA monitoring study

indicates that this assessment unit is still of concern for Fish Community, Macro-benthic community, Nitrate concentrations, and Ortho-Phosphorus. This listing history indicates that degradation of the receiving waters has occurred since 1975.

Data gathered at the nearest upstream sampling station confirms this lowering of water quality. TCEQ Sampling Point 1466 is just upstream of the area of the Colorado River receiving the discharge. Ex. ES-3, p. 8; Tr. Vol. 1, 114:11-17. In 2023, LCRA reported that there are "significant trends" in increasing concentrations of Chloride, Total Suspended Solids, and Chlorophyll-a at this location. Ex. ES-3, p. 12. Corix's expert witness, Mr. Price, conceded that data gathered by LCRA show an increase over time in Chlorophyll-a.

In short, Environmental Stewardship produced abundant evidence indicating that degradation in the ambient waters of the Colorado River has occurred since November 28, 1975. The change in the quality of the receiving waters from having no concern for nutrients and fish population to a status where concerns exist proves that degradation in ambient water quality has occurred in the receiving waters since November 28, 1975. According to TCEQ's IPs, this means that existing conditions should not be used as baseline data: "Baseline conditions are estimated from existing conditions . . . *unless there is information indicating that degradation in ambient water quality has occurred in the receiving waters since November 28, 1975*." Ex. ED-JL-3 (emphasis added). Reliance on existing conditions for purposes of establishing baseline conditions—despite evidence indicating that degradation to water quality has occurred since 1975—violates TCEQ's Antidegradation rules. Environmental Stewardship satisfied its burden.

Thus, Corix bore the burden of proving accurate and reliable baseline conditions—baseline conditions that are based on information *other than* unreliable existing conditions. The IPs apply to TCEQ staff and permit applicants, and the IPs do not allow reliance on existing conditions for purposes of establishing baseline conditions, where, as here, there is information indicating degradation in water quality has occurred since 1975. This is Corix's burden.[2] Yet, the PFD misplaces this burden on Environmental Stewardship instead of on Corix: "Nor has it [Environmental Stewardship] shown what that baseline was." PFD, pp. 27-28. And the PFD maintains that Environmental Stewardship was required to prove that the discharge would cause more than de minimis degradation. PFD, p. 28. This was error. Environmental Stewardship satisfied its burden of production; Corix maintained the burden of proving compliance with TCEQ's Antidegradation rules. It failed to do so—choosing instead to continue to rely on the existing conditions as baseline conditions, even when the evidence presented established that doing so was not allowed.

This failure to acknowledge evidence demonstrating that existing conditions are not proper baseline conditions for purposes of the Tier 2 Antidegradation review distinguishes this case from *Save Our Springs Alliance, Inc. v. Texas Commission on Environmental Quality*, No. 23-0282, 2025 WL 1085176 (Tex. 2025)—cited in the PFD. In that case, no party disputed that existing conditions were proper for purposes of establishing baseline conditions. Here, there is ample evidence in the record indicating that existing conditions are not proper baseline conditions.

[2] Exhibit ES-205 provides evidence of how baseline conditions are properly established, based on historical data.

Because the PFD improperly placed the burden of proof of compliance with TCEQ's Tier 2 Antidegradation review on Environmental Stewardship, instead of on Corix, the PFD reached the wrong conclusion. Corix failed to satisfy its burden of proof here. And so, the permit should be denied.

C. <u>Contaminants of Emerging Concern, Including PFAS</u>

Corix's proposed discharge will contain per- and polyfluoralkyl substances ("PFAS"), otherwise known as "forever chemicals," which are potentially toxic to humans and wildlife, and the Colorado River already exhibits high levels of these chemicals. Issuance of the permit without regard for these impacts violates the requirements of the TSWQS that waters not be toxic to aquatic life, as set forth at 30 Tex. Admin. Code §§ 307.4(d) and 307.6(b)(4).

The PFD acknowledges that no party disputed that Contaminants of Emerging Concern ("CECs"), such as PFAS, are toxic. It also acknowledges that TCEQ water quality standards require that State waters be maintained in a state that is not toxic to humans or wildlife. PFD, p. 33. Yet, the PFD claims that Environmental Stewardship was required to prove that the CECs and PFAS in Corix's discharge would meet the definition of toxicity. PFD, p. 33. This was not Environmental Stewardship's burden.

Moreover, it is beyond dispute that CECs and PFAS in Corix's discharge have a reasonable potential to result in toxicity to aquatic organisms, in violation of TCEQ's rules. If there were any dispute about this, the State's Original Petition against 3M Company and other defendants, filed in the district court of Johnson County in December 2024 reveals that the State is well aware of the risks and environmental harms presented by CECs and

PFAS. *See* Attachment A (Ex. ES-5, offer of proof). Thus, it was Corix's burden to demonstrate that such harms, resulting from the toxic CECs and PFAS in its discharge would not occur here were its requested permit issued.

III. Conclusion

For the reasons set forth above, Environmental Stewardship respectfully requests that the Commission deny Corix's Application, because Corix has not met its burden and has not demonstrated that its Application meets the applicable statutory and regulatory requirements. Environmental Stewardship further requests such other and further relief to which it may be justly entitled.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that, on May 27, 2025, a true and correct copy of the foregoing document was served upon the following counsel of record via electronic service.

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ATTACHMENT A

SOAH DOCKET NO. 582-24-22552
TCEQ DOCKET NO. 2023-1591-MWD

APPLICATION OF CORIX UTILITIES (TEXAS) INC. FOR TPDES PERMIT NO. WQ0013977001	**§**	**BEFORE THE STATE OFFICE**
	§	**OF**
	§	**ADMINISTRATIVE HEARINGS**

EXHIBIT ES-5

OFFER OF PROOF

OFFER OF PROOF

Filed: 12/11/2024 10:24 AM
David R. Lloyd, District Clerk
Johnson County, Texas
By: Amaris Montemayor, Deputy

IN THE DISTRICT COURT OF
JOHNSON COUNTY, TEXAS

STATE OF TEXAS, *Plaintiff*, v. 3M COMPANY; CORTEVA, INC., DUPONT DE NEMOURS, INC., and EIDP, INC. F/K/A E. I. DU PONT DE NEMOURS AND COMPANY, *Defendants*.	§ § § § § § § § § § §	DISTRICT COURT JUDICIAL DISTRICT CAUSE NO. DC-C202400996

PLAINTIFF'S ORIGINAL PETITION

TO THE HONORABLE DISTRICT JUDGE:

Plaintiff, STATE OF TEXAS, acting by and through the Attorney General of Texas, KEN PAXTON (the "State"), complains of Defendants 3M COMPANY ("3M"); CORTEVA, INC. ("Corteva"); DUPONT DE NEMOURS AND CO., INC. ("New DuPont"); and EIDP, INC. F/K/A E. I. DU PONT DE NEMOURS AND COMPANY ("Old DuPont") (collectively, "Defendants") and would respectfully show Defendants have engaged in deceptive trade practices by failing to disclose health risks and environmental harms associated with their products, and representing and/or implying their products were "safe" in a false, deceptive, or misleading manner, in violation of the Texas Deceptive Trade Practices–Consumer Protection Act, Tex. Bus. & Com. Code §§ 17.41–17.63 ("DTPA").

INTRODUCTION

1. For decades, Defendants manufactured, marketed, and sold a wide array of consumer products containing per- and polyfluoroalkyl substances ("PFAS"), including perfluorooctane sulfonic acid ("PFOS") and perfluorooctanoic acid ("PFOA"). Defendants

marketed these products in Texas and elsewhere to consumers as having remarkable benefits such as resistance to heat, oil, stains, grease, and water. Defendants' PFAS-containing materials included products used in or on food packaging, carpeting, cookware, upholstery, cosmetics, and many other consumer products, which Defendants sold to Texas consumers under well-known brand names including Teflon® and Scotchgard®.

2. But Defendants knew for much of this time, during which they profited immensely from the sale of their products, that PFAS pose risks to people's health and impact the environment. For example, PFAS are "persistent, bioaccumulative and toxic" ("PBT"), and exposure in humans may be associated with diseases such as cancer and decreased vaccine response. Further, PFAS, once introduced into the environment, accumulate in fish, game, and other animal and plant life, contaminate drinking water and other natural resources, and accumulate in the blood of humans. Defendants knew of these risks, knew they could not contain PFAS in their consumer products, and – as early as the 1970s – knew that their PFAS chemistry was already building-up in the blood of most Americans. Nonetheless, Defendants concealed these substantial risks from consumers and the State, and for decades, they even affirmatively claimed their products were "safe."

I. DISCOVERY

3. The discovery in this case should be conducted under Level 3 pursuant to Texas Rule of Civil Procedure 190.4.

4. This case is not subject to the restrictions of expedited discovery under Texas Rule of Civil Procedure 169 because the State's claims include non-monetary injunctive relief.

5. In addition to the claims for non-monetary injunctive relief, the State seeks monetary relief of $1,000,000 or more, including civil penalties, attorneys' fees, and costs.

II. JURISDICTION

6. This action is brought by the Attorney General, Ken Paxton, in the name of the State of Texas, through his Consumer Protection Division and in the public interest under the authority granted by § 17.47 of the DTPA upon the grounds that Defendants have engaged in false, deceptive, and misleading acts and practices in the course of trade and commerce as defined in, and declared unlawful by, §§ 17.46(a) and (b) of the DTPA. In enforcement suits filed pursuant to § 17.47 of the DTPA, the Attorney General is further authorized to seek civil penalties, redress for consumers, and injunctive relief. The Attorney General may also seek reasonable attorneys' fees and court costs for prosecuting this action, as authorized by Texas Government Code § 402.006(c).

III. SCOPE OF THIS ACTION

7. Through this action, the State is not seeking any relief with respect to the manufacture, marketing, or sale of Aqueous Film-Forming Foam—a specific category of products that contain PFAS—as that is the subject of a separate action.

IV. DEFENDANTS

8. Defendant 3M Company is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business located at 3M Center, St. Paul, Minnesota 55144-1000. 3M is registered to do business in Texas and may be served through Corporation Service Company d/b/a CSC-Lawyers Incorporating Service Company, 211 E. 7th Street, Suite 620, Austin, Texas 78701-3136, or wherever it may be found.

9. Defendant EIDP, Inc. (*i.e.*, Old DuPont), f/k/a E. I. du Pont de Nemours and Company, is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business located at 974 Centre Road, Wilmington, Delaware 19805 and

9330 Zionsville Road, Indianapolis, Indiana. In 2015, facing billions of dollars in liabilities arising from its use of PFAS, Defendant Old DuPont began engaging in a series of transactions meant to distance its valuable assets from the liability created by its actions in unleashing and marketing these products to the public, ultimately resulting in the creation of New DuPont and Corteva. Old DuPont may be served through the Texas Secretary of State, P.O. Box 12079, Austin, Texas 78711.

10. Defendant DuPont de Nemours, Inc., d/b/a DuPont (*i.e.*, New DuPont), is a Delaware corporation with its principal place of business located at 974 Centre Road Building 730, Wilmington, Delaware 19805. In 2015, Old DuPont created New DuPont to facilitate a merger with third party The Dow Chemical Company ("Old Dow") and serve as a holding company for the combined assets of the two companies. In connection with a series of subsequent transactions in 2019, New DuPont assumed certain Old DuPont liabilities—including those relating to PFAS. New DuPont does business throughout the United States, including in the State of Texas. New DuPont may be served through the Texas Secretary of State, P.O. Box 12079, Austin, Texas 78711.

11. Defendant Corteva, Inc. is a corporation organized and existing under the laws of the State of Delaware, with its principal places of business located at 974 Centre Road, Wilmington, Delaware 19805 and 9330 Zionsville Road, Indianapolis, Indiana 46268. In 2019, New DuPont spun off a new, publicly traded company, Corteva, which currently holds Old DuPont as a subsidiary. In connection with this transfer, Corteva assumed certain of Old DuPont's liabilities—including those relating to PFAS. Corteva is registered to do business in Texas and may be served through CT Corporation System, 1999 Bryan Street, Ste. 900, Dallas, Texas 75201-3136, or wherever it may be found.

V. VENUE

12. Venue of this suit lies in Johnson County, Texas, pursuant to DTPA § 17.47(b), because transactions forming the basis of this suit occurred in Johnson County, Texas, and Defendants have done business in Johnson County, Texas.

VI. PUBLIC INTEREST

13. Plaintiff has reason to believe that Defendants are engaging in, have engaged in, or are about to engage in, the unlawful acts or practices set forth below. Plaintiff has further reason to believe Defendants have caused injury, loss, and damage to the State of Texas, and have caused adverse effects to the lawful conduct of trade and commerce, thereby directly or indirectly affecting the people of this State. The allegations herein focus on two specific types of PBT PFAS–PFOS and PFOA.

14. PFOS exposure is associated with numerous adverse health effects in humans, including increases in serum lipids (*i.e.*, high cholesterol); decreases in antibody response to vaccines; increases in risk of childhood infections; adverse reproductive and developmental effects; and pregnancy-induced hypertension and preeclampsia. PFOA exposure is associated with, among other things, decreased birthweight, testicular and kidney cancers, ulcerative colitis, medically diagnosed high cholesterol, and thyroid disease.

15. Therefore, the Consumer Protection Division of the Office of the Attorney General of the State of Texas is of the opinion that these proceedings are in the public interest.

VII. TRADE AND COMMERCE

16. Defendants have, at all times described below, engaged in trade and commerce as defined by § 17.45(6) of the DTPA.

VIII. ACTS OF AGENTS

17. Whenever in this Petition it is alleged that Defendants did any act, it is meant that Defendants performed or participated in the act or Defendants' officers, agents, or employees performed or participated in the act on behalf of and under the authority of Defendants.

IX. APPLICABLE LAW

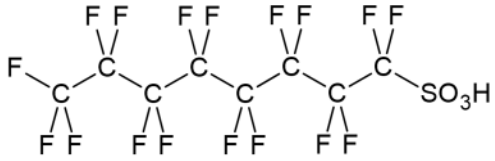
18. The DTPA prohibits "false, misleading, or deceptive acts or practices in the conduct of any trade or commerce. " DTPA § 17.46(a).

19. Section 17.47 of the DTPA authorizes the Consumer Protection Division to bring an action for temporary and permanent injunction whenever it has reason to believe that any person is engaged in, has engaged in, or is about to engage in any act or practice declared unlawful by the DTPA.

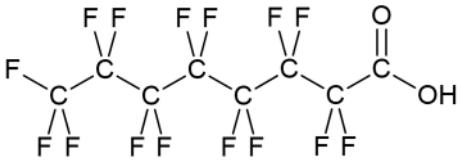
X. FACTUAL ALLEGATIONS

PFOS and PFOA

20. PFAS are a family of human-made chemical compounds containing a carbon chain on which all hydrogen atoms are replaced by fluorine atoms. The carbon-fluorine bond is the strongest bonds in organic chemistry and the many carbon-fluorine bonds in PFAS impart their unique chemical properties. Figure 1 below shows the chemical structures of PFOS and PFOA.



Perfluorooctane Sulfonic Acid ("PFOS")



Perfluorooctanoic Acid ("PFOA")

Figure 1

21. 3M developed PFOS and PFOA in the 1940s. Old DuPont, in 1951, began manufacturing products containing PFOA. Old DuPont purchased PFOA from 3M.

22. Defendants marketed products containing harmful PFAS chemicals for over 70 years and were aware of the harmful effects of PFAS chemicals for over 50 years. Despite this knowledge, Defendants continued to market PFAS products and chemicals in Texas and elsewhere as safe for consumer use, misrepresent their environmental and biological risks, and conceal risks of harm from the public.

23. For decades, advertisements included images of family home life in and around these products, were marketed to women cooking for their families, and specifically promoted the value of the products for households with children and pets. These advertisements did not disclose material information regarding the harms of the chemicals, and through the context and claims of the advertisements, misrepresented their safety for household and family use.

Defendants' Manufacture, Marketing, and Sale of PFAS-Containing Products

Old DuPont's Deception Relating to PFAS Products

24. Old DuPont began using PFOA and other PFAS in its specialty chemical production applications, including household applications and products, like Teflon® and Stainmaster®. Old DuPont advertised Teflon® as a protective non-stick coating for cookware and Stainmaster® as a soil and stain repellant for fabrics and textile products. For instance, Old DuPont released Stainmaster® Carpet in 1986. Old DuPont advertised this product as being helpful for families with children and pets, which is particularly concerning due to the additional exposure for children, who spend more time on or near the floor.

25. Old DuPont also manufactured and advertised Zonyl® as a cheaper and less labor-intensive alternative to wax-paper food packaging beginning in the 1960s. On information and

belief, this material has been used for fast food packaging and microwave popcorn bags, among other consumer uses.

26. On information and belief, the Teflon® PTFE chemical has been used in a wide variety of cosmetics, to make them long-lasting and easier to apply.

27. As early as the 1960s, Old DuPont was aware that PFOA is toxic to animals and humans and that it bioaccumulates and persists in the environment. Old DuPont also knew that Teflon®, and associated industrial facilities, emitted and discharged large quantities of PFOA and other PFAS into the environment and that many people had been exposed to its PFAS, including via public and private drinking water supplies. Yet, it continued to develop and market products for consumers as safe and without revealing this knowledge that would have been material information to consumers' purchasing decisions.

28. Old DuPont's scientists issued internal warnings about PFOA toxicity as early as 1961, including warnings that PFOA caused adverse liver reactions in rats and dogs. Old DuPont's Toxicology Section Chief opined that such products should be "handled with extreme care" and that contact with the skin should be "strictly avoided." However, advertisements from the 1970s promoted family and household use of Teflon® pans through "women [who] test[ed] pans like these in their own homes"—touting the "preference" of Teflon® by these women and the implied safety for family and household use while failing to disclose the already known dangers associated with PFAS.

29. In 1978, based on information it received from 3M about elevated and persistent organic fluorine levels in workers exposed to PFOA, Old DuPont initiated a plan to review and monitor the health conditions of potentially exposed workers to assess whether any negative

health effects were attributable to PFOA exposure. This monitoring plan involved obtaining and analyzing the blood samples from its workers for the presence of fluorine.

30. By 1979, Old DuPont had data indicating that, not only was organic fluorine/PFOA building up in the blood of its exposed workers (and was, thus, "biopersistent"), but those workers exposed to PFOA had a significantly higher incidence of health issues than did unexposed workers. Old DuPont did not share this data or the results of its worker health analysis with the general public or government entities, including the State of Texas, at that time.

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

32. At around this same time, Old DuPont, on information and belief, was releasing advertisements encouraging families not to worry, because they had Teflon® carpet protector.

33. Not only did Old DuPont know that PFOA accumulated in humans, it was also aware that PFOA could cross the placenta from an exposed mother to her gestational child. In 1981, Old DuPont conducted a blood sampling study of pregnant or recently pregnant employees. Of the eight women in the study who worked with Teflon®, two—or 25%—had children with

birth defects in their eyes or face, and at least one had PFOA in the umbilical cord. Instead of addressing this concern, in the same year Old DuPont communicated to its employees that "there is no known evidence that our employees have been exposed to C8 levels that pose adverse health effects." C8 refers to PFAS like PFOA and PFOS with an eight-carbon chain structure. It also quietly moved female employees away from areas where PFAS may have been present.

34. Old DuPont selectively reported to the United States Environmental Protection Agency ("EPA") in March of 1982 that results from a *rat* study showed PFOA crossing the placenta if present in maternal blood, but Old DuPont concealed the results of its own study of its *human* workers.

35. Not only did Old DuPont know about PFOA's toxicity danger as early as the 1960s, but it was also aware that PFAS were capable of contaminating the surrounding environment, leading to human exposure. For example, no later than 1984, Old DuPont was aware that PFOA released from its manufacturing operations was contaminating local drinking water supplies, but said nothing to regulators or the impacted communities.

36. Old DuPont was long aware that the PFAS it was releasing from its facilities could leach into groundwater used for public drinking water—a fact that could both impact its corporate image, as discussed below, and materially impact consumers' purchasing decisions. Old DuPont held a meeting at its corporate headquarters in Wilmington, Delaware in 1984 to discuss health and environmental issues related to PFOA, and employees spoke of the PFOA issue as "one of corporate image, and corporate liability." They were resigned to Old DuPont's "incremental liability from this point on if we do nothing" because Old DuPont was "already liable for the past 32 years of operation." They also stated that the "legal and medical [departments within Old DuPont] will likely take the position of total elimination" of PFOA use

in Old DuPont's business and that these departments had "no incentive to take any other position." Nevertheless, Old DuPont not only decided to keep using and releasing PFOA, marketing brands containing PFOA, but affirmatively misrepresented to regulators, the scientific community, and the public that its PFOA releases presented no risks to human health or the environment.

PERSONAL & CONFIDENTIAL

TO: T. M. KEMP
T. L. SCHRENK

FROM: J. A. SCHMID

C-8 MEETING SUMMARY
5/22/84 - WILMINGTON

THE REVIEW WAS HELD WITH BESPERKA, BENNETT, RIDDICK, GLEASON, HEGENBARTH, SERENBETZ, RAINES, KENNEDY, VON SCHRILTZ, AND INGALLS IN ATTENDENCE. COPIES OF THE CHARTS USED ARE ATTACHED.

THERE WAS A CONSENSUS THAT C-8, BASED ON ALL THE INFORMATION AVAILABLE FROM WITHIN THE COMPANY AND FROM 3M, DOES NOT POSE A HEALTH HAZARD AT LOW LEVEL CHRONIC EXPOSURE.

THERE WAS AGREEMENT THAT A DEPARTMENTAL POSITION NEEDED TO BE DEVELOPED CONCERNING THE CONTINUATION OF WORK DIRECTED AT ELIMINATION OF C-8 EXPOSURES OFF PLANT AS WELL AS TO OUR CUSTOMERS AND THE COMMUNITIES IN WHICH THEY OPERATE.

THERE WAS CONSENSUS REACHED THAT THE ISSUE WHICH WILL DECIDE FUTURE ACTION IS ONE OF CORPORATE IMAGE, AND CORPORATE LIABILITY. LIABILITY WAS FURTHER DEFINED AS THE INCREMENTAL LIABILITY FROM THIS POINT ON IF WE DO NOTHING AS WE ARE ALREADY LIABLE FOR THE PAST 32 YEARS OF OPERATION. CORPORATE IMAGE DISCUSSION CENTERED AROUND THE PERCEIVED DILIGENCE VERSUS OUR POLICIES IF WE ELECTED TO STOP WORK.

CURRENTLY, NONE OF THE OPTIONS DEVELOPED ARE, FROM A FINE POWDER BUSSINESS STANDPOINT, ECONOMICALY ATTRACTIVE AND WOULD ESSENTIALLY PUT THE LONG TERM VIABILITY OF THIS BUSSINESS SEGMENT ON THE LINE. FROM A BROADER CORPORATE VIEWPOINT THE COSTS ARE SMALL.

THE BASIS FOR A DECISION AT THIS POINT IS SUBJECTIVE AND IS MADE MORE DIFFICULT BY OUR CURRENT UNDERSTANDING OF TECHNOLOGY AND COST, AND THE IMPACT ON THE FINE POWDER BUSSINESS. IT'S NOT AN EASY AND OBVIOUS DICISION AS FOR EXAMPLE TBSA WAS.

RJZ009986

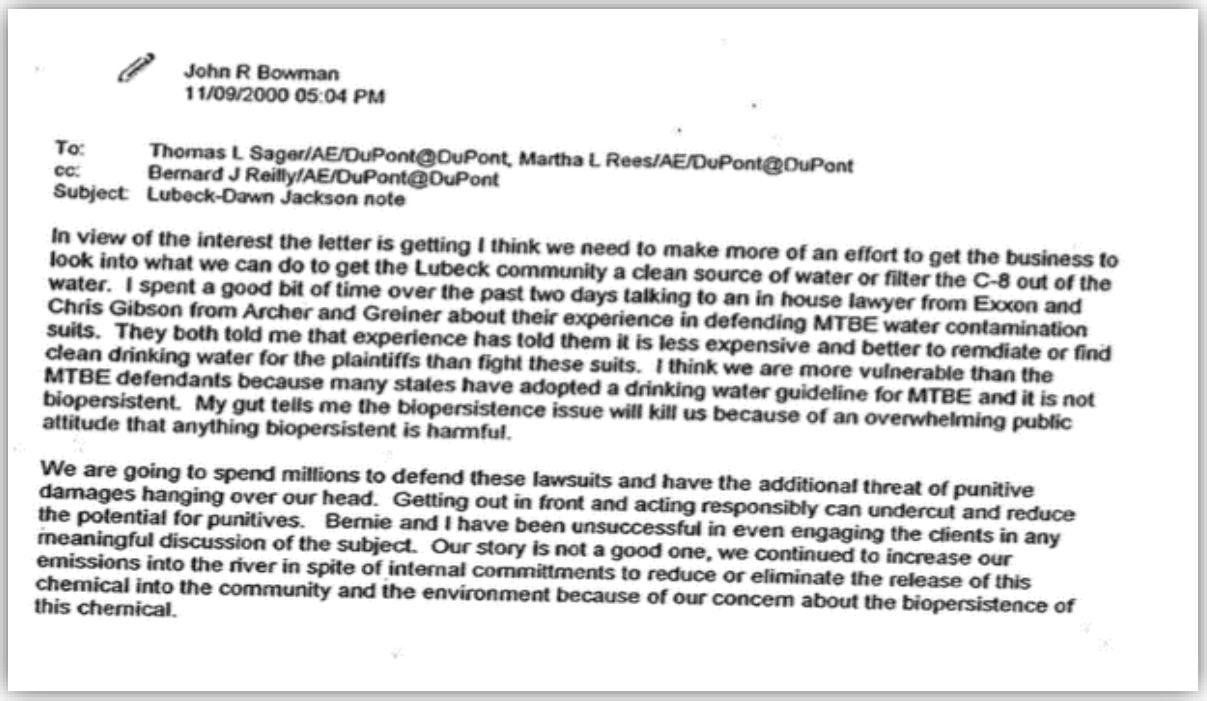
37. Despite knowledge of potential health hazards and contamination, Old DuPont introduced Stainmaster® carpet to the public in 1986, spending $10 million on the first campaign of national advertisements. Old DuPont marketed Stainmaster® carpet as safe for families and targeted families with babies in particular, through advertisements such as those below, whose misleading messages DuPont aimed to get into every American household.


Stainmaster Xtra Life*.
You Don't Have to Baby It.
Xtra Life
DUPONT
STAINMASTER
CARPET
Now there really is a carpet that passes the Terrible Toddler Test – yet looks good enough for any room. Stainmaster Xtra Life Carpet stands up to foot traffic better because it resists matting and crushing*. It has superior stain resistance, too. It's certified and warranted by DuPont*. And it comes in a wide range of styles and colors. See it today. And remember: it never has to be babied.
BARRY DECORATORS
Haddonfield, NJ
(609) 429-5044
Cherry Hill, NJ
(609) 795-0766
BOB WAGNER'S MILL CARPET
Downingtown, PA
(215) 269-7808
West Chester, PA
(215) 430-4004
FEASTERVILLE FLOOR COVERING
418 W. Street Road
Feasterville, PA
(215) 355-2510
LOMAX RUG CO. &
NO WAX VINYL OUTLET
2940 Jasper Street
Philadelphia, PA
(215) 739-6110
PALA TILE & CARPET
1804 Kirkwood Highway
Wilmington, DE
(302) 998-0585
ROY LOMAS CARPET
2150 Detweiler Road
Kulpsville, PA
(215) 256-9575

38. However, infants and toddlers in homes with Stainmaster® carpets are consistently exposed to PFAS. According to the Centers for Disease Control and Prevention, infants and toddlers are at increased risk of ingesting these chemicals through hand to mouth transfer of PFAS from carpets. Similarly, the EPA reported that children are particularly susceptible to inhaling PFAS in carpets, with inhalation levels reaching 32,500 pg/cm^3.

39. Old DuPont also continued to advertise its Teflon® brand for household use, touting nonstick benefits but failing to disclose to consumers the serious adverse effects of PFAS. On information and belief, the advertisements below are from the 1990s.

40. In 2000, the email below from Old DuPont employees demonstrated that the company was aware that biopersistence is an important consumer issue due to "an overwhelming public attitude that anything biopersistent is harmful," yet they continued to conceal the biopersistence of PFAS in chemical products such as Teflon®.



John R Bowman
11/09/2000 05:04 PM

To: Thomas L Sager/AE/DuPont@DuPont, Martha L Rees/AE/DuPont@DuPont
cc: Bernard J Reilly/AE/DuPont@DuPont
Subject: Lubeck-Dawn Jackson note

In view of the interest the letter is getting I think we need to make more of an effort to get the business to look into what we can do to get the Lubeck community a clean source of water or filter the C-8 out of the water. I spent a good bit of time over the past two days talking to an in house lawyer from Exxon and Chris Gibson from Archer and Greiner about their experience in defending MTBE water contamination suits. They both told me that experience has told them it is less expensive and better to remdiate or find clean drinking water for the plaintiffs than fight these suits. I think we are more vulnerable than the MTBE defendants because many states have adopted a drinking water guideline for MTBE and it is not biopersistent. My gut tells me the biopersistence issue will kill us because of an overwhelming public attitude that anything biopersistent is harmful.

We are going to spend millions to defend these lawsuits and have the additional threat of punitive damages hanging over our head. Getting out in front and acting responsibly can undercut and reduce the potential for punitives. Bernie and I have been unsuccessful in even engaging the clients in any meaningful discussion of the subject. Our story is not a good one, we continued to increase our emissions into the river in spite of internal committments to reduce or eliminate the release of this chemical into the community and the environment because of our concern about the biopersistence of this chemical.

41. Old DuPont also began to assemble a litigation defense team, which included hiring an outside consulting company called the Weinberg Group. In a 2003 letter to Old DuPont, the Weinberg Group recommended that Old DuPont "implement a strategy at the outset which discourages government agencies, the plaintiff's bar, and misguided environmental groups from pursuing this matter any further . . . ." The strategy would include "facilitating the publication of papers and articles dispelling the alleged nexus between PFOA and teratogenicity as well as other claimed harm" and "establish[ing] not only that PFOA is safe over a range of serum concentration levels, but that it offers real health benefits . . . ."

42. In 2004, EPA filed an administrative enforcement action against Old DuPont based on its failure to disclose toxicity and exposure information for PFOA in violation of the federal Toxic Substances Control Act ("TSCA") and Resource Conservation and Recovery Act ("RCRA"). Old DuPont eventually settled the lawsuit by agreeing to pay over $16 million in civil

administrative penalties and conduct supplemental environmental projects. EPA called the settlement the "largest civil administrative penalty EPA has ever obtained under any federal environmental statute."

43. Old DuPont's own Epidemiology Review Board ("ERB") repeatedly raised concerns about Old DuPont's statements to the public that there were no adverse health effects associated with human exposure to PFOA. For example, in February 2006, the ERB "strongly advise[d] against any public statements asserting that PFOA does not pose any risk to health" and questioned "the evidential basis of [Old DuPont's] public expression asserting, with what appears to be great confidence, that PFOA does not pose a risk to health."

44. In February 2006, the New York Times noted that DuPont ran full page advertisements in its newspaper and other newspapers continuing to state that Teflon® is safe. Below is the advertisement, which claims that Teflon® has been "safely used for 40 years" and continues to omit that PFOA exposure was known to Old DuPont to cause harm to humans.


THE NEW YORK TIMES, FRIDAY, FEBRUARY 3, 2006
A9
Teflon®
Non-Stick Coating
is Safe.
DuPont
Teflon
Convenient. Tested. Trusted.
The facts are these:
• Your cookware coated with Teflon® non-stick is safe. Cookware coated with Teflon® has been safely used for more than 40 years.
• Cookware with Teflon® non-stick coating shows no detectable levels of PFOA, according to independent studies and published research conducted under normal cooking conditions. There has been a lot of confusion about PFOA, a common chemical used in the manufacture of non-stick coatings. Cooking with pans coated with Teflon® non-stick does not release PFOA into your food.
• The government is studying PFOA, not Teflon®. DuPont has been recognized by the U.S. Environmental Protection Agency for our leadership in reducing PFOA emissions. The EPA has consistently said there is no reason to stop using non-stick cookware.
Trust the brand that has been used in homes for over 40 years: Teflon®. To learn more, please go to Teflon.com.
DUPONT
The miracles of science™

45. Despite its knowledge regarding PFOA's toxicity, Old DuPont continued to claim that PFOA posed no health risks. On information and belief, Old DuPont continued to market and sell Teflon® containing PFOA until 2007. Old DuPont knew these statements were not true but did not correct them.

46. Old DuPont advertised consumer brands using PFAS chemicals as safe for home use in a variety of contexts. On information and belief, all of the advertisements throughout this section promoted products containing PFAS chemicals. The advertisements, which include television advertisements, range in time from the 1960s to the early 2000s.

3M's Deception Related to PFAS Products

47. 3M has known for decades that the PFAS contained in its products, such as PFOS, are toxic and adversely affect the environment and human health. Despite this knowledge, 3M has advertised brands, such as Scotchgard, as consumer-friendly and safe for families.

48. 3M advertised Scotchgard Protector in the mid-1950s as a coating that could be used to protect fabrics from water and other fluids. From 1970 to 2002, paper and carpet treatments were the most common use of PFOS substances.

49. On information and belief, 3M's Scotchban paper protector was used for non-food packaging as early as the 1950s, and was later used in food paper packaging around 1970. Paper mills would apply Scotchban solution to make paper cups, cake mixes, pet food, and more as the grease and water resistant chemicals would not impact the appearance or other properties of the paper.

50. By 1956, 3M's PFAS were found to bind to proteins in human blood, resulting in bioaccumulation of those compounds in the human body. 3M knew as early as 1960 that its PFAS waste could leach into groundwater and otherwise enter the environment. An internal 3M

memorandum from 1960 described 3M's understanding that such wastes "[would] eventually reach the water table and pollute domestic wells." As early as 1963, 3M knew that its PFAS were highly stable in the environment and did not degrade after disposal. Despite this knowledge, 3M continued to market its products to customers, misrepresented them as safe for household and family use, and failed to disclose information regarding potential health and environmental issues to consumers to make educated purchasing decisions.

51. For instance, this advertisement from 1961 promotes the benefits of Scotchgard products to families and children in the household without disclosing the known pollutant effects.

52. The advertisement below, on information and belief from 1965, advertises the benefits of Scotchgard on a furniture company's products – especially when it comes to young children. Ironically, the advertisement states "live dangerously," but it implies that your furniture

will be safer with Scotchgard and that your children may safely use it. 3M's logo and Scotchgard trademark are both present in this ad.

53. This advertisement, on information and belief from 1967, shows a large family and friends with children and babies, and says the mother sprays "everything she wants to protect" with Scotchgard. This clearly conveys the product is safe for family and household use.

54. By the 1970s, 3M had become concerned about the risks posed to the general population by exposure to 3M's fluorochemicals. In fact, around this time, 3M abandoned a study of its fluorochemicals after the company's release of said chemicals during the study caused

severe pollution of nearby surface waters. In 1975, 3M found there was a "universal presence" of PFAS (PFOA and PFOS) in blood serum samples taken from individuals across the United States. Since PFAS are not naturally occurring, this finding reasonably alerted 3M to the high likelihood that its products were a source of this PFAS—a scenario 3M discussed internally, but did not share outside the company. This finding also alerted 3M to the likelihood that PFAS are mobile, persistent and bioaccumulative because these characteristics would explain the presence of PFAS in human blood. Yet, 3M continued to conceal these facts from the public who could have used this information to make educated purchasing decisions.

55. As early as 1976, 3M began monitoring the blood of its employees for PFAS because the company was concerned about their effect on human health. In 1978, 3M conducted PFOS and PFOA studies in monkeys and rats. All monkeys died within the first few days or weeks after being given food contaminated with PFOS. The studies also showed that PFOS and PFOA affected the liver and gastrointestinal tract of the species tested. In the late 1970s, 3M studied the fate and transport characteristics of PFOS in the environment, including in surface water and biota. A 1979 report drew a direct line between effluent from 3M's Decatur, Alabama plant and fluorochemicals bioaccumulating in fish tissue taken from the Tennessee River adjacent to the 3M plant. 3M did not reveal the harms to these animals to consumers, facts which could have impacted their purchasing decision, and instead continued to assure consumers that the products were safe.

56. In 1981, on information and belief, this advertisement from 3M shows a mother and child from the 1960s and the 1980s, and says that Scotchgard "makes living a little easier." In actuality, 3M already had studied its employees' blood and performed other studies due to concerns regarding health effects.

57. In 1983, 3M's scientists opined that concerns about PFAS "give rise to legitimate questions about the persistence, accumulation potential, and ecotoxicity of fluorochemicals in the environment." In 1984, 3M's internal analyses proved that fluorochemicals were likely bioaccumulating in 3M's employees.

58. In the 1980s, despite concerns regarding PFAS's negative impact on animal health, on information and belief, 3M continued to advertise Scotchgard on television without disclosing serious potential health risks, and instead touted benefits to the household. On information and belief, advertisements such as the one below showed common household stains

and how Scotchgard can protect a household, saying it "keeps ordinary spills from becoming extraordinary stains."

59. According to a 3M environmental specialist, Rich Purdy, who resigned from his position due to the company's inaction over PFOS's environmental impacts, PFOS is "the most insidious pollutant since PCB" because it is "does not degrade," and is "more toxic." The specialist claimed that 3M omitted "the most significant information" from its report to the EPA and continues to sell PFOS despite knowledge that PFOS is "biomagnifying in the food chain and harming sea mammals." Purdy further discussed concerns that 3M had asked scientists not to put their thoughts in writing due to the "legal discovery process." Ultimately, he concluded "it is unethical to be concerned with markets, legal defensibility, and image over environmental safety." 3M had resisted calls from its own ecotoxicologists going back to 1979 to perform an

ecological risk assessment on PFOS and similar chemicals. At the time of the specialist's resignation in 1999, 3M continued its resistance.

60. Despite its understanding of the hazards associated with the PFAS in its products, 3M suppressed scientific research on the hazards associated with them and mounted a campaign to control the scientific dialogue on the fate, exposure, analytics, effects to human health, and ecological risks of PFAS. At least one scientist funded by 3M saw his goal as "keep[ing] 'bad' papers [regarding PFAS] out of the literature" because "in litigation situations," those articles "can be a large obstacle to refute." Thus, 3M deceived others and hid the negative effects of PFAS. For example, Dr. Rich Purdy wrote a letter detailing, without limitation: (1) 3M's tactics to prevent research into the adverse effects of its PFOS, (2) 3M's submission of misinformation about its PFOS to the EPA, (3) 3M's failure to disclose substantial risks associated with its PFOS to the EPA, (4) 3M's failure to inform the public of the widespread dispersal of its PFOS in the environment and population, (5) 3M's production of chemicals it knew posed an ecological risk and a danger to the food chain, and (6) 3M's attempts to keep its workers from discussing the problems with the company's fluorochemical projects to prevent their discussions from being used in the legal process.

61. By the late 1990s, 3M's own toxicologist had calculated a "safe" level for PFOS in human blood to be 1.05 parts per billion at a time when 3M was well aware that the average level of PFOS being found in the blood of the general population of the United States was approximately 30 times higher than this "safe" blood level. Yet, 3M did not disclose that information to regulatory authorities or the public to make consumer purchasing decisions relating to 3M's PFAS products.

62. Despite its knowledge of the risks associated with exposures to its PFAS products, when 3M announced that it would phase out its PFOS, PFOA, and related products in 2000, it falsely asserted "our products are safe," instead of disclosing what it knew about the substantial threat posed by PFOS and PFOA. 3M also claimed to the press that it "was a complete surprise that [PFOS] was in the blood bank supplies" when they had been on notice of this issue for years.

TOP OF THE NEWS

EPA says it pressured 3M over Scotchgard chemical

DAVID BARBOZA NEW YORK TIMES

CHICAGO

The Environmental Protection Agency said Thursday that it had pressed 3M Co. to come up with a solution after the company's own tests had shown that a chemical compound used in Scotchgard products could pose a risk to human health and the environment.

The EPA account differs from that of 3M, which said earlier this week that it had decided to stop making the chemical used in Scotchgard and many other products by the end of the year because the tests showed that the chemical compounds failed to decompose in the environment.

Officials of 3M say they have no evidence that the chemicals pose a long-term threat to human health.

The company said it negotiated with the EPA but its decision was voluntary and there was never a discussion of a recall of the products.

On Tuesday, Charles Reich, 3M's executive vice president for specialty material markets, said, "Our decision to phase out production is based on our principles of responsible environmental management."

The EPA confirmed that the agency had not issued an ultimatum to 3M.

While the EPA said it did not see an immediate safety risk for consumers using products now on the market, agency officials said they grew concerned about potential long-term health risks to humans after a 3M study showed that the chemical, perfluorooctanyl sulfonate, lingered for years in human blood and animal tissue and that high doses were known to kill laboratory rats.

"The results raised a number of concerns," said Stephen Johnson, who works in the office of prevention, pesticides and toxic substances at the EPA.

"What it suggests to us is that there are potentially long-term consequences. But we don't have evidence it is unsafe now."

Officials of 3M, however, say they are absolutely confident that their products are safe, and that there are no long-term consequences to human health.

"This isn't a health issue now, and it won't be a health issue," said Larry Zobel, the medical director at 3M, which is based in Maplewood, Minn.

"To the question of whether this builds up in humans, it would have to be a long time, like hundreds of thousands of years to be a threat," he said.

The EPA said its decision to press 3M rested on four concerns: the compound is persistent in the environment; it appears in wildlife and human tissue around the world; it appears in human blood samples taken from around the world; and, based on the study of laboratory rats, it has the potential to harm humans.

3M Co. said Tuesday that it would pull some Scotchgard products off the market because of concerns over a key ingredient. EPA officials said they grew concerned about potential long-term health risks to humans after a 3M study showed that the chemical, perfluorooctanyl sulfonate, lingered for years in human blood and animal tissue.

The EPA said it was first alerted to the study of laboratory rats shortly after it was conducted in 1998.

In that study, male and female rats were given doses of the chemical and then mated. When a pregnant rat continued to get regular doses of about 3.2 milligrams per kilogram of body weight, most of the offspring died within four days.

"With all that information, we finally talked to 3M and said that raises a number of concerns. What are you going to do?" said Johnson at the EPA.

There is still a difference of interpretation, however.

Officials of 3M said the doses given to the rats were extremely high, but EPA officials said that few other chemicals would have as severe an effect.

"This is fairly toxic stuff in rats," one EPA official said. "There's clear evidence it presents a problem in rats."

But 3M said it had not yet determined the cause of death in the rats nor how humans or animals ingested the chemicals so that it appeared in tissue or blood samples.

"That's a very interesting question," Zobel said. "We can't say how it gets into anybody's blood."

As a result of that uncertainty, and the persistence of the compound in the environment, 3M said it would do away with the chemistry by the end of the year.

63. 3M continued to mislead the public and stated that its decision was simply made to "reallocat[e] resources," and still marketed its products as safe for consumer and family use.

64. Aftermarket consumer use to treat home items for stain and water resistance is especially concerning because chemicals are even more likely to transfer from the products

during application or use to indoor air and dust. Even treated fabrics, like a carpet or upholstered chair coated with Scotchgard, could create exposure. Advertisements demonstrate that 3M's marketing did not disclose the harms of its products, and in fact misrepresented them as safe for use by families. Advertisements show families gathered together using Scotchgard products, or common household uses of the products, making claims such as "You can relax." On information and belief, similar advertisements continued throughout the lifespan of the Scotchgard PFOS product.

65. On September 10, 2019, 3M's Senior Vice President for Corporate Affairs, Denise Rutherford, testified in a Congressional Hearing before the Committee on Oversight and Reform of the United States House of Representatives Subcommittee on the Environment. Rutherford stated that "[m]any of [3M's] products are essential to making people's lives better." More troublingly, Rutherford falsely asserted that "the weight of scientific evidence has not established that PFOS, PFOA, or other PFAS cause adverse human health effects. Public health agencies and independent science review panels, while acknowledging certain possible associations, agree with that basic fact."

66. 3M continued engaging in deceptive practices in 2022, coinciding with its announcement that it would phase out all of its PFAS products by 2025. 3M represented that "PFAS can be safely made and used," and that its "products are safe for their intended uses." Not only did 3M make statements it knew to be false, but it omitted material information relating to the health hazards of their products.

67. As of the filing of this Complaint, 3M has not stopped its deceptive advertisements, and continues promoting that its "products, including those containing PFAS, are safe and effective for their intended uses in everyday life."

Old DuPont's Multi-Step, Years-Long Scheme Resulting in New Companies Assuming PFAS Liabilities

68. In or about 2013, Old DuPont began planning a series of corporate restructurings designed to separate its valuable assets from its billions of dollars of legacy liabilities—especially those arising from its historical use of PFOA and other PFAS.

69. For more than five decades, Old DuPont manufactured, produced, or utilized PFOA and other PFAS at plants in New Jersey, West Virginia, and North Carolina, among others. By 2013, Old DuPont knew it was facing an avalanche of claims related to its PFAS business.

70. For example, a 2012 study—funded by Old DuPont pursuant to a 2005 class action settlement—confirmed "probable links" between PFOA exposure and several serious human diseases: medically diagnosed high cholesterol, ulcerative colitis, pregnancy induced hypertension, thyroid disease, testicular cancer, and kidney cancer. As a result, more than 3,500 class members with one or more of those linked diseases filed personal injury claims against Old DuPont. Under the terms of the 2005 class settlement, Old DuPont had agreed not to contest the fact that the class members' exposure to PFOA could have caused each of the linked diseases, significantly limiting Old DuPont's available defenses to liability.

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

72. At the same time, Old DuPont and Old Dow were discussing a possible "merger of equals." But no rational merger partner, including Old Dow, would agree to a transaction that would expose it to the substantial PFAS and environmental liabilities that Old DuPont faced.

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

74. Old DuPont engaged in a coordinated three-part restructuring plan that consisted of (i) Old DuPont's attempt to cast off its massive performance chemicals liabilities onto Chemours, its then newly-formed wholly owned subsidiary, and spinning off Chemours as a separate publicly traded company; (ii) the creation of New DuPont to facilitate a purported merger with Old Dow; and (iii) a series of internal restructurings and divestitures that resulted in the spinoff of Old DuPont to its newly formed parent, Corteva. In the end, New DuPont and Corteva assumed Old DuPont's liabilities related to, among other things, its use and manufacture of PFAS chemicals, and are directly liable for Old DuPont's conduct at issue in this case.

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

i. Step 1: The Chemours Spinoff

76. The first step in Old DuPont's scheme was to create Chemours as a wholly owned subsidiary and transfer its performance chemicals business, which included Teflon® and other products associated with Old DuPont's historic use of PFOA ("Performance Chemicals Business") to Chemours. Then, on July 1, 2015, Old DuPont spun off Chemours as a separate public entity and saddled Chemours with Old DuPont's massive legacy liabilities (the "Chemours Spinoff").

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

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

79. Chemours, in turn, broadly assumed Old DuPont's massive liabilities relating to Old DuPont's Performance Chemicals Business and other unrelated business lines, set forth in detail in the nonpublic schedules and exhibits to the Chemours Separation Agreement.

80. Specifically, the Chemours Separation Agreement requires Chemours to indemnify Old DuPont against, and assume for itself, all "Chemours Liabilities," which are defined broadly to include, among other things, "any and all Liabilities relating . . . primarily to, arising primarily out of or resulting primarily from, the operation or conduct of the Chemours Business, as conducted at any time prior to, at or after the Effective Date," which includes Old DuPont's historic liabilities relating to and arising from its marketing and operation of the Performance Chemicals Business, such as its liabilities arising from PFAS.

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

82. Notwithstanding the billions of dollars in PFAS liabilities that Chemours would face, on July 1, 2015, Old DuPont caused Chemours to transfer to Old DuPont approximately $3.4 billion as a cash dividend, along with a "distribution in kind" of promissory notes with an aggregate principal amount of $507 million. In total, Old DuPont extracted approximately $3.9 billion from Chemours.

83. Old DuPont required Chemours to fund these distributions through financing transactions, including senior secured term loans and senior unsecured notes totaling approximately $3.995 billion, on May 12, 2015.

84. Old DuPont, however, transferred only $4.1 billion in net assets to Chemours. At the end of 2015, Chemours reported a total net worth of just $130 million. But Chemours's estimated liabilities—which at the time totaled $6.168 billion—vastly underestimated the true value of its liabilities, including the PFAS liabilities it had assumed from Old DuPont, which Chemours knew or should have known would cost it billions of dollars.

85. In fact, Old DuPont spun off Chemours into a state of insolvency. Indeed, Old DuPont left Chemours so undercapitalized that in May 2019, Chemours sued Old DuPont, New DuPont, and Corteva in Delaware Chancery Court. *See The Chemours Company v. DowDuPont, et al.*, C.A. No. 2019-0351 (Del. Ch. Ct., filed May 13, 2019). Chemours alleged, among other things, that if (i) the full value of Old DuPont's potential PFAS liabilities was properly estimated and (ii) Chemours were required to satisfy all the potential liabilities DuPont transferred to it, then Chemours would have been insolvent at the time it was spun off from Old DuPont.

ii. Step 2: The Old Dow/Old DuPont "Merger"

86. After the Chemours Spinoff, Old DuPont took the untenable position that it was somehow no longer responsible for the widespread PFAS liabilities that it had accrued over several decades. Of course, Old DuPont could not contractually discharge all of its historical liabilities through the Chemours Spinoff, and Old DuPont remained liable for the liabilities it had caused and Chemours had assumed.

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

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

89. To effectuate the transaction, Old DuPont and Old Dow entered into an Agreement and Plan of Merger (the "DowDuPont Merger Agreement") that provided for the formation of a new holding company renamed first as DowDuPont and then renamed again as DuPont de Nemours, Inc. (*i.e.*, New DuPont), of which Old DuPont and Old Dow became wholly owned subsidiaries.

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

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

91. Following the DowDuPont Merger, DowDuPont underwent a significant internal reorganization and engaged in numerous business segment and product line "realignments" and "divestitures." The net effect of these transactions has been the transfer, either directly or indirectly, of a substantial portion of Old DuPont's assets out of the company, frustrating Old DuPont's creditors, including with respect to its substantial PFAS liabilities.

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

93. DowDuPont then incorporated two companies (i) Corteva and (ii) New Dow. In accordance with the merger plan, each of these three companies received one of the three business divisions associated with Old DuPont's and Old Dow's historic assets, and was subsequently separated as an independent, publicly traded company.

94. The mechanics of the separations are governed by the April 1, 2019 Separation and Distribution Agreement among Corteva, New Dow, and DowDuPont (the "DowDuPont Separation Agreement") and a subsequent June 1, 2019 Letter Agreement between Corteva and DowDuPont (the "Letter Agreement").

95. The DowDuPont Separation Agreement allocated the assets and liabilities primarily related to the respective business divisions between the three companies: DowDuPont retained the assets and liabilities associated with the Specialty Products Business and several "non-core" business segments and product lines that once belonged to Old DuPont; Corteva

received the assets and liabilities associated with the Agriculture Business; and New Dow received the assets and liabilities associated with the Materials Science Business.

96. DowDuPont also "contributed" Old DuPont to Corteva, and Old DuPont remains a wholly-owned subsidiary of Corteva to this day.

97. Pursuant to the DowDuPont Separation Agreement and Letter Agreement, Corteva and New DuPont also assumed direct financial liability for legacy liabilities arising from Old DuPont's historic use of PFOA and other PFAS and its former Performance Chemicals Business, *i.e.*, the same liabilities that DuPont had caused Chemours to assume in 2015. While New DuPont and Corteva initially tried to bury the details in nonpublic schedules, New DuPont and Corteva's express assumption of Old DuPont's historic liabilities has been revealed through other litigation, and includes all liability associated with PFAS. The State of Texas can therefore bring claims against New DuPont and Corteva directly for Old DuPont's deceptive marketing of consumer PFAS-containing brands.

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

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

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

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

102. The net result of these transactions was to strip away valuable tangible assets from Old DuPont—once available to satisfy successful claims brought by potential plaintiffs such as the State of Texas—and transfer those assets to New DuPont and Corteva for far less than the assets are worth.

103. Many details about these transactions were hidden from the public in confidential schedules and exhibits to the DowDuPont Separation Agreement and the Letter Agreement. Old DuPont, New DuPont, and Corteva buried these details in an apparent attempt to hide from creditors, like the State of Texas, where Old DuPont's valuable assets went and the inadequate consideration that Old DuPont received in return. Moreover, neither New DuPont nor Corteva has publicly conceded that they assumed Old DuPont's liabilities arising from its historic use of PFOA and other PFAS. However, certain courts have required New DuPont and Corteva to disclose the nonpublic portions of the restructuring agreements—including the DowDuPont Separation Agreement and Letter Agreement. Under the plain language of those agreements, New DuPont and Corteva contractually assumed Old DuPont's liabilities arising from its historic use of PFOA and other PFAS, and are therefore directly liable for Texas's claims against Old DuPont in this case.

104. Indeed, several courts have held that New DuPont and Corteva contractually assumed Old DuPont's PFAS liabilities. The North Carolina Supreme Court, for example, held that New DuPont and Corteva expressly assumed Old DuPont's PFAS liabilities pursuant to the DowDuPont Separation Agreement and Letter Agreement. *See State ex rel. Stein v. E. I. Du Pont De Nemours & Co.*, 382 N.C. 549, 563 (N.C. 2022) ("Corteva and New DuPont expressly assumed Old DuPont's PFAS liabilities, including those liabilities arising in North Carolina"). The trial court subsequently entered summary judgment against New DuPont and Corteva on the

issue of their contractual assumption of the PFAS liabilities of Old DuPont. *See State ex rel. Stein v. E.I. du Pont de Nemours & Co.*, No. 20 CVS 5612, 2024 WL 472553, at *6 (N.C. Super. Feb. 7, 2024).

XI. COUNT I: VIOLATIONS OF THE DTPA

105. The State of Texas incorporates Paragraphs 1 through 104, as is fully set forth herein.

106. Defendants have engaged in false, misleading, or deceptive acts or practices in the conduct of trade or commerce, in violation of DTPA § 17.46(a).

107. Defendants represented that their goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities which they do not have, in violation of DTPA § 17.46(b)(5).

108. Defendants represented that goods or services are of a particular standard, quality, or grade, or that goods are of a particular style or model, when they were another, in violation of DTPA § 17.46(b)(7).

109. Defendants failed to disclose information concerning goods or services which was known at the time of the transaction, and such failure to disclose this information was intended to induce the consumer into a transaction into which the consumer would not have entered had the information been disclosed, in violation of DTPA § 17.46(b)(24).

110. New DuPont and Corteva agreed to assume Old DuPont's liabilities described above.[1]

[1] Note that this transaction is being challenged as a fraudulent transfer in numerous actions across the country, for example in *The State of Texas v. 3M Company, et al*., Case No. 2:23-cv-04294.

XII. PRAYER

111. WHEREFORE, PREMISES CONSIDERED, the State of Texas prays that Defendants be cited according to the law to appear and answer herein; that after due notice and hearing, a TEMPORARY INJUNCTION be issued; and that after due notice and trial, a PERMANENT INJUNCTION be issued. The State of Texas prays that the Court will issue an ORDER enjoining Defendants, their officers, agents, servants, employees, and any other persons in active concert or participation with Defendants from the following:

A. Misrepresenting the safety or human health risks of chemicals sold by you;

B. Failing to clearly and conspicuously disclose human health risks with products sold by you;

C. Selling or offering for sale any goods which contain PFAS chemicals known by you to create health and safety concerns to users of those goods;

D. Causing goods in the stream of commerce to include any PFAS chemicals which are known by you to create health and safety concerns to the users of those goods; and

E. Advertising or marketing any goods using the direct or implied representation that goods are safe for household or consumer use, if such goods are known by you to include chemicals that create health risks to the users of those goods.

112. Plaintiff further requests that this Court award money damages.

113. Plaintiff further requests that Defendants be ordered to pay to the State of Texas:

A. Civil penalties of up to $10,000.00 per violation of the DTPA;

B. Pre-judgment and post-judgment interest on all awards of restitution, damages, or civil penalties, as provided by law;

C. All costs of Court, costs of investigation, and reasonable attorney's fees pursuant to Texas Government Code § 402.006(c); and

D. Decree that all of Defendants' fines, penalties or forfeitures are not dischargeable in bankruptcy. *See* 11 U.S.C. § 523(a)(7).

114. Plaintiff prays for all further relief, at law or inequity, to which it is justly entitled.

Dated: December 11, 2024

Respectfully Submitted,

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