

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ALBANY

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STATE OF NEW YORK,	:	Index No.
	:	
Plaintiff,	:	Summons
	:	
- against -	:	
	:	
3M COMPANY; TYCO FIRE PRODUCTS LP;	:	
CHEMGUARD, INC.; BUCKEYE FIRE	:	
EQUIPMENT COMPANY; NATIONAL FOAM,	:	
INC.; KIDDE-FENWAL, INC.; AMEREX	:	
CORPORATION; FIRE SERVICE PLUS, INC.;	:	
E.I. DU PONT DE NEMOURS & COMPANY;	:	
and THE CHEMOURS COMPANY;	:	
	:	
Defendants.	:	
-----	X	

TO: 3M COMPANY
TYCO FIRE PRODUCTS LP
CHEMGUARD, INC.
BUCKEYE FIRE EQUIPMENT COMPANY
NATIONAL FOAM, INC.
KIDDE-FENWAL, INC.
AMEREX CORPORATION
FIRE SERVICE PLUS, INC.
E.I. DU PONT DE NEMOURS & COMPANY
THE CHEMOURS COMPANY

YOU ARE HEREBY SUMMONED to answer the attached complaint in this action and to serve a copy of your answer on the plaintiff’s attorney within twenty (20) days after the service of this summons, exclusive of the day of service (or within thirty (30) days after service is complete if this summons is not personally delivered to you within the State of New York). In case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Pursuant to CPLR 503, the venue for this action is Albany County, because plaintiff resides there.

Dated: Albany, New York
November 4, 2019

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State of New York
Attorney for Plaintiff

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and THE CHEMOURS COMPANY;	:	
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Plaintiff State of New York (the “State” or “New York”), by its attorney Letitia James, Attorney General of the State of New York, as and for its Complaint against 3M Company; Tyco Fire Products LP; Chemguard, Inc.; Buckeye Fire Equipment Company; National Foam, Inc.; Kidde-Fenwal, Inc.; Amerex Corporation; Fire Service Plus, Inc. (the foregoing, collectively, “Manufacturers”); E.I. du Pont de Nemours & Company (“DuPont”); and The Chemours Company (“Chemours”); alleges as follows:

NATURE OF THIS ACTION

1. This action arises from threats to public health and contamination of the environment caused by toxic substances in Manufacturers’ products.
2. Manufacturers designed, manufactured, marketed, and sold aqueous film-forming foam and related products (“AFFF”) that were discharged into the environment at or from sites throughout New York. DuPont and Chemours supplied chemicals that the Manufacturers incorporated into the AFFF they manufactured.

3. AFFF is a product that has been used to extinguish fires involving fuel or other flammable liquids, including aviation fires and fires in aircraft hangars and industrial facilities extinguished with automatic fire suppression systems, to train firefighters, and to test firefighting equipment. Manufacturers' AFFF products contained the chemical compounds perfluorooctanoic acid/perfluorooctanoate ("PFOA"), perfluorooctane sulfonic acid/perfluorooctane sulfonate ("PFOS"), and/or chemical compounds that transform into PFOA and/or PFOS (collectively, "PFOA/S"). (In this Complaint, Manufacturers' AFFF products are referred to as "AFFF Products.") Human exposure to PFOA is associated with an increased risk of kidney and testicular cancer, ulcerative colitis, and other conditions. Human exposure to PFOA and PFOS is associated with an increased risk of immune system effects, changes in liver enzymes and thyroid hormones, low birthweight, and other adverse health conditions.

4. The State brings this action for (1) compensatory damages consisting of (i) costs incurred and to be incurred by the State in investigating, monitoring, remediating, and otherwise responding to injuries and/or threats to public health and the environment caused by Manufacturers' AFFF Products; and (ii) damages for harm to the State's natural resources; (2) punitive damages; and (3) injunctive and equitable relief in the form of a monetary fund for the State's reasonably expected future damages as set forth above, and/or requiring defendants to perform investigative and remedial work in response to the threats and/or injuries they have caused.

PARTIES

5. The State, as a body politic and sovereign entity, brings this action as *parens patriae* and representative of all residents and citizens of the State, as trustee and guardian of the State's natural resources, and on its own behalf in its sovereign and proprietary capacities.

6. On information and belief, Manufacturers' AFFF Products were discharged into the environment at or from numerous sites in New York (collectively, the "Sites").

7. Defendant 3M Company ("3M") is a corporation organized under the laws of Delaware. On information and belief, 3M designed, manufactured, marketed, and sold AFFF Products that were discharged into the environment at or from the Sites addressed in this Complaint.

8. Defendant Tyco Fire Products LP ("Tyco") is a limited partnership organized under the laws of Delaware. On information and belief, Tyco manufactures the Ansul brand of products and is the successor-in-interest to the corporation formerly known as The Ansul Company, a corporation organized under the laws of Wisconsin (The Ansul Company, with Tyco, "Tyco/Ansul"). On information and belief, Tyco/Ansul and/or its predecessors designed, manufactured, marketed, and sold AFFF Products that were discharged into the environment at or from the Sites addressed in this Complaint.

9. Defendant Chemguard, Inc. ("Chemguard") is a corporation organized under the laws of Texas. On information and belief, Chemguard designed, manufactured, marketed, and sold AFFF Products that were discharged into the environment at or from the Sites addressed in this Complaint.

10. Defendant Buckeye Fire Equipment Company ("Buckeye") is a corporation organized under the laws of Ohio. On information and belief, Buckeye designed, manufactured, marketed, and sold AFFF Products that were discharged into the environment at or from the Sites addressed in this Complaint.

11. Defendant National Foam, Inc. ("National Foam") is a corporation organized under the laws of Delaware. On information and belief, National Foam manufactures the Angus

brand of products and is the successor-in-interest to Angus Fire Armour Corporation, a corporation also organized under the laws of Delaware (National Foam, together with Angus Fire Armour Corporation, “National Foam/Angus”). On information and belief, National Foam/Angus and/or its predecessors designed, manufactured, marketed, and sold AFFF Products that were discharged into the environment at or from the Sites addressed in this Complaint.

12. Defendant Kidde-Fenwal, Inc. is a corporation organized under the laws of Delaware. On information and belief, Kidde-Fenwal, Inc. is the successor-in-interest to Kidde Fire Fighting Inc. (f/k/a Chubb National Foam, Inc., f/k/a National Foam System Inc.), a corporation organized under the laws of Pennsylvania. On information and belief, Kidde-Fenwal, Inc. and/or its predecessors designed, manufactured, marketed, and sold AFFF Products that were discharged into the environment at or from the Sites addressed in this Complaint.

13. Defendant Amerex Corporation (“Amerex”) is a corporation organized under the laws of Alabama. On information and belief, Amerex is the successor-in-interest to Solberg Scandinavian AS, a Norwegian company. On information and belief, Amerex and/or its predecessors designed, manufactured, marketed, and sold AFFF Products that were discharged into the environment at or from the Sites addressed in this Complaint.

14. Defendant Fire Service Plus, Inc. (“Fire Service”) is a corporation organized under the laws of Georgia. On information and belief, Fire Service designed, manufactured, marketed, and sold AFFF Products that were discharged into the environment at or from the Sites addressed in this Complaint.

15. DuPont is a corporation organized under the laws of the State of Delaware.

16. Chemours (together with DuPont, “DuPont/Chemours”) is a limited liability company organized under the laws of Delaware. In 2015, DuPont spun off its performance

chemicals business (which included the design, manufacture, marketing, and sale of chemicals (“feedstocks”) for use in AFFF Products) to Chemours, along with DuPont’s associated environmental liabilities. Upon information and belief, DuPont/Chemours has designed, manufactured, marketed, and sold feedstocks containing PFOA, PFOS, and/or chemicals that transform into them (collectively, “PFOA/S feedstocks”) to some or all of the Manufacturers, which included them in their AFFF Products that were discharged into the environment at or from the Sites addressed in this Complaint.

**NEW YORK’S UNIQUE ROLE IN PROTECTING
PUBLIC HEALTH AND THE ENVIRONMENT**

A. The State is *Parens Patriae*, Trustee of New York’s Natural Resources, and Owner of New York’s Fish and Other Wildlife

17. The State is *parens patriae* and representative of all residents and citizens of New York and trustee and guardian of New York’s natural resources.

18. The State owns fish and other wildlife in New York “for the use and enjoyment of the people of the state, and the state has a responsibility to preserve, protect and conserve such terrestrial and aquatic resources.” Environmental Conservation Law (“ECL”) § 15-0103(8).

19. It is the policy of the State to “maintain reasonable standards of purity of the waters of the state consistent with public health and public enjoyment thereof, the propagation and protection of fish and wild life . . . and to that end require the use of all known available and reasonable methods to prevent and control the pollution of the waters of the state of New York.” *Id.* § 17-0101.

20. The State’s Department of Environmental Conservation (“DEC”) and Department of Health (“DOH”) protect public health and the environment, including drinking water, surface water, groundwater, land, and wildlife by implementing and enforcing New York and federal

statutes and regulations. *See, e.g.*, Public Health Law § 201(1)(l) (regulating the sanitary aspects of water supplies, sewage disposal, and water pollution); ECL Art. 17 (protecting surface water and groundwater from water pollution); 6 New York Codes, Rules & Regulations Part 360 (protecting land, surface water, and groundwater from disposal of solid waste); ECL § 27-0913 (regulating the storage, transportation, treatment, or disposal of hazardous waste); ECL § 27-1313 (providing remedial programs for inactive hazardous waste disposal sites); ECL Art. 11 (protecting the State's fish and wildlife).

B. The Law of Public Nuisance

21. A public nuisance is a condition that offends, interferes with, or causes damage to the public in the exercise of rights common to all, in a manner such as to interfere with use by the public of a public place or endanger or injure the property, health, safety, or comfort of a considerable number of persons.

22. Injuries and/or threats to drinking water sources, public health, and the environment constitute public nuisances in New York.

23. A public nuisance is an offense against the State, and the State has standing to abate and/or prosecute public nuisances.

24. Persons who cause or contribute to the creation or maintenance of a public nuisance are strictly, jointly, and severally liable for its abatement and for all costs, damages, and expenses arising from the public nuisance.

FACTUAL ALLEGATIONS

A. PFOA, PFOS, and the Threats They Pose to Public Health and the Environment

25. Poly- and per-fluoroalkyl substances are chemical compounds containing fluorine and carbon atoms. These substances have been used for decades in the manufacture of, among

other things, household and commercial products that resist heat, stains, oil, and water. These substances are not naturally occurring and must be manufactured.

26. The two most widely studied types of these substances are PFOA and PFOS, which each contain eight carbon atoms.

27. PFOA and PFOS have unique properties that cause them to be: (i) mobile and persistent, meaning that they readily spread into the environment where they break down very slowly; (ii) bioaccumulative and biomagnifying, meaning that they tend to accumulate in organisms and up the food chain; and (iii) toxic, meaning that they pose serious health risks to humans and animals. Because PFOA and PFOS have these three properties, they pose significant threats to public health and the environment.

28. Mobility and persistence in the environment. PFOA and PFOS easily dissolve in water, and thus they are mobile and readily spread in the environment. PFOA and PFOS also readily contaminate soils and leach from the soil into groundwater, where they can travel significant distances.

29. PFOA and PFOS are characterized by the presence of multiple carbon-fluorine bonds, which are exceptionally strong and stable. As a result, PFOA and PFOS are thermally, chemically, and biologically stable and they resist degradation due to light, water, chemical, and biological processes.

30. Bioaccumulation and biomagnification in the environment. Bioaccumulation occurs when an organism absorbs a substance at a rate faster than the rate at which the substance is lost by metabolism and excretion. Biomagnification occurs when the concentration of a substance in the tissues of organisms increases up the food chain.

31. PFOA and PFOS bioaccumulate/biomagnify in numerous ways. First, they are relatively stable once ingested, so that they bioaccumulate in individual organisms for significant periods of time. Because of this stability, any newly ingested PFOA and PFOS will be added to any PFOA and PFOS already present. In humans, PFOA and PFOS remain in the body for years.

32. Second, in humans and other mammals, PFOA and PFOS can bioaccumulate by crossing the placenta from mother to fetus and by passing to infants through breast milk.

33. Third, they biomagnify up the food chain, such as when humans eat fish that have ingested PFOA or PFOS.

34. Toxic effects in humans and animals. Exposure to PFOA and PFOS can be toxic and may pose serious health risks to humans and to animals. Human health effects associated with PFOA exposure include kidney and testicular cancer, thyroid disease, high cholesterol, ulcerative colitis, liver damage, and pregnancy-induced hypertension (also known as preeclampsia). Human health effects associated with PFOS exposure include immune system effects, changes in liver enzymes and thyroid hormones, low birthweight, high uric acid, and high cholesterol. In laboratory testing on animals, PFOA and PFOS have caused the growth of tumors, changed hormone levels, and affected the function of the liver, thyroid, pancreas, and immune system.

B. Development of AFFF Products

35. In the 1940s, 3M began using a process called electrochemical fluorination to create carbon-fluorine bonds, which are key components of PFOA and PFOS. 3M soon discovered that these types of substances have strong surfactant properties, meaning that they reduce the surface tension between a liquid and another liquid or solid. This reduced surface

tension enabled 3M to develop a myriad of products that resist heat, stains, oil, and water. These products included older forms of Scotchgard, which contained PFOS and which, when applied to fabric, furniture, and carpets, protected against liquids and stains.

36. Building on these earlier experiments, in the early 1960s 3M began developing firefighting foams containing PFOS to suppress flammable liquid fires, which cannot be effectively extinguished with water alone.

37. AFFF does not have the same problems that water alone does in extinguishing flammable liquid fires. AFFF concentrate containing PFOA/S forms a foam when it is mixed with water and ejected from a nozzle. That foam is then sprayed so that it coats the fire, blocking the supply of oxygen feeding the fire and creating a cooling effect and evaporation barrier to extinguish the vapors on fire. A film also forms to smother the fire after the foam has dissipated.

38. 3M sold AFFF Products from approximately the 1960s through at least 2000.

39. The other Manufacturers and/or their predecessors also sold AFFF Products, using a telomerization process to manufacture AFFF Products.

40. Following 3M's withdrawal from the AFFF Products market, in 2001 or earlier and through at least 2014, DuPont designed, manufactured, marketed, and sold PFOA/S feedstocks to some or all of the Manufacturers, which included them in their AFFF Products that were discharged into the environment at or from the Sites. Such feedstocks included "Forafac 1157 N."

C. Defendants' Knowledge of the Threats to Public Health and the Environment Posed by PFOA and PFOS

41. On information and belief, by at least the 1970s 3M knew or should have known that PFOA and PFOS are mobile and persistent, bioaccumulative and biomagnifying, and toxic.

42. Upon information and belief, 3M concealed from the public and government agencies its knowledge of the risk of harm posed by PFOA/S.

43. In 1975, 3M concluded that PFOS was present in the blood of the general population. Since PFOA/S is not naturally occurring, this finding should have alerted 3M to the possibility that their products were a source of this PFOS. The finding also should have alerted 3M to the possibility that PFOS might be mobile, persistent, bioaccumulative, and biomagnifying, as those characteristics could explain the absorption of PFOS in blood from 3M's products. In 1976, 3M found PFOA in the blood of its workers. This finding should have alerted 3M to the same issues raised by the findings regarding PFOS in the prior year.

44. A 1978 study by 3M showed that PFOA reduced the survival rate of fathead minnow fish eggs.

45. Other studies by 3M in 1978 showed that PFOS and PFOA are toxic to rats, and that PFOS is toxic to monkeys. In one study in 1978, all monkeys died within the first few days of being given food contaminated with PFOS.

46. Studies by 3M after the 1970s also showed adverse effects from exposure to PFOA/S.

47. In a 1983 study, for example, 3M found that PFOS caused the growth of cancerous tumors in rats.

48. A study proposal by 3M in 1983 stated that the resistance to degradation of PFOA and PFOS made them "potential candidates for environmental regulations, including further testing requirements under laws such as the Toxic Substances Control Act." 3M Environmental Laboratory (EE & PC), Fate of Fluorochemicals – Phase II, at p.6 (E. A. Reiner, ed. May 20, 1983).

49. A 1997 material safety data sheet (“MSDS”) for a non-AFFF product made by 3M listed its only ingredients as water, PFOA, and other per-fluoroalkyl substances and warned that the product includes “a chemical which can cause cancer.” The MSDS cited “1983 and 1993 studies conducted jointly by 3M and DuPont” as support for this statement. On information and belief, 3M’s MSDSs for its AFFF Products did not provide similar warnings.

50. Federal law requires chemical manufacturers and distributors to immediately notify the United States Environmental Protection Agency (“EPA”) if they have information that “reasonably supports the conclusion that such substance or mixture presents a substantial risk of injury to health or the environment.” *See* Toxic Substances Control Act (“TSCA”), 15 U.S.C. § 2607(e).

51. 3M did not comply with its duty under TSCA, and in April 2006 it agreed to pay EPA a penalty of more than \$1.5 million for its failure to disclose studies regarding PFOA/S and other per-fluoroalkyl substances dating back decades, among other things.

52. Since at least 1951, DuPont and, on information and belief, later Chemours, designed, manufactured, marketed, and sold products containing PFOA/S, including Teflon and Stainmaster carpet, and more recently PFOA/S feedstocks, such as Forafac 1157 N, for use in the manufacture of AFFF Products.

53. Upon information and belief, for decades DuPont/Chemours knew or should have known that PFOA/S is mobile and persistent, bioaccumulative and biomagnifying, and toxic.

54. Upon information and belief, DuPont/Chemours concealed from the public and government agencies its knowledge of the risk of harm to the public posed by PFOA/S.

55. In 1978, DuPont began to review and monitor the health conditions of its workers who were potentially being exposed to PFOA. DuPont subsequently found that PFOA is “toxic”

and that “continued exposure is not tolerable,” but did not disclose this to the public or to the EPA.

56. In 1981, DuPont failed to disclose to the public and to the EPA data demonstrating the transplacental movement of PFOA to fetuses. It also failed to disclose to the public and to EPA widespread PFOA contamination in public drinking water sources resulting from discharges at its Washington Works facility in Washington, West Virginia, where PFOA concentrations exceeded DuPont’s own Community Exposure Guideline.

57. In 1991, DuPont researchers recommended a follow-up study to a study from ten years earlier of employees who might have been exposed to PFOA. The earlier study showed elevated liver enzymes in the blood of DuPont workers. On information and belief, for the purpose of avoiding or limiting liability, DuPont chose not to conduct the follow-up study, instead postponing it until after they were sued.

58. In or around December 2005, pursuant to TSCA, 15 U.S.C. §§ 2607(e) and 2615(a), DuPont agreed to pay a \$10.25 million fine to the federal government arising from its failures to disclose information to EPA about PFOA’s health risks. Upon information and belief, in statements to the public and government regulators, DuPont has repeatedly and falsely claimed that human exposure to PFOA has no adverse health consequences. In a May/June 2008 publication, for example, DuPont stated that “the weight of the evidence indicates that PFOA exposure does not pose a health risk to the general public,” and “there are no human health effects known to be caused by PFOA, although study of the chemical continues.”

59. DuPont made those statements despite the fact that in 2006, its own Epidemiology Review Board advised the company not to make public statements asserting that PFOA does not pose any risk to health.

60. For decades, 3M manufactured PFOA and supplied it to DuPont for its manufacture of Teflon and other products. In May 2000, 3M decided to stop producing PFOA. Despite DuPont's knowledge of the risks to human health posed by PFOA, in response to the withdrawal of 3M from the market, DuPont opened its own plant to manufacture PFOA to be incorporated into DuPont's products and to manufacture and sell feedstocks containing PFOA for the manufacture of AFFF Products by others.

61. On information and belief, all Manufacturers and DuPont/Chemours knew or should have known that in its intended and/or common use, AFFF Products and PFOA/S feedstocks would very likely injure and/or threaten public health and the environment. On information and belief, this knowledge was accessible to all Manufacturers and to DuPont/Chemours. For example, in 1970, a well-established firefighting trade association was alerted to the toxic effects on fish of a chemical compound related to PFOS. On information and belief, at least the following defendants are and/or were members of this trade association: 3M, Tyco/Ansul, Chemguard, and National Foam/Angus.

62. Additionally, on information and belief, all Manufacturers (and Dupont/Chemours) knew or should have known that their AFFF Products (and PFOA/S feedstocks) easily dissolve in water, because the products were designed to be mixed with water; are mobile, because the products were designed to quickly form a thin film; resist degradation, because that is the nature of the products' chemical composition, and on information and belief the products have long shelf-lives; and tend to bioaccumulate, because information regarding the presence of substances with carbon-fluorine bonds in the blood of the general population was publicly available.

D. Evolving Governmental Understanding of the Levels of Acceptably Safe Exposure to PFOA/S

63. As discussed above, neither 3M, nor, on information and belief, the other Manufacturers nor DuPont/Chemours, complied with their obligations to notify EPA about the “substantial risk of injury to health or the environment” posed by their AFFF Products. *See* TSCA, 15 U.S.C. § 2607(e).

64. In or around 1998, EPA began investigating safety concerns regarding PFOA/S after some limited disclosures by 3M and others.

65. Beginning in 2009, EPA issued health advisories about the levels of exposure to PFOA and PFOS in drinking water that it believed were protective of public health. As described on EPA’s website, “health advisories are non-enforceable and non-regulatory and provide technical information to states[,] agencies and other health officials on health effects, analytical methodologies, and treatment technologies associated with drinking water contamination.” *Drinking Water Health Advisories for PFOA and PFOS, What’s A Health Advisory?*, available at <https://www.epa.gov/ground-water-and-drinking-water/drinking-water-health-advisories-pfoa-and-pfos> (last visited October 11, 2019).

66. The recommendations in EPA’s health advisories evolved as EPA learned more about PFOA and PFOS.

67. On January 8, 2009, EPA issued Provisional Health Advisories for PFOA and PFOS, advising that “action should be taken to reduce exposure” to drinking water containing levels of PFOA and PFOS exceeding 400 parts per trillion (“ppt”) and 200 ppt, respectively. *See* Provisional Health Advisories for Perfluorooctanoic Acid (PFOA) and Perfluorooctane Sulfonate (PFOS), available at <https://www.epa.gov/sites/production/files/2015-09/documents/pfoa-pfos-provisional.pdf>, at p.1, n.1 (last visited October 11, 2019).

68. In January 2016, DEC issued a rule designating one form of PFOA a “hazardous substance” under New York law. That designation enabled the State to use monies in the State Superfund program to respond to contamination from PFOA. As DEC and DOH continued to evaluate the scientific data, they determined that PFOS also met the definition of a hazardous substance under New York law. In April 2016, DEC issued a second rule designating both PFOA and PFOS as hazardous substances under New York law.

69. On or around May 19, 2016, the EPA issued updated Drinking Water Health Advisories for PFOA and PFOS, recommending that drinking water concentrations for PFOA and PFOS, either singly or combined, should not exceed 70 ppt. *See* Lifetime Health Advisories and Health Effects Support Documents for PFOA and PFOS, 81 Fed. Reg. 33,250-51 (May 25, 2016).

70. On or around July 8, 2019, DOH submitted to the New York Secretary of State for publication in the New York State Register a Notice of Proposed Rulemaking, which would set legal limits of 10 ppt for PFOA and 10 ppt for PFOS in drinking water.

E. The Use of Manufacturers’ AFFF Products in New York

71. Manufacturers’ AFFF Products have been used for decades throughout New York at civilian airports, industrial facilities, firefighting training centers, and other facilities.

72. On information and belief, Manufacturers manufactured and sold AFFF Products that were used and discharged at the Sites, and DuPont/Chemours manufactured and sold PFOA/S feedstocks incorporated into such products.

73. Sampling results of surface water, groundwater, soil, and/or fish at or near the Sites demonstrate the presence of elevated concentrations of PFOA/S.

74. On information and belief, Manufacturers and DuPont/Chemours did not provide adequate warnings regarding the public health and environmental hazards associated with their

AFFF Products. Nor did Manufacturers and DuPont/Chemours provide adequate instructions about how to avoid or mitigate such hazards.

75. The normal, intended, and foreseeable manner of storage and use of Manufacturers' AFFF Products resulted in the discharge of PFOA/S onto land and into the environment at the Sites.

F. The State's Response

76. DEC and DOH have worked and continue to work together to investigate and respond to potential harms from PFOA/S contamination around the State as appropriate. Among other things, if DEC or DOH identifies a potential site of concern, they may inspect the site and determine whether public or private drinking water sources, groundwater, wildlife, or other resources should be sampled. If warranted by sampling results and other considerations, DEC may provide water treatment systems for public or private drinking water sources. Consumers may be provided bottled water or connected to uncontaminated drinking water sources. DOH and/or DEC also communicates with members of affected communities through public notices, public hearings, and door-to-door home visits when appropriate. DOH also may offer blood sampling for people living in affected communities.

G. Sites Where the State Has Incurred Response Costs¹

77. As precautionary measures and in order to protect public health and New York's natural resources from potential PFOA/S contamination from AFFF, the State has undertaken, conducted, and/or overseen initial sampling and/or other oversight activities at numerous Sites.

78. The State has incurred costs in connection with investigating and protecting the public from this potential contamination, including costs incurred in connection with sampling.

¹ The sites in this section are arranged in order of the sites with the highest concentrations of drinking water contamination, followed by sites with the highest concentrations of groundwater contamination.

The State may incur additional costs in connection with PFOA/S contamination at these Sites, including costs associated with the State's continuing investigation and possibly remediation efforts. Additionally, the State's continuing investigation may reveal that the State's natural resources have been injured at or around these Sites. Defendants should be required to reimburse the State for these initial sampling and oversight costs and all such future costs, plus any natural resource damages.

79. The following table sets forth the Sites at which the State has undertaken, conducted, and/or overseen sampling and/or other oversight activities; and initial sampling results relating to those sites.

	<u>Site Name and Location in New York</u>	<u>Sampling Results (PFOA & PFOS combined)</u>
1	Damascus Road Landfill in East Quogue	220 ppt in drinking water; 11,624 ppt in groundwater
2	Sullivan County Airport in Swan Lake	78.9 ppt in drinking water; 237 ppt in groundwater
3	Dutchess County Fire Training Center in Hyde Park	37.8 ppt in drinking water; 18.6 ppt in surface water
4	Gotham Ink Corporation in Stony Point	14.5 ppt in drinking water
5	Greene County Training Center in Cairo	13.3 ppt in drinking water
6	Saint Lawrence County Fire Training Center in Potsdam	5.8 ppt in drinking water
7	Former IBM Semiconductor Facility in East Fishkill	2 ppt in drinking water; 1,180 ppt in groundwater;

8	IBM Facility in Poughkeepsie	934 ppt in groundwater
9	Nepera-Harriman in Harriman	608 ppt in groundwater; 15.4 ppt in surface water
10	Cascades Containerboard Packaging/Frontier Chemical in Niagara Falls	479 ppt in groundwater
11	Xerox Facility in Webster	450 ppt in groundwater
12	East Hampton Airport in Wainscott	309.3 ppt in groundwater; 4 parts per billion in soil
13	Harmon Railroad Yard in Croton-on-Hudson	91 ppt in groundwater
14	Poultney Street in Whitehall	59.5 ppt in groundwater
15	Wyoming County Fire Training Center in Wethersfield	34.7 ppt in groundwater
16	GE Powerex in Auburn	11.4 ppt in groundwater
17	Sherwood Shoe in Rochester	9.2 ppt in groundwater; 4.07 parts per billion in soil
18	Oswego County Airport in Fulton	7.4 ppt in groundwater

Potential PFOA/S Contamination at Other Sites

80. As the State continues its investigation, it may discover other sites that will require remediation due to contamination with PFOA/S from AFFF Products. The State may also discover that other natural resources have been injured due to such contamination.

81. Defendants should be required to fund the State's investigation of and remedial efforts related to contamination from other sites or to perform those activities themselves.

Defendants should also be required to compensate the State for all injuries to, destruction of, or loss of the State's natural resources.

FIRST CAUSE OF ACTION
Strict Liability for Public Nuisance

82. The State incorporates by reference the allegations contained in paragraphs 1 through 81 as if fully set forth herein.

83. The storage and use of AFFF Products at the Sites has threatened and/or injured drinking water, public health, the environment, and the State's natural resources, thus causing a public nuisance.

84. Manufacturers and DuPont/Chemours participated in the creation and/or maintenance of this public nuisance through, among other things, their marketing and sale of AFFF Products or PFOA/S feedstocks with defective designs and without providing adequate product instructions or warnings about the risks to drinking water, public health, the environment, and natural resources posed by PFOA/S.

85. Manufacturers and DuPont/Chemours are strictly, jointly, and severally liable to the State for all resulting damages, including the costs incurred and to be incurred in responding to the threats and/or injuries to drinking water, public health, the environment, and the State's natural resources from PFOA/S contamination; damages for the public's lost use of the State's natural resources; and the costs of assessing the injury to, destruction of, or loss of those natural resources, including the costs of experts to assess the damage.

86. The State is entitled to an injunction requiring Manufacturers and DuPont/Chemours to abate the public nuisance.

87. On information and belief, Manufacturers and DuPont/Chemours knew or should have known that their products would result in a public nuisance. On information and belief,

Manufacturers' and DuPont/Chemours' conduct involved actual malice or wanton, willful, and reckless disregard for the health, safety, and rights of others. The Court should award the State punitive damages in an amount sufficient to deter and punish such conduct.

SECOND CAUSE OF ACTION
Strict Products Liability for Defective Design

88. The State incorporates by reference the allegations contained in paragraphs 1 through 81 as if fully set forth herein.

89. Manufacturers and DuPont/Chemours have strict duties not to market products with defective designs, that is, products that are not reasonably safe when stored and used in a foreseeable manner.

90. Manufacturers breached these duties by marketing and selling AFFF Products. DuPont/Chemours breached these duties by marketing and selling PFOA/S feedstocks to Manufacturers for incorporation in their AFFF Products.

91. AFFF Products and PFOA/S feedstocks are not reasonably safe products because the substantial likelihood of harm to drinking water, public health, the environment, and natural resources from their storage and use outweighs their utility. On information and belief, these products are not reasonably safe because it is feasible to design them in a safer manner. It is feasible to manufacture and sell AFFF without PFOA/S or with only miniscule amounts of it. On information and belief, the vast majority of AFFF and the feedstocks contained within it in the United States is used for firefighting training exercises and equipment testing. AFFF and feedstocks, especially when used only for firefighting training exercises and equipment testing, need not contain PFOA/S. It is also feasible to employ additional features or procedures to contain, collect, and properly treat AFFF after it has been discharged or to otherwise prevent or

minimize its discharge into the environment, thereby minimizing the likelihood of harm from PFOA/S.

92. As a proximate result of Manufacturers' and DuPont/Chemours' manufacturing and marketing of defectively designed AFFF Products or PFOA/S feedstocks, these products were purchased or otherwise acquired by private entities and stored and used at the Sites in a foreseeable manner, resulting in threats and/or injuries to drinking water, public health, the environment, and the State's natural resources.

93. Manufacturers and DuPont/Chemours are strictly, jointly, and severally liable to the State for all resulting damages, including the costs incurred and to be incurred in responding to the threats and/or injuries to drinking water, public health, the environment, and the State's natural resources from PFOA/S contamination; damages for the public's lost use of the State's natural resources; and the costs of assessing the injury to, destruction of, or loss of those natural resources, including the costs of experts to assess the damage.

94. On information and belief, Manufacturers and DuPont/Chemours knew or should have known that their products would result in substantial threats and/or injuries to the State. On information and belief, Manufacturers' and DuPont/Chemours' conduct involved actual malice or wanton, willful, and reckless disregard for the health, safety, and rights of others. The Court should award the State punitive damages in an amount sufficient to deter and punish such conduct.

THIRD CAUSE OF ACTION
Strict Products Liability for Failure to Warn

95. The State incorporates by reference the allegations contained in paragraphs 1 through 81 as if fully set forth herein.

96. Manufacturers and DuPont/Chemours have strict duties not to manufacture, sell, and distribute products without adequate warnings about latent dangers resulting from the foreseeable manner of storage and use of their products of which they knew or should have known.

97. On information and belief, Manufacturers and DuPont/Chemours breached these duties by failing to warn about latent dangers to drinking water, public health, and the environment from storing and using AFFF Products or PFOA/S feedstocks, because Manufacturers and DuPont/Chemours knew or should have known that such dangers would result from the foreseeable manner of storage and use of these products. On information and belief, Manufacturers and DuPont/Chemours failed to warn about the existence and nature of the latent dangers, the magnitude of those dangers, and how to prevent or minimize those dangers.

98. As a proximate result of Manufacturers' and DuPont/Chemours' manufacturing and marketing of AFFF Products or PFOA/S feedstocks without adequate warnings about latent dangers, these products were purchased or otherwise acquired by private entities and stored and used at the Sites in a foreseeable manner, resulting in avoidable threats and/or injuries to drinking water, public health, the environment, and the State's natural resources.

99. Manufacturers and DuPont/Chemours are strictly, jointly, and severally liable to the State for all resulting damages, including the costs incurred and to be incurred in responding to the threats and/or injuries to drinking water, public health, the environment, and the State's natural resources from PFOA/S contamination; damages for the public's lost use of the State's natural resources; and the costs of assessing the injury to, destruction of, or loss of those natural resources, including the costs of experts to assess the damage.

100. On information and belief, Manufacturers and DuPont/Chemours knew or should have known that their products would result in substantial threats and/or injuries to the State. On information and belief, Manufacturers' and DuPont/Chemours' conduct involved actual malice or wanton, willful, and reckless disregard for the health, safety, and rights of others. The Court should award the State punitive damages in an amount sufficient to deter and punish such conduct.

FOURTH CAUSE OF ACTION
Restitution

101. The State incorporates by reference the allegations contained in paragraphs 1 through 81 as if fully set forth herein.

102. The storage and use of AFFF Products and PFOA/S feedstocks contained within them at the Sites has threatened and/or injured drinking water, public health, the environment, and the State's natural resources.

103. Manufacturers and DuPont/Chemours caused these threats and/or injuries.

104. Manufacturers and DuPont/Chemours had and have duties to abate these threats and/or injuries.

105. Manufacturers and DuPont/Chemours have failed to fulfill their duties.

106. The State has discharged the duties of Manufacturers and DuPont/Chemours to abate these threats and/or injuries, and absent complete injunctive relief, the State will continue to discharge those duties.

107. By discharging the duties of Manufacturers and DuPont/Chemours to abate these threats and/or injuries, the State has conferred a benefit upon Manufacturers and DuPont/Chemours, and absent restitution, Manufacturers and DuPont/Chemours are unjustly enriched.

108. Manufacturers and DuPont/Chemours are jointly and severally liable to the State for the reasonable value of the benefit conferred upon them by the State.

PRAYER FOR RELIEF

WHEREFORE, the State requests judgment in its favor and against defendants as follows:

- a. Holding and declaring defendants to be strictly, jointly, and/or severally liable to the State on the claims set forth above, and awarding the State damages consisting of its costs incurred and to be incurred in responding to the contamination caused by defendants' products and/or actions and omissions; damages for injury to, destruction of, and loss of the State's natural resources and the recreational and other services those natural resources provide, including the costs of assessing such damages and the costs of experts needed to make such an assessment, in an amount to be determined at trial;
- b. Ordering injunctive and equitable relief in the form of a monetary fund for the State's reasonably expected future response costs as set forth above, plus damages for injury to, destruction of, and loss of the State's natural resources; and/or requiring defendants to perform investigative and remedial work in response to the threats and/or injuries they have caused;
- c. Awarding punitive damages against defendants in an amount to be determined at trial; and
- d. Awarding such other and further relief the Court deems just, equitable, and proper.

Dated: Albany, New York
November 4, 2019

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