

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NORTH CAROLINA
SOUTHERN DIVISION**

VICTORIA CAREY, MARIE BURRIS,)
MICHAEL KISER, and BRENT NIX,)
individually and on behalf of all others)
similarly situated,)

Plaintiffs,)

v.)

E.I. DUPONT de NEMOURS AND)
COMPANY and THE CHEMOURS)
COMPANY FC, LLC,)

Defendants.)

Case No.: 7:17-CV-00189-D
Case No.: 7:17-CV-00197-D
Case No.: 7:17-CV-00201-D

**PLAINTIFFS’ REPLY IN SUPPORT OF THEIR *EX PARTE* APPLICATION FOR
ORDER SHORTENING DEFENDANTS’ TIME TO RESPOND TO PLAINTIFFS’
MOTION FOR CORRECTIVE ACTION**

Chemours’ response to Plaintiffs’ *ex parte* application for expedited briefing (D.E. 82 in Case No. 17-cv-201)¹ is riddled with mischaracterizations, ranging from its assertion that Chemours “pledged to communicate with [Plaintiff Marie Burris] only through counsel” (Chemours made no such pledge to the undersigned attorneys and failed to respond whatsoever to counsel’s August 9 letter), to its speculation that “it appears that Mr. Leopold actually represents only six individuals” (Chemours has never asked how many individuals Mr. Leopold represents, but it is many more than six). In addition to these misleading remarks—which are consistent with Chemours’ now-established pattern of bending the truth—Chemours’ response contains two glaring omissions that underscore the need for the Court to resolve the issues in Plaintiffs’ Motion for Corrective Action as quickly as possible.

¹ Chemours’ Response was also filed as D.E. 93 in Case No. 17-cv-189, and as D.E. 81 in Case No 17-cv-197.

First, the response does not say whether Chemours believes that accepting a granular activated carbon (GAC) water filtration system could compromise a well owner's property damage claims against Chemours or Dupont. Chemours' persistent refusal to answer this question suggests that, if a putative class member accepts the GAC filtration system, Chemours might contest his or her ability to participate in this litigation. But Chemours' letter to well owners contained no warning about the possible legal ramifications of accepting the filters. Nor did the North Carolina Department of Environmental Quality's ("DEQ") August 2 letter inform well owners that accepting the GAC filters could compromise their legal claims. The Court must act quickly to ensure that, over the next few weeks, putative class members do not unknowingly limit their legal options.

Second, despite Plaintiffs' request, Chemours has not yet identified any scientific literature supporting the statements in its letter to well owners regarding the safety and efficacy of GAC filtration. Given the DEQ's position that, at present, no studies support the efficacy of GAC filtration as a solution to GenX and PFAS contamination, Chemours should be required to produce the data and related analyses supporting its assertions as soon as possible so that the Court may determine whether Chemours has been misleading putative class members about issues essential to their health, as well as to this litigation. If so, the Court should not simply rely on the DEQ to step in and correct Chemours' dangerous misstatements—it should create a Court-supervised process for protecting absent class members. *See Gulf Oil Co. v. Bernard*, 452 U.S. 89, 100 & n.12 (1981) (recognizing courts' "duty" to guard against "potential abuses associated with communications to class members").

Plaintiffs therefore urge the Court to grant their request for expedited briefing on their Motion for Corrective Action.

Dated: August 16, 2018

Respectfully submitted,

/s/ Theodore J. Leopold

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CERTIFICATE OF SERVICE

I hereby certify that the undersigned electronically filed the foregoing document with the Clerk of Court using the ECF system, with notices of case activity to be generated and sent electronically to counsel of record who are registered to receive such service.

August 16, 2018
Date

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