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,	)	Case Nos.: 7:17-CV-00189 7:17-CV-00197 7:17-CV-00201
v.	)	
E. I. DU PONT DE NEMOURS AND COMPANY and THE CHEMOURS COMPANY FC, LLC,	)	
Defendants.	)	

MEMORANDUM IN OPPOSITION TO DEFENDANTS' MOTION TO DISMISS PLAINTIFFS' CONSOLIDATED CLASS ACTION COMPLAINT

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Rules

Other Authorities

INTRODUCTION

For nearly four decades, Defendants illegally discharged toxic perfluorinated or polyflourinated compounds ("PFCs") into the Cape Fear River and lied to regulators to cover their tracks. In their motion to dismiss, Defendants are once again playing fast and loose with the law and the truth, applying the wrong standard of review, ignoring longstanding principles of tort law, and falsely claiming that essential allegations are missing from the Consolidated Amended Class Action Complaint ("Complaint").

First, Defendants claim that Plaintiffs failed to allege an essential element of their personal injury claims: causation. *See* Defendants' Motion to Dismiss (ECF No. 50) ("MTD") at 5-6. But the Complaint expressly alleges facts supporting Plaintiffs' claim that Defendants' PFC pollution was the "direct and proximate" cause of Plaintiffs' injuries. ¶¶ 116-19, 121-22, 123, 124-26, 145, 150, 155, 161, 167.[1] Judged under the proper standard of review, Plaintiffs' causal allegations are more than sufficient to survive a motion to dismiss under Fed. R. Civ. P. 12(b)(6).

Second, Defendants argue that Plaintiffs failed to allege a "cognizable injury" in support of their claims of negligent property damage, because the government has yet to regulate many of the PFCs that Defendants have illegally discharged. *See* MTD at 7-10. The existence or absence of regulatory thresholds, however, has never been an indispensable element of a negligence, nuisance, or trespass claim. Defendants' common law duty to refrain from contaminating the public water supply and damaging Plaintiffs' property exists whether or not a government body has decided to regulate a pollutant.

Third, Defendants contend that Plaintiffs failed to state a claim for unjust enrichment because they have not alleged that they conferred any benefit on Defendants. Plaintiffs allege,

[1] Citations in the form "¶ __" are to the Complaint.

however, that Defendants used Plaintiffs' land, household fixtures, and water supply for PFC disposal, thereby saving Defendants the expense of proper disposal to Plaintiffs' detriment. This constitutes a benefit conferred under North Carolina law.

Fourth, and finally, Defendants challenge Plaintiffs' request for a medical monitoring fund by arguing that medical monitoring damages are foreclosed in North Carolina, relying on *Curl v. American Multimedia, Inc.*, 654 S.E.2d 76 (N.C. Ct. App. 2007). But their argument ignores that three Plaintiffs plead current personal injury caused by Defendants' actions, for which medical monitoring damages are well-established. Moreover, *In re NC Swine Farm Nuisance Litigation*, No. 5:15-cv-00013-BR, 2017 WL 5178038 (E.D.N.C. Nov. 8. 2017), instructs that, for Plaintiffs with contaminated property, fear of future illness from contamination can be taken into account when determining damages for nuisance claims.

The Court should therefore deny Defendants' motion to dismiss in its entirety.

STATEMENT OF FACTS

Numerous scientific studies have confirmed that PFCs—including perfluorooctanoic acid ("PFOA")—can cause serious health problems, including testicular cancer, pancreatic cancer, uterine cancer, kidney cancer, liver disease, thyroid disease, ulcerative colitis, and pregnancy-induced hypertension, among other illnesses. ¶ 2. GenX, or C3 Dimer Acid, is a PFC developed more recently by Defendants to replace compounds like PFOAs. ¶¶ 23, 58. GenX is associated with similar health risks, however. ¶¶ 59-80. Despite their knowledge of those studies, Defendants E. I. du Pont de Nemours and Company ("DuPont") and its successor, The Chemours Company FC, LLC ("Chemours"), have spent the past four decades emitting and discharging PFCs from their Fayetteville Works facility in eastern North Carolina. *Id.* Defendants' PFC pollution has contaminated the Cape Fear River—which serves as a primary source of drinking water for five counties—as well as the surrounding land and air. ¶ 3.

In addition, Defendants illegally concealed their PFC pollution from state and local regulators. ¶ 2. For example, Defendants consistently failed to report the full complement of PFCs—and the dangers posed by those chemicals—in their applications for National Pollutant Discharge Elimination System ("NPDES") permits, despite their legal obligation to do so. ¶¶ 46-50, 57, 64, 67, 82, 100. In addition, Defendants shirked their obligations to report accidental PFC spills. *See, e.g.*, ¶ 54 (noting that on at least seven occasions between 2011 and 2013, Defendants failed to report spills of PFOA, a particularly carcinogenic PFC); ¶ 103 (noting that Defendants failed to report a GenX spill on October 7, 2017). Because the regulators and water utilities were unaware of Defendants' PFC pollution, they could not take steps to filter municipal water supplies or warn individuals who owned contaminated water wells. ¶ 54. Thus, PFC-laden water flowed into the homes of thousands of North Carolina residents, damaging their pipes and appliances, and reducing the value of their land. More importantly, residents drank the contaminated water and developed a host of illnesses as a result.

Plaintiffs are among the injured. Michael Kiser suffers from multiple cancers, liver disease, and intestinal cysts. ¶ 123. Victoria Carey has thyroid disease and an immune disorder, and the pipes and appliances in her home have been damaged. ¶¶ 118-19. Brent Nix has ulcerative colitis and diverticulitis, and is no longer able to use the tap water on his property. ¶¶ 124-26. Finally, Marie Burris has a contaminated well, which will lower the value of her property. ¶¶ 121-22.

On January 31, 2018, Plaintiffs filed the Complaint, seeking to hold Defendants liable for: 1) negligence, 2) gross negligence, 3) negligence *per se*, 4) public and private nuisance, 5) trespass, and 6) unjust enrichment.

STANDARD OF REVIEW

In evaluating Defendants' motion to dismiss, the Court must accept all factual allegations in the Complaint as true, draw all reasonable inferences in Plaintiffs' favor, and ask whether Plaintiffs have stated a plausible claim for relief. *Mason v. Mach. Zone, Inc.*, 851 F.3d 315, 319 (4th Cir. 2017); *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 556 (2007). The plausibility standard does not "impose a probability requirement at the pleading stage"; thus, Plaintiffs' claims "may proceed even if it strikes a savvy judge that actual proof of [Plaintiffs' case] is improbable, and that a recovery is very remote and unlikely." *Twombly*, 550 U.S. at 556 (internal quotations omitted).

ARGUMENT

I. PLAINTIFFS ADEQUATELY PLEAD THAT DEFENDANTS' CHEMICAL DISCHARGES CAUSED PHYSICAL INJURY

According to Defendants, Plaintiffs "have not pleaded" that PFCs caused their injuries. MTD at 5-6. But that is simply incorrect. The Complaint alleges that: (1) Defendants discharged PFCs into the Cape Fear River, *see, e.g.*, ¶¶ 2-3; (2) local water utilities who rely on the Cape Fear River as their water supply piped contaminated water into Plaintiffs' homes without removing the PFCs, *id.*; (3) Plaintiffs drank, bathed in, and used the contaminated water in their homes, ¶ 117 (Carey), ¶ 123 (Kiser), ¶ 124 (Nix); (4) drinking or otherwise ingesting PFCs can cause cancer, liver disease, thyroid disease, and ulcerative colitis, ¶ 2; (5) Plaintiffs in fact developed cancer, liver disease, thyroid disease, and ulcerative colitis, ¶ 119 (Carey), ¶ 123 (Kiser), ¶ 126 (Nix); and (6) *Plaintiffs' illnesses were the "direct and proximate result" of Defendants' conduct*, ¶¶ 145, 150, 155, 161, 167.

Defendants nonetheless urge the Court to dismiss Plaintiffs' personal injury claims because the Complaint does not conclusively "establish" that PFCs caused Plaintiffs' injuries.

MTD at 5-6 (quoting *Bourne v. E.I. du Pont de Nemours & Co.*, 189 F. Supp. 2d 482, 485 (S.D.W. Va. 2002), *aff'd* 85 F. App'x 964 (4th Cir. 2004)). In support of their argument, Defendants cite a bevy of cases in which courts required plaintiffs to "establish" causation *after discovery*.[2] At this point in the litigation, however, Plaintiffs have no obligation to "establish" anything. They merely need to allege enough "factual content [to] allow[] the court to draw the reasonable inference that" Defendants caused their injuries. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). As noted above, this is a low bar: an inference can be reasonable even if it is improbable. *See Twombly*, 550 U.S. at 556. It is certainly reasonable to infer that Plaintiffs developed cancer, liver disease, thyroid disease, and ulcerative colitis because Defendants polluted their water with chemicals that have been scientifically linked to cancer, liver disease, thyroid disease, and ulcerative colitis.

II. PLAINTIFFS HAVE STATED CLAIMS FOR NEGLIGENT PROPERTY DAMAGE, NUISANCE, AND TRESPASS

A. Plaintiffs Have Stated a Claim for Negligent Property Damage

In moving to dismiss Plaintiffs' property-related negligence claims, Defendants do not dispute that Plaintiffs have adequately alleged three of the four elements of a negligence claim—that is, duty, breach, and causation. *See Davis v. N.C. Dep't of Human Res.*, 121 N.C. App. 105,

[2] *Burr v. Everhart*, 246 N.C. 327, 328, 98 S.E.2d 327, 328 (1957) (motion for judgment of nonsuit at the end of trial); *James v. Clark*, 118 N.C. App. 178, 180, 454 S.E.2d 826, 828 (1995) (motion for summary judgment); *Ammons v. Wysong & Miles Co.*, 110 N.C. App. 739, 744, 431 S.E.2d 524, 528 (1993) (motion for summary judgment); *Bourne*, 189 F. Supp. 2d at 483-84; (motion to exclude expert testimony); *Gates v. Rohm & Haas Co.*, 655 F.3d 255, 262 (3d Cir. 2011) (motion for class certification); *Yates v. Ford Motor Co.*, No. 5:12-cv-752, 2015 WL 3463559, at *1 (E.D.N.C. May 30, 2015) (pre-trial motions *in limine*); *Fontenot v. TASER Int'l, Inc.*, No. 3:10-cv-125-RJC-DCK, 2011 WL 2535016, at *1 (W.D.N.C. June 27, 2011) (motions for summary judgment and to exclude expert testimony); *McClain v. Metabolife Int'l, Inc.*, 401 F.3d 1233, 1236 (11th Cir. 2005) (motion to exclude expert testimony); *In re Lipitor (Atorvastatin Calcium) Mktg., Sales Practices & Prod. Liab. Litig.*, 185 F. Supp. 3d 786, 788 (D.S.C. 2016) (motion to exclude expert testimony); *Guinn v. AstraZeneca Pharm. LP*, 602 F.3d 1245, 1248 (11th Cir. 2010) (motion for summary judgment and to exclude expert testimony).

112, 465 S.E.2d 2, 6 (1995). Defendants' sole argument—and the one Plaintiffs address here—is that Plaintiffs' alleged injuries fail the "harm" element as a matter of law. Defendants' argument has three variants, and each is fatally flawed.

Defendants first theorize that "a chemical must exceed regulatory levels to constitute an injury." MTD at 8. In other words, no pollution-related injury is actionable in negligence unless: (1) a government body has already set a "safe" regulatory threshold for the polluting chemical, and (2) the threshold has been exceeded. That has never been the law, and rightly so: if Defendants' theory were true, there could *never* be liability for toxic discharges if polluters concealed a toxin's existence from regulators and the public.

Quite the contrary, North Carolina expressly recognizes that common law duties—and harms resulting from their breach—persist independently of any parallel regulatory action. "It is established North Carolina law that the enactment of various environmental statutes by the legislature has not in any way abrogated the common law protection of property encompassed by actions for negligence, trespass, or nuisance." *Rudd v. Electrolux Corp.*, 982 F. Supp. 355, 366 (M.D.N.C. 1997) (citing *Biddix v. Henredon Furniture Indus.*, 76 N.C. App. 30, 40-43, 331 S.E.2d 717, 723-25 (1985)). And just as "[c]ompliance with a legislative enactment or an administrative regulation does not prevent a finding of negligence where a reasonable man would take additional precautions," *Boyd v. L.G. DeWitt Trucking Co.*, 103 N.C. App. 396, 404, 405 S.E.2d 914, 920 (1991) (quoting RESTATEMENT (SECOND) OF TORTS § 288C (1965)), the *absence* of a regulation does not render a polluter immune from liability. This is particularly so where, as here, the chemicals at issue have only recently come to light. *See, e.g.*, ¶ 98 (discussing August 2017 identification of two new PFCs—Nafion byproducts 1 and 2—in the Cape Fear River attributable to Defendants' illegal discharges).

The cases Defendants cite, moreover, are wholly inapt. First, all three cases involve summary-judgment or post-trial decisions based on a substantial evidentiary record. *See In re Wildewood Litig.*, 52 F.3d 499, 503 (4th Cir. 1995) (post-trial motions); *Brooks v. E.I. du Pont de Nemours & Co.*, 944 F. Supp. 448, 449 (E.D.N.C. 1996) (summary judgment); *New Mexico v. Gen. Elec.*, 335 F. Supp. 2d 1185, 1263-64 (D.N.M. 2004) (summary judgment). Because these cases "d[o] not address the pleading requirements" for negligence, they offer no guidance in this procedural context. *See United States v. Charlotte-Mecklenburg Hosp. Auth.*, 248 F. Supp. 3d 720, 732 (W.D.N.C. 2017) (rejecting at the motion-to-dismiss stage defendant's reliance on a Second Circuit decision reviewing a district court's bench-trial judgment); *Lozar v. Birds Eye Foods, Inc.*, 678 F. Supp. 2d 589, 605 (W.D. Mich. 2009) ("[T]his is a motion merely testing whether the . . . complaint states a claim . . . , not a summary-judgment motion testing the sufficiency of the plaintiffs' evidence.").

Second, not a single one of Defendants' cases involves "emerging contaminants" like GenX and certain related PFCs whose existence and toxicity has only recently been discovered. *See* Chemours' Mot. to Dismiss, Exh. 7 (*GenX Frequently Asked Questions*, N.C. Dep't of Envtl. Quality), *CFPUA v. Chemours*, No. 17-195-D, Dkt. 38-8 at ECF p. 6 ("[S]ome newer or 'emerging' chemicals . . . could not be measured due to limitations of current laboratory testing."); *id.* ("Limited information is available about the potential health effects of these newer emerging chemicals."); *id.* ("It is not unusual for unregulated contaminants to come to light as technology gets better at detecting them.").

Third, and most critically, none of Defendants' cases hold that there can be no injury where government bodies have *yet to regulate* the chemical in question. Indeed, all that the cases stand for is that a court, after assessing a complete factual record replete with documentary

discovery and expert testimony, may deem the *evidence* of injury in a particular case insufficient to make out a negligence claim. *See Meekins v. Box*, 152 N.C. App. 379, 385, 567 S.E.2d 422, 426 (2002) (rejecting defendants' reliance on summary-judgment decision at motion-to-dismiss stage); *accord Charlotte-Mecklenburg*, 248 F. Supp. 3d at 732. What the cases absolutely *do not* do, however, is hold that a claim of negligence is *per se* inactionable in the absence of a regulatory threshold. As another district court cogently explained, although decisions like *Brooks*, *Wildewood*, and *New Mexico* have looked to "applicable [groundwater regulations] to determine *whether* an injury has occurred, they have not held that an injury *cannot* have occurred" unless that groundwater threshold was breached. *In re Methyl Tertiary Butyl Ether (MTBE) Prod.*, 458 F. Supp. 2d 149, 155-57 & nn.49-50 (S.D.N.Y. 2006); *aff'd* 725 F.3d 65, 109 (2d Cir. 2013) (rejecting polluters' argument that there can be no "injury" unless a toxin exceeds regulatory thresholds; "[t]he [maximum contaminant level] does not convey a license to pollute up to that threshold"); *see also United States v. Kinder Morgan Energy Partners, L.P.*, No. 17-1640, slip op. at 6 (4th Cir. Apr. 12, 2018) (noting that CWA violations are not limited "solely to those cases where EPA has promulgated an effluent limitation or issued a permit that covers the discharge") (quoting *Sierra Club, Lone Star Chapter v. Cedar Point Oil Co.*, 73 F. 3d 546, 561 (5th Cir. 1996)); *City of Redlands v. Shell Oil Co*., No. SCVSS-120627, slip op. at 2, 5-6 (Super. Ct. San Bernardino Oct. 6, 2009) (rejecting Shell's argument that there can be no damages "simply because [the state] has not yet set any [maximum contaminant level]" for a given toxin) (attached as Exhibit A).[3]

[3] Defendants' cited cases have, moreover, been roundly criticized by a number of other courts. One district court observed that *Brooks* and *Wildewood* "set out no authority or rationale for [their] holding[s]." *Cook v. Rockwell Int'l Corp.*, 273 F. Supp. 2d 1175, 1207 (D. Colo. 2003). And the Eleventh Circuit saw "no basis" to require groundwater contamination to exceed a regulatory threshold for a plaintiff to state a cognizable injury. *Adinolfe v. United Techs. Corp.*,

Defendants' second theory—that "contamination alone" does not suffice to state an injury, MTD at 8—is similarly flawed, and ignores Plaintiffs' extensive allegations of harm. Beginning with the factual allegations, Defendants inaccurately state that Plaintiffs' claims are only "based on the existence of [GenX and other] chemicals *in their water sources*." MTD at 9 (emphasis added). Although Plaintiffs *do* allege that Defendants have polluted the Cape Fear River, they also allege extensive harms to their persons and property. For example, Plaintiffs allege:

- that their well water and utility-supplied drinking water have tested positive for levels of GenX exceeding the state's provisional health goal, *see* ¶¶ 118, 121;

- that Defendants' toxic chemicals adhere to bacteria, biofilms, sediment, scale, rust, and stagnant pockets of water throughout Plaintiffs' water pipes, hot water heaters, water fixtures, and appliances; that said chemicals are physically harmful and carcinogenic; and that this contamination of their properties will require extensive and costly remediation, including replacement of pipes, fittings, appliances, and fixtures, and installation of filtration systems, ¶¶ 24, 60-81, 109-15, 118; and

- that Plaintiffs have suffered *physical* injuries resulting from consumption of PFC-polluted water, economic harm from being forced to purchase bottled water to avoid *currently* contaminated drinking water, and other costs associated with remediating well contamination, ¶¶ 114-15, 119, 121-26.

All of these injuries flow directly from Defendants' negligence, and they more than suffice to show a plausible injury for purposes of a motion to dismiss.

Defendants also rely heavily on *Rowe v. E.I. du Pont de Nemours & Co.* ("*Rowe II*"), 262 F.R.D. 451, 465 (D.N.J. 2009), for support, but their reliance is misplaced. Like other cases Defendants cite, *Rowe II* did not arise on a motion to dismiss. Instead, *Rowe II* concerns class certification for New Jersey tort claims "[a]fter a lengthy discovery period" in which the parties' experts opined on whether plaintiffs could establish "significant exposure to PFOA" on a class-

---

768 F.3d 1161, 1174 (11th Cir. 2014). In addition, the district court's terse decision in *Brooks* never considered the well-established principle that statutory enactments in North Carolina do not abrogate common law causes of action. *See, e.g.*, *Biddix*, 76 N.C. App. at 40-43.

wide basis. *Rowe v. E.I. du Pont de Nemours & Co.* ("*Rowe I*"), No. 06-cv-1810, 2008 WL 5412912, at *2, 17 (D.N.J. Dec. 23, 2008). After concluding that the record could not support a class-wide exposure finding, *id.*, the court rejected certification on the subsidiary issue of whether groundwater contamination by itself could serve as the basis for a class-wide negligence claim. *Rowe II*, 262 F.R.D. at 465. The court concluded it could not, because plaintiffs had failed to propose "any threshold level of contamination or allege any derivative harm from this contamination." *Id.*

Even if *Rowe II* were applicable on a motion to dismiss (and it is not), it carries no weight here, where Plaintiffs have alleged extensive exposure to the toxic contaminants, harm resulting from that exposure, and ongoing physical contamination of their properties. *See supra* at p. 9; *accord Sullivan v. Saint-Gobain Performance Plastics Corp.*, No. 16-cv-125, 2017 WL 3726435, at *6 (D. Vt. May 1, 2017) (disregarding *Rowe II* in denying motion to dismiss negligence claim for PFOA contamination of wells even in the absence of allegations of physical injury or contamination of plumbing and fixtures, and where the only harm alleged was that plaintiffs "ha[d] been advised not to use their well water for drinking or cooking"). Nor have Plaintiffs had the opportunity to generate expert testimony on what concentration of Defendants' PFCs in Plaintiffs' wells, plumbing fixtures, and water supply marks "the 'danger' point above which individuals are at a distinctive increased risk" of harm. *Rowe I*, 2008 WL 5412912, at *18.

Defendants last argue that "possible future costs" of remediation fall short of a legally cognizable injury. *See* MTD at 9. But the lone case Defendants cite for this proposition, *Coker v. DaimlerChrysler Corporation*, is entirely about standing to sue under North Carolina's deceptive trade practice statute, and has nothing at all to say about whether allegations of toxic contamination constitute "harm" under North Carolina tort law. *See* 172 N.C. App. 386, 617

S.E.2d 306 (2005). In addition, the consumer plaintiffs in *Coker*—who sued Chrysler for selling minivans advertised as "the safest" even though Chrysler neglected to install gear interlock devices—had alleged only that they might someday spend money to install interlock devices themselves. *Id.* at 394-95. The court deemed that injury too speculative to supply standing under the statute. *Id.* at 397. But most critically, what plaintiffs had failed to do was allege other plausible injuries that could have supported their standing—*i.e.*, diminution in the value of their car, the potential increased risk of harm attributable to the absence of the device, and an injury caused by the purchase of the allegedly defective vehicle itself. *Id.* at 392, 396-97; *see also id.* at 394 (contrasting plaintiffs' case with *Coley v. Champion Home Builders Co.*, 162 N.C. App. 163, 165 (2004), which denied a motion to dismiss where plaintiffs alleged defendants' actions had exposed plaintiffs to increased risk of injury). Here, Plaintiffs have alleged precisely those injuries—namely, that the contamination directly caused physical injuries, increased other affected homeowners' risk of physical injury, and lowered Plaintiffs' property values—all of which will require remediation, including replacement of fixtures and plumbing, to eradicate the harmful effects of Defendants' pollution. ¶¶ 60-81, 109-15, 118-21.

B. Plaintiffs Have Stated a Claim for Negligence *Per Se*

To adequately plead negligence *per se*, a plaintiff must plausibly allege that a defendant violated a safety statute; that she is in the class of persons protected by the statute; and that the injury alleged is of the type the statute was designed to prevent. *Carr v. Murrows Transfer, Inc.*, 262 N.C. 550, 554, 138 S.E.2d 228, 231 (1964). Plaintiffs have alleged these essential elements, citing Defendants' violations of the Clean Water Act ("CWA"), the Resource Conservation Recovery Act ("RCRA"), the Safe Drinking Water Act, and the Solid Waste Disposal Act, as constituting safety statutes whose purpose is to protect Plaintiffs and their interest in the health and safety of their surroundings. *See* ¶ 154.

Defendants argue that Plaintiffs have failed to allege the violation with the requisite specificity. MTD at 10. But Defendants ignore the repeated allegations in which Plaintiffs recount Defendants' violations of their NPDES permit, which constitutes a violation of the CWA and North Carolina's 2L groundwater standards. *Pres. Ass'n v. County Comm'rs of Carroll Cnty.*, 268 F.3d 255, 265 (4th Cir. 2001) (limiting the permit holder to only those discharges made in accordance with permit under the CWA).[4] Those violations support a claim of negligence *per se* under North Carolina law. *See* ¶¶ 48, 50, 54, 57, 64, 67, 82, 100, 103-04; *see also Biddix*, 76 N.C. App. at 341 ("[W]e hold that willful or negligent discharges in violation of a NPDES permit afford a basis for an action in damages to a riparian owner."); *Stoddard v. W. Carolina Regional Sewer Authority*, 784 F.2d 1200, 1206 (4th Cir. 1986) (affirming decision that NPDES permit violations supported nuisance claims). Plaintiffs also allege that the discharges violate RCRA, *see* ¶ 50, which has been held to support a claim for negligence *per se* in a similar context. *See Lozar v. Birds Eye Foods, Inc.*, 678 F. Supp. 2d 589, 605 (W.D. Mich. 2009).

C. Plaintiffs Have Stated a Claim for Nuisance

As with Plaintiffs' negligence claim, Defendants do not dispute that Plaintiffs have alleged the basic elements of nuisance—namely, "an unreasonable interference with the use and enjoyment of [plaintiffs'] property." *Jordon v. Foust Oil Co., Inc.*, 116 N.C. App. 155, 447 S.E.2d 491, 498 (N.C. Ct. App. 1994); *see also J & P Dickey Real Estate Family Ltd. P'ship v. Northrop Grumman Guidance & Elecs. Co.*, No. 11-cv-37, 2012 WL 925015, at *5-6 (W.D.N.C. Mar. 19, 2012) (holding ongoing migration of chemicals from defendant sufficient to state a

[4] The CWA provides that "the discharge of any pollutant by any person *shall be unlawful*" unless performed in compliance with a NPDES discharge permit. 33 U.S.C. § 1311(a) (emphasis added). But violations of the CWA are not limited to only those circumstances where a permittee "exceeds limitations in its permit." *Kinder Morgan*, No. 17-1640, slip op. at 6 (4th Cir. Apr. 12, 2018).

claim for nuisance under North Carolina law). Understandably so: North Carolinians are "responsible for abating a nuisance and must clean it up after having become aware of it." *Rudd*, 982 F. Supp. at 369 (allowing plaintiffs to proceed to trial where plaintiffs "presented evidence that defendants knowingly permitted the maintenance of a nuisance on their land by failing to remove and abate [it by] clearing the contamination from their soil"); *see also In re Swine Farm*, 2017 WL 5178038, at *11 (fears of adverse health effects from exposure to noxious substances constitutes "discomfort and annoyance" that suffices "for purposes of proving both liability and damages for the nuisance").

Defendants' only argument against Plaintiffs' nuisance claim is their assertion that Plaintiffs have not alleged "special harm." MTD at 10-11. Defendants' argument distorts the special-harm requirement and seeks to re-write Plaintiffs' Complaint. North Carolina law has long permitted claims for nuisance premised on large-scale pollution—even if the claimed injury is shared by many—so long as a plaintiff suffers injury to his or her property. *Hampton v. N. Carolina Pulp Co.*, 223 N.C. 535, 545 (1943) ("Every individual who receives actual damage from a nuisance may maintain a private suit for his own injury, although there may be many others in the said situation." (citation and internal quotation marks omitted)). In *Hampton*, the court allowed a commercial fishery to bring a nuisance claim against a polluting pulp mill even though the harm caused by the pollution was shared by all users of the river. *Id.*

Plaintiffs' claims are far stronger than the ones brought in *Hampton*. Here, Plaintiffs allege both a private and public nuisance based upon Defendants' continued discharges of contaminants into the air and water. That contamination unreasonably interferes with Plaintiffs' use and enjoyment of their property, ¶¶ 156-60, and includes special damages to Plaintiffs, namely physical injury and property damage. ¶ 161. Defendants' toxic pollutants adhere to

bacteria, biofilms, sediment, scale, rust, and stagnant pockets of water throughout Plaintiffs' water pipes, hot water heaters, water fixtures, and appliances. ¶¶ 109-13, 118. They have caused physical injuries to individuals, thereby requiring residents to incur the cost of consuming bottled water. ¶¶ 119, 123, 125-26. And for private well users like Ms. Burris, Defendants' actions require well monitoring, use of bottled water, and continued water testing. ¶¶ 102, 114-15, 120-22, 142. The Complaint thus alleges an ongoing injury to Plaintiffs' property, and that the inability to remove the biofilms, scale, rust, and sediment presents unabated health risks to residents. ¶ 114. These factual allegations present an ongoing permanent nuisance and also show the existence of a "special" injury "to private property" for which the law of nuisance provides redress. That a class of individuals may suffer similar injuries is of no moment; all that matters is that each plaintiff has suffered "an injury to private property." *Hampton*, 223 N.C. at 544.

Rhodes v. E.I. du Pont de Nemours & Co., 636 F. 3d 88 (4th Cir. 2011), cited by Defendants, does not support dismissal of the nuisance claim. There, the plaintiffs' only allegation was that "DuPont's allegedly tortious conduct interfered with the general public's access to clean drinking water." 636 F.3d at 96. To be sure, Plaintiffs do allege that DuPont interfered with the public's access to clean drinking water—but they allege far more than that: physical injury and injury to Plaintiffs' own property requiring remediation and repair.

A final point: with respect to Ms. Burris specifically, Defendants retread their familiar trope that because there is no legally binding threshold for GenX, Ms. Burris' test results showing concentrations in excess of the 140 ppt health goal "did not exceed any regulatory requirement and therefore cannot be said to interfere with Mr. Burris' use and enjoyment of the property." MTD at 11. Yet again, Defendants then cite *Brooks*, a cursory summary judgment

opinion holding that trace elements of a contaminant—*for which a regulatory limit had already been established*—could not support unidentified tort claims for property damage. *Id.* (citing *Brooks*, 944 F. Supp. at 449). But North Carolina law defines a nuisance as "[a]ny substantial nontrespassory invasion of another's interest in the private use and enjoyment of land by any type of liability forming conduct." *Morgan v. High Penn Oil Co.*, 238 N.C. 185, 193 (1953). And its courts have never held that a plaintiff cannot make out a claim of unreasonable interference where no regulatory threshold has been established for a given pollutant.

In any event, Ms. Burris (and all of the other Plaintiffs) have alleged substantial interference with their properties—including contamination of drinking water well in excess of North Carolina's health goal for GenX, the need for abatement, and the derivative cost of switching to bottled water. Indeed, the state has requested that Defendants provide bottled water to individuals whose wells have been contaminated by GenX. ¶¶ 102, 122. Those allegations more than suffice to support substantial interference with Plaintiffs' possessory interests. *BSK Enters., Inc. v. Beroth Oil Co.*, 783 S.E.2d 236, 252 (N.C. Ct. App. 2016), *review denied*, 787 S.E.2d 385 (N.C. 2016) (finding nuisance claim supported by plaintiffs having to install a water filtration system and numerous monitoring wells); *Rudd*, 982 F. Supp. at 369-70 (finding evidence to support private nuisance claims based upon defendants' continued discharge of pollutants and need to install monitoring wells).

D. Plaintiffs Have Stated a Claim for Trespass

To maintain an action for trespass, a plaintiff must demonstrate that (i) the plaintiff was in possession of the property; (ii) "the defendant made an unauthorized, and therefore an unlawful, entry on the land"; and (iii) the plaintiff was damaged by the invasion of his rights of possession. *Matthews v. Forrest*, 235 N.C. 281, 283, 69 S.E.2d 553, 555 (1952). In seeking to dismiss Plaintiffs' trespass claims, Defendants repeat their argument that Plaintiffs have failed to

"allege facts showing actual damage" to their property because they "do not even allege that their properties have been contaminated." MTD at 12. But, once again, Defendants ignore that Plaintiffs *have* alleged damage to their property, such as PFC contamination of Plaintiffs' wells (for Burris) and of household water fixtures (for all Plaintiffs). ¶¶ 116-25; *see also* ¶¶ 95, 97-98. This suffices for pleading trespass. *J & P Dickey*, 2012 WL 925015, at *5 (denying motion to dismiss trespass claims where complaint alleged plaintiff was in possession of the property when chemicals spread from defendants' property onto plaintiffs' property, which resulted in damages; all factual questions for either summary judgment or trial).

Even if Plaintiffs failed to allege actual damages, however (which they have not), "a complaint states a cause of action for the recovery of *nominal* damages for a properly pleaded trespass to realty even if it contains no allegations setting forth the character and amount of damages." *Matthews*, 235 N.C. at 283 (emphasis added); *Rudd*, 982 F. Supp. at 370 ("A plaintiff may recover nominal damages even without the proof of actual damages."). And even a complaint for nominal damages can support a further claim for punitive damages. *Matthews*, 235 N.C. at 283. Punitive damages are available provided that the defendant is liable for compensatory damages and committed an aggravating factor, such as fraud, malice, or willful or wanton conduct. N.C. Gen. Stat. § 1D-5(7) (2007). Here, Plaintiffs have cited scores of examples of Defendants' fraudulent and willful and wanton conduct, including knowingly discharging PFCs into the community, misrepresenting their discharges to the community and to state and federal authorities, and falsely minimizing the dangers associated therewith. *See* ¶¶ 1, 46, 48, 50, 54, 57, 64, 67, 82, 100, 103, 144, 163. Such allegations support punitive damages for Plaintiffs' trespass claims. *See, e.g.*, *Maint. Equip. Co. v. Godley Builders*, 107 N.C. App. 343, 351-52, 420 S.E.2d 199, 203-04 (1992) (affirming award of punitive damages where, *inter alia*,

plaintiff requested that defendant discontinue its trespassory grading operations, and defendant refused plaintiff's request to "put it back like it was"); *see also Cummans v. Dobbins*, 575 So. 2d 81 (Ala. 1991) (holding that in a trespass action, wantonness is established by the mere knowledge on the part of defendant of his invasion of landowner's rights, permitting jury consideration of punitive damages).

Finally, Defendants offer not a single citation for their assertion that "Plaintiffs cannot plead any damage [for trespass] in the absence of a state or federal requirement setting forth an enforceable" pollution limit. MTD at 12. Understandably so. Not only is it not the law in North Carolina that the viability of a tort claim depends on violation of a particular regulatory standard, but because North Carolina law does not require actual damages for a trespass, it would be incongruent to demand that Plaintiffs' trespass claims allege contamination above a pre-existing safety level. Indeed, North Carolina law permits stigma damages where the trespassory contamination may persist for an indefinite but significant period of time. *Rudd*, 982 F. Supp. at 372. That such damages may be recovered, regardless of whether contamination reaches a certain threshold, shows that Defendants' theory has been created from whole cloth.

III. PLAINTIFFS HAVE STATED A CLAIM FOR UNJUST ENRICHMENT

To state a claim for unjust enrichment, a plaintiff is required to show that: (1) she conferred a benefit on the defendant; (2) the defendant consciously accepted the benefit; and (3) the benefit was not conferred "officiously" (*i.e.*, by unwarranted interference in the defendant's affairs). *Booe v. Shadrick*, 322 N.C. 567, 570, 369 S.E.2d 554, 556 (N.C. 1988). Plaintiffs adequately allege each of these elements.

First, Plaintiffs allege that they (unwillingly) conferred a benefit on Defendants: uncompensated use of Plaintiffs' land, plumbing, and water supply for Defendants' disposal of PFCs. Because Defendants used Plaintiffs' land and water as a make-shift landfill, Defendants

were spared the expense of proper PFC containment and disposal. ¶¶ 169-70. Courts have long recognized that sparing someone an expense is equivalent to conferring a benefit. *See Cross v. Berg Lumber Co.*, 7 P.3d 922, 936 (Wyo. 2000) ("A benefit is conferred upon the defendant where, by tortiously using the plaintiff's property, he saves expense or loss that might otherwise be incurred—benefit being any form of advantage."); *Branch v. Mobil Oil Corp.*, 778 F. Supp. 35 (W.D. Okla. 1991) (denying motion to dismiss public nuisance and unjust enrichment claims, as "[u]njust enrichment can occur when a defendant uses something belonging to the Plaintiff in such a way as to effectuate some kind of savings which results in or amounts to a business profit") (citing D. Dobbs, HANDBOOK ON THE LAW OF REMEDIES § 4.5 (1973)).[5] Second, Defendants "accepted" this benefit by continuing to discharge toxic chemicals into the Cape Fear River and the surrounding land and air. ¶¶ 55-59, 63-67, 83, 90, 93, 169-70. Finally, Plaintiffs did not give this benefit "officiously," as Plaintiffs were unaware that Defendants discharged these chemicals into the river until the *Wilmington Star News* published that fact in 2017. ¶¶ 84-90.[6] These allegations adequately set forth how Defendants were unjustly enriched through their use of Plaintiffs' water supply and property to dispose of GenX and other toxic PFCs.

[5] To the extent Defendants argue that a plaintiff must directly confer a benefit on a defendant to state a claim for unjust enrichment, North Carolina law is to the contrary. *See Metric Constructors, Inc. v. Bank of Tokyo-Mitsubishi, Ltd.*, 72 F. App'x 916, 921 (4th Cir. 2003) ("Under North Carolina law, it is sufficient for a plaintiff to prove that it has conferred some benefit on the defendant, without regard to the directness of the transaction."); *Embree Constr. Grp., Inc. v. Rafcor, Inc.*, 330 N.C. 487, 496-97, 330 N.C. 487, 922-23 (1992) (holding that defendant benefitted at plaintiff's expense despite not being a direct beneficiary).

[6] Defendants cite *Sellers v. Morton*, 191 N.C. App. 75, 77, 661 S.E.2d 915, 923 (N.C. App. 2008), for support, but *Sellers'* finding on summary judgment that a plaintiff did not "prove" he conferred a benefit on defendants says nothing about whether Plaintiffs have alleged sufficient detail to support a claim here, on a motion to dismiss.

IV. PLAINTIFFS CAN SEEK DAMAGES FOR FUTURE INJURY

A. Plaintiffs Who Allege Personal Injury Can Seek Continued Medical Monitoring Damages

Defendants rely solely on *Curl v. America Multimedia, Inc.*, 187 N.C. App. 649 (2007), to argue that Plaintiffs—even those that have pleaded a present physical injury—cannot obtain medical monitoring damages under North Carolina law. MTD at 13-14. This overstates *Curl*'s holding, where the court refused to recognize an *independent* cause of action for medical monitoring without a present injury, and ignores key allegations in Plaintiffs' Complaint. *Curl* focused on future injury because the *Curl* plaintiffs failed to provide any evidence supporting present personal injury. *Curl*, 187 N.C. App. at 657. In contrast, three Plaintiffs allege present personal injury caused by Defendants' actions. ¶¶ 119, 123, 126. Under North Carolina law, future medical expenses are available as damages for a present personal injury. *See, e.g.*, *Fisher v. Rogers*, 251 N.C. 610, 112 S.E.2d 76 (1960); *Dickson v. Queen City Coach Co.*, 233 N.C. 167 (1951). Accordingly, medical monitoring is available for those within the putative Class who establish a present physical injury.[7]

[7] *Curl*'s conclusion that medical monitoring does not constitute an independent cause of action is also incorrect, and is not binding on this Court. Many states have recognized medical monitoring as a claim where a defendant has negligently exposed persons to an injurious toxin at levels above background. *See, e.g.*, *Donovan v. Philip Morris USA, Inc.*, 914 N.E. 2d 891 (Mass. 2009); *Ayers v. Township of Jackson*, 525 A.2d 287, 312 (N.J. 1987); *In re West Virginia Rezulin Litig.*, 585 S.E.2d 52, 72-73 (W. Va. 2003). This Court may disregard *Curl* if the Court views it as not predictive of what the North Carolina Supreme Court would decide. *Private Mortg. Inv. Servs., Inc. v. Hotel and Club Assocs., Inc.*, 296 F.3d 308 (4th Cir. 2002) ("[I]n a situation where the [state] Supreme Court has spoken neither directly nor indirectly on the particular issue before us, we are called upon to predict how that court would rule if presented with the issue [….] [State appellate] decisions may be disregarded if the federal court is convinced by other persuasive data that the highest court of the state would decide otherwise.").

B. Plaintiffs Suffering Property Damages May Also Seek Damages for Future Adverse Health Effects

Moreover, Plaintiffs who presently allege property damage[8] but no personal injury may seek medical monitoring damages for potential future injury. As set out in *Swine Farm*, fear of future adverse health effects arising from torts to property may inform both liability and damages for tort claims. In *Swine Farm*, neighbors of a hog farm filed a lawsuit claiming nuisance and seeking, among other things, damages for future adverse health effects. The court noted that under North Carolina law, "a tortfeasor 'is responsible for all damages directly caused by his misconduct, and for all indirect or consequential damages which are the natural and probable effect of the wrong, under the facts as they exist at the time the same is committed and which can be ascertained with a reasonable degree of certainty.'" *Id.* at *9 (quoting *Binder v. Gen. Motors Acceptance Corp*., 222 N.C. 512, 514, 23 S.E.2d 894, 895 (N.C. 1943)). The court concluded that the *Swine Farm* plaintiffs could adduce testimony and evidence concerning their fear of future adverse health effects to inform liability and the total amount of damages for plaintiffs' common law claims. *Id.* at *11. The *Swine Farm* court distinguished *Curl* because, unlike in *Curl*, the *Swine Farm* plaintiffs were not pursuing an independent cause of action for medical monitoring. *Swine Farm*, 2017 WL 5178038, at *11.[9]

[8]Three Plaintiffs have alleged property damage claims—Carey, Burris, and Nix—including allegations that the level of GenX in Carey's plumbing was higher than 140 ppt and allegations that Burris' test results from the DEQ showed greater than 140 ng/L of GenX in her well, resulting in Chemours' provision of bottled water to her residence. ¶¶ 118, 121, 122.

[9] Defendants argue that the *Swine Farm* plaintiffs did not seek "fear of" damages as a distinct category of damages, making the case distinct from *Curl*. MTD at 14 n. 1. This purported distinction is neither here nor there. As noted above, *Curl* does not foreclose monitoring or a health fund as relief, and *Swine Farm* instructs that plaintiffs with property damage and nuisance claims may seek damages related to their fear of potential adverse health effects. *Swine Farm*, 2017 WL 5178038, at *11.

Thus, under this court's ruling in *Swine Farm*, Plaintiffs may also allege fear of future adverse health effects and present evidence on the same to support damages on their common law claims. Those damages may compensate for future adverse health effects through medical monitoring or a health fund.

CONCLUSION

For the reasons stated above, the Court should deny Defendants' motion to dismiss in its entirety.

Dated: April 13, 2018

Respectfully submitted,

/s/Theodore J. Leopold
Theodore J. Leopold
COHEN MILSTEIN SELLERS & TOLL PLLC
2925 PGA Boulevard
Suite 220
Palm Beach Gardens, FL 33410
(561) 515-1400 Telephone
(561) 515-1401 Facsimile
tleopold@cohenmilstein.com

/s/Jay Chaudhuri
Jay Chaudhuri
N.C. Bar No. 27747
COHEN MILSTEIN SELLERS & TOLL PLLC
150 Fayetteville St.
Suite 980
Raleigh, NC 27601
(919) 890-0560 Telephone
(919) 890-0567 Facsimile
jchaudhuri@cohenmilstein.com

S. Douglas Bunch
Douglas J. McNamara
Jamie Bowers

Alison Deich
COHEN MILSTEIN SELLERS & TOLL PLLC
1100 New York Ave., N.W.
Suite 500
Washington, D.C. 20005
(202) 408-4600 Telephone
(202) 408-4699 Facsimile
dbunch@cohenmilstein.com
dmcnamara@cohenmilstein.com
jbowers@cohenmilstein.com
adeich@cohenmilstein.com

Vineet Bhatia
SUSMAN GODFREY, L.L.P.
1000 Louisiana St.
Suite 5100
Houston, TX 77002
(713) 651-3666 Telephone
(713) 654-6666 Facsimile
vbhatia@susmangodfrey.com

Stephen Morrissey
Jordan Connors
Steven Seigel
SUSMAN GODFREY, L.L.P.
1201 Third Ave.
Suite 3800
Seattle, WA 98101
(206) 516-3880 Telephone
(206) 516-3883 Facsimile
smorrissey@susmangodfrey.com
jconnors@susmangodfrey.com
sseigel@susmangodfrey.com

Neal H. Weinfield
THE DEDENDUM GROUP
1956 Cloverdale Ave.
Highland Park, IL 60035
(312) 613-0800 Telephone
(847) 478-0800 Facsimile
nhw@dedendumgroup.com

Andrew Whiteman
N.C. Bar No. 9523
WHITEMAN LAW FIRM

5400 Glenwood Ave.
Suite 225
Raleigh, NC 27612
(919) 571-8300 Telephone
(919) 571-1004 Facsimile
aow@whiteman-law.com

Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

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

R. Steven DeGeorge
ROBINSON, BRADSHAW & HINSON, P.A.
101 N. Tryon St.
Suite 1900, Independence Ctr.
Charlotte, NC 28246-1900
704-377-8123
704-339-3423 (fax)
sdegeorge@rbh.com

Jonathan D. Sasser
Stephen D. Feldman
ELLIS & WINTERS, LLP
P.O. Box 33550
Raleigh, NC 27636
919-865-7000
919-865-7010 (fax)
jon.sasser@elliswinters.com

Kenneth J. Reilly
SHOOK HARDY & BACON LLP
201 S. Biscayne Blvd
3200 Miami Center
Miami, FL 33131
305-960-6907
305-358-7470 (fax)
kreilly@shb.com

Counsel for Defendants

Dated: April 13, 2018

/s/Andrew Whiteman
Andrew Whiteman
N.C. Bar No. 9523
WHITEMAN LAW FIRM
5400 Glenwood Ave., Suite 225
Raleigh, NC 27612
(919) 571-8300
(919) 571-1004 (fax)
aow@whiteman-law.com

Paris Jimenez

From: Nikki Kustok
Sent: Friday, April 13, 2018 11:11 AM
To: Paris Jimenez
Subject: FW: Activity in Case 7:17-cv-00201-D Carey v. E. I. Du Pont De Nemours and Company et al Response in Opposition to Motion

From: Notice_NCED@nced.uscourts.gov [mailto:Notice_NCED@nced.uscourts.gov]
Sent: Friday, April 13, 2018 10:57 AM
To: Notice_NCED@nced.uscourts.gov
Subject: Activity in Case 7:17-cv-00201-D Carey v. E. I. Du Pont De Nemours and Company et al Response in Opposition to Motion

This is an automatic e-mail message generated by the CM/ECF system. Please DO NOT RESPOND to this e-mail because the mail box is unattended.
*****NOTE TO PUBLIC ACCESS USERS*** Judicial Conference of the United States policy permits attorneys of record and parties in a case (including pro se litigants) to receive one free electronic copy of all documents filed electronically, if receipt is required by law or directed by the filer. PACER access fees apply to all other users. To avoid later charges, download a copy of each document during this first viewing. However, if the referenced document is a transcript, the free copy and 30 page limit do not apply.**

U.S. District Court

EASTERN DISTRICT OF NORTH CAROLINA

Notice of Electronic Filing

The following transaction was entered by Whiteman, Andrew on 4/13/2018 at 1:56 PM EDT and filed on 4/13/2018

Case Name: Carey v. E. I. Du Pont De Nemours and Company et al
Case Number: 7:17-cv-00201-D
Filer: Victoria Carey
Document Number: 60

Docket Text:
RESPONSE in Opposition regarding [49] MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM filed by Victoria Carey. (Attachments: # (1) Exhibit Unreported decision) (Whiteman, Andrew)

7:17-cv-00201-D Notice has been electronically mailed to:

Andrew O. Whiteman aow@whiteman-law.com, aph@whiteman-law.com

Douglas J McNamara dmcnamara@cohenmilstein.com

John K. Sherk jsherk@shb.com, asims@shb.com, SFDistribution@shb.com

Jonathan D. Sasser jon.sasser@elliswinters.com, linda.hawkins@elliswinters.com, sarah.kaufman@elliswinters.com

Jordan W Connors jconnors@susmangodfrey.com

Joseph A. Ponzi jponzi@brookspierce.com, acarroll@brookspierce.com

Kenneth J. Reilly kreilly@shb.com, asims@shb.com, SFDistribution@shb.com

Mark D. Anstoetter manstoetter@shb.com, apittman@shb.com, asims@shb.com, mbuchanan@shb.com, sdrum@shb.com, SFDistribution@shb.com, sharms@shb.com

Stephen D. Feldman stephen.feldman@elliswinters.com, jotionette.jones@elliswinters.com

Stephen Douglas Bunch dbunch@cohenmilstein.com

Stephen E. Morrissey smorrissey@susmangodrey.com, nkustok@susmangodfrey.com

Steven M. Seigel sseigel@susmangodfrey.com

Theodore J. Leopold tleopold@cohenmilstein.com, lcuomo@cohenmilstein.com

7:17-cv-00201-D Notice has been delivered by other means to:

The following document(s) are associated with this transaction:

Document description: Main Document
Original filename:n/a
Electronic document Stamp:
[STAMP dcecfStamp_ID=1114528487 [Date=4/13/2018] [FileNumber=5447109-0
] [5c4de7c4e9c6a4a0d4bd7b2a58f7e7ef32012c1d750c135380f42e4acfa773043fc
c1fa755630589f774fc5c85cf5d386fd792481593d95e084611c4c301ac9c]]
Document description: Exhibit Unreported decision
Original filename:n/a
Electronic document Stamp:
[STAMP dcecfStamp_ID=1114528487 [Date=4/13/2018] [FileNumber=5447109-1
] [a0ae155469d5570b190d92627379e2bd94c51015b71ac47821b687c51bb89e92332
1ce3ed55e0f337342c1fa1882e5319dca37427b8d1ae49b34c78cba11e073]]