

Honorable Michael Regan
Administrator
US Environmental Protection Agency
Mail Code 1101A
1200 Pennsylvania Ave. NW
Washington, DC 20460

November 21, 2023

Re: Approval of Imports of GenX-Containing Wastes by Chemours

Dear Administrator Regan:

We write on behalf of environmental and public health groups representing communities in North Carolina, other states and across the nation. These undersigned groups are deeply concerned about EPA's recent [consent](#) to the Chemours Company's alarming importation of up to 4.4 million pounds of per- and polyfluoroalkyl substances (PFAS) waste from its facility in Dordrecht, Netherlands.

These imported wastes represent a serious threat to the health of overburdened communities in North Carolina's Cape Fear River basin, where the drinking water of more than 500,000 people has been highly contaminated for four decades by PFAS pollution from the Chemours plant in Fayetteville. As demonstrated below, we believe that EPA's decision to allow the waste imports was incomplete and highly flawed and failed to meaningfully address their harmful health and environmental impacts on at-risk communities. The many gaps and omissions in EPA's analysis are identified in this letter and summarized in the attachment.

While EPA's recent announcement of a temporary pause in the waste imports is a positive first step, we strongly urge the Agency to go further by rescinding its recent approval of these imports and informing the Dutch authorities that it no longer consents to their entry into the U.S. Anything less would fail to protect North Carolina communities from a serious threat of harm.

Background

EPA's September 8, 2023 consent to the Chemours' imports followed its rejection of 2018 and 2022 notices from the Netherlands seeking approval to export PFAS wastes to the U.S. EPA objected to these notices because of insufficient supporting information and concern that the wastes were "hazardous" under the Resource Conservation and Recovery Act (RCRA). However, EPA reversed its position in 2023 and consented to the imports based on a new submission by Chemours' Netherlands facility. Because this submission has been withheld as confidential business information, the public cannot review the basis for EPA's change in position.

EPA's approval of the imports allows up to 100 shipments from the Dordrecht plant to the Chemours Fayetteville facility. In 2018, Chemours [indicated](#) that 45% of the imported wastes would be GenX (HFPO Dimer Acid). It is believed that the wastes to be imported under EPA's recent approval are similar to the waste stream analyzed in 2018. As before, the GenX would be recovered and recycled on-site; the remainder of the imported waste would be disposed of off-site by incineration or underground injection.

Neither EPA nor Chemours has disclosed how the GenX will be recovered, how it will be used, and what impact it will have on the plant's discharges and emissions. Information on the constituents of the residual waste that would be disposed of off-site is not publicly available, but it may include other PFAS that are persistent and highly toxic. The impacts of GenX and these other PFAS on communities in ports of importation, along transport corridors, and near disposal facilities are likewise unknown.

The PFAS Crisis in Southeastern North Carolina

Around 2010, Chemours began to produce and use GenX as a replacement for perfluorooctanoic acid (PFOA), which EPA and industry had agreed to phase out because of its harmful health effects and widespread contamination of drinking water. Within a few years, extensive GenX contamination was discovered in the Cape Fear River downstream of the Fayetteville plant, in drinking water sourced from the river and private wells, and in local air, soil, groundwater, seafoam along local beaches, and food. At the same time, numerous other Chemours-specific PFAS were detected in drinking water and the blood of residents. Further investigation revealed that Chemours' contamination of the river and drinking water supplies had been occurring since the 1970s under the plant's previous owner, DuPont. Because of this historical and ongoing pollution, PFAS exposure by Cape Fear communities has been and remains among the highest in the nation.

In 2019, prompted by the high levels of GenX and other PFAS in wastewater and drinking water, Chemours, the North Carolina Department of Environmental Quality (NCDEQ), and Cape Fear River Watch entered into a [consent order](#) requiring extensive controls on PFAS wastewater discharges and air emissions. Then, in 2022, EPA published a GenX [Health Advisory](#) recommending a drinking water level of 10 parts per trillion (ppt). In March 2023, EPA proposed to convert this Advisory into an [enforceable drinking water standard](#) for GenX.

These limits on drinking water levels were based on a comprehensive EPA [toxicity assessment](#) finding strong evidence that GenX harms the liver, kidneys, immune system, and reproductive system at extremely low levels of exposure. Other PFAS that may be contained in the imported wastes likely have similar human health effects.

Earlier this year, a grassroots community group, Clean Cape Fear, filed a communication with the United Nations seeking redress from alleged human rights violations due to PFAS contamination coming from Chemours' Fayetteville Works Facility. Of the many concerns listed in the group's complaint was that the international shipment of GenX waste from Chemours' facility in the Netherlands to Fayetteville Works infringed on the basic human right to life, health, and life with dignity, right to information, right to clean water, and the right to a clean, healthy, and sustainable environment.

How Chemours' Reckless Waste Management Has Put Communities at Risk

We are deeply concerned about Chemours' ability to safely manage these imports without adding to the large human health and environmental risks from PFAS exposure in Southeastern North Carolina and elsewhere. Underscoring these concerns is the long history of Chemours' intentional and reckless handling of its waste, which has resulted in one of the biggest

environmental crises in the state's history. The company has devastated the air, water, and soil in the Cape Fear basin; caused downstream drinking water utilities to spend over \$200 million on water treatment; and contaminated at least 9,000 private wells, including those over 100 miles from the company's facility.

Chemours has repeatedly been cited for violations of [federal](#) and [state](#) environmental laws at its Fayetteville and other facilities. In 2019, EPA issued six notices of violation to Chemours for non-compliance with the Toxic Substances Control Act. In 2021, EPA and Chemours [settled](#) violations of its state RCRA permit involving unlawful receipt of hazardous PFAS waste from off-site sources in 2017 and 2018. The facility has more recently been issued several notices of violation by NCDEQ for violating the consent order and other state requirements. There is no evidence that EPA considered this history of state and federal violations when determining whether to approve the waste imports, yet they demonstrate that the company cannot be trusted to responsibly contain its pollution.

The 2019 consent order between Chemours, NCDEQ and Cape Fear River Watch includes numerous requirements for controlling air emissions, remediating groundwater and limiting groundwater discharges, capturing 99.99 percent of in-process waste streams, reducing PFAS levels in the Cape Fear River and drinking water intakes, and providing replacement drinking water supplies to private well owners with unsafe levels of contamination. EPA has failed to consult with NCDEQ on whether on-site processing of imported PFAS wastes will compromise compliance with consent order requirements. If the Chemours waste imports increase PFAS releases to the environment and levels in drinking water or human blood, overburdened communities will be placed at additional risk.

Answers to these and other basic questions are not available because of Chemours' failure to inform local communities of its planned waste imports and the absence of consultation between EPA and NCDEQ on their environmental impacts. For example, Chemours has not disclosed the process it intends to use to recover GenX from the imported waste and how the recovered GenX will be used in its operations. If Chemours' goal is to increase the volume of GenX used at the Fayetteville facility, the result could be additional GenX discharges and emissions from the plant. Similarly, because the identities of other PFAS that may be in the waste imports are unknown, their risks to communities near the Chemours plant or downstream disposal sites cannot be determined.

Last year, claiming capacity limitations at the Fayetteville facility, Chemours [applied](#) to NCDEQ to modify the facility's air permit to allow for an expansion of facility operations. Because the recovery of GenX from imported wastes could increase the facility's output, these claimed capacity constraints should be considered in evaluating Chemours' ability to safely manage and process the wastes. Again, however, because it did not consult with NCDEQ prior to approving the waste imports, EPA likely failed to conduct this analysis. If the plant's output increases, the effectiveness of the thermal oxidizer meant to control air emissions could be challenged, resulting in additional emissions.

The potential for increased harm also extends to communities surrounding the six ports listed in the EPA approval letter: Baltimore, M.D.; Charleston, S.C.; Chester, P.A.; Newark, N.J.; Norfolk, V.A.; and Wilmington, N.C. Residents in many of these communities face

environmental injustice. The PFAS waste imports will create additional health risks at the ports of entry and during transport to the waste's "final" destination at disposal sites. Should the wastes be incinerated, this will likely create additional risks to nearby communities because incineration does not typically destroy PFAS and PFAS emissions will likely be spread beyond the boundaries of disposal facilities.

Impending Changes in GenX's Classification under RCRA

In [response](#) to several petitions, EPA has sent a proposed rule to the Office of Management and Budget that would add GenX and certain other PFAS to the RCRA list of "hazardous constituents." Once this rule is finalized, Chemours will be prohibited from importing GenX waste to its Fayetteville facility for purposes of reclamation pursuant to the 2021 RCRA [Consent Agreement](#) between EPA Region 4 and Chemours and the applicable NCDEQ RCRA permit.

The risks from unrestricted imports of the Chemours wastes are a prime example of why the U.S. needs to prioritize finalizing the ongoing PFAS RCRA and CERCLA rulemakings for PFAS. We urge EPA to work with OMB to expedite these rulemakings so that communities like those in Eastern North Carolina will be better protected against PFAS waste in the future.

In the meantime, the very substances that EPA plans to regulate as hazardous waste have been approved to be shipped, largely unregulated, in large quantities via ship, rail car, and truck on our nation's transportation corridors. While the United States moves toward controlling PFAS under RCRA, the EU's highest court recently [affirmed](#) the classification of GenX as a "substance of high concern" under REACH. Chemours Netherlands facility is also under [criminal investigation](#) by Dutch authorities for a pattern of unlawful GenX releases. Our communities should not be Chemours' PFAS dumping ground simply because it wishes to avoid stringent regulation in the European Union and take advantage of the slow pace of the U.S. regulatory process.

Chemours' GenX waste shipments are also classified as "amber wastes" under the [OECD's Decision of the Council on the Control of Transboundary Movements of Wastes Destined for Recovery Operations](#), a designation that requires the consent of the receiving country prior to import. The OECD does not require any country to accept amber waste or limit the grounds for their objections to such imports. Given the PFAS crisis facing the United States, and the Cape Fear River Basin in particular, EPA should invoke its authority under that OECD agreement to reject all shipments of GenX and other PFAS waste.

EPA also has the authority to reject the shipments under RCRA if they contain any hazardous waste characteristic. Prior Chemours GenX waste shipments exhibited the hazard characteristic of corrosivity, and while the 2021 Consent Order between EPA and Chemours requires it to test the characteristics of future GenX waste exports, the order does not direct the results of such testing to be provided to EPA, much less be made public. Instead of relying on Chemours – a company with a long history of environmental non-compliance – to police itself, in the absence of a complete and public analysis of all hazardous waste characteristics EPA should deem all GenX imports hazardous and review them under its [Criteria and Process for Objecting to Requests to Import Hazardous Waste to a U.S. Facility](#). Under those criteria, EPA may object to a shipment if the U.S. receiving facility "cannot properly and safely manage" the waste. Given the severe harms associated with the PFAS class and EPA's acknowledgment of the risks from

PFAS disposal, all PFAS waste imports pose unnecessary and unacceptable risks, and they should be rejected on that basis as well.

Conclusion

What communities potentially affected by Chemours' waste imports need is *less* exposure to PFAS, not more. Residents near the Fayetteville facility have 2-3 times the national average of PFAS in their bodies. The EPA's own research acknowledges these residents have increased risks of multi-morbidities due to their PFAS contaminated tap and well water. We should not add to the already staggering burden borne by these communities by importing "forever chemical" waste from other countries. For these reasons, we respectfully request that EPA rescind its approval of Chemours' imports of PFAS waste.

We appreciate EPA's consideration of our concerns.

Respectfully submitted,

350 Triangle
350 West Sound Climate Action
7 Directions of Service
Alaska Community Action on Toxics
American Bird Conservancy
Animals Are Sentient Beings, Inc.
Breast Cancer Prevention Partners
Cape Fear River Watch
Center for Biological Diversity
Center for Environmental Health
Chatham Research Group
Chester Residents Concerned for Quality Living (CRCQL)
Clean Cape Fear
Clean Water Action
CleanAIRE NC
Concerned Health Professionals of Pennsylvania
Defend Our Health
Delaware Riverkeeper Network
Down East Coal Ash Environmental and Social Justice Coalition
Earth Action, Inc.
Earthjustice
Ecology Center of Michigan
Environmental Defense Fund
Environmental Justice Task Force - Tucson
Environmental Working Group
EnvironmentaLEE
Fight for Zero
Forest Keeper

Friends of Big Ivy
Green America
Green Science Policy Institute
Hawai'i Alliance for Progressive Action (HAPA)
Heartwood
Idle No More SF Bay
International Pollutants Elimination Network (IPEN)
Kickapoo Peace Circle
Maryland Pesticide Education Network
Merrimack Citizens for Clean Water
Mid-Missouri Peaceworks
Movement Rights
Natural Resources Defense Council
Need Our Water - Oscoda, Michigan
Newburgh Clean Water Project
NOFA/Mass Pollinator Network
North Carolina League of Conservation Voters
North Carolina Conservation Network
North Carolina Council of Churches
North Carolina Interfaith Power & Light
North Carolina Sierra Club
North Carolina Stop Genx in Our Water
Occupy Bergen County
Oregon Environmental Council
Plastic Pollution Coalition
Project Outreach: Frac Sand Sentinel
Protect Our Water, Heritage, Rights
Rachel Carson Council
Safer States
Scientist Rebellion, Turtle Island
SEE (Social Eco Education)
Slingshot
Snake River Alliance
Southern Environmental Law Center
Surfrider Foundation
SustainUS
The Last Plastic Straw
Thrive North Carolina
Toxic Free North Carolina
Until Justice Data Partners

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Matt Klassen, PFAS Task Coordinator, OW
Grant Cope, OA

**ATTACHMENT: CRITICAL GAPS AND OMISSIONS IN EPA'S SEPTEMBER 8, 2023
DECISION CONSENTING TO THE CHEMOURS WASTE IMPORTS**

- EPA's explanation for its basis for changing its position on imports;
- Characterization of the imported waste, including whether PFAS other than GenX are part of the waste, and information on toxicity of such compounds;
- How the GenX in the wastes will be recovered and used at the Fayetteville facility;
- What impact the GenX (and potentially other PFAS) will have on the plant's discharges and emissions;
- Whether and how the importation will affect compliance with the environmental restrictions in the consent order between Chemours, NCDEQ and Cape Fear River Watch;
- What effect the imported waste will have on human health for communities near Chemours' facility and downstream, as well as those along transport corridors and near disposal facilities;
- The implications of Chemours' past pollution and violations of environmental laws for its ability to manage the additional waste it will receive responsibly and lawfully;
- How capacity constraints at Chemours' facility could limit Chemours' ability to handle the waste without additional discharges and emissions; and
- Impacts of the additional waste on the effectiveness of the thermal oxidizer in controlling all PFAS air emissions.