

Mandates of the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes; the Working Group on the issue of human rights and transnational corporations and other business enterprises; the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment; the Special Rapporteur on the right to food and the Special Rapporteur on the human rights to safe drinking water and sanitation

Ref.: AL NLD 2/2023
(Please use this reference in your reply)

25 September 2023

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes; Working Group on the issue of human rights and transnational corporations and other business enterprises; Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment; Special Rapporteur on the right to food and Special Rapporteur on the human rights to safe drinking water and sanitation, pursuant to Human Rights Council resolutions 45/17, 53/3, 46/7, 49/13 and 51/19.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning **alleged human rights violations and abuses against residents along the lower Cape Fear River in North Carolina**. This is in relation to the residents' chronic exposure to dangerous quantities of per- and polyfluoroalkyl substances (PFAS), chemicals that are released from the Fayetteville Works facility, which is a manufacturing plant of the Chemours Company LLC (Chemours) previously owned by E.I DuPont de Nemours (DuPont). Chemours and DuPont are companies domiciled in the United States of America, with operations also abroad. Alarming reports indicate that the Netherlands has allowed the transboundary movement of PFAS waste from a facility in Dordrecht, Netherlands, to Fayetteville Works in North Carolina, the United States.

According to the information received:

Contaminating the environment with PFAS:

Fayetteville Works is a manufacturing plant located along the lower Cape Fear River in Bladen County, North Carolina. It was previously owned by DuPont and is now owned by its spinoff Chemours. For more than forty years, Fayetteville Works has been releasing a variety of toxic PFAS into the local environment, contaminating the air, soil, and water sources. PFAS are a class of thousands of synthetic organofluorine chemicals, and exposure to them jeopardizes residents' rights to life, health, drinking water and sanitation, and a healthy, clean, and sustainable environment.¹

In a petition filed to the Environmental Protection Agency (EPA) in October 2020, 54k known PFAS chemicals have been identified and attributed to

¹ Nix v. Chemours Co. FC LLC, No. 7:17-cv-00189-D (E.D. N.C. S. Div., May 18, 2022), Ex. 8, § 171

Chemours based on data from a wide range of testing and studies conducted by different actors, including Chemours, the Food and Drug Administration (FDA), Brunswick County authorities, academics, and community members.² An analysis of Chemours wastewater and stormwater discharge was required by a Consent Order that was entered in Bladen County Superior Court in 2019.³ Unidentified PFAS chemicals were detected in this analysis in addition to the 54 already known PFAS.

Many of the PFAS chemicals detected in the wastewater and stormwater discharge from Fayetteville Works are known to be toxic, such as GenX, which is currently produced at the facility, and Perfluorooctanoic acid (PFOA), which was historically produced in the facility.⁴ The toxicity of many other PFAS chemicals found is unknown but likely similar to known PFAS due to their structural similarity.⁵

In addition to their toxicity, one of the key characteristics of PFAS chemicals is their persistence. In fact, they are commonly known as “forever chemicals” because they do not degrade in the environment.⁶

Over the course of over 40 years, Fayetteville Works has been dumping its wastewater in the Cape Fear River. This has made the river water unsafe to drink for 100 river miles.⁷ Unbeknownst to them, public water authorities have been supplying contaminated water from the river to local residents, including residents of Brunswick County, Pender County, Bladen County, Cumberland County, and New Hanover County. Residents have also been using this water to grow their crops, for personal use, and to fill up their swimming pools. In addition to contamination from the wastewater dumped in the river, PFAS air emissions are also polluting water sources. As the air PFAS emissions land on soil, they infiltrate and contaminate groundwater.

The Fayetteville Works facility has received hazardous PFAS waste from the Netherlands since 2014.⁸ This waste is from the production of the toxic chemical GenX.

² Center for Environmental Health, et al., *Petition to Require Health and Environmental Testing Under the Toxic Substances Control Act on Certain PFAS Manufactured by Chemours in Fayetteville, North Carolina* (Oct. 13, 2020). https://www.epa.gov/sites/default/files/2020-10/documents/chemours_pfas_testing_petition_final.pdf - Please see p.46-49 for information on the tests and studies petitioners identified the 54 PFAS from.

³ The Chemours Company LLC, *PFAS Non-targeted Analysis and Methods Interim Report: Process and Non-Process Wastewater and Stormwater* (June 30, 2020), at 4. <https://www.chemours.com/en/-/media/files/corporate/fayetteville-works/pfas-nontargeted-analysis-and-methods--interim-report-20200630.pdf?rev=a135664f18664881af0e129aa54e456d&hash=34E2052584B485833656C69B141DCA94> “The compounds are considered to be unknown because the analytical method has not been calibrated for them (for example, because authentic standards do not exist).”

⁴ <https://www.chemours.com/en/about-chemours/genx>
<https://www.epa.gov/chemical-research/human-health-toxicity-assessments-genx-chemicals>
Questions and Answers: Drinking Water Health Advisories for PFOA, PFOS, GenX Chemicals & PFBS, U.S. EPA (Mar. 14, 2023), <https://www.epa.gov/sdwa/questions-and-answers-drinking-water-health-advisories-pfoa-pfos-genx-chemicals-and-pfbs> (regarding toxicity of PFOA)

⁵ <https://www.deq.nc.gov/news/key-issues/genx-investigation> - The Chemours facility was found to be responsible for the release of GenX into the Cape Fear River. DEQ began investigating this in June 2017.
<https://www.epa.gov/system/files/documents/2021-10/pfas-natl-test-strategy.pdf>

⁶ Marcos A. Orellana, *Visit to Italy*, HRC, A/HRC/51/35/Add. 2 (July 13, 2022), <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G22/405/46/PDF/G2240546.pdf?OpenElement>

⁷ *Nix v. Chemours Co. FC LLC*, No. 7:17-cv-00189-D (E.D. N.C. S. Div., May 18, 2022), Ex. 8, § 171

⁸ [Chemours Is Importing Toxic GenX Waste to the U.S. \(theintercept.com\)](https://www.theintercept.com)

GenX, the 6-Carbon PFAS compound that Fayetteville Works continues to produce, is especially mobile and rapidly reaches groundwater.⁹ It is also more difficult to filter GenX out of water than other longer-chain PFAS compounds. PFAS chemicals have been discovered in private wells in over a 10-mile radius of the Fayetteville Works plant.¹⁰

PFAS pollution from Fayetteville Works has spread through aquatic and terrestrial ecosystems in the area, affecting the fish, livestock, and crops. This means that residents' food sources are also contaminated with PFAS. According to data published by the EPA, the total level of PFAS found in a fish sample taken from the Cape Fear River in 2013 was 17,200 parts per trillion (ppt). In particular, the level of PFOS, one type of PFAS, in that sample was 4,700 ppt.¹¹ This level surpassed the EPA's health advisory for PFOS in drinking water, which recommends that levels should not surpass 0.02 ppt.¹²

Biomonitoring studies, which measure chemicals in biological organisms, highlight the high exposure to PFAS in the lower Cape Fear River watershed. In one study, certain types of PFAS were found in 97% of local residents tested.¹³ Another study showed that PFAS stay in the human body for a long period of time; months after the facility stopped releasing certain PFAS chemicals, the blood of 99% of adults and 100% of children who were tested still contained these PFAS chemicals.¹⁴ This information is concerning, especially considering the existing scientific evidence linking PFAS exposure to infertility, miscarriages, lung diseases, and different forms of cancer, among other adverse health impacts.

Since the Cape Fear River flows into the Atlantic Ocean, and given the persistence of PFAS, the dangers of PFAS contamination not only affect the local environment, but likely threaten wildlife and people beyond the local area.

Regarding the persistence of PFAS, DuPont and Chemours facilities have significantly contributed to the widespread contamination of the planet with toxic, synthetic PFAS chemicals that will not easily degrade. In addition to facilities in the United States of America including in North Carolina, West Virginia, and New Jersey, DuPont and Chemours have operations in several countries around the world that contributed to the global toxic PFAS pollution. Scientists have found PFOA anywhere in the world they have tested for it.¹⁵

⁹ *Draft for Public Comment: Human Health Toxicity Values for Hexafluoropropylene Oxide (HFPO) Dimer Acid and Its Ammonium Salt (CASRN 13252-13-6 and CASRN 62037-80-3): Also Known as "GenX Chemicals"* at 6-9, U.S. EPA (Nov. 2018), https://www.epa.gov/sites/production/files/2018-11/documents/genx_public_comment_draft_toxicity_assessment_nov2018-508.pdf

¹⁰ *Nix v. Chemours Co. FC LLC*, supra n.10, Ex. 8, § 8

¹¹ https://www.ewg.org/interactive-maps/pfas_in_US_fish/map/

¹² Liz McLaughlin, "This is heartbreaking": Study finds dangerous chemicals in freshwater fish, WRAL NEWS, <https://www.wral.com/this-is-heartbreaking-study-finds-dangerous-chemicals-in-freshwater-fish/20679753/>

¹³ Dylan J. Wallis et. Al, *Source apportionment of serum PFASs in two highly exposed communities*, SCIENCE OF THE TOTAL ENVIRONMENT, <https://www.sciencedirect.com/science/article/pii/S0048969722059411> (Jan. 10, 2023).

¹⁴ *Nix v. Chemours Co. FC LLC*, No. 7:17-cv-00189-D (E.D. N.C. S. Div., May 18, 2022), Ex. 2 at Fig. 36, ECF No. 336-2.

¹⁵ Nathaniel Rich, *The Lawyer Who Became DuPont's Worst Nightmare*, New York Times Magazine (2016).

Without prejudging the accuracy of these allegations, we express our most serious concern regarding the human rights and environmental impacts of DuPont and Chemours' activities in Fayetteville Works, particularly the discharge of toxic PFAS into the local environment. We are especially concerned about DuPont and Chemours' apparent disregard for the wellbeing of community members, who have been denied access to clean and safe water for decades. We are further alarmed that due to the persistence of these toxic, synthetic chemicals, DuPont and Chemours have caused a global PFAS contamination problem. Similarly, we are concerned about the role the Netherlands might be playing in PFAS pollution in North Carolina by exporting GenX waste to the Fayetteville facility. We remain preoccupied that these actions infringe on community members' right to life, right to health, right to a healthy, clean, and sustainable environment, and the right to clean water, among others.

Taking these concerns into consideration, we were pleased to learn about a proposal submitted by five European countries, including the Netherlands, to the European Chemicals Agency on 13 January 2023 to restrict the manufacture and use of PFAS within the European Union.¹⁶ The proposal aims to restrict PFAS as a class, as opposed to the restriction of individual PFAS, to avoid the replacement of one hazardous PFAS with another hazardous PFAS. The proposal reinforces the goals set out by the Zero Pollution action plan and the Chemicals Strategy defined by the European Commission. It is an important step that signals the Netherlands' recognition of the negative impacts of PFAS on human health and the environment. The Netherlands' recognition of the dangers of PFAS call for effective controls on PFAS-laden waste, so that waste exported from the country does not pose threats to human rights and the environment elsewhere. In this regard, we emphasize the universal nature of human rights and stress the importance of exercising due diligence with respect to the transboundary movement of hazardous waste.

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful for your observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.
2. Please describe the steps your Excellency's Government has taken to:
 - a. Ensure that the generation of hazardous wastes and other wastes within its borders is reduced to a minimum, taking into account social, technological and economic aspects;
 - b. Ensure the availability of adequate disposal facilities, for the environmentally sound management of hazardous wastes and other wastes, within its borders;

¹⁶ <https://echa.europa.eu/-/echa-publishes-pfas-restriction-proposal>

- c. Ensure that the transboundary movement of hazardous wastes and other wastes is reduced to a minimum and is conducted in a manner which will protect human health and the environment against adverse effects which may result from such movement.
3. Please indicate what assessments were conducted to determine whether the waste exported to the Fayetteville Works facility will be managed in an environmentally sound manner.
4. Please provide information on the measures that your Excellency's Government plans to take to prevent and mitigate the recurrence of impacts and damages of PFAS, including abroad by business enterprises domiciled within your territory.
5. Please highlight the steps that Your Excellency's Government has taken, or is considering to take, including policies, legislation, and regulations, to fulfill its obligations to protect the population against human rights abuse by business enterprises domiciled in its territory and/or jurisdiction, and ensuring that business enterprises within its territory and/or jurisdiction conduct effective human rights due diligence to identify, prevent, mitigate and account for how they address their impacts on human rights throughout their operation, as set forth by the UN Guiding Principles on Business and Human Rights (UNGPs).
6. Please indicate specific initiatives taken to ensure that those affected by business-related human rights abuse within your jurisdiction and/or territory have access to effective remedy.

We would appreciate receiving a response within 60 days. Past this delay, this communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#). They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person(s) responsible for the alleged violations.

We may publicly express our concerns in the near future, as we believe that the information received is sufficiently reliable to indicate that there is a matter that warrants immediate attention. In addition, we believe that the public needs to be informed of the potential implications related to the above allegations. The press release will indicate that we have been in contact with Your Excellency's Government to clarify the relevant issues.

Please be informed that a letter on this subject matter has been also sent to the United States as well as those business enterprises that are involved in the allegations above, namely DuPont de Nemours INC., The Chemours Company LLC, and Corteva Agriscience.

Please accept, Excellency, the assurances of our highest consideration.

Marcos A. Orellana

Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes

Damilola S. Olawuyi

Chair-Rapporteur of the Working Group on the issue of human rights and transnational corporations and other business enterprises

David R. Boyd

Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment

Michael Fakhri

Special Rapporteur on the right to food

Pedro Arrojo-Agudo

Special Rapporteur on the human rights to safe drinking water and sanitation

Annex

Reference to international human rights law

In connection with above alleged facts and concerns, we wish to draw the attention of Your Excellency's Government to obligations under international human rights instruments, to which the Netherlands is party. We wish to recall article 6(1) of the International Covenant on Civil and Political Rights (ICCPR), ratified by the Netherlands on 8 June 1992, which guarantees the right to life.

As highlighted by the Human Rights Committee in General Comment no. 36, the duty to protect life also implies that States parties should take appropriate measures to address the general conditions in society that may give rise to direct threats to life or prevent individuals from enjoying their right to life with dignity, including degradation of the environment (para. 26). Environmental degradation, climate change and unsustainable development constitute some of the most pressing and serious threats to the ability of present and future generations to enjoy the right to life. Implementation of the obligation to respect and ensure the right to life, and in particular life with dignity, depends, inter alia, on measures taken by States parties to preserve the environment and protect it against harm, pollution and climate change caused by public and private actors (para. 62).

States have a duty to prevent exposure to hazardous substances and wastes, as detailed in the 2019 report of the Special Rapporteur on the human rights implications of the environmentally sound management and disposal of hazardous substances and wastes to the United Nations General Assembly (A/74/480). This obligation derives implicitly, but clearly, from a range of rights and duties enshrined in the global human rights framework, under which States are obliged to respect and fulfill recognized human rights, and to protect those rights, including from the consequences of exposure to toxic substances. These rights include the human rights to life, health, food and drinking water, a healthy environment, adequate housing and safe and healthy working conditions.

We would like to remind your Excellency's Government that, under international law, including the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal, ratified by the Netherlands in 1993, States have obligations regarding the control and transboundary movement of certain toxic substances and wastes. One such obligation is contained in article 4 of the Basel Convention: "Each Party shall require that hazardous wastes or other wastes, to be exported, are managed in an environmentally sound manner in the State of import or elsewhere."

Both the United Nations General Assembly and the Human Rights Council recognized the right to a clean, healthy and sustainable environment with the adoption of resolutions A/RES/76/300 and A/HRC/RES/48/13. In this regard, we would like to draw the attention of your Excellency's Government to the Framework Principles on Human Rights and the Environment detailed in the 2018 report of the Special Rapporteur on Human Rights and the Environment (A/HRC/37/59). The principles provide that States must ensure a safe, clean, healthy and sustainable environment in

order to respect, protect and fulfill human rights (principle 1); States must respect, protect and fulfill human rights in order to ensure a safe, clean, healthy and sustainable environment (principle 2); and States must ensure effective enforcement of their environmental standards against public and private actors (principle 12).

In addition, we would like to stress that the Special Rapporteur on human rights and the environment has identified non-toxic environments in which people can live, work, study and play as one of the six substantial elements of the right to a clean, healthy and sustainable environment as recognized by the Human Rights Council and General Assembly. In his report on the topic A/HRC/49/53, he concluded that “the substantive obligations stemming from the right to a non-toxic environment require immediate and ambitious action to detoxify people’s bodies and the planet. States must prevent toxic exposure by eliminating pollution, terminating the use or release of hazardous substances, and rehabilitating contaminated communities”¹⁷ the Special Rapporteur has also recommended to “prohibit the production and use of substances that are highly toxic, bioaccumulative and persistent (including carcinogens, mutagens, endocrine disruptors, reproductive toxins, immune system toxins and neurotoxins) with limited exemptions where uses are essential for society”.

We would like to highlight the UN Guiding Principles on Business and Human Rights (A/HRC/17/31), which were unanimously endorsed by the Human Rights Council in June 2011, are relevant to the impact of business activities on human rights. These Guiding Principles are grounded in recognition of:

- a. “States’ existing obligations to respect, protect and fulfill human rights and fundamental freedoms;
- b. The role of business enterprises as specialized organs or society performing specialized functions, required to comply with all applicable laws and to respect human rights;
- c. The need for rights and obligations to be matched to appropriate and effective remedies when breached.”

According to the Guiding Principles, States have a duty to protect against human rights abuses within their territory and/or jurisdiction by third parties, including business enterprises. States may be considered to have breached their international human law obligations where they fail to take appropriate steps to prevent, investigate and redress human rights violations committed by private actors. While States generally have discretion in deciding upon these steps, they should consider the full range of permissible preventative and remedial measures.

¹⁷ A/HRC/49/53