SOUTHERN ENVIRONMENTAL LAW CENTER

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**VIA E-MAIL**

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Senators,

We are pleased to see that you are concerned about water quality and public health issues facing North Carolina, including the proliferation of per- and polyflouroalkyl substances ("PFASs") in our drinking waters. However, further burdening the North Carolina Department of Environmental Quality ("DEQ"), which has had 70 water quality positions eliminated and its budget cut by 40% in recent years, with an audit by the United States Environmental Protection Agency ("EPA") only hurts DEQ's ability to stop the water pollution and contamination of drinking water supplies facing our communities. As an alternative, we recommend the following immediate actions to ensure clean drinking water for all of North Carolina.

First, the Senate must stop pushing the House to pass House Bill 162. Second, the Senate must pass House Bill 189.

House Bill 162, which has passed the Senate and is awaiting action by the House, would prohibit state agencies from enacting any regulation to protect water quality if the c*ost to polluters* is too high, even if the *benefit to the people* of North Carolina in clean and safe

drinking water is many times the cost. Disallowing any rules that would have an aggregate five-year financial impact of $100 million or more handcuffs DEQ and the North Carolina Department of Health and Human Services ("DHHS") from adequately responding to contaminated water—and other public health—emergencies. Furthermore, the financial impact of any regulations found necessary to protect human health and the environment would not apply to a single polluter. Those costs would be spread across all regulated entities. Therefore, even rules that have a positive widespread impact, such as those that might be required to address the harmful pollution found in rivers across our state, may be made impossible by this law—even if such rules do not impose an unreasonable cost on any one regulated entity.

House Bill 189 passed the House unanimously on January 10th, 2018. It requires further study of GenX and other toxic contaminants in our drinking water sources and appropriates $2.3 million to DEQ to help address the issue of emerging contaminants. Although we agree that the policy portion of the bill does not go far enough to address the problem, the bill would provide much needed funding to DEQ to address toxic pollution of our waters. DEQ has taken discrete steps to address GenX by investigating Chemours' violations, filing an enforcement action against the company, and suspending and revoking its wastewater discharge permit, as well as linking well contamination around the facility to air emissions from the plant. The understaffed agency needs additional funding to address the protection of water quality, in particular, the backlog of existing water quality ("NPDES") permits and the contamination of drinking water sources from unstudied chemicals. Years of legislative cuts to DEQ's budget have left waterways unprotected and NPDES permits backlogged as much as two years.

There are several additional discrete actions the legislature should take immediately to begin addressing GenX and other toxic pollutants in our water. The Senate should not wait for the short session, as these actions could be taken in the session currently underway or in an additional special session this winter or spring. These actions involve both restoring the authority of DEQ that the North Carolina legislature has taken away and reinstating important water and air protections that the state legislature has repealed at the behest of large polluters over the past few years.

Specifically, the legislature could:

- Restore DEQ's authority to regulate air emissions that pollute state waters by repealing the limitation placed on the definition of "discharge," which currently excludes "emission[s]" in G.S. 143-213(9) which was established in 2012 by the N.C.G.A. in S.L. 2012-187. Evidence exists that GenX contamination of many of the wells surrounding the Chemours facility originates with airborne emissions.
- Repeal G.S. 150B-19.3, the "Hardison Amendment," which prohibits agencies authorized to implement and enforce state and federal environmental laws from adopting regulations for the protection of water quality, the environment, or natural resources that impose a more restrictive standard, limitation, or requirement than those imposed by federal law. North Carolina environmental agencies should have the flexibility and authority to enact protections for water quality and drinking water to protect the people of North Carolina based on the State's needs and circumstances. They should not be limited by federal standards, which, in many cases, are enacted to provide a minimal level of protection that is

not tailored to the particular threats to a state's water quality. Federal standards also cannot address uncommon pollutants such as GenX, which are produced by a single entity.

- Amend G.S. 143-215.1(c)(1) (Applications for Permits and Renewals for Facilities Discharging to the Surface Waters) to require applicants for permits or renewals of permits to monitor for and disclose all pollutants contained in the discharge by Chemical Abstracts Service ("CAS") Registry number. Pollutants that do not have a CAS number must be sufficiently identified so that the Department of Environmental Quality can understand its chemical formula/structure.
- Amend G.S. 143-215.1(a) (Activities for Which Permits Required) to prohibit permitted facilities from discharging any toxic substances, as defined by 15A N.C. Admin. Code 2B .0202(64), for which the EPA or State has not promulgated a health or effluent standard. If a chemical does have a health or effluent standard, or a consent order entered by the EPA under the Toxic Substances Control Act ("TSCA"), then the applicant must comply with whichever is most stringent. This provision shall not apply to municipal waste water treatment facilities.
- Amend G.S. 143-215.1 to require automatic permit suspension if a company is found to be discharging any pollutant (1) not authorized by its permit; and (2) not disclosed in its permit application in its ordinary course of business.
- Amend G.S. 143-215.1 to mandate that a company in violation of its discharge permit must provide and maintain the necessary filtration/treatment to municipalities downstream of polluted discharges for as long as contamination persists in the environment and to clarify that a company in violation of its discharge permit is financially responsible for the removal of their discharged pollutants from drinking water sources so that this burden does not fall to North Carolina's taxpayers.

We trust that you share our belief that no one should have to worry another day about the safety of the water they drink. You hold the power to begin to address the situation immediately, without wasting time on studies and audits. For the sake of the communities throughout North Carolina who cannot trust that the water they, and their children, drink is safe, please take action.

Sincerely,

Geoff Gisler
Southern Environmental Law Center
Senior Attorney

cc: Trey Glenn, Regional Administrator, EPA Region 4
Michael Regan, Secretary, NC Department of Environmental Quality