IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
SOUTHERN DIVISION

CAPE FEAR PUBLIC UTILITY AUTHORITY, BRUNSWICK COUNTY, LOWER CAPE FEAR WATER & SEWER AUTHORITY, and TOWN OF WRIGHTSVILLE BEACH,	)	
Plaintiffs,	)	Case No. 7:17-CV-195-D
v.	)	Case No. 7:17-CV-209-D
THE CHEMOURS COMPANY FC, LLC, E.I. DU PONT DE NEMOURS AND COMPANY, and THE CHEMOURS COMPANY,	)	**ORDER**
Defendants.	)	

On May 7, 2019, the Cape Fear Public Utility Authority ("Cape Fear"), Brunswick County (the "County"), Lower Cape Fear Sewer & Water Authority ("LCF"), and the Town of Wrightsville Beach, North Carolina ("Wrightsville Beach") (collectively, "plaintiffs") filed an amended master complaint of public water suppliers against The Chemours Company FC, LLC ("Chemours"), E.I. du Pont de Nemours and Company ("DuPont"), and The Chemours Company (collectively, "defendants") [D.E. 75]. Plaintiffs allege that defendants discharged toxic chemicals from the Fayetteville Works facility in Bladen County, North Carolina, into the Cape Fear River and surrounding air, soil, and groundwater. See id. at 15–16. The court has detailed the extensive procedural and factual history of this case. See Cape Fear Pub. Util. Auth. v. Chemours Co. FC, LLC, No. 7:17-CV-195, 2019 WL 13300188, at *1–4 (E.D.N.C. Apr. 19, 2019) (unpublished). This order recounts relevant events concerning the pending motions.

On February 28, 2025, defendants moved to seal various documents ("defendants' first motion to seal") [D.E. 465] and filed a memorandum in support [D.E. 466] and a declaration [D.E. 467]. On April 11, 2025, defendants moved to seal an "April 24, 2018 EPA TSCA Inspection Report Regarding Fayetteville Works" which plaintiffs filed as part of their summary judgment joint appendix ("defendants' second motion to seal") [D.E. 501] and filed a memorandum in support [D.E. 502]. On April 14, 2025, plaintiffs responded in opposition to defendants' first motion to seal [D.E. 510]. That same day, Cape Fear River Watch, Environmental Justice Community Action Network, and North Carolina Coastal Federation (collectively, the "Conservation and Community Groups") moved to intervene and object to defendants' first motion to seal [D.E. 503] and filed a memorandum in support [D.E. 504]. On April 25, 2025, plaintiffs responded in opposition to defendants' second motion to seal [D.E. 518]. On April 29, 2025, the NAACP New Hanover Branch ("NAACP") moved to intervene and object to defendants' first motion to seal [D.E. 519] and filed a memorandum in support [D.E. 523].[1] On May 22, 2025, defendants replied in support of their second motion to seal [D.E. 531]. That same day, defendants replied in support of their first motion to seal, and responded to the Conservation and Community Groups' and the NAACP's motions to intervene and object to defendants' first motion to seal [D.E. 532].

As explained below, the court denies defendants' first motion to seal [D.E. 465], denies defendants' second motion to seal [D.E. 501], and denies as moot the Community and Conservation Groups' and the NAACP's motions to intervene and object to defendants' first motion to seal [D.E. 503, 519].

[1] The NAACP filed a duplicative motion to intervene labeled as a memorandum in support of its motion to intervene. See [D.E. 520]. Accordingly, the court disregards the duplicative motion.

I.

The "public and press have [a] qualified right of access to judicial documents and records filed in civil and criminal proceedings." Gray Media Grp., Inc. v. Loveridge, 155 F.4th 330, 339 (4th Cir. 2025) (citation omitted); see Richmond Newspapers, Inc. v. Virginia, 448 U.S. 555, 580 n.17 (1980); Nixon v. Warner Commc'ns, Inc., 435 U.S. 589, 597 (1978); United States ex rel. Oberg v. Nelnet, Inc., 105 F.4th 161, 170–71 (4th Cir. 2024); Doe v. Pub. Citizen, 749 F.3d 246, 265 (4th Cir. 2014); Media Gen. Operations, Inc. v. Buchanan, 417 F.3d 424, 428 (4th Cir. 2005). "The right of public access springs from the First Amendment and the common-law tradition that court proceedings are presumptively open to public scrutiny." Gray Media Grp., 155 F.4th at 339 (citation omitted); see Doe, 749 F.3d at 265; Va. Dep't of State Police v. Wash. Post, 386 F.3d 567, 575 (4th Cir. 2004). "Because there are two sources, the right protected by each varies." Oberg, 105 F.4th at 171. Nevertheless, the right of public access, "whether arising under the First Amendment or the common law, may be abrogated only in unusual circumstances." Doe, 749 F.3d at 266 (cleaned up); see Gray Media Grp., 155 F.4th at 339. "The rationale for public access [to court records] is even greater where, as here, the case involves matters of particularly public interest." June Med. Servs., L.L.C. v. Phillips, 22 F.4th 512, 520 (5th Cir. 2022) (cleaned up).

"The common law presumes a right of the public to inspect and copy all judicial records and documents." Oberg, 105 F.4th at 171 (cleaned up); see Nixon, 435 U.S. at 597; Va. Dep't of State Police, 386 F.3d at 575; Stone v. Univ. of Md. Med. Sys. Corp., 855 F.2d 178, 180 (4th Cir. 1988). "Documents filed with the court are judicial records if they play a role in the adjudicative process or adjudicate substantive rights, such as when they were filed with the objective of obtaining judicial action or relief." Oberg, 105 F.4th at 171 (cleaned up); see In re U.S. for an Ord. Pursuant to 18 U.S.C. Section 2703(D), 707 F.3d 283, 290–91 (4th Cir. 2013). There is a presumption of public access to judicial records. See Oberg, 105 F.4th at 171; Rushford v. New

Yorker Mag., Inc., 846 F.2d 249, 253 (4th Cir. 1988). "This presumption of access, however, can be rebutted if countervailing interests heavily outweigh the public interests in access." Rushford, 846 F.2d at 253. In performing this inquiry, the court asks "whether the records are sought for improper purposes, such as promoting public scandals or unfairly gaining a business advantage; whether release would enhance the public's understanding of an important historical event; and whether the public has already had access to the information contained in the records." Oberg, 105 F.4th at 171 (citations omitted); see United States v. Amodeo, 71 F.3d 1044, 1051 (2d Cir. 1995); In re Knight Publ'g Co., 743 F.2d 231, 235 (4th Cir. 1984).

"Unlike the common-law right, the First Amendment right of access extends only to certain judicial proceedings and records." Oberg, 105 F.4th at 171 (citation omitted); see Stone, 855 F.2d at 180. Specifically, the right attaches to any judicial proceeding or record "(1) that has historically been open to the press and general public; and (2) where public access plays a significant positive role in the functioning of the particular process in question." Oberg, 105 F.4th at 171 (citation omitted); Courthouse News Serv. v. Schaefer, 2 F.4th 318, 326 (4th Cir. 2021) (cleaned up). The First Amendment right of access protects "materials submitted in conjunction with judicial proceedings that themselves would trigger the right of access." Oberg, 105 F.4th at 171 (citation omitted); see Doe, 749 F.3d at 267; In re Wash. Post Co., 807 F.2d 383, 390 (4th Cir. 1986). Whenever the First Amendment protects a proceeding or a document, a court may restrict access "only if closure is necessitated by a compelling government interest and the denial of access is narrowly tailored to serve that interest." Oberg, 105 F.4th at 171 (cleaned up); see Doe, 749 F.3d at 266; Wash. Post, 807 F.2d at 390. The First Amendment, however, "does not prohibit a district court from limiting the disclosure of products of pretrial discovery." Oberg, 105 F.4th at 172 (citation omitted); see Rushford, 846 F.2d at 252.

Once a party files documents "in connection with a summary judgment motion in a civil case," the documents "lose their status of being raw fruits of discovery" and the "more rigorous First Amendment standard must be satisfied before the public can be denied access." Oberg, 105 F.4th at 172 (cleaned up); see Gray Media Grp., 155 F.4th at 339 (holding that the First Amendment right of access applies to "exhibits attached to a motion for summary judgment"); Rushford, 846 F.2d at 253; In re "Agent Orange" Prod. Liab. Litig., 98 F.R.D. 539, 544–45 (E.D.N.Y. 1983). "[T]he right to access protected documents attaches immediately upon their filing." Oberg, 105 F.4th at 172. Accordingly, the First Amendment right of access to summary judgment materials "does not depend on judicial resolution of the summary judgment motion or judicial reliance on the documents in resolving the motion." Id.; see id. at 173 (holding that the district court erred when it held that a third party lacked a First Amendment right of access to a party's summary judgment motion and supporting documents, even though the case settled before disposition of the summary judgment motion).

"The burden to overcome a First Amendment right of access rests on the party seeking to restrict access, and that party must present specific reasons in support of its position." Va. Dep't of State Police, 386 F.3d at 575 (citation omitted); see Gray Media Grp., 155 F.4th at 340; Doe, 749 F.3d at 272; Encyc. Brown Prods., Ltd. v. Home Box Off., Inc., 26 F. Supp. 2d 606, 612–13 (S.D.N.Y. 1998). When the First Amendment right of access attaches to a document, a court may grant a motion to seal that document only if sealing "is necessitated by a compelling government interest and the denial of access is narrowly tailored to serve that interest." Doe, 749 F.3d at 266 (cleaned up); see Gray Media Grp., 155 F.4th at 339–40; Oberg, 105 F.4th at 172–73; Stone, 855 F.2d at 180; Wash. Post, 807 F.2d at 390. The Fourth Circuit has "suggested that protecting a corporation's confidentiality interest in proprietary and trade-secret information could justify the partial sealing of court records." Oberg, 105 F.4th at 171 n.8 (citation omitted); see Doe, 749 F.3d

at 269. "[A] company's bare allegation of reputational harm" is not a compelling interest. Doe, 749 F.3d at 269 (collecting cases). The court will "not guess about whether certain information is in fact confidential and proprietary or conjecture about how a party would be harmed by the disclosure of information." Natera, Inc. v. NeoGenomics Lab'ys, Inc., No. 1:23-CV-629, 2024 WL 1464744, at *2 (M.D.N.C. Apr. 4, 2024) (unpublished). Instead, the moving party "must identify the specific trade secret or proprietary information at issue." Sisk v. Abbott Lab'ys, No. 1:11-CV-159, 2014 WL 1874976, at *1 (W.D.N.C. May 9, 2014) (unpublished) (citation omitted); see Trott v. Deutsche Bank, AG, No. 20 Civ. 10299, 2025 WL 2775990, at *3 (S.D.N.Y. Sept. 30, 2025) (unpublished) ("[Defendant's] conclusory assertions that the information contained [in the documents defendants moved to seal] is proprietary, confidential, and commercially sensitive are insufficient to overcome the strong presumption of the public's right to access this information." (cleaned up)); Mission 1st Grp., Inc. v. Mission First Sols., LLC, No. 1:23-CV-1682, 2025 WL 864278, at *1–4 (E.D. Va. Mar. 19, 2025) (unpublished) (denying motion to seal where moving party's proposed redactions to summary judgment materials concerned bid contract and project names, company names, and company employee names); Dew v. E.I. DuPont Nemours & Co., No. 5:18-CV-73, 2024 WL 4906068, at *3–4 (E.D.N.C. Nov. 27, 2024) (unpublished) (denying motion to seal documents filed in support of summary judgment motion where defendants stated without evidence "that the documents they want to place under seal include non-public, confidential, and sensitive business information"); Ingram v. Pac. Gas & Elec. Co., No. 12-CV-2777, 2013 WL 5340697, at *3–4 (N.D. Cal. Sept. 24, 2013) (unpublished) (rejecting argument that a company's policies and procedures should be sealed because the argument "conflate[d] trade secrets with ordinary secrets" and "[i]nformation does not have value to a competitor merely because the competitor does not have access to it" (cleaned up)).

A district court ruling on a motion to seal "must comply with certain substantive and procedural requirements." Va. Dep't of State Police, 386 F.3d at 576 (citation omitted). "Limiting public access to summary judgment filings requires the [c]ourt to articulate specific findings that sealing is essential to preserve higher values, sealing is narrowly tailored to serve that interest, and less restrictive alternatives to sealing are inadequate . . . . Before sealing, the [c]ourt must also provide notice to the public and an opportunity to object, which can be accomplished by docketing the motion to seal in advance of deciding the issue." Schrof v. Clean Earth, Inc., No. 1:22-CV-1533, 2025 WL 958593, at *2 (D. Md. Mar. 31, 2025) (unpublished) (citations omitted).

A.

Defendants' first motion to seal concerns various documents plaintiffs filed in support of their motions for summary judgment, the parties' summary judgment briefing, and an exhibit attached to defendants' motion to withdraw or amend requests for admission. See [D.E. 465] 1; [D.E. 466-1] 1–49. Defendants argue that "most of the documents" they ask the court to seal "reveal non-public facts about the operations of [d]efendants' businesses." [D.E. 466] 6. In reply, defendants indicate that they move to seal only the 59 documents identified in exhibit seven to defendants' reply. See [D.E. 532] 3; [D.E. 532-7] 1–13. Thus, the court addresses defendants' first motion to seal only as to those 59 documents. See [D.E. 532-7] 1–13.

Defendants' first motion to seal is publicly available on the court's docket. See [D.E. 465] (docketed on Feb. 28, 2025). Members of the public objected to defendants' first motion to seal. See [D.E. 510-6 to 510-12]; [D.E. 503]; [D.E. 519]. The procedural requirements necessary for the court to rule on defendants' first motion to seal are met. See Design Res., Inc. v. Leather Indus. of Am., 1:10-CV-157, 2014 WL 12595214, at *3 (M.D.N.C. Aug. 19, 2014) (unpublished).

The First Amendment's right of access applies to the documents that defendants move to seal. Plaintiffs filed the documents in connection with their summary judgment motions. See

Gray Media Grp., 155 F.4th at 339; Oberg, 105 F.4th at 172; Rushford, 846 F.2d at 253; In re "Agent Orange" Prod. Liab. Litig., 98 F.R.D. at 544–45. Defendants resist this conclusion and argue that a motion to seal "immaterial" documents "needlessly" filed with a party's summary judgment motion only must meet the common law standard. See [D.E. 466] 5.

Fourth Circuit precedent dooms defendants' argument. In Oberg, a third party moved to unseal filed documents concerning the parties' summary judgment motions nearly 13 years after the case settled. See 105 F.4th at 166–67. The parties settled the case before the district court decided the summary judgment motions. See id. The district court denied the third party's motion, explaining that the third party lacked a common law or First Amendment right to access the sealed documents because those rights attach only when "a document . . . play[s] a relevant and useful part in the adjudication process." Id. at 167. The Fourth Circuit reversed and held that the First Amendment standard applies once a party files the documents in connection with a summary judgment motion. See id. at 171–73. The Fourth Circuit rejected the party's argument that the documents at issue had "little value in understanding what happened in the litigation," because "it is up to the public to decide why the case was brought (and fought) and what exactly was at stake in it." Id. at 173 (cleaned up). In other words, "the right to access protected documents attaches immediately upon their filing." Id. at 172. Consistent with Oberg, whether the party moving to seal considers the documents at issue material to summary judgment is immaterial to whether the First Amendment right of access applies. See id. Thus, the court rejects defendants' argument and applies the First Amendment standard to the documents that defendants move to seal.

Defendants, as they did in Dew, argue that the court should seal each document "because [the documents] contain[] some combination of confidential, sensitive, and non-public business information." 2024 WL 4906068, at *1; see [D.E. 466] 6–8; [D.E. 466-1] 1–49; [D.E. 532] 6–11; [D.E. 532-1] 1–13. In support, defendants provide a declaration from Kathleen E. O'Keefe

("O'Keefe"), a Chemours employee who worked at DuPont. See [D.E. 467] 1. O'Keefe describes DuPont's and Chemours's processes for handling non-public, commercially sensitive, and confidential information. See id. at 1–4. O'Keefe explains why DuPont and Chemours maintain documents confidentially and how information may remain competitively sensitive "when it is several years old or when new or different products are being made." Id. at 4. O'Keefe also identifies certain documents that, she asserts, contain commercially sensitive information. See [D.E. 467] 5–6. O'Keefe's general statements do not provide the specific evidence necessary to demonstrate that defendants' interests in sealing the documents outweigh the public's First Amendment right to access the documents. See Mission 1st Grp., 2025 WL 864278, at *1–4; Dew, 2024 WL 4906068, at *3–4; Ingram, 2013 WL 5340697, at *3–4. O'Keefe does not specifically identify trade secrets or confidential information that defendants seek to protect. See Sisk, 2014 WL 1874976, at *1–2. O'Keefe generally refers to "confidential chemical manufacturing processes" and "flow diagrams." [D.E. 467] 5. The court cannot make the factual findings necessary to grant defendants' first motion to seal without more specific evidence that the documents at issue overcome the public's right of access. See, e.g., Oberg, 105 F.4th at 172 ("Before a court can limit the public's access to such documents, therefore, it must find that such a limitation is justified under the First Amendment." (citation omitted)); Va. Dep't of State Police, 386 F.3d at 578–79; Rushford, 846 F.2d at 254.

The court also rejects defendants' arguments that the court should seal the documents because defendants maintained certain documents as confidential or commercially sensitive. Defendants' designation of documents as "confidential, without more, is insufficient to justify restricting the public's presumptive right of access to the subject documents." Sisk, 2014 WL 1874976, at *2 (cleaned up); see Trott, 2025 WL 2775990, at *3. And defendants do not support their claims that certain documents are commercially sensitive with specific evidence. See, e.g.,

Natera, Inc., 2024 WL 1464744, at *2 ("Factual findings are required before sealing. Courts need evidence to make these factual findings. Statements in a brief are not evidence . . . ." (cleaned up)); Encyc. Brown Prods., 26 F. Supp. 2d at 613 ("With respect to proof of competitive harm, vague and conclusory allegations will not suffice. Movant must prove that disclosure would work a clearly defined and very serious injury." (cleaned up)). Defendants provide only O'Keefe's declaration, which does not suffice. See Sisk, 2014 WL 1874976, at *1–2; Mission 1st Grp., 2025 WL 864278, at *1–4; Dew, 2024 WL 4906068, at *3–4; Ingram, 2013 WL 5340697, at *3–4.

Here, as in Dew, defendants make the same "unsupported claim[s]" concerning their motion to seal which the court found fell "short of [demonstrating] a compelling interest sufficient to overcome the strong First Amendment presumptive right of public access." 2024 WL 4906068, at *3 (citation omitted). Thus, the court denies defendants' first motion to seal and denies as moot the Conservation and Community Groups' and the NAACP's motions to intervene.

B.

Defendants' second motion to seal concerns an April 24, 2018 EPA Toxic Substances Act Compliance Monitoring Inspection Report (the "TSCA report"). See [D.E. 501]. The document summarizes the EPA's findings from an inspection of the Fayetteville Works plant. See [D.E. 485-13] 1–45. Defendants argue that "if revealed," the information contained in the TSCA report "could cause [defendants] competitive harm." [D.E. 502] 5.

Defendants' second motion to seal is publicly available on the court's docket. See [D.E. 501] (docketed on Apr. 11, 2025). The procedural requirements necessary for the court to rule on defendants' second motion to seal are met. See Design Res., 2014 WL 12595214, at *3.

Defendants' second motion to seal fails for the same reasons as defendants' first motion to seal. Defendants provide insufficient evidence to demonstrate that sealing the TSCA report serves a compelling interest which outweighs the public's right of access. For instance, O'Keefe states

that the TSCA Report "contain[s] Confidential Business Information" which includes "descriptions and flow-diagram depictions of chemical manufacturing processes." [D.E. 467] 5. But a document's status as confidential or commercially sensitive alone does not justify its sealing. See, e.g., Sisk, 2014 WL 1874976, at *2. And defendants do not attempt to demonstrate that the information O'Keefe describes qualifies as a trade secret under North Carolina law. See Natera, Inc., 2024 WL 1464744, at *2; Encyc. Brown Prods., 26 F. Supp. 2d at 612. Thus, defendants have failed to demonstrate that granting their second motion to seal serves a compelling interest.

In opposition to this conclusion, defendants argue that the court recognized the "exact type of information" that defendants move to seal as competitively sensitive in Sempowich v. Tactile Systems Technology, Inc., No. 5:18-CV-488, 2020 WL 2789792, at *3 (E.D.N.C. May 29, 2020) (unpublished), and Nallapati v. Justh Holdings, LLC, No. 5:20-CV-47, 2022 WL 4238054, at *2 (E.D.N.C. Sept. 14, 2022) (unpublished). [D.E. 502] 5. In Sempowich, the court granted a motion to seal "sensitive and confidential personal information about [the moving party's] current and former employees, commercially sensitive information regarding [the moving party's] regional sales and employee's sales within certain regions, and the names of [the moving party's] strategic partners that could be used by a competitor to the detriment of [the moving party]." 2020 WL 2789792, at *3. The moving party also submitted a declaration of its chief financial officer "which describe[d] the type and confidential nature of the information" the moving party sought to seal. Id. Unlike in Sempowich, defendants move to seal a broad class of documents they deem commercially sensitive or confidential and do not provide specific evidence to support their motion. Accordingly, Sempowich does not support defendants' motion to seal the TSCA Report. Likewise, in Nallapati, the court sealed deposition excerpts and a forensic auditors' report after the parties filed consent motions to seal and no objections were filed. See 2022 WL 4238054, at *1. Moreover, while the court in Nallapati found that the proposed sealed documents "substantially"

were comprised of commercially sensitive information, see id. at *2, defendants here have failed to show that the information they move to seal is commercially sensitive. Accordingly, Sempowich and Nallapati provide no comfort to defendants.

Defendants also argue that a federal statute describes "the reasons for permitting information like the TSCA Report to be maintained under seal." [D.E. 502] 6. Specifically, defendants argue that 15 U.S.C. § 2613 "reflects and serves the sort of important, higher interests that overcome the First Amendment presumption of access." Id. (cleaned up).[2] Section 2613 concerns the EPA's disclosure of information that private parties submit to the EPA as confidential. See 15 U.S.C. § 2613(a), (c). Section 2613 is irrelevant to whether defendants' request to seal overcomes the First Amendment's right of access. Section 2613 is a statutory framework for the EPA's treatment of material submitted to the EPA and does not concern documents filed with a federal court in litigation. The First Amendment's right of access and section 2613 are different standards.

Defendants' motion to seal also is not narrowly tailored. Plaintiffs demonstrate that a "sanitized" version of the TSCA Report is available online. See [D.E. 518] 3; [D.E. 518-1]. Much of the information redacted in the "sanitized" version of the TSCA Report are names of chemicals which are now public. Compare, e.g., [D.E. 485-13] 18–21, with [D.E. 518-1] 18–21. Accordingly, even if the court found that defendants met their burden of demonstrating a compelling interest, the court would deny defendants' motion to seal the TSCA Report because it is not narrowly tailored. See, e.g., Sempowich, 2020 WL 2789792, at *5 (stating that the moving

[2] In their memorandum in support and reply, defendants cite 15 U.S.C. § 2615 as the relevant statutory provision. See [D.E. 502] 6; [D.E. 531] 3. Section 2615, however, describes the penalties for violating the Toxic Substances Control Act. See 15 U.S.C. § 2615. The court assumes that defendants refer to section 2613, which pertains to the EPA's treatment of confidential information. See id. § 2613.

party must demonstrate why redaction "is not a feasible alternative to sealing these documents in their entirety"). Defendants' motion to seal the TSCA Report, like defendants' first motion to seal, falls "short of [demonstrating] a compelling interest sufficient to overcome the strong First Amendment presumptive right of public access," Dew, 2024 WL 4906068, at *3 (citation omitted), and their request is otherwise overbroad. Thus, the court denies defendants' second motion to seal [D.E. 501].

II.

In sum, the court DENIES defendants' motions to seal [D.E. 465, 501] and DENIES AS MOOT the Conservation and Community Groups' and NAACP's motions to intervene and object to defendants' first motion to seal [D.E. 503, 519].

SO ORDERED. This 3 day of December, 2025.

JAMES C. DEVER III
United States District Judge