



AN OVERVIEW OF NORTH CAROLINA'S CHEMOURS CONSENT ORDER

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Per- and polyfluoroalkyl substances (PFAS) are a vast group of synthetic chemicals that are notoriously persistent both in the environment and within organisms.¹ Since the 1940s, they have been used in common products like fire extinguishers, stain- and water-resistant fabrics, nonstick cookware, and even food packaging.² However, more recently, studies have shown that PFAS contamination may lead to a variety of severe health problems, especially in sensitive groups such as children and the elderly.³ As technology and public awareness expand, more effects of these toxic chemicals are revealed and more contaminated sites are identified. As a problem with such widespread, damaging effects, PFAS contamination has sparked a new expanse of litigation. Two compelling litigation approaches have emerged: multidistrict litigation, like the nationwide aqueous film-forming foam multidistrict litigation (AFFF MDL), and enforceable settlement agreements, such as North Carolina’s Chemours Consent Order.

In addition to the AFFF MDL,⁴ another monumental step toward addressing widespread PFAS contamination is North Carolina’s Chemours Consent Order. Instead of litigating cases in court, parties can choose to enter into a consent order which, with approval from the court, acts as a resolution to a case and binds parties to the commitments in them. As PFAS litigation grows, many defendants and states are choosing to enter into consent orders as a way to address existing contamination and prevent future exposure to citizens more quickly than if cases were litigated in court. While this resolution is state-specific, it sets a precedent for states throughout the nation to efficiently and effectively curb PFAS pollution and facilitate remediation.

Implemented in February 2019, the Consent Order is a detailed agreement between The Chemours Co., the North Carolina Department of Environmental Quality (NCDEQ), and Cape Fear River Watch (CFRW), settling litigation among the parties with a cooperatively developed, comprehensive action plan.⁵ “The court enforceable order requires Chemours to address PFAS sources and contamination at [its North Carolina] facility to prevent further impacts to air, soil, groundwater and surface waters.”⁶ Below, this paper outlines how the Chemours Consent Order came to be, the terms of the agreement, and its current state of success.

Background

In June 2017, water sampling revealed that high levels of a PFAS variety called GenX were present in the Cape Fear Public Utility Authority, a public drinking water system that serves

¹ *Our Current Understanding of the Human Health and Environmental Risks of PFAS*, U.S. ENV’T PROT. AGENCY, <https://www.epa.gov/pfas/our-current-understanding-human-health-and-environmental-risks-pfas> (May 16, 2024).

² *Id.*

³ *Id.*

⁴ For an overview of the AFFF MDL, please see Cheyanne Sharp, *The Aqueous Film-Forming Products Liability Multidistrict Litigation: The Basics*, NAT’L SEA GRANT L. CTR (2024), available at <https://bit.ly/aqueous-film-forming-products>.

⁵ *Chemours Consent Order*, N.C. DEP’T OF ENV’T QUALITY, <https://www.deq.nc.gov/news/key-issues/genx-investigation/chemours-consent-order#ConsentOrder2019-10041> (last visited July 17, 2024).

⁶ *Id.*

about 200,000 residents throughout New Hanover County, North Carolina.⁷ The detected chemicals were made by Chemours at their Fayetteville Works production facility, “a 2,150-acre industrial site straddling the Cumberland-Bladen county line along the Cape Fear River, about 100 miles upstream from Wilmington.”⁸ A study by researchers at North Carolina State University alerted state authorities that GenX from the facility was polluting the Cape Fear River Basin and traveling into downstream communities, raising concerns that the contamination had extended into Brunswick and Pender Counties as well.⁹ As NCDEQ continued to investigate the contamination, it also found that GenX from the Fayetteville Works Facility was present in nearby private drinking water wells and that the chemicals were further spreading through the plant’s air emissions.¹⁰

Chemours began developing GenX as a replacement for PFAS varieties known as PFOA and PFOS, which were formerly used in Teflon, but later phased out of production because of their toxicity.¹¹ GenX can be intentionally produced to manufacture things like nonstick coatings, or it may otherwise result as a manufacturing byproduct.¹² Unfortunately, it was later revealed that GenX is even more hazardous than the chemicals it was made to replace.¹³ In 2021, the United States Environmental Protection Agency conducted a human health toxicity assessment for the contaminant, showing “that the liver is particularly sensitive to exposure to GenX chemicals.”¹⁴ The studies informing the assessment reported that GenX exposure is related to health complications such as liver and kidney toxicity, immune and developmental effects, and cancer.¹⁵

Three months after the Cape Fear River Basin contamination was discovered, NCDEQ brought suit against Chemours in North Carolina state court, alleging the company violated state water quality laws and the Clean Water Act (CWA).¹⁶ This resulted in a partial consent order

⁷ Vaughn Hagerty, *Toxin Taints CFPWA Drinking Water*, STAR NEWS ONLINE, <https://www.starnewsonline.com/story/news/environment/2017/06/07/toxin-taints-cfpua-drinking-water/20684831007/> (June 8, 2017).

⁸ *Id.*

⁹ *GenX in the Lower Cape Fear River Basin*, N.C. DEP’T OF HEALTH & HUM. SERVS., https://epi.dph.ncdhhs.gov/oec/a_z/genx.html#:~:text=GenX%20is%20a%20member%20of,nonstick%20coatings%2C%20and%20firefighting%20foam (July 11, 2024); Hagerty, *supra* note 7.

¹⁰ N.C. DEP’T OF HEALTH & HUM. SERVS., *supra* note 9.

¹¹ Alex Formuzis, *EPA: GenX Nearly as Toxic as Notorious Non-Stick Chemicals It Replaced*, ENV’T WORKING GRP. (Nov. 14, 2018), <https://www.ewg.org/news-insights/news-release/epa-genx-nearly-toxic-notorious-non-stick-chemicals-it-replaced>.

¹² N.C. DEP’T OF HEALTH & HUM. SERVS., *supra* note 9.

¹³ Cheryl Hogue, *US EPA Deems Two GenX PFAS Chemicals More Toxic Than PFOA*, CHEM. & ENG’G NEWS (Oct. 29, 2021), <https://cen.acs.org/environment/persistent-pollutants/US-EPA-deems-two-GenX-PFAS-chemicals-more-toxic-than-PFOA/99/i40>.

¹⁴ *Technical Fact Sheet: Human Health Toxicity Assessment for GenX Chemicals*, U.S. ENV’T PROT. AGENCY, <https://www.epa.gov/system/files/documents/2023-03/GenX-Tox-Assessment-technical-factsheet-March-2023-Update.pdf> (last visited July 17, 2024).

¹⁵ *Id.*

¹⁶ Letter from Francisco J. Benzoni, Assistant Att’y Gen., Dep’t of Just. Env’t Div., to The Chemours Co. (Sept. 5, 2017) (available at <https://www.deq.nc.gov/genx/letter-ncdoj-chemours/download>); Letter from Geoff Gisler & Jean

between the parties, with Chemours agreeing to halt its GenX-containing wastewater discharges.¹⁷ Nonetheless, the company continued releasing PFAS into the air, surface waters, and groundwater, prompting NCDEQ to amend its complaint and reinstate its request for injunctive relief in April 2018.¹⁸

In May 2018, CFRW—a nonprofit organization working to protect the Cape Fear River—got involved in the dispute, represented by the Southern Environmental Law Center (SELC).¹⁹ CFRW petitioned NCDEQ on behalf of over 1,000 members who rely on the Cape Fear River for things like recreation and drinking water, requesting a declaratory ruling “ordering Chemours . . . to immediately discontinue all emissions and discharges of . . . PFAS . . . from the Fayetteville Works Facility.”²⁰ CFRW acknowledged that this relief was similar to that sought by NCDEQ in its own complaint, but maintained that NCDEQ could grant the order itself, without judicial intervention, because it “is required by law to act in times of emergency to protect the health and safety of the public.”²¹ On the same day, CFRW also sent letters to Chemours notifying the company of its intent to sue under the CWA for wastewater discharge permit violations²² and under the Toxic Substances Control Act for releasing dangerous GenX compounds without mandatory controls in place.²³

NCDEQ ultimately denied CFRW’s request, prompting CFRW to seek review of the agency’s decision in state court in July 2018.²⁴ A month later, CFRW also followed through on its intention to bring suit against Chemours for its alleged statutory violations, filing a complaint against the company in federal court.²⁵

Zhuang, S. Env’t L. Ctr., to The Chemours Co., at 3 (May 7, 2018) [hereinafter CWA Notice of Intent] (available at https://legacy.uploads.southernenvironment.org/words_docs/2018_05_07_-_Chemours_60-Day_CWA_Notice_FINAL.PDF).

¹⁷ CWA Notice of Intent, *supra* note 16, at 3.

¹⁸ *North Carolina GenX and Other PFAS Timeline*, S. ENV’T L. CTR. (Dec. 5, 2022), <https://www.southernenvironment.org/wp-content/uploads/2022/12/2022-12-05-SELC-timeline-NC-GenX-PFAS-pollution-Chemours.pdf> [hereinafter *Timeline*].

¹⁹ *Request for Declaratory Ruling for Cape Fear River Watch*, S. ENV’T L. CTR. 1–4 (2018), https://legacy.uploads.southernenvironment.org/words_docs/2018_05_07_-_Request_for_Declaratory_Ruling.PDF (request submitted to the N.C. Dep’t of Env’t Quality).

²⁰ *Id.* at 1.

²¹ Press Release, S. Env’t L. Ctr., Groups File to Immediately Stop GenX Pollution from Chemours Fayetteville Facility (May 7, 2018) (available at <https://www.southernenvironment.org/press-release/groups-file-to-immediately-stop-genx-pollution-from-chemours-fayetteville-f/>); *see also* Request for Declaratory Ruling, *supra* note 19, at 1.

²² CWA Notice of Intent, *supra* note 16, at 1–3.

²³ Letter from Geoff Gisler & Jean Zhuang, S. Env’t L. Ctr., to The Chemours Co., at 1–6 (May 7, 2018) [hereinafter TSCA Notice of Intent] (available at https://legacy.uploads.southernenvironment.org/words_docs/2018_05_07_-_Chemours_60-Day_TSCA_Notice_FINAL.PDF).

²⁴ Petition for Judicial Review, *Cape Fear River Watch v. N.C. Dep’t of Env’t Quality*, No. 18-cv-002462 (N.C. Super. Ct. July 13, 2018).

²⁵ Complaint for Declaratory and Injunctive Relief, *Cape Fear River Watch v. Chemours Co. FC, LLC*, No. 7:18-cv-00159-BO (E.D.N.C. Aug. 29, 2018).

By August 2018, there was a web of lawsuits in progress between NCDEQ, CFRW, and Chemours. Rather than inefficiently litigating so many individual disputes, the parties consented to CFRW intervening in NCDEQ's pending state court suit against Chemours.²⁶ A short time later, after "conduct[ing] good-faith discussions to develop comprehensive and effective solutions to the environmental concerns that [were] raised concerning the Facility's operations," the parties reached the unprecedented Consent Order.²⁷

Terms of the Consent Order and Its Addendum

The 2019 Consent Order

A final version of the Chemours Consent Order was entered and made binding by North Carolina's Bladen County Superior Court on February 25, 2019.²⁸ According to the court document, "Chemours denies any violation of any law, regulation or permit . . . and has agreed to [the] Consent Order solely to avoid the expense, burden and uncertainty of litigation and to address community concerns about the Facility."²⁹ Nevertheless, the court-enforceable order sets out detailed and stringent guidelines for Chemours to follow for remedying past damage caused by the facility's PFAS emissions and preventing future contamination as well. The Consent Order establishes mandatory compliance measures for Chemours to take regarding its air emissions, surface water discharges, and seepage into groundwater, along with several other miscellaneous provisions regarding things like monitoring plans and civil penalties.³⁰

First, the Consent Order addresses Chemours' PFAS air emissions from the facility. Chemours was required to install a thermal oxidizer—a device that combusts air pollutants into carbon dioxide and water—by the end of 2019, and to provide evidence that it removed "all PFAS at an efficiency of 99.99%" soon after.³¹ It also sets several "GenX Emissions Reduction Milestones," culminating with a mandate that "Chemours shall reduce Facility-wide annual air emissions of GenX Compounds by at least 99%" by the end of 2019.³²

The Consent Order also drastically changed how Chemours handled its PFAS emissions to surface waters. First, it banned the company from "dishcharg[ing] process wastewater from Chemours' manufacturing areas until issuance of an NPDES Permit . . . with such limits as [NC]DEQ reasonably deems necessary and appropriate to control the discharge of GenX Compounds and other PFAS."³³ It also required that Chemours develop an accelerated plan to

²⁶ Consent Order at 34, *State ex rel. Regan v. The Chemours Co. FC, LLC*, No. 17-cvs-580 (N.C. Super. Ct. Feb. 25, 2019).

²⁷ *Id.* at 2.

²⁸ *Id.* at 42.

²⁹ *Id.* at 3.

³⁰ *Id.* at 6–32.

³¹ *Id.* at 8.

³² *Id.* at 8–9.

³³ *Id.* at 11.

reduce PFAS transport into the Cape Fear River and the surface waters that feed downstream public water utilities, outlining “the maximum reductions . . . that are economically and technologically feasible, and can be achieved within a two-year period” along with a detailed timeline for its implementation.³⁴

Next, the Consent Order required action by Chemours regarding its GenX emissions into groundwater. By the end of 2019, Chemours had to develop a “Corrective Action Plan”—to be submitted to NCDEQ for approval and subject to public comment—that included installing groundwater monitoring wells and reducing PFAS discharges by at least 75%.³⁵ The Consent Order also required Chemours to permanently line its ditches and sedimentation ponds to prevent further seepage of PFAS into groundwater, a remedial measure that it had already begun doing by the time of the agreement.³⁶

Another substantial commitment laid out for Chemours through the Consent Order was providing both temporary and permanent drinking water supplies for communities suffering from PFAS-contaminated water. The agreement states:

Chemours shall establish and properly maintain permanent replacement drinking water supplies in the form of [a connection to] public water or a whole building filtration system for any party (i.e., household, business, school, or public building) with a private drinking water well that has been found through testing validated by DEQ to be contaminated by concentrations of GenX compounds in exceedance of 140 ng/L, or any applicable health advisory, whichever is lower.³⁷

Thereafter, Chemours is also responsible for paying the affected parties’ water bills from public utilities, up to a limit of \$75 per month for twenty years.³⁸ Chemours was required to act on these provisions within nine months of the Consent Order’s entry for the parties it was then aware of, and it has nine months to act after becoming aware of a new party that qualifies.³⁹ In the meantime, when Chemours discovers a new qualifying party, the company must provide bottled water as a temporary replacement until a permanent clean water source is secured.⁴⁰

Each of the aforementioned goals are accompanied by specific guidelines for regular, ongoing PFAS testing and monitoring.⁴¹ The Consent Order also includes some miscellaneous provisions, such as requiring Chemours to plan for and fund third-party

³⁴ *Id.* at 14–19.

³⁵ *Id.* at 21–23.

³⁶ *Id.* at 23.

³⁷ *Id.* at 24.

³⁸ *Id.* at 25.

³⁹ *Id.* at 25.

⁴⁰ *Id.* at 27.

⁴¹ *Id.* at 9–11 (air emissions compliance); *id.* at 11–14, 19–21 (surface water compliance); *id.* at 23 (groundwater compliance); *id.* at 26–27 (drinking water provisions compliance); *id.* at 29–30 (other compliance measures).

studies on the toxicity of NCDEQ-designated PFAS to both “human health and aquatic life,” providing information “sufficient to aid in development of surface water and groundwater regulatory standards.”⁴² On top of all these compliance measures, the Consent Order also requires Chemours to pay a \$12 million civil penalty to NCDEQ and consent to additional potential fines for failing to comply with any aspects of the agreement.⁴³

There is one final and essential aspect of the Consent Order: the “Release and Reservation of Rights.”⁴⁴ Similar to a settlement, the agreement resolves and disposes of all NCDEQ and CFRW’s previous claims against Chemours relating to its emissions of GenX from the Fayetteville Works Facility.⁴⁵ However, NCDEQ “reserves all legal and equitable remedies available to enforce the provisions of this Consent Order,” and nothing in the agreement “restrict[s] the right of [NC]DEQ to inspect or take enforcement action against Chemours for any new or subsequent violations” of law in the future.⁴⁶

The 2020 Addendum to the Consent Order

On October 12, 2020, the court approved an Addendum to the Consent Order, which introduced even more terms for Chemours to follow after further deliberation and agreement between the parties.⁴⁷ The Addendum specifically elaborated on the section of the Consent Order laying out the requirements for Chemours’ accelerated action plan to scale back on the Fayetteville Works Facility’s PFAS discharges to surface water.⁴⁸ In August 2019, Chemours submitted its proposed plan for satisfying this criteria as required under the Consent Order, but the proposal underwent a period of rejections by NCDEQ and CFRW and subsequent revisions.⁴⁹ The Addendum represented the culmination of this process, with “the Parties [reaching an] agreement on a set of measures to reduce PFAS loading to surface waters and downstream water intakes to satisfy the requirements of Paragraph 12 of the Consent Order.”⁵⁰

The Addendum mainly required Chemours to install three additional technologies to prevent the spread of PFAS from the facility through groundwater. First, it required that Chemours design and implement flow-through cells at four identified groundwater seeps throughout the facility, intercepting the water flow and removing PFAS with at least 80% efficiency.⁵¹ Next, it

⁴² *Id.* at 19.

⁴³ *Id.* at 31–32.

⁴⁴ *Id.* at 32.

⁴⁵ *Id.* at 32, 35.

⁴⁶ *Id.* at 33.

⁴⁷ Addendum to Consent Order para. 12, *State ex rel. Regan v. The Chemours Co. FC, LLC*, No. 17-cvs-580 (N.C. Super. Ct. Oct. 12, 2020).

⁴⁸ *Id.* at 1.

⁴⁹ *Id.* at 2–3.

⁵⁰ *Id.* at 3.

⁵¹ *Id.* at 6–10.

required that Chemours install and operate both a barrier wall and groundwater extraction system by March 15, 2023.⁵² The barrier wall—constructed between the Fayetteville Works Facility and the Cape Fear River—is meant to “intercept the groundwater flow under the Facility.”⁵³ The extraction system, comprised of a number of wells and trenches, simultaneously works “to pump groundwater at a rate and depth sufficient to prevent groundwater migration around, above, or under the barrier wall,” ultimately filtering the diverted water of PFAS “at a minimum removal efficiency of 99%.”⁵⁴

The Addendum also sets an important long-term goal: the seep remediation system, barrier wall, and groundwater extraction system must collectively reduce the facility’s mass loading of PFAS into the Cape Fear River by at least 95% or more depending on the weather conditions.⁵⁵ With a plan in place to manage Chemours’ groundwater PFAS emissions, the agreement turned to one more additional requirement: Chemours also had to install a system that captured stormwater leaving the facility and filtered out at least 99% of its PFAS by June 2021.⁵⁶ Like the Consent Order, the Addendum also called for some miscellaneous measures such as developing water sampling protocols and inquiry-specific investigations.⁵⁷ It laid out additional penalties for a failure to comply with the Addendum’s terms as well.⁵⁸

Remediation Progress

Between 2019 and 2023, Chemours installed the thermal oxidizer required by the original Consent Order, along with the seep remediation system, barrier wall, groundwater extraction system, and stormwater capture and treatment system all required by the Addendum.⁵⁹ According to Chemours, the new technologies are allowing the company to meet the environmental goals of the agreement, with each individual installation removing 99% or more of PFAS from the facility’s releases to the air, groundwater, and surface water.⁶⁰ In September 2022, NCDEQ granted Chemours’ permit for the multifaceted groundwater treatment system, requiring Chemours to remove over 99.9% of PFAS from the facility’s largest source of contamination to the Cape Fear River—an approval that the SELC said “set[] the strongest

⁵² *Id.* at 16.

⁵³ *Id.*

⁵⁴ *Id.* at 17.

⁵⁵ *Id.* at 12–13.

⁵⁶ *Id.* at 18–19.

⁵⁷ *See, e.g., id.* at 3–6, 19–20.

⁵⁸ *Id.* at 22.

⁵⁹ *Timeline, supra* note 18; *Recent Actions, Investigations and Enforcement*, N.C. DEP’T OF ENV’T QUALITY, <https://www.deq.nc.gov/news/key-issues/genx-investigation/recent-actions-investigations-and-enforcement#2023-13930> (last visited July 19, 2024).

⁶⁰ *Timeline, supra* note 18; *Fayetteville Works*, The Chemours Co., <https://www.chemours.com/en/about-chemours/global-reach/fayetteville-works> (last visited July 19, 2024).

limits on . . . PFAS in the United States after [CFRW and SELC] and many residents urged the agency to strengthen the permit.”⁶¹

Chemours’ most recent Consent Order Progress Report shares that the company continues to comply with the agreement by either shipping its process wastewater away for disposal or recycling it in the facility’s manufacturing processes, rather than discharging it into the environment.⁶² Regarding its water provision duties, Chemours continues to provide bottled water to all homes currently eligible for the interim supplies, while also working to install public water connections and household mitigation systems.⁶³

Of course, there have been obstacles along the way as well. For example, in 2021, NCDEQ utilized its enforcement power against Chemours as provided in the Consent Order, fining the company nearly \$200,000 for inadequately functioning treatment systems and permit violations—although those breaches have since been corrected.⁶⁴ Now, in 2024, there are also watchdog journalists reporting that “PFAS levels outside the plant [are] far above those detected and reported as evidence of Chemours’ success—as much as 30 times higher.”⁶⁵

During the period for public comment on the Consent Order, many North Carolina residents also expressed their concerns that the terms of the agreement were not stringent enough.⁶⁶ For example, some said that shutting the facility down completely was the only reliable way to prevent future pollution, or that Chemours should have done more by expanding eligibility for clean water provisions and compensating those now suffering from PFAS-related illnesses.⁶⁷ One commenter impactfully said, “A fine of \$12 million is less than 1% of [Chemours’] profits

⁶¹ Press Release, S. Env’t L. Ctr., Comments by Conservation Groups and North Carolina Residents Lead to Strongest Limits on PFAS Water Pollution Nationwide (Sept. 16, 2022) (available at <https://www.southernenvironment.org/press-release/comments-by-conservation-groups-and-north-carolina-residents-lead-to-strongest-limits-on-pfas-water-pollution-nationwide/>); *Timeline*, *supra* note 18; Press Release, N.C. Dep’t of Env’t Quality, Settlement Ends Chemours Challenge of Permit to Reduce PFAS Entering the Cape Fear River (Nov. 14, 2022) (available at <https://www.deq.nc.gov/news/press-releases/2022/11/14/settlement-ends-chemours-challenge-permit-reduce-pfas-entering-cape-fear-river>).

⁶² *Consent Order Progress Report for First Quarter 2024*, THE CHEMOURS CO. (Apr. 30, 2024), https://www.chemours.com/en/-/media/files/corporate/fayetteville-works/28_ncdeq_1q2024-quarterly-co-progress-report_04302024.pdf?rev=4fc09f52d4d44babb67ed3f59c1930e&hash=B631F0CF25B4E93DCB3B1A8D28B324E.

⁶³ *Id.*

⁶⁴ Greg Barnes, *North Carolina Fines Chemours \$200,000 More for Failing to Stop PFAS Pollution*, N.C. HEALTH NEWS (Apr. 1, 2021), <https://www.northcarolinahealthnews.org/2021/04/01/north-carolina-fines-chemours-200000-more-for-failing-to-stop-pfas-pollution/#:~:text=North%20Carolina%20environmental%20regulators%20have,the%20company's%20Fayetteville%20Works%20plant>.

⁶⁵ Tom Perkins, *A North Carolina PFAS Factory Claims Its Emissions Fell by 99.99%. A Guardian Test Reveals Otherwise*, THE GUARDIAN (Jan. 28, 2024), <https://www.theguardian.com/us-news/2024/jan/28/north-carolina-pfas-forever-chemicals-testing>.

⁶⁶ Greg Barnes, *Judge Approves Revised Consent Order Against Chemours*, N.C. HEALTH NEWS (Feb. 26, 2019), <https://www.northcarolinahealthnews.org/2019/02/26/judge-approves-revised-consent-order-against-chemours/>.

⁶⁷ *Id.*

for just one three-month period, hardly a punishment or much of an incentive to stop poisoning us.”⁶⁸

Nevertheless, the Chemours Consent Order is an important milestone both for North Carolina itself and for environmental solutions nationwide. The agreement implements critical measures to secure North Carolinians’ access to safe drinking water, and it signals that companies within the state will be held accountable for their environmental harm. As the NCDEQ’s Secretary put it, “It sets a strong precedent: profits may not come before people, and the leadership of the state of North Carolina will not allow your actions to go unchecked.”⁶⁹ From a broader perspective, the Consent Order also sets a new precedent in the legal realm: rather than going through years of costly, energy-depleting litigation, parties may now be inspired to settle their disputes through efficient and effective action plans.

⁶⁸ *Id.*

⁶⁹ *Id.*