

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND**

**STEPHEN MARTIN and CHERYL
MARTIN,**

Plaintiffs,

v.

**W.L. GORE & ASSOCIATES, INC.,
The Corporation Trust, Incorporated
2405 York Road, Suite 201
Lutherville, Maryland 21093-2264**

Defendant.

C.A. No.: 1:24-cv-3549

COMPLAINT

COME NOW Plaintiffs Stephen Martin and Cheryl Martin (collectively, “Plaintiffs”), by and through their undersigned counsel, who file this Complaint against Defendant, W.L. Gore & Associates, Inc., (“Gore” or “Defendant”), and hereby allege and state as follows:

I. NATURE OF THE CASE

1. This is a civil suit brought against Defendants under the citizen suit enforcement provisions of the Solid Waste Disposal Act, 42 U.S.C. § 6901 *et seq.* (“Resource Conservation and Recovery Act” or “RCRA”). Plaintiffs seek declaratory and injunctive relief, the assessment of civil penalties, attorneys’ fees, and such other relief the Court deems appropriate to remedy Gore’s violations of these laws from its manufacturing plant located in Elkton, Maryland with a mailing address of 2401 Singerly Road, Elkton, Maryland 21921 (the “Cherry Hill Facility” or “Cherry Hill”).

2. Gore’s Cherry Hill Facility is located in Cecil County on approximately 20.78 acres of improved property in Elkton, Maryland. As detailed more fully below, manufacturing practices at the Cherry Hill Facility utilize polytetrafluoroethylene (“PTFE”), as well as dispersions of Ammonium Perfluorooctanoate (“APFO”), which is the ammonium salt of Perfluorooctanoic acid

(“PFOA”). These manufacturing processes released APFO and PFOA air emissions, that were then deposited and migrated to groundwater. In addition, Gore discharged or disposed these constituents on-site and in the contaminated process wastewater that was carried to the Wastewater Treatment Plant (“WWTP”) for the City of Elkton. As detailed further below, Gore’s manufacturing processes release constituents of concern and pollutants to the groundwater and nearby streams.

3. Gore’s violations of federal law include: (1) Gore has contributed and is contributing to the past or present handling, storage, treatment, transportation, or disposal of solid waste that may present an imminent and substantial endangerment to health or the environment in violation of RCRA; and (2) Gore is and has been engaged in open dumping in violation of RCRA.

4. These ongoing violations harm both the water and the wildlife. They also harm the recreational, aesthetic, and/or commercial interests of citizens in the surrounding areas, including Plaintiffs. Plaintiffs also have had to confront anxiety concerning health effects of substances being discharged from the Cherry Hill Facility. They seek to address both the harm to themselves and the impact to the community and key water resources through this action.

II. JURISDICTION AND VENUE

5. The Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331 (federal question), and 42 U.S.C. § 6972 (RCRA).

6. On September 4, 2024, Plaintiffs notified Defendants pursuant to 42 U.S.C. § 6972(b)(2)(A), of their intention to file suit for violations of RCRA. The Notice outlined Plaintiffs’ concerns, including the imminent and substantial endangerment posed by the conduct alleged herein. Plaintiffs sent that letter by mail to the registered agent for W.L. Gore & Associates, Inc. Plaintiffs also provided copies of the Notice Letter to the Maryland Department of the

Environment (“MDE”) and the federal Environmental Protection Agency (“EPA”).

7. A true and correct copy of Plaintiffs’ September 4, 2024 notice letter is attached hereto as Exhibit A with documentation of its receipt attached hereto as Exhibit B.

8. The violations identified in the notice letter are continuing at this time and are likely to continue in the future.

9. Neither EPA nor MDE has commenced or is diligently prosecuting a court action to redress the violations described in the Notice Letter and alleged in this Complaint. Plaintiffs do not object to later intervention by MDE.

10. At all times relevant herein, Defendant Gore has purposefully availed itself of the privilege of conducting business in the State of Maryland, has transacted business in the State of Maryland, contracted to purchase and operate the Cherry Hill Facility in the State of Maryland, regularly caused its Cherry Hill Facility to be operated in the State of Maryland, and this action arises out of business transacted in, contracts to be performed in whole or in part within Maryland, as well as actions and/or omissions committed in whole or in part within Maryland, and which occasioned and inflicted injuries upon Plaintiffs. Plaintiffs’ claims arise out of or relate to Defendant Gore’s activities and contacts with the State of Maryland, and specific personal jurisdiction over Gore is therefore proper.

11. Venue is proper in this Court pursuant to 28 U.S.C. § 1391 because a substantial portion of the events or omissions giving rise to Plaintiffs’ claims took place in this judicial district, and because the property that is the subject of this action is situated in the district. Venue is proper in this Court pursuant to 42 U.S.C. § 6972(a) because the action regards alleged violations and endangerment that occurred and may occur in this judicial district.

III. PARTIES

A. Plaintiffs

12. Plaintiffs each reside within close proximity to the Cherry Hill Facility. Plaintiffs have suffered, and continue to suffer, harm to their property and their recreational, aesthetic, and/or commercial interests within the area. Plaintiffs also suffer harm to their physical and mental well-being as they suffer from anxiety related to their reasonable fear of, and potentially actual, adverse health effects resulting from their exposures to substances discharged from the Cherry Hill Facility. Gore's ongoing discharges from the Cherry Hill Facility harm Plaintiffs in part because these discharges contain pollutants that are known to be harmful and to persist in the environment. These harms fall within the zone of interests protected by RCRA. Plaintiffs assert actual and/or imminent, concrete, and particularized injuries that have a causal connection to the conduct complained of in this complaint, *i.e.*, injuries that are fairly traceable to the challenged actions described herein.

13. Stephen Martin resides on Somerset Court in Elkton, Maryland, less than one mile from the Cherry Hill Facility. Mr. Martin is also the Administrator of the Moose Lodge. Because of his concerns about water quality due to Gore's actions, he is deterred from the use and enjoyment of his properties. He is concerned that the pollution by Gore has made the properties unusable for himself and others. Mr. Martin also fears actual adverse health effects, and future effects, from the contamination on his properties.

14. Cheryl Martin resides on Somerset Court in Elkton, Maryland, less than one mile from the Cherry Hill Facility. Because of her concerns about water quality due to Gore's actions, she is deterred from the use and enjoyment of her property. She is concerned that the pollution by Gore has made the property unusable for herself and others. Mrs. Martin also fears actual adverse

health effects, and future effects, from the contamination on her property.

15. Plaintiffs bring this action on behalf of themselves and all Citizens who live, work, or recreate near the Cherry Hill Facility and will collectively be referred to as Plaintiffs.

16. Plaintiffs have encountered PFOA laden wastes through contamination of their groundwater, surface water, and soil in the past and reasonably fear they will continue to encounter these wastes in the future that threaten their health and the environment.

17. Plaintiffs seek to prevent and remedy their ongoing injuries with this action. Relief from this Court addressing Gore's noncompliance with RCRA would redress Plaintiffs' injuries by increasing the likelihood, if not ensuring, that Gore will cease its discharges of pollutants and eliminate the endangerment to health and the environment.

B. Defendant

18. Defendant W.L. Gore & Associates, Inc., is a Delaware Corporation that identified its principal place of business as 555 Paper Mill Road, Newark, Delaware 19711. Defendant Gore is authorized to do business within the State of Maryland. Defendant Gore's registered agent for service in the State of Maryland is: The Corporation Trust, Incorporated, 2405 York Road, Suite 201, Lutherville, Maryland 21093-2264.

IV. LEGAL BACKGROUND OF RCRA

19. Enacted in 1976, the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6901 *et seq.*, "is a comprehensive environmental statute that governs the treatment, storage, and disposal of solid and hazardous waste." *Goldfarb v. Mayor & City Council of Baltimore*, 791 F.3d 500, 504 (4th Cir. 2015) (quoting *Meghrig v. KFC W., Inc.*, 516 U.S. 479, 483 (1996)). EPA has authority to develop the RCRA program and to delegate primary implementation responsibility to individual states. In Maryland, the Maryland Department of the

Environment (“MDE”) is authorized by EPA to implement RCRA.

20. Congress, in enacting RCRA, was particularly concerned with “greater amounts of solid waste (in the form of sludge and other pollution treatment residues)” that had been created. 42 U.S.C. § 6901(b)(3), as well as with open dumping. Congressional findings “with respect to the environment and health” include, *inter alia*, findings that “open dumping is particularly harmful to health, contaminates drinking water from underground and surface supplies, and pollutes the air and the land,” and that “the placement of inadequate controls on hazardous waste management will result in substantial risks to human health and the environment.” *Id.* § 6901(b)(4)-(5). Accordingly, among the statute’s objectives are “prohibiting future open dumping on the land and requiring the conversion of existing open dumps to facilities which do not pose a danger to the environment or to health.” *Id.* § 6901(a)(3).

21. RCRA Section 1004(3) defines “disposal” as

the discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste . . . into or on any land or water so that such solid waste or hazardous waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including ground waters.

42 U.S.C. § 6903(3).

22. Under RCRA Section 1004(14), an “open dump” is

any facility or site where solid waste is disposed of which is not a sanitary landfill which meets the criteria promulgated under section 6944 of [RCRA] and which is not a facility for disposal of hazardous waste.¹

42 U.S.C. § 6903(14).

23. RCRA, Section 1004(27) defines “solid waste” as

any garbage, refuse, sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility and other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from industrial, commercial, mining, and agricultural operations, and from

¹ Hazardous waste facilities must have a permit under RCRA. *See* 42 U.S.C. § 6925(a).

community activities

42 U.S.C. § 6903(3).

24. In February 2024, EPA proposed to list 9 PFAS (including PFOA and PFOS) as “hazardous constituents,” under RCRA. The effect of including these substances in the RCRA hazardous constituent list appearing at 40 CFR § 261, Apdx VIII is to bring PFAS contaminated sites within RCRA’s corrective action authority, available to EPA and to citizens.

V. FACTUAL BACKGROUND

A. The Gore Cherry Hill Facility’s Fate and Transport of PFAS

25. The majority of Gore’s most important and lucrative products are based on a fluoropolymer called polytetrafluoroethylene (“PTFE”), otherwise known as Teflon®, which Gore uses to create thousands of different products and applications.

26. PTFE, CAS number 9002-84-0, is identified by the EPA as a per- and polyfluoroalkyl substances (PFAS).
<https://comptox.epa.gov/dashboard/chemical/details/DTXSID7047724?list=PFASMASTER> (last visited Dec. 2, 2024).

27. Gore began processing PFOA-containing PTFE products at Cherry Hill in the early 1970s.

28. PFAS are a large group of over four thousand (4,000) chemical compounds, including but not limited to ammonium perfluorooctanoate (“APFO”), perfluorooctanoate (“PFO”), perfluorooctane sulfonic acid (“PFOS”), and perfluorooctanoic acid (“PFOA”), colloquially known as (“C8”).

29. The manufacturing process required the use of large industrial drying ovens.

30. As of 2003, the Cherry Hill Facility had 32 ovens.

31. These ovens and oxidizers, upon information and belief, emitted large amounts of particulate containing APFO/PFOA into the atmosphere.

32. PFOA, and all perfluorochemical compounds (PFCs), are human-made chemicals that are not found in nature. The ammonium salt form of PFOA, APFO, is highly water soluble and its particulate matter quickly and easily dissolves into rainwater and other precipitation to form APFO- or PFOA, which then readily percolates down through soils to contaminate groundwater.

33. Upon release from the Cherry Hill Facility, the APFO/PFOA emissions released through the drying process, formed fine particulates in the ambient environment as a wind-driven contaminant before depositing onto the land surface via wet (rainfall driven) or dry (gravity-driven) deposition. Figure 1 below shows a conceptual model of this deposition.

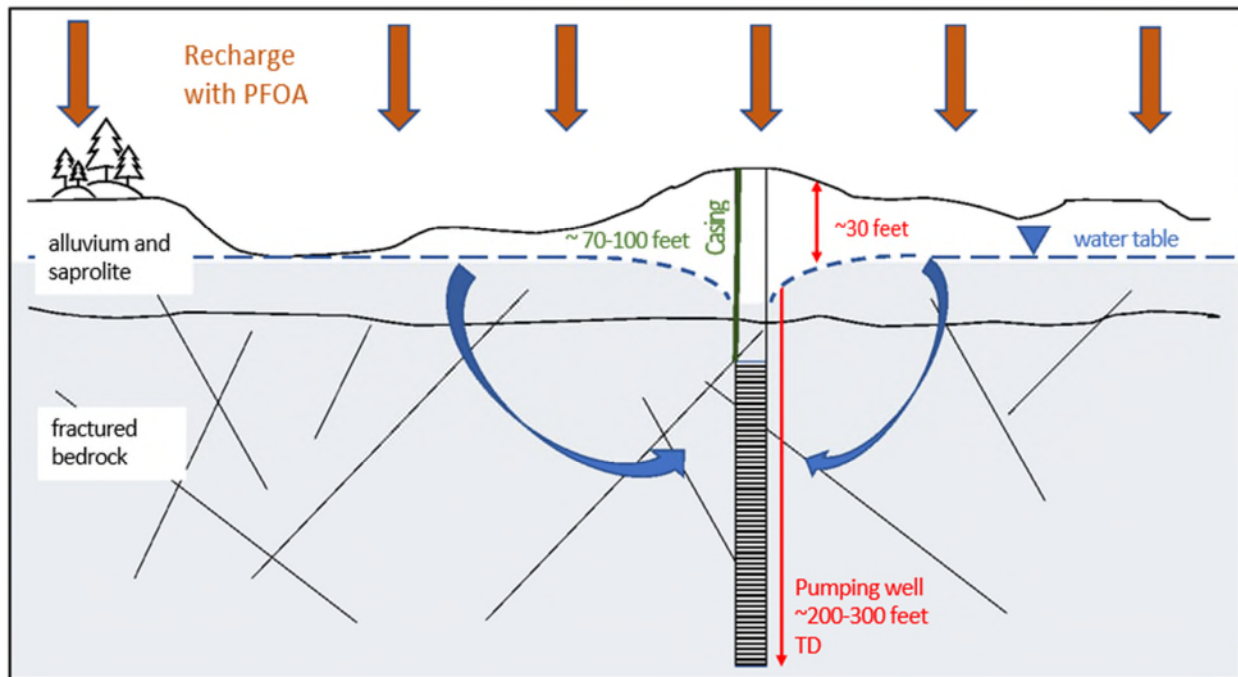


Figure 1. Conceptual Model of PFOA Infiltration

34. PFOA leaches through the soil profile during precipitation events until it reaches the water table.

35. Once PFOA has entered the aquifer, it migrates with groundwater.

36. This particulate deposition and leaching contaminate the groundwater and nearby tributaries and streams as well as drinking water supply wells that draw from the aquifer.

37. Furthermore, upon information and belief, washdown from the Cherry Hill Facility traveled into nearby surface water and groundwater.

38. When APFO and PFOA were used, contaminated processed water was a residual, which, upon information and belief, was disposed of through various means, and spilled.

39. There were two retention ponds located at the Cherry Hill Facility and PTFE-laden APFO contaminated processed water was disposed by Gore into either: (1) a wastewater treatment system; or (2) these onsite retention ponds.

40. Upon information and belief, Gore did not have an industrial wastewater treatment system until 1997. Once Gore obtained a wastewater treatment system, its capabilities were not sufficient to filter the high volume of APFO out of the wastewater.

41. In turn, Gore is alleged to have discharged a portion of the APFO in contaminated process wastewater sent to the City of Elkton Wastewater Treatment Plant (WWTP), where it was subsequently discharged to a local stream.

42. Therefore, the City's discharge and its receiving stream contain PFAS, including but not limited to, PFOA.

43. Both the disposal of PTFE-laden, APFO/PFOA contaminated process water into the public sewage system, and the particulate laden air emissions of PFOA caused the community surrounding the Cherry Hill Facility to have unsafe levels of PFOA in their groundwater.

B. Migration of PFAS from Gore's Cherry Hill Facility and Onto Plaintiffs' Property and Surrounding Environment

44. Groundwater from the Cherry Hill Facility migrates to the east and southeast

toward a cluster of homes on the east side of Singerly Road, and then a small spring to the east of the Cherry Hill Facility, named Murray Spring, discharges groundwater to a tributary of Little Elk Creek.

45. Of particular concern are results of recent sampling of groundwater and surface water adjacent to Cherry Hill's Facility performed on behalf of the Plaintiffs by experienced water quality consultants which indicate a direct pathway of contaminant discharge from Gore, and the underlying groundwater at the Cherry Hill Facility, to the surrounding properties. Groundwater provides a direct pathway from the Cherry Hill Facility to the surrounding community of PFOA and constituents of concern on the Cherry Hill Facility's property that present an imminent and substantial endangerment to the public health or the environment of Maryland.

46. Surface water, residential well, and public water system samples were taken in 2022, 2023 and 2024, that show widespread contamination of PFOA and other PFAS compounds. The highest concentrations are closest to the Cherry Hill Facility and decrease with distance from the plant.

47. The contamination is dominated by PFOA, with subordinate amounts of PFHxA and PFHpA, all of which have been documented in materials used at the Cherry Hill Facility.

48. On April 10, 2024, the EPA finalized a new rule setting maximum contaminant levels ("MCLs") under the Safe Drinking Water Act, 42 U.S.C. §300(f), *et seq.*, to reduce exposure from five different PFAS (PFOA, PFOS, PFNA, PFHxS and GenX chemicals). EPA set a MCL at 4.0 parts per trillion ("ppt") for PFOA and PFOS and a MCL of 10.0 ppt for PFNA, PFHxS and GenX chemicals. EPA, PFAS National Primary Drinking Water Regulation, 89 FR 32532, 2024.

49. Groundwater samples taken downgradient of the Cherry Hill Facility along Singerly and Cherry Hill Roads had concentrations of PFOA that exceeded 700 ppt as compared

to the MCL of 4 ppt.

50. Multiple private wells of community members, as well as former community water systems, have been impacted by the contamination emanating from the Cherry Hill Facility over the years. In particular, the Manchester Park neighborhood is located approximately 5,000 feet to the south-southeast of the Cherry Hill Facility. Drinking water for the neighborhood was supplied by groundwater production wells owned by CECO Utilities, Inc. The neighborhood obtained their water from an unconfined aquifer, which was infiltrated by rainwater contaminated with PFOA from the Cherry Hill Facility, from 1980 to 2003. *See Figure 2. Cecil Count Planning and Zoning, 2014).*

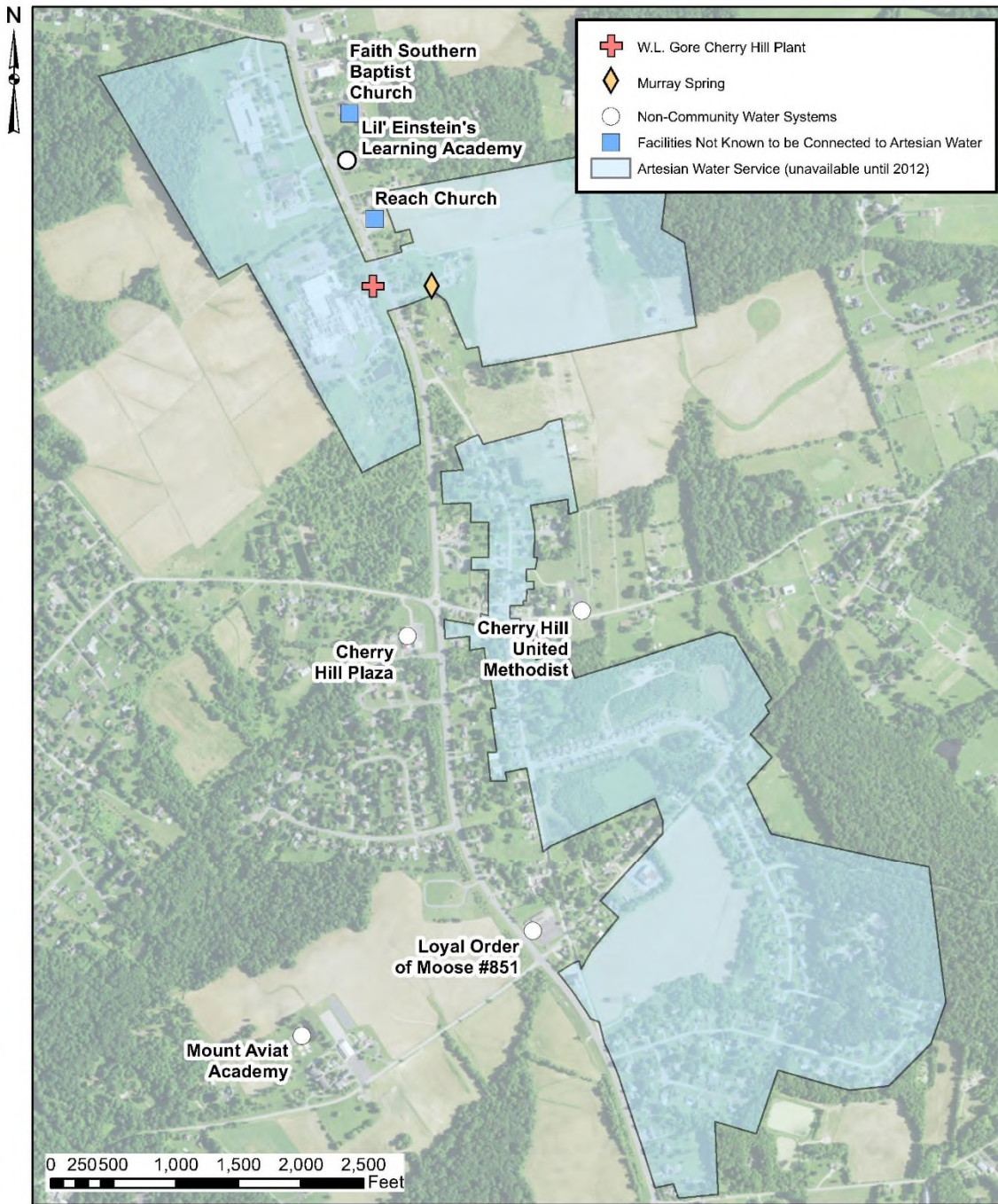


Figure Present-Day Water Supply in Cherry Hill Area
 [Facilities and residential areas outside of the blue shaded region
 are not known to be connected to Artesian water]

Figure 2. Present-day water supply in Cherry Hill area (facilities and residential areas outside of the blue shaded region are not known to be connected to Artesian water).

51. The Plaintiffs' drinking water supply wells have over 175 times the MCL. See

Figure 3.

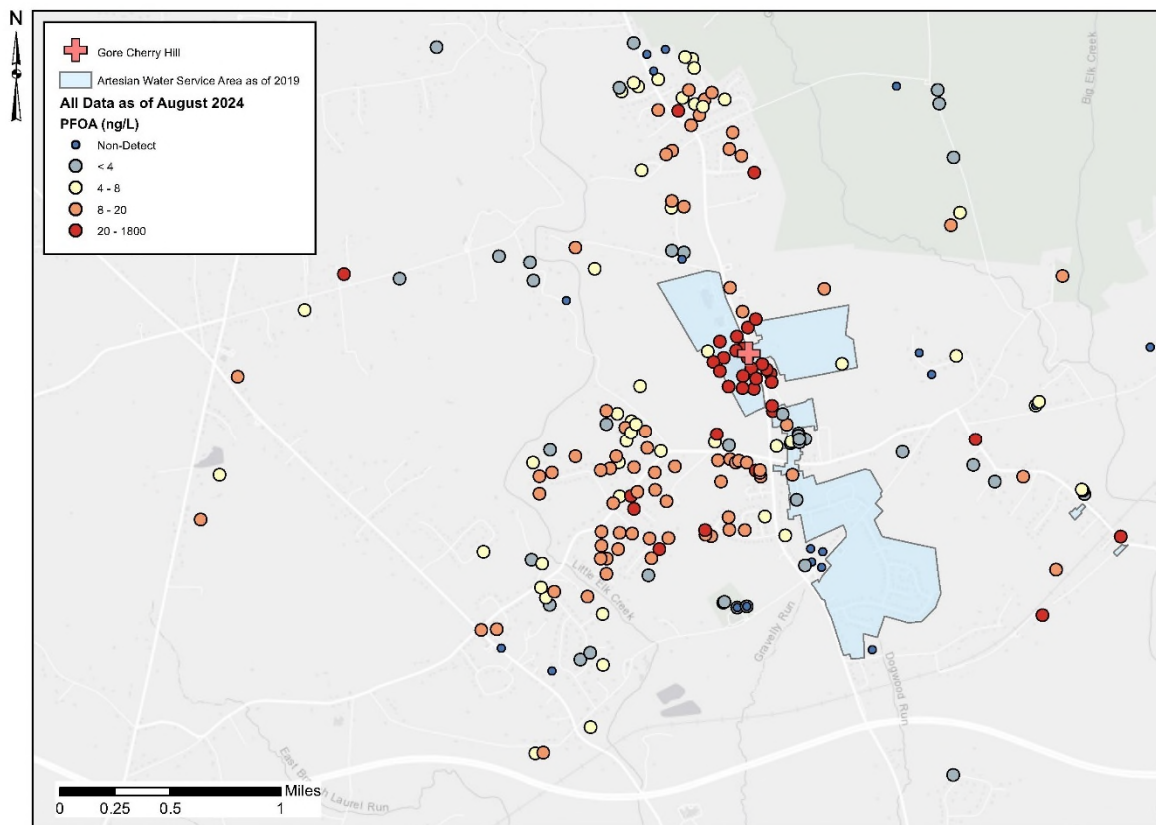


Figure 3 PFOA Concentrations in Groundwater

Figure 3. PFOA Concentrations in Groundwater

52. Surface water samples taken downgradient of the Cherry Hill Facility at the headwaters of a tributary to Little Elk Creek also exceeded 700 ppt for PFOA. See Figure 4.

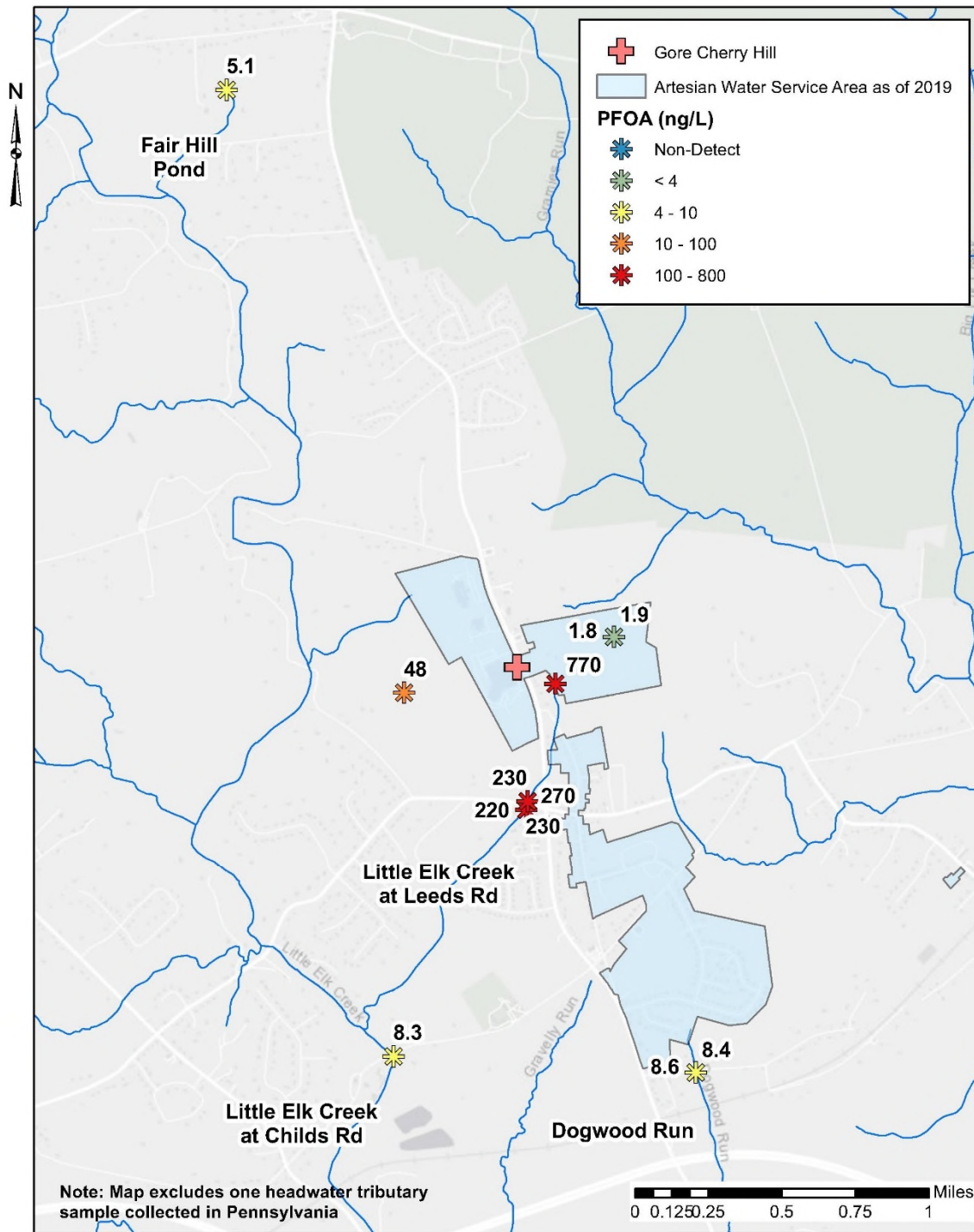


Figure 4 PFOA Concentrations in Surface Water

Figure 4. PFOA Concentrations in surface water.

53. Upon information and belief, soil in the area continues to be contaminated with PFAS.

C. Health Effects of PFAS

54. PFOA is persistent in the environment and resistant to environmental degradation processes.

55. PFOA is bioaccumulated in humans and wildlife, primarily in blood serum, kidneys and liver. Studies have found PFOS and PFOA in the blood samples of the general human population.

56. Human epidemiological studies found associations between PFOA exposure and high cholesterol, increased liver enzymes, decreased vaccination response, thyroid disorders, pregnancy-induced hypertension and preeclampsia, and cancer.

57. The International Agency for Research on Cancer (“IARC”), the cancer agency of the World Health Organization (“WHO”), evaluated the carcinogenicity of PFOA through a Working Group of 30 international experts from 11 countries meeting on 7–14 November 2023, in Lyon, France.

58. After thoroughly reviewing the extensive published literature, the Working Group classified PFOA as *carcinogenic to humans* (Group 1). A summary of the final evaluations has been published online in *The Lancet Oncology*. The detailed assessment will be published as Volume 135 of the *IARC Monographs*.

59. Due to their reasonable fear and concern about the effects of Gore’s discharges, Plaintiffs suffer harm to their mental well-being due to anxiety and the fear of actual and potential adverse health effects resulting from their exposures.

D. Imminent Endangerment

60. Upon information and belief, including consultation with an experienced hydrogeologist, the fate and transport of PFOA through the soil column and into potable groundwater supplies contributed to and is contributing to elevated levels of PFOA in the groundwater, and is posing an “imminent and substantial endangerment to health or the environment” in violation of 42 U.S.C. § 6972(a)(1)(B).

61. This endangerment stems from Gore’s disposal of process wastewater, manufacturing byproducts and other solid wastes on-site, through their wastewater, and through air emissions of PFAS-laden particulate.

62. Gore is directly responsible as the generator, treater, and transporter of the contaminated process wastewater, manufacturing byproducts and other solid wastes containing APFO and PFOA.

E. Gore’s Violations of Federal Laws Are Dangerous and Damaging

63. RCRA Section 1004(3) defines “disposal” as

the discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste . . . into or on any land or water so that such solid waste or hazardous waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including ground waters.

42 U.S.C. § 6903(3).

64. The term “disposal” is broad and has been interpreted to not only include active actions but passive actions as well.

65. Gore’s practices of emitting, discharging, and/or disposing of PFAS and manufacturing byproducts on-site, through their wastewater, and through air emissions of particulate-laden PFAS, constitutes disposal of solid waste per the RCRA definition.

66. As described above, the disposal of PFAS presents an imminent and substantial endangerment to health or the environment.

67. Section 1002(b) of RCRA states that “disposal of solid waste ... in or on the land without careful planning and management can present a danger to human health and the environment;” and that “open dumping is particularly harmful to health, contaminates drinking water from underground and surface supplies, and pollutes the air and land...”. 42 U.S.C. § 6901(b).

68. Section 4005(a) of RCRA states that “any solid waste management practice or disposal of solid waste ... which constitutes the open dumping of solid waste or hazardous waste is *prohibited*.” 42 U.S.C. § 6945(a) (emphasis added).

VI. CAUSES OF ACTION

Count I: Violation of RCRA – Imminent and Substantial Endangerment

69. Plaintiffs reallege and incorporate by reference the allegations of the preceding paragraphs as if repeated and set forth herein.

70. Under RCRA Section 7002(a)(1)(B), citizens may commence a citizen suit against:

any person, . . . including any past or present generator, past or present transporter, or past or present owner or operator of a treatment, storage, or disposal facility, who has contributed or who is contributing to the past or present handling, storage, treatment, transportation, or disposal of any solid or hazardous waste which may present an **imminent and substantial endangerment to health or the environment**

42 U.S.C. § 6972(a)(1)(B) (emphasis added).

71. Defendant is a “person” within the meaning of Section 1004(15) of RCRA, 42 U.S.C. § 6903(15).

72. Gore is a present generator, treater, and transporter of solid . . . waste and the operator of a treatment, storage, and disposal facility that has and is contributing to the past and present handling, storage, treatment, transportation or disposal of solid wastes.

73. Gore's practice of handling, treating, storing, transporting, and/or disposing of process wastewater, manufacturing byproducts and other solid wastes on-site, through their wastewater, and through air emissions, presents an imminent and substantial endangerment to health or the environment.

74. As described above, the disposal of process wastewater, manufacturing byproducts and other solid wastes on-site, through their wastewater, and through air emissions has contributed to, and is contributing to, elevated levels of PFOA and PFAS compounds and may pose an imminent and substantial endangerment to health or the environment. The wastewater and groundwater contain constituents of concern known to be harmful to human health and wildlife and to persist in the environment.

75. Further, Plaintiffs have experienced and continue to experience actual and threatened harms to their health and wellbeing, forcing them to change their lifestyles, installing carbon filtration systems and purchasing bottled water, depriving them of sleep, and leaving them anxious and unable to find comfort and reprieve even in their own homes.

76. These complained of practices and conditions resulting in actual and threatened damage and injury to health or the environment have continued and progressed since prior to the enactment of RCRA and subsequent thereto.

77. Plaintiffs, other citizens, and the environment are harmed and will continue to be harmed by Gore's failure to abate the endangerment unless the Court grants the relief sought herein.

Count II: Violation of RCRA – Open Dumping

78. Plaintiffs reallege and incorporate by reference the allegations of the preceding paragraphs as if repeated and set forth herein.

79. Under RCRA Section 7002(a)(1)(A), citizens may commence a citizen suit against “any person . . . who is alleged to be in violation of any permit, standard, regulation, condition, requirement, prohibition, or order which has become effective pursuant to [RCRA].” 42 U.S.C. § 6972(a)(1)(A).

80. Gore’s ongoing release and/or disposal practices of emitting, discharging, and/or disposing of PFAS and manufacturing byproducts on-site, through their wastewater, and through air emissions, constitutes disposal of solid waste.

81. RCRA prohibits “any solid waste management practice or disposal of solid waste or hazardous waste which constitutes the open dumping of solid waste or hazardous waste . . .” 42 U.S.C. § 6945(a).

82. 42 U.S.C. § 6945(a) further provides that “the prohibition [against open dumping] . . . shall be enforceable under section 6972 [the citizen suit provisions] of this title against persons engaged in the act of open dumping.”

83. Gore’s improper practices described above constitute “open dumping” and violate the criteria promulgated under sections 6907(a)(3) and 6944(a) in violation of RCRA.

84. These complained of conditions, and resulting damage and injury, have continued and progressed since prior to the enactment of RCRA and subsequent thereto.

85. Plaintiffs and the environment are harmed and will continue to be harmed by Gore’s open dumping unless the Court grants the relief sought herein.

REQUEST FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court grant the following relief:

- A. Declaratory and injunctive relief pursuant to § 7002 of the Resource Conservation and Recovery Act, 42 U.S.C. § 6972, ordering Gore to perform and pay for such work as may be required to eliminate or remediate any solid waste handled, stored, treated, transported or disposed at the Cherry Hill Facility that may present an imminent and substantial endangerment to health or the environment, and restraining Gore from further violating RCRA;
- B. Declaratory and injunctive relief pursuant to 42 U.S.C. § 6945(a) to remedy the violations of RCRA alleged in Count II;
- C. The assessment of the maximum amount of civil penalties allowed by law, per day per violation, pursuant to 42 U.S.C. § 6928;
- D. An award of the costs of litigation, including reasonable attorney and expert witness fees, pursuant to § 7002(e) of RCRA, 42 U.S.C. § 6972(e); and
- E. Such further and additional relief as the Court deems just and proper.

[Signature page to follow]

Respectfully submitted,

BAIRD MANDALAS BROCKSTEDT
& FEDERICO, LLC

/s/ Philip C. Federico

Philip C. Federico, Fed ID No. 01216

Chase T. Brockstedt (Motion to be admitted *pro hac vice* to follow)

Brent P. Ceryes, Fed ID No. 19192

Catherine M. Cramer (Motion to be admitted *pro hac vice* to follow)

A. Wray Fitch, Fed. ID No. 13722

Matthew P. Legg, Fed ID No. 19904

Stella D. Pratt (Motion to be admitted *pro hac vice* to follow)

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MOTLEY RICE LLC

/s/ T. David Hoyle

T. David Hoyle (Motion to be admitted *pro hac vice* to follow)

Anne McGinness Kearse (Motion to be admitted *pro hac vice* to follow)

Rebecca A. Fonseca (Motion to be admitted *pro hac vice*)

Lee M. Heath (Motion to be admitted *pro hac vice* to follow)

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Attorneys for Plaintiffs

DATED: December 9, 2024
Baltimore, Maryland

EXHIBIT A



Philip C. Federico
410-421-7777
pfederico@bmbfclaw.com

September 4, 2024

**VIA REGULAR & CERTIFIED MAIL
RETURN RECEIPT REQUESTED:**

W.L. Gore & Associates, Inc.
2401 Singerly Road
Elkton, Maryland 21921
Michael Regan
United States Environmental Protection Agency
1200 Pennsylvania Avenue NW
Washington, DC 20460

Adam Ortiz
United States Environmental Protection Agency
Region 3
1650 Arch Street
Philadelphia, Pennsylvania 19103

Secretary Serena McIlwain
Maryland Department of the Environment
1800 Washington Boulevard
Baltimore, Maryland 21230

The Corporation Trust, Incorporated
Registered Agent for W.L. Gore & Associates, Inc.
2405 York Road, Suite 201
Lutherville Timonium, Maryland 21093

**RE: 90 DAY NOTICE OF INTENT TO SUE PURSUANT TO THE RESOURCE
CONSERVATION AND RECOVERY ACT**

Dear W.L. Gore & Associates:

Pursuant to the citizen suit provisions of the Resource Conservation and Recovery Act (“RCRA”), 42 U.S.C. § 6972(b)(1)(A), this letter serves as notice that Stephen and Cheryl Martin (collectively “the Citizens”) intend to sue W.L. Gore & Associates (“Gore”), which owns and operates a manufacturing plant located at 2401 Singerly Road, Elkton, Maryland 21921 (“Cherry Hill Plant”), in the federal District Court for the Northern District of Maryland regarding its

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emissions, discharge, release and disposal of perfluorinated alkyl (“PFAS”) chemicals and their precursors, which have contaminated the area’s groundwater.

Gore’s actions present or may present an imminent and substantial endangerment to health or the environment, in violation of RCRA § 6972(a)(1)(B). Further, with its unpermitted release and disposal of these substances, Gore has violated the RCRA prohibition against Open Dumping established in 42 USC 6945, Subtitle D of RCRA.

W.L. Gore's Release and Disposal of PFAS and Forever Chemicals

W.L. Gore & Associates, Inc. (“Gore”) owns and operates the Cherry Hill Plant (“Cherry Hill Plant”) in Elkton, Cecil County, Maryland. It began operations in 1972 and continues to the present. Elkton has a population of about 16,000 residents. Upon information and belief, many of Cherry Hill’s manufacturing processes utilized polytetrafluoroethylene (“PTFE”), as well as dispersions of Ammonium Perfluorooctanoate (APFO) which is the ammonium salt of perfluorooctanoic acid (PFOA), and an unwanted byproduct of this process was the conversion and release of per- and polyfluoroalkyl substances (PFAS) including APFO and PFOA. Upon information and belief, APFO and PFOA were released into the environment with air emissions and discharged or disposed of in wastewater. Nearly every day some of the APFO escaped the Gore plant in contaminated air from the production process that was vented through the facility’s roof stacks into the ambient air. Most of that was subsequently dissolved by rain and migrated into the groundwater, contaminating nearby streams and groundwater. That portion of APFO that left Cherry Hill in the contaminated process wastewater was carried to the Wastewater Treatment Plant (WWTP) for the City of Elkton, from which it flowed into a local stream with the treated municipal sewage.

APFO falls under the perfluorinated alkyl (PFAS) class of “forever” chemicals that are inert and thermally stable and do not biodegrade in the environment. They are also carcinogenic. USEPA proposed in February 2024 to list PFAS as a hazardous waste under RCRA. *See Proposal to List Nine Per- and Polyfluoroalkyl Compounds as Resource Conservation and Recovery Act Hazardous Constituents*, United States Environmental Protection Agency, [Proposal to List Nine Per- and Polyfluoroalkyl Compounds as Resource Conservation and Recovery Act Hazardous Constituents | US EPA](#). As a consequence of these manufacturing activities, large amounts of PFAS—forever chemicals—were released by Gore’s Cherry Hill plant into the surrounding area over a period of more than 20 years.

Conversion of APFO emissions to PFOA and Groundwater Migration

Upon release of APFO from the Cherry Hill Plant to the air, APFO formed fine particulates in the ambient environment as a wind-driven contaminant before depositing onto the land surface via wet (rainfall-driven) or dry (gravity-driven) deposition. Once the APFO particles were deposited on the land surface and encountered water in streams or during rainfall events, they dissolved in water, forming perfluorooctanoate (PFO-) and ammonium (NH₄⁺) or perfluorooctanoic acid (PFOA). The term “PFOA” refers to the dissociated, aqueous form of APFO. PFOA leaches through the soil profile during precipitation events until it reaches the water table (Davis et al., 2007). Once PFOA has entered the aquifer, it migrates with groundwater. The

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APFO emitted into the air from Gore's Cherry Hill facility dissolved in precipitation and became PFOA and migrated into the subsurface through the unsaturated (vadose) zone, and into the water-bearing zone tapped by the drinking water supply wells.

Surface water, residential well, and public water system samples collected in 2022 and 2023 in the Cherry Hill area show widespread PFOA and other PFAS contamination that is greatest closest to the Gore Cherry Hill Plant and decreases with distance from the plant. This contamination is dominated by PFOA, with subordinate amounts of PFHxA and PFHpA, all of which have been documented in materials used at the Cherry Hill Plant.

USEPA has recently established a national primary drinking water regulation (Maximum Contaminant Level or MCL) for PFOA at 4 parts per trillion (ppt). 40 C.F.R. 141.903. The highest concentrations of PFOA in groundwater are associated with residential wells east and southeast (downgradient) of the Gore facility along Singerly and Cherry Hill Roads, where in 2022-2023, the maximum concentration in well samples exceeded 700 ppt.

The highest concentrations of PFOA in surface water (>700 ppt) are also associated with the headwaters of a tributary to Little Elk Creek east and southeast (downgradient) of the Gore facility along Singerly and Cherry Hill Roads.

Multiple private wells of community members, as well as community water systems have been impacted over the years. The Manchester Park neighborhood is located approximately 5,000 feet, or less than 1 mile, south-southeast of the Cherry Hill Plant. Drinking water for residents in the subdivision was supplied by groundwater production wells owned by CECO Utilities, Inc. (MDE, 2005). Six wells were installed between 1963 and 2002. A seventh well was installed in 2003. The neighborhood was not connected to a public water main until November 2012, when CECO transferred their water utility assets to Artesian Water Maryland. Because wells serving the Manchester Park neighborhood obtained their water from an unconfined aquifer for the period from 1980 to 2003, these wells were infiltrated by rainwater contaminated with PFOA from the Cherry Hill Plant. Upon information and belief, the soil in this area continues to have PFAS present.

Gore's On-Site Release and Disposal

For 20 years, Gore pumped their APFO-laden industrial wastewater into the City of Cherry Hill's sewer system untreated, even though for most or all that time, upon information and belief, they knew that APFO is non-biodegradable and toxic, and thus would merely flow unaffected through the City's wastewater treatment plant and be discharged to the receiving stream at very high concentration.

Upon information and belief, Gore did not have an industrial wastewater treatment system until 1997. Further upon information and belief, when Gore did finally obtain an industrial wastewater treatment system in 1997, its capabilities were not sufficient to filter out the high levels of APFO in its wastewater. As a result, Gore is alleged to have discharged APFO in outgoing treated wastewater into the city sewer system. As a result of this, the city's discharge and its receiving stream contain PFAS, including, but not limited to PFOA. Additionally, on information

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and belief, washdown from W.L. Gore's Cherry Hill Facility containing PFOA, traveled into nearby ground, groundwater and surface water.

Under natural conditions, groundwater under the W.L. Gore Cherry Hill Plant would be expected to migrate eastward and southeastward, consistent with topography. Investigations of groundwater contamination have documented that shallow groundwater from under the plant does migrate as expected, which is in the direction of a cluster of homes on the east side of Singerly Road and then discharges to a tributary of Little Elk Creek. The highest concentrations of PFOA observed in residential wells (700 ppt+) are associated with these homes across Singerly Road, east and southeast (downgradient) of the Gore plant. The source of this groundwater contamination is likely deposition of plant air emissions to the ground near the plant as well as discharge of waters containing forever chemicals to drain fields on the Gore property.

Health Effects

The substances that are collectively categorized as PFAS are highly toxic "forever chemicals" that can cause different types of cancers, reproductive and developmental issues, thyroid disease, and changes in the immune system. Once PFAS enters the body, it remains for a long period of time. Its half-life in the body is estimated to be at least 7 years. It is not naturally occurring in the environment and has no natural background level.

Short-term exposure of humans to PFAS may result in increases in cholesterol levels and changes to liver enzymes. Long-term exposure is linked to lower antibody response to some vaccines, pregnancy-induced hypertension and preeclampsia, developmental delays, and certain types of cancers.

Chronic exposure to PFAS is still being studied but chronic exposure to lab animals has resulted in low birth weight, birth defects, delayed development, and newborn deaths. It has also resulted in liver and pancreatic tumors.

PFAS causes damage and injury to person and property upon entering the environment, continuously causes and threatens injury as a result of its presence, and continuously causes damage and injury due to its persistence in the environment once present.

EPA reviewed data for these chemicals and determined that nine PFAS compounds (including those resulting from Gore's manufacturing operations) meet the criteria for listing as a RCRA hazardous waste constituent. To be listed under RCRA, scientific studies must show that the chemical has toxic, carcinogenic, mutagenic, or teratogenic effects on humans or other life forms. 42 U.S.C. § 6903(5).

Citizens

Citizens reside within 3.5 miles of the Cherry Hill Plant. Citizens allege harm to their property and their recreational, aesthetic, and/or commercial interests within the area. Citizens also allege harm to their physical health as they suffer from adverse health effects, including but not limited to, cancers, thyroid disease, and/or high cholesterol as a result of their exposures to PFOA and PFAS discharged from the Cherry Hill Plant. Citizens also suffer harm to their mental well-

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being, such as anxiety related to the fear of, and potential actual, adverse health effects resulting from their exposures. Citizens assert actual and/or imminent, concrete, and particularized injuries that have a causal connection to the conduct complained of in this letter, i.e., injuries that are fairly traceable to the challenged actions.

Imminent Endangerment and Open Dumping

As summarized above, Gore's release and disposal of forever chemicals as a result of the manufacturing activities at the Cherry Hill Plant have contaminated the environment surrounding the Cherry Hill facility. Gore's actions in causing the release and disposal of these forever chemicals from its manufacturing facility present or may present an imminent and substantial endangerment to health or the environment, in violation of 40 U.S.C. § 6972(a)(1)(B). Gore's practices of emitting, discharging and/or disposing of PFAS and manufacturing byproducts into the air, on-site and to the City's wastewater treatment system constitutes the disposal of solid waste by discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste into or on any land or water so that such solid waste may enter the environment or be emitted into the air or discharged into any water. Gore's release and disposal of these substances without a permit to do so constitutes Open Dumping in violation of 42 U.S.C. § 6945.

Relief Requested

Pursuant to 42 U.S.C. § 6972(a), Citizens intend to seek legal and equitable relief for Gore's disposal practices and open dumping in violation of RCRA. The relief sought includes but is not limited to:

Orders and all other relief to provide Citizens and all others impacted by Gore's contamination with clean and healthy drinking water;

Orders and all other relief to bear the expense of monitoring and remediating the soil and groundwater in the area of the Cherry Hill plant to ensure that ongoing leakage of constituents of concern and further contamination of the groundwater is prevented, as overseen, and certified by a qualified, independent professional environmental engineer;

Orders and all other relief to bear the expense of containing the migration of all groundwater containing constituents of concern from the Cherry Hill Plant property to the drinking water using groundwater barriers and filters or equivalent technology, as overseen and certified by a qualified, independent professional environmental engineer;

Orders and all other relief to bear the expense of stopping Gore's practice of open dumping and/or emitting manufacturing byproducts into unlined impoundments and removing or otherwise remediating all waste disposal areas that may cause damage and threaten injury to the person and property of third parties, as overseen and certified by a qualified, independent professional environmental engineer;

Orders and all other relief to bear the expense of assessing and remediating the impact of the entry of substances from the Cherry Hill Plant to all impacted public water supply

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intakes as overseen and certified by a qualified, independent professional environmental engineer;

Orders and all other relief to bear the expense of testing and remediating all sediments containing constituents of concern in properties adjacent to the Cherry Hill Plant, as overseen and certified by a qualified, independent professional environmental engineer;

Penalties assessable for RCRA violations;

Attorneys' and Expert Witness Fees and Costs;

Other necessary and ongoing relief.

Pursuant to 40 CFR § 54.3, the names and addresses of the persons receiving this notice are as follows:

W.L. Gore & Associates, Inc.
2401 Singerly Road
Elkton, Maryland 21921

Michael Regan
United States Environmental Protection Agency
1200 Pennsylvania Avenue NW
Washington, DC 20460

Adam Ortiz
United States Environmental Protection Agency
Region 3
1650 Arch Street
Philadelphia, Pennsylvania 19103

Secretary Serena McIlwain
Maryland Department of the Environment
1800 Washington Boulevard
Baltimore, Maryland 21230

The Corporation Trust, Incorporated
Registered Agent for W.L. Gore & Associates, Inc.
2405 York Road, Suite 201
Lutherville Timonium, Maryland 21093

September 4, 2024

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The attorneys representing the parties in this notice are:

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Conclusion

For all the above reasons, Gore has violated the Resource Conservation and Recovery Act and is subject to a Citizens' Suit.

Very Truly Yours,




Philip C. Federico

PCF/sdp

Cc: Libretta Stennes
Gary T. Lombardo
Chase T. Brockstedt
T. David Hoyle
Anne McGinness Kearse
Brent P. Ceryes
A. Wray Fitch
Catherine M. Cramer
Matthew P. Legg
Rebecca A. Fonseca
Stella D. Pratt
M. Nolan Webb

EXHIBIT B

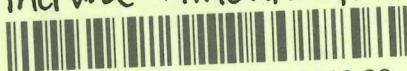
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<ul style="list-style-type: none"> ■ Complete items 1, 2, and 3. ■ Print your name and address on the reverse so that we can return the card to you. ■ Attach this card to the back of the mailpiece, or on the front if space permits. 	<p>A. Signature</p> <p>X <input type="checkbox"/> Agent <input type="checkbox"/> Addressee</p>																	
<p>1. Article Addressed to:</p> <p>Michael Regan U.S. EPA 1200 Pennsylvania Ave. NW Washington, DC 20460</p>	<p>B. Received by (Printed Name)</p>	<p>C. Date of Delivery</p> <p style="text-align: center; font-size: 1.2em;">SEP 10 2024</p>																
 <p>9590 9402 5099 9092 9618 76</p>	<p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No</p>																	
<p>2. Article Number (Transfer from service label)</p> <p>7022 2410 0002 0931 7372</p>	<p>3. Service Type</p> <table border="0"> <tr> <td><input type="checkbox"/> Adult Signature</td> <td><input type="checkbox"/> Priority Mail Express®</td> </tr> <tr> <td><input type="checkbox"/> Adult Signature Restricted Delivery</td> <td><input type="checkbox"/> Registered Mail™</td> </tr> <tr> <td><input checked="" type="checkbox"/> Certified Mail®</td> <td><input type="checkbox"/> Registered Mail Restricted Delivery</td> </tr> <tr> <td><input type="checkbox"/> Certified Mail Restricted Delivery</td> <td><input type="checkbox"/> Return Receipt for Merchandise</td> </tr> <tr> <td><input type="checkbox"/> Collect on Delivery</td> <td><input type="checkbox"/> Signature Confirmation™</td> </tr> <tr> <td><input type="checkbox"/> Collect on Delivery Restricted Delivery</td> <td><input type="checkbox"/> Signature Confirmation Restricted Delivery</td> </tr> <tr> <td><input type="checkbox"/> Mail</td> <td></td> </tr> <tr> <td><input type="checkbox"/> Mail Restricted Delivery</td> <td></td> </tr> </table>		<input type="checkbox"/> Adult Signature	<input type="checkbox"/> Priority Mail Express®	<input type="checkbox"/> Adult Signature Restricted Delivery	<input type="checkbox"/> Registered Mail™	<input checked="" type="checkbox"/> Certified Mail®	<input type="checkbox"/> Registered Mail Restricted Delivery	<input type="checkbox"/> Certified Mail Restricted Delivery	<input type="checkbox"/> Return Receipt for Merchandise	<input type="checkbox"/> Collect on Delivery	<input type="checkbox"/> Signature Confirmation™	<input type="checkbox"/> Collect on Delivery Restricted Delivery	<input type="checkbox"/> Signature Confirmation Restricted Delivery	<input type="checkbox"/> Mail		<input type="checkbox"/> Mail Restricted Delivery	
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1. Article Addressed to:

The Corporation Trust,
 Registered Agent for W.L. Gore
 2405 York Road, Suite 201
 Lutherville Timonium, MD 21093



9590 9402 5099 9092 9619 06

2. Article Number (Transfer from service label)

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PS Form 3811, July 2015 PSN 7530-02-000-9053

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X *Paul Schroeder*

Agent

Addressee

B. Received by (Printed Name)

Paul Schroeder

C. Date of Delivery

9.9

D. Is delivery address different from item 1?

Yes

If YES, enter delivery address below:

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- Adult Signature
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<p>1. Article Addressed to:</p> <p>Adam Ortiz R006</p> <p>U.S. EPA Region 3 1650 Arch Street Philadelphia, PA 19103</p>  <p>9590 9402 5099 9092 9619 20</p>		<p>B. Received by (Printed Name)</p>	<p>C. Date of Delivery</p> <p>SEP 09 2024</p>
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<p>3. Service Type</p> <ul style="list-style-type: none"> <input type="checkbox"/> Adult Signature <input type="checkbox"/> Adult Signature Restricted Delivery <input checked="" type="checkbox"/> Certified Mail® <input type="checkbox"/> Certified Mail Restricted Delivery <input type="checkbox"/> Collect on Delivery <input type="checkbox"/> Collect on Delivery Restricted Delivery 		<ul style="list-style-type: none"> <input type="checkbox"/> Priority Mail Express® <input type="checkbox"/> Registered Mail™ <input type="checkbox"/> Registered Mail Restricted Delivery <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Signature Confirmation™ <input type="checkbox"/> Signature Confirmation Restricted Delivery 	
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1. Article Addressed to: Secretary Serena McIlwain Maryland Dept. of the Environment 1800 Washington Blvd. Baltimore, MD 21230	B. Received by (Printed Name)	C. Date of Delivery
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