UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

CHAMBERS OF
MADELINE COX ARLEO
UNITED STATES DISTRICT JUDGE

MARTIN LUTHER KING COURTHOUSE
50 WALNUT ST. ROOM 4066
NEWARK, NJ 07101
973-297-4903

October 14, 2021

VIA ECF

LETTER ORDER

Re: SUEZ Water New Jersey, Inc. v. E.I. DuPont De Nemours, et. al, Civil Action No. 20-19906

Dear Litigants:

Before the Court is (1) Defendants Corteva, Inc.'s ("Corteva") and DuPont de Nemours, Inc.'s ("New DuPont") Motion to Dismiss the First Amended Complaint, ECF No. 35, for lack of personal jurisdiction pursuant to Federal Rule of Civil Procedure 12(b)(2), ECF No. 38; and (2) Defendants E.I. DuPont De Nemours and Company, Inc.'s ("Old DuPont"), New DuPont's, DuPont Specialty Products USA, LLC's ("DuPont LLC"), Corteva's, the Chemours Company's ("Chemours"), and the Chemours Company FC, LLC's ("Chemours FC") (collectively with the other defendants, "Defendants") Motion to Dismiss the First Amended Complaint for failure to state a claim upon which relief may be granted pursuant to Federal Rule of Civil Procedure 12(b)(6), ECF No. 39. Plaintiff SUEZ Water New Jersey, Inc. ("Plaintiff") opposes each motion. ECF Nos. 41, 42. For the reasons explained below, both Motions are **DENIED**, and the Parties are **ORDERED** to proceed with jurisdictional discovery.

I. BACKGROUND[1]

This action arises from Defendants' use and release of per- and polyfluoroalkyl substances ("PFAS") into New Jersey's environment. Am. Compl. ¶ 1. Beginning in the 1950s, Old DuPont, Chemours, Chemours FC, and DuPont LLC produced PFAS at several manufacturing facilities in New Jersey. Id. ¶¶ 1, 17, 42. PFAS are a group of manufactured chemicals that are incorporated into a wide variety of industrial and commercial products. Id. ¶ 14. The United States Environmental Protection Agency has identified widespread PFAS contamination in the environment, and drinking water is a primary source of exposure to PFAS. Id. ¶¶ 17-18.

Old DuPont is a Delaware corporation with its principal place of business in Delaware. Id. ¶ 6. It is undisputed that Old DuPont has sold, licensed, and distributed PFAS and PFAS-containing products in New Jersey. Id. ¶ 6. Old DuPont later underwent complex corporate restructuring, resulting in the spin-off of Chemours, which assumed some of Old DuPont's

[1] These facts are principally drawn from the First Amended Complaint, ECF No. 35, and the exhibits attached thereto.

environmental liabilities resulting from its involvement with PFAS, and Corteva, which Plaintiff alleges also assumed some of Old DuPont's liabilities.[2] Id. ¶¶ 97-102. Specifically, Plaintiff alleges, "upon information and belief," that Corteva and New DuPont agreed during the restructuring to assume liabilities of Old DuPont relating to PFAS that were not previously assumed by Chemours during its spin off. Id. ¶ 103.

On June 1, 2020, the New Jersey Department of Environmental Protection (the "NJDEP") announced the adoption of Maximum Containment Levels ("MCLs") for public water systems. Id. ¶ 2. In recognition of the health risks presented by high concentrations of PFAS in water, the NJDEP established MCLs between 13 and 14 parts per trillion ("ppt") for PFAS. Id. ¶¶ 25-30. As the owner and operator of multiple public water systems in New Jersey, Plaintiff must comply with the MCLs and alleges that it will be required to incur significant costs to remove the PFAS from its water supplies to comply with the new requirements. Id. ¶¶ 82-91. Plaintiff alleges that the presence of the PFAS in its water supplies is the direct and proximate result of Defendants' long-running releases of PFAS into New Jersey's environment. Id. ¶ 1.

On December 18, 2020, Plaintiff filed its initial Complaint, ECF No. 1, which it then amended on February 25, 2021, see Am. Compl. The Amended Complaint asserts seven causes of action against Defendants: (1) public nuisance; (2) private nuisance; (3) negligence; (4) trespass; (5) strict liability—abnormally dangerous activity; (6) strict liability—defective design; and (7) strict liability—failure to warn. Am. Compl. ¶¶ 106-73. The instant Motions followed.

II. LEGAL STANDARD

A. Motion to Dismiss Under Rule 12(b)(2)

To survive a Rule 12(b)(2) motion to dismiss, Plaintiff bears "the burden of demonstrating facts that establish[] personal jurisdiction" over Defendant. Fatouros v. Lambrakis, 627 F. App'x 84, 86-87 (3d Cir. 2015) (citation omitted). Plaintiff must make "a prima facie case of personal jurisdiction and . . . is entitled to have its allegations taken as true and all factual disputes drawn in its favor." Miller Yacht Sales, Inc. v. Smith, 384 F.3d 93, 97 (3d Cir. 2004). Plaintiff may not rely on "the bare pleadings alone," but instead must establish its "jurisdictional facts through sworn affidavits or other competent evidence." Id. at 101 n.6 (internal quotation marks and citation omitted). If Plaintiff meets its burden, then Defendant must "present a compelling case that the presence of some other considerations would render jurisdiction unreasonable." Mellon Bank (E.) PSFS, Nat'l Ass'n v. Farino, 960 F.2d 1217, 1223 (3d Cir. 1992) (citation and quotation marks omitted).

---

[2] In 2015, Old DuPont created Chemours as a wholly-owned and operated subsidiary. Id. ¶ 98. Shortly thereafter, Old DuPont transferred some of its business lines, which included those that used PFAS in manufacturing, to Chemours. Id. Old DuPont then spun-off Chemours as a separate public entity according to a separation agreement dated June 26, 2015 (the "Chemours Separation Agreement"). Id. ¶ 99. As part of that agreement, Chemours assumed Old DuPont's environmental liabilities relating to PFAS and agreed to indemnify Old DuPont for those liabilities. Id.

In 2015, Old DuPont and the Dow Chemical Company merged and became subsidiaries of DowDuPont, Inc. Id. at 100. DowDuPont, Inc. incorporated Corteva in 2019, transferred some of its business lines to Corteva, and made Corteva the parent company of Old DuPont. Id. ¶ 101. Shortly thereafter, DowDuPont, Inc. spun Corteva off into an independent company. Id. Corteva holds 100% of Old DuPont's common stock. DowDuPont, which retained some of Old DuPont's business lines, changed its name in 2019 to DuPont de Nemours, Inc. ("New DuPont"). Id.

B. Motion to Dismiss Under Rule 12(b)(6)

In resolving a Rule 12(b)(6) motion to dismiss, the Court accepts all pleaded facts as true, construes the complaint in the plaintiff's favor, and determines "whether, under any reasonable reading of the complaint, the plaintiff may be entitled to relief." Phillips v. Cnty. of Allegheny, 515 F.3d 224, 233 (3d Cir. 2008) (internal quotation marks and citation omitted). To survive a motion to dismiss, the claims must be facially plausible, meaning that the pleaded facts "allow[] the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009). The allegations must be "more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555 (2007).

III. ANALYSIS

A. Personal Jurisdiction

Corteva and New DuPont argue that the Court should dismiss the Complaint for lack of general or specific personal jurisdiction. See Def. Br. at 1, ECF No. 38. Plaintiff counters that Corteva and New DuPont expressly assumed Old DuPont's jurisdictional contacts in this forum. See Pl. Rep. at 15, ECF No. 42. The Court holds that such a finding cannot be made on the record before the Court and jurisdictional discovery is therefore warranted.

"A federal court sitting in New Jersey has jurisdiction over parties to the extent provided under New Jersey state law," which "provides for jurisdiction coextensive with the due process requirements of the United States Constitution." Miller Yacht Sales, Inc. v. Smith, 384 F.3d 93, 96 (3d Cir. 2004) (citations omitted). To comport with due process, a plaintiff must separately demonstrate personal jurisdiction over each defendant. Bristol Myers Squibb Co. v. Superior Ct. of Cal., San Francisco Cnty., 137 S. Ct. 1773, 1783 (2017). This typically requires a plaintiff to demonstrate that each defendant has constitutionally sufficient contacts with New Jersey, either generally or specifically with regards to this action. O'Connor v. Sandy Lane Hotel Co., 496 F.3d 312, 317 (3d Cir. 2007). In some cases, however, an entity may inherit the jurisdictional contacts of a predecessor organization and be subject to suit even if personal jurisdiction would otherwise not independently exist.[3]

"Successor jurisdiction 'can be present in the following situations: (1) merger or de facto merger; (2) express or implied assumption of liabilities, including by a ratification of the predecessor's activities; or (3) acquisition of assets or reorganization undertaken to fraudulently avoid jurisdiction." American Estates Wines, Inc. v. Kreglinger Wine Estates Pty, Ltd., No. 07-2474, 2008 WL 819993, at *5 (D.N.J. Mar. 25, 2008) (quoting In re Nazi Era Cases Against German Defendants Litig., 153 F. App'x 819, 823 (3d Cir. 2005)); see also Flagship Interval Owner's Ass'n, Inc. v. Philadelphia Furniture Manuf. Co., No. 09-1173, 2010 WL 1135736, at *6-7 (D.N.J. Mar. 22, 2010) (finding successor jurisdiction based on de facto merger and alter ego theories).

[3] Plaintiff does not argue that Corteva and New DuPont are subject to the Court's general jurisdiction and does not contend that specific jurisdiction exists in the absence of successor liability.

Here, Corteva and New DuPont argue that the Court lacks personal jurisdiction over them because Chemours assumed all of Old DuPont's PFAS-related liabilities, leaving no remaining liability for Corteva or New DuPont to assume. See Def. Rep. at 3, ECF No. 45. However, Corteva and New DuPont do not support such a contention with any legal authority. Nor do they cite any language from the Chemours Separation Agreement to show that Chemours would assume PFAS-related liability to the exclusion of any other successors.[4] If Corteva and New DuPont expressly assumed some PFAS-related liability from Old DuPont's activities in New Jersey, this would provide minimum contacts with the forum state sufficient to support personal jurisdiction. See Am. Estates Wines, Inc. v. Kreglinger Wine Estates Pty, Ltd., No. 07-2474, 2008 WL 819993 (D.N.J. Mar. 25, 2008).

Plaintiff argues that it has sufficiently pled facts to show a prima facie case of successor jurisdiction, but in the alternative, requests jurisdictional discovery to support its allegations. See Def. Rep. at 15, 27. The documentation Plaintiff submitted is insufficient for the Court to determine whether Corteva and New DuPont actually assumed PFAS-related liabilities from Old DuPont. Plaintiff points to the April 1, 2019 Separation and Distribution Agreement among Corteva, New Dow, and DowDuPont, Inc. (the "DowDuPont Separation Agreement") to allege that Corteva and New DuPont each assumed liabilities of Old DuPont, including PFAS liabilities not previously assumed by Chemours. Am. Compl. ¶ 103.[5] While the DowDuPont Separation Agreement does specify that New DuPont assumed all "Specialty Products Liabilities" and Corteva assumed all "Agriculture Liabilities," the specific definitions of these terms are set forth in non-public schedules to the DowDuPont Separation Agreement. Certification of Richard P. O'Leary, Ex. B. §§ 1.1(38)(vii), 1.1(309)(vi), ECF No. 41.3. These schedules are not attached to the Complaint and neither party has submitted them for the Court's review. Because inferences could be drawn either way, depending on the definitions of "Agricultural Liabilities" and "Special Products Liabilities," the Court is unable to determine from the present record whether Corteva or New DuPont assumed any PFAS-related liability of Old DuPont.

Plaintiff has therefore not yet carried its burden to demonstrate personal jurisdiction; however, the Court can assist the plaintiff in proving jurisdiction "by allowing jurisdictional discovery" where appropriate. Kirkwood v. Brenntag N. Am., Inc., No. 19-14947, 2020 WL 1516974 (D.N.J. Mar. 30, 2020) (quoting Toys "R" Us, Inc. v. Step Two, S.A., 318 F.3d 446, 456 (3d Cir. 2003)). At the pleading stage, a plaintiff need only present "factual allegations that suggest 'with reasonable particularity' the possible existence of the requisite 'contacts between the party and the forum state,' such that [its] claim is not clearly frivolous." Id. (quoting Toys "R" Us, 318 F.3d at 456). A grant of jurisdictional discovery lies within a district court's discretion, guided as always by the relevant legal standards. SoftwareArt Corp. v. Satyajit Gopalakrishnan, No. 07-4755, 2008 WL 2876395 (D.N.J. July 22, 2008).

---

[4] Although the Chemours Separation Agreement was not included in the Amended Complaint, it was specifically referenced in the Amended Complaint, see Am. Compl. ¶ 99, and it is a matter of public record.

[5] In considering a Rule 12(b)(2) motion to dismiss, a court may evaluate jurisdictional allegations by considering sworn affidavits and certifications. See Cruickshank-Wallace v. CAN Fin. Corp., 768 F. App'x 77, 80 (3d Cir. 2019).

The Court is satisfied that Plaintiff has particularly pled enough to set forth a nonfrivolous claim of personal jurisdiction over Corteva and New DuPont. The Court denies Corteva's and New DuPont's Motion without prejudice but permits them to renew their objections following jurisdictional discovery.

B. Proximate Cause

Defendants next contend that the entire complaint must be dismissed[6] because Plaintiff fails to set forth sufficient allegations to establish that Defendants were the proximate cause of PFAS in Plaintiff's water sources, particularly because their manufacturing sites are fifty and 135 miles away from Plaintiff's public water sources. The Court disagrees.

"The proximate cause inquiry asks 'whether the [injury] was reasonably foreseeable or was, on the contrary, a remote or abnormal incident . . . that was not otherwise reasonably foreseeable by defendant [].'" Sabree v. Williams, No. 06-2164, 2008 WL 11509881, at *47 (D.N.J. June 30, 2008) (alteration in original) (quoting Jakelsky v. Friehling, 33 F.Supp.2d 359, 365 (D.N.J. 1999)). Put differently, proximate cause is "a cause which in the natural and continuous sequence, unbroken by an efficient intervening cause, produces the result complained of and without which the result would not have occurred." Severa v. Solvay Specialty Polymers USA, LLC, No. 20-6909, 2021 WL 912850, at *13 (D.N.J. Mar. 10, 2021). "'Ordinarily, issues of proximate cause are considered to be jury questions,' but a court may decide the issue as a matter of law where 'no reasonable jury could find that the plaintiff's injuries were proximately caused'" by the defendant. Id. (quoting Broach-Butts v. Therapeutic Alternatives, Inc., 456 N.J. Super. 25, 191 (App. Div. 2018)).

Plaintiff alleges that Defendants used, manufactured, and disposed of PFAS at several sites in New Jersey, which resulted in long-running PFAS releases to the environment. Am. Compl. ¶¶ 39-58. Plaintiff further alleges that PFAS are highly resistant to natural and chemically-aided degradation, are water-soluble, can migrate from soil to groundwater, and are highly mobile in water, which can allow them to spread beyond their initial sources of introduction into the environment. Id. at ¶¶ 23-24. Moreover, Plaintiff's Amended Complaint asserts that PFAS are in their water supply as a result of Defendants' PFAS use, manufacturing, and distribution. Accepting these pleaded facts as true, the Plaintiff adequately alleges that Defendants were the proximate cause of Plaintiff's injuries, as a reasonable jury could find that Defendants' actions caused the PFAS to contaminate Plaintiff's water supply.[7]

C. Public Nuisance Claim (Count One)

Defendants next argue that Plaintiff has failed to allege a special injury to maintain its public nuisance claim, as Plaintiff has suffered from the same alleged water supply contamination

[6] Proximate cause is an essential element of each of Plaintiff's claims.

[7] Defendants additionally argue that Plaintiff needed to specifically allege "when, where, and to whom" Defendants allegedly sold, licensed, manufactured, discharged, or disposed of any PFAS in New Jersey to constitute sufficiently particularized allegations of causation. Mot. to Dismiss, ECF No. 39. However, such a level of evidentiary proof is not required at the motion to dismiss stage. See Lujan v. Defs. of Wildlife, 504 U.S. 555, 561 (1992).

as the general public. Specifically, they contend that while Plaintiff alleges only greater damages in connection with its need to remediate the PFAS contamination, it did not suffer a different kind of injury from the public's injury. This argument is unavailing.

A public nuisance is "an unreasonable interference with a right common to the general public," such as the right to clean public water. Philadelphia Elec. Co. v. Hercules, Inc., 762 F.2d 303, 315 (3d Cir. 1985) (citation omitted). "[T]o sustain a private claim on a public nuisance theory, 'a plaintiff must have suffered a harm of greater magnitude and of a different kind than that which the general public suffered.'" Baptiste v. Bethlehem Landfill Co., 965 F.3d 214, 221 (3d Cir. 2020) (quoting Allegheny Gen. Hosp. v. Philip Morris, Inc., 228 F.3d 429, 446 (3d Cir. 2000)).

Plaintiff alleges that its special injury is that PFAS have entered its public drinking water systems, requiring Plaintiff to design, install, and operate new systems to eradicate the contaminants. Pl. Rep. at 19. While Plaintiff has not alleged any direct injury to its property, the Third Circuit has recognized that injury to a business operation as a result of pollution may constitute a special injury. Hercules, 762 F.2d at 316 (finding special injury "where an established business made commercial use of the public right with which the defendant interfered") (quoting William L. Prosser, Private Action for Public Nuisance, 52 Va. L. Rev. 997, 999 (1966)); see also Mayor & Council of Borough of Rockaway v. Klockner & Klockner, 811 F. Supp. 1039, 1056-57 (D.N.J. 1993) (finding special injury where a plaintiff's business suffered substantial business losses as a result of defendant's alleged pollution of public water). Because Plaintiff has alleged significant injuries to its business operations as a result of Defendants' alleged environmental contamination—the need to expend financial resources to rid the public water supply of PFAS—the Court finds that Plaintiff has adequately alleged a special injury to maintain its public nuisance claim.

D. Private Nuisance and Trespass Claims (Counts Two & Four)

Defendants moved to dismiss Plaintiff's private nuisance and trespass claims for its alleged failure to plead the prima facie element of exclusive possession. Specifically, Defendants argue that Plaintiff does not have an adequate possessory interest in the public water supply to the exclusion of others, even though the water enters Plaintiff's wells, intakes and treatment plants. The Court disagrees.

Under New Jersey law, a plaintiff must allege exclusive possession of property to succeed in trespass and private nuisance claims. See Dep't of Env't Prot. v. Ventron Corp., 94 N.J. 473, 488 (1983). Our Courts have held that the presence of contaminants on exclusively possessed real property is sufficient to maintain such claims. See, e.g., Sines v. Darling Ingredients Inc., No. 19-19121, 2020 WL 5015488, at *6 (D.N.J. Aug. 25, 2020) ("[C]ourts have allowed for trespass claims to go forward based solely on the alleged invasion of microscopic deposits onto the property of another without consent." (citations omitted)); In re Methyl Tertiary Butyl Ether Prods. Liab. Litig., No. 1:00-1898, 378 F. Supp. 2d 348, 423 (S.D.N.Y. 2005) (applying New Jersey law and permitting private nuisance claims to continue where the plaintiff alleged that the defendant's pollution of groundwater contaminated the plaintiff's wells). Here, Plaintiff has alleged that

Defendants' actions caused PFAS to enter its water treatment facilities, which has interfered with its use and enjoyment of those facilities. As such, Plaintiff has adequately pled exclusive possession and is entitled to proceed on its private nuisance and trespass claims.

E. Cognizable Injury (Counts Three, Six, & Seven)

Defendants next move to dismiss Plaintiff's negligence, design-defect, and failure-to-warn claims on the basis that: (1) contamination alone does not constitute an "injury" sufficient to substantiate a negligence claim; and (2) economic losses are not compensable for negligence and strict liability claims. The Court disagrees.

First, while Defendants are correct in that "contamination alone does not constitute an 'injury' sufficient to substantiate a negligence claim," Rowe v. E.I. Dupont de Nemours & Co., 262 F.R.D. 452, 465 (D.N.J. Oct. 9, 2009), contamination can be a basis for an injury where a plaintiff can show that they suffered harm as a result of such contamination. See id. (observing that a plaintiff's contamination did not constitute "injury" for purposes of a negligence claim, but that "the contamination caused plaintiff's well to be 'unfit for use' and, thus, plaintiff was forced to dig a new well," which was a cognizable injury). Because Plaintiff has alleged that it will suffer harm as a result of removing the PFAS from its water supply, see Compl. ¶ 67, it has sufficiently alleged a cognizable injury for its negligence claim.

Second, under the New Jersey Products Liability Act ("PLA"), a manufacturer of goods can only be strictly liable for "harm" stemming from "(a) physical damage to property . . . ; (b) personal physical illness, injury or death; [and] (c) pain and suffering, mental anguish, or emotional harm." N.J.S.A. § 2A:58C-1(b)(2). Defendants rely upon the PLA to contend that Plaintiff cannot seek only economic losses for its strict liability claims. However, this argument overlooks the plainly applicable environmental tort exception to the PLA. The environmental tort exception applies to "civil action[s] seeking damages for harm where the cause of the harm is exposure to toxic chemicals or substances." N.J.S.A. §§ 2A:58C-1, -6. As Plaintiff has brought suit for the alleged presence of toxic chemicals in its water supplies as a result of the Defendants' actions, the PLA does not bar Plaintiff from seeking only damages stemming from its economic losses.[8]

As for Plaintiff's negligence claims, Defendants cite to People Express Airlines, Inc. v. Consol. Rail Corp., 100 N.J. 246, 263 (N.J. 1985), to assert that Plaintiff, as a public water system operator, is not part of a "particularly foreseeable" class of plaintiffs and cannot recover for purely economic loss under a negligence theory. Although plaintiffs generally cannot recover for purely economic losses, such recovery is possible in New Jersey under limited exceptions, including where the plaintiff is part of a "particularly foreseeable" class of plaintiffs. Id. Under the People Express standard, "a defendant owes a duty of care to take reasonable measures to avoid the risk

[8] Defendants additionally assert that the economic loss doctrine applies to common law products liability claims, barring recovery for economic loss for Plaintiff's strict liability claims. However, the economic loss doctrine only "bars negligence claim when the party asserting the action has a contractual remedy." Schenker, Inc. v. Expeditors Int'l of Wash., Inc., No. A-3555-15T1, 2016 WL 3563187, at *4 (App. Div. July 1, 2016) (emphasis added) (quoting Dean v. Barrett Homes, Inc., 204 N.J. 286, 295 (2010)). As Plaintiff and Defendants have no contractual relationship, the economic loss doctrine is clearly inapplicable here.

of causing economic damages, aside from physical injury, to particular plaintiffs or plaintiffs comprising an identifiable class with respect to whom defendant knows or has reason to know are likely to suffer such damages from its conduct." Id. To determine whether a plaintiff fits within an identifiable class of plaintiffs, courts look to whether the plaintiffs are particularly foreseeable in terms of the type of persons or entities comprising the class, the certainty or predictability of their presence, the number of those in the class, and the type of economic harm anticipated. Coleman v. Martinez, 247 N.J. 319, 350 (2021) (citing People Express, 100 N.J. at 263-64). In People Express, the Court specifically looked at cases involving plaintiffs recovering economic damages for environmental pollution, observing the common theory that public utilities, who "depend on the exercise of the public . . . right to clean water as a natural resource," were "particularly foreseeable because they are so closely linked, through the resource, to the defendants' behavior." 100 N.J. at 260.

The Court finds that Plaintiff, as a public water utility, is a member of a particularly foreseeable class of plaintiffs affected by Defendants' alleged environmental contamination. Plaintiff has alleged that Defendants knew that PFAS could harm the environment since at least the early 1960s, and that they were aware that PFAS could spread throughout the environment. Am. Compl. ¶¶ 35-36. It was therefore reasonably foreseeable that public water utilities, including Plaintiff, would be harmed by such environmental pollution. Thus, Plaintiff has set forth sufficient allegations to maintain its negligence claims for purely economic losses.[9]

F. Products Liability Claims (Counts Six & Seven)

Defendants lastly challenge Plaintiff's design defect and failure to warn claims, contending that Plaintiff has not adequately pleaded that it was a reasonably foreseeable user of the PFAS-containing products. Again, the Court finds Defendants' argument unavailing.

Strict products liability exists where a "seller distributes a product, it is not reasonably fit, suitable and safe for its intended or reasonable foreseeable purposes so that users or others who may be expected to come into contact with the product are injured as a result thereof . . . ." Suter v. San Angelo Foundry & Mach. Co., 81 N.J. 150, 169 (1979) (emphasis added). As discussed supra, it was reasonably foreseeable that Plaintiff would come in contact with the PFAS that

[9] Defendants alternatively assert that People Express "no longer has any continuing validity in New Jersey" because of its disfavored treatment by the California Supreme Court and other states. Mot. to Dismiss at 14. However, Defendants have not argued that the New Jersey Supreme Court has overruled People Express, and so it remains god law. As a federal court sitting in diversity jurisdiction, this Court will apply valid substantive state law, including People Express. Thabault v. Chait, 541 F.3d 512, 521 (3d Cir. 2008) (citing Erie R. Co v. Tompkins, 304 U.S. 64, 78 (1938)). Defendants additionally argue that Plaintiff cannot recover purely economic damages because it lacks privity of contract with Defendants. However, Defendants offer no support for such a requirement that a plaintiff be in privity of contract with a defendant to be part of a reasonably foreseeable class of plaintiffs. C.f. People Express, 100 N.J. at 267 (finding that the plaintiff could recover for economic losses from the defendant's negligence, despite the parties lacking contractual privity).

Defendants allegedly put into the stream of commerce. Thus, Plaintiff need not be a user of the PFAS-containing products to bring suit for design defects or a failure to warn claim.[10][11]

IV. CONCLUSION

For the reasons stated above, Corteva and New DuPont's Motion to Dismiss, ECF No. 38, and Defendants' Motion to Dismiss, ECF No. 39 are **DENIED** without prejudice to the arguments raised therein. The Parties are **ORDERED** to confer with Judge Hammer to prepare a schedule for jurisdictional discovery. After the completion of jurisdictional discovery, Defendants may renew their Motion to Dismiss for lack of personal jurisdiction.

SO ORDERED.

/s Madeline Cox Arleo
MADELINE COX ARLEO
UNITED STATES DISTRICT JUDGE

[10] Defendants ask this Court to adopt the decision in Menkes v. 3M Co., No. 17-0573, 2018 WL 2298620, at *9 (E.D. Pa. May 21, 2018), which dismissed the plaintiffs' strict liability claims stemming from water contamination because they were not consumers of the allegedly defective product. However, that decision was based in part on Pennsylvania law, and New Jersey law clearly allows for bystanders to succeed in products liability claims.

[11] Defendants lastly argue that dismissal of all of Plaintiff's common law claims is appropriate because common law claims are disfavored in environmental tort actions. Mot. to Dismiss at 16-17. However, Defendants cite only to cases in which plaintiffs sought to proceed on both statutory and common law claims. See, e.g., Heller Urban Renewal, LLC v. FER Blvd. Realty Corp., No. 13-431, 2014 WL 252106, at *7 (D.N.J. Jan. 6, 2014) (dismissing common law claims where plaintiff additionally alleged Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA") and New Jersey Spill Act claims); Pub. Serv. Elec. & Gas Co. v. Newport Assocs. Dev. Co., 365 F. Supp. 3d 506, 522 (D.N.J. 2019) (dismissing trespass and private nuisance claims as "superfluous" of claims under the Oil Pollution Act, CERCLA, and the New Jersey Sill Compensation 86 Control Act). Because Plaintiff is only seeking relief on common law claims, Plaintiff is entitled to proceed on its adequately pled claims. See Sines, 2020 WL 5015488, at *6 ("[W]hen Courts in this District have dismissed common law trespass claims in pollution cases, they have generally only done so where the plaintiff has also pled an alternative claim under a strict liability statute regulating pollution, which Plaintiffs have not done.").