

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 2

U.S. ENVIRONMENTAL  
PROTECTION AGENCY-REG.11  
2012 MAY 16 P 1:32  
REGIONAL HEARING  
CLERK

In the Matter of:

E.I. Du Pont De Nemours and Company, Inc.

Respondent

In a proceeding under Section 113(d)  
of the Clean Air Act, 42 U.S.C. § 7413(d)

**CONSENT AGREEMENT  
AND  
FINAL ORDER**

**CAA-02-2012-1201**

**PRELIMINARY STATEMENT**

This Consent Agreement and Final Order (CAFO) simultaneously commences and concludes an administrative penalty proceeding brought by the Complainant, the Director of the Division of Enforcement and Compliance Assistance for the U.S. Environmental Protection Agency (EPA) Region 2, against Respondent E.I. Du Pont De Nemours and Company, Inc. (DuPont or Respondent), pursuant to Section 113(d) of the Clean Air Act (CAA or the Act), 42 U.S.C. § 7413(d), and Rules 22.13(b) and 22.18(b) of EPA's Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties (CROP), 40 C.F.R. Part 22.

The Consent Agreement is signed by the Complainant and Respondent, and the Final Order is issued by the Region 2 Regional Administrator. As set forth in the "Jurisdictional Allegations" section of the Consent Agreement, the Complainant is duly authorized to sign consent agreements and the Regional Administrator is duly authorized to issue final orders.

## CONSENT AGREEMENT

### General Provisions

1. EPA has determined that DuPont violated the CAA and its implementing regulations at DuPont's Yerkes Facility (Facility) in Buffalo, New York. More specifically, EPA has determined that DuPont violated 40 C.F.R. Part 63, Subpart A, §§ 63.1 - 63.16 (the Part 63 General Provisions), 40 C.F.R. Part 63, Subpart FFFF, §§ 63.2430 – 63.2550 (the MON MACT), and 40 C.F.R. Part 63, Subpart UU, §§ 63.1019 – 63.1039 (the MON LDAR), each of which were promulgated by EPA pursuant to Sections 112 and 114 of the CAA, as well as provisions of the Facility's CAA Title V Operating Permit. The specific violations found by EPA are set forth below in the section of this Consent Agreement entitled "Conclusions of Law."

2. Complainant and Respondent enter into this Consent Agreement and propose the attached Final Order so as to resolve the violations alleged in the "Conclusions of Law" section of this Consent Agreement. Pursuant to CROP 22.13(b) and 22.18(b), the issuance of the Consent Agreement and Final Order serves to simultaneously commence and conclude the agency's administrative penalty proceeding for those violations.

3. For the purposes of this proceeding, and to avoid the expense of protracted litigation, Respondent:

- a. admits the jurisdictional allegations set forth below in the section of this Consent Agreement entitled "Jurisdictional Allegations;"
- b. neither admits nor denies the findings of fact set forth in the section of his Consent Agreement entitled "Findings of Fact,"
- c. consents to the payment of the civil penalty specified in the section of this Consent Agreement entitled "Settlement," on the terms specified in that section;

- d. consents to the issuance of the attached Final Order; and
- e. waives any right to contest the allegations set forth in the “Conclusions of Law” section of this Consent Agreement and any right to appeal the attached Final Order.

**Jurisdictional Allegations**

4. Section 113(d) of the CAA authorizes the EPA Administrator to issue an order assessing civil administrative penalties against any person that has violated or is violating any requirement or prohibition of subchapters I, III, IV-A, V or VI of the Act, or any requirement or prohibition of any rule, order, waiver, permit or plan promulgated pursuant to any of those subchapters, including but not limited to any regulation promulgated pursuant to Sections 112 and 114 of the Act.

5. Section 302(e) of the CAA provides that whenever the term “person” is used in the Act, the term includes an individual, corporation, partnership, association, state, municipality, political subdivision of a State, and any agency, department, or instrumentality of the United States and any officer, agent, or employee thereof.

6. Pursuant to EPA Delegation of Authority 7-6-A and EPA Region 2 Delegation of Authority 7-6-A, the Administrator has delegated to the Complainant, the Director of the Division of Enforcement and Compliance Assistance, through the Region 2 Regional Administrator, the authority to (a) make findings of violations, (b) issue CAA Section 113(d) administrative penalty complaints, and (c) agree to settlements and sign consent agreements memorializing those settlements, for CAA violations that occur in the State of New York, the State of New Jersey, the Commonwealth of Puerto Rico, and the Territory of the U.S. Virgin Islands.

7. Pursuant to EPA Delegation of Authority 7-6-C, the Administrator has delegated to the Region 2 Regional Administrator the authority to execute CAA Section 113(d) Final Orders.

8. Pursuant to Section 113(d), the Administrator and the Attorney General, through their respective delegates, have jointly determined that this matter is appropriate for an administrative penalty proceeding. Specifically, on August 4, 2011, the United States Department of Justice (DOJ) granted EPA's request for a waiver of the CAA Section 113(d) 12-month time limitation on EPA's authority to initiate an administrative penalty action in this matter.

9. Respondent is a "person" within the meaning of Section 302(e) of the Act.

10. Respondent is an "owner or operator" of the Facility, as that term is used in CAA Section 112(a)(9) and 40 C.F.R. § 63.2.

11. The Facility's Standard Industrial Classification (SIC) Codes are 3081 (Unsupported Plastics Film and Sheet) and 3088 (Plastics Plumbing Fixtures).

12. The Facility is a "stationary source," as that term is used Section 112(a)(3) of the Act and 40 C.F.R. § 63.2.

13. The Facility is a "major source" of HAPs, as that term is used in Section 112(a)(1) of the Act and 40 C.F.R. § 63.2.

14. The Facility is subject to a Title V Operating Permit that was issued to DuPont pursuant to 6 NYCRR 201, 40 C.F.R. Part 70, and Title V of the Act.

## Legal Background

### CAA Sections 112 and 114

15. Section 112 of the Act requires the EPA Administrator to: (i) publish a list of hazardous air pollutants (HAPs), (ii) publish a list of categories and subcategories of major and area sources of those HAPs, and (iii) promulgate regulations establishing emission standards for each such category and subcategory.

16. Emissions standards promulgated pursuant to Section 112 are commonly known as National Emissions Standards for Hazardous Air Pollutants, or NESHAPs. NESHAPs promulgated under the CAA as it existed prior to the 1990 CAA amendments are set forth in 40 C.F.R. Part 61. NESHAPs promulgated under the CAA as amended in 1990 are set forth in 40 C.F.R. Part 63. Part 63 NESHAPs are sometimes known as MACT standards, because Section 112(d) of the CAA, as amended in 1990, directs EPA to promulgate emissions standards based on the maximum achievable control technology (MACT).

17. Section 112(a) of the Act contains definitions relevant to Section 112.

More specifically:

- a. Section 112(a)(1) of the Act defines "major source" as any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit considering controls, in the aggregate 10 tons per year or more of any hazardous air pollutant or 25 tons per year or more of any combination of hazardous air pollutants.
- b. Section 112(a)(2) of the Act defines "area source" as any stationary source of hazardous air pollutants that is not a major source."
- c. Section 112(a)(3) of the Act defines "stationary source" as a any building, structure, facility or installation which emits or may emit any air pollutant.

d. Section 112(a)(9) defines “owner or operator” as any person who owns, leases, operates, controls or supervises a stationary source.

18. Section 112(i)(3)(A) prohibits the operation of a source in violation of any emissions standard, limitation or regulation issued pursuant to Section 112, and directs the Administrator to set a compliance deadline for existing sources that is no more than 3 years after the effective date of the standard.

19. Section 114 of the CAA authorizes the EPA Administrator to require testing, monitoring, record-keeping, and reporting of information, to enable him or her to carry out any provision of the Act (except certain provisions in subchapter II) and to assess compliance with, among other requirements, any regulations promulgated under Sections 111 and 112 of the Act.

*The Part 63 General Provisions*

20. On March 16, 1994, pursuant to Sections 112 and 114 of the Act, EPA promulgated 40 C.F.R. Part 63, Subpart A, §§ 63.1 – 63.16 (previously defined as the Part 63 General Provisions).

21. The Part 63 General Provisions set forth general definitions, procedures and requirements that apply to every Part 63 NESHAP, unless the individual NESHAP in question provides differently. More specifically, the owners and operators of sources subject to an individual Part 63 NESHAP are subject to the portions of the general provisions that are expressly included in that individual Part 63 NESHAP. See 40 C.F.R. §§ 63.1(a)(4) (“Each relevant standard in this part 63 must identify explicitly whether each provision in this subpart A is or is not included in such relevant standard.”) & (c)(1) (“If a relevant standard has been established under this part, the owner or

operator of an affected source must comply with the provisions of that standard and this subpart as provided in paragraph (a)(4) of this section.”).

22. 40 C.F.R. § 63.2 contains the following definitions, among others:

- a. “affected source” means the collection of equipment, activities, or both within a single contiguous area and under common control that is included in a Section 112(c) source category or subcategory for which a Section 112(d) standard or other relevant standard is established pursuant to Section 112 of the Act. This definition of “affected source” applies to each Section 112(d) standard for which the initial proposed rule is signed by the Administrator after June 30, 2002.
- b. “existing source” means any affected source that is not a new source.
- c. “major source” is defined, in pertinent part, as any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit considering controls, in the aggregate 10 tons per year or more of any hazardous air pollutant or 25 tons per year or more of any combination of hazardous air pollutants.
- d. “new source” means any affected source the construction or reconstruction of which is commenced after the Administrator first proposes a relevant emission standard under this Part establishing an emission standard applicable to such source.
- e. “owner or operator” means any person who owns, leases, operates, controls, or supervises a stationary source.
- f. “stationary source” means any building, structure, facility, or installation that emits or may emit any air pollutant.

23. 40 C.F.R. § 63.6(c)(1) provides that after the effective date of Part 63 NESHAP, the owners and operators of existing sources subject to that NESHAP must comply with the NESHAP by the compliance date established in the applicable Subpart(s) of 40 C.F.R. Part 63.

The MON MACT

24. On November 10, 2003, pursuant to Sections 112 and 114 of the Act, EPA promulgated 40 C.F.R. Part 63, Subpart FFFF, §§ 63.2430 – 63.2550, the NESHAP for miscellaneous organic chemical manufacturing (previously defined as the MON MACT).

25. The MON MACT sets forth requirements for owners and operators of miscellaneous organic chemical manufacturing process units (MCPUs) located at, or that are part of, a major source of HAP emissions as defined in Section 112(a) of the Act. See 40 C.F.R. § 63.2435(a).

26. The MON MACT requirements include, among others, emission limits, leak repair, recordkeeping and reporting requirements. For example, 40 C.F.R. § 63.2480, in combination with Table 6 of the MON MACT, requires owners and operators to comply with either Part 63, Subpart H or Part 63, Subpart UU for equipment leaks, with certain limited exceptions set forth in 40 C.F.R. §§ 63.2480(b) through (d).

27. Table 12 of the MON MACT lists the Part 63 NESHAP General Provisions that apply, including, among others, 40 C.F.R. § 63.2 and 40 C.F.R. § 63.6(c)(1).

28. 40 C.F.R. § 63.2445(b) provides that if a facility is an existing source on November 10, 2003, then the facility must comply with the MON MACT requirements for existing sources no later than May 10, 2008. See *a/so* § 63.6(c)(1) and Table 12 of the MON MACT.



The MON LDAR

29. On June 29, 1999, pursuant to Sections 112 and 114 of the Act, EPA promulgated 40 C.F.R. Part 63, Subpart UU, §§ 63.1019 – 63.1039, National Emission Standards for Equipment Leaks – Control Level 2 Standards (MON LDAR).

30. 40 C.F.R. § 63.1019(a) of the MON LDAR provides that owners and operators subject to the MON MACT (among other referencing Subparts) who choose the Subpart UU compliance option specified in 40 C.F.R. § 63.2480 of the MON MACT must comply with the MON LDAR, which applies to control air emissions from equipment leaks.

31. In general, the MON LDAR sets forth requirements concerning identification of MON LDAR components, monitoring of MON LDAR components, leak repairs, and recordkeeping and reporting.

32. 40 C.F.R. § 63.1023(b) sets forth requirements for instrument monitoring methods. 40 C.F.R. § 63.1023(b)(1) provides that monitoring shall comply with Method 21 of 40 C.F.R. Part 60, Appendix A, except as otherwise provided in section 63.1023.

33. 40 C.F.R. § 63.1023(b)(3) provides that the detection instrument shall be calibrated before use on each day of its use by the procedures specified in Method 21 of 40 C.F.R. Part 60, Appendix A.

34. Method 21 of 40 C.F.R. Part 60, Appendix A contains the procedures for calibration precision testing, response time testing and proper probe placement for LDAR monitoring.

CAA Title V and New York State's Title V Operating Permit Program

35. Title V of the CAA consists of Sections 501 to 507 of the Act, 42 U.S.C. §§ 7661-7661f.

36. In general, Title V of the CAA requires each "major source" to obtain an operating permit setting forth all of the air pollution requirements that apply to that source, and also provides for the creation of state and federal programs to issue such permits.

37. Section 501(a) of the CAA provides that the term "major source," as used in Title V of the CAA, means any stationary source or group of stationary sources located within a contiguous area and under common control that is a major source as defined in either Section 112 of the Act or Section 302 of the Act or part D of subchapter I of the Act.

38. Section 502(a) of the CAA makes it unlawful to violate any requirement of a Title V Operating Permit and also makes it unlawful to operate a major source except in compliance with such a permit.

39. Section 502(b) of the CAA requires EPA to promulgate regulations establishing the minimum elements of a Title V Operating Permit program and sets forth the procedures by which EPA will approve, oversee, and withdraw approval of state operating permit programs.

40. Section 502(d) of the CAA requires each state to develop and submit to EPA a permit program meeting the requirements of Title V of the Act.

41. Section 502(e) of the Act provides that EPA retains the authority to enforce Title V Operating Permits issued by a State.

42. Section 503 of the CAA sets forth requirements for permit applications and provides that major sources are required to have Title V Operating Permits by the later of (i) the effective date of the permit program applicable to the source, or (ii) the date on which the source becomes a major source.

43. Section 504 of the CAA specifies requirements and conditions that must be included in any Title V Operating Permit.

44. Consistent with Section 502(b) of the Act, EPA promulgated 40 C.F.R. Parts 70 and 71. 40 C.F.R. Part 70 sets forth minimum requirements for state Title V Operating Permit programs. 40 C.F.R. Part 71 contains the federal Title V Operating Permit program, including, among other elements, the procedures by which EPA will issue Title V Operating Permits.

45. EPA granted interim approval of the New York Title V Operating Permit Program on December 9, 1996, 61 Fed. Reg. 57,589 (Nov. 7, 1996).

46. EPA granted full approval of the New York Title V Operating Permit Program on February 5, 2002. 67 Fed. Reg. 5,216.

47. 6 NYCRR 201-6.5(c)(2), a provision in the NYS Title V Operating Permit Program, requires records of all monitoring data and support information be retained for a period of at least five years from the date of the monitoring, sampling, measurement, report, or application. The provision specifies that support information includes all calibration and maintenance records and all original strip-chart recordings for continuous monitoring instrumentation, all quality assurance information and copies of all reports required by the permit.

48. 6 NYCRR 201-6.5(c)(3)(ii), a provision in the NYS Title V Operating Permit Program, requires that sources to submit reports every 6-months of deviations and incidences of noncompliance stating the probable cause of such deviations, and any corrective actions or preventive measures taken.

49. 6 NYCRR 201-6.5(e), a provision in the NYS Title V Operating Permit Program, requires that sources certify compliance annually and submit annual certifications to both the permitting agency, New York State Department of Environmental Conservation (NYSDEC), and EPA.

*The Facility's Title V Operating Permit Requirements*

50. Conditions 2-2, 2-3, 2-4, and 2-5 in Respondent's Title V Operating Permit for the Facility (the Permit), include 40 C.F.R. Subpart FFFF as an applicable requirement.

51. Condition 4 in the Permit includes 6 NYCRR 201-6.5(c)(2) as an applicable requirement.

52. Condition 5 in the Permit, includes 6 NYCRR 201-6.5(c)(3)(ii) as an applicable requirement.

53. Condition 6 in the Permit includes 6 NYCRR 201-6.5(e) as an applicable requirement.

**Findings of Fact**

54. The factual findings set forth below are the result of an investigation conducted by EPA Region 2 staff pursuant to Section 114 of the CAA.

55. Respondent is the owner and operator of the Facility.

56. The Facility's Standard Industrial Classification (SIC) Codes are 3081 (Unsupported Plastics Film and Sheet) and 3088 (Plastics Plumbing Fixtures).

57. On August 13, 2007, NYSDEC issued the Facility a Title V Operating Permit, 9-1464-00031

58. NYSDEC modified the Facility's Title V Operating Permit on July 30, 2009 and November 17, 2009.

59. The Facility's Title V Operating Permit indicates that the Facility's total annual HAP emissions exceed 10 tpy or more for any HAP and/or 25 tpy or more for combined HAPs.

60. At all times relevant to this CAFO, Respondent's Facility has been a "major source," as that term is used in Sections 112 and 501(a) of the CAA.

61. The Permit, as modified on November 17, 2009, indicates that the Facility is subject to the MON MACT and the MON LDAR.

62. NYSDEC granted DuPont a 1-year extension to comply with the MON MACT, effective May 10, 2009.

63. The Yerkes Facility emits Methyl Methacrylate, a listed CAA HAP under Section 112(b)(1) of the Act, that is used in the manufacture of Corian.

64. EPA conducted an inspection of the Facility (Inspection) on June 15 – 16, 2010.

65. During the Inspection, EPA conducted side-by-side monitoring with a DuPont employee (DuPont LDAR Employee).

66. At the time of the Inspection, the DuPont LDAR Employee performed all monitoring at the Yerkes Facility.

67. The DuPont LDAR Employee performed all monitoring using a toxic vapor analyzer (TVA) 1000 equipped with data logger.

68. During the Inspection, DuPont had the following calibration gases onsite: zero gas, 499 ppm CH<sub>4</sub> (methane), 5,000 ppm CH<sub>4</sub>, and 9,993 ppm CH<sub>4</sub>.

69. During the Inspection, all calibration gases were certified to be within  $\pm 2\%$  accuracy by the manufacturer.

70. During the Inspection, EPA observed that the DuPont LDAR Employee did not calibrate the TVA before use on day of monitoring.

71. During the Inspection, the DuPont LDAR Employee stated that he only performed a true calibration 3 times since November 2009.

72. During the Inspection, EPA requested that an instrument calibration be performed and observed that the DuPont LDAR Employee did not put the instrument in calibration mode.

73. During the Inspection, EPA observed that the DuPont LDAR Employee performed an instrument response check, or "bump" check while the TVA was in run mode.

74. During the Inspection, EPA observed that the DuPont LDAR Employee only waited for the TVA to show a reading of 90% of the calibration gas being used.

75. During the Inspection, EPA observed that the DuPont LDAR Employee did not record the actual instrument reading.

76. During the Inspection, EPA observed that the DuPont LDAR Employee did not use a zero gas.

77. During the Inspection, EPA observed that the DuPont LDAR Employee did not switch quickly between zero gas and the calibration gas when the response time test was performed.

78. During the Inspection, EPA observed the DuPont LDAR Employee did not place the probe of the TVA close enough to the interface of the components when monitoring.

79. During the Inspection, the DuPont LDAR Employee told EPA that he places the TVA as close as possible to the component without touching the component surface.

80. Respondent did not identify the noncompliance, detailed in paragraphs 70 through 79 above, in its MON LDAR periodic reports for May-December 2009 and January-June 2010.

81. Respondent did not identify noncompliance, detailed in paragraphs 70 through 79 above, in its Title V annual certifications for 2009 and 2010.

### **Conclusions of Law**

Based on the Findings of Fact set forth above, EPA reaches the following Conclusions of Law:

#### **General Conclusions**

82. DuPont is a "person" within the meaning of Section 302(e) of the Act.

83. DuPont is the owner and/or operator of a chemical facility, within the meaning of Section 112(a)(9) of the Act.

84. The Facility is a stationary source, within the meaning of Sections 112(a)(3) of the Act, and a major source of HAPs, within the meaning of Section 112(a)(1) of the Act.

85. The Facility was required to be in compliance with the MON MACT by no later than May 10, 2009 and is required to comply with the MON MACT thereafter.

86. Respondent chose to comply with the MON LDAR as specified in § 63.2480(a) and Table 6 of the MON MACT.

87. The Facility is subject to a Title V Operating Permit that was issued to DuPont pursuant to 6 NYCRR 201, 40 C.F.R. Part 70, and Title V of the Act.

Specific Violations

88. DuPont's failures to calibrate monitoring instrument before use (see paragraphs 70-73 above) are violations of: (1) 40 C.F.R. § 63.1023(b)(3) and Method 21, (Section 10.1), both of which are included in the MON LDAR, (2) 40 C.F.R. § 63.2480(a) of the MON MACT, and (3) Sections 112 and 114 of the Act. Each failure is also a violation of Conditions 2-2, 2-3, 2-4, and 2-5 of the Facility's Title V Operating Permit, which includes the MON MACT as an applicable requirement.

89. DuPont's failures to conduct a calibration precision test on the monitoring instrument (see paragraphs 74-76 above) are violations of: (1) 40 C.F.R. § 63.1023(b)(3) and Method 21, (Section 8.1.2), both of which are included in the MON LDAR, (2) 40 C.F.R. § 63.2480(a) of the MON MACT, and (3) Sections 112 and 114 of the Act. Each failure is also a violation of Conditions 2-2, 2-3, 2-4, and 2-5 of the Facility's Title V Operating Permit, which includes the MON MACT as an applicable requirement.



90. DuPont's failures to conduct a response time test on the monitoring instrument (see paragraph 77 above) are violations of: (1) 40 C.F.R. § 63.1023(b)(3) and Method 21, (Section 8.1.3), which are included in the MON LDAR, (2) 40 C.F.R. § 63.2480(a) and of the MON MACT, and (3) Sections 112 and 114 of the Act. Each failure is also a violation of Condition 2-2, 2-3, 2-4, and 2-5 of the Facility's Title V Operating Permit, which includes the MON MACT as an applicable requirement.

91. DuPont's failures to use proper probe placement when performing LDAR monitoring (see paragraphs 78-79 above) are violations of: (1) 40 C.F.R. § 63.1023(b) (1) and Method 21, (Section 8.3.1), which are included in the MON LDAR, (2) 40 C.F.R. § 63.2480(a) of the MON MACT, and (3) Sections 112 and 114 of the Act. Each failure is also a violation of Conditions 2-2, 2-3, 2-4, and 2-5 of the Facility's Title V Operating Permit, which includes the MON MACT as an applicable requirement.

92. DuPont's failures to identify noncompliance with the MON LDAR in the MON LDAR periodic reports (see paragraph 80 above) are violations of: (1) 40 C.F.R. §§ 63.2520 and 63.1039(b) of the MON LDAR, (2) 40 C.F.R. § 63.2480(a) of the MON MACT, and (3) Sections 112 and 114 of the Act. Each failure is also a violation of Conditions 2-2, 2-3, 2-4, and 2-5 of the Facility's Title V Operating Permit, which includes the MON MACT as an applicable requirement.

93. DuPont's failures to identify non-compliance and certify non-compliance with the MON MACT and MON LDAR in its Title V annual compliance certifications for calendar years 2009 and 2010 (see paragraph 81 above) is a violation of 6 NYCRR 201-6.5(e) and Condition 6 of the Facility's Title V Operating Permit. Each of DuPont's

violations of 6 NYCRR 201-6.5(e) is a violation of Sections 114, 502, and 503(b)(2) of the Act.

### **Settlement**

94. Pursuant to Section 113(d) of the Act, Respondent shall pay a civil penalty of **\$165,000**. Respondent shall have the option of paying the entire \$165,000, either by corporate, cashiers' or certified check within thirty (30) days from the date of issuance of the attached Final Order (Due Date). Respondent shall: (1) clearly type or write the docket number (CAA-02-2012-1201) on the check to ensure proper payment; (2) make the check payable to the order of "Treasurer, United States of America;" and (3) send the check to:

U.S. Environmental Protection Agency  
Cincinnati Finance Center  
P.O. Box 979077  
St. Louis, MO 63197-9000

Respondent shall send notice of payment to the following:

Kenneth Eng, Air Compliance Branch Chief  
Division of Enforcement and Compliance Assistance  
U.S. Environmental Protection Agency – Region 2  
290 Broadway – 21st Floor  
New York, New York 10007

and

Air Branch Chief  
Office of Regional Counsel  
U.S. Environmental Protection Agency – Region 2  
290 Broadway – 16th Floor  
New York, New York 10007

95. If Respondent fails to make full and complete payment of the \$165,000 penalty that is required by this CAFO, this case may be referred by EPA to the United States Department of Justice and/or the United States Department of the Treasury for

collection. In such an action, pursuant to Section 113(d)(5) of the CAA, 42 U.S.C. § 7413(d)(5) and 31 U.S.C. § 3717, Respondent shall pay the following amounts:

- a. Interest. If Respondent fails to make payment, or make partial payment, any unpaid portion of the assessed penalty shall bear interest at the rate established pursuant to 31 U.S.C. § 3717 and 26 U.S.C. § 6621 from the payment Due Date.
- b. Handling Charges. Pursuant to 31 U.S.C. § 3717(e)(1), a monthly handling charge of fifteen dollars (\$15.00) shall be paid if any portion of the assessed penalty is more than thirty (30) days past the payment Due Date.
- c. Attorney Fees, Collection Costs, Nonpayment of Penalty. If Respondent fails to pay the amount of an assessed penalty on time, pursuant to 42 U.S.C. § 7413(d)(5), in addition to such assessed penalty and interest and handling assessments, Respondent shall also pay the United States' enforcement expenses, including but not limited to attorney fees and costs incurred by the United States for collection proceedings, and a quarterly nonpayment penalty for each quarter during which such a failure to pay persists. Such nonpayment penalty shall be ten percent of the aggregate amount of Respondent's outstanding penalties and nonpayment penalties accrued from the beginning of such quarter.

96. This Consent Agreement is being entered into voluntarily and knowingly by the parties in full settlement of Respondent's alleged violations identified herein.

97. Nothing in this Consent Agreement and attached Final Order shall relieve Respondent of the duty to comply with all applicable provisions of the Clean Air Act and other environmental laws and it is the responsibility of the Respondent to comply with such laws and regulations.

98. This Consent Agreement and attached Final Order shall not affect the right of the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

99. This Consent Agreement, attached Final Order, and any provision herein is not intended to be an admission of liability in any adjudicatory or administrative

proceeding, except in an action, suit, or proceeding to enforce this CAFO or any of its terms and conditions.

100. Respondent explicitly waives its right to request a hearing and/or contest allegations in this Consent Agreement and explicitly waives its right to appeal the attached Final Order.

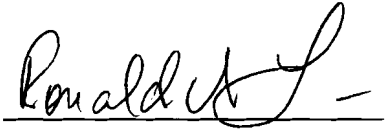
101. Respondent waives any right it may have pursuant to 40 C.F.R. § 22.08 to be present during discussions with, or to be served with and to reply to any memorandum or communication addressed to, the Regional Administrator or the Deputy Regional Administrator where the purpose of such discussion, memorandum, or communication is to recommend that such official accept this Consent Agreement and issue the attached Final Order.

102. Each party to this Consent Agreement shall bear its own costs and attorneys' fees in this action resolved by this Consent Agreement and attached Final Order.

103. The Consent Agreement and attached Final Order shall be binding on Respondent and its successors and assignees.

104. Each of the undersigned representative(s) to this Consent Agreement certifies that he or she is duly authorized by the party whom he or she represents to enter into the terms and conditions of this Consent Agreement and bind that party to it.

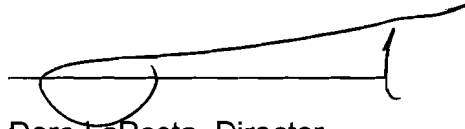
For Respondent:



Ronald A. Lee, Plant Manager  
Du Pont Yerkes Facility  
E.I. Du Pont De Nemours and  
Company, Inc.

Date 4/25/2012

For Complainant:



Dore LaPosta, Director  
Division of Enforcement and  
Compliance Assistance  
United States Environmental  
Protection Agency, Region 2

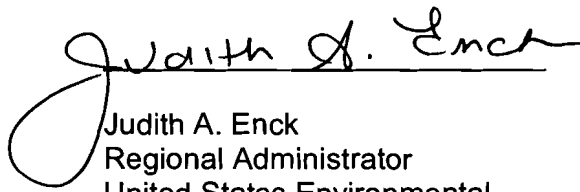
Date MAY 9, 2012

*In the Matter of E.I. Du Pont De Nemours and Company, Inc.  
CAA-02-2012-1201*

**FINAL ORDER**

The Regional Administrator of EPA, Region 2, concurs in the foregoing Consent Agreement, in the matter of E.I. Du Pont De Nemours and Company, Inc., CAA-02-2012-1201. The Consent Agreement, entered into by the parties, is hereby approved and issued, as a Final Order, effective immediately.

DATE: 5/9/12

  
Judith A. Enck  
Regional Administrator  
United States Environmental  
Protection Agency, Region 2

CERTIFICATE OF SERVICE

I certify that the attached Consent Agreement and Final Order (CAFO), dated 05/09/2012 was sent in the following manner to the addressees listed below.

Original and One Copy Delivered by hand to Regional Hearing Clerk's Office:

✓ Karen Maples  
Regional Hearing Clerk  
U.S. Environmental Protection Agency  
Region 2  
290 Broadway, 16<sup>th</sup> Floor  
New York, New York 10007-1866

Copy by Hand to:

Kara Murphy  
Assistant Regional Counsel  
U.S. Environmental Protection Agency  
Air Branch, Region 2  
290 Broadway, 16<sup>th</sup> Floor  
New York, New York 10007-1866

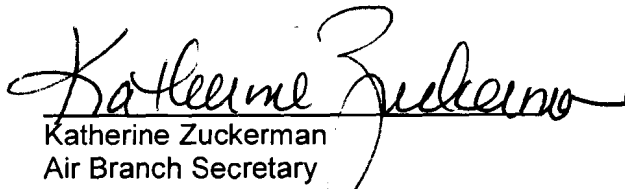
*and copy by Overnight Mail to:*

Stephen Rahaim  
DuPont Legal - Corporate Counsel  
1007 Market Street, D-7099  
Wilmington, DE 19898

*and copy to:*

Blake Edwards  
USEPA  
26 West Martin Luther King Drive  
Mail Code: NWD  
Cincinnati, OH 45268

Dated: May 16, 2012

  
Katherine Zuckerman  
Air Branch Secretary  
U.S. Environmental Protection Agency  
Office of Regional Counsel, Region 2