UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2
290 BROADWAY
NEW YORK, NY 10007-1866

October 7, 2015

CERTIFIED MAIL-
RETURN RECEIPT REQUESTED

Stephen Rahaim
Chief Environmental Counsel
E. I. DuPont de Nemours and Company
974 Centre Road - Building 721/1164
Wilmington, Delaware 19803

Re: Consent Agreement and Final Order, In the Matter of E.I. duPont de Nemours and Company

Dear Mr. Rahaim:

Enclosed please find a fully executed copy of the Consent Agreement and Final Order in this matter. Please do not hesitate to contact me if you have any questions.

Thank you again for your assistance throughout this process.

Sincerely,

Jean H. Regna

Jean H. Regna
Assistant Regional Counsel

Enclosure

cc: Regional Hearing Clerk

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

In the Matter of E.I. duPont de Nemours and Company, DuPont Yerkes Plant, Buffalo, New York, Respondent.	Docket No. CAA-02-2015-1211 CONSENT AGREEMENT AND FINAL ORDER

PRELIMINARY STATEMENT

1. This Consent Agreement and Final Order ("CAFO") is issued pursuant to Section 113(d) of the Clean Air Act ("CAA"), 42 U.S.C. § 7413(d). The Complainant in this action is the Director of the Emergency and Remedial Response Division of the United States Environmental Protection Agency, Region 2 ("EPA"), who has been delegated the authority to institute this action. Respondent is E.I. duPont de Nemours and Company ("Respondent").

2. EPA and the U.S. Department of Justice have determined, pursuant to Section 113(d)(1) of the CAA, 42 U.S.C. § 7413(d)(1), that EPA may pursue this matter through administrative enforcement action.

3. Pursuant to Section 22.13 of the revised Consolidated Rules of Practice, 40 Code of Federal Regulations ("C.F.R.") § 22.13(b), where parties agree to settlement of one or more causes of action before the filing of a complaint, a proceeding may be simultaneously commenced and concluded by the issuance of a CAFO pursuant to 40 C.F.R. §§ 22.18(b)(2) and (3).

4. It has been agreed by the parties that settling this matter by entering into this CAFO pursuant to 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3) is an appropriate means of resolving specified claims against Respondent without litigation. Compliance with the terms and conditions of this CAFO shall resolve those alleged violations which are set forth herein in the counts below.

STATUTORY BACKGROUND

5. Section 113(d) of the CAA provides for the assessment of penalties for violations of Section 112(r) of the CAA.

6. Pursuant to Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1), the owners and operators of stationary sources producing, processing, handling, or storing substances listed pursuant to Section 112(r)(3) of the CAA, 42 U.S.C. § 7412(r)(3), or any other extremely hazardous substance have a general duty, in the same manner and to the same extent as 29 U.S.C. § 654, to identify hazards which may result from accidental releases of such substances using appropriate hazard assessment techniques, to design and maintain a safe facility taking such steps as are necessary to prevent releases, and to minimize the consequences of accidental releases which do occur.

EPA FINDINGS OF FACT

7. Respondent is the owner and/or operator of the DuPont Yerkes facility located at Sheridan Drive and River Road, Buffalo, New York (the "Facility"). The Facility is a manufacturing facility, where, among other things, a substance with the trade name of TEDLAR® is produced.

8. The production of TEDLAR® at the Facility is organized into the following manufacturing areas: Polymer; Mix; Casting; and Treating/Finishing. Vinyl fluoride is a raw material used at the Facility during the polymerization process in the production of TEDLAR®.

9. The polymerization process is a risk management program covered process. The equipment in the polymerization process includes a supply tank, a reactor, separators, and a slurry flash tank.

10. At the slurry flash tank, steam and vinyl fluoride are flashed off through the flash tank vent. After the slurry flash tank, the slurry, which still contains some vinyl fluoride, is then pumped through a cooler and sent to one of three slurry storage tanks (slurry tanks #1, #2 and #3). At the time of the incident described below, these three slurry tanks were interconnected by a common overflow line.

11. There is a U-leg loop seal pipe which is a liquid trap on the end of the overflow line inside slurry tank #2. The U-leg loop seal pipe is designed to prevent steam and vinyl fluoride vapors from passing directly from the flash tank and entering the slurry tank. However, if the slurry flash tank level was too high, hot slurry would pass through the flash tank overflow line directly into slurry tank #2.

12. Facility staff had noted in late 2009 that the U-leg loop seal pipe in slurry tank #2 was cracked. Prior to the November 2010 Incident, the U-leg loop seal pipe was not repaired.

13. On November 3, 2010, Facility staff noted that the U-leg loop seal pipe in slurry tank #2 had a "fishmouth" split in the pipe. Facility staff concluded that the slurry tank could be returned to service without repairing the split.

14. Prior to the November 2010 Incident, Facility staff restarted the process after concluding that the damaged U-leg loop seal pipe did not increase the risk of vinyl fluoride vapor transfer into slurry tank #2. Vinyl fluoride then flowed directly into slurry tank #2.

15. On November 8, 2010, the liquid ring compressor that was intended to reduce the amount of vinyl fluoride in the flash tank within the TEDLAR® process malfunctioned, and the process was restarted without the compressor operating, which is a change to the equipment in the process. Prior to the incident described below, Facility staff calculated that the loss of this compressor would double the amount of vinyl fluoride going to the flash tank. Facility staff restarted the process without first evaluating the effect of the change to process equipment. The process operated in this mode until the incident described below.

16. Prior to the incident described below, a stream of vinyl fluoride vapor entered slurry tank #2 through the damaged U-leg loop seal pipe. Damage to the U-leg loop seal pipe was noted by Facility staff on November 3, 2010. The three slurry tanks were joined by a common slurry tank overflow line so that vinyl fluoride in the slurry in slurry tank #3 and the vinyl fluoride and steam entering slurry tank #2 from the flash tank via the damaged U-leg loop seal pipe had an open path to slurry tank #1. A flammable concentration of vinyl fluoride accumulated in slurry tank #1.

17. On November 9, 2010, a contractor was performing "hot work" repairs on top of slurry tank #1. These repairs involved welding and grinding steel on top of slurry tank #1. "Hot work" is any flame or spark-producing operation including welding, grinding, and riveting, and is defined at 40 C.F.R. § 68.3 as "work involving electric or gas welding, cutting, brazing, or similar flame or spark-producing operations."

18. At approximately 11:04 am on November 9, 2010 (the "November 2010 Incident"), a flammable concentration of vinyl fluoride in slurry tank #1 was ignited by the hot work repairs which were being performed on top of the tank #1. Sparks from the hot work activities ignited the flammable vinyl fluoride mixture inside the tank and resulted in an explosion and fire. The welder lost his life, and the foreman who was standing nearby on fire watch was injured.

19. Following the November 2010 Incident, staff at Respondent's Facility conducted an incident investigation regarding the Incident and prepared incident investigation reports dated November 11, 2010 and January 12, 2011.

20. Following the November 2010 Incident, representatives of the Occupational Safety and Health Administration and the U.S. Chemical Safety Board investigated the Incident, and EPA conducted an inspection of the Facility on June 5 – 6, 2012.

21. Respondent has made changes at the Facility in response to the November 2010 Incident. The changes include upgrades to the Facility's process hazard analysis process, the addition of layers of protection to reduce the risk of vapors entering the slurry tanks, and other policy changes recommended by Respondent's incident investigation team. In addition,

Respondent has changed the configuration of the overflow from the slurry tanks, and for the two remaining slurry tanks (slurry tank #2 and slurry tank #3), the vapor space between the tanks is not connected and will not allow a path for vinyl fluoride to be concentrated in the off-line tank.

EPA CONCLUSIONS OF LAW

22. Respondent is, and at all times referred to herein was, a "person" within the meaning of Section 302(e) of the CAA, 42 U.S.C. § 7602(e).

23. Respondent is the owner and operator of the Facility, which is a "stationary source" as that term is defined at 42 U.S.C. § 7412(r)(2).

24. Vinyl fluoride is a flammable gas. It is an extremely hazardous substance and a regulated substance pursuant to Section 112(r)(2) and (3) of the CAA.

25. Respondent was in charge of the Facility at the time of the November 2010 Incident.

26. At its Facility, Respondent stores, processes, handles, and/or produces extremely hazardous substances, including substances listed pursuant to Section 112(r)(3) of the CAA, including vinyl fluoride.

27. Pursuant to Section 112(r)(1) of the CAA, Respondent has a general duty, in the same manner and to the same extent as 29 U.S.C. § 654, to (a) identify hazards which may result from accidental releases of a regulated substance or other extremely hazardous substance, using appropriate hazard assessment techniques, (b) design and maintain a safe facility taking such steps as are necessary to prevent releases, and (c) minimize the consequences of accidental releases which do occur.

COUNT 1

28. Prior to the November 2010 Incident, Respondent failed to identify that a flammable concentration of vinyl fluoride could accumulate in the slurry tanks.

29. Prior to the November 2010 Incident, the existence and purpose of the U-leg loop seal pipe in slurry tank #2, which is designed to prevent steam and vinyl fluoride vapors from entering the slurry tank, was not properly identified on Facility documentation, including drawings, piping and instrumentation diagrams ("P&IDs"), and the Facility's Process Technology package.

30. Prior to the November 2010 Incident, Facility staff incorrectly assumed that vinyl fluoride could not reach flammable levels in the slurry tanks present in the TEDLAR® process.

31. Prior to the November 2010 Incident, Facility staff restarted the process without properly evaluating the effect of the change regarding the malfunction of the liquid ring

compressor within the TEDLAR® process, which more than doubled the amount of vinyl fluoride going to the flash tank.

32. As described above, Respondent failed to identify hazards, and failed to design and maintain a safe facility taking such steps as are necessary to prevent releases regarding the Facility. Respondent's failure to design and maintain a safe facility by taking such steps as are necessary to prevent releases regarding the Facility constitute violations of Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1). Respondent is therefore subject to the assessment of penalties under Section 113(d) of the CAA, 42 U.S.C. § 7413(d).

COUNT 2

33. Prior to the November 2010 Incident, Facility staff was aware of the crack in the U-leg loop seal pipe and the "fishmouth" split in the U-leg loop seal pipe in slurry tank #2, and returned the slurry tank to service without repairing the split.

34. Prior to the November 2010 Incident, Facility staff restarted the process without properly evaluating the effect of the change regarding the malfunction of the liquid ring compressor within the TEDLAR® process.

35. Prior to the November 2010 Incident, Facility staff did not properly isolate and lockout slurry tank #1 from slurry tanks #2 and #3 prior to authorizing the hot work repairs on slurry tank #1. Flammable vinyl fluoride passed directly from slurry tank #2 to slurry tank #1 through the overflow line, and accumulated in slurry tank #1.

36. Prior to the November 2010 Incident, Facility staff failed to assure the absence of any flammable vapor in areas where hot work was to take place, including the atmosphere inside the tank, even though the repair work involved significant grinding and welding directly on the top of the tank.

37. As described above, Respondent failed to identify hazards, and failed to design and maintain a safe facility taking such steps as are necessary to prevent releases regarding the Facility. Respondent's failure to design and maintain a safe facility by taking such steps as are necessary to prevent releases regarding the Facility constitute violations of Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1). Respondent is therefore subject to the assessment of penalties under Section 113(d) of the CAA, 42 U.S.C. § 7413(d).

COUNT 3

38. The Facility staff who signed off on the hot work permit for the work performed at the time of the November 2010 Incident were not knowledgeable in the operations and hazards of the process connected to the slurry tanks. They were not aware of the crack in the U-leg loop seal pipe or the split in the U-leg loop seal pipe, and what effect this would have inside the atmosphere of the slurry tanks. They were also not aware of the malfunction of the liquid ring compressor, which increased the amount of vinyl fluoride going into the slurry flash tank, which,

with the crack in the U-leg loop seal pipe, would increase the amount of flammable vapor inside the slurry tanks.

39. The Facility's hot work permit, for the work performed at the time of the November 2010 Incident, was not fully completed, including the section which asked if flammable material would be within 35 feet of the hot work. This section was not completed even though the hot work was carried out within 35 feet of the slurry flash tank that was designed to vent vinyl fluoride to the atmosphere.

40. The contractors for the work performed at the time of the November 2010 Incident were unfamiliar with the TEDLAR® process, the process equipment and connected equipment, and the chemical hazards.

41. As described above, Respondent failed to identify hazards, and failed to design and maintain a safe facility taking such steps as are necessary to prevent releases regarding the Facility. Respondent's failure to design and maintain a safe facility by taking such steps as are necessary to prevent releases regarding the Facility constitute violations of Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1). Respondent is therefore subject to the assessment of penalties under Section 113(d) of the CAA, 42 U.S.C. § 7413(d).

CONSENT AGREEMENT

42. Based upon the foregoing, and pursuant to Section 113(d) of the CAA and the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits" (40 C.F.R. Part 22), Complainant and Respondent hereby agree on the following provisions.

43. For the purpose of this proceeding and in the interest of an expeditious resolution of this matter, pursuant to 40 C.F.R. § 22.18(b)(2), Respondent (a) admits the jurisdictional basis for this matter, (b) admits the EPA Findings of Fact set forth above as a statement of EPA's factual basis for each of the alleged violations, (c) consents to the assessment of the civil penalty set forth below, (d) consents to the issuance of the attached Final Order, and (e) waives its right to contest the allegations and its right to appeal the attached Final Order.

44. Respondent neither admits nor denies the EPA Conclusions of Law set forth above.

45. This CAFO and any provision herein shall not be construed as an admission in any criminal or civil action or other administrative proceeding, except in an action or proceeding to enforce or seek compliance with the provisions of this CAFO.

46. Respondent hereby certifies, consistent with Paragraph 21 above, the Facility is now in compliance with all applicable requirements of Sections 112(r)(1) and (7) of the CAA as related to the EPA Findings of Fact and EPA Conclusions of Law.

47. Respondent consents to the issuance of this Consent Agreement and consents for the purposes of settlement to the payment of the civil penalty cited herein and to the performance of the Supplemental Environmental Project.

48. Respondent agrees to pay a civil penalty in the total amount of $723,438.00, as described below. Such payment shall be made by cashier's or certified check or by Electronic Fund Transfer ("EFT"). Payment of the penalty must be received by EPA on or before thirty (30) calendar days after the date of signature of the Final Order at the end of this document (hereinafter referred to as the "due date").

If the payment is made by check, then the check shall be made payable to the "Treasurer, United States of America" and shall be mailed to:

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

The check shall be identified with a notation listing the following: "In the Matter of: E.I. duPont de Nemours and Company, DuPont Yerkes Plant" and shall bear thereon "Docket Number CAA-02-2015-1211."

If Respondent chooses to make the payment by EFT, then Respondent shall provide the following information to its remitter bank:

Amount of Payment
SWIFT address: FRNYUS33, 33 Liberty Street, New York, NY 10045
Account Code for Federal Reserve Bank of New York receiving payment: 68010727
Federal Reserve Bank of New York ABA routing number: 021030004
Field Tag 4200 of the Fedwire message should read:
"D 68010727 Environmental Protection Agency"
Name of Respondent: E.I. duPont de Nemours and Company
Case Number: CAA-02-2015-1211

Whether the payment is made by check or by EFT, the Respondent shall promptly thereafter furnish reasonable proof that the payment has been made to:

Jean Regna
Assistant Regional Counsel
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 2
290 Broadway, 17th Floor
New York, New York 10007-1866

and

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

Payment must be received pursuant to the provisions above.

49. If Respondent fails to make full and complete payment of the civil penalty that it is required to pay by this CA/FO, 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 makes partial payment, interest shall accrue on any unpaid portion of the assessed penalty 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 handling charge of fifteen dollars ($15.00) shall be paid per month, or any portion thereof, if any portion of the assessed penalty is not paid within thirty (30) days of 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 Section 113(d)(5) of the CAA, 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 non-payment penalty for each calendar quarter during which such a failure to pay persists. Such non-payment penalty shall be ten percent (10%) of the aggregate amount of Respondent's outstanding penalties and non-payment penalties accrued from the beginning of such quarter.

50. The penalty specified in Paragraph 48, above, shall represent civil penalties assessed by EPA and shall not be deductible for purposes of state or federal taxes.

Supplemental Environmental Project

51. Respondent agrees to, and shall in accordance with the terms and conditions of this CA/FO, implement and perform a Supplemental Environmental Project ("SEP") that consists of the purchase of the equipment described in Paragraph 52 below and payment for training for first responder staff on the equipment that it will provide to the Brighton Fire Department, Tonawanda, New York. To implement this SEP, Respondent shall spend a net expenditure of $111,953.00.

52. Respondent shall purchase the following equipment within sixty (60) days of the effective date of this CA/FO: a RadSeeker® Handheld Radioisotope Identifier; and a GasID® Portable Gas and Vapor Identifier, and ensure they are delivered to and received by the Brighton Fire Department within one hundred and eighty (180) days of the effective date of this CA/FO. Such purchase shall be inclusive of Manufacturer-supplied training sessions for first responder staff on the new equipment referenced above.

53. Within two hundred and seventy (270) days after the effective date of this CA/FO, Respondent shall submit a SEP Report to EPA for approval, to the addressees set forth in Paragraph 54 below, which shall:

a. Provide documentation of the timely purchase and delivery of all equipment referenced in Paragraph 52 above.

b. Provide documentation of training on the equipment pursuant to Paragraph 51 above, including the date(s) such training was held, and a list of personnel trained.

c. Provide an itemized cost report, with appropriate documentation, of the costs incurred in the performance of this SEP. This report shall include the total amount of costs expended to implement this SEP, and shall be certified as accurate under penalty of perjury by a responsible corporate official.

d. A certification under penalty of perjury by a responsible corporate official that the SEP was performed in accordance with the terms of this CA/FO.

54. Information required to be submitted to EPA pursuant to this CAFO shall be sent to Ellen Banner at her address below, by hard copy and electronic copy, and an electronic copy shall also be sent to Jean H. Regna, at regna.jean@epa.gov.

Ellen Banner
U.S. Environmental Protection Agency
Emergency and Remedial Response Division

Response and Prevention Branch
2890 Woodbridge Avenue
Edison, New Jersey 08837
(732) 321-4338
banner.ellen@epa.gov

55. Following its receipt of the SEP Report required above, EPA will either (a) accept the SEP Report or (b) reject the SEP Report, notify the Respondent, in writing, of questions EPA has and/or deficiencies therein and grant Respondent an additional short period of time, which shall be reasonable under the then-existing circumstances (fifteen (15) days at a minimum), in which to answer EPA's inquiries and/or to correct any deficiencies in the SEP Report. EPA has the sole authority to determine whether costs expended are creditable to the SEP as herein required. (Deficiencies may include a determination by EPA that certain expenditures are not creditable to the SEP.)

56. Whether Respondent has complied with the terms of this CA/FO with regard to the successful and satisfactory implementation and/or operation of the SEP as herein required, including whether Respondent has made good faith and timely efforts to effect same, and whether costs expended are creditable to the SEP as herein required shall be solely determined by EPA. Should EPA have any concerns about the satisfactory completion of the SEP, EPA will communicate those concerns in writing to Respondent and provide it with an opportunity to respond, and/or correct any of the deficiency(ies). If EPA makes a determination that the SEP has been satisfactorily completed, it will provide Respondent with written confirmation of the determination within a reasonable amount of time.

57. The SEP to be implemented by Respondent pursuant to this CA/FO has been accepted by EPA solely for purposes of settlement of this administrative proceeding. Nothing in this CA/FO is intended or is to be construed as a ruling on or determination of any issue related to any federal, state, or local permit.

58. Any public statement, oral or written, in print, film or other media, made by the Respondent, or by any officer, employee or agent of the Respondent, that makes reference to the SEP under this CA/FO shall include the following language: "This project was undertaken in connection with the settlement of an enforcement action initiated by the U.S. Environmental Protection Agency against E.I. duPont de Nemours and Company under the Clean Air Act."

59. Respondent hereby certifies that, as of the date of its authorized signature on this Consent Agreement, it is not required to implement or complete the aforementioned SEP pursuant to any federal, Commonwealth or local law, or other requirement including federal or state rules. Respondent further certifies that, with the exception of this Consent Agreement, Respondent is not required to implement or complete the SEP set forth in this Consent Agreement by any agreement, grant, or as injunctive relief in this or any other suit, action or proceeding in any jurisdiction, and that Respondent had not instituted before October 2012 any of the work that is part of this SEP.

60. Respondent certifies that it has not received, and is not presently negotiating to receive, credit in any other enforcement action for the aforementioned SEP and that Respondent in good faith believes that the SEP is in accordance with the provisions of the "U.S. Environmental Protection Agency Supplemental Environmental Projects Policy 2015 Update."

61. Respondent certifies that it is not a party to any open federal financial assistance transaction that is funding or could be used to fund the same activity as the SEP. Respondent further certifies, to the best of its knowledge and belief after reasonable and diligent inquiry, there is no such open federal financial transaction that constitutes funding or could be used to fund the same activity as the SEP, nor has the same activity as the SEP been described in an unsuccessful federal financial assistance transaction submitted to EPA within two years of the date of the execution of this settlement (unless the project(s) was barred from funding as statutorily ineligible). For the purpose of the certifications to be made pursuant to this paragraph, the term "open federal financial assistance transaction" refers to a grant, cooperative agreement, loan, federally-guaranteed loan guarantee or other mechanism for providing federal financial assistance whose performance period has not yet expired.

62. Respondent shall not use or expend any money received from the United States government, as a grant or otherwise, directly to finance, implement, perform and/or operate any aspect or any portion of the aforementioned SEP.

63. EPA may, in the exercise of its discretion, grant an extension of the date(s) of performance established in this CA/FO with regard to any of requirements for the SEP, if good cause exists for such extension(s). If Respondent submits a request for extension, such request shall be accompanied by supporting documentation and be submitted to EPA no later than fourteen (14) days prior to any due date set forth in this CA/FO, or other deadline established pursuant to this CA/FO. Such extension, if any, shall be approved in writing.

64. Respondent shall be liable for stipulated penalties in the event Respondent fails to comply with the terms and conditions of this CA/FO including the performance, implementation, completion and operation of the SEP as set forth below in this paragraph:

a. If the SEP is not undertaken, Respondent shall pay a stipulated penalty of $111,953.00;

b. If EPA determines that the SEPs is satisfactorily completed, and Respondent has spent at least 90 percent of the total amount of money that it was required to expend for the SEP on expenditures that EPA determines are creditable toward the SEP (*i.e.* Respondent has spent $107,758.00 (90% of $111,953.00, provided EPA has determined said amount is creditable toward the SEP), Respondent shall not pay stipulated penalty for not having spent the full amount specified herein for the SEP.

c. If EPA determines that the SEP is satisfactorily completed and implemented but Respondent has spent less than 90 percent of the amount

of money required to be spent for the SEP on expenditures that EPA determines are creditable toward the SEP, Respondent shall pay a stipulated penalty equal to two hundred (200) percent of the difference between the required amount to be spent ($111,953.00) and the amount Respondent actually spent on expenditures that EPA determines are creditable toward said SEP.

d. For any failure to timely submit any SEP Report, Respondent shall pay a stipulated penalty in the amount of $150.00 for each day any such report is late up to the 30th day, and Respondent shall pay a stipulated penalty in the amount of $500.00 for each day any such report is thereafter late, and such penalty(ies) shall continue to accrue from the first date such report(s) is untimely until said report(s) is submitted to EPA.

65. Unless Respondent provides EPA with a written explanation pursuant to the Paragraph below, all stipulated penalties are due and payable within thirty (30) days of Respondent's receipt of EPA's written demand for payment of the penalty(ies). The method of payment shall be in accordance with the provisions of Paragraph 48. Interest and a late payment handling charge will be assessed in the same manner and in the same amounts as specified in Paragraph 49 above. Penalties shall accrue as provided above regardless of whether EPA has notified the Respondent of the violation or made a demand for payment, but need only be paid upon demand.

66. After receipt of a demand from EPA for stipulated penalty(ies) pursuant to the above paragraph, Respondent shall have twenty (20) days in which to provide EPA with a written explanation of why it believes that a stipulated penalty(ies) is not due and owing, or is not appropriate, for the cited violation(s) of the terms and conditions of this CA/FO (including any technical, financial or other information that Respondent deems relevant).

67. EPA may, in the exercise of its sole discretion, waive or reduce any stipulated penalty due if Respondent has in writing demonstrated to EPA's satisfaction good cause for such action. If, after review of Respondent's submission pursuant to the preceding paragraph, EPA determines that Respondent has failed to comply with the terms and conditions of this CA/FO and concludes that the demanded stipulated penalty(ies) is due and owing, and further EPA has not waived or reduced the demanded stipulated penalty(ies), EPA will notify Respondent, in writing, of its decision regarding the stipulated penalty(ies). Respondent shall then, within thirty (30) days of receipt thereof, pay the stipulated penalty amount(s) indicated in EPA's notice. (EPA may also in its discretion, *sua sponte*, decide not to demand stipulated penalties.)

68. Failure of Respondent to pay any stipulated penalty(ies) demanded by EPA pursuant to this CA/FO may result in referral of this matter to the United States Department of Justice or the United States Department of the Treasury for collection or other action provided by applicable law.

69. For federal income tax purposes, Respondent agrees that it will neither capitalize into inventory or basis nor deduct any costs or expenditures incurred in performing the SEP.

General Provisions

70. This CAFO is being voluntarily and knowingly entered into by the parties in full settlement of Respondent's alleged violations of the CAA set forth above in the Findings of Fact and EPA Conclusions of Law.

71. This CAFO shall not relieve Respondent of its obligation to comply with all applicable provisions of federal, State, or local law, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, State, or local permit. This CAFO 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 other than injunctive or equitable relief for the violations resolved herein. Except for the alleged violations resolved herein, compliance with this CAFO shall not be a defense to any actions subsequently commenced pursuant to federal laws and regulations administered by EPA, and it is the responsibility of Respondent to comply with such laws and regulations.

72. This CAFO 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.

73. Respondent explicitly waives any right to request a hearing as to the matters addressed herein and/or contest any allegations in this Consent Agreement and explicitly waives any right to appeal the attached Final Order.

74. Each party hereto shall bear its own costs and attorneys' fees in the action resolved by this CAFO.

75. This CAFO shall be binding on Respondent and its successors and assignees.

76. Each of the undersigned representatives to this CAFO certifies that he or she is duly authorized by the party whom he or she represents to enter into the terms and conditions of the CAFO and to bind that party to it.

77. Respondent consents to service upon Respondent of a copy of this CAFO by any EPA employee, in lieu of service made by the EPA Region 2 Regional Hearing Clerk..

In the Matter of E.I. duPont de Nemours and Company
Docket Number CAA-02-2015-1211

For Respondent
E.I. duPont de Nemours and Company

Warren C. Hoy
Signature

Date: 9/28/2015

WARREN C. HOY
Name (Printed or Typed)

PLANT MANAGER
Title (Printed or Typed)

In the Matter of E.I. duPont de Nemours and Company
Docket Number CAA-02-2015-1211

For Complainant
U.S. Environmental Protection Agency, Region 2

Date: Sept. 30, 2015

Walter Mugdan, Director
Emergency and Remedial Response Division
U.S. Environmental Protection Agency, Region 2

In the Matter of E.I. duPont de Nemours and Company
Docket Number CAA-02-2015-1211

FINAL ORDER

The Regional Administrator of the U.S. Environmental Protection Agency, Region 2, ratifies the foregoing Consent Agreement. The Consent Agreement, entered into by the Complainant and Respondent to this matter, is hereby approved, incorporated herein, and issued as a Final Order. The effective date of this Order shall be the date of filing with the Regional Hearing Clerk, U.S. Environmental Protection Agency, Region 2, New York, New York.

Judith Enck

Judith Enck
Regional Administrator
U.S. Environmental Protection
Agency – Region 2
290 Broadway
New York, New York 10007-1866

Date: 9/30/15

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

In the Matter of E.I. duPont de Nemours and Company, DuPont Yerkes Plant, Buffalo, New York, Respondent.	Docket No. CAA-02-2015-1211

CERTIFICATE OF SERVICE

This is to certify that I have this day caused (or am causing) to be sent the foregoing fully executed Consent Agreement and Final Order, in the following manner to the respective addressees below:

Original and One Copy
By Hand:

Office of Regional Hearing Clerk
U.S. Environmental Protection Agency
Region 2
290 Broadway, 16th Floor
New York, New York 10007

Copy by Certified Mail -
Return Receipt Requested

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