UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103

In Re:	)	
	)	
E.I. du Pont de Nemours & Co.	)	**Docket No. RCRA-03-2009-0252**
1007 Market Street	)	
Wilmington, Delaware 19898,	)	
	)	
RESPONDENT.	)	**Proceeding Under Section**
	)	**3008(a) and (g) of the**
901 West DuPont Avenue	)	**Resource Conservation and**
Belle, WV 25015	)	**Recovery Act, as amended,**
EPA Facility I.D. # WVD005012851,	)	**42 U.S.C. § 6928(a) and (g)**
	)	
FACILITY.	)	

CONSENT AGREEMENT

I. PRELIMINARY STATEMENT

1. This Consent Agreement is entered into by the Director of the Land and Chemicals Division, U.S. Environmental Protection Agency, Region III ("Complainant"), and E.I. du Pont de Nemours & Co. ("Respondent" or "DuPont"), pursuant to Section 3008(a) and (g) of the Solid Waste Disposal Act, commonly known as Resource Conservation and Recovery Act of 1976, as amended by *inter alia*, the Hazardous and Solid Waste Amendments of 1984 (collectively referred to hereinafter as "RCRA"), 42 U.S.C. § 6928(a) and (g), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits ("*Consolidated Rules of Practice*"), 40 C.F.R. Part 22, including, specifically, 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3).

2. The *Consolidated Rules of Practice*, at 40 C.F.R. § 22.13(b), provide, in pertinent part, that where the parties agree to settlement of one or more causes of action before the filing of a complaint, a proceeding simultaneously may be commenced and concluded by the issuance of a consent agreement and final order pursuant to 40 C.F.R. § 22.18(b)(2) and (3). Pursuant thereto, this Consent Agreement ("CA") and the accompanying Final Order ("FO", collectively referred to herein as the "CAFO") simultaneously commences and concludes this administrative proceeding against Respondent.

3. The State of West Virginia ("West Virginia" or the "State") has received federal authorization to administer a Hazardous Waste Management Program in lieu of the federal hazardous waste management program established under RCRA Subtitle C, 42 U.S.C. §§ 6921-6939e. The West Virginia Hazardous Waste Management Regulations ("WVHWMR") originally were authorized by the U. S. Environmental Protection Agency ("EPA" or the "Agency") on May 29, 1986, pursuant to Section 3006(b) of RCRA, 42 U.S.C. § 6926(b). Revisions to the West Virginia Hazardous Waste Management Regulations were authorized by EPA effective July 10, 2000 and December 15, 2003. The provisions of the State's current, authorized revised West Virginia Hazardous Waste Management Regulations (hereinafter, "WVHWMR") are set forth in Title 33, Leg. Rule, Division of Environmental Protection, Office of Waste Management, Series 20, Parts 33-20-1 through 33-20-15 (33 Code of State Regulations 20, abbreviated as 33CSR20 and hereinafter cited as WVHWMR § 33-20-1, et seq.). The provisions of the WVHWMR incorporate by reference 40 C.F.R. Parts 260-279 (1999 ed.), have become requirements of RCRA Subtitle C and are enforceable by EPA pursuant to RCRA § 3008(a), 42 U.S.C. § 6928(a).

4. Pursuant to Section 3005(a) of RCRA, 42 U.S.C. § 6925(a), the West Virginia Department of Environmental Protection ("WVDEP"), Division of Water and Waste Management ("DWWM"), issued DuPont a Hazardous Waste Management Permit ("Part B RCRA Permit"), No. WVD 005012851, that became effective as of September 15, 2003 and that has remained effective at all times herein relevant. This Part B RCRA Permit consists of four Permit Modules and seven Attachments and allows the Respondent to operate certain hazardous waste management units consisting of two container storage areas, the Vazo Warehouse Container Storage Area ("Vazo Area") and the Consolidated Drum Storage Unit ("CDS Unit"), and two tanks ("Tank 63" and "Tank 26") at the DuPont Chemical Solutions Enterprise facility located at 901 West DuPont Avenue, Belle, West Virginia 25015 (hereinafter, the "Facility"). The Respondent does not have interim status or a RCRA permit to treat, store or dispose of hazardous waste at any other area of the Facility.

5. The factual allegations and legal conclusions in this CA that are based on federally-authorized State Hazardous Waste Management Program requirements cite to WVHWMR provisions in effect at the time of the violations alleged herein. For expedience and convenience, all CA citations to the federal hazardous waste management regulations set forth at 40 C.F.R. Parts 260 - 279 are to the July 1, 2008 edition of the Code of Federal Regulations.

6. The factual allegations and legal conclusions in this CA that are based upon the requirements and provisions of the Part B RCRA Permit for the Facility (No. WVD 005012851) cite to those Part B RCRA Permit Module conditions (hereinafter cited as "Permit Condition ____") and Permit Attachment provisions (hereinafter cited as "Permit Attachment _____"), as are applicable.

7. Section 3008(g) of RCRA, 42 U.S.C. § 6928(g), authorizes the assessment of a civil penalty against any person who violates any requirement of Subtitle C of RCRA. Respondent is hereby notified of EPA's determination that Respondent has violated RCRA Subtitle C, 42 U.S.C. §§ 6921-6939e, federally-authorized WVHWMR requirements and Part B RCRA Permit requirements at the Facility.

8. In accordance with Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2), and by written letter dated February 11, 2009, EPA notified the State, through the Hazardous Waste and UST Program Manager of the WVDEP, of EPA's intent to commence this administrative action against Respondent in response to the violations of RCRA Subtitle C and of the Facility's Part B RCRA Permit that are alleged herein.

II. GENERAL PROVISIONS

9. Respondent admits the jurisdictional allegations set forth in this CAFO.

10. Respondent neither admits nor denies the specific factual allegations or the conclusions of law contained in this CAFO, except as provided in the paragraph immediately above.

11. Respondent agrees not to contest EPA's jurisdiction with respect to the execution of this CA, the issuance of the attached FO, or the enforcement of the CAFO.

12. For the purposes of this proceeding only, Respondent hereby expressly waives its right to contest the allegations set forth in this CA and any right to appeal the accompanying FO.

13. Respondent consents to the issuance of this CAFO and agrees to comply with its terms and conditions.

14. Respondent shall bear its own costs and attorney's fees.

15. The provisions of this CAFO shall be binding upon Complainant and Respondent, its officers, directors, employees, successors and assigns.

16. 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; nor does this CAFO constitute a waiver, suspension or modification of the requirements of RCRA Subtitle C, 42 U.S.C. §§ 6921-6939e, or any regulations promulgated and/or authorized thereunder.

III. EPA FINDINGS OF FACT AND CONCLUSIONS OF LAW

17. In accordance with the *Consolidated Rules of Practice* at 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3), Complainant makes the following findings of fact and conclusions of law:

18. Respondent is a Delaware corporation headquartered at 1007 Market Street, Wilmington, Delaware 19898.

19. At the Facility, Respondent manufactures organic and inorganic chemicals and preparations for industrial use.

20. Respondent is a "person" as that term is defined in WVHWMR § 33-20-2.1.a, which incorporates by reference 40 C.F.R. § 260.10.

21. The Facility is a hazardous waste storage "facility" as that term is defined in WVHWMR § 33-20-2.1.a, which incorporates by reference 40 C.F.R. § 260.10.

22. At all times relevant to this CAFO, Respondent was and is the "owner" and "operator" of the Facility, as those terms are defined in WVHWMR § 33-20-2.1.a, which incorporates by reference 40 C.F.R. § 260.10.

23. As described below, Respondent is and, at all times relevant to this CAFO has been, a "generator" of "solid waste" and "hazardous waste" at the Facility, as these terms are defined in WVHWMR § 33-20-2.1.a, which incorporates by reference 40 C.F.R. § 260.10.

24. At all times relevant to this CAFO, and as described below, Respondent has engaged in the "storage" of "solid waste" and "hazardous waste" in "container[s]" at the Facility, as these terms are defined in WVHWMR § 33-20-2.1.a, which incorporates by reference 40 C.F.R. § 260.10.

25. At all times relevant to this CAFO, Respondent has been a large quantity generator of hazardous waste at the Facility.

26. On September 23, 2008 a duly authorized representative of EPA conducted a compliance evaluation inspection ("CEI") of the Facility to assess the Respondent's compliance with federally authorized WVHWMR and Facility Part B RCRA Permit requirements.

27. On February 23, 2009, pursuant to the authority of RCRA § 3007(a), 42 U.S.C. § 6927(a), EPA sent an information request letter ("IRL") to Facility representatives seeking additional information regarding certain of Respondent's hazardous waste management practices at the Facility and requesting the production of specified documents and information.

28. A Facility representative replied to EPA's IRL by correspondence dated April 3, 2009.

29. On June 8, 2009, EPA sent a Notice of Noncompliance and Request to Show Cause letter ("NON") to the Facility advising Respondent of EPA's preliminary findings of WVHWMR and Part B RCRA Permit violations at the Facility and offering the Respondent an opportunity to provide such additional information as it believed the Agency should review and consider before reaching any final conclusions pertaining to the Respondent's WVHWMR and Part B RCRA Permit compliance at the Facility.

30. In a written correspondence dated July 10, 2009, Respondent responded to the preliminary conclusions set forth by EPA in the NON and provided EPA with supplemental information.

31. On the basis of the Facility Inspection and a review of the IRL response and supplemental information provided to EPA in response to the NON, EPA concludes that Respondent has violated certain requirements and provisions of RCRA Subtitle C, 42 U.S.C. §§ 6921-6939e, WVHWMR requirements promulgated thereunder, and the Facility's Part B RCRA Permit.

Applicable Definitions

32. Pursuant to WVHWMR § 33-20-2.1.a, which incorporates by reference 40 C.F.R. § 260.10:

    a. the term *container* "means any portable device in which a material is stored, transported, treated, disposed of, or otherwise handled."

b. the term *facility* means "All contiguous land, and structures, other appurtenances, and improvements on the land, used for treating, storing, or disposing of hazardous waste. A facility may consist of several treatment, storage, or disposal operational units (*e.g.*, one or more landfills, surface impoundments, or combinations of them)."

c. the term *generator* "means any person, by site, whose act or process produces hazardous waste identified or listed in [40 C.F.R. Part 261] or whose act first causes a hazardous waste to become subject to regulation."

d. the term *hazardous waste* means a hazardous waste as defined in [40 C.F.R.] § 261.3. . . ."

e. a *hazardous waste management unit* "is a contiguous area of land on or in which hazardous waste is placed, or the largest area in which there is significant likelihood of mixing hazardous waste constituents in the same area[]" and "[e]xamples of hazardous waste management units include . . . a tank and its associated piping and underlying containment system and a container storage area . . . [which] includes containers and the land or pad upon which they are placed."

f. the term *operator* "means the person responsible for the overall operation of a facility."

g. the term *owner* "means the person who owns a facility or part of a facility."

h. the term *storage* "means the holding of hazardous waste for a temporary period, at the end of which the hazardous waste is treated, disposed of, or stored elsewhere."

Relevant Statutory Requirements

33. Pursuant to Section 3005(a) and (e) of RCRA, 42 U.S.C. § 6925(a) and (e), and WVHWMR § 33-20-11.1, which incorporates by reference 40 C.F.R. § 270.1(b), no person may own or operate a facility for the treatment, storage or disposal of hazardous waste without first obtaining a permit or interim status for such facility.

34. At all times relevant hereto, and as set forth above, Respondent had a Part B RCRA Permit to operate certain hazardous waste management units at the Facility; specifically, two container storage areas, the Vazo Area and the CDS Unit, and two tanks, Tank 63 and Tank 26.

35. At all times relevant hereto, Respondent did not have a permit, pursuant to Section 3005(a) of RCRA, 42 U.S.C. § 6925(a), or WVHWMR § 33-20-11.1, which incorporates by reference 40 C.F.R. Part 270, for the storage of hazardous waste at any other area of the Facility.

Permit Exemption Conditions - Accumulation Time/Requirements

36. WVHWMR § 33-20-5.1 incorporates by reference 40 C.F.R. § 262.34(a) and provides, in pertinent part and with exceptions not herein applicable, that generators of hazardous waste who accumulate hazardous waste in containers, tanks, drip pads, or containment buildings on-site for less than 90 days are exempt from the requirement to obtain a permit for such accumulation, so long as the hazardous waste is stored in accordance with a number of conditions set forth in that section, including, *inter alia*:

a. the condition set forth at 40 C.F.R. § 262.34(a)(1)(i), which requires, in pertinent part and with exceptions not herein applicable, that when hazardous waste is placed in containers, the generator must comply with the applicable requirements of 40 C.F.R. Part 265, Subpart I, including the requirements set forth at 40 C.F.R. §§ 265.173(a) and .174, which provide, in relevant part and with an exception not herein applicable, that: "[a] container holding hazardous waste must always be closed during storage, except when it is necessary to add or remove waste"; and that "[a]t least weekly, the owner or operator must inspect areas where containers are stored . . . . The owner or operator must look for leaking containers and for deterioration of containers caused by corrosion or other factors."

b. the condition set forth at 40 C.F.R. § 262.34(a)(2), which requires that, while being accumulated on-site, "the date upon which each period of accumulation begins is clearly marked and visible for inspection on each container."

c. the condition set forth at 40 C.F.R. § 262.34(a)(3), which requires that, while being accumulated on-site, each container and tank must be labeled or marked clearly with the words "Hazardous Waste".

d. the condition set forth at 40 C.F.R. § 262.34(a)(4), which requires that the generator comply with the requirements for owners or operators in Subpart C, including the requirement set forth at 40 C.F.R. § 265.31, which provides that: "[f]acilities must be maintained and operated to minimize the possibility of a fire, explosion, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water which could threaten human health or the environment."

37. WVHWMR § 33-20-5.1 also incorporates by reference 40 C.F.R. § 262.34(c)(1) which provides, in pertinent part and with exceptions not herein applicable, that a generator may accumulate as much as 55 gallons of hazardous waste in containers at or near any point of generation where wastes initially accumulate, which is under the control of the operator of the process generating the waste, without a permit or interim status and without complying with the requirements of 40 C.F.R. § 262.34(a), provided he: (i) complies with §§ 265.171, 265.172, and 265.173(a) of 40 C.F.R. Part 265, Subpart I; and (ii) marks his containers either with the words ''Hazardous Waste'' or with other words that identify the contents of the containers.

38. WVHWMR § 33-20-5.1 further incorporates by reference 40 C.F.R. § 262.34(b), which additionally provides, in pertinent part and with an exception not herein applicable, that: "(b) A generator who accumulates hazardous waste for more than 90 days is an operator of a storage facility and is subject to the requirements of 40 C.F.R. parts 264 and 265 and the permit requirements of 40 C.F.R. Part 270 . . . ."

COUNT I
(*Operating Without a Permit*)

39. The allegations of paragraphs 1 through 38 of this CA are incorporated herein by reference as though fully set forth at length.

40. During the time period beginning on June 3, 2008 and continuing through April 2, 2009 (*i.e.*, a period in excess of the 90-day permit exemption condition of WVHWMR § 33-20-5.1, which incorporates by reference the requirements of 40 C.F.R. § 262.34(a)), Respondent stored five 55-gallon drum *containers* of D001/D002/U162 *hazardous waste* at a less than 90-day accumulation area of the Facility hereinafter referred to as the "West 291 Building Storage Area."

41. At the time of the September 23, 2008 CEI, Respondent was storing *hazardous waste* nickel-cadmium, mercury and dry cell batteries in, and on top of, three 55-gallon drum *containers* that were not labeled with the words "Hazardous Waste", in accordance with the permit exemption conditions of WVHWMR § 33-20-5.1, which incorporates by reference the requirements of 40 C.F.R. § 262.34(a) and (a)(3), at a satellite accumulation area of the Facility located in a structure adjacent to the CDS Unit.

42. At the time of the September 23, 2008 CEI, Respondent was storing *hazardous waste* fluorescent bulbs at a satellite area of the Facility located in a structure adjacent to the CDS Unit in cardboard box *containers* that were not labeled with the words "Hazardous Waste" or with the date that initial accumulation began and in one *container* that was not closed, in accordance with the permit exemption conditions of WVHWMR § 33-20-5.1,

which incorporates by reference the requirements of 40 C.F.R. § 262.34(a)(1), (a)(2) and (a)(3) and, by further reference, the container management provisions of 40 C.F.R. Part 265, Subpart I, including the "management of containers" requirements of 40 C.F.R. § 265.173(a).

43. During the time period from June 3, 2008 through March 19, 2009, Respondent failed to inspect the West 291 Building Storage Area, where containers of D001/D002/U162 *hazardous waste* were being stored in *containers*, on a weekly basis to look for leaking containers and for deterioration of containers caused by corrosion or other factors, in accordance with WVHWMR § 33-20-5.1, which incorporates by reference 40 C.F.R. § 262.34(a)(1)(i) and, by further reference, the container management provisions of 40 C.F.R. Part 265, Subpart I, including the inspection requirements of 40 C.F.R. § 265.174.

44. Each of the *hazardous waste container* storage areas at the Facility which are identified in paragraphs 40 through 43, immediately above, is a *hazardous waste* management "facility" as that term is defined in WVHWMR § 33-20-2.1.a, which incorporates by reference 40 C.F.R. § 260.10.

45. At all times relevant to the allegations in this CA, Respondent maintained and operated an aerosol can puncturing device and associated 55-gallon drum *container* at the Facility to puncture aerosol paint cans in order to relieve pressure and remove and store the residual *hazardous waste* contents.

46. At the time of the September 23, 2008 CEI, the aerosol can puncturing device, associated *container* and the proximate wall and floor area of the Facility where they were located, were covered in waste paint splatter which, at the time of discharge, became a *discarded material,* a *solid waste* and a *hazardous waste*, as those terms are defined at WVHWMR § 33-20-3.1.a, which incorporates by reference 40 C.F.R. § 261.2.

47. The aerosol can puncturing device, associated 55-gallon drum *container* and area of the Facility where they were located, is a *hazardous waste* management "facility" as that term is defined in WVHWMR § 33-20-2.1.a, which incorporates by reference 40 C.F.R. § 260.10.

48. Respondent failed to maintain and operate the aerosol can puncturing device, associated 55-gallon drum *container* and area of the Facility where they were located so as to minimize the possibility of a fire, explosion, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water which could threaten human health or the environment, in accordance with WVHWMR § 33-20-5.1, which incorporates by reference 40 C.F.R. § 262.34(a)(4) and, by further reference, the preparedness and prevention provisions of 40 C.F.R. Part 265, Subpart C,

including the maintenance and operation of facility requirement set forth at 40 C.F.R. § 265.31.

49. For each of the reasons and during each of the times set forth in paragraphs 40 through 48, immediately above, Respondent failed to comply with the permit exemption conditions, identified in paragraphs 36 and 37, above, for temporary (*i.e.*, 90 days or less) or satellite accumulation of *hazardous waste* by a generator that are required pursuant to WVHWMR § 33-20-5.1, which incorporates by reference the provisions of 40 C.F.R. § 262.34(a) and (c)(1).

50. Respondent violated WVHWMR § 33-20-11, which incorporates by reference 40 C.F.R. § 270.1(b), and Section 3005(a) of RCRA, 42 U.S.C. § 6925(a), by owning and operating the *hazardous waste* management *facilities* that are identified and described in paragraphs 40 through 48, above, without a permit, interim status or valid exemption to the permitting/interim status requirements.

COUNT II
(*Failure to Comply with WVHWMR Hazardous Waste Container Management Requirements)*

51. The allegations of paragraphs 1 through 50 of this CA are incorporated herein by reference as though fully set forth at length.

52. WVHWMR § 33-20-7.2, which incorporates by reference 40 C.F.R. § 264.173(a), provides, in relevant part and with exceptions not herein applicable, that "[a] container holding hazardous waste must always be kept closed during storage, except when it is necessary to add or remove waste."

53. On September 28, 2008, one *container* of *hazardous waste* fluorescent bulbs, previously identified in paragraph 42, above, was being stored at a satellite area of the Facility and was not kept closed at times when it was not necessary to add or remove waste.

54. Respondent violated WVHWMR § 33-20-7.2, which incorporates by reference the requirements of 40 C.F.R. § 264.173(a), by holding *hazardous waste* in a container that was not kept closed during storage, when it was not necessary to add or remove waste.

COUNT III
(*Failure to Comply with WVHWMR Hazardous Waste Container Inspection Requirements*)

55. The allegations of paragraphs 1 through 54 of this CA are incorporated herein by reference as though fully set forth at length.

56. WVHWMR § 33-20-7.2, which incorporates by reference 40 C.F.R. § 264.174, provides, in relevant part and with an exception not herein applicable that "[a]t least weekly, the owner or operator must inspect areas where containers are stored . . . . The owner or operator must look for leaking containers and for deterioration of containers . . . caused by corrosion or other factors."

57. From June 3, 2008 through March 19, 2009, and as previously recited in paragraph 43, above, Respondent failed to inspect the West 291 Building Storage Area, where D001/D002/U162 *hazardous waste* was being stored in 55-gallon *containers*, on a weekly basis to look for leaking containers and for deterioration of containers caused by corrosion or other factors.

58. Respondent violated WVHWMR § 33-20-7.2, which incorporates by reference the requirements of 40 C.F.R. § 264.174, by failing to perform weekly inspections of an area of the Facility where containers of *hazardous waste* were being stored to look for leaking containers and for deterioration of containers caused by corrosion or other factors.

COUNT IV
(*Failure to Comply with WVHWMR Requirement to Maintain and Operate a Hazardous Waste Management Facility to Minimize the Possibility of a Fire, Explosion, or any Unplanned Sudden or Non-sudden Release of Hazardous Waste*)

59. The allegations of paragraphs 1 through 58 of this CA are incorporated herein by reference as though fully set forth at length.

60. WVHWMR § 33-20-7.2, which incorporates by reference 40 C.F.R. § 264.31, provides that: "[f]acilities must be designed, constructed, maintained, and operated to minimize the possibility of a fire, explosion, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water which could threaten human health or the environment."

61. On September 23, 2008, the *hazardous waste* management *facility* previously identified and described in paragraphs 45 through 47, above, was covered in waste paint splatter that was a *discarded material,* a *solid waste* and a *hazardous waste* at the time of discharge.

62. Respondent violated WVHWMR § 33-20-7.2, which incorporates by reference the requirements of 40 C.F.R. § 264.31, by failing to maintain and operate the *hazardous waste* management *facility* previously identified in paragraphs 45 through 47, above, to minimize the possibility of a fire, explosion, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water which could threaten human health or the environment.

COUNT V
(*Failure to Comply with WVHWMR Requirement to Make Hazardous Waste Determination*)

63. The allegations of Paragraphs 1 through 62 of this CA are incorporated herein by reference as though fully set forth at length.

64. WVHWMR § 33-20-5.1, which incorporates the requirements and provisions of 40 C.F.R. § 262.11, requires, in applicable part, that: "[a] person who generates a solid waste, as defined in 40 CFR 261.2, must determine if that waste is a hazardous waste using the following method: (a) He should first determine if the waste is excluded from regulation under 40 CFR 261.4. (b) He must then determine if the waste is listed as a hazardous waste in Subpart D of 40 C.F.R. part 261. . ." using the methodology described in the regulation.

65. On June 3, 2008, Respondent generated and began to store at the West 291 Building Storage Area of the Facility six 55-gallon drum containers of *solid waste,* as that term is defined at WVHWMR § 33-20-3.1, which incorporates by reference 40 C.F.R. § 261.2.

66. During the September 23, 2008 CEI, the foreman of West 291 Building Storage Area of the Facility advised the EPA inspector that no waste determination had been made as to the contents of the drummed materials, though the drums had been labeled as "Hazardous Waste".

67. In an April 3, 2009 response ("Response") to an EPA information request letter ("IRL"), Respondent informed EPA of its subsequent (*i.e*, post-CEI) determination that the contents of five of these six drums, previously identified in paragraph 43, above, "were RCRA hazardous due to the characteristics of ignitability (D001), corrosivity (D002) and methyl methacrylate (U162) present" and that the remaining sixth drum "was found to be

RCRA non-hazardous."

68. As an attachment to its April 3, 2009 IRL Response, Respondent provided documentation, in the form of Waste Characterization Forms, which indicated that the waste determination for the *container* of waste determined to be RCRA non-hazardous was not made by the Respondent until September 25, 2008 and that full and complete waste determinations for the five *containers* of waste determined to be RCRA *hazardous waste* were not made by the Respondent until April 2, 2009.

69. Respondent violated WVHWMR § 33-20-5.1, which incorporates the requirements and provisions of 40 C.F.R. § 262.11, by failing to determine, through the use of any of the methods identified in 40 C.F.R. § 262.11(a) or (b), whether any of the six *containers* of *solid waste* in storage at the West 291 Building Storage Area at the time of the September 28, 2008 CEI was a *hazardous waste*.

COUNT VI
(Noncompliance with Hazardous Waste Management Permit — Failure to Transfer Hazardous Waste From Containers Not in Good Condition)

70. The allegations of paragraphs 1 through 69 of this CA are incorporated herein by reference as though fully set forth at length.

71. As identified in paragraph 4, above, the requirements and conditions of the Respondent's Part B RCRA Permit govern the operation of the CDS Unit at the Facility.

72. Permit Condition IV-C, entitled "Condition of Containers", pertains to container storage at the CDS Unit of the Facility and provides that: "[i]f a container, holding hazardous waste is not in good condition (e.g., severe rusting, apparent structural defects, etc.) or if it begins to leak, the Permittee shall transfer the hazardous waste from such container to a container that is in good condition, or otherwise manage the waste in compliance with the conditions of this Permit (40 CFR §264.171)."

73. Permit Attachment 5.D-1a(2), which provision applies to liquid waste stored in the CDS Unit, alternatively provides, in relevant part, that: ". . . the entire drum may be placed into a compatible over-sized drum."

74. On September 23, 2008, there were present and in storage at the CDS Unit of the Facility four 55-gallon drum containers of hazardous waste that were visibly bulging, potentially damaged and exhibiting apparent structural defects.

75. Respondent violated Part B RCRA Permit Condition IV-C by failing to transfer hazardous waste from the four 55-gallon drum containers at the Facility's CDS Unit that were not in good condition at the time of the September 23, 2008 CEI to containers that were in good condition, or to otherwise manage the waste in compliance with its Part B RCRA Permit by alternatively placing the four 55-gallon drum containers into compatible over-sized drums, pursuant to Permit Attachment 5.D-1a(2).

COUNT VII

(Noncompliance with Hazardous Waste Management Permit — Failure to Comply with Hazardous Waste Container Management Requirements)

76. The allegations of paragraphs 1 through 75 of this CA are incorporated herein by reference as though fully set forth at length.

77. Permit Condition IV-E-3 pertains to container storage at the CDS Unit of the Facility and provides that: "[t]he Permittee shall not place a container of hazardous waste into storage unless the composition is known, container is properly labeled, and the generator is identified."

78. Permit Attachment 5-D-1a(1), entitled "Description of Containers: 264.171, 264.172, 270.14(b)(1)" also pertains to container storage at the CDS Unit of the Facility and further provides that: "[w]astes in the CDS Unit are stored in steel, plastic or fiber drums. . . . Wastes are placed in drums which have a material of construction, which is compatible with the wastes. . . . The drums are clearly labeled indicating contents, date of filling, and initial storage. "

79. On September 23, 2008, Respondent was storing at the CDS Unit of the Facility:

    a. four 85-gallon steel drum *containers* of *hazardous waste* that were labeled as containing toxic and flammable liquid waste phenyl chloroformate, but which were not labeled with the date of initial storage; and

    b. six blue plastic drum *containers* of *hazardous waste* trifluoromethyl phenylacetonitrile that were not labeled as to their contents or with the date of initial storage.

80. Respondent violated Part B RCRA Permit Condition IV-E-3 and Permit Attachment 5-D-1a(1) by storing at the CDS Unit: (a) four *containers* of *hazardous waste* flammable liquid phenyl chloroformate that were not labeled with the date of initial storage; and (b) six blue plastic *containers* of *hazardous waste* trifluoromethyl phenylacetonitrile that were not (i) labeled as to their contents, or (ii) with the date of initial storage.

IV. CIVIL PENALTIES

81. Respondent agrees to pay a civil penalty in the amount of **One Hundred and Eleven Thousand Dollars ($111,000.00)**, in settlement and satisfaction of all civil claims for penalties which Complainant may have concerning the violations alleged and set forth in Section III ("EPA Findings of Fact and Conclusions of Law") of this CA. Such civil penalty shall become due and payable immediately upon Respondent's receipt of a true and correct copy of the CAFO. In order to avoid the assessment of interest, administrative costs and late payment penalties in connection with such civil penalty, Respondent must pay such civil penalty no later than thirty (30) calendar days after the date on which this CAFO is mailed or hand-delivered to Respondent.

82. The civil penalty settlement amount set forth in the paragraph immediately above was determined after consideration of the statutory factors set forth in Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), which include the seriousness of the violation and any good faith efforts to comply with the applicable requirements. These factors were applied to the particular facts and circumstances of this case with specific reference to EPA's October, 1990 RCRA Civil Penalty Policy, as revised in June, 2003 ("RCRA Penalty Policy"), which reflect the statutory penalty criteria and factors set forth at Section 3008(a)(3) and (g) of RCRA, 42 U.S.C. §§ 6928(a)(3) and (g), the appropriate *Adjustment of Civil Monetary Penalties for Inflation,* pursuant to 40 C.F.R. Part 19 and the September 21, 2004 memorandum by Acting EPA Assistant Administrator Thomas V. Skinner, entitled *Modifications to EPA Penalty Policies to Implement the Civil Monetary Penalty Inflation Adjustment Rule* (" Skinner Memorandum"). Pursuant to 40 C.F.R. Part 19, and as provided in the Skinner Memorandum, penalties for RCRA violations occurring after January 30, 1997 were increased by 10% to account for inflation, not to exceed a $27,500.00 per violation statutory maximum penalty. Pursuant to 40 C.F.R. Part 19, and as further provided in the Skinner Memorandum, penalties for RCRA violations occurring after March 15, 2004 and before January 13, 2009 have been increased by an additional 17.23% to account for subsequent inflation, not to exceed a $32,500.00 per violation statutory maximum penalty.

83. Payment of the civil penalty as required by paragraph 81, above, shall be made by either cashier's check, certified check, or electronic wire transfer, in the following manner:

a. All payments by Respondent shall reference Respondent's name and address, and the Docket Number of this action ***(Docket No. RCRA-03-2009-0252)***;

b. All checks shall be made payable to "**United States Treasury**";

c. All payments made by check and sent by regular mail shall be addressed and mailed to:

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

Contact: Eric Volck 513-487-2105

d. All payments made by check and sent by overnight delivery service shall be addressed and mailed to:

U.S. Bank
Government Lockbox 979077
U.S. EPA, Fines & Penalties
1005 Convention Plaza
Mail Station SL-MO-C2-GL
St. Louis, MO 63101

Contact: 314-418-1028

e. All payments made by check in any currency drawn on banks with no USA branches shall be addressed for delivery to:

Cincinnati Finance
U.S. EPA, MS-NWD
26 W. M.L. King Drive
Cincinnati, OH 45268-0001

f. All payments made by electronic wire transfer shall be directed to:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, NY 10045

Field Tag 4200 of the Fedwire message should read "D 68010727 Environmental Protection Agency"

g. All electronic payments made through the automated clearinghouse (ACH), also known as Remittance Express (REX), shall be directed to:

US Treasury REX / Cashlink ACH Receiver
ABA = 051036706
Account No.: 310006, Environmental Protection Agency
CTX Format Transaction Code 22 - Checking

Physical location of U.S. Treasury facility:
5700 Rivertech Court
Riverdale, MD 20737
Contact: Jesse White 301-887-6548 or REX, 1-866-234-5681

h. On-Line Payment Option:

WWW.PAY.GOV/PAYGOV

Enter sfo 1.1 in the search field. Open and complete the form.

i. Additional payment guidance is available at:

http://www.epa.gov/ocfo/finservices/make_a_payment.htm

84. At the time of payment, Respondent simultaneously shall send a notice of such payment, including a copy of the check or electronic fund transfer, as applicable, to:

Ms. Lydia Guy
Regional Hearing Clerk (3RC00)
U.S. EPA, Region III
1650 Arch Street
Philadelphia, PA 19103-2029;

and

A.J. D'Angelo
Sr. Assistant Regional Counsel (3RC30)
U.S. EPA, Region III
1650 Arch Street
Philadelphia, PA 19103-2029.

85. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, EPA is entitled to assess interest, administrative costs and late payment penalties on outstanding debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim, as more fully described below.

86. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11(a), EPA is entitled to assess interest and late payment penalties on outstanding debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim, as more fully described below. Accordingly, Respondent's failure to make timely payment or to comply with the conditions in this CAFO shall result in the assessment of late payment charges including interest, penalties, and/or administrative costs of handling delinquent debts.

87. Interest on the civil penalty assessed in this CAFO will begin to accrue on the date that a true and correct copy of this CAFO is mailed or hand-delivered to Respondent. However, EPA will not seek to recover interest on any amount of the civil penalty that is paid within thirty (30) calendar days after the date on which such interest begins to accrue. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. § 13.11(a).

88. The costs of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period a debt is overdue. 40 C.F.R. § 13.11(b). Pursuant to Appendix 2 of EPA's *Resources Management Directives - Cash Management*, Chapter 9, EPA will assess a $15.00 administrative handling charge for administrative costs on unpaid penalties for the first thirty (30) day period after the

payment is due and an additional $15.00 for each subsequent thirty (30) days the penalty remains unpaid.

89. A late payment penalty of six percent (6%) per year will be assessed monthly on any portion of the civil penalty that remains delinquent more than ninety (90) calendar days. 40 C.F.R. § 13.11(c). The late payment penalty on any portion of the civil penalty that remains delinquent more than ninety days shall accrue from the first day payment is delinquent. 31 C.F.R. § 901.9(d).

90. The Respondent agrees not to deduct for federal tax purposes the civil monetary penalty specified in this CAFO.

V. CERTIFICATIONS

91. Respondent certifies to Complainant by its signature hereto, to the best of Respondent's knowledge and belief, that Respondent and the Facility currently are in compliance with all relevant provisions of the Part B RCRA Permit, the current, authorized revised WVHWMR, and of RCRA Subtitle C, 42 U.S.C. §§ 6921-6939e, for which violations are alleged in this CA.

VI. OTHER APPLICABLE LAWS

92. Nothing in this CAFO shall relieve Respondent of any duties otherwise imposed upon it by applicable federal, state, or local law and/or regulation.

VII. RESERVATION OF RIGHTS

93. This CAFO resolves only EPA's claims for civil penalties for the specific violations which are alleged in this CA. Nothing in this CAFO shall be construed as limiting the authority of EPA to undertake action against any person, including the Respondent, in response to any condition which EPA determines may present an imminent and substantial endangerment to the public health, public welfare or the environment. In addition, this settlement is subject to all limitations on the scope of resolution and to the reservation of rights set forth in Section 22.18(c) of the *Consolidated Rules of Practice.* Further, EPA reserves any rights and remedies available to it under RCRA, the regulations promulgated thereunder, and any other federal laws or regulations for which EPA has jurisdiction, to enforce the provisions of this CAFO following its filing with the Regional Hearing Clerk.

VIII. FULL AND FINAL SATISFACTION

94. This settlement shall constitute full and final satisfaction of all civil claims for penalties which Complainant has under RCRA Section 3008(a) and (g), 42 U.S.C. § 6928(a) and (g), for the violations alleged in this CA.

IX. PARTIES BOUND

95. This CA and the accompanying FO shall apply to and be binding upon the EPA, the Respondent, Respondent's officers and directors (in their official capacity) and Respondent's successors and assigns. By his or her signature below, the person signing this CA on behalf of Respondent acknowledges that he or she is fully authorized to enter into this CA and to bind the Respondent to the terms and conditions of this CA and the accompanying FO.

X. EFFECTIVE DATE

96. The effective date of this CAFO is the date on which the FO is filed with the Regional Hearing Clerk after signature by the Regional Administrator or his designee, the Regional Judicial Officer.

XI. ENTIRE AGREEMENT

97. This CAFO constitutes the entire agreement and understanding of the parties concerning settlement of the above-captioned action and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this CAFO.

For Respondent **E.I. du Pont de Nemours & Co.**:

Date: 9/4/2009 By: William A. Menke

William A. Menke, Plant Manager
Belle Plant

For the Complainant: U.S. Environmental Protection Agency, Region III

Date: 9/10/09 By: _____
A.J. D'Angelo
Sr. Assistant Regional Counsel

After reviewing the EPA Findings of Fact, Conclusions of Law and other pertinent matters, the Land and Chemicals Division of the United States Environmental Protection Agency, Region III, recommends that the Regional Administrator, or his designee, the Regional Judicial Officer, issue the attached FO.

Date: 9/11/09 By: _____
Abraham Ferdas, Director
Land and Chemicals Division

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103

In Re:	)	
	)	
E.I. du Pont de Nemours & Co.	)	**Docket No. RCRA-03-2009-0252**
1007 Market Street	)	
Wilmington, Delaware 19898,	)	
	)	
RESPONDENT.	)	**Proceeding Under Section**
	)	**3008(a) and (g) of the**
901 West DuPont Avenue	)	**Resource Conservation and**
Belle, WV 25015	)	**Recovery Act, as amended,**
EPA Facility I.D. # WVD005012851,	)	**42 U.S.C. § 6928(a) and (g)**
	)	
FACILITY.	)	

FINAL ORDER

Complainant, the Director of the Land and Chemicals Division, U.S. Environmental Protection Agency, Region III, and Respondent, E.I. du Pont de Nemours & Co., have executed a document entitled "Consent Agreement," which I hereby ratify as a Consent Agreement in accordance with the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits ("*Consolidated Rules of Practice*"), 40 C.F.R. Part 22, with specific reference to Sections 22.13(b) and 22.18(b)(2) and (3). The terms of the foregoing Consent Agreement are accepted by the undersigned and incorporated into this Final Order as if fully set forth at length herein.

NOW, THEREFORE, pursuant to Section 3008(a) and (g) of the Solid Waste Disposal Act, commonly known as Resource Conservation and Recovery Act of 1976, as amended by *inter alia*, by the Hazardous and Solid Waste Amendments of 1984 (collectively referred to hereinafter as "RCRA"), 42 U.S.C. § 6928(a) and (g), and the *Consolidated Rules of*

Practice, after having determined, based on the representations of the Parties set forth in the Consent Agreement, that the civil penalty of One Hundred and Eleven Thousand Dollars ($111,000.00) agreed to therein was based upon a consideration of the factors set forth in RCRA Section 3008(a), 42 U.S.C. § 6928(a), **IT IS HEREBY ORDERED** that Respondent pay a civil monetary penalty of One Hundred and Eleven Thousand Dollars ($111,000.00) in accordance with the provisions of the foregoing Consent Agreement and comply timely with each of the additional terms and conditions thereof.

The effective date of the foregoing Consent Agreement and this Final Order is the date on which this Final Order is filed with the Regional Hearing Clerk.

9/16/09
Date

Renée Sarajian
Regional Judicial Officer
U.S. Environmental Protection Agency, Region III

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103

In Re:	)	
	)	
E.I. du Pont de Nemours & Co.	)	**Docket No. RCRA-03-2009-0252**
1007 Market Street	)	
Wilmington, Delaware 19898,	)	
	)	
RESPONDENT.	)	**Proceeding Under Section**
	)	**3008(a) and (g) of the**
901 West DuPont Avenue	)	**Resource Conservation and**
Belle, WV 25015	)	**Recovery Act, as amended,**
EPA Facility I.D. # WVD005012851,	)	**42 U.S.C. § 6928(a) and (g)**
	)	
FACILITY.	)	

CERTIFICATE OF SERVICE

I hereby certify that on the date set forth below, I caused to be hand-delivered to Ms. Lydia Guy, Regional Hearing Clerk (3RC00), U.S. EPA Region III, 1650 Arch Street, 5th Floor, Philadelphia, PA 19103-2029, the original and one copy of the foregoing Consent Agreement and of the accompanying Final Order. I further certify that on the date set forth below, I caused true and correct copies of the same to be mailed via Certified Mail, Return Receipt Requested, Postage Prepaid (*Article No. 7004 2890 0000 5075 5237*), to the following person at the following address:

Maria Angelo, Esquire
DuPont Legal
1007 Market Street
WOB - D-7086
Wilmington, DE 19898

9/17/2009
Date

A.J. D'Angelo (3RC30)
Sr. Assistant Regional Counsel
U.S. EPA, Region III
1650 Arch Street
Philadelphia, PA 19103-2029
Tel. (215) 814-2480