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ENVIRONMENTAL APPEALS BOARD

**BEFORE THE ENVIRONMENTAL APPEALS BOARD  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C.**

IN THE MATTER OF: )

E. I. du Pont de Nemours )  
and Company )

Wilmington, DE )

Respondent )

Washington Works Facility )  
Route 892 South DuPont Road )  
Washington, Wood County, WV )

Docket No. TSCA-HQ-2004-0016  
Docket No. RCRA-HQ-2004-0016  
Docket No. TSCA-HQ-2005-5001

**JOINT MOTION TO AMEND THE SETTLEMENT  
TO ALLOW ADDITIONAL TIME FOR RESPONDENT  
TO COMPLETE SUPPLEMENTAL ENVIRONMENTAL PROJECTS**

The United States Environmental Protection Agency ("EPA" or "Complainant") and E.I du Pont de Nemours and Company ("DuPont" or "Respondent") (referred to jointly as "the parties") file this Motion to Amend the Settlement to Allow Additional Time for Respondent to Complete Supplemental Environmental Projects ("Motion") pursuant to 40 C.F.R. §§ 22.4(a) and 22.16 of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Rules of Practice). In this Motion, the parties respectfully request to modify Appendices A and B of the Consent Agreement and Final Order (CAFO) signed by the Environmental Appeals Board ("EAB") on

December 21, 2005, to extend the completion dates and change the performance schedules. The parties believe there is good cause for the modifications outlined below.

**Appendix A – Supplemental Environmental Project (SEP)**

**FLUOROTELOMER-BASED PRODUCT BIODEGRADATION TESTING**

The parties request to amend Appendix A to extend completion of the SEP to six (6) years after the date DuPont received the signed Final Order. Section II.B. in Appendix A states that the SEP is to be completed no later than three (3) years from the date DuPont received the signed Final Order. DuPont received the Final Order on December 27, 2005. The current Completion Date for the SEP, therefore, is December 27, 2008. This Motion requests extension of the SEP Completion Date to December 27, 2011.

The parties request this modification after three years of working to develop a process for purifying the nine (9) Fluorotelomer Products listed in the CAFO. When the CAFO was initially negotiated, the parties anticipated that purifying the 9 Fluorotelomer Products would take approximately ninety days. However, both parties understood that a valid method to purify the Fluorotelomer Products had not been developed when the SEP began. DuPont has performed exploratory studies and engaged in discussions with EPA on adapting the "Mabury Method" to meet the purifying requirements of the SEP. DuPont recently completed a purification pre-experiment. Based in part on that pre-experiment, the parties have developed a Purification Procedure Agreement (incorporated into the SEP as Attachment H of Appendix A) to assure progress will be made to finalize the purification process in the next few months. The parties also agree that DuPont will purify the commercial Fluorotelomer Products in accordance with the Purification Procedure Agreement and DuPont will ship the resultant product(s) to EPA by

June 1, 2009. The parties also agree that Organization of Economic Cooperation and Development (OECD) 302A Semi-continuous Activated Sludge (SCAS) pilot testing will begin by January 31, 2010.

Appendix A has also been modified to delete reference to the OECD 303A testing. Given the importance of the OECD 302A SCAS testing and the costs associated with performing the OECD 302A SCAS testing for all nine Fluorotelomer Products and the three variants of each Fluorotelomer Product, the parties decided to eliminate the OECD 303A testing to ensure more SCAS testing is completed. Along with the deletion of the OECD 303A testing, the parties agree that SEP Section II.J.2.b. will be modified such that if no laboratory will commit to completing all of the biodegradation studies (including pilots) by September 1, 2011, then the alternative approach provisions in this same section of the SEP apply.

For the EAB's convenience, a revised version of Appendix A (public copy) that incorporates the modifications discussed above, as well as the minor changes agreed to by the parties over the past three years, is attached as Exhibit 1.

#### **Appendix B – Supplemental Environmental Project (SEP)**

#### **MICROSCALE CHEMISTRY & GREEN CHEMISTRY IN WOOD COUNTY, WEST VIRGINIA PUBLIC SCHOOLS**

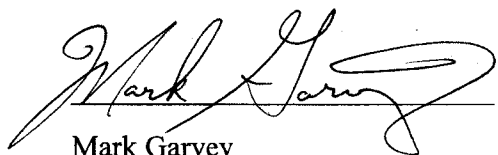
The CAFO provides that all work will be concluded on the SEP found in Appendix B within three (3) years of the effective date of the CAFO. The microscale chemistry and green chemistry programs have been very well received. For this reason, the parties request that the completion date for this SEP be extended to August 31, 2009. This date accommodates the

school calendar and allows the Wood County Public School District additional time to make decisions about how to maintain the program.

The SEP requires DuPont to spend \$1,250,000 within three (3) years on the microscale chemistry and green chemistry program. DuPont has made substantial progress with this program and the parties are requesting the extension to allow for activities that began in the school year 2008-2009 to be completed and allow training to occur through the summer of 2009. DuPont also has the funds to expand this SEP to the sixth grade. DuPont estimates that by expanding the SEP to the sixth grade, all SEP funds will be expended by August 31, 2009. Finally, DuPont is working with the school system to establish a Resource Center. The Wood County School District needs additional time to decide on the location for the Resource Center.

For the foregoing reasons, the parties request this Motion to Amend the Settlement to Allow Additional Time for Respondent to Perform Supplemental Environmental Projects be **GRANTED.**

Respectfully submitted,



Mark Garvey  
Senior Attorney  
Waste and Chemicals Enforcement Division  
Office of Civil Enforcement (2249A)  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, N.W.  
Washington, DC 20460  
202-564-4168  
Fax 564-0035  
Date: 12/18/08



Andrea V. Malinowski  
Corporate Counsel  
DuPont Legal D-7078  
1007 Market Street  
Wilmington, DE 19898  
302-774-6443  
andrea.v.malinowski@usa.dupont.com

Date: 17 December 2008

Attachment: **EXHIBIT 1 – “Appendix A”**  
**Fluorotelomer-Based Product Biodegradation Testing**  
**Supplemental Environmental Project**  
**(revised 12.17.08)**

**PUBLIC COPY**  
**NO CONFIDENTIAL BUSINESS INFORMATION**

## CERTIFICATION OF SERVICE

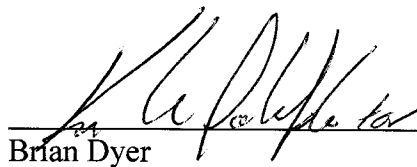
I certify that the original of the above joint Motion to Amend the Settlement to Allow Additional Time for Respondent to Complete Supplemental Environmental Projects, Docket Nos. TSCA-HQ-2004-0016, RCRA-HQ-2004-0016, and TSCA-HQ-2005-5001 were filed with the Environmental Appeals Board Hearing Clerk and that copies were sent:

Hand carried to:

Eurika Durr, Clerk of the Board  
U.S. Environmental Protection Agency  
Environmental Appeals Board  
Colorado Building  
1341 G Street, N.W., Suite 600  
Washington, D.C. 20005

By email and U.S. Mail to:

Andrea V. Malinowski  
Corporate Counsel  
DuPont Legal D-7078  
1007 Market Street  
Wilmington, DE 19898

  
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Brian Dyer

Waste and Chemicals Enforcement Division  
Office of Civil Enforcement  
U.S. Environmental Protection Agency (2245A)  
1200 Pennsylvania Avenue, N.W.  
Washington, DC 20460

Date: 12/24/08