

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

In the Matter of :

E. I. DuPont De Nemours and Company,

Hazardous & Solid Waste Amendments
(HSWA) Permit Modification
DuPont Pompton Lakes Works
EPA I.D. No. NJD002173946

RCRA Appeal Nos. 13-01 & 13-02

STATUS REPORT

Region 2 of the United States Environmental Protection Agency (“EPA”) herewith submits a Status Report on the above-captioned matter, pursuant to the Environmental Appeals Board (“EAB”), August 29, 2013 Order. EPA Region 2 has consulted with counsel for petitioners E.I. DuPont De Nemours and Company (“DuPont”) and the Passaic River Coalition (“Passaic”) in preparing the report.

DuPont and EPA have continued to work jointly through meetings and telephone discussions to address the issues contained in DuPont’s appeal. While significant progress has been made, substantive issues remain outstanding, as further described below.

DuPont has completed a comprehensive sediment sampling program in the Pompton Lake system, and analytic results from the sampling program have been compiled and are being evaluated. Discussions concerning a dredging scenario for the Pompton Lake system, including both its areal extent, and so-called “hot spots” of contamination, are being informed by the sediment sampling program results. In addition, DuPont has a technical study of the Lake System stability underway and is undertaking risk evaluation work.

The DuPont and Passaic petitions involve several major issues. These key issues, as viewed by EPA, are outlined below, together with EPA’s evaluation of the current status of settlement efforts with respect to them.

- **Dredging Area:** The area to be dredged in the Lake Delta. DuPont’s appeal challenges the designation of a 40 acre area to be dredged in the permit; discussions to date have not resolved this issue.
- **Hot Spots:** The Passaic appeal addresses the issue of defining and designating “hot spots” for remedial action; Passaic argues that the requirement to remove hot spots that may be identified through Lake System sampling should be explicitly stated in the permit. Since the recent receipt of the analytic results from the sediment sampling program, DuPont and EPA’s technical discussions will include addressing issues concerning potential hot spots. EPA will soon review the results of its discussions with DuPont with Passaic representatives.
- **Due Process:** DuPont’s appeal raises substantive due process concerns with the permit’s requirement that additional remedial actions can be required by EPA without a new permit modification and public review and comment. EPA and DuPont have discussed this issue, and are in agreement that this particular issue can be resolved in conjunction with other aspects of the permit.
- **Post-Dredging Activity:** DuPont’s appeal also questions the nature and extent of post-dredging sampling, analysis and monitoring that the permit requires both in the dredged area and in the Lake System itself. EPA and Dupont expect that this issue can be resolved in the technical meetings and settlement discussions that are underway.
- **Ecological Risk Assessment:** DuPont’s appeal addresses ecological risk assessment issues. The nature and timing of such future assessments have not yet been resolved in the EPA-DuPont discussions, although technical work and analyses are being carried out.
- **Upland Areas:** The DuPont appeal challenges the permit’s provisions concerning a required Remediation and Restoration Plan for the Upland Soils Areas. EPA and DuPont agree that this issue can be resolved.
- **Public Participation:** Passaic’s appeal includes alleged deficiencies in EPA’s public participation activities concerning the Pompton Lake permit, and calls for reestablishment of a Community Advisory Group (“CAG”) in Pompton Lakes. EPA has continued public outreach activities since the appeals were filed, and has engaged

with Passaic both in telephonic and in-person discussions. These consultations will continue.

CONCLUSION

The parties are fully engaged in good faith efforts to resolve the issues contained in the appeals. In an effort to accelerate the process, DuPont and EPA have scheduled a senior in-person management and technical meeting on December 17, 2013. EPA expects to make a Supplemental filing with the Board after the meeting in order that the Board may have the latest, updated information available for its review.

Respectfully submitted,

s/ Robert G. Hazen

Robert G. Hazen
Assistant Regional Counsel
U.S. Environmental Protection Agency
Region 2
290 Broadway, 16th Floor
New York, New York 10007-1866
Phone: (212) 637-3215
Email: Hazen.robert@epa.gov

December 12, 2013

Certificate of Service

I certify that the foregoing Status Report in the matter of E. I. DuPont de Nemours and Company, RCRA Appeal Nos. RCRA 13-01, and RCRA 13-02, was filed by electronic submission to the Environmental Appeals Board through the EAB eFiling system this twelfth day of December, 2013.

I hereby also certify that identical paper copies of the foregoing Status Report in the matter of E.I. DuPont de Nemours and Company, RCRA Appeal Nos. 13-01, and 13-02, were sent to the following persons in the manner indicated:

Environmental Appeals Board – By Overnight Mail

Clerk of the Board
U. S. Environmental Protection Agency
Environmental Appeals Board
1201 Constitution Avenue, NW
WJC East, Room 3334
Washington, D.C. 20004

Attorney for Petitioner E.I. DuPont de Nemours and Company –By First Class Mail

Stephen Rahaim
E.I. DuPont de Nemours and Company
DuPont Legal – Corporate Counsel
1007 Market Street, D-7099
Wilmington, DE, 19898
Telephone: (302) 774-8720

Attorney for Petitioner Passaic River Coalition – By First Class Mail

Shawn M. LaTourette, Esq.
Lieberman & Blecher
10 Jefferson Plaza, Suite 400
Princeton, New Jersey 08540
Telephone: (732) 355-1311

December 12, 2013

s/ Robert G. Hazen

Robert G. Hazen
Assistant Regional Counsel, Region 2
U.S. Environmental Protection Agency
290 Broadway
New York, New York 10007-1866
Telephone: (212) 637-3215

