

**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** ) )  
 ) )  
**Respondent** ) )  
\_\_\_\_\_)

Docket No. TSCA-HQ-2010-5002

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ENVIR. APPEALS BOARD

**CONSENT AGREEMENT**

Complainant, United States Environmental Protection Agency (EPA or Agency), and Respondent, and E.I. du Pont de Nemours and Company (DuPont) (collectively, the Parties), having consented to the entry of this Consent Agreement and proposed Final Order before the taking of any testimony and without adjudication of any issues of law or fact, consent to the terms of this Consent Agreement and attached Final Order.

**I. PRELIMINARY STATEMENT**

1. This civil administrative proceeding for the assessment of penalties pursuant to § 16(a) of the Toxic Substances Control Act (TSCA), 15 U.S.C. § 2615(a), is being simultaneously commenced and concluded pursuant to 40 C.F.R. §§ 22.13(b) and 22.18(b)(2)-(3).
2. To avoid the disruption of orderly business activities and expense of litigation, Respondent, for purposes of this proceeding: (1) admits that EPA has jurisdiction over the subject matter in this Consent Agreement, and (2) consents to the terms of this Consent Agreement and Final Order.
3. The Respondent waives any defenses it might have as to jurisdiction.

## II. EPA'S FINDINGS OF FACT AND LAW

### COUNT I

4. Respondent is a corporation located at 1007 Market Street, Wilmington, Delaware 19898 and incorporated in Delaware.
5. Respondent is a person subject to the requirements of TSCA § 8(e), 15 U.S.C. § 2607(e).
6. Respondent manufactures, processes, or distributes in commerce the chemical substances or mixtures or in the past has manufactured, processed, or distributed in commerce the chemical substances or mixtures addressed in this Consent Agreement as those terms are defined in TSCA § 3, 15 U.S.C. § 2602 and TSCA § 8(f), 15 U.S.C. § 2607(f). Respondent is subject to TSCA and regulations promulgated thereunder.
7. TSCA § 8(e) provides that "Any person who manufactures, processes, or distributes in commerce a chemical substance or mixture and who obtains information which reasonably supports the conclusion that such substance or mixture presents a substantial risk of injury to health or the environment shall immediately inform the Administrator of such information unless such person has actual knowledge that the Administrator has been adequately informed of such information." 15 U.S.C. § 2607(e).
8. In a letter dated May 5, 2006, Respondent informed EPA that it had performed inhalation toxicity studies that it may not have reported to EPA as required pursuant to TSCA § 8(e).
9. On or about July 12, 2006, Respondent submitted 109 studies to EPA concerning acute inhalation toxicity in rats. Respondent submitted additional studies over the next eleven months. In all, Respondent voluntarily provided 176 submissions to EPA.

10. All studies were acute inhalation toxicity studies performed on rats exposed to the test substances in an aerosol or particulate form.
11. Respondent designated 57 studies as "8E" submissions and 119 studies as "FYI" submissions. EPA has designated 114 of the 119 studies as FYI on its web site. EPA determined that 5 of the 119 studies were duplicates of studies submitted in the 1990's. Attachment 1 lists the studies designated by Respondent as "8E" and Attachment 2 lists the studies designated by Respondent as "FYI." Both attachments are incorporated by reference.
12. EPA has determined that the 57 inhalation studies listed in Attachment 1 meet EPA's criteria for reporting under TSCA § 8(e).
13. Respondent's failure to immediately submit each of the 57 studies to the Administrator as required under TSCA § 8(e) constitutes 57 failures to submit a report, notice, or other information as required by TSCA § 15(3)(B), 15 U.S.C. § 2614(3)(B).
14. Pursuant to section 15(3)(B) of TSCA, 15 U.S.C. § 2614 (3)(B), it is unlawful for any person to fail or refuse to submit reports, notices, or other information as required by TSCA.
15. Violations of section 15(3)(B) of TSCA subjects an entity to civil penalties pursuant to Section 16(a) of TSCA, 15 U.S.C. § 2615(a).
16. Each day such violations continue shall, for purposes of TSCA § 16, 15 U.S.C. § 2615, constitute separate violations of TSCA § 15, 15 U.S.C. § 2614.

### III. CIVIL PENALTY

17. The penalty agreed upon by the Parties for settlement purposes is **\$3,300,000**.
18. The proposed penalty in this matter is consistent with the *Enforcement Response Policy for Reporting and Recordkeeping Rules and Requirements for TSCA Sections 8, 12 and 13* (revised March 31, 1999; effective June 1, 1999) (*TSCA ERP*). The *TSCA ERP* was developed in accordance with the *Guidelines for Assessment of Civil Penalties Under Section 16 of the Toxic Substances Control Act; PCB Penalty Policy*, which sets forth a general penalty assessment policy for TSCA violations. 45 Fed. Reg. 59,770 (Sept. 10, 1980). The *TSCA ERP*, though not a regulation, establishes a framework for applying the statutory factors to be considered in assessing a civil penalty, *i.e.*: "the nature, circumstances, extent and gravity of the violation or violations and, with respect to the violator, ability to pay, effect on ability to continue to do business, any history of prior such violations, the degree of culpability, and such other matters as justice may require." TSCA § 16(a)(2)(B), 15 U.S.C. § 2615(a)(2)(B).
19. The proposed civil penalty in this case reflects: (1) a determination of the Gravity-based Penalty (GBP); and, (2) adjustments to the GBP, taking into account the statutory factors.
20. Not more than thirty (30) calendar days after the effective date of the Final Order, respondent shall *either*:
21. Dispatch a cashier's or certified check in the amount of **\$3,300,000** made payable to the order of the "Treasurer of the United States of America," and bearing the case docket number TSCA HQ-2010-5002, to the following address:

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

OR

22. Effect a wire transfer in the amount of **\$3,300,000** with the notation “DuPont Civil Penalty Docket No. TSCA-2010-5002,” by using the following instructions:

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."]*

23. Respondent shall forward a copy of the check or documentation of a wire transfer to:

Tony R. Ellis, Case Development Officer  
Waste and Chemical Enforcement Division (2249A)  
U.S. Environmental Protection Agency  
1200 Pennsylvania Ave., NW (Room No. 5041-A)  
Washington, DC 20460  
(202) 564-4167  
Ellis.Tony@epa.gov

24. If Respondent fails to pay the civil penalty of **\$3,300,000**, within thirty (30) calendar days of the execution of the Final Order, then Respondent shall pay an additional stipulated penalty of \$1,000 per calendar day, plus interest, as provided for in 31 U.S.C. § 3717, as in effect on the date of execution of the Final Order, unless Complainant in writing excuses or mitigates the stipulated penalty. Complainant may excuse or mitigate the stipulated penalty if Complainant determines in its sole discretion, that failure to comply occurred despite Respondent's exercise of good faith and due diligence. If additional stipulated penalties are due, Complainant will dispatch to Respondent a demand letter specifying the total amount

due and owed by Respondent, including any interest allowed by law. Within fourteen (14) calendar days following Respondent's receipt of such demand letter, Respondent shall pay the stipulated penalty in the manner specified in this section.

#### **IV. Reservation of Rights and Release**

25. This settlement resolves only the civil administrative claims alleged in this Consent Agreement.
26. Pursuant to 40 C.F.R. § 22.18(b)(2), Respondent waives its right to contest the allegations herein, its right to appeal the Final Order and its right to request a judicial or administrative hearing on any issue of law or fact set forth in, and resolved by, this Consent Agreement.
27. For the sole purpose of establishing Respondent's compliance history in any future enforcement proceeding that EPA may bring against Respondent within five (5) years of the date of the execution of the Final Order, Respondent agrees not to challenge the violations alleged in this Consent Agreement. Otherwise, Respondent neither admits nor denies the allegations, but consents to the terms and conditions of this Consent Agreement and Final Order.
28. By executing this Consent Agreement, Respondent certifies that regarding the violations alleged herein, Respondent is in compliance with sections 8(e) and 15(3)(B) of TSCA; 15 U.S.C. §§ 2607(e) and 2614(3)(B).
29. This settlement is conditioned upon the thoroughness and accuracy of Respondent's submissions to EPA in this matter.

30. Compliance with this Consent Agreement and Final Order shall not be a defense to any subsequent action EPA may commence pursuant to federal law or regulation for violations occurring after the date of this Consent Agreement, or any violations of TSCA not alleged in this Consent Agreement that may have occurred prior to the date that this Consent Agreement is fully executed by both Parties.

31. Nothing in this Consent Agreement or the Final Order is intended to, nor shall be construed to, operate in any way to resolve any criminal liability of Respondent.

#### V. OTHER MATTERS

32. This Consent Agreement shall be binding upon the Parties, and its officers, directors, employees, successors and assigns. The undersigned representative of each Party certifies that he or she is duly authorized by his or her respective Party to sign this Consent Agreement.

33. This Consent Agreement shall take full effect upon signing and filing of the Final Order by EPA's Environmental Appeals Board.

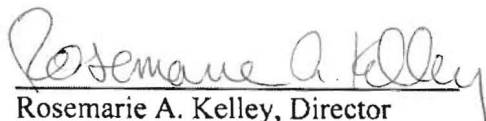
34. Respondent's obligations under this Consent Agreement shall end when it has paid in full the scheduled civil penalty, paid any stipulated penalties, and submitted documentation required by the Consent Agreement and Final Order.

35. All of the terms and conditions of this Consent Agreement together comprise one settlement agreement, and each of the terms and conditions is in consideration for all of the other terms and conditions. This Consent Agreement shall be null and void if any term or condition of this Consent Agreement is held invalid or is not executed by the authorized representative of each

party in identical form, or is not approved in such identical form by EPA's Environmental Appeals Board.

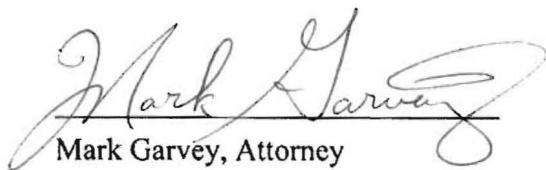
36. The penalty, including any stipulated penalties specified above, represents civil penalties assessed by EPA, and shall not be deductible for purposes of federal taxes.
37. Failure of Respondent to remit the civil penalties provided herein will result in this matter being forwarded to the United States Department of Justice for collection.
38. The Parties agree to bear their own costs and attorneys fees.

**WE AGREE TO THIS:**



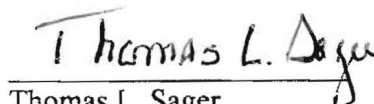
Rosemarie A. Kelley, Director  
Waste and Chemical Enforcement Division  
Office of Civil Enforcement  
Office of Enforcement and Compliance Assurance  
United States Environmental Protection Agency

Date: 12/6/10



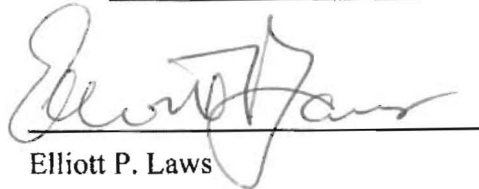
Mark Garvey, Attorney  
Waste and Chemical Enforcement Division  
Office of Civil Enforcement  
Office of Enforcement and Compliance Assurance  
United States Environmental Protection Agency

Date: 9/23/10



Thomas L. Sager  
Senior Vice President  
and General Counsel  
DuPont Legal

Date: 9/14/10



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Date: 9/17/10