

**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 AND AGREED UPON MOTION FOR EXTENSION OF TIME

Pursuant to the Environmental Appeals Board (“EAB”) March 8, 2013 Order Consolidating Petitions for Review and Granting Motion To Stay Proceedings, Region 2 of the United States Environmental Protection Agency (“EPA”) herewith submits a Status Report on the above-captioned matter, including a Motion for Extension of Time that has been agreed to by the two petitioners in this proceeding.

Since March 8, DuPont and EPA working jointly through more than a ten joint technical meetings and numerous telephone discussions have established a major effort to provide a comprehensive, up-to-date characterization of the physical condition of sediment as well as sediment contamination in the Acid Brook Delta area of Pompton Lake, and downstream in the Ramapo River from the lake to the Pompton Lake Dam. In discussions between DuPont and EPA, it was agreed that resolution of issues concerning a dredging scenario for the Pompton Lake system, including both its areal extent, and any potential need to address so-called “hot spots” of contamination, required collection of additional data and their analyses and evaluation. Consultations and discussions also included the U.S. Fish and Wildlife Service and the New Jersey Department of Environmental Protection.

In early June, DuPont submitted a plan for comprehensive sediment sampling, which after EPA review and comment, is now underway. The sediment sampling includes more than 350 sampling locations in the lake and river, which will be subject to mercury analysis or in some cases physical analysis of samples from lake and river bottom to help determine locations

of sediment deposition and/or erosion . Analytical results will be compared to historical data to address any uncertainty that historical data may not reflect current conditions. (Section E. 1. d. of the DuPont Permit Modification contains provision for sediment sampling, and the current effort is consistent with these provisions). Also, the technical work now underway includes a side scan sonar bathymetric survey to provide information on river bed and lake bottom depth and physical characteristics.

The sediment sample collection process should be completed by early September, and laboratory analytic data results are expected to be available within six weeks thereafter. The analytical results will enable the parties to then engage in detailed settlement discussions based on extensive and up-to-date information concerning the Pompton Lake system physical characteristics, and the location and extent of mercury contamination in sediments within the system.

DuPont and EPA have also had discussions concerning other areas of DuPont's appeal petition, namely the scope of work for tasks related to assessing ecological risk and the appropriate approach to uplands soil remediation. These matters require further discussions, which are ongoing between DuPont and EPA representatives.

In the period since March 8, 2013, EPA has continued community outreach to provide information to groups and officials in the Pompton Lakes community concerning the sediment dredging scenario and other issues relating to the permit modification as well as information concerning other corrective action work being carried out by DuPont at its Pompton Lakes facility pursuant to its RCRA permit. The outreach has included issuance of a newsletter, a community information meeting, and smaller group meetings and telephone conferences with local officials and representatives of Community Advisory Groups. Community input has been regularly received by EPA during the outreach process. This outreach has included representatives of the Passaic River Coalition, which EPA will continue to keep informed as the technical work and settlement process moves forward.

Based on the detailed sampling and other technical work now underway, DuPont and EPA believe that additional time is necessarily required to enable evaluation and discussion of potential resolution of issues concerning the permit modification and development of a settlement agreement that will address technical and other issues in both appeals.

Accordingly, EPA hereby requests that the EAB approve a Motion for Extension of Time to stay the proceedings before the EAB until February 26, 2014. Region 2 would file a response to the petitions by February 25, 2014, and EPA will file a certified copy of the administrative record for the permit Modification no later than February 11, 2014, unless the matters are resolved or the Board otherwise directs. In addition, EPA will supply a Status Report by no later than January 29, 2014 on the discussions to resolve the appeals.

EPA Region 2 has consulted with counsel for Petitioners DuPont and the Passaic River Coalition in preparing this Status Report. The petitioners support the Motion for Time Extension contained herein.

Conclusion

For good cause, EPA Region 2 respectfully requests that the Board grant the Motion for Extension, and enter a stay of the proceedings in accordance with the conditions set forth above. A proposed form of Order is submitted herewith.

Respectfully submitted,

s/ Robert G. Hazen

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August 22, 2013

**BEFORE THE ENVIRONMENTAL APPEALS BOARD
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
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ORDER

And now, this _____ day of _____, upon consideration of the Status Report and Agreed Upon Motion for Extension of Time submitted by the U.S. Environmental Protection Agency, Region 2, it is hereby ORDERED that the Motion is GRANTED. IT IS FURTHER ORDERED that all proceedings in the appeals are stayed in accordance with the terms set forth in the Status Report and Agreed Upon Motion for Extension of Time.

BY THE BOARD:

Certificate of Service

I certify that the foregoing Status Report and Agreed Upon Motion for Extension of Time 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 22nd day of August, 2013.

I hereby also certify that identical paper copies of the foregoing Status Report and Agreed Upon Motion for Extension of Time 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
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WJC East, Room 3334
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August 22, 2013

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