



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

NOV 16 2018

REPLY TO THE ATTENTION OF

LU-16J

VIA CERTIFIED MAIL: RETURN RECEIPTS REQUESTED

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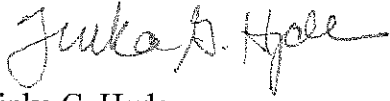
RE: RCRA § 3008(h) Administrative Order on Consent for Corrective Measures
Implementation Order (Docket No. RCRA-05-2019-003)
Former DuPont East Chicago Facility, East Chicago, Indiana
EPA ID: IND 005 174 354

Dear Ms. Telford, Mr. Ei, and Mr. Parrish:

Please find enclosed for your records a fully executed copy of the U.S. Environmental Protection Agency's RCRA § 3008(h) Administrative Order on Consent for Corrective Measures Implementation (Docket No. RCRA-05-2019-003) for the Former DuPont East Chicago Facility.

If you have any questions regarding this letter, please do not hesitate to contact Jennifer Dodds of my staff, at 312-886-1484 or dodds.jennifer@epa.gov.

Sincerely,



Tinka G. Hyde
Division Director
Land and Chemicals Division

Enclosure

cc: Naeha Dixit, EPA
Mary Fulghum, EPA
Julie LaVan, LaVan Law
Patricia McGee, E.I. du Pont de Nemours and Company
Bernie Reilly, The Chemours Company, FC LLC
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UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 5

IN THE MATTER OF:)

DuPont East Chicago Facility)
5215 Kennedy Avenue)
East Chicago, Indiana)

EPA ID: IND 005 174 354)

RESPONDENTS:)

E.I. du Pont Nemours and Company)
Chemours Company FC, LLC)
East Chicago Gateway Partners, LLC)

Proceeding under Section 3008(h))
of the Resource Conservation and Recovery)
Act, 42 U.S.C. § 6928(h))

RCRA Docket No **RCRA-05-2019-0003**



ADMINISTRATIVE ORDER ON CONSENT

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I. JURISDICTION

1. The United States Environmental Protection Agency (“EPA”) and E.I. du Pont Nemours and Company (“DuPont”), Chemours Company FC, LLC (“Chemours”), and East Chicago Gateway Partners, LLC (“ECGP”) (collectively, “Respondents”) voluntarily enter this Administrative Order on Consent (“Order”) regarding the former chemical manufacturing facility located at 5215 Kennedy Avenue, East Chicago, Indiana (“the Facility”). This Order provides for the performance of corrective action activities at or in connection with the Facility. A map that generally depicts the Facility is attached hereto as Appendix A.
2. This Order is issued under Section 3008(h) of the Solid Waste Disposal Act, commonly referred to as the Resource Conservation and Recovery Act of 1976 (RCRA), as amended by the Hazardous and Solid Waste Amendments of 1984, 42 United States Code (U.S.C.) § 6928(h). The Administrator of EPA has delegated the authority to issue orders under Section 3008(h) to the Regional Administrator of Region 5 by EPA Delegation Nos. 8-31, dated Jan. 17, 2017, and 8-32, dated May 11, 1994, and this authority has been further delegated by the Regional Administrator for Region 5 to the Director of the Land and Chemicals Division (“Division Director”).
3. On January 31, 1986, EPA granted the State of Indiana (the State) authorization to operate a hazardous waste program in lieu of the federal program, pursuant to Section 3006(b) of RCRA, 42 U.S.C. § 6928(b). 51 Fed. Reg. 3,955 (Jan. 31, 1986). EPA has also subsequently authorized additional revisions to the State’s authorized program. The State, however, does not have authority to enforce Section 3008(h) of RCRA. The State has been given notice of this Order.
4. EPA and Respondents recognize that this Order has been negotiated in good faith. Respondents consent to, and agree not to contest, EPA’s jurisdiction to issue and enforce this Order. Further, Respondents will not contest EPA’s jurisdiction to: compel compliance with this Order in any subsequent enforcement proceedings, either administrative or judicial; require Respondents’ full or interim compliance with this Order; or impose sanctions for violations of this Order. Respondents waive any right to request a hearing on this matter pursuant to Section 3008(b) of RCRA, 42 U.S.C. § 6928(b), and 40 Code of Federal Regulations (C.F.R.) Part 24, and consent to the issuance of this Order without a hearing under Section 3008(b) of RCRA, 42 U.S.C. § 6928(b), as an Administrative Order on Consent issued pursuant to Section 3008(h) of RCRA, 42 U.S.C. § 6928(h).
5. Respondents waive any and all remedies, claims for relief, and otherwise available rights to judicial or administrative review that Respondents may have with respect to any issue of fact or law set forth in this Order, including any right of judicial review under Chapter 7 of the Administrative Procedures Act, 5 U.S.C. §§ 701-706, and 40 C.F.R. Part 24 providing for review of final agency action.

II. PARTIES BOUND

6. This Order is binding upon EPA and upon Respondents and their heirs, agents, successors, and assigns. Any change in Respondents’ ownership or corporate or partnership status

including, but not limited to, any transfer of assets or real or personal property, shall not alter Respondents' responsibilities under this Order. Any conveyance of title, easement, or other interest in the Facility shall not affect Respondents' obligations under this Order.

7. The undersigned representative of each Respondent certifies that he or she is fully authorized to enter into the settlement embodied in this Order and to execute and legally bind each Respondent to it.
8. Respondents shall provide a copy of this Order to each contractor hired to perform the Work and to each person representing Respondents with respect to the Facility or the Work, and shall condition all contracts entered into hereunder upon performance of the Work in conformity with this Order. Respondents or their contractors shall provide written notice of this Order to all subcontractors hired to perform any portion of the Work this Order requires. Respondents shall nonetheless be responsible for ensuring that their contractors and subcontractors perform the Work in accordance with this Order.

III. DEFINITIONS

9. Unless otherwise expressly provided in this Order, terms used in this Order that are defined in RCRA, 42 U.S.C. §§ 6901-6992k, and the regulations promulgated under RCRA, shall have the meaning assigned to them in RCRA. Whenever terms listed below are used in this Order or its Appendices, the following definitions shall apply solely for purposes of this Order:
 - a. "Administrative Record" shall mean all documents considered or relied upon by EPA for the issuance of this Order, including, but not limited to, the following documents: (a) the 1997 RCRA § 3008(h) Administrative Order on Consent (Docket No. 5-RCRA-'97-007) between EPA Region 5 and Respondent DuPont concerning the Facility and the documents contained within its associated administrative record, (b) EPA's October 6, 2014 Final Decision Soil, Surface Water, Sediment and Groundwater Cleanup for DuPont Facility Natural Area and Buffer Zone Area (Appendix B) and the documents contained with its associated administrative record, and (c) EPA's July 18, 2018 Final Decision and Response to Comments for the Western Portion/Industrial Area of the Former DuPont East Chicago Facility (Appendix C) and the documents contained with its associated administrative record.
 - b. "Annex Area" shall mean the approximately 9-acre parcel located east of the Natural Area, directly west of the Northern Indiana Public Service Company (NIPSCO) and EJ&E Railroad (a/k/a Canadian National Railroad) rights-of-way and immediately east of the Indiana Harbor Belt right-of-way, within the Lake County Assessor parcel identification number 45-03-34-300-001.000-02, as depicted on the Facility Map attached as Appendix A. The Annex Area was not included in the investigatory work conducted to determine the nature and extent of any releases of hazardous wastes and hazardous constituents pursuant to the 1997 RCRA § 3008(h) Administrative Order on Consent.
 - c. "Buffer Zone Area" shall mean the 200-foot-wide strip of land west of and adjacent to the Natural Area that extends from the northern boundary to the southern boundary of the

Facility and occupies approximately 20 acres as depicted on the Facility Map attached as Appendix A.

- d. “Effective Date” as stated in Paragraph 85 shall mean the date EPA signs this Order.
- e. “Facility” shall mean all the land formerly owned by Respondent DuPont and Respondent Chemours that was conveyed to Respondent ECGP on or about June 29, 2018 and depicted on the Facility Map attached as Appendix A.
- f. “Institutional Controls” or “ICs” shall mean Proprietary Controls and state or local laws, regulations, ordinances, zoning restrictions, or other governmental controls or notices of contamination, notices of administrative action, or other notices that: limit land, water, or other resource use to minimize the potential for human exposure to contaminants at or in connection with the Facility; limit land, water, or other resource use to implement, ensure non-interference with, or ensure the protectiveness of the Work; or provide information intended to modify or guide human behavior at or in connection with the Facility.
- g. “Leased Area” shall mean the 30-acre active manufacturing area in the southwestern corner of the Facility as depicted on the Facility Map attached as Appendix A.
- h. “Natural Area” shall mean the 172-acre undeveloped area containing globally rare dune and swale geomorphology and associated plant communities in the eastern portion of the Facility as depicted on the Facility Map attached as Appendix A.
- i. “Off-site Property” shall mean all real property beyond the Facility boundary.
- j. “Off-site Property Owner” shall mean any person, other than Respondents, who owns or controls any Off-site Property.
- k. “Open Area” shall mean the former manufacturing and waste management area that occupies approximately 50 acres including an approximately 30-acre solid waste landfill in the northeastern portion of the Facility as depicted on the Facility Map attached as Appendix A.
- l. “Proprietary Controls” or “PCs” shall mean easements or covenants running with the land that: (i) limit land, water or other resource use and/or provide access rights; and (ii) are created pursuant to common law or statutory law by an instrument that the owner records in the appropriate land records office.
- m. “Redevelopment Area” shall mean the approximately 155-acre area that encompasses the former manufacturing areas located in the central and western portions of the Facility as depicted on the Facility Map attached as Appendix A.
- n. “Transfer” shall mean to sell, assign, convey, or lease, or where used as a noun, a sale, assignment, conveyance, or other disposition of any interest by operation of law or otherwise.

- o. "Western Portion/Industrial Area" shall mean the Redevelopment Area, the Open Area, and the Leased Area, collectively, as depicted on the Facility Map attached as Appendix A. For avoidance of doubt, the Western Portion/Industrial Area and any area included within its description is not precluded from redevelopment.
- p. "Work" shall mean any activity Respondents must perform to comply with the requirements of this Order, including, but not limited to, the work listed in Section VI, and any EPA approved modifications pursuant to Paragraph 42.

IV. CONCLUSIONS OF LAW AND DETERMINATIONS

10. After consideration of the Administrative Record, EPA has determined that:
- a. Respondents are each a "person" within the meaning of Section 1004(15) of RCRA, 42 U.S.C. § 6903(15).
 - b. Respondent DuPont and Respondent Chemours were each the owner and/or operator of a facility that has operated under interim status under Section 3005(e) of RCRA, 42 U.S.C. § 6925(e).
 - c. Respondent ECGP is the current owner and/operator of a facility that has operated under interim status under Section 3005(e) of RCRA, 42 U.S.C. § 6925(e).
 - d. Certain wastes and constituents found at the Facility are hazardous wastes pursuant to Sections 1004(5) and 3001 of RCRA, 42 U.S.C. §§ 6903(5) and 6921.
 - e. There is or has been a release of hazardous waste(s) into the environment from the Facility.
 - f. The actions required by this Order are necessary to protect human health or the environment.

V. PROJECT MANAGER

11. EPA has designated Jennifer Dodds of the RCRA Remediation and Reuse Branch as its Project Manager. Respondents have designated Richard Parrish of ECGP as their Project Manager. Each Project Manager will be responsible for overseeing the implementation of the Work. The Parties must provide prompt written notice whenever they change Project Managers.

VI. WORK TO BE PERFORMED

12. Pursuant to Section 3008(h) of RCRA, 42 U.S.C. § 6928(h), Respondents agree to and are hereby ordered to perform the actions specified in this Section, in the manner and by the dates specified here. Respondents represent that they have the technical and financial ability to carry out the Work to be Performed at the Facility. The Work described in Section VI. is tailored to the Facility based on the work already performed at the Facility and represents the activities determined to be necessary to complete the corrective action process. Respondents

must perform the Work undertaken pursuant to this Order in compliance with RCRA and other applicable federal and state laws and their implementing regulations, and consistent with all relevant EPA guidance documents as appropriate to the Facility. This guidance includes, but is not limited to, the Documentation of Environmental Indicator Determination Guidance, relevant portions of the Model Scopes of Work for RCRA Corrective Action, and EPA's risk assessment guidance.

13. Nothing herein shall be construed as restricting Respondents from performing an immediate or emergency response to a newly discovered release or threat of a release of a hazardous waste or hazardous constituent to the environment at or from the Facility. Upon the discovery of such a release or threat of release which requires an immediate or emergency response, Respondents must provide EPA with prompt oral notification within 24 hours and written notification within 3 days of discovery, summarizing the immediacy and magnitude of the potential threats to human health and the environment and the immediate and emergency response performed. The EPA Project Manager may orally authorize Respondents to act immediately prior to EPA's receipt of written notice, proposed interim remedial measures, or EPA's written approval of proposed interim measures.
14. Respondents must timely submit for EPA review and approval any proposed interim remedial measures necessary for releases discovered under Paragraph 13, to control current human exposures to contamination or to stabilize the migration of contaminated groundwater, within 30 days of Respondents' written notice under Paragraph 13 and at least 90 days prior to the proposed commencement of any construction work. The proposed interim remedial measures must contain a work plan and a project schedule. The EPA Project Manager will determine whether any public participation activities are appropriate prior to acting on the request for approval.
15. In October 1997, Respondent DuPont provided to EPA a Current Conditions Report that described the locations and investigations of all releases of wastes and contaminated media at or above reportable quantities which have occurred at the Facility since Respondent DuPont became the owner/operator of the Facility except that the Current Conditions Report did not include any information regarding the Annex Area.
16. Respondent DuPont provided a Conceptual Site Model ("CSM") for the Facility to EPA in 1997. Within 60 days of the Effective Date of this Order, the Respondents shall submit an updated CSM to EPA for review and approval. The updated CSM shall include the Annex Area. Thereafter, every five years from the Effective Date of this Order, Respondents shall submit an updated CSM to EPA for review and approval. In addition, within 60 days of the discovery of a release under Paragraph 13, Respondents shall submit an updated CSM to EPA for review and approval.
17. Respondent DuPont provided documentation, using an Environmental Indicators Report as a guide, to demonstrate that:
 - a. All current human exposures to contamination at or from the Facility are under control. That is, there are no significant or unacceptable exposures for any media known or reasonably suspected to be contaminated with hazardous wastes or hazardous constituents

above risk-based levels and for which there are complete pathways between contamination and human receptors. EPA approved this demonstration on December 21, 2004.

- b. Migration of contaminated groundwater at or from the Facility is stabilized, that is, the migration of all groundwater known or reasonably suspected to be contaminated with hazardous wastes or hazardous constituents above acceptable levels is stabilized to remain within any existing areas of contamination as defined by monitoring locations designated at the time of the demonstration. In addition, any discharge of groundwater to surface water is either insignificant or currently acceptable according to an appropriate interim assessment. EPA approved this demonstration on June 29, 2005.
18. Within 90 days after the Effective Date of this Order, in accordance with Paragraph 41 (EPA Approvals), Respondents shall submit to EPA for approval a draft Annex Area Soil and Groundwater Investigation Work Plan, a wetlands delineation survey, and a schedule for conducting and completing work required by this Paragraph. Respondents may choose to either incorporate the Annex Area into the DuPont July 2013 Natural Area Evaluation, Risk Assessment, and Monitoring Plan, as modified by EPA; or, conduct an ecological inventory of plants, insects, and animals that may be present to support a separate Annex Area Evaluation, Risk Assessment, and Monitoring Plan.
- a. If EPA determines that the Annex Area sampling demonstrates that hazardous waste or hazardous constituents and concentrations present in the Annex Area are consistent with the findings regarding the adjacent Natural Area as reported in the March 2013 Interim Remedial Measures – Buffer Zone Area Completion Report; the July 2013 Natural Area Evaluation, Risk Assessment, and Monitoring Plan; and the October 6, 2014 Natural Area and Buffer Zone Area Final Decision, then EPA may issue an Explanation of Significant Differences to incorporate the Annex Area into the Natural Area and Buffer Zone Area Final Decision.
 - b. If EPA determines that the Annex Area sampling indicates that the presence or concentrations of hazardous waste or hazardous constituents in the Annex Area are inconsistent with the findings regarding the adjacent Natural Area as reported in the March 2013 Interim Remedial Measures – Buffer Zone Area Completion Report; the July 2013 Natural Area Evaluation, Risk Assessment, and Monitoring Plan; and the October 6, 2014 Natural Area and Buffer Zone Area Final Decision, then EPA may require Respondents to conduct Additional Work, including but not limited to implementation of interim remedial measures, as described in Paragraph 42 below.
 - c. The EPA Project Manager will determine whether any public participation activities are appropriate prior to approving any interim or final remedial measures for the Annex Area or issuing an Explanation of Significant Differences to the October 6, 2014 Natural Area and Buffer Zone Area Final Decision.
19. If the demonstrations in Paragraph 17 must be updated due to (1) releases discovered under Paragraph 13 or (2) information related to the Annex Area discovered under Paragraph 18, then Respondents must:

- a. Determine appropriate risk screening criteria under current use scenarios and provide the basis and justification for the use of these criteria.
 - b. Determine any current unacceptable risks to human health and the environment and describe why other identified risks are acceptable.
 - c. Control any unacceptable current human exposures that Respondent identifies. This includes performing any interim remedial measures EPA approves as necessary to control current human exposures to contamination to within acceptable risk levels.
 - d. Stabilize the migration of contaminated groundwater. This includes implementing any interim remedial measures EPA approves as necessary to stabilize the migration of contaminated groundwater.
 - e. Conduct groundwater monitoring to confirm that any contaminated groundwater remains within the original area of contamination.
 - f. Prepare and submit to EPA an interim remedial measures report pursuant to EPA's approved project schedule that describes and justifies any interim actions performed to meet the requirements of this Section, including sampling documentation, construction completion documentation, and/or confirmatory sampling results.
20. Final corrective measures necessary to protect human health and the environment from all current and future unacceptable risks due to releases of hazardous waste or hazardous constituents at or from the Facility (the "Final Corrective Measures Proposals") were proposed to EPA by Respondents DuPont and Chemours in two phases. First, in July 2013, Respondent DuPont proposed final corrective measures for the Natural Area and Buffer Zone Area in the eastern portion of the Facility. Second, in October 2016, Respondent Chemours proposed final corrective measures for the Western Portion/Industrial Area of the Facility, which includes the Redevelopment Area, the Open Area, and the Leased Area.
21. EPA provided the public with an opportunity to review and comment on the proposed final corrective measures, including a detailed description and justification for the proposals (the "Statement of Basis") in 2014 for the Natural Area and Buffer Zone Area and in 2017 and in 2018 for the Western Portion/Industrial Area of the Facility, which includes the Redevelopment Area, the Open Area, and the Leased Area. Following the public comment periods, EPA selected the final corrective measures and notified the public of the decision and rationale in a "Final Decision and Response to Comments" for the Natural Area and Buffer Zone Area on October 6, 2014 and for the Western Portion/Industrial Area of the Facility on July 18, 2018 (collectively, the "Final Decisions").
22. Starting upon the Effective Date of this Order, Respondents shall perform all actions necessary to implement the final corrective measures selected in EPA's Final Decisions. Within 90 days after the Effective Date of this Order, in accordance with Paragraph 41 (EPA Approvals), Respondents shall submit to EPA for approval a draft work plan ("Corrective Measures Implementation Work Plan") for performing the corrective measures selected in EPA's Final Decisions, including future actions integral to remedy implementation. The draft work plan shall provide a description of, and a schedule for, the implementation of the final

corrective measures, including future actions integral to remedy implementation. Upon EPA's approval of the Corrective Measures Implementation Work Plan, Respondents shall perform of the Work in accordance with the schedule included therein.

23. Reporting and Other Requirements:

- a. Respondents must consider green remediation best management practices when developing remediation plans and activities. Respondents must show proof of such consideration in reports, documentation, and plans Respondents submit to EPA as this Order requires. This includes, but is not limited to, consideration of green remediation best management practices for excavation and surface restoration, integrating renewable energy into site cleanup (e.g., utilizing lower emitting truck exhausts, diesel propane-power trucks), soil vapor extraction and air sparging, pump and treat technologies, landfill cover, and energy production activities (e.g., solar energy or green roofs), as applicable.
- b. Respondents must establish a publicly-accessible repository and/or website for information regarding site activities and conduct public outreach and involvement activities.
- c. Respondents must provide quarterly progress reports to EPA by the fifteenth day of the month after the end of each quarter. The report must list work performed to date, data collected, problems encountered, project schedule, and percent of the project completed.
- d. The Parties will communicate frequently and in good faith to assure successful completion of the requirements of this Order.
- e. Respondents must provide a Final Remedy Construction Completion Report for EPA's review and approval documenting all work that it has performed pursuant to the schedule in EPA's Final Decisions and any work that was performed pursuant to Paragraph 14 or Paragraph 18. The Final Remedy Construction Completion Report must provide a description of the environmental results of the final remedy and any interim remedial measures including, but not limited to, (1) the volume, in cubic yards, for each of the following: soil, sediment, vapor, aquifer formation, surface water, and materials in containers that the response actions addressed; and (2) an estimate of the mass of contaminants mitigated as part of those materials addressed. The Final Remedy Construction Completion Report must also report on the number and types of jobs created as a part of the remedy construction.
- f. Respondents must include a Long-Term Monitoring and Maintenance Plan in the Final Remedy Construction Completion Report. Respondents must revise and resubmit the report in response to EPA's written comments, if any, by the dates EPA specifies. Upon EPA's written approval, Respondents must implement the approved Long-Term Monitoring and Maintenance Plan according to the plan's schedule and terms.
- g. Any risk assessments Respondents conduct must estimate human health and ecological risk under reasonable maximum exposure for both current and reasonably expected future land use scenarios. In conducting the risk assessments, Respondents will follow the Risk

Assessment Guidance for Superfund (RAGS) or other appropriate EPA guidance. Respondents will use appropriate conservative screening values when screening to determine whether further investigation is required. Appropriate screening values include those derived from Federal Maximum Contaminant Levels, EPA Regional Screening Levels for Chemical Contaminants, EPA Region 4 Ecological Screening Levels, RAGS, OSWER Technical Guide for Assessing and Mitigating the Vapor Intrusion Pathway from Subsurface Vapor Sources to Indoor Air Publication 9200.2-154, and EPA technical documents and tools.

VII. QUALITY ASSURANCE

24. Respondents shall provide a Quality Assurance Project Plan (QAPP) for EPA review and approval at least 60 days prior to any investigation. The QAPP shall address sample analysis and data handling regarding the Work. The QAPP must include a detailed explanation of Respondents' quality assurance, quality control, and chain of custody procedures for all sampling, monitoring, and analytical activities.
25. Respondents shall develop the QAPP in accordance with "EPA Requirements for Quality Assurance Project Plans," QA/R-5, EPA/240/B-01/003 (Mar. 2001, reissued May 2006), "Guidance for Quality Assurance Project Plans," QA/G-5, EPA/240/R 02/009, (Dec. 2002), and "Uniform Federal Policy for Quality Assurance Project Plans," Parts 1-3, EPA/505/B-04/900A through 900C (Mar. 2005), or other applicable guidance as EPA identifies. The QAPP also must include procedures:
 - a. To ensure that all analytical data used in decision making relevant to this Order are of known and documented quality;
 - b. To ensure that EPA and its authorized representatives have reasonable access to laboratories Respondents use ("Respondents' Labs") in implementing the Order;
 - c. To ensure that Respondents' Labs analyze all samples EPA submits pursuant to the QAPP for quality assurance monitoring;
 - d. To ensure that Respondents' Labs perform all analyses using EPA-accepted methods according to the latest approved edition of "Test Methods for Evaluating Solid Waste (SW-846)" or other methods EPA approves.
 - e. To ensure that Respondents' Labs participate in an EPA-accepted quality assurance/quality control (QA/QC) program or other QA/QC program acceptable to EPA.
 - f. For Respondents to provide EPA with notice at least 28 days prior to any sample collection activity.
 - g. For Respondents to provide split samples or duplicate samples to EPA upon request; any analysis of such samples shall be in accordance with the approved QAPP.
 - h. For EPA to take any additional samples that it deems necessary.

- i. For Respondents to split samples or duplicate samples in connection with EPA's oversight sampling.
- j. For Respondents to submit to EPA all sampling and test results and other data in connection with the implementation of this Order.

VIII. PROPERTY REQUIREMENTS

26. Agreements Regarding Access and Non-Interference. Respondents shall provide EPA and its representatives, contractors, and subcontractors with access at all reasonable times to the Facility to conduct any activity regarding the Order, including those activities listed in Paragraph 26.a. (Access Requirements). Respondents shall also refrain from using the Facility in any manner that EPA determines will pose an unacceptable risk to human health or to the environment due to exposure to hazardous waste, or interfere with or adversely affect the implementation, integrity, or protectiveness of the corrective action, including the restrictions listed in Paragraph 26.b. (Land, Water, or Other Resource Use Restrictions).

a. **Access Requirements.** Activities which require access include, but are not limited to:

- (1) Monitoring the Work;
- (2) Verifying any data or information submitted to EPA, the State, or other local authority;
- (3) Conducting investigations regarding contamination at or near the Facility;
- (4) Obtaining samples;
- (5) Assessing the need for, planning, or implementing additional corrective action activities at or near the Facility;
- (6) Assessing implementation of quality assurance and quality control practices;
- (7) Inspecting and copying records, operating logs, contracts, or other documents Respondents or their agents maintain or generate, consistent with Section IX (Access to Information);
- (8) Assessing Respondents' compliance with the Order;
- (9) Determining whether the Facility is being used in a manner that is prohibited or restricted, or that may need to be prohibited or restricted under the Order; and
- (10) Implementing, monitoring, maintaining, reporting on, and enforcing any land, water, or other resource use restrictions and Institutional Controls.

b. **Land, Water, or Other Resource Use Restrictions.** The following is a list of land, water, or other resource use restrictions applicable to the Facility:

(1) Prohibiting changes in land use from the current industrial use, except that Respondents may seek changes in the current zoning designations to support redevelopment, provided those changes are consistent with the existing industrial use designation;

(2) Prohibiting installation of on-site drinking water supply wells;

(3) Ensuring that any nonpotable groundwater production wells shall not be installed without notice to EPA and IDEM and Respondents' receipt of any necessary appropriate federal, state, and local permits;

(4) Prohibiting activities which could result in exposure to contaminants in subsurface soils and groundwater, including, but not limited to: exposure of contaminated subsurface soil by removing parking or road asphalt, cement, or other hardscape or removing or intruding into contaminated surface soil except for (1) activities performed to implement the Work required by and in compliance with this Order or the Corrective Measures Implementation Work Plan including all health and safety plan provisions and/or (2) redevelopment work performed by Respondent ECGP or its contractors in compliance with EPA-approved soil management plan(s) and all health and safety plan provisions;

(5) Ensuring that any new structures, including nonpotable groundwater production wells, on the Facility will not be constructed in a manner, which could interfere with the Work including, but not limited to, the following: interference with implementation and maintenance of the remedy and the Long-Term Monitoring and Maintenance Plan; interference with access to groundwater sampling ports or injection areas; or disturbance of solid waste landfill; and

(6) Ensuring that any new structures on the Facility will be constructed in a manner, which will minimize potential risk of inhalation of contaminants due to vapor intrusion.

27. **Proprietary Controls.** Respondents shall, with respect to the Facility, execute and record, in accordance with the procedures of this Paragraph Proprietary Controls that grant a right of access to conduct any activity regarding this Order, including those activities listed in Paragraph 26.a. and grant the right to enforce any land, water, or other resource use restrictions set forth in Paragraph 26.b. In addition, to the extent it may be required, Respondents shall, with respect to any Off-site Property, use best efforts to secure the Off-site Property Owner's cooperation in executing and recording Proprietary Controls that (i) grant a right of access to conduct any activity regarding this Order, including those activities listed in Paragraph 26.a.; and (ii) grant the right to enforce any land, water, or other resource use restrictions set forth in Paragraph 26.b.

a. **Grantees.** The Proprietary Controls must be granted to one or more of the following persons and their representatives, as EPA determines: the State, Respondents, and other appropriate grantees. Proprietary Controls consistent with Indiana Code 13-11-2-193.5 and 13-25-4-24 (or later adopted provisions in the nature of a Uniform Environmental Covenants Act (UECA) document). The recorded Proprietary Control must also include a designation that EPA (and/or the State as appropriate) is a “third-party beneficiary” expressly granted the rights of access and the right to enforce the covenants allowing EPA and/or the State to maintain the right to enforce the Proprietary Controls without acquiring an interest in real property.

b. **Initial Title Evidence.** Respondents shall, within 90 days after the Effective Date:

(1) **Submit Recorded Title Evidence.** Submit to EPA a title insurance commitment or other title evidence acceptable to EPA that: (i) names the proposed insured or the party in whose favor the title evidence runs, or the party who will hold the real estate interest, or if that party is uncertain, names the United States, the State, the Respondents, or “To Be Determined;” (ii) covers the Facility or Off-site Property that is to be encumbered; (iii) demonstrates that the person or entity that will execute and record the Proprietary Controls is the owner of Facility or Off-site Property; (iv) identifies all record matters that affect title to the Facility or Off-site Property including all prior liens, claims, rights (such as easements) and encumbrances (collectively, “Prior Encumbrances”); and (v) includes complete, legible copies of such Prior Encumbrances; and

(2) **Submit Non-Recorded Title Evidence.** Submit to EPA a report of the results of an investigation, including a physical inspection of the Facility or Off-site Property, which identifies non-record matters that could affect the title, such as unrecorded leases or encroachments.

c. **Release or Subordination of Prior Liens, Claims and Encumbrances**

(1) Respondents shall secure the release, subordination, modification, or relocation of all Prior Encumbrances on the title to the Facility or Off-site Property that the title evidence reveals or are otherwise known to the Respondents, unless EPA waives this requirement as provided under Paragraphs 27.c.(2) through 27.c.(4).

(2) Respondents may, by the deadline under Paragraph 27.b., submit an initial request for waiver of the requirements of Paragraph 27.c.(1) regarding one or more Prior Encumbrances, on the grounds that such Prior Encumbrances cannot defeat or adversely affect the rights the Proprietary Controls grant and cannot interfere with the Work or result in unacceptable exposure to contaminants at or in connection with the Facility.

(3) Respondents may, within 180 days after the Effective Date, or if an initial waiver request has been filed, within 90 days after EPA’s determination on the initial waiver request, submit a final request for a waiver of the requirements

of Paragraph 27.c.(1) regarding any particular Prior Encumbrance on the grounds that Respondents could not obtain the release, subordination, modification, or relocation of such Prior Encumbrance despite best efforts.

(4) The initial and final waiver requests must include supporting evidence including descriptions of and copies of the Prior Encumbrances and maps showing areas the Prior Encumbrances affect. The final waiver request also must include evidence of efforts made to secure release, subordination, modification, or relocation of the Prior Encumbrances.

(5) Respondents shall complete their obligations under Paragraph 27.c.(1) regarding all Prior Encumbrances: within 365 days after the Effective Date; or if an initial waiver request has been filed, within 270 days after EPA's determination on the initial waiver request; or if a final waiver request has been filed, within 180 days after EPA's determination on the final waiver request.

d. Update to Title Evidence and Recording of Proprietary Controls

(1) Respondents shall submit to EPA for review and approval all draft Proprietary Controls and copies of recorded instruments addressing Prior Encumbrances pursuant to the following schedule:

(a) For the Natural Area only, within 365 days of satisfying their obligations under Paragraph 27.c(1) as it pertains to the Natural Area only. Respondents may elect to submit draft Proprietary Controls for EPA review and approval prior to this deadline; and

(b) For the remainder of the Facility, within 30 days after the Respondents receive EPA's approval of their Final Remedy Construction Completion Report. Respondents may elect to submit draft Proprietary Controls for EPA review and approval prior to this deadline.

(2) Upon EPA's approval of the proposed Proprietary Controls, Respondents shall, within 30 days, update the original title insurance commitment (or other evidence of title acceptable to EPA) under Paragraph 27.b. If the updated title examination indicates that no liens, claims, rights, or encumbrances have been recorded since the effective date of the original commitment (or other title evidence), Respondents shall immediately record the Proprietary Controls in the appropriate land records. If the updated title examination indicates that liens, claims, rights, or encumbrances have been recorded since the effective date of the original commitment (or other title evidence), Respondents shall secure the release, subordination, modification, or relocation under Paragraph 27.c(1), or the waiver under Paragraphs 27.c(2) through 27.c(4), regarding any newly-discovered liens, claims, rights, or encumbrances, prior to recording the Proprietary Controls.

(3) If Respondents submitted a title insurance commitment under Paragraph 27.b(1), then upon the recording of the Proprietary Controls and instruments addressing Prior Encumbrances, Respondents shall obtain a title

insurance policy that: (i) is consistent with the original title insurance commitment; (ii) is for \$100,000 or other amount EPA approves; (iii) is issued to the Respondents or other person EPA approves; and (iv) is issued on a current American Land Title Association (ALTA) form or other form EPA approves.

(4) Respondents shall, within 45 days after recording the Proprietary Controls, or such other deadline approved by EPA, provide to EPA and to all grantees of the Proprietary Controls: (i) certified copies of the recorded Proprietary Controls and instruments addressing Prior Encumbrances showing the clerk's recording stamps; and (ii) the title insurance policy(ies), if any or other approved form of updated title evidence as of the date of recording of the Proprietary Controls and instruments.

- e. Respondents shall monitor, maintain, enforce, and annually report on all Proprietary Controls required under this Order. If Respondents agree to Transfer any portion of the Facility, Respondents may request EPA's written agreement that Respondents be released from the requirements to monitor, maintain, enforce, and annually report on the Proprietary Controls associated with the Transferred property if a transferee has agreed to undertake these obligations for that portion of the Facility.
- f. Respondents shall not Transfer to any non-party, any portion of the Facility unless Respondents have executed and recorded all EPA-approved Proprietary Controls and instruments addressing Prior Encumbrances regarding the affected portion of the Facility in accordance with the procedures of this Paragraph.

28. **Best Efforts.** As used in this Section, "best efforts" means the efforts that a reasonable person in the position of Respondents would use to achieve the goal in a timely manner, including the cost of employing professional assistance and the payment of reasonable sums of money to secure access and/or use restrictions, Proprietary Controls, releases, subordinations, modifications, or relocations of Prior Encumbrances that affect the title to the Facility or Off-site Property, as applicable. If Respondents are unable to accomplish what is required through "best efforts" in a timely manner, Respondents shall notify EPA, and include a description of the steps taken to comply with the requirements. If EPA deems it appropriate, it may assist Respondents, or take independent action, in obtaining such access and/or use restrictions, Proprietary Controls, releases, subordinations, modifications, or relocations of Prior Encumbrances that affect the title to the Facility or Off-site Property, as applicable.

29. If EPA determines that Institutional Controls in the form of state or local laws, regulations, ordinances, zoning restrictions, or other governmental controls, or notices of contamination, notices of administrative action, or other notices are needed, Respondents shall cooperate with EPA's and the State's efforts to record, secure, and ensure compliance with such Institutional Controls.

30. Transfer

- a. Respondents shall, within 15 days after the Effective Date, submit for EPA approval a notice about the Facility in the appropriate land records. The notice must: (1) include a proper legal description of the Facility; (2) provide notice to all successors-in-title: (i) that EPA has determined that corrective action activities are needed at the Facility; and (ii) that Respondent has entered into an Order requiring implementation of such selected corrective action activities; and (3) identify the EPA docket number and/or Effective Date. Respondents shall record the notice within 10 days after EPA's approval of the notice and submit to EPA a certified copy of the recorded notice within 10 days thereafter.
 - b. Respondents shall, prior to entering into a contract to Transfer the Facility or any portion of the Facility, or 60 days prior to Transferring the Facility or a portion of the Facility, whichever is earlier:
 - (1) Notify the proposed transferee that EPA has determined that corrective action activities are needed at the Facility and that Respondents have entered into an Order requiring implementation of such corrective action activities; and
 - (2) Notify EPA and the State of the name and address of the proposed transferee and anticipated changes in the uses of the Facility or portion of the Facility and provide EPA and the State with a copy of the above notice that it provided to the proposed transferee.
31. In the event of any Transfer of the Facility or a portion thereof, unless EPA otherwise consents in writing, Respondents shall continue to comply with their obligations under the Order, including their obligation to secure access and ensure compliance with any use restrictions regarding the Facility and to implement, maintain, monitor, and report on required Institutional Controls.
32. Notwithstanding any provision of the Order, EPA retains all of its access authorities and rights, as well as all of its rights to require land, water, or other resource use restrictions and institutional controls, including enforcement authorities related thereto, under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. § 9601 et seq., RCRA, and any other applicable statute or regulation.

IX. ACCESS TO INFORMATION

33. Respondents shall provide to EPA, upon request, copies of all records, reports, documents, and other information (including in electronic form) (hereinafter referred to as "Records") within Respondents' possession or control or that of their contractors or agents relating to activities at the Facility or to the implementation of this Order, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information related to the Work. Upon request, Respondents shall make available to EPA, for purposes of investigation, information gathering, or testimony, their employees, agents, or representatives with knowledge of relevant facts concerning the performance of the Work.

34. **Privileged and Protected Claims.** Respondents may assert a claim that all or part of a Record EPA requests is privileged or protected under federal law, in lieu of providing the Record, as follows:

a. If Respondents assert such a privilege or protection, Respondents shall provide EPA with the following information regarding such Record: its title; its date; the name, title, affiliation (e.g., company or firm), and address of the author, each addressee, and each recipient; a description of the Record's contents; and the privilege or protection asserted. If a claim of privilege or protection applies only to a portion of a Record, Respondents shall provide the Record to EPA in redacted form to mask the privileged or protected portion only. Respondents shall retain all Records that Respondents claims privileged or protected until EPA has had a reasonable opportunity to dispute the privilege or protection claim and any such dispute has been resolved in Respondents' favor.

b. Respondents may make no claim of privilege or protection regarding:

(1) Any data regarding the Facility, including, but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, radiological, or engineering data, or the portion of any other Record that evidences conditions at or around the Facility; or

(2) The portion of any Record that Respondents are required to create or generate pursuant to this Order.

35. **Business Confidential Claims.** Respondents may assert that all or part of a Record provided to EPA under this Section or Section X (Record Retention) is business confidential to the extent 40 C.F.R. §§ 2.203 and 270.12(a) permit, in accordance with those sections. Respondents shall segregate and clearly identify all Records or parts thereof submitted under this Order for which Respondents asserts business confidentiality claims. Records claimed as confidential business information will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies Records when they are submitted to EPA, or if EPA has notified Respondents that the Records are not confidential under the standards of 40 C.F.R. Part 2, Subpart B, the public may be given access to such Records without further notice to Respondent.

36. Notwithstanding any provision on this Order, EPA retains all of its information gathering and inspection authorities and rights, including enforcement actions related thereto, under RCRA and any other applicable statutes or regulations.

X. RECORD RETENTION

37. Record Retention

a. Until 10 years after EPA issues the Acknowledgement of Termination pursuant to Paragraph 80, Respondents shall preserve and retain all non-identical copies of Records (including Records in electronic form) now in its possession or control or that come into its possession or control, that relate in any manner to this Order or to hazardous waste management and disposal at the Facility. Respondents must also retain, and instruct its

successors, contractors, and agents to preserve, for the same time period specified above, all non-identical copies of the last draft or final version of any Records (including Records in electronic form) now in its possession or control or that come into its possession or control that relate in any manner to performance of the Work. Additionally, Respondents (and their successors, contractors, and agents) must retain copies of all data generated during the performance of the Work and not contained in the aforementioned Records. Each of the above record retention requirements shall apply regardless of any corporate retention policy to the contrary.

- b. At the conclusion of this record retention period, Respondents shall notify EPA at least 90 days prior to the destruction of any such Records, and, upon EPA's request and except as provided in Paragraph 34 (Privileged and Protected Claims), Respondents shall deliver any such records to EPA.
- c. Respondents certify that, to the best of their knowledge and belief, after thorough inquiry, it has not altered, mutilated, discarded, destroyed, or otherwise disposed of any Records (other than identical copies) relating to its potential liability regarding the Facility since notification of EPA's or the State's potential liability and that it has fully complied with any and all EPA and State requests for information regarding the Facility pursuant to Section 3007 of RCRA, 42 U.S.C. § 6927, Sections 104(e) and 122(e)(3)(B) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e)(3)(B), and state law.

XI. REPORTING AND DOCUMENT CERTIFICATION

38. **General Requirements for Deliverables.** Respondents shall submit all deliverables in electronic form. Technical specifications for sampling and monitoring data and spatial data are addressed in Paragraph 39. All other deliverables shall be submitted to EPA in the electronic form EPA's Project Manager specifies. If any deliverable includes maps, drawings, or other exhibits that are larger than 8.5" by 11", Respondents shall also provide EPA with paper copies of such exhibits. All documents submitted pursuant to this Order shall be sent to:

Jennifer Dodds
EPA Project Manager
US EPA
Region 5
Mail Code LU-16J
77 West Jackson Boulevard
Chicago, Illinois 60604-3590
dodds.jennifer@epa.gov

Naeha Dixit & Mary Fulghum
Associate Regional Counsel
Office of Regional Counsel
US EPA
Region 5
Mail Code: C-14J

77 West Jackson Boulevard
Chicago, Illinois 60605-3590
dixit.naeha@epa.gov
fulgham.mary@epa.gov

Documents to be submitted to Respondents shall be sent to:

Richard Parrish
Project Manager
East Chicago Gateway Partners, LLC
5215 Kennedy Avenue
East Chicago, Indiana 46312-3805
rich@impactenvironmental.com

Julie LaVan
LaVan Law
271 West Main Street
Moorestown, New Jersey 08057
julie@jlvallaw.com

Sathya Yalvigi
Project Director
The Chemours Company, FC LLC
1007 Market Street
Wilmington, Delaware 19898
Sathya.y.yalvigi@Chemours.com

David L. Rieser
K&L Gates, LLC
70 West Madison Street
Chicago, Illinois 60602
David.rieser@klgates.com

Patricia McGee
Corporate Counsel
E.I. du Pont de Nemours and Company
974 Centre Road
Wilmington, Delaware 19805
Patricia.mcgee@dupont.com

In addition, documents pursuant to Section XIII (Financial Assurance) and any notice of destruction of documents pursuant to Section X (Record Retention) shall be submitted to EPA's designated Financial Assurance Coordinator and Records Manager, respectively.

39. Technical Specifications.

- a. Sampling and monitoring data should be submitted in standard Electronic Data Deliverable (EDD) format, as agreed to with the EPA Project Manager. Other delivery methods may be allowed upon EPA approval.
 - b. Spatial data, including spatially-referenced data and geospatial data, should be submitted:
 - (1) in the ESRI File Geodatabase format; and
 - (2) as unprojected geographic coordinates in decimal degree format using North American Datum 1983 (NAD83) or World Geodetic System 1984 (WGS84) as the datum. If applicable, submissions should include the collection method(s). Projected coordinates may optionally be included but must be documented. Metadata should accompany any spatial data, and such metadata should comply with the Federal Geographic Data Committee (FGDC) Content Standard for Digital Geospatial Metadata and its EPA profile, the EPA Geospatial Metadata Technical Specification. An add-on metadata editor for ESRI software, the EPA Metadata Editor (EME), complies with these FGDC and EPA metadata requirements.
 - c. Each file must include an attribute name for each unit or sub-unit submitted. Consult EPA's geospatial policies and standards on attribute identification and naming.
 - d. Spatial data Respondents submit do not, and is not intended to, define the Facility boundaries.
40. Respondents' Project Manager, or another of Respondents' responsible officials, must sign all deliverables that are submitted pursuant to Section VI (Work to be Performed), and the deliverables must contain the following statement:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I have no personal knowledge that the information submitted is other than true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

Signature: _____
 Name: _____
 Title: _____
 Date: _____

XII. AGENCY APPROVALS/ADDITIONAL WORK/MODIFICATIONS

41. EPA Approvals

a. Initial Submissions

(1) After review of any deliverable that is required to be submitted for EPA approval under this Order, EPA will: (i) approve the submission, in whole or in part; (ii) approve the submission upon specified conditions; (iii) disapprove the submission, in whole or in part; or (iv) any combination of the foregoing.

(2) EPA also may modify the initial submission to cure deficiencies in the submission if: (i) EPA determines that disapproving the submission and awaiting a resubmission would cause disruption to the Work; or (ii) previous submission(s) have been disapproved due to material defects and the deficiencies in the initial submission under consideration indicate a bad faith lack of effort to submit an acceptable deliverable.

b. **Resubmission.** Upon receipt of a notice of disapproval or if required by a notice of approval upon specified conditions under Paragraph 41.a.(1) (Initial Submissions), Respondents shall, within 10 days or such longer time as EPA may specify in such notice, correct the deficiencies and resubmit the deliverable for approval. After review of the resubmitted deliverable, EPA may:

(1) Approve the resubmission, in whole or in part;

(2) Approve the resubmission upon specified conditions;

(3) Modify the resubmission;

(4) Disapprove the resubmission, in whole or in part, requiring Respondents to correct the deficiencies; or

(5) Any combination of the foregoing.

c. **Implementation.** Upon EPA's approval, approval upon conditions, or modification under Paragraph 41.a. or 41.b., of any such deliverable, or portion thereof: (1) such deliverable, or portion thereof, will be incorporated into and become an enforceable part of this Order; and (2) Respondents shall take any action the deliverable, or portion thereof, requires. The implementation of any non-deficient portion of a deliverable submitted or resubmitted under Paragraph 41.a. or resubmitted under Paragraph 41.b. does not relieve Respondents of any liability for stipulated penalties under Section XIV (Delay in Performance/Stipulated Penalties).

42. **Additional Work.** EPA may determine that certain activities, including investigatory work, engineering evaluation, procedure/methodology modifications, or land, water, or other resource use restrictions or Institutional Controls, are necessary in addition to or in lieu of the Work described in this Order, to address or evaluate actual or potential threats to human

health or the environment resulting from the release or potential release of hazardous waste at or from the Facility. Such Additional Work may include, but is not limited to, the investigation of or the remediation of releases of hazardous wastes or hazardous constituents to groundwater that has migrated to Off-site Property. If EPA makes such a determination, EPA will notify Respondents in writing. Within 30 days after the receipt of such determination, Respondents shall submit for EPA approval a work plan for the Additional Work, unless EPA states otherwise. Upon EPA's approval of the work plan, Respondents shall implement it in accordance with the schedule and provisions contained therein. This Section does not alter or diminish EPA's Project Manager's authority to make oral modifications to any plan or schedule pursuant to Paragraph 43.

43. Modifications.

- a. This Order may be modified only by mutual agreement of the Parties. Except as provided below in Paragraphs 43.b. and 43.c., any agreed modifications shall be in writing, signed by all Parties, shall be effective on the date of signature by EPA, and shall be incorporated into this Order.
- b. EPA's Project Manager may modify any work plan, schedule, or scope of work in writing or by oral direction. EPA will promptly memorialize any oral modification, but its effective date is the date of EPA's Project Manager's oral direction.
- c. If Respondents seek permission to deviate from the requirements of any approved work plan, schedule, or scope of work, Respondents' Project Manager shall submit a written request to EPA for approval outlining the proposed modification and its basis. Respondents may not proceed with the requested deviation until receiving oral or written approval from EPA's Project Manager.
- d. No informal advice, guidance, suggestion or comment by EPA's Project Manager or other EPA representatives regarding reports, plans, specifications, schedules or any other writing Respondents submit shall relieve Respondents of their obligation to obtain any formal approval this Order requires, or to comply with all of this Order's requirements, unless it is modified in writing pursuant to Paragraph 43.

XIII. FINANCIAL ASSURANCE

44. Estimated Cost of the Work

- a. Respondents shall submit to EPA detailed written estimates, in current dollars, of the cost of hiring a third party to perform the Work to be Performed under this Order (hereafter "Estimated Cost of the Work"). The Estimated Cost of the Work shall account for the total costs of the work activities that they cover, as described in Section VI (Work to be Performed), and any EPA-approved work plan(s), including any necessary long-term costs, such as monitoring costs and operation and maintenance costs. A third party is a party who (i) is neither a parent nor a subsidiary of any Respondent and (ii) does not share a common parent or subsidiary with any Respondent. The cost estimates shall not incorporate any salvage value that may be realized from the sale of wastes, structures or equipment, land, or other assets associated with the Facility.

- b. Respondents have submitted and EPA has approved an initial Estimated Cost of the Work to be Performed under Section VI. This initial estimate complies with Paragraph 44.a. and covers the Work described in Paragraph 22 and described in Appendices B & C. In addition, Respondents shall include the work related to the Annex Area described in Paragraph 18 in the next annual adjustment of the Estimated Cost of the Work pursuant to Paragraph 44.d.
- c. Concurrent with the submission of additional EPA-approved work plan(s) required under this Order, Respondents shall submit a revised Estimated Cost of the Work.
- d. Respondents shall annually adjust the Estimated Cost of the Work for inflation within 60 days prior to the anniversary date of the establishment of the financial assurance instrument(s) until the Work this Order requires is completed. In addition, Respondents shall adjust the Estimated Cost of the Work if EPA determines that any Additional Work is required, pursuant to Paragraph 42, or if any other condition increases the cost of the Work to be performed under this this Order.
- e. Respondents shall submit each Estimated Cost of the Work to EPA for review. EPA will review each cost estimate and notify Respondents in writing of EPA's approval, disapproval, or modification of the cost estimate.

45. Assurances of Financial Responsibility for Completing the Work

- a. To secure the full and final completion of the Work in accordance with this Order, Respondents shall establish and maintain financial assurance for the benefit of the EPA in the amount of the most recent Estimated Cost of the Work. Respondents may use one or more of the financial assurance forms generally described in Paragraphs 45.a.(1) through 45.a.(4) in the first two years following the Effective Date of this Order. Thereafter, Respondents may use one or more of the financial assurance forms described in Paragraphs 45.a.(1) through 45.a.(6). Any and all financial assurance instruments provided pursuant to this Order shall be satisfactory in form and substance as EPA determines.

(1) A trust fund established for the benefit of EPA, administered by a trustee who has the authority to act as a trustee under federal and State law and whose trust operations are regulated and examined by a Federal or State agency and that is acceptable in all respects to the EPA. The trust agreement shall provide that the trustee shall make payments from the fund as the Division Director shall direct in writing (1) to reimburse Respondents from the fund for expenditures made by Respondents for Work performed in accordance with this Order, or (2) to pay any other person whom the Division Director determines has performed or will perform the Work in accordance with this Order. The trust agreement shall further provide that the trustee shall not refund to the grantor any amounts from the fund unless and until EPA has advised the trustee that the Work under this Order has been successfully completed;

(2) A surety bond unconditionally guaranteeing performance of the Work in accordance with this Order, or guaranteeing payment at the direction of EPA into a standby trust fund that meets the requirements of the trust fund in Paragraph 45.a.(1) above. The surety company issuing the bond shall, at a minimum, be among those listed as certified sureties on Federal Bonds as set forth in Circular 570 of the U.S. Department of the Treasury;

(3) An irrevocable letter of credit, payable at the direction of the Division Director, into a standby trust fund that meets the requirements of the trust fund in Paragraph 45.a.(1) above. The letter of credit shall be issued by a financial institution (i) that has the authority to issue letters of credit and (ii) whose letter of credit operations are regulated and examined by a Federal or State agency;

(4) A policy of insurance that (i) provides EPA with rights as a beneficiary which are acceptable to EPA; and (ii) is issued by an insurance carrier that has the authority to issue insurance policies in the applicable jurisdiction(s), and whose insurance operations are regulated and examined by a Federal or State agency. The insurance policy shall be issued for a face amount at least equal to the current Estimated Cost of the Work to be performed under this Order, except where costs not covered by the insurance policy are covered by another financial assurance instrument. The policy shall provide that the insurer shall make payments as the Division Director shall direct in writing (i) to reimburse Respondents for expenditures made by Respondents for Work performed in accordance with this Order; or (ii) to pay any other person whom the Division Director determines has performed or will perform the Work in accordance with this Order, up to an amount equal to the face amount of the policy. The policy shall also provide that it may not be canceled, terminated or non-renewed and the policy shall remain in full force and effect in the event that (i) a Respondent is named as a debtor in a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code; or (ii) EPA notifies the insurer of Respondents' failure to perform, under Paragraph 45 of this Order;

(5) A corporate guarantee, executed in favor of the EPA by one or more of the following: (i) a direct or indirect parent company; or (ii) a company that has a "substantial business relationship" with a Respondent (as defined in 40 C.F.R. § 264.141(h)), to perform the Work in accordance with this Order or to establish a trust fund as permitted by Paragraph 45.a.(1); provided, however, that any company providing such a guarantee shall demonstrate to the satisfaction of the EPA that it satisfies the financial test requirements of 40 C.F.R. § 264.143(f) with respect to the Estimated Cost of the Work that it proposes to guarantee; or

(6) A demonstration by a Respondent that it meets the financial test criteria of 40 C.F.R. § 264.143(f) with respect to the Estimated Cost of the Work, provided that all other requirements of 40 C.F.R. § 264.143(f) are satisfied.

- b. Respondents have selected as initial financial assurance a surety bond pursuant to Paragraph 45.a. Respondents shall submit a draft surety bond for review and approval by EPA within 10 days after the Effective Date. Within 10 days of EPA's approval of the draft surety bond, Respondents shall execute or otherwise finalize all instruments or other documents required to make the selected financial assurance legally binding in a form substantially identical to the EPA approved draft surety bond, and such financial assurance shall be fully effective. Respondents shall submit all executed and/or otherwise finalized instruments or other documents to EPA within 30 days after the Effective Date.
- c. If Respondents seek to establish financial assurance by using a letter of credit, a surety bond, or a corporate guarantee, the Respondents shall at the same time establish, and thereafter maintain, a standby trust fund which meets the requirements of Paragraph 45.a.(1) above, into which funds from other financial assurance instrument can be deposited, if the financial assurance provider is directed to do so by EPA pursuant to Paragraph 46.b. below.
- d. Respondents shall submit all financial assurance instruments and related required documents by certified mail to the designated EPA Regional Financial Assurance Coordinator at the address listed below. Copies shall also be sent to the EPA Project Manager.

Justin Abrams, Accountant
US EPA
Region 5
Mail Code: MF-10J
77 West Jackson Boulevard
Chicago, Illinois 60604-3590
abrams.justin@epa.gov

- e. If at any time during the effective period of this Order the Respondents provide financial assurance for completion of the Work by means of a corporate guarantee or financial test pursuant to Paragraphs 45.a.(5) or 45.a.(6), Respondents shall also comply with the other relevant requirements of 40 C.F.R. § 264.143(f), 40 C.F.R. § 264.151(f), and 40 C.F.R. § 264.151(h)(1) relating to these methods, unless otherwise provided in this Order, including but not limited to, (i) initial submission of required financial reports and statements from the guarantors' chief financial officer and independent certified public accountant; (ii) annual re-submission of such reports and statements within 90 days after the close of each of the guarantors' fiscal years; and (iii) notification of EPA within 90 days after the close of any of the guarantors' fiscal years in which any such guarantor no longer satisfies the financial test requirements set forth at 40 C.F.R. § 264.143(f)(1). Respondents further agree that if Respondents provide financial assurance by means of a corporate guarantee or financial test, EPA may request additional information (including financial statements and accountant's reports) from the Respondents or corporate guarantor at any time.
- f. For purposes of the corporate guarantee or the financial test described in Paragraphs 45.a.(5) or 45.a.(6), references to 40 C.F.R. § 264.143(f) to "the sum of current closure

and post-closure costs and the current plugging and abandonment cost estimates” shall mean “the sum of all environmental remediation obligations” (including obligations under CERCLA, RCRA, the Safe Drinking Water Act (SDWA), the Toxic Substances Control Act (TSCA), and any other state or tribal environmental obligations) guaranteed by such company or for which such company is otherwise financially obligated in addition to the cost of the Work to be performed in accordance with this Order.

- g. Respondents may combine more than one mechanism to demonstrate financial assurance for the Work to be performed in accordance with this Order, except that these mechanisms are limited to trust funds, surety bonds guaranteeing payment into a trust fund, letters of credit, and insurance.
- h. If at any time EPA determines that any financial assurance instrument provided pursuant to this Section is inadequate or no longer satisfies the requirements set forth or incorporated by reference in the Section, whether due to an increase in the estimated cost of completing the Work or for any other reason, EPA shall so notify Respondents in writing. If at any time Respondents become aware of information indicating that any financial assurance instrument provided pursuant to this Section is inadequate or no longer satisfies the requirements set forth or incorporated by reference in the Section, whether due to an increase in the estimated cost of completing the Work, or for any other reason, then Respondents shall notify EPA in writing of such information within 10 days. Within 30 days of receipt of notice of EPA’s determination or within thirty days of Respondents’ becoming aware of such information, as the case may be, Respondents shall obtain and present to EPA for approval a proposal for a revised or alternative form of financial assurance that satisfies all requirements set forth or incorporated by reference in this Section. In seeking approval for a revised or alternative form of financial assurance, Respondents shall follow the procedures set forth in Paragraph 47.b. below.
- i. Respondents’ inability or failure to establish or maintain financial assurance for completion of the Work shall in no way excuse performance of any other requirements of this Order, including, without limitation, the obligation of Respondents to complete the Work in strict accordance with this Order.
- j. Any and all financial assurance instruments provided pursuant to Paragraphs 45.a.(2), 45.a.(3), or 45.a.(4) shall be automatically renewed at the time of their expiration unless the financial assurance provider has notified both Respondents and EPA Project Manager and Financial Assurance Coordinator at least 120 days prior to expiration, cancellation, or termination of the instrument; or of a decision to cancel, terminate or not renew a financial assurance instrument. Under the terms of the financial assurance instrument, the 120 days will begin to run with the date of receipt of the notice by EPA Project Manager and Financial Assurance Coordinator and Respondents. Furthermore, if Respondents have failed to provide alternate financial assurance and obtain written approval for such alternate financial assurance within 90 days following receipt of such notice by both Respondents and EPA Project Manager and Financial Assurance Coordinator, then the EPA Project Manager and Financial Assurance Coordinator will so notify the financial assurance provider in writing prior to the expiration of the instrument, and the financial assurance provider shall immediately deposit into the standby trust fund, or a newly

created trust fund approved by EPA, the remaining funds obligated under the financial assurance instrument for the performance of the Work in accordance with this Order.

46. Access to Financial Assurance

- a. If EPA determines that Respondents (i) have ceased implementation of any portion of the Work, (ii) are significantly or repeatedly deficient or late in their performance of the Work, or (iii) are implementing the Work in a manner that may cause an endangerment to human health or the environment, EPA may issue a written notice (“Performance Failure Notice”) to both the Respondents and the financial assurance provider of Respondents’ failure to perform. The notice issued by EPA will specify the grounds upon which such a notice was issued and will provide the Respondents with a period of 10 days within which to remedy the circumstances giving rise to the issuance of such notice.
- b. Failure by the Respondents to remedy the relevant Performance Failure to EPA’s satisfaction before the expiration of the 10-day notice period specified in Paragraph 46.a., shall trigger EPA’s right to have immediate access to and benefit of the financial assurance provided pursuant to Paragraphs 45.a.(1) – (5). EPA may at any time thereafter direct the financial assurance provider to immediately (i) deposit into the standby trust fund, or a newly created trust fund approved by EPA, the remaining funds obligated under the financial assurance instrument, or (ii) arrange for performance of the Work in accordance with this Order.
- c. If EPA has determined that any of the circumstances described in clauses (i), (ii), or (iii) of Paragraph 46.a. has occurred, and if EPA is nevertheless unable after reasonable efforts to secure the payment of funds or performance of the Work in accordance with this Order from the financial assurance provider pursuant to this Order, then, upon receiving written notice from EPA, Respondents shall within 10 days thereafter deposit into the standby trust fund, or a newly created trust fund approved by EPA, in immediately available funds and without setoff, counterclaim, or condition of any kind, a cash amount equal to the estimated cost of the remaining Work to be performed in accordance with this Order as of such date, as determined by EPA.
- d. If EPA is notified by the issuer of a financial assurance mechanism that it intends to cancel such mechanism, and Respondents fail to provide an alternative financial assurance mechanism in accordance with this Section at least 30 days prior to the cancellation date, the funds guaranteed under such mechanism must be paid prior to cancellation into the relevant standby trust fund or a newly created trust fund approved by EPA to facilitate performance of the Work in accordance with this Order.
- e. Respondents may invoke the procedures set forth in Section XV (Dispute Resolution) to dispute EPA’s determination that any of the circumstances described in clauses (i), (ii), or (iii) of Paragraph 46.a. has occurred. Invoking the dispute resolution provisions shall not excuse, toll, or suspend the obligation of the financial assurance provider under Paragraph 46.b. of this Section to fund the trust fund or perform the Work. Furthermore, notwithstanding Respondents’ invocation of such dispute resolution procedures, and during the pendency of any such dispute, EPA may in its sole discretion direct the trustee

of such trust fund to make payments from the trust fund to any person that has performed the Work in accordance with this Order until the earlier of (i) the date that Respondents remedies, to EPA's satisfaction, the circumstances giving rise to EPA's issuance of the relevant Performance Failure Notice; or (ii) the date that a final decision is rendered in accordance with Section XV (Dispute Resolution), that Respondents have not failed to perform the Work in accordance with this Order.

47. Modification of Amount, Form, or Terms of Financial Assurance

a. **Reduction of Amount of Financial Assurance.** If Respondents believe that the estimated cost to complete the remaining Work has diminished below the amount covered by the existing financial assurance provided under this Order, Respondents may, at the same time that Respondents submit the annual cost adjustment, pursuant to Paragraph 44.d. of this Section, or at any other time agreed to by EPA, submit a written proposal to EPA to reduce the amount of the financial assurance provided under this Section so that the amount of the financial assurance is equal to the estimated cost of the remaining Work to be performed. The written proposal shall specify, at a minimum, the cost of the remaining Work to be performed and the basis upon which such cost was calculated. In seeking approval of a revised financial assurance amount, Respondents shall follow the procedures set forth in Paragraph 47.b(2) of this Section. If EPA decides to accept such a proposal, EPA shall notify Respondents of its decision in writing. After receiving EPA's written decision, Respondents may reduce the amount of the financial assurance only in accordance with and to the extent permitted by such written decision. In the event of a dispute, Respondents may reduce the amount of the financial assurance required hereunder only in accordance with the final EPA Dispute Decision resolving such dispute. No change to the form or terms of any financial assurance provided under this Section, other than a reduction in amount, is authorized except as provided in Paragraph 47.b. below.

b. Change of Form of Financial Assurance

(1) If Respondents desire to change the form or terms of financial assurance, Respondents may, at the same time that Respondents submit the annual cost adjustment, pursuant to Paragraph 44.d. of this Section, or at any other time agreed to by EPA, submit a written proposal to EPA to change the form of financial assurance. The submission of such proposed revised or alternative form of financial assurance shall be as provided in Paragraph 47.b.(2) below. The decision whether to approve a proposal submitted under this Paragraph 47 shall be made in EPA's sole and unreviewable discretion and such decision shall not be subject to challenge by Respondents pursuant to the dispute resolution provisions of this Order or in any other forum.

(2) A written proposal for a revised or alternative form of financial assurance shall specify, at a minimum, the cost of the remaining Work to be performed, the basis upon which such cost was calculated, and the proposed revised form of financial assurance, including all proposed instruments or other documents required in order to make the proposed financial assurance legally

binding. The proposed revised or alternative form of financial assurance shall satisfy all requirements set forth or incorporated by reference in this Section. EPA shall notify Respondents in writing of its decision to accept or reject a revised or alternative form of financial assurance submitted pursuant to this Paragraph. Within 10 days after receiving a written decision approving the proposed revised or alternative financial assurance, Respondents shall execute and/or otherwise finalize all instruments or other documents required in order to make the selected financial assurance legally binding in a form substantially identical to the documents submitted to EPA as part of the proposal and such financial assurance shall be fully effective. Respondents shall submit all executed and/or otherwise finalized instruments or other documents required in order to make the selected financial assurance legally binding to the EPA Regional Financial Management Officer within 30 days of receiving a written decision approving the proposed revised or alternative financial assurance, with a copy to EPA Financial Assurance Coordinator, the EPA Project Manager. EPA shall release, cancel, or terminate the prior existing financial assurance instruments only after Respondents have submitted all executed and/or otherwise finalized new financial assurance instruments or other required documents to EPA.

- c. **Release of Financial Assurance.** Respondents may submit a written request to the Division Director that EPA release the Respondents from the requirement to maintain financial assurance under this Section at such time as EPA and Respondents have both executed an “Acknowledgment of Termination and Agreement to Record Preservation and Reservation of Right” pursuant to Section XX (Termination) of this Order. The Division Director shall notify both the Respondents and the provider(s) of the financial assurance that Respondents are released from all financial assurance obligations under this Order. Respondents shall not release, cancel, or terminate any financial assurance provided pursuant to this Section except as provided in this Paragraph or Paragraph 47.b(2). In the event of a dispute, Respondents may release, cancel, or terminate the financial assurance required hereunder only in accordance with a final administrative or judicial decision resolving such dispute.

XIV. DELAY IN PERFORMANCE/STIPULATED PENALTIES

48. Respondents shall be liable to EPA for stipulated penalties in the amounts set forth in Paragraphs 49 and 50 for failure to comply with the requirements of this Order specified below, unless excused under Section XVI (*Force Majeure*). “Comply” as used in the previous sentence, includes Respondents’ compliance with all applicable requirements of this Order, within the deadlines established under this Order. If (i) an initially submitted or resubmitted deliverable contains a material defect and the conditions are met for modifying the deliverable under Paragraph 41.a.(2), Section XII (Agency Approvals/Additional Work/Modifications); or (ii) a resubmitted deliverable contains a material defect; then the material defect constitutes a lack of compliance for purposes of this Paragraph.
49. **Stipulated Penalty Amounts – Work to be Performed (Excluding Deliverables)**

- a. The following stipulated penalties shall accrue per violation per day for any noncompliance identified in Paragraph 49.b.:

| Period of Noncompliance | Penalty Per Violation Per Day |
|---|--------------------------------------|
| 1 st through 14 th day | \$ 6,000 |
| 15 th through 30 th day | \$ 9,000 |
| 31 st day and beyond | \$ 12,000 |

b. Obligations

(1) Failure to commence, perform, and/or complete Work in a manner acceptable to EPA or at the time required pursuant to this Order.

(2) Establishment and maintenance of financial assurance in compliance with the timelines and other substantive and procedural requirements of Section XIII (Financial Assurance).

50. **Stipulated Penalty Amounts – Deliverables.** The following stipulated penalties shall accrue per violation per day for failure to submit timely or adequate deliverables pursuant to this Order:

| Period of Noncompliance | Penalty Per Violation Per Day |
|---|--------------------------------------|
| 1 st through 14 th day | \$ 2,000 |
| 15 th through 30 th day | \$ 4,000 |
| 31 st day and beyond | \$ 6,000 |

51. All penalties shall begin to accrue on the day after the complete performance is due or the day a violation occurs and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity. Penalties shall continue to accrue during any dispute resolution period, and shall be paid within 15 days after the agreement or the receipt of EPA's decision or order. However, stipulated penalties shall not accrue: (i) with respect to a deficient submission under Section XII (Agency Approvals/Additional Work/Modifications), during the period, if any, beginning on the 31st day after EPA's receipt of such submission until the date that EPA notifies Respondents of any deficiency, or (ii) with respect to a decision under Section XV (Dispute Resolution), during the period, if any, beginning the 21st day after the Negotiation Period begins until the date that EPA issues a final decision regarding such dispute. Nothing in this Order shall prevent the simultaneous accrual of separate penalties for separate violations of this Order.
52. Following EPA's determination that Respondents have failed to comply with a requirement of this Order, EPA may provide written notification of such noncompliance to Respondents. EPA may send Respondents a written demand for payment of the penalties. However, penalties shall accrue as provided in Paragraph 51 regardless of whether EPA has notified Respondents of a violation.
53. All penalties accruing under this Section shall be due and payable to EPA within 30 days after Respondents' receipt from EPA of a demand for payment of the penalties, unless

Respondents invoke the dispute resolution procedures under Section XV (Dispute Resolution) within the 30-day period. Respondents have identified the following e-mail addresses as valid for receipt of penalty demand notices: patricia.mcgee@dupont.com for Respondent DuPont, bernard.reilly@chemours.com for Respondent Chemours, and rich@impactenvironmental.com for Respondent ECGP.

54. If Respondents fail to pay stipulated penalties when due, Respondents shall pay Interest on the unpaid stipulated penalties as follows: Interest shall begin to accrue on any unpaid stipulated penalty balance beginning on the 31st day after Respondents' receipt of EPA's demand. Interest shall accrue at the Current Value of Funds Rate the Secretary of the Treasury has established. Pursuant to 31 U.S.C. § 3717, an additional penalty of 6% per annum on any unpaid principal shall be assessed for any stipulated penalty payment which is overdue for 90 or more days. In addition, a handling fee of \$15 per month shall be assessed beginning on the 31st day after Respondents' receipt of EPA's demand.
55. All payments to EPA under this Section shall indicate that the payment is for stipulated penalties and shall be paid to "Treasurer, United States" by Automated Clearinghouse (ACH) to:

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

Payments shall include a reference to the name of the Facility, Respondents' name and address, and the EPA docket and site identification number of this action. A copy of the transmittal request shall be sent simultaneously to the EPA Project Manager and to the EPA Cincinnati Finance Office by email at cinwd_acctsreceivable@epa.gov, or by mail to:

EPA Cincinnati Finance Office
26 W. Martin Luther King Drive
Cincinnati, Ohio 45268

56. The payment of penalties and interest, if any, shall not alter in any way Respondents' obligation to complete the performance of Work required under this Order.
57. Nothing in this Order shall be construed as prohibiting, altering, or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of Respondents' violation of this Order or of the statutes and regulations upon which it is based, including but not limited to 42 U.S.C. § 6928(h)(2); however, EPA shall not seek civil penalties pursuant to 42 U.S.C. § 6928(h)(2) for any violation for which a stipulated penalty is provided in this Order, except in the case of a willful violation of this Order.
58. Notwithstanding any other provision of this Section, EPA may, in its unreviewable discretion, waive any portion of stipulated penalties that have accrued pursuant to this Order.

XV. DISPUTE RESOLUTION

59. The dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes regarding this Order. The Parties shall attempt to resolve any disagreements concerning this Order expeditiously and informally.
60. **Informal Dispute Resolution.** If Respondents object to any EPA action taken pursuant to this Order, it shall notify EPA's Project Manager in writing of their objection(s) within 14 days after such action. EPA and Respondents shall have 60 days from EPA's receipt of Respondents' written objection(s) to resolve the dispute through informal negotiations (the "Negotiation Period"). Upon request of Respondents, the Negotiation Period may be extended at EPA's sole discretion. Any agreement the Parties reach pursuant to this Section shall be in writing and shall, upon the Parties' signatures, be incorporated into and become an enforceable part of this Order.
61. **Formal Dispute Resolution.** If the Parties are unable to reach an agreement within the Negotiation Period, Respondents may submit a statement of position to EPA's Project Manager within 20 days after the end of the Negotiation Period. EPA may, within 20 days thereafter, submit a statement of position. Thereafter, an EPA management official at the Division Director level will issue a written decision on the dispute to Respondents. EPA's decision shall be incorporated into and become an enforceable part of this Order. Following resolution of the dispute, as this Section provides, Respondents shall fulfill the requirement that was the subject of the dispute in accordance with the agreement reached or with EPA's decision, whichever occurs.
62. The invocation of formal dispute resolution procedures under this Section shall not extend, postpone, or affect in any way any obligation of Respondents under this Order not directly in dispute, unless EPA provides otherwise in writing. Except as provided in Paragraph 51, stipulated penalties with respect to the disputed matter shall continue to accrue but payment shall be stayed pending resolution of the dispute. Notwithstanding the stay of payment, stipulated penalties shall accrue from the first day of noncompliance with any applicable provision of the Order. In the event that Respondents do not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section XIV (Delay in Performance/Stipulated Penalties).

XVI. FORCE MAJEURE

63. "*Force majeure*," for purposes of this Order, is any event arising from causes beyond the control of Respondents, of any entity a Respondent controls, or of Respondents' contractors that delays or prevents the performance of any obligation under this Order despite Respondents' best efforts to fulfill the obligation. The requirement that Respondents exercise "best efforts to fulfill such obligation" includes using best efforts to anticipate any potential *force majeure* and best efforts to address the effects of any potential *force majeure* (a) as it is occurring and (b) following the potential *force majeure*, such that the delay and any adverse effects of the delay are minimized to the greatest extent possible. "*Force majeure*" does not include financial inability to complete the Work.

64. If any event occurs or has occurred that may delay the performance of any obligation under this Order for which Respondents intend or may intend to assert a claim of *force majeure*, Respondents shall notify EPA Project Manager orally or, in his or her absence, the Project Manager's supervisor, the Chief of the Remediation and Reuse Branch, Land and Chemicals Division, EPA Region 5, within 48 hours of when Respondents first knew that the event might cause a delay. Within 5 business or calendar days thereafter, Respondents shall provide a written explanation to EPA of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; Respondents' rationale for attributing such delay to a *force majeure*; and a statement as to whether, in the opinion of Respondents, such event may cause or contribute to an endangerment to public health or welfare, or the environment. Respondents shall include with any notice available documentation supporting their claim that the delay was attributable to a *force majeure*. Respondents shall be deemed to know of any circumstance of which Respondents, any entity Respondents control, or Respondents' contractors knew or should have known. Failure to comply with the above requirements regarding an event shall preclude Respondents from asserting any claim of *force majeure* regarding that event, provided, however, that if EPA, despite the late or incomplete notice, is able to assess to its satisfaction whether the event is a *force majeure* under Paragraph 63 and whether Respondents have exercised their best efforts under Paragraph 63, EPA may, in its unreviewable discretion, excuse in writing Respondents' failure to submit timely notices under this Paragraph.
65. If EPA agrees that the delay or anticipated delay is attributable to a *force majeure*, EPA will notify Respondents in writing of the length of the extension, if any, for performance of the obligations the *force majeure* affects. An extension of the time for performance of the obligations the *force majeure* affects shall not, of itself, extend the time for performance of any other obligation. If EPA does not agree that a *force majeure* caused or will cause the delay or anticipated delay, EPA will notify Respondents in writing of its decision.
66. If Respondents elect to invoke the dispute resolution procedures set forth in Section XV (Dispute Resolution) regarding EPA's decision, Respondents shall do so no later than 15 days after receipt of EPA's notice. In any such proceeding, Respondents shall have the burden of demonstrating by a preponderance of the evidence that has caused or will cause the delay or anticipated delay, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that Respondents complied with the requirements of Paragraphs 63 and 64. If Respondents carry this burden, the Respondents shall be deemed not to have violated the affected obligation(s) of this Order identified to EPA.
67. EPA's failure to timely complete any obligation under the Order is not a violation of the Order. However, if such failure prevents Respondents from meeting one or more deadlines, Respondents may seek relief under this Section.

XVII. RESERVATION OF RIGHTS

68. Notwithstanding any other provisions of this Order, EPA retains all of its authority to take, direct, or order any and all actions necessary to protect human health or the environment or to prevent, abate, or minimize an actual or threatened release of hazardous substances, pollutants, or contaminants, or hazardous or solid waste or constituents of such wastes, on, at, or from the Facility, including but not limited to the right to bring enforcement actions under RCRA, CERCLA, and any other applicable statutes or regulations.
69. EPA reserves all of its statutory and regulatory powers, authorities, rights, and remedies, both legal and equitable, that may pertain to Respondents' failure to comply with any of the requirements of this Order, including without limitation the assessment of penalties under Section 3008(h)(2) of RCRA, 42 U.S.C. § 6928(h)(2).
70. This Order shall not be construed as a covenant not to sue, release, waiver, or limitation of any rights, remedies, powers, claims, and/or authorities, civil or criminal, which EPA has under RCRA, CERCLA, or any other statutory, regulatory, or common law authority of the United States.
71. This Order is not intended to be, nor shall it be construed to be, a permit. Respondents acknowledge and agree that EPA's approval of the Work and/or any work plan does not constitute a warranty or representation that the Work and/or work plan will achieve the corrective measures completion criteria. Respondents' compliance with this Order shall not relieve Respondents of their obligations to comply with RCRA or any other applicable local, state, or federal laws and regulations.
72. Respondents agree not to contest this Order or any EPA action or decision taken pursuant to this Order, including without limitation, decisions of the Regional Administrator, Director of Land and Chemicals Division or any authorized representative of EPA prior to EPA's initiation of a judicial action to enforce this Order, including an action for penalties or an action to compel Respondents' compliance with this Order. In any action EPA may bring for violation of this Order, Respondents shall bear the burden of proving that EPA's actions were arbitrary and capricious and not in accordance with law.

XVIII. OTHER CLAIMS

73. By issuing this Order, EPA assumes no liability for injuries or damages to persons or property resulting from any acts, errors, or omissions of Respondents. EPA will not be deemed a party to any contract, agreement or other arrangement Respondents or their officers, directors, employees, agents, successors, assigns, heirs, trustees, receivers, contractors, or consultants may enter in carrying out actions pursuant to this Order.
74. Respondents waive all claims against the United States relating to or arising out of this Order, including, but not limited to, contribution and counterclaims.
75. Each Party will bear its own litigation costs.

76. In any subsequent administrative or judicial proceeding EPA initiates for injunctive or other appropriate relief relating to the Facility, Respondents shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, *res judicata*, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims the United States raises in the subsequent proceeding were or should have been raised in the present matter.

XIX. INDEMNIFICATION

77. Respondents shall indemnify, save, and hold harmless the United States, its officials, agents, contractors, subcontractors, employees, and representatives from any and all claims or causes of action arising from, or on account of, negligent or other wrongful acts, errors or omissions of Respondents, their officers, directors, employees, agents, contractors, subcontractors, and any persons acting on Respondents' behalf or under their control, in carrying out actions pursuant to this Order. In addition, Respondents agree to pay the United States all costs the United States incurs, including but not limited to attorneys' fees and other expenses of litigation and settlement, arising from or on account of claims made against the United States based on negligent or other wrongful acts or omissions of Respondents, their officers, directors, employees, agents, contractors, subcontractors, and any persons acting on their behalf or under their control, in carrying out activities pursuant to this Order. The United States shall not be held out as a party to any contract Respondents enter or which is entered on Respondents' behalf in carrying out activities pursuant to this Order. Neither Respondents nor any such contractor shall be considered an agent of the United States.
78. The United States shall give Respondents notice of any claim for which the United States plans to seek indemnification pursuant to this Section and shall consult with Respondents prior to settling such claim.
79. Respondents agree not to assert any claims or causes of action against the United States for damages or reimbursement or for set-off of any payments made or to be made to the United States, arising from or on account of any contract, agreement, or arrangement between Respondents and any person for performance of Work on or relating to the Facility, including, but not limited to, claims on account of construction delays. In addition, Respondents shall indemnify and hold harmless the United States with respect to any and all claims for damages or reimbursement arising from or on account of any contract, agreement, or arrangement between Respondents and any person for performance of Work on or relating to the Facility, including, but not limited to, claims on account of construction delays.

XX. TERMINATION

80. Respondents may submit a request in writing seeking termination of this Order pursuant to Paragraph 81 for all or a portion of the Facility. The request must include a demonstration of how Respondents have met the requirements of this Order for all or a portion of the Facility. Respondents may also request that EPA issue a "corrective action complete" or a "corrective action complete with controls" determination for all or a portion of the Facility as described at 67 Fed. Reg. 9,176 (Feb. 27, 2002).

81. This Order shall be deemed satisfied for all or a portion of the Facility upon Respondents' and EPA's execution of an "Acknowledgment of Termination and Agreement to Record Preservation and Reservation of Rights" ("Acknowledgment of Termination"). EPA will prepare the Acknowledgment of Termination for Respondents' signature. The Acknowledgment of Termination will specify that Respondents have demonstrated to the satisfaction of EPA that this Order, including any additional activities EPA determines are required pursuant to this Order, have been satisfactorily completed.
82. Respondents' execution of the Acknowledgement of Termination will affirm Respondents' continuing obligation to preserve all records as required in Section X (Record Retention), to maintain any necessary Property Requirements as required in Section VIII, and to recognize EPA's Reservation of Rights as required in Section XVII.

XXI. SURVIVABILITY/PERMIT INTEGRATION

83. Except as otherwise expressly provided in this Section, this Order shall survive the issuance or denial of any RCRA permit for the Facility, and this Order shall continue in full force and effect after either the issuance or denial of such permit. Accordingly, Respondents shall continue to be liable for the performance of obligations under this Order notwithstanding the issuance or denial of such permit. If the Facility is issued a RCRA permit and that permit expressly incorporates all or any part of the requirements of this Order, or expressly states that its requirements are intended to replace some or all of the requirements of this Order, Respondents may request a modification or termination of this Order and shall, with EPA approval, be relieved of liability under this Order for those specific obligations.

XXII. INTEGRATION/APPENDICES

84. This Order and its Appendices constitute the final, complete, and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this Order. The Parties acknowledge that there are no representations, agreements or understandings relating to the settlement other than those expressly contained in this Order. The following Appendices are incorporated into this Order:

- a. Appendix A – Facility Map
- b. Appendix B – Final Decision Soil, Surface Water, Sediment and Groundwater Cleanup for DuPont Facility Natural Area and Buffer Zone Area, October 6, 2014
- c. Appendix C – Final Decision and Response to Comments, the Western Portion/Industrial Area of the Former DuPont East Chicago Facility, July 18, 2018

XXIII. EFFECTIVE DATE

85. This Order shall be effective upon the date it is signed by the EPA.

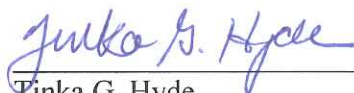
Agreed this ____ day of November, 2018.

IT IS SO AGREED AND ORDERED:

U.S. ENVIRONMENTAL PROTECTION AGENCY:

11-16-18

Dated



Tinka G. Hyde

Director of Land and Chemicals Division, Region 5

Signature Page for Settlement Regarding the DuPont East Chicago Facility

FOR Chemours Company FC, LLC:

November 15, 2018
Dated

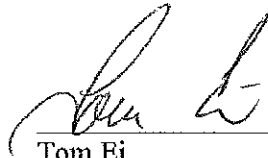


~~Sheryl Telford~~ Stephen H. Shoemaker
Director, ~~EHS and Remediation~~ of Remediation
Chemours Company FC, LLC
1007 Market Street
Wilmington, DE 19899

Signature Page for Settlement Regarding the DuPont East Chicago Facility

FOR E.I. du Pont Nemours and Company:

Nov 14 2018
Dated




Tom Ei
Remediation Director
E.I. du Pont Nemours and Company
Chestnut Run Plaza
974 Centre Road
Wilmington, DE 19805

Signature Page for Settlement Regarding the DuPont East Chicago Facility

FOR East Chicago Gateway Partners, LLC:

11/16/2018
Dated



Richard Parrish
President
East Chicago Gateway Partners, LLC
5215 Kennedy Avenue
East Chicago, Indiana 46312-3805

CERTIFICATE OF SERVICE

I hereby certify that I have caused copies of the foregoing Administrative Order on Consent (RCRA Docket No. RCRA-05-2019-003), for the DuPont Facility located at 5215 Kennedy Avenue, East Chicago, Indiana and designated EPA ID: IND 005 174 354, to be served on the persons designated below, on the date below, by causing said copies to be deposited in the U.S. Mail, First Class and certified-return receipt requested, postage prepaid, at Chicago, Illinois, in envelopes addressed to:

Sheryl Telford
Director, EHS and Remediation
Chemours Company FC, LLC
1007 Market Street
Wilmington, DE 19899
CERTIFIED MAIL: 7017 0530 0000 1267 5055


Tom Ei
Remediation Director
E.I. du Pont Nemours and Company
Chestnut Run Plaza
974 Centre Road
Wilmington, DE 19805
CERTIFIED MAIL: 7017 0530 0000 1267 5093

Mr. Richard Parrish, P.G.
President
East Chicago Gateway Partners, LLC
5215 Kennedy Avenue
East Chicago, Indiana 46312-3805
CERTIFIED MAIL: 7017 0530 0000 1267 5048

I have further caused the original of the Administrative Order on Consent and this Certificate of Service to be served in the Office of the Regional Hearing Clerk located in the Resource Management Division, U.S. EPA, Region V, 77 West Jackson Boulevard, Chicago, Illinois 60604, on the date below.

The addresses above are each said person's last known address to the subscriber.

Dated this 10th day November, 2018



Mary Valdes, Legal Technician
U.S. EPA, Region V