

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 7
901 NORTH 5TH STREET
KANSAS CITY, KANSAS 66101

11 JUN -6 AM 8:34
ENVIRONMENTAL PROTECTION
AGENCY REGION VII
REGIONAL HEARING CLERK

IN THE MATTER OF:)
)
E. I. du Pont de Nemours and Company)
801 35th Street)
Fort Madison, IA 52627)
)
RCRA I.D. No. IAD005272398)
)
Respondent.)
)
Proceeding under Sections 3008(a) and (g) of)
the Resource Conservation and Recovery Act,)
as amended, 42 U.S.C. §§ 6928(a) and (g))
)
_____)

**CONSENT AGREEMENT
AND FINAL ORDER**

Docket No. RCRA-07-2011-0015

I. PRELIMINARY STATEMENT

The United States Environmental Protection Agency (EPA), Region 7 (Complainant) and E. I. du Pont de Nemours and Company (Respondent) have agreed to a settlement of this action before the filing of a complaint, and thus this action is simultaneously commenced and concluded pursuant to Rules 22.13(b) and 22.18(b)(2) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation, Termination or Suspension of Permits (Consolidated Rules of Practice), 40 C.F.R. §§ 22.13(b) and 22.18(b)(2).

II. ALLEGATIONS

Jurisdiction

1. This administrative action is being conducted pursuant to Sections 3008(a) and (g) of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (RCRA) and the Hazardous and Solid Waste Amendments of 1984, 42 U.S.C. §§ 6928(a) and (g), and in accordance with the Consolidated Rules of Practice.

2. This Consent Agreement and Final Order (CAFO) serves as notice that EPA has reason to believe that Respondent violated Section 3005 of RCRA, 42 U.S.C. § 6925, and the regulations found at 40 C.F.R. §§ 262, 264, 270 and 273.

Parties

3. The Complainant is the Chief of the Waste Enforcement and Materials Management Branch in the Air and Waste Management Division of EPA, Region 7, who has been duly delegated the authority to bring this action by the Administrator of EPA.

4. The Respondent is E. I. du Pont de Nemours and Company, a company incorporated under the laws of Delaware and licensed to do business in the state of Iowa.

Statutory and Regulatory Framework

5. When EPA determines that any person has violated or is in violation of any RCRA requirement, EPA may issue an order assessing a civil penalty for any past or current violation and/or require immediate compliance or compliance within a specified time period pursuant to Section 3008 of RCRA, 42 U.S.C. § 6928.

6. Section 3008(g) of RCRA, 42 U.S.C. § 6928(g), authorizes a civil penalty of not more than \$25,000 per day for violations of Subchapter III of RCRA (Hazardous Waste Management). This figure has been adjusted upward for inflation pursuant to the Civil Monetary Penalties Inflation Adjustment Rule, 40 C.F.R. Part 19, so that penalties of up to \$32,500 per day are now authorized for violations of Subchapter III of RCRA that occur after March 15, 2004, through January 12, 2009. For violations of Subchapter III of RCRA that occur after January 12, 2009, penalties of up to \$37,500 per day are now authorized.

General Factual Allegations

7. Respondent is a Delaware corporation authorized to conduct business in the State of Iowa and is a "person" as defined in Section 1004(15) of RCRA, 42 U.S.C. § 6903(15).

8. Respondent is located at 801 35th Street in Fort Madison, IA (Facility). Respondent employs approximately 131 individuals.

9. Respondent manufactures resins and inks. Its processes include batch mixing, formulating, reacting, and packaging. As a result of its operations, Respondent generates approximately three million pounds of hazardous waste per year, or 160,000 to 210,000 per month. This waste consists primarily of: non-halogenated waste resins and solvents (D001, D002, D003, D005, D006, D007, D008, D009, and D035 characteristic and F003, F005, P028, U147, U162, and U190 listed hazardous waste). The Respondent is also a small quantity handler of universal waste and a generator of used oil.

10. The regulations for determining whether a waste is a solid and/or hazardous waste are set forth at 40 C.F.R. Part 261. Each of the wastes listed in paragraph 9 is a "solid waste" and all of the wastes except the used oil and universal waste are also "hazardous wastes" within

the meaning of these regulations.

11. Respondent is a Large Quantity Generator (LQG) of hazardous waste by both monthly generation (over 1000 kg) and accumulation.

12. Respondent has been assigned a RCRA facility identification number of IAD005272398.

13. Respondent was issued a hazardous waste management facility operating permit (RCRA permit) on September 28, 1992 that authorized Respondent to store hazardous waste for up to one year in three container storage units: Building 20, Building 53, and Building 58. The RCRA permit also authorizes hazardous waste storage in two 8,150-gallon aboveground storage tanks in Building 58.

14. Respondent conducted closure activities on Buildings 20, 53 and 58 in January 2007, and submitted a Certification of Closure for those buildings in March 2007.

15. On September 21-22, 2009 and September 29, 2009, Complainant's representative conducted a Compliance Evaluation Inspection at Respondent's Facility (hereinafter the EPA inspection).

16. At the time of inspection, Respondent was conducting hazardous waste storage activities in Buildings 20 and 58 that were subject to Respondent's RCRA permit.

Alleged Violations

COUNT 1

**FAILURE TO COMPLY WITH THE OPERATING PERMIT'S GENERAL PERMIT
CONDITIONS**

17. The allegations stated in paragraphs 7 through 16 are re-alleged and incorporated as if fully set forth herein.

18. In August 2006, Respondent submitted a closure plan to EPA that was approved by EPA on November 29, 2006. In March 2007, Respondent submitted a Closure Work Report that certified that closure activities had been completed and stated that Respondent would no longer use Buildings 53 and 58 as hazardous waste storage areas, and would use Building 20 as a 90 day storage area.

Failure to Report Modification of a Container Unit

19. Section I.E.10 of Respondent's RCRA permit requires Respondent to report modifications of the facility as defined in Appendix I to 40 C.F.R. § 270.42.

20. "Modification of a container unit without increasing the capacity of the unit" is a modification defined in Appendix I to 40 C.F.R. § 270.42.

21. At the time of the EPA inspection, hazardous waste was being stored in 34 containers in Building 20 for a period of time exceeding 90 days.

22. By letter to EPA dated October 9, 2009, Respondent stated that storage of waste for a period of time exceeding 90 days in Building 20 was allowed under its RCRA permit.

23. Respondent's conversion of Building 20 from a 90 day storage area to a 365 day storage area is a modification of a container unit without increasing the capacity of the unit which is a modification defined in Appendix I to 40 C.F.R. § 270.42.

24. Respondent's failure to notify EPA of its modification of a container unit without increasing the capacity of the unit is a violation of Section I.E.10. of Respondent's RCRA permit and Section 3005 of RCRA, 42 U.S.C. § 6925.

Failure to Report Modification of a Tank Management Practice

25. Section I.E.10 of Respondent's RCRA permit requires Respondent to report modifications of the facility as defined in Appendix I to 40 C.F.R. § 270.42.

26. "Modification of a tank management practice" is a modification defined in Appendix I to 40 C.F.R. § 270.42.

27. At the time of the EPA inspection, hazardous waste was being stored in a 1,850 gallon above ground storage tank in Building 58 for a period of time exceeding 90 days.

28. By letter to EPA dated October 9, 2009, Respondent stated that storage of waste for a period of time exceeding 90 days in Building 58 was allowed under its RCRA permit.

29. Respondent's conversion of Building 58 from a 90 day storage area to a 365 day storage area is a modification of a tank management practice which is a modification defined in Appendix I to 40 C.F.R. § 270.42.

30. Respondent's failure to notify EPA of its modification of a tank management practice is a violation of Section I.E.10. of Respondent's RCRA permit and Section 3005 of RCRA, 42 U.S.C. § 6925.

Failure to Report Unauthorized Storage of Wastes in Containers

31. Section I.E.10 of Respondent's RCRA permit requires Respondent to report modifications of the facility as defined in Appendix I to 40 C.F.R. § 270.42.

32. "Storage of different wastes in containers... that do not require additional or different management practices from those authorized in the permit" is a modification defined in Appendix I to 40 C.F.R. § 270.42.

33. Section III.B.1. of Respondent's RCRA permit lists wastes that are allowed to be stored in Building 20.

34. At the time of the EPA inspection, Respondent was storing the following containers of hazardous waste in Building 20:

- a. one 55-gallon container of WOM-368 (D002);
- b. fifteen 55-gallon containers of WOM-142 (P028);
- c. three 55-gallon containers of WOM-346 (U190);
- d. one 5-gallon container of WOM-346 (U190);
- e. one 30-gallon container of WOM-346 (U190); and
- f. one 5-gallon container of WOM-347 (U244).

35. The containers of hazardous waste identified in Paragraph 34 above are not listed in Section III.B.1. of Respondent's RCRA permit and Respondent's storage of this hazardous waste is a modification defined in Appendix I to 40 C.F.R. § 270.42.

36. Respondent's failure to notify EPA that it was storing hazardous wastes other than those listed in Section II.B.1. of Respondent's RCRA permit is a violation of Section I.E.10. of Respondent's RCRA permit and Section 3005 of RCRA, 42 U.S.C. § 6925.

Failure to Report Other Instances of Non-Compliance

37. Section I.E.20 of Respondent's RCRA permit requires Respondent to report, at the time monitoring reports are submitted, all other instances of noncompliance not required to be reported elsewhere in the permit.

38. Section II.F. of Respondent's RCRA permit requires Respondent to conduct personnel training, as required by 40 C.F.R. § 264.16, and to maintain training documents and records, as required by 40 C.F.R. §§ 264.16(d) and 264.16(e).

39. At the time of the EPA inspection, Respondent did not have records of training for calendar year 2008. Respondent stated at the time of the EPA inspection that the absence of the 2008 training records was identified during a recent audit by Respondent. Respondent did not

report the absence of the 2008 training records at the time monitoring reports were required to be submitted pursuant to Respondent's RCRA permit.

40. Respondent's failure to report the absence of the 2008 training records at the time monitoring reports were submitted is a violation of Section I.E.20 of Respondent's RCRA permit and Section 3005 of RCRA, 42 U.S.C. § 6925.

COUNT 2
FAILURE TO COMPLY WITH THE OPERATING PERMIT'S GENERAL FACILITY
CONDITIONS

41. The allegations stated in paragraphs 7 through 16 are re-alleged and incorporated as if fully set forth herein.

Failure to Submit the Contingency Plan to Local Authorities

42. Section II.I.2. of Respondent's RCRA permit requires Respondent to comply with 40 C.F.R. § 264.53, which requires Respondent to submit copies of its Contingency Plan, including revisions, to local emergency response authorities.

43. At the time of the EPA inspection, Respondent had revised its Contingency Plan in 2007 and 2009. Respondent had not submitted the 2007 and 2009 Contingency Plan revisions to local emergency response authorities.

44. Respondent's failure to submit the 2007 and 2009 Contingency Plan revisions to local emergency response authorities is a violation of 40 C.F.R. § 264.53 and Section II.I.2. of Respondent's RCRA permit and Section 3005 of RCRA, 42 U.S.C. § 6925.

Failure to Maintain Training Documents and Records

45. Section II.F. of Respondent's RCRA permit requires Respondent to conduct personnel training, as required by 40 C.F.R. § 264.16, and to maintain training documents and records, as required by 40 C.F.R. §§ 264.16(d) and 264.16(e).

46. At the time of the EPA inspection, Respondent did not have records of training for calendar year 2008.

47. Respondent's failure to maintain training documents and records for calendar year 2008 is a violation of 40 C.F.R. §§ 264.16(d) and 264.16(e) and Section II.F. of Respondent's RCRA permit and Section 3005 of RCRA, 42 U.S.C. § 6925.

Failure to Demonstrate and Maintain Financial Assurance

48. Section II.N. of Respondent's RCRA permit requires Respondent to demonstrate continuous compliance with 40 C.F.R. § 264.143 by providing documentation of financial assurance for closure of the facility, as required by 40 C.F.R. § 264.151.

49. For the fiscal years 2008 and 2009, Respondent did not demonstrate continuous compliance with financial assurance requirements for closure of the facility

50. Respondent's failure to demonstrate continuous compliance with financial assurance requirements for the fiscal years 2008 and 2009 is a violation of 40 C.F.R. § 264.143 and Section II.N. of Respondent's RCRA permit and Section 3005 of RCRA, 42 U.S.C. § 6925.

Failure to Demonstrate and Maintain Liability Coverage

51. Section II.O. of Respondent's RCRA permit requires Respondent to have and maintain liability coverage for sudden and accidental occurrences in the amount of at least \$1 million per occurrence, with an annual aggregate of at least \$2 million, exclusive of legal defense costs, as required by 40 C.F.R. § 264.147(a), and to demonstrate continuous compliance with the liability coverage requirement.

52. For the fiscal years 2008 and 2009, Respondent did not demonstrate continuous compliance with liability coverage requirements for the facility.

53. Respondent's failure to demonstrate continuous compliance with liability coverage requirements for the facility is a violation of 40 C.F.R. § 264.147(a) and Section II.O. of Respondent's RCRA permit and Section 3005 of RCRA, 42 U.S.C. § 6925.

COUNT 3
FAILURE TO COMPLY WITH THE OPERATING PERMIT'S CONTAINER
CONDITIONS

54. The allegations stated in paragraphs 7 through 16 are re-alleged and incorporated as if fully set forth herein.

Storage of Hazardous Waste in a Container Which is Not in Good Condition

55. Section III.C. of Respondent's RCRA permit provides "if a container holding hazardous waste is not in good condition (e.g., severe rusting, apparent structural defects) or if it begins to leak, the Permittee shall transfer the hazardous waste from such container to a container that is in good condition or otherwise manage the waste in compliance with the conditions of" the permit.

56. At the time of the EPA inspection, a 55-gallon hazardous waste storage container of WOM-5 (D001 and D035 characteristic hazardous waste) had structural defects and had leaked. The hazardous waste was not transferred into a container that was in good condition or otherwise managed in compliance with the conditions of the permit for approximately four days.

57. Respondent's failure to transfer the hazardous waste from such container to a container that is in good condition or otherwise manage the waste in compliance with the conditions of the permit is a violation of Section III.C. of Respondent's RCRA permit and Section 3005 of RCRA, 42 U.S.C. § 6925.

COUNT 4
OPERATING AS A TREATMENT, STORAGE, AND DISPOSAL FACILITY WITHOUT
A PERMIT AND FAILURE TO COMPLY WITH GENERATOR REQUIREMENTS

58. The allegations stated in paragraphs 7 through 16 are re-alleged and incorporated as if fully set forth herein.

Failure to Keep a Satellite Accumulation Container Closed

59. 40 C.F.R. § 262.34(c)(1)(i) allows an unpermitted waste generator to accumulate as much as 55 gallons of hazardous waste in containers at or near the point of generation, provided, *inter alia*, the generator complies with 40 C.F.R. 265.173(a). 40 C.F.R. § 265.173(a) requires a container holding hazardous waste to always be closed during storage, except where necessary to add or remove waste.

60. At the time of the EPA inspection, a 55-gallon container containing WOM-0 hazardous waste (D001, D035, F003, F005) in Building 58 was not closed.

61. Respondent's failure to close the 55-gallon container of WOM-0 hazardous waste is a violation of 40 C.F.R. §§ 262.34(c)(1)(i) and 265.173(a) and Section 3005 of RCRA, 42 U.S.C. § 6925.

Failure to Properly Label a Satellite Accumulation Container

62. 40 C.F.R. 262.34(c)(1)(ii) allows an unpermitted waste generator to accumulate as much as 55 gallons of hazardous waste in containers at or near the point of generation, provided the containers are marked with the words "Hazardous Waste" or with other words that identify the contents of the containers.

63. At the time of the EPA inspection, a 55-gallon container containing WOM-0 hazardous waste in Building 58 was not labeled with the words "Hazardous Waste" or with other words that identify the contents of the container.

64. Respondent's failure to mark the container of WOM-0 hazardous waste with the words "Hazardous Waste" or with other words that identify the contents of the container is a violation of 40 C.F.R. 262.34(c)(1)(ii) and Section 3005 of RCRA, 42 U.S.C. § 6925.

Accumulation of Hazardous Waste in a Container for Longer Than 90 Days

65. Section 3005 of RCRA, 42 U.S.C. § 6925, states that the "treatment, storage, or disposal of any such hazardous waste... is prohibited except in accordance" with a permit.

66. 40 C.F.R. 262.34(a) states that a generator may accumulate hazardous waste on-site for 90 days or less without a permit provided that certain conditions are met.

67. At the time of the EPA inspection, a 250-gallon tote containing WOM-0 hazardous waste was located outside of Building 15, on the west side, and the tote had been accumulating hazardous waste for 99 days. Building 15 is not a permitted hazardous waste storage area and may not accumulate hazardous waste for more than 90 days.

68. Respondent's storage of WOM-0 hazardous waste outside of Building 15 for a period of time exceeding 90 days is a violation of 40 C.F.R. 262.34(a) and Section 3005 of RCRA, 42 U.S.C. § 6925.

Failure to Properly Label a Hazardous Waste Accumulation Container

69. 40 C.F.R. 262.34(a)(3) states that a generator may accumulate hazardous waste on-site for 90 days or less without a permit, provided each container and tank is marked with the words "Hazardous Waste."

70. At the time of the EPA inspection, a 250-gallon tote containing WOM-0 hazardous waste was located outside of Building 15, on the west side, and the tote was not labeled with the words "Hazardous Waste."

71. Respondent's failure to label a 250-gallon tote containing WOM-0 hazardous waste with the words "Hazardous Waste" is a violation of 40 C.F.R. 262.34(a)(3) and Section 3005 of RCRA, 42 U.S.C. § 6925.

COUNT 5
UNIVERSAL WASTE MANAGEMENT

72. The allegations stated in paragraphs 7 through 16 are re-alleged and incorporated as if fully set forth herein.

Failure to Accumulate Universal Waste Lamps in Closed Containers

73. 40 C.F.R. 273.13(d)(1) requires a small quantity handler of universal waste to contain any lamp in containers or packages that remain closed.

74. At the time of the EPA inspection, three universal waste containers were not closed: 1) One 55-gallon universal waste container holding approximately 10 spent fluorescent lamps; 2) One container holding 4 spent fluorescent lamps; and 3) One container holding two spent metal halide lamps.

75. Respondent's failure to store universal waste lamps in closed containers is a violation of 40 C.F.R. § 273.13(d)(1).

Failure to Properly Label a Universal Waste Lamp Container

76. 40 C.F.R. 273.14(e) requires a small quantity handler of universal waste to label each lamp, container or package in which such lamps are contained with one of the following phrases: "Universal Waste – Lamps(s)," or "Waste Lamp(s)," or "Used Lamps(s)".

77. At the time of the EPA inspection, one container holding approximately 4 spent fluorescent lamps was not labeled.

78. Respondent's failure to label a container holding universal waste is a violation of 40 C.F.R. § 273.14(e).

Failure to Date or Otherwise Track Universal Waste Accumulation

79. 40 C.F.R. § 273.15(c) requires a small quantity handler of universal waste who accumulates universal waste to demonstrate the length of time that the universal waste has been accumulated from the date it becomes a waste or is received.

80. At the time of the EPA inspection, one container holding approximately 4 spent fluorescent lamps was not labeled with an accumulation start date. In addition, one spent lead-acid battery that was not labeled with an accumulation start date. Respondent could not demonstrate the length of time the above universal waste had accumulated.

81. Respondent's failure to demonstrate the length of time that the 4 spent fluorescent lamps and the spent lead-acid battery had accumulated is a violation of 40 C.F.R. § 273.15(c).

Failure to Properly Containerize a Universal Waste Battery

82. 40 C.F.R. § 273.13(a)(1) requires a small quantity handler of universal waste to place any universal waste battery that shows evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions in a closed container.

83. At the time of the EPA inspection, one spent lead-acid universal waste battery showed evidence of leaking and was not placed in a closed container.

84. Respondent's failure to place the leaking universal waste battery in a closed container is a violation of 40 C.F.R. § 273.13(a)(1).

Failure to Properly Label a Universal Waste Battery

85. 40 C.F.R. § 273.14(a), requires a small quantity handler of universal waste to label or mark universal waste batteries, or the container in which the batteries are held, with any one of the following phrases: "Universal Waste – Battery(ies)," or "Waste Battery(ies)," or "Used Battery(ies)."

86. At the time of the EPA inspection, one spent lead-acid universal waste battery was not labeled.

87. Respondent's failure to label the universal waste battery is a violation of 40 C.F.R. § 273.14(a).

III. CONSENT AGREEMENT

88. Respondent and EPA agree to the terms of this Consent Agreement and Final Order and Respondent agrees to comply with the terms of this Consent Agreement and Final Order.

89. Respondent admits the jurisdictional allegations of this Consent Agreement and Final Order and agrees not to contest EPA's jurisdiction in this proceeding or any subsequent proceeding to enforce the terms of this Consent Agreement and Final Order.

90. Respondent neither admits nor denies the factual allegations set forth in this Consent Agreement and Final Order.

91. Respondent waives its right to a judicial or administrative hearing on any issue of fact or law set forth in this Consent Agreement and Final Order, and its right to appeal the proposed Final Order portion of this Consent Agreement and Final Order.

92. Respondent and Complainant agree to conciliate the matters set forth in this Consent Agreement and Final Order without the necessity of a formal hearing and to bear their respective costs and attorney's fees.

93. This Consent Agreement and Final Order resolves all civil administrative claims for the alleged RCRA violations identified in this Consent Agreement and Final Order. Complainant reserves the right to take enforcement action against Respondent for any violations of RCRA, or any violation of any other applicable law, not alleged in the Consent Agreement and Final Order and to enforce the terms and conditions of this Consent Agreement and Final Order.

94. Nothing contained in this Consent Agreement and Final Order shall alter or otherwise affect Respondent's obligation to comply with all applicable federal, state, and local environmental statutes and regulations and applicable permits.

95. Respondent certifies that by signing this Consent Agreement and Final Order that to the best of its information and belief, Respondent's facility is in compliance with all requirements of RCRA, 42 U.S.C. § 6901 *et. seq.* and all regulations promulgated thereunder.

96. The effect of settlement described in Paragraph 93 above is conditioned upon the accuracy of Respondent's representations to EPA, as memorialized in Paragraph 95 above of this Consent Agreement and Final Order.

97. The undersigned representative of Respondent certifies that he or she is fully authorized to enter the terms and conditions of this Consent Agreement and Final Order and to execute and legally bind Respondent to it.

98. This Consent Agreement and Final Order shall apply to and be binding upon Respondent and Respondent's agents, successors and/or assigns. Respondent shall ensure that all contractors, employees, consultants, firms or other persons or entities acting for Respondent with respect to matters included herein comply with the terms of this Consent Agreement and Final Order.

99. Respondent consents to performance of the compliance actions specified in Paragraph 4 of the Final Order below.

100. Respondent agrees that in settlement of the claims alleged in the Complaint, Respondent shall pay a mitigated civil penalty of \$69,263 as set forth in Paragraph 1 of the Final Order below.

101. The penalty specified in Paragraph 100 above shall represent civil penalties assessed by EPA and shall not be deductible for purposes of Federal, state, or local income tax purposes.

102. Late Payment Provisions: Pursuant to 31 U.S.C. § 3717, EPA is entitled to assess interest and penalties on debts owed to the United States and a charge to cover the cost of processing and handling a delinquent claim. Interest will therefore begin to accrue on a civil or stipulated penalty if it is not paid by the date required. Interest will be assessed at a rate of the United States Treasury tax and loan rate in accordance with 31 C.F.R. § 901.9(b). A charge will be assessed to cover the costs of debt collection including processing and handling costs and attorneys fees. In addition, a non-payment penalty charge of six (6) percent per year compounded annually will be assessed on any portion of the debt which remains delinquent more than ninety (90) days after payment is due. Any such non-payment penalty charge on the debt will accrue from the date the penalty payment becomes due and is not paid. 31 C.F.R. §§ 901.9(c) and (d).

103. Respondent understands that failure to pay any portion of the civil penalty on the date the same is due may result in the commencement of a civil action in Federal District Court to collect said penalty, along with interest thereon at the applicable statutory rate.

104. Notwithstanding any other provision of this Consent Agreement and Final Order, EPA reserves the right to enforce the terms of this Consent Agreement and Final Order by initiating a judicial or administrative action under Section 3008 of RCRA, 42 U.S.C. § 6928, and to seek penalties against Respondent in an amount provided herein or, if not specified, an amount not to exceed \$37,500 per day per violation pursuant to Section 3008(c) of RCRA, for each day of non-compliance with the terms of the Final Order, or to seek any other remedy allowed by law.

105. This Consent Agreement and Final Order shall be effective upon filing. Unless otherwise stated, all time periods stated herein shall be calculated in calendar days from such date.

IV. FINAL ORDER

Pursuant to the authority of Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), and according to the terms of this Consent Agreement and Final Order, IT IS HEREBY ORDERED THAT:

A. Payment of Civil Penalty

1. Within thirty (30) days of the effective date of this Final Order, Respondent shall pay a mitigated civil penalty of \$69,263.
2. Payment of the penalty may be submitted on-line at www.pay.gov by entering "SFO 1.1" in the "Search Public Forms" field. Open the on-line form and complete required fields to complete payment. Respondent shall print a copy of the payment receipt and mail a copy of the receipt to:

Jonathan Meyer
Office of Regional Counsel
U.S. EPA Region VII
901 N. 5th Street
Kansas City, Kansas 66101.

Payment may also be made by cashier or certified check made payable to "Treasurer of the United States" and remitted to:

US Environmental Protection Agency
Fines and Penalties -CFC
PO Box 979077
St. Louis, MO 63197-9000.

The Respondent shall reference the EPA Docket Number on the check. A copy of the check shall be provided to EPA's representative identified in this paragraph and in paragraph 5 below.

3. Failure to pay any portion of the civil penalty on the date the same is due may result in the commencement of a civil action in Federal District Court to collect said penalty, along with interest and penalties.

B. Compliance Actions

4. Beginning on the effective date of this Consent Agreement and Final Order, Respondent shall conduct the following closure activities at the Facility, in accordance with Subpart G of 40 C.F.R. Part 264 and the terms, conditions and time periods specified below:

- a. Within 60 days of the effective date of this Consent Agreement and Final Order, Respondent shall submit a Closure Work Plan for Buildings 20 and 58. The Closure Work Plan shall comply with all applicable requirements of Subpart G of 40 C.F.R. Part 264 and shall include performance of the following activities:
 - i. Respondent shall identify Closure Performance Standards for all constituents of hazardous waste stored in Buildings 20 and 58, including the hazardous waste identified in Paragraph 34 of this Consent Agreement and Final Order.
 - ii. Building 20: Respondent shall remove and properly dispose of all hazardous waste storage containers in Building 20. The floor shall be washed and triple-rinsed and all rinse water shall be collected. The final rinse water shall be sampled and analyzed for constituents of hazardous waste stored in Building 20, and the results shall be compared to the Closure Performance Standards.
 - iii. Building 58: Respondent shall empty, to the lowest obtainable level, and properly dispose of the WOM-0 hazardous waste contained in the 1,850 gallon aboveground storage tank ("paint tank"). The paint tank shall be rinsed with the appropriate solvent and Respondent shall properly dispose of the rinsate. A measurement of the remaining residue in the paint tank shall be recorded. The secondary containment dike area shall be washed and triple-rinsed and all rinse water shall be collected. The final rinse water shall be sampled and analyzed for constituents of hazardous waste stored in the paint tank, and the results shall be compared to the Closure Performance Standards.

- iv. Within 15 days of receipt of sampling results, Respondent shall notify EPA in writing if any Closure Performance Standard has been exceeded. In addition to such notification, Respondent shall propose in writing to EPA a Closure Work Plan amendment outlining additional closure activities in order to attain the Closure Performance Standards.
 - v. All closure activities shall be reviewed by a professional engineer who will visually inspect the units, and review the analytical results.
- b. Within 60 days of the effective date of this Consent Agreement and Final Order, Respondent shall submit to EPA for review and approval a Quality Assurance Project Plan (QAPP) for the sampling and analysis to be conducted under the Closure Work Plan, and shall follow such QAPP upon approval by EPA.
 - c. Within 180 days after EPA's approval of the Closure Work Plan, Respondent shall complete closure activities in accordance with the approved Closure Work Plan.
 - d. Within 60 days after Closure activity completion, Respondent shall submit to EPA, in accordance with 40 C.F.R. § 264.115, a certification that the hazardous waste management units have been closed in accordance with the specifications in the approved closure plan. The certification must be signed by the Respondent and by a qualified Professional Engineer.
5. All documentation shall be sent to:

Nicole Moran
AWMD/WEMM
U.S. EPA, Region 7
901 N. 5th Street
Kansas City, Kansas 66101

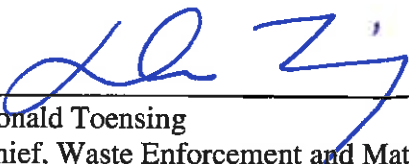
C. Parties Bound

6. This Final Order portion of this CAFO shall apply to and be binding upon Complainant and Respondent, and Respondent's agents, successors and/or assigns. Respondent shall take steps to ensure that all contractors, employees, consultants, firms or other persons or entities acting for Respondent with respect to matters included herein comply with the terms of this CAFO.

FOR COMPLAINANT:
U.S. ENVIRONMENTAL PROTECTION AGENCY

6-1-11


Date



Donald Toensing
Chief, Waste Enforcement and Materials Management Branch
Air and Waste Management Division
U.S. Environmental Protection Agency
Region 7

6-2-11

Date



Jonathan Meyer
Assistant Regional Counsel
U.S. Environmental Protection Agency
Region 7

FOR RESPONDENT
E. I. DU PONT DE NEMOURS AND COMPANY

5/20/2011
Date

Warren C. Hoy
Signature

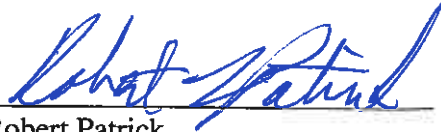
WARREN C HOY
Printed Name

PLANT MANAGER
Title

IN THE MATTER OF E. I. DU PONT DE NEMOURS AND COMPANY
Docket No. RCRA-07-2011-0015

IT IS SO ORDERED. This Final Order is effective upon its final entry by the Regional Judicial Officer.

June 3, 2011
Date


Robert Patrick
Regional Judicial Officer
U.S. Environmental Protection Agency
Region 7

IN THE MATTER OF E. I. du Pont de Nemours and Company, Respondent
Docket No. RCRA-07-2011-0015

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Consent Agreement and Final Order was sent this day in the following manner to the addressees:


Copy hand delivered to
Attorney for Complainant:

Jonathan Meyer
Assistant Regional Counsel
Region 7
United States Environmental Protection Agency
901 N. 5th Street
Kansas City, Kansas 66101

Copy by Certified Mail Return Receipt to:

James B. Allen, Corporate Counsel
E. I. du Pont de Nemours and Company
Legal - D-7084
1007 Market Street
Wilmington, DE 19898

Dated: 6/6/11


Kathy Robinson
Hearing Clerk, Region 7