STATE OF DELAWARE
DEPARTMENT OF NATURAL RESOURCES
AND ENVIRONMENTAL CONTROL
89 KINGS HIGHWAY
DOVER, DELAWARE 19901

Office of the
Secretary

Phone: (302) 739-9000
Fax: (302) 739-6242

NOTICE OF ADMINISTRATIVE PENALTY ASSESSMENT AND SECRETARY'S ORDER

Pursuant to 7 *Del. C.* § 6005

Order No. 2018-WH-0031

PERSONALLY SERVED BY AN ENVIRONMENTAL PROTECTION OFFICER

Issued To:

Mr. Leo Hamilton
Site Manager
E. I. DuPont de Nemours and Company
DuPont Experimental Station
200 Powder Mill Road
Wilmington, DE 19880

Registered Agent:

The Corporation Trust Company
1209 Orange Street
Wilmington, DE 19801

Dear Mr. Hamilton:

The Secretary of the Department of Natural Resources and Environmental Control ("Department") has found E.I. DuPont de Nemours and Company ("Respondent" or "DuPont") in violation of 7 *Del. C.* Chapters 60 and 63, 7 DE Admin. Code 1302, Delaware's *Regulations Governing Hazardous Waste* ("DRGHW"), and Respondent's hazardous waste storage permit HW04F22. Accordingly, the Department is issuing this Notice of Administrative Penalty Assessment, pursuant to 7 *Del.C.* §6005(b)(3).

BACKGROUND

DuPont operates a research and development facility located at 200 Powder Mill Road, Wilmington, Delaware. The facility is referred to as the DuPont Experimental Station Labs. During the operation of its facility, DuPont generates hazardous waste and operates a permitted hazardous waste storage facility. As such, Respondent is subject to compliance inspections conducted by the Solid and Hazardous Waste Management Section ("SHWMS"), pursuant to 7 DE Admin. Code 1302, Delaware's *Regulations Governing Hazardous Waste* ("DRGHW") and Respondent's issued permit.

DuPont leases laboratory space at its facility to several other entities, including The Chemours Company FC, LLC ("Chemours"). Chemours is also a generator of hazardous waste and is subject to compliance inspections conducted by the SHWMS.

DuPont's issued permit allows it to receive and store waste generated by former DuPont entities leasing space at the DuPont Experimental Station (e.g., Chemours).

On May 16, 2017, the Department conducted a focused compliance inspection of the DuPont Experimental Station in coordination with a full compliance assessment conducted at Chemours located at the DuPont Experimental Station. At the time of the assessment, Respondent was classified as a large quantity generator ("LQG") [1] and a treatment, storage, and disposal facility ("TSDF")[2]. The facility has has been assigned the EPA ID number DED003930807. On the basis of the information gathered during the inspection, the Department found Respondent to be in violation of applicable state statutes, regulations, and Respondent's permit governing the generation and management of hazardous waste.

The Department notified Respondent of the violations identified on May 16, 2017 by issuing Notice of Violation ("NOV") No. 17-HW-08 dated July 10, 2017 to Respondent. The NOV was received by Respondent on July 11, 2017. The NOV identified two (2) violations of Respondent's permit and required Respondent to immediately comply with the NOV's requirements and additionally to submit documentation demonstrating compliance within thirty (30) days of receipt of the NOV. DuPont responded to the NOV and corrected the identified violations.

---

[1] Generators of more than 1,000 kilograms (2,200 pounds) of hazardous waste in any calendar month are large quantity generators (Delaware's *Regulations Governing Hazardous Waste*, 2016).

[2] Facilities that treat, store, or dispose of hazardous waste are referred to as TSDF's and are subject to permitting requirements. DuPont is in possession of a hazardous waste storage permit, Permit HW04H22. At the time of the May 16, 2017 inspection, the issued permit number was HW04F22. The permit was subsequently modified on May 19, 2017 to update the list of emergency coordinators and was renumbered HW04g22. Thus, at the time of the July 11, 2017 inspection, DuPont was operating under Permit HW04g22. It was then modified again on August 28, 2017 to include waste acceptance from non-DuPont affiliated entities and was renumbered HW04H22. The provisions cited in this Order were not changed in either of these permit modifications and thus the language cited in the Order is the same in Permits HW04F22, HW04g22, and HW04H22.

Additionally, on July 11, 2017, Department representatives conducted a routine full compliance inspection at the DuPont Experimental Station. On the basis of the information gathered during the inspection, Department representatives found the facility in violation of its issued permit.

On July 19, 2017, Respondent submitted documentation demonstrating that the container observed during the July 11, 2017 compliance inspection had been shipped off-site for proper hazardous waste management on that day. This corrected the violation to the satisfaction of the Department.

The Department notified Respondent of the violations identified on July 11, 2017 by issuing NOV No. 17-HW-12 dated August 21, 2017 to Respondent. The NOV was received by Respondent on August 24, 2017. The NOV identified one (1) violation of Respondent's permit. As Respondent had previously demonstrated compliance with the requirement, a response to the NOV was not required.

FINDINGS OF FACT AND VIOLATION INCLUDING REGULATORY REQUIREMENTS

1. **Permits HW04F22 and HW04g22, Condition III.L.2 reads:**

> *"The Permittee shall store LDR hazardous wastes on-site solely for the purpose of the accumulation of such quantities of hazardous waste as necessary to facilitate proper recovery, treatment, or disposal. Each storage container shall be marked to identify its contents and the date accumulation begins. The Permittee shall provide documentation that accumulation is to facilitate proper deposition for all containers in accumulation and/or storage for greater than one year, immediately, upon request."*

On May 16, 2017, Department representatives observed one container of hazardous waste dated March 30, 2016 that was picked up by DuPont staff from one of Chemours' 90 day accumulation areas located at the Experimental Station facility. DuPont and Chemours representatives both stated waste is picked up on a daily basis and therefore the waste was transported to DuPont's permitted hazardous waste storage pad on March 30, 2016. At the time of the inspection, this container had been stored greater than one (1) year.

On May 16, 2017, Department representatives also observed a container of hazardous waste dated May 23, 2016 that was picked up by DuPont staff from one of Chemours' 90 day accumulation areas located at the facility and transported to DuPont's storage pad on the same day. At the time of the inspection, this container had not exceeded the one (1) year storage limit. However, subsequent to the inspection, SHWMS representatives were provided documentation that the contents of this container were incinerated by Respondent on June 15, 2017. As the container was incinerated after May 23, 2017, this container was also stored greater than one (1) year.

During a compliance inspection on July 11, 2017, Department representatives observed one (1) – 55 gallon steel drum of waste generated by DuPont. The container was labeled to contain "Hydrocarbon Oil Mixture 100%" and was marked as having the D001 hazardous waste code. The container was dated April 20, 2016. Therefore, at the time of the inspection, the container had been accumulated in excess of one (1) year.

Storage of hazardous waste in excess of one (1) year is a violation of Permit Condition III.L.2.

2. **Permit HW04F22, Condition II-1.A.1.(a) reads:**

> *"Where the methods of producing wastes are very specific, DuPont uses the generators' knowledge of the waste to determine the proper waste characterization. Knowledge of the history and chemical composition from generator knowledge or previous analysis, provides sufficient information to complete the information in Figure 1 11-1 Waste Tag."*

Figure 1 II-1, Waste Tag Information – On and Off-site Generators reads:

> *"Waste Tag (on & off-site) contains the following information, at a minimum: Waste information*
> - *Hazardous or non-hazardous..."*

At the time of the May 16, 2017 inspection, Department representatives observed one (1) 55 gallon drum dated March 7, 2017 that was labeled "Non-Hazardous Waste" on DuPont's permitted storage pad. A review of the waste tag also indicated the drum contained D001 hazardous waste, which is ignitable hazardous waste. Chemours representatives reviewed the waste tag and contents of the drum and stated the contents were ignitable and the "non-hazardous" descriptor was in error. However, given the container was located on DuPont's permitted hazardous waste storage pad, it is DuPont's responsibility to ensure the wastes on its pads are properly characterized. At a minimum, DuPont should have identified the discrepancy of the container being labeled as non-hazardous waste, while also carrying a hazardous waste code. Failing to properly label hazardous waste stored on the permitted pad is a violation of Permit Condition II-1.A.1.(a).

CONCLUSIONS

Based on the foregoing, the Department has concluded that Respondent has violated the above cited statutory and regulatory provisions.

ASSESSMENT OF PENALTY AND COSTS

Pursuant to the provisions of 7 *Del.C.* §6005(b)(3), this is written notice to Respondent that on the basis of its findings, the Department is assessing Respondent an administrative penalty of $53,600.00 for the violations identified in this Assessment and Order.

In addition to the penalty assessment, Respondent is hereby assessed, pursuant to 7 *Del.C.* §6005(c), costs in the amount of $3,350.00 which were incurred by the Department in the investigation of the noted violations.

Respondent shall submit one check to the Department in the amount of $53,600.00 to pay the penalty and one check to the Department in the amount of $3,350.00 to pay the Department's costs within 30 days from the receipt of this Assessment and Order. The checks shall be made payable to the "State of Delaware" and shall be directed to: Ralph K. Durstein III, Deputy Attorney General, Department of Justice, Environmental Unit, 102 W. Water Street-3rd Floor, Dover, Delaware 19904.

PUBLIC HEARING AND APPEAL RIGHTS

This Assessment and Order is effective and final upon receipt by Respondent. Pursuant to §6008 of Title 7 of the Delaware Code, any person whose interest is substantially affected by this action of the Secretary may appeal to the Environmental Appeals Board within **20 days** of the receipt of the Assessment and Order. In the alternative, Respondent may, pursuant to 7 *Del.C.* §6005(b)(3), request a public hearing on the penalty assessment and Order, within **30 days** of receipt of the Assessment and Order. A hearing would be conducted pursuant to 7 *Del.C.* §6006, and the Secretary's order following the hearing would be subject to appeal, pursuant to 7 *Del.C.* §6008, by any person substantially affected.

The Department reserves the right to take additional enforcement actions regarding these and other violations at Respondent's facility, including but not limited to one or more of the following: an action under 7 *Del.C.* §6005(b)(1) seeking penalties for past violations, an action under 7 *Del.C.* §6005(b)(2) seeking penalties for continuing violations, an action in the Court of Chancery pursuant to 7 *Del.C.* §6005(b)(2) seeking a temporary restraining order or an injunction, and the imposition of civil penalties and recovery of the Department's costs and attorney's fees pursuant to 7 *Del.C.* §6005(b)(3) & (c)(1). Nothing in this document shall be deemed to estop, or in any way preclude, any additional enforcement action for these or any other violations, including administrative and civil penalties for each day of violation, or an action for the recovery of Department costs expended in abating these violations.

To request a hearing, please submit your request, in writing, to:

Department of Natural Resources and Environmental Control
Office of the Secretary
89 Kings Highway
Dover, DE 19901
Ph: (302) 739-9000

To submit an appeal to the Environmental Appeals Board, there is a $50.00 filing fee, with a check made payable to the: "Environmental Appeals Board" and sent to:

Department of Natural Resources and Environmental Control
Office of the Secretary
Attn: Assistant to the Environmental Appeals Board
89 Kings Highway
Dover, DE 19901
Ph: (302) 739-9000

If you have any questions, please contact Karen J'Anthony at (302) 739-9403.

1/22/18
Date

Shawn M. Garvin, Secretary

cc: Ralph K. Durstein III, Deputy Attorney General
Marjorie A. Crofts, WHS Director
Nancy C. Marker, SHWMS Program Administrator
Karen G. J'Anthony, SHWMS Program Manager
Melissa A. Ferree, SHWMS Engineer
Susan S. Baker, Enforcement Coordinator
SHWMS File

WAIVER OF STATUTORY RIGHT TO A HEARING

E. I. DuPont de Nemours and Company hereby waives its right to a hearing and its opportunity to appeal or contest this Assessment and Order and agrees to the following:

1. **E. I. DuPont de Nemours and Company** will pay the administrative penalty in the amount of $53,600.00 by sending a check payable to the "State of Delaware" within 30 days of receipt of this Assessment and Order. The check shall be directed to Ralph K. Durstein III, Deputy Attorney General, Department of Justice, Environmental Unit, 102 W. Water Street-3rd Floor, Dover, Delaware 19904; and

2. **E. I. DuPont de Nemours and Company** will reimburse the Department in the amount of 3,350.00 which represents the Department's estimated costs. The reimbursement shall be paid within 30 days of receipt of this Assessment and Order. The check shall be made payable to the "State of Delaware" and be directed to Ralph K. Durstein III, Deputy Attorney General, Department of Justice, Environmental Unit, 102 W. Water Street-3rd Floor, Dover, Delaware 19904.

E. I. DuPont de Nemours and Company

Date: _____

By: _____

Title: _____