



State of New Jersey

CHRIS CHRISTIE  
*Governor*

KIM GUADAGNO  
*Lt. Governor*

DEPARTMENT OF ENVIRONMENTAL PROTECTION  
DIVISION OF AIR AND HAZARDOUS MATERIALS ENFORCEMENT  
BUREAU OF HAZARDOUS WASTE & UST COMPLIANCE AND ENFORCEMENT  
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BOB MARTIN  
*Commissioner*

**CERTIFIED MAIL/RRR**  
**7008 1140 0000 1422 7276**

November 18, 2011

Mr. Scott T. Northey, Environmental Manager  
EI DUPONT DE NEMOURS & CO  
Rt. 130 & Canal Rd.  
Administration Bldg., Room 330  
Chambers Works Plant  
Deepwater, NJ 08023

**RE: ADMINISTRATIVE CONSENT ORDER**  
**DUPONT CHAMBERS WORKS**  
**Rt. 130, Bldg 1244**  
**Secure Environmental Treatment**  
**Deepwater, NJ 08023**  
**EA ID #: NEA100001 - NJD002385730**

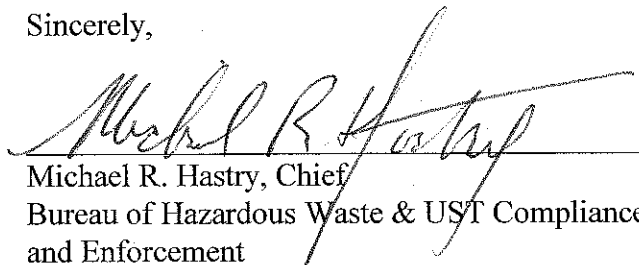
Dear Mr. Northey:

Enclosed is the fully Administrative Consent Order for the above referenced matter. Also enclosed is the Enforcement Invoices for your submittal to the Division of Revenue.

By copy of this letter and enclosure, I am advising the Director of the Office of Legal Affairs, that this matter is settled in accordance with the terms of the Agreement.

Should you have any questions, please call Ms. Karen Miller of my staff at (609) 943-3019.

Sincerely,

  
Michael R. Hastry, Chief  
Bureau of Hazardous Waste & UST Compliance  
and Enforcement

Enclosure



State of New Jersey

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IN THE MATTER OF

EI DUPONT DE NEMOURS & CO AND EI
DUPONT DE NEMOURS CHAMBERS
WORKS
Rt. 130, Bldg 1244
Secure Environmental Treatment
Deepwater, NJ 08023

:
:
: ADMINISTRATIVE CONSENT ORDER
:
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:
:
:

EA ID # NEA100001 - NJD002385730

This Administrative Consent Order (hereinafter ACO) is entered into pursuant to the authority vested in the Commissioner of the New Jersey Department of Environmental Protection ("Department") by N.J.S.A. 13:1D-1 et seq., and the Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq. and the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 et seq. and duly delegated to the Acting Director, Division of Air and Hazardous Materials Enforcement, pursuant to N.J.S.A. 13:1B-4.

FINDINGS

- 1. EI DUPONT DE NEMOURS & CO (hereinafter "DuPont") is a large quantity generator, transporter and permitted commercial Treatment, Storage, and Disposal (TSD) facility for hazardous wastes located at Route 130, Block 301 Lot 1, of Pennsville Township, and Block 185, Lot 1 of Carneys Point, Salem County, New Jersey (ID# NJD002385730).
2. DuPont has operated at the above location since the early 1900's and is currently authorized to operate a hazardous waste disposal facility - 'Secure C Landfill'. Secure C Landfill is used to dispose of sludge filter cake generated by the onsite wastewater treatment plant and other various types of bulk hazardous and non-hazardous waste from onsite and offsite sources as specified by their operating permit. Landfill operating areas consist of cells 2, 3, 4 and 5A. DuPont has operated this landfill since the 1970's.
3. DuPont stores containerized hazardous wastes on site on permitted container storage pads "A" and "B" until these wastes can be forwarded to other TSD facilities for further treatment. In addition, DuPont maintains a wastewater treatment facility on site that treats and disposes of both hazardous and non-hazardous wastes. The facility also has several areas of manufacturing where they produce a variety of products used in the chemical industry.

4. Since January of calendar year 2000, the Department has recorded 220 incidents of spills, discharges and/or releases of hazardous wastes or hazardous substances (exclusive of air releases) occurring at the facility. These incidents have varied in size and many have occurred outside of primary containment controls. Many occurred as a result of faulty/inoperable pumps, leaking valves and gaskets, valves inadvertently left open, cracks in containment structures and accidents.
5. In an effort to address these recurring incidents, DuPont and the Department on June 22, 2006 entered into an Administrative Consent Order (ACO) wherein large part DuPont agreed to upgrade the facility's waste handling equipment. DuPont met the conditions of this ACO and for approximately two years the number of incidents decreased fairly significantly.
6. However, since mid-2008, occurrences of incidents have again risen significantly. In addition the Department has determined additional violations (some spill/discharge related, others regarding DuPont' Hazardous waste landfill and others related to the storage of wastes at the facility's rail siding) as noted in the following inspections and/or investigations.
7. On April 7, 2009, the Department conducted an investigation at DuPont and was made aware of the following violation:
  - a) **Requirement:** Pursuant to 40 CFR 264.31, facilities must be maintained and operated to minimize the possibility of a fire, explosion, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water which could threaten human health or the environment. [40 CFR 264.31]  
**Description of Noncompliance:** Failure of facility owner or operator to maintain or operate facility to minimize possibilities of fire, explosion or releases of hazardous waste or hazardous waste constituents. Specifically, a release had occurred because of a faulty valve on a stormwater line at Sump 5B (of Secure Landfill C) on 3/23/09. The stormwater line contained residual leachate (hazardous waste code-F039) at the time of the incident. Approximately 1 lb. of leachate was discharged onto the cap of Secure Landfill C during this event, in violation of 40 CFR 264.31. (INV09005)

Additionally, on April 7, 2009, the Department conducted an investigation and determined the following violation:

- b) **Requirement:** Pursuant to 40 CFR 268.50(a)(2), except as provided in this section, the storage of hazardous wastes restricted from land disposal under subpart C of this part of RCRA section 3004 is prohibited, unless an owner/operator of a hazardous waste treatment, storage, or disposal facility stores such wastes in tanks, containers, or containment buildings solely for the purpose of the accumulation of such quantities of hazardous waste as necessary to facilitate proper recovery, treatment, or disposal and: (i) Each container is clearly marked to identify its contents and the date each period of accumulation begins; (ii) Each tank is clearly marked with a description of its contents, the quantity of each hazardous waste

received, and the date each period of accumulation begins, or such information for each tank is recorded and maintained in the operating record at that facility. Regardless of whether the tank itself is marked, an owner/operator must comply with the operating record requirements specified in Sec. 264.73 or Sec. 265.73. [40 CFR 268.50(a)(2)]

Description of Noncompliance: Failure of facility owner or operator to store restricted waste solely for the purpose of the accumulation of such quantities of waste as necessary to facilitate proper recovery, treatment, or disposal or to clearly mark each container or tank. Specifically, DuPont was found to be storing one 55-gallon drum of hazardous waste (Drum #: VE 647420999 1 7) on the permitted Container Storage Area B for a period greater than one year (accumulation start date 3/28/08), in violation of 40 CFR 268.50(a)(2). The Department determines this drum was not being stored solely for the purpose of the accumulation of such quantities of waste as necessary to facilitate proper recovery, treatment, or disposal. (BCI090014)

8. During an inspection conducted on March 24, 2009 and subsequent investigation, the Department determined that TH-231 contained a sediment heel of hazardous waste. TH-231, which is part of the wastewater treatment plant, had accumulated these excessive hazardous waste sediments during its normal course of operation. However these sediments ultimately could not be processed through the facility's treatment plant. DuPont made several efforts to process the waste through the plant without success. DuPont took the tank out of service, and held the sediments in the tank for a few of years. When DuPont then revisited the treatment of the sediments in the tank it was determined that major maintenance and repair as well as a permit modification would need to be obtained prior to any further removal or treatment of the material. As a result of this inspection/investigation, the Department has determined the following violations:

- a) Requirement: Pursuant to 40 CFR 270.10(e-f), owners and operators of existing hazardous waste management facilities or of hazardous waste management facilities in existence on the effective date of statutory or regulatory amendments under the act that render the facility subject to the requirement to have a RCRA permit must submit Part A of their permit application no later than: (i) Six months after the date of publication of regulations which first require them to comply with the standards set forth in 40 CFR part 265 or 266, or (ii) Thirty days after the date they first become subject to the standards set forth in 40 CFR part 265 or 266, whichever first occurs. (iii) For generators generating greater than 100 kilograms but less than 1000 kilograms of hazardous waste in a calendar month and treats, stores, or disposes of these wastes on-site, by March 24, 1987. Except as provided in paragraph (f)(3) of this section, no person shall begin physical construction of a new HWM facility without having submitted Parts A and B of the permit application and having received a finally effective RCRA permit. [40 CFR 270.10(e-f)]

Description of Noncompliance: Constructed, installed, modified, or operated hazardous waste facility without submitting Part A or Part B of permit application. Specifically, DuPont was storing hazardous waste in a tank system not included in DuPont's RCRA TSD facility permit, in violation of 40 CFR 270.10(e-f). Regulations state that the hazardous waste should be removed from the tank within a 90-day period after the tank is taken out of service. (INV090004)

- b) **Requirement:** Pursuant to 40 CFR 262.34(a)(3), except as provided in paragraphs (d), (e), and (f) of this section, a generator may accumulate hazardous waste on-site for 90 days or less without a permit or without having interim status, provided that while being accumulated on-site, each container and tank is labeled or marked clearly with the words, "Hazardous Waste". [40 CFR 262.34(a)(3)]

Description of Noncompliance: Failure of generator to clearly mark each container or tank with the words "Hazardous Waste". Specifically, DuPont had failed to label tank TH-231 with the words "Hazardous Waste", in violation with 40 CFR 262.34(a)(3). (INV090004)

- c) **Requirement:** Pursuant to 40 CFR 265.174, the owner or operator must inspect areas where containers are stored, at least weekly, looking for leaks and for deterioration caused by corrosion or other factors. [40 CFR 265.174]

Description of Noncompliance: Failure of facility owner or operator to perform inspection of each area where containers are stored. Specifically, DuPont had failed to inspect tank TH-231 and its containment area weekly for leaks, in violation of 40 CFR 265.174. (INV090004)

- d) **Requirement:** Pursuant to 40 CFR 268.50(a)(2)(i-ii), except as provided in this section, the storage of hazardous wastes restricted from land disposal under subpart C of this part of RCRA section 3004 is prohibited, unless an owner/operator of a hazardous waste treatment, storage, or disposal facility stores such wastes in tanks, containers, or containment buildings solely for the purpose of the accumulation of such quantities of hazardous waste as necessary to facilitate proper recovery, treatment, or disposal and (i) Each container is clearly marked to identify the date each period of accumulation begins; (ii) Each tank is clearly marked with the date each period of accumulation begins, or such information for each tank is recorded and maintained in the operating record at that facility. Regardless of whether the tank itself is marked, an owner/operator must comply with the operating record requirements specified in Sec. 264.73 or Sec. 265.73. [40 CFR 268.50(a)(2)(i-ii)]

Description of Noncompliance: Failure of facility owner or operator storing restricted waste solely for the purpose of the accumulation of such quantities of waste as necessary to facilitate proper recovery, treatment, or disposal to include the accumulation start date on each container or tank. Specifically, DuPont stored

sediments of hazardous waste in tank TH-231. These hazardous wastes had not been removed for several years since the tank was last in operation. This restricted waste was **not** stored solely for the purpose of the accumulation of such quantities of waste as necessary to facilitate proper recovery, treatment, or disposal, in violation of 40 CFR 268.50(a)(2)(i-ii). (INV090004)

- e) **Requirement:** Pursuant to 40 CFR 262.34(a)(2) except as provided in paragraphs (d), (e), and (f) of this section, a generator may accumulate hazardous waste on-site for 90 days or less without a permit or without having interim status, provided that the date upon which each period of accumulation begins is clearly marked and visible for inspection on each container. [40 CFR 262.34(a)(2)]

Description of Noncompliance: Failure of generator to clearly mark container with date when accumulation period begins or to make mark visible for inspection. Specifically, DuPont failed to clearly mark tank TH-231 with the date when accumulation period began, in violation of 40 CFR 262.34(a)(2). (INV090004)

- f) **Requirement:** Pursuant to 40 CFR 265.193(c)(1), to meet the requirements of paragraph (b) of this section, secondary containment systems must be at a minimum constructed of or lined with materials that are compatible with the waste(s) to be placed in the tank system and must have sufficient strength and thickness to prevent failure due to pressure gradients (including static head and external hydrological forces), physical contact with the waste to which they are exposed, climatic conditions, the stress of installation, and the stress of daily operation (including stresses from nearby vehicular traffic). [40 CFR 265.193(c)(1)]

Description of Noncompliance: Failure of containment system to consist of material compatible with wastes stored or to have sufficient strength and thickness. Specifically, the containment system tank TH-231 did not have sufficient strength and thickness as documented by photograph taken on June 26, 2009, in violation of 40 CFR 265.193(c)(1). (INV090004)

9. On April 28, 2009, the Department conducted an inspection at DuPont and determined the following violations:

- a) **Requirement:** Pursuant to 40 CFR 262.34(a), except as provided in paragraphs (d), (e), and (f) of this section, a generator may accumulate hazardous waste on-site for 90 days or less without a permit or without having interim status provided it is done in compliance with 40 C.F.R. 262.34(a). [40 CFR 262.34(a)]

Description of Noncompliance: Failure of generator to ship waste offsite within 90 days. Specifically, five 55-gallon drums (ranging from 10-gallons to 55-gallons of total volume), that had accumulation start dates as follows: 5/1/08, 6/9/08, 8/19/08, 8/19/08 and 8/19/08, were observed in the 90-day storage area in front of Container Storage Area A, in violation of 40 CFR 262.34(a). (BCI090017)

**b) Requirement:** Pursuant to 40 CFR 268.50(a)(2), except as provided in this section, the storage of hazardous wastes restricted from land disposal under subpart C of this part of RCRA section 3004 is prohibited, unless an owner/operator of a hazardous waste treatment, storage, or disposal facility stores such wastes in tanks, containers, or containment buildings solely for the purpose of the accumulation of such quantities of hazardous waste as necessary to facilitate proper recovery, treatment, or disposal and: (i) Each container is clearly marked to identify its contents and the date each period of accumulation begins; (ii) Each tank is clearly marked with a description of its contents, the quantity of each hazardous waste received, and the date each period of accumulation begins, or such information for each tank is recorded and maintained in the operating record at that facility. Regardless of whether the tank itself is marked, an owner/operator must comply with the operating record requirements specified in Sec. 264.73 or Sec. 265.73. [40 CFR 268.50(a)(2)]

Description of Noncompliance: Failure of facility owner or operator to store restricted waste solely for the purpose of the accumulation of such quantities of waste as necessary to facilitate proper recovery, treatment, or disposal or to clearly mark each container or tank. Specifically, DuPont was storing one 30-gallon drum of Barium Chloride (hazardous waste code D005) on the permitted Container Storage Area A for a period greater than one year; this drum (Drum #: JM 821109000 4 1, Contract #: DW00345) had an accumulation start date of April 9, 2008, in violation of 40 CFR 268.50(a)(2). The Department determines that this drum was not being stored solely for the purpose of the accumulation of such quantities of waste as necessary to facilitate proper recovery, treatment, or disposal. (BCI090017)

10. On May 2, 2009, the Department conducted an inspection at DuPont and determined the following violation:

**a) Requirement:** Pursuant to 40 CFR 268.50(a)(2), except as provided in this section, the storage of hazardous wastes restricted from land disposal under subpart C of this part of RCRA section 3004 is prohibited, unless an owner/operator of a hazardous waste treatment, storage, or disposal facility stores such wastes in tanks, containers, or containment buildings solely for the purpose of the accumulation of such quantities of hazardous waste as necessary to facilitate proper recovery, treatment, or disposal and: (i) Each container is clearly marked to identify its contents and the date each period of accumulation begins; (ii) Each tank is clearly marked with a description of its contents, the quantity of each hazardous waste received, and the date each period of accumulation begins, or such information for each tank is recorded and maintained in the operating record at that facility. Regardless of whether the tank itself is marked, an owner/operator must comply with the operating record requirements specified in Sec. 264.73 or Sec. 265.73. [40 CFR 268.50(a)(2)]

Description of Noncompliance: Failure of facility owner or operator to store restricted waste solely for the purpose of the accumulation of such quantities of waste as necessary to facilitate proper recovery, treatment, or disposal or to clearly mark each container or tank. Specifically, DuPont was determined to be storing two 55-gallon

drums of hazardous waste, with accumulation start dates of 5/1/08, on the permitted Container Storage Area A and two 55-gallon drums of hazardous waste, with accumulation start dates 4/30/08 and 5/1/08, on the permitted Container Storage Area B for a period greater than one year, in violation of 40 CFR 268.50(a)(2). The Department determines that these drums were not being stored solely for the purpose of the accumulation of such quantities of waste as necessary to facilitate proper recovery, treatment, or disposal. (BCI090018)

11. On May 12, 2009, the Department conducted an inspection at DuPont and was made aware of the following violations:

- a) **Requirement:** Pursuant to 40 CFR 270.30(a), the permittee must comply with all conditions of this permit, except that the permittee need not comply with the conditions of this permit to the extent and for the duration such noncompliance is authorized in an emergency permit. (See 270.61). Any permit noncompliance, except under the terms of an emergency permit, constitutes a violation of the appropriate Act and is grounds for enforcement action; for permit termination, revocation and re-issuance, or modification; or for denial of a permit renewal application. [40 CFR 270.30(a)]

**Description of Noncompliance:** Failure of permittee to comply with all conditions of permit. Specifically, DuPont failed to comply with permit condition No. 83 of their hazardous waste permit (HWP050001), which specifies that Secure Landfill C must be designed so that leachate depth over the upper liner never exceeds 12 inches. The Department determined that a leachate level of 13 inches was recorded at the Cell 5B vent tube on 5/11/09, in violation of 40 CFR 270.30(a). (BCI090019)

- b) **Requirement:** Pursuant to 40 CFR 265.31, facilities must be maintained and operated to minimize the possibility of a fire, explosion, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water which could threaten human health or the environment. [40 CFR 265.31]

**Description of Noncompliance:** Failure of facility owner or operator to maintain or operate facility to minimize possibilities of fire, explosion or releases of hazardous waste or hazardous waste constituents. Specifically, due to a faulty back flow preventer valve, 40 lbs. of wastewater (hazardous waste codes: D002, D018 & D036) overflowed from the EE wastewater sump at the Nitrator Area into the clean water ditch on May 4, 2009, in violation of 40 CFR 265.31 (INV090006)

12. On May 26, 2009 the Department conducted an inspection at DuPont and determined the following violation:

- a) **Requirement:** Pursuant to 40 CFR 264.15(c), the owner or operator must remedy any deterioration or malfunction of equipment or structures which the inspection reveals on a schedule which ensures that the problem does not lead to an environmental or human



health hazard. Where a hazard is imminent or has already occurred, remedial action must be taken immediately. [40 CFR 264.15(c)]

Description of Noncompliance: Failure of facility owner or operator to remedy any deterioration or malfunction immediately or on an appropriate schedule. Specifically, DuPont failed to repair the safety shower and eyewash units at Secure Landfill C (next to the Dewatering Tank) immediately or on an appropriate schedule and failed to replace these units with temporary or portable units with the absence of working fixed units, in violation of 40 CFR 264.15(c). According to facility personnel, these units have been out-of-service for several months; the malfunction of these units was not documented during routine inspections conducted by facility personnel. (BCI090021)

13. On June 30, 2009 the Department conducted an inspection at DuPont and determined the following violation:

- a) **Requirement:** Pursuant to 40 CFR 268.50(a)(2)(i-ii), except as provided in this section, the storage of hazardous wastes restricted from land disposal under subpart C of this part of RCRA section 3004 is prohibited, unless an owner/operator of a hazardous waste treatment, storage, or disposal facility stores such wastes in tanks, containers, or containment buildings solely for the purpose of the accumulation of such quantities of hazardous waste as necessary to facilitate proper recovery, treatment, or disposal and (i) Each container is clearly marked to identify the date each period of accumulation begins; (ii) Each tank is clearly marked with the date each period of accumulation begins, or such information for each tank is recorded and maintained in the operating record at that facility. Regardless of whether the tank itself is marked, an owner/operator must comply with the operating record requirements specified in Sec. 264.73 or Sec. 265.73. [40 CFR 268.50(a)(2)(i-ii)]

Description of Noncompliance: Failure of facility owner or operator storing restricted waste solely for the purpose of the accumulation of such quantities of waste as necessary to facilitate proper recovery, treatment, or disposal to include the accumulation start date on each container or tank. Specifically, during the inspection DuPont was storing sixty 55-gallon drums and two 275-gallon totes of hazardous waste on the permitted Container Storage Pad A without accumulation start dates indicated on the containers in violation of 40 CFR 268.50(a)(2)(i-ii). (BCI090026)

14. On July 06, 2009 the Department conducted an inspection at DuPont and determined the following violation:

- a) **Requirement:** Pursuant to 40 CFR 268.50(a)(2)(i-ii), except as provided in this section, the storage of hazardous wastes restricted from land disposal under subpart C of this part of RCRA section 3004 is prohibited, unless an owner/operator of a hazardous waste treatment, storage, or disposal facility stores such wastes in tanks, containers, or containment buildings solely for the purpose of the accumulation of such quantities of hazardous waste as necessary to facilitate proper recovery, treatment, or disposal and (i) Each container is clearly marked to identify the date each period of accumulation begins; (ii) Each tank is clearly marked with the date each period of

accumulation begins, or such information for each tank is recorded and maintained in the operating record at that facility. Regardless of whether the tank itself is marked, an owner/operator must comply with the operating record requirements specified in Sec. 264.73 or Sec. 265.73. [40 CFR 268.50(a)(2)(i-ii)]

Description of Noncompliance: Failure of facility owner or operator storing restricted waste solely for the purpose of the accumulation of such quantities of waste as necessary to facilitate proper recovery, treatment, or disposal to include the accumulation start date on each container or tank. Specifically, during an inspection on July 6, 2009, DuPont was found to be storing twenty two (5-gallon) containers marked Hazardous Waste in Row 39 and one 5-gallon container of hazardous waste in row 42 of the permitted hazardous waste Container Storage Area A that were not sampled, dated (with accumulation start dates/dates of receipt) or bar coded, in violation of 40 CFR 268.50(a)(2)(i-ii). (BCI090027)

15. On July 20, 2009 the Department conducted an inspection at DuPont and was made aware of the following violations:

- a) **Requirement:** Pursuant to 40 CFR 265.31, facilities must be maintained and operated to minimize the possibility of a fire, explosion, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water which could threaten human health or the environment. [40 CFR 265.31  
Description of Noncompliance: Failure of facility owner or operator to maintain or operate facility to minimize possibilities of fire, explosion or releases of hazardous waste or hazardous waste constituents. Specifically, a pump was leaking hazardous waste into a containment area. The containment area pump (P-201A) failed to operate resulting in hazardous waste overflowing the containment area onto the surrounding stones releasing approximately 1,668 pounds of sludge. The sludge is classified as an F039 RCRA hazardous waste. Department investigation determined the overflow spill was caused by pump P-201A being disabled due to an underground leak.
- b) **Requirement:** Pursuant to 40 CFR 270.30(a), the permittee must comply with all conditions of the Hazardous Waste Facility Permit, except that the permittee need not comply with the conditions of the permit to the extent and for the duration such noncompliance is authorized in an emergency permit. Any permit noncompliance, except under the terms of an emergency permit, constitutes a violation of the appropriate Act and is grounds for enforcement action; for permit termination, revocation and re-issuance, or modification; or for denial of a permit renewal application. [40 CFR 270.30(a)]  
Description of Noncompliance: Failure of facility owner or operator to maintain or operate facility to minimize possibilities of fire, explosion or releases of hazardous waste or hazardous waste constituents. Specifically, on July 15, 2009 the level of leachate at cell # 7 vent tube reached 29 inches, in violation of permit condition No. 83 of the Facility's permit (HWP05001) and 40 CFR 270.30(a). (INV090007)

16. On July 24, 2009 the Department conducted an inspection at DuPont and determined the following violation:

- a) **Requirement:** Pursuant to 40 CFR 268.50(a)(2), except as provided in this section, the storage of hazardous wastes restricted from land disposal under subpart C of this part of RCRA section 3004 is prohibited, unless an owner/operator of a hazardous waste treatment, storage, or disposal facility stores such wastes in tanks, containers, or containment buildings solely for the purpose of the accumulation of such quantities of hazardous waste as necessary to facilitate proper recovery, treatment, or disposal and:
- (i) Each container is clearly marked to identify its contents and the date each period of accumulation begins;
  - (ii) Each tank is clearly marked with a description of its contents, the quantity of each hazardous waste received, and the date each period of accumulation begins, or such information for each tank is recorded and maintained in the operating record at that facility. Regardless of whether the tank itself is marked, an owner/operator must comply with the operating record requirements specified in Sec. 264.73 or Sec. 265.73. [40 CFR 268.50(a)(2)]

**Description of Noncompliance:** Failure of facility owner or operator to store restricted waste solely for the purpose of the accumulation of such quantities of waste as necessary to facilitate proper recovery, treatment, or disposal or to clearly mark each container or tank. Specifically, during an inspection on July 24, 2009, DuPont was found to be storing, on the permitted Container Storage Area A, and for a period greater than one year, one drum of D002 waste (dated November 14, 2007) inside an overpack drum that was not dated, in violation of 40 CFR 268.50(a)(2). The Department determined that this drum was not being stored solely for the purpose of accumulation of such quantities of waste as necessary to facilitate proper recovery, treatment, or disposal. (INV090008)

17. On August 4, 2009 the Department conducted an inspection at DuPont and determined the following violations:

- a) **Requirement:** Pursuant to 40 CFR 270.30(a), the permittee must comply with all conditions of this permit, except that the permittee need not comply with the conditions of this permit to the extent and for the duration such noncompliance is authorized in an emergency permit. (See 270.61). Any permit noncompliance, except under the terms of an emergency permit, constitutes a violation of the appropriate Act and is grounds for enforcement action; for permit termination, revocation and re-issuance, or modification; or for denial of a permit renewal application. [40 CFR 270.30(a)]

**Description of Noncompliance:** Failure of permittee to comply with all conditions of permit. Specifically, during an inspection on August 4, 2009, DuPont did not inspect the permitted hazardous waste container storage area on a weekly basis, in violation of permit condition No. 69 and 40 CFR 270.30(a). The weekly inspection log for the Chemical Waste Management Area has not been completely filled out since 7/20/09.

- b) **Requirement:** Pursuant to 40 CFR 268.50(a)(2)(i-ii), except as provided in this section, the storage of hazardous wastes restricted from land disposal under subpart C of this part of RCRA section 3004 is prohibited, unless an owner/operator of a hazardous waste treatment, storage, or disposal facility stores such wastes in tanks, containers, or containment buildings solely for the purpose of the accumulation of such quantities of hazardous waste as necessary to facilitate proper recovery, treatment, or disposal and (i) Each container is clearly marked to identify the date each period of accumulation begins; (ii) Each tank is clearly marked with the date each period of accumulation begins, or such information for each tank is recorded and maintained in the operating record at that facility. Regardless of whether the tank itself is marked, an owner/operator must comply with the operating record requirements specified in Sec. 264.73 or Sec. 265.73. [40 CFR 268.50(a)(2)(i-ii)]

Description of Noncompliance: Failure of facility owner or operator storing restricted waste solely for the purpose of the accumulation of such quantities of waste as necessary to facilitate proper recovery, treatment, or disposal to include the accumulation start date on each container or tank. Specifically, DuPont was determined to be storing (on Container Storage Area Pad A) sixteen 55-gallon drums of hazardous waste (F003, F005) without clearly marking the containers to identify the date each period of accumulation began, in violation of 40 CFR 268.50(a)(2)(i-ii). (BCI090031)

18. On August 10, 2009 the Department conducted an inspection at DuPont and determined the following violation:

- a) **Requirement:** Pursuant to 40 CFR 268.50(a)(2)(i-ii), except as provided in this section, the storage of hazardous wastes restricted from land disposal under subpart C of this part of RCRA section 3004 is prohibited, unless an owner/operator of a hazardous waste treatment, storage, or disposal facility stores such wastes in tanks, containers, or containment buildings solely for the purpose of the accumulation of such quantities of hazardous waste as necessary to facilitate proper recovery, treatment, or disposal and (i) Each container is clearly marked to identify the date each period of accumulation begins; (ii) Each tank is clearly marked with the date each period of accumulation begins, or such information for each tank is recorded and maintained in the operating record at that facility. Regardless of whether the tank itself is marked, an owner/operator must comply with the operating record requirements specified in Sec. 264.73 or Sec. 265.73. [40 CFR 268.50(a)(2)(i-ii)]

Description of Noncompliance: Failure of facility owner or operator storing restricted waste solely for the purpose of the accumulation of such quantities of waste as necessary to facilitate proper recovery, treatment, or disposal to include the accumulation start date on each container or tank. Specifically, the Department determined DuPont did not clearly mark two 55-gallon drums of Hazardous waste located on Container Pad A to identify the date each period of accumulation begins, in violation of 40 CFR 268.50(a)(2)(i-ii). (BCI090032)

19. On August 26, 2009 the Department conducted an inspection at DuPont and was made aware of the following violation:

- a) **Requirement:** Pursuant to 40 CFR 270.30(a), the permittee must comply with all conditions of this permit, except that the permittee need not comply with the conditions of this permit to the extent and for the duration such noncompliance is authorized in an emergency permit. (See 270.61). Any permit noncompliance, except under the terms of an emergency permit, constitutes a violation of the appropriate Act and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or for denial of a permit renewal application. [40 CFR 270.30(a)]

**Description of Noncompliance:** Failure of permittee to comply with all conditions of permit. Specifically, the Department determined on August 26, 2009 a sump failure caused an overflow at cell #7 of the permitted hazardous waste landfill and that a leachate level of 29 inches was recorded, in violation of permit condition No. 83 which specifies a limit of 12 inches and 40 CFR 270.30(a). (INV090009)

20. On August 10, 2009 the Department conducted an inspection at DuPont and was made aware of the following violation:

- a) **Requirement:** Pursuant to 40 CFR 265.31, facilities must be maintained and operated to minimize the possibility of a fire, explosion, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water which could threaten human health or the environment. [40 CFR 265.31]

**Description of Noncompliance:** Failure of facility owner or operator to maintain or operate facility to minimize possibilities of fire, explosion or releases of hazardous waste or hazardous waste constituents. Specifically, the Department determined on August 10, 2009 spilled approximately 41.7 lbs of F039 from a leaky hose that was not contained, in violation of 40 CFR 265.31. (INV090010)

21. On September 14, 2009 the Department conducted an inspection at DuPont and determined the following violations:

- a) **Requirement:** Pursuant to 40 CFR 262.34(a), except as provided in paragraphs (d), (e), and (f) of this section, a generator may accumulate hazardous waste on-site for 90 days or less without a permit or without having interim status provided it is done in compliance with 40 C.F.R. 262.34(a). [40 CFR 262.34(a)]

**Description of Noncompliance:** Failure of generator to ship waste off site within 90 days. Specifically, the Department determined DuPont was storing (in the 90-day storage area in front of permitted Container Storage Area A), eight (8) 55-gallon drums of hazardous waste with accumulation dates of June 12, 2009, in violation of 40 CFR 262.34(a) The eight 55-gallon drums arrived at 90-day storage area in front of permitted Container Storage Area A from building (788's) 90-day container storage area on September 10, 2009. (BCI090037)

**b) Requirement:** Pursuant to 40 CFR 268.50(a)(2), except as provided in this section, the storage of hazardous wastes restricted from land disposal under subpart C of this part of RCRA section 3004 is prohibited, unless an owner/operator of a hazardous waste treatment, storage, or disposal facility stores such wastes in tanks, containers, or containment buildings solely for the purpose of the accumulation of such quantities of hazardous waste as necessary to facilitate proper recovery, treatment, or disposal and:  
(i) Each container is clearly marked to identify its contents and the date each period of accumulation begins; (ii) Each tank is clearly marked with a description of its contents, the quantity of each hazardous waste received, and the date each period of accumulation begins, or such information for each tank is recorded and maintained in the operating record at that facility. Regardless of whether the tank itself is marked, an owner/operator must comply with the operating record requirements specified in Sec. 264.73 or Sec. 265.73. [40 CFR 268.50(a)(2)]

Description of Noncompliance: Failure of facility owner or operator to store restricted waste solely for the purpose of the accumulation of such quantities of waste as necessary to facilitate proper recovery, treatment, or disposal or to clearly mark each container or tank. Specifically, the Department determined DuPont had two 55-gallon drums of hazardous waste that were on the permitted hazardous waste Container Storage Pad A greater than one year (accumulation start dates 7/22/08, and 8/22/08), in violation of 40 CFR 268.50(a)(2). (BCI090037)

22. On September 21, 2009 the Department conducted an inspection at DuPont and was made aware of the following violation:

**a) Requirement:** Pursuant to 40 CFR 265.31, facilities must be maintained and operated to minimize the possibility of a fire, explosion, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water which could threaten human health or the environment. [40 CFR 265.31]  
Description of Noncompliance: Failure of facility owner or operator to maintain or operate facility to minimize possibilities of fire, explosion or releases of hazardous waste or hazardous waste constituents. Specifically, on September 19, 2009, a DuPont employee punctured the bottom a 250-gallon tote containing Sulfuric acid (pH1.8) and discharging it to the soil, in violation of 40 CFR 265.31. (BCI090038)

23. On October 6, 2009 the Department conducted an inspection at DuPont and was made aware of the following violations:

**a) Requirement:** Pursuant to N.J.A.C. 7:1E-1.11(a), no person shall cause, suffer, allow or permit a discharge of a hazardous substance. [N.J.A.C. 7:1E- 1.11(a)]  
Description of Noncompliance: Discharge of a hazardous substance. Specifically, at 1354 hours on September 28, 2009, DuPont discharged approximately two (2) pounds of a hazardous substance (dinitrobenzene/water mix). The discharge was due to holes in an overhead "recycle" line that caused the release that contaminated the surrounding ground, in violation of N.J.A.C. 7:1E-1.11(a). (INV090012)

Description of Noncompliance: Discharge of a hazardous substance. Specifically, at approximately 0237 hours on September 30, 2009, DuPont discharged forty-seven (47) pounds of a hazardous substance (mixed phenylenediamines). The discharge was released into the air from a distillation column due to a leak in the reflux line at sixty-nine feet elevation because of a line blockage and gasket failure, in violation of N.J.A.C. 7:1E-1.11(a). This discharge lasted approximately 20 minutes. The release caused the material to impact areas in the neighboring community. (INV090011)

24. On November 10, 2009 the Department conducted an inspection at DuPont and was made aware of the following violation:

- a) **Requirement:** Pursuant to 40 CFR 264.31, the facility shall be designed, constructed, maintained and operated to minimize the possibility of fire, explosion, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to the air, soil, surface water or groundwater which could threaten human health or the environment. [40 CFR 264.31]

Description of Noncompliance: Failure of facility owner or operator to maintain or operate facility to minimize possibilities of fire, explosion or releases of hazardous waste or hazardous waste constituents. Specifically, on November 4, 2009, DuPont discharged approximately 200 gallons of leachate (F039) at Cell 7 of Secure Landfill "C" in violation of 40 CFR 264.31. The release occurred when a 2" flexible auxiliary hose discharging leachate into the main sump jumped out of the sump onto the catwalk. Leachate flowed onto the rocks on the side slope of the landfill below the catwalk. (INV090013)

25. On November 11, 2009 the Department conducted an inspection at DuPont and made aware of the following violation:

- a) **Requirement:** Pursuant to 40 CFR 270.30(a), the permittee must comply with all conditions of this permit, except that the permittee need not comply with the conditions of this permit to the extent and for the duration such noncompliance is authorized in an emergency permit. (See 270.61). Any permit noncompliance, except under the terms of an emergency permit, constitutes a violation of the appropriate Act and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or for denial of a permit renewal application. [40 CFR 270.30(a)]

Description of Noncompliance: Failure of permittee to comply with all conditions of the landfill permit. Specifically, DuPont failed to comply with permit condition No. 83 of hazardous waste permit HWP050001 which states that the leachate depths over the upper liner never exceed twelve inches (12"). The October 09, 2009 landfill fluid levels log shows levels of 13 inches for October 26<sup>th</sup>, 21 inches for October 29<sup>th</sup> and 23 inches for October 30<sup>th</sup>, in violation of 40 CFR 270.30(a). (BCI090046)

26. On December 7, 2009 the Department conducted an inspection at DuPont and made aware of the following violation:

- a) **Requirement:** Pursuant to 40 CFR 264.31, the facility shall be designed, constructed, maintained and operated to minimize the possibility of fire, explosion, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to the air, soil, surface water or groundwater which could threaten human health or the environment. [40 CFR 264.31]

Description of Noncompliance: Failure of facility owner or operator to maintain or operate facility to minimize possibilities of fire, explosion or releases of hazardous waste or hazardous waste constituents. Specifically, on December 3, 2009 at 13:30 hours, the facility experienced a discharge of approximately 100 gallons of leachate (F039) from the main collection sump at Cell 7 of Landfill "C", in violation of 40 CFR 264.31. The cause of the discharge was the temporary failure of the Godwin pump to pump leachate through the stormwater line which led to the sump backing up and overflowing onto the outer side slope of the landfill. (INV090014)

27. On December 29, 2009 the Department conducted an inspection at DuPont and made aware of the following violation:

- a) **Requirement:** Pursuant to 40 CFR 265.31, facilities must be maintained and operated to minimize the possibility of a fire, explosion, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water which could threaten human health or the environment. [40 CFR 265.31]

Description of Noncompliance: Failure of facility owner or operator to maintain or operate facility to minimize possibilities of fire, explosion or releases of hazardous waste or hazardous waste constituents. Specifically, on December 11, 2009, at 1129 hours, foam developed on the surface of the liquid in Aerator Tanks 152 & 153. The wind blew approximately 500-pounds of foam over the side of these tanks discharging F039 hazardous waste contaminant to the ground, in violation of 40 CFR 265.31. (INV100001)

28. On January 13, 2010 the Department conducted an inspection at DuPont and determined the following violation:

- a) **Requirement:** Pursuant to 40 CFR 270.30(a), the permittee must comply with all conditions of this permit, except that the permittee need not comply with the conditions of this permit to the extent and for the duration such noncompliance is authorized in an emergency permit. (See 270.61). Any permit noncompliance, except under the terms of an emergency permit, constitutes a violation of the appropriate Act and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or for denial of a permit renewal application. [40 CFR 270.30(a)]



Description of Noncompliance: Failure of permittee to comply with all conditions of permit. Specifically, DuPont failed to maintain each container storage area in accordance with the application documents referenced within the permit and in accordance with 40 CFR 264.175, in violation of permit condition No. 81 of their hazardous waste permit (HWP080001) and 40 CFR 270.30(a). On or around November 30, 2009, a vehicle backed into the secondary containment wall surrounding permitted hazardous waste Storage Area "C". As a result, approximately a six foot section of containment wall was dislocated from the structure. (BCI100003)

Also during this inspection, the Department was made aware of the following violations:

- b) **Requirement:** Pursuant to 40 CFR 265.31, the facility shall be designed, constructed, maintained and operated to minimize the possibility of fire, explosion, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to the air, soil, surface water or groundwater which could threaten human health or the environment. [40 CFR 265.31]

Description of Noncompliance: Failure of facility owner or operator to maintain or operate facility to minimize possibilities of fire, explosion or releases of hazardous waste or hazardous waste constituents. Specifically, on January 11, 2010 DuPont discharged approximately 14 lbs. of sulfuric acid (hazardous waste code-D002) from the Nitrator Area into the clean water ditch because a sample tap drain line had frozen causing sulfuric acid to spill over the secondary containment wall, in violation of 40 CFR 265.31. (INV100002)

- c) **Requirement:** Pursuant to 40 CFR 264.31, the facility shall be designed, constructed, maintained and operated to minimize the possibility of fire, explosion, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to the air, soil, surface water or groundwater which could threaten human health or the environment. [40 CFR 264.31]

Description of Noncompliance: Failure of facility owner or operator to maintain or operate facility to minimize possibilities of fire, explosion or releases of hazardous waste or hazardous waste constituents. Specifically, on January 12, 2010, DuPont discharged 150-gallons of hazardous waste leachate (hazardous waste code-F039) from sump # 7 of Secure Landfill C impacting nearby soils and stone, in violation of 40 CFR 264.31. (INV100003)

29. On March 24, 2010 the Department conducted an inspection at DuPont and made aware of the following violations:

- a) **Requirement:** Pursuant to 40 CFR 270.30(a), the permittee must comply with all conditions of the Hazardous Waste Facility Permit, except that the permittee need not comply with the conditions of the permit to the extent and for the duration such noncompliance is authorized in an emergency permit. Any permit noncompliance, except under the terms of an emergency permit, constitutes a violation of the appropriate Act and is grounds for enforcement action; for permit termination,

revocation and re-issuance, or modification; or for denial of a permit renewal application. [40 CFR 270.30(a)]

Description of Noncompliance: Failure of permittee to comply with all conditions of permit. Specifically, DuPont failed to comply with permit condition No. 83 of hazardous waste permit HWP050001 which states that the landfill is designed so that the leachate depth over the upper liner never exceeds twelve inches (12"). On March 24, 2010 landfill fluid levels of Cell 7 reached 13 inches, in violation of 40 CFR 270.30(a). (BCI100014)

- b) **Requirement:** Pursuant to 40 CFR 265.31, facilities must be maintained and operated to minimize the possibility of a fire, explosion, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water which could threaten human health or the environment. [40 CFR 265.31]
- Description of Noncompliance: Failure of facility owner or operator to maintain or operate facility to minimize possibilities of fire, explosion or releases of hazardous waste or hazardous waste constituents. Specifically, on March 24, 2010, DuPont discharged a hazardous waste (hazardous waste code-F039) at the tertiary treatment area of the wastewater treatment plant (WWTP). Approximately, 50-gallons of hazardous wastewater sprayed from an open drain valve on a suction hose (connected to a Godwin pump) over the secondary containment wall impacting nearby soils and stone, in violation of 40 CFR 265.31. (INV100005)

30. On February 24 & 25, 2010 and March 30, 2010 the Department conducted an inspection at DuPont and determined the following violations:

- a) **Requirement:** Pursuant to 40 CFR 262.11, a person who generates a solid waste, as defined in 40 CFR 261.2, must determine if that waste is a hazardous waste using the following method:(a) He should first determine if the waste is excluded from regulation under 40 CFR 261.4.(b) He must then determine if the waste is listed as a hazardous waste in subpart D of 40 CFR part 261. (c) For purposes of compliance with 40 CFR part 268, or if the waste is not listed in subpart D of 40 CFR part 261, the generator must then determine whether the waste is identified in subpart C of 40 CFR part 261 by either: (1) Testing the waste according to the methods set forth in subpart C of 40 CFR part 261, or according to an equivalent method approved by the Administrator under 40 CFR 260.21; or (2) Applying knowledge of the hazard characteristic of the waste in light of the materials or the processes used.(d) If the waste is determined to be hazardous, the generator shall refer to N.J.A.C. 7:26G-5, 8 through 11, and N.J.A.C. 7:26A-7 for possible exclusions or restrictions pertaining to management of the specific waste. [40 CFR 262.11] [40 CFR 262.11]
- Description of Noncompliance: Failure of generator of solid waste to determine if waste is hazardous. Specifically, DuPont failed to determine if benzyl chloride residues were a hazardous waste, in violation of 40 CFR 262.11. Investigation has determined DuPont failed to properly empty (using one of the methods described in 40 CFR 261.7(3)), approximately 440 55-gallon containers containing benzyl chloride residues. These non-RCRA empty containers were sent to Recycle Inc. (South

Plainfield, NJ), a drum washing facility, over a three year period from 2007-2010 posing an inhalation hazard to anyone who opened these containers and was exposed to the fumes. (INV100004)

- b) **Requirement:** Pursuant to 40 CFR 262.20(a)(1), a generator who transports, or offers for transport a hazardous waste for offsite treatment, storage, or disposal, or a treatment, storage, and disposal facility who offers for transport a rejected hazardous waste load, must prepare a Manifest (OMB Control number 2050-0039) on EPA Form 8700-22, and, if necessary, EPA Form 8700-22A, according to the instructions included in the appendix to this part. [40 CFR 262.20(a)(1)]

Description of Noncompliance: Failure of generator, who transports, or offers for transport a hazardous waste for offsite treatment, storage, or disposal, or a treatment, storage, and disposal facility who offers for transport a rejected hazardous waste load, to prepare a manifest before transporting or offering hazardous waste for transport off-site. Specifically, DuPont shipped approximately 440 drums (55-gallon capacity) containing acutely hazardous waste residues of benzyl chloride over a three year period from 2007-2010 to Recycle Inc. (South Plainfield, NJ) without a manifest in violation of 40 CFR 262.20(a)(1). (INV100004)

31. On June 4, 2010 the Department conducted an inspection at DuPont and made aware of the following violation:

- b) **Requirement:** Pursuant to 40 CFR 270.30(a), the permittee must comply with all conditions of the Hazardous Waste Facility Permit, except that the permittee need not comply with the conditions of the permit to the extent and for the duration such noncompliance is authorized in an emergency permit. Any permit noncompliance, except under the terms of an emergency permit, constitutes a violation of the appropriate Act and is grounds for enforcement action; for permit termination, revocation and re-issuance, or modification; or for denial of a permit renewal application. [40 CFR 270.30(a)]

Description of Noncompliance: Failure of permittee to comply with all conditions of permit. On 3/24/10, a leachate depth of 17 inches (above the upper liner) was recorded at the Cell 7 vent tube and 13 inches on May 31 and June 1, 2010. Permit condition No. 83 of DuPont hazardous waste permit (HWP050001), specifies that Secure Landfill C must be designed so that leachate depth over the upper liner never exceeds 12 inches, in violation of 40 CFR 270.30(a). (BCI100024)

32. On May 3-7, 2010 the Department conducted an inspection at DuPont and determined the following violations:

- a) **Requirement:** Pursuant to 40 CFR 262.11, a person who generates a solid waste, as defined in 40 CFR 261.2, must determine if that waste is a hazardous waste using the following method:(a) He should first determine if the waste is excluded from

regulation under 40 CFR 261.4.(b) He must then determine if the waste is listed as a hazardous waste in subpart D of 40 CFR part 261. (c) For purposes of compliance with 40 CFR part 268, or if the waste is not listed in subpart D of 40 CFR part 261, the generator must then determine whether the waste is identified in subpart C of 40 CFR part 261 by either: (1) Testing the waste according to the methods set forth in subpart C of 40 CFR part 261, or according to an equivalent method approved by the Administrator under 40 CFR 260.21; or (2) Applying knowledge of the hazard characteristic of the waste in light of the materials or the processes used.(d) If the waste is determined to be hazardous, the generator shall refer to N.J.A.C. 7:26G-5, 8 through 11, and N.J.A.C. 7:26A-7 for possible exclusions or restrictions pertaining to management of the specific waste. [40 CFR 262.11] [40 CFR 262.11]

Description of Noncompliance: Failure of generator of solid waste to determine if waste is hazardous. Specifically, DuPont failed to identify the contents of approximately 30 rail cars, 86 tank trailers and five 55-gallon containers found in various areas of the facility during this inspection, in violation of 40 CFR 262.11. (SCI100001)

- b) **Requirement:** Pursuant to N.J.A.C. 7:26-2.8(f), no person shall begin construction or operation of a solid waste facility without obtaining a SWF Permit unless exempt pursuant to N.J.A.C. 7:26-1.1, 1.7 or 1.8. [N.J.A.C. 7:26-2.8(f)]

Description of Noncompliance: Failing to obtain a SWF permit prior to constructing or operating a solid waste facility, in violation of N.J.A.C. 7:26-2.8(f). Specifically, DuPont is unable to provide specific details regarding eighty-six (86) tank trailers (analytical data, MSDS sheets, etc.), origin of the contents within the tank trailers (bills-of-lading, hazardous waste manifests, etc.) or ownership information regarding these tank trailers. Nine (9) rail cars contain various amounts of outdated, unsalable product, most of which has been stored in the cars for at least 10 years. Many of these trailers are damaged, non-functional, un-placarded and/or unregistered with applicable entities including the NJ Motor Vehicle Commission and/or NJDEP. Several trailers are 10-20 years past the D.O.T. required tank integrity test date. DuPont has thus far identified six (6) cars as "ready to scrap" and approximately 20 cars have been identified as containing asbestos insulation. (SCI100001)

Additionally, during the May 3-7, 2010 inspection, the Department observed the following alleged violations pertaining to the rail car containment area. As per separate agreements with US EPA Regions 2 and 3, US EPA Region 3 will assume the lead in addressing the following four (4) violations. Therefore, the below violations are being listed for informational purposes only and will not be addressed in this document's compliance schedule or penalty calculations:

- c) **Requirement:** Pursuant to 40 CFR 264.175(b)(1), a base must underlay the containers which is free of cracks or gaps and is sufficiently impervious to contain leaks, spills, and accumulated precipitation until the collected material is detected and removed. [40 CFR 264.175(b)(1)] [40 CFR 264.175(b)(1)]

Description of Noncompliance: Failure of container storage area to have an underlying base free of cracks or gaps and sufficiently impervious to contain leak, spills and accumulated precipitation until collected material is detected and removed. Specifically, DuPont failed to provide containment for the rail car accumulation area that had a base free of cracks or gaps and sufficiently impervious to contain leak, spills and accumulated precipitation until collected material is detected and removed, in violation of 40 CFR 264.1785(b)1. (SCI100001)

- d) **Requirement:** Pursuant to 40 CFR 264.175(b)(2), the base must be sloped or the containment system must be otherwise designed and operated to drain and remove liquids resulting from leaks, spills, or precipitation, unless the containers are elevated or are otherwise protected from contact with accumulated liquids. [40 CFR 264.175(b)(2)] [40 CFR 264.175(b)(2)]

Description of Noncompliance: Failure of container storage area to be sloped or designed and operated to drain and remove liquids, unless containers are protected from contact with accumulated liquids. Specifically, DuPont failed to provide containment for the rail car accumulation area that was sloped or designed and operated to drain and remove liquids, unless containers are protected from contact with accumulated liquids, in violation of 40 CFR 264.175(b)2. (SCI100001)

- e) **Requirement:** Pursuant to 40 CFR 264.175(b)(3), the containment system must have sufficient capacity to contain 10% of the volume of containers or the volume of the largest container, whichever is greater. Containers that do not contain free liquids need not be considered in this determination. [40 CFR 264.175(b)(3)] [40 CFR 264.175(b)(3)]

Description of Noncompliance: Failure of container storage area to have capacity to contain 10 percent of volume of all containers or volume of largest container, whichever is greater. Specifically, DuPont failed to provide containment for the rail car accumulation area that had the capacity to contain 10 percent of volume of all containers or volume of largest container, whichever is greater., in violation of 40 CFR 264.175(b)3. (SCI100001)

- f) **Requirement:** Pursuant to 40 CFR 264.175(b)(4), run-on into the containment system must be prevented unless the collection system has sufficient excess capacity in addition to that required in paragraph (b)(3) of this section to contain any run-on which might enter the system. [40 CFR 264.175(b)(4)] [40 CFR 264.175(b)(4)]

Description of Noncompliance: Failure of container storage area to be protected from run-on, unless in compliance with exceptions at 40 C.F.R. 264.175(b)(4). Specifically, DuPont failed to provide containment for the rail car accumulation area that was protected from run-on, unless in compliance with exceptions at 40 C.F.R. 264.175(b)(4), in violation of 40 CFR 264.175(b)4. (SCI100001)

33. On June 28, 2010 the Department conducted an inspection at DuPont and made aware of the following violation:

- a) **Requirement:** Pursuant to 40 CFR 265.31, the facility shall be designed, constructed, maintained and operated to minimize the possibility of fire, explosion, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to the air, soil, surface water or groundwater which could threaten human health or the environment. [40 CFR 265.31]

**Description of Noncompliance:** Failure of facility owner or operator to maintain or operate facility to minimize possibilities of fire, explosion or releases of hazardous waste or hazardous waste constituents. Specifically, On Wednesday, 7/28/10, there was a small leak (or hole) in an overhead line near Building 1178. The line conveys effluent from the stripper to the secondary system of the WWTP. Approximately twenty (20) gallons of F039 liquid waste sprayed out onto the ground beneath the pipe rack from insulation covering the line, in violation of 40 CFR 265.31. (BCI100017)

34. On October 6, 2010 the Department conducted an inspection at DuPont and was made aware of the following violation:

- a) **Requirement** Pursuant to 40 CFR 265.31, the facility shall be designed, constructed, maintained and operated to minimize the possibility of fire, explosion, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to the air, soil, surface water or groundwater which could threaten human health or the environment. [40 CFR 265.31]

**Description of Noncompliance:** Failure of facility owner or operator to maintain or operate facility to minimize possibilities of fire, explosion or releases of hazardous waste or hazardous waste constituents. Specifically, On 10/1/10, a hazardous waste discharge (various hazardous waste codes including F039) estimated at 700-gallons occurred at the "10 Foot Ditch," near the "A Vault Landfill.", in violation of 40 CFR 265.31. (INV100009)

35. On October 26, 2010 the Department conducted an inspection at DuPont and was made aware of the following violation:

- a) **Requirement:** Pursuant to 40 CFR 264.31, the facility shall be designed, constructed, maintained and operated to minimize the possibility of fire, explosion, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to the air, soil, surface water or groundwater which could threaten human health or the environment. [40 CFR 264.31]

**Description of Noncompliance:** Failure of facility owner or operator to maintain or operate facility to minimize possibilities of fire, explosion or releases of hazardous waste or hazardous waste constituents. On 10/20/10, a 50-gallon hazardous waste discharge (hazardous waste code-F039) occurred at Cell 5B of Secure Landfill C. This discharge occurred during a routine backflushing event at this location. (INV100011)

36. On December 20, 2010 the Department conducted an inspection at DuPont and was made aware of the following violation:

- a) **Requirement:** Pursuant to 40 CFR 265.31, facilities must be maintained and operated to minimize the possibility of a fire, explosion, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water which could threaten human health or the environment. [40 CFR 265.31]  
**Description of Noncompliance:** Failure of facility owner or operator to maintain or operate facility to minimize possibilities of fire, explosion or releases of hazardous waste or hazardous waste constituents. On 12/15/10, a hazardous waste discharge (various hazardous waste codes including F039) estimated at 3-gallons occurred outside of the containment area near sump pump P-205. A frozen check valve was found to be the source of the discharge. (INV100012)

37. On December 28, 2010, the Department conducted an inspection at DuPont and was made aware of the following violation:

- a) **Requirement:** Pursuant to 40 CFR 264.31, the facility shall be designed, constructed, maintained and operated to minimize the possibility of fire, explosion, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to the air, soil, surface water or groundwater which could threaten human health or the environment. [40 CFR 264.31]  
**Description of Noncompliance:** Failure of facility owner or operator to maintain or operate facility to minimize possibilities of fire, explosion or releases of hazardous waste or hazardous waste constituents. On 12/15/10, a hazardous waste discharge (hazardous waste code-F039) estimated at 5-gallons occurred outside of secondary containment near leak detection sump LD 2-1. A frozen pipe within leak detection sump LD 2-1 was found to be the source of the discharge. (INV100013)

38. On January 31, 2011, the Department conducted an inspection at DuPont and was made aware of the following violation:

- a) **Requirement:** Pursuant to 40 CFR 262.34(a)(1), except as provided in paragraphs (d), (e), and (f) of this section, a generator may accumulate hazardous waste on-site for 90 days or less without a permit or without having interim status, provided that it is done in accordance with 40 CFR 262.34(a)(1).  
**Description of Noncompliance:** Failure of generator to place waste in containers, in tanks, on drip pads, or in containment buildings in accordance with 262.34(a)(1). Specifically, on 1/31/11, DuPont did not store approximately (10-15) 4ft fluorescent light bulbs properly to prevent breakage, or place four U-tube green tip bulbs, and four 4ft green tip bulbs in proper containment. (INV110002)

39. On February 09, 2011, the Department conducted an inspection at DuPont and found the following violations:

- a) **Requirement:** Pursuant to 40 CFR 265.173, a container holding hazardous waste must always be closed during storage, except when it is necessary to add or remove waste. A container holding hazardous waste must not be opened, handled, or stored in a manner which may rupture the container or cause it to leak. [40 CFR 265.173] [40 CFR 265.173]

**Description of Noncompliance:** Failure of facility owner or operator to comply with requirements for the management of containers. Specifically, DuPont did not properly close the lid on a cardboard box containing 4ft fluorescent light bulbs on 2/9/11 and 2/15/11. (INV110004)

- b) **Requirement:** Pursuant to 40 CFR 262.34(c)(1)(ii), a generator may accumulate as much as 55 gallons of hazardous waste or one quart of acutely hazardous waste listed in Sec. 261.33(e) in containers at or near any point of generation where wastes initially

accumulate, which is under the control of the operator of the process generating the waste, without a permit or interim status and without complying with paragraph (a) of this section provided he marks his containers either with the words "Hazardous Waste" or with other words that identify the contents of the containers. [40 CFR 262.34(c)(1)(ii)]

**Description of Noncompliance:** Failure of generator to mark satellite containers with the words "Hazardous Waste" or other words which identify the contents of the container. Specifically, on 2/9/11 & 2/15/11, DuPont failed to mark a container containing four u-tube light bulbs with the words hazardous waste. (INV110004)

40. On October 26, 2010, the Department conducted an inspection at DuPont and was made aware of the following violations:

- a) **Requirement:** Pursuant to 40 CFR 262.20(a)(1), a generator who transports, or offers for transport a hazardous waste for offsite treatment, storage, or disposal, or a treatment, storage, and disposal facility who offers for transport a rejected hazardous waste load, must prepare a Manifest (OMB Control number 2050-0039) on EPA Form 8700-22, and, if necessary, EPA Form 8700-22A, according to the instructions included in the appendix to this part. [40 CFR 262.20(a)(1)]

**Description of Noncompliance:** Failure of generator, who transports, or offers for transport a hazardous waste for offsite treatment, storage, or disposal, or a treatment, storage, and disposal facility who offers for transport a rejected hazardous waste load, to prepare a manifest before transporting or offering hazardous waste for transport off-site. (INV110003)



- b) **Requirement:** Pursuant to 40 CFR 262.11, a person who generates a solid waste, as defined in 40 CFR 261.2, must determine if that waste is a hazardous waste using the following method:(a) He should first determine if the waste is excluded from regulation under 40 CFR 261.4.(b) He must then determine if the waste is listed as a hazardous waste in subpart D of 40 CFR part 261. (c) For purposes of compliance with 40 CFR part 268, or if the waste is not listed in subpart D of 40 CFR part 261, the generator must then determine whether the waste is identified in subpart C of 40 CFR part 261 by either: (1) Testing the waste according to the methods set forth in subpart C of 40 CFR part 261, or according to an equivalent method approved by the Administrator under 40 CFR 260.21; or (2) Applying knowledge of the hazard characteristic of the waste in light of the materials or the processes used.(d) If the waste is determined to be hazardous, the generator shall refer to N.J.A.C. 7:26G-5, 8 through 11, and N.J.A.C. 7:26A-7 for possible exclusions or restrictions pertaining to management of the specific waste. [40 CFR 262.11] [40 CFR 262.11]

Description of Noncompliance: Failure of generator of solid waste to determine if waste is hazardous. Between 9/27/10 & 10/07/10, DuPont received five Iso-tanks from Porto Rico that contained (K049) liquid hazardous waste. These hazardous wastewaters were off-loaded into the wastewater treatment plant. Although no one visual inspected the tanks, each unit was believed to be empty per driver conformation. Specifically, between 9/27/10 & 10/7/10 DuPont allowed five (5) iso-tanks to leave the facility in route to Porto Rico without determining that the material left in the tanks was a hazardous waste in violation of 40 CFR 262.11. (INV110003)

41. On March 14, 2011, the Department conducted an inspection at DuPont and found the following violations:

- a) **Requirement:** Pursuant to 40 CFR 264.35, did the facility maintain sufficient aisle space for the unobstructed movement of personnel or equipment in an emergency? [40 CFR 264.35]

Description of Noncompliance: Failure of facility operator to maintain sufficient aisle space for the unobstructed movement of personnel or equipment in an emergency. Specifically, on 3/14/11, DuPont did not maintain sufficient aisle space of there Chem. waste Pad A of some hazardous waste light bulbs. (BCI110011)

- b) **Requirement:** Pursuant to 40 CFR 262.34(a)(2), did the generator clearly mark each container of hazardous waste with the date when the accumulation period began, and make the mark visible for inspection? [40 CFR 262.34(a)(2)]

Description of Noncompliance: Failure of generator to make mark visible for inspection. Specifically, on 3/14/11, DuPont did not make the hazardous waste label and accumulation date visible for inspection on some hazardous waste containers. (BCI110011)

42. On March 23, 2011, the Department conducted an inspection at DuPont and found the following violations:

- a) **Requirement:** Pursuant to 40 CFR 270.30(a), did the permittee comply with all conditions of the permit? [40 CFR 270.30(a)]

**Description of Noncompliance:** The facility failed to comply with all of the conditions of the permit. DuPont's Hazardous Waste Permit (HWP 080002) states that the permittee is authorized to stabilize and solidify waste materials within containers staged at the landfill, or upon approval by the Department, in piles staged in the landfill area, while awaiting analytical results for placement in the landfill or shipment to an authorized off-site facility. All waste piles shall be covered with tarps while staged at the landfill area. Specifically, on 3/16/11 & 3/23/11 DuPont failed to Position one side of Pile # 1 staged on top of Secure C Landfill for two weekly inspections in a row. (BCI110012)

43. On March 29, 2010, the Department conducted an inspection at DuPont and was made aware of the following violations:

- a) **Requirement:** Pursuant to 40 CFR 265.31, facilities must be maintained and operated to minimize the possibility of a fire, explosion, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water which could threaten human health or the environment. [40 CFR 265.31]

**Description of Noncompliance:** Failure of facility owner or operator to maintain or operate facility to minimize possibilities of fire, explosion or releases of hazardous waste or hazardous waste constituents. Specifically, on 3/26/11, a hazardous waste discharge (hazardous waste code-F039) estimated at 7-gallons occurred outside of secondary containment near Secondary Aeration at the waste water treatment plant. A relief valve had opened relieving pressure was found to be the source of the discharge. (INV110005)

44. On March 23, 2011, the Department conducted an inspection at DuPont and found the following violations:

- a) **Requirement:** Pursuant to 40 CFR 262.11, a person who generates a solid waste, as defined in 40 CFR 261.2, must determine if that waste is a hazardous waste using the following method:(a) He should first determine if the waste is excluded from regulation under 40 CFR 261.4.(b) He must then determine if the waste is listed as a hazardous waste in subpart D of 40 CFR part 261. (c) For purposes of compliance with 40 CFR part 268, or if the waste is not listed in subpart D of 40 CFR part 261, the generator must then determine whether the waste is identified in subpart C of 40 CFR part 261 by either: (1) Testing the waste according to the methods set forth in subpart C of 40 CFR part 261, or according to an equivalent method approved by the Administrator under 40 CFR 260.21; or (2) Applying knowledge of the hazard characteristic of the waste in light of the materials or the processes used.(d) If the

waste is determined to be hazardous, the generator shall refer to N.J.A.C. 7:26G-5, 8 through 11, and N.J.A.C. 7:26A-7 for possible exclusions or restrictions pertaining to management of the specific waste. [40 CFR 262.11]

Description of Noncompliance: Failure of generator of solid waste to determine if waste is hazardous. Specifically, DuPont Chambers Works failed to determine if the contents of various containers, tanks, scrubbers, reactors, condensers, columns, pumps and associated piping were hazardous prior to the closure of Building J-24 in 2001 (date specified by Scott Northey). Various waste including spent fluorescent lamps, Freon, Celite Diatomaceous Earth, Syltherm XLT and a 55-gallon drum containing a mixture of Acetylacetonate and rainwater was removed from the building subsequent to the site visit conducted on 11/18/10. As of 10/15/2011, DuPont has completed an assessment of the vessels in the building. The assessment indicates that the majority of the vessels are empty and/or clean. Remaining materials include residues and heat exchange materials (i.e., propylene glycol, ethylene glycol). All remaining materials were sampled and analyzed. To date, no hazardous materials have been identified. (INV100010)

45. On June 03, 2011, the Department conducted an inspection at DuPont and found the following violation:

- a) **Requirement:** Pursuant to 40 CFR 264.72(d), did the facility owner or operator comply with the requirements of 40 CFR 264.72(d) when rejecting waste or indentifying a container residue that exceeds the quantity limits for empty? [40 CFR 264.72(d)]

Description of Noncompliance: Specifically, DuPont records indicate that a 15,700 pound heel was received by DuPont via hazardous waste manifest # 000358053 WAS and identified by DuPont on 3/3/11. DuPont rejected this heel back to the generator under hazardous waste manifest # 001319167FLE on 5/13/11, which exceeds the 60 day time limit to complete such rejections. (BCI110022)

46. On August 24, 2011, the Department conducted an inspection at DuPont and was made aware of the following violation:

- a) **Requirement:** Pursuant to 40 CFR 264.31, the facility shall be designed, constructed, maintained and operated to minimize the possibility of fire, explosion, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to the air, soil, surface water or groundwater which could threaten human health or the environment. [40 CFR 264.31]

Description of Noncompliance: Failure of facility owner or operator to maintain or operate facility to minimize possibilities of fire, explosion or releases of hazardous waste or hazardous waste constituents. On 08/23/11, an estimated 1-gallon of hazardous wastes discharge (hazardous waste code-F039) occurred outside of CF-162 from the return activated sludge line at the wastewater treatment plant. Nearby soil and stones were impacted. (INV110013)

47. Based on the facts set forth in these FINDINGS, the Department has determined that EI DUPONT DE NEMOURS & CO has violated the Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq., and/or the Spill Compensation and Control Act, N.J.S.A. 58:10-23.1 et seq. and the regulations promulgated pursuant thereto, specifically:

1. 40 CFR 262.11 - on four (4) separate and distinct occasions.
2. 40 CFR 262.20(a)(1) - on two (2) separate and distinct occasions.
3. 40 CFR 262.34(a) - on two (2) separate and distinct occasions.
4. 40 CFR 262.34(a)(1)
5. 40 CFR 262.34(a)(2) - on two (2) separate and distinct occasions.
6. 40 CFR 262.34(a)(3)
7. 40 CFR 262.34(c)(1)(ii)
8. 40 CFR 264.15(c)
9. 40 CFR 264.31 - on seven (7) separate and distinct occasions.
10. 40 CFR 264.35
11. 40 CFR 264.72(d)
12. 40 CFR 265.31 - on eleven (11) separate and distinct occasions.
13. 40 CFR 264.175(b)1
14. 40 CFR 264.175(b)2
15. 40 CFR 264.175(b)3
16. 40 CFR 264.175(b)4
17. 40 CFR 265.173
18. 40 CFR 265.174
19. 40 CFR 265.193(c)(1)
20. 40 CFR 268.50(a)(2) - on five (5) separate and distinct occasions.
21. 40 CFR 268.50(a)(2)(i-ii) - on five (5) separate and distinct occasions.
22. 40 CFR 270.10(e-f)
23. 40 CFR 270.30(a) - on nine (9) separate and distinct occasions.
24. N.J.A.C. 7:1E-1.11(a) - on two (2) separate and distinct occasions.
25. N.J.A.C. 7:26-2.8(f)

48. In order to resolve this matter without trial or adjudication, DuPont and the Department have agreed to the entry of this ACO and to be bound by its terms and conditions.

### ORDER

**NOW, THEREFORE, IT IS HEREBY ORDERED THAT:**

#### A. COMPLIANCE SCHEDULE

49. DuPont agrees to comply with the following conditions and/or facility upgrades described herein and shall take whatever actions are necessary to achieve and/or maintain compliance with the violations listed in paragraph 47 above.

- a. DuPont shall comply with all RCRA regulations, including “speculative accumulation as described in 40 CFR 261.1(c)(8). However, for the purposes of the Department determining if DuPont has satisfied all of the requirements of this ACO or for determining if DuPont should be assessed any stipulated penalties, DuPont is only required to be in compliance with the specific regulatory citations detailed above.
- b. DuPont shall comply with all Solid Waste regulations including those pertaining to “Solid Waste Facilities” in N.J.A.C. 7:26-2.8. However, for the purposes of the Department determining if DuPont has satisfied all of the requirements of this ACO or for determining if DuPont should be assessed any stipulated penalties, DuPont is only required to be in compliance with the specific regulatory citations detailed above.
- c. Within ninety (90) days of the effective date of this Order, DuPont shall have performed an evaluation of the site-wide and area specific procedures relating to the proper storage, identification and accumulation of waste. These procedures should ensure that containers and tanks of waste being stored solely for the purpose of the accumulation of such quantities of hazardous waste as necessary to facilitate proper recovery, treatment, or disposal, are clearly marked and/or the appropriate documentation is maintained on site and available for inspection including completing the investigation of building J-24. These procedures and the findings of the evaluation shall be provided to the Department for their review and comment.
- d. Within one-hundred and twenty (120) days of the effective date of this Order, DuPont shall provide to the Department a listing of actions and preventative measures to be undertaken to prevent spills/discharges of hazardous waste and hazardous substance from occurring in/throughout the plant. Upon Department review and comment, DuPont shall implement and maintain the preventative measures.
- e. Within three (3) months of the effective date of this Order, DuPont will remove the remaining hazardous waste from tank TH-231, so as to render the tank RCRA empty.

**Secure Landfill C Maintenance/Preventive Measures Issues**

- f. Within ninety (90) days of the effective date of this Order, DuPont shall provide to the Department a listing of actions and preventative measures that have been taken or to be undertaken to address the issues stated below. Upon review and comment by the Department, DuPont agrees to maintain any actions/preventative measures already taken and implement any actions/preventative measures determined to be necessary to address these issues.
  - i. The discharge of leachate and/or other hazardous waste and hazardous substance from the stormwater line, on Secure Landfill C;
  - ii. The leachate depth exceeding 12 inches over the upper liner of the landfill; and

- iii. That proper maintenance and repairs (i.e. safety shower and eyewash units at Secure Landfill C and the integrity of the permitted containment areas) are performed in a manner to maintain compliance with DuPont's permit and the RCRA regulations.
- g. DuPont agrees that within ninety (120) days of the effective date of this order to establish a written procedure that requires personnel to insure that all piles temporarily staged/stored on the secure landfill C are to be covered at all times (said piles being stored/staged for reasons other than disposal in the landfill).

#### Rail Siding Issues

- h. The Department acknowledges that DuPont has already implemented a preliminary review of all of the product and/or waste containing rail cars/tank trailers at the facility. Within thirty (30) days of the effective date of this Order, DuPont shall provide a list of all product/waste rail cars and tank trailers that have been on-site in excess of ninety (90) days. This list shall include:
  - i. If the material is waste or product. If a material/waste is unknown.
  - ii. Owner(s) of the material (if other than DuPont).
  - iii. How long the material/waste has been on site.
  - iv. If the material is being speculatively accumulated (please include required compliance verification)
  - v. Which tank trailers/rail cars are "non-road worthy"
- i. The Department acknowledges that DuPont has taken proactive steps prior to the effective date of this Order to address the tank trailers and rail cars referenced in 32(a) and (b) of this Order. As such within sixty (60) days of the effective date of this Order DuPont shall provide a status report as to the rail cars and tank trailers that have already been identified and removed from the facility.
- j. Within ninety (90) days of the effective date of this Order, DuPont shall provide a detailed plan to identify and process those remaining rail cars and tank trailers referenced in 32(a) and (b) of this Order, as well as any other container that is found to be similarly situated as a result of the list to be submitted per "h" of this section. This plan shall include the following and shall be implemented, subsequent to Department review and comment:
  - i. Provide a schedule for sampling and identifying all and tank trailers that contain unknown material
  - ii. Provide a schedule for the disposal/removal from the site. DuPont shall have no more then twelve (12) months to identify and remove all concerned material from the site, subject to written extensions approved by the Department.

**DuPont, USEPA Region III, NJDEP - Interagency Coordination**

50. USEPA Region III and DuPont are currently negotiating a Consent Order to settle, among other items, DuPont's alleged failure to have containment for hazardous waste laden rail cars at the DuPont's NJ Chambers Works Facility. NJDEP had cited DuPont for these violations during prior inspections of the facility. NJDEP, through discussion with USEPA Region III has agreed that USEPA Region III shall address these violations as part of the pending Consent Order. Once executed, EPA through NJDEP assistance will be responsible for enforcing the provisions of the Consent Decree.
51. However, in the event that USEPA Region III and DuPont are, for whatever reason, unable to execute the aforementioned Consent Order, DuPont agrees to perform the following activities indentified in paragraph 52 below regarding DuPont's rail activities at the facility. In the event Region III and DuPont execute the aforementioned Consent Decree, DuPont shall not have to address the activities indentified in paragraph 52 below in the context of this ACO. The executed Consent Decree will have primacy and paragraph 52 shall be null and void.
52. Until the EPA/DuPont Consent decree is signed, and effective upon the signing of this Administrative Consent Order, DuPont agrees to:
- a) Cease accepting rail cars containing hazardous waste by March 30, 2012; and empty and return all rail cars containing hazardous waste by June 1, 2012
  - b) RCRA railcar management activities:
    - i. DuPont shall sign all the waybills upon the rail car's arrival and note the date and time of the cars arrival at the General Rail Siding.
    - ii. DuPont shall remove all rail cars containing hazardous waste from the General Rail Siding to the Designated Rail Siding as soon as practicable but no later than within seventy-two (72) hours of arrival of those rail cars on site.
    - iii. To the maximum extent possible, DuPont shall store all railcars containing hazardous waste on the SET Rail Spots. In any event, DuPont shall not store more than thirty (30) railcars containing hazardous waste within the boundaries of the General Rail Siding at any given time.
    - iv. DuPont shall not return a railcar that contained hazardous waste to a generator unless the railcar is "empty" within the meaning of RCRA, or DuPont complies with 40 C.F.R. § 264.72(d)(1) (2010). The requirements contained in 40 C.F.R. § 264.72(d)(1) (2010) shall supersede any contrary requirements in the RCRA permit. In complying with 40 C.F.R. § 264.72(d)(1), DuPont shall, at a minimum:
      - 1. Consult with the generator regarding each non-empty railcar before it is forwarded to another facility or returned to the generator; and

2. Forward non-empty railcars to an alternative facility that can manage the waste unless it is impossible to locate such a facility.
- c) Inspection Activities for RCRA Railcars. Starting on the date that DuPont signs this Administrative Consent Order and continuing through June 1, 2012, DuPont shall institute the following RCRA Railcar inspection activities:
- i. DuPont shall visually monitor storm water originating from the Designated Rail Siding for signs of releases, and respond to any releases detected. Monitoring shall continue through June 1, 2012;
  - ii. DuPont shall minimize the area at the Designated Rail Siding where railcars containing hazardous waste may be stored, by consolidating such railcars in as small a geographic area of the Designated Rail Siding as is practicable and consistent with all relevant regulations and shall, in conducting the monitoring activities set forth in this section, ensure cars are so configured;
  - iii. DuPont shall conduct inspections of the Designated Rail Siding area and containment on at least a daily basis to determine whether any visible leaks or spills have occurred at the dedicated rail storage areas have occurred by visually observing and checking each railcar stored for leaks and the ground underneath and near all such railcars for any visible leaks or spills;
  - iv. In the event that any railcar located in the Designated Rail Siding is found to be leaking, DuPont shall, upon stabilizing and containing that leak, if necessary, immediately move such railcar(s) to an area with adequate secondary containment or provide an alternate means to contain the leak, promptly implement its contingency plan in accordance with 40 C.F.R. 264.50-.56., and provide notice to NJDEP of any such leaks or releases within twenty-four (24) hours of discovery; and
  - v. DuPont shall maintain a daily inspection and storm water visual observation log. DuPont shall use the log to record each daily inspection and storm water visual observation. Upon request by NJDEP, DuPont shall provide copies of completed daily inspection logs.
- d) Nothing in this Administrative Consent Order is intended to preclude DuPont from accepting railcars containing hazardous wastes at the SET facility after March 30, 2012, provided that it manages and stores such railcars in accordance with the requirements set forth in RCRA and its implementing regulations, including 40 C.F.R. § 264.175, and according to a permit issued pursuant to 40 C.F.R. Part 270 that is consistent with these requirements.



53. If DuPont is not able to achieve compliance by taking the above actions, DuPont is responsible for taking whatever additional actions are necessary in order to comply with all applicable federal, state and local permits as well as all applicable statutes, codes, rules, regulations and orders, including but not limited to the statutes and regulations cited herein. However, for the purposes of termination of this order or the calculation of any stipulated penalty penalties the Department shall only consider DuPont's failure to comply with the above actions.
54. DuPont shall be responsible for submitting TSD, NJDPES/Stormwater permit modification applications if required by permit or regulation. Work involving the modification of equipment subject to permit modification requirements and subsequent approval shall not commence until the modification(s) have been approved by the Department.

### **B. PROGRESS REPORTS**

55. DuPont shall submit quarterly progress reports to the Department by first day of the first month of each quarter starting with the first day of the quarter following the effective date of this Administrative Consent Order. Each report shall explain the status of DuPont's compliance with this ACO and shall include, but not be limited to, the following:
- A. Identification of site and reference to this ACO;
  - B. Status of permitting and planning approvals and any work at the site and progress to date;
  - C. Difficulties or problems encountered during reporting period and actions taken to rectify;
  - D. Activities planned for the next reporting period;
  - E. Required and actual completion date for each item required by this ACO;
  - F. An explanation of any non-compliance with the compliance schedule; and
  - G. Evaluation of all corrective measures implemented to date.

### **C. PROJECT COORDINATION**

56. DuPont shall submit to the Department all documents required by this Administrative Consent Order, including correspondence relating to force majeure issues, by certified mail or hand delivery with an acknowledgement of receipt from the Department. The date that the the certified mail is postmarked will be the date the Department uses to determine DuPont compliance with the requirements of this Administrative Consent Order and the applicability of stipulated penalties and any other remedies to the Department.
57. Within seven (7) calendar days after the effective date of this Administrative Consent Order, DuPont shall submit to the Department the name, title, address and telephone number of the individual who shall be DuPont's technical contact for the Department for all matters concerning this Administrative Consent Order and DuPont shall designate an agent and mailing address for this agent for the purpose for all matters concerning this Administrative Consent Order.

58. Unless otherwise directed in writing by the Department, DuPont shall submit copies of all documents required by this Administrative Consent Order to the individual identified below, who shall be the Department's contact for DuPont for all matters concerning this Administrative Consent Order:

Division of Air and Hazardous Materials Enforcement  
Bureau of Hazardous Waste & UST Compliance and Enforcement  
PO Box 407  
Trenton, NJ 08625-0407  
Attention: Mr. Peter Taylor, Supervisor

**D. PENALTY**

59. In settlement of the violations cited in the above findings, DuPont shall pay a penalty of **\$725,000** by check made payable to the Treasurer, State of New Jersey" and remitted to the Division of Revenue at the address stated on the enclosed invoice(s) by thirty calendar day from the effective date of the Administrative Consent Order.

**E. STIPULATED PENALTIES**

60. DuPont shall pay stipulated penalties to the Department, as set forth below, for failure to comply with the provisions of this ACO unless the Department has notified DuPont in writing that a stipulated penalty will not be assessed for violations of the compliance schedule pursuant to the force majeure provisions of this ACO.

<u>Calendar Days After Due Date</u>	<u>Per Calendar Day</u>
1-7	\$1000
8-14	\$2000
15 or more	\$5000

61. Within 45 calendar days after DuPont's receipt of a written demand from the Department for stipulated penalties, DuPont shall submit a check to the Department as outlined in paragraph 60 above.

62. If DuPont fails to pay stipulated penalties pursuant to the preceding paragraphs, the Department may take action to collect same, including, but not limited to, instituting civil proceedings to collect such penalties pursuant to R. 4:67 and R. 4:70 or assess civil administrative penalties for violations of this ACO.

63. The payment of stipulated penalties does not alter DuPont's responsibility to complete all requirements of this ACO.

#### **F. FORCE MAJEURE**

64. If any event occurs which is beyond the control of DuPont and which DuPont believes will or may cause delay in the achievement of the compliance schedule provisions of this ACO, DuPont shall notify the Department in writing within seven (7) calendar days of becoming aware of the delay or anticipated delay, as appropriate. In the notification, DuPont shall reference this paragraph, describe the anticipated length of the delay, the precise cause or causes of the delay, and any measures taken or to be taken to minimize the delay. DuPont shall take all necessary action to prevent or minimize any such delay.

65. The Department shall adjust the deadlines in the compliance schedule of this ACO for a period no longer than the delay if the Department finds that:

- A. DuPont has complied with the notice requirements of paragraph 50;
- B. any delay or anticipated delay has been or will be caused by fire, flood, riot, strike, or other circumstances beyond the reasonable control of DuPont; and
- C. DuPont has taken all necessary actions to prevent or minimize the delay.

66. If the Department denies DuPont's force majeure request, DuPont may be subject to stipulated penalties. The burden of proving that any delay is caused by circumstances beyond the reasonable control of DuPont and the length of any such delay attributable to those circumstances shall rest with DuPont. Increases in the cost or expenses incurred by DuPont in fulfilling the requirements of this ACO shall not be a basis for an extension of time. Delay in an interim requirement shall not automatically justify or excuse delay in the attainment of subsequent requirements. Contractor's breach shall not automatically constitute force majeure.

#### **G. RESERVATION OF RIGHTS**

67. The Department reserves the right to unilaterally terminate this Administrative Consent Order in the event DuPont violates the terms. However, before the Department terminates this Administrative Consent Order pursuant to this paragraph, the Department will notify DuPont in writing of their obligations, and DuPont shall have reasonable time under the circumstances, not to exceed thirty (30) calendar days, to perform said obligations.

68. The Department reserves the right to seek reimbursement for past costs to be incurred in the oversight of this Administrative Consent Order.

69. This Administrative Consent Order shall not be construed to affect or waive claims of federal or state natural resources trustees against any party for damages or injury to natural resources.
70. The Department reserves the right to require DuPont to take any and all additional measures should the Department determine that such measures are necessary to protect human health and/or the environment. Nothing in this Administrative Consent Order constitutes a waiver of any statutory right or enforcement powers of the Department to require DuPont to undertake such additional measures should the Department determine that they are necessary.

#### **H. GENERAL PROVISIONS**

71. Neither the entry into this ACO nor the payment of the associated penalty shall constitute an admission of liability by DuPont for any of the violations listed herein.
72. Nothing contained in this ACO restricts the ability of the Department to raise the above Findings in any other proceeding, specifically including, but not limited to, proceedings pursuant to N.J.S.A. 13:1E-126 et seq., (commonly referred to as A-901).
73. This ACO shall be binding on DuPont, its respective agents, successors, assigns, and any trustee in bankruptcy or receiver appointed pursuant to a proceeding in law or equity.
74. This ACO shall be fully enforceable as a final Administrative Order in the New Jersey Superior Court.
75. DuPont agrees not to contest the terms or conditions of this ACO except that DuPont may contest the Department's interpretation or application of such terms or conditions in any action brought by the Department to enforce this ACO's provisions.
76. This ACO shall not relieve DuPont from obtaining and complying with all applicable federal, state and local permits as well as all applicable statutes, codes, rule, regulations and orders, including but not limited to the statutes and regulations cited herein.
77. No modification or waiver of this ACO shall be valid except by written amendment duly executed by DuPont and the Department or by the Department's written modification pursuant to the force majeure provisions herein.
78. DuPont shall not construe any unwritten or informal advice, guidance, suggestions, or comments by the Department, or by persons acting on behalf of the Department, as relieving DuPont of its obligations under its permit(s) if any, this ACO, the Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq., and/or the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 et seq.

79. In addition to the Department's statutory and regulatory rights to enter and inspect, DuPont shall allow the Department and its authorized representatives access to the site at all times for the purpose of determining compliance with this ACO.
80. Nothing in this ACO shall preclude the Department from taking enforcement action against DuPont for matters not set forth in the findings of this ACO.
81. No obligations or penalties imposed by this ACO are intended to constitute debt(s), which may be limited or discharged in a bankruptcy proceeding. All obligations and penalties are imposed pursuant to the police powers of the State of New Jersey for the enforcement of the law and the protection of public health, safety, welfare and the environment.
82. DuPont shall give written notice of this ACO to any successor in interest thirty (30) calendar days prior to transfer of ownership or control of the facility or facilities which are the subject of this ACO and shall simultaneously notify the Department that such notice has been given. This requirement shall be in addition to any other statutory or regulatory requirements arising from the transfer of ownership or control of DuPont's facility. In addition, the parties agree that any contract, lease, deed or any other agreement that DuPont enters into to convey the property/facility that is the subject of this ACO shall include a provision which states that the successor, assignee, tenant or purchaser has agreed to assume the obligations imposed by this ACO.
83. The Department reserves all statutory and common law rights to require DuPont to take additional action(s) if the Department determines that such actions are necessary to protect public health, safety, welfare and the environment. Nothing in this ACO shall constitute a waiver of any statutory or common law right of the Department to require such additional measures should the Department determine that such measures are necessary.
84. This ACO shall be governed and interpreted under the laws of the State of New Jersey.
85. If any provision of this ACO is found invalid or unenforceable, the remainder of this ACO shall not be affected thereby and each provision shall be valid and enforced to the fullest extent permitted by law. The Department does, however, retain the right to terminate the remainder of this ACO if, after such finding, it determines that the remaining ACO does not serve the purpose for which it was intended.
86. This ACO represents the entire integrated agreement between the Department and DuPont on the matters contained herein.
87. The Department reserves the right to unilaterally terminate this ACO in the event DuPont violates its terms and to take any additional enforcement action it deems necessary.
88. This ACO shall terminate upon DuPont's compliance with all of the conditions of this order. For said termination to be effectuated, DuPont must send written notification to the Department as to their belief that all items of the ACO are completed. If after sixty (60) from the receipt of said notice the Department fails to respond or consents to the termination of this Order then this ACO shall be deemed terminated.

89. This ACO shall become effective upon the execution hereof by all parties, subject to completion of any required public participation process.

**EI DUPONT DE NEMOURS CHAMBERS WORKS**

DATED: 10/14/11

BY: FM Holman

NAME: F.M. HOLMAN

TITLE: PLANT MANAGER

By this signature, I certify that I have full authority to execute this document on behalf of EI DUPONT DE NEMOURS CHAMBERS WORKS.

**New Jersey Dept. of Environmental Protection**

DATED: 11/23/2011

BY: Edward M. Choromanski

NAME: EDWARD M. CHOROMANSKI

TITLE: Acting Director, Air & Hazardous Materials

By this signature, I certify that I have full authority to execute this document on behalf of NJDEP.