

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
BEAUMONT DIVISION

_____)	
UNITED STATES OF AMERICA and the)	
STATE OF TEXAS,)	
)	
Plaintiffs,)	
)	
v.)	Civil Action No.
)	
E. I. DU PONT DE NEMOURS AND CO.)	
)	
and)	
)	
THE CHEMOURS CO. FC, LLC,)	
)	
Defendants.)	

COMPLAINT FOR NATURAL RESOURCE DAMAGES

The United States of America (“United States”), by the authority of the Attorney General of the United States, by and through the undersigned attorneys, acting at the request of the National Oceanic and Atmospheric Administration (“NOAA”), and of the Fish and Wildlife Service of the United States Department of the Interior (“FWS”), and the State of Texas, on behalf of the Texas Commission on Environmental Quality (“TCEQ”), the Texas General Land Office (“TGLO”), and the Texas Parks and Wildlife Department (“TPWD”) (collectively, the “State”), file this Complaint and allege as follows:

STATEMENT OF THE CASE

1. This is a civil action against E. I. du Pont de Nemours and Co. (“DuPont”) and The Chemours Co. FC, LLC (“Chemours”), pursuant to Section 107(a)(4)(C) of the Comprehensive Environmental Response, Compensation and Liability Act (“CERCLA”), 42

U.S.C. § 9607(a)(4)(C), seeking recovery of damages for injury to, loss of, or destruction of natural resources, including recovery of the costs of assessing such injury and damages and the future costs of overseeing and monitoring restoration actions, as a result of releases of hazardous substances into the environment at or from the DuPont Beaumont Works Industrial Park Complex including the West Marsh, located at 5470 N. Twin City Highway, Nederland, Texas 77627. The State of Texas also seeks relief under the Texas Water Code (“TWC”) §§ 26.261-267.

JURISDICTION AND VENUE

2. This Court has personal jurisdiction over the Parties and has jurisdiction over the subject matter of this action under Sections 107 and 113(b) of CERCLA, 42 U.S.C. §§ 9607 and 9613(b), and 28 U.S.C. §§ 1331, 1345 and 2201.

3. Venue is proper in this District pursuant to 28 U.S.C. § 1391 and Section 113(b) of CERCLA, 42 U.S.C. § 9613(b) because the release or threatened release of hazardous substances that gives rise to the action occurred in this District.

PARTIES

4. DuPont is a Delaware corporation registered to do business in the State of Texas.

5. DuPont formerly owned and operated the DuPont Beaumont Works Industrial Park Complex including the West Marsh (the “Site”), located at 5470 N. Twin City Highway, Nederland, Texas, from 1954 through 2015.

6. On July 1, 2015, DuPont created a new company, Chemours, for its Performance Chemicals Division. Chemours is a Delaware corporation registered to do business in the State of Texas.

7. In 2015, Chemours became the owner of the DuPont Beaumont Works Industrial Park Complex, located at 5470 N. Twin City Highway, Nederland, Texas, and the Site.

8. Collectively, DuPont and Chemours are the “Defendants.”

9. Pursuant to Federal statutes, including Section 107(f)(2)(A) of CERCLA, 42 U.S.C. § 9607(f)(2)(A), TCEQ, TGLO, TPWD, NOAA, and FWS are trustees for natural resources injured as a result of releases of hazardous substances caused by Defendants at the Site.

CERCLA STATUTORY BACKGROUND

10. Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), provides in pertinent part that:

(1) the owner or operator of . . . a facility, (2) any person who at the time of disposal of any hazardous substance owned or operated any facility at which such hazardous substances were disposed of, . . . (4) . . . from which there is a release, or a threatened release which causes the incurrence of response costs, of a hazardous substance, shall be liable for – . . . (C) damages for injury to, destruction of, or loss of natural resources, including the reasonable costs of assessing such injury, destruction or loss resulting from such a release; . . .

11. The term “natural resources” as defined in CERCLA means “land, fish, wildlife, biota, air, water, groundwater, drinking water supplies, and other such resources belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by the United States, . . . and any State or local government. . . .” 42 U.S.C. § 9601(16).

GENERAL ALLEGATIONS

12. The Site (also known as the “West Marsh”) encompasses approximately 30 acres in the northwestern corner of the DuPont Beaumont Works Industrial Park Complex, bounded by the Neches River on the northeast, closed solid waste management units to the southeast, tank storage to the southwest, and a former canal on the northwest.

13. DuPont began operations at the Site in 1954, which included the production of plastics and other proprietary synthetic products commercially sold by DuPont. Chemours, a new company formed by DuPont became the owner of the Site in 2015.

14. During the time that DuPont owned and operated the Site, hazardous substances including arsenic, chromium, lead, zinc, copper, mercury, and nickel were disposed of at the Site.

15. Chemours is the current owner of the Site where hazardous substances have come to be located.

16. Releases of hazardous substances from the Site have resulted in injuries to, destruction of, loss of, and the loss of use of natural resources and services from natural resources at the Site, including estuarine emergent wetland habitat and other resources.

17. Under Section 107 of CERCLA, 42 U.S.C. § 9607, and 43 C.F.R. Part 11, the United States and the State of Texas (collectively, “Plaintiffs”), as natural resource trustees, are entitled to recover damages for injury to natural resources, including (1) the cost to restore, replace, or acquire the equivalent of such natural resources; (2) the compensable value of lost services resulting from the injury to resources; and (3) the reasonable cost of assessing injuries to natural resources and resulting damages.

18. In 2007, DuPont entered into a Memorandum of Agreement with the federal and state natural resource trustees (collectively, “the Trustees”) to perform a cooperative, restoration-based assessment to address potential natural resource injuries at the Site. Chemours joined the cooperative assessment when it became the Site owner in 2015.

19. The Trustees’ assessment of these injuries to natural resources, including the restoration project proposed to compensate for those losses, is identified in the “Final Damage

Assessment and NEPA Categorical Exclusion for DuPont Beaumont Works West Marsh, Jefferson County, Texas,” dated June 6, 2016.

20. The Trustees determined that hazardous substances released at the Site have injured or potentially injured estuarine emergent wetland habitat and other resources.

21. The primary hazardous substances at the Site include arsenic, chromium, lead, zinc, copper, mercury, and nickel.

22. The Trustees have incurred costs in assessing the injury to natural resources which remain unreimbursed.

FIRST CLAIM FOR RELIEF

(The United States’ and the State of Texas’s Claim for Recovery of
Natural Resource Damages Under CERCLA)

23. Paragraphs 1 through 22 are re-alleged and incorporated herein by reference.

24. DuPont and Chemours are “persons” within the meaning of Section 101(21) of CERCLA, 42 U.S.C. § 9601(21) and also within the meaning of Section 26.263(5) of the TWC.

25. The Site is a “facility” within the meaning of Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

26. There was a “release” or a threatened “release” within the meaning of Section 101(22) of CERCLA, 42 U.S.C. § 9601(22), of “hazardous substances”, within the meaning of Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), into the environment at the Site.

27. The release of hazardous substances at or to the Site caused injury to, destruction of, or loss of “natural resources” within the meaning of Sections 101(16) and 107(a)(4)(C) of CERCLA, 42 U.S.C. §§ 9601(16) and 9607(a)(4)(C).

28. TCEQ, TGLO, TPWD, NOAA, and FWS are agencies that have been designated as natural resource trustees pursuant to Section 107(f) of CERCLA, 42 U.S.C. § 9607(f).

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.