

Section 113(b)(2) of the Clean Air Act (“CAA”), 42 U.S.C. § 7413(b)(2); Section 7.002 of the Texas Water Code, Tex. Water Code § 7.002; and regulations promulgated thereunder, for injunctive relief and the assessment of civil penalties. The violations that are the subject of this complaint occurred at Defendants’ Sabine River facility located at 3055 Farm Road 1006, Orange, Orange County, Texas (“Facility”).

2. The violations that are the subject of this Complaint relate to: Defendants’ failure to comply with RCRA and the Texas Solid Waste Disposal Act (Tex. Health & Safety Code ch. 361), and other regulatory requirements, with respect to the generation, treatment, storage, and disposal of hazardous waste at the Facility; Defendants’ discharge of pollutants to the air of the United States and failure to comply with other regulatory requirements in violation of the CAA and the Texas Clean Air Act (Tex. Health & Safety Code ch. 382); and DuPont’s violations of the Texas Pollution Discharge Elimination System permit issued pursuant to the CWA and Chapter 26 of the Texas Water Code, Tex. Water Code ch. 26.

3. As a result of Defendants’ failure to comply with federal and state regulations, excess pollutants have been and are being emitted into the environment from the Facility. These pollutants, and some of their harmful effects, include, *inter alia*: corrosive materials (pH less than 2.0 or greater than 12.5), which cause irritation, blistering, and burns to tissue upon contact; benzene, which is a known human carcinogen and volatile organic compound (“VOC”); and other VOCs found in the ethylene process. VOCs contribute to the formation of ground-level ozone, a major constituent of smog.

JURISDICTION

4. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C.

§§ 1331, 1345 and 1355; Section 3008(a) of RCRA, 42 U.S.C. § 6928(a); Section 309(b) of the CWA, 33 U.S.C. § 1319(b); and Section 113(b) of the CAA, 42 U.S.C. § 7413(b). This Court has supplemental jurisdiction over the state law claims pursuant to 28 U.S.C. § 1367.

5. This Court has personal jurisdiction over Defendants because the Facility is located in Orange County, Texas, meaning it is presently within the jurisdictional boundaries of the federal district court for the Eastern District of Texas, as established by Congress under 28 U.S.C. § 124(c).

VENUE

6. Venue is proper in this Judicial District under 28 U.S.C. §§ 1391(b) and 1395(a); Section 3008(a)(1) of RCRA, 42 U.S.C. § 6928(a)(1); Section 309(b) of the CWA, 33 U.S.C. § 1319(b); and Section 113(b) of the CAA, 42 U.S.C. § 7413(b), because the violations alleged in the Complaint are alleged to have occurred in, and Defendants conduct business in, this Judicial District.

NOTICE

7. Notice was given to the State of Texas (“Texas”) prior to the commencement of this action as required by Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2); Section 309(b) of the CWA, 33 U.S.C. § 1319(b); and Section 113(b) of the CAA, 42 U.S.C. § 7413(b). Texas is a co-plaintiff in this action.

DEFENDANTS

8. DuPont was founded in 1802 and was incorporated in Delaware in 1915. At all times relevant to this action, DuPont is and has been a corporation organized under the laws of the State of Delaware and doing business in Texas. DuPont was owner and operator of the

Facility from 1946 through January 2019.

9. PMNA is a wholly owned subsidiary of The Dow Chemical Company and was incorporated in Delaware in 2018. PMNA is the current owner and operator of the Facility through a Special Warranty Deed transfer of the Facility from DuPont to PMNA on or about February 1, 2019.

10. At all times relevant to this action, each Defendant has been a “person” within the meaning of Section 1004(15) of RCRA, 42 U.S.C. § 6903(15); Section 502(5) of the CWA, 33 U.S.C. § 1362(5); Section 302(e) of the CAA, 42 U.S.C. § 7602(e); Tex. Health & Safety Code §§ 361.003(23) & 382.003(10); and Tex. Water Code § 26.001(25).

STATUTORY AND REGULATORY FRAMEWORK

A. RESOURCE CONSERVATION AND RECOVERY ACT

11. RCRA, 42 U.S.C. § 6901 *et seq.*, establishes a comprehensive program to be administered by the Administrator of EPA (“Administrator”), regulating the generation, transportation, treatment, storage, and disposal of hazardous waste.

12. Pursuant to its authority under RCRA, EPA promulgated regulations at 40 C.F.R. Parts 260 through 272 that are applicable to generators, transporters, and treatment, storage, and disposal facilities. These regulations provide detailed requirements governing the activities of persons who generate hazardous waste. These regulations generally prohibit the treatment, storage, and disposal of hazardous waste without a permit or equivalent “interim status.” These regulations also prohibit land disposal of certain hazardous waste.

13. Pursuant to Section 3006 of RCRA, 42 U.S.C. § 6926, and 40 C.F.R. Part 271, the Administrator may authorize a state to administer a RCRA hazardous waste program in lieu of

the federal program when he or she deems the state program to be substantially equivalent to the federal program. When a state obtains such authorization, federally-approved state regulations apply in lieu of the federal RCRA regulations in that state. Federally-approved state RCRA regulations are enforceable by the United States pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a).

14. The Administrator granted final authorization to Texas to administer its Hazardous Waste Management Program in lieu of the federal program on December 12, 1984, effective December 26, 1984. 49 Fed. Reg. 48300; *see also* 40 C.F.R. § 272.2201. There have been subsequent revisions to the federal program, with corresponding revisions to the authorized State program.

15. In Texas, the authorized hazardous waste program is managed by the TCEQ, pursuant to the Texas Solid Waste Disposal Act, Tex. Health & Safety Code ch. 361, and the rules and regulations promulgated thereunder at 30 Texas Administrative Code (Tex. Admin. Code) Chapter 335. For ease of reference, the Texas regulations are cited below followed by the applicable federal hazardous waste regulation.

16. Pursuant to 30 Tex. Admin. Code § 335.1(146)(A) [40 C.F.R. § 261.2(a)(1)], “solid waste” is defined as any discarded material, “including solid, liquid, semisolid, or contained gaseous material resulting from industrial, municipal, commercial, mining, and agricultural operations, and from community and institutional activities,” subject to certain exceptions not applicable here. Pursuant to 30 Tex. Admin. Code § 335.1(146)(B) [40 C.F.R. § 261.2(a)(2)], a discarded material is any material which is abandoned, recycled, considered inherently waste-like, or a military munition. Pursuant to 30 Tex. Admin. Code § 335.1(146)(C)

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