

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

UNITED STATES OF AMERICA,
and STATE OF TEXAS
Plaintiffs,

v.

E.I. DU PONT DE NEMOURS AND
COMPANY, and
PERFORMANCE MATERIALS,
NA, INC.

Defendants.

Civil Action No. 1:21-cv-00516

CONSENT DECREE

TABLE OF CONTENTS

I.	<u>JURISDICTION AND VENUE</u>	6
II.	<u>APPLICABILITY</u>	7
III.	<u>DEFINITIONS</u>	9
IV.	<u>INJUNCTIVE RELIEF REQUIREMENTS FOR COMPLIANCE</u>	11
V.	<u>COMPLIANCE EVALUATION AND AUDIT REQUIREMENTS</u>	12
VI.	<u>APPROVAL OF DELIVERABLES</u>	19
VII.	<u>PERMITS</u>	20
VIII.	<u>CIVIL PENALTY</u>	21
IX.	<u>REPORTING REQUIREMENTS</u>	24
X.	<u>STIPULATED PENALTIES</u>	27
XI.	<u>FORCE MAJEURE</u>	36
XII.	<u>DISPUTE RESOLUTION</u>	38
XIII.	<u>INFORMATION COLLECTION AND RETENTION</u>	41
XIV.	<u>EFFECT OF SETTLEMENT/RESERVATION OF RIGHTS</u>	43
XV.	<u>COSTS</u>	45
XVI.	<u>NOTICES</u>	46
XVII.	<u>EFFECTIVE DATE</u>	50
XVIII.	<u>RETENTION OF JURISDICTION</u>	50
XIX.	<u>MODIFICATION</u>	51
XX.	<u>TERMINATION</u>	51
XXI.	<u>PUBLIC PARTICIPATION</u>	55
XXII.	<u>SIGNATORIES/SERVICE</u>	55
XXIII.	<u>INTEGRATION</u>	56

XXIV.	<u>FINAL JUDGMENT</u>	56
XXV.	<u>APPENDICES</u>	56
XXVI.	<u>26 U.S.C. § 162(f)(2)(A)(ii) IDENTIFICATION</u>	56

WHEREAS, concurrent with the lodging of this Consent Decree, Plaintiffs, the United States of America, on behalf of the United States Environmental Protection Agency (“EPA”), and the State of Texas (the “State”) by and through the Texas Commission on Environmental Quality (“TCEQ”), have filed a Complaint in this action against Defendants E. I. du Pont de Nemours and Company (“DuPont”) and Performance Materials NA, Inc. (“PMNA”) (collectively “Defendants”) for alleged environmental violations during their respective periods of ownership and operation of the Sabine River Operations Facility (also referred to as “the Facility”) located in Orange, Texas.

WHEREAS, the Complaint alleges that Defendants have violated the following environmental statutes and their implementing federal and state regulations at the Facility located in Orange County, Texas: the Clean Air Act (“CAA”), 42 U.S.C. §§ 7401-7671q; the Resource Conservation and Recovery Act (“RCRA”), 42 U.S.C. §§ 6901-6992k; and the Clean Water Act (“CWA”), 33 U.S.C. §§ 1251-1387; the Texas Clean Air Act (“TCAA”), Tex. Health & Safety Code §§ 382.001-.510; the Texas Solid Waste Disposal Act (“TSWDA”), Tex. Health & Safety Code §§ 361.001-.992; and Chapters 7 and 26 of the Texas Water Code (“TWC”), Tex. Water Code ch. 7, 26.

WHEREAS, in August 2017, DuPont and The Dow Chemical Company (“TDCC”) each merged with subsidiaries of DowDuPont, Inc. (“DowDuPont”) and, as a result, TDCC and DuPont became subsidiaries of DowDuPont.

WHEREAS, DuPont owned and operated the Facility until February 1, 2019.

WHEREAS, on February 1, 2019, ownership and operation of the Facility was transferred from DuPont to PMNA, then a subsidiary of DuPont.

WHEREAS, on April 1, 2019, Dow, Inc. (“Dow”) was spun out of DowDuPont as a standalone publicly traded company, and PMNA became a subsidiary of TDCC, itself a subsidiary of Dow.

WHEREAS, on May 4, 2020, Dow and PMNA sold ownership and operation of the Facility’s waste incineration operations to Heritage Thermal of Texas, LLC (“Heritage”), including (i) a rotary kiln, afterburner chamber and associated facilities, and (ii) the Title V Operating Permit for operation of the Sabine Region Incinerator (Regulated Entity No. RN100542711), Permit No. O1896, issued on August 3, 2016, including all existing or applicable permits by rule.

WHEREAS, pursuant to the Asset Transfer Agreement dated December 8, 2019, (i) Heritage acknowledged and agreed that the transferred assets may become subject to a multimedia enforcement consent decree, (ii) Heritage and PMNA agreed to communicate, consult, and reasonably cooperate with one another in the design, engineering, procurement, construction, installation and commissioning of capital projects related to the transferred assets as and when and to the extent required pursuant to this Consent Decree, and (iii) PMNA has the right, exercisable at any time, to assume responsibility for such projects and to otherwise comply with any of the obligations in the Consent Decree related to the transferred assets, and to access the transferred assets in connection therewith.

WHEREAS, by agreeing to entry of this Consent Decree, Defendants deny and do not admit any liability to the United States or the State arising out of the transactions or occurrences alleged in the Complaint.

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