

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

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**UNITED STATES OF AMERICA and  
STATE OF TEXAS,**

**Plaintiffs,**

**v.**

**E. I. DU PONT DE NEMOURS AND  
COMPANY,**

**Defendant.**

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**Civil Action No.** \_\_\_\_\_

**COMPLAINT**

The United States of America, by the authority of the Attorney General of the United States and through the undersigned attorneys, acting at the request of the Administrator of the United States Environmental Protection Agency (“EPA”), and the State of Texas, by the authority of the Attorney General of Texas and through the undersigned attorneys, acting at the request of the Texas Commission on Environmental Quality (“TCEQ”), file this complaint and allege as follows:

**NATURE OF THE ACTION**

1. This is a civil action brought against E. I. du Pont de Nemours and Company (“DuPont” or “Defendant”) pursuant to Section 3008(a) and (g) of the Resource Conservation and Recovery Act (“RCRA”), 42 U.S.C. § 6928(a) and (g); the Texas Solid Waste Disposal Act (Tex. Health & Safety Code ch. 361); Section 113(b) of the Clean Air Act (“CAA”), 42 U.S.C. § 7413(b); the Texas Clean Air Act (Tex. Health & Safety Code ch. 382); Section 311 of the Clean Water Act (“CWA”), 33 U.S.C. § 1321; and Section 7.002 of the Texas Water Code, Tex.

Water Code § 7.002, for injunctive relief and the assessment of civil penalties. The violations that are the subject of this complaint have occurred at Defendant's La Porte facility located at 12501 Strang Road, La Porte, Harris County, Texas (the "Facility").

2. The violations that are the subject of this Complaint relate to Defendant's failure to comply with RCRA and the Texas Solid Waste Disposal Act, and regulations promulgated thereunder, with respect to the generation, treatment, storage, and disposal of hazardous waste at the Facility; Defendant's failure to comply with regulatory requirements in violation of the CAA and the Texas Clean Air Act, and regulations promulgated thereunder; and Defendant's failure to comply with regulatory requirements in violation of the CWA and regulations promulgated thereunder.

3. As a result of Defendant's failure to comply with federal and state laws and regulations, excess hazardous air pollutants and hazardous wastes have been and are being emitted, discharged or released into the environment from Defendant's Facility. These hazardous air pollutants and hazardous wastes, and some of their harmful effects, include: carbamate, which is toxic to fish, aquatic invertebrates, and mammals and highly toxic to insects; methylene chloride, which is a carcinogen; methomyl, which is highly toxic to fish, birds, and mammals; methyl isocyanate, which is toxic to wildlife; and volatile organic compounds ("VOCs"), which 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)(1) of RCRA, 42 U.S.C. § 6928(a)(1); Section 113(b) of the CAA, 42 U.S.C. § 7413(b); and Section 311(b)(7)(E) and (n) of the CWA, 33 U.S.C. § 1321(b)(7)(E) and (n). This Court has supplemental jurisdiction over the state law claims

pursuant to 28 U.S.C. § 1367.

5. This Court has personal jurisdiction over the Defendant because Defendant's Facility is located in Harris County, Texas, meaning it is presently within the jurisdictional boundaries of the United States District Court for the Southern District of Texas, as established by Congress under 28 U.S.C. § 124(b).

#### **VENUE**

6. Venue is proper in this Judicial District under 28 U.S.C. §§ 1391(b)-(c) and 1395(a); Section 3008(a)(1) of RCRA, 42 U.S.C. § 6928(a)(1); Section 113(b) of the CAA, 42 U.S.C. § 7413(b); and Section 311(b)(7)(E) and (n) of the CWA, 33 U.S.C. § 1321(b)(7)(E) and (n), because the violations alleged in the Complaint are alleged to have occurred in, and Defendant conducts business in, this Judicial District.

#### **NOTICE**

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

#### **PARTIES**

8. 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.

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

10. The United States, on behalf of the EPA, is a Plaintiff in this action.

11. The State of Texas, on behalf of the TCEQ, is a Plaintiff in this action.

**STATUTORY AND REGULATORY FRAMEWORK**

**A. RCRA**

12. RCRA, 42 U.S.C. § 6901 *et seq.*, was enacted on October 21, 1976, and establishes a comprehensive program to be administered by the Administrator of EPA (“Administrator”), regulating the generation, transportation, treatment, storage, and disposal of hazardous waste.

13. 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.

14. 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).

15. 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. 48,300; *see also* 40 C.F.R. § 272.2201. There have

been subsequent authorized revisions to the base program.

16. 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.

17. 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) [40 C.F.R. § 261.2(b)], materials are solid wastes if they are abandoned by being (1) disposed of, (2) burned or incinerated, (3) accumulated, stored, or processed (but not recycled) before or in lieu of being abandoned by being disposed of, burned, or incinerated, or (4) sham recycled.

18. Pursuant to 30 Tex. Admin. Code § 335.1(73) [40 C.F.R. § 261.3], a solid waste, as defined in 30 Tex. Admin. Code § 335.1(146) [40 C.F.R. § 261.2], is “hazardous waste” if it is “identified or listed as a hazardous waste by the administrator of the United States Environmental Protection Agency in accordance with the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 United States Code, §§6901 *et seq.*”

19. Pursuant to 40 C.F.R. § 261.3, a solid waste is a hazardous waste if it meets any of the following criteria listed in 40 C.F.R. § 261.3(a)(2)(i)-(iv): generally, if it exhibits any of

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