

**VIRGINIA WASTE MANAGEMENT BOARD
ENFORCEMENT ACTION**

**ORDER BY CONSENT
ISSUED TO**

DUPONT TEXTILES & INTERIORS

EPA HAZARDOUS WASTE ID No. VAD003114832

SECTION A: Purpose

This is a Consent Order issued under the authority of Section 1455 of the Code of Virginia between the Virginia Waste Management Board and DuPont Textiles & Interiors to resolve certain violations of the Virginia Waste Management Act and the Virginia Hazardous Waste Management Regulations.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meanings assigned to them below:

1. "Va. Code" means the Code of Virginia (1950), as amended.
2. "Order" means this document, termed a Consent Order under the authority of the Virginia Waste Management Law.
3. "Waste Board" means the Virginia Waste Management Board, a permanent Citizens' Board of the Commonwealth of Virginia described in Va. Code §§ 10.1-1401 and 10.1-1184.

4. "DTI" or "the Company" means the DuPont Textiles & Interiors, a wholly owned subsidiary of E. I. du Pont de Nemours and Company. The facility is located at 400 DuPont Boulevard, Waynesboro, Virginia.
5. "DEQ" means the Virginia Department of Environmental Quality, an independent administrative agency within the executive branch of the Commonwealth of Virginia as described in Va. Code § 10.1-1183.
6. "VRO" means DEQ's Valley Regional Office.
7. "Director" means the Director of DEQ, whose powers and duties are described in Va. Code § 10.1-1185.
8. "VHWMR" means the Waste Board's Hazardous Waste Management Regulations, 9 VAC 20-60-12 et seq.
9. "40 CFR" means Title 40 of the Code of Federal Regulations.
10. "The Permit" means the Hazardous Waste Management Container Storage Permit issued by DEQ to DTI on September 25, 1995.

SECTION C: Findings of Facts and Conclusions of Law

1. DTI is a manufacturer of synthetic fiber materials including nylon and Lycra[®].
2. DTI is a generator of hazardous waste operating under EPA Hazardous Waste ID No. VAD003114832 and the Permit. DTI generates multiple hazardous waste streams, the most significant by volume being wastes which are hazardous based on their characteristic of ignitability (Hazardous Waste # D001).
3. On September 4 and 5, 2002, staff from DEQ's waste compliance program conducted a hazardous waste compliance inspection of the DTI facility. During the inspection, DEQ staff documented the following violations of the Va. Code, 40 CFR and the VHWMR:
 - (a) One hundred seven (107) drums of waste were stored in two separate areas outside of the area covered by DTI's permit. The drums contained soil, gravel, and concrete excavated from the DTI plant site, and protective equipment used during the excavation. Although none of the drums were analyzed to determine if they contained hazardous waste, there was a concern for the potential for contamination in the material stored in the drums. An unknown portion of the drums had been stored since April 1 and June 1

of 2001 in apparent violation of Va. Code § 10.1-1426.A and 9 VAC 20-60-262 of the VHWMR;

- (b) Failure to provide Land Disposal Restriction (LDR) forms for hazardous waste manifests generated since December 2001 in apparent violation of 40 CFR 268.7(a)(1) and 9 VAC 20-60-268 of the VHWMR;
 - (c) Failure to provide annual employee refresher training in apparent violation of 40 CFR 265.16c, Section II.D of the Permit and 9 VAC 20-60-265 of the VHWMR; and,
 - (d) On May 15, 2002, and June 10, 2002, soils in thirty-two of the 107 drums were sampled and analyzed for Total Mercury per SW 846-7471A. This analysis formed the basis for determining the disposal method for the 107 drums of soil, gravel, concrete, and protective equipment. DTI did not perform a hazardous waste determination test (or TCLP) on the 107 drums of excavated soil, gravel, and concrete. Failure to perform a hazardous waste determination on the 107 drums of waste located outside of the area covered by DTI's Permit is in apparent violation of 40 CFR 262.11 and 9 VAC 20-60-262 of the VHWMR.
4. These violations were cited in Notice of Violation No. WS-02-09-VRO-032, issued to DTI on September 30, 2002. On October 23, 2002, representatives of DEQ and DTI met in an informal settlement conference at DTI. At the settlement conference, DTI representatives provided, and DEQ representatives accepted, supporting documentation that had not been presented at the inspection indicating that the regulatory requirements referenced above under Paragraphs 3(b) and 3(c) had been met. Accordingly, the apparent violations cited under Paragraphs 3(b) and 3(c) would not have been cited by DEQ had the information been presented at the inspection.
5. The 107 drums observed in two separate areas outside of the storage area covered by the Permit (cited above under Paragraphs 3(a) and 3(d)), on September 6, 2002, contained mercury contaminated soil generated during site cleanup activities at the Company. DTI has removed these drums for characterization and proper disposal in accordance with the law and the VHWMR.
6. DTI is also the subject of Corrective Action Permit No. VAD003114832 ("CAP") issued by DEQ on October 22, 1998. Under Part 2.E of the CAP, any release of a hazardous waste or constituent at or from the facility may require that the area of the release be identified as an Area Of Concern ("AOC") and that the AOC be included in an ongoing Facility Investigation under the Resource Conservation and Recovery Act. Under the terms of the Order, DTI will provide documentation to DEQ-VRO indicating that the two areas of the DTI facility used for

unpermitted storage of hazardous waste as cited in Paragraph 3(a) of Section C of the Order have been identified as AOCs and that the assessment of a potential release in these areas will be completed under the terms of the CAP.

SECTION D: Agreement and Order

Accordingly, the Board, by virtue of the authority granted it in Va. Code § 10.1-1455, orders DTI, and DTI voluntarily agrees that DTI shall:

1. Within 30 days of the effective date of the Order, provide documentation to DEQ-VRO indicating that the two areas of the DTI facility used for unpermitted storage of hazardous waste, as cited in Paragraph 3(a) of Section C of the Order, have been identified as AOCs and that the assessment of a potential release in these areas will be completed under the terms of the CAP; and,
2. Pay a civil charge of **\$24,828** in settlement of the apparent violations cited in this Order.
 - a. **\$6,207** of this civil charge shall be paid within 30 days of the effective date of this Order. Payment shall be by check, certified check, money order, or cashier's check payable to "**Treasurer of the Commonwealth of Virginia**" and sent to:

**Receipts Control
Department of Environmental Quality
P. O. Box 10150
Richmond, Virginia 23240**

DTI shall include its Federal Identification Number with the civil charge payment and shall note on the check that the payment is being made pursuant to this Order.

- b. **\$18,621** of this civil charge shall be satisfied upon completion by DTI of a Supplemental Environmental Project (SEP) pursuant to Va. Code § 10.1-1186.2 and as described in Appendix A of this Order.
- c. By signing this Order, DTI certifies that it has not commenced performance of the SEP before DEQ identified the violations in this Order and approved the SEP.
- d. In the event that the SEP is not performed as described in Appendix A, upon notification by the Department, DTI shall pay the amount specified in Paragraph 2.b above within 30 days of such notification according to the procedures specified in Paragraph 2.a above, unless an alternate project has been agreed upon by the parties.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend the Order with the consent of DTI, for good cause shown by DTI, or on its own motion after notice and opportunity to be heard.
2. This Order only addresses and resolves those violations specifically identified herein, including those matters addressed in Notice of Violation No. WS-02-09-VRO-032, issued to DTI on September 30, 2002. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility as may be authorized by law; or (3) taking subsequent action to enforce the Order. This Order shall not preclude appropriate enforcement actions by other federal, state, or local regulatory authorities for matters not addressed herein.
3. For purposes of this Order only, DTI admits the jurisdictional allegations in this Order.. By entering into this Order, DTI does not admit to the factual allegations or legal conclusions contained herein for this or any subsequent proceeding.
4. DTI consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. DTI declares it has received fair and due process under the Administrative Process Act, Va. Code §§ 2-2.4000 *et seq.*, and the Virginia Waste Management Act and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to enforce this Order.
6. Failure by DTI to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. DTI shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other occurrence. DTI shall show that such circumstances were beyond its control and not

due to a lack of good faith or diligence on its part. DTI shall notify the DEQ Regional Director in writing when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:

- a. the reasons for the delay or noncompliance;
- b. the projected duration of any such delay or noncompliance;
- c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
- d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director within 48 hours of learning of any condition above, which DTI intends to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto, their successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and DTI.
11. This Order shall continue in effect until the Director or Board terminates the Order in his or its sole discretion upon 30 days written notice to DTI. Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve DTI from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.
12. By its signature below, DTI voluntarily agrees to the issuance of this Order.

And it is so ORDERED this ____ day of _____, 2003.

Robert G. Burnley, Director
Department of Environmental Quality

DTI voluntarily agrees to the issuance of this Order.

By: _____

Date: _____

Commonwealth of Virginia

City/County of _____

The foregoing document was signed and acknowledged before me this _ day of _____, 2003, by _____, who is
(name)

_____ of DTI, on behalf of the Company.
(title)

Notary Public

My commission expires: _____.

APPENDIX A
SUPPLEMENTAL ENVIRONMENTAL PROJECT
DTI

1. The Supplemental Environmental Project to be performed by DTI is enhanced de-nitrification of DTI's wastewater discharge to the South River through the installation of a pump and piping to serve as a re-circulation loop from the DTI aeration tank discharge back to the anoxic tank. The performance standard for the SEP is to reduce, by a minimum of 25%, DTI's clarifier effluent nitrate (NO₃-N) concentration from its present level as established by the baseline sampling performed pursuant to Paragraph 1.a below. The SEP implementation schedule shall be as follows.
 - a. **Not later than 30 days** of the effective date of the Order, commence establishment of baseline NO₃-N concentrations discharged from the clarifier through the collection of a minimum of 4 grab samples, spaced one week apart, with averaged values;
 - b. **Not later than 240 days** of the effective date of the Order, complete construction of the SEP project;
 - c. **Not later than 270 days** of the effective date of the Order, commence establishment of post-construction NO₃-N concentrations discharged from the clarifier through the collection of a minimum of 4 grab samples, spaced one week apart, with averaged values; and,
 - d. **Not later than 330 days** of the effective date of the Order, demonstrate compliance with the SEP performance standard.
2. The cost of the SEP to DTI shall not be less than \$18,621. In the event that the final cost of the SEP is less than this amount, DTI shall pay the remainder of the amount to the Commonwealth of Virginia, unless otherwise agreed to by the Department.

3. DTI acknowledges that it is solely responsible for completion of the SEP project. Any delegation of funds, tasks, or otherwise by DTI to a third party, shall not relieve DTI of its responsibility to complete the SEP as contained in this Order.
4. DTI shall submit verification to the Department in the form of a Final SEP Report **within 365 days** of the effective date of the Order. The Final SEP Report shall identify the final overall cost of the SEP and shall include invoices or other documentation of SEP project costs.
5. In the event that DTI publicizes the SEP or the results of the SEP, DTI shall state in a prominent manner the project is part of a settlement for an enforcement action.
6. The Department has the sole discretion to determine whether the SEP has been completed in a satisfactory manner.