



# COMMONWEALTH of VIRGINIA

## DEPARTMENT OF ENVIRONMENTAL QUALITY

PIEDMONT REGIONAL OFFICE

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Douglas W. Domenech  
Secretary of Natural Resources

David K. Paylor  
Director

Michael P. Murphy  
Regional Director

**STATE WATER CONTROL BOARD  
ENFORCEMENT ACTION - ORDER BY CONSENT  
ISSUED TO  
E. I. DU PONT DE NEMOURS AND COMPANY  
FOR  
DU PONT-JAMES RIVER PLANT  
VPDES Permit No. VA0004880**

### **SECTION A: Purpose**

This is a Consent Order issued under the authority of Va. Code § 62.1-44.15, between the State Water Control Board and E. I. du Pont de Nemours and Company, regarding the DuPont James River Plant, for the purpose of resolving certain violations of the State Water Control Law and the applicable permit and regulation.

### **SECTION B: Definitions**

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

1. "305(b) report" means the report required by Section 305(b) of the Clean Water Act (33 United States Code § 1315(b)), and Va. Code § 62.1-44.19:5 for providing Congress and the public an accurate and comprehensive assessment of the quality of State surface waters.
2. "Board" means the State Water Control Board, a permanent citizens' board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and 62.1-44.7.
3. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.

4. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.
5. "Discharge" means discharge of a pollutant. 9 VAC 25-31-10.
6. "Discharge of a pollutant" when used with reference to the requirements of the VPDES permit program means:
  - a. Any addition of any pollutant or combination of pollutants to surface waters from any point source; or
  - b. Any addition of any pollutant or combination of pollutants to the waters of the contiguous zone or the ocean from any point source other than a vessel or other floating craft which is being used as a means of transportation.
7. "DMR" means Discharge Monitoring Report.
8. "DuPont" means E. I. du Pont de Nemours and Company, a corporation authorized to do business in Virginia and its affiliates, partners, subsidiaries, and parents. DuPont is a "person" within the meaning of Va. Code § 62.1-44.3.
9. "EPA" means Environmental Protection Agency.
10. "Effluent" means wastewater – treated or untreated – that flows out of a treatment plant, sewer, or industrial outfall.
11. "Facility" or "Plant" means the DuPont James River Plant located at 1201 Bellwood Road, Chesterfield, Virginia, which treats and discharges treated effluent from DuPont's co-located business operations under VPDES Permit No. VA0004880.
12. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.
13. "O&M" means operations and maintenance.
14. "Order" means this document, also known as a "Consent Order" or "Order by Consent," a type of Special Order under the State Water Control Law.
15. "Permit" means VPDES Permit No. VA0004880, which was issued under the State Water Control Law and the Regulation to DuPont on May 3, 2006, and which expired on May 2, 2011. DuPont has submitted a Permit reapplication, and the Permit has been administratively continued by the Department.
16. "Pollutant" means dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials (except those regulated under the Atomic Energy Act of 1954, as

amended (42 USC § 2011 *et seq.*)), heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water... 9 VAC 25-31-10.

17. "Pollution" means such alteration of the physical, chemical, or biological properties of any state waters as will or is likely to create a nuisance or render such waters (a) harmful or detrimental or injurious to the public health, safety, or welfare or to the health of animals, fish, or aquatic life; (b) unsuitable with reasonable treatment for use as present or possible future sources of public water supply; or (c) unsuitable for recreational, commercial, industrial, agricultural, or other reasonable uses, provided that (i) an alteration of the physical, chemical, or biological property of state waters or a discharge or deposit of sewage, industrial wastes or other wastes to state waters by any owner which by itself is not sufficient to cause pollution but which, in combination with such alteration of or discharge or deposit to state waters by other owners, is sufficient to cause pollution; (ii) the discharge of untreated sewage by any owner into state waters; and (iii) contributing to the contravention of standards of water quality duly established by the Board, are "pollution." Va. Code § 62.1-44.3.
18. "PRO" means the Piedmont Regional Office of DEQ, located in Glen Allen, Virginia.
19. "Regulation" means the VPDES Permit Regulation, 9 VAC 25-31-10 *et seq.*
20. "State Water Control Law" means Chapter 3.1 (§ 62.1-44.2 *et seq.*) of Title 62.1 of the Va. Code.
21. "State waters" means all water, on the surface and under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction, including wetlands. Va. Code § 62.1-44.3.
22. "TMDL" means total maximum daily load.
23. "Va. Code" means the Code of Virginia (1950), as amended.
24. "VAC" means the Virginia Administrative Code.
25. "VDH" means Virginia Department of Health.
26. "VPDES" means Virginia Pollutant Discharge Elimination System.

### **SECTION C: Findings of Fact and Conclusions of Law**

1. DuPont owns and operates the DuPont James River Facility in Chesterfield County, Virginia. The Permit allows DuPont to discharge treated stormwater and other industrial wastes from the Plant, to the James River, in strict compliance with the terms and conditions of the Permit.

2. The James River is located in the Lower James River Basin. During the 2010 305(b)/303(d) Water Quality Assessment, the James River was considered a Category 5A water. The Water Quality Standard is not attained, and the water is impaired or threatened for one or more designated uses by a pollutant(s) and requires a TMDL (303d list). The Aquatic Life Use is impaired due to inadequate submerged aquatic vegetation, low dissolved oxygen, and high chlorophyll a. The Recreation Use is impaired due to *E. coli*. The Fish Consumption Use is impaired due to a VDH advisory for PCBs. The Fish Consumption Use also has two, non-impairing observed effects - mercury due to a fish tissue screening value exceedance, and kepone due to a VDH advisory. The Wildlife Use is fully supporting.
3. The Facility was included in the James River and Tributaries – City of Richmond bacterial TMDL, which was approved by the EPA on November 4, 2010. Dupont is not permitted to discharge fecal coliform and therefore did not receive an *E. coli* wasteload allocation. The Facility was addressed in the Chesapeake Bay TMDL, which was approved by the EPA on December 29, 2010. The Facility was included in the aggregated loads of total nitrogen, total phosphorus, and total suspended solids for non-significant wastewater dischargers in the upper James River tidal freshwater segment (JMSTF2).
4. In submitting its DMRs, as required by the Permit, DuPont indicated that it exceeded discharge limitations, contained in Part I.A.1 of the Permit, for pH on March 8, 2011. DuPont staff did not report the violation until April 10, 2011, when the DMR was submitted to the Department. The Permit in Part II G. and Part II I. requires immediate reporting of noncompliant or unusual discharges with a detailed follow-up letter in 5 days. DuPont staff indicated that the exceedance was related to a leak in one of several jacketed tubes containing sulfuric acid. In addition DEQ staff noted that the toxicity testing reports submitted by DuPont, indicated that samples were instantaneous grab samples, rather than 24-hour flow proportional composite samples as required by Part I.B.9 of the Permit.
5. On May 6, 2011, PRO issued a Notice of Violation for the pH exceedance, failure to report the unusual discharge within the required timeframes, and failing to use the correct sampling method for toxicity.
6. DEQ staff met with Facility staff on May 5, 2011 to conduct a site visit at the Facility and discuss the compliance issues cited in the NOV. During the meeting and in a letter dated May 11, 2011, DuPont staff responded to the Notice of Violation by stating that an acid cooler leak occurred and caused a pH excursion, which lasted for 21 minutes. Facility staff neutralized the discharge with soda ash and immediately shut down the Plant for three days while the leak was found and repaired. DuPont staff also stated that they discussed reporting the discharge to DEQ immediately, but decided to report it on the DMR since they believed that the discharge did not result in negative impacts to state waters. DuPont Facility staff have indicated to DEQ staff that after discussing the toxicity sampling events with their consultant, the samples were flow proportional, and

the operator failed to mark the proper area on the chain of custody forms. DuPont staff plan to conduct a Facility shutdown in November 2011 for routine maintenance and will conduct a thorough re-inspection of the acid cooler to determine what caused the acid line leak. The re-inspection of the acid cooler may lead to additional repairs or system adjustments to prevent future incidents. The plan and schedule for the November inspection are incorporated in Appendix A of the Order.

7. The Facility's operating logs indicate that it discharged effluent that did not meet the pH minimum Permit limit from the Plant on March 8, 2011.
8. Va. Code § 62.1-44.5 states that: "[E]xcept in compliance with a certificate issued by the Board, it shall be unlawful for any person to discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances."
9. The Regulation, at 9 VAC 25-31-50, also states that except in compliance with a VPDES permit, or another permit issued by the Board, it is unlawful to discharge into state waters sewage, industrial wastes or other wastes.
10. Va. Code § 62.1-44.15(5a) states that a VPDES permit is a "certificate" under the statute.
11. The Department has issued no permits or certificates to DuPont for discharges from the Facility to State Waters other than VPDES Permit No. VA0004880.
12. The James River is a surface water located wholly within the Commonwealth and is a "state water" under State Water Control Law.
13. Based on the April 2011 DMR, the results of the May 5, 2011 meeting, and the documentation submitted on May 11, 2011, the Board concludes that DuPont has violated the Permit and Va. Code 62.1-44.5 and 9 VAC 25-31-50, by discharging effluent from the Plant while concurrently failing to comply with the conditions of the Permit, as described in Section C above.
14. In order for DuPont to complete its return to compliance, DEQ staff and representatives of DuPont have agreed to the Schedule of Compliance, which is incorporated as Appendix A of this Order.

#### **SECTION D: Agreement and Order**

Accordingly, by virtue of the authority granted it in Va. Code §§ 62.1-44.15, the Board orders DuPont, and DuPont agrees to:

1. Perform the actions described in Appendix A of this Order; and
2. Pay a civil charge of \$1,820 within 30 days of the effective date of the Order in settlement of the violations cited in this Order.

Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia," and delivered to:

Receipts Control  
Department of Environmental Quality  
Post Office Box 1104  
Richmond, Virginia 23218

DuPont shall include its Federal Employer Identification Number (FEIN) with the civil charge payment and shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into the Virginia Environmental Emergency Response Fund (VEERF).

#### **SECTION E: Administrative Provisions**

1. The Board may modify, rewrite, or amend this Order with the consent of DuPont for good cause shown by DuPont, or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.
2. This Order addresses and resolves only those violations specifically identified in Section C of this Order. 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; or (3) taking subsequent action to enforce the Order.
3. For purposes of this Order and subsequent actions with respect to this Order only, DuPont admits to the jurisdictional allegations, and agrees not to contest, but does not admit, the findings of fact and conclusions of law in this Order.
4. DuPont 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. DuPont declares it has received fair and due process under the Administrative Process Act and the State Water Control Law 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 modify, rewrite, amend, or enforce this Order.
6. Failure by DuPont 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, state, 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. DuPont 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 unforeseeable circumstances beyond its control and not due to a lack of good faith or diligence on its part. DuPont shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. DuPont shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days 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 verbally within 24 hours and in writing within three business days, of learning of any condition above, which the parties intend 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.

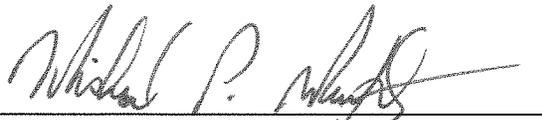
9. This Order is binding on the parties hereto, and any successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and DuPont. Nevertheless, DuPont agrees to be bound by any compliance date which precedes the effective date of this Order.
11. This Order shall continue in effect until:
  - a. The Director or his designee terminates the Order after DuPont has completed all of the requirements of the Order;
  - b. DuPont petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or

- c. The Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to DuPont.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve DuPont from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. Any plans, reports, schedules or specifications attached hereto or submitted by DuPont and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.
13. The undersigned representative of DuPont certifies that he or she is a responsible official [or officer] authorized to enter into the terms and conditions of this Order and to execute and legally bind DuPont to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of DuPont.
14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.
15. By its signature below, DuPont voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 23<sup>RD</sup> day of September, 2011.



Michael P. Murphy, Regional Director  
Department of Environmental Quality

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E. I. du Pont de Nemours and Company voluntarily agrees to the issuance of this Order.

Date: 7/29/11 By: Mr. Francis Montemurro, DuPont James River Plant Manager  
(Person) (Title)  
E. I. du Pont de Nemours and Company

Commonwealth of Virginia  
City/County of Chesterfield

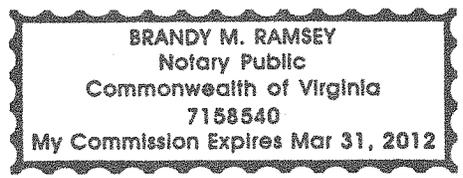
The foregoing document was signed and acknowledged before me this 29<sup>th</sup> day of

July, 2011, by Francis Montemurro who is  
Plant Manager of E. I. du Pont de Nemours and Company, on behalf of

the corporation.

Brandy M Ramsey  
Notary Public  
7158540  
Registration No.  
My commission expires: March 31 2012

Notary seal:



## APPENDIX A SCHEDULE OF COMPLIANCE

### 1. Acid Cooler Piping Investigation

- a. DuPont shall as soon as possible, but in no event later than November 15, 2011, conduct an investigation into the cause of the pipe rupture leading to the acidic discharge of March 8, 2011. The investigation shall include tube removal, reinsertion of a plug into the tube sheet, and analysis of the ruptured tube.
- b. DuPont shall as soon as possible, but in no event later than January 31, 2012, submit a final report documenting the cause of the rupture and a corrective action plan to address prevention of future occurrences. The removed ruptured tube will be analyzed for cause of failure.
- c. DuPont shall include a corrective action plan implementation schedule with the final report due January 31, 2012, that will address preventing any future occurrences. Upon the Department's approval, said plan and schedule shall become a part of, and enforceable under the terms of this Order.

### 2. DEQ Contact

Unless otherwise specified in this Order, DuPont shall submit all requirements of Appendix A of this Order to:

**Frank Lupini**  
**Enforcement Specialist**  
**VA DEQ –Piedmont Regional Office**  
**4949A Cox Road,**  
**Glen Allen, Virginia 23060**  
**Frank.Lupini@deq.virginia.gov**