

New York State
Department of Environmental Conservation
Division of Environmental Enforcement
270 Michigan Avenue
Buffalo, NY 14203-2999

Reg. S. Aom

April 17, 1997



Certified Mail
Return Receipt Requested

Ross E. Austin, Esq.
DuPont Legal, D8068
1007 Market Street
Wilmington, Delaware 19898

RE: Lyndonville - West Avenue Site, Site # 8-37-002

Dear Mr. Austin:

Enclosed is a fully executed Order on Consent. As your letters to the various property owners acknowledging consent to access have indicated, field work should begin within 60 days. Please let me know if you have any difficulty in securing access for the investigation.

Sincerely,

Glen R. Bailey
Glen R. Bailey
Senior Attorney
Division of Environmental
Enforcement

GRB/B/jb
B078DPT.6

Enclosure

cc: John Hicks
David Pratt
Edward Belmore

STATE OF NEW YORK: DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of the Implementation
of a Phase I Remedial Investigation
for an Inactive Hazardous Waste
Disposal Site, Under Article 27,
Title 13 and Article 3, Title 3
of the Environmental Conservation
Law of the State of New York by

ORDER
ON
CONSENT

INDEX #B8-0474-95-10

E. I. duPont de Nemours and Company
Respondent.

Site Code #8-37-002

WHEREAS,

1. The New York State Department of Environmental Conservation (the "Department") is responsible for the enforcement of Article 27, Title 13 of the Environmental Conservation Law of the State of New York ("ECL"), entitled "Inactive Hazardous Waste Disposal Sites." This Order is issued pursuant to that authority under ECL Article 27, Title 13 and ECL 3-0301.

2. E. I. duPont de Nemours and Company ("Respondent") formerly operated an agricultural chemical formulating facility in the Village of Lyndonville, Orleans County, New York. Wastes from the processes of DuPont were allegedly disposed on its property adjacent to the facility ("the Site") and containers of commercial chemical product have been excavated and removed from the Site.

3. The Department has determined that the Site is an inactive hazardous waste disposal site, as that term is defined at ECL 27-1301.2, and has listed it in the Registry of Inactive Hazardous Waste Disposal Sites in New York State as Site Number 8-37-002. The Department has given the Site a Classification "2" pursuant to ECL 27-1305.4.b.

4. The Department and Respondent agree that the goal of this Order is for Respondent to (i) implement a Supplemental Environmental Assessment Work Plan to gather data to enable the Department to evaluate whether the Site is a continuing source of contaminants, and which may enable Respondent to evaluate its responsibility for that contamination; and (ii) reimburse the State's administrative costs incurred pursuant to this Order.

5. Respondent, having consented to the issuance of this Order without any admission of liability, hereby waives its right to a hearing herein as provided by law, and agrees to be bound by its terms.

NOW, having considered this matter and being duly advised, IT IS ORDERED THAT:

I. Performance and Reporting of Activities

A. Within 60 days after the effective date of this Order, or as mutually agreed by the parties, Respondent shall implement the Supplemental Environmental Assessment ("the Assessment") in accordance with the Work Plan dated November 8, 1996, which has been approved by the Department and is attached to this Order as Appendix "A" and is incorporated herein.

B. Respondent shall perform the Assessment in accordance with the Department-approved Work Plan.

C. During the performance of field work, Respondent shall have on-Site a representative who is qualified to supervise the work done.

D. Respondent shall prepare an Assessment Report that

shall:

1. include all final data generated in compliance with the QA Plan contained in the Work Plan and all other relevant information obtained during the investigation;
2. provide all of the appropriate assessments and evaluations raised by the data obtained for the Site;
3. identify any additional data that must be collected; and
4. include a certification by the individual or firm with primary responsibility for the day to day performance of the investigation that all activities that comprised the Assessment were performed in full accordance with the approved Work Plan.

II. Interim Remedial Measures

A. 1. Respondent may propose one or more interim remedial measures ("IRMs") or supplemental remedial investigations ("SRIs") for the Site. In proposing an IRM or SRI, Respondent shall submit to the Department a work plan that includes a chronological description of the anticipated activities together with a schedule for performance of those activities, a health and safety plan, contingency plan, and (if the Department requires such) a citizen participation plan.

2. The work plan submitted to the Department for its review and approval shall contain detailed documents and specifications and shall be prepared, signed, and sealed by a professional engineer.

3. Upon the Department's determination that the proposal is an appropriate IRM or SRI, and upon the Department's approval of such work plan, the Department-approved work plan (the "IRM Work Plan" or "SRI Work Plan," as the case may be) shall be incorporated into and become an enforceable part of this Order. Respondent shall then carry out such activities in accordance with the schedule contained in the IRM or SRI Work Plan, and this Order. Respondent shall notify the Department of any significant difficulties that may be encountered in implementing the Department-approved work plan, and shall not modify any detail, specification or obligation unless first approved by the Department.

4. During the implementation of all construction activities identified in the Department-approved work plan, Respondent shall have on-Site a full-time representative who is qualified to supervise the work done.

5. Within the schedule contained in the Department-approved work plans, Respondent shall submit to the Department a final report prepared by a professional engineer that includes a certification by that individual that all activities were performed in full accordance with the Department-approved work plans and this Order.

a. If the performance of any IRM encompasses construction activities, then the final report shall also include a detailed post-remedial operation and maintenance plan ("O&M Plan"); "as-built" drawings and a final engineering report (each

including all changes made during construction.) The O&M Plan, "as-built" drawings, final engineering report, and certification must be prepared, signed, and sealed by a professional engineer.

b. Upon the Department's approval of any O&M Plan, Respondent shall implement the O&M Plan in accordance with the requirements of the Department's approval.

6. After receipt of the final report and certification, the Department shall notify Respondent in writing whether the Department is satisfied that the IRM or SRI was completed in compliance with the Department-approved work plan and design.

III. Progress Reports

A. 1. In the event that implementation of the Assessment, and any IRM or SRI exceeds three months' duration, Respondent shall submit to the Project Manager identified in Subparagraph X.A. below monthly progress reports that:

a. describe the actions which have been taken toward achieving compliance with this Order during the previous month;

b. include all results of sampling and tests and all other data received or generated by Respondent or Respondent's contractors or agents in the previous month, including quality assurance/quality control information, whether conducted pursuant to this Order or conducted independently by Respondent;

c. identify all work plans, reports, and

other deliverables required by this Order that were completed and submitted during the previous month;

d. describe all actions, including, but not limited to, data collection and implementation of work plans, that are scheduled for the next month and provide other information relating to the progress at the Site;

e. include information regarding percentage of completion, unresolved delays encountered or anticipated that may affect the future schedule for implementation of the Respondent's obligations under the Order, and efforts made to mitigate those delays or anticipated delays;

f. include any modifications to any work plans that Respondent has proposed to the Department or that the Department has approved; and

g. describe all activities, if any, undertaken in support of the Citizen Participation Plan during the previous month and those to be undertaken in the next month.

2. Respondent shall submit these progress reports to the Department by the tenth day of every month following the date three months after the effective date of this Order.

B. Respondent shall allow the Department to attend, and shall provide the Department at least seven days advance notice of any of the following: pre-bid meetings, job progress meetings, substantial completion meeting and inspection, and final inspection and meeting.

IV. Review of Submittals

A. 1. The Department shall review each of the submittals required of Respondent pursuant to this Order to determine whether it was prepared, and whether the work done to generate the data and other information in the submittal was done, in accordance with this Order and generally accepted technical and scientific principles. The Department shall notify Respondent in writing of its approval or disapproval of the submittal. All Department-approved submittals shall be incorporated into and become an enforceable part of this Order.

2. a. If the Department disapproves a submittal, it shall so notify Respondent in writing and shall specify the reasons for its disapproval. Within 30 days after receiving written notice that Respondent's submittal has been disapproved, Respondent shall make a revised submittal to the Department that addresses and resolves all of the Department's stated reasons for disapproval of the first submittal.

b. After receipt of the revised submittal, the Department shall notify Respondent in writing of its approval or disapproval. If the Department disapproves the revised submittal, Respondent shall be in violation of this Order and the Department may take any action or pursue whatever rights it has pursuant to any provision of statutory or common law without prejudice to either's right to contest the same. If the Department approves the revised submittal, it shall be incorporated into and become an enforceable part of this Order.

B. The Department may require Respondent to modify

and/or amplify and expand a submittal if the Department determines, as a result of reviewing data generated by an activity required under this Order or as a result of reviewing any other data or facts, that further work is necessary.

V. Penalties

A. Respondent's failure to comply with any term of this Order constitutes a violation of this Order and the ECL.

B. Respondent shall not suffer any penalty under this Order or be subject to any proceeding or action if it cannot comply with any requirement hereof because of war, riot, or an unforeseeable disaster arising exclusively from natural causes which the exercise of ordinary human prudence could not have prevented. Respondent shall, within five days of when it obtains knowledge of any such condition, notify the Department in writing. Respondent shall include in such notice the measures taken and to be taken by Respondent to prevent or minimize any delays and shall request an appropriate extension or modification of this Order. Failure to give such notice within such five-day period constitutes a waiver of any claim that a delay is not subject to penalties. Respondent shall have the burden of proving that an event is a defense to compliance with this Order pursuant to this paragraph.

VI. Entry upon Site

Respondent hereby consents to the entry upon the Site, or areas in the vicinity of the Site which may be under the control of the Respondent, by any duly designated employee,

consultant, contractor, or agent of the Department or any State agency for purposes of inspection, sampling, and testing and to ensure Respondent's compliance with this Order.

VII. Indemnification

Respondent shall indemnify and hold the Department, the State of New York, and their representatives and employees harmless for all claims, suits, actions, damages, and costs of every name and description arising out of or resulting from the fulfillment or attempted fulfillment of this Order by Respondent and/or Respondent's directors, officers, employees, servants, agents, successors, and assigns.

VIII. Department Reservation of Rights

A. Nothing contained in this Order shall be construed as barring, diminishing, adjudicating, or in any way affecting any of the Department's criminal, civil or administrative rights or authorities.

B. Nothing contained in this Order shall be construed to prohibit the Commissioner or his duly authorized representative from exercising any summary abatement powers.

IX. Payment of State Costs

Within 30 days after receipt of an itemized invoice from the Department, Respondent shall pay to the Department a sum of money which shall represent reimbursement for the State's expenses, including but not limited to, direct labor, fringe benefits, indirect costs, travel, analytical costs, and contractor costs incurred by the State of New York for work performed at the

Site to date, as well as for negotiating this Order, reviewing and revising submittals made pursuant to this Order, overseeing activities conducted pursuant to this Order, collecting and analyzing samples, and administrative costs associated with this Site. Such payment shall be made by certified check payable to the Department of Environmental Conservation. Payment shall be sent to the Bureau of Program Management, Division of Hazardous Waste Remediation, New York State Department of Environmental Conservation, 50 Wolf Road, Albany, New York 12233-7010. Itemization of costs shall include an accounting of personal services, indicating the employee name, title, biweekly salary, and time reported spent (in hours) on the project during the billing period, as identified by an assigned time and activity code. This information shall be documented by reports of Direct Personal Service. Approved fringe benefit and indirect cost rates shall be applied. Non-personal service costs shall be summarized by category of expense (e.g., supplies, materials, travel, contractual) and shall be documented by expenditure reports.

X. Communications

A. All written communications required by this Order shall be transmitted by United States Postal Service, by private courier service, by telecopy, or hand delivered as follows:

Communication from Respondent shall be sent to:

1. David E. Pratt, P.E. (Project Manager)
Division of Hazardous Waste Remediation
NYS Department of Environmental Conservation
6274 East Avon - Lima Road
Avon, New York 14424-9519
(Fax # (716) 226-2909)

2. Director, Bureau of Environmental Exposure Investigation
New York State Department of Health
2 University Place
Albany, New York 12203
(Fax # (518) 458-6434)
3. Edward R. Belmore, P.E.
NYS Department of Environmental Conservation
Division of Hazardous Waste Remediation
50 Wolf Road
Albany, New York 12233-7010
(Fax # (518) 457-1088)
4. Glen R. Bailey, Esq.
Division of Environmental Enforcement
NYS Department of Environmental Conservation
270 Michigan Avenue
Buffalo, New York 14203-2999
(Fax # (716) 851-7067)

B. Copies of work plans and reports shall be submitted as follows:

1. Two copies (one unbound) to: David E. Pratt;
2. Two copies to the Director, Bureau of Environmental Exposure Investigation;
3. One copy to Edward R. Belmore; and
4. One copy to Glen R. Bailey.

C. Within 30 days of the Department's approval of any report submitted pursuant to this Order, Respondent shall submit to David Pratt, P. E., additional copies, including one computer readable magnetic media copy of the approved report in American Standard Code for Information Interchange (ASCII) format on three and one-half inch diskette, in accordance with a specific request from the Project Manager.

D. Communication to be made from the Department to the Respondent shall be sent to:

Ross E. Austin, Esq.
DuPont Chemical Company
Legal Department, D-8068
1007 Market Street
Wilmington, Delaware 19898
(Tel.: (302) 774-8553)

with a copy to:

Paul S. Mazierski
DuPont Environmental Remediation Services
DuPont Specialty Chemicals, Building No. 35
Buffalo Avenue & 26th Street
Niagara Falls, New York 14302
(Tel.: (716) 278-5496)

E. The Department and Respondent reserve the right to designate additional or different addressees for communication on written notice to the other.

XI. Miscellaneous

A. Nothing in this Order shall be construed to bind any entity not specifically bound by the terms of this Order, nor constitute an admission of law or fact, nor an admission of any violation of any law or regulation or evidence of the same.

B. Respondent has retained professional consultants, contractors, laboratories, quality assurance/quality control personnel, and data validators acceptable to the Department to perform the technical, engineering, and analytical obligations required by this Order. The responsibility for the performance of the professionals retained by Respondent shall rest solely with Respondent.

C. The Department shall have the right to obtain split samples, duplicate samples, or both, of all substances and materials sampled by Respondent, and the Department also shall have the right to take its own samples. Respondent shall make

available to the Department the results of all sampling and/or tests or other data generated by Respondent with respect to implementation of this Order and shall submit these results in the reports required by this Order.

D. Respondent shall notify the Department at least 10 working days in advance of any field activities to be conducted pursuant to this Order.

E. Respondent shall use its best efforts to obtain all permits, easements, rights-of-way, rights-of-entry, approvals, or authorizations necessary to perform Respondent's obligations under this Order. Respondent shall promptly notify the Department in the event of its inability to obtain such authorizations on a timely basis. In the event Respondent is unable to obtain such authorizations, the Department may, consistent with its legal authority and at its own discretion, assist in obtaining such authorizations Respondent was unable to obtain. In the event that necessary authorizations are not forthcoming on a timely basis, the Work Plan may be modified accordingly.

F. Respondent and Respondent's officers, directors, agents, servants, employees, successors, and assigns shall be bound by this Order. Any change in ownership or corporate status of Respondent including, but not limited to, any transfer of assets or real or personal property shall in no way alter Respondent's responsibilities under this Order. Respondent's officers, directors, employees, servants, and agents shall be obliged to comply with the relevant provisions of this Order in

the performance to their designated duties on behalf of Respondent.

G. Respondent shall provide a copy of this Order to each contractor hired to perform work required by this Order and to each person representing Respondent with respect to the Site and shall condition all contracts entered into in order to carry out the obligations identified in this Order upon performance in conformity with the terms of this Order. Respondent or Respondent's contractors shall provide written notice of this Order to all subcontractors hired to perform any portion of the work required by this Order. Respondent shall nonetheless be responsible for ensuring that Respondent's contractors and subcontractors perform the work in satisfaction of the requirements of this Order.

H. All references to "professional engineer" in this Order are to an individual registered as a professional engineer in accordance with Article 145 of the New York State Education Law. If such individual is a member of a firm, such firm must be qualified to offer engineering services in accordance with Article 145 of the New York State Education Law.

I. All references to "days" in this Order are to calendar days unless otherwise specified.

J. The section headings set forth in this Order are included for convenience of reference only and shall be disregarded in the construction and interpretation of any of the provisions of this Order.

K. 1. The terms of this Order shall constitute the complete and entire Order between Respondent and the Department concerning the Site. No term, condition, understanding, or agreement purporting to modify or vary any term of this Order shall be binding unless made in writing and subscribed by the party to be bound. No informal advice, guidance, suggestion, or comment by the Department regarding any report, proposal, plan, specification, schedule, or any other submittal shall be construed as relieving Respondent of Respondent's obligation to obtain such formal approvals as may be required by this Order.

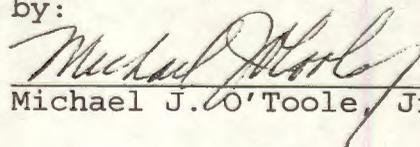
2. If Respondent desires that any provision of this Order be changed, Respondent shall make timely written application, signed by the Respondent or its authorized agent, to the Commissioner setting forth reasonable grounds for the relief sought. Copies of such written application shall be delivered or mailed to David Pratt, P.E., and to Glen R. Bailey.

L. The effective date of this Order shall be the date it is signed by the Commissioner or his designee.

DATED: 4/11, New York
1997

John P. Cahill
Acting Commissioner
New York State Department
of Environmental Conservation

by:


Michael J. O'Toole, Jr.

