UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY

IN THE MATTER OF:	Docket No. TSCA-HQ-2004-0016 Docket No. RCRA-HQ-2004-0016
E. I. du Pont de Nemours and Company Wilmington, DE Respondent Washington Works Facility Route 892 South DuPont Road Washington, Wood County, WV	COMPLAINT AND NOTICE OF OPPORTUNITY FOR HEARING

INTRODUCTION

This Complaint and Notice of Opportunity for Hearing ("Complaint") is filed pursuant to Toxic Substances Control Act § 16(a), 15 U.S.C. § 2615(a), ("TSCA") and Resource Conservation and Recovery Act ("RCRA") §§ 3008(a) and (g), as amended by the Hazardous and Solid Waste Amendments ("HSWA"), 42 U.S.C. §§ 6928(a) and (g), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits ("Consolidated Rules of Practice"), 40 C.F.R. Part 22, a copy of which is enclosed with this Complaint. See Enclosure A. The Complainant is Walker B. Smith, Director, Office of Regulatory Enforcement, Office of Enforcement and Compliance Assurance, United States Environmental Protection Agency ("EPA" or the "Agency"), who has been duly delegated the authority to institute this action. The Respondent is E. I. du Pont de Nemours and Company, 1007 Market Street, Wilmington, Delaware ("DuPont"

or "Respondent"), owner and operator of a treatment, storage, or disposal facility and manufacturer, processor or distributor of chemical substances and mixtures in commerce.

This Complaint serves as notice that Complainant has reason to believe that Respondent failed to immediately submit information as required by TSCA § 8(e), 15 U.S.C. § 2607(e), thereby committing an unlawful act under TSCA § 15, 15 U.S.C. § 2614. This Complaint further serves as notice that Complainant has reason to believe that Respondent has violated RCRA Subtitle C, 42 U.S.C. §§ 6921-6939e, West Virginia hazardous waste management regulations, the federal hazardous waste corrective action regulations in effect at the time of the violation, and Respondent's RCRA Permit, WVD 04 587 5291. Sections 15 and 16 of TSCA authorize EPA to take an enforcement action against any person that commits a prohibited action under TSCA. Sections 3008(a) and (g) of RCRA authorize EPA to take an enforcement action whenever it is determined that a person is in violation of any requirement of Subtitle C of RCRA, EPA's regulations thereunder, or any regulation of a state hazardous waste program that has been authorized by EPA.

On May 29, 1986, pursuant to Section 3006(b) of RCRA, 42 U.S.C. § 6926(b), and 40 C.F.R. Part 271, Subpart A, the State of West Virginia ("West Virginia") was granted final authorization to administer its base hazardous waste management program in lieu of the federal base hazardous waste management program established under RCRA Subtitle C, 42 U.S.C. §§ 6921-6939e. Through this final authorization, the provisions of the West Virginia hazardous waste management program ("Original Authorized Program") became requirements of RCRA Subtitle C and are, accordingly, enforceable by EPA pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a). A revised West Virginia hazardous waste management program, set forth at

West Virginia Code of State Rules, West Virginia Hazardous Waste Management Rule (WVHWMR), Title 33, Dep't of Envtl. Protection, Div. of Waste Management, Series 20, Sections 33-20-1 through 33-20-15 ("Revised Authorized Program"), was authorized by EPA on July 10, 2000, and accordingly, the provisions of the Revised Authorized Program are enforceable by EPA on and after July 10, 2000, pursuant to § 3008(a) of RCRA, 42 U.S.C. § 6928(a).

On December 15, 2003, pursuant to RCRA § 3006(b), and 40 C.F.R. Part 271, EPA authorized revisions to the West Virginia hazardous waste management program. In particular, West Virginia was authorized to administer the Federal Corrective Action Program, Section 3004(u) of RCRA, 42 U.S.C. § 6924(u), created under the Hazardous and Solid Waste Amendments ("HSWA"), enacted on November 8, 1984 (Pub. L. No. 98-616), which amended Subtitle C of RCRA. See also 40 C.F.R. §§ 264.100 - 264.101. At all relevant times, for purposes of the violation of RCRA § 3008(a) at issue in this administrative Complaint, West Virginia was not authorized to implement the Federal Corrective Action Program. Sections 3008(a) and (g) of RCRA, 42 U.S.C. § 6928(a) and (g), authorize EPA to assess a civil penalty against any person who violates any requirement of Subtitle C of RCRA or a regulation or permit issued thereunder.

In accordance with RCRA § 3008(a)(2), 42 U.S.C. § 6928(a)(2), EPA has notified the State of West Virginia, through the West Virginia Division of Environmental Protection ("DEP"), of EPA's intent to issue a Complaint to Respondent for the violation of RCRA, as alleged herein.

In support of this Complaint, Complainant hereby makes the following allegations:

COMPLAINT

GENERAL ALLEGATIONS FOR COUNTS I-II

1. Respondent owns and operates a manufacturing facility, known as Washington Works ("Washington Works Facility"), located at Route 892 South DuPont Road, Washington, Wood County, West Virginia, 26181. Respondent was the owner and operator of this facility at all times relevant to this Complaint.

2. Respondent manufactures, processes, or distributes in commerce a chemical substance or mixture as those terms are defined in TSCA § 3, 15 U.S.C. § 2602 and TSCA § 8(f), 15 U.S.C. § 2607(f).

3. Respondent is a person subject to the requirements of TSCA § 8(e), 15 U.S.C. § 2607(e).

4. Respondent is a manufacturer, processor, or distributor of perfluorooctanoic acid (PFOA) (Octanoic acid, pentadecafluoro- Chemical Abstracts Service Registry Number (CAS No.) 335-67-1).[1]

5. EPA has identified potential human health concerns from exposure to PFOA and its salts. Amonium perfluorooctanoate (APFO) (Octanoic acid, pentadecafluoro-, ammonium salt (CAS No. 3825-26-1)) is the most widely used salt of PFOA, and most animal toxicity studies have been conducted with APFO.

6. PFOA is a perfluorinated detergent/surfactant manufactured in the United States by DuPont. DuPont processes or distributes PFOA in connection with Teflon®- related

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[1]DuPont often refers to PFOA as C-8, referring to the chain of eight carbons in its molecular structure. FC-143 (the 3M trademark) is another name for PFOA.

products.[2]

7. DuPont has manufactured, processed or distributed PFOA at its Washington Works facility outside Parkersburg, West Virginia since 1951.

8. DuPont's Washington Works facility has vented PFOA into the air, treated waste containing PFOA in anaerobic digestion ponds, disposed of waste containing PFOA into landfills, and discharged PFOA into the Ohio River.

9. PFOA is hepatotoxic (liver toxin) to animals.

10. PFOA is biopersistent in animals and humans.

11. PFOA is bioaccumulative in humans.

12. PFOA is associated with developmental effects in animals.

13. PFOA is in the blood of the general population in all geographic regions of the U.S.

14. PFOA is not naturally occurring, thus all PFOA in human blood is attributable to human activity. PFOA is produced synthetically and formed through the degradation or metabolism of other fluorochemical products, such as fluorinated telomers.

15. DuPont and other researchers have studied PFOA in lab animals. There are gender differences in the elimination of PFOA in rats.

16. There are substantial differences in the half-life of PFOA in rats and humans. There are considerable differences among species in the kinetics of PFOA.

17. In September 2002, the Director of the Office of Pollution Prevention and Toxics (OPPT)

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[2]The 3M Company manufactured APFO and sold it to DuPont since 1951 to make the PFOA solution. In May 2000, 3M announced that it was discontinuing its PFOA chemistries. DuPont began production of PFOA between 2000 and 2002 after its supplier, the 3M Company, discontinued manufacturing APFO.

initiated a priority review of PFOA. EPA published a Federal Register Notice, 68 Fed. Reg. 18,626 (April 16, 2002), as part of its effort to collect additional information. The Agency is interested in collecting information because recent studies have indicated that PFOA causes developmental toxicity and other effects in laboratory animals. EPA's preliminary assessment, released April 10, 2003, indicates potential exposure of the U.S. general population to PFOA at very low levels. However, this risk assessment also reflects considerable scientific uncertainty regarding the potential risks.

18. TSCA § 2(a)(2), 15 U.S.C. § 2601(a)(2) states, "Findings - The Congress finds that - (2) among the many chemical substances and mixtures which are constantly being developed and produced, there are some whose manufacture, processing, distribution in commerce, use or disposal may present an unreasonable risk of injury to health or the environment."

19. TSCA § 2(b)(2), 15 U.S.C. § 2601(b)(2) and TSCA § 2(b)(3), 15 U.S.C. § 2601(b)(3) state, "Policy - It is the policy of the United States that - (2) adequate authority should exist to regulate chemical substances and mixtures which present an unreasonable risk of injury to health or the environment, and to take action with respect to chemical substances and mixtures which are imminent hazards; and (3) authority over chemical substances and mixtures should be exercised in such a manner as to not impede unduly or create unnecessary economic barriers to technological innovation while fulfilling the primary purpose of this Act to assure that such innovation and commerce in such chemical substances and mixtures do not present an unreasonable risk of injury to health or the environment."

20. TSCA § 8(e), 15 U.S.C. § 2607(e), provides that, "Any person who manufactures,

processes, or distributes in commerce a chemical substance or mixture and who obtains information which reasonably supports the conclusion that such substance or mixture presents a substantial risk of injury to health or the environment shall immediately inform the Administrator of such information unless such person has actual knowledge that the Administrator has been adequately informed of such information."

GENERAL ALLEGATIONS FOR COUNT III

21. Respondent, DuPont, is a corporation incorporated in the State of Delaware and is a "person" as defined by WVHWMR § 33-20-2, RCRA § 1004(15), 42 U.S.C. § 6903(15), and 40 C.F.R. § 260.10. At all relevant times, for purposes of this Complaint, Respondent was a corporation organized under the laws of the State of Delaware.

22. Respondent owns and operates the Washington Works Facility located at Route 892 South DuPont Road, Washington, Wood County, West Virginia, 26181.

23. Respondent is, and has been, at all times relevant to this Complaint, the "owner" of the Washington Works Facility as that term is defined by WVHWMR § 33-20-2 and 40 C.F.R. § 260.10.

24. Respondent is, and has been, at all times relevant to this Complaint, the "operator" of the Washington Works Facility as that term is defined by WVHWMR § 33-20-2 and 40 C.F.R. § 260.10.

25. Respondent's Washington Works Facility is a "facility," as that term is defined by WVHWMR § 33-20-2 and 40 C.F.R. § 260.10.

26. Section 3004(u) of RCRA, and regulations promulgated thereunder, codified at 40 C.F.R.

§§ 264.100 - 264.101, require corrective action as necessary to protect human health and the environment for all releases of hazardous waste or constituents from any solid waste management unit at a treatment, storage, or disposal facility, regardless of the time at which waste was placed in such unit, for all permits issued after November 8, 1984.

27. On or about January 5, 1987, West Virginia issued to Respondent a RCRA "base" permit for the treatment, storage, or disposal of hazardous waste at its Washington Works Facility.

28. In March of 1985, EPA requested that Respondent provide information on Solid Waste Management Units (SWMUs) at the Washington Works Facility.

29. Based upon information EPA received in response to the March 1985 request for information, on December 13, 1989, EPA issued to Respondent the corrective action portion of Respondent's full RCRA Permit, EPA ID No. WVD 04 587 5291 ("Corrective Action Permit"), for the Washington Works Facility, pursuant to Sections 3005(c) and 3004(u) of RCRA, 42 U.S.C. §§ 6925(c), 6924(u).

30. On December 16, 1999, EPA extended the term of the corrective action portion of Respondent's RCRA permit for the Washington Works Facility until the effective date of a new corrective action permit for the Washington Works Facility.

31. The Corrective Action portion of Respondent's RCRA Permit, as extended, remains fully effective as of the filing of this Complaint.

COUNT I - Transplacental Movement of PFOA

32. Complainant re-alleges paragraphs 1 through 20, above, as if fully set forth below.

33. On or about March 20, 1981, the 3M Company, DuPont's supplier of PFOA, advised

DuPont about the potential for PFOA to cause birth defects in rats. Specifically, 3M advised DuPont that researchers observed what appeared to be treatment related damage to the eye lenses of some rat pups.[3]

34. On or about May 14, 1981, DuPont revised a document describing the results of a DuPont blood sampling of eight pregnant employees at the Washington Works Facility.[4] In August of 1981, DuPont revised this document again with handwritten notes. This blood sampling document identifies the levels of PFOA in the blood of certain pregnant employees at the Washington Works facility along with a description of the status of the child.

35. DuPont's human blood sampling was conducted to monitor these pregnant employees for their exposure to PFOA, to monitor umbilical cord blood for PFOA on at least one occasion, and to test babies' blood for PFOA on at least two occasions.

36. The May 14, 1981 document provides certain details on a pregnant woman with 0.078 parts per million (ppm) C-8 in her blood. She is described as having a "Normal child - born April 1981. Umbilical cord blood 0.055 ppm."

37. The existence of 0.055 ppm of PFOA in the umbilical cord blood demonstrates PFOA movement in humans, and specifically, that PFOA moved from the mother, through the placenta, to the fetus.

38. DuPont did not immediately submit, nor has it ever submitted, this human blood sampling information concerning the transplacental movement of PFOA, a chemical

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[3]Later studies could not reproduce the fetal lens defect.

[4]The document does not indicate the date it was created.

known then to be persistent, to demonstrate liver toxicity in animals and that DuPont was reviewing for possible birth defects.

39. On or about December 18, 1981, DuPont discussed an inquiry from a mother with a child with 0.4 ppm C-8 in its blood, as to whether a baby's liver was more susceptible to damage by PFOA than that of an adult. This discussion occurred in a memorandum from J. F. Doughty, of DuPont's Washington Works Facility, to R.D. Ingalls, of DuPont's Wilmington, Delaware office.

40. DuPont's December 18, 1981, memorandum discussed in paragraph 39, above includes an inquiry as to whether the 3M studies on C-8 showed any malformations other than eye defects.

41. On or about March 16, 1982, DuPont reported data to EPA, that EPA subsequently regarded as substantial risk data under TSCA § 8(e), concerning the transplacental movement of PFOA in rats. DuPont continued to fail or refuse to disclose that it had obtained human blood sampling data in 1981confirming the transplacental movement of PFOA in humans.

42. DuPont reviewed the human blood sampling information as part of its litigation preparation involving the Washington Works Facility in the Circuit Court of Wood County, West Virginia when it produced the human blood sampling document to opposing counsel on September 24, 2000.

43. DuPont continued to fail or refuse to submit to EPA the data concerning human blood sampling confirming the transplacental movement of PFOA after it had included the document in production for litigation September 24, 2000.

44. The human blood sampling information confirming the transplacental movement of PFOA is information that reasonably supports the conclusion that PFOA presents a substantial risk of injury to human health that the Administrator was not already adequately informed about at the time the information was obtained by DuPont or at any time prior to the date EPA finally received the data.

45. The 1981 data indicating that PFOA moves across the placental barrier between PFOA-exposed mothers and their fetuses suggest that such fetuses could experience toxic effects associated with PFOA, including persistence/bioaccumulation, and, as observed in animal tests, developmental toxicity and liver toxicity. The human data are more indicative of such possibility in humans than the data submitted to EPA by DuPont in 1982, which demonstrated that PFOA moved across the placental barrier in rats used in laboratory experiments. EPA's efforts to characterize effects of PFOA might have been more expeditious had the data on transplacental movement of the chemical in humans been submitted immediately by DuPont when DuPont obtained the information in 1981.

46. DuPont's failure to immediately inform EPA about the information concerning the human blood sampling constitutes a violation of TSCA § 8(e), 15 U.S.C. § 2607(e).

47. The Agency considers the human blood sampling information confirming transplacental movement of PFOA in humans to reasonably support the conclusion of a substantial risk of injury to health or the environment. The Administrator was not adequately informed about this risk at the time the information was obtained by DuPont in 1981, and was not

informed until March 6, 2001.[5]

48. DuPont was required to immediately inform the EPA about the human blood sampling information confirming transplacental movement of PFOA under TSCA § 8(e), 15 U.S.C. § 2607(e), as information which reasonably supports the conclusion that such substance or mixture presents a substantial risk to health.

49. DuPont was required under TSCA § 8(e) to inform the Administrator every day between June 15, 1981 and March 6, 2001 about the human blood sampling information confirming transplacental movement of PFOA.

50. DuPont failed or refused to immediately inform the Administrator about the human blood sampling information confirming transplacental movement of PFOA.

51. TSCA § 15(3)(B), 15 U.S.C. § 2614(3)(B), provides that it is unlawful for any person "to fail or refuse to submit reports, notices, or other information" required by TSCA.

52. DuPont's failure or refusal to submit the human blood sampling information as required under TSCA § 8(e) is an unlawful act under TSCA § 15(3)(B).

COUNT II - Public Water Supply Contamination

53. Complainant re-alleges paragraphs 1 through 20, above, as if fully set forth below.

54. On or about June 14, 1984, DuPont compiled sampling results which determined that PFOA was present in the public water supply in communities in the vicinity of the Washington Works Facility.

55. On or about August 29, 1984, DuPont summarized the results from water samples

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[5]Mr. Robert A. Bilott, Esq. of Taft, Stettinius & Hollister, LLP first supplied the human blood sampling document to EPA on March 6, 2001.

collected on March 15, 1984 and a second set of water samples taken on June 4, 1984, in a letter to J. A. Schmid, from J. F. Doughty (signed John Doughty) entitled SUMMARY OF C-8 IN WATER SAMPLING PROGRAM. This letter includes a table showing the location of samples of drinking water from such sites as an employee's home, a public drinking fountain, a private well, and other sites collected on March 15, 1984. These sampling sites were located in West Virginia and Ohio. The above-described 1984 drinking water sampling results detected PFOA in the public water supply for Lubeck, West Virginia and in Little Hocking, Ohio.

56. On or about March 13, 1987, DuPont recorded C-8 at 1.9 parts per billion (ppb) in two water samples described as "Lubeck Business Tap." On or about May 12, 1988, November 2, 1988, May 7, 1989, May 23, 1991, May 29, 1991, and August 8, 1991, DuPont obtained "LPSD Home Tap" sampling showing PFOA at the respective levels of 2.2 ppb, 1.4 ppb, 0.7 ppb, 3.8 ppb, 3.8 ppb and 3.9 ppb in home tap water.

57. The two samples in paragraph 55 from "Lubeck Business Tap[s]" appear to be among the five samples discussed in a DuPont Interoffice Memorandum dated May 12, 1987, from Tony Playtis to Roger Zipfel. Sample number 2 and sample number 3 are identified as "taken on" March 13, 1987, and the analytical report showed C-8 at 1.9 ppb for both samples. Sample number 2 is identified as drinking water coming from Powell's General Store, Washington, WV and sample number 3 is identified as drinking water from the Lubeck Pennzoil, Lubeck, WV. Both samples were collected by C. L. Hill.

58. On or about August 29, 1988, a DuPont interoffice memorandum from Anthony J. (Tony) Playtis to Roger J. Zipfel with the subject: "Test Results - C8 in Groundwater,"

contained information on the level of PFOA detected in six water samples. Four of the six samples indicate PFOA over 1 ppb at the locations sampled. One sample, among the six listed, is described as follows:

Sample Description	C8 Level
Lubeck Water - Playtis Home 5/12/88, 17:00	2.2 ppb

59. On or about January 30, 1989, in a DuPont Interoffice memorandum from Anthony J. (Tony) Playtis to Roger J. Zipfel with the subject: "Test Results - C8 in Water," there are results for four local water sources sampled. The results from two of the four samples indicate PFOA in an amount greater than 1ppb. One sample, among four listed, is described as follows:

Sample Description	ppb C8
Lubeck Water - Playtis Home 11/2/88, 17:00	1.4

60. Community Exposure Guidelines (CEGs) are DuPont's exposure guidelines that are expected to be without any effect to members of the community during continuous 24-hour a day exposure to a chemical or physical agent. CEGs are based on the best available information from industrial experience, animal toxicity studies, controlled human exposure studies, and epidemiological findings.

61. On or about June 6, 1991, DuPont set a Community Exposure Guideline for drinking water (CEGw) at 1 microgram per liter (1 µg/L or 1 ppb) for PFOA. In June of 1991, the DuPont Washington Works Facility was aware of the 1 ppb CEGw that had been established for PFOA.

62. At the time DuPont adopted a CEGw at 1 ppb, it had collected results from drinking

water samples as discussed above, and had information regarding the level of PFOA detected in such samples. DuPont took many drinking water samples and tested them for PFOA during the years 1984 through 1991. In a June 14, 1984, Personal and Confidential Update, titled "UPDATE ON C-8 IN WATER SAMPLES," some of the following sampling results were provided

- Washington 3/25/84 ..... 1.2 ppb C-8
- Washington 6/4/84 ..... 1.0 ppb C-8
- Lubeck 6/4/84 ..... 1.5 ppb C-8
- Little Hocking 3/15/84 ..... 0.8 ppb C-8

63. In a July 11, 2003, letter to Rich Hefter of EPA, DuPont provided some but not all of the analytical results that it had obtained for PFOA in drinking water. Some of the analytical results provided to EPA in July 2003, are listed below:

C-8 OFF SITE SAMPLING	C-8 PPB
• LUBECK BUSINESS TAP (2) 3/13/87	1.9, 1.9
• LPSD HOME TAP -P 5/12/88	2.2
• LPSD HOME TAP -P 11/2/88	1.4
• LPSD HOME TAP -P 5/7/89	0.7
• LPSD HOME TAP -M 5/23/91	3.8
• LPSD HOME TAP - C 5/29/91	3.8

The C-8 OFF SITE SAMPLING table also includes a sampling result dated after DuPont had adopted the CEGw standard of 1 ppb. It is listed on the chart as follows:

- LPSD HOME TAP -M 8/8/91 ..... 3.9

64. These results, discussed in paragraphs 62-63, above, indicate a substantial risk of widespread exposure to a chemical at a level of concern that requires informing the Administrator immediately.

65. DuPont purchased the drinking water supply wells from the Lubeck Public Service District (LPSD) during the 1986 to 1990 time period. New drinking water supply wells

were established 2.7 miles away from the Washington Works Facility for the LPSD.

66. On or about June 23, 1991, after DuPont had purchased the drinking water supply wells from LPSD, DuPont detected PFOA at 2.4 ppb in a new well in the new Lubeck well field (2.7 miles south - southwest of Washington Works), as discussed in a September 19, 1991 memorandum to Walt Stewart from Terry Vandell with the subject: "Meeting Minutes Of The On-Site Washington Works Meeting (September 11, 1991, 9:00 AM-11:00 AM) Regarding The September 4, 1991 Proposed C-8 Sampling Program."

67. DuPont failed or refused to submit the information it had obtained on the widespread contamination of PFOA in public drinking water at levels exceeding its CEGw, even after reviewing it specifically to decide whether it should be submitted to EPA under TSCA § 8(e). On or about January 12, 2000, in a letter from DuPont's Senior Counsel Andrea V. Malinowski, Esq. to Douglas Johns, Esquire, Legal, General Electric Plastics ("GE"), DuPont replied to an e-mail concerning FC-143. The letter states, "Regarding item 1, DuPont did not submit a TSCA 8(e) notification to EPA concerning the presence of FC-143 in environmental media. The 8(e)-reportability of the presence of FC-143 in environmental media was reviewed within DuPont and determined to not be reportable." The letter provides four bullets as the reasons for that decision. Those bullets are summarized as follows:

- Toxicology studies were submitted to EPA by the 3M Company for FC-143,
- Discharge of FC-143 in an outfall to the Ohio River had been reported to EPA,
- FC-143 was detected in the aquifer underlying a solid waste management unit identified as B-4, at the Washington Works Facility,

- The presence of "detectable levels" of C-8 in the Lubeck public supply wells had been reported to EPA's waste program in a February 9, 1990 letter.

68. The four bullets listed by DuPont in its January 12, 2000, letter to GE are misleading as follows:

- The toxicology studies provided by 3M do not include DuPont's human blood sampling data concerning the transplacental movement of PFOA.
- DuPont's statement that FC-143 is present in outfall 005 does not provide information about widespread contamination of home tap water with PFOA above DuPont's CEGw of 1 ppb.
- DuPont's detection of PFOA under the DuPont Local Landfill does not give the Administrator notice that any of the PFOA had migrated off site. The statement was made as part of a statement of "Releases, Spills, etc." that dealt with leakage of surfactant when "the third basin was constructed . . ."
- DuPont's statement to EPA in the Verification Investigation Workplan for Six Solid Waste Management Units on February 9, 1990, that C-8 was in the public water supply begins with the statement, "Releases have occurred in the past." After discussing in the Verification Investigation Workplan the construction of a dam in 1964 and the re-lined impoundments in 1973-74, DuPont states, "The Lubeck public supply wells have perfluorooctanoate (also called C-8). Washington Works is in the process of purchasing these wells from Lubeck Water supply." This statement gives the impression that the C-8 release has ceased, was confined to a small area, and that DuPont purchased the contaminated area to prevent public exposure.

69. In DuPont's January 12, 2000 letter to GE, discussed in paragraphs 67-68, above, DuPont fails or refuses to recognize that its C-8 contamination in public drinking water is ongoing, that C-8 contamination extends into people's homes, and that DuPont had never informed the Administrator of levels of C-8 contamination of drinking water greater than three times higher than DuPont's own CEGw set more than 8 years before DuPont wrote its letter to GE.

70. DuPont's January 12, 2000 letter to GE does not discuss the 1 ppb CEGw for PFOA established by DuPont on June 6, 1991, and the subsequent samples obtained from one of the new public water supply wells showing over twice that level at 2.4 ppb PFOA on June 23, 1991.

71. DuPont reviewed the PFOA contamination of the public water supply information as part of its preparation for litigation in the Circuit Court of Wood County, West Virginia concerning PFOA contamination originating from the Washington Works facility. DuPont failed or refused to submit to EPA the substantial risk information concerning PFOA contamination in public drinking water that it provided to opposing counsel on or about October 18, 2000.

72. TSCA § 8(e), 15 U.S.C. § 2607(e), provides that "Any person who manufactures, processes, or distributes in commerce a chemical substance or mixture and who obtains information which reasonably supports the conclusion that such substance or mixture presents a substantial risk of injury to health or the environment shall immediately inform the Administrator of such information unless such person has actual knowledge that the Administrator has been adequately informed of such information."

73. The Agency considers the information concerning the contamination of the public water supply to reasonably support the conclusion of a substantial risk of injury to health or the environment.[6] The Administrator was not informed at the time DuPont obtained monitoring data showing contamination of the public water supply prior to 1991, and subsequent to that time.

74. DuPont was required under TSCA § 8(e), 15 U.S.C. § 2607(e), to immediately report the information concerning DuPont's monitoring data of the contamination of the public water supply for the communities in the vicinity of its Washington Works Facility and this obligation continued as DuPont learned more about the contamination.

75. DuPont was required under TSCA § 8(e) to inform the Administrator every day between July 24, 1991 and March 6, 2001 about the information it had obtained on the widespread contamination of public drinking water at a level greater than its CEGw.

76. DuPont was required to inform the Administrator immediately about information concerning the PFOA contamination of public drinking water that DuPont obtained in 1984. DuPont continued to fail or refuse to submit this information to the Administrator as it increased its understanding that the PFOA contamination extended into people's homes and was more than twice DuPont's own Community Exposure Guideline for water.

77. TSCA § 15(3)(B) of TSCA, 15 U.S.C. § 2614(3)(B), provides that it is unlawful for anyone "to fail or refuse to submit reports, notices, or other information" required by

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[6]Robert A. Bilott, Esq. of Taft, Stettinius & Hollister, LLP and the Environmental Working Group submitted the information as discussed in footnote 5.

TSCA.

78. DuPont's failure or refusal to immediately submit to the Administrator its understanding that the PFOA contamination extended into people's homes at levels approaching and exceeding its Community Exposure Guideline for water as required under TSCA § 8(e) is an unlawful act under TSCA § 15(3)(B).

COUNT III - RCRA Permit Violation

79. Complainant re-alleges paragraphs 21 through 31, above, as if fully set forth below.

80. Section 3005(a) of RCRA, 42 U.S.C. § 6925(a), provides, in pertinent part, that each person owning or operating an existing facility or planning to construct a new facility for the treatment, storage, or disposal of hazardous waste is required to obtain a permit and comply with the regulations promulgated by EPA concerning permitting requirements. In addition, the treatment, storage, or disposal of hazardous waste or the construction of a new facility is prohibited unless in compliance with all applicable permitting requirements.

81. Section 3005(c) of RCRA, 42 U.S.C. § 6925(c), provides, in pertinent part, that upon a determination by EPA (or a state, if applicable), of compliance by a facility for which a permit is applied for pursuant to RCRA §§ 3004 and 3005, 42 U.S.C. §§ 6924 and 6925, EPA (or the state) shall issue a permit for such facilities; and that each permit issued under RCRA § 3005 shall contain such terms and conditions necessary to protect human health and the environment.

82. Section 3004(u) of RCRA, 42 U.S.C. § 6924(u), requires, in pertinent part, that each permit issued after November 8, 1984, by EPA or an authorized state, shall require

corrective action from any solid waste management unit at the treatment, storage, or disposal facility seeking such permit, regardless of the time at which waste was placed in such unit.

83. Section 3004(v) of RCRA, 42 U.S.C. § 6924(v), requires, in pertinent part, that corrective action be taken beyond the facility boundary at a treatment, storage or disposal facility where necessary to protect human health and the environment.

84. 40 C.F.R. § 270.32(b)(2) and WVHWMR § 33-20-11.1, provide, in pertinent part, that each permit issued under RCRA § 3005 shall contain terms and conditions as EPA determines necessary to protect human health and the environment.

85. Part I, Section C of Respondent's Corrective Action Permit states, in pertinent part, that pursuant to RCRA § 3005(c)(3), the permit contains those terms and conditions determined necessary to protect human health and the environment.

86. 40 C.F.R. § 270.30(a) and WVHWMR § 33-20-11.1, provide, in pertinent part, that a RCRA permittee must comply with all conditions of its permit, and that any permit noncompliance, except under the terms of an emergency permit, constitutes a violation of RCRA and is grounds for an enforcement action; for permit termination, revocation and reissuance, or modification; or for denial of a permit renewal application.

87. Part 1, Section I.1 of Respondent's Corrective Action Permit requires Respondent to comply with all conditions of the permit, except to the extent and for the duration such noncompliance is authorized by an emergency permit. Any other permit noncompliance constitutes a violation of RCRA and is grounds for enforcement action, permit termination, revocation and reissuance, or modification, or for denial of a permit renewal

application.

88. 40 C.F.R. § 270.30(h) and WVHWMR § 33-20-11.1, provide, in pertinent part, that the permittee shall furnish within a reasonable time, any relevant information which EPA may request to determine whether cause exists for modifying, revoking and reissuing, or terminating the permit, or to determine compliance with the permit.

89. Part 1, Section I.7 of Respondent's Corrective Action Permit requires, in pertinent part, that Respondent shall furnish, within the specified time, any relevant information that EPA may request to determine whether cause exists for modifying, revoking and reissuing, or terminating the permit, or to determine compliance with the permit.

90. The Corrective Action Permit for the Washington Works Facility generally requires Respondent to perform the following: 1) a Verification Investigation (VI), including a VI Workplan and VI Report, to evaluate to what extent hazardous constituents have been released to the soil, surface water, and groundwater as a result of historic plant operations at Solid Waste Management Units (SWMUs) and to define SWMU areas of concern where additional data are needed to determine the extent of constituent migration; 2) a RCRA Facility Investigation (RFI), including an RFI Workplan and RFI Report, for suspected releases from specific SWMUs at the Washington Works Facility, and 3) a Corrective Measure Study. All plans, reports, schedules, and other submissions required by the terms of EPA's portion of Respondent's Corrective Action Permit are, upon approval by EPA, incorporated into the permit.

91. On or about December 14, 1990, Respondent submitted to EPA a revised VI Workplan. As required by Part II.B.1 of Respondent's Corrective Action Permit, the VI Workplan is

designed to, among other things, describe how the permittee will investigate the release of hazardous waste or hazardous constituents from all SWMUs and determine the need for further investigation and/or implementation of interim measures at the Washington Works Facility.

92. Respondent's Verification Investigation was conducted in the winter of 1991 for the SWMUs at the Washington Works Facility. C-8 is one of the constituents that Respondent was required to investigate as part of the Verification Investigation.

93. On or about April 3, 1992, Respondent submitted to EPA a VI Report. As required by Part II.B.2 of Respondent's Corrective Action Permit, the VI Report was to contain all data organized in a logical sequence and include, among other things, summaries of all findings, problems encountered during the investigation, actions taken to correct the problems, and copies of all daily reports, inspections reports, and laboratory/monitoring data. Respondent was also required to include in the VI Report, conclusions and recommendations.

94. C-8 (also referred to as PFOA or FC-143 as described in paragraph 4, footnote 1, above) is one of the constituents that Respondent detected as part of the Verification Investigation it performed at the Washington Works Facility, and included in its VI Report to EPA in April of 1992.

95. On or about May 5, 1997, EPA issued a Notice of Deficiency (Notice) to Respondent for the VI Report. In the Notice, EPA requested that Respondent provide a response to EPA, within 30 days of receipt, for all deficiencies identified in the Notice.

96. In the Groundwater portion of the Notice, EPA requested that Respondent provide to

EPA "known toxicological information" regarding C-8.

97. In Respondent's Response to the Notice of Deficiency (Response to the Notice) on or about June 6, 1997, and in its specific response to EPA's request for "known toxicological information," Respondent directed EPA to information that was included in the VI Report, and provided "[a]dditional C-8 toxicological information" at Attachment 2 of the Response to Notice, titled "Toxicological Information on C-8."

98. The "Toxicological Information on C-8" included certain "Health Hazardous Data."

99. In the section regarding "Health Hazardous Data," Respondent did not provide EPA the human blood sampling information concerning the transplacental movement of PFOA that Respondent obtained in 1981 when performing blood sampling of pregnant workers at the Washington Works Facility.

100. Information regarding the transplacental movement of C-8 in humans is, and, at the time of EPA's Notice and Respondent's Response to the Notice was, "known toxicological information" about C-8.

101. Neither in its Response to the Notice in June 1997, nor at any other time, did Respondent provide to EPA the information regarding the transplacental movement of C-8 in humans.

102. In its Response to the Notice in June 1997, Respondent did not provide all "known toxicological information" it had regarding C-8 because it did not provide to EPA the information regarding the transplacental movement of C-8 in humans.

103. All known toxicological information about C-8 is "relevant information" that EPA might request "to determine whether cause exists for modifying, revoking and reissuing or terminating [Respondent's Corrective Action Permit,] or to determine compliance with

this permit. Part I, Section I.7; 40 C.F.R. § 270.30(h); WVHWMR § 33-20-11.

104. Respondent's failure to provide this known toxicological information constitutes noncompliance with Respondent's duty to provide information, as required by Part 1, Section I.7 of Respondent's Corrective Action Permit, 40 C.F.R. § 270.30(h) and WVHWMR § 33-20-11.1

105. Because Respondent did not comply with this provision of its Corrective Action Permit to provide known toxicological information, Respondent did not comply with all conditions of its permit, as required by Part 1, Section I.1. of Respondent's Corrective Action Permit, 40 C.F.R. § 270.30(a), and WVHWMR § 33-20-11.1.

106. From at least June 6, 1997, until at least March 6, 2001, Respondent violated § 3005(a), 42 U.S.C. § 6925(a), Part 1, Section I.7 of Respondent's Corrective Action Permit, 40 C.F.R. § 270.30(h), and WVHWMR § 33-20-11.1, by failing to provide the known toxicological information on C-8 described above.

CIVIL PENALTY ASSESSMENT FOR COUNTS I-II

TSCA § 16, 15 U.S.C. § 2615, authorizes the assessment of a civil penalty for the violations described herein of $25,000 for each day of violation occurring and continuing before January 30, 1997, and up to $27,500 for each day of violation occurring and continuing after January 30, 1997,[7] to March 6, 2001, the date EPA received the TSCA § 8(e) information from a

[7] The Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996, requires EPA to periodically adjust penalties to account for inflation. EPA's Civil Monetary Penalty Inflation Adjustment Rule establishes $27,500 as the maximum civil penalty that may be assessed under TSCA § 16(a), per violation, between January 30, 1997, through May 15, 2004, and $32,500 for violations occurring thereafter. See 40 C.F.R. § 19, 61 Fed Reg. 69,360 (Dec. 31, 1996); 69 Fed. Reg. 7121 (Feb. 13, 2004).

third-party.

Pursuant to 40 C.F.R. § 22.14(a)(4)(ii), Complainant is not proposing a specific penalty at this time, but will do so at a later date. See 40 C.F.R. § 22.19(a)(4). In determining the amount of a civil penalty for violations of TSCA, Complainant shall take into account the nature, circumstances, extent, and gravity of the violations alleged, as well as Respondent's ability to pay, effect on ability to continue to do business, any history of prior such violations, the degree of culpability, and such other matters as justice may require. See also Enclosure B.

CIVIL PENALTY ASSESSMENT FOR COUNT III

RCRA §§ 3008(a)(3) and (g), 42 U.S.C. §§ 6928(a)(3) and (g), authorize the assessment of a civil penalty for violations described herein of $25,000 for each day of violation occurring and continuing before January 30, 1997, and up to $27,500 for each day of violation occurring and continuing after January 30, 1997,[8] at least to March 6, 2001, the date EPA received the information regarding the transplacental movement of PFOA from a third-party.

Pursuant to 40 C.F.R. § 22.14(a)(4)(ii), Complainant is not proposing a specific penalty at this time, but will do so at a later date. See 40 C.F.R. § 22.19(a)(4). In determining the amount of a civil penalty for violations of RCRA pursuant to RCRA §§ 3008(a)(3) and (g), 42 U.S.C. §§ 6928(a)(3) and (g), Complainant shall take into account the seriousness of the violation and any

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[8] The Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996, requires EPA to periodically adjust penalties to account for inflation. EPA's Civil Monetary Penalty Inflation Adjustment Rule establishes $27,500 as the maximum civil penalty that may be assessed under RCRA §§ 3008(a) and (g), per violation, between January 30, 1997, through May 15, 2004, and $32,500 for violations occurring thereafter. See 40 C.F.R. § 19, 61 Fed Reg. 69,360 (Dec. 31, 1996); 69 Fed. Reg. 7121 (Feb. 13, 2004).

good faith efforts by Respondent to comply with the applicable requirements. See also Enclosure C.

NOTICE OF OPPORTUNITY TO REQUEST A HEARING

As provided in TSCA § 16(a)(2)(A), 15 U.S.C. § 2615(a)(2)(A), and RCRA § 3008(b), 42 U.S.C. § 6928(b), you have the right to request a formal hearing to contest any material fact set forth in this Complaint or to contest the appropriateness of the penalty. To avoid being found in default, which constitutes an admission of all facts alleged in the Complaint and a waiver of the right to a hearing and having a penalty assessed without further proceedings, you must file a written Answer within thirty (30) days of receiving this Complaint.

Pursuant to the Consolidated Rules of Practice, your Answer must clearly and directly admit, deny, and/or explain each of the factual allegations contained in this Complaint with regard to which you have any knowledge. If you have no knowledge of a particular fact and so state, the allegation is denied. Failure to deny any of the allegations in this Complaint will constitute an admission of the undenied allegation.

The Answer shall also state the circumstances and arguments, if any, which are alleged to constitute the grounds of defense and the basis for opposing any proposed penalty, and shall specifically request an administrative hearing if desired. EPA will consider, among other factors, Respondent's "ability to pay" to adjust the civil penalty to be assessed in this proceeding. For purposes of Count III, the burden of raising and demonstrating an inability to pay rests with Respondent. If you deny any material fact or raise any affirmative defense, you will be considered to have requested a hearing. The Answer must be filed with the:

Headquarters Hearing Clerk (1900L)
United States Environmental Protection Agency
1200 Pennsylvania Ave. N.W.
Washington, DC 20460

Please send a copy of the Answer and all other documents that you file in this action to the following attorneys assigned to represent EPA in this matter:

Mark Garvey, Attorney
Toxics and Pesticides Enforcement Division (2245A)
Office of Regulatory Enforcement
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460
(202) 564-4168

Ilana Saltzbart, Attorney
Toxics and Pesticides Enforcement Division (2245A)
Office of Regulatory Enforcement
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

Any hearing requested will be conducted in accordance with the Administrative Procedures Act, 5 U.S.C. § 551 *et seq*., and the Consolidated Rules of Practice. See Enclosure A.

INFORMAL SETTLEMENT CONFERENCE

Whether or not you request a hearing, you may confer informally with EPA to discuss the facts of this case, or amount of the penalty, and the possibility of settlement. An informal settlement conference does not, however, affect your obligation to file a written Answer to the Complaint.

EPA has the authority, where appropriate, to modify the amount of the penalty to reflect any settlement reached with you in an informal conference. The terms of such an agreement

would be embodied in a Consent Agreement and Final Order ("CAFO"). A CAFO signed by EPA and you would be binding as to all terms and conditions specified therein upon signature by the Environmental Appeals Board.

Please be advised that the Consolidated Rules of Practice prohibit any *ex parte* (unilateral) discussion of the merits of any action with the Administrator, Environmental Appeals Board Judge, Administrative Law Judge, or any person likely to advise these officials in the decision of the case, after the Complaint is issued.

By:

Date: 7-7-04

Walker B. Smith, Director
Office of Regulatory Enforcement
Office of Enforcement And Compliance Assurance
U.S. Environmental Protection Agency

ENCLOSURE

A - Consolidated Rules of Practice - 40 C.F.R. Part 22

B - TSCA Enforcement Response Policies

C - RCRA Penalty Policy

CERTIFICATION

I hereby certify that the original of the foregoing Complaint and Notice of Opportunity for Hearing, Docket Nos. TSCA-HQ-2004-0016, RCRA-HQ-2004-0016 has been filed with the Headquarters Hearing Clerk and that copies were sent:

by certified mail, return receipt requested, and fax to:

Stacey J. Mobley
Senior Vice President, General Counsel, and Chief Administrative Officer
DuPont
1007 Market Street
Room D-7038
Wilmington, Delaware 19898
fax: 302 773-4679

by fax, without enclosures, to

Peter D. Roberston
Patton Boggs, LLP
2550 M Street, NW
Washington, DC 20037
fax: 202 457-6315

Tony R. Ellis

Tony R. Ellis (2245A)
Toxics and Pesticides Enforcement Division
Office of Regulatory Enforcement
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W..
Washington, DC 20460

7/8/04
Date