



State of Ohio Environmental Protection Agency

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May 11, 2010

Ms Nancy Sandell, Senior Paralegal  
Legal Environmental Group, D-7096-2  
E.I. duPont de Nemours and Company  
1007 Market Street  
Wilmington, Delaware 19898

RTC of 06/04/09 NOV

RE: EI DUPONT DE NEMOURS, TOLEDO, OHIO OHD005041843;<sup>31/32</sup>  
DUPONT ELECTRONIC TECHNOLOGIES, DAYTON, OHIO OHD004855292;<sup>06/03/06</sup>  
FINANCIAL ASSURANCE RECORDS REVIEW AND RETURN TO  
COMPLIANCE

Dear Ms. Sandell:

On May 11, 2010, I completed reviewing financial assurance documentation submitted to Ohio EPA by your letter dated March 12, 2010, and Aaron Smith's letter (Dayton only) dated April 23, 2010, covering the DuPont facilities listed above. I evaluated the Dayton Facility for compliance with Ohio Administrative Code (OAC) rules 3745-55-42 through 3745-55-47 and its Ohio hazardous waste permit, and the Toledo facility for OAC rules 3745-55-42 through 3745-55-47. I evaluated both facilities' compliance with OAC rule 3745-54-101 related to RCRA corrective action financial assurance.

To demonstrate compliance with financial assurance requirements for closure pursuant to OAC rule 3745-55-43 and its Permit (Dayton only), DuPont uses a financial test. By letter dated March 12, 2010, as supplemented, you submitted 2009 financial test documentation to Ohio EPA. The DuPont submittal for 2010 included the cover letter, letter from the Chief Financial Officer, summary and detailed closure cost estimates, a partial 2003 Consent Order entered between DuPont and Ellen Bowers et. al in US District Court of Ohio's Eastern Division, a March 12, 2010 Report of Independent Accountants, and Dupont's 2009 SEC Form 10-K. The Form 10-K included the February 17, 2010, Report of Independent Registered Public Accounting Firm.

**Closure Cost Estimate:**

In his April 23, 2010, letter Aaron Smith of DuPont submitted to Ohio EPA a Class 1 modification to the Dayton facility's Permit updating the financial assurance and cost estimate. The 2008 Annual Inflation Factor (price deflator) commonly used for these estimates was 2.1; for 2009 it was 1.18. Attached to Mr. Smith's letter was your March 12, 2010, letter stating the inflation factor was 1.005. DuPont reported that the inflation factor is based on figures from third quarter 2009 divided by the average of 2008. Although regulations state the most current annual deflator is to be used (see OAC rule 3745-55-42(B), DuPont's consistent use of third quarter numbers would be acceptable. If due to operational needs DuPont uses third quarter

Ted Strickland, Governor  
Lee Fisher, Lieutenant Governor  
Chris Korleski, Director



figures for the current year, it must be divided by third quarter figures from the previous year, not the average of the previous year (apples to apples). If you have an alternative understanding please advise, otherwise in next year's submittal please use third quarter 2010 divided by third quarter 2009, or use the most recent and previous annual deflators prescribed in OAC rule 3745-55-42. Based on recent reviews, the financial test itself, and since using the correct price deflators probably would have yielded similar results (see below), no violation is being cited at this time.

Attached to Mr. Smith's letter as Exhibit A is a closure cost estimate for the Dayton facility of \$218,000. Also, attached was the cost estimate work sheet CS-2 for the Dayton Facility's Container Storage Area unit listing the estimate as \$218,361.00. The worksheet also states the closure cost had been "Rounded to", but the statement appears to be incomplete. Adding lines 12 and 13 should give the total cost of closure. Line 12 plus Line 13 = \$136,944.00, not the \$218,361.00 listed. In 2009, DuPont reported the cost estimate for this unit as \$136,264.00, so \$218,361.00 would be an increase of 38% for this year. With the disparities between totals and worksheets I could not discern what accounted for this 38% increase, although it does appear adequate to cover closure costs for the Dayton Facility.

For the Toledo Facility, Exhibit A of your March 12, 2010, letter lists the closure costs as \$669,000.00. The cost estimate worksheet for Tank 13 lists the sum total as \$31,680.00 and the worksheet for the container storage area lists the sum total as \$636,826.00. Total for the worksheets is \$668,505.00. Last year's submittal listed this cost as \$634,000.00, an increase this year of 5%. Although I could not determine whether DuPont had applied an inflation factor to the 2009 sum total or simply used current figures in the Toledo cost estimate it appears the cost estimate is adequate.

**Financial Assurance Mechanism:**

I reviewed the DuPont Financial Test submittal detailed above pursuant to the financial assurance requirements in OAC rules 3745-55-43 and 3745-55-51(G) (instrument wording) and the facility Permit (Dayton). The submittals appear to be complete and adequate. **Also, with the April 23, 2010, Class 1 Permit mod for the Dayton facility the violation of Permit Condition A.27(i)(ii) and (iii) listed in Ohio EPA's June 4, 2009, letter is abated.**

**Liability Coverage:**

As stated in the March 12, 2010, DuPont Chief Financial Officer's letter, DuPont utilizes the Financial Test to provide both sudden and non-sudden accidental occurrences coverage for both facilities listed above pursuant to OAC rules 3745-55-47(A)(B) and (F) and its Dayton Permit.

For companies such as DuPont providing liability coverage through a financial test for several states, there is no requirement for listing each facility's individual amount of coverage. Instead a company lists the amount of annual aggregate liability coverage to be demonstrated. In DuPont's 2010 submittal, this amount from Alternative II, Line No. 2 is \$115MM. However, under Paragraph Two of the March 12, 2010, CFO letter, DuPont states the facilities listed in Exhibit A, in this case the Dayton and Toledo, Ohio Facilities, have coverage for both sudden and non sudden liability. To the best of my knowledge, neither facility has a land disposal unit

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subject to non-sudden requirements. If my understanding is correct, DuPont should delete reference to and coverage for non-sudden accidental occurrences in its next submittal. In the alternative please detail why DuPont is maintaining this coverage.

**Corrective Action:**

For the Dayton Facility, DuPont is not required to provide financial assurance for RCRA Corrective Action pursuant to OAC rule 3745-54-101 or its Permit. For the Toledo Facility, I understand Dupont is performing Corrective Action pursuant to an order with US EPA so I did not review the Toledo facility's compliance with the corrective action financial assurance requirements.

Based upon my review of the documentation noted above, DuPont is in compliance with Ohio's financial assurance requirements for the Toledo and Dayton Facilities. Ohio EPA DHWM's Southwest District Office will be acknowledging the Class 1 Permit modification for the Dayton Facility by separate letter. Thank you for combining the financial assurance and permit mod as we discussed last year. Although probably needing more of your time up front initially, this should result in efficiencies for us both over the course of the year. If you have any related questions or concerns please feel free to contact me at (614) 644-2955 or [john.schierberl@epa.state.oh.us](mailto:john.schierberl@epa.state.oh.us).

Sincerely,



John Schierberl  
Compliance Assurance Section  
Division of Hazardous Waste Management

ec: Tom Ontko, SWDO, DHWM  
Kristina Durnell, RIS, DHWM  
Pam McCoy, ERAS, DHWM  
Janice Damico, NWDO, DHWM

**NOTICE:**

Ohio EPA's failure to list specific deficiencies or violations in this letter does not relieve your company from having to comply with applicable regulations.