



Environmental
Protection Agency

John W. Kasich, Governor
Mark Fisher, Lt. Governor
Scott D. Worley, Director

June 27, 2012

Dupont Legal, Environmental Group
Mr. Guy V. Johnson, Corporate Counsel
1007 Market Street, Room D7090-2
Wilmington, DE 19898

**RE: DuPont Electronic Polymers LP – Dayton, OH
Financial Record Review: Notice of Violation
OHD 004 855 292**

Dear Mr. Johnson:

On June 26, 2012, I conducted a financial record review of the DuPont Electronic Polymers LP – Dayton, OH (DuPont). I evaluated the facility for compliance with the Closure care financial assurance, closure cost estimates, and liability requirements as set forth in Ohio Administrative Code (OAC) rules 3745-55-42, 3745-55-43, & 3745-55-47. I also evaluated the facility for compliance with permit conditions B.36, B.37, B.38 and E.9.b. Please note that the financial records review for the DuPont Automotive Toledo Plant will come under separate cover.

To demonstrate financial assurance for closure care, a surety performance bond and standby trust agreement are used. A surety performance Bond, No. 9035400, was issued by Fidelity and Deposit Company of Maryland. The current amount of the bond is \$142,000.00, effective April 1, 2012. A standby trust agreement was entered into April 30, 2012 by and between DuPont and JP Morgan Chase, NA.

To demonstrate third party liability coverage, an Accord Certificate of Liability Insurance was supplied on April 3, 2012. The Insurer listed is Old Republic Insurance Company, Policy No. MWZZ 50636, with an effective policy period between March 30, 2012 and March 30, 2013. The pollution liability limits are \$1,000,000 per occurrence and \$2,000,000 annual aggregate.

I found the following **violations of Ohio's hazardous waste laws**. In order to correct these violations you must do the following and send me the required information *immediately upon* your receipt of this letter:

1. **OAC Rule 3745-55-42(E), Copy of Facility's Detailed Closure Cost Estimate must be submitted annually to the Director:** During the active life of the facility, a copy of the facility's current, detailed closure cost estimate prepared and maintained in accordance with paragraphs (A) and (B) of this rule must be submitted annually to the director of Ohio EPA.

DuPont has failed to submit an adjusted closure cost estimate for the DuPont Dayton facility. The last closure cost estimate was submitted with the financial test on March 31, 2011. In accordance with OAC 3745-55-42(B), during the active life of the facility, for owners and operators using the financial test or corporate guarantee, the closure cost estimate must be updated for inflation within thirty days after the close of the owner or operator's fiscal year. For the DuPont Dayton facility, the cost estimate must have been adjusted for inflation prior to January 30, 2012. On March 30, 2012, DuPont notified Ohio EPA that it no longer met the requirements of the financial test in accordance with OAC rule 3745-55-43(F)(6). In accordance with OAC rule 3745-55-42(E), DuPont was required to submit to the director a detailed closure cost estimate prepared and maintained in accordance with paragraphs (A) and (B) of OAC rule 3745-55-42. For owners/operators using a financial mechanism other than the financial test, such submittal of the closure cost estimate to Ohio EPA must be made within sixty days following the update to the estimate made in accordance with paragraph (B) of this rule. For the DuPont Dayton facility, the estimate should have been submitted to the director prior to March 31, 2012, the same date as would have been required had DuPont submitted a financial test. By email dated April 24, 2012, I notified you that I had not yet received an annual updated detail closure cost estimate for the DuPont Dayton facility. As of June 26, 2012, Ohio EPA has yet to receive the required submission of this cost estimate.

- DuPont must immediately submit an adjusted closure cost estimate. The adjustment may be made by recalculating the maximum costs of closure in current dollars, or by using an inflation factor derived from the most recent "Implicit Price Deflator for Gross National Product" published by the U.S. department of commerce in its "Survey of Current Business." The annual inflation factor was calculated at 2.1%. In addition, in a financial records review letter dated May 2, 2011 and in my email dated April 24, 2012, I notified DuPont that 'Line 10: Engineering Expenses' were applied at only 4.7% of Line 9, when they are state to be calculated at 10%. Please make sure this error is corrected and Line 10 is correctly calculated at 10% of Line 9.

2. **OAC Rule 3745-55-47(A)(1)(a), Requirements for the Hazardous Waste Liability Endorsement or Certificate of Liability Insurance:** Each insurance policy must be amended by attachment of the "Hazardous Waste Facility Liability Endorsement" or evidenced by a "Certificate of Liability Insurance." The wording of the endorsement

must be identical to the wording specified in rule 3745-55-51 of the Administrative Code. The wording of the certificate of insurance must be identical to the wording specified in paragraph (J) of rule 3745-55-51 of the Administrative Code. The owner or operator must submit a signed duplicate original of the endorsement or the certificate of insurance to the director.

On April 3, 2012, Ohio EPA received an Accord Certificate of Insurance from DuPont. While the certificate did provide some of the details required relative to the third party liability coverage, it did not match the required wording for Hazardous Waste Certificate of Liability Insurance as specified in paragraph (J) of rule 3745-55-51 of the Administrative Code.

- DuPont must immediately submit either an endorsement which must be identical to the wording specified in rule 3745-55-51 of the Administrative Code or a Certificate of Liability Insurance which must be identical to the wording specified in paragraph (J) of rule 3745-55-51 of the Administrative Code. The owner or operator must submit a signed duplicate original of the endorsement or the certificate of insurance to the director.

DuPont needs to immediately take the necessary measures to return to compliance with Ohio's environmental laws. Within 14 days of receipt of this letter, DuPont is requested to provide documentation to this office including the steps taken to abate the violations cited above. Documentation of steps taken to return to compliance includes written correspondence, updated policies, and photographs, as appropriate, and may be submitted via the postal service or electronically to Shawn.Sellers@epa.ohio.gov.

Please be advised that violations cited above will continue until the violations have been properly abated. Failure to comply with Chapter 3734 of the Ohio Revised Code and rules promulgated thereunder may result in a civil penalty of up to \$10,000 per day for each violation. It is imperative that you return to compliance. If circumstances delay the abatement of violations, DuPont is requested to submit written correspondence of the steps that will be taken by date certain to attain compliance.

Additional Concern

DuPont has not submitted the appropriate permit modification for its financial assurance documentation located in Section 7 – Attachment 3. The modification must be submitted as required by OAC rule 3745-50-51. Please submit this documentation to Ohio EPA within 30 days.

If you have any questions, please feel free to call me at (614) 644-2933 or email me at Shawn.Sellers@epa.ohio.gov.

Sincerely,



Shawn M. Sellers, P.E.
Engineering, Remediation, and Authorizations Section
Division of Materials and Waste Management

SMS/jam

cc: Tom Koch, DMWM, SWDO

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.