IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE

UNITED STATES OF AMERICA, Plaintiff, v. E. I. DU PONT DE NEMOURS AND COMPANY Defendant.	)	CIVIL ACTION No.

COMPLAINT

The United States of America, by the authority of the Attorney General of the United States and through the undersigned attorneys, acting at the request of the Administrator of the United States Environmental Protection Agency ("EPA"), files this complaint and alleges as follows:

STATEMENT OF THE CASE

This is a civil action brought pursuant to the Clean Air Act, ("CAA"), 42 U.S.C. § 7401 et seq., against the Defendant, E. I. du Pont de Nemours and Company ("DuPont") seeking civil penalties and injunctive relief arising out of violations of the repair, testing, record-keeping, and reporting regulations for appliances which use ozone-depleting substances, which violations occurred at the DuPont titanium dioxide manufacturing facility located in New Johnsonville, Tennessee. 40 C.F.R. Part 82, Subpart F, §§ 82.152 - 82.166, ("Recycling and Emission Reduction"), promulgated pursuant to Subchapter VI of the Clean Air Act ("CAA") ("Stratospheric Ozone Protection"), 42 U.S.C. §§ 7671-7671q.

I. JURISDICTION AND VENUE

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331, 1345, and 1355, and Section 113(b) of the CAA, 42 U.S.C. § 7413(b).

2. Venue is proper in the Middle District of Tennessee, pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), and 28 U.S.C. §§ 1391(b), and 1395(a), because it is the judicial district in which DuPont resides and does business, in which the events giving rise to the claims occurred, and in which the violations of the CAA occurred.

II. NOTICE AND AUTHORITY

3. The United States Department of Justice has authority to bring this action on behalf of the Administrator of the EPA pursuant to 28 U.S.C. §§ 516, and 519, and Section 305(a) of the CAA, 42 U.S.C. § 7605(a).

4. Notice of the commencement of this action has been given to the air pollution control agency for Tennessee. 42 U.S.C. § 7413(b).

III. DEFENDANT

5. DuPont is a corporation incorporated under the laws of the state of Delaware and doing business in this judicial district.

6. DuPont is a "person" as defined in Section 302(e) of the CAA, 42 U.S.C. § 7602(e) and 40 C.F.R. § 82.152, and within the meaning of Section 113(d) of the CAA, 42 U.S.C. § 7413(d).

IV. DEFINITIONS

7. Unless otherwise expressly provided herein, terms used in this Complaint that are defined in the CAA, or in the regulations promulgated pursuant to the CAA, will have the

meaning assigned to them in the CAA and regulations. Whenever the terms set forth below are used in this Complaint, the following definitions apply:

a. "Appliance" means any device which contains and uses a Class I or Class II substance as a refrigerant and which is used for household or commercial purposes, including any air conditioner, refrigerator, chiller or freezer. 40 C.F.R. § 82.152;

b. "Comfort Cooling Appliance" or "CCA" means any appliance that contains more than 50 pounds of Refrigerant but is used for the comfort of employees working in the plant and is not linked to the manufacturing process, but is covered by 40 C.F.R. § 82.156(i)(5);

c. "Day" shall mean a calendar day unless expressly stated to be a business day. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business the next business day;

d. "DuPont" shall mean E. I. du Pont de Nemours and Company; Wilmington, Delaware;

e. "EPA" means the United States Environmental Protection Agency and any successor departments or agencies of the United States;

f. "Facility" shall mean the DuPont titanium dioxide manufacturing facility located at One DuPont Road, in New Johnsonville, Tennessee, 37134;

g. "Industrial Process Refrigeration Appliance" or "IPR" means any Appliance that is directly linked to the manufacturing process and that contains more than fifty (50) pounds of an ODS Refrigerant, as defined in 40 C.F.R. § 82.152, and is covered by 40 C.F.R. § 82.156(i)(2);

h. "Non-Ozone Depleting Substance" or "Non-ODS" means any substance that is approved by EPA for the end use of the Appliance, and is not an ODS;

i. "Non-ODS System" means any cooling system that either contains only Non-ODS or that contains no ODS;

j. "ODS" means an ozone depleting substance which is defined as a Class I or Class II substance, or a blend of Class I or Class II substances. Section 602 of the CAA, 42 U.S.C. § 7671(a), 40 C.F.R. § 82.3, App. A and B;

k. "ODS System" means any cooling system which uses ODS;

l. "Paragraph" means a portion of this Complaint identified by an arabic numeral or an upper or lower case letter;;

m. "Parties" mean the United States and DuPont;

n. "Retrofit", "Retrofits" or "Retrofitted" means a designed change (i.e., conversion) of an IPR at the Facility from an ODS System to a Non-ODS System;

o. "Replace", "Replaces" or "Replacement" means to remove from the Facility an existing IPR containing an ODS, and to install an IPR which contains a Non-ODS System.;

p. "Refrigerant" means any Class I or II ozone-depleting substances as per the CAA 42 U.S.C. § 7671(g);

q. "United States" means the United States of America, acting on behalf of EPA.

STATUTORY AND REGULATORY PROVISIONS

8. Subchapter VI of the CAA, 42 U.S.C. §§ 7671-7671q ("Stratospheric Ozone Protection") implements the Montreal Protocol on Substances that deplete the Ozone Layer, and mandates the elimination or control of emissions of substances which are known or suspected to cause or significantly contribute to harmful effects on the stratospheric ozone layer, referred to as Class I and Class II substances.

9. Section 608 of Subchapter VI, 42 U.S.C. § 7671g ("National Recycling and Emission Reduction Program") requires that the EPA promulgate regulations establishing standards and requirements regarding the use and disposal of Class I and Class II ozone-depleting substances during the service, repair, or disposal of appliances and industrial process refrigeration.

10. EPA promulgated the regulations required by Section 608, codified at 40 C.F.R. Part 82, Subpart F, §§ 82.150- 82.166, ("Recycling and Emissions Reduction") (hereinafter "Subpart F Regulations"), on May 14, 1993. 58 Fed. Reg. 28,712.

11. Section 608 of the CAA states, "it shall be unlawful for any person, in the course of maintaining, servicing, repairing, or disposing of an appliance of industrial process refrigeration, to knowingly vent or otherwise release or dispose of any such Class I or Class II substances used as a Refrigerant in such appliance (or industrial process refrigeration) in a manner which permits such substance to enter the environment." 42 U.S.C. § 7671g(c)(1). The Subpart F Regulations reiterate this prohibition, effective June 14, 1993. 40 C.F.R. § 82.154(a).

12. The Subpart F Regulations contain leak repair requirements for all types of Appliances containing more than fifty (50) pounds of Refrigerant, including IPRs and CCAs. These regulations are aimed at reducing emissions of Class I and Class II ozone-depleting substances in the atmosphere.

13. Section 113(a)(3) of the CAA, authorizes the Administrator to commence a civil action in federal district court against any person who has violated any requirement or prohibition of Subchapter VI ("Stratospheric Ozone-Protection" [inclusive of Section 608]), including a requirement of any rule promulgated under the Act (which includes the Subpart F Regulations). 42 U.S.C. § 7413(a)(3)(C).

14. Section 113(b)(2) of the CAA, authorizes the Administrator to bring a civil action in a federal district court against any person who has violated any requirement or prohibition of Subchapter VI ("Stratospheric Ozone-Protection" [inclusive of Section 608]), including a requirement of any rule promulgated under the Act (which includes the Subpart F Regulations). 42 U.S.C. § 7413(b)(2).

15. Section 113(b) of the CAA, authorizes the assessment of civil penalties not to exceed $25,000 per day for each violation of Section 608 of the CAA, 42 U.S.C. § 7671g.

16. Because certain of the violations alleged in the Complaint occurred after January 30, 1997, DuPont is liable for civil penalties of up to $27,500 per day for each violation occurring after that date, pursuant to Pub. L. 104-134 and 61 Fed. Reg. 69360, as corrected in 62 Fed. Reg. 13514, March 20, 1997.

GENERAL ALLEGATIONS

17. DuPont is, and at all times relevant to this Complaint was, the owner or operator of the Facility and of each IPR and CCA located at the Facility.

18. Each IPR and CCA at the DuPont Facility is an "Appliance" within the meaning of 42 U.S.C. § 7671(g)(1) and 40 C.F.R. § 82.152(a).

19. At all times relevant to this Complaint, DuPont employed Class I substances and Class II substances (Refrigerant) in its IPRs and CCAs at its Facility.

20. At all times relevant to this Complaint, the full charge of Refrigerant required for each of the affected IPRs and CCAs at DuPont's Facility has been more than fifty (50) pounds.

21. Pursuant to 40 C.F.R. § 82.156(i)(2), a Facility with IPRs charged with more than fifty (50) pounds of Refrigerant must keep the leak rate of its equipment below a 35% annualized

leak rate. Where the annualized leak rate from an IPR exceeds 35%, the Facility must repair the leak within thirty (30) days (120 days if the facility cannot get a necessary part or if an industrial process shutdown, as defined by the Subpart F Regulations, is needed to repair the Appliance). 40 C.F.R. § 82.156(i)(2).

22. Pursuant to 40 C.F.R. § 82.156(i)(3), if leak repair is attempted, the Facility must then perform an initial verification leak check on the subject Appliance. A follow-up verification leak test must be performed within thirty (30) days. 40 C.F.R. § 82.156(i)(3).

23. If leak repair has not been successfully completed within thirty (30) days, the Facility must replace or retrofit the Appliance. 40 C.F.R. § 82.156(i)(3)(ii). Once replacement or retrofit is selected, the Facility must develop a one-year plan and submit it to the EPA prior to taking action. 40 C.F.R. § 82.156(i)(6).

24. Pursuant to 40 C.F.R. § 82.156(i)(3)(iii), if leak repair is attempted but the follow-up verification test reveals that the leak rate is more than 35%, the facility must notify the EPA within thirty (30) days, in accordance with 40 C.F.R. § 82.166(n).

25 . Pursuant to 40 C.F.R. § 82.156(i)(5), owners and operators of Appliances normally containing more than 50 pounds of Refrigerant and not covered under 40 C.F.R. §§ 82.156(i)(1) or (i)(2), such as CCAs, must have leaks repaired in accordance with 40 C.F.R. § 82.156(i)(9) if the Appliance is leaking at a rate such that the loss of Refrigerant will exceed 15% of the total charge during a twelve-month period.

26. Pursuant to 40 C.F.R. § 82.156(i)(9), owners or operators must repair leaks within thirty (30) days after discovery, or within thirty (30) days after such leaks should have been discovered.

27. Pursuant to 40 C.F.R. § 82.166(k), the owner/operator of IPRs and CCAs containing more than fifty (50) pounds of Refrigerant must maintain records detailing the date and type of service, as well as the amount of Refrigerant added to the equipment.

FIRST CLAIM FOR RELIEF
VIOLATIONS OF SECTION 608 OF THE CAA, AND 40 C.F.R. § 82.156(i)(2)
(Failure to Repair Leak - Industrial Process Refrigeration Appliance)

28. Paragraphs 1 through 27 are realleged and incorporated herein by reference.

29. The annualized leak rates of Class I and Class II substances from one or more IPRs at DuPont's Facility exceeded an annualized leak rate of 35% on one or more occasions during the five-year period prior to the filing of this Complaint, in violation of Section 608 of the CAA, 42 U.S.C. § 7671q, and 40 C.F.R. § 82.156(i)(2).

30. Leak rates of Refrigerant from IPRs at the Facility varied from approximately 47 percent to 1,506 percent, in violation of Section 608 of the CAA, 42 U.S.C. § 7671g, and 40 C.F.R. § 82.156(i)(2), subjecting DuPont to the imposition of civil penalties not to exceed $27,500 per day of each violation.

SECOND CLAIM FOR RELIEF
VIOLATIONS OF SECTION 608 OF THE CAA, AND 40 C.F.R. § 82.156(i)(3)
(Failure to Conduct Initial Verification Leak Test)

31. Paragraphs 1 through 27 are realleged and incorporated herein by reference.

32. DuPont failed to perform one or more initial verification leak tests as required by Section 608 of the CAA, 42 U.S.C. § 7671q, and 40 C.F.R. § 82.156(i)(3) on one or more IPRs at its Facility during the five-year period prior to the filing of this Complaint.

33. DuPont's failure to perform initial verification leak tests on one or more of the IPRs at its Facility was in violation of Section 608 of the CAA, 42 U.S.C. § 7671g, and 40 C.F.R. § 82.156(i)(3), and subjects DuPont to the imposition of civil penalties not to exceed $27,500 per day of each violation.

THIRD CLAIM FOR RELIEF
VIOLATIONS OF SECTION 608 OF THE CAA, AND 40 C.F.R. § 82.156(i)(3)
(Failure to Conduct Follow-up Verification Leak Test)

34. Paragraphs 1 through 27 are realleged and incorporated herein by reference.

35. DuPont failed to perform one or more follow-up verification leak tests as required by Section 608 of the CAA, 42 U.S.C. § 7671q, and 40 C.F.R. § 82.156(i)(3) on one or more IPRs at its Facility during the five-year period prior to the filing of this Complaint.

36. DuPont's failure to perform follow-up verification leak tests on one or more of the IPRs at its Facility, was in violation of Section 608 of the CAA, 42 U.S.C. § 7671g, and 40 C.F.R. § 82.156(i)(3), and subjects DuPont to the imposition of civil penalties not to exceed $27,500 per day of each violation.

FOURTH CLAIM FOR RELIEF
VIOLATIONS OF SECTION 608 OF THE CAA, AND 40 C.F.R. § 82.156(i)(3)(ii)
(Failure to Retrofit or Retire IPRs within one year)

37. Paragraphs 1 through 27 are realleged and incorporated herein by reference.

38. DuPont failed to retrofit or retire leaking IPRs, or otherwise comply with the requirements of Section 608 of the CAA, 42 U.S.C. § 7671q, and 40 C.F.R. § 82.156(i)(3)(ii) within one year after a follow-up verification test indicated that repairs to the IPRs were not successfully completed with respect to one or more IPRs at its Facility during the five-year period prior to the filing of this Complaint.

39. DuPont's failure to retrofit or retire leaking IPRs within one year after a follow-up verification test indicated that repairs to the IPRs were not successfully completed, was in violation of Section 608 of the CAA, 42 U.S.C. § 7671g, and 40 C.F.R. § 82.156(i)(3)(ii), and subjects DuPont to the imposition of civil penalties not to exceed $27,500 per day of each violation.

FIFTH CLAIM FOR RELIEF
VIOLATIONS OF SECTION 608 OF THE CAA, AND 40 C.F.R. § 82.156(i)(6)
(Failure to Develop Retrofit or Retirement Plan)

40. Paragraphs 1 through 27 are realleged and incorporated herein by reference.

41. DuPont failed to develop a written, one-year retrofit or retirement plan for leaking IPRs as required by Section 608 of the CAA, 42 U.S.C. § 7671g, and 40 C.F.R. § 82.156(i)(6) with respect to one or more IPRs at its Facility during the five-year period prior to the filing of this Complaint.

42. DuPont's failure to develop a written, one-year retrofit or retirement plan for leaking IPRs was in violation of Section 608 of the CAA, 42 U.S.C. § 7671g, and 40 C.F.R. § 82.156(i)(6), and subjects DuPont to the imposition of civil penalties not to exceed $27,500 per day of each violation.

SIXTH CLAIM FOR RELIEF
VIOLATIONS OF SECTION 608 OF THE CAA, AND 40 C.F.R. § 82.156(i)(3)(iii)
(Failure to Notify EPA of Failed Follow-Up Verification)

43. Paragraphs 1 through 27 are realleged and incorporated herein by reference.

44. DuPont failed to notify EPA that its IPRs failed one or more follow-up verification tests as required by Section 608 of the CAA, 42 U.S.C. § 7671g, and 40 C.F.R.

§ 82.156(i)(3)(iii) with respect to one or more IPRs at its Facility during the five-year period prior to the filing of this Complaint.

45. DuPont's failure to notify EPA of the failure of one or more follow-up verification tests, was in violation of Section 608 of the CAA, 42 U.S.C. § 7671g, and 40 C.F.R. § 82.156(i)(3)(iii), and subjects DuPont to the imposition of civil penalties not to exceed $25,000 per day for each violation for violations occurring prior to January 30, 1997, and, $27,500 per day of each violation occurring thereafter.

SEVENTH CLAIM FOR RELIEF
VIOLATIONS OF SECTION 608 OF THE CAA, AND 40 C.F.R. § 82.156(i)(5)
(Failure to bring Leak Rate to below 15%)

46. Paragraphs 1 through 27 are realleged and incorporated herein by reference.

47. The annualized leak rate of Class I and Class II substances from one or more CCAs at DuPont's Facility exceeded an annualized leak rate of 15% on one or more occasions during the five-year period prior to the filing of this Complaint, in violation of Section 608 of the CAA, 42 U.S.C. § 7671q, and 40 C.F.R. § 82.156(i)(5).

48. Annualized leak rates of Refrigerant from CCAs at DuPont's Facility varied from 35 percent to 4,506 percent in violation of Section 608 of the CAA, 42 U.S.C. § 7671g, and 40 C.F.R. § 82.156(i)(5), subjecting DuPont to the imposition of civil penalties not to exceed $27,500 per day of each violation.

EIGHTH CLAIM FOR RELIEF
VIOLATIONS OF SECTION 608 OF THE CAA, AND 40 C.F.R. § 82.166(k)
(Failure to Maintain Service Records)

49. Paragraphs 1 through 27 are realleged and incorporated herein by reference.

50. DuPont failed to maintain records detailing the date(s) and type(s) of maintenance, service or repair activities performed on its IPRs and CCAs as required by Section 608 of the CAA, 42 U.S.C. § 7671g, and 40 C.F.R. § 82.166(k) with respect to one or more IPRs and CCAs at its Facility during the five-year period prior to the filing of this Complaint.

51. DuPont's failure to maintain records detailing the date(s) and type(s) of maintenance, service or repair activities performed on its IPRs and CCAs was in violation of Section 608 of the CAA, 42 U.S.C. § 7671g, and 40 C.F.R. § 82.166(k), and subjects DuPont to the imposition of civil penalties not to exceed $27,500 per day of each violation.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, the United States of America, prays that the Court:

1. Assess civil penalties against DuPont of not more than $27,500 per day for each violation or failure to comply with the Subpart F Regulations and the Clean Air Act.

2. Award the United States its costs and expenses incurred in this action; and

3. Grant the United States such other and further relief as this Court deems appropriate.

Respectfully Submitted,

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