

SETTLEMENT AGREEMENT AMONG
THE UNITED STATES, ON BEHALF OF THE
NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION AND
THE UNITED STATES DEPARTMENT OF THE INTERIOR

AND

THE DELAWARE DEPARTMENT OF NATURAL RESOURCES AND
ENVIRONMENTAL CONTROL

AND

E.I. DU PONT DE NEMOURS AND COMPANY

AND

THE CHEMOURS COMPANY FC, LLC
FOR NATURAL RESOURCE DAMAGES RELATING TO THE EDGE MOOR PLANT
AND HAY ROAD IRON RICH LANDFILL

I. Introduction

A. The United States of America, on behalf of the National Oceanic and Atmospheric Administration (“NOAA”) of the United States Department of Commerce and the United States Department of the Interior (“DOI”) acting through the Fish and Wildlife Service (“FWS”), and the Delaware Department of Natural Resources and Environmental Control (“DNREC”) (collectively referred to as the “Trustees”), and E. I. du Pont de Nemours and Company (“DuPont”) and The Chemours Company FC, LLC (“Chemours”) (collectively, “Settling Defendants”) enter into this Settlement Agreement to resolve, without litigation, the Trustees’ civil claims under the Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA”), 42 U.S.C. § 9607(a), and the Delaware Hazardous Substances Cleanup Act (“HSCA”), 7 *Del. C.* Chapter 91, for injury to, impairment of, destruction of, loss of, diminution of value of, and/or loss of use of natural resources, including the costs of

assessing the injuries, resulting from releases of hazardous substances from the Edge Moor titanium dioxide manufacturing plant (“Edge Moor Plant”) and Hay Road Iron Rich Landfill, located in New Castle County, Delaware (collectively the “Site”).

B. NOAA and DOI have been delegated authority to act as the Federal Trustees for natural resources impacted by the release of hazardous substances at or from the Site pursuant to Executive Order 12580 and the National Contingency Plan, 40 C.F.R. Part 300. DNREC is acting in its capacity as the designated Trustee for the State of Delaware for natural resources that have been affected by the releases of hazardous substances. 40 C.F.R. § 300.605.

C. The execution of this Settlement Agreement shall not constitute, nor is it in any way an admission by Settling Defendants of any fact or liability, and shall not be used in any other action against Settling Defendants as proof of liability.

D. For purposes of any action to enforce this Settlement Agreement, Settling Defendants consent to the jurisdiction of the U.S. District Court for the District of Delaware over this Settlement Agreement and any such action and over Settling Defendants, and consent to venue in the U.S. District Court for the District of Delaware.

II. Parties Bound

1. The provisions of this Settlement Agreement shall apply to and be binding upon Settling Defendants and all of their successors and assigns, and upon the Trustees.

III. Definitions

2. Terms used in this Settlement Agreement that are defined in CERCLA, or in regulations promulgated under CERCLA, shall have the meanings assigned to them in such law or regulations, unless otherwise provided in this Settlement Agreement. Whenever the terms set forth below are used in this Settlement Agreement, the following definitions shall apply:

- a. “Chemours” means The Chemours Company FC, LLC, a Settling Defendant in this case and a Delaware corporation, along with its successors and assigns.
- b. “Day” means a calendar day unless expressly stated to be a business day. In computing any period of time under this Settlement Agreement, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next business day.
- c. “DNREC” means the Delaware Department of Natural Resources and Environmental Control, as the as the authorized representative and designated Trustee for the State of Delaware, pursuant to 42 U.S.C. §§ 9607(f)(1), 9607(f)(2)(B), 7 Del. Admin. C. § 1375-2.1.
- d. “DOI” means the United States Department of the Interior.
- e. “DuPont” means E. I. du Pont de Nemours and Company, a Settling Defendant in this case and a Delaware corporation, along with its successors and assigns.
- f. “Effective Date” has the definition provided in Section XII.
- g. “HSCA Fund” means the Hazardous Substance Cleanup Fund established pursuant to 7 *Del. C.* § 9113.
- h. “Natural Resource” or “Natural Resources” means land, fish, wildlife, biota, air, water, ground water, drinking water supplies, and other such resources belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by Delaware, the United States (including the resources of the fishery conservation zone established by the Magnuson-Stevens Fishery Conservation and Management Act [16 U.S.C. § 1801 et seq.]), any foreign government, any local government, or any Indian tribe.

i. “Natural Resource Damages” means any damages recoverable pursuant to Section 107(a)(4)(C) of CERCLA, 42 U.S.C. § 9607(a)(4)(C), and the HSCA, 7 *Del. C.* Chapter 91, by the Trustees on behalf of the public for injury to, impairment of, destruction of, loss of, diminution of value of, and/or loss of use of, Natural Resources resulting from a release of hazardous substances at or from the Site, including, but not limited to: (i) the reasonable costs of assessing such injury, destruction, or loss arising from or relating to such a release; (ii) the costs of restoration, rehabilitation, or replacement of injured or lost natural resources or of acquisition of equivalent resources; (iii) the costs of planning such restoration activities; (iv) compensation for injury, destruction, loss, loss or use, or impairment of natural resources; and (v) each of the categories of recoverable damages described in 43 C.F.R. § 11.15.

j. “Natural Resource Damage Assessment Costs” means the costs incurred by the Trustees in assessing the Natural Resource Damages that have occurred at or relating to the Site.

k. “Natural Resource Restoration Projects” means the future projects or project to be developed and overseen by the Trustees to restore, replace, rehabilitate, or acquire the equivalent of the Natural Resources that were injured, destroyed, or lost as a result of hazardous substance releases at or from the Site, including lost natural resource services.

l. “NOAA” means the National Oceanic and Atmospheric Administration.

m. “NRDAR Fund” means the DOI Natural Resource Damage Assessment and Restoration Fund established pursuant to 42 U.S.C. §§ 1474b and 1474b-1.

n. “Parties” means the Trustees and Settling Defendants.

o. “Settlement Agreement” means this Settlement Agreement between the United States, DNREC, and the Settling Defendants.

p. “Site” means: (1) the Edge Moor Plant located at 104 Hay Road used by DuPont and Chemours for manufacturing titanium dioxide; and (2) the Hay Road Iron Rich Landfill (a/k/a Hay Road Sludge Drying Iron Rich Site, DE-0024) located at 450 Hay Road used by DuPont for storage and staging of Iron Rich Material.

q. “Trustees” means the National Oceanic and Atmospheric Administration, the Department of the Interior acting through the Fish and Wildlife Service, and DNREC.

r. “United States” means the United States of America, including all of its departments, agencies, and instrumentalities.

IV. Payment of Certain Costs and Damages

3. Payment to the United States for Natural Resource Damage Assessment Costs. Within 30 Days after the Effective Date, Settling Defendants shall pay \$173,602.04 to the United States to reimburse Natural Resource Damage Assessment Costs incurred by NOAA and DOI relating to the Site. Of the total amount to be paid by Defendant pursuant this Paragraph:

- i. \$1,204.40 will reimburse DOI for Natural Resource Damage Assessment Costs which it has incurred relating to this Site; and
- ii. \$172,397.64 will reimburse NOAA for Natural Resource Damage Assessment Costs which it has incurred relating to this Site.

4. Payment for Natural Resource Restoration Projects. Within 30 Days after the Effective Date, Settling Defendants shall pay \$808,500 to the United States for the joint benefit and use of the federal and state Trustees in planning, selecting, implementing, and monitoring Natural Resource Restoration Projects.

5. Payment Instructions. Payment of the amount set forth in Paragraphs 3 and 4 shall be made by FedWire Electronic Funds Transfer (“EFT”) to the U.S. Department of Justice

account, in accordance with instructions provided to Settling Defendants by the Financial Litigation Unit (“FLU”) of the United States Attorney’s Office for the District of Delaware after the Effective Date. The payment instructions provided by the FLU will include a Consolidated Debt Collection System (“CDCS”) number, which Settling Defendants shall use to identify all payments required to be made in accordance with this Settlement Agreement. Any payments received by the Department of Justice after 4:00 p.m. (Eastern Time) will be credited on the next business day. The total amount to be paid by Settling Defendants pursuant to Paragraph 4 (Payment for Natural Resource Restoration Projects) shall be deposited in a segregated sub-account within the NRDAR Fund, to be managed by the DOI for the joint benefit and use of the Trustees to pay for Natural Resource Restoration Projects. The FLU will provide the payment instructions to the following on behalf of the Settling Defendants:

Brian Israel, Esq.
Arnold & Porter Kaye Scholer LLP
Brian.Israel@arnoldporter.com

6. Payment for Assessment Costs Incurred by DNREC. Within 30 Days after the Effective Date, Settling Defendants shall pay \$89,653.80 to DNREC by certified check in accordance with further instructions to be provided to Settling Defendants by DNREC.

7. At the time of payment in Paragraphs 3, 4, and 6, Settling Defendants shall send a written and electronic notice of payment and a copy of any transmittal documentation to:

Britta Hinrichsen, Attorney Advisor
Natural Resources Section
NOAA Office of the General Counsel
55 Great Republic Drive
Gloucester, MA 01930
britta.hinrichsen@noaa.gov

And

Department of the Interior
Natural Resource Damage Assessment and Restoration Program
Attn: Bruce Nessler, Restoration Fund Manager
1849 C Street, NW
Mail Stop 4449
Washington, D.C. 20240
Bruce_nessler@ios.doi.gov

Mark Barash, Esq.
U.S. Department of the Interior
Office of the Regional Solicitor
15 State Street, 8th Floor
Boston, MA 02109-3502
mark.barash@sol.doi.gov

And

Devera B. Scott
Deputy Attorney General
Delaware Dept. of Justice
102 W. Water Street
Dover, DE 19904
Devera.Scott@delaware.gov

With a copy to:

EES Case Management Unit
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611
DJ # 90-5-1-1-12319
eesdcopy.enrd@usdoj.gov

8. Interest.

a. If Settling Defendants fail to make any of the payments specified in Paragraphs 3 and 4 when due, Settling Defendants shall pay interest on those payments at the rate specified for interest on investments of the EPA Hazardous Substance Superfund, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year. Rates are available online at

<https://www.epa.gov/superfund/superfund-interest-rates>. Interest shall be calculated from the Effective Date to the date of payment.

b. If Settling Defendants fail to make the payment specified in Paragraph 6 when due, Settling Defendants shall pay interest on that payment at the allowable interest rate as specified in the Delaware Regulations Governing Hazardous Substance Cleanup at 7 DE ADMIN Code 1375. Interest shall be calculated from the Effective Date to the date of payment.

9. Stipulated Penalties.

a. In addition to interest, if Settling Defendants fail to make any of the payments specified in Paragraphs 3, 4, and 6 when due, they shall pay \$500 as a stipulated penalty for each Day or portion thereof that each payment is overdue until all overdue payments (including stipulated penalties) are paid in full. Separate stipulated penalties shall accrue for failure to make each such payment.

b. A stipulated penalty for failure to make the payment specified in Paragraphs 3 and 4 shall be paid to the United States Treasury in accordance with the payment instructions in Paragraph 5.

c. A stipulated penalty for failure to make the payment specified in Paragraph 6 shall be paid to the HSCA Fund in accordance with the payment instructions in Paragraph 6.

10. Stipulated penalties shall accrue as provided in subparagraph 9.a regardless of whether the United States or DNREC has notified Settling Defendants of the violation or made a demand for payment, but need only be paid upon demand. The stipulated penalty is due and payable within 30 Days of the date of the demand for payment of the stipulated penalty by the United States or DNREC.

11. Payments made under Paragraphs 8 and 9 shall be in addition to any other remedies or sanctions available to the United States and DNREC by virtue of Settling Defendants' failure to comply with the requirements of this Settlement Agreement.

12. Notwithstanding any other provisions of this Section IV, the United States or DNREC may, each in their unreviewable discretion, waive payment of any portion of the stipulated penalty that has accrued pursuant to this Settlement Agreement due to them. Such waiver of payment shall not be construed as a waiver of any other payment(s) required under this Settlement Agreement.

13. Settling Defendants shall be liable for attorneys' fees and costs incurred by the Trustees or the United States to collect any amount due under this Settlement Agreement that is not timely paid.

V. Covenant Not to Sue and Reservation of Rights by the Trustees

14. In consideration of the payments to be made by Settling Defendants pursuant to Section IV (Payment of Certain Costs and Damages), the United States and DNREC, as the authorized representative and designated Trustee for the State of Delaware, pursuant to 42 U.S.C. §§ 9607(f)(1), 9607(f)(2)(B), covenant not to sue or maintain any lawsuit, action, administrative proceeding, or other proceeding against Settling Defendants pursuant to CERCLA, 42 U.S.C. § 9607, or HSCA, 7 *Del. C.* Ch. 91 for Natural Resource Damages, including any costs, attorneys' fees, other fees, or expenses incurred by the Trustees to recover Natural Resource Damages.

15. The covenant not to sue in Paragraph 14 is not effective until, and is conditioned upon, complete and satisfactory performance by Settling Defendants of their obligations under

Section IV (Payment of Certain Costs and Damages) of this Settlement Agreement. These covenants not to sue extend only to Settling Defendants and do not extend to any other person.

16. Notwithstanding any other provision of this Settlement Agreement, the United States and DNREC reserve, and this Settlement Agreement is without prejudice to, any claims not expressly included in Paragraph 14, including but not limited to:

- a. Claims based upon a failure of Settling Defendants to meet a requirement of this Settlement Agreement;
- b. Criminal claims;
- c. Claims for costs of removal or remedial action at the Site; and
- d. Claims for damages for injury to, destruction of, or loss of natural resources unrelated to the Site.

17. Notwithstanding any other provision of this Settlement Agreement, the United States and DNREC each reserves the right to file claims against Settling Defendants seeking recovery of Natural Resource Damages if conditions are discovered or information is received by the Trustees, not known to the Trustees at the time of execution of this Settlement Agreement, that, together with any other relevant information, indicates that there is injury to, impairment of, destruction of, loss of, diminution of value of, or loss of use of natural resources of a type unknown or of a magnitude that is substantially greater than was known by the Trustees, as of the date of their execution of this Settlement Agreement. For purposes of this Paragraph, the conditions and information known to the Trustees on the date of the execution of this Settlement Agreement shall include the conditions and information set forth in any sampling data and other data and information in the possession or control of the United States or DNREC at any time

prior to the execution of this Settlement Agreement, and/or all analysis, diagram, maps, reports, and surveys performed at the Site by or on behalf of the United States or the DNREC.

VI. Covenant Not to Sue by Settling Defendants

18. Settling Defendants hereby covenant not to sue and agree not to assert any claims or causes of action against the United States or DNREC, including their departments, agencies or instrumentalities, or their employees, agents, experts or contractors, with respect to Natural Resource Damages or this Settlement Agreement, including but not limited to:

- a. claims related to Natural Resource Damages at the Site; or
- b. any claim for costs, attorneys' fees, other fees, or expenses incurred in connection with this Settlement Agreement or claims resolved herein.

19. In any subsequent administrative or judicial proceeding initiated by the United States or DNREC related to the Site, Settling Defendants shall not assert, and may not maintain, any defense or claim based upon principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defense based upon any contention that the claims raised by the United States or DNREC in the subsequent proceeding were or should have been settled in this Settlement Agreement; except with respect to claims that have been specifically resolved pursuant to Paragraph 14. Nothing in this Paragraph affects the enforceability of the covenants not to sue set forth in Section V (Covenant Not to Sue and Reservation of Rights by the Trustees) herein.

VII. Signatories

20. Each of the undersigned representatives of the Parties certifies that he or she is fully authorized to enter into the terms and conditions of this Settlement Agreement and to execute and bind legally such Party to this document.

VIII. Entire Agreement

21. This Settlement Agreement constitutes the final, complete, and exclusive agreement and understanding between the Parties with respect to the settlement embodied in the Settlement Agreement and supersedes all prior agreements and understanding, whether oral or written. No other document, nor any representation, inducement, agreement, understanding, or promise constitutes any part of this Settlement Agreement or the settlement it represents, nor shall it be used in construing the terms of this Settlement Agreement.

IX. Modification

22. The terms of this Settlement Agreement may be modified only by a subsequent written agreement signed by all of the Parties.

X. Execution

23. This Settlement Agreement may be executed in several counterparts, each of which shall constitute an original, and all of which shall constitute one and the same instrument.

XI. Public Comment

24. Final approval by the United States and the effectiveness of this Settlement Agreement are subject to public notice and comment for a period of not less than 30 Days after publication of notice of this Settlement Agreement in the *Federal Register*. Settling Defendants agree not to withdraw their consent to the Settlement Agreement pending consideration of public comments and approval of the United States. If public comments disclose facts or considerations which, reasonably construed, indicate that this Settlement Agreement is inappropriate, improper, or inadequate, the United States may withdraw its approval of the Settlement Agreement. Should the United States withdraw its approval, this Settlement Agreement shall be null and void.

XII. Effective Date

25. The Effective Date of this Settlement Agreement shall be the date upon which the United States issues written notice to the Settling Defendants that the public comment period pursuant to Section XI (Public Comment) has closed and that comments received, if any, do not require modification or withdrawal from this Settlement Agreement.

Signatures on following pages

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THE NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION AND THE
UNITED STATES DEPARTMENT OF THE INTERIOR, AND THE DELAWARE
DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL,
AND E.I. DU PONT DE NEMOURS AND COMPANY, AND THE CHEMOURS
COMPANY FC, LLC FOR NATURAL RESOURCE DAMAGES RELATING TO THE
EDGE MOOR PLANT AND HAY ROAD IRON RICH LANDFILL**

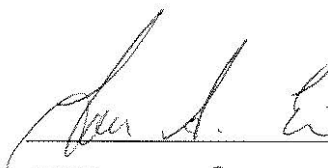
FOR E.I. DU PONT DE NEMOURS AND COMPANY

By: Thomas A. Warnock Date: 09/15/2022

Signature: 
Thomas Warnock (Sep 15, 2022 10:40 EDT)
Email: thomas.a.warnock@corteva.com

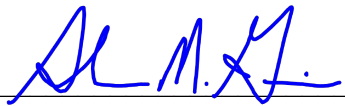
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FOR THE CHEMOURS COMPANY FC, LLC

By:  Date: 9-9-2022
Tom E.
Director - Environment and Remediation

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**FOR THE DELAWARE DEPARTMENT OF NATURAL RESOURCES
AND ENVIRONMENTAL CONTROL**

By: 

Date: 11/8/22

**SETTLEMENT AGREEMENT AMONG THE UNITED STATES, ON BEHALF OF THE
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**FOR THE UNITED STATES OF AMERICA, ON BEHALF OF NOAA
AND DEPARTMENT OF THE INTERIOR**

By: *Nathaniel Douglas* Date: _____
NATHANIEL DOUGLAS
Deputy Section Chief
Environmental Enforcement Section