



37044

BK# 3717 PG# 99

Tax Parcel No.: 5-31-13.00-7.00, 5-31-13.00-8.00,
5-31-13.00-9.00, 5-31-13.00-10.00,
5-31-13.00-11.00, 5-31-13.00-2.00,
5-31-13.00-3.00, 5-31-13.00-4.00,
5-31-13.00-5.01, 5-31-13.00-16,
5-31-13.00-17, 5-31-13.00-18,
5-31-13.00-1.00, 5-31-13.00-7.01,
5-31-13.00-7, 5-31-13.00-12.00

Prepared By: Department of Natural Resources and
Environmental Control

Return To: Program Manager II
DNREC-SHWMB
89 Kings Highway
Dover, DE 19901

ENVIRONMENTAL COVENANT

This Environmental Covenant is entered into by E.I. du Pont de Nemours and Company, Inc. (the "Owner") and the Delaware Department of Natural Resources and Environmental Control ("DNREC") pursuant to 7 Del. C. Chapter 79, Subchapter II, Uniform Environmental Covenants Act, for the purpose of subjecting certain property, as described more fully herein, to land use restrictions as set forth herein.

WITNESSETH

WHEREAS, E.I. du Pont de Nemours and Company, Inc. is the owner of certain real estate located at 25876 DuPont Road, Seaford, in Sussex County, Delaware, as described below ("Property"); and

WHEREAS, pursuant to 7 Del. C. Chapters 60 and 63; and 7 DE Admin. Code 1302, *Delaware Regulations Governing Hazardous Waste* (DRGHW), the Owner was required to implement corrective action in certain portions of the Property; and

WHEREAS, on February 25, 1992, the Environmental Protection Agency ("EPA"), and the Owner entered into an Administrative Consent Order, Docket Number RCRA-III-051-CA (the "Order"), pursuant to Section 3008(h) of Resource Conservation and Recovery Act ("RCRA"), as amended, 42 U.S.C. Section 6928(h); the Order identifies the corrective action activities that the Owner was required to complete; in January 2005, the Owner submitted the revised DuPont Seaford RCRA Facility Investigation Phase II Final Report which characterized potential sources of contamination and their corrective measures; and DNREC accepted the preferred remedial alternatives in a Statement of Basis (the "Plan") which summarized corrective measures to address contamination in certain portions of the Property; and

Delaware's good nature depends on you!

CL

WHEREAS, the Plan identifies certain portions of the Property requiring Institutional Controls and long term monitoring as stated in Section X of the Plan; and

WHEREAS, the Plan requires that certain land use restrictions be placed on certain portions of the Property, including the creation of a Groundwater Management Zones ("GMZ"), in accordance with the plan attached hereto as Exhibit A and hereby made a part hereof (the "GMZ Plan"), which will prevent withdrawal from groundwater in the GMZ except for environmental monitoring purposes; and

WHEREAS, on May 25, 2006, DNREC issued a Final Decision and Response to Comments (the "Decision") selecting, as part of the final remedy for the Property, certain land use restrictions to ensure long-term control of certain portions of the Property and protection of selected remedies in the portions of the Property identified as Solid Waste Management Units (SWMU) 1, and 7/12/13; and

WHEREAS, the Owner is willing to establish this Environmental Covenant on certain portions of the Property in order to implement the land use restrictions required as part of the selected remedy pursuant to the Plan; and

WHEREAS, the Owner is willing to establish this Environmental Covenant on additional portions of the Property identified as SWMU's 1, 6, 13, 19, and the coal ash beneath the golf course expansion area as described and attached hereto as Exhibits B and C and hereby made a part hereof (the "Restricted Areas"), which will prevent digging, drilling, excavating, grading, constructing, earth moving, or any other land disturbing activities at depths greater than 2 feet; and

Now, therefore, the Owner and DNREC agree to the following:

1. Environmental Covenant. This instrument is an Environmental Covenant developed and executed pursuant to 7 Del. C. Chapter 79, Subchapter II, Uniform Environmental Covenants Act.
2. Property. This Environmental Covenant concerns the portions of the Property identified as the Restricted Areas and the GMZ, which constitute portions of the Property located at 25876 DuPont Road, Seaford, in Sussex County, Delaware. The Property consists of approximately 16 parcels and is referenced as Sussex County Tax Parcel Numbers 5-31-13.00-7.00, 5-31-13.00-8.00, 5-31-13.00-9.00, 5-31-13.00-10.00, 5-31-13.00-11.00, 5-31-13.00-2.00, 5-31-13.00-3.00, 5-31-13.00-4.00, 5-31-13.00-5.01, 5-31-13.00-16, 5-31-13.00-17, 5-31-13.00-18, 5-31-13.00-1.00, 5-31-13.00-7.01, 5-31-13.00-7, and 5-31-13.00-12.00. Only the Restricted Areas and the GMZ, and not the entire Property, are subject to this Environmental Covenant.
3. Owner. E.I. du Pont de Nemours and Company, Inc is the owner of the Property and has an address at Barley Mill Plaza, Barley Mill Plaza 19-2222, 4417 Lancaster Avenue, Wilmington, DE 19805.
4. Holder. DNREC is the Holder of this Environmental Covenant.
5. Land Use Restrictions. As required by DNREC's final remedy for certain portions of the Property described in the Decision, the Owner hereby imposes and agrees to comply with the following land use restrictions for those certain portions of the Property:

- [a.] Land Use Restrictions. Use of any Restricted Area shall be restricted solely to those non-residential uses permitted within Commercial, Manufacturing, or Industrial Districts, respectively, as such district types and uses (including, without limitation, ancillary or accessory uses) are described and permitted, respectively, pursuant to the Delaware Code, as the same may be amended from time to time.
- [b.] Interference with Remedy. There shall be no digging, drilling, excavating, grading, constructing, earth moving, or any other land disturbing activities at depths greater than 2 feet on any Restricted Area without the prior written approval of DNREC's Solid and Hazardous Waste Management Branch ("DNREC-SHWMB"). Notwithstanding the foregoing, Owner may conduct maintenance and/or repair activities in the event of an emergency, such as a disruption to site utilities, or other event that requires immediate action ("Emergency Action") within a Restricted Area without prior notice to DNREC-SHWMB, provided that such activities are conducted in accordance with such written health and safety standards as are adopted in the normal course of business activities on the Property. In the event of an Emergency Action, Owner shall notify DNREC-SHWMB as soon as reasonably possible after the onset of the land disturbing activity and shall submit a written description of the activity within seven (7) days of the initial notification.
- [c.] Limitation of Groundwater Withdrawal. Except for environmental monitoring purposes, no groundwater shall be withdrawn from any well within the GMZ on the Property without the prior written approval of DNREC-SHWMB.

6. Running with the Land. This Environmental Covenant shall be binding upon the Owner and all assigns and successors in interest, including any Transferee, and shall run with the land, pursuant to 7 Del. C. Section 7910(a), subject to amendment or termination as set forth herein. The term "Transferee," as used in this Environmental Covenant, shall mean any future owner of any interest in the Restricted Areas or the GMZ or any portion thereof, including, but not limited to, owners of an interest in fee simple, mortgagees, easement holders, and/or lessees; provided, however, that the inclusion in the foregoing definition of mortgagees, easement holders, and/or lessees is intended to clarify that their respective interests in the Restricted Areas or the GMZ, or any portion thereof, are subject to this Environmental Covenant but is not intended to change the character of their respective interests to that of an owner of the Property or any portion thereof or to re-characterize their respective interests in the Property for any other purposes.

7. Compliance Enforcement. Compliance with this Environmental Covenant may be enforced pursuant to 7 Del. C. Section 7916. Failure to timely enforce compliance with this Environmental Covenant or the land use restrictions contained herein by any party shall not bar subsequent enforcement by such party and shall not be deemed a waiver of the party's right to take action to enforce any non-compliance. Nothing in this Environmental Covenant shall restrict the Secretary of DNREC from exercising any authority under applicable law.

8. Rights of Access. Owner hereby grants to DNREC, its agents, contractors, and employees, the right of access to the Property for implementation or enforcement of this Environmental Covenant.

9. Administrative Record. The Administrative Record in support of the Decision contains all documents which support DNREC's issuance of the Final Remedy (as defined in the Decision) and is located at the offices of DNREC-SHWMB, 89 Kings Highway, Dover, Delaware, 19901.

10. Notice upon Conveyance. Each instrument hereafter conveying any fee simple interest in the Restricted Areas or the GMZ, or any portion thereof, shall contain a notice of the land use restrictions set forth in this Environmental Covenant, and provide the recorded location of this Environmental Covenant. The notice shall be substantially in the following form:

THE INTEREST CONVEYED HEREBY IS SUBJECT TO AN ENVIRONMENTAL COVENANT, DATED _____, 2009, RECORDED IN THE OFFICE OF THE RECORDER OF DEEDS IN AND FOR SUSSEX COUNTY, DELAWARE, IN [BOOK _____, PAGE _____]. THE ENVIRONMENTAL COVENANT CONTAINS THE FOLLOWING ACTIVITY AND USE LIMITATIONS:

- [a.] Land Use Restrictions. Use of any Restricted Area shall be restricted solely to those non-residential uses permitted within Commercial, Manufacturing, or Industrial Districts, respectively, as such district types and uses (including, without limitation, ancillary or accessory uses) are described and permitted, respectively, pursuant to the Delaware Code, as the same may be amended from time to time;
- [b.] Interference with Remedy. There shall be no digging, drilling, excavating, grading, constructing, earth moving, or any other land disturbing activities at depths greater than 2 feet on any Restricted Area without the prior written approval of DNREC's Solid and Hazardous Waste Management Branch ("DNREC-SHWMB"). Notwithstanding the foregoing, Owner may conduct maintenance and/or repair activities in the event of an emergency, such as a disruption to site utilities, or other event that requires immediate action ("Emergency Action") within a Restricted Area without prior written notice to DNREC-SHWMB, provided that such activities are conducted in accordance with such written health and safety standards as are adopted in the normal course of business activities on the Property. In the event of an Emergency Action, Owner shall notify DNREC-SHWMB as soon as reasonably possible after the onset of the land disturbing activity and shall submit a written description of the activity within seven (7) days of the initial notification.
- [c.] Limitation of Groundwater Withdrawal. Except for environmental monitoring purposes, no groundwater shall be withdrawn from any well within the GMZ on the Property without the prior written approval of DNREC-SHWMB;

Failure to include the foregoing notice in any such instrument does not in any way affect the validity and enforceability of such instrument or the validity or enforceability of this Environmental Covenant.

Owner shall notify DNREC within ten (10) days after each conveyance of a fee simple interest in any portion of the Property that includes one or more of the Restricted Areas or the GMZ. Owner's notice shall include the name and address of the Transferee, a copy of the deed or other

documentation evidencing the conveyance, and, if less than the entire Property, a survey or tax map that shows the boundaries of that portion of the Property being transferred.

11. Representations and Warranties. Owner hereby represents and warrants to the other signatories hereto:

- [a.] that the Owner has the power and authority to enter into this Environmental Covenant, to grant the rights and interests herein provided and to carry out all obligations hereunder;
- [b.] that the Owner is the sole owner of the Property and holds fee simple title to the Property;
- [c.] as of Effective Date of this Environmental Covenant, no person holds a mortgage or other lien on that portion of the Property that includes one or more of the Restricted Areas or the GMZ that is superior in time and right to this Environmental Covenant and known to the Owner;
- [d.] that the Owner has identified all other parties that hold any interest (e.g., encumbrance) of record in those portions of the Property encumbered by this Environmental Covenant, and any unrecorded interests known to Owner, and notified such parties of the Owner's intention to enter into this Environmental Covenant; and
- [e.] that this Environmental Covenant will not materially violate or contravene or constitute a material default under any other agreement, document or instrument to which Owner is a party or by which Owner is bound.

12. Amendment or Termination.

- a. This Environmental Covenant may be amended or terminated by consent of all of the following: the Owner or a Transferee who is then the Owner of that portion of the Property that is subject to this Environmental Covenant and is the subject of the amendment or termination; and DNREC, pursuant to 7 Del. C. Section 7915 and other applicable law. The term, "Amendment," as used in this Environmental Covenant, shall mean any changes to the Environmental Covenant, including the land use restrictions set forth herein, or the elimination of one or more land use restrictions when there is at least one limitation remaining; an Amendment shall also include an assignment of the Environmental Covenant, as specified in 7 Del. C. Section 7915. The term, "Termination," as used in this Environmental Covenant, shall mean the elimination of all activity and use limitations set forth herein and all other obligations under this Environmental Covenant.
- b. This Environmental Covenant may be amended or terminated only by a written instrument duly executed by DNREC and the Owner or Transferee, as applicable, who is then the Owner of that portion of the Property that is subject to this Environmental Covenant and is the subject of the amendment or termination. Within thirty (30) days of signature by all requisite parties on any Amendment or Termination of this Environmental Covenant, the Owner or such Transferee shall file such instrument for recording with the Sussex County Recorder of Deeds Office, and shall provide a file-and date-stamped copy of the recorded instrument to DNREC. Failure to record such

instrument as aforesaid does not in any way affect the validity and enforceability of such instrument.

13. Severability. If any provision of this Environmental Covenant is found to be unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired.

14. Governing Law. This Environmental Covenant shall be governed by and interpreted in accordance with the laws of the State of Delaware.

15. Recordation. Within thirty (30) days after the date of the final required signature upon this Environmental Covenant and delivery to the Owner, Owner shall file this Environmental Covenant for recording, in the same manner as a deed to the Property, with the Sussex County Recorder of Deeds Office. This Environmental Covenant must be indexed in the grantor's index in the name of the Owner, and in the grantee's index in the name of the Holder, DNREC.

16. Effective Date. The effective date of this Environmental Covenant shall be the date upon which the fully executed Environmental Covenant has been recorded with the Sussex County Recorder of Deeds.

17. Delivery of Environmental Covenant. The Owner shall deliver a filed and date-stamped copy of the recorded Environmental Covenant to: DNREC.

18. Notice. Any document or communication required by this Environmental Covenant shall be submitted to:

Holder:
Program Manager II
DNREC-SHWMB
89 Kings Highway
Dover, DE 19901

Owner:
E.I. du Pont de Nemours and Company, Inc
Corporate Remediation Group
Barley Mill Plaza 19-2222
4417 Lancaster Avenue
Wilmington, DE 19805

The undersigned representative of the Owner and DNREC, respectively, represents and certifies that the undersigned is authorized to execute this Environmental Covenant.

Delaware Department of Natural Resources and Environmental Control

Nancy C. Marker
Nancy C. Marker, Environmental Program Manager II

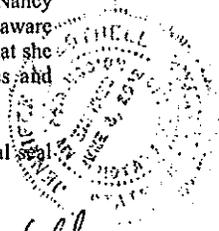
6/23/09
Date

State of Delaware) ss:

County of Kent)

Before me, a notary public, in and for said county and state, personally appeared Nancy C. Marker, Environmental Program Manager II, a duly authorized representative of the Delaware Department of Natural Resources and Environmental Control, who acknowledged to me that she did execute the foregoing instrument on behalf of the Department of Natural Resources and Environmental Control.

IN TESTIMONY WHEREOF, I have subscribed my name and affixed my official seal this 23rd day of June, 2009.



Jennifer M. Bothell

Notary Public
Name:
Commission Expires:

JENNIFER M. BOTHELL
Notary Public, State of Delaware
My Commission Expires June 3, 2012

This instrument prepared by:

Douglas Zeiters
Environmental Scientist II
Department of Natural Resources and Environmental Control
Division of Air and Waste management
Solid & Hazardous Waste Management Branch
89 Kings Highway
Dover, DE 19901

NCM:DRZ:did
DuPont Seaford\Institutional Controls\DRZ09010

Recorder of Deeds
John F. Brady
Sep 29, 2009 11:31A
Sussex County
Doc. Surcharge Paid

RECEIVED

SEP 29 2009

**ASSESSMENT DIVISION
OF SUSSEX COUNTY**