

EXECUTIVE SUMMARY - ENFORCEMENT MATTER Page 1 of 2
DOCKET NO.: 2007-1901-AIR-E **TCEQ ID:** RN100218239 **CASE NO.:** 34998
RESPONDENT NAME: DuPont Performance Elastomers L.L.C.

| | | |
|---|---|--|
| ORDER TYPE: | | |
| <input type="checkbox"/> 1660 AGREED ORDER | <input checked="" type="checkbox"/> FINDINGS AGREED ORDER | <input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING |
| <input type="checkbox"/> FINDINGS DEFAULT ORDER | <input type="checkbox"/> SHUTDOWN ORDER | <input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER |
| <input type="checkbox"/> AMENDED ORDER | <input type="checkbox"/> EMERGENCY ORDER | |
| CASE TYPE: | | |
| <input checked="" type="checkbox"/> AIR | <input type="checkbox"/> MULTI-MEDIA (check all that apply) | <input type="checkbox"/> INDUSTRIAL AND HAZARDOUS WASTE |
| <input type="checkbox"/> PUBLIC WATER SUPPLY | <input type="checkbox"/> PETROLEUM STORAGE TANKS | <input type="checkbox"/> OCCUPATIONAL CERTIFICATION |
| <input type="checkbox"/> WATER QUALITY | <input type="checkbox"/> SEWAGE SLUDGE | <input type="checkbox"/> UNDERGROUND INJECTION CONTROL |
| <input type="checkbox"/> MUNICIPAL SOLID WASTE | <input type="checkbox"/> RADIOACTIVE WASTE | <input type="checkbox"/> DRY CLEANER REGISTRATION |
| <p>SITE WHERE VIOLATION(S) OCCURRED: DuPont Performance Elastomers, 5470 North Twin City Highway, Nederland, Jefferson County</p> <p>TYPE OF OPERATION: Chemical plant</p> <p>SMALL BUSINESS: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>OTHER SIGNIFICANT MATTERS: There are no complaints. There is no record of additional pending enforcement actions regarding this facility location.</p> <p>INTERESTED PARTIES: No one other than the ED and the Respondent has expressed an interest in this matter.</p> <p>COMMENTS RECEIVED: The <i>Texas Register</i> comment period expired on May 26, 2008. No comments were received.</p> <p>CONTACTS AND MAILING LIST: TCEQ Attorney/SEP Coordinator: None TCEQ Enforcement Coordinator: Mr. Aaron Houston, Enforcement Division, Enforcement Team 5, MC R-10, (409) 899-8784; Mr. Bryan Sinclair, Enforcement Division, MC 219, (512) 239-2171 Respondent: Mr. Kenneth L. Archer, Plant Manager, DuPont Performance Elastomers L.L.C., P.O. Box 4901, Beaumont, Texas 77704 Respondent's Attorney: Not represented by counsel on this enforcement matter</p> | | |

VIOLATION SUMMARY CHART:

| VIOLATION INFORMATION | PENALTY CONSIDERATIONS | CORRECTIVE ACTIONS TAKEN/REQUIRED |
|--|--|--|
| <p>Type of Investigation: <input type="checkbox"/> Complaint <input checked="" type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input type="checkbox"/> Records Review</p> <p>Date(s) of Complaints Relating to this Case: None</p> <p>Date of Investigation Relating to this Case: October 10, 2007</p> <p>Date of NOV/NOE Relating to this Case: November 22, 2007 (NOE)</p> <p>Background Facts: This was a routine investigation.</p> <p>AIR</p> <p>Failure to prevent an unauthorized emissions event. Specifically, 641 pounds ("lbs") of carbon tetrachloride, 23 lbs chlorine, 79 lbs chloroform, and 104 lbs sulfur dioxide were released through a ruptured disk on "D" Reactor (EPN HYP-FMFG). [30 TEX. ADMIN. CODE §§ 116.115(b)(2)(F) and (c), and 122.143(4), TEX. HEALTH & SAFETY CODE § 382.085(b), New Source Review Permit 556A, Special Condition 1, and Federal Operating Permit O-01269, General Terms and Conditions, and Special Condition 8].</p> | <p>Total Assessed: \$10,000</p> <p>Total Deferred: \$0 <input type="checkbox"/> Expedited Settlement <input type="checkbox"/> Financial Inability to Pay</p> <p>SEP Conditional Offset: \$0</p> <p>Total Paid to General Revenue: \$10,000</p> <p>Site Compliance History Classification <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Person Compliance History Classification <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Major Source: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>Applicable Penalty Policy: September 2002</p> <p>Findings Orders Justification: Human health has been exposed to pollutants which exceed levels that are protective.</p> | <p>Corrective Actions Taken:</p> <p>The Executive Director recognizes that the Respondent has implemented the following corrective measures at the Plant by November 16, 2007:</p> <p>a. Conducted a training session on basic process operation ("BPO") interaction and use of abort in distributed control system ("DCS"), focusing on how this incident occurred;</p> <p>b. Created a chlorine flow alarm in the DCS that will alert personnel of high chlorine flow; and</p> <p>c. Updated the Hypalon standard operating conditions to include a learning description of the event and the inclusion of the new chlorine flow alarm.</p> <p>Ordering Provisions:</p> <p>The Order will require the Respondent to:</p> <p>a. Within 30 days after the effective date of this Agreed Order:</p> <p>i. Create a standard operation procedure for the management and interaction of DCS BPOs and the use of the abort function by operators;</p> <p>ii. Set up training for central control room operators concerning: interaction and management of BPOs, and the correct use of the abort vs. manual function in DCS.</p> <p>b. Within 45 days after the effective date of this Agreed Order, submit written certification and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision a.</p> |

Additional ID No(s): JE0693A



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision November 6, 2007

TCEQ

| | | | | | | |
|--------------|-----------------|-------------|------------------|-------------|----------------|--|
| DATES | Assigned | 26-Nov-2007 | Screening | 27-Nov-2007 | EPA Due | |
| | PCW | 6-Dec-2007 | | | | |

| | | | |
|--|--------------------------------------|---------------------------|-------|
| RESPONDENT/FACILITY INFORMATION | | | |
| Respondent | DuPont Performance Elastomers L.L.C. | | |
| Reg. Ent. Ref. No. | RN100218239 | | |
| Facility/Site Region | 10-Beaumont | Major/Minor Source | Major |

| | | | |
|--|-----------------|--------------------------|--------------------|
| CASE INFORMATION | | | |
| Enf./Case ID No. | 34998 | No. of Violations | 1 |
| Docket No. | 2007-1901-AIR-E | Order Type | Findings |
| Media Program(s) | Air | Enf. Coordinator | Aaron Houston |
| Multi-Media | | EC's Team | Enforcement Team 5 |
| Admin. Penalty \$ Limit Minimum | \$0 | Maximum | \$10,000 |

Penalty Calculation Section

| | | |
|---|-------------------|----------|
| TOTAL BASE PENALTY (Sum of violation base penalties) | Subtotal 1 | \$10,000 |
|---|-------------------|----------|

ADJUSTMENTS (+/-) TO SUBTOTAL 1

Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.

| | | | |
|---------------------------|-----------------|--------------------------------|---------|
| Compliance History | 34% Enhancement | Subtotals 2, 3, & 7 | \$3,400 |
|---------------------------|-----------------|--------------------------------|---------|

| | |
|--------------|--|
| Notes | Penalty enhancement due to: two (2) NOVs for same or similar violations, two (2) NOVs for unrelated violations, and one (1) Agreed Order containing a denial of liability. |
|--------------|--|

| | | | | |
|--------------------|----|----------------|-------------------|-----|
| Culpability | No | 0% Enhancement | Subtotal 4 | \$0 |
|--------------------|----|----------------|-------------------|-----|

| | |
|--------------|--|
| Notes | The Respondent does not meet the culpability criteria. |
|--------------|--|

| | | | |
|------------------------------------|--------------|-------------------|-----|
| Good Faith Effort to Comply | 0% Reduction | Subtotal 5 | \$0 |
|------------------------------------|--------------|-------------------|-----|

| | | |
|---------------|------------|-------------------------------|
| | Before NOV | NOV to EDPRP/Settlement Offer |
| Extraordinary | | |
| Ordinary | | |
| N/A | X | (mark with x) |

| | |
|--------------|---|
| Notes | The Respondent does not meet the good faith criteria. |
|--------------|---|

| | | | | |
|-------------------------|-------|------------------------|-------------------|-----|
| Total EB Amounts | \$270 | 0% Enhancement* | Subtotal 6 | \$0 |
|-------------------------|-------|------------------------|-------------------|-----|

Approx. Cost of Compliance \$9,000 *Capped at the Total EB \$ Amount

| | | |
|-----------------------------|-----------------------|----------|
| SUM OF SUBTOTALS 1-7 | Final Subtotal | \$13,400 |
|-----------------------------|-----------------------|----------|

| | | | |
|---|----|-------------------|-----|
| OTHER FACTORS AS JUSTICE MAY REQUIRE | 0% | Adjustment | \$0 |
|---|----|-------------------|-----|

Reduces or enhances the Final Subtotal by the indicated percentage.

| | |
|--------------|--|
| Notes | |
|--------------|--|

| | |
|-----------------------------|----------|
| Final Penalty Amount | \$13,400 |
|-----------------------------|----------|

| | | |
|-----------------------------------|-------------------------------|----------|
| STATUTORY LIMIT ADJUSTMENT | Final Assessed Penalty | \$10,000 |
|-----------------------------------|-------------------------------|----------|

| | | | | |
|-----------------|----|-----------|-------------------|-----|
| DEFERRAL | 0% | Reduction | Adjustment | \$0 |
|-----------------|----|-----------|-------------------|-----|

Reduces the Final Assessed Penalty by the indicted percentage. (Enter number only; e.g. 20 for 20% reduction.)

| | |
|--------------|---|
| Notes | No deferral is recommended for Findings Orders. |
|--------------|---|

| | |
|------------------------|----------|
| PAYABLE PENALTY | \$10,000 |
|------------------------|----------|

Screening Date 27-Nov-2007 **Docket No.** 2007-1901-AIR-E
Respondent DuPont Performance Elastomers L.L.C.
Case ID No. 34998
Reg. Ent. Reference No. RN100218239
Media [Statute] Air
Enf. Coordinator Aaron Houston

PCW

Policy Revision 2 (September 2002)

PCW Revision November 6, 2007

Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

| Component | Number of... | Enter Number Here | Adjust. |
|-------------------------------|--|-------------------|---------|
| NOVs | Written NOVs with same or similar violations as those in the current enforcement action (number of NOVs meeting criteria) | 2 | 10% |
| | Other written NOVs | 2 | 4% |
| Orders | Any agreed final enforcement orders containing a denial of liability (number of orders meeting criteria) | 1 | 20% |
| | Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission | 0 | 0% |
| Judgments and Consent Decrees | Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (number of judgements or consent decrees meeting criteria) | 0 | 0% |
| | Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government | 0 | 0% |
| Convictions | Any criminal convictions of this state or the federal government (number of counts) | 0 | 0% |
| Emissions | Chronic excessive emissions events (number of events) | 0 | 0% |
| Audits | Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which notices were submitted) | 0 | 0% |
| | Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which violations were disclosed) | 0 | 0% |
| <i>Please Enter Yes or No</i> | | | |
| Other | Environmental management systems in place for one year or more | No | 0% |
| | Voluntary on-site compliance assessments conducted by the executive director under a special assistance program | No | 0% |
| | Participation in a voluntary pollution reduction program | No | 0% |
| | Early compliance with, or offer of a product that meets future state or federal government environmental requirements | No | 0% |

Adjustment Percentage (Subtotal 2) 34%

>> Repeat Violator (Subtotal 3)

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary
Compliance History Notes

Penalty enhancement due to: two (2) NOVs for same or similar violations, two (2) NOVs for unrelated violations, and one (1) Agreed Order containing a denial of liability.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 34%

| | | | | |
|--------------------------------|--------------------------------------|-------------------|-----------------|------------------------------------|
| Screening Date | 27-Nov-2007 | Docket No. | 2007-1901-AIR-E | PCW |
| Respondent | DuPont Performance Elastomers L.L.C. | | | Policy Revision 2 (September 2002) |
| Case ID No. | 34998 | | | PCW Revision November 6, 2007 |
| Reg. Ent. Reference No. | RN100218239 | | | |
| Media [Statute] | Air | | | |
| Enf. Coordinator | Aaron Houston | | | |

| | |
|------------------------------|---|
| Violation Number | 1 |
| Rule Cite(s) | 30 Tex. Admin. Code §§ 116.115(b)(2)(F) and (c), and 122.143(4), Tex. Health & Safety Code § 382.085(b), New Source Review Permit 556A, Special Condition 1, and Federal Operating Permit O-01269, General Terms and Conditions, and Special Condition 8 |
| Violation Description | Failed to prevent an unauthorized emissions event. The emissions event occurred on August 24, 2007, from 11:30 p.m. until 11:50 p.m. Specifically, 641 pounds ("lbs") of carbon tetrachloride, 23 lbs chlorine, 79 lbs chloroform, and 104 lbs sulfur dioxide were released through a ruptured disk on "D" Reactor (EPN HYP-FMFG). One plant worker was injured as a result of the emissions event. |
| Base Penalty | \$10,000 |

>> Environmental, Property and Human Health Matrix

| | | | | |
|----|-------------|-------|----------|---------------------|
| OR | Harm | | | |
| | Release | Major | Moderate | Minor |
| | Actual | x | | |
| | Potential | | | |
| | | | | Percent 100% |

>> Programmatic Matrix

| | | | | | |
|--|---------------|-------|----------|-------|-------------------|
| | Falsification | Major | Moderate | Minor | |
| | | | | | Percent 0% |

Matrix Notes

Human health or the environment has been exposed to significant amounts of pollutants which exceed levels that are protective of human health or environmental receptors.

Adjustment \$0

\$10,000

Violation Events

| | | | |
|----------------------------|--------------|--------------------------|--|
| Number of Violation Events | 1 | Number of violation days | 1 |
| mark only one with an x | daily | x | Violation Base Penalty \$10,000 |
| | monthly | | |
| | quarterly | | |
| | semiannual | | |
| | annual | | |
| | single event | | |

One daily event is recommended.

| | |
|---|---|
| Economic Benefit (EB) for this violation | Statutory Limit Test |
| Estimated EB Amount | \$270 |
| | Violation Final Penalty Total \$13,400 |
| This violation Final Assessed Penalty (adjusted for limits) \$10,000 | |

Economic Benefit Worksheet

Respondent DuPont Performance Elastomers L.L.C.
Case ID No. 34998
Reg. Ent. Reference No. RN100218239
Media Air
Violation No. 1

| Percent Interest | Years of Depreciation |
|------------------|-----------------------|
| 5.0 | 15 |

| Item Description | Item Cost | Date Required | Final Date | Yrs | Interest Saved | Onetime Costs | EB Amount |
|--------------------------------|-----------|---------------|------------|-----|----------------|---------------|-----------|
| <small>No commas or \$</small> | | | | | | | |

Delayed Costs

| | | | | | | | |
|--------------------------|---------|-------------|-------------|-----|-------|------|-------|
| Equipment | \$3,000 | 24-Aug-2007 | 31-Oct-2007 | 0.2 | \$2 | \$37 | \$39 |
| Buildings | | | | 0.0 | \$0 | \$0 | \$0 |
| Other (as needed) | | | | 0.0 | \$0 | \$0 | \$0 |
| Engineering/construction | | | | 0.0 | \$0 | \$0 | \$0 |
| Land | | | | 0.0 | \$0 | n/a | \$0 |
| Record Keeping System | | | | 0.0 | \$0 | n/a | \$0 |
| Training/Sampling | \$5,000 | 24-Aug-2007 | 10-Jul-2008 | 0.9 | \$220 | n/a | \$220 |
| Remediation/Disposal | | | | 0.0 | \$0 | n/a | \$0 |
| Permit Costs | | | | 0.0 | \$0 | n/a | \$0 |
| Other (as needed) | \$1,000 | 24-Aug-2007 | 16-Nov-2007 | 0.2 | \$12 | n/a | \$12 |

Notes for DELAYED costs

Estimated delayed cost: \$3,000 for a chlorine flow alarm, \$5,000 for various training relating to this incident and updates to standard operating procedures ("SOP") for the distribution control system basic process operation, and \$1,000 for updating the Hypalon SOP. Date required is the date of the emissions event. Final date is when the corrective actions were completed or the estimated date of completion.

Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

| | | | | | | | |
|-------------------------------|--|--|--|-----|-----|-----|-----|
| Disposal | | | | 0.0 | \$0 | \$0 | \$0 |
| Personnel | | | | 0.0 | \$0 | \$0 | \$0 |
| Inspection/Reporting/Sampling | | | | 0.0 | \$0 | \$0 | \$0 |
| Supplies/equipment | | | | 0.0 | \$0 | \$0 | \$0 |
| Financial Assurance [2] | | | | 0.0 | \$0 | \$0 | \$0 |
| ONE-TIME avoided costs [3] | | | | 0.0 | \$0 | \$0 | \$0 |
| Other (as needed) | | | | 0.0 | \$0 | \$0 | \$0 |

Notes for AVOIDED costs

Approx. Cost of Compliance

\$9,000

TOTAL

\$270

13 08/31/2007 (569800)
14 09/11/2007 (567600)
15 11/20/2007 (597342)

E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)

Date: 01/16/2004 (256217)
Self Report? NO Classification: Minor
Citation: 30 TAC Chapter 335, SubChapter A 335.6(c)
Description: Failure to provide notification for a waste stream and a hazardous waste management unit.
Self Report? NO Classification: Minor
Citation: 30 TAC Chapter 335, SubChapter C 335.69(a)(1)(A)
40 CFR Chapter 262, SubChapter I, PT 262, SubPT C 262.34(a)(1)(i)
Description: Failure to perform weekly inspections of the container storage area.
Self Report? NO Classification: Minor
Citation: 30 TAC Chapter 335, SubChapter C 335.62
40 CFR Chapter 262, SubChapter I, PT 262, SubPT A 262.11
Description: Failure to perform a hazardous waste determination for wastewater stored in frac tanks generated during maintenance clean outs of process tanks.
Date: 08/24/2004 (290740)
Self Report? NO Classification: Moderate
Citation: 5C THC Chapter 382, SubChapter A 382.085(a)
Description: Failure to prevent unauthorized emissions during a recordable only emissions event.
Date: 08/02/2005 (400258)
Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 116, SubChapter B 116.115(c)
30 TAC Chapter 122, SubChapter B 122.143(4)
5C THC Chapter 382, SubChapter A 382.085(b)
Rqmt Prov: PERMIT 556A
PERMIT O-01269 SC 12
PERMIT O-01269 SC 8
Description: Failure to conduct CEMS quarterly accuracy testing for the second quarter in 2004.
Date: 05/17/2007 (556050)
Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 116, SubChapter B 116.115(c)
30 TAC Chapter 122, SubChapter B 122.143(4)
5C THC Chapter 382, SubChapter D 382.085(b)
Rqmt Prov: PERMIT 556A, Special Condition 4A
OP O-01269, Special Condition 8A
Description: Failure to comply with permitted limits of VOC from the CA Stack.

F. Environmental audits.

N/A

G. Type of environmental management systems (EMSs).

N/A

H. Voluntary on-site compliance assessment dates.

N/A

I. Participation in a voluntary pollution reduction program.

N/A

J. Early compliance.

N/A

Sites Outside of Texas

N/A

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
DUPONT PERFORMANCE
ELASTOMERS L.L.C.
RN100218239**

§
§
§
§
§
§

**BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY**

**AGREED ORDER
DOCKET NO. 2007-1901-AIR-E**

At its _____ agenda, the Texas Commission on Environmental Quality (“the Commission” or “TCEQ”) considered this agreement of the parties, resolving an enforcement action regarding DuPont Performance Elastomers L.L.C. (“the Respondent”) under the authority of TEX. HEALTH & SAFETY CODE ch. 382 and TEX. WATER CODE ch. 7. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondent presented this agreement to the Commission.

The Respondent understands that it has certain procedural rights at certain points in the enforcement process, including, but not limited to, the right to formal notice of violations, notice of an evidentiary hearing, the right to an evidentiary hearing, and a right to appeal. By entering into this Agreed Order, the Respondent agrees to waive all notice and procedural rights.

It is further understood and agreed that this Order represents the complete and fully-integrated settlement of the parties. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable. The duties and responsibilities imposed by this Agreed Order are binding upon the Respondent.

The Commission makes the following Findings of Fact and Conclusions of Law:

I. FINDINGS OF FACT

1. The Respondent owns and operates a chemical plant at 5470 North Twin City Highway, in Nederland, Jefferson County, Texas (the “Plant”).
2. The Plant consists of one or more sources as defined in the TEX. HEALTH & SAFETY CODE § 382.003(12).

3. During an investigation on October 10, 2007, TCEQ staff documented the Respondent failed to prevent an unauthorized emissions event. The emissions event occurred on August 24, 2007, from 11:30 p.m. until 11:50 p.m. Specifically, 641 pounds ("lbs") of carbon tetrachloride, 23 lbs chlorine, 79 lbs chloroform, and 104 lbs sulfur dioxide were released through a ruptured disk on "D" Reactor (EPN HYP-FMFG). The emissions event occurred as a result of the reactor being set to abort instead of manual. Setting the reactor to abort disrupts the basic process operation ("BPO"). This created an upset condition that eventually ruptured a disk. One plant worker was injured as a result of the emissions event.
4. The Respondent received notice of the violations on November 27, 2007.
5. The Executive Director recognizes that the Respondent has implemented the following corrective measures at the Plant by November 16, 2007:
 - a. Conducted a training session on BPO interaction and use of abort in distributed control system ("DCS"), focusing on how this incident occurred;
 - b. Created a chlorine flow alarm in the DCS that will alert personnel of high chlorine flow; and
 - c. Updated the Hypalon standard operating conditions to include a learning description of the event and the inclusion of the new chlorine flow alarm.

II. CONCLUSIONS OF LAW

1. The Respondent is subject to the jurisdiction of the TCEQ pursuant to TEX. HEALTH & SAFETY CODE ch. 382 and TEX. WATER CODE ch. 7 and the rules of the Commission.
2. As evidenced by Findings of Fact No. 3, the Respondent failed to prevent an unauthorized emissions event, in violation of 30 TEX. ADMIN. CODE §§ 116.115(b)(2)(F) and (c), and 122.143(4), TEX. HEALTH & SAFETY CODE § 382.085(b), New Source Review Permit 556A, Special Condition 1, and Federal Operating Permit O-01269, General Terms and Conditions, and Special Condition 8.
3. Pursuant to TEX. WATER CODE § 7.051 the Commission has the authority to assess an administrative penalty against the Respondent for violations of the Texas Water Code and the Texas Health and Safety Code within the Commission's jurisdiction; for violations of rules adopted under such statutes; or for violations of orders or permits issued under such statutes.
4. An administrative penalty in the amount of Ten Thousand Dollars (\$10,000) is justified by the facts recited in this Agreed Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053. The Respondent has paid the Ten Thousand Dollar (\$10,000) administrative penalty.

III. ORDERING PROVISIONS

NOW, THEREFORE, THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY ORDERS that:

1. The Respondent is assessed an administrative penalty in the amount of Ten Thousand Dollars (\$10,000) as set forth in Section II, Paragraph 4 above, for violations of TCEQ rules and state statutes. The payment of this administrative penalty and the Respondent's compliance with all the terms and conditions set forth in this Agreed Order completely resolve the violations set forth by this Agreed Order in this action. However, the Commission shall not be constrained in any manner from requiring corrective actions or penalties for other violations that are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: DuPont Performance Elastomers L.L.C., Docket No. 2007-1901-AIR-E" to:

Financial Administration Division, Revenues Section
Attention: Cashier's Office, MC 214
Texas Commission on Environmental Quality
P.O. Box 13088
Austin, Texas 78711-3088

2. The Respondent shall undertake the following technical requirements:
 - a. Within 30 days after the effective date of this Agreed Order:
 - i. Create a standard operation procedure for the management and interaction of DCS BPOs and the use of the abort function by operators;
 - ii. Set up training for central control room operators concerning: interaction and management of BPOs, and the correct use of the abort vs. manual function in DCS.
 - b. Within 45 days after the effective date of this Agreed Order, submit written certification as described below, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision No. 2.a. The certification shall be notarized by a State of Texas Notary Public and include the following certification language:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

The certification shall be submitted to:

Order Compliance Team
Enforcement Division, MC 149A
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

with a copy to:

Air Section, Manager
Beaumont Regional Office
Texas Commission on Environmental Quality
3870 Eastex Freeway
Beaumont, Texas 77703

3. The provisions of this Agreed Order shall apply to and be binding upon the Respondent. The Respondent is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Plant operations referenced in this Agreed Order.
4. If the Respondent fails to comply with any of the Ordering Provisions in this Agreed Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, the Respondent's failure to comply is not in violation of this Agreed Order. The Respondent shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. The Respondent shall notify the Executive Director within seven days after the Respondent becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
5. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a written and substantiated showing of good cause. All requests for extensions by the Respondent shall be made in writing to the Executive Director. Extensions are not effective until the Respondent receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
6. The Executive Director may refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings without notice to the Respondent if the Executive Director determines that the Respondent has not complied with one or more of the terms or conditions in this Agreed Order.
7. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
8. This Agreed Order, issued by the Commission, shall not be admissible against the Respondent in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this

Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.

9. This agreement may be executed in multiple counterparts, which together shall constitute a single original instrument. Any executed signature page to this Agreement may be transmitted by facsimile transmission to the other parties, which shall constitute an original signature for all purposes.
10. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties. By law, the effective date of this Agreed Order is the third day after the mailing date, as provided by 30 TEX. ADMIN. CODE § 70.10(b) and TEX. GOV'T CODE § 2001.142.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission



For the Executive Director

5/11/2008
Date

I, the undersigned, have read and understand the attached Agreed Order in the matter of DuPont Performance Elastomers L.L.C. I am authorized to agree to the attached Agreed Order on behalf of DuPont Performance Elastomers L.L.C., and do agree to the specified terms and conditions. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I understand that by entering into this Agreed Order, «EntityName» waives certain procedural rights, including, but not limited to, the right to formal notice of violations addressed by this Agreed Order, notice of an evidentiary hearing, the right to an evidentiary hearing, and the right to appeal. I agree to the terms of the Agreed Order in lieu of an evidentiary hearing. This Agreed Order constitutes full and final adjudication by the Commission of the violations set forth in this Agreed Order.

I also understand that failure to comply with the Ordering Provisions, if any, in this order and/or failure to timely pay the penalty amount, may result in:

- A negative impact on compliance history;
- Greater scrutiny of any permit applications submitted;
- Referral of this case to the Attorney General's Office for contempt, injunctive relief, additional penalties, and/or attorney fees, or to a collection agency;
- Increased penalties in any future enforcement actions;
- Automatic referral to the Attorney General's Office of any future enforcement actions; and
- TCEQ seeking other relief as authorized by law.

In addition, any falsification of any compliance documents may result in criminal prosecution.



Signature

March 6, 2008
Date

KENNETH L. ARCHER

Name (Printed or typed)
Authorized Representative of
DuPont Performance Elastomers L.L.C

PLANT MANAGER

Title

Instructions: Send the original, signed Agreed Order with penalty payment to the Financial Administration Division, Revenues Section at the address in Section IV, Paragraph 1 of this Agreed Order.

