

**COOPERATIVE NATURAL RESOURCE DAMAGE ASSESSMENT  
FUNDING AGREEMENT**

**IN CONNECTION WITH HAZARDOUS SUBSTANCES AT AND RELEASED FROM  
THE E.I. DUPONT DE NEMOURS AND COMPANY'S FORMER FACILITIES IN  
POMPTON LAKES, NEW JERSEY INTO SURROUNDING AREAS INCLUDING THE  
ACID BROOK DELTA, POMPTON LAKE, POMPTON RIVER, RAMAPO RIVER, AND  
WATERSHED**

**I. INTRODUCTION**

This Cooperative Funding Agreement (Agreement) is made and entered into by and between the United States Department of the Interior (“DOI”), acting by and through the Regional Director, United States Fish and Wildlife Service (“FWS”), on behalf of both the FWS and the National Park Service (NPS), and E.I. DuPont de Nemours and Company (“DUPONT”), collectively referred to as the “Parties.”

**II. BACKGROUND**

In accordance with Natural Resource Damage Assessment (NRDA) Regulations (43 CFR Part 11), the Federal Trustees have completed a Preassessment Screen (PAS) Determination for the Pompton Lakes Works (PLW) Site. The PAS indicated that a strong likelihood exists for impacts to natural resources from hazardous substances, particularly mercury, released at the PLW, and demonstrated that the criteria for moving forward with a NRDA of the PLW have been met.

**III. AUTHORITY**

Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) as amended (42 U.S.C. § 9607), Executive Order 12580, and the National Contingency Plan (40 C.F.R. § 300.600), DOI acts on behalf of the public as Trustee for natural resources potentially affected by releases at the PLW. DOI is authorized to conduct natural resource damage assessment and restoration activities and to sue for injuries to and the restoration of such natural resources. The NRDA Regulations at 43 C.F.R. 11.32(a)(2)(iii)(A) encourage the invitation of potentially responsible parties to participate in the assessment process. Pursuant to the Park System Resource Protection Act, 16 USC § 19jj et. seq., (PSRPA), the DOI Secretary is authorized to assess and obtain compensation for, inter alia, injuries to any park system resources.

**IV. PURPOSE**

DOI is proceeding with a NRDA. The purpose of this Agreement is to provide a first step forward and a framework for a cooperative NRDA. This Agreement is intended to facilitate resolution of any natural resource damage (NRD) and PSRPA claims arising from or relating to the PLW, to minimize the transaction costs associated with such claim(s), and to work toward the goal of cooperatively developing and implementing a final restoration plan.

The Parties agree that it is desirable to undertake a cooperative assessment to:

- A. Determine the nature and extent of injuries to natural resources and/or the services provided by such resources (injury determination and quantification);
- B. Determine the nature and extent of injuries to park system resources; and
- C. Conduct restoration planning and implementation (restoration).

Based on experience gained working under this Agreement, the Parties shall determine the manner and extent of future cooperation, and implement such cooperation through subsequent agreement(s).

The parties therefore agree as follows:

## **V. TERMS AND CONDITIONS**

### **A. Cooperative Assessment Process:**

DOI and DUPONT shall meet and establish a technical work group (TWG), to include all Parties, which will identify, by consensus, NRDA data collection needs to be integrated with any other ongoing site-related investigations. DOI and DuPont desire that investigations and other interactions be undertaken in as timely a manner as possible to avoid delays in the remediation and restoration of the PLW.

The TWG may recommend to DOI and DUPONT, for their approval, specific data collection activities to be undertaken. Upon acceptance by both DUPONT and DOI, if requested by any Party, the TWG's recommendations shall be included in an Addendum to this Agreement. Data collection efforts shall be coordinated with other site-related investigations to achieve economy of time and effort and all data collected under this agreement shall be shared in a manner that all parties may readily access and use. Where appropriate and feasible, quality assurance/quality control (QA/QC) procedures consistent with Environmental Protection Agency (EPA) or other relevant and mutually agreed upon requirements shall be used. Data shall be collected in a mutually agreed upon manner, by or with the oversight of DOI or its consultants. The TWG may also consider additional NRDA data and information needs, including identifying restoration opportunities that could redress potential NRD liabilities. Some of these restoration opportunities may be subject to time constraints; and in those cases, either Party may ask that they be considered under a "restoration up front" framework so that those opportunities are not lost.

- B. All Parties agree to be guided by the principles set forth in the proposed Cooperative Assessment Approach and Framework, attached hereto and incorporated herein as Exhibit A.

- C. It is understood and agreed that DOI retains final responsibility for, and authority over, the development and implementation of this NRDA, including but not limited to the assessment plan, data collection, and other studies undertaken to implement the NRDA plan.
- D. Either Party may challenge data and/or associated material collected as part of activities undertaken by the Parties pursuant to and authorized by this Agreement. Such challenge shall be made within ninety (90) calendar days of receipt of the finalized data and/or associated material, shall be in writing, and shall contain a detailed explanation of the basis for such challenge. In the event a Party fails to raise a challenge, such data and/or associated material shall be binding upon such Party in any civil, judicial, or administrative proceeding between or among the Parties relating to NRD at or from the PLW. For the purposes of this paragraph, "associated material" refers to any supporting or developed products related to data collection and analysis such as the study design, data collection activities, and methodologies, QA/QC procedures, and analysis plan(s).

If a Party has filed a timely challenge pursuant to this Subsection, that Party has the right to challenge, in any civil, judicial, or administrative proceeding between the Parties relating to NRD arising from the PLW, only the data and/or associated materials referenced above. In the event that a Party files a timely challenge, any other Party shall have an additional sixty (60) calendar days to respond and submit additional challenges.

- E. During the period of this Agreement, either DOI or DUPONT may propose additional joint studies related to NRDA for the PLW. Any DUPONT agreement to fund such studies must be in writing and shall be incorporated as an attachment to this Agreement.
- F. Cooperative Assessment Funding:
  - 1. Past Costs: DUPONT shall reimburse DOI past NRD assessment costs in the amount of \$56,648.63, incurred through June 30, 2013, within 180 days of full execution of this agreement. DOI shall provide DUPONT with an accounting of such costs, along with funds transfer instructions, within 30 days of execution of this agreement. DUPONT shall have the right to dispute and object to any costs. Notice of any such dispute and objection shall be provided to DOI in writing within thirty (30) calendar days of receipt of the detailed accounting of past costs. If any such objection is made, DUPONT and DOI shall work to resolve the objection.
  - 2. Initial Upfront Costs: DUPONT shall make upfront payments totalling \$60,000.00 to fund DOI's anticipated actual administrative and assessment costs to be incurred during the period from August 1, 2013, through September 30, 2014. These funds shall be provided in two payments to DOI of \$30,000.00 each, the first one due within 30 calendar days of full execution of this Agreement and

the second one due within 90 days of full execution of this Agreement. These costs are part of DOI's ordinary course of business relating to NRDA activities for the PLW, including, but not limited to, coordination with EPA and NJ DEP, pre-assessment study planning, attendance at site-related meetings, ongoing geographic information system (GIS) development, historical data review, consultant support, etc., but excluding the costs of NRDA study implementation. Providing up-front funding for salary and administrative costs both improves efficiency with respect to these costs and will decrease actual costs incurred by decreasing the time spent developing proposals for internal case funding. Any unspent funds will be carried into the next cooperative assessment funding period (i.e., fiscal year 2015). DOI shall provide DuPont an accounting of any remaining (carryover) fund balance, actual or estimated, within 60 days after the initial upfront cost funding period ends. Assessment costs incurred during Fiscal year 2014 over and above the amounts paid by DUPONT as Initial Upfront Costs shall be added to Upfront Costs for Fiscal year 2015.

3. NRDA Study Costs For Mutually-Agreed-to Studies:

- a. Fiscal Year 2014: Within 60 days of execution of this agreement, DOI shall provide DUPONT with a description of proposed studies and a good faith estimate of proposed study costs for Fiscal Year 2014. The parties shall promptly meet or otherwise discuss thereafter the proposed studies and work towards agreement on the cooperative studies to be undertaken. In light of the timing of execution of this agreement, the Parties shall finalize decisions about NRDA studies to be undertaken in FY 2014 by subsequent mutual agreement of DOI and DuPont.
- b. Fiscal Year 2015 and thereafter. Beginning June 30, 2014, and annually thereafter, DOI shall provide DUPONT cost estimates and/or Scopes of Work (SOWs), as appropriate, identifying all anticipated NRDA studies, activities, and estimated costs (excluding any assessment costs provided under paragraph F.2, above) to support those studies for the next fiscal year (excluding the costs of the development and implementation of NRDA study activities undertaken solely by DOI, unless such costs are otherwise agreed to in writing by DOI and DUPONT).

DUPONT shall have the right to dispute and object to any costs. Notice of any such dispute and objection shall be provided to DOI in writing within thirty (30) calendar days of receipt of the SOW. If any such objection is made, DUPONT and DOI shall work to resolve the objection. If no objection is filed, DUPONT agrees to provide the necessary funds within sixty (60) calendar days of receiving the cost estimate.

The Parties may pursue expedited or streamlined procedures for the development and funding of joint assessment studies. Supplemental NRDA studies may be undertaken within each fiscal year by mutual agreement of DOI and DUPONT.

For each mutually agreed upon supplemental study, SOWs identifying anticipated activities and costs will be provided to DUPONT; DUPONT may either elect to provide funding for said supplemental studies within the same fiscal year, or to defer funding until the next fiscal year.

4. Ongoing Non-Study Assessment Related Costs:

- a. Fiscal Year 2015 and thereafter: By June 30 2014, and annually thereafter, DOI shall provide DUPONT with cost estimates and/or SOWS, as appropriate, identifying all non-study assessment related costs anticipated for the timeframe of the subsequent fiscal year.
- b. An accounting of the amount spent and activities funded in each six-month funding period shall be provided to DUPONT within 60 days following the end of the funding period. Any funds allotted, but not used, for a particular funding period will be rolled over and applied to ongoing costs in future funding period(s).

DUPONT shall have the right to dispute and object to any costs. Notice of any such dispute and objection shall be provided to DOI in writing within thirty (30) calendar days of receipt of each funding request. If any such objection is made, DUPONT and DOI shall work to resolve the objection. If no objection is filed, one-half of the next fiscal year's estimated non-study assessment related costs shall be paid by DUPONT within sixty (60) calendar days after receiving the cost estimate, with the remaining half provided six months later. For Fiscal Year 2014 costs, if no objection is filed, DUPONT shall pay the full amount within sixty (60) calendar days after receiving the cost estimate.

5. If at any time during the period of this Agreement it appears to DOI that any costs referred to above will, in fact, exceed the estimated dollar amount provided to DUPONT as per the above paragraphs, DOI shall promptly so inform DUPONT in writing and provide a revised best estimate of the total costs anticipated. Within thirty (30) days of receipt of the revised best estimate, DUPONT shall respond to DOI with its willingness to continue the cooperative assessment under the revised total cost estimate. If DUPONT declines to so proceed, DOI may terminate this Agreement.

## **VI. RESERVATION OF RIGHTS**

- A. Nothing in this Agreement is intended to be, nor should it be construed as, an admission of liability on the part of DUPONT or as a limitation upon any of DUPONT'S rights or defenses.
- B. Nothing in this Agreement is intended to be, nor should it be construed to be, a limitation on DOI's authority to pursue any claims or causes of action against

DUPONT for damages or otherwise; provided, however, that any payments of DOI costs and the funding of any DOI activities by DUPONT shall be credited against future claims for assessment costs and damages.

## **VII. TERMINATION**

Either DUPONT or DOI may withdraw from this Agreement at will at any point for any reason. The withdrawal must be made in writing and communicated to all other Parties to this Agreement, and shall be effective immediately upon such notice. Withdrawal by DUPONT shall terminate this Agreement, in which event DUPONT shall (1) remain obligated to pay any compensable DOI costs or expenses incurred prior to DUPONT's termination of this Agreement, and (2) remain obligated to continue to fund through the end of the Federal fiscal year all previously agreed upon assessment studies. This Agreement will remain in effect until terminated or replaced by the parties. If terminated, any funds provided by DUPONT unspent as of the termination date shall be returned to DUPONT as promptly as is possible, with the goal of returning the funds within sixty (60) days of the termination date, except for study costs referred to above. Termination of this agreement by the withdrawal of a party, by expiration, or otherwise, shall not terminate the rights and obligations of Section V, Subsection D, above, which provision shall be deemed to continue in force and binding effect.

## **VIII. NOTICES**

Any general information or notices required to be given in writing under this Agreement shall be deemed to have been sufficiently given if delivered either personally or by certified mail (return receipt requested, postage prepaid), fax, or e-mail (if followed by letter) to each of the addresses set forth below, or to such other address for either party as may be designated by written notice.

### For DUPONT:

Stephen Rahaim  
E.I.duPont de Nemours and Company  
1007 Market Street D-7099  
Wilmington, DE 19898  
Email: [Stephen.Rahaim@dupont.com](mailto:Stephen.Rahaim@dupont.com)  
Office: (302) 774-8720  
FAX: (302) 355-4074

### For FWS and NPS:

Mark Barash  
One Gateway Center  
Suite 612  
Newton, MA 02458  
Phone (617) 527-2103  
Fax: (617) 527-6848  
Email: [mark.barash@sol.doi.gov](mailto:mark.barash@sol.doi.gov)

With copies to:

Brian Donohue  
Senior Attorney, Environmental Enforcement Section, U.S. Department of Justice  
P.O. Box 7611  
Ben Franklin Station

Washington, DC 20044  
Phone: (202) 514-2738

## **IX. DISPUTE RESOLUTION**

- A. The Parties shall endeavor in good faith to make decisions by consensus.
- B. In the absence of consensus, the Parties shall attempt in good faith, for a period not to exceed thirty (30) calendar days after receipt of written notice that briefly identifies the subject on which there is no consensus, to reach consensus through consultation among the Parties' representatives, who are currently designated as:

1. For DUPONT:

Stephen Rahaim  
E.I.duPont de Nemours and Company  
1007 Market Street D-7099  
Wilmington, DE 19898

Ralph G. Stahl, Jr. Ph.D., D.A.B.T.  
Principal Consultant  
DuPont Corporate Remediation Group  
Chestnut Run Plaza, Bldg 715, Rm 232  
974 Centre Road  
P.O. Box 2915  
Wilmington, Delaware 19805  
Email: [Ralph.G.Stahl\\_Jr@dupont.com](mailto:Ralph.G.Stahl_Jr@dupont.com)  
Office: (302) 999-3733  
FAX: (302) 999-2497

2. For DOI:

FWS  
Melissa Foster  
U.S. Fish & Wildlife Service  
New Jersey Field Office  
Phone: (609) 383-3938 x 21  
Fax: (609) 383-3939  
E-mail: [melissa\\_foster@fws.gov](mailto:melissa_foster@fws.gov)

NPS  
Nancy Werdel  
Damage Assessment National Program Office  
National Park Service/WASO/EQD/Resource Protection Branch  
P.O. Box 25287  
Denver, CO 80225

E-mail: [nancy\\_werdel@nps.gov](mailto:nancy_werdel@nps.gov)  
Phone: (303) 969-2745  
Fax: (303) 987-6782

DOI  
Mark Barash  
U.S. Department of the Interior Office of the Regional Solicitor  
One Gateway Center, Suite 612  
Newton Comer, MA 02458  
Phone: (617) 527-2103  
Fax: (617) 527-6848  
Email: [mark.barash@sol.doi.gov](mailto:mark.barash@sol.doi.gov)

C. In the event consensus is not reached by the representatives pursuant to Subparagraph IX.B, the Parties shall attempt in good faith for a period not to exceed thirty (30) calendar days to reach consensus through consultation among the following management representatives, or their designees.

1. For DUPONT:  
Michael J. Lukas  
Remediation Team Manager  
DuPont Corporate Remediation Group  
Chestnut Run Plaza, Bldg 715, Room 232  
974 Centre Road  
P.O. Box 2915  
Wilmington, Delaware 19805  
Phone: (302) 999-3567  
Email: [michael.j.lukas@dupont.com](mailto:michael.j.lukas@dupont.com)

2. For DOI:  
  
FWS and NPS  
Wendi Weber  
Regional Director  
U.S. Fish and Wildlife Service  
300 Westgate Center Drive  
Hadley, MA 01035-8200  
Phone: (413) 253-8200  
Fax: (412) 253-8308

D. In the event consensus is not reached by the representatives pursuant to Subparagraph IX.C, the Parties shall terminate the Agreement as provided in Section VII.

## **X. APPLICABLE LAW**

This Agreement shall be governed in all respects, including validity, interpretation, and effect, by the laws of the State of New Jersey, without giving effect to the principles of conflicts of laws of such state.

## **XI. AUTHORITY**

The person executing this Agreement on behalf of each party represents and warrants that he or she has full power and authority to do so on behalf of such party.

## **XII. EXECUTION**

This Agreement and any modifications or addenda hereto may be executed in several counterparts by the parties and when so executed shall be considered fully executed to the same extent as if the parties had signed the original document. Facsimile execution is authorized.

## **XIII. PERIOD AND EFFECTIVE DATE**

The effective date of this Agreement shall be the date of the last signature, and the period of this Agreement shall be for five (5) years from that date, unless otherwise amended in writing.

## **XIV. MODIFICATION**

This agreement may be amended or modified by the Parties, which must be in writing and executed by all of the Parties.

IN WITNESS WHEREOF the Parties have executed this Agreement on the dates attested to below.

The United States Department of the Interior ("DOI"), by its Authorized Official

By:



Name:

Wendi Weber

Title:

Regional Director  
U.S. Fish and Wildlife Service  
300 Westgate Center Drive  
Hadley, MA 01035

Date:

April 29, 2014

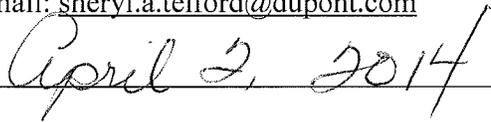
FOR THE RESPONSIBLE PARTY:

DUPONT

By:  
Name:  
Title:

  
\_\_\_\_\_  
Sheryl A. Telford  
Director, DuPont Corporate Remediation Group  
Chestnut Run Plaza, Bldg 715  
974 Centre Road  
P.O. Box 2915  
Wilmington, Delaware 19805  
Phone: (302) 999-3562  
Email: [sheryl.a.telford@dupont.com](mailto:sheryl.a.telford@dupont.com)

Date:

  
\_\_\_\_\_

## Exhibit A

### **PROPOSED COOPERATIVE ASSESSMENT APPROACH AND FRAMEWORK E.I. du Pont de Nemours and Company's Pompton Lakes Works Site and Environs**

#### I. Points of General Understanding

- A. DOI shall meaningfully involve DUPONT in the NRDA process.
- B. DOI and DUPONT shall interact in good faith.
- C. DOI and DUPONT share a desire to establish a cooperative process for addressing restoration.
- D. DOI and DUPONT understand that development of a successful cooperative process requires significant time and effort, and is best achieved by iterative confidence- and trust-building steps.
- E. DOI and DUPONT enter this cooperative process with a shared focus on the goal of resolving NRD claims and achieving appropriate natural resource restoration, all in a timely manner.
- F. DOI and DUPONT will strive to achieve consensus decision-making.
- G. DOI and DuPont understand that points of disagreement on technical or other matters may arise from time to time and will strive to resolve them in a timely and respectful manner.

#### II. Specific Obligations, Understandings, and Mechanisms

- A. DOI shall manage and control the assessment process:
  - a. DOI will meet regularly with DUPONT to discuss the goals and direction of the assessment process;
  - b. DOI will consider DUPONT's suggestions;
  - c. DOI will decide what studies will be performed and by whom;
  - d. DUPONT will fully fund those studies with which it agrees; for DOI's proposed studies for which DuPont disagrees, each party shall pursue its own studies and individually pay for those studies; however, the Parties shall continue to cooperate and share data even for those studies with which it has not reached consensus;
  - e. All Parties will share all relevant data with each other unless the Parties agree otherwise; and,
  - f. Prior to commencing any independent NRD or NRD related studies, DUPONT shall notify DOI of their intention, provide copies of all work plans, and share all data, unless the Parties agree otherwise.
- B. DUPONT shall reimburse DOI for all reasonable ongoing assessment costs, direct and indirect.
- C. All parties reserve rights and defenses.
- D. DOI and DUPONT shall endeavor to identify and implement restoration projects including, where appropriate, early (upfront) restoration projects.

- E. DOI and DuPont share a common appreciation of the public's interest in the PLW's remediation and restoration. Therefore with respect to public meetings or other interactions with public officials or groups that are planned or under consideration, each Party will provide prior notice of such activities and seek input from the other prior to the particular activity. This prior notice is intended to help alleviate or reduce potential miscommunications among DOI, DuPont, and the public.