DIVISION OF ENVIRONMENTAL PROTECTION

GASTON CAPERTON
GOVERNOR

10 McJunkin Road
Nitro, WV 25143

LAIDLEY ELI McCoy, Ph.D.
DIRECTOR

October 15, 1996

Mr. W. M. Stewart
Senior Environmental Control Consultant
E.I. DuPont de Nemours and Company
Washington Works
P.O. Box 1217
Parkersburg, West Virginia 26102

Re: Dry Run Landfill (WV/NPDES Permit No. WV0076244) and Washington Works facility (WV/NPDES Permit No. WV0001279)

Dear Mr. Stewart:

E.I. DuPont de Nemours and Company has always been a valued citizen of West Virginia. However, over the past several months, inspectors with DEP have observed serious shortcomings in DuPont's operations of the Dry Run Landfill and the Washington Works facility. During numerous inspections, DEP employees noticed, among other violations, the following:

1. On several occasions, DuPont has allowed, and continues to allow, a large flow of black and odorous leachate to be released from its Dry Run Landfill into Dry Run, in violation of its NPDES Permit and the West Virginia Code of State Regulations;

2. On several occasions, DuPont discharged Teflon, Delron, Nylon and wax beads from its Washington Works facility into the Ohio River, in violation of its NPDES Permit and the West Virginia Code of State Regulations;

3. On several occasions, DuPont has failed, and apparently continues to fail, to prevent run-off from flowing across the Dry Run Landfill and has failed to collect and treat leachate generated by the Dry Run Landfill, in violation of the West Virginia Code of State Regulations;

4. On several occasions, DuPont has failed, and apparently continues to fail, to notify DEP that the quality of the leachate generated by the Dry Run Landfill has exceeded the design capacity of the treatment system, in violation of its NPDES Permit and the West Virginia Code of State Regulations;

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5. On several occasions, DuPont has failed, and apparently continues to fail, to properly compact the wastes disposed at the Dry Run Landfill, in violation of the West Virginia Code of State Regulations;

6. On numerous occasions, DuPont has deposited, and continues to deposit, waste in the Dry Run Landfill in greater concentrations than the concentrations approved by DEP, in violation of its NPDES Permit and the West Virginia Code of State Regulations;

7. On several occasions, DuPont has failed to properly operate and maintain the Dry Run Landfill, in violation of its NPDES Permit.

8. DuPont has failed, and continues to fail, to retrofit the Dry Run Landfill surface impoundment with a liner system and leak detection system, in violation of the West Virginia Code of State Regulations;

9. On numerous occasions, DuPont has allowed the effluent from the Dry Run Landfill to exceed the water quality standards, in violation of the West Virginia Code of State Regulations;

10. On numerous occasions, DuPont has allowed the effluent from the Dry Run Landfill to exceed the discharge limitations established in its NPDES Permit, in violation of its NPDES Permit; and

11. On several occasions, DuPont has failed, and continues to fail, to comply with each and every condition of its NPDES Permit, in violation of its NPDES Permit.

Due to the foregoing violations at the Washington Works facility and Dry Run Landfill, DEP intends to file a civil action against DuPont in the Circuit Court of Wood County. The agency will seek injunctive relief to address current and prospective violations and will ask for the assessment of civil penalties for current and past violations. A copy of a draft complaint is attached.

I have instructed DEP's Office of Legal Services to initiate formal proceedings against DuPont in circuit court by no later than January 15, 1997. Should DuPont wish to enter into negotiations to explore potential resolution of the enforcement action before a complaint is filed, please contact DEP attorneys Matthew Crum or Scott Goldman at (304) 558-9160.

Very truly yours,

Laidley Eli McCoy, Ph.D.
Director

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IN THE CIRCUIT COURT OF WOOD COUNTY, STATE OF WEST VIRGINIA

LAIDLEY ELI McCOY, Director,
West Virginia Division of
Environmental Protection,

DRAFT

Plaintiff,

v. Civil Action _____

E. I. DuPONT DE NEMOURS & COMPANY, INC.,

Defendant.

COMPLAINT

INTRODUCTION

Plaintiff Laidley Eli McCoy, Director, West Virginia Division of Environmental Protection ("DEP"), by counsel, alleges the following:

1. This is a civil action brought under the Water Pollution Control Act, West Virginia Code §§ 22-11-1 to -28 (1995) ("WPCA") and the Solid Waste Management Act, West Virginia Code §§ 22-15-1 to -20 (1995) ("SWMA"), against Defendant E.I. DuPont De Nemours and Company, Incorporated, based on violations of the WPCA, SWMA, and the regulations promulgated thereunder for injunctive relief, the assessment of civil penalties, and attorneys fees.

PARTIES

2. Plaintiff, Laidley Eli McCoy, for and on behalf of the State of West Virginia, is the duly appointed Director of DEP, and is thereby authorized by the WPCA, and the regulations promulgated thereunder, to enforce the water pollution control laws and regulations of this State. Specifically, W. Va. Code § 22-11-22 states:

> Any person who violates any provision of any permit issued under or subject to the provisions of [the WPCA] is subject to a civil penalty not to exceed ten thousand dollars per day of such violation, and any person who violates any provision of this article or of any rule . . . is subject to a civil penalty not to exceed ten thousand dollars per day of such violation. Any such civil penalty may be imposed and collected only by a civil action instituted by the director [of DEP] in the circuit court of the county in which the violation occurred or is occurring or of the county in which the waters thereof are polluted as the result of such violation.
>
> Upon application by the director, the circuit courts of this state or the judges thereof in vacation may by injunction compel compliance with and enjoin violations of the provisions of this article, the rules of the [environmental quality] board or director, effluent limitations, the terms and conditions of any permit granted under the provisions of this article, or any order of the director or board, and the venue of any such action shall be the county in which the violation or noncompliance exists or is taking place or in any county in which the waters thereof are polluted as the result of such violation or noncompliance.

3. Additionally, Director McCoy is authorized by the SWMA and the regulations promulgated thereunder, to enforce the solid waste management laws and regulations of this State. Specifically, W. Va. Code § 22-15-15(d) and (e) state:

> (d) Any person who violates any provision of [the SWMA], [a]ny permit or any rule or order issued pursuant to [the SWMA] is subject to a civil penalty not to exceed twenty-five thousand dollars for each day of such violation, which penalty shall be recovered in a civil action either in the court wherein the violation occurs or in the circuit court of Kanawha County.
>
> (e) The director may seek an injunction, or may institute a civil action against any person in violation of any provisions of this article or any permit, rule or order issued pursuant to this article.

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4. Defendant E. I. DuPont De Nemours & Company ("Defendant"), is a corporation duly authorized to conduct business in the State of West Virginia. Defendant owns and operates a facility ("Washington Works") in Wood County, West Virginia, which produces plastic and acrylic resins. Defendant also owns and operates a non-hazardous waste landfill ("Dry Run Landfill") in Wood County, West Virginia, that serves the Washington Works facility. At all pertinent times hereto, Defendant was and is doing business in Washington, Wood County, West Virginia.

5. Under the WPCA and SWMA, the definition of the term "person" includes "any industrial user, public or private corporation, institution, association, firm or company organized or existing under the laws of this or any other state or country." W. Va. Code §§ 22-11-3(15) and -15-2(22). Defendant is a "person" as defined under the WPCA and SWMA.

JURISDICTION AND VENUE

6. This Honorable Court has jurisdiction over this action pursuant to W. Va. Code §§ 22-11-22 and 22-15-15(d).

7. Venue is proper in this court pursuant to W. Va. Code §§ 22-11-22 and 22-15-15(d) because Defendant's Washington Works facility and Dry Run Landfill are located in Wood County and because the violations referenced herein occurred or are occurring in Wood County.

STATEMENT OF FACTS

8. Defendant was originally authorized to operate the Dry Run Landfill in 1982 through issuance of permit No. IWL-6282-82 by the Department of Natural Resources ("DNR"),

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predecessor to DEP. Such permit authorized Defendant to discharge a specific amount and type of pollutants into Dry Run, a tributary of the North Fork of Lee Creek, which is a tributary of the Ohio River. Pursuant to W. Va. Code §§ 22-11-3(23), Dry Run, the North Fork of Lee Creek, and the Ohio River are all "waters" of the State.

9. On January 12, 1990, DNR reissued IWL-6282-82 to Defendant as Solid Waste/National Pollutant Discharge Elimination System ("SW/NPDES") Permit No. WV0076244. As written, the SW/NPDES Permit was scheduled to expire on January 11, 1995. A copy of SW/NPDES Permit No. WV0076244 is attached hereto as Exhibit 1.

10. Solid Waste/National Pollutant Discharge Elimination System Permit No. WV0076244 incorporated by reference, as a term and condition thereof, information submitted by Defendant with SW/NPDES Application No. WV0076244, as well as information contained in correspondence from Defendant dated August 10, 1987; September 15, 1987; March 1, 1988; April 14, 1988; March 16, 1989; and May 9, 1989. See Exhibit 1, page 1.

11. Under the federal Clean Water Act, 33 U.S.C. § 1251, et seq. and the WPCA, the State of West Virginia, through DEP, is authorized to regulate discharges into the waters of the State of West Virginia through implementation of the National Pollutant Discharge Elimination System ("NPDES") Program. Specifically, the NPDES Program is "the [n]ational program for issuing, denying, modifying, revoking and reissuing, suspending, revoking, monitoring and enforcing permits, and imposing and enforcing pretreatment requirements under Sections 307, 318, 402, and 405 of [the federal Clean Water Act], including any approved [s]tate program." See National Pollutant Discharge Elimination System (NPDES) Program, ("NPDES Program"), West Virginia Code of State Regulations ("CSR"), Title 47, Series 10 § 2.27 (1993).

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12. On February 16, 1990, Defendant appealed the terms and conditions of SW/NPDES Permit No. WV0076244 to the Water Resources Board, predecessor to the Environmental Quality Board. The appeal was resolved by the Board's entry of an agreed order dated March 12, 1991, and resulted in a corresponding modification of SW/NPDES Permit No. WV0076244. The agreed order is attached hereto Exhibit 2.

13. By letter dated January 11, 1995, DEP extended the expiration date of SW/NPDES Permit No. WV0076244 from January 11, 1995, to January 11, 1996.

14. By letter dated January 3, 1996, DEP conditionally extended the expiration date of SW/NPDES Permit No. WV0076244 to September 11, 1996. Such extension was conditioned upon Defendant providing DEP with additional information regarding its Dry Run Landfill.

15. By letter dated August 22, 1996, DEP extended the expiration date of SW/NPDES Permit No. WV0076244 to December 11, 1996.

16. In addition to the Dry Run Landfill, Defendant also owns and operates the Washington Works facility which produces plastic and acrylic resins. On September 30, 1994, DEP reissued NPDES Permit No. WV0001279 to Defendant for its Washington Works facility, such permit authorizing Defendant to discharge a specific amount and type of pollutants directly into the Ohio River. NPDES Permit No. WV0001279 is attached hereto as Exhibit 3.

COUNT I
Violations of Conditions Not Allowable in State Waters

17. Plaintiff hereby realleges and incorporates the allegations set forth in paragraphs 1 - 16 above as if fully restated herein.

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18. Pursuant to the Requirements Governing Water Quality Standards ("Water Quality Standards"), 46 CSR 1 § 3 (1996), entitled "Conditions Not Allowable in State Waters,"

> No sewage, industrial waste, or other wastes present in any of the waters of the State shall cause therein or materially contribute to . . . distinctly visible floating or settleable solids, suspended solids, scum, foam, or oily slicks . . . [d]eposits or sludge banks on the bottom . . . [o]dors in the vicinity of the waters . . . [or] [d]istinctly visible color.

19. On March 23, 1995, Cynthia J. Musser, Inspector, Environmental Enforcement, DEP, inspected the Dry Run landfill. During the inspection, a flow of very black and odorous leachate was emanating from the subject landfill and entering Dry Run, thus discoloring Dry Run and imparting an odor thereto.

20. On May 3, 1995, Inspector Musser conducted an inspection of Defendant's Dry Run Landfill. The leachate from the landfill remained odorous and black, and the discharge from the subject landfill into Dry Run was odorous, turbid, and green with algae, thus discoloring Dry Run and imparting an odor thereto.

21. On August 13, 1996, Inspector Musser conducted an inspection of Defendant's Dry Run Landfill. The leachate from the landfill remained odorous and black, and the discharge from the subject landfill into Dry Run was odorous, turbid, and green with algae, thus discoloring Dry Run and imparting an odor thereto.

22. On August 20, 1996, Inspector Supervisor Charles A. Moses, Inspector James C. Laine, Jr., and Inspector Musser conducted a river patrol of the Ohio River in the vicinity of Defendant's Washington Works facility. During the river patrol, the inspectors sampled deposits on the bottom of the Ohio River and along the river's banks immediately below Outfall 002 of the

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Washington Works facility. The sample contained beads made of Nylon, Delron and Teflon - all materials manufactured at the Washington Works facility.

23. During the August 20, 1996, Ohio River patrol, the inspectors likewise sampled deposits along the banks of the Ohio River immediately below Outfall 003 of the Washington Works facility. The sample contained beads made of Nylon, Delron and Teflon - all materials manufactured at the Washington Works facility.

24. During the August 20, 1996, Ohio River patrol, the inspectors sampled deposits on the bottom of the Ohio River below Outfall 005 of the Washington Works facility. The bottom deposit sample yielded beads which contained Teflon and Delron - both materials manufactured at the Washington Works facility.

25. During the August 20, 1996, Ohio River patrol, the inspectors observed floating solids on the Ohio River and along the banks of the Ohio River which were determined to be a mixture of Teflon and wax and which had been discharged from Outfall 005 of the Washington Works facility. The floating solids were located along the West Virginia river bank of the Ohio River for approximately one-half mile below Outfall 005.

26. On March 23, 1995, May 3, 1995, and August 13, 1996, Defendant was in violation of Water Quality Standards 46 CSR 1§ 3, (1996) "Conditions Not Allowable in State Waters," by discharging a turbid flow from Dry Run Landfill into Dry Run, such flow constituting the discharge of distinctly visible colors, turbid conditions, and odors in waters of the State.

27. On August 20, 1996, Defendant was in violation of Water Quality Standards, 46 CSR 1 § 3, (1996) "Conditions Not Allowable in State Waters," by discharging beads of material

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manufactured at Defendant's facility, from three separate discharge points, into the Ohio River, waters of the State. Such deposition of material constituted the illegal discharge of settleable solids into waters of the State as well as the impermissible deposition of materials on the bottom of the subject stream.

28. On August 20, 1996, Defendant was in violation of Water Quality Standards, 46 CSR 1 § 3, (1996) "Conditions Not Allowable in State Waters," by discharging a floating or suspended mixture of Teflon and wax, materials manufactured at Defendant's Washington Works facility, into the Ohio River. Such discharge constituted the illegal placement of distinctly visible floating or suspended solids into waters of the state.

COUNT II
Failure to Prevent Run-off and Collect and Treat Leachate

29. Plaintiff hereby realleges and incorporates the allegations set forth in paragraphs 1 - 28 above as if fully restated herein.

30. Solid Waste Management Regulations ("SWMR") 47 CSR 38 §§ 4.8.1.b and d (1996), entitled "Leachate Management," state:

> 4.8.1.b Any liquid which comes in contact with waste or accumulates in a portion of the facility where active waste disposal operations are occurring must be handled as leachate and properly treated . . . unless otherwise approved by the director [of DEP] in writing.
>
> . . .
>
> 4.8.1.d In the case of an industrial landfill, the leachate collection and treatment facility must be in place and operable prior to the commencement of landfill operations.

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31. Solid Waste Management Regulation, 47 CSR 38 § 4.5.2.b.A. (1996), entitled "Run-on Control System," states:

> (a) Permittees of all SWLFs [solid waste landfills] must design, construct, operate, and maintain:
>
> (b) A run-on control system capable of preventing flow onto any part of the disposal area including the active portion of the SWLF during peak discharge from at least a 25-year, 24-hour storm.

32. During a May 16, 1994, field review of the Dry Run Landfill conducted by John G. Britvec, Geologist, Office of Water Resources, DEP, and Inspector Musser, Mr. Britvec and Inspector Musser observed that Defendant had not installed a system which would collect and treat leachate, as required by SWMR, 47 CSR 38 § 4.8.1.d (1996).

33. During the May 16, 1994, field review, Mr. Britvec and Inspector Musser observed that Defendant had not installed diversion ditches at the facility, as required by SWMR, 47 CSR 38 § 4.5.2.b.A. (1996).

34. During the May 16, 1994, field review and on other occasions, DEP personnel advised Defendant's managerial personnel that a leachate collection system and diversion ditches must be installed at the subject landfill.

35. During the March 23, 1995, inspection of the Dry Run Landfill, Defendant did not have a collection system or treatment facility to collect or treat leachate generated by the Dry Run Landfill, as required by SWMR, 47 CSR 38 § 4.8.1.d (1996).

36. During the March 23, 1995, inspection, Defendant did not have diversion ditches in place to re-direct surface flow or run-on away from the working surface of the landfill, as required by SWMR, 47 CSR 38 § 4.5.2.b.A (1996).

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37. Upon information and belief, in April 1995, Defendant constructed two diversion ditches above the Dry Run Landfill to prevent run-on from flowing across the landfill.

38. During the August 13, 1996, inspection of the Dry Run Landfill, the diversion ditch on the upper side of the landfill was not properly maintained by Defendant, as required by SWMR, 47 CSR 38 § 4.5.2.b.A. (1996).

39. During the August 13, 1996, inspection of the Dry Run Landfill, the facility did not have a leachate collection system installed, as required by SWMR 47 CSR 38 § 4.8.1.d. (1996).

40. From May 16, 1994, until August 13, 1996, and upon information and belief, to the present date, Defendant has been in violation of SWMR 47 CSR 38 § 4.8.1.d. (1996), for failure to install a leachate collection system.

41. From May 16, 1994 until April 1995, Defendant was in violation of SWMR 47 CSR 38 § 4.5.2.b.A. (1996), for failure to design, construct and operate a run-on control system.

42. On August 13, 1996, and, upon information and belief, to the present date, Defendant was and is in violation of SWMR 47 CSR 38 § 4.5.2.b.A. (1996), for failure to maintain a run-on control system.

COUNT III
Failure to Notify of Violations

43. Plaintiff hereby realleges and incorporates the allegations set forth in paragraphs 1 - 42 above as if fully restated herein.

44. Solid Waste Management Regulation 47 CSR 38 § 4.8.1.j (1996), specifying notification requirements, states:

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> The permittee must immediately notify the director [of DEP] and describe remedial steps to be taken if . . . [o]peration of the leachate treatment facility under this rule cannot prevent the facility from . . . [v]iolating the terms of its permit, [SWMR], the [federal] Clean Water Act and the rules and regulations promulgated thereunder, or W. Va. Code § 22-11 and the rules and regulations promulgated thereunder; or . . . [c]ausing surface water pollution or groundwater degradation, contamination, or pollution.

Further, Solid Waste Management Regulation 47 CSR 38 § 4.8.1.j (1996), states:

> The permittee must immediately notify the director [of DEP] and describe remedial steps to be taken if . . . [t]he facility is generating a quality or quantity of leachate that exceeds the design capacity of the treatment system.

45. Defendant has failed to notify DEP that the operation of the Dry Run Landfill exceeded the design capacity of the landfill's treatment system and that, as a result, such facility was in violation of the terms and conditions of the SW/NPDES permit, the WPCA, and regulations promulgated thereunder.

46. Upon information and belief, Defendant continues to fail to notify DEP when the quality of the leachate generated by the Dry Run Landfill exceeds the capacity of the treatment system, thus causing violations of established discharge limits into Dry Run.

47. On numerous occasions Defendant has been and, upon information and belief, still is in violation of SWMR 47 CSR 38 § 4.8.1.j (1996), for failure to notify DEP when operations of its facility exceeded the design capacity of its treatment system.

COUNT IV
Failure to Adequately Compact

48. Plaintiff hereby realleges and incorporates the allegations set forth in paragraphs 1 - 47 above as if fully restated herein.

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49. Solid Waste Management Regulation 47 CSR 38 § 4.6.2.a.C, "Layering and Compaction," (1996) provides:

> Solid waste must be placed in layers not exceeding two (2) feet in depth and compacted with a minimum of three (3) passes with . . . equipment of [effective] compacting ability.

50. During the May 3, 1995, inspection, Defendant was compacting the wastes in the Dry Run Landfill in layers exceeding two feet in depth.

51. During the August 13, 1996, inspection, Defendant was continuing to compact the wastes in the Dry Run Landfill in layers exceeding two feet in depth.

52. On May 3, 1995, and August 13, 1996, and upon information and belief, to the present day, Defendant violated and continues to violate SWMR, 47 CSR 38 § 4.6.2.a.C. (1996), "Layering and Compaction," by failing to properly compact the wastes disposed in the Dry Run Landfill.

COUNT V
Changing Composition of Waste Without Proper Authorization

53. Plaintiff hereby realleges and incorporates the allegations set forth in paragraphs 1 - 52 above as if fully restated herein.

54. Section G.1 of the SW/NPDES Permit No. WV0076244 states:

> Only the waste materials specified in [SW/NPDES] Permit Application No. WV0076244 and in the letter dated the 1st day of March 1988 may be disposed in the landfill.

55. Section C.4 of SW/NPDES Permit No. WV0076244 states:

> This Permit may be modified, revoked and reissued, suspended, or revoked for cause. The filing of a request by the permittee for a permit modification,

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> revocation, and reissuance or revocation or a notification of planned changes or anticipated noncompliance, does not stay any permit condition.

(Emphasis added.)

56. By letter dated September 14, 1994, Defendant informed DEP that it had changed the composition of wastes being disposed at its Dry Run Landfill.

57. During mid-1994, Defendant did dramatically alter the composition of wastes being disposed at the Dry Run Landfill.

58. From mid-1994 through, upon information and belief, the present date, Defendant has disposed and continues to dispose of waste at the Dry Run Landfill, the composition of which differs substantially from that which was specified in Defendant's SW/NPDES Permit application and subsequently authorized in the SW/NPDES Permit No. WV0076244 without having obtained prior approval through a permit modification, in violation of SW/NPDES Permit No. WV0076244 § G.1.

COUNT VI
Failure to Properly Operate and Maintain Facility

59. Plaintiff hereby realleges and incorporates the allegations set forth in paragraphs 1 - 58 above as if fully restated herein.

60. Section D.1 of SW/NPDES Permit No. WV0076244, entitled "Proper Operation and Maintenance," states:

> The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control . . . which are installed or used by the permittee to achieve compliance with the conditions of this permit.

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61. On May 1, 1995, upon information and belief, a drain valve for the sediment/leachate pond located at the Dry Run Landfill was opened to lower the level of the pond. The drain valve remained open until May 3, 1995. From May 1 until May 3, 1996, as a result of Defendant opening the drain valve, an indeterminate amount of untreated leachate was discharged directly into Dry Run.

62. During the May 3, 1995, inspection, the discharge/sediment pond was approximately three (3) feet lower than the pond's normal elevation. This condition resulted from Defendant's failure to correctly operate such pond.

63. From May 1 to May 3, 1995, Defendant was in violation of SW/NPDES Permit No. WV0076244, § D.1, by failing to properly maintain and operate the drain valve on its sediment/leachate pond.

COUNT VII
Failure to Use a Leachate Liner and Leak Detection System

64. Plaintiff hereby realleges and incorporates the allegations set forth in paragraphs 1 - 63 above as if fully restated herein.

65. Solid Waste Management Regulation 47 CSR 38 § 4.8.3.c.B. (1996), setting forth requirements for surface impoundment, states that surface impoundments, such as the sediment/leachate pond at the Dry Run Landfill:

> must be constructed with a liner system of a minimum of two (2) liners and a leak detection system. Surface impoundments currently in use that do not have liners and a leak detection system as prescribed in [SWMR] must either be closed or retrofitted to conform to this section within six (6) months following the effective date of this rule.

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66. The Defendant has failed to construct a lining for its sediment/leachate pond at the Dry Run Landfill.

67. The surface impoundment used by Defendant to treat leachate has not been closed or retrofitted to properly treat and collect the leachate and does not use a leak detection system.

68. Defendant has violated SWMR, 47 CSR 38 § 4.8.3.c.B. (1996), by operating the Dry Run Landfill without retrofitting the surface impoundment with a liner system and leak detection system.

69. Upon information and belief, Defendant continues to violate SWMR, 47 CSR 38 § 4.8.3.c.B. (1996), by operating the Dry Run Landfill without retrofitting the surface impoundment with a liner system and leak detection system.

COUNT VIII
Violations of Numeric Water Quality Standards

70. Plaintiff hereby realleges and incorporates the allegations set forth in paragraphs 1 - 69 above as if fully restated herein.

71. Section C.12 of SW/NPDES Permit No. WV0076244, "Water Quality", states:

> The effluent covered by this permit may not cause a violation of applicable water quality standards adopted by the [Environmental Quality] Board..

72. Section G.8 of SW/NPDES Permit No. WV0076244 requires Defendant to sample Dry Run approximately one thousand feet (1000 ft.) downstream of Outlet 001 for several water quality standard parameters and submit such results on the "Monthly Stream Sampling Report Form."

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73. The water quality standard for the concentration of total iron in Dry Run established in the Water Quality Standards, 46 CSR 1, App. E., § 8.15 (1995), is 1.5 milligrams of iron per 1.0 liter of water (1.5 mg/l).

74. The water quality standard for the concentration of manganese in Dry Run established in the Water Quality Standards, 46 CSR 1, App. E., § 8.17 (1995), is 1.0 mg/l.

75. Results submitted by Defendant on its Monthly Stream Sampling Report Forms for May, 1995, July 1995, September 1995, January 1996, and March 1996 showed the stream contained 4.8 mg/l, 1.7 mg/l, 1.9 mg/l, 6.0 mg/l, and 3.7 mg/l of total iron, respectively - all exceeding the 1.5 mg/l total iron water quality standard.

76. Results submitted by Defendant on its Monthly Stream Sampling Report Forms for February 1995, April 1995, and July 1995, showed the stream contained 2.5 mg/l, 1.1 mg/l, and 1.9 mg/l of manganese, respectively - all exceeding the 1.0 mg/l manganese water quality standard.

77. On at least eight separate occasions, Defendant has violated SW/NPDES Permit No. WV0076244, Section C.12, "Water Quality," by exceeding numeric water quality standards.

78. Upon information and belief, Defendant continues to occasionally violate SW/NPDES Permit No. WV0076244, Section C.12, "Water Quality," by continuing to exceed the numeric water quality standards.

COUNT IX
Violations of Discharge Limitations

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79. Plaintiff hereby realleges and incorporates the allegations set forth in paragraphs 1 - 78 above as if fully restated herein.

80. Section E.2.a of SW/NPDES Permit No. WV0076244, entitled "Reporting," states:

> Permittee shall submit each month according to the enclosed format, a Discharge Monitoring Report (DMR) indicating in terms of concentration, and/or quantities, the values of the constituents listed in Part A.1 [of the Permit] analytically determined to be in the plant effluent(s).

81. Section A.1 of SW/NPDES Permit No. WV0076244, entitled "Discharge Limitations and Monitoring Requirements," establishes a maximum daily discharge limit for total suspended solids ("TSS") as 60 mg/l for Outlet 001.

82. Section A.1 of SW/NPDES Permit No. WV0076244, entitled "Discharge Limitations and Monitoring Requirements," establishes a maximum daily discharge limit for total iron as 7.0 mg/l and an average monthly discharge limit for total iron as 3.5 mg/l.

83. Defendant's required Discharge Monitoring Reports ("DMRs") that were sent to DEP for January 1995, May 1995, and July 1995 show the effluent of the Dry Run Landfill contained TSS concentrations of 64 mg/l, 190 mg/l, and 75 mg/l, respectively - all exceeding the maximum daily discharge limit for TSS concentrations set forth in SW/NPDES Permit No. WV0076244 § A.1. Copies of the DMRs for 1995 and 1996 are attached hereto as Exhibit 5.

84. The DMRs submitted by Defendant for May 1995 and May 1996 showed the effluent of the Dry Run Landfill contained total iron concentrations of 8.7 mg/l and 3.6 mg/l, respectively - both exceeding the average monthly discharge limit for total iron concentrations set forth in SW/NPDES Permit No. WV0076244 § A.1. See Exhibit 5.

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85. Upon at least five separate occasions, Defendant has violated SW/NPDES Permit No. WV0076244, § A.1, "Discharge Limitations and Monitoring Requirements," by exceeding the only two discharge limitations that were specifically established in SW/NPDES Permit No. WV0076244.

86. Upon information and belief, Defendant continues to violate SW/NPDES Permit No. WV0076244, § A.1, "Discharge Limitations and Monitoring Requirements," by exceeding the only two discharge limitations that were specifically established in SW/NPDES Permit No. WV0076244.

COUNT X
Duty to Comply

87. Plaintiff hereby realleges and incorporates the allegations set forth in paragraphs 1 - 86 above as if fully restated herein.

88. Section C.1.a of SW/NPDES Permit No. WV0076244, entitled "Duty to Comply" states:

> The permittee must comply with all conditions of this permit. Permit noncompliance constitutes a violation of the [federal Clean Water Act] and [State WPCA] and is grounds for enforcement action."

89. Issuance of SW/NPDES Permit No. WV0076244 was based, in part, upon information submitted by Defendant with SW/NPDES Application No. WV0076244, as well as information contained in correspondence from Defendant dated August 10, 1987, September 15, 1987, March 1, 1988, April 14, 1988, March 16, 1989, and May 9, 1989. A copy of SW/NPDES Application No. WV0076244, dated August 10, 1987, is attached hereto as Exhibit 6.

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90. In the information submitted by Defendant on August 10, 1987, Defendant stated that the surface of the Dry Run Landfill would be crowned to provide a 1% to 2% slope to eliminate ponding on the surface of the landfill and to direct surface water to diversion ditches on either side of the landfill. See Exhibit 6, page 7.

91. In the information submitted by Defendant on August 10, 1987, Defendant stated that compaction would be provided by a dozer operator who would spread the waste material in layers up to two feet thick. See Exhibit 6, page 7.

92. During the March 21, 1995, inspection, Defendant was not providing a 1% to 2% crown to prevent ponding on the surface of the landfill as stated in Defendant's SW/NPDES Application No. WV0076244.

93. During the March 21, 1995, inspection, Defendant was not adequately compacting the wastes at Dry Run Landfill, as stated in Defendant's SW/NPDES Application No. WV0076244.

94. During the May 3, 1995, inspection, Defendant was not providing a 1% to 2% crown to prevent ponding on the surface of the landfill, as stated in Defendant's SW/NPDES Application No. WV0076244.

95. During the May 3, 1995, inspection, Defendant was not adequately compacting the wastes at Dry Run Landfill, as stated in Defendant's SW/NPDES Application No. WV0076244.

96. During the August 13, 1996, inspection, Defendant was not providing a 1% to 2% crown to prevent ponding on the surface of the landfill, as stated in Defendant's SW/NPDES Application No. WV0076244.

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97. During the August 13, 1996, inspection, Defendant was not adequately compacting the wastes at Dry Run Landfill, as stated in Defendant's SW/NPDES Application No. WV0076244.

98. Upon at least six separate occasions, Defendant has violated SW/NPDES Permit No. WV0076244 § C.1, by failing to comply with every condition of the subject permit.

99. Upon information and belief, Defendant continues to violate SW/NPDES Permit No. WV0076244 § C.1, by failing to comply with every condition of the subject permit.

PRAYER FOR RELIEF

WHEREFORE, pursuant to West Virginia Code §§ 22-1-6, 22-11-4, 22-11-12, 22-11-15, 22-11-22, 22-15-5, 22-15-10, and 22-15-15, SW/NPDES Permit No. WV0076244 §§ C.1 and C.14, and otherwise, Plaintiff, Laidley Eli McCoy, Director, West Virginia Division of Environmental Protection, prays for an Order of Judgment against the Defendant, E. I. DuPont de Nemours & Company, that:

1. Preliminarily and permanently enjoins Defendant at its Dry Run Landfill from violating the Water Pollution Control Act, W. Va. Code §§ 22-11-1 to -28, the regulations promulgated thereunder, the Solid Waste Management Act, W. Va. Code §§ 22-15-1 to -20, the rules and regulations promulgated thereunder, SW/NPDES Permit No. WV0076244, and any and all other environmental laws, rules, or regulations which Defendant might be currently violating;

2. Preliminarily and permanently enjoins the Defendant from placing waste materials at the Dry Run Landfill until such time as the Defendant has installed a properly constructed

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landfill and leachate treatment facility, including a a lined impoundment, to prevent the current and future degradation of the waters and soils of the State of West Virginia;

3. Orders Defendant to construct a system of ditches and other permanent, mechanical devices to prevent water from running onto the Dry Run Landfill and mixing with the waste deposited therein;

4. Levies a civil penalty not to exceed $10,000 (ten thousand dollars) per day against Defendant, as specifically authorized by the West Virginia Water Pollution Control Act, at W. Va. Code § 22-11-22, for each of the Defendant's violations of SW/NPDES Permit No. WV0076244, the West Virginia Water Pollution Control Act, and the accompanying rules and regulations;

5. Levies a civil penalty not to exceed $25,000 (twenty-five thousand dollars) per day against Defendant, as specifically authorized by the West Virginia Solid Waste Management Act, at W. Va. Code § 22-15-15(d), for each of the Defendant's violations of SW/NPDES Permit No. WV0076244, the West Virginia Solid Waste Management Act, and the accompanying rules and regulations;

6. Levies a civil penalty not to exceed $10,000 (ten thousand dollars) per day against Defendant, as specifically authorized by SW/NPDES Permit No. WV0076244 § C.14(a), for each of the Defendant's violations of SW/NPDES Permit No. WV0076244, the federal Water Pollution Control Act, the West Virginia Water Pollution Control Act, and the accompanying rules and regulations;

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7. Awards to Plaintiff its costs and disbursements, including reasonable attorneys fees, incurred in this action, as specifically provided by the West Virginia Solid Waste Management Act, at W. Va. Code § 22-15-15(g); and

8. Awards such further relief that this Honorable Court deems appropriate.

Respectfully submitted,

LAIDLEY ELI McCOY, Director,
West Virginia Division of
Environmental Protection

BY COUNSEL:

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