

## SETTLEMENT AGREEMENT

Clean Air Council, Stephen Tindall, and John Flaherty (collectively, "Appellants") and the Delaware Department of Natural Resources and Environmental Control ("DNREC") hereby enter into this Settlement Agreement under the terms and for the consideration set forth in this document.

### RECITALS

WHEREAS, DNREC conducted an administrative proceeding (including public hearing) concerning the approval of the Final Plan of Remedial Action for the Hay Road, City of Wilmington DuPont Company Iron Rich Staging Area and Hay Road Sludge Drying Site at Cherry Island which culminated in Secretary's Order No. 2009-A-0005, dated January 16, 2009 but published for public notice on January 25, 2009 in the Delaware Register of Regulations, which approved the Final Plan ("the Underlying Proceeding"); and

WHEREAS, on or about February 13, 2009 Appellants filed with the Environmental Appeals Board an appeal of Secretary's Order No. 2009-A-005 denominated *Clean Air Council et al v. Department of Natural Resources and Environmental Control*, No. EAB 2009-03 ("the Appeal"); and

WHEREAS, the Appellants and DNREC wish to avoid the uncertainty and expense of continuing the Appeal and to resolve the Appeal under the terms set forth in this Settlement Agreement,

NOW THEREFORE, for the mutual promises and other consideration set forth herein, and intending to be bound by the terms in this Agreement, the Appellants and DNREC hereby agree to the following:

1. Actions by DNREC

In consideration of Appellants' promises herein, DNREC agrees to do the following:

A. Within 30 days of the Effective Date of this Agreement, DNREC will re-open the existing record in the Underlying Proceeding to formally include the following 8 documents identified in the Appellants' Notice of Appeal:

- (1) DuPont's work plan for supplemental investigation, submitted on August 13, 2007;
- (2) DuPont's Draft Remedial Investigation/Risk Assessment ("RI/RA") Addendum submitted on September 8, 2008;
- (3) A review of the RI/RA by the independent consultant submitted on November 5, 2008;
- (4) DNREC's Comments to DuPont on the Draft RI/RA Addendum on November 20, 2008;
- (5) DuPont's Final RI/RA Addendum submitted on December 8, 2008;
- (6) DuPont's Response Letter to the Department comments submitted on December 11, 2008;
- (7) DNREC's Site Investigation and Remediation Branch (SIRB) approval of the Addendum to the RI/RA on December 18, 2008; and

(8) SIRB's Technical Response memorandum submitted to the Hearing Officer on January 14, 2009 and attached to the Hearing Officer's Report.

B. DNREC will provide public notice of its re-opening of the existing record and, after providing such public notice, will keep the record of the Underlying Proceeding open for 30 days for public comment on the 8 documents and any issues arising out of the 8 documents.

C. While DNREC will re-open the existing record pursuant to this Agreement, DNREC will not reconvene the public hearing in the Underlying Proceeding to hear new evidence from witnesses. Any new evidence to be provided for inclusion into the existing record shall be done as written submissions to the record during the 30 day re-opening period.

D. The existing record, the 8 documents identified in sub-paragraph 1.A. above, and the public comment received pursuant to sub-paragraph 1.B. above, shall be considered the Newly-Constituted Record.

E. Upon closing of the public record after the 30-day public comment period, the Hearing Officer will issue a Report and Recommendation to the Secretary based upon the Newly-Constituted Record.

F. After the Hearing Officer issues the new Report and Recommendation, the Secretary will issue a decision based on the Newly-Constituted Record.

G. DNREC's agreement herein to introduce into the public hearing record of the Underlying Proceeding the 8 documents listed in sub-paragraph 1.A. above is done in settlement of a disputed matter. Nothing in this Agreement shall act as precedent to require DNREC to introduce into the records of other public hearings any documents which are similar to the 8 documents being introduced into the record of the Underlying Proceeding pursuant to this Agreement, nor shall it act as precedent to restrict what documents appellants can request be included or argue should have been included in the record of other administrative proceedings before DNREC; both DNREC and appellants reserve their right to determine, on a case-by-case basis, what documents they deem are appropriate for inclusion into the public hearing records of other administrative proceedings.

## 2. Actions by Appellants

In consideration of DNREC's promises herein, Appellants agree to do the following:

A. Upon their counsel receiving notice of the issuance of the new Report and Recommendation described in sub-paragraph 1.E. above and a copy of the same, Appellants will within five business days file with the EAB a Notice of Dismissal of the Appeal with prejudice.

## 3. Entire Agreement

The Appellants and DNREC agree that this Settlement Agreement sets forth the entire agreement as between them, and that all prior oral or written statements forming the basis for this agreement are incorporated into or superseded by the terms of this writing.

4. Modification

This Settlement Agreement may not be modified except by a writing signed by all of the Appellants and DNREC.

5. Governing Law

This Agreement shall be governed by the law of Delaware.

6. Execution in Counterparts

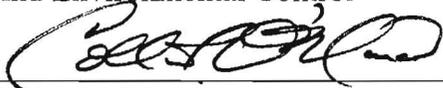
This Agreement may be executed in counterparts by the parties, and each counterpart shall constitute a part of the Agreement. The parties agree to exchange originals of the executed counterparts.

7. Effective Date

This Agreement shall be effective upon the date that all parties have signed the Agreement.

AGREED TO AND SIGNED ON THE DATE SO INDICATED:

Delaware Department of Natural Resources  
And Environmental Control



\_\_\_\_\_  
Collin P. O'Mara, Secretary

Date: 17 September 2009

\_\_\_\_\_  
Clean Air Council

Date: \_\_\_\_\_

\_\_\_\_\_  
Stephen Tindall

Date: \_\_\_\_\_

\_\_\_\_\_  
John Flaherty

Date: \_\_\_\_\_

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\_\_\_\_\_  
Collin P. O'Mara

Date: \_\_\_\_\_

  
\_\_\_\_\_  
Clean Air Council

Date: 9-2-07

\_\_\_\_\_  
Stephen Tindall

Date: \_\_\_\_\_

\_\_\_\_\_  
John Flaherty

Date: \_\_\_\_\_

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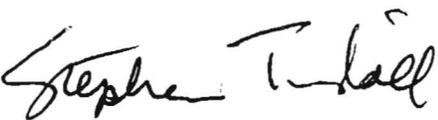
Delaware Department of Natural Resources  
And Environmental Control

\_\_\_\_\_  
Collin P. O'Mara

Date: \_\_\_\_\_

\_\_\_\_\_  
Clean Air Council

Date: \_\_\_\_\_

  
\_\_\_\_\_  
Stephen Tindall

Date: 9/8/09

\_\_\_\_\_  
John Flaherty

Date: \_\_\_\_\_

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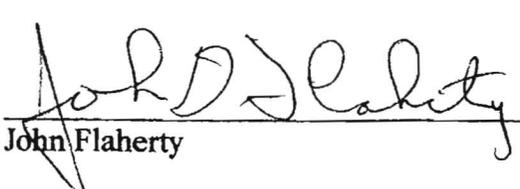
Date: \_\_\_\_\_

\_\_\_\_\_  
Clean Air Council

Date: \_\_\_\_\_

\_\_\_\_\_  
Stephen Tindall

Date: \_\_\_\_\_

  
\_\_\_\_\_  
John Flaherty

Date: 9/24/2009