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SUPERIOR COURT OF NEW JERSEY  
SALEM COUNTY, GENERAL EQUITY

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	)	
CARNEYS POINT TOWNSHIP,	)	SUPERIOR COURT OF NEW JERSEY
	)	CHANCERY DIVISION: SALEM COUNTY
Plaintiff,	)	
	)	
v.	)	
	)	Civil Action No. <u>C-13-10</u>
E. I. DUPONT De NEMOURS AND COMPANY,	)	
and SHERYL A. TELFORD,	)	
	)	<b>VERIFIED COMPLAINT</b>
Defendants.	)	
	)	
	x	

Plaintiff Carneys Point Township ("Plaintiff" or "Carneys Point") files this Complaint against E.I. DuPont De Nemours and Company ("DuPont") and Sheryl A. Telford ("Telford"), upon personal knowledge about their own actions and upon information and belief as to all other matters, as follows:

**PRELIMINARY STATEMENT**

For over 100 years DuPont owned and operated the Chambers Works chemical manufacturing plant located in Pennsville and Carneys Point Townships, in Salem County, New Jersey ("Chambers Works" or the "Site"). During that time DuPont released over 100 million pounds of hazardous waste into the soil and groundwater, which has now migrated to the

Delaware River to the west, the Salem Canal to the south, environmentally sensitive areas to the north and residential neighborhoods to the east as far away as 2-miles from the Site. Carneys Point has calculated it will cost over \$1 Billion to clean up the Site and the surrounding areas. The New Jersey Department of Environmental Protection (“DEP”) has determined it will take almost 1,000 years to complete the cleanup at the rate DuPont is addressing the situation. The Chambers Works Site is a disaster worse than the Exxon Valdez, which spilled 88 million pounds of crude oil in Alaska resulting in over \$1 Billion in civil and criminal penalties.

New Jersey has been home to many industrial sites like Chambers Works since the industrial revolution. The unfortunate reality of this manufacturing activity, however, is that New Jersey is saddled with many defunct manufacturing sites as a result of companies going bankrupt or otherwise abandoning their New Jersey locations. It is an understatement to say that these contaminated sites ruin the health, safety and economic life of local communities.

To protect the State and its residents from having to pay to cleanup these sites, in 1983, New Jersey passed the Environmental Responsibility Cleanup Act of 1983 (“ECRA”), now known as the Industrial Site Recovery Act (“ISRA”), which requires that owners and operators of industrial property or businesses in New Jersey—like DuPont—cleanup all hazardous substances and wastes they discharged to the environment *prior to*: (1) transferring the real property of the industrial establishment; (2) transferring the stock and non-real property assets of the industrial business; or (3) executing a merger agreement, among other triggers. ISRA tied cleanup to these transfers because they are sensitive moments when money is on the table—money that could be used to cleanup a site before it goes to enriching corporate executives and shareholders.

If an owner or operator cannot remediate the property prior to the transfer ISRA allows the owner or operator to provide DEP with the cost to remediate the site and surrounding areas calculated by a computer software program called RACER®. The money must be reserved and set aside as a “remediation funding source” (“RFS”), which the company can use to remediate the site. The RFS also acts like a “cookie jar” of money specifically set aside in the event the company fails to undertake or complete the work. In that instance DEP can use the money to complete the cleanup or affected municipalities can petition DEP to use the money to complete the cleanup. Carneys Point did a RACER® analysis of the Chambers Works Site, which is why it knows the cleanup cost is over \$1B.

To show it was serious about compliance ISRA requires owners or operators who do not comply with ISRA to pay base penalties of \$10,000 to \$20,000 per day per violation until compliance is achieved. Violators must also disgorge the economic gain reaped as a result of not complying with ISRA. In addition, ISRA holds corporate officers or managers who direct or authorize ISRA noncompliance to be personally liable for penalties.

In 2014 and 2015 DuPont began a series of corporate transfers to shed itself of its “dirty” businesses to become a more attractive merger partner with Dow Chemical Company (“Dow”). To accomplish that goal DuPont transferred its Titanium Technologies, Fluoroproducts and Chemical Solutions businesses (collectively, the “Performance Chemicals Businesses”) and the properties associated with them, including Chambers Works among others, to The Chemours Company (“Chemours”) and its subsidiaries including Chemours FC in exchange for \$3.9 billion and Chemours’ assumption of much of DuPont’s environmental liabilities.

These transfers triggered ISRA at Chambers Works three times. The first ISRA trigger occurred on January 23, 2015 when DuPont transferred the Chambers Works real property by

deed to Chemours FC. The second ISRA trigger occurred on July 1, 2015 when DuPont transferred all the stock it held in Chemours to DuPont's shareholders. The third ISRA trigger occurred on December 11, 2015 when DuPont entered into a Merger Agreement with Dow.

Despite the fact that DuPont triggered ISRA three times, DuPont—a Fortune 100 company whose operations at Chambers Works have yielded billions of dollars in revenue—intentionally did not comply with ISRA. In particular, DuPont failed to remediate the Chambers Works Site and the surrounding areas or post the more than \$1 Billion required as an RFS. Sheryl A. Telford, as Director of DuPont's Corporate Remediation Group, played an integral role in assisting DuPont violate ISRA by knowingly misinforming DEP about DuPont's corporate transfers of real estate, assets, stocks and liabilities.

The daily penalties for DuPont's ISRA violations exceed \$130 Million; the daily penalties for Telford's ISRA violations exceed \$120 Million; and the economic gain reaped by DuPont in not posting the \$1 Billion RFS is more than \$60 Million.

Presuming DuPont's merger with Dow is executed DuPont will no longer exist. As a result of assuming all of DuPont's environmental liability Chemours—a company with almost 90% fewer assets than DuPont—may be forced into bankruptcy and the Chambers Works site may be abandoned. Consequently, Chambers Works would be left as a rusting industrial nightmare that the residents of New Jersey will be left to clean up without the funds to do so.

This is exactly the scenario that ISRA was designed to prevent. DuPont's failure to comply with ISRA and post the \$1 Billion RFS has jeopardized the health, safety, welfare and environment of the residents of Carneys Point. If DuPont and Chemours abandon the Site it would be one of the most polluted abandoned chemical manufacturing sites in history.

ISRA allows an action to compel compliance and to assess penalties for noncompliance, including disgorgement of economic gain, to be brought in a *summary manner* against the corporation and any officer or manager who directed or authorized ISRA violations. As a political subdivision of the state Carneys Point files this Order to Show Cause under the ERA, which allows Carneys Point to directly enforce ISRA without prior notice to DEP.

The material facts pertaining to the three ISRA violations are not in dispute. Accordingly, Carneys Point respectfully requests that the Court issue an Order to Show Cause compelling DuPont and Telford to appear in Court and explain why the Court should not enter judgment:

- A. That DuPont triggered ISRA by transferring the Chambers Works real property to Chemours FC;
- B. That DuPont triggered ISRA by transferring all of the stock of Chemours to DuPont stockholders;
- C. That DuPont triggered ISRA by executing a Merger Agreement with Dow;
- D. Compelling DuPont to submit required ISRA documents to DEP and Carneys Point;
- E. Setting a short hearing date pursuant to New Jersey Court Rule 4:67-1(a) to confirm (i) that the amount of the remediation funding source ("RFS") DuPont must post to comply with ISRA is \$1.126B as set forth in the Verified Complaint, (ii) that Telford knowingly directed or authorized DuPont to violate ISRA; (iii) that the amount of daily penalties to be assessed against DuPont and Telford are as set forth in Table 1 and Table 2 attached and that (iv) the amount of the economic gain to be disgorged by DuPont for violating ISRA is \$63M as set forth in the Verified Complaint;

- F. Compelling DuPont to post the RFS as a Remediation Trust Fund as required by law, compelling DuPont and Telford to pay the daily penalties until the date ISRA compliance is achieved and to pay the economic gain into court as required by the ERA;
- G. Compelling the Defendants to pay Carneys Point its attorney's fees, expert fees and expenses as permitted by the ERA; and
- H. Such other relief as the court deems just and proper.

### **PARTIES**

#### **A. Plaintiff**

- 1. Plaintiff Carneys Point Township is a political subdivision of the State of New Jersey with its offices at 303 Harding Highway, Carneys Point, Salem County, New Jersey.

#### **B. Defendants**

- 2. Defendant E. I. DuPont de Nemours and Company is a Delaware Corporation with its principal place of business located at 1007 N. Market Street, Wilmington, Delaware.
- 3. Defendant Sheryl A. Telford is an individual who resides at 618 Main Street, Riverton, New Jersey 08077. Sheryl Telford was at all times relevant hereto the Director of the DuPont Corporate Remediation Group with her principal place of business at 974 Centre Road, Wilmington, Delaware.

### **JURISDICTION AND VENUE**

- 4. Jurisdiction and venue are proper in this Court because Defendants either do business, own property or live in New Jersey. Moreover, Plaintiff's causes of action arise from transactions and occurrences that took place in Salem County.

**THE ENVIRONMENTAL RIGHTS ACT**

5. Plaintiff asserts this action pursuant to the ERA, which permits Carneys Point to act as an enforcement agency to compel DuPont to comply with environmental statutes and regulations and assess penalties for noncompliance against DuPont and Telford for violating ISRA.
6. Carneys Point is a political subdivision of the State of New Jersey and, therefore, pursuant to the ERA, need not provide DEP with prior notice of this action or obtain DEP approval prior to suit.
7. An action to compel ISRA compliance and to assess penalties for noncompliance, including disgorgement of economic gain, can be brought in a *summary manner against the corporation and any officer or manager who directed or authorized ISRA violations*. See N.J.S.A. 13:1K-13.1c.
8. DEP has not taken action and/or has taken insufficient action to address the violations set forth herein. The statutes and regulations set forth herein are designed to prevent or minimize pollution, impairment or destruction of the environment, and the violations set forth herein are continuous and likely to recur in the future for the reasons set forth herein.

**FACTS**

**A. The History Of The Chambers Works Site**

9. In 1892, DuPont established an ammunition plant along the Delaware River in Carneys Point, New Jersey because the location had what DuPont needed—a marshy swamp that would act as a firebreak in the event the plant exploded. By the 1920's, DuPont's operations at Carneys Point expanded to include a huge chemical manufacturing complex

to the south. In total, DuPont's operations at Carneys Point expanded south along the Delaware River to the Salem Canal for a total distance of 2.7 miles of riverfront capturing 1,445 acres.

10. For most of the 20<sup>th</sup> century DuPont manufactured dyes, synthetic plastic and rubber, anti-knock lead for gasoline and other products at Chambers Works. The hazardous substances DuPont used in its dye and synthetic plastic and rubber operations for example included mercury, benzene, acids, sodium hydroxide, aluminum chloride, ammonia, sodium, sulfur, benzene, nitrobenzene, nitrotoluene, chlorobenzene, methyl amines and ethyl chloride, among others. As a result of the processes employed by DuPont's dye manufacturing, DuPont also produced large quantities of sludge and nitrobenzene waste. Lead flu dust and furnace slag was also stored in the open or in drums on the Site, among many other forms of waste.
11. Throughout its history at Chambers Works, DuPont produced billions of pounds of chemicals formulated from billions of pounds of raw materials and intermediaries using thousands of processes in a hundred or more buildings.
12. Sales of the products manufactured at the Site have resulted in billions of dollars of revenue for DuPont and have helped the company become a Fortune 100 Company with facilities located all over the United States and the world.

**B. DuPont Discharged Over 100 Million Pounds Of Hazardous Substances Into The Environment At The Chambers Works Site.**

13. For approximately 80 years, from 1892 to the early 1970s, DuPont operated at Carneys Point without meaningful environmental controls.
14. DuPont used huge quantities of water obtained from the Salem Canal and groundwater wells in its production processes. After finishing its production processes DuPont



dumped millions of gallons of wastewater contaminated with hazardous waste from its hundreds of production buildings into miles of mostly unlined earthen ditches that discharged directly to the Salem Canal, the Delaware River, or into large settling basins where contaminated solids settled to the bottom as sludge and the contaminated water was pumped to the river. Periodically DuPont dredged the sludge from these ditches for use as fill material throughout the Site. These ditches and basins were direct conduits for hazardous waste to enter the environment.

15. DuPont's raw materials and waste products were also stored outdoors on the open ground and DuPont used unlined landfills to dispose of production wastes. As a result of 100 years of DuPont's discharge of hazardous substances, soil and groundwater at the Site contain over 100 millions pounds of hazardous waste.

16. In 1970 DuPont installed an interceptor well system in an attempt to control migrating contaminated groundwater and to recover hazardous organic constituents.

17. In 1975 DuPont constructed a wastewater treatment plant and began treating contaminated groundwater that was pumped to the treatment plant prior to discharge to the Delaware River. Hazardous sludge waste generated by the treatment plant was landfilled onsite in a hazardous waste landfill.

18. Despite these efforts DuPont acknowledges that it will take "generations" to remediate the Site and DEP has determined it will take 999 years to return groundwater to potable use presuming the interceptor wells and wastewater treatment plant continue to operate.

**C. DuPont's Severe Contamination Of The Chambers Works Site And The Surrounding Areas Will Cost Over \$1 Billion To Remediate.**

19. DuPont has failed to contain contaminated groundwater from migrating offsite and has failed to develop and execute a plan to remove the contamination. Indeed, the Delaware

River, Salem Canal and communities of Pennsville and Carneys Point have all been and continue to be directly impacted by DuPont's contamination.

20. A large plume of DuPont's contamination exists in the sediment of the Delaware River to the west and the Salem Canal to the south.
21. In addition, Perfluorooctanoic Acid ("PFOA"), a raw material and byproduct of the manufacture of fluoropolymers such as Teflon, has left the Site and has contaminated the drinking water of Carneys Point and Pennsville to the east as far away as 2-miles from the Site.
22. Hazardous substances are impacting the ecology of Carneys Point to the north and contamination beneath buildings is emanating harmful vapors to the potential detriment of people working onsite.
23. In order to determine the cost of remediation of large industrial sites such as Chambers Works and surrounding areas DEP approved the use of a computer software program called RACER®.
24. Using this program Carneys Point determined that it would cost \$1.126 Billion to clean up Chambers Works and the surrounding area. This calculation was based on a review of hundreds of thousands of environmental documents prepared by DuPont over the years.
25. Carneys Point also calculated the economic gain received by DuPont for not posting the \$1.126 Billion as a remediation funding source ("RFS") to be \$63 million through January 2017. This was based on the formula developed by DEP to calculate economic gain.

**D. New Jersey Passed ISRA To Protect Its Residents From Being Responsible For The Remediation Of Industrial Sites Like Chambers Works**

### 1. ISRA In general

26. New Jersey has been home to multiple industrial sites like Chambers Works since the industrial revolution. As a result, New Jersey is saddled with many of these contaminated sites due to companies going bankrupt or abandoning their New Jersey operations.
27. In 1983 in order to avoid having New Jersey residents continue to be responsible for the cleanup of abandoned industrial sites New Jersey adopted ECRA now known as ISRA. ISRA is the same as ECRA but more streamlined. ISRA and its regulations are collectively referred to as "ISRA."
28. ISRA requires that direct and indirect owners and operators of industrial property or businesses in New Jersey remediate all hazardous substances and wastes discharged to the environment *prior to*: (a) the transfer of the property on which the industrial establishment operates; (b) the transfer of the assets and stocks of the business; or (c) the merger of the industrial business, among other "ISRA Triggers."
29. If the remediation cannot be completed before the transfer of ownership, ISRA alternatively allows owners and operators to provide DEP with the calculated cost to remediate the site and surrounding areas based upon a calculation using RACER®. That calculated cost must be posted as a remediation funding source or "RFS."
30. The owners and operators can then complete their business transfers prior to remediating the site and use the RFS as a drawdown account to perform the remediation work thereafter. In that instance DEP can use the money to complete the remediation or affected municipalities can petition DEP to use the money to complete the cleanup if the owner or operator fails to do the work.

## **2. ISRA Triggering Events**

31. ISRA is triggered when there is a change in ownership of the industrial establishment. There are a number of ways that happens. The most common trigger is when an owner or operator transfers ownership of the real estate of the industrial establishment or transfers a controlling interest (more than 50%) of the assets or stock of the industrial business. Another ISRA trigger is when an owner or operator executes a merger agreement. Each transfer is known as an "ISRA Trigger."
32. An industrial establishment can undergo numerous consecutive ISRA Triggers related to the transfer of real estate, assets, stock or merger. ISRA requires that each ISRA Trigger be addressed separately.

## **3. ISRA Compliance**

33. In order to comply with ISRA the owners and operators of an industrial establishment, like Chambers Works, must first provide DEP and the New Jersey municipalities in which they operate with a General Information Notice ("GIN") within five days of triggering ISRA. The GIN sets forth the facts and circumstances of the pending ISRA triggering event and allows DEP and affected municipalities to track ISRA compliance.
34. In addition, before transferring the real property, assets, stock or executing a merger agreement, the owners and operators must remediate onsite and offsite contamination and obtain a No Further Action letter ("NFA") from DEP or its equivalent confirming that the remediation has been completed in a manner protective of human health, safety and the environment.
35. As an alternative to completing the remediation prior to transfer, ISRA permits owners and operators to submit to DEP: (i) a Remediation Certification that certifies to DEP that

the person responsible for conducting the remediation will complete the cleanup after the ISRA transfer occurs; (ii) a Remediation Cost Review Form that calculates the cost of remediation using RACER® or another method approved by DEP; and (iii) proof that the calculated cost for remediation known as the remediation funding source (“RFS”) has been properly posted to the benefit of DEP and the host municipalities in a Remediation Trust Fund or other financial vehicle approved by ISRA.

36. The RFS is a key component of ISRA because it allows DEP, the host municipalities and others access to funds to complete the remediation if the owners and operators are unwilling or unable to complete the work.

37. Failure of owners and operators to remediate an industrial establishment or post the RFS in lieu of remediation is a violation of ISRA and the owners and operators are responsible for daily penalties for those violations until ISRA compliance is achieved. In addition, the owners and operators must disgorge the economic gain realized as a result of their ISRA violations. Corporate officers and managers also face personal liability for penalties for knowingly violating ISRA.

**E. DuPont Triggers ISRA Three Times and Intentionally Ignored Its ISRA Obligations.**

38. Despite the fact that DuPont is obligated to comply with ISRA because it owns and/or operates Chambers Works—an industrial establishment—DuPont intentionally ignored its ISRA obligations.

39. In particular, in order to finalize its merger with Dow, DuPont needed to shed 100 years of accumulated environmental liability to become a more attractive merger partner. In order to accomplish this goal DuPont hatched a scheme to transfer its “dirty” business units—its Performance Chemicals Businesses and related properties, including Chambers

- Works, among others – to Chemours, an independent, publicly-traded company that DuPont created through a series of corporate transfers.
40. On October 24, 2013 DuPont announced its plans to transfer its Performance Chemicals Businesses to The Chemours Company (“Chemours”) and Chemours’ subsidiaries in exchange for \$3.9 Billion and Chemours’ assumption of DuPont’s environmental liabilities. Chemours would be a separate publicly traded company that DuPont would not own, operate or otherwise control.
  41. On December 18, 2014 The Chemours Company, LLC – a holding company created for the purpose of effectuating the separation plan – filed a Registration Statement with the Securities and Exchange Commission (“SEC”) seeking approval to separate the real estate, assets, stock and liabilities of DuPont’s Performance Chemicals Businesses from DuPont’s other business segments and transfer them to Chemours.
  42. The Registration Statement included a Separation Agreement between DuPont and Chemours that: (a) provided for the transfer of the real estate, assets, stock and liabilities of Chambers Works to Chemours or its subsidiaries; (b) required Chemours and its subsidiaries to assume DuPont’s environmental obligations with regard to Chambers Works and other sites; and (c) required Chemours and its subsidiaries to indemnify DuPont against environmental liabilities at Chambers Works and elsewhere.
  43. Prior to filing the Registration Statement DuPont had created The Chemours Company FC, LLC (“Chemours FC”) a wholly owned subsidiary created to hold Chambers Works and other facilities.

44. On January 23, 2015 DuPont transferred the Chambers Works real estate to its subsidiary Chemours FC. This deed transfer was a change in ownership and the “First ISRA Trigger.”
45. On February 1, 2015 DuPont transferred Chambers Works assets to Chemours FC. At this point the Chemours FC subsidiary had the Chambers Works assets and real property in its possession.
46. On April 30, 2015 the holding company, The Chemours Company, LLC, was converted to the ultimate spin off company Chemours and 100% of Chemours’ stock went to DuPont.
47. On June 5, 2015 DuPont transferred Chemours FC to be a wholly owned subsidiary of Chemours. That way, since Chemours FC held the real estate and assets of Chambers Works, when DuPont separated from Chemours all of Chambers Works would go with Chemours.
48. On July 1, 2015 DuPont transferred 100% of the controlling interest of Chemours stock to DuPont stockholders. Chemours then became an independent publicly traded company on the New York Stock Exchange. DuPont separated from and did not own, operate or control Chemours or its subsidiaries including Chemours FC. This stock transfer was another change in ownership of Chambers Works because it transferred more than 50% of the stock and was therefore the “Second ISRA Trigger.”
49. At some point in 2015 DuPont leased a portion of the Chambers Works Site from Chemours FC to continue operating its non-Performance Chemical businesses at the Site (“DuPont Tenant Space”).

50. In December 2015 DuPont entered into a Merger Agreement with Dow to form DowDuPont. The execution of the Merger Agreement triggered ISRA on DuPont's Tenant Space at Chambers Works requiring DuPont to send DEP and host municipalities a GIN to inform them about this pending ISRA transaction. This is the "Third ISRA Trigger." Dow and DuPont shareholders approved the merger on July 20, 2016 but the merger has not yet occurred.

51. Despite knowing its ISRA obligations DuPont did not submit a GIN to DEP or Carneys Point for any of the three ISRA Triggers. In addition, DuPont did not remediate the Site prior to the First and Second ISRA Triggers and did not post an RFS in lieu of remediating the Site prior to the First and Second ISRA Triggers. Remediation or posting an RFS is not yet required for the DuPont Leasehold Space as part of the Third ISRA Trigger because the merger has not yet been finalized but an RFS is required for the entire Site including the DuPont Tenant Space as a result of the First and Second ISRA Triggers.

**F. Instead Of Complying With ISRA, DuPont Attempts To Mislead DEP Into Believing That The Stock Transfer Did Not Trigger ISRA.**

52. Sheryl A. Telford was the Director of DuPont's Remediation Group and a former official involved with DEP site remediation policy. After meeting with DEP she wrote DEP a letter on January 30, 2015 to try and convince DEP that even though DuPont was going to transfer a 100% controlling interest of Chemours stock to DuPont shareholders the stock transfer should be exempt from ISRA as a "corporate reorganization not substantially affecting ownership" of Chambers Works. This exemption provides that, even if a stock transfer is greater than a 50% controlling interest it can, in limited circumstances, still be considered exempt from ISRA, but only if (1) the transferor and



transferee are commonly owned entities and (2) the net worth of the transferee is about the same as the net worth of the transferor; that is, not more than 10% less than the net worth of the transferor. This ISRA exemption applies to the transfer of assets or stock but does not apply to the transfer of real estate.

53. Ms. Telford's January 30, 2015 letter was deceptive. She did not tell DEP that DuPont had just transferred the real estate to Chemours FC a week earlier on January 23, 2015 because the exemption did not apply to a real estate transfer and she did not want to alert DEP that the First ISRA Trigger had just happened.

54. With regard to the Second ISRA Trigger (stock transfer), Ms. Telford did not tell DEP (1) that DuPont's shareholders were independent of DuPont and therefore not under common ownership and (2) she did not tell DEP that the net worth of Chemours was 87% less than the net worth of DuPont – significantly greater than the 10% threshold allowed by the exemption. In other words, the ISRA exemption for a corporate reorganization not substantially affecting ownership did not apply to the Second ISRA Trigger. To the contrary, DuPont's transfer of 100% of the Performance Chemical Businesses to Chemours was by definition a corporate reorganization that did substantially affect ownership.

55. Ms. Telford also did not tell DEP that the net worth of Chemours might be even less than 87% that of DuPont's net worth because she did not tell DEP that the cleanup of Chambers Works is over \$1 Billion. She also did not tell DEP that Chemours had entered into a Separation Agreement with DuPont agreeing to indemnify DuPont from much of its worldwide environmental responsibility, including ISRA and thousands of

PFOA lawsuits pending in Ohio and West Virginia that may result in huge judgments against Chemours – expenses that would further dilute the net worth of Chemours.

56. As a DuPont manager responsible for ensuring environmental compliance and a former DEP official, Telford knew DuPont's actions triggered ISRA and her actions to misdirect DEP violated ISRA.
57. DEP did not respond to Ms. Telford's letter with regard to ISRA applicability at Chambers Works. DuPont nevertheless proceeded with its transfers without submitting a GIN to DEP or Carneys Point and without remediating the Site or posting the RFS in violation of ISRA.
58. DuPont's scheme to separate itself from its Performance Chemicals Businesses including Chambers Works was designed to saddle the cost of cleaning up the Site on the state of New Jersey and residents of Carneys Point in order for DuPont to save expenses and reap profits.
59. DuPont avoided ISRA compliance at Chambers Works by not cleaning up the Site or posting the RFS in excess of \$1B, which failure has jeopardized the health, safety, welfare and economic vitality of Carneys Point and its surrounding areas.
60. ISRA was designed specifically to deny DuPont the opportunity to off load its contaminated New Jersey sites to an undercapitalized company without first remediating the site or posting an RFS but that is just what DuPont did. DuPont's conduct violates ISRA and is unacceptable. Carneys Point brings this ERA action to compel DuPont to comply with ISRA and pay penalties for noncompliance, including the disgorgement of economic gain.

**CAUSES OF ACTION**

**COUNT ONE**

**DuPont's Violations of ISRA and its Regulations  
First ISRA Trigger – Transfer of Chambers Works Real Estate**

61. Carneys Point incorporates by reference each and every allegation in the preceding paragraphs as if fully set forth herein.
62. On or about December 18, 2014 DuPont's holding company filed a Registration Statement with the SEC seeking approval to separate the real estate, assets, stock and liabilities of DuPont's Performance Chemicals Businesses including Chambers Works from DuPont's other business segments into Chemours and its subsidiaries, a separate publicly traded company that DuPont would not own, operate or otherwise control.
63. Having indicated its intention to transfer the real estate of Chambers Works in the SEC Registration Statement dated December 18, 2014, DuPont failed to submit a GIN to DEP within 5 days thereafter or by December 23, 2014 as required by ISRA and N.J.A.C. 7:26B-3.2 ("Violation No. 1"). The base regulatory penalty is \$15,000 per day.
64. In addition, DuPont failed to send a copy of the GIN to Carneys Point within 5 days of December 18, 2014 or by December 23, 2014 as required by ISRA and N.J.A.C. 7:26B-3.2 ("Violation No. 2"). The base regulatory penalty is \$15,000 per day.
65. On January 23, 2015, DuPont transferred the Chambers Works real estate by deed to its subsidiary Chemours FC, which was recorded on January 30, 2015 without remediating the Site as required by ISRA and N.J.A.C. 7:26B-3.3(a) ("Violation No. 3"). The base regulatory penalty is \$20,000 per day.
66. In lieu of remediation, DuPont failed to submit a Remediation Certification Form to DEP prior to transferring the real property, which certified DuPont's intention to remediate the

- Site after transferring the real estate as required by ISRA and N.J.A.C. 7:26B-1.10(b) (“Violation No. 4”). The base regulatory penalty is \$15,000 per day.
67. In lieu of remediation, DuPont failed to submit a Remediation Cost Review Form that properly calculated the amount of the RFS using RACER® or other approved method prior to transferring the real property as required by ISRA and N.J.A.C. 7:26C-5.10 (“Violation No. 5”). The base regulatory penalty is \$10,000 per day.
68. In lieu of remediation, DuPont failed to establish and maintain an RFS in a Remediation Trust Fund in the amount of \$1,126B calculated by RACER® prior to transferring the real estate as required by ISRA and N.J.A.C. 7:26B-3.4 (“Violation No. 6”). The base regulatory penalty is \$15,000 per day.
69. DuPont is liable for base regulatory penalties for each day DuPont has been and continues to be in violation of the Violations set forth in Count One until compliance is achieved. See Table 1 attached.
70. DuPont is liable for the disgorgement of the economic gain of \$63M presuming compliance is achieved by January 2017 or more if compliance is not achieved by then as a result of the Violations set forth in Count One until compliance is achieved.

## **COUNT TWO**

### **DuPont’s Violations of ISRA and its Regulations Second ISRA Trigger – Transfer of Chemours Stock to DuPont Shareholders**

71. Carneys Point incorporates by reference each and every allegation in the preceding paragraphs as if fully set forth herein.
72. On or about December 18, 2014, DuPont’s holding company filed a Registration Statement with the SEC seeking approval to separate the real estate, assets, stock and liabilities of DuPont’s Performance Chemicals Segments including Chambers Works from DuPont’s

other business segments into Chemours and its subsidiaries. The Registration Statement announced DuPont's intentions to transfer the stock of Chemours to DuPont stockholders.

73. Prior to July 1, 2015 DuPont was the owner of 100% of the outstanding shares of common stock of Chemours.
74. On July 1, 2015, DuPont transferred 100% of the stock in Chemours to DuPont shareholders.
75. That transfer of stock resulted in a change in the person holding the controlling interest in Chemours, the indirect owner of Chambers Works, from DuPont to DuPont shareholders, which transfer triggered ISRA and which transfer was not exempt from ISRA.
76. Having indicated its intention to transfer the Chemours stock to DuPont stockholders in the SEC Registration Statement dated December 18, 2014, DuPont failed to submit a GIN to DEP within 5 days thereafter or by December 23, 2014 as required by ISRA and N.J.A.C. 7:26B-3.2 ("Violation No. 7"). The base regulatory penalty is \$15,000 per day.
77. In addition, DuPont failed to send a copy of the GIN to Carneys Point within 5 days of December 18, 2014 or by December 23, 2014 as required by ISRA and N.J.A.C. 7:26B-3.2 ("Violation No. 8"). The base regulatory penalty is \$15,000 per day.
78. On July 1, 2015, DuPont transferred 100% of the Chemours stock to DuPont stockholders without remediating the Site as required by ISRA and N.J.A.C. 7:26B-3.3(a) ("Violation No. 9"). The base regulatory penalty is \$20,000 per day.
79. In lieu of remediation, DuPont failed to submit a Remediation Certification Form to DEP prior to transferred 100% of the Chemours stock to DuPont stockholders, which certified DuPont's intention to remediate the Site after transferring the stock as required by ISRA and N.J.A.C. 7:26B-1.10(b) ("Violation No. 10"). The base regulatory penalty is \$15,000 per day.

80. In lieu of remediation, DuPont failed to submit a Remediation Cost Review Form that properly calculated the amount of the RFS using RACER® or other approved method prior to transferring 100% of the Chemours stock to DuPont stockholders as required by ISRA and N.J.A.C. 7:26C-5.10 (“Violation No. 11”). The base regulatory penalty is \$10,000 per day.
81. In lieu of remediation, DuPont failed to establish and maintain an RFS in a Remediation Trust Fund or other approved vehicle in the amount of \$1.126B calculated by RACER® prior to transferring 100% of the Chemours stock to DuPont stockholders as required by ISRA and N.J.A.C. 7:26B-3.4 (“Violation No. 12”). The base regulatory penalty is \$15,000 per day.
82. DuPont is liable for base regulatory penalties for each day DuPont has been and continues to be in violation of the Violations set forth in Count Two until compliance is achieved. See Table 1 attached.
83. DuPont is liable for the disgorgement of the economic gain of \$63M presuming compliance is achieved by January 2017 or more if compliance is not achieved by then as a result of the Violations set forth in Count Two until compliance is achieved.

### **COUNT THREE**

#### **DuPont’s Violations of ISRA and its Regulations Third ISRA Trigger – Merger with Dow**

84. Carneys Point incorporates by reference each and every allegation in the preceding paragraphs as if fully set forth herein.
85. On or about December 11, 2015, Dow and DuPont executed a Merger Agreement to approve the transfer of Dow and DuPont stock that would result in the merger of Dow and DuPont into DowDuPont and the extinguishment of the two individual corporations.

86. DuPont's execution of the Merger Agreement with Dow triggered ISRA notice requirements at DuPont's Tenant Space at Chambers Works.
87. DuPont failed to submit a GIN to DEP within 5 days of December 11, 2015 or by December 16, 2015 as required by ISRA and N.J.A.C. 7:26B-3.2 ("Violation No. 13").
88. DuPont failed to send a copy of the GIN to Carneys Point within 5 days of December 11, 2015 or by December 16, 2015 as required by ISRA and N.J.A.C. 7:26B-3.2 ("Violation No. 14").
89. DuPont is liable for base regulatory penalties for each day DuPont has been and continues to be in violation of the Violations set forth in Count Three until compliance is achieved. See Table 1 (attached). (\$130,890,000 accumulated daily penalties for Violations 1-14 from inception through 12/31/2016).
90. DuPont is liable for the disgorgement of the economic gain of \$63M presuming compliance is achieved by January 2017 or more if compliance is not achieved by then as result of the Violations set forth in Count Three until compliance is achieved.

#### **COUNT FOUR**

##### **Telford's Penalties for Assisting DuPont Violate ISRA**

91. Carneys Point incorporates by reference each and every allegation in the preceding paragraphs as if fully set forth herein.
92. Telford failed to tell DEP in her letter dated January 30, 2015 that DuPont had already triggered ISRA by transferring the Chambers Works real estate to Chemours FC on January 23, 2015, which deed was recorded on January 30, 2015 – the date of her letter ("First ISRA Trigger").
93. By letter dated January 30, 2015 Telford misinformed DEP about the applicability of the ISRA corporate reorganization exemption to the stock transfer by (i) failing to tell DEP that

DuPont and the DuPont stockholders were not under common ownership, (ii) failing to tell DEP that the net worth of Chemours was 87% less than the net worth of DuPont thereby failing the 10% test for the exemption; (iii) failing to tell DEP that the cost of cleanup at Chambers Works was over \$1 Billion thereby further impacting the net worth of Chemours; and (iv) failing to tell DEP that Chemours assumed the obligation to indemnify DuPont for thousands of PFOA lawsuits in Ohio and West Virginia, which would further erode the net worth of Chemours.

94. Telford is a former DEP official and she continued to work with DEP on stakeholder groups after joining DuPont including the stakeholder group dealing with the development of the Site Remediation Reform Act, which impacts how cleanups would be done under ISRA and other statutory programs.
95. Telford knew it was practically certain she could make the ISRA exemption argument appear plausible if she omitted the above facts.
96. Telford informed DuPont that DEP did not respond to her letter and that DuPont could proceed with the real estate transfer ("First ISRA Trigger") and stock transfer ("Second ISRA Trigger").
97. Telford is personally liable for penalties for DuPont's failure to submit a GIN to DEP by December 23, 2014 as required by ISRA and N.J.A.C. 7:26B-3.2 for the First ISRA Trigger ("Violation No. 15") and the Second ISRA Trigger ("Violation No. 16"). The base regulatory penalty for each violation is \$15,000 per day.
98. Telford is personally liable for penalties for DuPont's failure to submit a GIN to Carneys Point by December 23, 2014 as required by ISRA and N.J.A.C. 7:26B-3.2 for the First ISRA



Trigger (“Violation No. 17”) and the Second ISRA Trigger (“Violation No. 18”). The base regulatory penalty for each violation is \$15,000 per day.

99. Telford is personally liable for penalties for DuPont’s failure to remediate the Site as required by ISRA and N.J.A.C. 7:26B-3.3(a) for the First ISRA Trigger (“Violation No. 19”) and the Second ISRA Trigger (“Violation No. 20”). The base regulatory penalty is \$20,000 per day.

100. Telford is personally liable for penalties for DuPont’s failure to submit a Remediation Certification Form to DEP as required by ISRA and N.J.A.C. 7:26B-1.10(b) for the First ISRA Trigger (“Violation No. 21”) and the Second ISRA Trigger (“Violation No. 22”). The base regulatory penalty for each violation is \$15,000 per day.

101. Telford is personally liable for penalties for DuPont’s failure to submit a Remediation Cost Review Form as required by ISRA and N.J.A.C. 7:26C-5.10 for the First ISRA Trigger (“Violation No. 23”) and the Second ISRA Trigger (“Violation No. 24”). The base regulatory penalty for each violation is \$10,000 per day.

102. Telford is personally liable for penalties for DuPont’s failure to establish and maintain an RFS in a Remediation Trust Fund in the amount of \$1.126B calculated by RACER® for the First ISRA Trigger (“Violation No. 25”) and the Second ISRA Trigger (“Violation No. 26”). The base regulatory penalty for each violation is \$15,000 per day.

103. Telford is liable for base regulatory penalties for each day DuPont has been and continues to be in violation of the Violations set forth in Counts One and Two until compliance is achieved. See Table 2 (attached). (\$129,990,000 accumulated daily penalties for Violations 15-26 from inception through 12/31/2016).

**REQUEST FOR RELIEF**

WHEREFORE, for all of the foregoing reasons, Carneys Point respectfully requests that the Court issue an Order to Show Cause compelling Defendants to appear in Court and explain why the Court should not issue judgment as follows:

- A. That DuPont triggered ISRA by transferring the Chambers Works real property to Chemours FC;
- B. That DuPont triggered ISRA by transferring all of the stock of Chemours to DuPont stockholders;
- C. That DuPont triggered ISRA by executing a Merger Agreement with Dow;
- D. Compelling DuPont to submit required ISRA documents to DEP and Carneys Point;
- E. Setting a short hearing date pursuant to New Jersey Court Rule 4:67-1(a) to confirm (i) that the amount of the remediation funding source ("RFS") DuPont must post to comply with ISRA is \$1.126B as set forth in the Verified Complaint, (ii) that Telford knowingly directed or authorized DuPont to violate ISRA; (iii) that the amount of daily penalties to be assessed against DuPont and Telford are as set forth in Table 1 and Table 2 attached and that (iv) the amount of the economic gain to be disgorged by DuPont for violating ISRA is \$63M as set forth in the Verified Complaint;
- F. Compelling DuPont to post the RFS as a Remediation Trust Fund as required by law, compelling DuPont and Telford to pay the daily penalties until the date ISRA compliance is achieved and to pay the economic gain into court as required by the ERA;
- G. Compelling the Defendants to pay Carneys Point its attorney's fees, expert fees and expenses as permitted by the ERA; and

H. Such other relief as the court deems just and proper.

Respectfully submitted,

**MEYNER AND LANDIS LLP**

Dated: December 10, 2016

By:  

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*Attorneys for Plaintiff  
Carneys Point Township*

**CERTIFICATION PURSUANT TO R. 4:5-1**

I hereby certify, pursuant to R. 4:5-1, that the matter in controversy is not, to my knowledge, the subject of any action pending in any Court, nor of any Arbitration proceeding, that no other action or Arbitration proceeding is contemplated at this time and that I know of no other party who should be joined in this action.

**MEYNER AND LANDIS LLP**

*Attorneys for Plaintiff*

By: 

\_\_\_\_\_  
Albert I. Telsey, Esq.

**Dated:** December 10, 2016

