

THE UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF LOUISIANA

UNITED STATES OF AMERICA,	*	CIVIL ACTION NO. 12-219
ET. AL, JEFFREY M. SIMONEAUX,	*	
Relator	*	SECTION BAJ-SCR
	*	
VERSUS	*	JUDGE JACKSON
	*	
E.I. du PONT de NEMOURS AND	*	MAGISTRATE JUDGE RIEDLINGER
COMPANY	*	
	*	JURY DEMAND

\*\*\*\*\*

**FIRST AMENDED**  
**COMPLAINT FOR DAMAGES**  
**UNDER FEDERAL FALSE CLAIMS ACT**

Relator, Jeffrey M. Simoneaux, hereby amends the Complaint for Damages herein as follows:

I.

Relator amends paragraph 10 of the original complaint to read as follows:

10.

Relator worked for the Defendant at its Burnside Plant in excess of twenty (22) years. As of August 13, 2012, Relator terminated his employment with the Defendant, having secured alternative (albeit at a lower rate of compensation).

II.

Relator, Jeffrey M. Simoneaux, hereby amends the Complaint for Damages herein to add the following paragraphs:

37.1

Leaks have been ongoing since December 2011, at times worse than others. The

larger the SO<sub>3</sub> gas leak is, the more visible it is. Leaks have been coming from the Hot Interpass Exchanger (HIP), the Cold Interpass Exchanger (CIP), the converter, the converter boiler, the superheater, and apparently other areas.

37.2

When fugitive SO<sub>3</sub> gas leaves a pipe or vessel, it reacts with humidity in the air and produces an acid mist.

37.3

During a government-approved training session out of state on a specially designed testing location, Relator was present when DuPont spilled liquid SO<sub>3</sub> and determined that gas from a half gallon spill of liquid SO<sub>3</sub> travels eight (8) miles.

37.3

On May 1, 2012, DuPont prepared a lengthy “note to file” alleging wrongful conduct on the part of Relator with regard to his reporting of the leaks, including suggesting that he was “creating gossip and spreading innuendo” and stating, “It is expected that when involved in or when learning of incident investigations you will discuss the issues only with persons who have a need to know . . .” The note to file ends by stating that “if Jeff’s performance does not improve further disciplinary action up to and including separation may be necessary.” Relator contends that this note to file was a retaliatory response by DuPont to Relator’s voicing of concerns over the gas leaks at the DuPont Burnside plant.

37.4

Relator observed the CIP exchanger leaking over the weekend of May 12-13, 2012.

37.5

On Monday, May 14, 2012, while doing a Homeland Security check of the plant for leaks and unusual conditions, Relator observed the CIP Exchanger leaking; two of his co-workers, Ryan Becnel and Drew Tabor, confirmed the leak. Also, Relator's coworker, Ron Townley, was loading tank cars at the time and had to stop loading the cars because the leak was so bad it could be seen passing over the tankcar rack where Townley was working. Relator called his supervisor, Elizabeth Cromwell, who stated that if the employees did not think the leak was "going off-site" that they did not have to do anything but write a "first report" and advise DuPont's resident contractor, KBR, to adjust the vacuum hoses in the morning. Relator advised that the leak this day was not as large as on previous days, and that he could not tell whether the gas was "going off-site."

37.6

On Saturday, May 19, 2012, Relator smelled the leaking gas. On Sunday, May 20, 2012 Relator observed the gas leak blowing directly at the control room where operators at DuPont are required to work, this prevented safe entry and exit from the control room. Relator and other workers addressed the situation with the DuPont supervisors, including the Maintenance Supervisor, but the supervisors denied that the leak was happening--even when shown the leak on Camera #13.

37.7

As of May 24, 2012, visible gas leaks could be seen coming out of the CIP or HIP Exchangers.

37.8

DuPont Burnside management has from time to time since May 2012 indicated to

employees that they would shut the plant down for one week “cold shut down” to repair the source of the leaks, but they have failed to do so. One such indication came around May 24, 2012 when management indicated that there would be a shutdown on June 4, 2012 to repair the leaks. Leading up to that date, DuPont management increased the rates at which the plant was running – running the plant faster – in anticipation of losing productivity during the shutdown. The intentional increase in rates increased the gas leaks.

37.9

The crew which arrived on Saturday May, 26, 2012, reported that the leak was too serious for them to do anything about it. Relator was called in to work from home and witnessed the leak himself. Relator called the supervisor, Elizabeth Cromwell, who never returned his call. Relator completed another “first report” document as per the new instructions given by the plant manager, Tom Miller.

37.10

One of Relator’s co-workers, Leo Scot, was exposed to SO<sub>3</sub> gas while working in the water plant during his normal shift patrol and had to seek medical treatment for severe eye and throat irritation.

37.11

Relator and his coworkers, including Leo Scot, learned on Sunday, May 27, 2012, that a passer-by, who was driving down the River Road near the Burnside plant, called the local police department to complain about having driven through a gas cloud of some sort that afternoon. A fire truck and EMT arrived at the plant. Relator and his coworkers learned that DuPont Burnside employee, Rene Becnel, met the fire truck at the gate and

convinced them that there were no leaks – apparently signing a document to that effect. Rene Becnel then reported to the maintenance supervisor, Gene Clemmons, what he had done, and the maintenance supervisor asked if any media had come with the first responders. Becnel responded in the negative, and Supervisor Clemmons indicated that was a good thing and that they would try to work on the vacuum hoses some more tomorrow or words to that effect.

37.12

Early on May 29, 2012, the DuPont Burnside Plant Manager angrily addressed Relator asking why Relator was writing up these first reports and whether this was for the same leak, to which Relator responded yes, presumably. Relator pointed out that the plant was running near the highest point it had run all year and that the plant should be slowed or shut down and the leaks repaired, but that it was not in Relator's power to make that happen.

37.13

A couple of hours later on Tuesday, May 29, 2012, the DuPont Plant Manager, Tom Miller, called a meeting of employees at which he verbally expressed dissatisfaction about the various authorities having been notified. He also expressly discouraged employees, including Relator (who was present at the meeting), from contacting outside authorities, such as environmental agencies, about the leaks.

37.14

On June 10, 2012, a huge fugitive gas leak was seen by operators coming out of the CIP Exchanger.

37.15

As of June 26, 2012, a small but steady fugitive leak was coming from the converter.

37.16

There was a larger than usual leak on July 4, 2012, which appeared to be coming from the CIP Exchanger and another location. Percy Bell, the most senior operator on the plant, advised workers to cut the plant back drastically and if the leak did not stop, to shut the plant down.

37.17

The gas leaks were also particularly bad during the weekend of July 28-29, 2012. Kent Templet recorded those leaks in the operators' "red book" without making a "first report." Mr. Templet apparently did not get written up for using that procedure; however Relator was previously written up for not preparing a "first report," at a time when Relator was not even working in the role that would have made it his duty to prepare the first report.

37.18

As of August 8, 2012, DuPont was running the plant at further increased rates – to 2100 tons per day. Workers at the plant were being hit and burned with drops of acid because the FAT Tower demisters were not handling the increased rates.

37.19

During a one day shutdown – taken for the stated reasons of working on the River Water Pumps – DuPont Burnside repaired leaks in the sulfur boiler and in the Converter 1<sup>st</sup> pass but only enhanced (again) the "box" system around the CIP Exchanger leak,

which was being used to try to suck up the leaking SO<sub>3</sub> gas.

37.20

DuPont has intentionally operated with leaks, thus posing substantial risk of injury to health and the environment.

37.21

DuPont failed to properly and timely report the leaks to governmental authorities.

37.22

DuPont failed to calculate the amount of poisonous gas it has been leaking from its facility since December 2011.

37.23

DuPont failed to monitor the gas leaks to assess the danger they are posing to employees and the public.

37.24

DuPont destroyed evidence relevant to the gas leaks and the extent thereof, including vacuum hoses and other equipment that it has used to try to “suck up” the gas, rather than shut the plant down long enough to repair the leaking equipment.

37.25

Relator and his coworker, Leo Scot, have personally observed the SO<sub>3</sub> gas crossing the “north” fence line.

37.26

DuPont refused to properly repair the leaks and instead has made ineffective, patchwork attempts to capture leaking gas rather than repair the causes of the leaks. DuPont has used the vacuum hose system to run the plant on a permanent basis. The

plant is not designed to run that way. The properties of a fugitive leak of a corrosive chemical, like sulfuric acid mist, SO<sub>2</sub> and SO<sub>3</sub> guarantees that leaks will not get better and instead will continuously get worse. Indeed, there is no expectation on the part of DuPont that the leak will get better. The hoses fail more quickly when it rains, and that is known and expected by DuPont. The rainwater reacts with the gas to quickly form weak sulfuric acid which eats away at the metal pipe or vessel where the fugitive gas is escaping, making the leak worse. The leaks should have been repaired properly even if that required shutting the plant down for enough time to properly repair the leak.

37.27

During one repair attempt, DuPont intentionally ran the “blower” at full-blast without having it connected to the make-shift vacuum hose collection system in an attempt to identify the source of the fugitive leak. Even more SO<sub>3</sub> gas was intentionally released during that process. A large crack was found on the side of the CIP exchanger crack was approximately 5/8 inches wide by about 14 inches long. The vessel had been under pressure at the time and released an enormous SO<sub>3</sub> gas cloud into the environment as witnessed by long time employee of DuPont, Burnside, Mr. Percy Bell.

37.28

Camera #13 at the DuPont Burnside facility is in the vicinity of the source of the leaks and could be directed at the leaks at all times if DuPont Burnside management so desired. Camera #13 has captured the leaks from time to time since December 2011, but DuPont apparently records over the images on the camera and does not therefore preserve the evidence of the leaks. Also, DuPont installed lights some time around April 2012, which makes it harder to see the leaks on Camera #13.

37.29

Relator's co-workers have expressed to him that they are afraid to document leaks for fear of reprisal and reprimand by DuPont management.

\* \* \*

49.1

To the extent that DuPont's harassment of and retaliation against Relator was based upon Relator's speaking out about the gas leaks at the DuPont Burnside facility, Relator is entitled to recover herein all damages due to such harassment and retaliation. This includes the difference in compensation which Relator receives at his current job.

\* \* \*

54.

The Relator respectfully demands a trial by jury on all issues triable by jury.

**WHEREFORE**, Plaintiff, United States of America, ex rel., Jeffrey M. Simoneaux, requests judgment as prayed for in the original complaint herein.

**RESPECTFULLY SUBMITTED:**

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