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U.S. DIST. COURT
MIDDLE DIST. OF LOUISIANA

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THE UNITED STATES DISTRICT COURT

MIDDLE DISTRICT OF LOUISIANA

UNITED STATES OF AMERICA,
ET. AL, JEFFREY M. SIMONEAUX,
Relator

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CIVIL ACTION NO.

SECTION 12-219

VERSUS

E.I. du PONT de NEMOURS AND
COMPANY

JUDGE _____

MAGISTRATE JUDGE _____

COMPLAINT FOR DAMAGES UNDER FEDERAL FALSE CLAIMS ACT

Introduction

1.

This is an action under the Federal False Claims Act, 31 U.S.C. 3729-3733, which is brought on behalf of the United States of America by Relator, Jeffrey M. Simoneaux. Relator alleges that E.I. du Pont de Nemours and Company ("DuPont") has violated 15 U.S.C. § 2601 et. seq. beginning in December, 2011 and continuing until the present, and has failed to pay mandatory fines for said violations. Relator seeks, on behalf of the United States, the imposition of a civil fine of \$25,000.00 per violation per day, recovery of three times the amount of damages sustained by the United States, and an award of attorney's fees.

Jurisdiction and Venue

2.

This action is specifically authorized by 31 U.S.C. 3730(b). This Court has jurisdiction of this matter pursuant to 31 U.S.C. § 3732 and 28 U.S.C. § 1331.

3.

DuPont's principal office is located in the City of Burnside, Louisiana, within the Middle District of Louisiana. DuPont transacts business within the Middle District, and upon information and belief all of the violations at issue in this proceeding occurred within the Middle District. Venue is therefore appropriate in the Middle District of Louisiana pursuant to 28 U.S.C. 1391(b) and 31 U.S.C. 3732.

The Parties

4.

Relator, Jeffrey M. Simoneaux, is a citizen of the United States, and a resident of Ascension Parish, Louisiana.

5.

Defendant, DuPont, is a corporation organized under the laws of the State of Delaware and is authorized to do and doing business in the State of Louisiana.

6.

Relator brings this action on behalf of the United States pursuant to 31 U.S.C. 3730(b)(1).

Factual Background

7.

At its Burnside, LA plant, Dupont manufactures liquid sulfur trioxide (SO₃), sulfuric acid, and Oleum or fuming sulfuric acid. Sulfur trioxide (SO₃) gas is used in the production of these products.

8.

Sulfur trioxide (SO₃) gas a poisonous gas known to cause cancer in humans and is a listed substance under the Toxic Substance Control Act. (See, *e.g.*, MSDS, attached as Exhibit A)

9.

An elementary school, Sorrento Primary School, is located on Highway 22 about one mile "as the crow flies" from the Burnside plant. Residential neighborhoods are in even closer proximity to the plant.

10.

Relator has worked for Dupont at its Burnside Plant in excess of twenty (22) years, and is currently employed there as an Operator in the Safety and Protect Department.

11.

Relator has received numerous safety awards from Dupont; he also acted as the chairman of the Safety, Health and Environmental Committee for 14 years.

12.

a) Relator has received training from DuPont regarding the applicability and requirements of the Toxic Substances Control Act. 15 U.S.C. § 2601, et seq. (A copy of DuPont's TSCA training materials is attached as Exhibit B.)

b) 15 U.S.C. § 2607 provides in part:

(e) **Notice to Administrator of substantial risks** Any person who manufactures, processes, or distributes in commerce as chemical substance or mixture and who obtains information which reasonably supports the conclusion that such substance or mixture presents a substantial risk of injury to health or the environment shall immediately inform the Administrator of such information unless such person has actual knowledge that the Administrator has been adequately informed of such information.

c) DuPont has created internal procedures for reporting substantial risks which require that individual employees and officers make *internal* reports to DuPont of potentially substantial risks required to be reported to the Environmental Protection Agency under § 2607 and placing the responsibility for such reporting on DuPont. (See, *e.g.*, Exhibit B)

d) 15 U.S.C. § 2614 (entitled Prohibited acts) provides:

It shall be unlawful for any person to –

(1) fail or refuse to comply with (A) any rule promulgated or order issued under section 2603 of this title, (B) any requirement prescribed by section 2604 or 2605 of this title, (C) any rule promulgated or order issued under section 2604 or 2605 of this title, or (D) any requirement of subchapter II of this chapter or any rule promulgated or order issued under subchapter II of this chapter;

(2) use for commercial purposes a chemical substance or mixture which such person knew or had reason to know was manufactured, processed, or distributed in commerce in violation of section 2604 or 2605 of this title, a rule or order under section 2604 or 2605 of this title, or an order issued in action brought under section 2604 or 2606 of this title;

(3) fail or refuse to (A) establish or maintain records, (B) **submit reports, notices, or other information**, or (C) permit access to or copying of records, as required by this chapter or a rule thereunder; or (4) fail or refuse to permit entry or inspection as required by section 2610 of this title.

e) 15 U.S.C. § 2615 (entitled Penalties) provides in part:

(a) Civil (1) Any person who violates a provision of section 2614 or 2689 of this title shall be liable to the United States for a civil penalty in an amount not to exceed \$25,000 for each such violation. Each day such a violation continues shall, for purposes of this subsection, constitute a separate violation of section 2614 or 2689 of this title.

14.

As part of his job responsibilities, Relator from time to time is the “on duty outside operator” at the plant. At times Relator fills the job at night. The job involves patrolling the plant at night, looking for leaks, and also filling out homeland security status reports. If any leaks are found, the operator is to report them to the DuPont supervisor, Elizabeth Cromwell.

15.

Upon information and belief, one or more leaks of SO₃ gas from the CIP exchanger vessel began no later than December 21, 2011 and have continued, in varying degrees, every day through the date of this filing.

16.

DuPont’s contractor placed a box and hose system over the leaking areas in an attempt to reduce the amount of gas escaping from the leaking areas of the CIP. (Attached as Exhibit D is a copy of the DuPont operator’s log report for Wednesday, February 1st, 2012.) The log report reflects that a contractor worked on the gas leak on that date and when the contractor left, the leak was still ongoing. On February 1, 2012, Relator was working in the position of outside operator and sent an email to his supervisor, Elizabeth Cromwell (a copy of which is attached hereto as Exhibit C) which stated:

When we came on work Mark, Lonnie Robert, ETC. were all working on mitigation of pretty nice size SO₃ gas leak on top the CIP exchanger. Seems they could not get enough vacuum out of the vacuum hoses to suck it all up. While moving cars in the back Randall noticed the pronounced size of the release set against the dark night sky. We tried to increase the amount of vacuum from the system to the hoses and actually got it up an additional 10 inches to 20 inches. This is still not enough to get rid of the leaking gas. I am writing you to address our current situation with you. Let me know what you want us to do. Also, the stack Opacity at night in my estimation is still above our visible emissions limit of 10% Opacity. While I understand stack opacity is best measured during the solar

day between 10 am-2:00pm I do not think this absolves us from regulations.

17.

Relator's supervisor called within the hour of the February 1, 2012 email and asked what could be done about the leak. Relator explained that they either needed to shut down the plant or "cut the rates" and therefore reduce the amount of the leaking gas. The supervisor said to try not to shut down the plant but to slowly cut back the rates of the plant.

18.

Cutting back the rates means slowing the production rate of the plant (including slowing down the main blower which is the primary component contributing to the amount of pressure being created in various vessels throughout the plant). By slowing down this blower the pressure on such vessels as the converter and the CIP heat exchanger is lowered, thereby lowering the pressure on the leak sites as well. This could dramatically lower the amount of released gas.

To eliminate the gas leak required shutting down the plant so that the leaks sites could be welded. To allow all of the leaks to be identified while the plant is shut down, the vessels can be pressurized and pumped with colored gases to see where the gas is escaping from. This requires that the plant be shut down for about a week.

19.

Relator was in the process of trying to slowly cut back the rates of the plant when the plant manager, Tom Miller, arrived at the plant furious, overrode the decision to cut back the rates at the plant, and expressed that he wanted to speak to Relator without anyone else present. Relator advised the plant manager that he would like to have another operator present during the discussion, but the plant manager would not allow that.

20.

The plant manager, Tom Miller, directed Relator to “the stores” area of the plant and asked Relator what he thought he was doing by writing that email (regarding the leak) and said that Relator was going to get into a lot of trouble. The plant manager said that Relator had the “right to report” but that he did not have to put it in writing. Relator told the plant manager that his supervisor, Elizabeth Cromwell, often did not return his calls. The plant manager told Relator not to send any more written communications about leaks or stack opacity.

21.

Relator advised the plant manager that Relator was doing his job as outlined by TSCA (which he has a test on each year) and that if he had not reported the leak to his supervisor he could have been held criminally responsible for such a failure to report. The Plant Manager said if Relator wanted to play games, he would play and “we would see who lasted longer.” Relator told the Plant Manager that he was not playing games but only insuring that Relator was doing his job and covering himself in writing for heaving done his job given that in the past DuPont and its agents had not been honest about face to face conversations. The plant manager, Tom Miller, clearly advised Relator that if Relator sends an email to the plant manager and lets the plant manager know about an environmental offsite release, Relator will “get in trouble.”

22.

Relator advised the plant manager that he did not trust the plant manager or any other members of DuPont’s management team to do what was right in terms of these type events. Relator advised the Plant Manager that “we have gas going off this site right now.” The plant manager said that the gas was not going off the site and that “he was tired of this crap”. Relator asked the plant manager three times to go with Relator to ride to the back of the plant so that the

plant manager could see the gas flowing over the fence line. Relator asked the plant manager where he thought the gas was going, and the plant manager looked out the door and said, “who is the plant manager me or you? I am telling you I don’t see any gas going off the site.” Relator told the plant manager again that he would not see the gas from the location he was in (looking into the light coming off the process) and that if he wanted to see the leak going off site, he would have to ride with Relator to the back of the plant and look at it as Relator and his co-worker had already done. Two of Relator’s coworkers, Ryan Becnel and Drew Tabor, heard the plant manager, Tom Miller, state that he would not go see the gas leak. Coworker, Ron Townsley, inquired whether it was safe to load rail cars in light of the leak, because the gas could be seen going over the loading rack – which is about 100 feet from the site fence line.

23.

No internal DuPont incident report was prepared reflecting Relator’s email notification of the gas leaks and his meeting with the plant manager on February 1, 2012.

24.

After Relator’s email notification and for the first time since the SO₃ gas leaks began in December 2011, DuPont shut down the plant long enough to attempt to repair the leaks, but all of the leaks were not located and the repair efforts were not successful. When the plant started back up, SO₃ gas was still leaking from the CIP exchanger vessel.

25.

Attached as Exhibit E is a CD, containing a video recording captured by Camera # 13 at the DuPont Burnside plant on February 19, 2012 which shows the SO₃ gas leaking from the CIP exchanger on that date. The black hoses shown on the video were installed by DuPont’s contractor in an attempt to “suck the leak up and back into the process system” which Relator

believes does not adequately or permanently address the leak(s). The hose is prone to catching on fire, melting or filling up with liquid acid and collapsing. When the hoses melt, they risk catching the scaffolds on fire. Relator has already had to put out one such fire.

26.

On February 19, 2012, Rene Becnel, Relator's co-worker, logged the gas leaks in the DuPont "red book".

27.

On the evening of March 18, 2012, Relator was working as the outside operator and again observed the CIP exchanger leaking; he had his coworker, Leo Scott, observe the area as well; both observed the SO₃ gas to be going off-site. Relator called the DuPont control room and said he was going to report the leak; he verbally reported the leak to Elizabeth Cromwell, his supervisor. That evening at 21:00, Relator completed a "Safety Zone-Burnside Transfer Facility Security Plan" Report, which stated that SO₃ gas leaks were occurring.

28.

On March 18, 2012 at 8:19 p.m., Relator completed a shift log entry (a copy of which is attached as Exhibit G), which stated:

SO₃ leak found above CIP escaping from continuously leaking spots, not being gathered by suction hoses. Same leak site as previously notified three weeks ago, seems to be travelling offsite will take a closer look at fence line. Management (Elizabeth) notified, left message, no answer. Will try another method perhaps another supervisor. Since management previously advised not to email being it created a legal document. Got in touch with Kerry Long who advised to contact Mark to get some guys to come look at the leak as long as we had some doubt as to whether it was going off site. Elizabeth called back and we updated her. Will call back if we cannot stop leak.

29.

On March 19, 2012, Relator completed (in handwriting) a "Burnside Initial Incident

Report”, a copy of which is attached hereto as Exhibit H, describing an SO₃ gas leak he observed on March 18, 2012 while he was making his nightly security inspection per the Homeland Security requirements and reporting to DuPont supervisory and environmental management personnel, Elizabeth Cromwell and Kerry Long, that the SO₃ was crossing the fence line toward the neighboring facility, Ormet. At the time, Relator’s truck got stuck in the mud near the DuPont fence line. The plant manager suggested that Relator prepare a “first report” with regard to the truck getting stuck in the mud, and Relator’s supervisor and DuPont management have since indicated that Relator may be “written up” for getting his truck stuck in the mud.

30.

Relator’s incident report was apparently the first incident report prepared by anyone at Dupont with regard to the SO₃ gas leaking from the CIP exchanger (although the leaks had been occurring since December and contractors had attempted to repair the leaks in February.)

31.

On March 19, 2012, Relator’s supervisor, Elizabeth Cromwell, completed a Burnside Initial Incident Report (entered into the DuPont computer system) which was apparently to be based on the information provided her by Relator and referring to the March 18, 2012 8:30 pm. incident (a copy of which is attached as Exhibit I), but the information in Cromwell’s report leaves out the reported fact that the gas was going off site. The original report prepared by Relator could not be found on the DuPont computer system.

32.

Attached as Exhibit J is a copy an email dated March 27, 2012 from DuPont’s “Safety, Health and Environmental Consultant” with the subject “Burnside 1st Qtr 2012 Environmental Management System (EMS) Performance” which makes no mention of the SO₃ gas leak from

the CIP exchanger.

33.

On April 11, 2012 Relator again observed the CIP exchanger leaking SO₃ gas and observed the gas fumes going south this time and off of the plant site. Relator wrote this in the log and told the plant manager and the maintenance supervisor, Gene Clemens, what he observed. Gene Clemens commented that it seems the plant is always leaking when Relator comes on shift. Gene Clemens zoomed in with Camera #13, and the leak was significant. The plant manager expressed anger that the leak was written in the log book. The plant manager said he did not want someone “coming in here to do an environmental audit and coming across this stuff written in this log book, reading it and getting the wrong idea”.

34.

Relator is concerned that large quantities (perhaps tons) of SO₃ gas has been and are currently being released from the ongoing leak(s) in the CIP exchanger at the DuPont Burnside plant and present a substantial risk of injury to health and/or the environment.

35.

Upon information and belief SO₃ gas has been leaking from the CIP exchanger at the plant virtually every day (in varying degrees) since before December 21, 2011. Relator believes that Camera #13 would have recorded leaks from the CIP exchanger every day since the leaks began.

36.

Each time the issue of shutting down the plant to properly fix the leak comes up, DuPont management makes an excuse, such as needing to fill a few more SO₃ tank car orders or needing to wait until rain storms have passed, etc. The last communication Relator heard in regard to

fixing these leaks properly was that it was to be done during the next major shutdown in February 2013.

37.

Upon information and belief, DuPont has not properly complied with its legal responsibilities, including those under 15 U.S.C. § 2601, et seq., with respect to the SO₃ gas leak from the CIP exchanger. Upon information and belief, DuPont management is very reluctant to report offsite releases because it exposes DuPont to a \$25,000 fine per day and gives them a bad record.

In addition to the federal provisions cited herein, La. R.S. 40:1299.100 (entitled Submission of Emergency Plan And Reporting Of Toxic Substances; Penalties) provides in part:

A.(1) Each plant or industrial facility located within the state of Louisiana wherein any toxic substance is regularly manufactured, stored, or maintained in quantities capable of escaping the boundaries or perimeters of such plant or industrial facility in sufficient concentrations to cause death or serious bodily harm to persons outside said boundaries or perimeters shall prepare and submit an emergency plan for immediate notification of the proper public safety authority. **The emergency plan shall be put into effect whenever toxic substances escape beyond the boundaries or perimeters of each plant or industrial facility.**

* * *

(3) The term "toxic substance" is hereby defined to include those substances which are designated as toxic in rules and regulations adopted by the Department of Public Safety and Corrections with the concurrence of the Department of Environmental Quality.

* * *

C. Any person or corporate entity in violation of the provisions of this Section shall be fined not more than twenty five thousand dollars. Fines collected pursuant to this Section shall be distributed on a pro rata basis to the governing authority of the parish or parishes wherein the offending plant or industrial facility is located.

La. R.S. 40:1299.100 (emphasis supplied)

38.

Relator has suffered retaliatory action, harassment, threats and discrimination in the terms and conditions of his employment by DuPont because of lawful acts done by Relator in furtherance of other efforts to stop one or more violations of the subchapter referred to in 31 U.S.C. § 3730(h)(1).

39.

In addition to the harassment and threats set forth above, Relator was discriminated against in connection with a recent application for a different position in DuPont and verbally denied the position.

40.

In mid-March, 2012, Relator applied for a different job position referred to as “Logistics” or “Administrative Specialist”, an office position that had become available at DuPont due to an employee retirement. The job would result in a \$25,000 pay cut for Relator, but would allow him to avoid shift work, avoid being supervised by his current supervisory personnel, and limit the opportunity to for DuPont management to “write him up” for pretextual reasons since he would not be working with chemicals.

41.

After Relator applied for the position, he was advised by DuPont management that the position required an accounting or finance degree or appropriate experience. This was a new requirement for the available position. Relator has a business degree. The other two applicants for the position included a person with a culinary arts two-year degree and a person who was recently hired to load railcars who was still on probation due to her recent employment. According to existing company policy, the job should have gone to Relator.

42.

DuPont then decided, however, that the applicants would have to take a standardized secretarial test and a psychological evaluation test as part of their application for the position. In the 22 years that Relator had worked at DuPont, no existing employee had ever been tested in connection with a change of positions.

43.

The position required using Microsoft Excel software, and everyone at the DuPont Burnside Plant can attest to the fact that Relator is the most skilled employee at the plant with respect to that software. The office manager (who would be the supervisor for this position) had commended Relator twice in the last year for writing special programs in Excel which allowed her office staff to speed up their work.

44.

The material on the secretarial test had nothing to do with the Logistics job for which Relator was applying.

45.

Eventually, DuPont management increased the number of tests required for the Logistics position to five.

46.

Although Relator has extensive experience with Excel software, DuPont management required him to take a test on the most recent version of Excel which is not used (or otherwise available) at the DuPont Burnside plant. The person administering the test lead Relator to believe that this test was timed, so he skipped a few questions, however, the test was not timed.

47.

When Relator was going to take one of the tests, the plant manager, Tom Miller, was in the office when Relator arrived and stated “here he comes”. When Relator was leaving after taking the test, the plant manager was in the office again speaking to the examiner.

48.

On April 4, 2012, Relator was advised by DuPont personnel that he was not going to get the Logistics position; that same day, Relator placed a call to the DuPont Hot Line to report this mistreatment. (See Hot Line Case document as Exhibit K).

49.

Relator had previously filed a separate action for retaliation against DuPont for prior acts of harassment and discrimination following Relator having expressed concerns about racial discrimination at the plant. That action is pending on the docket of the United States District Court for the Middle District of Louisiana, entitled *Simoneaux v. E.I. Du Pont De Nemours and Company*, C. A. No. 3:11-CV-00506.

50.

The United States has been harmed and continues to be harmed by DuPont’s failure to comply with its responsibilities under 15 U.S.C. § 2601, et seq., including failing to report a “substantial risk to health or environment” (15 U.S.C. § 2607) and failing to pay mandatory penalties pursuant to 15 U.S.C. § 2615.

51.

The United States Government was also harmed by DuPont’s failure to comply with its responsibilities under 15 U.S.C. § 2601, et seq. because the United States government was deprived of the opportunity to inspect the SO₃ gas leak(s) in DuPont’s CIP exchanger over the

last four months in order to fully assess, monitor, order the repair of, and prevent further leaks.

52.

DuPont's actions, as described herein, violated and continue to violate 31 U.S.C. § 3729.

53.

By reason of the violation of 31 U.S.C. § 3729, DuPont has knowingly or recklessly damaged the United States government.

WHEREFORE, PREMISES CONSIDERED, Plaintiff, United States of America, ex rel., Jeffrey M. Simoneaux, request a judgment against E.I. du Pont de Nemours and Company as follows:

1. An award of money, in the amount of \$25,000.00 for each violation on each day in which DuPont violated of 15 U.S.C. § 2601, et seq., duly trebled;
2. The imposition of a civil penalty, payable to the United States Government, in an amount of not less than \$5,000.00 and not more than \$10,000.00 for each violation on each day in which DuPont violated 31 U.S.C. § 3729;
3. An award to Relator of its costs and reasonable attorney's fees;
4. An award to Relator pursuant to 31 U.S.C. § 3730(d);
5. All Relief from retaliatory and discriminatory actions which have been taken and may be taken by DuPont against Relator pursuant to 31 U.S.C. § 3730(h)(1) and (2); and
6. Such other and further relief as the Court may deem just, proper, and equitable.

RESPECTFULLY SUBMITTED:

/s/ Jane H. Barney

JANE H. BARNEY

Louisiana Bar Roll No. 22246

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and

/s/ J. Arthur Smith, III

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COUNSEL FOR RELATOR,
JEFFREY M. SIMONEAUX

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

UNITED STATES OF AMERICA,
ET. AL, JEFFREY M. SIMONEAUX,
Relator

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CIVIL ACTION NO.

SECTION _____

VERSUS

JUDGE _____

E.I. du PONT de NEMOURS AND
COMPANY

MAGISTRATE JUDGE _____

STATE OF LOUISIANA

PARISH OF EAST BATON R OUGE

VERIFICATION OF JEFFREY M. SIMONEAUX

BEFORE ME, the undersigned Notary Public, personally came and appeared:

JEFFREY M. SIMONEAUX


who, after being duly sworn, did depose and say:

My name is Jeffrey M. Simoneaux and my address is 37177 Lakeshore Avenue,
Prairieville, LA 70769. I have personal knowledge that all of the statements which I make in
this Complaint are true and correct.

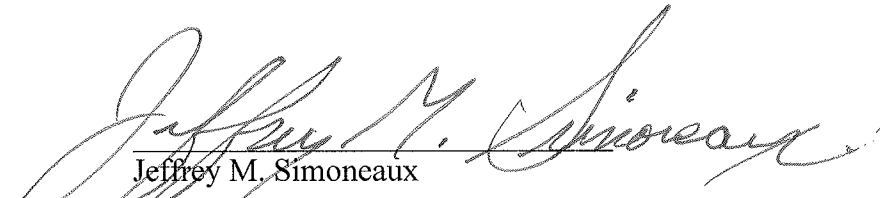
WITNESSES:



Jereleene Howard

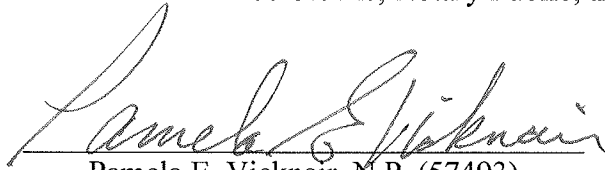


Harriet E. Halphen



Jeffrey M. Simoneaux

2012. **SWORN TO AND SUBSCRIBED** before me, Notary Public, this 16th day of April,

A handwritten signature in cursive script, reading "Pamela E. Vicknair", written over a horizontal line.

Pamela E. Vicknair, N.P. (57493)

East Baton Rouge Parish

State of Louisiana