

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

IN RE: SULFURIC ACID ANTITRUST LITIGATION	X : : : : : : : : X	MDL Docket No. 1536 Case No. 03 C 4576  Honorable Judge David H. Coar Magistrate Judge Jeffrey Cole
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**NOTICE OF CLASS ACTION SETTLEMENT WITH  
DEFENDANT E. I. DU PONT DE NEMOURS AND COMPANY**

**To: All Persons And Entities Who Purchased Sulfuric Acid In The United States Directly From E. I. du Pont de Nemours And Company, Norfalco LLC, Noranda Inc., Noranda DuPont LLC, Falconbridge Ltd., Pressure Vessel Services, Inc., PVS Chemicals, Inc. (Ohio), PVS Chemical Solutions, Inc., PVS Nolwood Chemicals, Inc., GAC Chemical Corporation, Marsulex, Inc., Chemtrade Logistics (U.S.), Inc., Intertrade Holdings, Inc., Koch Sulfur Products Company, And Koch Sulfur Products Company, LLC ("Defendants") From And Including January 1, 1988 To January 16, 2003 ("Class Period").**

**For Purposes Of This Litigation, "Sulfuric Acid" Refers To Non-Fuming Sulfuric Acid (Chemical Formula: H<sub>2</sub>SO<sub>4</sub>) Which Is, For Illustration (Although Not Exclusively), Commonly Sold At Strengths Of 93% And 98%. It Does Not Include Spent Regenerated Sulfuric Acid.**

**PLEASE READ THIS ENTIRE NOTICE CAREFULLY. YOUR LEGAL RIGHTS MAY  
BE AFFECTED BY LAWSUITS NOW PENDING IN THIS COURT.**

This Notice is given pursuant to Rule 23 of the Federal Rules of Civil Procedure and an Order of the United States District Court for the Northern District of Illinois. The purpose of this Notice is to inform you of the pendency of this litigation, the Court's preliminary approval of the Settlement Class as defined below, the Court's approval of Class Counsel for the Settlement Class, and that a proposed settlement has been reached on behalf of the Settlement Class with defendant E. I. du Pont de Nemours and Company ("DuPont") in the amount of Five Million Dollars (\$5,000,000) ("Settlement Fund").

This is a settlement with E. I. du Pont de Nemours and Company only. The lawsuit is continuing against all other Defendants.

Your options with respect to this class action are described later in this Notice. Specifically, you have the right to:

- Share in the Settlement Fund by remaining a member of the Settlement Class;
- Exclude yourself from the Settlement Class, in which case you will not be entitled to share in the Settlement Fund;
- Remain in the Settlement Class but object to the proposed settlement with DuPont, and to appear at the hearing before the Court to determine whether the proposed settlement should be approved as fair, adequate and reasonable;
- Enter an appearance as a Settlement Class member in the litigation through your own counsel at your expense.

You do **not** need to take any action at this time if you wish to remain in the Settlement Class and share in the Settlement Fund.

**DEFINITION OF THE SETTLEMENT CLASS**

On August 9, 2006, the Court certified a Settlement Class defined as follows:

All persons (excluding governmental entities and Defendants and their parents, predecessors, subsidiaries, affiliates, and their co-conspirators) who purchased Sulfuric Acid in the United States directly from any of the Defendants or any predecessor, subsidiary or affiliate of each, at any time during the period from January 1, 1988 until January 16, 2003.

For purposes of the Settlement Class definition set forth above, the following entities are Defendants: E. I. du Pont de Nemours and Company, Norfalco LLC, Noranda Inc., Falconbridge Ltd., Pressure Vessel Services, Inc., PVS Chemicals, Inc. (Ohio), PVS Chemical Solutions, Inc., PVS Nolwood Chemicals, Inc., GAC Chemical Corporation, Marsulex, Inc., Chemtrade Logistics (U.S.), Inc., Intertrade Holdings, Inc., Koch Sulfur Products Company, and Koch Sulfur Products Company, LLC.

If you purchased Sulfuric Acid in the United States directly from any of the Defendants (or from any of their predecessors, subsidiaries or affiliates, such as Noranda DuPont LLC) during the Class Period, you are eligible to be a member of the Settlement Class.

Plaintiffs' Ohio Chemical Services, Inc., Independent Chemical Corporation, National Alum Corporation, Producers Chemical Company, Old Bridge Chemicals, Inc. and AG RX have been appointed by the Court to serve as representatives for the Settlement Class.

The following attorneys have been appointed to serve as interim Class Counsel: Steven A. Asher of Weinstein Kitchenoff & Asher LLC; Mary Jane Edelstein Fait of Wolf Haldenstein Adler Freeman & Herz, LLC; Joseph C. Kohn of Kohn Swift & Graf, P.C.; and Steven O. Sidener of Gold Bennett Cera & Sidener, LLP.

### **BACKGROUND OF THE LITIGATION**

Beginning in 2003, seven class action lawsuits were filed against various Defendants by purchasers of Sulfuric Acid. Those lawsuits have been consolidated before the Court. Plaintiffs have filed a Third Consolidated Amended Complaint ("Complaint") in which they allege that Defendants violated Section 1 of the Sherman Act, 15 U.S.C. §1, by engaging in a conspiracy to fix, raise, maintain and/or stabilize the price of Sulfuric Acid in the United States at artificially high prices, and/or to allocate markets and customers for the sale of Sulfuric Acid in the United States during the Class Period of January 1, 1988 through January 16, 2003. Plaintiffs further allege that, as a result of the conspiracy, they and other members of the proposed Class have been injured by paying more for Sulfuric Acid than they would have paid in the absence of the illegal conduct, and seek recovery of treble damages, together with reimbursement of costs and an award of attorneys' fees.

Defendants deny the allegations of the Complaint and state that they have not engaged in price fixing or market/customer allocation or any other violation of the antitrust laws, and that there was no "combination, conspiracy or agreement" to do so.

At this time, neither Plaintiffs nor Defendants have proven their assertions. The Court expresses no opinion as to whether Plaintiffs' allegations are correct or whether Defendants have engaged in any wrongdoing. The purpose of this Notice is to inform you of the certification of the Settlement Class and the proposed settlement with DuPont.

### **SUMMARY OF PROPOSED SETTLEMENT WITH DUPONT**

#### **Cash Terms**

Plaintiffs, on behalf of the Settlement Class, have entered into an agreement with DuPont under which DuPont has paid into escrow Five Million Dollars (\$5,000,000.00) in exchange for a release of all claims asserted on behalf of Settlement Class members against DuPont for alleged price fixing and customer allocation of Sulfuric Acid in the United States. The Settlement Agreement with Class Counsel provides that up to \$75,000 may be paid out of the Settlement Fund for reasonable expenses associated with providing notice of the settlement to the proposed Settlement Class and with administering the Settlement Fund (including claims administrator fees and bank fees).

If the Settlement Agreement with DuPont is approved by the Court, the settlement sum, plus accruing interest, net of any amounts approved by the Court to reimburse litigation expenses of Class Counsel, and net of any possible reductions depending on the volume of purchases of entities that exclude themselves from the Settlement Class, will be available for distribution to Settlement Class members in proportion to their direct purchases of Sulfuric Acid in the United States during the Class Period.

Class Counsel have expended and incurred out of pocket costs and expenses to date of approximately \$2.9 million in litigating this case, including expert witness fees, deposition transcripts, photocopying costs, travel costs, and other necessary expenses. Plaintiffs' counsel have applied to the Court for partial reimbursement of these costs and expenses in the amount of \$1,594,441.06. This does not include any amount for attorneys' fees for the time expended by counsel in prosecuting this case, for which payment is not being sought from this Settlement Fund. This is without prejudice to counsel seeking reimbursement at a later date for the unpaid balance of costs and expenses, and/or attorneys' fees, from this or any other settlement or judgment that has been obtained. Counsels' petition for partial reimbursement of costs and expenses will be heard at the Settlement Hearing on December 20, 2006.

### Cooperation

In addition to paying the settlement amount of \$5 million, the Settlement Agreement requires DuPont to cooperate with Class Counsel in its continuing prosecution of Plaintiffs' claims against the remaining defendants. Such cooperation shall include furnishing affidavits or declarations to assist with the authentication of business records or to provide representatives who are competent to testify at deposition or trial with respect to such evidentiary issues.

### Termination and Treatment of Opt-Outs

The Settlement Agreement grants DuPont an option to terminate the settlement in the event that requests for exclusion from the Settlement Class are made by Class Members whose direct purchases represent more than 35% of the dollar amount of sales of Sulfuric Acid purchased from all defendants in the United States during the Class Period ("Total Class Purchases"). Plaintiffs' Co-Lead Counsel will provide DuPont with a list of Class Members who have timely opted-out or excluded themselves from the Settlement Class ("Opt-Outs"), and DuPont will have twenty days therefrom to exercise its option.

If the direct purchases of Opt-Outs exceed 5% but are less than 35% of Total Class Purchases, then DuPont is entitled to partial reimbursement of the Settlement Fund remaining after any Court-approved payments, costs and attorneys' fees. The amount of reimbursement is measured by taking 75% of that portion of the Settlement Fund (after any Court-approved payments, costs and/or attorneys' fees) that would be payable on a *pro rata* basis to Opt-Outs as measured by their direct purchases of Sulfuric Acid from Defendants in the United States as a percentage of the Total Class Purchases. If the direct purchases of Opt-Outs are 5% or less of Total Class Purchases, then DuPont does not have a termination option nor is it entitled to any reimbursement of the Settlement Fund.

### Release

The Settlement Agreement provides for Plaintiffs (and all "Releasors" as defined in the Agreement) to release and discharge DuPont (and all "Releasees" as defined in the Agreement) upon the Effective Date of the Settlement Agreement. The release contained within the Settlement Agreement reads as follows:

Upon the occurrence of the Effective Date and in consideration of DuPont's payment into the Settlement Fund, and for other valuable consideration, the Releasees shall be completely released, acquitted, and forever discharged from any and all claims, demands, actions, suits, proceedings and causes of action, whether class, individual, or otherwise in nature, damages whenever incurred, liabilities of any nature whatsoever, including costs, expenses, penalties and attorney's fees, known or unknown, suspected or unsuspected, asserted or unasserted, in law or equity, that Releasors, or each of them, whether directly, indirectly via Norfalco or otherwise, representatively, derivatively, as a successor, member, or owner, or in any other capacity, ever had, now have, or hereafter can, shall, or may have relating in any way to any conduct prior to the effective date of this Agreement concerning the manufacturing, pricing, selling, reselling, offering to sell or resell, refusing to sell, supplying, bidding, discounting, marketing, or distribution of Sulfuric Acid by the Releasees in the United States, including but not limited to, any conduct alleged, and causes of action asserted, or that could have been alleged or asserted in the cases that have been coordinated in the Action, or which arise under any U.S. federal or state antitrust, unfair competition, unfair practices, price discrimination, unitary pricing, or trade practice law, or similar state statute or common law claim, including without limitation, the Sherman Antitrust Act, 15 U.S.C. § 1 et seq., or arising under any foreign laws from the beginning of time to the Effective Date of this Agreement (hereinafter, the "Released Claims"). Nothing in this Agreement shall settle or compromise any claims by purchasers not located in the United States who purchased Sulfuric Acid outside the United States or claims made by indirect purchasers of Sulfuric Acid. Further, in addition to the foregoing, this Release shall not affect the rights of Releasors to seek damages or other relief from any person based on any product liability or breach of contract, or other claims unrelated to the subject matter of the Action. The Releasors shall not, after the date of this Agreement, seek to recover against any of the Releasees on any of the Released Claims.

The release does not settle or compromise any claim by Plaintiffs or any Class Member with any Defendant other than E. I. du Pont de Nemours and Company. The Settlement Agreement specifically reserves all rights of Plaintiffs and the Class Members against all Defendants other than E. I. du Pont de Nemours and Company. This Agreement is not intended to preclude a claim for damages by Plaintiffs against remaining Defendants or other alleged co-conspirators on the basis of the sales of Sulfuric Acid in the United States by E. I. du Pont de Nemours and Company or any entity in which E. I. du Pont de Nemours and Company participated.

## Contribution and Indemnification

DuPont and Plaintiffs do not believe that there are valid potential claims for contribution or indemnity available to the Noranda Defendants (Noranda, Inc., Falconbridge Ltd., or NorFalco, LLC, or their affiliates or successors in interest). However, to ensure that DuPont (including Releasees) does not lose the benefit of the Release and Discharge provided for in the Settlement Agreement, and to fully and finally resolve the claims against DuPont, Plaintiffs have agreed to assume the defense of any Contribution or Indemnification Claim (as defined in the Settlement Agreement) in the event that such a claim is brought against DuPont by the Noranda Defendants.

If Plaintiffs are required to assume the defense of any Contribution or Indemnification Claim against DuPont, DuPont is to assign its defenses and claims to Plaintiffs and to provide good faith assistance to Plaintiffs.

In the event Plaintiffs settle with the Noranda Defendants, Plaintiffs agree to make reasonable good faith efforts to obtain waivers of Contribution or Indemnification Claims the Noranda Defendants may have against DuPont before entering into such a settlement.

In the event Plaintiffs obtain a final judgment against the Noranda Defendants, or settle without obtaining waivers of Contribution or Indemnification Claims that the Noranda Defendants may have against DuPont, Plaintiffs are required to deposit 50% of any judgment paid or collected from the Noranda Defendants in an interest-bearing account. If the claim for contribution or indemnification is defeated, or if the statute of limitations elapses, then the money is returned to the Settlement Fund. If, however, the Noranda Defendants prevail on a claim for contribution or indemnification, then the money will be paid to DuPont to reimburse it for any actual payments made to the Noranda Defendants.

## CONSEQUENCES OF SETTLEMENT CLASS MEMBERSHIP

If you are a member of the Settlement Class as defined above, you will automatically remain a Settlement Class member unless you elect to be excluded from the Settlement Class. If you wish to remain in the Settlement Class you do not need to take any action at this time and your interests will be represented by Plaintiffs and by Class Counsel.

Do **not** dispose of any document that reflects your purchases of Sulfuric Acid in the United States directly from any Defendant during the period from January 1, 1988 to January 16, 2003. You may need those documents to complete a claim form if the settlement is approved. As a member of the Settlement Class, you will also be afforded an opportunity to be heard with respect to any proposed settlement of this litigation.

If you wish to exclude yourself from the Settlement Class, you must send a request for exclusion, in writing, post-marked **no later than November 3, 2006**, to the following address:

Sulfuric Acid Antitrust Litigation  
P.O. Box 30091  
Philadelphia, PA 19103

You must also file your request for exclusion with the Clerk of Court, United States District Court, Everett McKinley Dirksen Building, 219 South Dearborn Street, Chicago, Illinois 60604 and serve it upon Class Counsel (see addresses below) no later than **November 3, 2006**.

Your request for exclusion must contain the caption of this litigation, the full name of the purchaser, including any predecessor entities, and your address, and the amount of Sulfuric Acid purchased from Defendants during the Class Period. If you exclude yourself from the Settlement Class, you will not be bound by any decision regarding the settlement with DuPont and you will retain the right individually to pursue any claims you may have against DuPont. If you elect to be excluded from the Settlement Class, you will not share in the proposed settlement, or in any future recovery which might be paid to the Settlement Class with DuPont.

## THE SETTLEMENT HEARING

The Court will hold a hearing on **December 20, 2006**, at 10:00 a.m. at the United States District Court, Everett McKinley Dirksen Building, 219 South Dearborn Street, Courtroom 1419, Chicago, Illinois 60604, to determine whether the proposed partial settlement of the litigation between the Settlement Class and DuPont should be approved as fair, reasonable and adequate. The hearing may be continued without further notice.

If you do not exclude yourself from the Settlement Class but you wish to object to the Agreement of Settlement, or the Petition for Partial Reimbursement of Expenses, you must do so in writing. Your objection must include the caption of this litigation, must be signed, and must be filed with the Clerk of Court, United States District Court, Everett McKinley Dirksen Building, 219 South Dearborn Street, Chicago, Illinois 60604, and served upon Class Counsel and counsel for DuPont no later than **November 3, 2006**.

Class Counsel

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If you do not object to the proposed settlement, you need not appear at the hearing.

CHANGE OF ADDRESS, ADDITIONAL INFORMATION

If this Notice reached you at an address other than the one on the mailing label, or if your address changes, please send your correct address to the Claims Administrator.

The Agreement of Settlement, the Complaint, and other documents filed in this action are available for review during normal business hours at the offices of Clerk of Court, United States District Court, Everett McKinley Dirksen Building, 219 South Dearborn Street, Chicago, Illinois 60604. If you have questions concerning this Notice or the litigation, you may contact Class Counsel for the Plaintiffs. **Please do not contact the Clerk of Court or the Judge.**

Dated: September 19, 2006

BY ORDER OF:

The Clerk of Court  
for the District Court for the  
Northern District of Illinois