

# The Burger Court Opinion Writing Database

*E.I. DuPont de Nemours & Co. v. Train*

430 U.S. 112 (1977)

Paul J. Wahlbeck, George Washington University  
James F. Spriggs, II, Washington University in St. Louis  
Forrest Maltzman, George Washington University



Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
THE CHIEF JUSTICE

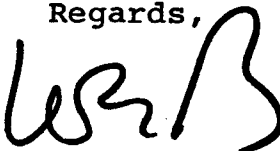
February 17, 1977

Re: 75-978; 1473; 1705 - E.I. duPont de Nemours and  
Company et al. v. Train, Administrator EPA

Dear John:

I join.

Regards,

A handwritten signature in dark ink, appearing to be "WB", written in a cursive style.

Mr. Justice Stevens

Copies to the Conference

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE WM. J. BRENNAN, JR.

February 14, 1977

RE: Nos. 75-978, 75-1473 and 75-1705 E. I du Pont de  
Nemours, et al. v. Russell E. Train, etc., et al.

Dear John:

I agree.

Sincerely,

A handwritten signature in cursive script, appearing to read "Bill", is written below the word "Sincerely,".

Mr. Justice Stevens

cc: The Conference

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE POTTER STEWART

February 11, 1977

Re: Nos. 75-978, 75-1473 and 75-1705,  
E. I. duPont de Nemours v. Train

Dear John,

I am glad to join your opinion for the Court  
in these cases.

Sincerely yours,

P.S.  
1.

Mr. Justice Stevens

Copies to the Conference

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE BYRON R. WHITE

February 14, 1977

Re: Nos. 75-978, 75-1473 & 75-1705 -  
E. I. duPont de Nemours v. Train

Dear John:

Please join me.

Sincerely,



Mr. Justice Stevens

Copies to Conference

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

February 14, 1977

Re: No. 75-978 - DuPont v. Train

Dear John:

Please join me.

Sincerely,



T.M.

Mr. Justice Stevens

cc: The Conference

HAB

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

February 14, 1977

Re: No. 75-978 - duPont v. Train  
No. 75-1473 - duPont v. Train  
No. 75-1705 - Train v. duPont

Dear John:

In a separate note I am joining your proposed opinion for these cases. I, for one, appreciate your taking on this complicated situation.

I have two suggestions as to style. I offer these with some diffidence, but I hope you will consider them.

1. On page 19, line 6, and again on page 23, at the end of the 6th line, appears the word "petitioners'." I wonder whether it might not be more appropriate to use the word "companies'," as you have done elsewhere in the opinion. I make this suggestion only because of the presence of No. 75-1705, where the administrator is the petitioner. Perhaps a similar observation is applicable to the reference to "the eight petitioners" in the second line of the opinion itself. This, of course, is not very important, for everyone knows what is meant.

2. In footnotes 15, 24 and 25 on pages 12, 19 and 21-22, respectively, you personalize the opinions of the courts of appeals by designating the authors of those opinions. I strongly urge that you eliminate the judges' names. I make this suggestion for the following reasons:

a. Gerry Heaney, who wrote the opinion for the CA 8, is a very sensitive person. The Eighth Circuit's opinion, I believe, was the first one out, and, for the most part, we are disagreeing with it. I would not want him to feel hurt or feel that we are critical by naming him specifically.

b. The court of appeals opinions, after all, are court opinions, just as ours are, and stand in contrast to an opinion of a single district judge.

c. I doubt if we are placing any reliance here on the status of any particular author-judge, as we do sometimes with a Hughes or a Holmes or even (when we happen to be in agreement) with a Learned Hand.

d. If you insist on naming Judge Edwards, then I suppose he should be described as sitting by designation in note 15 just as he is described in note 24.

I suppose these judges like to be named in our opinions, but I wonder whether we should do it when we are forced to select among lower court opinions.

Sincerely,

A handwritten signature in cursive script, appearing to read "Harry", with a horizontal line underneath it.

Mr. Justice Stevens



Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

February 14, 1977

Re: No. 75-978 - duPont v. Train  
No. 75-1473 - duPont v. Train  
No. 75-1705 - Train v. duPont

Dear John:

Please join me.

Sincerely,

*H.A.B.*

Mr. Justice Stevens

cc: The Conference

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

February 10, 1977

978  
No. 75-987 DuPont v. Train

Dear John:

Please show at the end of your opinion that I took  
no part in the consideration or decision of this case.

Sincerely,

*Levin*

Mr. Justice Stevens

lfp/ss

cc: The Conference

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

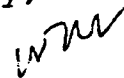
February 17, 1977

Re: Nos. 75-978, 75-1473 and 75-1705 - duPont v. Train

Dear John:

Please join me.

Sincerely,



Mr. Justice Stevens

Copies to the Conference

✓  
To: The Chief Justice  
Mr. Justice Brennan  
Mr. Justice Stewart  
Mr. Justice White  
Mr. Justice Marshall  
Mr. Justice Blackmun  
Mr. Justice Powell  
Mr. Justice Rehnquist

From: Mr. Justice Stevens

Circulated: 2/10/77

Recirculated: \_\_\_\_\_

3rd DRAFT

## SUPREME COURT OF THE UNITED STATES

No. 75-978, 75-1473 AND 75-1705

E. I. duPont de Nemours and  
Company et al., Petitioners,  
75-978 v.

Russell E. Train, Administrator,  
Environmental Protection  
Agency, et al.

E. I. duPont de Nemours and  
Company, et al., Petitioners,  
75-1473 v.

Russell E. Train, Administrator,  
Environmental Protection  
Agency.

Russell E. Train, Administrator,  
Environmental Protection  
Agency, Petitioner,  
75-1705 v.

E. I. duPont de Nemours and  
Company, et al.

On Writs of Certiorari to  
the United States Court  
of Appeals for the  
Fourth Circuit.

[February —, 1977]

MR. JUSTICE STEVENS delivered the opinion of the Court,

The inorganic chemical manufacturing plants operated by the eight petitioners discharge various pollutants into the Nation's waters and therefore are "point sources" within the meaning of the Federal Water Pollution Control Act Amendments of 1972, 86 Stat. 816, 33 U. S. C. § 1251 *et seq.* (Supp. IV) ("The Act").<sup>1</sup> The Environmental Protection

<sup>1</sup> A "point source" is "any discernible, confined and discrete convey-

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE JOHN PAUL STEVENS

February 14, 1977

Re: Nos. 75-978, 75-1473 and 75-1705 - E.I. duPont  
de Nemours, et al. v. Train, etc., et al.

Dear Harry:

Thanks for your two suggestions. I will adopt both of them.

Frankly, I had some doubt about using the individual judges' names. I put them in the draft for two reasons:

1. I did place extra reliance on the fact that Judges Hunter, Edwards, and Tene all reached the same conclusion. I do have a special regard for the quality of each of these judge's work.
2. Because of the special efforts that the authors of these complex opinions put into these cases, I thought it might be appropriate to give them individual recognition.

On balance, however, I am satisfied that your view is the correct one and that it would be a mistake to risk any offense to Judge Heaney. Even though we end up disagreeing with the Eighth Circuit, I think his opinion was extremely well done.

In all events, I agree with you.

Sincerely,



Mr. Justice Blackmun

To: The Chief Justice

Mr. Justice Brennan  
 Mr. Justice Stewart  
 Mr. Justice White  
 - Mr. Justice Marshall  
 Mr. Justice Blackmun  
 Mr. Justice Powell  
 Mr. Justice Rehnquist

4th DRAFT

From: Mr. Justice Stevens

## SUPREME COURT OF THE UNITED STATES

Circulated: \_\_\_\_\_

Recirculated: FEB 22 1977

No. 75-978, 75-1473 AND 75-1705

E. I. duPont de Nemours and  
 Company et al., Petitioners,  
 75-978 v.

Russell E. Train, Administrator,  
 Environmental Protection  
 Agency, et al.

E. I. duPont de Nemours and  
 Company, et al., Petitioners,  
 75-1473 v.

Russell E. Train, Administrator,  
 Environmental Protection  
 Agency.

Russell E. Train, Administrator,  
 Environmental Protection  
 Agency, Petitioner,

75-1705 v.

E. I. duPont de Nemours and  
 Company, et al.

On Writs of Certiorari to  
 the United States Court  
 of Appeals for the  
 Fourth Circuit.

[February 23, 1977]

MR. JUSTICE STEVENS delivered the opinion of the Court.

Inorganic chemical manufacturing plants operated by the eight petitioners discharge various pollutants into the Nation's waters and therefore are "point sources" within the meaning of the Federal Water Pollution Control Act Amendments of 1972, 86 Stat. 816, 33 U. S. C. § 1251 *et seq.* (Supp. IV)

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE JOHN PAUL STEVENS

March 3, 1977

MEMORANDUM TO THE CONFERENCE

Re: Case held for Nos. 75-978, 75-1473 and  
75-1705 - DuPont v. EPA

The only case held for DuPont v. EPA is Exxon Corp. v. EPA, No. 76-781. This case involves the "effluent limitation guideline" regulations for petroleum refineries. The Court of Appeals held that EPA is authorized by § 301 to issue regulations setting effluent limitations. It declined to consider whether the variance clause contained in the regulations for 1977 was sufficiently broad, on the ground that consideration of this issue was premature. Both of these holdings are in accord with the DuPont opinion.

The petition also raises an additional issue not presented in DuPont. Petitioners contend that EPA failed to consider the competitive impact of differences between the limitations imposed on different types of plants. EPA's stated reason was that the limitations are based on the actual performance of plants in each category. The statute does not list competitive impact as one of the factors to be considered. There does not appear to be any conflict on this issue; and the record is inadequate because petitioners failed to introduce any economic evidence to support their claim of injury to their competitive position. Moreover, the differences in effluent limitations may be due to differences in present pollution levels or in the available pollution control technology.

I will vote to deny the petition.

Respectfully,

