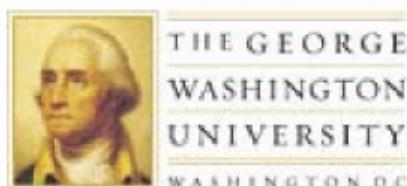


The Burger Court Opinion Writing Database

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,

WSB

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,



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.
P.

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

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

HAB

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 small curved 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,

Harry S.

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. 75-1987 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,

Lewis

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,

WRW

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").¹ The Environmental Protection

¹ 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 Tone 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

✓
 Stylistic and Punctuation
 Changes Throughout.

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,

