

## STATEMENT OF CONSIDERATIONS

REQUEST BY E.I. DU PONT DE NEMOURS AND COMPANY (DUPONT) FOR AN ADVANCE WAIVER OF DOMESTIC AND FOREIGN RIGHTS TO INVENTIONS MADE UNDER A SUBCONTRACT TO COOPERATIVE AGREEMENT NUMBER DE-FC04-02AL67620, DOE WAIVER NO. W(A) 04-015.

The Petitioner, DuPont, has requested a waiver of all domestic and foreign patent rights to inventions that the Petitioner may conceive or first actually reduce to practice in the course of DuPont's work as a subcontractor to Superior MicroPowders (Superior MP) under Cooperative Agreement Number DE-FC04-02AL67620 entitled "Development of High Performance, Low Platinum Cathodes Containing New Catalysts and Layer Structure (Topic 1A1)" with the U.S. Department of Energy (DOE).

The work to be done under the overall cooperative agreement will be the design and development of ink and electrodes that will increase catalyst screening throughput using small amounts of catalyst candidates and increasing the efficiency of membrane electrode assemblies. DuPont's work under the subcontract will focus on the research and development on electrocatalysts, analytical instruments, and automated process systems and stack components for fuel cells. This research and development will lead to broader use of fuel cell technologies, which will result in better air quality and lowered dependence on unstable overseas oil supplies.


The overall cooperative agreement covers a period from March 1, 2002 through February 28, 2006 at a total cost to DOE of \$4,170,000. DOE funds to be provided as follows: FY02 -- \$650,000; FY03 -- \$900,000; FY04 -- \$1,510,000; FY05 -- \$1,110,000. The prime contractor, Superior MP, will expend \$1,042,821 as a cost share over the period of this agreement (20%). The subcontract itself covers a period from February 1, 2002 through March 30, 2005, at a total overall cost of \$1,205,995.<sup>1</sup> DuPont will provide approximately \$308,164 as a cost share over the life of the subcontract (25.6%). DuPont has previously invested over \$5M in capital investments since 1998 to support such fuel cell research and development. The government contribution for the agreement and subcontract will be made through Budget & Reporting Codes EE0502, sponsored by the Office of Advanced Automotive Technologies.

DuPont is Wilmington, Delaware-based, multinational corporation with over 20 years of experience in research and development in the field of fuel cell membranes. DuPont also has over two hundred years of mass production expertise and a firmly established global marketing capability. Based on the dynamic nature of the technology itself, existing competition in this field, as well as the aggressive research and development being done in this field worldwide, it is not foreseen that the grant of this waiver would decrease competition, cause undesirable market concentration, nor place DuPont in a dominant market position.

DuPont has agreed to abide by 35 U.S.C. §§ 202, 203 and 204, as well as the provisions of the Standard Patent Rights clause for an Advance Waiver. Additionally, DuPont has agreed to the standard U.S. Competitiveness Clause as well as the background data rights clause found in 48 CFR 952.227-14, Alternate VI (February 1998) (attached). DuPont will abide by the Export Control laws and will require its licensees, if any, to do the same. Praxair will expend such sums as may be required to maintain the necessary patent protection and provide incentive for commercial development of the invention.

Considering Petitioner's status as a global leader in the research, development, production and commercialization of fuel cell membrane technology, it is concluded that the grant of the requested waiver is most likely to achieve commercialization success and actual implementation of the fuel cell component technology which is the focus of the overall cooperative agreement on both a national and global scale.

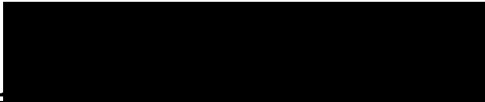
As such, upon evaluation of the Waiver Petition in view of the objectives and considerations set forth in 10 CFR 784.4, all of which have been considered, it is recommended that the requested waiver be granted.



Jim C. Durkis  
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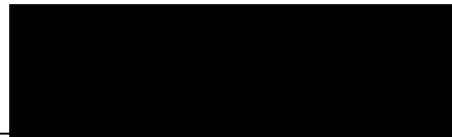
Based on the foregoing Statement of Considerations and the representations of the attached Waiver Petition, it is determined that the interests of the United States and the general public will best be served by a waiver of patent rights of the scope described above and, therefore, the waiver is granted. This waiver shall not apply to a modification or extension of the cooperative agreement where, through such modification or extension, the purpose, scope or DOE cost of the cooperative agreement have been substantially altered.

CONCURRENCE:



Steven G. Chalk  
Director, Office of Hydrogen, Fuel Cells  
and Infrastructure Technologies Program (EE-2H)

Date: 7/23/04



APPROVAL:

Paul A. Gottlieb  
Assistant General Counsel for Technology Transfer  
and Intellectual Property (GC-62)

Date: 7-27-04

DOE Headquarters Project Manager: Pete Devlin