

PERRINE DUPONT SETTLEMENT
SPELTER VOLUNTEER FIRE DEPARTMENT CLAIMS OFFICE
55 B. STREET
P.O. BOX 257
SPELTER, WV 26438
304-622-7443
1-800-345-0837
www.perrinedupont.com
perrinedupont@gtandslaw.com

May 6, 2013

BY HAND DELIVERY

The Honorable Thomas A. Bedell
Circuit Judge of Harrison County
301 West Main Street, Room 321
Clarksburg, West Virginia 26301

Re: Perrine, et al. v. DuPont, et al.; Civil Action No. 04-C-296-2 (Circuit Court of Harrison County, West Virginia) - Proposed Order Approving Compliant Soil Testing Procedures and Old Soil Enhancement Procedures; Our File No. 4609-1{DD-53}

Dear Judge Bedell:

Pursuant to this Court's attached April 22, 2013 Order Providing Guidance Respecting Property Remediation Program Issues (the "April 22 Order"), the Soil Remediation Remedy for Old and New Soil in Exhibit A to the April 22 Order was approved, subject to the Court's subsequent approval of the Compliant Soil Testing Procedures and the Soil Enhancement Procedures reasonably agreed to by the Settlement and NCM (the "Soil Procedures").

The experts for the Settlement and NCM have now agreed to the Soil Procedures, attached as Exhibit A, parts 1 and 2, to the enclosed proposed Order.

Therefore, please find attached that proposed agreed Order that is submitted for the Court's consideration.

Thank you for the Court's consideration of this request.

Yours very truly,


Edgar C. Gentle, III
Claims Administrator

ECGIII/pfo
Attachments

FILED IN 15TH
CIRCUIT COURT
2014 JUN -6 PM 4: 10

May 6, 2013
Page 2 of 2

- cc: (via email)(with attachment)
James S. Arnold, Esq., DuPont Representative on the Finance Committee
Virginia Buchanan, Esq., Plaintiff Class Representative on the Finance Committee
Meredith McCarthy, Esq., Guardian Ad Litem
Michael A. Jacks, Esq.
- cc: (by hand delivery)(with attachment)
Clerk of Court of Harrison County, West Virginia, for filing

IN THE CIRCUIT COURT OF HARRISON COUNTY, WEST VIRGINIA

LENORA PERRINE, et al.,

Plaintiffs,

v.

Case No. 04-C-296-2
Judge Thomas A. Bedell

E. I. DUPONT DE NEMOURS &
COMPANY, et al.,

Defendants.

**ORDER APPROVING COMPLIANT SOIL TESTING PROCEDURES AND
OLD SOIL ENHANCEMENT PROCEDURES**

Presently before the Court is the Claims Administrator's request that the Compliant Soil Testing Procedures and Old Soil Enhancement Procedures (the "Soil Procedures") in Exhibit A be approved.

By this Court's April 22, 2013 Order Providing Guidance Respecting Property Remediation Program Issues (the "April 22 Order"), the Soil Remediation Remedy for Old and New Soil in Exhibit A to the April 22 Order was approved, subject to this Court's subsequent approval of the Soil Procedures.

The experts for the Settlement and NCM have now agreed to the Soil Procedures, attached as Exhibit A, parts 1 and 2, to this Order.

After a careful review of the Claims Administrator's Report, and in consideration of the applicable law, the Court **ORDERS** that the Soil Procedures are hereby **APPROVED** and shall be carried out during the administration of the Settlement.

IT IS SO ORDERED.

The Clerk of this Court shall provide certified copies of this Order to the following:

David B. Thomas
James S. Arnold
Thomas Combs & Spann, PLLC
P.O. Box 3824
Charleston, WV 25338-3824

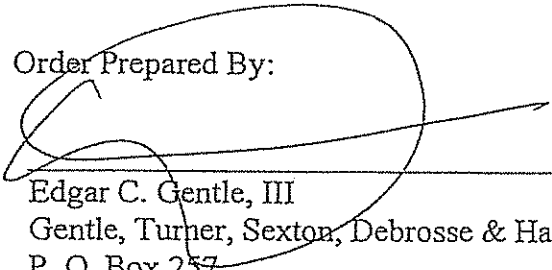
Meredith McCarthy
901 W. Main St.
Bridgeport, WV 26330
Guardian Ad Litem


Virginia Buchanan
Levin, Papantonio, Thomas, Mitchell,
Rafferty & Proctor, P.A.
P.O. Box 12308
Pensacola, FL 32591

J. Farrest Taylor
Cochran, Cherry, Givens, Smith,
Lane & Taylor, P.C.
163 West Main Street
Dothan, AL 36301

Edgar C. Gentle, III
Michael A. Jacks
Gentle, Turner & Sexton
P. O. Box 257
Spelter, WV 26438
Special Master

Order Prepared By:


Edgar C. Gentle, III
Gentle, Turner, Sexton, Debrosse & Harbison
P. O. Box 257
Spelter, WV 26438


Michael A. Jacks, Esq.
Gentle, Turner, Sexton, Debrosse & Harbison
W.Va. Bar No 11044
Gentle, Turner & Sexton
P. O. Box 257
Spelter, WV 26438

ENTER: _____

Thomas A. Bedell, Circuit Judge

EXHIBIT A

SOIL PROCEDURES

Attachment 1: Compliant Soil Testing Procedures

Attachment 2: Old Soil Enhancement Procedures

ATTACHMENT 1 to EXHIBIT A

Compliant Soil Testing Procedures

APRIL 15, 2013

STANDARD OPERATING PROCEDURE
SURFACE SOIL SAMPLE COLLECTION
USDA SOIL TEXTURE ANALYSIS
PERINNE - DUPONT SETTLEMENT
SPELTER, WV

1.0 SCOPE AND APPLICATION

The purpose of this standard operating procedure (SOP) is to describe the procedures for the collection of post remediation composite soil samples from residential property for USDA texture compliance and documenting contract compliance. Sampling depths are to be consistent with the base contract sampling depths for heavy metal analysis. Any exceedance of this depth voids the sample. A composite sample is defined as 12 aliquots of material collected in the prescribed manner from the target area of the property. There are two target areas per property that are defined as the front and backyards of the lot. In the event a lot does not have a structure that defines a front and back yard it will be treated as a single target area. Analysis of soil samples will be used to determine if the soil is classified as sandy loam, loam, or silt loam for the specified sampling depth.

2.0 METHOD SUMMARY

Soil samples will be collected using the methods and equipment described in this SOP. The independent third party sample technician will notify a designated individual in the Settlement and NCM 24 hours in advance of a sampling action. Either party can elect to observe the samples being collected and it is not mandatory for either party to observe the sample collection action. Samples will be collected using a tubular sampling Trier with a $\frac{3}{4}$ inch barrel by the independent third party sample collection technician. A total of 12 locations per target area will be sampled and composited into a single sample. The samples will be collected from a zig-zag symmetric rectangular pattern across the target area. The samples will be composited and placed in a 1-gallon sealable plastic bag. An independent laboratory mutually acceptable to both the Settlement and NCM will be identified and designated the project soil texture laboratory. The sample preparation procedures will be requested from the laboratory and mutually approved by the Settlement and NCM. The samples will be shipped to the project laboratory for analysis. The data will be transmitted from the lab to settlement and NCM independently. The third party sampler will prepare a compliance package described herein to be submitted to both parties.

3.0 SAMPLE PRESERVATION, CONTAINERS, HANDLING AND STORAGE

The samples will be collected and packaged in re-sealable plastic bags and shipped to the project laboratory using an approved carrier for delivery the next AM. The samples will be analyzed on a 3-5 day turnaround, to the extent practicable, and shall match the sample turnaround for contaminant sampling. Samples will be stored by the laboratory for a 30-day period and then disposed of in accordance with Federal, state and local regulations.

4.0 INTERFERENCES AND POTENTIAL PROBLEMS

There are two primary potential problems associated with soil sampling - cross contamination of samples and improper sample collection. Cross contamination problems can be eliminated or minimized through the use of dedicated sampling equipment and adequate decontamination of equipment between samples. Improper sample collection can involve sampling too deep, using contaminated equipment or inadequate homogenization of the samples where required, resulting in variable, non-representative results.

5.0 EQUIPMENT

Soil sampling equipment includes the following:

- Pre-cleaned ¾ inch Trier soil sampler
- Re-sealable one-gallon plastic bags
- Logbook
- Field data sheets and sample labels
- Chain of Custody records and custody seals
- Camera with date and time stamp capability
- Shipping Materials
- Decontamination supplies/equipment

6.0 REAGENTS

Not Used

7.0 PROCEDURES

7.1

Preparation

1. Determine the extent of the sampling effort, the sampling methods to be employed, and the types and amounts of equipment and supplies required. Ensure an adequate period of time has elapsed after a soaking rain.
2. Obtain necessary sampling equipment and supplies.
3. Decontaminate or pre-clean equipment, and ensure it is in working order. Clean water rinse is sufficient for soil textural sample collection.
4. Prepare schedules, notify and coordinate with the Settlement and NCM 24 hours prior to sampling event.
5. Perform a general site survey prior to site entry in accordance with the site specific Health and Safety Plan.
6. Collect the sample in accordance with section 7.2

7. Ship samples using approved commercial carrier to lab under chain of custody procedures and request sample analysis using the "pipette method for soil mechanical analysis" on the same schedule as the contaminants sampling.
8. Analyze results and prepare and deliver compliance report within 24-48 hours of receipt of sample analysis results.

7.2 Sample Collection

7.2.1 Surface Soil Samples

1. Label a sample bag with the following information:

Project name
Lot identification
Property Owner
Date
Time
Sample Number
Front _____, Back _____
Analysis
Sample Technician (ST)
ST Company

2. Using a pre-cleaned $\frac{3}{4}$ inch Trier remove a sample core from the specified depth as described in 1.0 above, in accordance with ASTM D5451 - 93(2012) Standard Practice for Sampling Using a Trier Sampler.
3. Rotate the Trier once or twice to cut a core of material and slowly withdraw the Trier, making sure that the slot is facing upward.
4. Using a clean knife cut off the turf at the soil interface and then cut a sample plug from the specified depth as described in 1.0 above, and carefully place in the sample bag.
5. Repeat until 12 locations have been collected from each target area. 12 aliquots of materials from locations a minimum of 2 feet away from structures or fences on the property and in a symmetrical zig-zag pattern to maximize spacing between sample sites. Plot locations on sample data form. Perform a ribbon textural analysis and record the results on the sample data sheets. Field classify the soils in accordance with the unified soil classification system.

6. Photograph the bag with the 12 core plugs and ensure the sample ID is readable and does not obscure a clear view of the cores.
7. Ship sample to lab under Chain of Custody procedures using an approved carrier for delivery the next day.
8. Samples to be analyzed on the same schedule as the samples for contaminants.
9. Results reported by the laboratory to both parties via email.
10. Third party sampler to prepare compliance report for each property within 24-48 hours of receipt of laboratory analysis results, and transmit via email to each party.

8.0 CALCULATIONS

The soil texture classification will be calculated using the grain size for each sample plotted on the USDA texture graph as reported by the laboratory. In the event of a discrepancy between front and/or backyard results outside the target range, the failed area will be re-tested one time in accordance with above. Due to the heterogeneous nature of soil composition and composite sample analysis the laboratory results will be subjected to full data validation and a compliance criteria of +/- 5 % will be applied to the sample analysis results and the results plotted and reported. A complete laboratory precision, accuracy and quality control and assurance reconciliation will be performed and applied to the final analysis of the data. In the event the soil texture classification is not sandy loam, loam, or silt loam, it will be determined to be non-compliant and will default to section 9.0.

9.0 SOIL NON-COMPLIANCE

In the event the soil placed is found not to be sandy loam, loam, or silt loam for the specified sampling depth, the soil will be retested using this established criteria and the re-analyzed in accordance with the procedure outlined in this SOP. The retest will be performed using an alternate grid of 12 sample locations and otherwise will comply with this SOP. NCM is to pay for both failing tests if a re-test fails.

In the event the second round of analytical sampling does not reveal that the soil is sandy loam, loam, or silty loam for the specified sampling depth, the sod will be removed from the non-compliant target area and the soil will be amended as appropriate and the process repeated until contractually compliant material is documented as being in place.

10.0 QUALITY ASSURANCE/QUALITY CONTROL

The following QA procedures apply:

1. All data must be documented on a field data sheet for each sample.

- part of the project record.
2. Photographic record to be attached to the sample collection sheet and made part of the project record.
 3. Graph of USDA texture classification for each sample to be prepared by the third party sampler and included in the project record.
 4. Documentation of any retesting and non-compliance corrective actions.

11.0 DATA VALIDATION

The Settlement and NCM shall validate each sample for compliance with the contract.

12.0 HEALTH AND SAFETY

When working with any potentially hazardous or regulated materials, follow U.S. EPA, OSHA and corporate health and safety procedures, in addition to the procedures specified in the site specific Health & Safety Plan.

ATTACHMENT 2 to EXHIBIT A

**Old Soil Enhancement Procedures
(Duane Truax's Outline and NCM's Clarifying Comments)**



3020 Columbia Avenue, Lancaster, PA 17603 • Phone: (717) 394-3721
E-mail: rettew@rettew.com • Website: rettew.com

We answer to you.

April 9, 2013

Edgar C. Gentle, III, Claims Administrator
Gentle, Turner, Sexton, Debrosse & Harbison
Perrine Dupont Settlement Claims Office
c/o Spelter Volunteer Fire Department Office
55 B Street
Spelter, WV 26438

Engineers
Planners
Surveyors
Landscape
Architects
Environmental
Consultants

RE: Perrine DuPont Settlement – Soil Remediation
Soil Expert Services
Proposed Treatment Procedures for New Lawns
RETTEW Project No. 095912000

Dear Mr. Gentle:

As per your request, RETTEW is providing this letter regarding proposed treatment procedures for the new lawns that have been installed to date by NCM Demolition & Remediation LP (NCM). More specifically, this letter provides a summary of the proposed treatment procedures that were agreed upon between the Settlement and NCM during our most recent meeting on April 5, 2015 at the Harrison County Courthouse located in Clarksburg, West Virginia.

To date, NCM has provided soil remediation services for approximately 92 properties. Soil remediation consisted of the removal of the top six inches of existing topsoil on each respective property. After replacing the topsoil from each property with imported topsoil materials, NCM placed new sod to reestablish the lawns areas. The treatment procedures described in this letter only address the properties that have been completed to date where the topsoil is determined not to be within the acceptable USDA textural classifications (sandy loam, loam, and silt loam) as per the Agreement. RETTEW was not required to provide recommendations for properties where laboratory testing indicates possible environmental concerns such as unacceptable levels of contaminants (zinc, arsenic, cadmium, etc.).

As per the agreed remedy with the Settlement, testing at the Claimant option will determine if soils placed by NCM are compliant with the Agreement. Specifically, for Claimant properties with topsoil that is determined to not be within the acceptable USDA textural classifications (sandy loam, loam, and silt loam), the following treatment procedures have been agreed to by both the Settlement and NCM.

1. At minimum, the full extent of the lawn area, with allowable safe working distances as specified in the Agreement, shall be cultivated utilizing a 'vertical slicer', 'thatcher', or similar device. Equipment with a minimum cutting depth of two inches and a blade spacing width ranging between four to six inches shall be utilized. In general, cultivation practices (i.e., slicing) on newly sodded areas are not recommended within one year (12 months) of installation. However, if cultivation practices are performed within the one



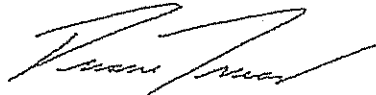
- year period, sodded areas must first be closely inspected to verify that the sod is sufficiently established to withstand the procedure and that it will not be irrevocably damaged as a result. NCM shall submit to the Settlement for approval a written summary of the proposed procedures and equipment to be utilized to execute Item #1.
2. Immediately following or in conjunction with the completion of the cultivation referenced in Item #1, lawn areas shall be top-dressed with sand. As per the recommendation of NCM's soil expert, Dr. Euenia Pena-Yewtukhiw (Dr. Pena) of West Virginia University, a 'river sand' or 'washed, coarse-grained sand' will be utilized for topdressing. This material will be applied over the entire extent of the lawn area. Dr. Pena will perform the necessary calculations to determine the appropriate application rate. NCM shall submit to the Settlement for approval a written summary of the proposed application rate, procedures, and equipment to be utilized to execute Item #2.
 3. Where laboratory testing indicates that a new lawn area has soil with an organic matter content less than five percent, an application of an organic amendment (i.e., peat moss, clean compost, etc.) is to be applied evenly over the full extent of the lawn area. This application is to occur immediately following the execution of Items #1 and #2. NCM shall submit to the Settlement for approval a written summary of the proposed organic amendments and proposed rate of application to be utilized to execute Item #3.
 4. In order to promote the growth and establishment of the sod, fertilizer shall be applied evenly over the full extent of the lawn area at least once during the one year period following installation. The application shall provide approximately one pound of nitrogen per 1,000 ft². Prior to making the first application, the proposed application rate and composition of the fertilizer blend is to be determined by NCM's technical consultants. NCM shall submit to the Settlement for approval a written summary of the proposed fertilizer applications to be utilized to execute Item #4.
 5. Where laboratory testing indicates that a new lawn area contains soil with a pH value less than 5.5, lime shall be applied to adjust the pH value to be between 6.0 and 7.0. The lime shall be applied evenly over the full extent of the lawn area at least once during the one year period following installation. Prior to making an application, the proposed application rate and composition of the lime material is to be determined by NCM's technical consultants based on the laboratory test results. NCM shall submit to the Settlement for approval a written summary of the proposed lime applications to be utilized to execute Item #5.
 6. All treatment procedures referenced in Items #1 through #5 shall be fully documented for each property and readily available for review by the Settlement. Documentation for each property must contain the following information:
 - a. Date
 - b. Property ID
 - c. Lawn Area Description/Condition
 - d. Sketch of Lawn Area with Dimensions
 - e. Equipment Description(s)
 - f. Material Description(s)
 - g. Application Rate(s)



- h. Treatment Procedure(s)
 - i. Photo-documentation of Lawn Area (Pre-treatment and Post-treatment)
 - j. Additional Comments
7. All equipment (i.e., slicers) to be utilized for the execution of Items #1 through #5 shall be operated according to the specific manufacturer's instructions.
8. Prior to executing any of the treatment procedures referenced in Items #1 thru #5 at the remediated properties, it is recommended that test plots be used to perform trial runs of the equipment at a testing location mutually agreed to by NCM and the Settlement. Each treatment procedure shall be first performed on a test plot area prior to use on the remediated properties. Representatives of the Settlement shall be present during any trial run event and provided, at minimum, with a 48 hour notice prior to conducting such an event. Additional recommendations may be made at that time if warranted.

If you have any questions regarding this letter, please do not hesitate to call our office. We will continue to work to give you the quality service you deserve as a valued client of RETTEW.

Sincerely,



Duane A. Truax, CPSS
Soil Scientist

copy: Diandra S. Debrosse-Zimmerman, Esq.; Michael A. Jacks, Esq.; Katherine A. Harbison, Esq.;
Mr. Billy Sublett; Mr. Marc Glass; Project Administrator; File

H:\Projects\09591\095912000\GS\Mediation\Ltr-Perrine Dupont Settlement-04-09-13.docx



Teri Thomas

From: esgentle <escrowagen@aol.com>
Sent: Friday, April 12, 2013 7:51 AM
To: khatbison@gtandslaw.com; Teri Thomas
Subject: Fw: Comments on soil enhancement protocol

Kip hood morning please get to Marc n Duane n ask for comments thx teri orint

Sent from my BlackBerry 10 smartphone.

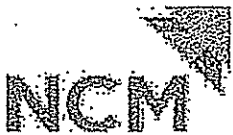
From: Dennis Raver
Sent: Friday, April 12, 2013 7:00 AM
To: escrowagen@aol.com; Terry D. Turner Jr. <tturner@gtandslaw.com>, Kip Harbison <kharbison@gtandslaw.com>, ddebrosse@gtandslaw.com (tturner@gtandslaw.com kharbison@gtandslaw.com); posborn@gtandslaw.com; mjacks@gtandslaw.com; bsublett@gtandslaw.com; dtruax@rettew.com dtruax@rettew.com; trebar@core-env.com; mglass@downstreamstrategies.com
Cc: George Hilton
Subject: Comments on soil enhancement protocol

NCM comments to soil enhancement protocol

1. No comment
2. Add definition of washed coarse-grained sand to include "80% between 2.0 and 0.25 mm, favoring fractions between 1-5mm"
3. Comment – Organic matter is a onetime treatment
4. No comment
5. Lime will only be applied once as agreed. At least once implies possible future applications. Soil laboratory should be supply lime applications rate with laboratory analysis. If not we will defer to Dr. Pena for application rates.
6. No comment
7. No comment
8. NCM will also use the trial run to calibrate equipment

Thanks

Dennis C. Raver
Program Manager



DC/MD/VA Regional Office
3900 Vero Road, Baltimore, MD 21227
410.247.5031 (office)
410.247.6714 (fax)
443.324.1037 (mobile)

Perrine DuPont Property Remediation Field Office
69 Third Street

PO Box 66
Spelter, West Virginia 26438
304.622.9094 (office)



IN THE CIRCUIT COURT OF HARRISON COUNTY, WEST VIRGINIA

LENORA PERRINE, et al., individuals
residing in West Virginia, on behalf of
themselves and all others similarly situated,

Plaintiffs,

v.

Case No. 04-C-296-2
Thomas A. Bedell, Circuit Judge

E.I. DU PONT DE NEMOURS AND COMPANY, et al.,

Defendants.

ORDER PROVIDING GUIDANCE RESPECTING
PROPERTY REMEDIATION PROGRAM ISSUES

Presently before the Court is the Claims Administrator's March 26, 2013, Report, which seeks the Court's guidance concerning three issues respecting the Property Remediation Program (the "Program").

The three matters requiring the Court's guidance are (i) a requested adjustment to the previous Court-approved April 9, 2012 Working Budget for the Program based upon an increase in the number of houses and commercial structures to be remediated and an increase in soil remediation costs; (ii) proposed Program road repairs and improvements; and (iii) proposed 2012 Replacement Soil Enhancement Procedures and proposed Supplemental Replacement Soil Testing Procedures.

After due and proper notice, this matter came on to be heard on Friday, April 5, 2013 at 2:30 p.m. Appearing were the Settlement Administrator, the Finance Committee, Representative for DuPont, James S. Arnold, Esq., Meredith H. McCarthy, Esq., the Guardian *ad litem* for Minor and Incompetent Claimants, and Cy A. Hill, Esq., Counsel for NCM Demolition and Remediation ("NCM"). Also appearing were Michael

A. Jacks, Esq., the Executive Director for the Settlement Claims Office, Diandra S. Debrosse-Zimmerman, Esq., the Settlement Administrator's law partner, Mr. Billy Sublett, the Settlement Construction Supervisor, Mr. Marc Glass and Mr. Duane Truax the Remediation and Soil Experts for the Settlement, and Dr. Eugenia M. Pena-Yewtukhiw, NCM's Soil Expert.

The Court considered the submissions of the Settlement Administrator, the Finance Committee, the Guardian *ad litem*, and NCM, and took such testimony as the Court deemed to be appropriate

After careful review of the Claims Administrator's report, and in consideration of applicable law, the Court makes the following findings and decisions:

1. The Court hereby approves the requested adjustment to the Working Budget for the Program.
2. The Court approves the proposed Road Repair and Improvement Program and Related Budget in the Report.
3. The Court hereby approves the 2012 Replacement Soil Enhancement Procedures and Supplemental Soil Replacement Procedures described in Exhibit A, subject to their being finalized by the experts for the Settlement and NCM and approved by this Court in a subsequent Order.

Lastly, pursuant to Rule 54(b) of the West Virginia Rules of Civil Procedure, the Court directs entry of this Order as a Final Order as to the claims and issues above upon an express determination that there is no just reason for delay, and upon an express direction for the entry for judgment.

IT IS SO ORDERED.

Finally, it is ORDERED that the Clerk of this Court shall provide certified copies

of this Order to the following:

David B. Thomas
James S. Arnold
Guthrie & Thomas, PLLC
P.O. Box 3824
Charleston, WV 25338-3824

Meredith McCarthy
901 W. Main St.
Bridgeport, WV 26330
Guardian ad litem

Edgar Gentle, III
Michael Jacks
Settlement Claims Office
P.O. Box 257
Spelter, WV 26438
Special Master

J. Farrest Taylor
Angela Mason
Cochran, Cherry, Givens, Smith,
Lane & Taylor, P.C.
163 West Main St.
Dothan, AL 36301

Virginia Buchanan
Levin, Papantonio, Thomas, Mitchell
Eshsner & Proctor, P.A.
316 South Baylen St., Suite 600
Pensacola, FL 32502-5996

Steve Zbur
Tom Rebar
CORE Environmental Services, Inc.
4 Brookstone Plaza
Morgantown, WV 26508

Cy A. Hill, Esq.
Mannion & Gray, L.P.A.
122 Capitol Street, Suite 100
Charleston, WV 25301

This Order Prepared By:



Edgar C. Gentle, III, Esq.
Gentle, Turner & Sexton
P. O. Box 257
Spelter, WV 26438
Claims Administrator



Michael A. Jacks, Esq.
W. Va. Bar No. 11044
P.O. Box 257
Spelter, WV 26438

ENTER: April 22, 2013



Thomas A. Bedell, Circuit Judge

April 12, 2013

The Perrine DuPont Settlement - Soil Remediation Remedy for Old and New Soil

Below is the remedy for Old and New Soil.

I. New Soil

For the remaining approximately 140 soil properties still to be remediated, the Settlement, at its expense, at the same time that the new soil is tested for contaminants and, to the extent practicable, as rapidly as contaminant testing is conducted, will sample the new soil to confirm that it is sandy loam, loam or silt loam, in accordance with the USDA soil classification system ("Compliant Soil"). If the soil fails the test, the remedies of the current Agreement pertaining to soil failing contaminants testing apply. NCM's and the Settlement's experts will reasonably agree to the Compliant Soil Testing Procedures, and NCM's experts are drafting them for review by the Settlement's experts.

II. Old Soil

For the approximately 92 properties (the Settlement and NCM will reasonably agree to the list of such properties) whose soil was remediated during the 2012 season, the following terms apply:

1. For soils that are subjected to the below described optional old soil testing, based upon voluntary Claimant participation and are found to be non-Compliant Soil, only, NCM shall extend the sod warranty under the current Agreement to November 15, 2014.

2. NCM and the Settlement, using a script reasonably agreed to, will notify all Claimants who received soil remediation during 2012 of the soil quality issue, and will meet with the impacted Claimants to offer optional testing and optional aeration and sanding using procedures reasonably agreed to by NCM's and the Settlement's soil experts, to promote long term successful sod growth (the "Soil Enhancement Procedures"). The Settlement's experts and NCM's experts will reasonably agree to the Soil Enhancement Procedures. They have one sand application. The Settlement's experts are drafting the Soil Enhancement Procedures for review by NCM's experts.

3. Claimants who opt to have their soil tested will be paid a \$50 annoyance and inconvenience fee by the Settlement. The deadline for Claimants to sign up for optional testing is November 30, 2013. If the testing results show non-Compliant Soil, then NCM will pay the reasonable costs of such testing. If the testing results show Compliant Soil, then the Settlement will pay the reasonable costs of such testing. For each claimant who opts to have their yard tested and has test results that indicate the soil is not sandy loam, loam, or silt loam, in accordance with the USDA soil classification system (the "non-Compliant Soil"), NCM will provide, at the Claimant's option, the Soil Enhancement Procedures.

Exhibit A to
The Court's Order

To the extent practicable, the Soil Enhancement Procedures will be administered once in the Spring and once in the Fall. Claimants with non-Compliant Soil, based on testing, who agree to receive the Soil Enhancement Procedures will receive an annoyance and inconvenience payment of \$175 for each of the two (2) procedures, to be paid by the Settlement and reimbursed by NCM.

III. Court Approval of Compliant Soil Testing Procedures and Soil Enhancement Procedures Required

After the Settlement and NCM reasonably agree to the Compliant Soil Testing Procedures and the Soil Enhancement Procedures, the Settlement shall submit them to the Court for review and possible approval.

The above remedy shall become effective only upon Court approval of such procedures.

STATE OF WEST VIRGINIA
COUNTY OF HARRISON, TO-WIT

I, Donald L. Kopp II, Clerk of the Fifteenth Judicial Circuit and the 18th
Family Court Circuit of Harrison County, West Virginia, hereby certify the
foregoing to be a true copy of the ORDER entered in the above styled action
on the 22 day of April, 2013.

IN TESTIMONY WHEREOF, I hereunto set my hand and affix
the Seal of the Court this 22 day of April, 2013.

Donald L. Kopp II
Fifteenth Judicial Circuit & 18th Family Court
Circuit Clerk
Harrison County, West Virginia