

## CDC rule focus of hearing in DuPont class-action

by Jim Davis  
STAFF WRITER

CLARKSBURG — A Harrison circuit judge on Thursday directed the administrator of the Spelter smelter class action settlement to revise an order stemming from more stringent federal regulations on acceptable lead levels for children.

Judge Thomas A. Bedell agreed with DuPont's attorney that the order should not contain language excluded from the new regulations put forth by the Centers for Disease Control and Prevention.

"My concern is it's language not adopted by the CDC," Bedell said.

The CDC regulations require ongoing medical monitoring of children 5

years or younger whose blood lead levels are 5 micrograms per deciliter or greater, administrator Ed Gentle told the judge.

The previous red-flag levels were 10 micrograms per deciliter, Gentle said.

The CDC's action, based on an advisory committee's recommendations, affects 20 children in the smelter suit settlement, Gentle added.

The order provides for informing both the families of the affected children and the medical providers participating in the monitoring program.

DuPont's lawyer, Jim Arnold, took issue with the order containing language included in the advisory committee's report, but not in the CDC's final decision.

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## DuPONT

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Medical providers will be receiving copies of both, Arnold said.

"This language is disjointed language," Arnold said. "Lawyers are substituting their judgment of what's important for toxicologists."

Meredith McCarthy, guardian ad litem for children in the case, and Virginia Buchanan, plaintiff class representative, argued for keeping

the language in the order.

Physicians are busy and aren't likely to have the time to read the information from the CDC and advisory panel, they said.

Bedell sided with Arnold.

"If both reports are being provided to the health care professionals, they can read them if they have the time or inclination to do so," the judge ruled.

Bedell denied Arnold's second objection to a provision authorizing McCarthy to contact the families of the affected children.

The order already requires that the families be notified by letter, Arnold said.

"We think that's just a duplication of effort and a needless expense," he said.

McCarthy replied that not contacting the families would be inconsistent with the rules of professional conduct and border on malpractice.

The costs, meanwhile, would be minimal, as many of the children are from the same families, McCarthy added.

In denying the objection, Bedell described Arnold's grounds as "frivolous."

Bedell also approved the settlement administration budget for the next year.

The budget is about \$19 mil-

lion, Gentle said.

That includes \$18.2 million for cleanup of properties near the former zinc smelter plant and \$761,866 for medical monitoring of people who registered for the program, Gentle said.

Bedell asked how much cash was on hand.

There is \$30 million for property remediation and \$2.3 million for medical monitoring, Gentle replied.

The settlement stems from a class action filed against DuPont by Spelter residents concerned about potential health problems as a result of living near the smelting plant.