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.

FINAL ORDER APPROVING SETTLEMENT

Presently pending before the Court is the proposed settlement and compromise of this case, as incorporated in a Memorandum of Understanding prepared and executed by the Parties on November 19, 2010. In light of the challenges and nuances of the continued mass litigation presented by this case, the Parties have agreed to settle their dispute.

This settlement resolves a class action which is larger than any before seen in Harrison County, and is one of the largest in the history of the judicial system of West Virginia. The Court Record, which consists of all the motions, briefs, documents and other filings made by the Parties over the nearly seven years since this case filed, currently encompasses thirty thousand three hundred and fifteen (30,315) pages, and it will continue to expand.

This case has taken on a life of its own; it has grown larger than any one attorney or firm, and beyond the individuals who make up the Plaintiff classes. This case has

been before the Federal Court for the Northern District of West Virginia, it has spent more than two years on appeal before the West Virginia Supreme Court of Appeals, and it has spent many years before this Court. Despite all of the work and time of so many people,[1] this case has not reached an end within the judicial system.

There have been many battles fought by the Parties and both sides have had victories. However, winning a battle or a skirmish does not end the war. The potential for lengthy future conflict still looms on the horizon, and, without this settlement, this war is not over.

Presently before the Court is the "Motion and Memorandum in Support of Motion for Final Approval of Proposed Class Settlement, Approval of Class Notice, and Class Representative's Incentive Award," filed by Counsel for the Plaintiffs on December 20, 2010.

The Parties appeared by counsel on December 30, 2010, at a fairness hearing and presented to the Court a proposed compromise and settlement through counsel Farrest Taylor, Virginia Buchanan, Mark Proctor, Edison Hill, Angela Mason and Perry Jones. The Defendants were represented by James Lees, David Thomas, and Stephanie Thacker. The previously appointed Guardian *ad litem*, Meredith McCarthy, appeared on behalf of the minors and incompetents in the classes.

The Court heard the evidence and representations of counsel for the Plaintiffs, who presented the testimony of Edgar C. Gentle, the previously appointed settlement and claims administrator, Lenora Perrine and Carolyn Holbert as members of the

[1] The Plaintiffs' attorneys have documented more than fifty-five thousand hours of work and the Defendants' attorneys have surely billed as many hours, and likely more.

classes, and Barry Hill, as an expert witness in support of the claimed attorneys' fees and expenses. These witnesses spoke in support of the nature and fairness of the proposed settlement. Edgar Gentle testified as to the nature of the proposed administration of the settlement. The Court also permitted an opportunity for any Class members having objection to the settlement of the case to be heard. Thereafter, the Court heard the viewpoints and arguments of Burl Davis, Albert Shaffer, Craig E. Ferrell, Thelma Valerio, and Hubert E. Ferrell.

The only class member who was adamantly against the settlement was Burl Davis, while others presented questions as to the nature and effect of the settlement, and the availability of cash payments instead of remediation or medical monitoring services, and these questions were addressed by Counsel for the Plaintiffs and Mr. Gentle. Even Mr. Davis's objection was based upon his belief that he would get "nothing" and his home's value would not increase due to contamination in the area in and around Spelter. However, although the final amount is yet to be determined, there will be tens of millions of dollars available for remediation of property which will help to increase home values in the class area.

After reviewing the proposed settlement and hearing the evidence presented by the Parties, as well as carefully considering the viewpoints of the class members, the Court hereby **ORDERS** that the Proposed Settlement be **APPROVED**.

The pertinent background is set forth below:

FACTUAL BACKGROUND

1. This action was filed on June 15, 2004, against Defendants E.I. du Pont de Nemours and Company ("DuPont"), T. L. Diamond & Company, Inc., Meadowbrook

Corporation, Matthiessen & Hegeler Zinc Company, Inc., Nuzum Trucking Company ("Nuzum"), and Joseph Paushel ("Mr. Paushel")(collectively "Defendants").

2. On September 14, 2006, this Court granted class certification and certified both a Property Class and a Medical Monitoring Class ("Plaintiff Classes") in this case pursuant to the provisions of Rule 23 of the West Virginia Rules of Civil Procedure. Upon appeal, the certification of both classes was upheld by the Supreme Court. "Having found no error in the circuit court's disposition of each of the elements to be considered in certifying a class under Rule 23(a) and (b), we find that certification was proper. Consequently, DuPont's claim that class certification violated its due process rights by preventing it from presenting individualized evidence and individualized defenses is without merit." *Perrine v. E.I. du Pont de Nemours and Co.*, 225 W.Va. 482, ___, 694 S.E.2d 815, ___, (2010).

3. The Court approved Plaintiffs' notice plan on December 21, 2006, which gave absent Class members until February 15, 2007, to opt out or exclude their claims from this litigation. The Notice specifically informed the Class members: "If you are a member of the Property Class and/or Medical Monitoring Class and do not request exclusion from the class action, you will be bound by any judgment whether favorable or not, or any settlement in this case."[2] Following this Notice, a number of persons and entities opted out.

[2] The Court notes that the Defendant has filed a "Memorandum of Law on Opt-Out Exclusion From the Certified Classes." However, the issue argued by the Defendant (that there should be no second chance for class members to opt out) is not before the Court. None of the class members have argued that they have the right to opt out of the settlement either in writing or at the Fairness Hearing. Accordingly, the Court will not address the issue.

4. Prior to the 2007 trial of this Class Action, the Plaintiff Classes agreed to dismiss Defendants Mr. Joseph Paushel and Nuzum. As a result, on or about March 5, 2007, this Court dismissed Defendants Mr. Paushel and Nuzum, with prejudice.

5. After extensive discovery and pre-trial litigation, this matter proceeded to trial beginning on September 10, 2007, and the trial lasted for approximately six (6) weeks. The trial consisted of four (4) phases, and the jury returned verdicts in favor of the Plaintiffs. The verdicts were ultimately rendered as awards of fifty-five million five hundred and thirty-seven thousand five hundred and twenty-two dollars and twenty-five cents ($55,537,522.25) for property damage and associated remediation costs, an estimated award of approximately one hundred and thirty million dollars ($130,000,000.00) for a future medical monitoring program to last for forty (40) years, and a punitive damages award of one hundred and ninety-six million and two hundred thousand dollars ($196,200,000.00).

6. Said verdicts were the result of the jury finding that the Plaintiffs' property and persons were exposed to elevated and dangerous levels of lead, cadmium, and arsenic, among other heavy metals, due to the long operation of a smelting facility in Spelter which polluted the class area.

7. On November 16, 2007, this Court entered an Amended Final Judgment Order finalizing the jury's verdict in the amounts described above against Defendant DuPont.

8. Thereafter, both the Plaintiffs and Defendants appealed numerous aspects of this Court's pre-trial, trial, and post-trial rulings to the West Virginia Supreme Court of Appeals.

9. On March 26, 2010, after a lengthy appellate process, the West Virginia Supreme Court of Appeals remanded this litigation to the Court with directions to conduct a trial on DuPont's statute of limitations defense. The opinion, when counting the pages of the majority and individual concurring and dissenting opinions, was the longest ever written by the Supreme Court.

10. The Supreme Court modified the punitive damages award, but conditionally affirmed the remainder of the verdict, which then consisted of approximately three hundred million dollars ($300,000,000.00). The Supreme Court determined that this Court erred in granting judgment as a matter of law in favor of the Plaintiffs on the affirmative defense of the statute of limitations, and directed this Court to hold a second trial to determine if the defense was merit worthy.

11. The effect of the Supreme Court's directive created an all or nothing proposition for the Parties. If the Plaintiffs prevailed on the statute of limitations issue, they would receive the relief obtained in the 2007 trial, as modified by the Supreme Court opinion. If DuPont prevailed, this Court would set aside the 2007 verdicts and render judgment in favor of DuPont, and the Plaintiffs would receive nothing. *Perrine v. E.I. du Pont de Nemours and Co.*, 225 W.Va. 482, ___, 694 S.E.2d 815, 854 (2010).

12. The Plaintiffs and Defendant both considered the directives of the Supreme Court's opinion and prepared for trial, which was set for the month of March, 2011. The Parties reached this settlement after considering the substantial amount of risk and expense remaining in the case for both sides. On November 19, 2010, the Parties advised the Court that a proposed compromise and settlement had been reached. Thereafter, on November 24, 2010, the Court set a December 30, 2010,

hearing to hear the Parties and to receive evidence and argument as to the fairness of the proposed settlement.

13. On December 6, 2010, the Court appointed Meredith McCarthy, a discrete and competent attorney practicing before this Court who is familiar with the facts involved in this case, to serve as Guardian *ad litem* to protect the interests of any minors who may be members of the Plaintiff Classes. Mrs. McCarthy previously served as a Guardian *ad litem* in this matter and is uniquely familiar with this issues presented.

14. Rule 23(e) of the West Virginia Rules of Civil Procedure requires that notice of the proposed compromise and settlement be given to the Plaintiff Classes in such manner as directed by the Court.

15. Plaintiffs' Counsel mailed individual "Notice of Proposed Settlement Regarding the Former Zinc Smelter in Spelter, West Virginia" ("Settlement Notice") to all reasonably identifiable Class members, including some approximate two thousand and five hundred (2500) property parcels and their respective owners. The Settlement Notice informed the absent Class members of the nature and terms of the proposed settlement, the date and time of the fairness hearing, the right to object, and the procedure for objection. Additionally, the Settlement Notice directed Class members to an informational website[3] at which they could review the November 19, 2010 Memorandum of Understanding between the Parties, which further details the terms of the settlement; and the November 30, 2010 Petition for Attorney Fees and Litigation Expenses filed by Plaintiffs' Counsel.

[3] The website, which was established by Settlement Administrator Edgar Gentle, can be reached at www.perrineduponl.com.

16. Additionally, the Settlement Notice was published in the Clarksburg Exponent newspaper on four separate dates: December 1st, 5th, 15th and 22nd, 2010; and in the Shinnston News on three separate dates: December 9th, 16th, and 23rd, 2010. Finally, the Notice was published in the Charleston Gazette on December 3rd, 10th, 17th, and 24th.

17. The Settlement Notice provided an opportunity for Class Members to file any written objections to the proposed settlement with the Claims Administrator and with the Court by December 20, 2010. Only two written objections to the settlement were received.

Having heard argument of counsel and the objections from the class members as noted herein, and considering the entire record of submissions and testimony in this case, and all applicable law, the Court makes the following Conclusions of Law.

Conclusions of Law

1. The Court finds that the Settlement Notice in this case was reasonable and afforded the Class Members an opportunity to be heard prior to approval of the settlement pursuant to the requirements of Rule 23.

2. Rule 23(e)(2) of the West Virginia Rules of Civil Procedure provides that a class action may not be dismissed or compromised without approval of the Court. Rule 23 does not provide any more direction for the Court, nor does the common law of West Virginia. However, it is clear that the primary inquiry of the Court must focus on the fairness and adequacy of the proposed settlement.

3. This Proposed Settlement affects the interests of the Classes as Certified by this Court on September 14, 2006, in the "Order Granting Class Certification."

Additionally, said class definitions for the medical monitoring class were modified by the June 14, 2007, "Order Granting Plaintiffs' Motion to Modify Class Definition and Denying Defendant DuPont's Motion to Decertify Class." For purposes of clarity, the Proposed Settlement affects the following classes as previously defined by Order of this Court.

a. The Property Class consists of "those who currently own, or who on or after December 1, 2003, have owned private real property lying within the below referenced communities or any other private real property lying closer to the Spelter Smelter facility than one or more of the below referenced communities." (Sept. 14, 2006, Order at 3).

b. The Medical Monitoring Class consists of "those who currently or at any time in the past since 1966 have resided on private real property in the Class Area for at least the minimum total residency time for a zone depicted on the map attached hereto as Exhibit A:[4] Zone 1: Minimum total residency time of one year since 1966. Zone 2: Minimum total residency time of three years since 1966. Zone 3: Minimum total residency time of five years since 1966. Residency time within a zone or zones closer to the former smelter facility but not meeting the minimum total residency time for a closer zone is accumulated with any residency time within a zone or zones further away in determining total residency time." (June 14, 2007, Order)

[4] Said Legal Notice, including the map with zones 1, 2, and 3, is attached as Exhibit 1 to this Order.

c. The General Provisions as to the geographic area are described as follows, and the Court further incorporates the boundary map as prepared and attached to this Order as Exhibit 1 to be read in concert with the following description:

i. "General Provisions. The initial proposed class area includes the following communities within Harrison County, West Virginia, and all other private real property lying closer to the Spelter Smelter facility than one or more of these communities: Spelter, Erie, Hepzibah, Lambert's Run, Meadowbrook, Gypsy, Seminole, Lumberport, Smith Chapel, and as further modified to include additional impacted areas as described in Plaintiffs' air model. The Court finds that private real property lying within these communities, as well as any other private real property lying closer to the Spelter Smelter facility, has been impacted by the release of hazardous substances at or from the Spelter Smelter facility." (Sept. 14, 2006, Order at 4).

4. In assessing the "fairness" of a proposed settlement, the Court has considered the following four factors as provided by persuasive common law from the Federal District Court of the Eastern District of Virginia: 1) the posture of the case at the time the settlement was proposed; 2) the extent of discovery that had been conducted; 3) the circumstances surrounding the negotiations; and 4) the experience of counsel in the area of class action litigation. *In re MicroStrategy, Inc. Securities Litigation*, 148 F.Supp.2d 654, 663-665 (E.D. Va. 2001); *Strang v. JHM Mortgage Sec. Ltd. P'ship*, 890 F.Supp 499, 501 (E.D. Va. 1995).

5. The Court finds that the Settlement in this action satisfies the fairness test because it has been negotiated between counsel who are experienced litigators and can accurately weigh the potential risk of a trial on the statute of limitations defense. This action has been pending for nearly seven years. In that time, the Parties have

actively pursued discovery, pre-trial litigation, a lengthy trial, and a lengthy appellate process.

6. Class Counsel, with the aid of their experts, has been able to determine the nature and strength of the Class Members' claims and to make reasonable calculations as to damages. Additionally, DuPont has been able to weigh their chances at trial in light of the original verdict and post-judgment interest. Both Parties are represented by able counsel who are experienced in class action litigation and who have spent tens of thousands of hours litigating this case. Therefore, under the four factors enumerated above, this settlement meets the fairness test because: (1) there is a substantial amount of risk facing both sides such that the settlement provides a fair compromise of the previously rendered verdict, (2) discovery has been extensively conducted and the Parties are well aware of the facts of the case, (3) the negotiations for the settlement were formally and fully conducted at arms length, and (4) both Parties are ably represented by experience counsel.

7. In determining the "adequacy" of the settlement, the Court looks to the following: 1) the relative strength of the Plaintiffs' case on the merits; 2) the existence of any difficulties of proof or strong defenses the Plaintiffs are likely to encounter if the case goes to trial; 3) the anticipated duration and expense of additional litigation; 4) the solvency of the Defendants and the likelihood of recovery on a litigated judgment; and 5) the degree of opposition to the settlement. *MicroStrategy*, 148 F.Supp.2d 665; *see also Strang*, 890 F.Supp at 501

8. The Court also finds that the Settlement satisfies the adequacy test. There is no certainty that the Plaintiffs will prevail at trial if the Settlement is not

approved. The sole issue of statute of limitations presents an all-or-nothing defense such that if Defendants were to prevail, the Plaintiffs would receive nothing. Alternatively, if Plaintiffs were to prevail at the trial, the case would nonetheless continue for years in appeal and the Defendants, unless they found relief on appeal, would be liable for approximately three hundred million dollars ($300,000,000.00), plus post-judgment interest accruing since 2007. Accordingly, both Parties are intimately familiar and engaged with this case, and have been able to negotiate a fair and adequate settlement to eliminate the risk presented to both sides by the second trial and future appellate litigation. Finally, despite the Settlement Notice provided to the Classes, there has been very little opposition voiced against the settlement. There were only two (2) written objections filed against the settlement, and the substance of the objections was against the claimed litigation expenses of the Attorneys, not the fairness of the settlement. Further, of the class members who spoke at the fairness hearing, only two were strongly opposed to the settlement, and both seemed to believe that cash payments based on the amount of the original verdicts were superior to remediation and medical monitoring plans. There are an estimated eight thousand five hundred (8,500) medical monitoring class members, and approximately two thousand eight hundred (2,800) property parcels in the two classes, and only two people voiced written opposition, and only one person voiced opposition to the settlement at the hearing. Therefore, the Court finds that there is not strong opposition to the settlement from within the classes.

9. Accordingly, the Court finds that the Settlement meets the adequacy test because although the Plaintiffs have a conditionally affirmed verdict, they face a

substantial challenge in overcoming the Defendants' statute of limitations defense. Without a settlement, litigation in this case would continue for a minimum of three to five (3-5) years, as the verdict at the second trial on the statute of limitations would be appealed to the West Virginia Supreme Court of Appeals by the losing party, and potentially appealed to the United States Supreme Court thereafter. Finally, there is very little opposition to the settlement from the Plaintiff Classes.

10. The Court-appointed Guardian *ad litem* in this case has stated to the Court that she has conducted an independent investigation into the facts contained in the record, the Petition for Approval of Settlement, and the Memorandum of Understanding between the Parties, and that the proposed settlement is fair, just, reasonable, equitable, and in the best interests of any minor members of the Plaintiff Classes.

11. The Court **FINDS** in view of all of the circumstances that the proposed settlement is fair, just, reasonable, equitable, and in the best interest of the Parties.

Accordingly, the Court **ORDERS** that:

1. The Petition seeking approval of the Settlement is **GRANTED**, and, therefore, the proposed settlement, which is found to be fair, reasonable, and in the best interests of the Parties, is hereby **APPROVED**.

2. Defendant DuPont is **ORDERED** to pay the total sum of seventy million dollars ($70,000,000.00) to Plaintiffs in accordance with the November 19, 2010, Memorandum of Understanding, and the prior Order of the Court dated December 23, 2010, which established two separate and distinct Qualified Settlement Funds.

Additionally, said Qualified Settlement Fund Accounts have been established at MVB Bank by Edgar Gentle at the direction of the Court.

3. Sixty-six million ($66,000,000.00) of the total seventy million ($70,000,000.00) payment shall be available to the Plaintiffs as directed by the Court, or it's designee, for the purposes of paying for remediation services and attorneys' fees and expenses for Plaintiffs' Counsel.

4. The remaining four million ($4,000,000.00) of the total seventy million ($70,000,000.00) payment shall be made available only for the medical monitoring sub-class of Plaintiffs as directed by the Court, or the Court's designee. Said sum shall not be used for any purpose other than for the sole benefit of the medical monitoring sub-class and shall be deposited in the Qualified Settlement Fund Account created solely for this amount and this purpose.[5]

5. Defendant DuPont is **ORDERED** to pay for the cost of a medical monitoring program on a "pay-as-you-go" basis, consistent with the February 25, 2008, "Final Order Regarding the Scope, Duration and Cost of the Medical Monitoring Plan," except as modified by the Memorandum of Understanding, for a period of thirty (30) years.

6. The Court recognizes that the issue as to the amount of attorney's fees and costs to be awarded remains to be determined. After weighing the evidence presented at the December 30, 2010, Fairness Hearing, and such filings as have been

[5] The Court recognizes that the Defendants assert that the administration of the medical monitoring program should be governed by a proposed executive committee instead of by the Court and the previously appointed Special Master/ Claims Administrator. Said argument and accompanying motions, as well as the exact use of the four million dollars, will be addressed by the Court in a later Order after the Court has had the time to review the matter.

made by the Plaintiffs' Counsel, the Court will promptly make a determination and enter an Order directing disbursement of fees and costs from the sixty-six million dollar ($66,000,000.00) Qualified Settlement Fund created, in part, for that purpose.

7. The Court further **ORDERS** that the Defendant DuPont pay such fees as incurred by the Guardian *ad litem*. The Court has determined that six thousand two hundred and fifty dollars ($6,250.00) is a reasonable and fair amount based on the time expended by the Guardian *ad litem* before and during the Fairness Hearing, which was stated to the Court as twenty-five (25) hours of work at a rate determined by the Court of two hundred and fifty dollars ($250.00) per hour.

8. Finally, as agreed to in the Memorandum of Understanding, DuPont is hereby **ORDERED** to pay the Court's costs associated with this matter, as taxed by the Clerk of this Court, in the amount of fifty-five thousand three hundred and thirteen dollars and eighty-nine cents ($55,313.89), which represents only the actual out-of-pocket expenses that have been borne by the citizens of Harrison County to date.[6]

9. It is **ORDERED** that this is a full and final settlement of all claims of the Plaintiff Classes in this action, that all claims of the Plaintiff Classes in this action are **DISMISSED, with prejudice**, against all Defendants, and that the Defendants are hereby released from any and all liability associated with this litigation, provided that the Defendants fulfill any and all obligations Ordered herein.

10. Further, the Court **ORDERS** that this is a Final Order pursuant to Rule 54(b) of the West Virginia Rules of Civil Procedure and constitutes a "final judgment [as]

[6] Said Taxation of Costs is Attachment B to this Order.

there is no just reason for delay and upon an express direction for the entry of judgment."

11. It is **ORDERED** that any and all prior judgments of liability and damages against all Defendants in this case are **VACATED** and shall have no collateral estoppel or *res judicata* effect against any Defendant in any pending or future claim against any of the Defendants arising from the operation or ownership of the zinc smelter that is the subject of this litigation. However, the Court notes that the judgment in favor of T.L. Diamond against DuPont, entered on February 15, 2008, which was upheld by the Supreme Court after a review of the indemnification agreement between T. L. Diamond and DuPont, shall not be vacated. Additionally, the Final Order which dismissed Defendants Nuzum Trucking and Joseph Paushel, with prejudice, on or about March 5, 2007, is not vacated. Finally, the jury's verdict found that the "other entities," including Nuzum Trucking, were not liable for negligence, public nuisance, private nuisance, trespass, and strict liability, and those findings are upheld and not vacated.

12. Further, the pending Motion for Sanctions, filed by the Plaintiffs on September 8, 2010, is "deemed moot" and thereby withdrawn, according to paragraph 8 of the Memorandum of Understanding. Although the Defendant has requested that "all pending motions" be deemed moot, upon a review of the record, the only other pending motions are not moot and are related to the administration of the settlement.

13. Without affecting the finality of this Final Judgment as to the Plaintiff Classes, the Court hereby retains exclusive jurisdiction over this action, and every aspect of the interpretation, implementation and enforcement of the Settlement, until the Settlement has been consummated and each and every act agreed to be performed by

the Parties thereto shall have been performed, and thereafter for all other purposes necessary to interpret and enforce the terms of the Settlement, the Orders of this Court, and in aid of this Court's jurisdiction and to protect and effectuate its judgments.

IT IS SO ORDERED.

Finally, the Clerk of this Court shall provide copies of this Order to the following:

David B. Thomas
James S. Arnold
Stephanie Thacker
Allen Guthrie & Thomas, PLLC
500 Lee St., East, Suite 800
P.O. Box 3394
Charleston, WV 25333-3394

Edgar Gentle, III
Gentle, Turner, & Sexton
501 Riverchase Parkway East,
Suite 100
Hoover, AL 35244
Special Master

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

J. Farrest Taylor
Cochran, Cherry, Givens, Smith,
Lane & Taylor, P.C.
163 West Main St.
Dothan, AL 3630

ENTER: January 4, 2011

Thomas A. Bedell, Circuit Judge

LEGAL NOTICE

If you are a current or former property owner or resident near the former Spelter Smelter facility in Harrison County, West Virginia, changes to a Class Action may affect your rights.

Lenora Perrine, et al. v.
E.I. Dupont De Nemours and Company, et al.

Case No: 04-C-296-2

NOTICE OF CHANGES TO MEDICAL MONITORING CLASS DEFINITION

As previously noticed, the Circuit Court of Harrison County, West Virginia has certified a class action in this case against defendants E.I. Dupont De Nemours and Company, Inc., Meadowbrook Corporation, Matthiessen & Hegeler Zinc Company, Inc., and T.L. Diamond & Company, Inc. concerning the former zinc smelter facility in Spelter, Harrison County, West Virginia.[1] Prior notice of the class action was issued by the Court on December 21, 2006. The prior notice and other information about the class action may be viewed or downloaded at *www.Spelterclass.com*. In addition, a copy of the prior notice and other information about the class action may be obtained by contacting the Class Administrator at:

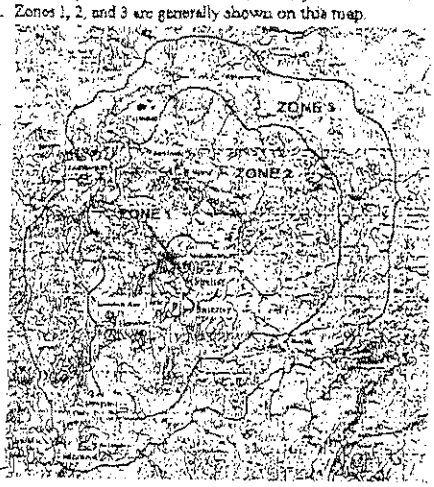
Class Administrator, Analytics, Inc.
P.O. Box 2002
Chanhassen, MN 55317-2002
1-866-233-0124

The Property Class definition[2] and the class boundaries (generally shown on the below map) set forth in the prior notice of the class action remain unchanged.[3]

However, the Medical Monitoring Class definition has been changed as follows:

Previously the Medical Monitoring Class definition was based on total residency time within the class area of 277 days. However, this definition has been changed to require one, three, or five years of total residency time since 1966, depending on where one lives or lived within the class area. Total residency time of one year since 1966 is required for Zone 1. Total residency time of three years since 1966 is required for Zone 2. Total residency time of five years since 1966 is required for Zone 3. Residency time within a zone or zones closer to the former smelter facility but not meeting the total residency time for a closer zone is accumulated with any residency time within a zone or zones further away in determining total residency time.

Zone 1 is the zone closest to the former smelter facility, and Zones 2 and 3 are further away from the former smelter facility but still within the class area. Zones 1, 2, and 3 are generally shown on this map.



If you have questions as to whether a particular parcel lies within Zone 1, 2, or 3, please contact the Class Administrator.

If you previously were in the Medical Monitoring Class based on total residency time of 277 days within the class area but do not have sufficient residency time under the amended Medical Monitoring Class definition stated above, you are no longer in the Medical Monitoring Class and are no longer represented by Class Counsel. You will need to take whatever action you deem appropriate to protect your rights, if any, which will no longer be protected in this class action and which will be subject to limitations on the timely bringing of claims.

If you meet the Property Class definition and did not previously "opt out" of the class action by filing a timely exclusion form as provided under the prior notice, you remain in the class action for purposes of the Property Class even if you do not meet the amended Medical Monitoring Class definition stated above. However, if you now wish to opt out of the class action entirely because you will no longer be part of the Medical Monitoring Class, you have until August 6, 2007 to submit an exclusion form. Otherwise, you will remain within the Property Class even if this means you will no longer be part of the Medical Monitoring Class under the amended Medical Monitoring class definition.

If you are a member of the Property Class and/or the amended Medical Monitoring Class and wish to remain in the class action, you do not need to take any action. If you are a member of the Property Class and/or the amended Medical Monitoring Class and do not request exclusion from the class action, you will be bound by any judgment whether favorable or not, or any settlement in this case.

To the extent the class action claims seek monetary damages, including punitive damages, they only relate to the Property Class. To the extent the class action claims seek medical monitoring, they relate to eligible past and present residents, whether or not they are in the Property Class. If money is awarded to the Property Class, Property Class members may be entitled to a share of that money. If remediation costs and/or medical monitoring are awarded, common funds may be established to efficiently manage remediation and/or medical monitoring on behalf of multiple class members. The precise monetary, remediation and/or medical monitoring remedies and distribution, if any, are to be determined in the class action proceedings. Litigation costs and legal fees for plaintiffs' attorneys may be deducted from awards to class members. The class action does not seek damages for personal injuries, and class members may risk being barred from pursuing any such potential claims in the future if they do not opt out of the class action.

If you are in the Property Class and/or the amended Medical Monitoring Class but do not want to be a part of this class action, you have the option of excluding yourself from the class action. Your written request to be excluded from the class action must be mailed to the Class Administrator and must include (1) your full name, and (2) your current mailing address. You also must sign the request and clearly state your intention to be removed from the class action. If your request is postmarked after August 6, 2007 you automatically will be included in the class action. A copy of the Exclusion Form is found below and may also be obtained at *www.Spelterclass.com* or by contacting the Class Administrator.

PLEASE DO NOT CONTACT THE COURT, THE CLERK'S OFFICE OR THE JUDGE, AND PLEASE DIRECT ANY QUESTIONS TO THE CLASS ADMINISTRATOR.

By order of the Honorable Thomas A. Bedell, Circuit Court Judge, Circuit Court of Harrison County, West Virginia. Date: _____, 2007.

[1] Plaintiffs allege that hazardous substances from the former Spelter Smelter facility have been released onto private real property in the class area and that these substances have health risks. Plaintiffs allege that the released hazardous substances include arsenic, cadmium, and lead. Specifically, plaintiffs allege that, as a result of these substances, they are entitled to property damages, including remediation costs, and medical monitoring. Plaintiffs also seek punitive damages, litigation costs, and legal fees for their attorneys. Defendants dispute that the plaintiffs are entitled to any damages, medical monitoring, or other relief. Defendants dispute that hazardous substances from the Spelter Smelter facility have covered the entire class area and that the health of class members is at risk. Defendants also raise various affirmative defenses.

[2] The Property Class is comprised of those who currently own, or who on or after December 1, 2003 have owned, private real property lying within the class area, excluding those who owned property only before December 1, 2003 or only after September 14, 2006 (the date of entry of the Order Granting Class Certification).

[3] Also, the class definitions continue to exclude defendants in the case, any entity in which a defendant in the case has a controlling interest, or a current employee, officer, director, legal representative, heir, successor, assign, or spouse of a defendant in the case.

REQUEST FOR EXCLUSION: MUST MAIL BY AUGUST 6, 2007

In the Circuit Court of Harrison County, West Virginia: *Lenora Perrine, et al. v. E.I. Dupont De Nemours and Company, et al.*, Case No. 04-C-296-2

(Print or Type)

Full Name: _____
First Middle Last

Current Mailing Address: _____

_____
City State Zip (if known)

( ) _____
Telephone Number (optional)

Mail to:
Class Administrator, Analytics, Inc.
P.O. Box 2002
Chanhassen, MN 55317-2002

I do not wish to be a Member of the Class Action.
I have read the Notice Of Changes To Medical Monitoring Class Definition in the above-referenced case.

_____ _____
Signature Date

Number: 0006014 * A S S E S S M E N T * January 03, 20

Assessed to. E. I. DUPONE DE NRMOURS & CO. $55,313.

The exact sum of Fifty Five Thousand Three Hundred Thirteen Dollars and 89 Cents

Victim..... LENORA PERRINE ET. AL

Assess Due Retrib C

Case #: 04-C-296

Assessment conducted at :

HARRISON COUNTY COURTHOUSE
CLARKSBURG, WV 26301

DONALD L. KORP II, CLERK

Deputy

Distribution to Accounts...

5001 OTHER PARTIES	405.00	4013 PARENT ED-MEDIATION	25835.3
2002 COURT REPORTER	570.00	1004 SHERIFF'S FEES	1.0
4014 DOMESTIC VIOLENCE-LE	25835.38	1003 POSTAGE/COPIES	2667.1

Clerk of the Circuit Court
Harrison County

Donald L. Kopp II, Clerk

301 WEST MAIN STREET
CLARKSBURG, WEST VIRGINIA 26301

Telephone (304) 624-8635
Fax (304) 624-8710

Karen G. Nestor
Chief Deputy

Lenora Perrine Et. Al — Gary W. Rich

04-C-296-2

E.I. DuPont D E Nrmours & Co. — David Thomas

Taxation of Cost

5/7/2007	Postage to Mail 1,500 Questionnaires (.42)	$630.00
	Return Postage (.42)	$630.00
7/11/2007	Jurors paid for Orientation	$22,476.69
9/10/2007	Jurors seated & 2nd Orientation	$12,748.79
	Jury 9/24 - 10/5/07	$5,197.00
	Jury 10/8/07 - 10/19/07	$5,197.00
9/12/2007	Jurors	$6,051.29
	Sub Total	**$52,930.77**
10/15/2010	Questionnaires Mail 1481	$656.04
	(.44) Return Postage 1259	$553.96
	Letter to Jurors 448	$197.12
	Sub Total	**$1,407.12**
	Court Reporter	$570.00
	Filing Fee	$145.00
	Jury Costs to SHC	$1.00
	Docket Fee	$10.00
	For Service	$250.00
	Sub Total	**$976.00**
	Grand Total	**$55,313.89**

Cost to be paid by Defendants