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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,

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

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

Defendants.

**ORDER RESOLVING PENDING REMEDIATION PROPERTY
CLEAN-UP PROGRAM ISSUES IN PREPARATION FOR IMPLEMENTATION**

Presently before the Court are the unresolved issues described below and related to the implementation of the Remediation Property Clean-Up Program (the "Program")

In order to allow the Parties to be heard on these issues and all other issues related to the implementation of the Program, this matter came on to be heard on May 1 and 2, 2012, beginning at 8:30 o'clock a.m. each day. Said Fairness Hearing was held before the Honorable Thomas A. Bedell, Judge of the Circuit Court of Harrison County, West Virginia, in the Division 2 Courtroom located on the Fourth (4th) Floor of the Harrison County Courthouse, 301 West Main Street, Clarksburg, West Virginia.

In accordance with the April 10, 2012, Order setting this Fairness Hearing, the Claims Administrator invited Class Members who have registered with the Program to attend the Fairness Hearing and to provide their input and suggestions to the Court on how to implement the Program.

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At the Hearing, the Claims Administrator submitted his April 9, 2012, Report respecting the recommended resolution of the issues, while presenting the alternative positions of the Parties. Also appearing was Mr. Richard B. Adams, an expert sponsored by the Claims Administrator, to address the recommended soil and house contamination levels justifying remediation; and to help the Court decide if soil remediation should be to a depth of 6 inches, as previously recommended by Dr. Kirk Brown, or to 12 inches, at considerably more expense. Mr. Marc Glass, the Court-appointed Program Remediation Technical Advisor, addressed whether the Upper B Street Properties (described below) should be included in Class Area Zone 1A and therefore be eligible for soil remediation, and helped answer Class Member questions. Also attending the hearing and helping answer Class Member questions about remediation were Mr. George W. Hilton, III, and Mr. Dennis Raver of NCM Demolition and Excavation, LP ("NCM"), the lowest qualified bidding contractor to carry out the Program with the Claims Administrator. NCM helped the Court address where to dispose of contaminated soils. The Claims Administrator provided an overview of his April 9, 2012, Report and of the Program implementation issues that have been brought to his attention by the Claimants Advisory Committee and the Claimants. Mr. Adams and Mr. Glass then made their presentations.

Interested Class Members then spoke to the Court about concerns and suggestions respecting the Program. The Claims Administrator, Mr. Glass, and NCM answered related Class Member questions. Class Counsel, the Guardian ad Litem for Children and DuPont were also invited to present their positions for the Court's consideration.

After a careful review of the Claims Administrator's submission, the thoughtful suggestions and comments of Class Members, and the submissions of the Parties, and having weighed the evidence and the presentations made at the May 1 and 2, 2012, Fairness Hearing, and in consideration of the applicable law, the Court **ORDERS** the following:

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1. THE SCOPE OF SOIL REMEDIATION

The structure of the Program, as outlined in this Court's June 27, 2011, Order (the "Previous Remediation Order"), and as recommended by Dr. Kirk Brown, is reaffirmed, with only Zone 1A to have soil remediation, and the entire Class Area to have house and commercial structure remediation on the property owned by participating Class Members.

2. UPPER B STREET PROPERTIES

The Court notes that by Order entered August 31, 2011, the approximately 20 properties on Upper B Street in Spelter, were to be soil tested, with the Court then to determine if they were to be included in Zone 1A and therefore to have their soil remediated. Mr. Marc Glass reports that, according to the soil test results, lead and arsenic levels in the Upper B Street Properties' soil compares to that in Zone 1A, but that cadmium and zinc levels are materially less. The Claims Administrator recommends that, because contamination with only one of the 4 heavy metals above the thresholds prescribed by Mr. Adams (described below) justifies remediation of a soil property in Zone 1A, the Upper B Street Properties should be included in Zone 1A.

The Court agrees with Mr. Glass and the Claims Administrator, and the Upper B Street Properties are hereby added to Zone 1A.

3. CONTAMINATION LEVELS JUSTIFYING REMEDIATION

In accordance with the Court's June 27, 2011, Previous Remediation Order, the Claims Administrator has conducted Zone 1A soil tests and Class Area house and commercial structure tests for participating Class Members respecting the 4 heavy metals. Mr. Richard B. Adams was retained to recommend the soil and house and commercial structure heavy metal levels justifying remediation, with his recommendations being summarized below:

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	<u>Soil (Zone 1A only)</u>	<u>House and Commercial Structures</u> <u>(All Zones in Class Area)</u>
Cd- Cadmium	39ppm (parts per million)	144.65 ug/ft ² (micrograms per square foot)
As- Arsenic	12.5 ppm	35.95 ug/ft ²
Zn- Zinc	23,000 ppm	43,695 ug/ft ²
Pb- Lead	400 ppm	40 ug/ft ²

These contamination levels are approved by the Court. Using these levels, the Claims Administrator reports that approximately 160 soil properties and 600 houses and commercial structures will be found to be contaminated when testing is completed (the "Remediation Level Properties").

However, at the Fairness Hearing, some Class Members expressed dissatisfaction with the testing process, believing their property is contaminated though it tested clean.

In order to make frugal use of Program funding, the Remediation Level Properties are to be cleaned, while those testing clean are not. However, to accommodate the Class Members' concerns, the Claims Administrator shall allow any Class Member whose property tested clean to be retested at the Program's expense, and with the higher of the two test results to be used in determining whether the Class Member has a Remediation Level Property.

4. WORKING BUDGET AND RELATED ISSUES

In his April 9, 2012, Report, the Claims Administrator provided the Court with a Program Working Budget to facilitate Court decision-making respecting the Program. The Working Budget does not deprive the Parties of the right to prepare a joint budget for the Remediation Program and the Medical Monitoring Program for the period commencing September 1, 2012, or for future periods.

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The Working Budget projects a \$6.4Million Program funding surplus before taking into account possible soil remediation of the Upper B Street Properties at a projected expense of \$700,000, which is addressed in another portion of this Order and a recommended reasonable reserve of \$1Million for litigation over road deterioration, and possibly remediating soil to a depth of 12 inches as recommended by Mr. Richard B. Adams, compared to the 6 inches recommended by Dr. Kirk Brown. The Court approves the suggested \$1 Million road deterioration reserve.

PART I: UPPER B STREET PROPERTIES

As the Court has Ordered the remediation of Upper B Street Properties soil, the \$700,000 reserve for this additional remediation is approved.

PART II: REMEDIATING SOIL TO 6 INCHES OR 12 INCHES

The Court, having carefully reviewed the expert report of Dr. Kirk Brown and the presentation of Mr. Adams, determines that remediation to 6 inches is adequate to provide a reasonable degree of soil remediation while weighing the rights of Class Members in other Zones of the Class Area. This may result in a significant Program Surplus when soil and house and commercial structure remediation is completed, with the Court to determine the disposition of any such surplus at a later date.

5. DISPOSITION OF CONTAMINATED SOIL

It was suggested that contaminated soil removed from yards during the Program be stored in a facility in Spelter, as opposed to a landfill, to save money. NCM provided input on this issue.

Upon considering the pros and cons of this suggestion, the Court determines that landfill disposal is the simplest means to dispose of contaminated soil, with no long term storage problems, and the Claims Administrator shall use this method.

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6. REMEDIAL LEVEL PROPERTY CLEAN-UP: MANDATORY OR OPTIONAL

In the Previous Remediation Order, the Court contemplated that Class Member Properties with heavy metals contamination levels justifying remediation (called Remediation Level Properties in this Order) would be cleaned-up. The Previous Remediation Order also contemplated that such Class Members would not receive the balance of their Annoyance and Inconvenience Payments until their property has been remediated.

At the Fairness Hearing, some Class Members asked the Court to reconsider its previous decision, requesting that they be allowed to forfeit their remediation rights and receive the balance of their Annoyance and Inconvenience Payments now.

After weighing this issue very carefully, the Court decides to keep the Program structure contemplated in the Previous Remediation Order in place. For the good of the Class Area and of the Class Members as a whole, Class Members with Remediation Level Properties are encouraged to participate in the Program, and will receive the balance of their Annoyance and Inconvenience Payments as soon as practicable after their property has been cleaned-up.

The Claims Administrator shall carry out the Program in accordance with this Order, with the Claims Administrator then to compute the Program Surplus, if any, and to submit a final report to the Court at that time.

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
Stephanie Thacker
Guthrie & Thomas, PLLC
Post Office Box 3394
Charleston, West Virginia 25333-3394

Meredith McCarthy
901 West Main Street
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Perry B. Jones, Esq.
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ENTER: May 4, 2012



THOMAS A. BEDELL, Circuit Judge

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 4th day of May, 2012.

IN TESTIMONY WHEREOF, I hereunto set my hand and affix
Seal of the Court this 7th day of May, 2012

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