

PERRINE DUPONT SETTLEMENT CLAIMS OFFICE  
ATTN: EDGAR C. GENTLE, CLAIMS ADMINISTRATOR  
C/O SPELTER VOLUNTEER FIRE DEPARTMENT OFFICE

55 B Street  
P. O. BOX 257  
Spelter, West Virginia 26438  
(304) 622-7443  
(800) 345-0837  
[www.perrinedupont.com](http://www.perrinedupont.com)  
[perrinedupont@gtandslaw.com](mailto:perrinedupont@gtandslaw.com)

October 27, 2016

CONFIDENTIAL  
VIA HAND DELIVERY

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

Re: The Perrine DuPont Settlement Remediation Program (the "Remediation Program") - Proposed Order Resulting from October 12, 2016 Hearing on Wrap-Up Matters; Our File No. 4609-1 {DD-89}, 4609-1{DD-47}, 4609-1{DD-92} and 4609-1{VV-129}

Dear Judge Bedell:

I hope this letter finds the Court well.

In accordance with the Court's instructions at the conclusion of the October 12, 2016 hearing with respect to these matters, please find a proposed Order for your consideration, with respect to a number of Settlement Remediation Program wrap-up matters: (i) approving the Settlement's purchase of two items with \$40,000 of the Remediation Program Surplus, for the Spelter, West Virginia Fire Station, namely, the purchase of air tanks for \$30,000, and the purchase of a UTV side-by-side for \$10,000; (ii) deferring the Church Alley matter to a later hearing in order to provide the Claims Administrator an opportunity to meet with the impacted Claimants, again, on November 1, 2016, to confirm that they are in agreement; (iii) determining that Ms. Heil does not have standing to complain about the contours of a neighboring property, because she is not the owner; and (iv) approving the proposed dividend rules submitted to the Court.

This Order was reviewed with the Settlement Finance Committee, with no objections or edits being lodged.

FILED IN 15TH  
CIRCUIT COURT  
2016 OCT 27 P 4:05

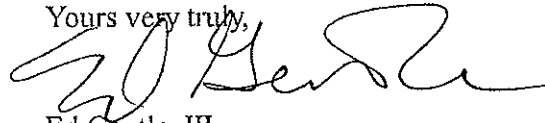
October 27, 2016

Page 2

---

Thank you for the Court's consideration.

Yours very truly,



Ed Gentle, III  
Claims Administrator

ECGIII/jcs  
Enclosures

cc: (confidential)(via email)(with enclosures)  
Virginia Buchanan, Esq.  
James S. Arnold, Esq.  
Meredith H. McCarthy, Esq.  
Terry D. Turner, Esq.  
Katherine A. Harbison, Esq.  
J. Christopher Smith, Esq.  
Michael A. Jacks, Esq.  
Jennifer L. Blankenship, Esq.  
Jennifer Newby, CPA  
Mr. Stan Keifer  
Mr. Tom Archer  
Mr. Paul Emerson  
Ms. Christy Mullins  
Ms. Sarah Cayton

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.

**FINAL ORDER RESPECTING CERTAIN SETTLEMENT REMEDIATION PROGRAM  
WRAP-UP MATTERS UNDER THE COURT'S JULY 13, 2016 DIVIDEND ORDER  
AND AUGUST 19, 2016 AMENDMENT TO DIVIDEND ORDER**

Presently before the Court are the Claims Administrator's October 4, 2016 Report in Attachment A and the October 7, 2016 Supplemental Report in Attachment B, respecting 4 Wrap-Up Matters in connection with the Settlement Remediation Program.

The Report and Supplemental Report came on to be heard on October 12, 2016, at 1:15 p.m.

The following individuals attended the hearing: Ed Gentle, the Claims Administrator; Michael Jacks, Esq., as local counsel for the Claims Administrator, telephonically; Meredith McCarthy, Esq., as Guardian Ad Litem for children and proxy for Class Counsel; Settlement Remediation Supervisor Paul Emerson; Settlement Staff members Christy Mullins and Sarah Cayton; Settlement Scientific and Technical Remediation Advisor Marc Glass, telephonically; Remediation contractor Northstar Demolition and Remediation f/k/a NCM, employee Tom Archer; and Settlement Engineering Consultant Doug Forni. Also attending was Claimant, Trudy Heil.

The first wrap-up matter is the Settlement's purchase of two items with \$40,000 of the Remediation Program Surplus, for the Spelter, West Virginia Fire Station, namely, the purchase of air tanks for \$30,000, and the purchase of a UTV side-by-side for \$10,000. At the hearing, the Claims Administrator entered into evidence copies of the canceled checks and the bills of sales for the two purchases, and stated that he had inspected the equipment purchased and it is on site at the fire station, where the Settlement has its claims office. The Court finds these purchases to be in order, and hereby approves them, so that this matter is closed.

The second item concerns the repair of the Church Alley in Spelter, West Virginia. The Claims Administrator reported that on October 5, 2016, the Settlement had a town meeting with the Claimants whose property adjoins the Church Alley in an effort to resolve this issue prior to it being heard by the Court. According to the Claims Administrator, the meeting resulted in a tentative agreement among the impacted Claimants. Mr. Doug Forni has created a written description of the tentatively agreed to improvements, and there will be a follow-up meeting with the impacted Claimants on November 1, 2016, to confirm that they are in agreement. Thereafter, this matter will be brought before the Court for consideration. The Court hereby defers this matter to a later hearing.

The third matter concerns a request by Claimant, Trudy Heil, to modify adjoining property owned by Mr. Randall Nutter in Zone 1A. The July 13, 2016 Dividend Order at page 6 provided that:

The additional road and infrastructure repairs and modifications described in the Report and questionnaire are approved, as are the requested drainage repairs in Eire identified by Ms. Heil, and to the extent they are consented to by the affected property owner(s), and shall be performed under the supervision of the Claims Administrator.

The Claims Administrator reported that, in an effort to carry out Ms. Heil's request and these provisions of the Court's Dividend Order, the Settlement engaged Mr. Marc Glass to inspect the Nutter property and to make appropriate recommendations.

Mr. Glass' resulting report was submitted into evidence, and Mr. Glass testified respecting his report and his findings. Based upon his findings, Mr. Glass recommended no further work be done on the Nutter property, finding it to have been remediated properly and to have approximately the same contours as it did prior to the Remediation Program.

Ms. Heil testified. She expressed the opinion that the contours of the property are not the same, and that water now puddles on the property, so that it is harder for her to walk her cats on the property.

After considering the testimony of Mr. Glass and Ms. Heil, and weighing the law and the facts, the Court determines that Ms. Heil does not have standing to complain about the contours of the Nutter property, because she is not the owner. The claim respecting the Nutter property is therefore denied.

The final wrap-up matter before the Court is the Claims Administrator's requested directions from the Court on Claimant dividend payment issues. The payment issues and the Claims Administrator's recommended disposition thereof are described in detail in the Supplemental Report that is Attachment B to this Order. At the hearing, the Claims Administrator gave an overview of the proposed dividend payment rules.

In a nutshell, payments will not be made per property, but per Claimant unit, with a Claimant unit being defined as the same group of individuals. This will often be a husband and wife. One Claimant unit may own 3 properties, for example, but will only be entitled to one payment, with the payment being the highest possible in connection with the 3 properties. For

example, a husband and wife comprising a Claimant unit may have the following 3 properties: (i) a Zone 1A property whose soil and house participated in the Remediation Program, entitling it to 2 surplus shares; (ii) a Zone 3 house that participated in the Remediation Program, entitling it to 1 surplus share; and (iii) a Zone 2 house that did not participate in the Remediation Program, entitling it to a 0.2 share. Under this example, the husband and wife Claimant unit would receive 2 surplus shares, which is the highest amount due on any of the 3 properties. They would not receive any payment in connection with the other 2 properties.

The proposed rules also address how to make payments when Claimants have died or the property meriting the payment has been sold. The Court finds the proposed rules to be fair and reasonable.

The Court also finds it appropriate, as proposed by the Claims Administrator's proposed rules, to make the dividend payments in the same manner in which the original annoyance and inconvenience payments were issued, such as issuing the dividend payment jointly to a husband and wife if that is how they received the original annoyance and inconvenience payments.

Finally, it is appropriate for properties that did not qualify for the Remediation Program because they are out of the Class Area, or subject to the Grasselli deed exclusion, or publicly owned, or previously denied eligibility by the Court, and so on, should not participate in the surplus payment program either, as set forth in the Claims Administrator's proposed rules.

After a careful review of the Claims Administrator's proposed rules in making the surplus dividend payments, the Court hereby approves them and adopts them herein by reference. The Court hereby instructs the Claims Administrator to apply the rules to the participating and non-participating Claimant population entitled to a dividend, and to provide a

resulting Proposed Dividend Payment Report to the Court, itemizing the proposed payments on a per Claimant basis before they are made, for the Court to consider.

The Court also amends the language in section 8) paragraph b. on page 8 of the July 13, 2016 Dividend Order to state:

“b. For nonparticipating claimants, defined above, by analogy, the Court finds it appropriate to pay (i) 20% of the 1/5th surplus share to the owners of the property when it was tested for contaminants and at the time the 20% payment was made; and (ii) 80% of the 1/5th surplus share to the owners of the property as of the date of this Order.

The above paragraph corrects a scrivener’s error, in which the word, share, on line 2 was mistakenly omitted.

Provided the Claims Administrator acts strictly in accordance with the protocols and the directives of this Order, he and his staff are granted Judicial Immunity.

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.**

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  
*Gardian Ad Litem*

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

Edgar C. Gentle, III  
Claims Administrator  
Gentle, Turner, Sexton & Harbison, LLC  
P.O. Box 257  
Spelter, WV 26437

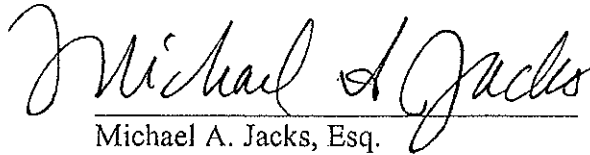
Ms. Trudy Heil  
3077 Maple Avenue  
Clarksburg, WV 26301

Michael A. Jacks, Esq.  
Jacks Legal Group, P.L.L.C.  
3467 University Ave, Suite 200  
Morgantown, WV 26505

Order Prepared by:



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



Michael A. Jacks, Esq.  
Jacks Legal Group, P.L.L.C.  
W.Va. Bar No 11044  
3467 University Ave, Suite 200  
Morgantown, WV 26505



ENTER: \_\_\_\_\_

\_\_\_\_\_  
Thomas A. Bedell, Circuit Judge



# ATTACHMENT A

PERRINE DUPONT SETTLEMENT CLAIMS OFFICE  
ATTN: EDGAR C. GENTLE, CLAIMS ADMINISTRATOR  
C/O SPELTER VOLUNTEER FIRE DEPARTMENT OFFICE  
55 B Street  
P. O. BOX 257  
Spelter, West Virginia 26438  
(304) 622-7443  
(800) 345-0837  
[www.perrinedupont.com](http://www.perrinedupont.com)  
[perrinedupont@gtandslaw.com](mailto:perrinedupont@gtandslaw.com)

October 4, 2016

**CONFIDENTIAL**  
**VIA HAND DELIVERY**

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

**Re: The Perrine DuPont Settlement Remediation Program (the "Remediation Program") - Wrap-Up Matters Under the Court's July 13, 2016 Dividend Order and August 19, 2016 Amendment to Dividend Order; Our File No. 4609-1 {DD-89}**

Dear Judge Bedell:

I hope this letter finds you well.

The purpose of this Report is to bring to the Court's attention some remaining Settlement winding-up issues and the appropriate use and disposition of the Surplus in accordance with the Court's July 13, 2016 Dividend Order and August 19, 2016 Amendment to Dividend Order, with both being in Attachment A to this Report.

#### **I. Spelter Fire Station Surplus Payment to Buy Equipment**

In accordance with the Court's two Dividend Orders in Attachment A, the Settlement worked closely with the Spelter Fire Station to facilitate the purchase of air tanks and UTV Side-By-Side, documentation of which is in Attachment B.

Therefore, this use of the Surplus is complete.

#### **II. Request by Claimant Trudy Heil to Modify the Adjoining Property Owned by Mr. Randall Nutter**

As the Court will recall, the Dividend Order at Page 6 provided that:

The additional road and infrastructure repairs and modifications described in the Report and questionnaire are approved, as are the requested drainage repairs in Eire identified by Ms. Heil, and to the extent they are consented to by the affected property owner(s), and shall be performed under the supervision of the Claims Administrator.

In an effort to carry out Ms. Heil's request and these provisions of the Court's Dividend Order, we engaged Mr. Marc Glass, the Settlement's Remediation Technical Advisor, to inspect the Nutter property and to make appropriate recommendations.

Attachment C contains the results of Mr. Glass' inspection.

It appears that the contours of Mr. Nutter's property were not materially modified by the Remediation Program, so that Ms. Heil's request as reflected in the Dividend Order may not be necessary.

We have notified Ms. Heil of the October 12, 2016 1:15 p.m. hearing, so that she can provide further input to the Court on this matter if she deems it to be appropriate. Thereafter, we would request that the Court make a final decision on this matter.

### III. Repair of the Church Alley

The purpose of this letter is to ask for your guidance with regard to the unnamed alley that runs between and parallel to "A" Street and "B" Street and intersects 2<sup>nd</sup> Street in Spelter (Attachment D). As you may recall, this alley was the subject of much Claimant discussion in 2012 and 2013.

This alley has been a point of contention as far back as 2012. The Settlement asked Doug Forni of Thrasher Engineering to design a drainage system for the alley to alleviate any Claimant issues with storm water runoff. An initial design was received on October 7, 2013 (Attachment E). A town hall meeting was held the next day at the Spelter Volunteer Fire Department to discuss the design. The plan was presented at the meeting and received much criticism from Claimants owning adjoining properties. Adjoining property owners specifically cited: lack of storm water issues, unfairness in having this sum of money spent on one alley and not others, and lack of a professional survey showing property lines.

After receiving much criticism, the plan was put on hold until remediation work was completed and added to a list of outstanding complaints. This list of outstanding complaints was approved as part of the Road Re-surfacing and Infrastructure Repair by the Dividend Order dated July 13, 2016. Since being approved as the Road Repair contractor by the Court, J.F. Allen along with the Department of Transportation Division of Highways (hereafter DOH), Thrasher Engineering, and Paul Emerson and Sarah Cayton of the Settlement have met to discuss the issue again. While looking at the issues in the field, adjoining property owners voiced complaints that the previous plan from Thrasher cannot be connected to existing drop inlets and existing drainage as currently designed. Further investigation confirms that there must be additional improvements made to properly direct the water. Furthermore, issues have arisen downstream from there, where the

October 4, 2016

Page 3

---

additional drainage would be directed. After discussion with the DOH and in an attempt to satisfy adjoining land owners the proposal has grown significantly.

A new proposal involves a new drop inlet not located in the alley which would need to be replaced and connected. All the water would then need to be connected to an open ditch at the corner of 2<sup>nd</sup> and "A" Street. This open ditch currently drains into a hollow which is in the process of being filled in. The land owner has a fill permit and is adamant about no additional water being routed into the hollow.

The DOH will not allow this water to be piped underground, stating that even though it would become state property and would be on a state right-of-way, they will not and cannot commit to maintaining new buried pipes. They stated an open ditch with culverts for any crossing right-of-ways would be acceptable. The issue with an open ditch is that an adjoining land owner to where this open ditch would be located on lower "A" Street has built a parking area, outbuilding, wood storage area, and a garden on the states right-of-way (Attachment F). The DOH has expressly said they will not ask the claimant responsible for the building and storage of property on state land to remove any of it stating "It doesn't concern them". The Settlement has reached out to these claimants offering to move the woodpile and leave the shed where it sits, but the claimants state that they've improved this land for the last 40+ years and don't want to lose land they've improved or have an open ditch running through it. They pointed to an area where they would be accepting of the location of the ditch, but it is located approximately 15-20 feet on another claimants' property who has said they are unwilling to accept those terms.

In light of both the new and old issues stemming from this one alley we ask for the Courts guidance on the practicality of performing work in the church alley with all of its contentions and downstream issues. The project is currently bid at \$56,278.50 but will likely increase as new drop inlets and pipes will need to be installed in order to get the water into an appropriate area. The contractor, J.F. Allen has asked to be able to adjust their bid based on the final drawings and plans. Should the court find the work be deemed too contentious, the money ear-marked for these projects could go back into the surplus fund to be split among all Claimants, or be split equally between all adjoining land owners to the alley for any work they would deem necessary for their own property. A list of all adjoining land owners is located in Attachment G.

In a final effort to resolve this matter prior to asking for the Court's help, we called an October 5, 2016 town meeting with the impacted Claimants to determine if there is a possible consensus on how to go forward. The notice of the town hall meeting is in Attachment H. We will update the Court with the results of this meeting at our October 12, 2016 1:15 p.m. hearing, to which all of these impacted Claimants have been invited.

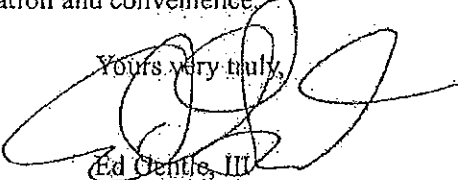
#### **IV. Requested Direction from the Court on Claimant Dividend Payment Issues**

We are in the process of completing the Property Claimant audit in order to issue the dividend correctly and in accordance with the July 13, 2016 Dividend Order. In doing so, certain questions and issues have been raised, which we would like to bring to the Court's attention in order to resolve them correctly. These issues will be provided to the Court shortly.

We appreciate your consideration of these matters.

A proposed Order setting these matters down for a hearing on October 12, 2016 at 1:15 p.m. is attached as Attachment I for the Court's consideration and convenience.

Yours very truly,

  
Ed Gentle, III

Claims Administrator

ECGIII/kah

Attachments:	Attachment A:	July 13, 2016 Dividend Order and August 19, 2016 Amendment to Dividend Order
	Attachment B:	Spelter Fire Station Documentation Re Use of Dividend
	Attachment C:	September 20, 2016 Marc Glass Report
	Attachment D:	Aerial of Alley
	Attachment E:	Thrasher Design
	Attachment F:	Aerial of Hollow and Proposed Ditch
	Attachment G:	List and Map of Adjoining Land Owners
	Attachment H:	Alley Town Hall Meeting Notice
	Attachment I:	Proposed Order

cc: (confidential)(via email)(with attachments)  
Virginia Buchanan, Esq.  
James S. Arnold, Esq.  
Meredith McCarthy, Esq.  
Mr. Paul Emerson  
Mr. Marc Glass  
Mr. Doug Forni  
Ms. Christy Mullins  
Ms. Sarah Cayton  
Mr. Tom Archer  
Mr. Stan Keifer  
Ms. Trudy Heil (via hand delivery)  
Mr. Randall Nutter (via hand delivery)  
Ms. Lori Dunn, Spelter Fire Station President (via hand delivery)  
Mr. James Glaspell (via hand delivery)  
Ms. Rhonda Blosser (via hand delivery)  
Methodist Church (via hand delivery)  
Ms. Diana Book (via hand delivery)  
Mr. and Ms. Paul Knotts (via hand delivery)  
Mr. Paul W. Knotts (via hand delivery)  
Mr. Jimmy Blake (via hand delivery)  
Mr. and Ms. Timothy Rader (via hand delivery)  
Ms. Carolyn Moschella (via hand delivery)  
Mr. Robert Rogers (via hand delivery)  
Mr. Derek Rogers (via hand delivery)  
Mr. and Mrs. Bob Greynolds (via hand delivery)

**Attachment A:**

**July 13, 2016 Dividend Order and August 19,  
2016 Amendment to Dividend Order**

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.

FINAL ORDER DETERMINING THE USE AND DISTRIBUTION OF THE  
REMEDATION FUND SURPLUS

Presently before the Court is the issue of the fair and equitable use and distribution of the projected remaining funds in the Property Remediation Qualified Settlement Fund (the "Property QSF"), with the Claims Administrator having submitted a winding-up projected budget, and the surplus being projected to remain upon the completion of the remaining aspects of the Settlement Property Remediation Program, in late 2016 or early 2017. The Claims Administrator, Ed Gentle, filed a Report with the Court on this matter on June 15, 2016, which is incorporated by reference and made part of the record herein.

The Property Remediation Program is expected to be completed in late 2016 or early 2017, with remaining repairs resulting from the Remediation Program to be conducted on claimant properties, and previously approved road repairs to be conducted in Zone 1A due to the use of heavy equipment in the area during the past four (4) years for soil remediation. Also to be performed are Zone 1A infrastructure improvements described below. After the completion of these final measures of the Remediation Program, the Claims Administrator projects that there is a surplus in the Property QSF of approximately \$4 million.

Out of the 1,227 Property Remediation claims filed with the Claims Administrator and approved, approximately 992 properties participated in the Property Remediation Program (the "participating claimants"), while approximately 235 properties, at the option of their claimant owners, did not participate (the "nonparticipating claimants").

To fairly notice the Property Remediation Class of the surplus and possible uses of the surplus, the Claims Administrator conducted a multi-step process, beginning with inviting all participating claimant Class Members to a series of public Town Hall Meetings to gather their input and opinions. After the Town Hall Meetings, which were conducted in March 2016, the Claims Administrator developed a detailed questionnaire describing the available options for use of the surplus, which was mailed to the 992 participating claimants on May 26, 2016.

As of the June 8, 2016, response deadline for the questionnaires, 281 families responded and provided their opinions and votes, which are tabulated and described in the Report.

The Court set a public Fairness Hearing for June 22, 2016, at 8:30A.M., and the participating claimants received written notice of the hearing, together with the questionnaire results. The hearing was timely held to allow presentation of the issues related to the use and distribution of the surplus to the Court, and to allow any interested participating claimants to state their positions and concerns to the Court.

The following individuals attended the hearing: Ed Gentle, the Claims Administrator; Meredith McCarthy, Esq., as guardian *ad litem* and proxy for Class Counsel; Jim Arnold, Esq., telephonically, as counsel for DuPont; Michael Jacks, as local counsel for the Claims Administrator; Settlement Remediation Supervisor Paul Emerson; Settlement Staff members Christy Mullins and Sarah Clayton; Settlement Scientific and Technical Remediation Advisor Marc Glass; and Remediation Contractor, NorthStar Demolition and Remediation f/k/a NCM,



employees Stan Keller and Tom Archer. Additionally, approximately 40 claimants appeared at the hearing, and seven claimants voiced their opinions on the matter, as summarized herein.

The salient issues presented to the Court are identified below:

- 1) Should the additional claimant requested Zone 1A Infrastructure repairs, identified in Question A of the Report, be conducted and paid for out of surplus funds?
- 2) Should claimants living in Zone 1A, who had residential soil remediation as well as residential house remediation, receive a larger share of the surplus than claimants in the outer zones, who only received house remediation? A related issue is whether a Zone 1A claimant should receive one share of the dividend for the soil, and a second share of the dividend for the house, or only one share for the entire property.
- 3) Should surplus shares be divided per claimant or per property? For example, if one claimant owns three Class Area properties, should the claimant receive three shares or one share or should a compromise method be used?
- 4) Should claimants who were eligible to participate in the Remediation Program and who successfully completed and submitted a Property Claim but who then elected not to participate in the Remediation Program (the nonparticipating claimants) receive a share of the surplus?

The following claimants spoke at the hearing, and their input is summarized below. Shafter "Bud" Drummond spoke, and noted that he is a lifelong resident of Spelter, and a retired volunteer Fire Fighter. Mr. Drummond requested that a small portion of the surplus be used to benefit the Spelter Volunteer Fire Department. Mr. Drummond noted that the Spelter Volunteer Fire Department is currently faced with an expense of approximately \$40,000 to

purchase new air tanks, and Mr. Drummond requested that adequate surplus funds be estimated for this expense.

Trudy Heil spoke, and requested that a portion of the surplus funds be used to drain surface water that is pooling behind her property, located in Eire, where soil remediation was conducted.

Athal Canaday spoke, and he also requested that the surface water pooling behind his property, which is adjacent to Ms. Heil's, be corrected with surplus funds. The Claims Administrator noted that Mr. Canaday's concerns are set for a separate hearing specific to his property on July 27, 2016, so they will not be addressed in this Order.

Albert Sheaffer spoke, and noted that he is also lifelong Spelter resident, and former employee of the zinc plant. Mr. Sheaffer noted that of the approximately 40 claimants in attendance, 4 were using breathing equipment for supplemental oxygen, and he requested that long term residents of the Class Area, particularly Zone 1A, receive a greater share of the surplus due to the claimed greater impact of the zinc plant on their lives and properties.

Jerry Stevens spoke, and he thanked the remediation crews and the Court, and suggested that a greater portion of the surplus go to the claimants who had lived in the Class Area the longest, and therefore were most impacted. The Court noted, in a moment of levity, that this approach would require inquiring into the age of all of the ladies in the Class Area, a task in which Mr. Stevens wisely declined to participate. The Court also finds that this suggested approach is impractical, as the surplus is from a Remediation Fund and not a Personal Injury Fund.

Shawn Shingleton, another lifelong Spelter resident, spoke, and he suggested that claimants from Zone 1A receive double shares of the surplus, due to the claimed larger impact of

the remediation process on their lives during the past four years. Mr. Shingleton noted that he was relocated for more than three weeks to allow his property to be remediated, and indicated that he has ongoing issues with the new sod on his property, which the Claims Administrator is addressing through separate proceedings. The Court therefore will not address the sod issue in connection with Mr. Shingleton's property in this Order.

Frank Tate, another Spelter resident, spoke, and he thanked the clean-up crews for their efforts. Mr. Tate suggested that distribution of the surplus should go to those who lived in the area the longest, and to those who lived in Zone 1A, and were impacted the most. Mr. Tate also voiced his opinion that the State was responsible for repairing the roads, not the Settlement. The Claims Administrator noted that the Court has already approved a Road Improvement Program to ensure that the Remediation Program leaves the roads in Zone 1A as good as they were found, with such road repairs being standard in similar Remediation Programs.

The Court has carefully reviewed the documents and questionnaire results in the Report, and the other relevant submissions of the Claims Administrator. The Court further thanks the Class Members for their opinions and input into these important matters, which are a great benefit to the Court, and which were carefully considered by the Court.

The Court notes that the law as to the distribution of residual funds in a class action case is generally governed by the *cy pres* doctrine, which literally translates to "as nearly as possible" to the original purpose of the funds, and shares principles with the distribution of funds in estate matters, sometimes referred to as equitable reformation or equitable approximation. *Berry v. Union National Bank*, 262 S.E.2d 766 (W.Va. 1980). See also, Ed Gentle, *The Cy Pres Distribution of a Class Action Recovery Surplus: Equity or Inequity?*, 66 Alabama L. Rev. 1 On-Line (2015).

The Court has also been advised by the Claims Administrator that some of the properties subject to the Remediation Program, both those owned by participating claimants and those owned by nonparticipating claimants, have been sold during the course of the Remediation Program. It is therefore appropriate to determine the relative rights of former and current owners of such properties to the surplus.

After a careful review of the facts of the matter and of the pertinent law, the Court hereby ORDERS that the Claims Administrator apply the following rulings to the distribution of the surplus:

- 1) The additional road and infrastructure repairs and modifications described in the Report and questionnaire are approved, as are the requested drainage repairs in Eire identified by Ms. Heil, and to the extent they are consented to by the affected property owner(s), and shall be performed under the supervision of the Claims Administrator;
- 2) The Zone 1A participating claimants, defined above, shall each receive a double share, compared to participating claimants in the outer zones. That is, the soil property that participated is entitled to a share and the house that participated is entitled to a share. Because these were 2 claims, with each being counted as a separate claim, this decision is in accordance with the Court's prior Order dated June 27, 2011 which states that "any extra remediation funds shall be distributed equally to all participants in the Property Remediation Program". Of course, if a Zone 1A property only had soil and not a house that participated, or a house and not a soil that participated, the property is only to receive a single share.

3) The participating claimants, defined above, with house-only properties, in the outer, non-1A Zones, shall each receive one share.

4) The nonparticipating claimants, defined above, shall each receive a one-fifth share, no matter what Zone the property is located in.

In the Report, the Claims Administrator noted that an analogy may be found in the MDL 926 Breast Implant Settlement, where timely registrants received a \$5,000 Advance Payment, and late registrants (with these claimants here being very late indeed), received only \$1,000.

5) As to whether the surplus shall be paid on a per property basis or a per claimant basis, the Court determines that:

a. The share distribution shall be per claimant unit, regardless of the number of properties owned by each claimant unit.

6) The Spelter Volunteer Fire Department shall receive \$40,000 only to replace their air tanks, but the Claims Administrator shall so earmark, monitor and document the appropriate use of the funds.

7) The Court notes that the Remediation Program began on November 1, 2011. The surplus attributed to a property that has not been sold from that time until the date of this Order shall be distributed to the claimant unit that owns it as of the date of this Order. A claimant unit shall include the heirs or will beneficiaries of the deceased claimant who owned the property at November 1, 2011 and departed this life prior to the date of this Order. If the property has been sold between November 1, 2011 and the date of this Order, the distribution of the surplus is described in the next paragraph.

8) The surplus pertaining to properties sold between November 1, 2011 and the date of this Order shall be distributed as follows:

- a. For participating claimants, defined above, the Court notes that they received 2 remediation annoyance and inconvenience payments, a 20% payment after their property was tested for contaminants, and an 80% payment after remediation was determined not to be necessary or was completed. It is therefore appropriate to pay (i) 20% of the surplus share to the then owners of the property at the time of the 20% initial payment; and (ii) 80% of the surplus share to the then owners of the property at the time of the second 80% payment.
- b. For nonparticipating claimants, defined above, by analogy, the Court finds it appropriate to pay 20% of the surplus to the owners of the property when it was tested for contaminants and at the time the 20% payment was made (if the claimant unit withdrew from the Remediation Program prior to receiving the 20% payment, the determination date will be November 1, 2011), and 80% as of the date of this Order. Provided the Claims Administrator acts strictly in accordance with the protocols and the directives of this Order, he and his staff are granted Judicial Immunity.

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.

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

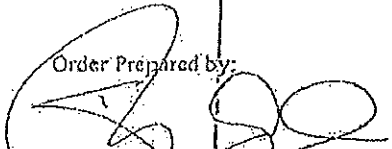
Virginia Buchanan  
Levin, Papantonio, Thomas, Mitchell,  
Rafferty & Proctor, P.A.  
P.O. Box 12308  
Pensacola, FL 32591

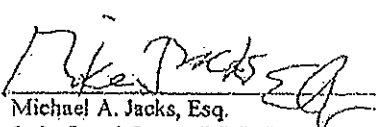
Meredith McCarthy  
901 W. Main St.  
Bridgeport, WV 26330  
*Gardian Ad Litem*

Edgar C. Gentle, III  
Claims Administrator  
Gentle, Turner, Sexton & Harbison, LLC  
P.O. Box 257  
Spelter, WV 26437

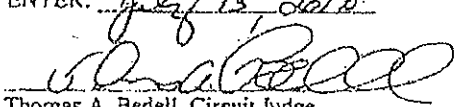
Jacks Legal Group, P.L.L.C.  
3467 University Ave, Suite 200  
Morgantown, WV 26505

Order Prepared by:

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

  
Michael A. Jacks, Esq.  
Jacks Legal Group, P.L.L.C.  
W.Va. Bar No 11044  
3467 University Ave, Suite 200  
Morgantown, WV 26505

ENTER: July 13, 2016

  
Thomas A. Bedell, Circuit Judge





remaining \$10,000 that is not spent on the tanks be invested into a UTV side-by-side for the department. A quote for the UTV from the Spelter VFD is in Attachment 3 to the Claims Administrator's August 18, 2016 Report.

The August 18, 2016 Report and this Order were shared with Counsel and no objections were received.

After a careful review of the facts of these matters and based upon the foregoing Report, and all other matters and things which the Court deems to be appropriate, it is hereby ORDERED, ADJUDGED and DECREED as follows:

1. The Court Approves the modification to purchase the air tanks and the accompanying air equipment that goes with the air tanks (approximately \$30,000), and to use the remaining \$10,000 to purchase a side-by-side UTV for the department; and
2. Provided that the Claims Administrator and his staff act substantially in accordance with the Court's Orders on these matters, the Claims Administrator and his staff are granted judicial immunity.

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.**

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

David B. Thomas, Esq.  
James S. Arnold, Esq.  
Thomas Combs & Spann, PLLC  
P. O. Box 3824  
Charleston, WV 25338  
*DuPont's Finance Committee Representative*

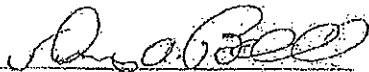
Virginia Buchanan, Esq.  
Levin, Papantonio, Thomas, Mitchell,  
Rafferty & Proctor, P.A.  
P.O. Box 12308  
Pensacola, FL 32591  
*Plaintiffs' Finance Committee Representative*

Meredith McCarthy, Esq.  
901 West Main Street  
Bridgeport, WV 26330  
*Guardian Ad Litem*

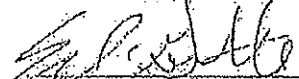
Edgar C. Gentle, III, Esq.  
Settlement Claims Office  
P.O. Box 257  
Spelter, WV 26438  
*Settlement Administrator*

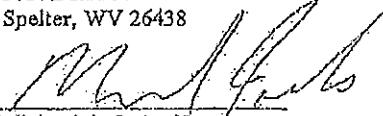
Michael A. Jacks, Esq.  
Jacks Legal Group, P.L.L.C.  
United Federal Credit Union Building  
3467 University Avenue, Suite 200  
Morgantown, WV 26505

ENTERED this 19 day of AUGUST, 2016.

  
Thomas A. Bedell  
Circuit Judge of Harrison County,  
West Virginia

This Order Prepared By:

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

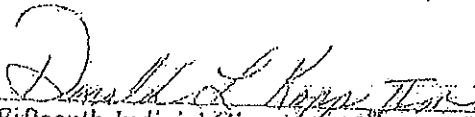
  
Michael A. Jacks, Esq.  
W. Va. Bar. No. 11044  
Jacks Legal Group, PLLC  
378 Lawnview Drive  
Morgantown, WV 26505

STATE OF WEST VIRGINIA  
COUNTY OF HARRISON, TO-WIT:

I, Donald L. Kopp II, Clerk of the Fifteenth Judicial Circuit and the 18<sup>th</sup>  
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 19 day of August, 2016.

IN TESTIMONY WHEREOF, I herunto set my hand and affix

Seal of the Court this 19 day of August, 2016.

  
Fifteenth Judicial Circuit & 18<sup>th</sup> Family Court  
Circuit Clerk  
Harrison County, West Virginia

**Attachment B:**

**Spelter Fire Station Documentation  
Re Use of Dividend**

MEMORANDUM

TO: Edgar C. Gentle, III, Esq.  
FROM: Terry D. Turner, Jr., Esq. ~~TT~~  
DATE: September 14, 2016  
RE: Perrine-DuPont Settlement - Spelter Fire Station Surplus Payment to Buy Equipment; Our File No. 4609-1 {DD-92}

---

Attached please find the following documents to support the Spelter Fire Station's utilization of the \$40,000 grant to buy air tanks and a UTV side-by-side:

1. \$30,000 Purchase of Air Tanks: Attached please find our August 31, 2016 check from the Settlement to the Grafton Volunteer Fire Department in the amount of \$30,000, along with a copy of the Bill of Sale, for the purchase of air tanks; and
2. \$10,000 Purchase of UTV Side-by-Side: Also attached is an August 31, 2016 check from the Settlement in the amount of \$10,000 to Pars Equipment, along with a September 2, 2016 invoice, detailing the receipt of the \$10,000 payment toward the invoice for a UTV side-by-side.

Should you need anything further, please let me know.

TDTjr/  
Attachments

PERRINE-DUPONT PROPERTY REMEDIATION  
QUALIFIED SETTLEMENT FUND  
501 RIVERCHASE PARKWAY, SUITE 100  
HOOVER, AL 35224

MVB BANK, INC.  
MARION  
RICHMONT, WV 25355  
259-459-315  
68-045970515

005270

DATE 8/31/16

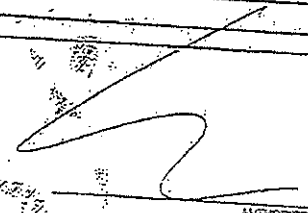
PAY TO THE ORDER OF Grafton Volunteer Fire Department

Thirty thousand and no/100

\$ 30,000.00

DOLLARS

MEMO



AUTHORIZED SIGNATURE

MP

⑈005270⑈ ⑆051504597⑆ 0041920⑈

MP Security Inkjet Inkjet Inkjet Inkjet Inkjet Inkjet



## GRAFTON VOLUNTEER FIRE DEPARTMENT

1 West Main Grafton, WV 26354  
(304)265-1866 Fax: (304)265-0119

David P. Crimm- Fire Chief

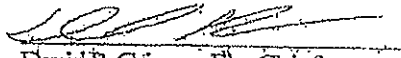
### Bill of Sale

IN CONSIDERATION OF the sum of \$30,000.00 USD, plus any applicable sales taxes, paid by check, the receipt of which consideration is acknowledged, Grafton Volunteer Fire Department of 1 W. Main St. Grafton, WV 26354 (the "Seller"), SELLS to the Spelter Volunteer Fire Department of 55 B St Spelter, WV 26438 (the "Purchaser"), the following property (the "Property") 15 - Scott Safety Model 4.5 SCBA's and 30 cylinders.

The Seller warrants that (1) the Seller is the legal owner of the Property, (2) the Property is free from all liens and encumbrances, (3) the Seller has full right and authority to sell and transfer the Property, and (4) the Seller will warrant and defend the title of the Property against any and all claims and demands of all persons.

The Property is being sold in an "as is" condition and the Seller expressly disclaims all warranties, whether expressed or implied, including but not limited to, any implied warranty of merchantability or fitness for particular purpose. Further, the Seller disclaims any warranty as to the condition of the Property. The Seller does not assume, or authorize any other person to assume on the behalf of the Seller, any liability in connection with the sale of the Property. The Seller's above disclaimer of warranties does not, in any way, affect the terms of any applicable warranties from the manufacturer of the Property.

The Purchaser has been given the opportunity to inspect the Property or to have it inspected and the Purchaser has accepted the Property in its existing condition. This Bill of Sale will be construed in accordance with and be governed by the laws of the State of West Virginia.

  
\_\_\_\_\_  
David P. Crimm, Fire Chief  
Grafton Volunteer Fire Department  
(SELLER)

PERRINE DUPONT PROPERTY REMEDIATION  
QUALIFIED SETTLEMENT FUND  
501 RIVERCHASE PARKWAY, SUITE 100  
HOOVER, AL 35224

MVB BANK, INC.  
MARION  
FAIRMONT, WV 26032  
439-515  
20-0159/0515

005271

DATE 8/31/15

PAY TO THE ORDER OF Parc Equipment

\$ 10,000.00

Ten thousand and no/100

DOLLARS

MEMO

AUTHORIZED SIGNATURE

MP

Security Features Included. Check on back

⑈005271⑈ ⑆051504597⑆ 0041920⑈



**THE TRACTOR GUYS (BM)**

PARCS  
72 RUDVILLE RD  
BRUCETON MILLS, WV 26525  
Phone: (304) 379-4333 Fax: (304) 379-4335

**Invoice**

**124743**

OUR GOAL IS YOUR SATISFACTION! IF YOU HAVE  
COMMENTS/CONCERNS PLEASE CALL 1-888-728-2394

Bill To:			Ship To:		
SPELTER VFD PO BOX 176 HARRISON COUNTY SPELTER, WV 26438					
Contact:	Customer Tax Number:	Phone:	Alt Phone:	PO Number:	Transaction:
MATT SHINGLETON	1035-0266	(304) 622-8258	(304)-		Cash Sale
Counter Person:	Sales Person:	Invoice Date:	Reference:	Department:	
LORI	GARRETT	09/02/16	155493	Counter Sales	

Part Number	Line	Description	Ordered	B/O	Shipped	List	Net Each	Amount
287794B	POLP	SPORT ROOF 3PIECE	1		1	\$299.99	\$210.00	\$210.00
4505-0407	PUNA	WINCH MOUNT MSE POL U	1		1	\$78.95	\$53.00	\$53.00
4505-0408	PUNA	WINCH 3700LB W/WIRE R	1		1	\$233.00	\$233.00	\$233.00
4501-0195	PUNA	PLOW MOUNT RNGR 700	1		1	\$128.05	\$80.00	\$80.00
4501-0477	PUNP	PLOW PUSH TUBE F/HAND	1		1	\$269.95	\$173.00	\$173.00
M91-10072	PUNA	MOOSE PLOW 72 BLADE	1		1	\$332.95	\$230.00	\$230.00
PS-P-RANXP-11	MISP	POWER STEERING KIT	1		1	\$600.00	\$600.00	\$600.00

Model	Line	Description	Price	Net	Amount
R16RAA76AJ	POLU	RGR-16 600 6X6 GRAY		\$11,900.00	\$11,900.00
VIN 4XARAA764GT734468		Year 2016			

Note:  
READ ALL OWNERS MANUALS AND FOLLOW ALL SAFETY INSTRUCTIONS. WE APPRECIATE  
YOUR BUSINESS. HAVE A GREAT DAY AND ENJOY YOUR NEW EQUIPMENT.  
THANK YOU FOR CHOOSING PARCS. VISIT OUR WEBSITE AT  
WWW.THETRACTORGUYS.COM  
NO TAX OR FEES- GOVERNMENT EXEMPTION

Invoice Total \$13,489.00  
Sales Tax \$0.00  
Grand Total \$13,489.00

Payment Details	Memo	Class	Date/Time	Amount
CHECK		BRANDON F	09/02 13:01	(\$10,000.00)
CHECK	5460	BRANDON F	09/02 13:01	(\$3,489.00)

Payment Total (\$13,489.00)

Balance Due \$0.00

**Attachment C:**

**September 20, 2016 Marc Glass Report**

# Downstream Strategies

Environmental Remediation & Investigation

295 High Street, Suite 3, Morgantown, WV 26505

September 20, 2016

Edgar C. Gentle, III, Esq.  
Claims Administrator  
Perrine DuPont Settlement Claims Office  
C/o Spelter Volunteer Fire Department Office  
55 B Street  
Spelter, WV 26438  
(304) 622-7443

RE: Opinions regarding August 16, 2016 Claimant concerns expressed to Settlement  
Claimant – Trudy Hell  
Map/Parcel(s) 11-16\_23.1 & 24  
Erie, West Virginia

Mr. Gentle,

Downstream Strategies (DS) presents this summary report detailing observations and investigative results from an August 31, 2016 site inspection of the above-referenced Claimant residence. I, Marc Glass of DS, was accompanied by Paul Emerson as a representative of the Perrine DuPont Settlement (Settlement). The inspection was conducted at the request of the Settlement to evaluate several Claimant concerns expressed to the Settlement during an August 16, 2016 meeting with the Claimant.

## 1. PROJECT BACKGROUND

The Claimant property is located in Erie, West Virginia in Remediation Zone 1A as shown on Figure 1. It is noted that all Claimant concerns relate to soil remediation performed on the adjacent property to the north of the Heil Property, referred to as the "Nutter Field" (Map/Parcel 247\_29.6), as shown on Figure 2. The specific Claimant concerns communicated to the Settlement are itemized below:

1. Soil remediation was not performed to the complete 6-inch depth in all areas, as specified by the Settlement remediation protocol. Specifically, where clean back-fill soil was staged during remediation.
2. Poor drainage in the Nutter Field will cause flooding of the Claimant's property in the event of a 100 or 500-year flood event.
3. Prior to remediation of the Nutter Field, a consistent slope was present from the alley behind the Claimant residence and extending to the tree line (presumed to the northeast). After remediation, a "hump" or raised elevation now exists in this transect.
4. Sections of plastic sheeting were left in the soil and now contribute to poorer drainage/infiltration after remediation was complete.
5. Replaced soil is high in clay content and contributes to poor drainage/infiltration after remediation.
6. Silt fence from erosion and sediment control structures was buried during remediation.
7. A pile of garbage is present that the Claimant believes the Settlement remediation contractors contributed to.

Figure 1: Site location map





The Nutter Field is situated directly north and adjacent to the Heil Property, with an undeveloped alley right-of-way situated between the two properties. The Nutter Field extends along the entire south Heil property boundary and continues to the west and east. Surface gradients along the common Heil/Nutter property boundary are evident by visual observation to trend from south to north, with the gradient increasing with distance from the Heil Property. Photographs demonstrating current surface elevations in the area of concern are presented as Exhibits 2 through 6.

### 3. INVESTIGATIVE METHODS

The following subsections present investigative approaches used to evaluate Claimant concerns pertaining to elevations and fill quality in the area of concern. Multiple lines of evidence were used during the evaluation process. These include the site observations discussed previously, review of historical photograph and video, collection of current site elevation data, review of West Virginia flood hazard information, qualitative soil penetration testing, and collection of soil cores for visual inspection and qualitative texture analysis.

#### 3.1 Photograph and video review

Several Claimant concerns related to backfill placed on the Nutter Field and/or the total depth achieved during the excavation and backfilling phases of soil remediation on the Nutter Field. Specifically, these include items #1, #4, #5, and #6 listed in Section 1 of this report and summarized below:

- Soil remediation was not performed to the complete 6-inch depth in all areas, as specified by the Settlement remediation protocol. Specifically, where clean back-fill soil was staged during remediation.
- Replaced soil is high in clay content and contributes to poor drainage/infiltration after remediation.
- Sections of plastic sheeting were left in the soil and now contribute to poorer drainage/infiltration after remediation was complete.
- Silt fence from erosion and sediment control structures was buried during remediation.

Review of video and photographs collected during soil remediation on the Nutter property indicates the following:

- Wood elevation stakes are evident throughout the Nutter Field during soil remediation. It is presumed these were installed to guide excavation and backfill depth. All indications from the video record suggest a practical and effective method for attaining the desired excavation and backfill elevations was used.
- Backfill soil material is visually distinct from native sub-soil material present after excavation. Backfill soils are medium to dark brown while native sub-soil is light reddish brown. Photographs and video indicate that backfill was placed to match the wood stake elevations.
- Pre-remediation video of surface gradients on the Nutter Field and near the Heil Property boundary (time signature 04:33) indicates high consistency with current gradients observed during the August 31, 2016 site reconnaissance. In both instances, the topographic gradient trends downward from the Heil Property and to the north across the Nutter Field. However, since no surface elevation measurements were recorded prior to remediation, it cannot be confirmed if elevation differences exist between pre and post-remediation. In either case, surface gradients direct flow away from the Heil Property and to the north across the Nutter Field.
- Silt fence is evident during the soil remediation process at the Nutter Field. All photographic evidence reviewed indicates that silt fence either remained in place after sod installation or, in some areas, was removed concurrent with sod installation. There is no photographic evidence in the record of silt fence or plastic sheeting debris being buried during backfilling or sod placement.

The observations made from review of the Settlement photograph and video record of soil remediation at the Nutter Field are presented as Exhibits 7 through 12 to this report

### 3.2 Point elevation measurements

Point elevations were collected throughout the area of concern using hand-held GPS equipment to assist in evaluating Claimant concerns expressed as items #2 and #3 from Section 1 of this report. Specifically, these include the following:

- Prior to remediation of the Nutter Field, a consistent slope was present from the alley behind the Claimant residence and extending to the tree line (presumed to the northeast). After remediation, a "hump" or raised elevation now exists in this transect.
- Poor drainage in the Nutter Field will cause flooding of the Claimant's property in the event of a 100 or 500-year flood event.

It is noted that accuracy limitations of GPS equipment are offset by the collection of all referenced data points within a short time period (approximately 15 minutes) in clear reception of numerous satellites. This approach limits variation between points and, although elevation accuracy is subject to the limitations of GPS equipment, the variation between point elevations relative to one another is minimized.

A total of five point elevations were collected from the locations shown on Figure 2 and summarized below in Table 1.

Table 1: Surface elevation points

Elevation Point	Location Description	Elevation*
A	Ground elevation on Heil Property near well head immediately south of residence (Exhibit 13)	946
B	Ground elevation at northwest Heil Property boundary.	942
C	Ground elevation at northeast Heil Property boundary.	939
D	Ground elevation within drainage swale extending north from Heil Property.	934
E	Ground elevation at "hump" on Nutter Field	935

\* Elevations reported in feet above mean sea level (MSL).

The Claimant concern that changes to the surface elevation on the Nutter Field after the Settlement soil remediation program might cause drainage issues on the Heil Property appear unfounded based on elevation measurements. Elevation measurements indicate a north trending gradient directing drainage to the north and away from the Heil residence and the Heil Property southern border.

It is noted that the elevation at Point E is approximately one-foot higher than the lowest elevation observed on the Heil Property at Point C. However, the elevations at Point E ("hump" on Nutter Field) and Point D (drainage swale on Nutter Field) demonstrate a surface gradient to the west. Further, an even stronger north-trending gradient is observed between Point C (the lowest elevation on the Heil Property) and Point D (surface elevation within the drainage swale on Nutter Field). These observations indicate surface drainage on the Nutter Field will trend away from the Heil Property toward lower elevations.





### 3.4 Soil core sampling

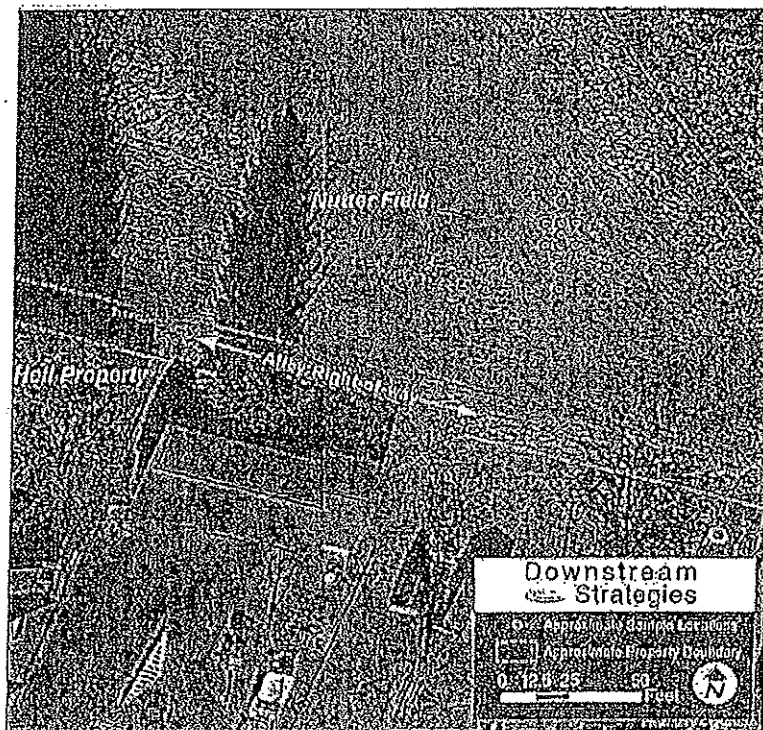
As presented previously, several Claimant concerns related to backfill placed on the Nutter Field and/or the depth of remediation. Specifically, these include items #1, #4, #5, and #6 from Section 1 of this report and summarized below:

- Soil remediation was not performed to the complete 6-inch depth in all areas, as specified by the Settlement remediation protocol. Specifically, where clean back-fill soil was staged during remediation.
- Replaced soil is high in clay content and contributes to poor drainage/infiltration after remediation.
- Sections of plastic sheeting were left in the soil and now contribute to poorer drainage/infiltration after remediation was complete.
- Silt fence from erosion and sediment control structures was buried during remediation.

Additional lines of evidence were collected as soil cores to allow direct observation of fill quality and depth, as placed. A hand-held stainless steel soil trier with an  $\frac{1}{4}$ -inch diameter, 12-inch length core barrel with a recovery window was used to collect soil cores for visual inspection for foreign debris (silt fence, plastic pieces), fill depth, and to allow qualitative field testing for soil grain size distribution.

Numerous core samples were collected from the area including and surrounding the "hump" area on the Nutter Field as shown on Figure 4. This area was identified by the Claimant as a specific area of concern.

Figure 4: Soil core sample locations Nutter Field "hump".



A rectangular area was first delineated across the area of concern with survey flags. A soil core was collected at a corner and visually evaluated for apparent depth of fill material and any evidence of foreign debris. Observations were recorded in a field notebook. The next soil sample was collected by walking four paces in a transect toward the opposite corner. Two transects were originated from adjacent corners and continued to the opposing corner. An additional transect was made from the mid-point of the long dimension of the delineated sample area to the opposite side. A minimum of 18 soil core samples were collected across the area of concern.

All soil core samples indicated between 6 and 8-inches of fill (including sod and backfill) material above the distinctly colored native subsoil. There was no plastic debris, silt fence, or any other foreign debris recovered in any of the core samples. All observations indicated that backfill was placed to a minimum depth at or exceeding six-inches and that no foreign, non-soil material was present.

Photographic documentation of the soil core sampling process is presented as Exhibits 14 through 18.

### 3.5 Soil texture evaluation

At several random locations, a sub-sample of the soil core was evaluated for texture by the soil ribbon test where a moistened volume of soil is squeezed between the fingers and thumb to extrude a compressed mass of soil, or ribbon. In general, if a "ribbon" can be made longer than 2-inches before breaking under the force of gravity, it is considered to represent a clay soil. If only shorter ribbons can be formed, the soil is considered either sandy or loamy. No ribbons longer than 2-inches could be formed from the soils evaluated and therefore, the fill material was evaluated in the field as loam textured.

The Settlement also requires that remediated soil is tested in place, after sod installation, to confirm attainment of Settlement soil texture criteria as loam or silt loam. Results for the "Nutter Field" (Map/Parcel 247\_29.6) laboratory soil texture analysis for samples collected in-place on June 26, 2015 and plotted on the United States Department of Agriculture (USDA) Soil Texture Triangle are presented as an Attachment to this report. The soil texture sampling results confirm that Nutter Field soils are classified as loam or silt-loam, with clay content less than 20%.

### 3.6 Compaction evaluation

To evaluate if construction equipment traffic during installation and handling of soil may have caused or contributed to compaction of the soil substrate, a qualitative penetration test was performed at random locations across the Nutter Field. If present, soil compaction may have several negative effects on sod health through poor moisture handling capacity (both too much and too little) and a media that is difficult for roots to penetrate. Infiltration of precipitation into the soil substrate will also be constrained in compacted soil conditions.

At each soil sub-sample location, an approximately 10-inch, 4-millimeter diameter wire tool, with 1-inch increment markings was advanced perpendicular to the ground surface to a depth of 10 inches or refusal under hand pressure. If refusal was encountered, the depth of penetration was recorded. In general, penetration was not possible across the Nutter Field to depths greater than 6-inches and penetration became difficult or refusal/bending of the wire under hand pressure occurred. It is noted that shallow soil conditions at the time were dry, which generally makes soils less plastic and amenable to penetration than when greater moisture is present. It is also noted that the depth of refusal generally agrees with the depth of native sub-soil.

In general, the soils at the Nutter Field were evaluated to likely have low rates of infiltration by the qualitative penetration test methodology. It is noted however that compaction did not appear to be limiting to sod root growth as the grass sward appeared healthy and well established with no bare spots or indications of plant stress.

## 4. OPINIONS

Multiple lines of evidence were reviewed to evaluate Claimant concerns expressed to the Settlement during an August 16, 2016 meeting. The Claimant concerns, are itemized below:

1. Soil remediation was not performed to the complete 6-inch depth in all areas, as specified by the Settlement remediation protocol. Specifically, where clean back-fill soil was staged during remediation.
2. Poor drainage in the Nutter Field will cause flooding of the Claimant's property in the event of a 100 or 500-year flood event.
3. Prior to remediation of the Nutter Field, a consistent slope was present from the alley behind the Claimant residence and extending to the tree line (presumed to the northeast). After remediation, a "hump" or raised elevation now exists in this transect.
4. Sections of plastic sheeting were left in the soil and now contribute to poorer drainage/infiltration after remediation was complete.
5. Replaced soil is high in clay content and contributes to poor drainage/infiltration after remediation.
6. Silt fence from erosion and sediment control structures was buried during remediation.
7. A pile of garbage is present that the Claimant believes the Settlement remediation contractors contributed to.

A site inspection was performed on August 31, 2016 during which contemporary photographs, surface elevations, and sub-surface soil cores were obtained for visual inspection and qualitative texture analysis. A review of historical photograph and video records for the Heil Property and adjacent Nutter Field soil remediation was performed. West Virginia flood hazard information was also referenced to evaluate potential impacts to the Heil Property.

With regard to Claimant concern #1: Review of historical photographs and inspection of soil core samples indicates that excavation depth on the Nutter Field was performed to an average minimum depth of at least 6-inches.

With regard to Claimant concerns #2 and #3: Historical (pre-remediation) surface gradients and drainage patterns on the Nutter Field appear to closely match current site conditions. Surface gradients appear appropriate to direct all surface drainage from the Nutter Field to the north and away from the Heil Property. The topographic elevation for a portion of the Nutter Field, referenced as a "hump", located northeast of the Heil Property was measured as approximately 1-foot above the lowest elevation recorded for the Heil Property. However, surface gradients on the Nutter Field would intercept and capture drainage from the eastern portions of the Nutter Field toward a lower elevation drainage swale on the Nutter Property extending to the north and away from the Heil Property. Evaluation of the West Virginia 100-year flood hazard mapping indicates that the Heil Property is not likely to be affected by flood water from the West Fork River. Any property can be adversely impacted by extreme precipitation rates. However, due to the elevations and topographic gradients observed, it is my opinion that the Heil Property would not be impacted by surface drainage from the Nutter Field even in unusual precipitation scenarios.

With regard to Claimant concern #4: Review of historical photographs and video, current site observation, and inspection of soil core samples provides no evidence of plastic sheeting or pieces of remediation-related debris remaining at the Nutter Field. While certainly a nuisance that should be abated if such debris were identified, it is my opinion that small pieces of impervious debris would not substantially alter the surface drainage patterns and characteristics on the Nutter Field in a way that might affect the Heil Property.

With regard to Claimant concern #5: The Settlement maintains a record of soil texture analysis for backfill material placed at the Nutter Field which indicates, through post-remediation sampling and laboratory analysis, that the placed soil is classified as loam or silt-loam and in attainment of Settlement remediation

criteria. Qualitative field assessment of soil core samples confirms this result and indicates soils with a clay content less than 20%.

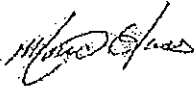
With regard to Claimant concern #6: Review of historical photographs and video, current site observation, and inspection of soil core samples provides no evidence of erosion and sediment control fence material at the Nutter Field. Historical photographs indicate that silt fence either remained in place after sod installation or, in some areas, was removed concurrent with sod installation. There is no photographic evidence in the record of silt fence or plastic sheeting debris being buried during backfilling or sod placement. Current observation did not indicate silt fence remaining on the Nutter Field.

With regard to Claimant concern #7: There was no garbage or debris pile observed on the Nutter field during the site reconnaissance conducted on August 31, 2016.

## 5. CONCLUSION

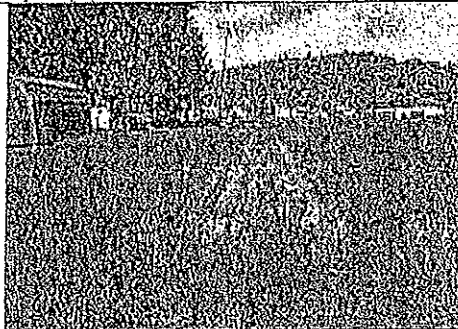
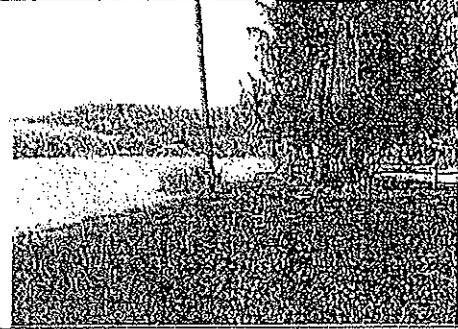
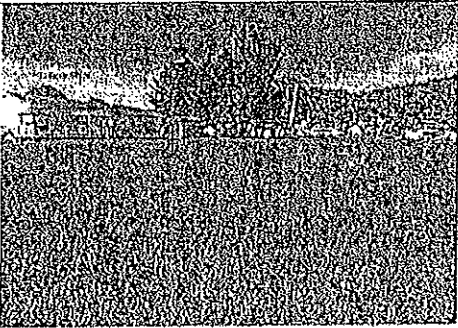
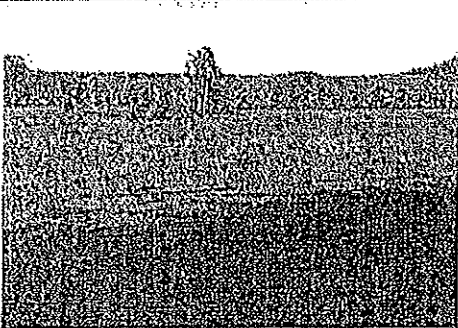
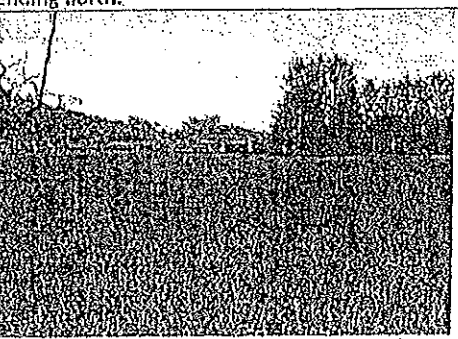
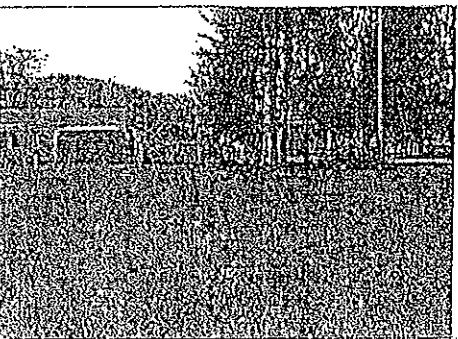
DS appreciates this opportunity to provide environmental consulting services to the Settlement. Please do not hesitate to contact me directly should you have any questions or wish to discuss this project further.




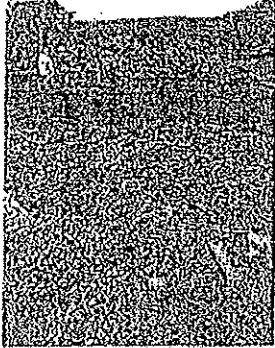
Sincerely,

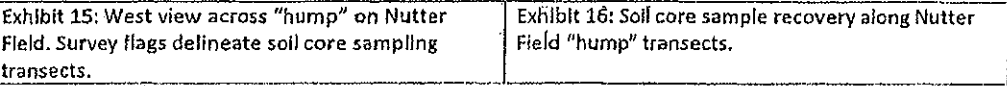
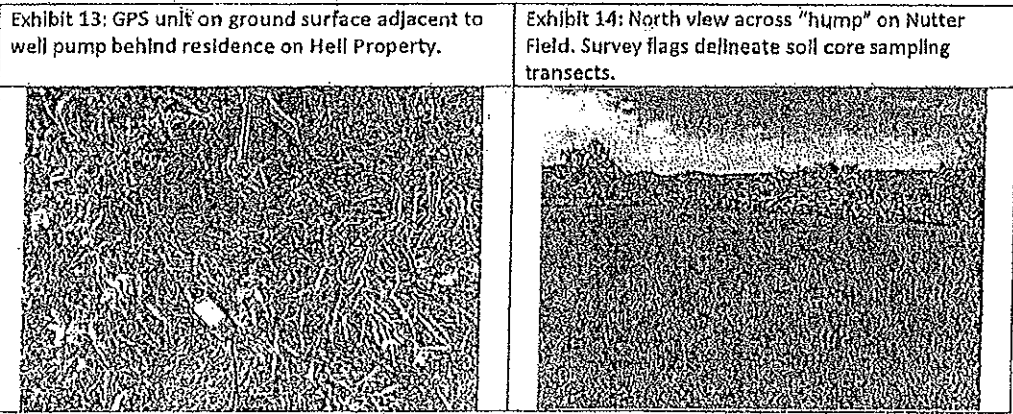
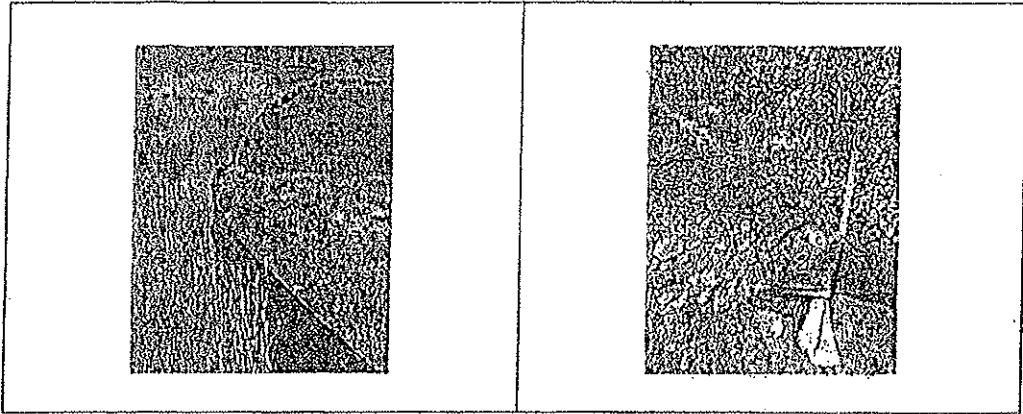


Marc Glass, LRS  
Principal

**EXHIBITS:**

<p>Exhibit 1: West view across the Nutter Field showing moderate surface gradient to north (right of view). Pine trees on Heil Property to the south (left of view).</p>	<p>Exhibit 2: East view along alley right-of-way between Heil Property and Nutter Field. Nutter Field "hump" at top left. Note drainage swale trending northwest.</p>
	
<p>Exhibit 3: View of Heil Property from "hump" on Nutter Field.</p>	<p>Exhibit 4: North view of drainage swale extending north from Heil Property toward West Fork River.</p>
	
<p>Exhibit 5: Southeast facing view toward Heil Property (pine trees) showing surface drain swale trending north.</p>	<p>Exhibit 6: South view of Heil Property showing drainage swale surface gradient towards north.</p>
	

<p>Exhibit 7: Wood elevation stakes, native sub-soil and backfill soil during Nutter Field soil remediation.</p>	<p>Exhibit 8: Color distinction between native subsoil and backfill soil during Nutter Field remediation.</p>
	
<p>Exhibit 9: Nutter Field backfilling during soil remediation (note elevation stake).</p>	<p>Exhibit 10: Silt fence in place after backfill and during sod placement on Nutter Field.</p>
	
<p>Exhibit 11: Silt fence in place after sod installation on Nutter Field.</p>	<p>Exhibit 12: Silt fence removal as final sod is placed atop backfill.</p>



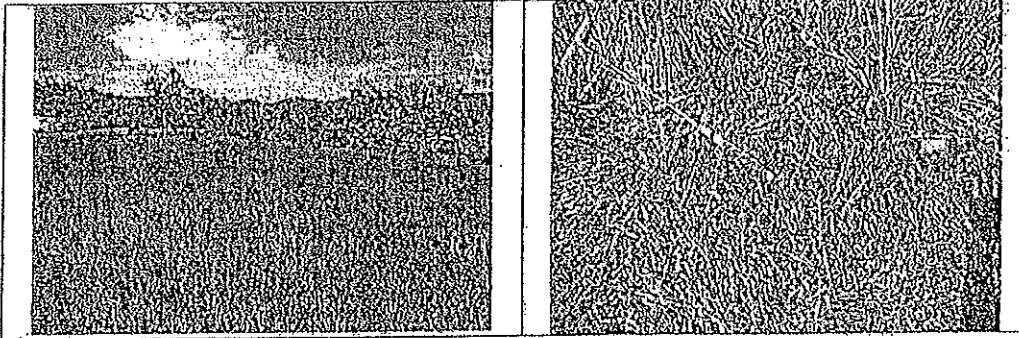
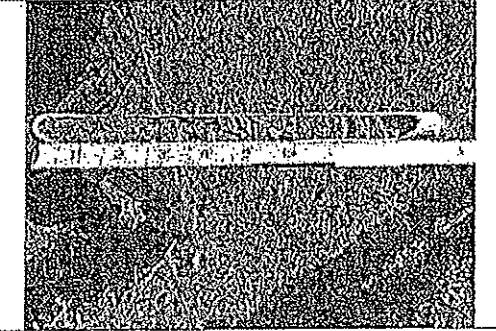
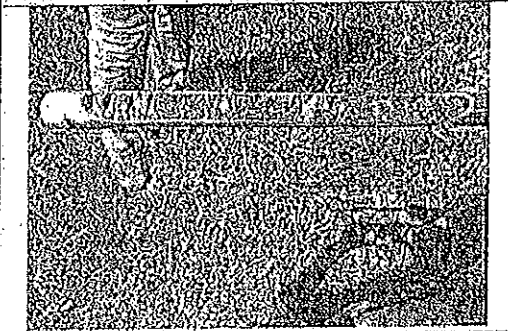


Exhibit 17: Typical soil core recovery from Nutter Field "hump" area. Note light brown, reddish subsoil near tip of core sample barrel.

Exhibit 18: Recovered soil core from Nutter Field "hump" area .





**ATTACHMENTS: NUTTER FIELD SOIL TEXTURE RESULTS**

Enter your data into the yellow highlighted cells

Password = Texture

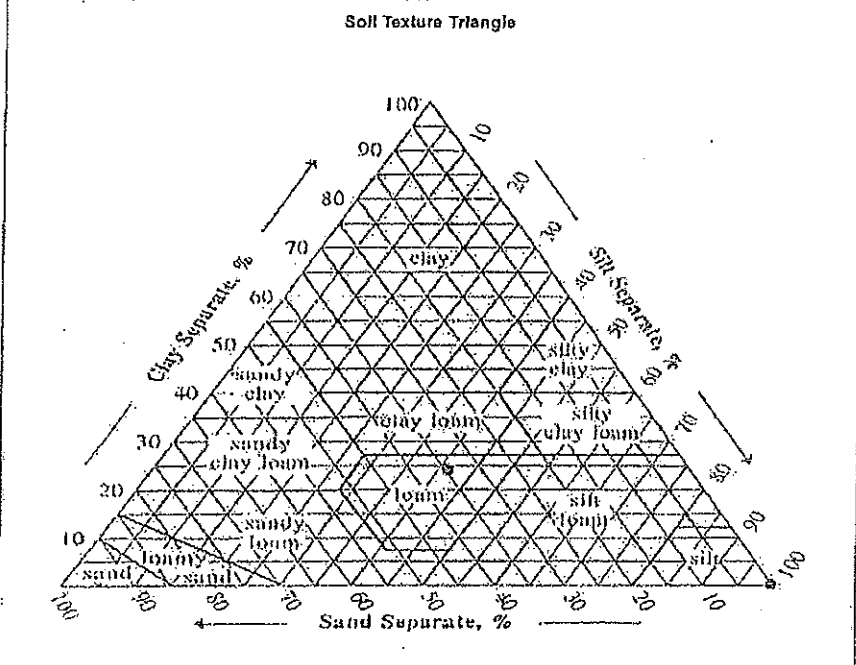
USDA Text	Sand, %	Clay, %	Silt, %	USDA Text
LOAM	34.80%	24.00%	41.40%	
SILT	0.00%	0.00%	100.00%	
SILT	0.00%	0.00%	100.00%	
SILT	0.00%	0.00%	100.00%	

Options of Sand, %	
% Very Coarse	0.00%
% Coarse	0.00%
% Medium	0.00%
% Fine	0.00%
% Very Fine	0.00%

Options of Sand, %	
% Very Coarse	0.00%
% Coarse	0.00%
% Medium	0.00%
% Fine	0.00%
% Very Fine	0.00%

Options of Sand, %	
% Very Coarse	0.00%
% Coarse	0.00%
% Medium	0.00%
% Fine	0.00%
% Very Fine	0.00%

Options of Sand, %	
% Very Coarse	0.00%
% Coarse	0.00%
% Medium	0.00%
% Fine	0.00%
% Very Fine	0.00%



Enter your data into the yellow highlighted cells

Password = Texture

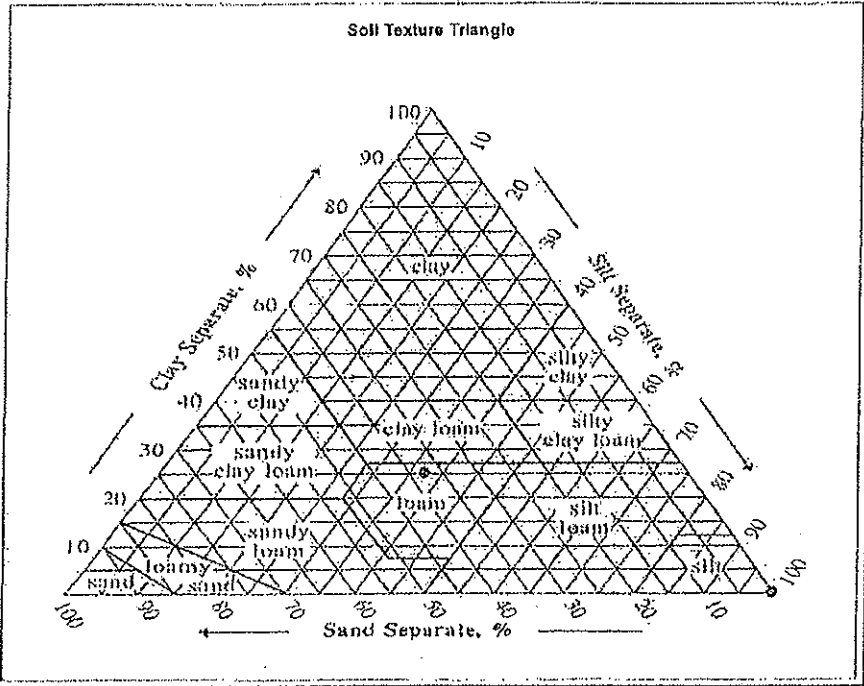
USDA texture	LOAM
SILT	
SILT	
SILT	

% Very Coarse	0.00%
% Coarse	0.00%
% Medium	0.00%
% Fine	0.00%
% Very Fine	0.00%

% Very Coarse	0.00%
% Coarse	0.00%
% Medium	0.00%
% Fine	0.00%
% Very Fine	0.00%

% Very Coarse	0.00%
% Coarse	0.00%
% Medium	0.00%
% Fine	0.00%
% Very Fine	0.00%

% Very Coarse	0.00%
% Coarse	0.00%
% Medium	0.00%
% Fine	0.00%
% Very Fine	0.00%



Enter your data into the yellow highlighted cells

Password = Texture

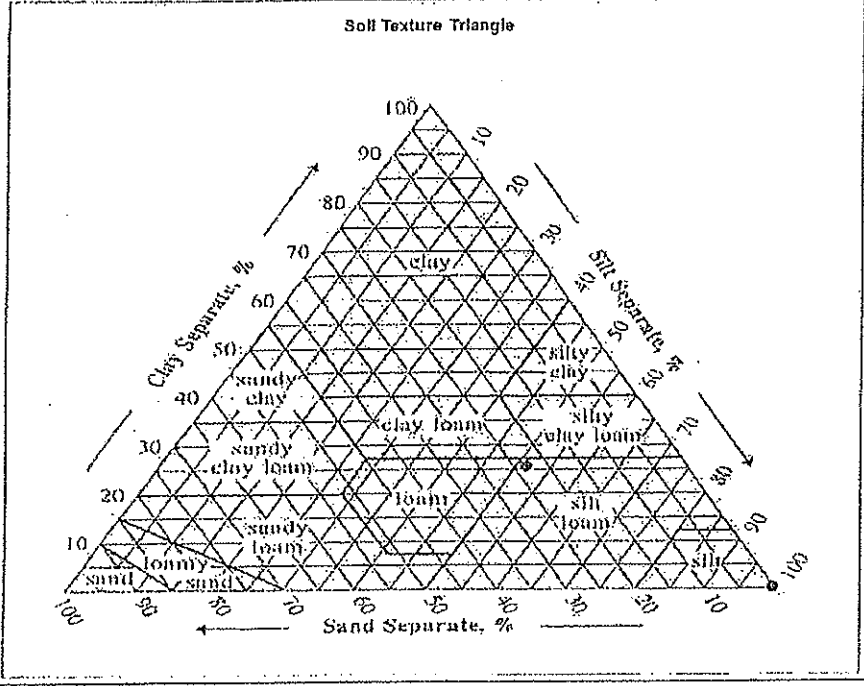
USDA Texture	Clay	Silt	Sand
SILT LOAM	23.10%	51.59%	25.30%
SILT	0.00%	100.00%	0.00%
SILT	0.00%	100.00%	0.00%
SILT	0.00%	100.00%	0.00%

Optimal Sand	Value
% Very Coarse	0.00%
% Coarse	0.00%
% Medium	0.00%
% Fine	0.00%
% Very Fine	0.00%

Optimal Silt	Value
% Very Coarse	0.00%
% Coarse	0.00%
% Medium	0.00%
% Fine	0.00%
% Very Fine	0.00%

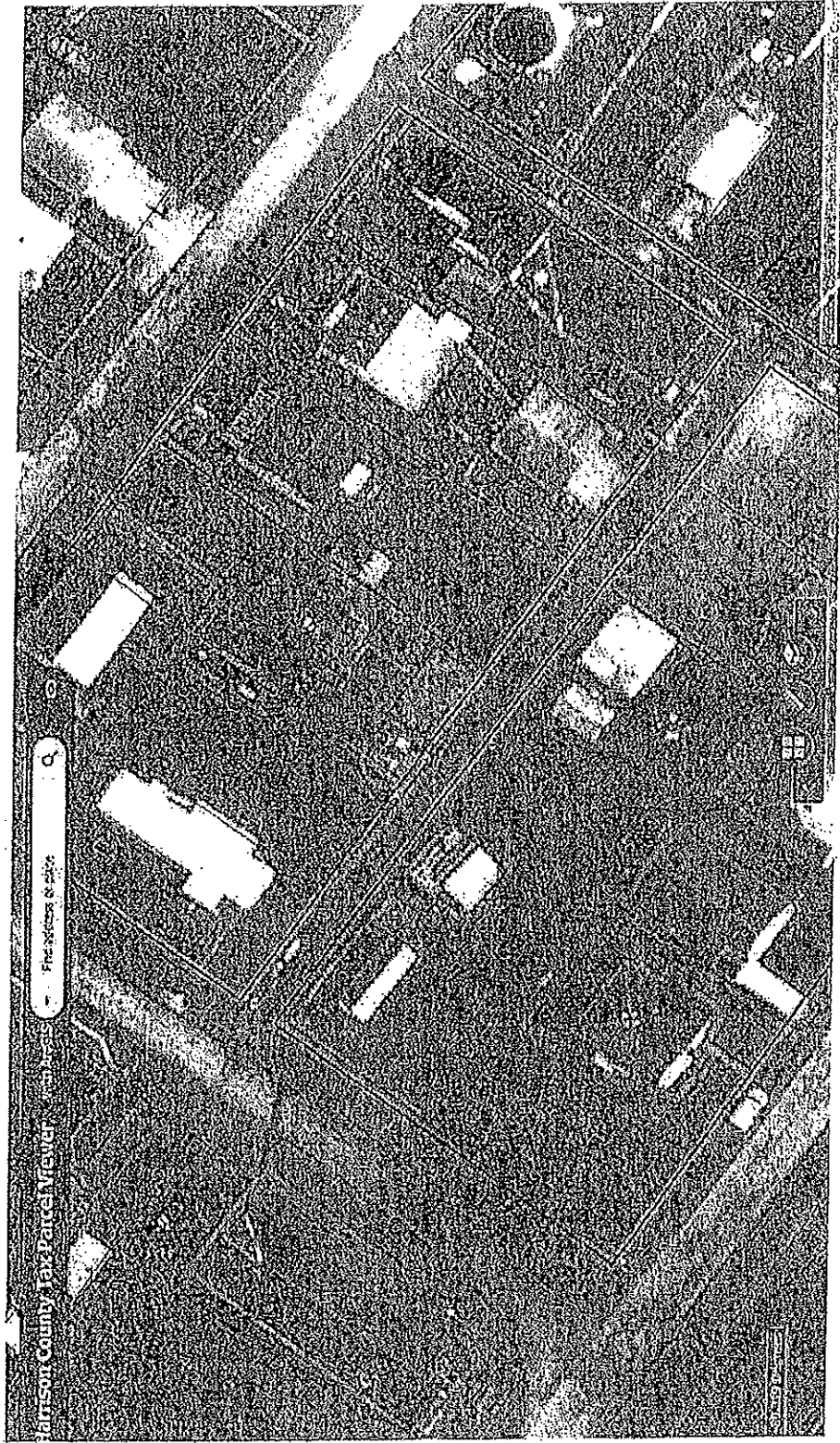
Optimal Sand	Value
% Very Coarse	0.00%
% Coarse	0.00%
% Medium	0.00%
% Fine	0.00%
% Very Fine	0.00%

Optimal Sand	Value
% Very Coarse	0.00%
% Coarse	0.00%
% Medium	0.00%
% Fine	0.00%
% Very Fine	0.00%

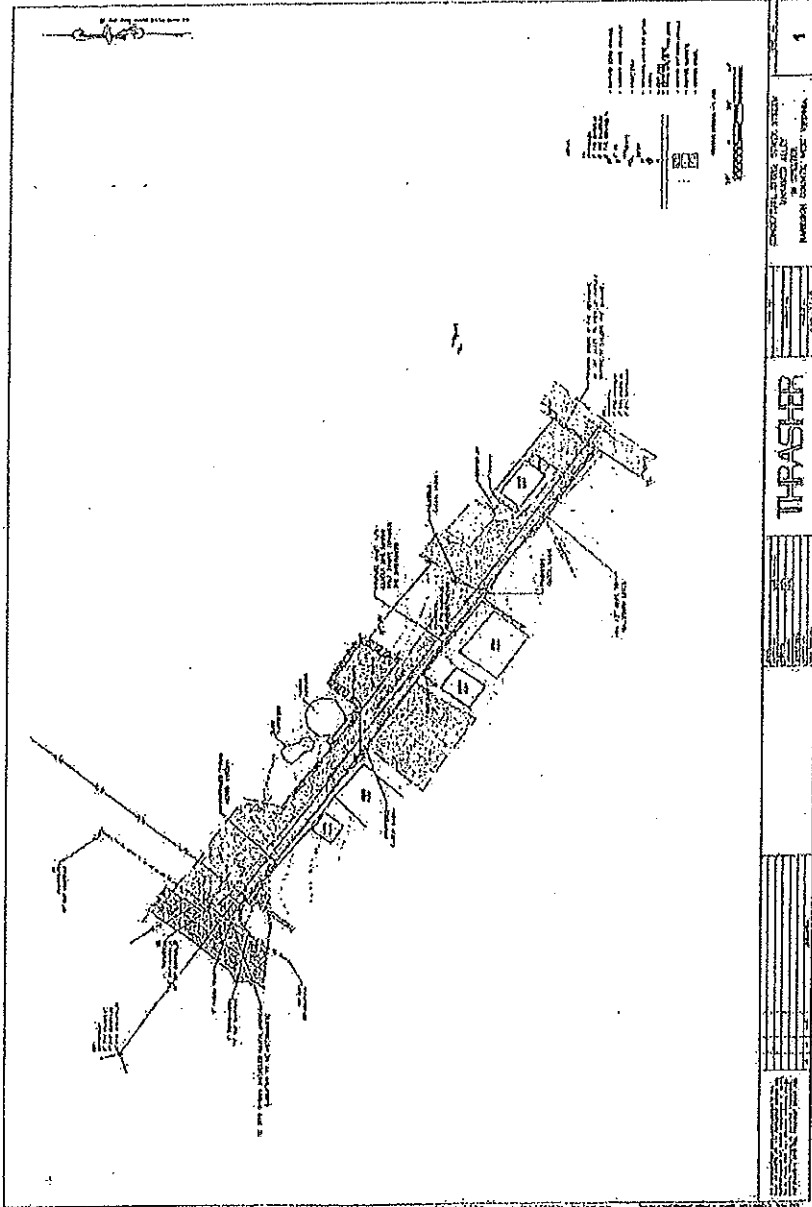


**Attachment D:**

**Aerial of Alley**



**Attachment E:**  
**Thrasher Design**



1

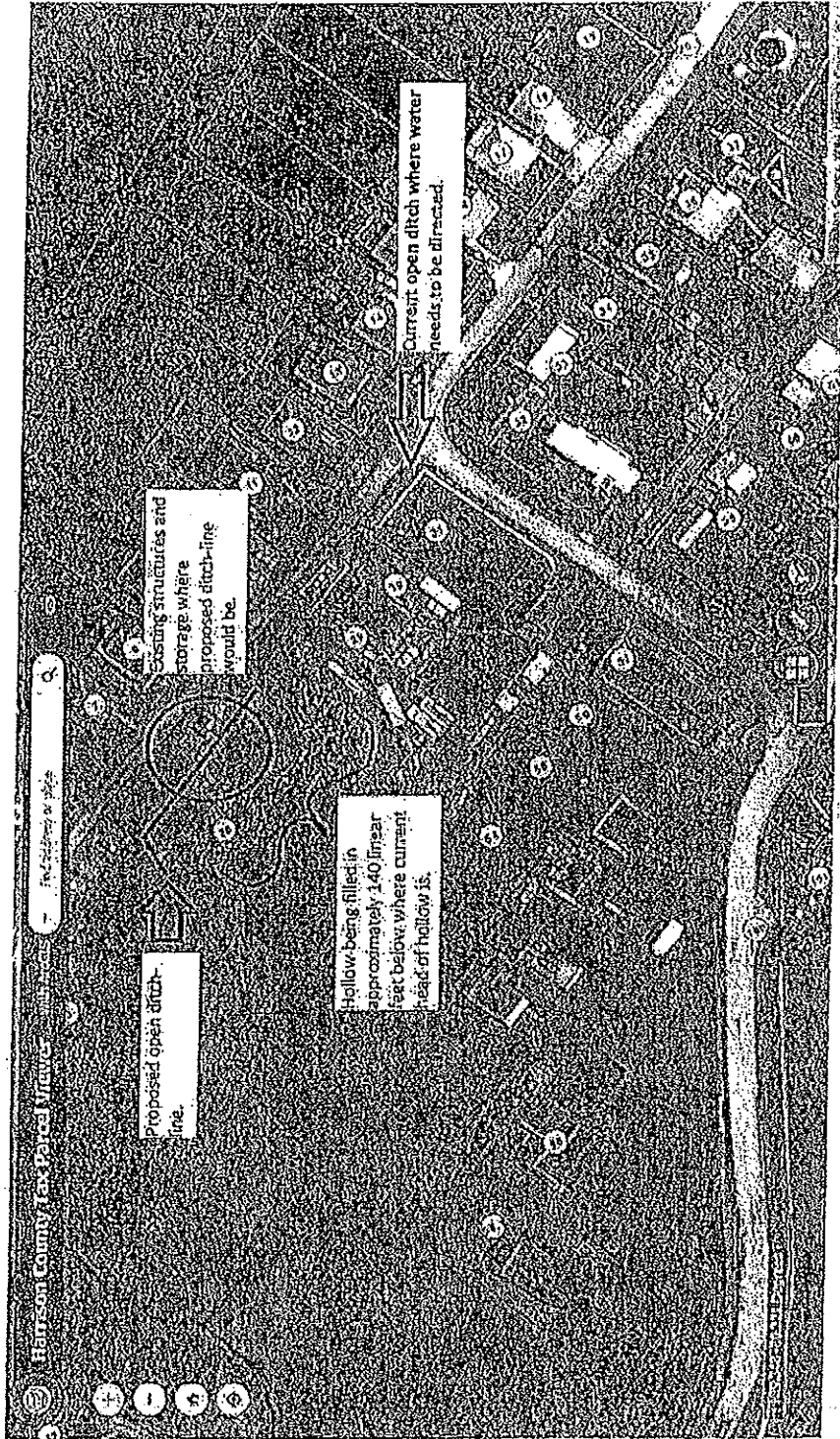
NATIONAL ARCHIVE  
 COLLEGE PARK, MARYLAND  
 NATIONAL ARCHIVE, COLLEGE PARK, MARYLAND

**THRASHER**



**Attachment F:**

**Aerial of Hollow and Proposed Ditch**



**Attachment G:**

**List and Map of Adjoining Land Owners**

Claimant Name	Tax ID	Lots Adjoining Alley
James Glaspell	11-01_63+62	2
Rhonda Blosser	11-01_61	1
Methodist Church	11-01_60	1
Diana Book	11-01_59	1
Paul R. and Alice Knotts	11-01_32	1
Paul W. Knotts	11-01_33+34	2
Jimmy Blake	11-01_35	1
Timothy and Hazel Rader	11-01_36	1
Carolyn Moschella	11-01_37	1
Robert an Derek Rogers*	11-01_31	1

\*While not directly connected to alley, the water coming down the alley goes towards house and has been involved in issue from beginning.

**Attachment H:**

**Alley Town Hall Meeting Notice**

PERRINE DUPONT SETTLEMENT CLAIMS OFFICE  
EDGAR C. GENTLE, CLAIMS ADMINISTRATOR  
SPELTER VOLUNTEER FIRE DEPARTMENT OFFICE

55 B Street  
P. O. BOX 257  
Spelter, West Virginia 26438  
(304) 622-7443  
(800) 345-0837  
[www.perrinedupont.com](http://www.perrinedupont.com)  
[perrinedupont@gtandslaw.com](mailto:perrinedupont@gtandslaw.com)

September 27, 2016

CONFIDENTIAL  
VIA HAND DELIVERY

Mr. James Glaspell  
Ms. Rhonda Blosser  
Methodist Church  
Ms. Diana Book  
Mr. and Mrs. Paul Knotts  
Mr. Jimmy Blake  
Mr. and Mrs. Timothy Rader  
Ms. Carolyn Moschella  
Mr. Robert Rogers  
Mr. Derek Rogers  
Mr. and Mrs. Bob Greynolds

**RE:** The Perrine DuPont Property Settlement - Repair of the Church Alley in Accordance with the Court's July 13, 2016 Dividend Order; Our File No. 4609-1 {DD-47}, 4609-1 {XXX} and Claimant File

Dear All:

As you may know, the enclosed July 13, 2016 Dividend Order from the Court contemplates repair of the church alley adjacent to your property. Please see page 6 of the Order at 1 in Enclosure A, which we have highlighted for your convenience.

Before going forward with repairs, we must obtain consensus by you, the owners of the adjacent properties on how to proceed.

Enclosed for your information, please find the alley design prepared by Doug Fomi, in Enclosure B, which attempts to provide a consensus plan on how to go forward. You might remember that this drawing was designed after inviting all of you to meet with us and meeting with as many of you as possible in an attempt to obtain consensus.

It is my understanding that we might not have complete agreement on this matter.

September 27, 2016

Page 2

---

Therefore, we will have a meeting on October 5, 2016 at 5:00 p.m. Eastern Time at the Spelter Fire Station to discuss this matter in an attempt to make sure we have complete agreement. Please make every attempt to attend. If you can not attend, please send someone who can speak for you if possible.

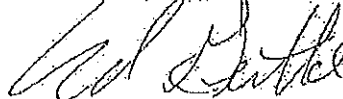
We will have Doug Forni, Paul Emerson and J.F. Allen, the contractor, present at the meeting, as well as me.

The goal of the meeting is simple: to listen to you and to determine if we can obtain agreement among you on how to proceed with this matter.

If we are not able to agree, Judge Bedell is having a hearing on October 12, 2016 at 1:15 p.m. Eastern Time to resolve remaining matters concerning the Dividend and related infrastructure repairs in Zone 1A. We will put this matter on the agenda for that hearing, and will invite you to provide your recommendations to the Court with respect to this matter.

Thank you for the opportunity to administer your Settlement these many years. I look forward to seeing you on October 5.

Yours very truly,



Edgar C. Gentle, III  
Settlement Administrator

ECGIII/jlb

Enclosures

cc: (confidential)(via email)  
Mr. Paul Emerson  
Mr. Doug Forni  
Mr. Bryan Leatherman, J.F. Allen General Manager

ENCLOSURE A



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. J. DUPONT DE NEMOURS &  
COMPANY, et al.,

Defendants.

FINAL ORDER DETERMINING THE USE AND DISTRIBUTION OF THE  
REMEDATION FUND SURPLUS

Presently before the Court is the issue of the fair and equitable use and distribution of the projected remaining funds in the Property Remediation Qualified Settlement Fund (the "Property QSF"), with the Claims Administrator having submitted a winding-up projected budget, and the surplus being projected to remain upon the completion of the remaining aspects of the Settlement Property Remediation Program, in late 2016 or early 2017. The Claims Administrator, Ed Gentle, filed a Report with the Court on this matter on June 15, 2016, which is incorporated by reference and made part of the record herein.

The Property Remediation Program is expected to be completed in late 2016 or early 2017, with remaining repairs resulting from the Remediation Program to be conducted on claimant properties, and previously approved road repairs to be conducted in Zone 1A due to the use of heavy equipment in the area during the past four (4) years for soil remediation. Also to be performed are Zone 1A infrastructure improvements described below. After the completion of these final measures of the Remediation Program, the Claims Administrator projects that there is a surplus in the Property QSF of approximately \$4 million.

Out of the 1,227 Property Remediation claims filed with the Claims Administrator and approved, approximately 992 properties participated in the Property Remediation Program (the "participating claimants"), while approximately 235 properties, at the option of their claimant owners, did not participate (the "nonparticipating claimants").

To fairly notice the Property Remediation Class of the surplus and possible uses of the surplus, the Claims Administrator conducted a multi-step process, beginning with inviting all participating claimant Class Members to a series of public Town Hall Meetings to gather their input and opinions. After the Town Hall Meetings, which were conducted in March 2016, the Claims Administrator developed a detailed questionnaire describing the available options for use of the surplus, which was mailed to the 992 participating claimants on May 26, 2016.

As of the June 8, 2016, response deadline for the questionnaires, 281 families responded and provided their opinions and votes, which are tabulated and described in the Report.

The Court set a public Fairness Hearing for June 22, 2016, at 8:30A.M., and the participating claimants received written notice of the hearing, together with the questionnaire results. The hearing was timely held to allow presentation of the issues related to the use and distribution of the surplus to the Court, and to allow any interested participating claimants to state their positions and concerns to the Court.

The following individuals attended the hearing: Ed Gentle, the Claims Administrator; Meredith McCarthy, Esq., as guardian *ad litem* and proxy for Class Counsel; Jim Arnold, Esq., telephonically, as counsel for DuPont; Michael Jacks, as local counsel for the Claims Administrator; Settlement Remediation Supervisor Paul Emerson; Settlement Staff members Christy Mullins and Sarah Cayton; Settlement Scientific and Technical Remediation Advisor Marc Glass; and Remediation Contractor, NorthStar Demolition and Remediation f/k/a NCM,

employees Stan Keffer and Tom Archer. Additionally, approximately 40 claimants appeared at the hearing, and seven claimants voiced their opinions on the matter, as summarized herein.

The salient issues presented to the Court are identified below:

- 1) Should the additional claimant requested Zone 1A infrastructure repairs, identified in Question A of the Report, be conducted and paid for out of surplus funds?
- 2) Should claimants living in Zone 1A, who had residential soil remediation as well as residential house remediation, receive a larger share of the surplus than claimants in the outer zones, who only received house remediation? A related issue is whether a Zone 1A claimant should receive one share of the dividend for the soil, and a second share of the dividend for the house, or only one share for the entire property.
- 3) Should surplus shares be divided per claimant or per property? For example, if one claimant owns three Class Area properties, should the claimant receive three shares or one share or should a compromise method be used?
- 4) Should claimants who were eligible to participate in the Remediation Program and who successfully completed and submitted a Property Claim but who then elected not to participate in the Remediation Program (the nonparticipating claimants) receive a share of the surplus?

The following claimants spoke at the hearing, and their input is summarized below.

Shafter "Bud" Drummond spoke, and noted that he is a lifelong resident of Spelter, and a retired volunteer fire fighter. Mr. Drummond requested that a small portion of the surplus be used to benefit the Spelter Volunteer Fire Department. Mr. Drummond noted that the Spelter Volunteer Fire Department is currently faced with an expense of approximately \$40,000 to

purchase new air tanks, and Mr. Drummond requested that adequate surplus funds be estimated for this expense.

Trudy Heil spoke, and requested that a portion of the surplus funds be used to drain surface water that is pooling behind her property, located in Eira, where soil remediation was conducted.

Aihal Canaday spoke, and he also requested that the surface water pooling behind his property, which is adjacent to Ms. Heil's, be corrected with surplus funds. The Claims Administrator noted that Mr. Canaday's concerns are set for a separate hearing specific to his property on July 27, 2016, so they will not be addressed in this Order.

Albert Sheaffer spoke, and noted that he is also lifelong Spelter resident, and former employee of the zinc plant. Mr. Sheaffer noted that of the approximately 40 claimants in attendance, 4 were using breathing equipment for supplemental oxygen, and he requested that long term residents of the Class Area, particularly Zone 1A, receive a greater share of the surplus due to the claimed greater impact of the zinc plant on their lives and properties.

Jerry Stevens spoke, and he thanked the remediation crews and the Court, and suggested that a greater portion of the surplus go to the claimants who had lived in the Class Area the longest, and therefore were most impacted. The Court noted, in a moment of levity, that this approach would require inquiring into the age of all of the ladies in the Class Area, a task in which Mr. Stevens wisely declined to participate. The Court also finds that this suggested approach is impractical, as the surplus is from a Remediation Fund and not a Personal Injury Fund.

Shawn Shingleton, another lifelong Spelter resident, spoke, and he suggested that claimants from Zone 1A receive double shares of the surplus, due to the claimed larger impact of

the remediation process on their lives during the past four years. Mr. Shingleton noted that he was relocated for more than three weeks to allow his property to be remediated, and indicated that he has ongoing issues with the new sod on his property, which the Claims Administrator is addressing through separate proceedings. The Court therefore will not address the sod issue in connection with Mr. Shingleton's property in this Order.

Frank Tate, another Spelter resident, spoke, and he thanked the clean-up crews for their efforts. Mr. Tate suggested that distribution of the surplus should go to those who lived in the area the longest, and to those who lived in Zone 1A, and were impacted the most. Mr. Tate also voiced his opinion that the State was responsible for repairing the roads, not the Settlement. The Claims Administrator noted that the Court has already approved a Road Improvement Program to ensure that the Remediation Program leaves the roads in Zone 1A as good as they were found, with such road repairs being standard in similar Remediation Programs.

The Court has carefully reviewed the documents and questionnaire results in the Report, and the other relevant submissions of the Claims Administrator. The Court further thanks the Class Members for their opinions and input into these important matters, which are a great benefit to the Court, and which were carefully considered by the Court.

The Court notes that the law as to the distribution of residual funds in a class action case is generally governed by the *cy pres* doctrine, which literally translates to "as nearly as possible" to the original purpose of the funds, and shares principles with the distribution of funds in estate matters, sometimes referred to as equitable reformation or equitable approximation. *Berry v. Union National Bank*, 262 S.E.2d 766 (W.Va. 1980). See also, Ed Gentle, [The Cy Pres Distribution of a Class Action Recovery Surplus: Equity or Inequity?](#), 66 Alabama L. Rev. 1 On-Line (2015).

The Court has also been advised by the Claims Administrator that some of the properties subject to the Remediation Program, both those owned by participating claimants and those owned by nonparticipating claimants, have been sold during the course of the Remediation Program. It is therefore appropriate to determine the relative rights of former and current owners of such properties to the surplus.

After a careful review of the facts of the matter and of the pertinent law, the Court hereby **ORDERS** that the Claims Administrator apply the following rulings to the distribution of the surplus:

- 1) The additional road and infrastructure repairs and modifications described in the Report and questionnaire are approved, as are the requested drainage repairs in Eire identified by Ms. Heil, and to the extent they are consented to by the affected property owner(s), and shall be performed under the supervision of the Claims Administrator;
- 2) The Zone 1A participating claimants, defined above, shall each receive a double share, compared to participating claimants in the outer zones. That is, the soil property that participated is entitled to a share and the house that participated is entitled to a share. Because these were 2 claims, with each being counted as a separate claim, this decision is in accordance with the Court's prior Order dated June 27, 2011 which states that "any extra remediation funds shall be distributed equally to all participants in the Property Remediation Program". Of course, if a Zone 1A property only had soil and not a house that participated, or a house and not a soil that participated, the property is only to receive a single share.

- 3) The participating claimants, defined above, with house-only properties, in the outer, non-1A Zones, shall each receive one share.
- 4) The nonparticipating claimants, defined above, shall each receive a one-fifth share, no matter what Zone the property is located in.

In the Report, the Claims Administrator noted that an analogy may be found in the MDL 926 Breast Implant Settlement, where timely registrants received a \$5,000 Advance Payment, and late registrants (with these claimants here being very late indeed), received only \$1,000.

- 5) As to whether the surplus shall be paid on a per property basis or a per claimant basis, the Court determines that:
  - a. The share distribution shall be per claimant unit, regardless of the number of properties owned by each claimant unit.
- 6) The Spitzer Volunteer Fire Department shall receive \$40,000 only to replace their air tanks, but the Claims Administrator shall so earmark, monitor and document the appropriate use of the funds.
- 7) The Court notes that the Remediation Program began on November 1, 2011. The surplus attributed to a property that has not been sold from that time until the date of this Order shall be distributed to the claimant unit that owns it as of the date of this Order. A claimant unit shall include the heirs or will beneficiaries of the deceased claimant who owned the property at November 1, 2011 and departed this life prior to the date of this Order. If the property has been sold between November 1, 2011 and the date of this Order, the distribution of the surplus is described in the next paragraph.

8) The surplus pertaining to properties sold between November 1, 2011 and the date of this Order shall be distributed as follows:

- a. For participating claimants, defined above, the Court notes that they received 2 remediation annoyance and inconvenience payments, a 20% payment after their property was tested for contaminants, and an 80% payment after remediation was determined not to be necessary or was completed. It is therefore appropriate to pay (i) 20% of the surplus share to the then owners of the property at the time of the 20% initial payment; and (ii) 80% of the surplus share to the then owners of the property at the time of the second 80% payment.
- b. For nonparticipating claimants, defined above, by analogy, the Court finds it appropriate to pay 20% of the surplus to the owners of the property when it was tested for contaminants and at the time the 20% payment was made (if the claimant unit withdrew from the Remediation Program prior to receiving the 20% payment, the determination date will be November 1, 2011), and 80% as of the date of this Order. Provided the Claims Administrator acts strictly in accordance with the protocols and the directives of this Order, he and his staff are granted Judicial Immunity.



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.

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

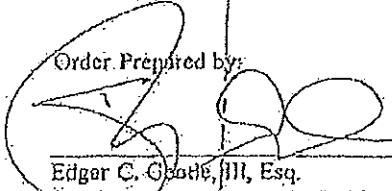
Virginia Buchanan  
Levin, Papantonio, Thomas, Mitchell,  
Rafferty & Proctor, P.A.  
P.O. Box 12308  
Pensacola, FL 32391

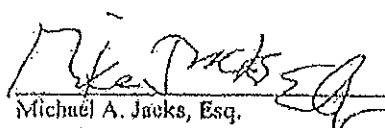
Meredith McCarthy  
901 W. Main St.  
Bridgeport, WV 26330  
*Gardian Ad Litem*

Edgar C. Gentle, III  
Claims Administrator  
Gentle, Turner, Sexton & Harbison, LLC  
P.O. Box 257  
Spelter, WV 26437


Jacks Legal Group, P.L.L.C.  
3467 University Ave, Suite 200  
Morgantown, WV 26505

Order Prepared by:

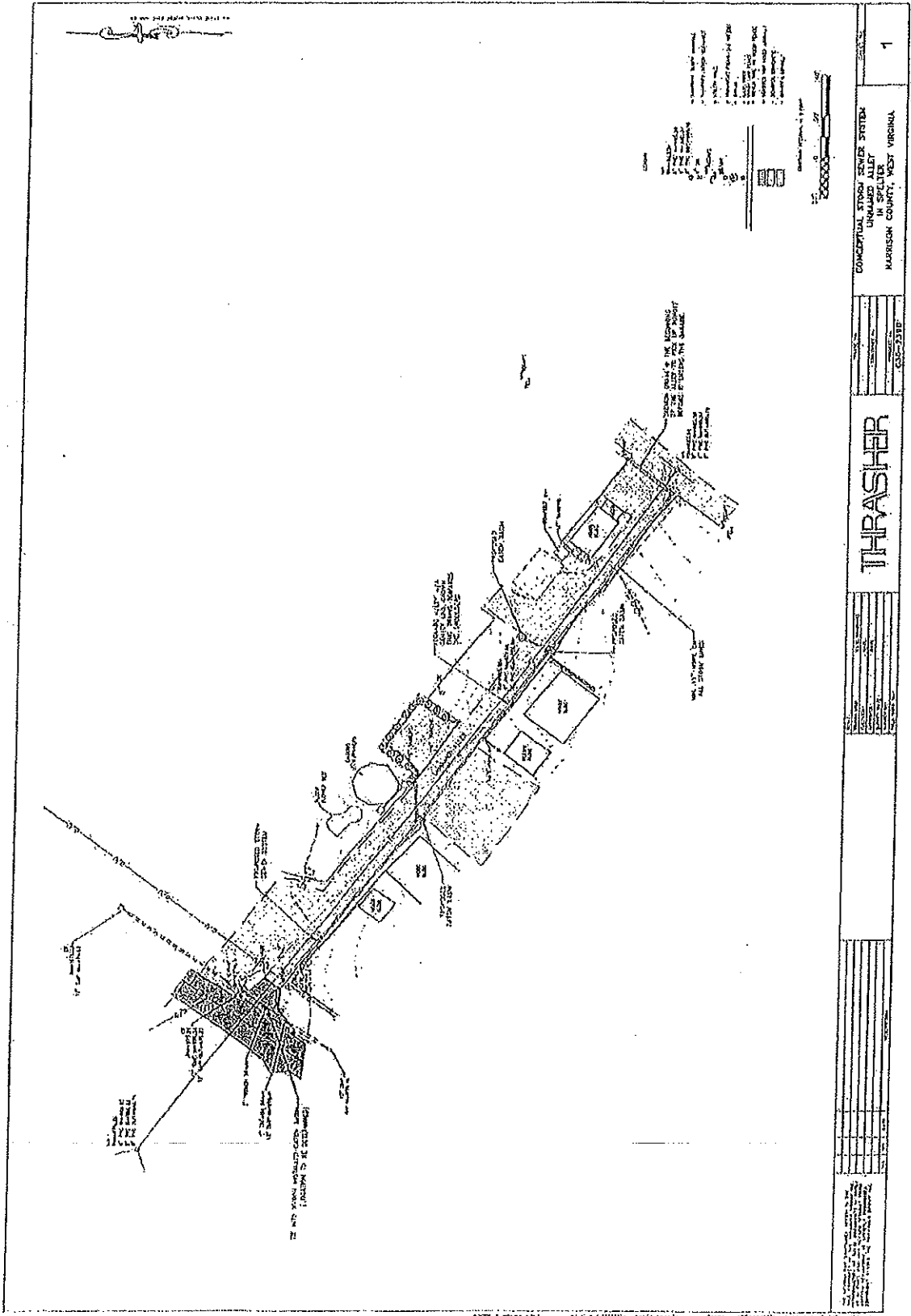
  
Edgar C. Gentle, III, Esq.  
Gentle, Turner, Sexton & Harbison, LLC  
P. O. Box 257  
Spelter, WV 26438

  
Michael A. Jacks, Esq.  
Jacks Legal Group, P.L.L.C.  
W.Va. Bar No 11044  
3467 University Ave, Suite 200  
Morgantown, WV 26505

ENTER: July 13, 2016

  
Thomas A. Bedell, Circuit Judge

ENCLOSURE B



**Attachment I:**  
**Proposed Order**

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 SETTING HEARING ON ISSUES  
RESPECTING DISTRIBUTION OF PROPERTY  
REMEDATION PROGRAM SURPLUS AND A CLAIMANT APPEAL**

Presently before the Court is the Claims Administrator's October 4, 2016 Report respecting these matters.

The Report and the matters addressed therein are hereby set for a hearing on October 12, 2016, at 1:15 P.M. and said hearing shall be held before the Honorable Thomas A. Bedell, Judge of the Circuit Court of Harrison County, West Virginia, in the Division 2 Courtroom, Room 321, located on the 4<sup>th</sup> Floor of the Harrison County Courthouse at 301 West Main Street, Clarksburg, West Virginia.

**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  
Gentle, Turner, Sexton & Harbison, LLC  
P. O. Box 257  
Spelter, WV 26438  
*Special Master*

Michael A. Jacks  
Jacks Legal Group, P.L.L.C.  
3467 University Avenue, Suite 200  
Morgantown, WV 26505

Mr. Marc Glass  
Downstream Strategies  
295 High Street, Suite 3  
Morgantown, WV 26505

Mr. Doug Forni  
Thrasher Engineering  
600 White Oaks Blvd  
Bridgeport, WV 26330

Mr. James Glaspell  
P.O. Box 156  
Spelter, WV 26438

Ms. Rhonda Blosser  
589 Lower Lamberts Run  
Clarksburg, WV 26301

Methodist Church  
P.O. Box 96  
Spelter, WV 26438

Ms. Diana Book  
P.O. Box 65  
Spelter, WV 26438

Paul R. and Alice Knotts  
P.O. Box 67  
Spelter, WV 26438

Mr. Paul W. Knotts  
P.O. Box 109  
Spelter, WV 26438

Mr. Jimmy Blake  
P.O. Box 145  
Spelter, WV 26438

Timothy and Hazel Rader  
P.O. Box 83  
Spelter, WV 26438

Ms. Carolyn Moschella  
P.O. Box 3  
Spelter, WV 26438

Robert and Derek Rogers  
P.O. Box 36  
Spelter, WV 26438

Bob and Janet Greynolds  
P.O. Box 105  
Spelter, WV 26438

Mr. Randall Nutter  
57 Jewel City Blvd  
Meadowbrook, WV 26404

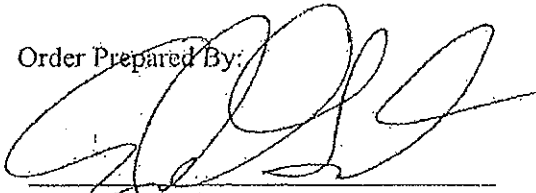
Mr. Tom Archer  
3900 Vero Road  
Baltimore, MD 21227

Ms. Trudy Heil  
3077 Maple Ave  
Clarksburg, WV 26301

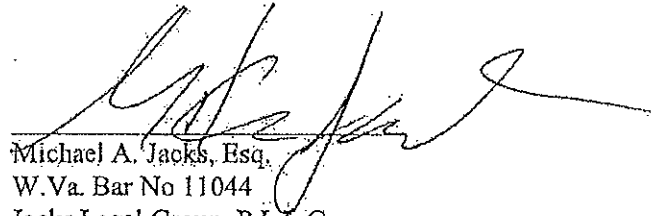
Lori Dunn, President  
Spelter Volunteer Fire Department  
P.O. Box 176  
Spelter, WV 26438

Mr. Stan Keifer  
8160 304<sup>th</sup> Ave, SE  
Issaquah, WA 98027

Order Prepared By:



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



Michael A. Jacks, Esq.  
W. Va. Bar No 11044  
Jacks Legal Group, P.L.L.C.  
3467 University Avenue, Suite 200  
Morgantown, WV 26505

ENTER: \_\_\_\_\_

\_\_\_\_\_  
Thomas A. Bedell, Circuit Judge

# **ATTACHMENT B**



PERRINE DUPONT SETTLEMENT CLAIMS OFFICE  
ATTN: EDGAR C. GENTLE, CLAIMS ADMINISTRATOR  
C/O SPELTER VOLUNTEER FIRE DEPARTMENT OFFICE

55 B Street  
P. O. BOX 257  
Spelter, West Virginia 26438  
(304) 622-7443  
(800) 345-0837  
[www.perrinedupont.com](http://www.perrinedupont.com)  
perrinedupont@gtandslaw.com

October 7, 2016

CONFIDENTIAL  
VIA HAND DELIVERY

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

Re: The Perrine DuPont Settlement Remediation Program (the "Remediation Program") - Supplement to October 4, 2016 Report Respecting Wrap-Up Matters Under the Court's July 13, 2016 Dividend Order and August 19, 2016 Amendment to Dividend Order ("Wrap Up Matters"); Our File No. 4609-1 {DD-89}

Dear Judge Bedell:

I hope this letter finds you well.

The purpose of this Report is to supplement our previous October 4, 2016 Report on Wrap Up Matters, by providing supplemental information on 2 of the 4 Wrap Up Matters.

III. Repair of the Church Alley

On October 5, 2016, we had a Town Meeting with Claimants with property adjoining the Church Alley, in an effort to resolve this issue. The meeting was well attended, and we have reached a tentative agreement. We therefore request that this matter be removed from the agenda for the October 12, 2016 hearing, and we update the Court on its status in the near future.

IV. Requested Direction from the Court on Claimant Dividend Payment Issues

According to the Dividend Order, in order to be eligible to receive a dividend payment, you must either be a participating<sup>1</sup> claimant<sup>2</sup> or a non-participating<sup>1</sup> claimant. Participating claimants in

---

<sup>1</sup>Participating means the Claimant participated in the Remediation Program, and non-participating means the Claimant did not.

<sup>2</sup>Claimant means a Settlement Remediation Class Member.

Zone 1A are entitled to a double share, while participating Claimants in Zones other than 1A are entitled to one share. Non-participating Claimants are entitled to a one-fifth share, no matter what Zone their property is located in. Furthermore, the Dividend Order states that the share distributions to be paid will be paid on a per claimant unit basis, regardless of the number of properties owned by each claimant unit.

The participating claimants are defined on page 2 of the Dividend Order as the 992 properties that participated in the Property Remediation Program, and the nonparticipating claimants are defined on page 2 of the Dividend Order as the 235 properties which, at the option of their claimant owners, did not participate in the Property Remediation Program.

In order to carry out the Dividend Order uniformly and fairly, we propose to clarify the payment definitions as follows:

A. Claimant Units

1. The share distribution shall be paid per claimant unit, regardless of the number of participating or nonparticipating properties owned by each claimant unit. A claimant unit is further defined as the same group of individuals. An individual that owns multiple properties with multiple claimant units could therefore receive more than 1 share.
2. Payments are distributed by claimant unit, but shares are calculated based on whether a claimant unit owned a participating or nonparticipating property, with participating properties taking precedence when a claimant unit owns more than one property, as those shares, defined below, are larger.

B. A participating property is defined as one of the approximately 992 properties that participated in the Property Remediation Program. A property participated in the Remediation Program if a claim form was filed, the property (house or soil) was tested, and either (i) it tested clean and was paid; or (ii) it tested with remediation levels of heavy metals and was subsequently remediated.

C. A nonparticipating property is defined as one of the approximately 235 properties which, at the option of their claimant owners, did not participate in the Property Remediation Program. A property is a nonparticipating property if a claim form was filed, the property tested with remediation levels of heavy metals, and it was not remediated.

- D. Participating properties, defined above, that are house-only properties, in the outer, non 1A Zones, shall each receive one share.
- E. Zone 1A participating properties, defined above, that had both a house and a soil property shall receive a double share, compared to participating house only properties in the outer zones.
- F. Nonparticipating properties, defined above, shall each receive a one-fifth share, no matter what Zone they are in.
- G. For payment purposes, a dividend payment attributed to a property that has not been sold from the time the Remediation Program began on November 1, 2011, until the date of the Dividend Order (July 13, 2016), shall be distributed to the claimant unit that owns it as of the date of the Dividend Order. A claimant unit shall include the heirs or Estate of a deceased claimant who owned the property at November 1, 2011 and departed this life prior to the date of the Dividend Order. If the property has been sold between November 1, 2011 and the date of the Dividend Order, the distribution of the dividend is described in the next paragraph.
- H. The dividend pertaining to properties sold between November 1, 2011 and the date of the Dividend Order shall be distributed as follows:
  - 1. For participating properties, defined above, 20% of the surplus share shall be paid to the owners of the property at the time of the initial 20% annoyance and inconvenience payment, and 80% of the surplus share shall be paid to the owners of the property at the time of the second/final 80% annoyance and inconvenience payment. If a property was subsequently sold after the 80% annoyance and inconvenience payment, any owners after that date are not entitled to any share of the surplus.
  - 2. For nonparticipating properties, defined above, 20% of the one-fifth share shall be paid to the owners of the property at the time the property was tested for contaminants and the initial 20% annoyance and inconvenience payment was made, and 80% of the one-fifth share shall be paid to the owners as of the date of the Dividend Order. If the property was subsequently sold after the date of the Dividend Order, any owners after that date will not be entitled to a share of the surplus.

During the course of our evaluation of the participating and nonparticipating properties and in preparation for calculating the dividend distribution, we encountered some issues regarding what

properties would or would not qualify for a dividend distribution, as well as some assumptions we felt were necessary to streamline surplus dividend check issuance procedures.

We therefore propose to use the following guidelines in classifying a property, and in issuing the dividend payments:

I. Settlement Eligibility and Payment Parameters

1. Claims filed for a house and/or soil property would not qualify for a dividend if the property (i) is out of the Class Area; or (ii) is subject to the Grasselli deed exclusion; or (iii) is publicly owned; or (iv) is denied eligibility by the Court; or (v) is not tested during the pre-remediation phase; or (vi) is inaccessible for pre-remediation testing or remediation; or (vii) is claimed only by a person who is not the owner of the property. Also, for house only properties, the property would not qualify for participation if there was no structure on the property, or the structure is uninhabitable, including garages, hunting cabins and any other structures not fit for human occupancy.
2. Dividend payments to all claimant units would be paid in the same manner in which the original annoyance and inconvenience payments were issued. E.g., if the annoyance and inconvenience payment was paid jointly to a husband and wife, then the dividend payment would be also. For known deceased payees, the Estate or the heirs would receive their payment.
3. For nonparticipating properties that have new owner claimant units as of the date of the Dividend Order, their share will be issued according to deed ownership records.

In an effort to fully illustrate the definitions and parameters set out above, we have attached, in Attachment B, tables that set out the dividend calculation parameters, and examples reflecting the application of those parameters for the Court's review.

We appreciate your consideration of these matters.

Yours very truly,

  
Ed Gentile III  
Claims Administrator

ECGIII/kah

Attachments: Attachment A: July 13, 2016 Dividend Order and August 19, 2016  
Amendment to Dividend Order  
Attachment B: Propose Surplus Dividend Calculation Parameters and  
Illustrations

October 7, 2016

Page 5

---

cc: (confidential)(via email)(with attachments)

Virginia Buchanan, Esq.

James S. Arnold, Esq.

Meredith McCarthy, Esq.

Katherine A. Harbison, Esq.

Jennifer L. Blankenship, Esq.

Ms. Jennifer Newby, CPA

Mr. Paul Emerson

Ms. Christy Mullins

Ms. Sarah Cayton

ATTACHMENT A

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.

FINAL ORDER DETERMINING THE USE AND DISTRIBUTION OF THE  
REMEDATION FUND SURPLUS

Presently before the Court is the issue of the fair and equitable use and distribution of the projected remaining funds in the Property Remediation Qualified Settlement Fund (the "Property QSF"), with the Claims Administrator having submitted a winding-up projected budget, and the surplus being projected to remain upon the completion of the remaining aspects of the Settlement Property Remediation Program, in late 2016 or early 2017. The Claims Administrator, Ed Gentle, filed a Report with the Court on this matter on June 15, 2016, which is incorporated by reference and made part of the record herein.

The Property Remediation Program is expected to be completed in late 2016 or early 2017, with remaining repairs resulting from the Remediation Program to be conducted on claimant properties, and previously approved road repairs to be conducted in Zone 1A due to the use of heavy equipment in the area during the past four (4) years for soil remediation. Also to be performed are Zone 1A infrastructure improvements described below. After the completion of these final measures of the Remediation Program, the Claims Administrator projects that there is a surplus in the Property QSF of approximately \$4 million.

Out of the 1,227 Property Remediation claims filed with the Claims Administrator and approved, approximately 992 properties participated in the Property Remediation Program (the "participating claimants"), while approximately 235 properties, at the option of their claimant owners, did not participate (the "nonparticipating claimants").

To fairly notice the Property Remediation Class of the surplus and possible uses of the surplus, the Claims Administrator conducted a multi-step process, beginning with inviting all participating claimant Class Members to a series of public Town Hall Meetings to gather their input and opinions. After the Town Hall Meetings, which were conducted in March 2016, the Claims Administrator developed a detailed questionnaire describing the available options for use of the surplus, which was mailed to the 992 participating claimants on May 26, 2016.

As of the June 8, 2016, response deadline for the questionnaires, 281 families responded and provided their opinions and votes, which are tabulated and described in the Report.

The Court set a public Fairness Hearing for June 22, 2016, at 8:30A.M., and the participating claimants received written notice of the hearing, together with the questionnaire results. The hearing was timely held to allow presentation of the issues related to the use and distribution of the surplus to the Court, and to allow any interested participating claimants to state their positions and concerns to the Court.

The following individuals attended the hearing: Ed Gentle, the Claims Administrator; Meredith McCarthy, Esq., as guardian *ad litem* and proxy for Class Counsel; Jim Arnold, Esq., telephonically, as counsel for DuPont; Michael Jacks, as local counsel for the Claims Administrator; Settlement Remediation Supervisor Paul Emerson; Settlement Staff members Christy Mullins and Sarah Cayton; Settlement Scientific and Technical Remediation Advisor Marc Glass; and Remediation Contractor, NorthStar Demolition and Remediation P/k/a NCM,



employees Stan Keifer and Tom Archer. Additionally, approximately 40 claimants appeared at the hearing, and seven claimants voiced their opinions on the matter, as summarized herein.

The salient issues presented to the Court are identified below:

- 1) Should the additional claimant requested Zone 1A infrastructure repairs, identified in Question A of the Report, be conducted and paid for out of surplus funds?
- 2) Should claimants living in Zone 1A, who had residential soil remediation as well as residential house remediation, receive a larger share of the surplus than claimants in the outer zones, who only received house remediation? A related issue is whether a Zone 1A claimant should receive one share of the dividend for the soil, and a second share of the dividend for the house, or only one share for the entire property.
- 3) Should surplus shares be divided per claimant or per property? For example, if one claimant owns three Class Area properties, should the claimant receive three shares or one share or should a compromise method be used?
- 4) Should claimants who were eligible to participate in the Remediation Program and who successfully completed and submitted a Property Claim but who then elected not to participate in the Remediation Program (the nonparticipating claimants) receive a share of the surplus?

The following claimants spoke at the hearing, and their input is summarized below.

Shafter "Brid" Drummond spoke, and noted that he is a lifelong resident of Spelter, and a retired volunteer Fire Fighter. Mr. Drummond requested that a small portion of the surplus be used to benefit the Spelter Volunteer Fire Department. Mr. Drummond noted that the Spelter Volunteer Fire Department is currently faced with an expense of approximately \$40,000 to

purchase new air filters, and Mr. Drummond requested that adequate surplus funds be estimated for this expense.

Trudy Heil spoke, and requested that a portion of the surplus funds be used to drain surface water that is pooling behind her property, located in Eire, where soil remediation was conducted.

Athal Canaday spoke, and he also requested that the surface water pooling behind his property, which is adjacent to Ms. Heil's, be corrected with surplus funds. The Claims Administrator noted that Mr. Canaday's concerns are set for a separate hearing specific to his property on July 27, 2016, so they will not be addressed in this Order.

Albert Sheaffer spoke, and noted that he is also lifelong Spelter resident, and former employee of the zinc plant. Mr. Sheaffer noted that of the approximately 40 claimants in attendance, 4 were using breathing equipment for supplemental oxygen, and he requested that long term residents of the Class Area, particularly Zone 1A, receive a greater share of the surplus due to the claimed greater impact of the zinc plant on their lives and properties.

Jerry Stevens spoke, and he thanked the remediation crews and the Court, and suggested that a greater portion of the surplus go to the claimants who had lived in the Class Area the longest, and therefore were most impacted. The Court noted, in a moment of levity, that this approach would require inquiring into the age of all of the ladies in the Class Area, a task in which Mr. Stevens wisely declined to participate. The Court also finds that this suggested approach is impractical, as the surplus is from a Remediation Fund and not a Personal Injury Fund.

Shawn Singleton, another lifelong Spelter resident, spoke, and he suggested that claimants from Zone 1A receive double shares of the surplus, due to the claimed larger impact of

the remediation process on their lives during the past four years. Mr. Shingleton noted that he was relocated for more than three weeks to allow his property to be remediated, and indicated that he has ongoing issues with the new sod on his property, which the Claims Administrator is addressing through separate proceedings. The Court therefore will not address the sod issue in connection with Mr. Shingleton's property in this Order.

Frank Tate, another Spelter resident, spoke, and he thanked the clean-up crews for their efforts. Mr. Tate suggested that distribution of the surplus should go to those who lived in the area the longest, and to those who lived in Zone 1A, and were impacted the most. Mr. Tate also voiced his opinion that the State was responsible for repairing the roads, not the Settlement. The Claims Administrator noted that the Court has already approved a Road Improvement Program to ensure that the Remediation Program leaves the roads in Zone 1A as good as they were found, with such road repairs being standard in similar Remediation Programs.

The Court has carefully reviewed the documents and questionnaire results in the Report, and the other relevant submissions of the Claims Administrator. The Court further thanks the Class Members for their opinions and input into these important matters, which are a great benefit to the Court, and which were carefully considered by the Court.

The Court notes that the law as to the distribution of residual funds in a class action case is generally governed by the *cy pres* doctrine, which literally translates to "as nearly as possible" to the original purpose of the funds, and shares principles with the distribution of funds in estate matters, sometimes referred to as equitable reformation or equitable approximation. *Berry v. Union National Bank*, 262 S.E.2d 766 (W.Va. 1980). See also, Ed Gentle, The Cy Pres Distribution of a Class Action Recovery Surplus: Equity or Inequity?, 66 Alabama L. Rev. 1 On-Line (2015).

The Court has also been advised by the Claims Administrator that some of the properties subject to the Remediation Program, both those owned by participating claimants and those owned by nonparticipating claimants, have been sold during the course of the Remediation Program. It is therefore appropriate to determine the relative rights of former and current owners of such properties to the surplus.

After a careful review of the facts of the matter and of the pertinent law, the Court hereby ORDERS that the Claims Administrator apply the following rulings to the distribution of the surplus:

- 1) The additional road and infrastructure repairs and modifications described in the Report and questionnaire are approved, as are the requested drainage repairs in Bire identified by Ms. Heil, and to the extent they are consented to by the affected property owner(s), and shall be performed under the supervision of the Claims Administrator;
- 2) The Zone 1A participating claimants, defined above, shall each receive a double share, compared to participating claimants in the outer zones. That is, the soil property that participated is entitled to a share and the house that participated is entitled to a share. Because these were 2 claims, with each being counted as a separate claim, this decision is in accordance with the Court's prior Order dated June 27, 2011 which states that "any extra remediation funds shall be distributed equally to all participants in the Property Remediation Program". Of course, if a Zone 1A property only had soil and not a house that participated, or a house and not a soil that participated, the property is only to receive a single share.

3) The participating claimants, defined above, with house-only properties, in the outer non-1A Zones, shall each receive one share.

4) The nonparticipating claimants, defined above, shall each receive a one-fifth share, no matter what Zone the property is located in.

In the Report, the Claims Administrator noted that an analogy may be found in the MDL 926 Breast Implant Settlement, where timely registrants received a \$5,000 Advance Payment, and late registrants (with these claimants here being very late indeed), received only \$1,000.

5) As to whether the surplus shall be paid on a per property basis or a per claimant basis, the Court determines that:

a. The share distribution shall be per claimant unit, regardless of the number of properties owned by each claimant unit.

6) The Spitzer Volunteer Fire Department shall receive \$40,000 only to replace their air tanks, but the Claims Administrator shall so earmark, monitor and document the appropriate use of the funds.

7) The Court notes that the Remediation Program began on November 1, 2011. The surplus attributed to a property that has not been sold from that time until the date of this Order shall be distributed to the claimant unit that owns it as of the date of this Order. A claimant unit shall include the heirs or will beneficiaries of the deceased claimant who owned the property at November 1, 2011 and departed this life prior to the date of this Order. If the property has been sold between November 1, 2011 and the date of this Order, the distribution of the surplus is described in the next paragraph.

8) The surplus pertaining to properties sold between November 1, 2011 and the date of this Order shall be distributed as follows:

- a. For participating claimants, defined above, the Court notes that they received 2 remediation annoyance and inconvenience payments, a 20% payment after their property was tested for contaminants, and an 80% payment after remediation was determined not to be necessary or was completed. It is therefore appropriate to pay (i) 20% of the surplus share to the then owners of the property at the time of the 20% initial payment; and (ii) 80% of the surplus share to the then owners of the property at the time of the second 80% payment.
- b. For nonparticipating claimants, defined above, by analogy, the Court finds it appropriate to pay 20% of the surplus to the owners of the property when it was tested for contaminants and at the time the 20% payment was made (if the claimant unit withdrew from the Remediation Program prior to receiving the 20% payment, the determination date will be November 1, 2011), and 80% as of the date of this Order. Provided the Claims Administrator acts strictly in accordance with the protocols and the directives of this Order, he and his staff are granted Judicial Immunity.

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.

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

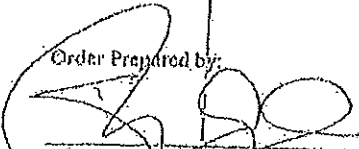
Meredith McCarthy  
901 W. Main St.  
Bridgeport, WV 26330  
*Gardian Ad Litem*

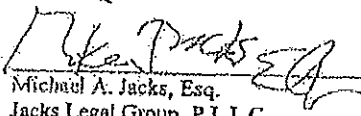
Virginia Buchanan  
Levin, Papantonio, Thomas, Mitchell,  
Rafferty & Proctor, P.A.  
P.O. Box 12308  
Pensacola, FL 32591

Edgar C. Gentle, III  
Claims Administrator  
Gentle, Turner, Sexton & Harbison, LLC  
P.O. Box 257  
Spelter, WV 26437

Jacks Legal Group, P.L.L.C.  
3467 University Ave, Suite 200  
Morgantown, WV 26505

Order Prepared by:

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

  
Michael A. Jacks, Esq.  
Jacks Legal Group, P.L.L.C.  
W.Va. Bar No 11044  
3467 University Ave, Suite 200  
Morgantown, WV 26505

ENTER: July 13, 2016

  
Thomas A. Bedell, Circuit Judge

# ATTACHMENT B



Perrine DuPont Settlement  
 Surplus Dividend Calculation Parameters

The following categories determine dividend shares, based on Guidelines Set Forth in the 07/13/16 Dividend Order, as clarified by the 10/10/16 Report to the Court:

Participating Properties, House and Soil (regardless of size)		
Registered the Property, Received Both Initial and Final Payments	Registered the Property, Received Only the Initial Payment	Received Only the Final Payment for a Registered Property
Participating Claimant Unit	Participating Claimant Unit	Participating Claimant Unit
Would Receive 100% of a full share or 100% share	Would Receive 20% of a full share or 20% share	Would Receive 80% of a full share or 80% share

**Participating Properties** will have resulting payments equal to a maximum of 1 share (or 2 shares if in Zone 1A) [1 or 2 (Zone 1A) shares to one Claimant Unit; or 20% of 1 or 2 (Zone 1A) shares = .20 or .40 (Zone 1A) share to one Claimant Unit and 80% of 1 or 2 (Zone 1A) shares = .80 or 1.60 (Zone 1A) share to another Claimant Unit].

Payments for Participating Properties will be issued to the Claimant Units in the same manner in which the original checks were issued.

Non-Participating Properties, House and Soil (regardless of size)		
Registered the Property, Received Initial Payment & Is the Current Owner as of 07/13/16	Registered the Property, Received Initial Payment & Is <b>NOT</b> the Current Owner as of 07/13/16	New Current Owner as of 07/13/16
Non-Participating Claimant Unit	Non-Participating Claimant Unit	Non-Participating Claimant Unit
Would Receive 100% of 1/5 share or 20% share	Would Receive 20% of 1/5 share or 4% share	Would Receive 80% of 1/5 share or 16% share

**Non-Participating Properties** will have resulting payments equal to a maximum of .20 (1/5th) share [.20 (1/5th) share to one Claimant Unit; or 20% of .20 (1/5th share) = .04 share to one Claimant Unit and 80% of .20 (1/5th share) = .16 share to another Claimant Unit]. If in Zone 1A, and the Claimant Unit remediated one property type, but not the other, they will only be eligible for the dividend associated with the remediated property.

Payments for Non-Participating Properties will be issued to the Claimant Units in the same manner in which the original checks were issued for the 100% and 20% shares, and for sold properties, the 80% share will be paid to the Current Owner(s) as of 07/13/16.

When grouping multiple properties for like Claimant Units, we included all of the above categories, meaning, it does not matter at what point the property was owned, as long as a payment was made or they owned it on 07/13/16, the Claimant Unit was combined. Each Claimant Unit is entitled to a maximum dividend of 1 share. And for Zone 1A properties, 2 shares. When there are multiple partial shares, the Claimant Unit will receive the share(s) associated with the property in the group that provides the largest payment.

Payments are calculated by Claimant Unit, but are determined by ownership of Properties that fall into the categories in the tables above. All properties owned by a Claimant Unit will be combined. Once all properties are combined, and if participating, the Claimant Unit would receive 1 share, or a percentage of the share if the property was sold/purchased during the remediation process. However, if participating and in Zone 1A, with both House and Soil Properties remediated, the Claimant Unit would receive 2 shares, or a percentage of those shares if the property was sold/purchased during the remediation process. If non-participating, the Claimant Unit would only receive 1/5th of a share, or a percentage of that share if the property was sold/purchased during the remediation process. Non-participating properties in Zone 1A are not combined with other participating property types in Zone 1A for additional allocation purposes. Overall, each Claimant Unit is only eligible for 1 share, 2 shares, or 1/5th share, unless the qualifying property was sold/purchased during the remediation, then the percentages in the tables above would be in effect.

## Perrine DuPont Settlement Surplus Dividend Calculation Parameters

**Example:** If Claimant Unit A + B owns 2 house properties (in Zones other than 1A) that are categorized above, one in column 2 for a participating property, and one in column 3 for a non-participating property, the Claimant Unit would receive only 20% because it is the higher of the shares (20% and 16%). If one was in column 1 for a participating property, and one was in column 2 for a non-participating property, they receive would receive 1 share because it is the higher of the shares (100% and 4%).

A Claimant Unit that owns multiple properties in different Zones that include Zone 1A will only be eligible for a maximum of 2 shares for the group of properties that includes Zone 1A properties. See the following **examples**:

Claimant Unit A registered 3 properties in different Zones. They owned all 3 properties from registration to 07/13/16 (Order Date).

Zone 1A	Remediated Soil	1 share	They would receive this 1 share because it resulted in the largest dividend.
	Opted Out of House	0 share	They would not receive this 1/5th share because they only remediated one type of property in Zone, and the remediated property resulted in a higher dividend.
Zone 3	Remediated House	0 share	They would not receive this 1 share because this property was combined with the others. And another property resulted in a higher dividend.
Zone 3	Opted Out of House	0 share	They would not receive this 1/5th share because this property was combined with the others. And another property resulted in a higher dividend.
		<u>1 share</u>	

In this example, the Claimant Unit would receive a dividend equal to 1 share for the remediated Zone 1A Soil property. They wouldn't receive anything for the other properties because all the properties were combined together.

If in this example, the Claimant Unit sold the Zone 1A property after they registered it, therefore only receiving the initial annoyance payment, the following would result:

Claimant Unit A registered 3 properties in different Zones. They sold the Zone 1A property to Claimant Unit B after they registered it.

Zone 1A	Remediated Soil	0 share	Sold this property after it was registered, and the new owner remediated it, so only eligible for 20% of 1 share. They would not receive this because one of the other properties they still own resulted in a higher dividend.
	Opted Out of House	0 share	Sold this property after it was registered, and the new owner also did not remediated it, so only eligible for 20% of a 1/5th share or 4%. They would not receive this because one of the other properties they still own resulted in a higher dividend.
Zone 3	Remediated House	1 share	They would receive this 1 share because it resulted in the largest dividend.
Zone 3	Opted Out of House	0 share	They would not receive this 1/5th share because this property was combined with the others. And another property resulted in a higher dividend.
		<u>1 share</u>	

Claimant Unit B purchased the above Zone 1A property and also registered 1 other Zone 1A property.

Zone 1A	Remediated Soil	0 share	Purchased this property after it was registered, and remediated it, so eligible for 80% of 1 share. They would not receive this because one of the other properties they own resulted in a higher dividend.
	Opted Out of House	0 share	Purchased this property after it was registered, and also did not remediated it, so only eligible for 80% of a 1/5th share or 16%. They would not receive this because one of the other properties they own resulted in a higher dividend.
Zone 1A	Remediated Soil	1 share	They would receive this 1 share because it resulted in the largest dividend.
	Remediated House	1 share	They would receive this 1 share because it resulted in the largest dividend.
		<u>2 shares</u>	