

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.

**CLAIMS ADMINISTRATOR'S RESPONSE TO NORTHSTAR DEMOLITION AND
REMEDATION, L.P., F/K/A NCM DEMOLITION AND REMEDIATION, L.P.'S APRIL
7, 2015, MOTION TO APPLY AND ENFORCE THE TERMS OF THE AGREEMENT
FOR SOIL AND PROPERTY REMEDIATION SERVICES**

COMES NOW, the Perrine DuPont Settlement (hereinafter, the "Settlement") by and through the Claims Administrator, Edgar, C. Gentle, III, Esq., in Response to "NorthStar Demolition and Remediation, L.P., f/k/a/ NCM Demolition and Remediation, L.P.'s April 7, 2015, Motion to Apply and Enforce the Terms of the Agreement for Soil and Property Remediation Services," (hereinafter, the "NCM Motion").

The Claims Administrator renews the Settlement's prior April 7, 2015, Motion that this Honorable Court determine that: 1) the Agreement for Soil and Property Remediation Services for the Lenora Perrine, et al., v. E.I. DuPont Nemours and Company, et al., Settlement a.k.a. the Perrine DuPont Settlement, dated April 25, 2012, and approved by the Court on May 1, 2012, (the "Agreement"), between NorthStar Demolition and Remediation f/k/a/ NCM Demolition and Remediation (hereinafter "NCM,"¹) and the Settlement by its plain terms has not expired; 2) NCM is obligated to finish the remediation

¹ NCM merged with LVI during 2014, forming NorthStar. In this Response we will continue to call the entity NCM, for simplicity.

work outlined in the Agreement under its terms without any adjustment in payment rates for the work outlined therein; and 3) the Settlement's damages be paid by NCM due to NCM's breach of contract and failure to timely remediate the Settlement properties identified in the Agreement, and that the Settlement be given leave by the Court to prove its damages.

I. Term of the Agreement

It is clear that the intent of the Parties in entering into the Agreement was to allow for the completion of the remediation services to govern the term of the Agreement. The intent of the Agreement was for NCM to provide property remediation services to the Settlement for approximately 160 soil properties and 600 houses, not to wait for pages on the calendar to turn until the date of December 31, 2014, appeared, and then walk away, regardless of the status of the remediation work. NCM has not completed the work, and a detailed outline of this failure is described in the Settlement's April 7, 2015, Motion, which is incorporated herein by reference.

NCM, in the April 7, 2015, Motion, argues that the intent of the parties was for the Agreement to expire prior to the work outlined therein being completed, because the date of December 31, 2014, was more important to the parties than was the status of the work that the Agreement exists to provide. NCM Motion at P. 3. This position is untenable: **Why would anyone enter into a contract for the provision of services but desire an end date to occur prior to the services being provided?**

"It is not the right or province of a court to alter, pervert or destroy the clear meaning and intent of the parties as expressed in unambiguous language in their written contract or to make a new or different contract for them." McDaniel v. Kleiss,

202 W.Va. 272, 503 S.E.2d 840 (1998); citing Cotiga Development Co. v. United Fuel Gas Co., 147 W.Va. 484, 128 S.E.2d 626 (1962). (Emphasis added).

The "clear meaning and intent" of the parties was for the Agreement to prescribe the terms for NCM to provide remediation services to the Settlement, and to Harrison County families in the Class Area. Id. NCM has not provided the services so prescribed. NCM's argued interpretation of the Agreement's Period of Performance clause, that an end date could occur prior to the work being completed, "perverts" the clear purpose of the Agreement, which is completion of the remediation work. Id.

The "Period of Performance" section of the Agreement, on page 8, Section II., A., states that, "[t]his Agreement shall become effective following Court approval, and shall continue in full force through December 31, 2014, or until such time as all conditions and obligations are met and satisfied herein, which the Claims Administrator estimates is sufficient time to complete all remediation services in accordance with the terms of this Agreement." (Emphasis added). This clause clearly does not state "whichever occurs first, not last," as argued in the NCM Motion. NCM Motion at Page 3. The argument in the NCM Motion requires the Court to first, ignore the clear intent of the Parties, and second, insert new language into the Agreement, which is contrary to well established West Virginia law.

On Page 3, the NCM Motion states that the "or" portion of the Period of Performance clause means that "whichever occurs first, not last" governs the term of the Agreement. This argument requires the insertion of new language, "whichever occurs first, not last," into the Agreement which was not included by the Parties, but clearly would have been had that been their intent. NCM's argument creates a deadline for completion

of the remediation work which it has failed to meet, thereby strengthening the Settlement's position that NCM is in breach of the terms of the Agreement.

The only logical reading of NCM's interpretation of the date of December 31, 2014, in the Agreement, as the end of the term of the Agreement, when considering the Agreement in its entirety, is that the remediation of 160 soil properties and 600 houses would have to be completed prior to that date. Since that work has not been completed, should the Court agree with NCM as to the expiration of the term of the Agreement, the Settlement renews its request that the Court find that NCM is in breach of contract for failing to complete the work outlined in the Agreement.

It is interesting that the NCM Motion cites cases in reference to the interpretation of contracts, and to Courts reading contracts according to their plain language, and then puts forth an argument that requires the insertion of new words into the Agreement. See NCM Motion at Page 2; Cabot Oil & Gas v. Huffman, 227 W. Va. 109, 705 S.E.2d 806 (2010).

NCM's argument ignores the clear language of the Continuation of Services clause, which states that "upon completion of the work" the Claims Administrator may ask for additional services. Agreement at page 48. This phrase, "completion of the work," again exhibits the clear intent of the parties to allow the work to determine the term of the Agreement, not an arbitrary date.

NCM's argument would incentivize slow work, so that NCM could ask for a raise after the passing of an arbitrary date on the calendar, without completion of the services that NCM has agreed to provide in the Agreement. This argument is defeated by the plain language of the Good Faith clause on Page 14 of the Agreement, in addition to the

other sections of the Agreement already cited: "NCM commits to act in good faith in working with the Claims Administrator to **complete all of the tasks and obligations identified herein**, and to perform all actions require to effectuate the items identified herein in a reasonable and responsible manner consistent with industry practices." (Emphasis added). The completion of "**all of the tasks and obligations**" defined in the Agreement, not merely some of them, is the plain intent of the parties. NCM has only remediated 389 houses out of the 600 houses that NCM is obligated to remediate under the Agreement.

The parties in the Agreement did not intend for NCM to work haphazardly until a date on the calendar passed, without completing the work, to request a raise.

II. Drafting of the Agreement

The NCM Motion, on Page 4, argues that the Settlement wrote the Agreement, and that "a contract should be construed most strongly against the person who wrote it, or caused it to be written. Bischoff v. Francesca, 133 W. Va. 474, 56 S.E.2d 865 (1949). The Agreement was drafted by the Settlement, not NorthStar."

This legal principal is based primarily upon the concept that a contract of adhesion, i.e. a contract offered by one party to another without the chance for modification, should be construed, if ambiguous, against the drafter. "A contract of adhesion is one drafted and imposed by a party of superior strength that leaves the subscribing party little or no opportunity to alter the substantive terms, and only the opportunity to adhere to the contract or reject it. A contract of adhesion should receive greater scrutiny than a contract with bargained-for terms to determine if it imposes terms that are oppressive, unconscionable or beyond the reasonable expectations of an ordinary

person.” State ex rel. Richmond American Homes of West Virginia, Inc. v. Sanders, 228 W.Va. 125, 717 S.E.2d 909, 921 (2011). (Emphasis added). While the legal principle cited by NCM does not apply solely to contracts of adhesion, Courts will assess the position of the parties during contract negotiations in making the determination as to whom the contract should be construed against, should a contract term be found to be ambiguous. “As this record does not clearly disclose whether the contract was prepared at the instance of, or by the plaintiffs, or the defendants, though there is evidence to the effect that plaintiffs did not see the contract until it was presented to them for their signatures, we are not at liberty to apply the rule in the construction of this contract that a contract should be construed most strongly against the person who wrote it, or caused it to be written.” Bischoff v. Francesa, 56 S.E.2d 865, 133 W.Va. 474, 483 (1949).

Therefore, the Settlement argues that this Court should consider the position of the Settlement and NCM during the negotiation period prior to the Agreement’s execution in 2012, and should consider the input that NCM had into the terms and language of the Agreement while it was being drafted.

NCM, during 2012 when the Agreement was executed, was a corporation with annual gross revenues of approximately \$212 million. See Exhibit 1, NCM and LVI Press Release, April 30, 2014. NCM is a sophisticated corporation which bargained at arm’s length with the Settlement during the negotiation and drafting period prior to the execution of the Agreement. The Settlement offers the below timeline of the drafting process, which is supported by email correspondence attached as Exhibit 2 in chronological order:

1. March 26, 2012, Mr. Gentle emailed Dennis Raver (NCM’s Project Manager) and told him that NCM was the winning bidder.

2. April 9, 2012, Mr. Gentle emailed a draft Agreement to Dennis Raver.
3. April 17, 2012, the Settlement had an in person meeting at the Spelter Fire Department to review the draft Agreement with George Hilton (NCM Vice President) and Dennis Raver.
4. April 23, 2012, the Settlement sent a second draft of the Agreement to NCM, incorporating NCM's edits from the April 17, 2012, meeting.
5. April 23, 2012, the Settlement had a conference call with NCM to discuss Agreement edits.
6. April 24, 2012, the Settlement sent a third draft of the Agreement to NCM to review.
7. April 25, 2012, Dennis Raver sent Mr. Gentle an email stating that, "NCM concurs with the edits that were made. We look forward to a 'clean' copy of the contract to execute."
8. April 25, 2012, the Settlement sent a final copy of the Agreement to NCM that Mr. Gentle had executed.
9. April 30, 2012, the Settlement filed the contract with Judge Bedell, after George Hilton had executed the Agreement on April 26, 2012, on NCM's behalf.²

As such, while the Settlement acted as a scrivener for the Agreement, NCM had substantial input into the terms and language in the Agreement, and negotiated its terms at arm's length. NCM was not forced into executing a contract of adhesion, but was instead offered the opportunity to negotiate and edit the Agreement until NCM was content with its terms, which included the remediation of 600 houses. NCM was afforded

² The "Final Order Approving the Agreement for Remediation Services Between The Perrine DuPont Settlement and NCM Demolition and Remediation," entered May 1, 2012, is attached as Exhibit 3.

the opportunity to negotiate the substantive terms of the Agreement, and review three separate drafts of the Agreement until it met NCM's satisfaction. Therefore, the Agreement was jointly drafted and negotiated by two entities who provided separate input into its terms. The Agreement should not be construed against the Settlement.

III. Disposition of the Down Payment

NCM requested and received a down payment of 5% of the \$14,820,000 value of the Agreement. Agreement³ at page 9. This down payment, \$741,000, is to be earned back by NCM during the course of completion of the remediation work, with NCM billing property remediation at 95% of the per unit price until the down payment has been fully utilized. Agreement at page 13.

NCM has not yet earned back this 5% down payment, because NCM has not completed the work defined by the Agreement and covered by the down payment. To date, the Settlement has paid NCM approximately \$12.8 million, leaving approximately \$2 million worth of remediation work left before NCM would have earned the full down payment. Exhibit 4 is a copy of a summary of invoices prepared by NCM and submitted with its most recent invoice, showing a total paid to date of \$12,789,492.48. This further supports the Settlement's position as to the term of the Agreement, because the 5% down payment was for completion of the work defined in the Agreement, which has not been completed. The 5% down payment was not based upon the date of December 31, 2014, to which NCM attaches such importance.

³ The Settlement has previously submitted the Agreement as Exhibit 3 to its April 7, 2015, Motion, and NCM submitted the body of the Agreement with its April 7, 2015, Motion. Further submission seems to be unnecessary, but should the Court so desire an additional copy, the Settlement will gladly provide one.

IV. Conclusion

In summary, NCM knew full well the scope of work required when NCM submitted its Response to the Request for Proposals (the "RFP"), both of which are attached to the Agreement and incorporated by reference therein. The RFP stated that 600 houses would need to be remediated by the winning bidder. NCM's Response and Bid included prices for the remediation of 600 houses. NCM's negotiation of multiple drafts of the Agreement included multiple references to the remediation of 600 houses. Agreement at Page 9 and Page 15. NCM's receipt of the 5% down payment included payment for the remediation of 600 houses. NCM executed an Agreement with a Period of Performance clause based upon completion of "all remediation services." Agreement at Page 9.

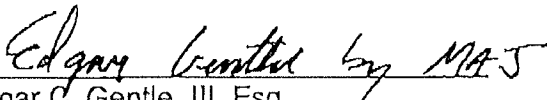
NCM has only completed the remediation of 389 houses, as of the end of March, 2015. NCM has not completed the soil remediation work. NCM still holds a 5% down payment for approximately \$2 million worth of remediation work that it is obligated to complete, and yet argues that the Agreement has terminated by its unambiguous terms.


The Agreement has not terminated due to its plain language and the incomplete nature of the remediation work defined therein. NCM is not entitled to request an increase in payment rates because the work has not been completed under the Continuation of Services clause. The Settlement is suffering mounting damages due to NCM's failure to timely complete the remediation work.

V. Request for Relief

For all of the foregoing reasons and the reasons argued in the April 7, 2015, Motion, the Claims Administrator and the Settlement respectfully request that this Court Order that: 1) the Agreement between NCM and the Settlement has not expired by its plain terms; 2) NCM is obligated to finish the remediation work outlined in the Agreement under its terms without any adjustment of payment rates for the work outlined therein; and 3) the Settlement's damages be paid by NCM due to its breach of contract and failure to timely remediate the Settlement properties identified in the Agreement, with the Settlement being given leave to prove its damages.

Respectfully submitted this 14th day of April, 2015.


Edgar C. Gentle, III, Esq.
Claims Administrator
Gentle, Turner, Sexton & Harbison
501 Riverchase Parkway East, Suite 100
Hoover, AL 35244
205-716-3000 (phone)
205-716-3010 (fax)
escrowagen@aol.com (email)


Michael A. Jacks, Esq.
W.Va. Bar No 11044
Gentle, Turner, Sexton & Harbison
P. O. Box 257
Spelter, WV 26438
304-622-7443 (phone)
304-622-7447 (fax)
mjacks@gtandslaw.com (email)

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.

CERTIFICATE OF SERVICE

I hereby certify that the within documents, entitled the "CLAIMS ADMINISTRATOR'S RESPONSE TO NORTHSTAR DEMOLITION AND REMEDIATION, L.P., F/K/A NCM DEMOLITION AND REMEDIATION, L.P.'S APRIL 7, 2015, MOTION TO APPLY AND ENFORCE THE TERMS OF THE AGREEMENT FOR SOIL AND PROPERTY REMEDIATION SERVICES," and Exhibits thereto, were served upon counsel on the 14th day of April, 2015, by sending a true and correct copy thereof via Federal Express, to Mr. Hill, and via email, according to the custom and practice of this case, to Mr. Hill, Mr. Thomas, Mr. Arnold, Ms. Buchanan, and Mrs. McCarthy, addressed as follows:

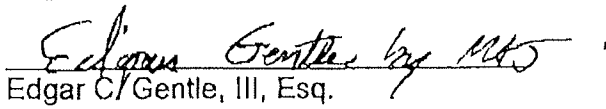
David B. Thomas, Esq.
James S. Arnold, Esq.
Thomas Combs & Spann, PLLC
P. O. Box 3824
Charleston, WV 25338
DuPont's Finance Committee Representative
jarnold@tcspllc.com

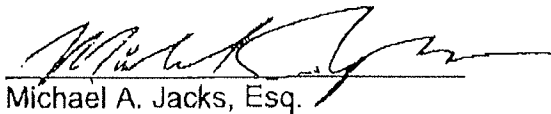
Virginia Buchanan, Esq.
Levin, Papantonio, Thomas, Mitchell,
Rafferty & Proctor, P.A.
P.O. Box 12308
Pensacola, FL 32591
Plaintiffs' Class Finance Committee Representative
VBuchanan@levinlaw.com

Meredith McCarthy, Esq.
901 West Main Street
Bridgeport, WV 26330
Guardian Ad Litem and Plaintiffs' Class Finance Committee Proxy
mhmcCarthy@citynet.net

Cy A. Hill, Esq.
Mannion Grey
707 Virginia Street East, Suite 260
Charleston, WV 25301
Counsel for NorthStar/NCM
chill@manniongray.com

Prepared by:


Edgar C. Gentle, III, Esq.
Claims Administrator
Gentle, Turner, Sexton & Harbison
501 Riverchase Parkway East, Suite 100
Hoover, AL 35244
205-716-3000 (phone)
205-716-3010 (fax)
escrowagen@aol.com (email)


Michael A. Jacks, Esq.
W.Va. Bar No 11044
Gentle, Turner, Sexton & Harbison
P. O. Box 257
Spelter, WV 26438
304-622-7443 (phone)
304-622-7447 (fax)
mjacks@gtandslaw.com (email)

SCHEDULE OF EXHIBITS

Exhibit 1 – “LVI and NCM Link to Form Demolition-Environmental Megafirm,” April 30, 2014.

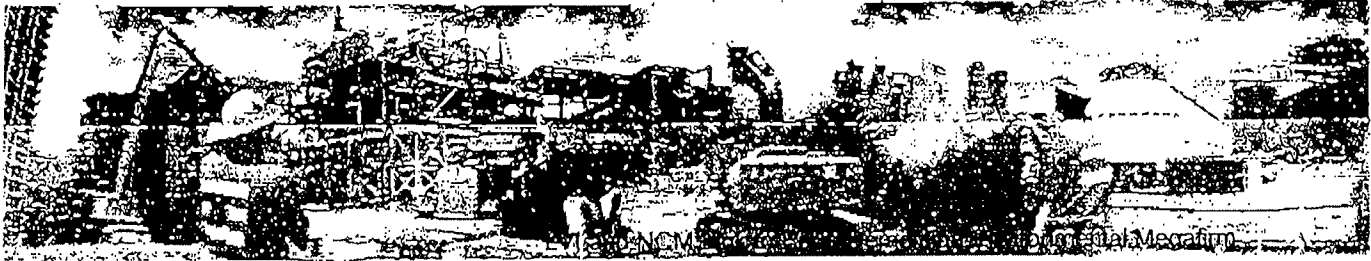
Exhibit 2 – Email Correspondence

- A. March 26, 2012, Email Correspondence Between Mr. Gentle, III, Esq., and Mr. Raver re NCM Being the Successful Bidder.**
- B. April 9, 2012, Email Correspondence Between Mr. Gentle, III, Esq., and Mr. Raver re Transmittal of Draft Contract.**
- C. April 17, 2012, Email Correspondence Between Mr. Gentle, III, Esq., and Mr. Raver re Follow Up Edits From April 17, 2012, In Person Meeting to Discuss Contract.**
- D. April 18, 2012, Email Correspondence from Amanda Williams re Scheduled Conference Call for April 23, 2012.**
- E. April 23, 2012, Email Correspondence Between Mr. Gentle, III, Esq., and Mr. Raver re Transmittal of Revised Draft Contract.**
- F. April 23, 2012, Email Correspondence Between Mr. Raver and Mr. Gentle, III, Esq., re NCM Revised Uniform Bid Form.**
- G. April 25, 2012, Email Correspondence Between Mr. Raver and Mr. Gentle, III, Esq., re NCM Acceptance of Third Revision of Contract.**
- H. April 25, 2012, Email Correspondence Between Mr. Gentle, III, Esq., and Mr. Raver re Transmittal of Final Draft Contract.**
- I. April 30, 2012, Email Correspondence Between Mr. Gentle, III, Esq., and NCM, the Finance Committee, and Settlement Staff re Filing of the Contract for Court Approval**

Exhibit 3 – Final Order Approving Agreement for Remediation Services Between the Perrine DuPont Settlement and NCM Demolition and Remediation

Exhibit 4 – NCM Summary of Invoices, April 1, 2015

**Exhibit 1 – “LVI and NCM Link to Form
Demolition-Environmental Megafirm,” April 30,
2014.**

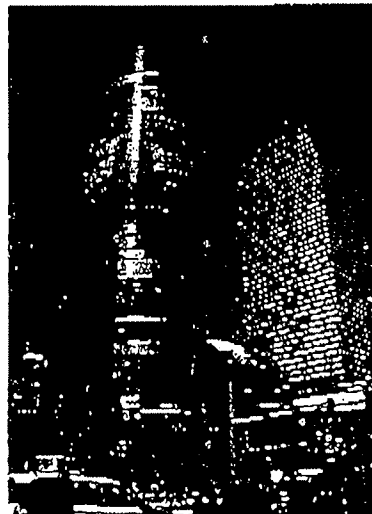


LVI and NCM Link to Form Demolition-Environmental Megafirm

Source: *Engineering News-Record*; http://enr.construction.com/business_management/companies/2014/0424-lvi-and-ncm-link-to-form-demolition-megafirm.aspx

April 30, 2014

By Debra K. Rubin and Tony Illia



The consolidation trend has hit the demolition and remediation construction sector in a big way, with major players LVI Services Inc., New York City, and NCM Group Holdings Inc., Brea, Calif., announcing on April 24 an agreement to merge. The new combined firm, to be called NorthStar Group Holdings LLC, will have annual revenue of about \$500 million and an average employment of about 5,000 in 50 U.S. offices, the firms say.

NorthStar says it will be "the foremost provider" of services in environmental remediation, deconstruction and demolition, nuclear decommissioning, emergency response and asset recovery management.

LVI ranks at No. 29 on ENR's list of the Top 200 Environmental Firms, with \$405 million in 2012 revenue. NCM reported \$212 million in 2012 revenue.

NCM was formed in 2011 when management and equity firm Evergreen Pacific Partners acquired and integrated sector firms Nuprecon, CST Environmental and MARCOR.

The privately-held firms did not release transaction details, but say the deal was done "via a merger of equity in the two entities and placement of a substantial debt financing led by M&T Bank."

Leading the company as CEO will be Scott E. Siate, currently president and CEO of LVI, and as president, Subhas "Sage" Khara, who now is NCM president and CEO.

Khara and LVI Chief Operating Officer John Leonard will manage NorthStar day-to-day operations, says the firm.

"The demolition and abatement markets can be very capital and manpower intensive and with more scale we believe we can more efficiently serve our target markets," Siate told ENR.

"The synergies will allow us to serve our clients with a broader set of service offerings," says Khara.

The two companies have decades of experience with Fortune 500 companies and public sector clients at the local, state and federal levels, says the NorthStar statement.

LVI Environmental of Nevada now is set to demolish the unfinished Harmon Hotel on the Las Vegas Strip in three phases over the next year. The \$279-million 26-story oval-shaped tower this week receives court approval to be leveled prior to a Sept. 24 jury trial between owner MGM Resorts International and contractor Tutor Perini Building Corp. over building defects.

Designed by Sigma Engineering Solutions, the demolition plan calls for tearing down the Harmon piecemeal from top-to-bottom, floor-by-floor, using "conventional equipment."

The plan has received Clark County approval: a demolition permit has already been issued, confirms county spokesman Dan Kulin.

The blue-glass tower, designed by Foster+Partners, anchors the northeast corner of the \$8.5-billion CityCenter hotel-entertainment complex that opened in December 2009 but was never occupied.

4/13/2015

ncm.force.com/link_to_form_megafirm

According to *State*, NorthStar's new structure will allow LVI to broaden its growing emergency response business and work in nuclear decommissioning.

NorthStar declined to comment on an online report in an international demolition publication that LVI's Leonard would manage projects using union workers, and Khara would manage its non union operations, noting confidentiality.

The firms anticipate more global expansion. They do little work in Canada but operate in about 10 countries, mostly in nuclear and radiological based services including a role in support of the decommissioning of the U.K.'s Magnox former nuclear facilities.

Source: *Engineering News Record*; http://enr.construction.com/business_management/companies/2014/0224-ki-and-lvi-link-to-form-demolition-megafirm.asp

Exhibit 2 – Email Correspondence

- A. March 26, 2012, Email Correspondence Between Mr. Gentle, III, Esq., and Mr. Raver re NCM Being the Successful Bidder.
- B. April 9, 2012, Email Correspondence Between Mr. Gentle, III, Esq., and Mr. Raver re Transmittal of Draft Contract.
- C. April 17, 2012, Email Correspondence Between Mr. Gentle, III, Esq., and Mr. Raver re Follow Up Edits From April 17, 2012, In Person Meeting to Discuss Contract.
- D. April 18, 2012, Email Correspondence from Amanda Williams re Scheduled Conference Call for April 23, 2012.
- E. April 23, 2012, Email Correspondence Between Mr. Gentle, III, Esq., and Mr. Raver re Transmittal of Revised Draft Contract.
- F. April 23, 2012, Email Correspondence Between Mr. Raver and Mr. Gentle, III, Esq., re NCM Revised Uniform Bid Form.
- G. April 25, 2012, Email Correspondence Between Mr. Raver and Mr. Gentle, III, Esq., re NCM Acceptance of Third Revision of Contract.
- H. April 25, 2012, Email Correspondence Between Mr. Gentle, III, Esq., and Mr. Raver re Transmittal of Final Draft Contract.
- I. April 30, 2012, Email Correspondence Between Mr. Gentle, III, Esq., and NCM, the Finance Committee, and Settlement Staff re Filing of the Contract for Court Approval

Mike Jacks

From: EscrowAgen@aol.com
Sent: Monday, March 26, 2012 1:44 PM
To: DRaver@ncmgroup.com
Cc: Diandra Debrosse; mglass@downstreamstrategies.com; Mike Jacks; Billy Sublett; Annette Vourlotis
Subject: Re: The Perrine DuPont Settlement - Property Clean-Up Request for Proposal; O...

Thank you, Dennis, we're on it! Ed Annette print

In a message dated 3/26/2012 1:43:05 P.M. Central Daylight Time, DRaver@ncmgroup.com writes:

Thank you very much. We too look forward to working with you on this project. Other than next Friday, 4/6/12, we will be in the office and will give the draft contract our fullest attention.

Once again thanks.

Dennis C. Raver

Senior Project Manager



3900 Vero Road, Baltimore, MD 21227

410.247.5031 (office)

410.387.7928 (direct)

410.247.6714 (fax)

443.324.1037 (mobile)

From: EscrowAgen@aol.com [mailto:EscrowAgen@aol.com]
Sent: Monday, March 26, 2012 2:13 PM
To: Dennis Raver
Cc: ddebrosse@gtandslaw.com; mglass@downstreamstrategies.com; mjacks@gtandslaw.com; bsublett@gtandslaw.com; avourlotis@gtandslaw.com
Subject: Re: The Perrine DuPont Settlement - Property Clean-Up Request for Proposal; O...

CONFIDENTIAL

Dennis, thank you for the attached. This shall confirm that NCM-SaLUT is the successful bidder subject to our negotiating a mutually agreeable contract and the Court approving it. PLS acknowledge this message and we will get you a draft contract hopefully early next week. We look forward to working with you, Ed

Annette PLS print

In a message dated 3/23/2012 8:56:50 A.M. Central Daylight Time, DRaver@ncmgroup.com writes:

Please find attached NCM-SaLUT's response to your March 21, 2012 Memorandum. As always, please don't hesitate to contact me with any questions. NCM-SaLUT remains very excited about this opportunity and looks forward to hearing from you.

Dennis C. Raver

Senior Project Manager



3900 Vero Road, Baltimore, MD 21227

410.247.5031 (office)

410.387.7928 (direct)

410.247.6714 (fax)

443.324.1037 (mobile)

From: escrowagen@aol.com [<mailto:escrowagen@aol.com>]

Sent: Wednesday, March 21, 2012 12:08 PM

To: Dennis Raver

Cc: sdthacker@agmtlaw.com; VBuchanan@levinlaw.com; ddebrosse@qtandslaw.com; kharbison@qtandslaw.com; mjacks@qtandslaw.com; mqlass@downstreamstrategies.com; bsublett@qtandslaw.com

Subject: The Perrine DuPont Settlement - Property Clean-Up Request for Proposal; Our File No. 4609-1{DD-19-B}

|| Please See Attached in PDF Format

Mike Jacks

From: escrowagen@aol.com
Sent: Monday, April 09, 2012 7:36 PM
To: draver@ncmgroup.com
Cc: mglass@downstreamstrategies.com; Mike Jacks; Billy Sublett; Diandra Debrosse; Kip Harbison; VBuchanan@levinlaw.com; mflowers@cochranfirm.com; pbjones@westandjones.com; sdthacker@agmtlaw.com; wcox@lflaw.com; mhmccarthy@citynet.net; lsutherland@velaw.com
Subject: Perrine DuPont Remediation Program - Draft Agreement with NCM; Our File No. 4609-1(DD-19-B)
Attachments: Memo to Mr. Raver Re Contract 4-9-12.pdf; Final April 9 Draft Contract.pdf

Please See Attached in PDF Format (Part 1 of 5)

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
perrinedupont@gtandslaw.com

MEMORANDUM

VIA E-MAIL
CONFIDENTIAL

TO: Mr. Dennis Raver
FROM: Edgar C. Gentle, III, Esq.
DATE: April 9, 2012
RE: The Perrine DuPont Remediation Program - Draft Agreement with NCM; Our
File No. 4609-1 {DD-19-B}

Dear Dennis:

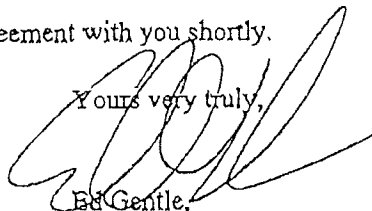
I hope that you are well.

Please find for your review a draft Agreement, with all Exhibits but Exhibit I.

Dennis, please note that Exhibit I refers to a Final Uniform Bid Price Form. Please note that we never received a revised Final Uniform Bid Price Form after we received your final updated bid on March 23, 2012. At your convenience, please provide the final version of this document that should equal your final bid of \$14,820,000.

We look forward to finalizing the Agreement with you shortly.

Yours very truly,



Ed Gentle,
Claims Administrator

ECGIII/kah
Attachment

April 9, 2012

Page 2

cc: (with attachment)(via e-mail)(confidential)

Mr. Marc Glass

Michael A. Jacks, Esq.

Mr. Billy Sublett

Diandra S. Debrosse, Esq.

Katherine A. Harbison, Esq.

Virginia Buchanan, Esq.

McDavid Flowers, Esq.

Perry B. Jones, Esq.

Stephanie D. Thacker, Esq.

William S. ("Buddy") Cox, Esq.

Meredith McCarthy, Esq.

Lewis Sutherland, Esq.

Mike Jacks

From: escrowagen@aol.com
Sent: Tuesday, April 17, 2012 8:22 PM
To: DRaver@ncmgroup.com
Cc: Diandra Debrosse; lsutherland@velaw.com; mglass@downstreamstrategies.com; Mike Jacks; Billy Sublett; Kip Harbison; GHilton@ncmgroup.com; Amanda Williams
Subject: Re: Perrine DuPont Settlement - NCM Draft Contract Edits; Our File No. 4609-1{DD-19-B}

diandra n l r flying to okla monday. how about monday 5pm eastern 4pm central? ed amanda pls print n set up call n calendar n give dial in to all cc'd thx eds

-----Original Message-----

From: Dennis Raver <DRaver@ncmgroup.com>
To: escrowagen <escrowagen@aol.com>
Cc: ddebrosse <ddebrosse@gtandslaw.com>; lsutherland <lsutherland@velaw.com>; mglass <mglass@downstreamstrategies.com>; mjacks <mjacks@gtandslaw.com>; bsublett <bsublett@gtandslaw.com>; kharbison <kharbison@gtandslaw.com>; George Hilton <GHilton@ncmgroup.com>
Sent: Tue, Apr 17, 2012 9:18 pm
Subject: RE: Perrine DuPont Settlement - NCM Draft Contract Edits; Our File No. 4609-1{DD-19-B}

We have had something come up with a United States Army Corps of Engineers project we are working on in Puerto Rico and George will be there the remainder of the week. Is it possible we can move our conference call to discuss the contract changes to first thing Monday morning instead of Friday?

Thanks

Dennis C. Raver
Senior Project Manager



3900 Vero Road, Baltimore, MD 21227
410.247.5031 (office)
410.387.7928 (direct)
410.247.6714 (fax)
443.324.1037 (mobile)

From: escrowagen@aol.com [mailto:escrowagen@aol.com]
Sent: Tuesday, April 17, 2012 10:30 AM
To: Dennis Raver; George Hilton
Cc: ddebrosse@gtandslaw.com; lsutherland@velaw.com; mglass@downstreamstrategies.com; mjacks@gtandslaw.com; bsublett@gtandslaw.com; kharbison@gtandslaw.com
Subject: Perrine DuPont Settlement - NCM Draft Contract Edits; Our File No. 4609-1{DD-19-B}

George and Dennis:

Here are my initial edits and comments. As you can see, there are about a half a dozen items. Others on our team are still looking, and may have additional edits.

Also, please don't forget your new individual bid.

Thanks,

Ed

Mike Jacks

From: Amanda Williams
Sent: Wednesday, April 18, 2012 9:47 AM
To: EscrowAgen@aol.com
Cc: Diandra Debrosse; lsutherland@velaw.com; mglass@downstreamstrategies.com; Mike Jacks; Billy Sublett; Kip Harbison; ghilton@ncmgroup.com; draver@ncmgroup.com
Subject: Perrine DuPont Settlement - NCM Draft Contract Edits (Conference Call Dial-in Instructions)

Below, please find the dial-in instructions for the Monday conference call. If you have any questions, please let me know.

Thanks,
Amanda

Amanda L. Williams
Gentle, Turner & Sexton
501 Riverchase Parkway East, Suite 100
Hoover, AL 35244
Phone: 205-716-3000
Fax: 205-716-3010



TeleConference
Services

TeleConference Folder Id: 690252085

Information is subject to change. If so, you will be notified by a TeleConference Associate. Cancel reservations at least 30 minutes before start time to avoid No Show fees.

Please review this information and contact TeleConference Services at (800)526-2655 if there are any changes.

ACCESS INFORMATION

Audio Conference

USA Toll-Free: (877)322-9654

HOST CODE: 264104

PARTICIPANT
CODE:

475073

CONFERENCE INFORMATION

Start Date and Time	End Date and Time	Duration
Mon Apr 23, 2012 4:00:00 PM EDT	Mon Apr 23, 2012 6:00:00 PM EDT	2 hr. 00 mins.

Identification

Conference
Name: 4609-1

Conference Id: MEG3091

Ports

Total
Ports: 10

Features Selected

☒ Automatic Port Expansion
☒ Operator Dial Out

☒ Host Dial Out

HOST and ARRANGER INFORMATION

Conference Host: ED GENTLE

Phone Number: (205)716-3000 Ext: 120

Conference Arranger: AMANDA WILLIAMS

Phone Number: (205)716-3000 Ext: 117

SPECIAL NOTES

- * Should you need assistance during your conference, please press # then 0 for a list of menu options including Specialist assistance.
- * **Special Tip:** Always remember to set a date for a follow-up conference while all participants are on the call.
- * If your individual TeleConference account is not used within a six month period, deactivation will occur.
- * If you have any questions regarding this service or your account, please call (800)526-2655 and a Specialist will assist you.
- * For your protection, do not publish your conference Access Information (e.g., Dial In Number, Access Codes.).

Thank you for choosing AT&T TeleConference Services!

Wed Apr 18 2012 09:37:26

Mike Jacks

From: escrowagen@aol.com
Sent: Monday, April 23, 2012 12:14 PM
To: ghilton@ncmgroup.com; draver@ncmgroup.com
Cc: mglass@downstreamstrategies.com; Mike Jacks; Billy Sublett; Diandra Debrosse; Kip Harbison; VBuchanan@levinlaw.com; mflowers@cochranfirm.com; pbjones@westandjones.com; sdthacker@agmtlaw.com; wcox@lflaw.com; mhmccarthy@citynet.net; lsutherland@velaw.com
Subject: Perrine DuPont Remediation Program - Second Draft of Draft Agreement with NCM; Our File No. 4609-1(DD-19-B)
Attachments: April 23 2012 Draft Contract.pdf

Please See Attached in PDF Format

Mike Jacks

From: Dennis Raver <DRaver@ncmgroup.com>
Sent: Monday, April 23, 2012 12:29 PM
To: escrowagen@aol.com; mglass@downstreamstrategies.com; Amanda Williams; Billy Sublett; Kip Harbison; Diandra Debrosse; Mike Jacks
Cc: George Hilton
Subject: RE: Perrine DuPont Remediation Program - Second Draft of Draft Agreement with NCM; Our File No. 4609-1(DD-19-B)
Attachments: 20120423123231.pdf

Please find attached the Uniform Bid Form showing the final contract value of \$14,820,000.

Sincerely,
Dennis C. Raver
Senior Project Manager



3900 Vero Road, Baltimore, MD 21227
410.247.5031 (office)
410.387.7928 (direct)
410.247.6714 (fax)
443.324.1037 (mobile)

From: escrowagen@aol.com [mailto:escrowagen@aol.com]
Sent: Monday, April 23, 2012 1:14 PM
To: George Hilton; Dennis Raver
Cc: mglass@downstreamstrategies.com; mjacks@gtandslaw.com; bsublett@gtandslaw.com; ddebrosse@gtandslaw.com; kharbison@gtandslaw.com; VBuchanan@levinlaw.com; mflowers@cochranfirm.com; pbjones@westandjones.com; sdthacker@agmtlaw.com; wcox@lflaw.com; mhmccarthy@citynet.net; lsutherland@velaw.com
Subject: Perrine DuPont Remediation Program - Second Draft of Draft Agreement with NCM; Our File No. 4609-1(DD-19-B)

Please See Attached in PDF Format

Mike Jacks

From: Dennis Raver <DRaver@ncmgroup.com>
Sent: Wednesday, April 25, 2012 4:27 PM
To: escrowagen@aol.com; George Hilton
Cc: mglass@downstreamstrategies.com; Mike Jacks; Billy Sublett; Diandra Debrosse; Kip Harbison; VBuchanan@levinlaw.com; mflowers@cochranfirm.com; pbjones@westandjones.com; sdthacker@agmtlaw.com; wcox@lflaw.com; mhmccarthy@citynet.net; lsutherland@velaw.com
Subject: RE: Perrine DuPont Remediation Program - Third Draft of Draft Agreement with NCM; Our File No. 4609-1(DD-19-B)

NCM concurs with the edits that were made. We look forward to the "clean" copy of the contract to execute.

Sincerely,

Dennis C. Raver
Senior Project Manager



3900 Vero Road, Baltimore, MD 21227
410.247.5031 (office)
410.387.7928 (direct)
410.247.6714 (fax)
443.324.1037 (mobile)

From: escrowagen@aol.com [mailto:escrowagen@aol.com]
Sent: Tuesday, April 24, 2012 12:25 PM
To: George Hilton; Dennis Raver
Cc: mglass@downstreamstrategies.com; mjacks@gtandslaw.com; bsublett@gtandslaw.com; ddebrosse@gtandslaw.com; kharbison@gtandslaw.com; VBuchanan@levinlaw.com; mflowers@cochranfirm.com; pbjones@westandjones.com; sdthacker@agmtlaw.com; wcox@lflaw.com; mhmccarthy@citynet.net; lsutherland@velaw.com
Subject: Perrine DuPont Remediation Program - Third Draft of Draft Agreement with NCM; Our File No. 4609-1{DD-19-B}

Please See Attached in PDF Format

Mike Jacks

From: escrowagen@aol.com
Sent: Wednesday, April 25, 2012 7:12 PM
To: ghilton@ncmgroup.com; draver@ncmgroup.com
Cc: mglass@downstreamstrategies.com; Mike Jacks; Billy Sublett; Diandra Debrosse; Kip Harbison; VBuchanan@levinlaw.com; mflowers@cochranfirm.com; pbjones@westandjones.com; sdthacker@agmtlaw.com; wcox@lflaw.com; mhmccarthy@citynet.net; lsutherland@velaw.com; jsarnold@agmtlaw.com; dbthomas@agmtlaw.com
Subject: Perrine DuPont Remediation Program - Final Draft of Draft Agreement with NCM; Our File No. 4609-1(DD-19-B)
Attachments: Raver and Hilton 4-25-12 Transmittal of Final Draft Contract.pdf; April 25 Final Draft Contract - Redlined.pdf; April 25 Final Contract - Signed By Claims Administrator.pdf

Please See Attached in PDF Format

Mike Jacks

From: escrowagen@aol.com
Sent: Monday, April 30, 2012 8:39 AM
To: draver@ncmgroup.com; ghilton@ncmgroup.com; sdthacker@agmtlaw.com;
jsarnold@agmtlaw.com; dbthomas@agmtlaw.com; VBuchanan@levinlaw.com;
mhmccarthy@citynet.net; Mike Jacks; mglass@downstreamstrategies.com
Cc: Kip Harbison
Subject: Perrine v DuPont - Report to Court Re Proposed Agreement For Soil and Property
Remediation Services; Our File No. 4609-1(DD-19)
Attachments: Bedell April 30, 2012 Lettr to Court and NCM Contract.pdf; April 30 - Part 1 of
Exhibits.pdf

Please See the Attached in PDF Format (Part 1 of 2)

**Exhibit 3 – Final Order Approving Agreement
for Remediation Services Between the Perrine
DuPont Settlement and NCM Demolition and
Remediation**

40

IN THE CIRCUIT COURT OF HARRISON COUNTY, WEST VIRGINIA

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

Plaintiffs,

v.

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

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

Defendants.

FINAL ORDER APPROVING AGREEMENT FOR REMEDIATION SERVICES
BETWEEN THE PERRINE DUPONT SETTLEMENT
AND NCM DEMOLITION AND REMEDIATION

Presently before the Court is the Claims Administrator's April 30, 2012, Report, which recommends that the proposed "Agreement for Soil and House Remediation Services for the Lenora Perrine, et. al., v. E.I. DuPont De Nemours and Company, et. al., Settlement a.k.a. the Perrine DuPont Settlement" ("Clean-Up Agreement") with NCM Demolition and Remediation, LP. ("NCM") be approved by this Court.

After a careful review of the Claims Administrator's Report, the Court notes that NCM was the lowest bidder out of ten (10) bids received to provide remediation services in connection with the Property Remediation (Clean-Up) Program previously approved by this Court; and that NCM was recommended by Mr. Marc Glass, the Court-Appointed Property Remediation Technical Advisor, after an extensive interview process to provide said services.

61

In consideration of applicable law, the Court ORDERS that the proposed Clean-Up Agreement is hereby APPROVED and that the Claims Administrator, on behalf of the Perrine DuPont Settlement, is hereby AUTHORIZED, EMPOWERED and DIRECTED to enter into the Sampling Agreement on behalf of the Settlement, with the Claims Administrator's execution and delivery of the Sampling Agreement to NCM Demolition and Remediation, LP, to be conclusively presumed to be the valid and binding act of the Settlement.

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

IT IS SO ORDERED.

Finally, it is ORDERED that the Clerk of this Court shall provide certified copies of this Order to the following:

David B. Thomas
James S. Arnold
Stephanie Thacker
Guthrie & Thomas, PLLC
P.O. Box 3394
Charleston, WV 25333-3394

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

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

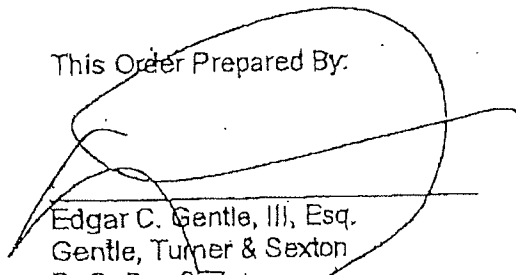
J. Farrest Taylor
Cochran, Cherry, Givens, Smith,
Lane & Taylor, P.C.
163 West Main St.
Dothan, AL 36301

407

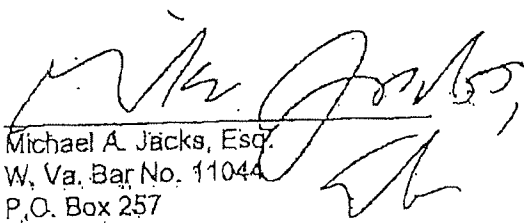
Virginia Buchanan
Levin, Papantonio, Thomas, Mitchell
Eshsner & Proctor, P.A.
316 South Baylen St., Suite 600
Pensacola, FL 32502-5996

Dennis Raver
George Hilton
NCM Demolition and Remediation, LP
3900 Vero Road
Baltimore, MD 21227

This Order Prepared By:



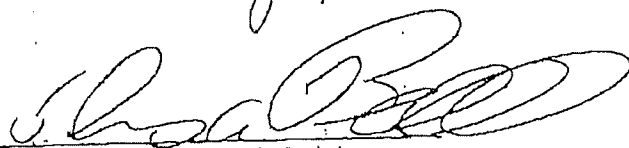
Edgar C. Gentle, III, Esq.
Gentle, Turner & Sexton
P. O. Box 257
Spelter, WV 26438
Claims Administrator



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

ENTER: _____

May 1, 2012



Thomas A. Bedell, Circuit Judge

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

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

on the 1 day of May, 2012

IN TESTIMONY WHEREOF, I hereunto set my hand and affix

Seal of the Court this 2 day of May, 2012

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

**Exhibit 4 – NCM Summary of Invoices, April 1,
2015**

NorthStar (Formerly NCM) Summary of Invoices to Perrine Dupont Settlement

As of 4/1/2015

244
memo

Invoice Date	Total Invoiced	Backcharges/ Additions	Description of adjustment	Disputed Yes/No/Pass	Net Payments to NCM
5/4/2012	\$741,000.00			\$	741,000.00
6/30/2012	\$350,224.70			\$	350,224.70
7/15/2012	\$486,762.18			\$	486,762.18
7/31/2012	\$143,829.28			\$	143,829.28
8/15/2012	\$448,845.76			\$	448,845.76
8/15/2012	\$83,655.10			\$	83,655.10
8/31/2012	\$498,769.46			\$	498,769.46
			adjustment made for disputed a/c charges on 1102-		
9/15/2012	\$509,054.29	-\$340.00 72		\$	508,714.29
9/30/2012	\$578,060.46			\$	578,060.46
10/15/2012	\$550,395.74			\$	550,395.74
10/31/2012	\$526,507.41			\$	526,507.41
11/15/2012	\$154,786.13			\$	154,786.13
11/30/2012	\$191,143.59			\$	191,143.59
12/15/2012	\$88,103.72			\$	88,103.72
12/31/2012	\$86,241.00			\$	86,241.00
1/15/2013	\$106,363.90			\$	106,363.90
1/31/2013	\$167,078.40			\$	167,078.40
			NCM Damages Setoff/deducted from Feb 2013		
2/28/2013	\$166,471.94	-\$9,741.63 payment		\$	157,730.31
3/31/2013	\$188,780.18			\$	188,780.18
4/15/2013	\$103,363.78			\$	103,363.78
			NCM Damages Setoff/deducted from 4/16/13 -		
4/30/2013	\$82,596.80	-\$84.00 4/30/13 payment		\$	82,512.80
5/15/2013	\$103,245.98			\$	103,245.98
			2012 Failed Soil Testing Costs Setoff from 5/16/13 -		
5/31/2013	\$90,105.60	-\$27,435.00 5/31/13 payment		\$	62,670.60
			CORE Soil Texture Charges from 6/1/13 - 6/15/13		
6/15/2013	\$54,438.78	-\$19,330.00 payment		\$	34,908.78
6/30/2013	\$36,351.18			\$	36,351.18
			2012 Failed Soil Testing Costs Setoff from 7/1/13 -		
7/15/2013	\$45,052.80	-\$6,615.00 7/15/13 payment		\$	38,437.80
7/31/2013	\$75,088.00			\$	75,088.00
			2013 Failed Soil Testing Costs Setoff from 8/1/13 -		
			8/15/13 payment (\$3,150.00) / Also, deducted		
			\$585.08 for 2 claimants - Melanie Yost (85.08) &		
			Morloc (\$500.00) for annoyance fee for NCM access		
8/15/2013	\$37,607.17	-\$3,735.08 to his property to work on another lot		\$	33,872.09
			Deducted \$1,487.64 for 2 claimants - Johnson 1102-		
			62 (\$900.00) for repairs to house and yard & Elbon		
8/31/2013	\$142,341.00	-\$1,487.64 1101-122 (\$587.64) for AC/Furnance Unit		\$	140,853.36
9/15/2013	\$61,879.42	\$587.64 Claimant Payments Refunded to NCM		\$	62,467.06
9/30/2013	\$294,795.30	-\$10,552.50 90% of Inconvenience Payments		\$	284,242.80
10/15/2013	\$196,496.27			\$	196,496.27
10/31/2013	\$161,450.42			\$	161,450.42
11/30/2013	\$333,162.16			\$	333,162.16
12/31/2013	\$128,214.85			\$	128,214.85
1/31/2014	\$173,878.50			\$	173,878.50
2/28/2014	\$129,770.00	-\$300.00 NCM's half of mediation invoice	No	\$	128,870.00
3/31/2014	\$105,176.39			\$	105,176.39
4/30/2014	\$98,022.89	-\$1,565.40 NCM charge for remediation delays		\$	95,356.49
5/31/2014	\$181,407.05	-\$7,797.12 Deduction for extended hotel and per diem	Yes	\$	173,609.93
		reduced for sampling (770) and hotel per diem			
6/30/2014	\$249,568.43	-\$2,955.51 (1500,685)	Yes	\$	246,612.82
			\$3,142.02 for hotel and per diem costs, \$1,250 for		
7/31/2014	\$641,215.19	-\$2,402.02 soil amendment; annoyance payments	Yes	\$	638,813.17
8/31/2014	\$911,391.74	-\$3,223.20	Yes	\$	908,168.54
9/30/2014	\$688,136.30	-\$250.00 Alleged Damage to Winkler property	No	\$	687,886.30
10/31/2014	\$686,716.07			\$	686,716.07
			Payment off by 01 (adjusted down to move soil to		
11/30/2014	\$191,516.52	-\$0.01 Nutter)		\$	191,516.51

NorthStar (Formerly NCM) Summary of Invoices to Parrine Dupont Settlement

As of 4/1/2015

note! per diem costs. NorthStar believes these were calculated incorrectly and a credit is due. - these					
12/31/2014	\$186,604.74	-5407.58 were returned at a value of 537.98 in February	No	\$	186,197.16
1/31/2015	\$269,326.44	-11,770.14 Calculation currently under review	Yes	\$	257,556.30
2/28/2015	\$135,527.70			\$	135,527.70
3/31/2015	\$187,777.00			\$	187,777.00
Total	\$12,898,797.77	-\$109,305.29		\$	12,789,492.48

Total paid
by Settlement
to date, per NCM