

Y6097-EE

Spelter smelter settlement winding down in Harrison County

by Matt Harvey ASSISTANT MANAGING EDITOR | Posted: Monday, January 18, 2016 6:00 pm

CLARKSBURG — Five years after one of West Virginia's largest class action lawsuits was settled, property cleanup is winding down and medical monitoring participation is dwindling.

The court action lasted almost seven years, generated more than 30,000 pages of court filings and probably more than 100,000 attorney hours before Harrison Chief Judge Thomas A. Bedell in early January 2011 approved the settlement between DuPont and residents of the Spelter area.

At issue was how heavy metal pollution from the manufacturing process at the old smelter was impacting property in the area as well as the health of those living nearby.

The budget for property cleanup in Spelter and nearby communities was set at \$34 million by Bedell, with guidance from Claims Administrator Edgar Gentle III.

Gentle, who also helped mediate the settlement, said Monday that just one more property still needs its soil remediated, while there are about 70 homes that still need cleaned.

Most of that work is at the farthest arc of properties that might have been impacted by emissions from the smelter that helped produce materials for U.S. military munitions during the 20th century.

Mike Jacks is an area attorney who served as executive director of the settlement claims office and who now works part time on the project as Gentle's local counsel.

"I think the best part (of the settlement) is that property cleanup really did a tremendous amount of benefit in the community, made it a safer place to live in," Jacks said.



Counting down

A \$34 million remediation of properties near the Spelter smelter site, mandated through settlement of a class action lawsuit, is nearing completion. Above, the site of the former smelting plant that played a key role in munitions manufacturing is shown.

Medical monitoring, with DuPont agreeing to fund three decades worth of tests and paying \$4 million as seed money, has seen a drastic falloff in participation.

Gentle, who's handled similar class action settlements throughout the country, said that isn't surprising.

Those who agreed to have their soil cleaned up received the benefit of having their property improved, plus a check for \$5,000 to cover the inconvenience. And those who agreed to allow remediation of their homes received \$500.

Those who agreed to participate in medical monitoring received some cash up front for participating, but now the only benefit they receive is testing every two years. And there's no money to pay for medical procedures and prescriptions needed to treat any illnesses that are discovered, Gentle notes.

Still, he urges those eligible to participate. Early detection can save lives, and it has for some of those who participated in the initial rounds of testing, Gentle said.

Gentle noted about 4,000 individuals actually agreed to the first round of testing (another 2,000 signed up to get the cash, but declined to take the tests). Of the 4,000 who said they were interested in the tests, only 2,000 actually went through with it, Gentle added.

Then in November of 2013, during the second round of medical monitoring, 1,000 individuals participated in the testing, Gentle said. There's no upward trend in the latest round of testing, which is ongoing, according to Gentle and Jacks.

Those who want to receive testing through this round of medical monitoring program still have time to do so, but must set up an appointment, Jacks said. They can call (866) 265-6139 or (304) 622-7443. There are five clinics that participate, and night and weekend appointments are available, Jacks said.

Tests will be offered for about 25 more years as part of the settlement, to try to ferret out whether the arsenic, lead, cadmium and selenium used in making zinc could have led to certain medical conditions. Jacks and Gentle added that a medical panel will be set up this year to determine whether advances in science should lead to additional or different testing when the next round of medical monitoring is held in 2017.

Other issues also remain, such as when the claims office will close. It likely will remain open at least through the end of the year, Gentle said.

There's a possibility that some money could be left in the property cleanup fund once all work is done, according to Gentle. If that happens, those who participated in the property cleanup would share in the surplus, Gentle said.

Settlement officials also likely will pave certain streets or roads that may have been damaged during remediation, Gentle said.

“We’re like the Boy Scouts at a campsite: We want to leave it at least like we found it, if not better,” Gentle said.

The settlement claims office remains open weekdays from 8:30 a.m.-5 p.m. at the Spelter fire station, 55 B St., Spelter. The phone numbers are (304) 622-7443 or (800) 345-0837. Or, write to perrinedupont@gtandslaw.com.