

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 ESTABLISHING PROPERTY REMEDIATION (CLEAN-UP)  
PROGRAM**

Presently pending before the Court is the issue of the design and implementation of the Property Remediation (Clean-Up) Program. The Claims Administrator reports that, after payment of previously Court approved Class Counsel fees and expenses, initial property remediation program start-up expenses pursuant to the Court's previously approved initial budget, and reasonable contingencies, there is approximately \$34 million remaining in the Perrine DuPont Property Remediation Settlement Fund to fund the Class Area property remediation program described in this Order. The Court takes judicial notice of prior testimony of Class Counsel expert, Dr. Kirk Brown, that \$57 million may be required for the clean-up. Therefore, a prudent, deliberate and frugal clean-up program is a necessity.

The property remediation program is one of the two types of relief agreed to by Class Counsel and DuPont in the Settlement November 19, 2010 Memorandum of Understanding, as approved by this Court's January 4, 2011 Final Order Approving the

Settlement. Medical Monitoring, the other portion of the Settlement, is addressed in other Orders of this Court.

The following steps were taken to accord the Property Class Members procedural due process and to afford them maximum input in the design of the property remediation program: (i) Property Class Members were first invited by letter and publication to two weeks of town meetings at the Spelter, West Virginia Volunteer Fire Station, where the Settlement Claims Office is located, held during the weeks of February 28 and March 7, 2011, which were timely held, with the Claims Administrator and Mr. Marc Glass, the Settlement property remediation expert approved by the Court, outlining the parameters of a possible property clean-up program, and receiving Initial Class Member input on property clean-up program design; (ii) utilizing the input from Property Class Members at the town meetings, on April 9, 2011, the Claims Administrator mailed the Class Members a questionnaire inviting them to provide their further input in property program design, with 340 Class Members timely completing and returning the questionnaire by May 1, 2011; (iii) the Claims Administrator mailed a letter to the Property Class Members on May 16, 2011, providing them with the results of the questionnaire answers, outlining the Claims Administrator's initial recommendations on property clean-up program design, and inviting the Class Members to the Court Fairness Hearings on property clean-up program design on June 2 and 3, 2011; and (iv) the Court then conducted these two days of Fairness Hearings, at which the Claims Administrator and the Settlement property remediation expert outlined a possible remediation program and answered Class Member questions, and a realtor and a physician described possible Class Area property value and Class Area resident health benefits from a property remediation program, and all attending Class

Members and all other individuals were invited and allowed to provide this Court with their suggestions on the record on how to design the property remediation program. A videographer recorded the first day of the Fairness Hearings, which may be viewed on the Settlement website, at [www.pennedupont.com](http://www.pennedupont.com).

After receiving the above input from the Claims Administrator, Settlement Property Remediation Expert and numerous Property Class Members on property remediation program design, considering the opinions expressed by Class Members and other individuals attending the Fairness Hearings<sup>1</sup>, the opinions of the realtor and physician who made presentations at the Fairness Hearings, a thorough review of the facts of the case, and careful consideration of the input of numerous interested individuals who live in the Class Area, as well as the input and opinions of various experts and professionals in the record, the Court hereby **ORDERS** the following:

The Property Class Definition of December 21, 2006, is hereby modified so as only to include current Class Area property owners who are not subject to the releases of the so-called Grasselli Deeds, described below. Therefore, the only individuals who may participate in the property remediation program are current property owners of eligible Class Area properties. There is no money provided by the Settlement to compensate past owners of Class Area property for two reasons. First, there was no Jury Verdict for property damages, so there was never an award of any kind simply for property damage.

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<sup>1</sup>The following individuals spoke at the June 2 and 3, 2011, Fairness Hearings described above: Norman Tate, Albert Sheaffer, Francis Ice, Cindy DiPetta, Hubert Ferrell, Rod Tenney, Jeannette Koontz, Francis "Sue" Tate, Wayne Aley, George Buck, Diane Singleton, Ronald Sheaffer, David Moser, Shawn Singleton, Ronald Brown, Thelma Valerio, and Don Elder. Additionally, the following individuals submitted letters which were filed with the Court: Waunona Crouser, Judith Andrews, Earl Goodwin, Jr., Doris Martin, Joyce White, Rose Fluharty, and Janice Niven. Additionally, the Claims Administrator provided the Court with Class Member correspondence respecting the property clean-up program that was received before the Fairness Hearing, and three petitions were presented to the Court, two by Francis Ice, and one from Francis "Sue" Tate.

Second, there is no punitive damages award in the Settlement. The Settlement between the Parties provided funds for a medical monitoring program and a remediation program. All other claims which were a part of the Complaint were eliminated by the Memorandum of Understanding between the Parties, and the prior judgment in this case was vacated by prior Order of this Court.

Next, the Court **ORDERS** that there will be no "cash" option for Class Area property owners to choose instead of remediation. Although some individuals have expressed the opinion that a clean-up of Class Area properties would somehow be wasted, the Court does not share this opinion. After listening to the testimony at trial and reviewing thousands of pages of materials during the nearly eight (8) years this case has been before the Court, the Court determines that certain parts of the Class Area are potentially hazardous to human health.

The property remediation program under the Settlement should provide the safest environment it can for the inhabitants of the Class Area, based on the \$34 million available. If the Court provided a "cash" option instead of a clean-up, much of the potentially hazardous contamination in the Class Area would remain for generations to come. Therefore, the funds available for remediation of Class Area properties through the Settlement will be used solely for clean-up related expenses, as further defined in this Order.

Further, the Court notes that, even if the property remediation program only removed one-half of the Class Area contamination, the Class Area would be safer than it is today. Additionally, hazardous materials testing and cleaning will remove much of the

uncertainty that currently exists about the safety of houses<sup>2</sup> throughout the Class Area, and soils in Zone 1A. The Settlement offers the only known chance for property remediation for the Class Area, and forgoing that chance to clean the area with a cash payment that could quickly dissipate without any lasting benefit to the Property Class would be unjust.

### I. Class Definition

On December 21, 2006, the Court adopted the following definition for the Property Class:

THOSE WHO CURRENTLY OWN, OR WHO ON OR AFTER DECEMBER 1, 2003 HAVE OWNED, PRIVATE REAL PROPERTY LYING WITHIN THE CLASS AREA DEFINED BELOW ("PROPERTY CLASS") ... Exclusions (1) If you owned property only before December 1, 2003 or only after September 14, 2006 (the Date of entry of the Order Granting Class Certification), you are not a Property Class member.

Individual Notice to Class Members, Dated December 21, 2006, by the Hon. Thomas A. Bedell. Subsequent to the adoption of this Class Definition, important Court Orders, the ruling of the West Virginia Supreme Court of Appeals, and the Settlement itself have necessitated a revision of this Class Definition.

First, the so-called Grasselli properties were excluded by Order of this Court, in 2007, and again by the ruling of the Supreme Court of Appeals on March 26, 2010, as follows:

A review of the Grasselli deeds reveals that the deeds utilized plain language to clearly express the intent of the parties. Notably, the Grasselli deeds were executed as part of the settlement of numerous lawsuits brought against Grasselli by local land owners seeking to recover damages caused by fumes, gases, and dust emitted from the smelter. In exchange for settling these claims, the deeds, in plain language, released Grasselli and its successors and assigns from all actions for losses of "every kind whatsoever" caused by

<sup>2</sup>House, in this Order, includes permanent houses, commercial dwellings and mobile homes which are fit for human occupancy as defined by the Claims Administrator.

the "past, present or future" operation of the plant or caused by "any substance or substances in the past, present or future," emanating from the plant. The deeds further grant Grasselli and its successors the "free and perpetual right" to discharge, or permit to escape onto the off-site lands of the grantors, the substances specified therein. Finally, the deeds provide that the releases and easements "shall run with [the] land" to the benefit of Grasselli and its successors. Not only do the Grasselli deeds utilize unmistakable language, but we additionally find notable the fact that the deeds were executed in the settlement of actions brought by area landowners seeking compensation for damage to their property caused by the substances emanating from the smelter. This fact leaves no doubt that the parties to the Grasselli deeds understood that they were agreeing to the continued discharge of harmful substances onto their properties, even if they did not know the exact composition of those substances.

Perrine v. E.I. du Pont de Nemours and Co., 225 W.Va. 482, \_\_\_, 694 S.E.2d 815, 842-849, (2010).

By ruling of the West Virginia Supreme Court of Appeals, issued March 26, 2010, the so-called Grasselli tracts are not part of the Property Remediation Class. Perrine v. E.I. du Pont de Nemours and Co., 225 W.Va. 482, 694 S.E.2d 815, 842-849 (2010). In the same way that an employee cannot contravene the direction of his employer, the Circuit Court of Harrison County is powerless to change the exclusion of the Grasselli tracts because the Supreme Court has ruled those tracts are excluded. Therefore, this Court does not have the ability to include the Grasselli tracts in the Property Remediation Program<sup>3</sup>.

<sup>3</sup>At the Fairness Hearing, some of those attending expressed strong opinions about the perceived unfairness of the exclusion of the Grasselli properties from the Property Class. The Court is sympathetic to those complaints, and agrees that cleaning all the properties in the Class Area, including the Grasselli properties, would best improve property values and human health. However, the West Virginia Supreme Court of Appeals has spoken, making the exclusion of the Grasselli properties the final decision on this issue.

Accordingly, the so-called Grasselli properties are not included in the property remediation program, and the owners of the Grasselli properties are not members of the Property Class.

Next, the Court notes that at the time the 2006 Class definition was established, the Plaintiffs had a claim for property damage in addition to the claim for property remediation. There was no property damages Jury Verdict in the 2007 trial. Therefore, there are no monies available to pay for property damages.

Finally, the Court notes that the voluntary Settlement, as contemplated by the Memorandum of Understanding, entered into on November 19, 2010, and finalized by the "Final Order Approving Settlement," entered by the Court on January 4, 2011, eliminated the claims for punitive damages. The only funding agreed to by the Parties was for property remediation, attorneys' fees and expenses, and medical monitoring.

Because there are no funds for punitive damages and no funds to compensate for property damages, there are no funds to pay past owners of Class Area properties. Accordingly, the property remediation program can only benefit the current owners of eligible properties in the Class Area. There is no money available for a "cash payment" instead of a remediation of affected properties. The only money available is designated for the remediation of Class Area properties.

Accordingly, upon its own Motion, the Court hereby modifies the definition of the Property Class to be as follows:

Members of the Property Class are current owners of eligible Class Area properties, as previously identified by Class Counsel within the Class area boundary. A current owner is defined as the owner of the property on the date that this Order is entered. If property is sold between the date of entry of this Order and the date of execution of the Property Remediation

Program as to that specific property, i.e. the testing and cleaning, if necessary, of that property, the benefits conferred by the Settlement and the Program inure to the new owner, not the old owner, thereby running with the land. Further, the properties identified in Court documents and fully described as the "thirty-two tracts" or the "Grasselli Properties" are excluded from the Property Remediation Program, by Order of this Court and by the ruling of the West Virginia Supreme Court of Appeals.

## II. Clean-Up Specifications

The Claims Administrator shall define and set clean-up specifications to clean any contaminated properties to a standard that is reasonably determined to be safe for human occupancy. As described below, and in accordance with the expert testimony of Dr. Kirk Brown in the record, potentially contaminated properties are (i) the soil on Class Member property in Class Area Zone 1 A; and (ii) the houses on Class Member property in the entire Class Area (Zones 1A, 1B, 2 and 3).

## III. Sign-Ups, Budgeting, and Claim Forms

The Claims Administrator shall establish a sign-up program in the most efficient manner to provide an opportunity for eligible Property Class Members to take part in the Remediation Program.

The sign-up period shall be from July 11, 2011 through October 10, 2011, inclusive, with the Claims Administrator to mail to Property Class Members the Claim Form substantially in the form of Exhibit A, together with the invitation letter in Exhibit A to the below described town meetings, on June ~~26~~<sup>27</sup>, 2011, to the extent practicable, (with Zone 1A Class Members to receive the additional letter provided). Late registrants shall be admitted to the property clean-up program for good cause, at the discretion of the Claims Administrator. To facilitate the sign-up process, there shall be town meetings at the Spelter



Volunteer Fire Station from July 11 through 16, 2011, inclusive, with a morning, mid-day and evening session, each day.

Following the expiration of the sign-up period, and based upon the sign-up results, the Claims Administrator shall provide to the Court for review and possible approval a property remediation program budget.

#### IV. Remediation Program Design

The Claims Administrator shall procure one or more licensed, bonded, and experienced companies to test and/or clean Class Area houses and land for hazardous cadmium, arsenic, lead and zinc contamination via a public bidding process. Each eligible parcel of soil or house (as described above) will be tested before any remediation, so that only contaminated properties are cleaned with Settlement funds, and property owners shall receive confidential written confirmation of the contamination status of their home after testing. The Claims Administrator shall start testing as soon as possible on a rolling basis after sign-ups begin, to move the property remediation program forward. Respecting house and soil testing results confidentiality, the Court makes the following findings.

House test results shall remain confidential, with the house, itself, reasonably containing any contamination, so that a Class Member's right to house test results privacy takes priority over a neighbor's interest in the test results. Soil test results confidentiality is more problematic, with soil being the major source of continued Class Area toxic metals dispersal, so that a neighbor has a reasonable interest in knowing the soil test results from adjoining properties. An individual's right to privacy cannot be ignored, however. Therefore, soil test results shall be subject to the following confidentiality rules:

Those having their soil tested:

- (i) Can elect to make the results public by checking the appropriate box on the Claim Form; or
- (ii) Can elect potentially to keep their test results private by checking the appropriate box on the Claim Form. If the soil test results are negative, they will be available to a contiguous land owner who signs a Claims Administrator Confidentiality Agreement. If they are positive, then a contiguous land owner can request them by completing the Confidentiality Agreement, and the Claims Administrator will request permission from the tested Class Member to release them. If the Class Member refuses, then the Court will address the issue at that time.

The remediation program shall begin in Zone 1A, with soil clean-ups taking priority over house clean-ups due to the public and potentially more dangerous nature of contaminated soils. The Court reserves judgment on whether soil clean up should be mandatory or optional. House clean-up will be optional, as the house, itself, largely keeps any contamination from spreading to adjoining properties or houses.

The Claims Administrator shall take reasonable measures to encourage all Zone 1A Class Members to participate in the soil remediation program. For Class Members who participate voluntarily, this issue is moot. If a Class Member is hesitant to participate, the Claims Administrator shall encourage the Class Member to have his soil tested at the expense of the Settlement. If the test is negative, then the issue is moot. If the test is positive, then the Claims Administrator shall encourage the Class Member to participate in soil remediation for the benefit of the Class Area and its residents. If the Class Member refuses, then the Court shall address the matter at that time, when it will be ripe.

After addressing Zone 1A soils, the Program will then move to the cleaning of houses, again starting in Zone 1A, and working outwards, to Zone 1B, Zone 2, and Zone 3, respectively.

With respect to payments for annoyance and inconvenience in participating in the property clean-up program, the Court **ORDERS** the following:

Owners of eligible properties in Zone 1A, regardless of size, in recognition of the annoyance and inconvenience caused by the soil clean-up, shall receive five thousand dollars (\$5,000) per property. This amount shall be divided into two payments, one at the time of verification of a claim for remediation of eligible Zone 1A soil, and one at the time of testing and completion of remediation of the Zone 1A soil, and/or certification that the property is safe and does not need to be remediated. The first payment shall be one thousand dollars (\$1,000). The second payment shall be four thousand dollars (\$4,000). Soil that is remediated shall be evidenced by a confidential written Certificate of Completion provided to the Class Member.

Owners of eligible houses which are fit for human occupancy, as reasonably determined by the Claims Administrator, and any commercial structures fit for human occupancy, as reasonably determined by the Claims Administrator, which are regularly occupied by people, in all three Zones, i. e. the entire Class Area, shall receive a total of five hundred dollars (\$500) per home or commercial structure. The payment shall be divided into two parts: the first payment shall be one hundred dollars (\$100) at the time the claim is verified, and the second payment shall be four hundred dollars (\$400) which shall be paid at the time of testing and completion of remediation of the house, or certification that the house is safe and remediation is not needed. Houses that are remediated shall



because owners of eligible properties must be informed of the contamination status of their properties. Some properties will not need any cleaning, and informing owners that their soils or houses are safe will remove a lot of uncertainty about Class Area properties.

2. Next, the soil in Zone 1A shall be remediated to the extent necessary to make Zone 1A safe for human occupancy.
3. Next, the houses and commercial structures fit for human occupancy in Zone 1 (Zone 1A and Zone 1B) shall be remediated.
4. Next, to the extent there are adequate funds, the houses and commercial structures fit for human occupancy in Zone 2 shall be remediated.
5. Finally, to the extent there are adequate funds, the houses and commercial structures fit for human occupancy in Zone 3 shall be remediated.

There may not be adequate funds to carry out all five steps above.

Thereafter, any extra remediation funds shall be distributed equally to all participants in the property remediation program, as defined by the further Order of this Court.

Further, the Court recognizes that the funds provided to remediate properties may not reach remediation of contaminated houses in Zones 2 and 3. If those properties cannot be remediated through the Settlement, they shall at least be tested and the owners shall be informed of the test results confidentially and in writing according to the prioritization schedule enumerated, *supra*.

The Claims Administrator shall provide confidential written Certificates of Cleanliness to the owners who participate in the property remediation program for properties that are tested and found to be safe or not safe for human occupancy.

regardless of whether the properties are safe at the time of testing or after remediation.

The Claims Administrator shall provide monthly updates on the progress of the property remediation program to the Court and the Finance Committee, and via distribution to the Press as well as publication on the Settlement website.

Further, as the property remediation program progresses, if cleaning necessitates that a house owner leave their house for a short period of time while the soil (in Zone 1A) or house (in the Class Area) is remediated, the property remediation program shall fund local hotel stays for owners and vet or pet sitter stays for pets, at a reasonable rate, to the extent necessary.

Next, the Court notes that certain Class Area property owners have requested funds to perform remediation of their properties on their own. The Court denies this request. The removal of hazardous metals must be done by qualified professionals, who, by thorough testing, will certify to property owners that contamination has been removed. If the Court allows owners to undertake this type of cleaning on their own, there would be no guarantee that necessary cleaning would be accomplished, no guarantee that contamination would be removed, and there could be resulting damage to property or human health. The potential heavy metal contamination in the Class Area involves potentially dangerous carcinogens, and the clean-up of these metals should be done by experts.

The Court also notes that some Class Area property owners have requested reimbursement for claimed past renovation expenses. The property remediation program cannot and shall not provide reimbursement for past expenses related to renovation of Class Area properties. First, the Court and Claims Administrator would have an extremely

difficult time in setting a fair value for any past expenses or renovations. Also, past renovation efforts likely had more than one purpose, such as adding to or improving living space, which is not part of the property remediation program, and it would be unfair to reimburse individuals for added or improved living space when other Class Members will not receive such benefits. Finally, without participation in the program and thorough testing by professionals, the Court cannot know if past amateur renovation efforts actually removed any contamination, so all eligible area properties need to be tested.

The Claims Administrator shall exercise his discretion in establishing and administering the property remediation program, with the supervision and oversight of the Court. Any property remediation program disputes between Class Area property owners and the Claims Administrator, following reasonable mediation and reconciliation efforts by the Claims Administrator, will be resolved by the Court.

Provided that the Claims Administrator, his staff and employees, act in substantial compliance with this Order, the Claims Administrator, and his staff and employees, are hereby granted judicial immunity.

Further, the Court **ORDERS** that this is a Final Order pursuant to Rule 54(b) of the West Virginia Rules of Civil Procedure and that this Order constitutes a "final judgment [as] there is no just reason for delay," and the Court hereby makes "an express direction for the entry of judgment."

**IT IS SO ORDERED.**

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

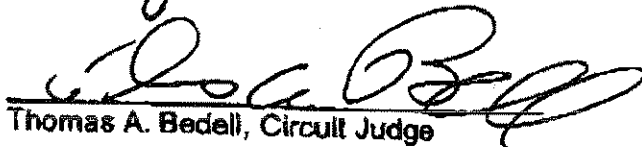
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Michael A. Jacks, Esq.  
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55 B Street  
P.O. Box 257  
Spelter, WV 26438  
Special Master and Claims  
Administrator

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

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

ENTER:

June 27, 2011  
Thomas A. Bedell, Circuit Judge



## EXHIBIT A:

TWO LETTERS (ONE LETTER FOR ALL POTENTIAL PROPERTY CLASS MEMBERS  
AND AN ADDITIONAL LETTER FOR ZONE 1A CLASS MEMBERS ONLY) INVITING  
PROPERTY CLASS AREA MEMBERS TO JULY 11 TO 16, 2011 TOWN HALL MEETINGS  
AND PROPERTY REMEDIATION (CLEAN-UP) CLAIM FORM

LETTER TO ALL CLASS AREA PROPERTY OWNERS

PERRINE DUPONT SETTLEMENT  
SPELTER VOLUNTEER FIRE DEPARTMENT CLAIMS OFFICE  
55 B. STREET  
P.O. BOX 257  
SPELTER, WV 26438  
304-622-7443  
1-800-345-0837  
Fax: 304-622-7447 or 205-716-3010  
www.perrinedupont.com  
perrinedupont@gtandslaw.com

June 25, 2011

Re: *Registration for House Clean-Up Program*

Dear Potential Property Program Class Member,

**THIS LETTER INVITES YOU TO A TOWN HALL MEETING AT THE SPELTER FIRE STATION WHERE WE WILL DESCRIBE THE PROPERTY CLEAN-UP PROGRAM AND HELP YOU WITH YOUR PAPERWORK TO REGISTER YOUR PROPERTY FOR THE PROGRAM.**

On June, \_\_\_\_ 2011, the Circuit Court of Harrison County entered the Final Order Establishing Property Remediation (Clean-Up) Program (the "Order") which established the property clean-up program (the "program") described by this letter. Based upon the information provided to us through the lawsuit, we believe that one or more of your properties may be eligible for the Program.

We have attached a Claim Form, and you must fill out your Claim Form for your property to be part of the Program, which will entitle you to an annoyance and inconvenience payment as described below, as well as testing of your house for arsenic, lead, cadmium and zinc (the "tested metals"), and to the extent necessary and to the extent we can afford it, cleaning of your house.

TO BE ELIGIBLE FOR THE PROGRAM, YOU MUST SUBMIT YOUR CLAIM FORM, FULLY COMPLETED AND WITH THE NECESSARY DOCUMENTATION AS DESCRIBED BELOW, BY OCTOBER 10, 2011.

### I. Town Hall Meetings

We will hold Town Hall Meetings for you to attend for help with registering your house<sup>1</sup> for the program at the Spelter Fire Department, in the dining hall. Anyone can come to either day of the Town Hall Meetings. The suggestion that Claimants with last names beginning with certain letters attend on certain days is **only a suggestion** so that there will be an even amount of people on each day of the Town Hall Meetings.

Attendance at the Town Hall Meetings is optional and will not affect your house's eligibility for the program in any fashion. However, you must submit your completed claim form and documentation on or before October 10, 2011, for your property to be considered for the program.

### TOWN HALL MEETINGS SPELTER FIRE DEPARTMENT

<u>DATE</u>	<u>TIMES</u>	<u>LAST NAMES</u>
Monday July 11, 2011	9:00AM - 12:00PM 2:00PM - 5:00PM 6:00PM - 8:00PM	Last Names Beginning With Letters A - E
Tuesday July 12, 2011	9:00AM - 12:00PM 2:00PM - 5:00PM 6:00PM - 8:00PM	Last Names Beginning With Letters F - J

<sup>1</sup>Under the Order, only Class Area Property owners in Zone 1A (see Map attached of Class Area) have a soil clean-up program. Class Members in other Zones only have a house clean-up program.

Wednesday July 13, 2011	9:00AM - 12:00PM 2:00PM - 5:00PM 6:00PM - 8:00PM	Last Names Beginning With Letters K - O
Thursday July 14, 2011	9:00AM - 12:00PM 2:00PM - 5:00PM 6:00PM - 8:00PM	Last Names Beginning With Letters P - T
Friday July 15, 2011	9:00AM - 12:00PM 2:00PM - 5:00PM 6:00PM - 8:00PM	Last Names Beginning With Letters U - Z
Saturday July 16, 2011	9:00AM - 12:00PM 2:00PM - 5:00PM 6:00PM - 8:00PM	Make Up Day - Anyone can come to Meeting

The Claims Administrator, will offer a brief presentation on the program at the beginning of each Town Hall Meeting. After my presentation, my staff and I will help you complete claim forms for your house.

## II. House Clean-Up Program Summary

The Order fully describes the program and is available on our website, [www.perrinedupont.com](http://www.perrinedupont.com). The Order requires us to obtain a Claim Form from the owner for each eligible house in the Class Area that is "fit for human occupancy", or a commercial structure reasonably fit for human occupancy, as determined by the Claims Administrator. My staff and other licensed contractors will perform a visual inspection of each house to make sure there is a structure fit for human occupancy.

In addition to the fully completed Claim Form, each house owner must sign the Claim Form, and we must have a copy of the most recent property tax ticket or receipt from Harrison County for the property on which the house is located, as well as a copy of each house owner's photo identification.

The program will begin with a sign-up program from July 11, 2011, to October 10,

2011. As each house is registered, we will test it for the tested metals. Thereafter, we will begin cleaning houses and soil in Zone 1A, around Spelter. Then, we will begin cleaning the houses in Zone 2, including areas such as Gypsy and Hepzibah. Thereafter, we will begin cleaning the houses in Zone 3, including areas such as Arlington, Lumberport, and Shinnston.

Every eligible house which we confirm as part of the Program will entitle the owner or owners to a **five hundred dollar (\$500) payment**. If there are multiple owners, the money will be shared equally among them. The money will be split into two payments, the first will consist of one hundred dollars (\$100) which will be paid at the time the Claim for the house is verified, and the second payment will consist of four hundred dollars (\$400) at the time the house is tested for hazardous contamination and cleaned if necessary. **You get to keep the five hundred dollars even if your property does not need to be cleaned.**

If your house is tested and deemed safe, you will receive a Certificate describing your property as safe. Alternatively, if your house tested metals results are positive, after your house is cleaned, you will receive a Certificate of Completion describing your house as safe.

**WE CANNOT GUARANTEE THAT YOUR HOUSE WILL BE CLEANED DUE TO LIMITED FUNDING. HOWEVER, EACH HOUSE VERIFIED AS ELIGIBLE WILL BE TESTED AND THE OWNER(S) OF THAT HOUSE WILL RECEIVE FIVE HUNDRED DOLLARS (\$500) AS AN ANNOYANCE AND INCONVENIENCE PAYMENT FOR THAT HOUSE.**

We hope that we will be able to test and clean every verified house, however, according to the Order, we must first test everyone, then clean the soil in Zone 1A, and then work through the houses in Zone 1, to Zone 2, and then to Zone 3. This is because the most potentially contaminated areas are closest to the former zinc smelter site and they have been given priority in the program.

The program does not provide any money for former owners of property in the Class Area. It also does not provide any money or testing for or cleaning of the so-called Grasselli properties. Finally, the program does not provide any reimbursement for owners of properties who claim to have renovated their properties on their own. According to the Order, we must test each house to make sure that it is safe, even if the owner believes it to be safe and has already done some renovations or cleaning of the property.

There is no cash option instead of the program. You do not have to participate in the program, but if you do not, you will not receive anything from the property clean-up portion of the Settlement.

If you own eligible property that includes soil in Zone 1A, you are receiving an additional letter in this package about the soil clean-up program.

At the conclusion of the program, any leftover money will be distributed equally to the property owners who participate.

If you have any questions; please come by our office, call us, or send us an email.

Yours very truly,

Ed Gentle,  
Claims Administrator  
(304) 622-7443  
(205) 716-3000  
1-800-345-0837 (toll free)  
perrinedupont@gtandslaw.com

**LETTER TO PROPERTY OWNERS IN ZONE 1A ABOUT SOIL CLEAN-UP ONLY**

**PERRINE DUPONT SETTLEMENT  
SPELTER VOLUNTEER FIRE DEPARTMENT CLAIMS OFFICE**

**55 B. STREET**

**P.O. BOX 257**

**SPELTER, WV 26438**

**304-622-7443**

**1-800-345-0837**

**Fax: 304-622-7447 or 205-716-3010**

**[www.perrinedupont.com](http://www.perrinedupont.com)**

**[perrinedupont@gtandslaw.com](mailto:perrinedupont@gtandslaw.com)**

June 25, 2011

**Re: *Registration for Soil Clean-Up Program***

Dear Potential Property Program Clean-Up Class Member,

We are sending you two (2) letters, the first describes the Property Clean-Up Program in general terms and applies to all eligible properties that are homes or commercial structures which are fit for human occupancy in the entire Class Area and invites you to Town Hall Meetings to learn about the Property Program and register your property.

**This letter pertains to soil testing and clean-up in Zone 1A only.**

On June \_\_\_\_ 2011, the Circuit Court of Harrison County entered the Final Order Establishing Property Remediation (Clean-Up) Program (the "Order") which established the property clean-up program (the "program") described by this letter. Based upon the information provided to us through the lawsuit, we believe that one or more of your properties may be eligible for the program and we believe that at least one of your properties is in Zone 1A and is eligible for soil clean-up.

We have attached a Claim Form, and you must fill out your Claim Form for your soil in Zone 1A to be part of the program, which will entitle you to an annoyance and inconvenience payment as described below, as well as testing, and to the extent necessary

and to the extent we can afford it, cleaning of your soil if it is hazardous to human health. Completion of your Claim Form for eligible Zone 1A property will also entitle you to testing and clean-up (if contaminated) of the house if it qualifies.

**TO BE ELIGIBLE FOR THE PROGRAM, YOU MUST SUBMIT YOUR CLAIM FORM, FULLY COMPLETED AND WITH THE NECESSARY DOCUMENTATION AS DESCRIBED BELOW, BY OCTOBER 10, 2011.**

#### Property Clean-Up Program Soil Summary

The Order fully describes the program and is available on our website, [www.perrinedupont.com](http://www.perrinedupont.com). The Order requires us to obtain a Claim Form for each eligible property in the Class Area that has soil in one 1A.

In addition to the fully completed Claim Form, each soil owner in Zone 1A must sign the Claim Form, and we must have a copy of the most recent property tax ticket or receipt from Harrison County for the property, as well as a copy of each owner's photo identification.

We will test the soil of each property in 1A once the owner signs up for the program.

The program will begin with a sign-up program from July 11, 2011, to October 10, 2011. As each property is registered, we will test it for arsenic, lead, cadmium, and zinc (the "tested metals"). Thereafter, we will begin cleaning houses<sup>1</sup> and soil in Zone 1A, around Speller. Thereafter, we will begin cleaning the houses in Zone 1B and Zone 2, including areas such as Gypsy and Hepzibah. Thereafter, we will begin cleaning the houses in Zone 3, including areas such as Arlington, Lumberport, and Shinnston.

Completion of a Claim Form for each eligible property which has soil in Zone 1A which we confirm as part of the program will entitle the owner or owners to a **five thousand dollar (\$5,000) payment**. If there are multiple owners, the money will be shared equally among them. The money will be split into two payments, the first will consist of one thousand dollars (\$1,000) which will be paid at the time the Claim for the Zone 1A soil is verified, and the second payment will consist of

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<sup>1</sup>House, in this Order, includes permanent houses, commercial dwellings and mobile homes which are fit for human occupancy as defined by the Claims Administrator.



four thousand dollars (\$4,000) at the time the soil is tested for and remediated of hazardous contamination (if necessary). **You get to keep the five thousand dollars even if based upon our test your soil does not need to be cleaned.** You will receive the soil test results from us in writing.

If your soil is tested and deemed safe, you will receive a Certificate describing your property as safe. Alternatively, if the tested metal levels require soil clean-up, after your soil is cleaned and is safe, you will receive a Certificate of Completion describing your soil as safe.

**WE CANNOT GUARANTEE THAT YOUR SOIL WILL BE CLEANED DUE TO LIMITED FUNDING. HOWEVER, EACH ZONE 1A PROPERTY VERIFIED AS ELIGIBLE WILL HAVE ITS SOIL TESTED FOR CONTAMINATED SOIL AND THE OWNER(S) OF THAT PROPERTY WILL RECEIVE FIVE THOUSAND DOLLARS (\$5,000) TOTAL AS AN ANNOYANCE AND INCONVENIENCE PAYMENT, FOR THAT PROPERTY. NOTE THAT SOIL CLEAN-UP IN ZONE 1A HAS THE FIRST PRIORITY IN THE PROGRAM.**

We do not know if the soil clean-up in Zone 1A will become mandatory. We are first going to see how many people will voluntarily have their soil tested to see if it needs to be cleaned. Such voluntary participation will include the five thousand dollar (\$5,000) annoyance and inconvenience payment described above.

Additionally, the confidentiality rules for soil test results are as follows. First, if you decide to make your test results public, by checking the box on the Claim Form, your soil test results will be public. Second, if you choose to keep your soil test results confidential, and the results are negative, meaning your soil is safe and will not be cleaned, any adjoining land owner (i.e. next door neighbor) who signs a confidentiality agreement will be allowed to see the results, but to keep them confidential. If your soil test results are positive, meaning your soil must be cleaned, any adjoining land owner may request the results if they sign the confidentiality agreement, and if you agree, they will be provided to the adjoining land owner, but are to be kept confidential. If you do not agree, the issue will be decided by the Circuit Court.

The program does not provide any money for former owners of property in the Class Area. It also does not provide any money for testing for the so-called Grasselli properties. Finally, the program does not provide any reimbursement for owners of properties who claim to have renovated

their properties on their own. According to the Order, we must test each property to make sure that it is safe, even if the owner believes it to be safe and has already done some renovations or cleaning of the property.

There is no cash option instead of the program.

At the conclusion of the program, any leftover money will be distributed equally to the property owners who participate.

WE INVITE YOU TO THE JULY 11 TO 16, 2011 TOWN HALL MEETINGS DESCRIBED IN THE OTHER ENCLOSED LETTER. AT THE MEETINGS, WE WILL REVIEW THE PROGRAM IN DETAIL AND WILL BE AVAILABLE TO HELP YOU COMPLETE THE CLAIM FORM.

If you have any questions; please come by our office, call us, or send us a fax or an email.

Yours very truly,

Ed Gentle,  
Claims Administrator  
(304) 622-7443  
(205) 716-3000  
1-800-345-0837 (toll free)  
perrinedupont@gtandslaw.com

**HOUSE AND SOIL CLEAN-UP PROGRAM  
REGISTRATION FORM**

**PERRINE DUPONT SETTLEMENT CLAIMS OFFICE  
C/O SPELTER VOLUNTEER FIRE DEPARTMENT  
55 B. ST., P.O. BOX 257, SPELTER, W.Va. 26438  
1-800-345-0837 OR 1-304-622-7443 OR 1-205-716-3000  
FAX: 1-304-622-7447 OR 1-205-716-3010  
[www.perrinedupont.com](http://www.perrinedupont.com)  
[perrinedupont@gtandslaw.com](mailto:perrinedupont@gtandslaw.com)**

**THIS FORM ONLY APPLIES TO PROPERTY OWNERS OF ELIGIBLE PROPERTY WITHIN THE CLASS AREA<sup>1</sup>, WITH A COPY OF THE CLASS AREA MAP AND OF THE EXCLUDED GRASSELLI PROPERTIES BEING ATTACHED.**

**THE PROPERTY CLEAN-UP PROGRAM DOES NOT APPLY TO THE GRASSELLI PROPERTIES (THAT ARE DEFINED IN THE COURT'S FINAL 2011 PROPERTY REMEDIATION (CLEAN-UP) PROGRAM ORDER).**

**A. TO QUALIFY FOR THE HOUSE CLEAN-UP PROGRAM, YOU MUST OWN A CLASS AREA HOUSE OR MOBILE HOME THAT IS FIT FOR HUMAN OCCUPANCY OR A CLASS AREA COMMERCIAL STRUCTURE THAT IS FIT FOR HUMAN OCCUPANCY AND REGULARLY OCCUPIED BY PEOPLE.**

**B. TO QUALIFY FOR THE SOIL CLEAN-UP PROGRAM, YOU MUST OWN PROPERTY IN ZONE 1A OF THE CLASS AREA. We have included a separate letter to Zone 1A Class Members with their copy of this Claim Form.**

**IF YOU DO NOT OWN CLASS AREA PROPERTY, PLEASE DO NOT COMPLETE THIS FORM.**

**YOU MUST COMPLETE AND SUBMIT THIS FORM BY OCTOBER 10, 2011, OR YOU WILL RECEIVE NOTHING FROM THE PROPERTY CLEAN-UP SETTLEMENT. THIS FORM IS TO BE PREPARED PER PROPERTY AND NOT PER PERSON. IF YOU OWN MORE THAN ONE ELIGIBLE PROPERTY YOU WILL NEED TO FILL OUT A CLAIM FORM FOR EACH PROPERTY.**

<sup>1</sup> Court Orders pertaining to the clean-up program can be found on the settlement website [www.perrinedupont.com](http://www.perrinedupont.com). Please See Attached Class Area Map, and the attached map showing the excluded Grasselli properties.

Please note that having more than one lot or parcel that are next to each other and assessed for property taxes together does not require filling out more than one Claim Form, because they are one property under the program. But, separately assessed properties are separate properties under the program. For example, if you own one eligible property in Shinnston and one eligible property in Spelter you will need to fill out two Claim Forms. But, if you own three lots next to each other in Spelter you only need to complete one Claim Form.

You may submit this Claim Form by mail, fax, email, or hand delivery. For help with this Claim Form, you may call 1-800-345-0837 OR 1-304-622-7443 OR 1-205-716-3000, visit our office in the Fire Department in Spelter (we are open Monday through Friday from 9:00 a.m. to noon, and 1 p.m. to 5 p.m.), or send us a fax or an email.

### REQUIRED INFORMATION

- Below, please identify the Class Area property that you own. The following information is on the bill that the Harrison County Sheriff's Tax Office sends you every year for property taxes.<sup>2</sup>

District

Tax Map

Parcel(s)

Lot(s)

- You must attach to this Claim Form a current bill or receipt for property taxes to prove that you are the Owner of the property.

### OWNERS' NAMES

**WE MUST HAVE A COPY OF EACH OWNER'S PHOTO ID, SUCH AS A DRIVER'S LICENSE, ATTACHED TO THIS FORM**

**OWNER 1**

First Name

Middle Initial

Last Name

Date of Birth

Social Security Number<sup>3</sup>

<sup>2</sup> It is also available at the website <http://harrison.softwaresystems.com:8383/?sm=ee>.

<sup>3</sup> You must provide your social security number. If you do not provide a social security number, we cannot validate your claim, we cannot pay you anything, and we cannot clean-up your property.

**OWNER 2**

First Name \_\_\_\_\_ Middle Initial \_\_\_\_\_ Last Name \_\_\_\_\_  
 Date of Birth \_\_\_\_\_ Social Security Number \_\_\_\_\_

**OWNER 3**

First Name \_\_\_\_\_ Middle Initial \_\_\_\_\_ Last Name \_\_\_\_\_  
 Date of Birth \_\_\_\_\_ Social Security Number \_\_\_\_\_

**OWNER 4<sup>4</sup>**

First Name \_\_\_\_\_ Middle Initial \_\_\_\_\_ Last Name \_\_\_\_\_  
 Date of Birth \_\_\_\_\_ Social Security Number \_\_\_\_\_

**CONTACT ADDRESS AND PHONE NUMBER(S)**

This is the address where you will receive mail related to this Claim, and the phone number(s) we will use to call you about your claim. If you need to provide a second address, please attach a second sheet of paper.

Name or Names \_\_\_\_\_

Home Phone Number \_\_\_\_\_ Cell Phone Number \_\_\_\_\_

Street, Route, or P.O. Box \_\_\_\_\_

City \_\_\_\_\_ Zip Code \_\_\_\_\_

<sup>4</sup> If there are more than four owners of your property, please attach an additional sheet of paper to the form that lists the additional owner(s).

Please provide directions to your property. For example, if you live on Lamberts Run, please describe whether it's Upper or Lower Lamberts Run, and please provide directions to your property from the nearest main road.

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### **SAMPLING, TESTING, AND REMEDIATION LICENSE AND AGREEMENT**

1. The Owner(s) identified in this Claim Form hereby grants to the Perrine DuPont Settlement (the "Settlement") an irrevocable license to enter upon the real property identified in this Claim Form ("the Property") for the following purposes:

To carry out the house clean-up project in all zones of the Class Area, taking dust samples from the living space and attic and testing said samples for the presence of arsenic, cadmium, lead, and zinc (the "tested metals").

To carry out the soil clean-up project in Zone 1A only of the Class Area, taking soil samples from the Owner(s)'s property and testing said samples for the presence of the tested metals.

This license grants the Settlement, and its agents, servants, or employees, including general and sub-contractors, the right to enter the Property, remove the samples, and have the samples tested for the tested metals. House sample results (for all Class Area Zones) and soil test sample results (for Zone 1A only) shall be provided by the Settlement in writing to the Owner(s). Further, to the extent funds are available and the sample results show a tested metals level reasonably deemed hazardous to human health ("tested positive") by the Claims Administrator, so that remediation (clean-up) of the house (all zones) or soil (Zone 1A only) is necessary,

- the Owner(s) grant the Settlement the right to remove tested metals from the Property, remove and replace contaminated materials, conduct intensive cleaning, and conduct follow up testing to confirm that tested metals contamination has been removed from the Property. Only Properties tested positive will be cleaned up.
2. The Settlement agrees upon completion of the sampling and testing, and remediation (clean-up), if any is needed, to be performed pursuant to this agreement, that all Settlement materials and equipment shall be removed from the Property.
  3. The Owner(s) shall advise the Settlement of any hazardous or potentially hazardous conditions that the Owner(s) is aware of that might reasonably be expected to be affected by the clean-up work to be performed.
  4. Upon completion of sampling and testing, the Settlement will provide the results, in writing, to the Owner(s), as well as a letter describing whether the results indicate that a remediation (clean-up) of the Property is necessary.
  5. The Settlement expressly does not guarantee that the Property will be remediated (cleaned) because there may not be enough money to remediate (clean) all the Property in the Class Area. Pursuant to the Property Remediation (Clean-Up) Program Order, the Settlement will provide a sampling and testing service to determine if the Property needs to be remediated (cleaned). After all of the sampling and testing is completed and paid for, and after all annoyance and inconvenience payments (described below) are made, the Settlement will remediate (clean-up) the soil in Zone 1A. Thereafter, to the extent funds are available, the Settlement will remediate (clean-up) the houses in Zone 1. Thereafter, to the extent funds are available, the Settlement will remediate (clean-up) the houses in Zone 2. Thereafter, to the extent funds are available, the Settlement will remediate (clean-up) the houses in Zone 3.
  6. Clean-Up Annoyance and Inconvenience Payments.
    - A. For the House Clean-Up Program in the entire Class Area, as compensation for the annoyance and inconvenience caused by the registration, sampling, testing, and remediation (if necessary and funds are available) process, the Settlement agrees to pay one hundred dollars (\$100) to the Owner or Owners, jointly, at the time this Claim is verified as true and the Property identified herein is verified as eligible. Thereafter, at the time of sampling, testing and clean-up if the Property is tested positive, the Perrine DuPont Settlement agrees to pay four hundred dollars (\$400) to the Owner or Owners, jointly.
    - B. For the Soil Clean-Up Program in Zone 1A only, as compensation for the annoyance and inconvenience caused by the registration, sampling, testing,

and remediation (if necessary) process, the Settlement agrees to pay one thousand dollars (\$1,000) to the Owner or Owners, jointly, at the time this Claim is verified as true and the Property identified herein is verified as eligible. Thereafter, at the time of sampling, testing, and clean-up if the Property is tested positive, the Settlement agrees to pay four thousand dollars (\$4,000) to the Owner or Owners, jointly.

7. Optional Non-Zone 1A Soil Sampling. The property remediation program does not include the clean-up of soil outside Zone 1A. However, Owners of a Class Area Property outside Zone 1A can have it sampled, with the estimated sampling expense of \$\_\_\_\_\_ to be deducted from the above \$500 annoyance and inconvenience payment, by checking the below box (this is optional):

☐ SOIL TESTING OPTION FOR NON-ZONE 1A MEMBERS ONLY. BY CHECKING THIS BOX, I INSTRUCT THE CLAIMS ADMINISTRATOR TO SAMPLE THE PROPERTY SOIL FOR THE TESTED METALS AND TO PROVIDE ME THE CONFIDENTIAL RESULTS WITH MY \$500 INCONVENIENCE AND ANNOYANCE PAYMENT TO BE REDUCED TO \$\_\_\_\_\_, BUT WITH MY SOIL NOT TO BE CLEANED BY THE SETTLEMENT.

8. By signing this License and completing this Claim Form, the Owner(s) hereby certify, under penalty of prosecution for the felony of perjury, that the Owner(s) identified in this Claim Form are the only person(s) with any legal rights to the Property identified herein, and that no other person(s) have any legal rights to the Property identified herein, and that the house is fit for human occupancy (always applicable outside Zone 1A).
9. If the Owner(s) or their pets require a hotel or vet or pet sitter stay, or similar accommodation during the tested positive Property clean-up, then the Settlement shall pay such reasonable expenses. In order to concentrate the clean-up on needed areas, Owner(s) of tested positive Property will meet with a technician for the Settlement in order for the agent to collect necessary information.
10. For the Zone 1A soil clean-up (if applicable), a safe and practical approach will be used to excavate and replace the soil, using small equipment, such as mini-excavators; and skid steers to limit stress on foundations and buried utility lines. A safe working distance away from foundations and utility lines will be established. All buried utilities lines will be located before excavation commences. Soil removal, if needed, will only affect six inches of soil.



11. House test results will remain confidential. For Zone 1-A Class Members Only:

Do you want your soil test results:

- ☐ Public  
☐ Confidential (private)

[Check one box only]

If you check the above confidential (private) box, if the soil test results are negative, they will be available to a contiguous land owner who signs a Claims Administrator Confidentiality Agreement. If they are positive, then a contiguous land owner can request them by completing the Confidentiality Agreement, and the Claims Administrator will request permission from the tested Class Member to release them. If the Class Member refuses, then the Court will address the issue at that time.

12. This License and Agreement and Claim Form constitutes the whole of the obligations of the Owner(s) and the Settlement respecting the property clean-up program, and no other agreements, whether oral or written, shall be binding or valid, except as provided herein.

I (we) verify under penalty of perjury that I (we) am (are) the only and the true owners of the above Property.

Signature

Print Name

Date

Owner 1

Owner 2

Owner 3

Owner 4

[Do not complete the below. For Settlement Staff only.]

**VERIFICATION REVIEW:**

This form is complete, the Class Area Property Owner(s) has (have) been verified, the house (always applicable outside Zone 1A) is fit for human occupancy, and the Property is ready to sample.

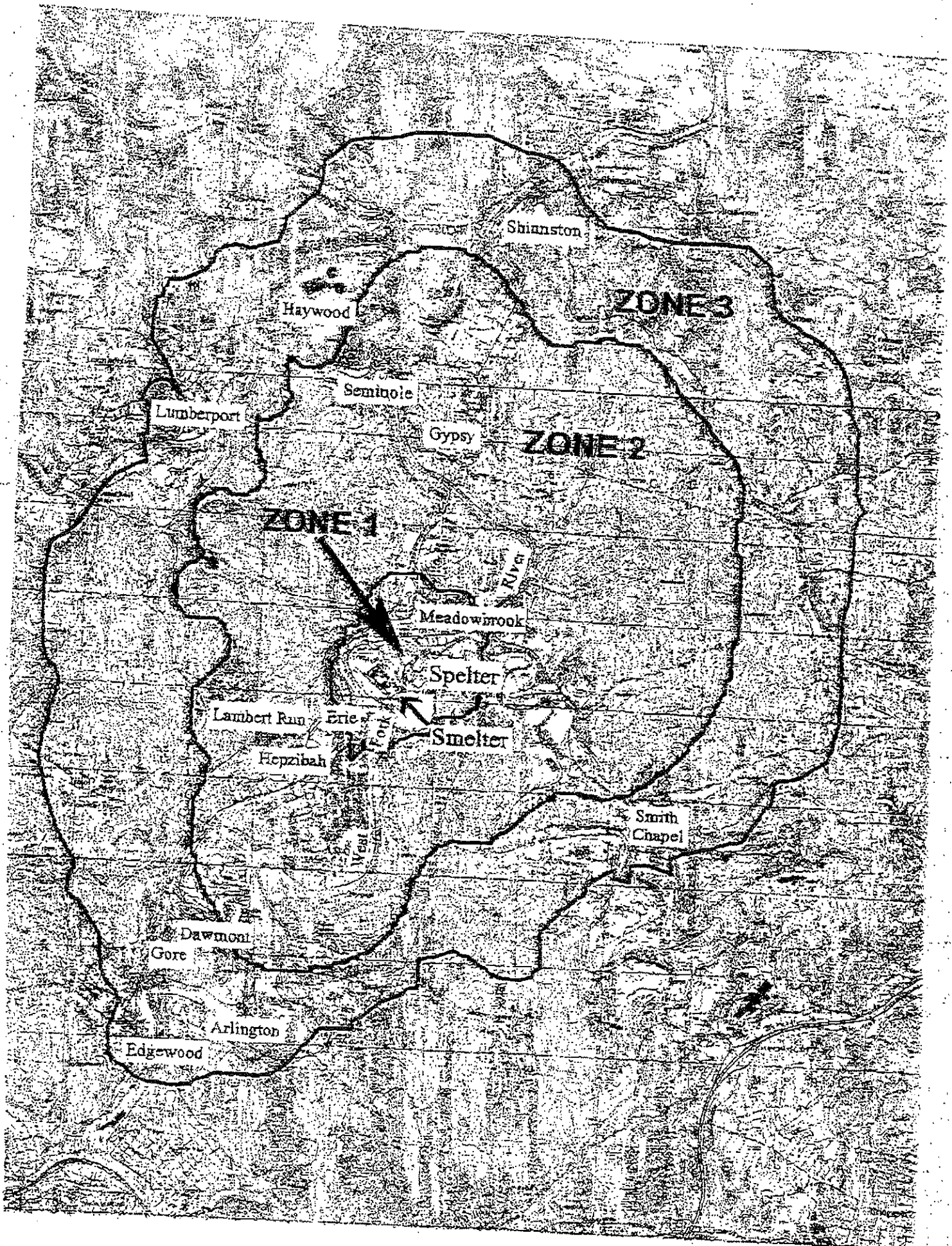
☐ ZONE 1A SOIL

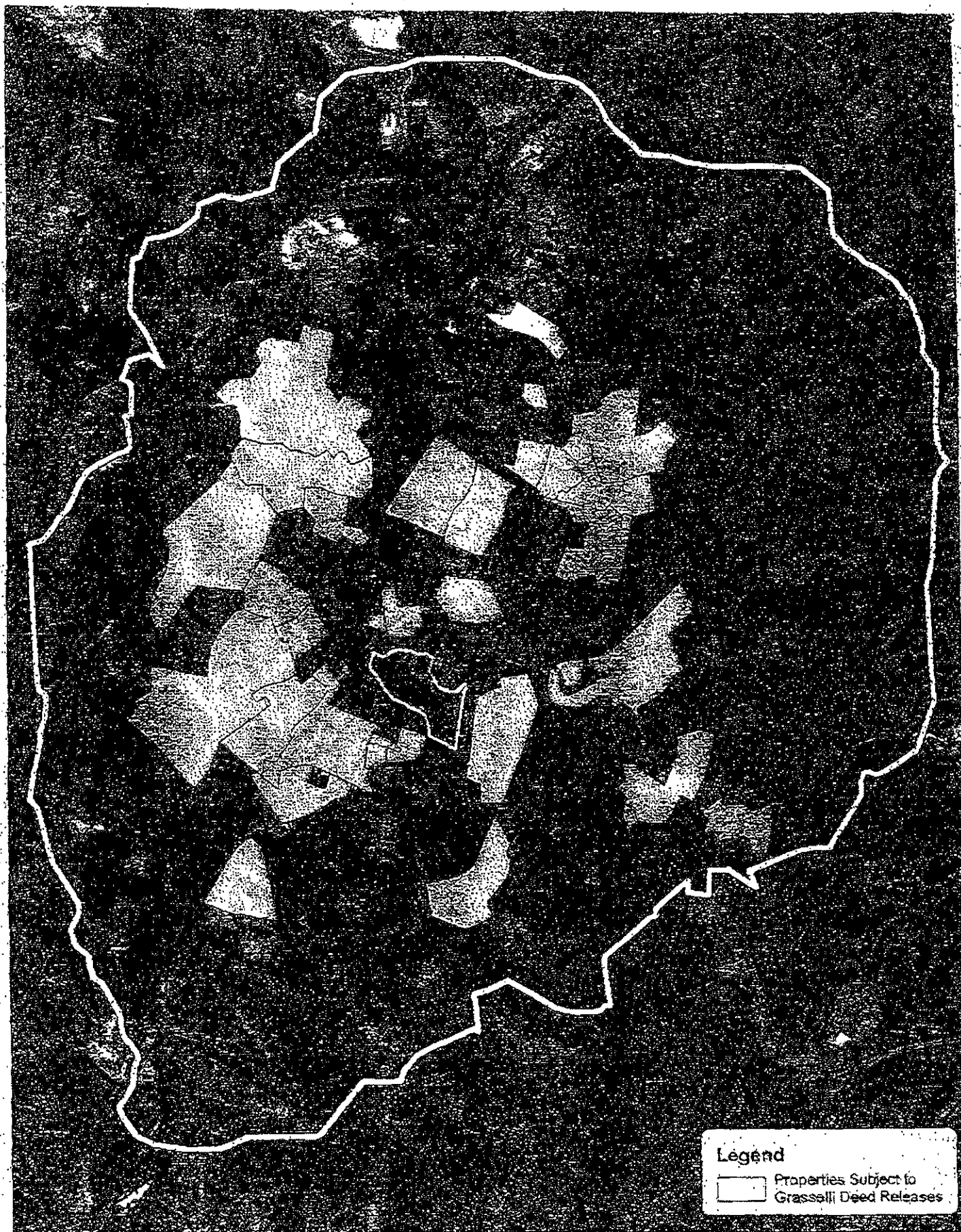
☐ HOUSE IN ZONE \_\_\_\_.

\_\_\_\_\_  
Staff Signature

\_\_\_\_\_  
Staff Name

[Class Area Map and Excluded Grasselli Property Map are Attached]





**Legend**

 Properties Subject to  
Grasselli Deed Releases