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May 16, 2011

Re: *Perrine et al. v. DuPont et al.* (04-C-296-2) - Settlement Administration Update; Property Clean-Up Questionnaire Results; and Fairness Hearing Dates for Proposed Property Clean-Up Program; File No. 4609-1 {DD}

Dear Claimant,

The purpose of this letter is to update you with respect to the Property Clean-Up portion of your Settlement, to share with you the results of the Property Clean-Up Claimant Questionnaire we mailed to you on April 9, 2011, and to invite you to the Fairness Hearings on the proposed Class Area Property Clean-Up Program to be held on June 2 and June 3, at the Harrison County Courthouse, where you may voice your opinion to the Court. The Class Area Map is attached for your convenience.

**I.
INVITATION TO JUNE FAIRNESS HEARINGS**

The Court will hold a two-day Property Clean-Up Program Fairness Hearing on June 2 and 3, 2011, during which any potential Property Class Members ("Claimants") may offer their opinions on the design and implementation of the Property Clean-Up Program. Here is the hearing schedule:

DATE	LOCATION	TIME	SUGGESTED CLAIMANTS
Thursday June 2, 2011	Harrison County Courthouse Judge Bedell's Courtroom (Division 2) Fourth Floor	Register to speak from 9:30 to 10:00am. <u>Hearing begins</u> at 10:00am.	Last Names beginning with letters A through L.
Friday June 3, 2011	Harrison County Courthouse Judge Bedell's Courtroom (Division 2) Fourth Floor	Register to speak from 8:30 to 9:00am. <u>Hearing</u> <u>begins at</u> 9:00am.	Last Names beginning with letters M through Z.

Anyone can attend either day of the Fairness Hearings. The suggestion that Claimants with a last name beginning with letters A-L attend on June 2, and last names beginning with letters M-Z attend on June 3, is **only a suggestion** so that there may be an even number of Claimants on the first and second days of the hearing, to allow everyone more time to speak with the Court. We hope to allow everyone wishing to do so to speak with the Court, although we may have to limit the amount of time allowed per speaker depending on how many people sign up to speak.

Attendance at the Fairness Hearing is optional and will not affect your eligibility for the Property Clean-Up Program.

The Fairness Hearing will allow you to tell the Court, i.e. Judge Bedell, who presides over the Settlement, how you believe the Property Clean-Up Program should be designed and what this program should do about heavy metal contamination in the Class Area.

We will offer a brief presentation on the status of the Property Clean-Up Program in the Settlement and our initial recommendations on the design of this Program at the beginning of the Fairness Hearing. However, your input is very important. The Court will only make its determination after hearing all interested Claimants at the Fairness Hearing.

If you are unable to attend the Fairness Hearings in person, you may write a letter to the Perrine DuPont Settlement Claims Office, P.O. Box 257, Spelter, WV 26438, and let us know your opinions while we are considering how to implement the Property Clean-Up Program. We will make your letter part of the Fairness Hearing record and consider all the input we receive, whether in writing or otherwise. We need to receive your letter by June 1, 2011 for it to be part of the record. You may submit your letter by mail, fax, email, or hand delivery.

After the Fairness Hearing, the Court will be asked to issue a Final Order on the design and implementation of the Property Clean-Up Program.

II.

SUMMARY OF THE RESULTS OF THE PROPERTY CLEAN-UP QUESTIONNAIRE

This is a summary of the results of the Property Clean-Up Questionnaire, which was mailed to Class area property owners on April 9, 2011. We are personally grateful to the people who took the time to respond to the Questionnaire. There are many different points of view on the Property Clean-Up portion of the Settlement, and we appreciate hearing from as many people as possible, so that we can understand what the majority believes is fair and aid the Court in making the best decision.

We have not made a final decision on how the Property Clean-Up Program ("Program") will be designed, so we are providing the following summary to you, so that you will know how your neighbors responded with their Questionnaires. Please review the following results, and if you have any feedback on this subject, please attend the Fairness Hearing or write us a letter with your opinion and plan for the Program.

We understand that some of you may not be happy with the Settlement, the lawsuit in general, or the proposed Property Clean-Up Program. However, we ask you to help us move forward with what we have to work with, and do the best we can to reduce the possible heavy metals health risk to everyone who lives in the Class Area. We cannot go back in time and change the lawsuit, and we cannot increase the amount of money that is available for the Property Clean-Up Program, which is \$34 million. Therefore, we request that

you review the information that is presented in this letter and attend the Fairness Hearings to let the Court know your thoughts about the Property Clean-Up Program.

We received 340 completed Property Clean-Up Questionnaires back by the deadline of May 1, 2011.

The answers to each Question are summarized below and categorized by topic.

1. Most Claimants Believe that Property Values Should Increase With Property Clean-Up.

Question 1 asked if a clean-up will improve Class Area property values: 73% answered, "Yes." There is clear consensus that a clean-up will improve property values, both by removing any contamination from individual houses and by improving the perception of the Class Area to realtors and potential house buyers. Additionally, we are planning to write reports of progress made by the Property Clean-Up program to area realtors and newspapers so that as clean-up is accomplished, the perception of the value of Class Area properties will likely increase. We may think of the Property Clean-Up as a \$34 million investment, for which we hope to obtain a much greater health and economic return.

2. There is Consensus that Large Scale Testing of the Class Area Is Unnecessary.

Question 2 asked if further large scale studies of the potential contamination in the Class Area should be conducted, to help design the Program, at an additional expense to the Settlement: 86% answered, "No." There is a clear consensus that additional large studies are not needed, and the expense is not worth the benefit of further large scale scientific results.

3. Most Claimants Agree that Settlement Funds Should Not Test Soil Outside of Zone 1A.

Question 3 asked if Settlement funds should be used to test soil in areas outside of Zone 1A, where Dr. Kirk Brown, the Plaintiffs' Clean-Up Expert, testified that soil clean-up is not needed, at the property owner's request: 75% answered, "No." There is clear consensus that properties that Dr. Brown described as safe, as far as any soil contamination is concerned, which is the majority of the Class Area, including Zones 1B, 2 and 3, should not be tested with Settlement funds. Likewise, we recommend that a soil clean-up should be limited to Zone 1A. Some of you who live outside Zone 1A have asked if your soil can be tested anyway. Although we are not advising the Court to use Settlement funds to test the soil outside Zone 1A, we will try to negotiate a discounted soil testing rate for non-Zone 1A Claimants to enjoy if they want to pay for their own soil test. You might want to use some or all of your \$500 participation payment described in part II 10 below to pay for a soil test, but that decision is up to you.

4. Most Believe that we Should Test Each Property Before Clean-Up, with Only Dirty Properties to be Cleaned.

Question 4 asked if we should test each property and only clean those that are hazardous to human health: 78% answered, "Yes." This small scale testing, at individual houses and lots, is much less expensive than cleaning houses which are not contaminated. There seems to be consensus among Claimants that only

contaminated houses and lots should be cleaned.

5. There is apparent Consensus that Grasselli And Opt-Out Properties Are Excluded From the Property Clean-Up.

Question 5 asked if Class Area properties that are covered by so-called “Grasselli” deeds, and excluded by Order of the West Virginia Supreme Court of Appeals, and properties owned by individuals who opted out of the lawsuit, should be excluded from the Program: 69% answered, “Yes,” and indicated their desire that these properties be excluded from the Program. Accordingly, we recommend that this part of the Class Area not be cleaned or remediated. By law, these properties are excluded from the Settlement anyway.

6. We Should Start the Clean-Up with Soil in Zone 1A and Work Outwards.

Question 6 asked if we should test and clean the soil in Zone 1A, which is mainly Spelter, before cleaning anywhere else: 82% answered, “Yes.” We believe this is a common sense approach to the Property Clean-Up, and it would allow us to focus our resources on the most potentially contaminated area closest to the location of the former zinc smelting facility in the Class Area before anywhere else.

Question 8 asked if we should use the “inside out” approach and start our clean-up in Zone 1A and work our way outwards to less contaminated areas. Again, 88% answered, “Yes.” There is clear consensus that the most potentially contaminated part of the Class Area should be cleaned first.

7. Most Believe We Should Prioritize the Clean-Up of Houses Over Common Areas.

Question 7 asked if we should prioritize the clean-up of Class Members’ houses and soil before cleaning any common areas, such as parks: 60% answered, “Yes.” However, a significant percent, 40% of Claimants desire that common areas be cleaned just like houses. We will carefully consider any more feedback we receive on this issue. For example, although the ball field and children’s play area in Spelter may have new soil and be safe, we could test those areas to make sure that there is no dangerous contamination in those common areas. On the other hand, we may not have enough Settlement funds to clean all Class Area houses that are contaminated, leaving no money for the common areas.

8. Should Zone 1A Soil Clean Up Be Mandatory?

This is the one of the most difficult questions. Question 9 asked if soil clean up in Zone 1A should be mandatory: 55% answered, “Yes.” This is a tough issue, as we understand that many people firmly believe in their own property rights, and, if they do not want to have any contaminated soil cleaned, they have a good argument that they should be left alone. However, there is also a concern for neighbors, who might desire to have all the soil cleaned or replaced so that their clean yards are not re-contaminated. We will wait and listen to the opinions of everyone who wants to have a say on this issue, and Judge Bedell will make the final decision.

9. **Should Soil and House Test Results be Made Public Instead of Remaining Confidential and Provided to the Claimants Tested?**

Question 10 asked if test results of soils in Zone 1A should be made public instead of remaining confidential: 64% answered, "Yes." Soil has the ability to move from one part of the Class Area to another, by dust blowing in the wind, or erosion, so a majority of respondents believe that contaminated soil levels, or safe levels, should be made public.

Question 13 asked if individuals who have tests for hazardous heavy metals performed on their houses should be provided with confidential test results: 93% answered, "Yes." There is clear consensus on this issue, and it makes sense to provide each house owner with confidential test results. **Unlike soil contamination, any contamination in the house is limited by the actual structure and will not generally migrate beyond the actual structure to anywhere else.**

Question 18, however, asked if access to a Class Member's property should be protected by confidentiality and/or privacy agreements: 59% answered, "Yes." While a majority of respondents favor confidentiality, it is clear that many people also want all test results to be made public.

Question 21 asked if technicians should collect information from property owners before conducting any clean-up to concentrate clean-up on needed areas: 84% answered, "Yes."

At the Fairness Hearing, we look forward to discussing these public health and individual privacy issues further in an attempt to resolve them.

10. **Should We Have Property Clean-Up Sign-Up Payments?**

Question 11 asked if we should pay each property (i.e. soil) owner in Zone 1A one thousand dollars (\$1,000) with the payment conditioned upon the soil being tested, and if the soil is hazardous to human health, cleaned: 45% answered, "Yes."

Question 12 asked if we should pay each house owner in Zone 1, Zone 2, and Zone 3, five hundred dollars (\$500) with the payment conditioned upon the house being tested, and if hazardous to human health, cleaned: 57% answered, "Yes."

Your Claims Administrator believes the disparity between the response to Questions 11 and 12 is based upon the fact that a majority of respondents to the Questionnaire will benefit under Question 12, because each house owner in the entire Class Area would receive a payment, while a small minority will benefit under Question 11, because only Zone 1A would receive a payment.

As you consider this, you may ask yourself about how inconvenient it will be for the people who have their yards cleaned, including having old soil removed down to six inches deep and having new soil placed

on top and starting from scratch with grass seed. In addition, we believe that those in Zone 1A agreeing to a soil clean-up will benefit the entire Class Area.

11. A Large Majority Believe That Owners of Clean Properties Should Receive Certificates of Clean-Up Completion.

Question 14 asked if, after a contaminated property has been cleaned, the owner should be provided with a Certificate of Completion indicating that the property is clean: 84% answered, "Yes." This is a common sense approach which will provide each owner with a valuable document to show to a potential purchaser or lending institution once the property is clean and free of any contamination.

12. Should the Property Owner be Given Money to Conduct His Own Clean-up?

Question 15 asked if Class Members should be paid cash to conduct clean-up on their own, even if the clean-up may be hazardous to human health and best performed by professionals: 69% answered, "No." While the final decision is up to the Judge, a clear majority of Claimants do not believe that individual property owners should do their own clean-up.

13. Should Property Owners Who Claim to Have Cleaned Their Houses Receive Money?

Question 16 asked if Class Members who claim to have renovated their houses on their own should be paid cash for their previous efforts: 69% answered, "No." Some Class Area property owners have informed the Claims Administrator that they have already cleaned their houses, and in some cases, soil, at their own expense. We believe the safest approach is to test the houses anyway, with participating Class Members receiving the cash payment described in Part II 10 above. If the property is contaminated, the Claimant could still participate in the Property Clean-Up.

14. Should the Soil Clean-Up Money be Equal for Each Property or Should More Money be Spent to Clean the Most Contaminated Properties?

Question 17 asked if it is fair that more heavily contaminated soils in Zone 1A may require more clean-up: 69% answered, "Yes." The "No" answer stated that equal money should be used for each property, regardless of the level of contamination. We believe this result is fair because the additional money required to clean the more contaminated soils in Zone 1A may help the whole Class Area.

15. Should Settlement Funds Pay for Hotel Stays if Needed for the Clean-Up?

Question 19 asked if Settlement funds should pay a Class Member's hotel stay if clean-up of their house requires that they leave for a short time: 74% answered, "Yes."

16. Should Clean-Up Funds be Divided into Per House Allowances, With Zone 1 Receiving More than Zone 2, and Zone 2 Receiving More than Zone 3?

Question 20 asked if there should be a per house clean-up allowance, with the houses in Zone 1 receiving a larger allowance than the houses in Zone 2, and the houses in Zone 2 receiving a larger allowance than the house in Zone 3: 68% answered, "Yes." We will not be able to know how large the allowance will be until we gauge the level of participation in the Program by having a three month sign-up period, if the Court chooses to rule in that manner.

17. How to Safely Excavate Soil in Zone 1A.

Question 22 described a safe and practical approach to excavating soil in Zone 1A, and asked if the respondent agreed with the approach. The approach would use 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 would be established. All buried utility lines would be located before excavation commenced. Soil removal, if needed, would only affect the top six inches of soil: 92% answered, "Yes," that this is a reasonable approach to excavating soil.

18. Most Believe We Should Conduct a Property Clean-Up Sign-Up for the Program Like We Did with Medical Monitoring Registration.

Question 23 asked if you agree to a sign-up plan for the Property Clean-Up Program, with the sign up to last for ninety (90) days, possibly from July 11th to October 10th, including a week of Town Hall meetings from July 11 to July 16, 2011, with only those who signed up during the ninety (90) days ever being eligible to participate in the Property Clean-Up Program: 89% answered, "Yes," to this approach.

19. In the Unlikely Event that there is Clean-Up Money Left Over, How Should We Distribute the Left-Over Money?

Question 24 asked if, in the unlikely event that there is money left over once all clean-up is complete, should it be distributed equally among the people who participated in the clean-up: 85% answered, "Yes." Because the money assigned to the Clean-Up was paid into the Settlement to have a Class Area Property Clean-Up Program, we believe that other than the Clean-Up Sign-Up Payments in Part II, Question 10 above, this is the only cash payment that should be allowed in the Property Clean-Up Program.

Some Claimants have asked for cash instead of a Property Clean-Up. We think the best answer to this request is to suggest that those Claimants sign-up for the Property Clean-Up Program and, if there is cash left, they will receive a cash payment.

III.
SUMMARY

In summary, a majority of Claimants answering the Questionnaire appear to desire to follow a Property Clean-Up Program that begins with the soil in Zone 1A and then moves to houses in the center of the Class Area and then moving outward. Further, a majority of Claimants appear to believe that having sign-up payments is a good idea to encourage participation in the Property Clean-Up and to provide compensation for annoyance and inconvenience caused by the Clean-Up.

In addition, the clear consensus is that a Property Clean-Up will improve Class Area property values.

It is also clear that removing any hazardous metal contamination from the Class Area will reduce health risks, which may be currently higher than in other areas.

Thanks for the opportunity to help administer this Settlement. We look forward to seeing you at the June Fairness Hearings.

Yours very truly,



Ed Gentle
Claims Administrator



Michael Jacks
Settlement Executive Director

Attachment (Class Area Map)

