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IN THE CIRCUIT COURT OF WOOD COUNTY, WEST VIRGINIA

JACK W. LEACH, ET AL.,

Plaintiffs,

v.

CIVIL ACTION NO.: 01-C-608
(Judge George W. Hill)

E.I. DU PONT DE NEMOURS AND COMPANY,

Defendant.

ORDER APPROVING FINAL SETTLEMENT AND NOTICE PLAN AND FOR ENTRY OF FINAL JUDGMENT

On February 28, 2005, counsel for both parties (the "Parties") appeared before this Court to seek approval of their Joint Motion for Order Approving Final Settlement and Notice Plan and for Entry of Final Judgment. Attached as Exhibit 1 to the Motion, the Parties presented for this Court's consideration a complete copy of the final settlement agreement between the Parties (hereinafter "Settlement"). The Parties also presented documentation of execution of Notice as approved by this Court in its November 24, 2004 Order. In addition, the Court heard testimony offered by the Parties in support of the allocation of the $70 million payment under the Settlement, the Notice program, Requests for Exclusion and Requests for Water Analysis and related matters. After consideration of the Motion, with all exhibits, the entire record herein, including the Settlement, and after hearing counsel and testimony in open court, this Court hereby makes the following Findings of Fact, Conclusions of Law and Order:

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3-1-05 sent to all counsel listed.

I. Settlement

This Court has presided over this matter since it was transferred to this Court in December of 2001. In an Order dated April 10, 2002, this Court certified this matter as a class action pursuant to Rule 23(b)(1)(A) and 23(b)(2) of the West Virginia Rules of Civil Procedure and appointed two West Virginia law firms and one Ohio law firm as Class Counsel. Members of the Class Counsel team have extensive litigation and trial experience, including class action personal injury cases, as well as matters involving environmental contamination.

This matter is a complex case that includes claims for medical monitoring, personal injury, property damage, injunctive relief, attorneys' fees and punitive damages and involved sophisticated scientific and technical issues. The Court has presided over hearings addressing many of these scientific issues and is familiar with Plaintiffs' allegations and DuPont's defenses. Trial in this matter was scheduled to begin on October 12, 2004. Both parties anticipated a lengthy trial with several expert and fact witnesses to address these complex issues.

A. Plaintiffs Proposed Use of $70 Million

As part of the Settlement, DuPont must pay $70 million to the Class ("Settlement Amount"), of which $20 million must be used for community health and education projects. The Court has reviewed the proposal by Plaintiffs for use of the Settlement Amount, which the Court understands to be as follows:

1. The $70 million Settlement Amount will be deposited into one or more interest bearing account(s) approved by the Court, hereafter referred to as the "Settlement Fund." The Settlement Fund will be held and maintained by the Health Project Administrator as a Qualified

Settlement Fund pursuant to the provisions of Section 468B of the Internal Revenue Code. Robert G. Astorg, CPA, Managing Director, American Express Tax and Business Services, Inc. will serve as Health Project Administrator.

2. The Settlement Fund will be disbursed through the Health Project Administrator to pay for a Class health and education project ("Health Project"). The Health Project will include each Class Member, regardless of age or place of residence, who submits a valid proof of claim form (hereinafter "Proof of Claim form") to the Health Project Administrator establishing that he or she is a Class Member, as defined above (hereinafter referred to as "Health Project Participant"). The Proof of Claim form will include a confidential health questionnaire designed to obtain relevant health data from the Class that will be useful and beneficial to the Class. With the consent of the Health Project Participant, or his or her parent or guardian, the health data obtained on the Proof of Claim form, along with the results of the Blood Tests described in subparagraphs (3) and (4) below, will be submitted by the Health Project Administrator to the Science Panel for its consideration in making its determinations under the Settlement, subject to appropriate confidentiality protections.

3. The Health Project will pay each Health Project Participant the sum of $150.00 from the Settlement Fund upon submission of his or her Proof of Claim form. Additionally, each Health Project Participant will be offered the opportunity to receive two separate blood tests to be paid for by the Health Project from the Settlement Fund. One blood test will be for the purpose of determining the levels of PFOA, PFOS, PFHS, and all available perfluoroalkanes from C5 to C12 in the Health Project Participant's blood ("Fluorocarbon Blood Test"). The second blood test will be for the purpose of determining whether or not the Health Project Participant's blood contains any

indication(s) of cancer or other disease(s) ("Diagnostic Blood Test"). Each Health Project Participant who elects to obtain the Fluorocarbon Blood Test and Diagnostic Blood Test (hereinafter referred to collectively as "Blood Tests") will be paid the additional sum of $250.00 from the Settlement Fund immediately upon providing the required blood specimens.

4. The Diagnostic Blood Test will include the following, as appropriate for gender and age:

a. Chemistry panel (35 Chemistries)

b. C - Reactive Protein

c. Complete Blood Count (including differential and blood count)

d. Prostate Specific Antigen (PSA)

e. Carcinogenic Embryonic Antigen (CEA)

f. CA 125

g. Alpha fetoprotein

h. Thyroid hormone panel with T4, T3 and TSH

i. Insulin level

j. Growth hormone as reflected by Insulin like growth factor - 1 (ILGF1)

k. Testosterone with free and total testosterone

l. Estradiol

m. Prolactin

n. Immunoglobulins (IgE, IgA, IgG and IgM)

o. ANA

5. The costs of obtaining the required blood specimens, completing the specified tests, and reporting the results of the Fluorocarbon Blood Test to each Health Project Participant is reasonably estimated to be $210.00 per person. The cost of obtaining the required blood specimens, completing the specified tests, and reporting the results of the Diagnostic Blood Test to each Health Project Participant is reasonably estimated to be $336.00 per person. Therefore, the combined monetary value provided to each Health Project Participant from the Blood Tests is reasonably estimated to be $546.00 per person. In addition to the specific value, each Health Project Participant will receive the value of learning the results of the Blood Tests, and the Class will receive the benefit of generation of additional information for consideration by the Science Panel.

6. In addition to the monetary value of the Blood Tests paid from the Settlement Fund by the Health Project, each Health Project Participant who elects to obtain the Blood Tests will also receive combined cash payments from the Settlement Fund totaling $400.00, as provided in subparagraph (3) above. for a combined aggregate value of $946.00 per person.

7. It is anticipated that, due to the potential size of the Class, which could include as many as 80,000 persons, the Settlement Fund will be completely spent by the disbursements paid directly to or for the benefit of each Health Project Participant who elects to obtain the Blood Tests. In the event there are more requests for Blood Tests by Health Project Participants than the Settlement Fund can pay, then the Health Project will be terminated as soon as there is no money left in the Settlement Fund. In the event that any money remains in the Settlement Fund after all Health Project Participants receive their Blood Tests and cash payments, then all such remaining money will be distributed, per capita, by the Health Project Administrator to each Health Project Participant, unless the amount of the distribution would be less than $10.00 per capita in which event all

remaining money in the Settlement Fund will be donated to the Good Samaritan Clinic in Parkersburg, West Virginia.[1] The Plaintiffs request that the Court find that the Health Project, as described above, is appropriate and reasonable, and approve the appointment of Robert G. Astorg as the Health Project Administrator.

The Court **FINDS** that this use of the Settlement Amount through the Health Project reasonably and adequately complies with the terms of the Settlement. The Court also **FINDS** this use of the Settlement Amount to be beneficial to the Class, as discussed in more detail below. The Court further **FINDS** that the appointment of Robert G. Astorg as Health Project Administrator is appropriate and reasonable.

B. Approval of Settlement

The Court has reviewed the record and the representations by Class Counsel as to the volume of analysis invested into this case at the time the Settlement was executed. In addition, the Court has considered the conclusions of Class Counsel with respect to the balancing of the risks of recovery, delay and costs that continued prosecution of the Lawsuit would entail, as well as the arguments by Class Counsel in favor of support of the Settlement.

The Court has also fully considered the benefits of the Settlement to the Class. The Court finds that this Settlement will provide necessary information about C-8 to address questions about the exposure of Class Members to C-8 and any effects that exposure may have. The Court also finds that the Class will benefit from C-8 water treatment, completion of a community health study, and an assessment by an independent Science Panel as to whether there is a Probable Link, as defined in the Settlement, between C-8 and human disease. The Class will also receive the

[1] Initially, this amount was $25.00 but, after negotiations with counsel for objectors, the Plaintiffs agreed to an amount of $10.00

immediate benefits of blood testing and compensation. The Court understands that many of the blood tests that will be available to Class Members through the Settlement are unique and expensive procedures that otherwise would not likely have been available. In addition, the Class will not need to wait for the uncertain outcome of a lengthy trial nor face the possibility of no recovery. In addition, the Court finds that the terms of the Settlement adequately addresses any claims by Class Members for personal injury or any entitlement by Class Members to medical monitoring in the event that the Science Panel finds a Probable Link, as defined in the Settlement, between C-8 and human disease.

After consideration of the foregoing, this Court **FINDS** that the Settlement, including the Health Project, is fair, reasonable, adequate, and in the best interests of the Class. The Court acknowledges that DuPont specifically denies any liability or wrongdoing relating to the matters in the lawsuit. The Court makes no new findings with respect to Plaintiffs' allegations in this lawsuit through this Order. The Court's conclusion with respect to approval of Settlement should not be construed as a comment on these allegations or a finding of liability on any matter.

II. Notice

In their Joint Motion for Preliminary Approval of Settlement, the Parties submitted to the Court a Notice program designed by the Garden City Group, Inc., as well as an affidavit from Wayne L. Pines in support of the Notice program. The Parties also requested that the Court appoint the Garden City Group, Inc. as Administrator to carry out duties set forth in the Settlement, including execution of the Notice program. In an Order dated November 24, 2004, the Court found that the Notice program satisfied Rule 23(C)(2) and (e) of the West Virginia

Rules of Civil Procedure and due process and constituted the best form of notice practicable in this case. In addition, the Court approved the form and content of Notice to be mailed and published and ordered that the Notice program be executed.

The Court finds that the Administrator caused to be mailed approximately 35,386 Court-approved Notices to potential class members, and of that set, only 2,660 were returned with no forwarding address as of February 22, 2005. The Court finds that counsel for the Parties provided materials to the Administrator to assist in the location of potential Class Members, including maps and statistics for the Public Water Districts, all available information to identify current and former Washington Works employees, and a list of all persons who signed retention agreements with Class Counsel or contacted Class Counsel to receive Notice. Also, the Administrator purchased publicly-available lists and directories for the geographic areas surrounding the Public Water Districts.

In addition, the Court finds that the Administrator caused to be published the Court-Appointed Notices in the following publications, including two publications with national circulation, on the dates indicated:

a. The Parkersburg News (December 9, 14, and 19, 2004);

b. The Parkersburg Sentinel (December 9 and 14, 2004);

c. The Marietta Times (December 9 and 14, 2004);

d. Point Pleasant Register (December 9 and 14, 2004);

e. Pomeroy Sentinel (December 9 and 14, 2004);

f. Gallipolis Daily Tribune (December 10 and 14, 2004);

g. Gallipolis Sunday Times-Sentinel (December 19, 2004);

h. Athens Messenger (December 9, 14, and 19, 2004);

i. The Charleston Gazette (December 9 and 14, 2004);

j. Charleston Daily Mail (December 9 and 14, 2004);

k. Sunday Gazette Mail (December 19, 2004);

l. The Columbus Dispatch (December 9, 14 and 19, 2004);

m. Parade Magazine (January 2, 2005); and

n. USA Weekend (January 2, 2005).

The Court has considered the distribution of these publications and the likelihood that this published Notice would reach Class Members. The Court also finds that the Administrator caused to be set up a toll-free telephone information line and a website. The Court acknowledges the number of contacts to the settlement website and call center. The Court also recognizes the hundreds of requests received directly by the Administrator for Notice, including many from outside the states of Ohio and West Virginia.

After considering the record, the Court **FINDS** that the Administrator carried out its duties under the Settlement and this Court's November 24th Order to execute the Notice program. The Court further **FINDS** that the Notice program in this matter satisfied Rule 23(c)(2) and (e) of the West Virginia Rules of Civil Procedure and due process and constituted the best notice practicable.

III. Requests for Exclusion

The Administrator presented the Court with copies of all written Requests for Exclusion received through February 22, 2005. The Court **FINDS** that of these 66 requests, 19 people self-

identified as DuPont employees. The Court notes that the number of Requests for Exclusion is not sufficient to trigger the provisions in Section 2.1.4 of the Settlement. The Court also notes that neither Party objects to the Court granting these Requests for Exclusion.

IV. Water Analysis

Pursuant to Section 2.1.1 of the Settlement, individuals with Eligible Private Sources within the geographic boundaries of the Public Water Districts set forth in Schedule 2.1.1(A) of the Settlement or the wells set forth in Schedule 2.1.1(B) and used as their primary source of drinking water could request that their well be analyzed by DuPont to determine if they are members of the class. Testing of Eligible Water Sources has been ongoing and will continue until all eligible requests received through February 25, 2005 are completed.

Based on the foregoing, the Court **FINDS** that DuPont is not obligated to process requests for water testing received after February 25, 2005 under Section 2.1.1 of the Settlement, and that DuPont has satisfied its obligations for water analysis under Section 2.1.1 of the Settlement when all requests for testing of wells eligible under that Section and received before February 25, 2005, are completed.

V. Disposition of Claims

As stated above, this matter involves claims of medical monitoring, personal injury, property damage, injunctive relief, attorneys' fees and punitive damages. The Court finds that these claims can and should be segregated for disposition in the manner set forth in Sections 3.2 and 3.3 of the Settlement, which set forth and define the Initial Released Claims and Conditionally Released Claims. The claims in this case are separable because there is more than

one possible recovery for each. In addition, the Court finds that delay of final resolution of the Initial Released Claims pending determination of the Science Panel as to whether a Probable Link exists between C-8 and Human Disease would unnecessarily suspend the benefits to the Class of the Settlement. There are no remaining issues to be litigated in this matter, as the Settlement sets forth adequately the agreed upon mechanism to determine whether the Conditionally Released Claims will be dismissed by this Court or whether some Class Members may pursue individual claims against DuPont. Moreover, the Court's conclusions as to the adequacy of representation of Class Counsel, the adequacy of Notice and the fairness of the Settlement do not depend upon the outcome of the Science Panel.

Accordingly, pursuant to Rule 54(b) of the West Virginia Rules of Civil Procedure, the Court expressly certifies and determines that there is no just reason for delay and expressly directs entry of judgment as aforesaid.

Based upon the foregoing, it is, therefore, hereby accordingly **ORDERED, ADJUDGED AND DECREED** that:

A. the Class is certified as those individuals: (1) who for the period of at least one year up to and including December 3, 2004, consumed drinking water containing .05 ppb or greater of C-8 attributable to releases from Washington Works from (a) any of six specified Public Water Districts (each as more particularly described in Schedule 2.1.1(A) of the Settlement), (b) any Eligible Private Source within the geographic boundaries of the Public Water Districts that is the individual's sole source of drinking water at that location or (c) any Eligible Private Source more particularly described in Schedule 2.1.1(B) attached to the Settlement that was the individual's sole source of drinking water at that location; and (2) who

(a) did not exercise their right to Opt Out of the Certified Class or (b) have not elected to waive their rights as a Class Member through execution of a Notice of Clarification Regarding Class Member Status filed with the Court in the Lawsuit;

B. the Settlement, including the Health Project, is approved by this Court as fair, reasonable, adequate and in the best interests of the Class;

C. Robert G. Astorg is approved and appointed by this Court as Health Project Administrator;

D. the Notice program as carried out satisfies due process and the requirements of Rule 23(c)(2) and (e) of the West Virginia Rules of Civil Procedure;

E. the Requests for Exclusion described in Section III of this Order are granted and these individuals are excluded from the Class;

F. all Initially Released Claims set forth in Section 3.2 of the Settlement are **DISMISSED** with prejudice;

F. all Conditionally Released Claims set forth in Section 3.3 of the Settlement will be **DISMISSED** if, and only if, all conditions for release of such claims set forth in Section 3.3 of the Settlement are met; and

G. this Judgment and Order in this matter is a final determination by this Court with respect to all matters set forth in this Order, and this matter is ended subject to retention of jurisdiction by this Court over this matter in accordance with Section 14.2 of the Settlement.

IT IS SO ORDERED this 28th day of Feb., 2005.

The Clerk is directed to provide certified copies of this Order to all counsel of record.

Honorable George W. Hill
Circuit Court of Wood County, West Virginia

PRESENTED BY:

NAMED PLAINTIFFS

By HILL, PETERSON, CARPER, BEE & DEITZLER, PLLC

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AND

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

I, CAROLE JONES, Clerk of the Circuit Court of Wood County, West Virginia, hereby certify that the foregoing is a true and complete copy of an order entered in said Court, on the 28th day of Feb 2005, as fully as the same appears of record.

Given under my hand and seal of said Circuit Court, this the 1st day of March, 2005

Carole Jones
Clerk of the Circuit Court of
Wood County, West Virginia

By: D S Poulter, Deputy

01-C-608

E. I. DU PONT DE NEMOURS AND COMPANY

By SPILMAN, THOMAS & BATTLE, PLLC

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CLASS ACTION SETTLEMENT AGREEMENT

This Class Action Settlement Agreement (the "Agreement") is entered into as of the 17th day of November, 2004, by and among E. I. du Pont de Nemours and Company, a Delaware corporation (the "Defendant"), on the one hand, and Jack W. Leach, William Parish, Joseph K. Kiger, Darlene G. Kiger, Judy See, Rick See, Jack L. Cottrell, Virginia L. Cottrell, Carrie K. Allman, Roger D. Allman, Sandy Cowan, and Aaron B. McConnell (the "Named Plaintiffs") on behalf of themselves and the Class Members (as defined in Section 1.11 below) on the other hand. This Agreement memorializes the settlement among the Named Plaintiffs on behalf of themselves and the Class Members (as hereinafter defined) and the Defendant (collectively the "Settling Parties").

RECITALS

A. There is currently pending in the Circuit Court of Wood County, West Virginia (the "Court"), an action captioned Jack W. Leach, et al. v. E. I. du Pont de Nemours and Company and Lubeck Public Service District, Case No. 01-C-608 (the "Lawsuit"). The Lawsuit has been certified as a class action pursuant to an Order on Class Certification and Related Motions entered by the Court on April 10, 2002. The Court clarified the definition of the Class in an Order entered on June 26, 2003.

B. The Settling Parties wish to promptly and fully resolve and settle the differences among them with respect to the Lawsuit, on the terms and conditions set forth in this Agreement, which Class Counsel believe are fair, reasonable, adequate, and beneficial to and in the best interests of the Class Members.

C. The Amended Complaint filed in this Lawsuit included claims against the Lubeck Public Service District. Those claims have since been resolved in a settlement approved by the Court in an order entered on April 22, 2003. Lubeck Public Service District is not a party to this Agreement and is not in any way bound by the terms of the Settlement (as hereinafter defined).

NOW THEREFORE, in consideration of the mutual promises contained in this Agreement, the parties hereto hereby agree as follows:

1. **DEFINITIONS**. Capitalized terms and phrases not otherwise defined in this Agreement shall have the meanings set forth below.

1.1 "Administrator" shall mean the neutral administrator described in Article 10 hereof.

1.2 "Administrator Contract" shall have the meaning provided in Section 10.2 hereof.

1.3 "Agreement" shall have the meaning provided in the Preamble of this Agreement.

1.4 "Association" shall mean that the Science Panel, after taking into consideration the available scientific evidence and whatever scientifically relevant factors the Science Panel deems appropriate, determines that a particular observed correlation between C-8 and a particular Human Disease merits further Hypothesis Testing Studies.

1.5 "Association Finding" shall have the meaning provided in Section 12.2.3(a)(1) hereof.

1.6 "Bower" shall mean Bower v. Westinghouse, 206 W.Va. 133 (1999).

1.7 "Business Day" shall mean any day other than a Saturday, a Sunday, or a day on which banking institutions or trust companies in New York, New York or Charleston, West Virginia are authorized or obligated by law, regulation, or executive order to remain closed.

1.8 "C-8" shall mean ammonium perfluorooctanoate which is also known as "APFO," and "FC-143", as well as its acidic anion, perfluorooctanoic acid, which is also known as "PFOA".

1.9 "Certified Class" shall have the meaning provided in Section 2.1.1 hereof.

1.10 "Class Counsel" shall mean those law firms listed on the signature pages of this Agreement as "Counsel for Plaintiffs."

1.11 "Class Members" shall mean those individuals who are members of the Certified Class who have not exercised the right to "Opt Out" in accordance with Section 2.1.4 and who have not elected to waive any rights they may have to any relief awarded in the Lawsuit and to representation by Class Counsel, as evidenced by a Notice of Clarification Regarding Class Member Status on file with the Court.

1.12 "Community Study" shall have the meaning provided in Section 12.2.2 hereof.

1.13 "Conditionally Released Claim" shall have the meaning provided in Section 3.3.

1.14 "Confirmed Private Sources" shall have the meaning provided in Section 2.1.1 hereof.

1.15 "Court" shall have the meaning provided in Recital A.

1.16 "Covered Private Sources" shall have the meaning provided in Section 11.4 hereof.

1.17 "Defendant" shall mean E. I. du Pont de Nemours and Company.

1.18 "Effective Date of Settlement" shall mean the date on which all conditions to settlement set forth in Article 2 of this Agreement have been fully satisfied or waived.

1.19 "Eligible Private Sources" shall have the meaning provided in Section 2.1.1 hereof.

1.20 "Employee Study" shall have the meaning provided in Section 12.1 hereof.

1.21 "Fairness Hearing" shall have the meaning provided in Section 2.1.5.

1.22 "Fee Percentage" shall have the meaning provided in Article 8 hereof.

1.23 "Final" shall mean: with respect to any judicial ruling or order, that the period for any petitions for appeals, appeals, petitions, writs, motions for rehearing or certiorari or any other motions required to seek review by any court with appellate or original jurisdiction has expired without the initiation of a review proceeding, or, if a review proceeding has been timely initiated, that there has occurred a full and final disposition of any such review proceeding, including the exhaustion of proceedings in any remand and/or subsequent appeal on remand.

1.24 "Final Settlement Order" shall have the meaning provided in Section 2.1.6.

1.25 "General Causation" shall mean that it is probable that exposure to C-8 is capable of causing a particular Human Disease.

1.26 "Health Studies" shall mean the Employee Study, the Community Study, the "Hypothesis Testing Studies," all as more particularly defined in Article 12.

1.27 "Hypothesis Testing Studies" shall have the meaning provided in Section 12.2.3 hereof.

1.28 "Human Disease" shall mean a serious latent disease that results in an interruption, cessation, or disorder of body functions, systems, or organs. The term "Human Disease" as used herein includes birth defects.

1.29 "Initial Funding Level" shall have the meaning provided in Section 12.4.1 hereof.

1.30 "Initial Released Claims" shall have the meaning provided in Section 3.2.

1.31 "Lawsuit" shall have the meaning provided in Recital A of this Agreement.

1.32 "Medical Monitoring" shall mean diagnostic medical examinations, tests or procedures utilized to detect Human Disease.

1.33 "Medical Monitoring Fund" shall have the meaning provided in Section 12.4 hereof.

1.34 "Medical Monitoring Protocol" shall have the meaning provided in Section 12.3.2 hereof.

1.35 "Medical Panel" shall have the meaning provided in Section 12.3 hereof.

1.36 "Medical Panel Contracts" shall have the meaning provided in Section 10.2.2(b)(1) hereof.

1.37 "Minimum Participation Level" shall have the meaning provided in Section 2.1.4 hereof.

1.38 "Named Plaintiffs" shall have the meaning provided in the Preamble to this Agreement.

1.39 "Non-Employee Opt Outs" shall mean those "Opt Outs" who are not current or former employees of the Defendant.

1.40 "Notice of Clarification Regarding Class Member Status" shall mean the Notice of Clarification Regarding Class Member Status sent to certain current and former employees of the Defendant in accordance with the Agreed Order entered by the Court on August 16,.2004.

1.41 "No Association Finding" shall have the meaning provided in 12.2.3(a)(2) hereof.

1.42 "No Probable Link Finding" shall have the meaning provided in Section 12.2.3(b)(2) hereof.

1.43 "Notice" shall have the meaning provided in Section 2.1.2 hereof.

1.44 "Opt Out" shall refer to the process for individuals to exercise their right to exclude themselves from the Certified Class in accordance with Rule 23(c)(2) of the West Virginia Rules of Civil Procedure.

1.45 "Opt Outs" shall mean those individuals included in the Certified Class who have exercised the right to Opt Out and thus are not Class Members.

1.46 "Phase I" shall have the meaning provided in Section 12.2.3(a) hereof.

1.47 "Phase II" shall have the meaning provided in Section 12.2.3(b) hereof.

1.48 "Preliminary Approval Order" shall have the meaning provided in Section 2.1.2 hereof.

1.49 "Probable Link" shall mean that based upon the weight of the available scientific evidence, it is more likely than not that there is a link between exposure to C-8 and a particular Human Disease among Class Members.

1.50 "Probable Link Finding" shall have the meaning provided in Section 12.2.3(b)(1) hereof.

1.51 "Public Water Districts" shall have the meaning provided in Section 2.1.1 hereof.

1.52 Qualified Settlement Fund shall have the meaning provided in Section 9.1 hereof.

1.53 "Released Parties" shall have the meaning provided in Section 3.1 hereof.

1.54 "Science Panel" shall have the meaning provided in Section 12.2 hereof.

1.55 "Science Panel Contracts" shall have the meaning provided in Section 10.2.2(a)(1) hereof.

1.56 "Settlement" shall mean the settlement to be consummated under this Agreement pursuant to the Final Settlement Order as described in Section 2.1.6 hereof.

1.57 "Settlement Amount" shall have the meaning provided in Section 9.1 hereof.

1.58 "Settling Parties" shall mean the Named Plaintiffs on behalf of themselves and the Class Members, the Defendant and all of its, his, her and their heirs, personal representatives, successors and assigns.

1.59 "Special Master" shall have the meaning provided in Section 10.4 hereof.

1.60 "Specific Causation" shall mean that it is probable that exposure to C-8 caused a particular Human Disease in a specific individual.

1.61 "Unconditional" shall have the meaning provided in Article 2 hereof.

1.62 "Washington Works" shall mean the property legally described on Schedule 1.62 attached hereto.

1.63 "Water Treatment Project" shall have the meaning provided in Section 11.1 hereof.

2. CONDITIONS TO EFFECTIVENESS OF SETTLEMENT UNDER THIS AGREEMENT. The Settlement provided for in this Agreement shall not become final and unconditional ("Unconditional") unless and until each and every one of the following conditions in Sections 2.1 through 2.2 has been satisfied or waived:

2.1 Notice and Court Approval. The Settlement contemplated under this Agreement shall have been approved by the Court, as provided for herein. The Settling Parties agree jointly to recommend to the Court that it approve the terms of this Agreement and the Settlement contemplated hereunder. All Settling Parties agree to undertake their best efforts,

including all steps and efforts contemplated by this Agreement, and any other steps or efforts which may become necessary by order of the Court or otherwise, to carry out this Agreement, including the following:

2.1.1 *Class Certification*. By Order of the Court entered April 10, 2002, the Lawsuit was certified as a class action pursuant to Rule 23(b)(1)(A) and 23(b)(2) of the West Virginia Rules of Civil Procedure. The April 10, 2002 Order certified and defined the class as: "all persons whose drinking water is or has been contaminated with ammonium perfluorooctanoate (a/k/a "C-8") attributable to releases from DuPont's Washington Works plant . . . with respect to all issues relating to Defendants' underlying liability and Plaintiffs' claims for equitable, injunctive and declaratory relief including liability for punitive damages." On June 26, 2003, the Court entered an Order which clarified that "contaminated" means, for purposes of the class definition, containing a quantifiable (greater than or equal to .05 ppb) amount of C-8. The Settling Parties hereby agree and stipulate that the Certified Class shall be certified pursuant to West Virginia Rule of Civil Procedure 23(b)(2) and 23(b)(3) and include as Class Members only those individuals who, (1) for the period of at least one year up to and including the date of the first Notice issued in accordance with Section 2.1.3, have consumed drinking water containing .05 ppb or greater of C-8 attributable to releases from Washington Works from (a) any of six specified Public Water Districts (each as more particularly described in Schedule 2.1.1(A) attached hereto and incorporated herein (collectively, the "Public Water Districts")), (b) any private water source within the geographic boundaries of the Public Water Districts that is the individual's sole source of drinking water at the location ("Eligible Private Sources") or (c) any private water source more particularly described in Schedule 2.1.1(B) attached hereto that is the individual's sole source of drinking water at the location (the "Confirmed Private Sources"); and (2) who (a) do not exercise their right to Opt Out of the Certified Class or (b) have not elected to waive their rights as a Class Member through execution of a Notice of Clarification Regarding Class Member Status filed with the Court in the Lawsuit (collectively, the "Certified Class"). The Settlement contemplated under this Agreement is expressly conditioned on the definition of the Certified Class provided in this Section 2.1.1 having become Final.

As of the Effective Date as defined in Section 14.15, for the purpose of identifying Eligible Private Sources, Defendant shall offer to those individuals who meet the other applicable criteria for inclusion in the Certified Class as defined in this Section 2.1.1, to collect sample(s) from potentially Eligible Private Sources in accordance with collection procedures deemed appropriate by the Defendant so that the sample(s) can be tested for the presence of a quantifiable amount of C-8 using Exygen Research or another qualified laboratory, at Defendant's sole cost and expense. Defendant's offer to provide such testing shall be included in the Notice described in Section 2.1.2. Requests for such testing shall be submitted to the Administrator and forwarded to the Defendant in accordance with Section 10.2.1(d). Once the Administrator forwards a request for testing to Defendant, Defendant shall, at its sole cost and expense, arrange with the owner of the potentially Eligible Private Source(s) at issue for prompt collection, testing and analysis of such potentially Eligible Private Source(s) and shall promptly forward the complete laboratory results for such testing, including identification of the laboratory detection limit, quantification limit, and spike and surrogate recovery rates to: (1) the owner(s) of the potentially Eligible Private Source(s) tested; (2) the individual(s) requesting testing of the potentially Eligible Private Source(s) tested; and (3) Class Counsel. Any individual who

receives written notice from the Defendant before the deadline to Opt Out set by the Court that the results of such testing establish the presence of a quantifiable amount of C-8 and who also meets the other applicable criteria for inclusion in the Certified Class shall be included in the Certified Class and thus, shall be a Class Member unless the person exercises the right to Opt Out within the time limits set by the Court or has elected to waive his or her rights as a Class Member through execution of a Notice of Clarification Regarding Class Member Status filed with the Court in the Lawsuit.

2.1.2 *Preliminary Approval of Settlement and of Notice*. As soon as reasonably possible upon execution of this Agreement, Class Counsel and counsel for the Defendant will file a joint motion with the Court for entry of an order (the "Preliminary Approval Order") (a) preliminarily approving the Settlement embodied in this Agreement, and (b) directing the time, manner and content of notice to the Certified Class with respect to this Settlement in the form of Schedule 2.1.2(A) (the "Notice").

The joint motion shall seek an order:

(a) Preliminarily approving the terms and conditions of the Settlement embodied in this Agreement subject to the Fairness Hearing and final approval by the Court in the Final Settlement Order;

(b) Clarifying that the Certified Class is Certified pursuant to West Virginia Rule of Civil Procedure 23(b)(2) and 23(b)(3) and includes only those individuals specified in Section 2.1.1 hereof;

(c) Appointing The Garden City Group, Inc. as the Administrator, as agreed to by the Settling Parties pursuant to Section 10.1 hereof;

(d) Finding that the Notice in the form of Schedule 2.1.2(A) hereto fairly and adequately: (A) describes the terms and effect of this Agreement and the Settlement; (B) gives adequate notice of the time and place of the Fairness Hearing for final approval of the Settlement; (C) describes how the recipients of the Notice may object to approval of the Settlement or Opt Out; and (D) constitutes due and sufficient notice of the matters set forth in the Notice to all individuals entitled to receive such Notice;

(e) Finding that the proposed manner of communicating the Notice is the best notice practicable under the circumstances and duly satisfies the due process requirements of Rule 23 of the West Virginia Rules of Civil Procedure; and

(f) Appointing and designating the law firms listed on the signature pages hereto as "Counsel for Plaintiffs" as Class Counsel.

2.1.3 *Issuance of Class Notice*. On the date and in the manner set by the Court in its Preliminary Approval Order, the Notice in the form of Schedule 2.1.2(A) shall be delivered to the Certified Class at the time and in the manner approved by the Court.

2.1.4 *Minimum Participation Level*. For the purposes of this Agreement, the Settling Parties agree that the Certified Class includes 80,000 individuals. The Notice described in Section 2.1.2 shall inform individuals included in the Certified Class of their right to Opt Out. Any individuals who choose to Opt Out of the Certified Class shall not be Class Members and shall not participate in the Settlement. This Settlement is expressly conditioned upon the participation of: (a) no less than ninety-eight percent (98%) of the Certified Class (excluding current and former employees of Washington Works) and (b) no less than ninety-eight percent (98%) of the individuals identified on Schedule 2.1.4(A) (excluding current and former employees of Washington Works), which Schedule identifies those individuals who are included in the Certified Class and who have signed retention agreements with Class Counsel (including current and former employees of Washington Works) (collectively, the "Minimum Participation Level"). Only the Defendant shall have the sole and exclusive authority to waive the Minimum Participation Level described in this Section.

2.1.5 *The "Fairness Hearing."* On the date set by the Court, the Settling Parties shall participate in the hearing at which the Court will determine: whether the proposed Settlement of the Lawsuit on the terms and conditions provided for in this Agreement is fair, reasonable and adequate and should be approved by the Court; whether a judgment should be entered herein; whether the distribution of the Settlement Amount as provided in this Agreement should be approved; and to determine the amount of fees and expenses that should be awarded to Class Counsel (the "Fairness Hearing"). The Settling Parties will reasonably cooperate with one another in obtaining acceptable Orders at the Fairness Hearing and will not do anything inconsistent with obtaining them.

2.1.6 *Motion for Order of Final Approval of Class Action Settlement*. The Settling Parties shall file a joint motion for issuance of an Order of Final Approval of Class Action Settlement in this Lawsuit ("Final Settlement Order") in time for such motion to be considered by the Court at the Fairness Hearing. The joint motion shall seek an order approving the Settlement embodied in this Agreement and entering a judgment dismissing the Initial Released claims described in Section 3.2 with prejudice.

2.2 Finality of Order of Final Approval of Settlement. The Final Settlement Order shall have become Final.

3. **RELEASES AND COVENANTS NOT TO SUE.**

3.1 Released Parties. The Released Parties are Defendant and its current and former directors, officers, shareholders, agents, attorneys, representatives, employees, affiliates,

subsidiaries, insurers and counsel, and its or their predecessors, successors or assigns ("Released Parties").

3.2 Initial Release and Covenant Not to Sue. Effective upon the disbursement of the Settlement Amount pursuant to Section 9.1, the Named Plaintiffs, on their own behalf and on behalf of the Class Members, release and forever discharge the Released Parties from any and all claims, losses, damages, attorneys' fees, costs, and expenses, whether asserted or not, accrued or not, known or unknown including, but not limited to, claims for medical monitoring, property damage (including claims based upon alleged diminution of value or stigma), injunctive relief and special, general and punitive damages associated with such claims that: (a) are not covered by the Conditional Release provided in Section 3.3; (b) relate to exposure to C-8 of Class Members from any and all pathways including, but not limited to, air, water and soil; and (c) are based on the same factual predicate as raised in the Lawsuit (collectively, the "Initial Released Claims"). This release is intended to include the release of unknown and unsuspected claims, as well as any claim or right obtained by assignment. This release is not intended to include the release of any rights or duties created by or that could be created by this Agreement, including, but not limited to, the express warranties and covenants set forth herein. The Named Plaintiffs, on their own behalf and on behalf of the Class Members, further covenant and agree not to file any action or proceedings against the Released Parties or their counsel based on the Initial Released Claims. Nothing in this Agreement releases any person other than the Released Parties.

3.3 Conditional Release and Covenant Not to Sue. Effective upon the occurrence of (a) the disbursement of the Settlement Amount pursuant to Section 9.1, and (b) the earlier of (i) the date on which the Science Panel delivers a No Association Finding with respect to a Human Disease to the Administrator as described in Section 12.2.3(a)(2) and (ii) the date on which the Science Panel delivers a No Probable Link Finding with respect to a Human Disease to the Administrator as described in Section 12.2.3(b)(2), the Named Plaintiffs on their own behalf and on behalf of the Class Members, release and forever discharge the Released Parties from any and all claims, losses, damages, attorneys' fees, costs, and expenses, whether asserted or not, accrued or not, known or unknown, for personal injury and wrongful death, including but not limited to any claims for injunctive relief and special, general and punitive and any other damages whatsoever associated with such claims, that: (a) relate to exposure to C-8 of Class Members from any and all pathways including, but not limited to, air, water and soil; (b) are based on the same factual predicate as raised in the Lawsuit; and (c) relate to any Human Disease for which the Science Panel has delivered a No Association Finding or No Probable Link Finding to the Administrator as described in Section 12.2.3 (collectively the "Conditionally Released Claims"). This release is intended to include the release of unknown and unsuspected claims, as well as any claim or right obtained by assignment. This release is not intended to include the release of any rights or duties created by or that could be created by this Agreement, including, but not limited to, the express warranties and covenants set forth herein. The Settling Parties acknowledge and agree that the release of Conditionally Released Claims as provided in this Section 3.3 may become effective, if at all, at different times for different Human Disease(s), as the Science Panel' completes Phase I, and if necessary, Phase II of its work in accordance with Section 12.2.3. The Named Plaintiffs on their own behalf and on behalf of the Class Members further covenant and agree not to file any action or proceedings against the Released Parties based on the Conditionally Released Claims unless and until the Science Panel delivers a Probable Link Finding to the Administrator as described in Section 12.2.3(b)(1) with respect to

the specific Human Disease at issue in the Conditionally Released Claim. In the event that the Science Panel delivers a Probable Link Finding to the Administrator as described in Section 12.2.3(b)(1), the release of Conditionally Released Claims described in this Section 3.3 shall not become effective with respect only to those Conditionally Released Claims in which the specific Human Disease(s) for which a Probable Link Finding has been delivered is/are at issue. Upon delivery of any Probable Link Finding to the Administrator, Defendant agrees that, in any personal injury or wrongful death action brought by, on behalf of, or otherwise pertaining to a Class Member, Defendant will not contest the issue of General Causation between C-8 and any Human Disease(s) as to which a Probable Link Finding has been delivered, but reserves the right to contest Specific Causation and damages as to any individual Class Member or plaintiff and to assert any other defenses not barred by this Agreement. Nothing in this Agreement releases any person other than the Released Parties.

4. NO ADMISSION OF LIABILITY.

4.1 The Settling Parties understand and agree that this Agreement embodies a compromise settlement of disputed claims, and that nothing in this Agreement, including the furnishing of consideration for this Agreement, shall be deemed to constitute any finding or admission of wrongdoing by Defendant, or give rise to any inference of wrongdoing or admission of wrongdoing or liability in this or any other proceeding. Moreover, Defendant specifically denies any such liability or wrongdoing. Subject to the provisions set forth in Section 3.3 and Article 6 hereof with respect to the tolling and potential preservation of the Conditionally Released Claims and the findings of the Science Panel, Defendant states that it is entering into this Settlement to avoid the time, expense and distraction of embroilment in the current Lawsuit and potential future litigation and disputes relating to present, past or future C-8 exposure claimed to be attributable to the operations of Washington Works.

4.2 Any agreement, stipulation and/or the Court's Preliminary Approval Order related to the definition of the Certified Class in accordance with Section 2.1.1 shall not constitute and shall not be construed as an admission on the part of any Released Party that this action (in the event that this Agreement is terminated under the conditions described in Article 7), or any other proposed or certified class action is appropriate for class treatment pursuant to West Virginia Rule of Civil Procedure 23 or any other class action statute or rule, and does not constitute a waiver of any substantive or procedural defenses. This Agreement is without prejudice to the rights of Released Parties (a) in the event that this Agreement is terminated under the conditions described in Article 7, to seek decertification or modification of the trial class as certified in the Court's Order of April 10, 2002, as clarified by the Court's Order of June 26, 2003, or (b) to oppose certification in any other proposed or certified class action.

4.3 Neither the terms, nor the existence of this Agreement shall be admissible in any other proceeding, except for proceedings brought by, on behalf of, or pertaining to Class Members for (a) alleged breach of this Agreement or (b) Conditionally Released Claims for which the release does not become effective as provided in Section 3.3.

4.4 Defendant's agreement not to contest General Causation for Human Disease(s) for which the Science Panel has delivered a Probable Link Finding to the Administrator in any personal injury or wrongful death action brought by, on behalf of, or

otherwise pertaining to a Class Member as provided in Section 3.3, is without prejudice and does not in any way restrict or limit Defendant's ability to contest General Causation in any other proceeding. Similarly, any document or communication relating to, constituting, or evidencing Defendant's compliance with Section 3.3 by not contesting the issue of General Causation for a Conditionally Released Claim in which Human Disease(s) for which a Probable Link Finding has been delivered to the Administrator is/are at issue, shall not be admissible or be deemed to constitute any finding or admission of wrongdoing by Defendant, or give rise to any inference of wrongdoing or admission of wrongdoing or liability, in any other proceeding.

5. **REPRESENTATIONS AND WARRANTIES.**

5.1 Settling Parties' Representations and Warranties. The Settling Parties, and each of them, represent and warrant:

5.1.1 That they are voluntarily entering into this Agreement as a result of arm's-length negotiations among their counsel, that in executing this Agreement they are relying solely upon their own judgment, belief and knowledge, and that advice and recommendations of their own independently selected counsel, concerning the nature, extent and duration of their rights and claims hereunder and regarding all matters which related in any way to the subject matter hereof, and that this Agreement contains the entire agreement among the Settling Parties. The Settling Parties acknowledge that they have not been influenced to any extent whatsoever in executing this Agreement by any representations, statements or omissions pertaining to any of the foregoing except as specifically set forth in this Agreement. Each Settling Party assumes the risk of mistake as to facts or law; and

5.1.2 That they have carefully read the contents of this Agreement, and this Agreement is signed freely by each individual executing this Agreement on behalf of the Settling Parties. The Settling Parties, and each of them, further represent and warrant to each other that he, she or it has made such investigation of the facts pertaining to the Settlement, this Agreement and all of the matters pertaining thereto, as he, she or it deems necessary.

5.2 Signatories' Representations and Warranties. Each individual executing this Agreement on behalf of any other Person does hereby personally represent and warrant to the other Settling Parties that he or she has the authority to execute this Agreement on behalf of, and fully bind, each principal which such individual represents or purports to represent.

6. **TOLLING AGREEMENT**. Each of the Settling Parties hereby agrees that as of the Effective date of this Agreement as described in Section 14.15 hereof, the running of the statute of limitations with respect to (a) the Conditionally Released Claims, and (b) any and all claims, counterclaims and defenses of the parties with respect to the Conditionally Released Claims shall be deemed tolled from August 30, 2001 through and including the date on which the Science Panel delivers to the Administrator a Probable Link Finding with respect to the particular Human Disease(s) at issue in the Conditionally Released Claim. If the Science Panel reaches a No Association Finding or a No Probable Link Finding with respect to the particular Human Disease(s) at issue in the Conditionally Released Claim, the Conditional Release shall become immediately effective in accordance with Section 3.3. The Settling Parties agree that the Class Members shall not take any action whatsoever to pursue any Conditionally Released Claim

unless and until the Science Panel delivers to the Administrator a Probable Link Finding with respect to the particular Human Disease(s) at issue in the Conditionally Released Claim.

7. TERMINATION OF AGREEMENT.

7.1 Termination. This Agreement may automatically terminate or be terminated by the Settling Parties, and thereupon become null and void, in the following circumstances:

7.1.1 If the Court declines to approve the Settlement, then the Settling Parties hereto agree to jointly pursue review of such decision of the Court. In the event and on the date that such order declining approval of the Settlement becomes Final, this Agreement shall automatically terminate, and thereupon become null and void.

7.1.2 If the Court issues a ruling modifying this Agreement, and if within thirty-one (31) days after the date of any such ruling the Settling Parties have not agreed in writing to proceed with all or part of the Agreement as modified by the Court or by the Settling Parties, then, provided that no appeal is then pending from such ruling, this Agreement shall automatically terminate, and thereupon become null and void, on the thirty-first day after issuance of the order referenced in this Section 7.1.2.

7.1.3 If an appeal is pending of an order declining to approve the Agreement or modifying this Agreement, this Agreement shall not be terminated until final resolution or dismissal of any such appeal, except by written agreement of the Settling Parties.

7.1.4 If the Minimum Participation Level described in Section 2.1.4 is not satisfied, and Defendant notifies Class Counsel in writing within five (5) Business Days after the Administrator notifies the Settling Parties of the total number of individuals who have exercised the right to Opt Out, that Defendant has, in the exercise of its sole and exclusive discretion, chosen not to waive the Minimum Participation Level provided in Section 2.1.4.

7.2 Consequences of Termination of the Settlement Agreement. If this Agreement is terminated and rendered null and void for any reason specified in Section 7.1 above, the following shall occur:

7.2.1 The Lawsuit shall for all purposes with respect to the Settling Parties revert to its status as of September 4, 2004, reserving to the Settling Parties all claims and defenses, and Class Counsel and Counsel for the Defendant agree to jointly seek postponement of trial for a period of at least 4 months from the date of termination of this Agreement.

7.2.2 All releases and dismissals delivered pursuant to the Agreement shall be null and void; none of the terms of the Agreement shall be effective or enforceable; and neither the fact nor the terms of this Agreement shall be offered or received in evidence in the Lawsuit or in any other action or proceeding for any purpose, except in an action or proceeding arising under or to enforce this Agreement.

7.2.3 Defendant shall not be entitled to repayment of any costs or expenses paid for the Administrator or the Notice.

8. ATTORNEYS' FEES. Subject to the provisions of Section 2.1.4 hereof, Class Counsel shall apply to the Court and Defendant agrees to support such application, for attorneys' fees not to exceed the amount of 25.5% (the "Fee Percentage") of the sum total of the following amounts: the Settlement Amount, the Water Treatment Project (which for purposes of this Section 8 only shall be valued at the amount of Ten Million and no/100 Dollars ($10,000,000.00)) and the Health Studies described in Article 12 hereof (which for purposes of this Section 8 only, shall be valued at the amount of Five Million and no/100 Dollars ($5,000,000.00)). Defendant further agrees to pay the sum of One Million Dollars ($1,000,000.00) to Class Counsel as partial reimbursement of costs and expenses related to the Lawsuit, which amount the Settling Parties agree represents the Released Parties' entire responsibility for Class Counsel's costs and expenses, Defendant shall, within ten (10) Business Days after the date on which the Settling Parties agree that all conditions to the effectiveness of this Agreement set forth in Article 2 hereof have been waived or satisfied, pay and deliver in accordance with the delivery instructions set forth in Schedule 8.1 all such attorneys' fees, costs and expenses in the amounts referenced herein as are approved by the Court.

In addition, if a Medical Monitoring Fund is established in accordance with Section 12.4, Defendant shall pay and deliver in accordance with the delivery instructions set forth in Schedule 8.1 on or before January 31 of each year Class Counsel's attorneys' fees in the amount of the Fee Percentage multiplied by the funds actually disbursed from the Medical Monitoring Fund (or any alternative funding source provided in accordance with Section 12.4.3) for Medical Monitoring during the preceding calendar year (January 1 through December 31), as long as the Medical Monitoring Fund (or any alternative funding source provided in accordance with Section 12.4.3) continues to exist in accordance with the terms of this Agreement.

9. SETTLEMENT PAYMENT AND COSTS.

9.1 Settlement Amount. In consideration of all the promises and covenants set forth in this Agreement, and of the release and dismissal of claims as contemplated in this Agreement and specifically described in Article 3, Defendant will, within ten (10) Business Days of the date on which the Settling Parties agree that all conditions to the effectiveness of this Settlement set forth in Article 2 hereof have been waived or satisfied, pay and deliver in accordance with the delivery instructions set forth in Schedule 9.1 hereto the sum of Seventy Million and no/100 Dollars ($70,000,000.00) in same-day funds (the "Settlement Amount") to an account established for the benefit of the Class Members, which account is intended to constitute a qualified settlement fund as defined in Section 1.468B-1 of the Treasury regulations as promulgated under Section 468B of the Internal Revenue Code ("Qualified Settlement Fund"). Class Counsel shall identify the administrator of said Qualified Settlement Fund. At least Twenty Million and no/100 Dollars ($20,000,000.00) of the Settlement Amount shall be used to fund certain health and education projects as reasonably described by Class Counsel in the joint motion described in section 2.1.2 and in the Notice set forth in Schedule 2.1.2(A), and as approved by the Court in its Preliminary Approval Order. The Settling Parties acknowledge and agree that Defendant shall have no authority or liability in connection with the management, investment, maintenance, or administration of the Settlement Amount or the Qualified

Settlement Fund. In the event that the Minimum Participation Level described in Section 2.1.4 is not satisfied and the Defendant, in exercising its sole and exclusive discretion, chooses to waive the Minimum Participation Level, the Settlement Amount shall be reduced by a percentage equal to two times the percentage of Non-Employee Opt Outs, calculated as the total number of Non-Employee Opt Outs as a proportion of the 80,000 individuals included in the Certified Class for the purposes of this Agreement.

9.2 Costs Related to Administration of the Settlement Amount. Defendant shall have no responsibility for payment of costs and expenses related to the administration and management of the Settlement Amount on behalf of Class Members, including the costs of compliance with any applicable requirements imposed by law.

9.3 Costs Related to this Agreement. Defendant shall pay all costs and expenses relating to any guardian ad litem appointed by the Court in connection with the Lawsuit and any proceeding required to obtain judicial approval of releases of claims of Class Members under legal disability.

9.4 Allocation of Settlement Amount. Recognizing that as of the time of this Agreement no finding has been made one way or the other by the Science Panel as to whether there is a Probable Link between C-8 exposure attributable to Washington Works and Human Disease(s) among Class Members and that only certain claims are Initial Released Claims with the remainder being Conditionally Released Claims, the Settling Parties agree that no portion of the Settlement Amount is allocable to the release of punitive damage claims associated with the Initial Released Claims. The Settling Parties further agree that the balance, if any, of the Settlement Amount not expressly allocated and paid for other purposes specified in this Agreement is allocable solely to claims for personal physical injury and sickness relating to allegedly consuming C-8 in drinking water. To the extent that any Class Member becomes entitled by settlement or judgment to recover additional personal physical injury or sickness damages pursuant to the provisions of this Agreement, any amount so recoverable shall be reduced by the amount such Class Member has received from the Settlement Amount as partial payment of personal physical injury or sickness damages under this paragraph.

10. ROLE OF ADMINISTRATOR AND SPECIAL MASTER.

10.1 Appointment of Administrator. The Settling Parties agree that The Garden City Group, Inc. shall serve as the Administrator of this Agreement, subject to approval by the Court.

10.2 Powers and Duties of Administrator. Defendant shall make a reasonable, good faith effort to execute, within ten (10) Business Days of the Effective Date of this Agreement as defined in Section 14.15, a contract with the Administrator ("Administrator Contract") that authorizes the Administrator to exercise the authorities and to perform the duties described in this Section. Defendant shall not include any terms or conditions in the Administrator Contract (or any modification or amendment thereto) that conflict or are inconsistent with the terms of this Agreement or the Settlement. Defendant shall provide a full and complete copy of the Administrator Contract (and any modification or amendment thereto)

to Class Counsel within three (3) Business Days of the execution of the Administrator Contract (or any modification or amendment thereto).

10.2.1 *Initial Powers and Duties*. The Administrator Contract shall require the Administrator to:

(a) Develop a notice plan to provide the "best notice practicable" to the Certified Class under the circumstances, including individual notice to all members who can be identified through reasonable effort. W. Va. R. Civ. P. 23(c)(2).

(b) Coordinate or perform any mailings associated with the Notice or additional elements of the notice plan.

(c) Process any Opt Outs and develop a definitive list of Opt Outs, which shall be provided to the Settling Parties within five (5) Business Days of the last day on which individuals included in the Certified Class are entitled to respond to the Notice.

(d) Take those steps necessary to develop appropriate forms for individuals who may be in the Certified Class to submit requests for analysis of potential Eligible Private Sources as provided in Section 2.1.1 and forward those requests to Defendant within (3) three Business Days of receipt.

10.2.2 *Powers and Duties Related to an Unconditional Settlement*. The Administrator Contract shall require the Administrator, on the condition that the Settling Parties agree that all conditions to the effectiveness of this Agreement set forth in Article 2 hereof have been waived or satisfied, to:

(a) Science Panel.

(1) No later than (10) Business Days after the later of (a) the date that the Settling Parties agree that all conditions to the effectiveness of this Agreement have been waived or satisfied and (b) the Settling Parties have mutually agreed upon all three members of the Science Panel as described in Section 12.2.1, execute contracts (in the form approved by Class Counsel and Counsel for Defendants) with the members of the Science Panel who have been mutually agreed to by the Settling Parties to perform the duties of the Science Panel described in Section 12.2 ("Science Panel Contracts"). The Science Panel Contracts shall: (a) provide a fully-executed copy of this Agreement (with all Schedules) and instructions to carefully review: (i) Section 10.2.2(a)(6) describing the nature and extent of communications between the Science Panel, the Administrator and the Settling Parties; (ii) Section 12.2 describing the duties of the Science Panel; (iii) Section 12.5 addressing ex parte contacts; and

(iv) Section 12.5 reflecting that the Administrator, the Science Panel, the Medical Panel, and any qualified entities retained by the Administrator in connection with this Agreement are not agents of any Settling Party or Released Party; (b) provide a complete and unedited copy of Bower; (c) include a schedule for prompt and efficient completion of the Science Panel's duties under Section 12.2 hereof, including deadlines for completion of such duties and issuance of status reports; and (d) not contain any terms or conditions that conflict or are inconsistent with the terms of this Agreement, Settlement, or the Administrator Contract. The Administrator shall deliver a copy of each fully-executed Science Panel Contracts to the Settling Parties within three (3) Business Days of execution of each of the Science Panel Contracts. The Administrator shall monitor the execution of the terms of the Science Panel Contracts and shall compensate the Science Panel pursuant to the terms of the Science Panel Contracts. If any member of the Science Panel resigns, withdraws, or otherwise stops serving on the Science Panel, the Administrator shall notify the Settling Parties within three (3) Business Days of such event, and shall contract with any such new member of the Science Panel selected by the Settling Parties (as provided in Section 12.2.1 hereof) pursuant to the provisions of this Section 10.2.2(a)(1).

(2) At the request of the Science Panel, and by the deadlines requested by the Science Panel, solicit proposals for services to assist the Science Panel in performing its duties described in Section 12.2 and shall contract with qualified persons that certify under oath that they are not affiliated with or have any current or former business or other relationship with any of the Settling Parties (unless waived by the Settling Parties) to provide the requested services, including services related to the Community Study. The Administrator shall maintain copies of all such contracts and certifications, monitor execution of the terms of each contract and shall provide compensation according to the terms of each contract.

(3) Beginning three (3) months after execution of the last Science Panel Contract, provide quarterly progress reports to the Settling Parties, either orally or in writing, that contain expected time of completion of services under any of the contracts described in this section, copies of all contracts and certifications executed pursuant to Section 10.2.2(a)(2), and an accounting of funds expended for completion of services described in this Section or for duties of the Science Panel as described in Section 12.2.

(4) Notify the Settling Parties within three (3) Business Days upon receipt of a report from the Science Panel at the conclusion of Phase I, and if necessary Phase II of the Science Panel's work as set forth in Section 12.2.3.

(5) Within ten (10) Business Days of receipt of a either (a) a Phase I report from the Science Panel that does not reach an Association Finding for any Human Disease; or (b) the Science Panel's Phase II report, notify Class Members of the Science Panel's conclusions in the report triggering the notice required by this Section, which notice shall be communicated to Class Members pursuant to a plan that is similar to the plan for providing Notice to the Certified Class approved in the Preliminary Approval Order, unless the Court approves or the Settling Parties agree to a different plan for the purpose of complying with this Section 10.2.2(a)(5). If the Science Panel's Phase II report reaches a Probable Link Finding for any Human Disease(s), the notice provided by the Administrator shall inform Class Members

that the statute of limitations is no longer being tolled on any Conditionally Released Claim as provided in Article 6.

(6) Facilitate communication between the Settling Parties and the Science Panel as follows:

i) Communication Initiated by Science Panel

a) The Administrator shall provide to each of the Settling Parties one copy of any written communication from the Science Panel. The copies shall be transmitted by the Administrator within three (3) Business Days of receipt from the Science Panel. The Administrator shall take appropriate steps to make certain each party receives its copy as close to the same time as practicable.

b) If the Science Panel has oral questions for the Settling Parties, the Administrator shall have discretion to submit the questions in writing jointly to the Settling Parties or to schedule a joint telephone conference between a designee of each Settling Party, the Administrator and the Science Panel.

ii) Communication Initiated By Settling Parties. If one Settling Party (Party A) seeks to communicate with the Science Panel, Party A shall send a copy of the proposed communication to the other Settling Party (Party B) and four copies to the Administrator. Within three (3) Business Days of receipt of such communication, the Administrator shall forward the communication to each member of the Science Panel and send a copy of the Administrator's correspondence to each of the Settling Parties. Nothing in this Agreement, Settlement, Administrator Contract, or Science Panel Contracts shall in any way restrict the content or volume of such communications, provided that such communications do not conflict with the terms of this Agreement or the Settlement, including Section 12.5 hereof.

(b) Medical Panel: The Administrator Contract shall require the Administrator, in the event that a Medical Panel is established in accordance with Section 12.3 to:

(1) No later than thirty (30) days after the Science Panel delivers a Probable Link Finding to the Administrator as described in Section 12.2.3(b)(1), execute contracts (in the form approved by Class Counsel and Counsel for Defendants) with the members of the Medical Panel who have been mutually agreed to by the Settling Parties to perform the duties of the Medical Panel described in Section 12.3 ("Medical Panel Contracts"). The Medical Panel Contracts shall: (a) provide a fully-executed copy of this Agreement (with all Schedules) and instructions to carefully review: (i) Section 10.2.2(b)(5) describing the nature and extent of communications between the Medical Panel, the Administrator and the Settling Parties; (ii) Section 12.3 describing the duties of the Medical Panel; (iii) Section 12.5 addressing ex parte contacts; and (iv) Section 12.6 reflecting that the Administrator, the Science Panel, the Medical Panel, and any qualified entities retained by the Administrator in connection with this Agreement are not agents of any Setting Party or Released Party; (b) provide a complete and unedited copy of Bower; (c) include a schedule for prompt and efficient completion of the Medical Panel's duties under Section 12.3 hereof, including deadlines for completion of such duties and issuance

of status reports; and (d) not contain any terms or conditions that conflict or are inconsistent with the terms of this Agreement, Settlement, or the Administrator Contract. The Administrator shall deliver a copy of each fully-executed Medical Panel Contracts to the Settling Parties within three (3) Business Days of execution of each of the Medical Panel Contracts. The Administrator shall monitor the execution of the terms of the Medical Panel Contracts and shall compensate the Medical Panel pursuant to the terms of the Medical Panel Contracts. If any member of the Medical Panel resigns, withdraws, or otherwise stops serving on the Medical Panel, the Administrator shall notify the Settling Parties within three (3) Business Days of such event, and shall contract with any such new member of the Medical Panel selected by the Settling Parties (as provided in Section 12.3.1 hereof) pursuant to the provisions of this Section 10.2.2(b)(1).

(2) At the request of the Medical Panel, and by the deadlines requested by the Medical Panel, solicit proposals for services to assist the Medical Panel in performing its duties described in Section 12.3 and shall contract with qualified persons that certify under oath that they are not affiliated with or have any current or former business or other relationship with any of the Settling Parties (unless waived by the Settling Parties) to provide the requested services, including services related to the Medical Monitoring Protocol. The Administrator shall maintain copies of all such contracts and certifications, monitor execution of the terms of each contract and shall provide compensation according to the terms of each contract.

(3) Beginning three (3) months after the execution of the last Medical Panel Contracts, provide quarterly progress reports to the Settling Parties, either orally or in writing, that contain expected time of completion of services under any of the contracts described in this section, copies of all contracts and certifications executed pursuant to Section 10.2.2.(b)(2), and an accounting of funds expended for completion of services described in this Section or for duties of the Medical Panel as described in Section 12.3.

(4) Within ten (10) Business Days of receipt of a Medical Monitoring Protocol, notify Class Members of the Medical Monitoring Protocol developed by the Medical Panel and the process for Class Members to obtain reimbursement for any Medical Monitoring included within the Medical Monitoring Protocol and authorized by the Class Member's personal physician, which notice shall be communicated to Class Members pursuant to a plan that is similar to the plan for providing Notice to the Certified Class approved in the Preliminary Approval Order, unless the Court approves or the Settling Parties agree to a different plan for the purpose of complying with this Section 10.2.2(b)(4).

(5) Facilitate communication between the Settling Parties and the Medical Panel as follows:

a) Communication Initiated by Medical Panel

i) The Administrator shall provide to each of the Settling Parties one copy of any written communication from the Medical Panel. The copies shall be transmitted by the Administrator within three (3) business days of receipt from the Medical Panel. The

Administrator shall take appropriate steps to make certain each party receives its copy as close to the same time as practicable.

ii) If the Medical Panel has oral questions for the Settling Parties, the Administrator shall have discretion to submit the questions in writing jointly to the Settling Parties or to schedule a joint telephone conference between a designee of each Settling Party, the Administrator and the Medical Panel.

b) Communication Initiated By Settling Parties. If one Settling Party (Party A) seeks to communicate with the Medical Panel, Party A shall send a copy of the proposed communication to the other Settling Party (Party B) and four copies to the Administrator. Within three (3) Business Days of receipt of such communication, the Administrator shall forward the communication to each member of the Medical Panel and send a copy of the Administrator's correspondence to each of the Settling Parties. Nothing in this Agreement, Settlement, Administrator Contract, or Medical Panel Contracts shall in any way restrict the content or volume of such communications, provided that such communications do not conflict with the terms of this Agreement or the Settlement, including Section 12.5 hereof.

(6) Medical Monitoring Fund. In the event a Medical Monitoring Fund is established in accordance with Section 12.4:

i) The Administrator shall take steps necessary to monitor the fund during the period of the Medical Monitoring program to make certain the Medical Monitoring Fund is kept in accordance with Section 12.4.

ii) The Administrator shall promptly notify the Settling Parties that the Medical Monitoring Fund must be replenished in accordance with Section 12.4.

iii) The Administrator shall process claims by individual Class Members for expenses for any Medical Monitoring approved by the Medical Panel as described in Section 12.3.2(d).

iv) Collect and maintain any requests for Medical Monitoring and records related to any reimbursement for Medical Monitoring submitted by Class Members as described in Section 12.3.2(d).

10.2.3 *Costs of Administrator*. Defendant shall provide reasonable compensation for and reimburse all reasonable documented expenses incurred by the Administrator in connection with performing his or her duties as defined in this Article and the Administrator Contract.

10.2.4 *Recordkeeping Duties of Administrator*. The Administrator shall maintain appropriate books, records and documents such as contracts, invoices and receipts as reasonably required by the Defendant including for the purpose of obtaining reimbursement of costs and expenses related to the performance of the Administrator's duties under this Section 10.2. Defendant shall have the right to obtain, and the Administrator shall be required to

provide, an accounting related to costs and expenses as well as access to books and records which Defendant may reasonably require.

10.3 Appointment of Special Master. The Settling Parties agree that James D. Lamp, who previously served as a mediator appointed by the Court in the Lawsuit, shall serve as Special Master under this Agreement.

10.4 *Duties of Special Master*. For any disputes between the Settling Parties involving this Agreement, at the Request of either Settling Party, the Special Master shall have authority to issue non-binding recommendations to the Court pursuant to the following terms:

10.4.1 The Special Master shall determine whether the Parties shall meet in person, by telephone or submit the dispute for resolution by letter brief at a length and schedule to be determined by the Special Master.

10.4.2 The Special Master shall deliver his written recommendation to the Settling Parties and the Court within thirty days of the later of either a meeting, telephone conference or receipt of the last permitted letter brief.

10.5 *Costs of the Special Master*: The Settling Parties shall be responsible for an equal share of any hourly costs and administrative costs incurred by the Special Master to perform the duties in Section 10.4.

11. **WATER TREATMENT**. On the condition that the Settling Parties agree that all conditions to the effectiveness of this Agreement set forth in Article 2 hereof have been waived or satisfied:

11.1 Design and Installation. Defendant hereby covenants and agrees to offer to design or procure and install state-of-the-art water treatment technology or its functional equivalent at Defendant's sole cost and expense for each of the Public Water Districts to reduce the levels of C-8 in the affected water supply to the lowest practicable levels as specified by the individual Public Water Districts (the "Water Treatment Project").

11.2 Operation and Maintenance. Until such time as the Science Panel completes Phase I of its work, and if warranted, Phase II (as such terms are defined in Section 12.2.3 hereof), Defendant will provide for the Water Treatment Project installed at each of the Public Water Districts by reimbursing the Public Water Districts on a quarterly basis for any operating and maintenance costs directly and exclusively attributable to the Water Treatment Project. If the Science Panel delivers a Probable Link Finding to the Administrator for any Human Disease, Defendant shall continue to provide for the Water Treatment Project. Notwithstanding any other provision of this Agreement, Defendant shall continue to provide the Water Treatment Project to the extent and for as long as necessary to meet applicable state and federal regulations governing C-8 concentrations in public drinking water supplies. As long as the Water Treatment Project is not in any way necessary in order to meet applicable state and federal regulations governing C-8 concentrations in public drinking water supplies, Defendant shall be under no obligation to operate and maintain the Water Treatment Project as of the earlier of the date on which (a) the Science Panel completes Phase I and delivers a report to the

Administrator that does not provide an Association Finding for any Human Disease; or (b) the Science Panel completes Phase II and delivers a report to the Administrator that does not provide a Probable Link Finding for any Human Disease.

11.3 Contents of Water Treatment Project Development Plans. Each development plan for the Water Treatment Project developed at Defendant's sole cost and expense, in consultation with each Public Water District, shall detail the overall plan for the design, development, construction and operation of the Water Treatment Project, including but not limited to:

(a) preliminary site plans for the Water Treatment Project to be designed to comply with the requirements of applicable governmental authorities;

(b) a description of the type of improvements to be constructed and/or equipment to be installed as part of the Water Treatment Project;

(c) a projected schedule for construction and installation of any required improvements;

(d) a list of permits, if any, required from relevant regulatory authorities; and

(e) a proposed budget for the construction and development of the Water Treatment Project and a proposed annual operating budget for the Water Treatment Project.

11.4 Private Water Sources. Until such time as the Science Panel completes Phase I of its work, and if warranted, Phase II (as such terms are defined in Section 12.2.3 hereof), Defendant shall offer to make available to Class Members whose sole source of drinking water is either an Eligible Private Source, as demonstrated by testing conducted by Defendant in accordance with Section 2.1.1, or a Confirmed Private Source (collectively, "Covered Private Sources"), appropriate state-of-the-art water treatment technology, or its functional equivalent as determined by Defendant on a case by case basis, at Defendant's sole cost and expense. In any event, Defendant shall provide the state-of-the-art water treatment technology, or its functional equivalent, to the extent necessary to meet applicable state and federal regulations governing C-8 concentrations in public drinking water supplies. As long as the level of C-8 in the Covered Private Sources meets any limits of applicable state and federal regulations governing C-8 concentrations in public drinking water supplies, Defendant shall be under no obligation to operate and maintain the appropriate state-of-the-art water treatment technology or to provide its functional equivalent for the Covered Private Sources as of the earlier of the date on which (a) the Science Panel completes Phase I and delivers a report to the Administrator that does not reach an Association Finding for any Human Disease; or (2) the Science Panel completes Phase II and delivers a report to the Administrator that does not reach a Probable Link Finding for any Human Disease.

12. **COMMUNITY HEALTH ISSUES**. On the condition that the Settling Parties agree that all conditions to the effectiveness of this Agreement set forth in Article 2 hereof have been waived or satisfied:

12.1 Employee Health Studies. Defendant hereby covenants and agrees to complete its ongoing workers' health studies at Washington Works ("Employee Study"), described in more detail in the Protocol 14809 titled "Ammonium Perfluorooctanoate: Cross-Sectional Surveillance of Clinical Measures of General Health Status Related to Serum Biomarker of Exposure and a Retrospective Cohort Mortality Analysis in a Polymer Production Plant" and all amendments thereto at its sole cost and expense.

12.2 Science Panel. The Settling Parties covenant and agree hat an independent three-member scientific panel (the "Science Panel") will be established and will exercise authority and perform duties in accordance with the terms of this Section and that Defendant shall pay all costs and expenses related to the Science Panel, including for any persons retained pursuant to Section 10.2.2(a)(2).

12.2.1 *Selection of the Science Panel*. The Settling Parties shall mutually agree upon each member of the Science Panel. Appropriate candidates for appointment to the Science Panel shall be recognized, independent, appropriately credentialed epidemiologists who have not testified as expert witnesses designated by the Settling Parties, and who have not been consulted by counsel for the Settling Parties prior to September 4, 2004, unless waived by mutual agreement of the Settling Parties.. The parties agree to use their best efforts to identify and engage the three members of the Science Panel as soon as practicable. If any member of the Science Panel withdraws, resigns, or otherwise stops serving on the Science Panel, any replacement Science Panel member shall be mutually agreed to and selected by the Settling Parties in the same manner provided in this Agreement for the original Science Panel members. The Science Panel shall have the discretion to request the Administrator to retain toxicologists and/or professionals from other scientific disciplines that the Science Panel has determined will assist the Science Panel in performing its work described in this Section 12.2.

12.2.2 *Commuhity Study*. The Science Panel shall develop and approve, by a vote of at least two members of the Science Panel, a protocol for a study of Human Disease among residents exposed to C-8 in the communities served by the Public Water Districts and Covered Private Sources and shall have the responsibility for conducting such study in accordance with such protocol (the "Community Study"). The Science Panel shall submit a copy of the Community Study protocol to the Administrator within ten (10) Business Days after its adoption by the Science Panel.

12.2.3 *Phases of Work*. The Science Panel shall conduct its work in two phases.

(a) Phase I. In the first phase of its work, the Science Panel shall be responsible for the Community Study and establishing, by a vote of at least two members of the Science Panel, agreed upon objective criteria for the Science Panel to evaluate the Community Study, Worker Study and any

other relevant studies and/or data to determine, based upon a vote of at least two members of the Science Panel, whether there is an Association between C-8 exposure and any Human Disease(s). In performing such Phase I work, the Science Panel shall not be limited to consideration of only data relating to Class Members, but shall be free to consider all scientifically relevant data including, but not limited to, data relating to C-8 exposure among workers, among people in other communities, and any other human exposure data, along with animal and toxicological data relating to C-8. The Science Panel shall complete its Phase I work as expeditiously as possible and shall provide a written report documenting its Phase I findings to the Administrator within ten (10) Business Days of completing its Phase I work.

(1) Association Finding. If, in Phase I, the Science Panel's Phase I report concludes that one or more Association(s) between C-8 exposure and Human Disease(s) exists ("Association Finding"), the Science Panel shall promptly commence a second phase of work ("Phase II"), described in Section 12.2.3(b).

(2) No Association Finding. If the Science Panel's Phase I report concludes that there is no Association between C-8 exposure and Human Disease(s) ("No Association Finding"), the Conditional Release provided in Section 3.3 herein shall become immediately effective with respect to those Human Disease(s) for which the Science Panel has reached a No Association Finding. Any Human Diseases that are not studied by the Science Panel during Phase I shall be deemed to be subject to a No Association Finding and the Conditional Release provided in Section 3.3. If the Science Panel's Phase I report does not provide an Association Finding for any Human Disease, the Science Panel's work shall terminate and the Science Panel shall not proceed to Phase II.

(b) Phase II. If one or more Association Findings is delivered by the Science Panel, the Science Panel shall commence a second phase of work ("Phase II"). In Phase II, the Science Panel shall establish, carry out and analyze one or more protocols for further study of any Association Finding from Phase I ("Hypothesis Testing Studies") and, upon completion of all Hypothesis Testing Studies, evaluate the available scientific evidence to determine, based upon a vote of at least two members of the Science Panel, whether such evidence demonstrates a Probable Link between C-8 exposure and any Human Disease. In performing such Phase II work, the Science Panel shall not be limited to consideration of only data relating to Class Members, but shall be free to consider all scientifically relevant data including, but not limited to, data relating to C-8 exposure among workers, among people in other communities, and any other human exposure data, along with animal and toxicological data relating to C-8. The Science Panel shall complete its Phase II work as expeditiously as possible and shall deliver a written

report documenting its Phase II findings to the Administrator within ten (10) Business Days of completing the Phase II work.

(1) Probable Link Finding. If the Science Panel's Phase II report concludes that there is a Probable Link between C-8 exposure and Human Disease(s) ("Probable Link Finding"), the Science Panel's work shall terminate and Defendant shall fund any Medical Monitoring for individual Class Members performed in accordance with the Medical Monitoring Protocol developed by the Medical Panel for the specific Human Disease(s) identified by the Science Panel as having a Probable Link to C-8 exposure.

(2) No Probable Link Finding. If the Science Panel's Phase II report concludes that there is No Probable Link between C-8 exposure and Human Disease(s) ("No Probable Link Finding"), the Science Panel's work shall terminate and the Defendant shall be under no obligation to: (a) make any further provision, payment or funding for any Water Treatment Project and for any Covered Private Sources except as otherwise required in Article 11 hereof, or (b) make any provision, payment or funding for any Medical Panel as described in Section 12.3 or Medical Monitoring Fund as described in Section 12.4.

(c) Termination of the Science Panel's Work. The Settling Parties shall jointly notify the Court of the termination of the Science Panel's work in accordance with this Section 12.2.3. If the Science Panel terminates its work in accordance with this Section and does not deliver a Probable Link Finding to the Administrator with respect to any Human Disease, the Settling Parties shall, within ten (10) Business Days of receipt of the Science Panel's report, execute a stipulation of dismissal, with prejudice of all Conditionally Released Claims and, within ten (10) days of the execution of such stipulation, submit a joint motion to the Court for entry of the stipulation. If the Science Panel terminates its work in accordance with this Section and delivers a Probable Link Finding to the Administrator with respect to any Human Disease, the Settling Parties shall, within ten (10) Business Days of receipt of the Science Panel's report, execute a stipulation of dismissal, with prejudice of all Conditionally Released Claims except those in which Human Disease(s) for which the Science Panel delivered a Probable Link Finding are at issue and, within ten (10) days of execution of such stipulation, submit a joint motion to the Court for entry of the stipulation.

12.3 Medical Panel. If the Science Panel delivers a Probable Link Finding to the Administrator in accordance with Section 12.2.3(b)(1), the Settling Parties covenant and agree that an independent three-member medical panel (the "Medical Panel") will be established and will exercise authority and perform duties in accordance with the terms of this Section and that Defendant shall pay all costs and expenses related to the Medical Panel, including for any persons retained pursuant to Section 10.2.2(b)(2).

12.3.1 *Selection of the Medical Panel*. The Settling Parties shall mutually agree upon each member of the Medical Panel within sixty (60) days after the delivery of a Probable Link Finding to the Administrator. The members of the Medical Panel shall be recognized, independent and appropriately credentialed medical physicians who have not testified as expert witnesses designated by the Settling Parties, and who have not been consulted by counsel for the Settling Parties prior to such time as the Science Panel delivers a Probable Link Finding to the Administrator, unless waived by mutual agreement of the Settling Parties. If any member of the Medical Panel withdraws, resigns, or otherwise stops serving on the Medical Panel, any replacement Medical Panel Member shall be mutually agreed to and selected by the Settling Parties in the manner provided in this Agreement for original Medical Panel members.

12.3.2 *Determinations Related to Medical Monitoring*. For any Human Disease for which the Science Panel delivers a Probable Link Finding to the Administrator, the Medical Panel shall develop, based on a vote of at least two members of the Medical Panel, general guidelines for Medical Monitoring that is related to the Human Disease(s) for which the Science Panel has delivered a Probable Link Finding to the Administrator and is different from what would otherwise be prescribed for Class Members absent exposure to C-8 ("Medical Monitoring Protocol"). The Medical Panel shall memorialize the Medical Monitoring Protocol in a report and shall submit such report to the Administrator within ten (10) Business Days of completing the Medical Monitoring Protocol. In determining whether and what Medical Monitoring should be included in the Medical Monitoring Protocol, the Medical Panel shall consider the following factors:

(a) Increased Risk. The Medical Panel need not conclude that the particular Human Disease(s) addressed by any Probable Link Finding is certain or even likely to occur among the Class Members as a result of their C-8 exposure. All that must be demonstrated is that the Class Member has a significantly increased risk of contracting the particular Human Disease(s) relative to what would be the case in the absence of exposure. No particular level of quantification is necessary to satisfy this requirement.

(b) Necessity of Diagnostic Testing. The increased risk of the Human Disease(s) addressed by any Probable Link Finding must make it reasonably necessary for the Class Member to undergo periodic diagnostic medical examinations different from what would be prescribed in the absence of exposure to C-8. Diagnostic testing must be reasonably necessary in the sense that it must be something that a qualified physician would prescribe based upon demonstrated exposure to a particular toxic agent. While there obviously must be some reasonable medical basis for undergoing diagnostic monitoring, factors such as financial cost and the frequency of testing need not necessarily be given significant weight. Moreover, the requirement that diagnostic testing must be medically advisable does not necessarily preclude the situation

where such a determination is based, at least in part, upon the subjective desires of a Class Member for information concerning the state of his or her health.

(c) Existence of Monitoring Procedures. Medical Monitoring for the Human Disease(s) addressed in a Probable Link Finding must be available. If no such test exists, then periodic monitoring is of no assistance and the cost of such monitoring is not available. In the event diagnostic testing later becomes available, then the Medical Panel may incorporate such testing into the Medical Monitoring Protocol at such later time. It is not, however, necessary to show that any treatment currently exists for any Human Disease(s) addressed in a Probable Link Finding before diagnostic testing for such Human Disease(s) can be incorporated into the Medical Monitoring Protocol.

(d) The Medical Panel shall develop a form to be completed by the personal physician of any Class Member seeking reimbursement for any Medical Monitoring included in the Medical Monitoring Protocol that provides a basis for the Administrator to determine whether the Class Member at issue should be reimbursed for Medical Monitoring. Medical Monitoring that the Class Member's personal physician would have prescribed for the Class Member even if the Class Member had not been exposed to C-8 shall not qualify for reimbursement from the Medical Monitoring Fund described in Section 12.4.

12.3.3 *Amendments to Medical Monitoring Program*. The Medical Panel can, at any time during performance of its duties under Section 12.3.2, by a vote of at least two members of the Medical Panel, amend its Medical Monitoring Protocol or any individual finding based upon consideration of new developments or by application of the Settling Parties. The Medical Panel shall deliver a copy of any amendments under this Section to the Administrator.

12.4 Medical Monitoring Fund. If the Medical Panel determines that a Medical Monitoring Protocol is indicated, Defendant shall pay the cost of Medical Monitoring for Class Members up to Two Hundred Thirty-Five Million and no/100 Dollars ($235,000,000.00) (the "Medical Monitoring Fund") as described in more detail in this Section. In the event that the Minimum Participation Level described in Section 2.1.4 is not satisfied and the Defendant, in exercising its sole and exclusive discretion, chooses to waive the Minimum Participation Level, the Two Hundred Thirty-Five Million and no/100 Dollars ($235,000,000.00) cap on the Medical Monitoring Fund shall be reduced by a percentage equal to two times the percentage of Non-Employee Opt Outs, calculated as the total number of Non-Employee Opt Outs as a proportion of the 80,000 individuals included in the Certified Class for the purposes of this Agreement.

12.4.1 *Establishment of Medical Monitoring Fund*. If the Administrator notifies the Settling Parties that the Science Panel has reached a Probable Link Finding with respect to any Human Disease, Defendant shall, within thirty (30) days after receipt of such

notice from the Administrator, deliver in accordance with the delivery instructions provided by the Administrator One Million and no/100 Dollars ($1,000,000.00) ("Initial Funding Level").

12.4.2 *Maintenance of Medical Monitoring Fund*. If the Defendant receives notice from the Administrator that the amount of money in the Medical Monitoring Fund account has fallen below Five Hundred Thousand and no/100 Dollars ($500,000.00), the Defendant shall within thirty (30) days after receipt of such notice from the Administrator, deliver in accordance with the delivery instructions provided by the Administrator, a sum sufficient to bring the balance of the account up to One Million and no/100 Dollars ($1,000,000.00).

12.4.3 *Termination of Medical Monitoring Fund*. On or after the tenth anniversary of the first date on which all three (3) initial members of the Medical Panel have executed a Medical Panel Contract, any Settling Party may apply to the Medical Panel, through the Administrator for amendments to the Medical Monitoring Fund. Such amendments may include termination of the Medical Monitoring Fund on the condition that: (1) the Defendant agree to provide an alternative source of funding to provide Medical Monitoring for specific Class Members who have obtained Medical Monitoring or have been approved by the Administrator for Medical Monitoring based upon the submission from the Class Member's personal physician; and (2) at least two members of the Medical Panel and the Court agree that the alternative funding that the Defendant has offered to provide is sufficient to cover the cost of Medical Monitoring for the Class Members at issue. Upon termination of the Medical Monitoring Fund, any remaining money in the fund will be refunded to Defendant.

12.5 Panel Contacts. The Settling Parties shall engage in no *ex parte* contact with the Science Panel, Medical Panel, or any contractors hired to perform services for the Science Panel or Medical Panel pursuant to the terms of this Agreement, except as authorized by an express written waiver by the Settling Parties. All communications with the Science Panel and Medical Panel by the Settling Parties or their agents relating to this Agreement shall be conducted through the Administrator pursuant to Sections 10.2.2(a)(6) and 10.2.2(b)(5). The Science Panel and Medical Panel and their authorized contractors shall conduct their work in private.

12.6 Absence of Agency. The Settling Parties acknowledge and agree that the Administrator, the Science Panel, the Medical Panel, and any qualified entities retained by the Administrator in connection with this Agreement are intended to be independent and are not agents of any of the Settling Parties or any Released Party. As a result, any data or information obtained, generated, collected or otherwise possessed by the Administrator, the Science Panel, the Medical Panel, and any qualified entities retained by the Administrator in connection with this Agreement should not, prior to dissemination to the specific Settling Party, be attributed to or deemed to be known by any Settling Party or Released Party for the any purpose whatsoever including, but not limited to, any reporting or other compliance obligation imposed by law.

13. **SECURITY**. The Parties have reached a Side Letter Agreement, attached as Schedule 13.1 to provide an appropriate mechanism for securing all aspects of this Agreement that shall be funded, including the Medical Monitoring Fund.

14. MISCELLANEOUS PROVISIONS.

14.1 Good Faith Efforts. The Settling Parties agree that they will in good faith draft and execute all documents necessary to carry out the intent of this Agreement.

14.2 Jurisdiction. The Circuit Court of Wood County, West Virginia shall retain jurisdiction over the Settling Parties to resolve any dispute which may arise regarding this Agreement including any dispute regarding validity, performance, interpretation, administration, enforcement, enforceability, or whether the Agreement should be deemed terminated because the Settling Parties are unable to satisfy one or more unwaived conditions.

14.3 Governing Law. This Agreement shall be governed by the laws of the State of West Virginia without giving effect to the conflict of laws or choice of law provisions thereof, except to the extent that the law of the United States governs any matter set forth herein, in which case such federal law shall govern.

14.4 Severability. The provisions of this Agreement are not severable.

14.5 Amendment. This Agreement may be amended only by a writing executed by all signatories hereto, provided that after Court approval, this Agreement may be modified or amended only by written agreement signed on behalf of all the parties and approved by the Circuit Court of Wood County, West Virginia.

14.6 Waiver. The provisions of this Agreement may be waived only by an instrument in writing executed by the waiving party. The waiver by any party of any breach of this Agreement shall not be deemed to be or construed as a waiver of any other breach, whether prior, subsequent, or contemporaneous, of this Agreement.

14.7 Construction. None of the Settling Parties hereto shall be considered to be the drafter of this Agreement or any provision hereof for the purpose of any statute, case law or rule of interpretation or construction that would or might cause any provision to be construed against the drafter hereof.

14.8 Principles of Interpretation. The following principles of interpretation apply to this Agreement:

14.8.1 *Headings*. The headings of this Agreement are for reference purposes only and do not affect in any way the meaning or interpretation of this Agreement.

14.8.2 *Singular and Plural*. Definitions apply to the singular and plural forms of each term defined.

14.8.3 *Gender*. Definitions apply to the masculine, feminine, and neuter genders of each term defined.

14.8.4 *References to a Person*. References to a person are also to the person's permitted successors, heirs, personal representatives and assigns.

14.8.5 *Internal References to Agreement*. The words "hereof," "herein" and "hereunder" and words of similar import refer to this Agreement as a whole and not to any particular provision of this Agreement.

14.8.6 *References to Part of this Agreement*. When a reference is made to an article, section or exhibit, the reference is to an article or section of, or an exhibit to, this Agreement, unless otherwise indicated.

14.8.7 *Terms of Inclusion*. Whenever the words "include," "includes" or "including" are used in this Agreement, they shall not be limiting but rather shall be deemed to be followed by the words "without limitation."

14.9 Further Assurances. Each of the Settling Parties agrees, without further consideration, and as part of finalizing the Settlement hereunder, to execute and deliver such other documents and take such other actions as may be necessary to consummate and effectuate the subject matter and purpose of this Agreement.

14.10 Survival. All representations, warranties and covenants set forth in this Agreement shall be deemed continuing and shall survive the Effective Date of Settlement, or termination or expiration of this Agreement.

14.11 Notices. Any notice, demand or other communication under this Agreement (other than notices to Class Members) shall be in writing and shall be deemed duly given upon receipt if it is addressed to the intended recipient as set forth below and personally delivered, sent by registered or certified mail (postage prepaid), sent by confirmed facsimile, or delivered by reputable express overnight courier:

If to Plaintiffs:

R. Edison Hill, Esq.
Hill, Peterson, Carper, Bee & Deitzler, PLLC
NorthGate Business Park
500 Tracy Way
Charleston, WV 25311-1261
Phone: (304) 345-5667
Fax: (304) 345-7830

If to Defendant:

Laurence F. Janssen
Steptoe & Johnson, LLP
633 West 5th Street, Suite 700
Los Angeles, CA 90071
Phone: (213) 439-9400
Fax: (213) 439-9599

Any Settling Party may change the address at which it is to receive notice by written notice delivered to the other Settling Parties in the manner described above.

14.12 Entire Agreement. This Agreement contains the entire agreement among the Settling Parties relating to this Settlement. It specifically supersedes any settlement terms or settlement agreements relating to the Settlement that were previously executed by any of the Settling Parties.

14.13 Counterparts. Provided that the parties promptly thereafter exchange original signature pages, this Agreement may be executed by exchange of faxed executed signature pages. Facsimile signatures shall be considered the same as originals. This Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same instrument.

14.14 Binding Effect. This Agreement binds and inures to the benefit of the parties hereto, their assigns, heirs, administrators, executors and successors.

14.15 Effective Date. The effective date of this Agreement shall be the date of the final signature affixed below.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of 11-18, 2004.

NAMED PLAINTIFFS, on behalf of themselves and all Class Members

By: Jack W Leach
Jack W. Leach

By: _____
William Parrish

By: _____
Joseph K. Kiger

By: _____
Darlene G. Kiger

By: _____
Judy See

By: Larry A. Winter

Larry A. Winter
Winter Johnson & Hill PLLC
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Phone: (513) 381-2838
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AND

E. I. DU PONT DE NEMOURS AND COMPANY,
a Delaware Corporation

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Attorneys for E. I. Du Pont De Nemours and Company

STATE OF MINNESOTA

COUNTY OF WASHINGTON

DISTRICT COURT

TENTH JUDICIAL DISTRICT

Court File No. C2-04-6309

File #

WASHINGTON COUNTY
DISTRICT COURT

APR 2 6 2005

CHRISTINA M. VOLKERS
COURT ADMINISTRATOR

By Deputy

FILED

FILED

Felicia Palmer and Sesario Briseno, individually and on behalf of all others similarly situated,

Plaintiffs,

v.

3M Company,

Defendant.

ORDER

The above-entitled matter came on for hearing before the Honorable Stephen L. Muehlberg of the Tenth Judicial District at the Washington County Government Center on February 22, 2005, on Defendant's Motion to Dismiss. Mark Englehart, Esq., Gale Pearson, Esq., James Peterson, Esq., Stephen Randall, Esq., Rhon Jones, Esq., David Byrne, Esq., R. Edison Hill, Esq., Larry Winter, Esq., and Mark Schumacher, Esq., appeared on behalf of Plaintiffs. Michael McCarthy, Esq., Cooper Ashley, Esq., and John Allison, Esq., appeared on behalf of Defendant.

In their brief, Plaintiffs request to delete the claim for punitive damages from the Compliant and to re-plead the claims for fraud and concealment by bringing a motion to amend the complaint. As a result of Plaintiffs request, these claims will not be addressed by the following Order. Plaintiffs filed a motion to amend the complaint on March 10, 2005. This Order only addresses the original Compliant.

Based upon all the files, records, and proceedings, the Court makes the following:

ORDER

1. Defendant's Motion to Dismiss Plaintiffs' claim for medical monitoring, as stated in both the Second Count and elsewhere in the Complaint, is hereby **GRANTED**; Plaintiffs' claim for medical monitoring, as contained in both the Second Count and elsewhere in the Complaint, is hereby dismissed with prejudice.
2. Defendant's Motion to Dismiss Plaintiffs' claim for public nuisance, as stated in the Third Count of the Complaint, is hereby **GRANTED**; Plaintiffs' claim for

SCHEDULE 2.1.1(B)

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