

**IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA**

JACK W. LEACH, WILLIAM PARRISH, JOSEPH K. KIGER, DARLENE G. KIGER, JUDY SEE, RICK SEE, JACK L. COTTRELL, VIRGINIA L. COTTRELL, CARRIE K. ALLMAN, ROGER D. ALLMAN, SANDY COWAN, AARON B. McCONNELL, AND ANGELA D. McCONNELL,

Plaintiffs,

v.

CIVIL ACTION NO.: 01-C- 2518  
(Judge Bloom)

E.I. DU PONT DE NEMOURS AND COMPANY, a Delaware corporation and LUBECK PUBLIC SERVICE DISTRICT, a West Virginia public corporation,

Defendants.

**AMENDED CLASS ACTION COMPLAINT**

Pursuant to Rule 23 of the West Virginia Rules of Civil Procedure, plaintiffs, individually and on behalf of a class of other people similarly situated, state as follows for their Class Action Complaint against defendants E. I. du Pont de Nemours and Company ("DuPont") and the Lubeck Public Service District ("LPSD") (DuPont and LPSD are referred to herein as the "Defendants"):

**NATURE OF ACTION**

1. This is a civil action for declaratory, injunctive, equitable relief, compensatory and punitive damages, including medical monitoring, and costs incurred and to be incurred by plaintiffs and the other class members for bodily injury and property damage arising from the intentional, knowing, reckless and negligent acts and omissions of the Defendants in connection with contamination of human drinking water supplies used by the plaintiffs and other class members.

**JURISDICTION AND VENUE**

2. This Court has venue and jurisdiction over this action.

3. This action is brought for individual claims and pursuant to Rule 23 of the West Virginia Rules of Civil Procedure, as a class action on behalf of the named plaintiffs and on behalf of those who have ingested or otherwise been significantly exposed to contaminated water as a result of the acts and omissions of the Defendants.

## GENERAL ALLEGATIONS

4. DuPont is a Delaware corporation authorized to conduct business in the State of West Virginia and has a principal place of business at 1007 Market Street, Wilmington, Delaware 19898.

5. LPSD is a West Virginia public corporation authorized to conduct business in the State of West Virginia and has a principal place of business at P.O. Box 700, Washington, West Virginia 26181-0700.

6. DuPont owns and operates a manufacturing facility in Wood County, West Virginia known as the "Washington Works Plant."

7. In connection with its manufacturing operations at its Washington Works Plant DuPont has used hazardous, toxic and/or carcinogenic wastes, substances, pollutants and/or contaminants, including ammonium perfluorooctanoate (a/k/a C-8/FC-143/APFO/ DFS-2/PFOA) (hereinafter "C-8"), (collectively the "Materials") since the early 1950s.

8. During the course of its operations at its Washington Works Plant, DuPont has negligently, recklessly, knowingly, carelessly, wrongfully and/or intentionally allowed, caused, and/or otherwise permitted and is continuing to so allow, cause, and otherwise permit releases of Materials, from the Washington Works Plant into those waters that are and have been used for human drinking water purposes (the "Releases").

9. Plaintiffs are those persons who have been significantly exposed to the Materials through ingestion of or other significant exposure to water contaminated by the Releases. The named plaintiffs are as follows:

- a. Jack W. Leach, a resident of Wood County, West Virginia;
- b. William Parrish, a resident of Wood County, West Virginia;
- c. Joseph K. Kiger, a resident of Wood County, West Virginia;
- d. Darlene G. Kiger, a resident of Wood County, West Virginia;
- e. Judy See, a resident of Wood County, West Virginia;
- f. Rick See, a resident of Wood County, West Virginia;

- g. Jack L. Cottrell, a former resident of Wood County, West Virginia who currently resides in Marietta, Ohio;
- h. Virginia L. Cottrell, a former resident of Wood County, West Virginia who currently resides in Marietta, Ohio;
- i. Carrie K. Allman, a resident of Wood County, West Virginia;
- j. Roger D. Allman, a resident of Wood County, West Virginia;
- k. Sandy Cowan, a resident of Wood County, West Virginia;
- l. Aaron B. McConnell, a resident of Wood County, West Virginia; and
- m. Angela D. McConnell, a resident of Wood County, West Virginia;

(hereinafter collectively referred to as ("Plaintiffs")).

- 10. C-8 is a bioretentive substance.
- 11. C-8 is a bioaccumulative substance.
- 12. C-8 is a biopersistent substance.
- 13. C-8 is an animal carcinogen.
- 14. C-8 is a proven hazardous substance.
- 15. DuPont has established a "community exposure guideline" ("CEG") of 1 part per billion (1 ppb) for C-8 in public drinking water supplies for humans.
- 16. C-8 poses a risk to human health at a concentration of less than 1 ppb in water.
- 17. At all times relevant hereto, the LPSD has owned and operated a public water supply system in Wood County, West Virginia, that supplies drinking water to several thousand customers in portions of Wood County, West Virginia, and possibly other locations.
- 18. As a state public corporation and regulatory agency, LPSD has and has had responsibility for ensuring that safe and reliable water service is supplied to its West Virginia customers, including the Plaintiffs.
- 19. By at least 1984, DuPont had detected C-8 in water supplied by the LPSD at levels exceeding 1 ppb.
- 20. At the time DuPont first detected C-8 in water supplied by the LPSD, the LPSD was obtaining its water from wells located on property that abutted the Ohio River and was immediately

adjacent to and hydraulically down-gradient from DuPont's Washington Works Plant (the "Original Wells").

21. In 1989, the Public Service Commission of West Virginia ("PSC") advised the LPSD that the potential existed for the LPSD's water supply to be contaminated by DuPont's immediately adjacent Washington Works Plant, and directed the LPSD to implement a monitoring program and to investigate the issue of whether DuPont had contaminated the LPSD's water supply by gathering and submitting to the PSC appropriate water monitoring data.

22. Instead of performing an independent investigation or monitoring to ensure the safety and reliability of the drinking water sold to its West Virginia customers by determining whether DuPont had contaminated the LPSD's water supply, as directed by the PSC, the LPSD simply asked DuPont to address the PSC's concerns.

23. In response to the concerns raised by the PSC, DuPont told the LPSD in 1989 that C-8 had been detected in the LPSD's water supply but DuPont negligently, recklessly, carelessly, wrongfully and/or intentionally failed to disclose to the LPSD and the LPSD's customers that the levels of C-8 detected in the LPSD's water supply exceeded DuPont's own internal CEG for C-8 in drinking water.

24. Rather than performing any followup investigation or monitoring to gather additional information about the nature, extent or potential effects of the C-8 present in the LPSD water supply or notifying the public of such details, the LPSD and DuPont entered into an agreement in which the LPSD sold to DuPont the property where the Original Wells were located for approximately \$2 million, and the LPSD purchased new property along the Ohio River approximately two miles further down from DuPont's Washington Works Plant where new wells were installed for use in the LPSD's public water supply services (the "New Wells").

25. By 1991, DuPont had detected C-8 in water obtained from the LPSD's New Wells and in groundwater and surface waters otherwise impacted by the Releases at levels exceeding 1 ppb.

26. DuPont advised the LPSD of C-8 levels detected in the water obtained from the New Wells exceeding 1 ppb as early as 1992 but DuPont negligently, recklessly, carelessly, wrongfully, and/or intentionally failed to disclose to the LPSD, the LPSD's customers, and to those other individuals who were using water impacted by the Releases that the levels of C-8 detected in the water exceeded DuPont's own internal CEG for C-8 in drinking water.

27. By at least May of 2000, DuPont had learned that the manufacturer of the C-8 used by DuPont at its Washington Works Plant, the Minnesota Mining and Manufacturing Company ("3M"), had decided to stop manufacturing and selling C-8, based upon concerns associated with the bio-persistence and relative toxicity of C-8.

28. By at least 2001, DuPont had learned that C-8 had been detected in private water wells hydraulically down-gradient from one or more of the locations where DuPont had dumped C-8 into the ground, including DuPont's Dry Run Landfill in Wood County, West Virginia, and DuPont's Letart Landfill in Mason County, West Virginia.

29. Despite knowledge of the same bio-persistence and toxicity concerns known to 3M relating to the use of C-8 and its release into the environment and the fact that C-8 was getting into public and private human drinking water supplies, DuPont has refused to stop using C-8 or releasing C-8 into the environment and now plans to begin direct manufacture of its own C-8 at the Washington Works Plant.

30. At no time since C-8 was first detected in human drinking water supplies has DuPont or the LPSD ever disclosed to the public, including any of the LPSD's customers, that C-8 was present in such water at levels exceeding DuPont's 1 ppb CEG for C-8 in drinking water or that C-8 was present in such water at any level presenting any risk of harm.

31. DuPont has taken steps to purposely and intentionally conceal from the public the fact that C-8 has been detected in the human drinking water supplies at levels exceeding DuPont's 1 ppb CEG for C-8 in drinking water, including purposeful and intentional omissions of any reference to such test results when specifically asked about C-8 levels in the LPSD water by

members of the Parkersburg, West Virginia media earlier this year and in a letter drafted by DuPont and LPSD that the LPSD sent to its water customers, dated October 31, 2000.

32. In July of 2001, LPSD issued a drinking water report to its customers falsely stating that the levels of C-8 detected in the LPSD water supply were deemed "safe" by the United States Environmental Protection Agency.

33. DuPont has known for several years that the discharge of C-8 into the Ohio River from its Washington Works Plant is contributing to the levels of C-8 present in human water supplies.

34. DuPont has known for several years that the level of C-8 discharged from its Washington Works Plant could be reduced substantially by use of a carbon absorption treatment system at the Washington Works Plant.

35. DuPont and the LPSD have known for several years that the levels of C-8 in the LPSD water supply could be further reduced by the LPSD's use of a carbon absorption treatment system.

36. At no time since C-8 was first detected in human drinking water supplies has DuPont or the LPSD installed any carbon absorption treatment system to reduce C-8 levels at the LPSD's property.

37. It was not until the Spring of 2001, after the West Virginia Division for Environmental Protection ("WVDEP") first asked DuPont to begin monitoring and reporting to WVDEP the levels of C-8 discharged from DuPont's Washington Works Plant into the Ohio River, that DuPont installed a carbon absorption treatment system at its Washington Works Plant to attempt to begin reducing the levels of C-8 discharged directly from the Washington Works Plant into the Ohio River.

38. Since approximately 1979, DuPont has arranged and paid for medical monitoring, including periodic blood sampling, of those DuPont employees working at the Washington Works Plant who have been exposed to C-8 during the course of their employment at the Washington Works Plant.

39. At no time since C-8 was first detected in human drinking water has DuPont or the LPSD provided or paid for medical monitoring for the LPSD's water customers.

40. The Releases have adversely impacted and continue to adversely impact the value of those real properties in which Plaintiffs and the other class members have an ownership or other possessory interest that either are serviced by the LPSD or draw drinking water from water supplies contaminated by the Releases.

41. The Releases have possibly and/or have made and/or continue to make Plaintiffs and the other class members physically ill and otherwise physically harmed, and/or have caused and continue to cause associated emotional and mental stress, anxiety, and fear of current and future illnesses, including but not limited to, fear of significantly increased risk of cancer and other disease, among Plaintiffs and the other class members.

#### **CLASS ACTION ALLEGATIONS**

42. This civil action is an appropriate case to be brought and prosecuted as a class action by Plaintiffs against the Defendants pursuant to Rule 23 of the West Virginia Rules of Civil Procedure.

43. There exists a class of individuals who have been significantly exposed to the Materials through ingestion of or other significant exposure to water that was contaminated as a result of the acts and omissions of the Defendants as described above. This class includes all persons who have been or will be significantly exposed to the Materials by ingestion of or other significant exposure to the drinking water contaminated by the Releases since the time the Releases began.

44. Because each of the named Plaintiffs have ingested or otherwise been significantly exposed to water contained by the Releases, the named Plaintiffs have claims against the Defendants that are typical of the claims of the class members and the named Plaintiffs will fairly and adequately protect the interests of the class with respect to the appropriate common issues of fact and law.

45. The named Plaintiffs have hired counsel who are competent to prosecute this action for and on behalf of the Plaintiffs and the class.

46. The prosecution of this civil action by all Plaintiffs in separate actions: (1) would create a risk of inconsistent or varying adjudications with respect to individual members of the class; (2) could, as a practical matter, be dispositive of interests of other members of the class who were not parties to the separate actions; and (3) may substantially impair or impede Plaintiffs' ability to protect their interests.

47. The Defendants have acted or refused to act on grounds generally applicable to the class making declaratory, injunctive and equitable relief appropriate for the whole class.

48. The class includes thousands of persons and is therefore so numerous that it would be impracticable to join all of them as named Plaintiffs in this action.

49. There are questions of law and fact common to the members of the class which predominate over any questions affecting only individual class members, including, but not limited to the following:

- a. Whether the Plaintiffs and other class members are entitled to medical monitoring relief.
- b. Whether the Defendants or either of them violated W. Va. Code § 46A-6-101 *et seq.*, thereby rendering the Defendants or either of them strictly liable to the Plaintiffs and the class for compensatory and punitive damages and equitable and injunctive relief.
- c. Whether the Defendants or either of them violated W. Va. Code §§ 22-11-1, *et seq.*, and whether as a consequence they committed negligence *per se* thereby rendering the Defendants or either of them liable to the Plaintiffs and the class.
- d. Whether the Defendants or either of them are liable to the Plaintiffs and the class for damages proximately caused by the Defendants' negligence.

- e. Whether the Defendants or either of them are liable to the Plaintiffs and the class for damages proximately caused by the Defendants' creation of a public and private nuisance.
- f. Whether the Defendants or either of them are liable to the Plaintiffs and the class for causing a continuing trespass of their bodies and property.
- g. Whether the Defendants or either of them are liable to the Plaintiffs and the class for punitive damages.
- h. Such other common factual and legal issues as are apparent from the allegations and causes of action asserted in this Complaint.

50. Prosecution of a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

51. The interests of members of the class, as to common questions of law and fact, in individually controlling the prosecution of separate actions do not outweigh the benefits of a class action as to those issues.

52. Any difficulties in management of this case as a class action are outweighed by the benefits it has with respect to disposing of common issues of law and fact as to the large number of litigants, and it is desirable to concentrate the litigation in one forum for the management of this civil action.

### **FIRST COUNT**

#### **BREACH OF DUTY, NEGLIGENCE, CONCEALMENT AND FRAUD**

53. Plaintiffs and the other class members incorporate the allegations contained in Paragraphs 1 through 52 of this Complaint as if fully restated herein.

54. In connection with its operation of the Washington Works Plant, DuPont has had and continues to have a duty to operate and manage the Washington Works Plant in such a way as to not create a nuisance or condition causing any injury or damage to human health or the environment.

55. In connection with its ownership and operation of a public drinking water supply system, the LPSD has had and continues to have a duty to operate and manage the LPSD's water

supply system in such a way as to not allow or permit the presence of any substance in the LPSD's public water supply that could cause or contribute to any injury or risk of injury to human health and the environment.

56. DuPont breached its duty of care by negligently operating and managing the Washington Works Plant and conducting other operations and activities at the Washington Works Plant in such a manner as to negligently cause, permit, and allow the Releases.

57. The LPSD breached its duty of care by negligently producing, marketing, distributing, selling, and failing to investigate or monitor drinking water provided to its customers in West Virginia, including the named Plaintiffs and other class members which it knew, or in the exercise of reasonable diligence should have known, was contaminated with the Materials from DuPont's Washington Works Plant to such an extent that the water was unfit and unsafe for human consumption.

58. The Defendants' negligent acts and omissions proximately caused and continue to proximately cause damage to Plaintiffs and other class members in the form of bodily injury and property damage, in addition to creating conditions that are harmful to human health and the environment, for which the Defendants are liable, including liability for all appropriate medical monitoring of Plaintiffs and other class members.

59. The Defendants knowingly, intentionally, recklessly and/or negligently failed and/or refused to advise the Plaintiffs and other class members of the dangers to their health and property posed by the Releases.

60. Defendants negligently, knowingly, recklessly and/or intentionally withheld information from the Plaintiffs and other class members who had a right to know of information which would have prevented Plaintiffs and other class members from being exposed to the Materials.

61. Plaintiffs and other class members did not have sufficient information to determine the safety of the drinking water impacted by the Releases and, therefore, relied upon the superior knowledge of the Defendants in deciding to purchase and ingest the drinking water, and, as a result

of their reliance on the Defendants' false and misleading affirmative misrepresentations and intentional omissions and hiding of relevant, significant and material facts and information, Plaintiffs and the other class members were misled into believing the drinking water was safe and effective for human consumption.

62. Defendants withheld information which they had in their possession concerning research, testing, lack of research and testing, studies of humans and animals who had been exposed to the Materials that demonstrated that the Materials cause damage to humans and animals, as well as other information that medically, legally, scientifically and ethically Plaintiffs and other class members had a right to know before ingesting the drinking water and which Defendants had a duty under West Virginia law to disclose.

63. Medical diagnostics and testing are available which, if utilized, can detect the latent illness(es) or disease(s) to which Plaintiffs and other class members have been exposed and therefore early detection of the latent disease(s) or illness(es) is possible and beneficial to Plaintiffs and other class members who have ingested the drinking water, the costs of which the Defendants should be ordered by this Court to pay.

64. As a proximate result of the aforesaid acts and omissions by the Defendants and each of them acting for and on their own behalf and as agents, ostensible agents, employees, conspirators and joint venturers of others, contaminated drinking water was placed in the stream of commerce, distributed and sold to customers in West Virginia, and ingested by Plaintiffs and the class which Plaintiffs seek to represent, and Plaintiffs were injured as herein alleged.

65. The aforesaid acts and omissions of Defendants and each of them acting in the manner as alleged herein were negligent and as a proximate result Plaintiffs and the class members have suffered and will in the future suffer some or all of the following damages:

- a. Expenses reasonably necessary for the monitoring of the latent illness(es) or disease(s) associated with ingestion of the Materials;
- b. Medical and hospital bills for diagnostic and preventative treatment and for treatment of injuries;

- c. Physical injury, both temporary and permanent;
- d. Property damage, both temporary and permanent;
- e. Severe and significant emotional distress and mental pain and suffering;
- f. Humiliation, embarrassment and fear;
- g. Loss of enjoyment of life;
- h. Annoyance and inconvenience; and
- i. Other damages, which, under the law and circumstances, Plaintiffs are entitled to recover, including attorneys fees and costs associated with the prosecution of this action.

## **SECOND COUNT**

### **DEFECTIVE PRODUCT, FAILURE TO WARN AND CONSPIRACY**

66. Plaintiffs and the other class members incorporate herein the allegations contained in Paragraphs 1 through 65 of this Complaint as if fully restated herein.

67. The Defendants conspired to distribute the contaminated drinking water in an unreasonably dangerous and defective condition and permitted the contaminated drinking water to be placed in the stream of commerce knowing it would be ingested by humans, including the Plaintiffs and the class they seek to represent.

68. The contaminated drinking water was defective in that, when it was placed in the stream of commerce, (1) the foreseeable risks exceeded the benefits associated with consumption; (2) the contaminated drinking water was more dangerous than the ordinary consumer, including Plaintiffs and the class they seek to represent, would expect and more dangerous than other drinking water that was available and marketed in the area; (3) the contaminated drinking water was not distributed with sufficient warnings and instructions associated with its use; and (4) the contaminated drinking water was inadequately tested.

69. The contaminated drinking water was defective in that, as distributed and sold, it was not accompanied by proper warnings and instructions and defendants are strictly liable to Plaintiffs and the class they seek to represent for their damages.

### **THIRD COUNT**

#### **BREACH OF EXPRESSED AND IMPLIED WARRANTY**

70. Plaintiffs and the other class members incorporate herein the allegations contained in Paragraphs 1 through 69 of this Complaint as if fully restated herein.

71. At the time the LPSD marketed and sold and permitted the marketing and selling of the contaminated drinking water sold and marketed by LPSD for consumption by Plaintiffs and the class they seek to represent, LPSD knew the water would be so consumed and the LPSD impliedly warranted the drinking water to be of merchantable quality and safe and fit for such use.

72. Contrary to such implied warranty, the drinking water supplied to Plaintiffs and the class they seek to represent was not of merchantable quality or safe or fit for human consumption because it was and is unreasonably dangerous and unfit for the ordinary purposes for which it was intended to be used.

73. As a direct and proximate result of the LPSD's breach of its implied warranties, Plaintiffs and the class suffered and will continue to suffer injury, harm and economic loss as alleged in this Complaint.

### **FOURTH COUNT**

#### **UNFAIR AND DECEPTIVE PRACTICES (W. VA. CODE §§ 46A-6-101, 102)**

74. Plaintiffs and the other class members incorporate herein the allegations contained in Paragraphs 1 through 73 of this Complaint as if fully restated herein.

75. In October and November of 2000 and July of 2001, Defendants published, disseminated and circulated written information through correspondence to customers of the LPSD which tended to and did induce, directly and indirectly West Virginia residents, including Plaintiffs and the class they seek to represent, to enter into contracts and agreements to purchase and/or continue purchasing the drinking water, and to in fact purchase such drinking water when the published information was known and calculated by the Defendants to mislead Plaintiffs and other consumers in West Virginia.

76. Defendants, through the publication of incomplete and false information regarding the safety of the drinking water, engaged in unfair methods of competition and unfair or deceptive practices as set forth in W. Va. Code § 46A-6-102(f), including, but not limited to: advertising, printing, displaying, publishing, distributing or broadcasting, or causing to be advertised, printed, displayed, published, distributed or broadcast a statement or representation with regard to the sale of goods which was false, misleading, or deceptive, and which omitted to state material information which was necessary to make the statements made therein not false, misleading or deceptive and by engaging in conduct which created a likelihood of confusion or of misunderstanding.

77. The acts and omissions described above violated W. Va. Code § 46A-6-101, *et seq.* in that Defendants withheld information about the deleterious effects of the Materials with the intent that Plaintiffs and the class would purchase and consume contaminated drinking water when the Defendants knew if the truth were published or provided to Plaintiffs that they would not purchase or consume the contaminated drinking water.

78. As a proximate result of the violation by Defendants of W. Va Code § 46A-6-101, *et seq* the Plaintiffs and the class suffered an ascertainable loss of money or property and they are entitled to recover damages as provided by such statute.

#### **FIFTH COUNT**

#### **MEDICAL MONITORING**

79. Plaintiffs and the other class members incorporate herein the allegations contained in Paragraphs 1 through 78 of this Complaint as if fully restated herein.

80. Each person who has ingested, will ingest, or has been or will be otherwise significantly exposed to the water contaminated by the Releases, through the tortious conduct of the Defendants, has been or will be, relative to the general population, significantly exposed to the Materials.

81. One or more of the Materials are proven hazardous substances.

82. There is a probable link between exposure to one or more of the Materials and human disease.

83. Each person who has been or will be significantly exposed to the Materials through ingestion or other significant exposure to the drinking water contaminated by the Releases has or will have a significantly increased risk of contracting one or more serious latent diseases relative to what would be the case in the absence of such exposure.

84. The increased risk of serious latent disease described in Paragraph 83 makes it reasonably necessary for each person so exposed to undergo periodic diagnostic medical examinations different from what would be prescribed in the absence of such exposure.

85. Monitoring procedures exist that make possible the early detection of the diseases referenced in Paragraphs 82-84 above.

86. Further, as a proximate result of the acts and omissions of the Defendants as alleged in this Complaint, Plaintiffs and the class have been and will be greatly annoyed and inconvenienced, have suffered and will suffer fear, humiliation and embarrassment and have been and will be otherwise damaged as alleged in this Complaint.

87. Plaintiffs and the class have no adequate remedy at law and, therefore, medical monitoring and the establishment of a medical monitoring fund is reasonably necessary to pay for medical monitoring.

## **SIXTH COUNT**

### **NEGLIGENCE PER SE**

88. Plaintiffs and the other class members incorporate herein the allegations contained in Paragraphs 1 through 87 of this Complaint as if fully restated herein.

89. By their acts and omissions resulting in the Releases, the Defendants violated and continue to violate one or more applicable West Virginia statutes, including but not limited to Sections 22-11-1 *et seq.* and 46A-6-101 *et seq.* of the West Virginia Code, constituting negligence *per se*, including liability for all appropriate medical monitoring for Plaintiffs and the other class members associated with the Releases.

90. The Defendants' violation of law proximately caused and continues to proximately cause damage to Plaintiffs and the other class members in the form of property damage and bodily

injury for which the Defendants are liable, including liability for all appropriate medical monitoring of Plaintiffs and the other class members.

### **SEVENTH COUNT**

#### **PUBLIC AND PRIVATE NUISANCE**

91. Plaintiffs and the other class members incorporate herein the allegations contained in Paragraphs 1 through 90 of this Complaint as if fully restated herein.

92. The Defendants' acts and omissions with respect to the Releases caused and continue to cause a substantial and unreasonable interference with Plaintiffs' and the other class members' use and enjoyment of their properties and has materially diminished and continues to diminish the value of such properties.

93. The Defendants' substantial and unreasonable interference with the use and enjoyment of Plaintiffs' and the other class members' properties and continuing substantial and unreasonable interference with such use and enjoyment constitutes a continuing private and public nuisance.

94. The Defendants' creation and continuing creation of a continuing private and public nuisance proximately caused and continues to proximately cause damage to Plaintiffs and the other class members in the form of bodily injury and property damage for which the Defendants are liable, including liability for all appropriate medical monitoring of Plaintiffs and the other class members.

### **EIGHTH COUNT**

#### **PAST AND CONTINUING TRESPASS AND BATTERY**

95. Plaintiff and the other class members incorporate herein the allegations contained in Paragraphs 1 through 94 of this Complaint as if fully restated herein.

96. The Defendants' acts and omissions resulting in the Releases have resulted and continue to result in the release and threatened release of Materials at, under, onto, and into Plaintiffs and the other class members' bodies and properties.

97. The Materials present on Plaintiffs' and the other class members' properties and in their bodies originating from the Washington Works Plant were at all relevant times hereto, and continue to be, the property of Defendants.

98. The invasion and presence of the Materials at, under, onto, and into Plaintiffs' and the other class members' properties and bodies was and continues to be without permission or authority from Plaintiffs or any of the other class members or anyone who could grant such permission or authority.

99. The presence and continuing presence of the Materials at Plaintiffs' and the other class members' properties and bodies constitutes a continuing trespass and battery.

100. The Defendants' past and continuing trespass and battery upon Plaintiffs' and the other class members' properties and bodies proximately caused and continues to proximately cause damage to Plaintiffs and the other class members in the form of bodily injury and property damage, for which the Defendants are liable, including liability for all appropriate medical monitoring of Plaintiffs and the other class members.

### **NINTH COUNT**

#### **PUNITIVE DAMAGES**

101. Plaintiffs and the other class members incorporate herein the allegations contained in paragraphs 1 through 100 of this Complaint as if fully restated herein.

102. The Defendants' acts and omissions as described above were conducted with such intentional, malicious, wanton, willful, and reckless indifference to Plaintiffs' and the other class members' rights and flagrant disregard for the safety and property of Plaintiffs and the other class members that Defendants are liable for punitive damages.

**WHEREFORE**, Plaintiffs and the other class members hereby demand that they be awarded damages, equitable and injunctive relief as follows:

A. A judgment against Defendants that Defendants are liable to Plaintiffs and the other class members for all appropriate medical monitoring costs, in an amount to be determined at trial;

B. Compensatory damages in an amount to be determined at trial;

- C. Punitive damages in an amount to be determined at trial;
- D. Damages as provided for pursuant to W. Va. Code § 46A-6-101 *et seq.*, including compensatory and punitive damages and equitable and injunctive relief;
- E. The costs and disbursements of this action, including attorneys' fees;
- F. Pre-judgment and post-judgment interest;
- G. Equitable and injunctive relief for providing notice and medical monitoring relief to the Plaintiffs and the class and to abate the Releases;
- H. An order from this Court ordering that this is an appropriate action to be prosecuted as a class action pursuant to Rule 23 of the West Virginia Rules of Civil Procedure and finding that Plaintiffs and their counsel are appropriate representatives and appropriate counsel for the class and that this action shall proceed as a class action on all common issues of law and fact; and
- I. For all other further and general relief, whether compensatory, punitive, equitable or injunctive relief as this Court may deem just and appropriate.

**JURY DEMAND**

Plaintiff and the other class members hereby demand trial by jury on all issues so triable.

JACK W. LEACH, WILLIAM PARRISH, JOSEPH K. KIGER, DARLENE G. KIGER, JUDY SEE, RICK SEE, JACK L. COTTRELL, VIRGINIA L. COTTRELL, CARRIE K. ALLMAN, ROGER D. ALLMAN, SANDY COWAN, AARON B. McCONNELL, AND ANGELA D. McCONNELL,  
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