

IN THE CIRCUIT COURT OF WOOD COUNTY, WEST VIRGINIA

JACK W. LEACH, et al.,

Plaintiffs,

v.

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

E.I. DU PONT DE NEMOURS AND COMPANY,
and LUBECK PUBLIC SERVICE DISTRICT

Defendants.

**INJUNCTION ORDER DIRECTED TO DEE ANN STAATS, PH.D. AND THE
WEST VIRGINIA DEPARTMENT OF ENVIRONMENTAL PROTECTION**

On June 12, 2002, the plaintiffs appeared by their counsel R. Edison Hill, Robert A. Bilott, and Larry A. Winter, defendant E.I. Du Pont De Nemours and Company appeared by its counsel, Laurence F. Janssen, Charles L. Woody and Heather Jones, defendant Lubeck Public Service District appeared by its counsel, John R. McGhee and Richard A. Hayhurst, and the deponent Dee Ann Staats, Ph.D. and the West Virginia Department of Environmental Protection appeared by their counsel Christopher Negley for a telephonic hearing on plaintiffs' motion to enjoin the West Virginia Department of Environmental Protection ("WVDEP") and Dee Ann Staats, Ph.D. ("Staats") from destroying records relevant to the C-8 investigation. Plaintiffs have argued in essence that Staats and the WVDEP failed to comply with this Court's Civil Case Subpoena issued on June 6, 2002 ("Subpoena") which required Staats to produce to plaintiffs at her deposition on June 6, 2002 all documents and tangible things in her possession, custody and control which were described in an attachment to the Subpoena. During oral argument, counsel for Staats and the WVDEP confirmed that Staats did not produce all of the documents described in the attachment to the Subpoena in part because some of those documents were destroyed.

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Pursuant to the representations and admissions of the parties, the deponent Staats and the WVDEP through their respective counsel, the Court hereby issues the following findings of fact.

Findings of Fact

1. Staats was duly served with the Subpoena in the above-styled civil action on June 4, 2002 scheduling her deposition at the offices of Hill Peterson Carper Bee & Deitzler in Charleston, WV commencing on June 6, 2002.
2. The Subpoena commanded Staats to appear and give testimony in a deposition in the above-styled civil action and to produce and permit inspection and copying of designated books, documents and tangible things which were more particularly described in the "Attached List - Production/Inspection", attached to and made a part of the subpoena, all in accordance with Rule 45 of the West Virginia Rules of Civil Procedure.
3. The deponent Staats appeared on June 6, 2002 for her deposition, but did not produce all documents which were described in the attachment to the Subpoena.
4. During her deposition on June 6 and 7, 2002, Staats testified that she did not produce some documents in response to the Subpoena because she had destroyed or caused the destruction of certain documents which would otherwise have been subject to the Subpoena. During the hearing on June 12, 2002 counsel for Staats and the WVDEP conceded that Staats and the WVDEP have destroyed and otherwise failed to save and preserve various records, documents, including drafts, correspondence, emails and other documents relating to the WVDEP's investigation of C-8 all of which were subject to the Subpoena. Staats and the WVDEP further conceded that such destruction of documents and failure to produce in accordance with the Subpoena was the result of Staats and the WVDEP's standard practice and policy of destroying documents they anticipate might be the

subject of a subpoena in this litigation. Staats argued that it has been her routine practice to destroy drafts, documents and email correspondence for many years particularly when she anticipated such documents might be subpoenaed. She further argued that she is not required by law to produce her records for this litigation, notwithstanding the service of the Subpoena, and that in the absence of an injunction she intends to continue her routine practice of destroying documents and email correspondence relating to the WVDEP's investigation of C-8.

5. Staats and the WVDEP further argue that since she is not a "party" to this litigation, she is beyond the jurisdiction of this Court and therefore not subject to its orders.

Based upon these findings of facts, the Court hereby makes the following conclusions of law.

Conclusions of Law

1. This Court has jurisdiction over the deponent Staats and her employer the WVDEP pursuant to the Subpoena which was duly issued and served upon her pursuant to Rule 45 of the West Virginia Rules of Civil Procedure to give a deposition and to produce documents in the above-styled civil action which is pending in this Court. Staats' arguments regarding the lack of jurisdiction over her are meritless.

2. The admitted practice of Staats and the WVDEP of destroying documents which she anticipated would be subpoenaed in this litigation constitutes obstruction of justice in this Court which is subject to the inherent power of this Court to police and punish.

3. The admissions of Staats and the WVDEP that her practice of destroying documents which are subject to the Subpoena will continue in the absence of an injunction by this Court creates exigent circumstances which provide just cause for this Court in scheduling this hearing on an

expedited basis and upon shorter notice than that provided for in Rule 5 of the West Virginia Rules of Civil Procedure.

4. Staats and the WVDEP have presented no defense to plaintiffs' motion cognizable by law and the arguments advanced in opposition to plaintiffs' motion for injunctive relief are irrelevant and without any basis in fact or law.

5. The plaintiffs have demonstrated ample grounds for the issuance of the injunctive relief on an emergency basis as prayed for and their motion for an injunction against Staats and the WVDEP is hereby granted.

It is therefore accordingly ORDERED, ADJUDGED and DECREED that:

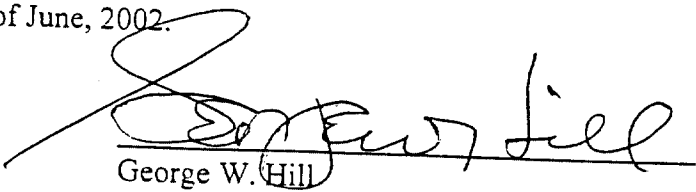
1. Dee Ann Staats, Ph.D. and the WVDEP are enjoined from destroying any and all documents and things related to the WVDEP's investigation of C-8, including but not limited to the documents and things plaintiffs identified in the attachment to the Subpoena and all notes and draft reports prepared and/or possessed by Staats, TERA and the WVDEP and all persons under the control of Staats and the WVDEP.

2. Dee Ann Staats, Ph.D. and the WVDEP are enjoined from destroying emails and are ordered to preserve both their internal computer data relating to the investigation of C-8, and all such data stored not only on WVDEP desktop and laptop computers, but any and all personal laptop computers, including but not limited to the personal laptop computer of Staats.

3. Plaintiffs are hereby authorized to engage computer experts to be selected and paid by the plaintiffs to examine the laptop computers and in-house computers utilized by Staats and the WVDEP in order to retrieve any and all information pertaining to C-8 that has been deleted or for which attempts have been made to delete the data and/or information, and Staats and the WVDEP

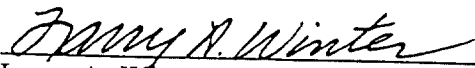
shall immediately make all such laptop computers and in-house computers available to plaintiffs and their experts for such document retrieval purposes upon plaintiffs' request.

ENTERED this 25th day of June, 2002.


George W. Hill

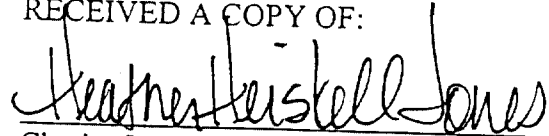
Judge of the Circuit Court of Wood County

PRESENTED BY:



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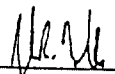


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