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AR 226 - 1187

ROBERT A. BILOTT  
(513) 357-9638  
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October 25, 2002

**TELECOPY AND REGULAR U.S. MAIL**

Perry D. McDaniel, Esq.  
West Virginia Department of  
Environmental Protection  
Office of Legal Services  
1356 Hansford Street  
Charleston, WV 25301

RECEIVED  
OPT NCIIC  
2003 JAN 15 AM 11:16

Re: DuPont/C-8 Issues:  
*Jack W. Leach, et al. v. E.I. duPont de Nemours and Company and*  
*Lubeck Public Service District*  
(Circuit Court of Wood Cty, WV, Civil Action No. 01-C-608)

Dear Perry:

It has come to our attention that Joe Dawley, formerly with the law firm of Spilman Thomas & Battle in Charleston, West Virginia, accepted the request of WVDEP's Secretary, Michael Callaghan, to become the new General Counsel for WVDEP. (See Attachment A) As you are aware, Mr. Dawley was working as one of the attorneys representing E.I. duPont de Nemours and Company ("DuPont") in connection with ongoing C-8 issues and in defense of the claims asserted against DuPont in the referenced lawsuit. In particular, you may recall that Mr. Dawley represented DuPont in at least one meeting between WVDEP and Plaintiffs in the referenced lawsuit to discuss issues relating to WVDEP's compliance with the Wood County Circuit Court's Order prohibiting WVDEP from destroying any C-8 documents and requiring WVDEP to try to retrieve electronic documents previously deleted from Dr. Dee Ann Staats' files. Mr. Dawley also appears to have had some level of involvement while at Spilman in assisting DuPont in the negotiation and drafting of the November 2001 Consent Order entered between the State and DuPont on C-8 matters (the "Consent Order"). (See Attachment B) We understand that Mr. Dawley was approached by Secretary Callaghan to become General Counsel for WVDEP while Mr. Dawley was working at Spilman.

CONTAIN NO CBI

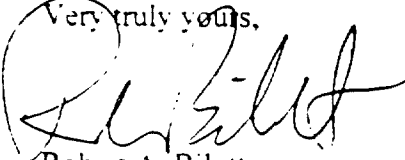
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Perry D. McDaniel, Esq.  
October 25, 2002  
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We further understand that another former Spilman lawyer, Stephanie Timmermeyer, also recently left that law firm to accept the position as Director of WVDEP's Division of Air Quality. after Ms. Timmermeyer also had been working directly for DuPont on C-8 issues, and also apparently had worked for DuPont in negotiating and drafting the Consent Order. (See Attachment C) We understand that the Director of WVDEP's Division of Water resources, Allyn Turner, also is a former Spilman attorney. (See Attachment A)

Thus, we understand that WVDEP now has former Spilman lawyers in charge of its Air Division, Water Division, and Legal Divisions. One of those attorneys who helped draft the Consent Order on DuPont's behalf is now the individual ultimately in charge of the WVDEP Division and personnel that must determine whether DuPont's C-8 air emissions are exceeding applicable screening levels under that very same Consent Order. The individual ultimately in charge of the WVDEP personnel that determine DuPont's legal compliance with the C-8 Consent Order also apparently was involved to some degree with negotiating and drafting that same Consent Order on behalf of DuPont and was representing DuPont in litigation with our clients where DuPont has been advocating the position that its C-8 emissions and releases are not actionable at all. Even if the WVDEP personnel who had previously worked for DuPont on C-8 matters were somehow prohibited from working on C-8 matters at WVDEP themselves, their subordinates are fully aware that their bosses ultimately retain the power and discretion to reward and punish their actions as they deem appropriate.

Based on the foregoing, we request on behalf of our clients that WVDEP turn over all issues involving enforcement of the November 2001 Consent Order between the State and DuPont to an independent organization or agency that is not supervised or staffed by former DuPont attorneys or employees. With respect to independent oversight of WVDEP, we note that Secretary Callaghan publically announced in July of 2002 that he had requested "that the Prosecuting Attorney's Association conduct an independent investigation into DEP's practices regarding document retention and the C-8 case." As of today's date, we have heard nothing further with respect to that investigation. We look forward to prompt confirmation from WVDEP as to how these issues are being handled. Thank you.

Very truly yours,  
  
Robert A. Bilott

RAB/mdm  
Attachments

000164

Perry D. McDaniel, Esq.

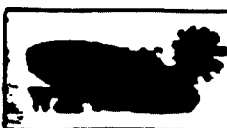
October 25, 2002

Page 3

cc: R. Edison Hill, Esq. (w/ attachments)  
Larry A. Winter, Esq. (w/ attachments)  
Heather Heiskell Jones, Esq. (w/ attachments)  
John R. McGhee, Jr. Esq. (w/ attachments)  
Richard A. Hayhurst, Esq. (w/ attachments)  
Darrell V. McGraw, Jr. Esq. (WV Attorney General's Office) (w/ attachments)  
William Charnock, Esq. (WV Prosecuting Attorney's Association) (w/ attachments)  
Janet Sharke, Esq. (USEPA, Region III) (w/ attachments)  
Lillian Pinzon, Esq. (USEPA, Region V) (w/ attachments)  
Greg Smith, Esq. (Ohio EPA, Legal) (w/ attachments)  
Betty Montgomery, Esq. (Ohio Attorney General's Office) (w/ attachments)

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# Industry firm lawyer named general counsel for DEP

Tuesday August 13, 2002

By Ken Ward Jr.  
STAFF WRITER

**Special  
Features**  
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Gazette**  
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The Wise administration on Monday named a lawyer from a local industry firm to be general counsel for the state Department of Environmental Protection

Joseph M. Dawley will take over the DEP job in August. He is currently an associate at the firm Spilman, Thomas & Battle.

Dawley, 37, is a 1997 graduate of the Northwestern University School of Law. He is also a professional engineer, with a chemical engineering degree from Syracuse University.

"Joe has law experience in air quality, waste management, and water resources issues," said DEP Secretary Michael Callaghan. "He's well suited for advising DEP on environmental policy."

Dawley replaces Bill Adams, another former Spilman lawyer, who resigned last week after nearly 10 years with the agency.

Other former Spilman lawyers in top posts at DEP include Allyn Turner, director of the Division of Water Resources, and Stephanie Timmermeyer, director of the Division of Air Quality.

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The Spilman firm Website says that Dawley has, "defended toxic tort actions and citizens suits" and "negotiated terms and conditions of consent degrees with state regulatory agencies in enforcement actions."

In a DEP news release, Dawley said, "This is a new and exciting avenue in my career to pursue. As a professional engineer and an attorney specializing in environmental law, there's a lot I can lend to DEP as its general counsel."

Dawley is among the Spilman lawyers representing various industry groups that intervened in a federal court lawsuit over new state water pollution rules.

Citizen groups filed the suit over the state's new stream anti-degradation rules. They say the rules are too weak.

Coal, timber, chemical and other industry groups intervened in an effort to avoid having the rules made stricter.

In 2001, Dawley co-wrote an article in the West Virginia Law Review arguing against efforts to toughen the state's anti-degradation policy.

During his career as an engineer, Dawley said that he worked for a company in Massachusetts that tried to come up with alternatives to waste incineration.

Dawley also said that he and his wife are members of the West Virginia Highlands Conservancy.

On Monday, he said that he hasn't talked with Callaghan about any specific issues he hoped to work on at DEP.

"I'm just excited about working with Secretary Callaghan and the leadership of DEP," Dawley said. "There are a lot of exciting things happening there."

To contact staff writer Ken Ward Jr., use e-mail or call 348-1702.

Write a [letter to the editor](#).

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000167

## Law and science = general counsel

Being second can be exciting. Just ask Joe Dawley, the Department of Environmental Protection's (DEP) new general counsel. Bill Adams, DEP's first-ever general counsel, left the agency to pursue other opportunities. Now it's Dawley's turn.

A transplant from Massachusetts, Dawley went to law school in Portland, Ore., and came to West Virginia as his wife, a native of Virginia, wanted to be closer to home. He had been practicing environmental law at the Charleston law firm of *Spilman Thomas and Battle* for two and a half years, practicing environmental law when DEP Cabinet Secretary Michael O. Callaghan approached him.

"It was at a ground-breaking ceremony," Dawley said. "He (Callaghan) told me that he was considering me for the position. I said I would think about it—I was surprised and flattered. It's not every day that a Cabinet secretary says that he's considering you for a position in his agency."

Skilled in environmental law, dealing with air, water, waste, and mining issues will be old hat for him. What seems to peak this 37 year-old's interest is making policy. "Knowing that I can help navigate DEP's and West Virginia's environmental future is exciting to me," Dawley said. "I will have a direct impact on the direction of this agency."

But law is not all that Dawley is skilled at. His first career was that of a chemical engineer. He worked as an engineer for seven years.

"(As an engineer,) I worked with lawyers, concerning the Clean Water Act," Dawley said. "It was interesting, and I thought I'd like to know more about the law. So, I decided to go to law school. Having the background in engineering and law, I am able to put law and science together."

## New face on Hansford Street

by Anne Howell  
Office Manager, Public Information Office

Remember the TV show, *BJ and the Bear*, with Greg Evigan being a trucker and Bear, his sidekick, being a chimpanzee? Well, this BJ is definitely not a chimpanzee, or a trucker.



Bobbi Jean Chestnut, or B. J. as she likes to be called, is the new administrative secretary for the Department of Environmental Protection's (DEP) Office of Oil and Gas. Bobbi started at the DEP on Aug. 1. She previously worked for the Department of Health and Human Resources (DHHR) in its purchasing office, then went to DHHR's Office of Environmental Health Services. She was the procurement contact for that office.

B. J. and husband Alan have two children, Megan, 10 years-old, and Jacob, 8 years-old. The children keep B. J. and her husband very busy with sports-basketball, softball, cheerleading, football, and soccer. They reside in Belle.

B. J. likes working for the DEP. "I really like my job," she said, with a big smile on her face.

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## CALENDAR

DEP now has a calendar of events on  
the Web! Check it out at:  
[www.dep.state.wv.us](http://www.dep.state.wv.us).

It's that simple!! See what's going on  
with the DEP!

Tanya B. Johnson

---

From: Stephanie R. Timmermeyer  
Sent: Friday, November 02, 2001 3:00 PM  
To: 'ABENINCASA@mail.dep.state.wv.us'  
Cc: 'DSTAATS@mail.dep.state.wv.us'; M. Ann Bradley; Joseph M. Dawley  
Subject: Screening Level Definition

Armando:

Below are our suggestions for modification of the definition of "screening level." There is support in EPA guidance documents for the two sentences which have been added to the end. We can provide those at your request.

Screening Level: the concentration in a specific media such as air, water, or soil, that is likely to be without an appreciable risk of deleterious effects during a lifetime in the human population. Screening levels generally serve as a basis for determining the need for further investigation. Exceedance of a screening level does not automatically imply the need for corrective action.

Stephanie R. Timmermeyer  
Spilman Thomas & Battle  
P.O. Box 273  
Charleston, West Virginia 25321-0273  
304-340-3803

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K. Edison Hill  
James C. Peterson  
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C. Michael Bee  
Harry G. Deitzler  
Sandra Brenneman Haman  
Susan B. Tucker  
Kelli B. Hill

PLEASE REPLY TO CHARLESTON

July 9, 2002

Writer's E-mail Address  
rehill@hpcbd.com

VIA FACSIMILE: 558-4255  
ORIGINAL TO FOLLOW

Perry D. McDaniel, Chief  
West Virginia Department of Environmental Protection  
Office of Legal Services  
1356 Hansford Street  
Charleston, WV 25301

Re: *Leach, et al. v. E. I. du Pont de Nemours and Co., et al*  
Civil Action No. 01-C-608  
Circuit Court of Wood County, West Virginia

Dear Perry:

It is my understanding that our computer expert, Charles Justice, met with you, John Dunlap, and Attorney Joseph Dawley, yesterday morning at approximately 10 a.m., at the office of the West Virginia Department of Environmental Protection. I am not certain what role Mr. Dawley played in this meeting, as his law firm represents DuPont in our class action lawsuit pending in Wood County, West Virginia. I was not aware that counsel for DuPont would be included in your meeting. Please correct me if Mr. Dawley was there in some capacity other than in representing DuPont's interests. Mr. Dawley has not responded to our request yesterday for clarification as to who he represents in this matter.

Charlie Justice informed me that Mr. Dunlap possessed a document that detailed the steps that he has taken since Charlie Justice first met with you regarding document retrieval. Although you would not permit a copy of this document to be given to Charlie Justice, you informed him that you would submit an affidavit within the next two days, outlining the steps that have been taken to retrieve pertinent documents.

It was related to me by Mr. Justice that Mr. Dunlap stated that the following procedures had been undertaken to retrieve documents:

1. Dr. Staats' old computer was retrieved from storage.

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SPECIALIST BY NATIONAL  
BOARD OF TRIAL ADVOCACY

± LICENSED ALSO IN MINNESOTA

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Office of Legal Services  
1356 Hansford Street  
Charleston, WV 25301  
Telephone Number 304-553-9160  
Fax Number 304-553-4255

---

## West Virginia Department of Environmental Protection

Bob Wise  
Governor

Michael O. Canagham  
Cabinet Secretary

July 15, 2002

**VIA FACSIMILE AND U. S. MAIL**

R. Edison Hill, Esquire  
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NorthGate Business Park  
500 Tracy Way  
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John R. McGhee, Jr., Esquire  
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1600 Bank One Center  
Virginia Street East  
Charleston, WV 25301

Heather Heiskell Jones, Esquire  
Spilman, Thomas & Battle  
Spilman Center  
300 Kanawha Boulevard, East  
Charleston, WV 25301

**Re: Retrieval and Preservation of Documents related to C8 Investigation**

Dear Counsel:

Please accept this letter as a preliminary response to the letters of July 8 from Rob Bilott and July 9 from Ed Hill and to update all parties to the Wood County litigation to some of the steps taken by the Department of Environmental Protection regarding document retention and retrieval.

As discussed with Mr. Bilott by telephone on July 8 and as acknowledged in the letter of that date, our office inadvertently sent Mr. Bilott three copies of the same notes of TERA from the May 2002 meeting in Cincinnati. One counsel from each of the three parties (Bilott, Jones, McGhee) was provided a complete set of three handwritten notes from the meeting by letter dated July 1. By mistake, it is possible that each of the three parties received three copies of one person's notes. Please contact me if such a mistake was made. A complete set of the three different notes was forwarded to Mr. Bilott on July 8.

Regarding Mr. Bilott's understanding that the DEP does not possess any "drafts of the minutes of the May 6-7, 2002, CAT Team meeting" such representation was true only as to my office. Dr. Staats was out of the office and I did not know, and still do not know, the status of the



West Virginia Department  
of Environmental Protection

Promoting a healthy environment."

000171

R. Edison

process to prepare the minutes. I will be meeting with Dr. Staats this week and will make an inquiry as to the status of the minutes.

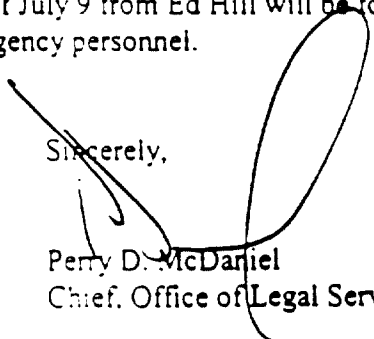
With regard to Mr. Hill's letter of July 9, 2002, Joe Dawley attended the July 8 meeting with John Dunlap, computer technician of the DEP, as a representative of DuPont to listen to the presentation by Mr. Dunlap of the actions taken to retrieve and preserve data. DuPont had inquired about the June 20 meeting between Mr. Dunlap and Charlie Justice, and expressed an interest in notice of future meetings. Their counsel was not notified of the July 8 meeting until the morning of July 8. Based upon a phone call from their counsel, DuPont's counsel could not arrange for a computer expert to attend, but wanted someone to attend to listen to the presentation. They chose to send Mr. Dawley. The DEP is willing to accommodate all parties to the Wood County action with regard to understanding the steps taken by DEP.

As explained to Mr. Justice on July 8, the DEP has taken significant steps to retrieve and preserve data existing within its computer system. Mr. Justice was informed that documentation would be provided to explain the steps taken, most likely in the form of an affidavit. In response to the numbered comments or representations in the July 8 letter, please be advised that John Dunlap has not reviewed the letter of July 8 and the DEP is not in position to affirm or refute the specific contentions therein. As was explained to Mr. Justice on June 20 and July 8, the DEP is open to all suggestions or recommendations on the retrieval and preservation of documents. The DEP is also open to additional meetings with Mr. Justice in order to verify that all available steps have been taken to retrieve and preserve data.

As a preliminary response, the DEP does have a list identifying the subdirectories and documents of the documents contained on the computers used by Dr. Staats. The documents cover a wide range of issues and many pertain to ongoing investigative work by the DEP. It is the intention of the DEP to print or electronically view the documents, and conduct a review to determine which documents are relevant to the C8 investigation and whether any privileges apply that would exempt disclosure of the documents. The review will be similar to a review done to comply with a discovery request or subpoena.

Additional response to the letter of July 9 from Ed Hill will be forthcoming after the letter has been reviewed by John Dunlap and agency personnel.

Sincerely,

  
Perry D. McDaniel  
Chief, Office of Legal Services

cc: Larry Winter, Esq.  
Robert Bilott, Esq.  
Laurence Janssen, Esq.  
Richard Hayhurst, Esq.

000172

Stephanie R. Timmermeyer

From: M. Ann Bradley  
Sent: Monday, October 29, 2001 5:01 PM  
To: 'kwatson@mail.dep.state.wv.us'; 'abenincasa@mail.dep.state.wv.us';  
Cc: 'jhanshaw@mail.dep.state.wv.us'; 'Bernard.J.Reilly@usa.dupont.com'; Stephanie R. Timmermeyer  
Subject: Section F for MMCO



QAQrenvaironModelIn  
g10-29-01-

Karen:

Here is a mark-up of the most recent proposal on modeling. I will call you in the morning to explain our revisions. We should be able to respond to the scavenging coefficient language by tomorrow (except that I will be at the Clean Air Act seminar in the afternoon). I'll try to send something out as soon as I get back to the office.

Ann

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EXHIBIT

C

000173

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Tanya B. Johnson

From: Stephanie R. Timmermeyer  
Sent: Wednesday, October 31, 2001 12:56 PM  
Subject: 'ABENINCASA@mail.dep.state.wv.us'  
M. Ann Bradley; Tanya B. Johnson; 'BernardJReilly@uas.dupont.com'  
Draft MMCO



MMCO Draft  
10-31-01.doc



Attachment A Draft  
10-31-01.doc

Armando,

Attached are two documents - today's draft of the Multi-Media Consent Order and a draft of Attachment A. Please call me if you have any questions.

Stephanie R. Timmermeyer  
Spilman Thomas & Battle  
P.O. Box 273  
Charleston, West Virginia 25321-0273  
304-340-3803

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Tanya B. Johnson

---

From: Stephanie R. Timmermeyer  
Sent: Wednesday, November 14, 2001 1:07 PM  
To: 'abenincasa@mail.dep.state.wv.us'  
Cc: 'Bernard.J.Reilly@usa.dupont.com'; M. Ann Bradley; 'paul.j.bossert@usa.com'; Heather H. Jones; Paula L. Durst  
Subject: FINAL Multi-Media Order and Attachments



Final Multi-Media  
Consent Order...

Attached is an electronic copy of the Multi-Media Order and Attachments.



Final Attachment A.doc



Final Attachment B.doc



Final Attachment C.doc

Stephanie R. Timmermeyer  
Spilman Thomas & Bartle  
P.O. Box 273  
Charleston, West Virginia 25321-0273  
304-340-3803

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