

**IN THE UNITED STATES DISTRICT COURT FOR  
THE WESTERN DISTRICT OF VIRGINIA  
HARRISONBURG DIVISION**

**UNITED STATES OF AMERICA and  
COMMONWEALTH OF VIRGINIA,  
SECRETARY OF NATURAL  
RESOURCES,**

**Plaintiffs,**

v.

**E.I. du PONT de NEMOURS AND CO.,**

**Defendant.**

Case No. 5:16-cv-00082

By: **Michael F. Urbanski**  
United States District Judge

**ORDER SETTING A PUBLIC HEARING AND  
ESTABLISHING RELATED PROCEDURES**

This matter is before the court on a complaint filed by the United States of America and Commonwealth of Virginia, Secretary of Natural Resources, plaintiffs, against E.I. du Pont de Nemours and Company, defendant, seeking the entry of an agreed Consent Decree. ECF No. 1. On December 15, 2016, the parties filed a Notice of Lodging of Consent Decree, ECF No. 2, which provided for a 45-day period of public comment. Several written comments have been received and docketed, and that period has now passed. On April 20, 2017, plaintiffs filed an unopposed Motion to Enter the Consent Decree, ECF No. 14, along with a memorandum detailing the parameters of the proposed Consent Decree and responding to the public comments received.

In considering whether to enter the proposed Consent Decree, the court must determine whether the Consent Decree is “fair, adequate, and reasonable and is not illegal, the product of collusion, or against the public interest.” United States v. North Carolina, 180

F.3d 574, 581 (4th Cir. 1999). To assist the court in making this determination, the court will hold a public hearing on June 2, 2017. At this hearing, the court expects the parties to provide an overview addressing the principal provisions of the proposed consent decree and the major issues addressed in the various public comments, including: the amount of the settlement; the expenditure of monies on mussel restoration; the impact of the settlement on the Waynesboro area; the expenditure of monies on the Front Royal Fish Hatchery for smallmouth bass and other species (muskellunge and walleye) propagation versus a trout grow-out facility in Waynesboro.

The court also is interested in learning more about the response to Comment L.3. Cleanup, which states: “Funds recovered in this action may not be used for mercury removal or response actions in general. Clean up of mercury is addressed through the Resource Conservation and Recovery Act activities led by U.S. Environmental Protection Agency and VDEQ.” (Appendix D-20, ECF No. 15-1).

To assure an orderly process, any person wishing to speak at the hearing must comply with the rules set out in this order.

**Speaking at the Public Hearing:** Beginning at 8:30 a.m. on June 2, 2017, members of the public who wish to speak may sign up outside the courtroom on the third floor of the United States Courthouse, 116 N. Main Street, Harrisonburg, Virginia 22802. The public hearing will begin at 9:00 a.m. on that day (with occasional breaks), and will continue until completion. The court will hear public comments directed to whether the Consent Decree is “fair, adequate, and reasonable and is not illegal, the product of collusion, or against the public interest.” North Carolina, 180 F.3d at 581. Counsel and the parties to the case will be

given the first opportunity to speak. Members of the public will then make their statements, in the order that people signed up. Other than counsel and the parties, speakers will be limited to five minutes each. The hearing will be on the record and all speakers must supply their name and, if applicable, the organization with which they are affiliated. However, each organization may be represented by only one speaker. The court will hear individuals in the order they signed up, until the hearing concludes. The court hopes to hear from all who sign up, but the hearing will conclude no later than 5:00 p.m., even if all speakers on the sign-up list have not yet been heard.

**Space limitations:** Space is limited in the courtroom. If necessary, the court may require persons to rotate in and out of the courtroom. The courtroom will be open beginning at **8:30 a.m.**

**Courthouse rules:** All courthouse visitors and their belongings are subject to search upon entering the courthouse. Visitors must pass through metal detectors that are staffed by Court Security Officers, and all belongings will be screened through an x-ray machine. The court's policy on possession and use of portable and wireless electronic devices inside the courthouse and courtroom is set forth in Standing Order 2013-8. **Members of the general public may not bring portable electronic devices, including computers, tablets, mobile phones, or audio/video recording devices, into the courthouse** and will be required to return any such devices to their vehicles. Court proceedings may not be recorded, photographed, broadcast, or transmitted from inside the courtroom. Posting to social media from inside the courtroom is not permitted. Use of electronic devices in violation of this policy may result in removal from the hearing or other sanctions.

Proper courtroom decorum is expected and required. The court anticipates respectful silence and attention during the presentations of all speakers. Signs, poster boards, and other demonstrative objects will not be permitted in the courtroom, except as necessary exhibits during the public comment period. Applause and/or other outward demonstrations will not be permitted inside the courtroom.

**Site visit:** If feasible, after adjournment of court on June 2, 2017 or on June 3, 2017, the court directs the parties to arrange for a view by the court of the area of the South River impacted by the mercury contamination from the Waynesboro du Pont facility.

**IT IS ORDERED** that a Public Hearing to consider the proposed Consent Decree will be held on **June 2, 2017 at 9:00 a.m.** in the third floor courtroom, United States Courthouse, 116 N. Main Street, Harrisonburg, Virginia 22802.

**IT IS FURTHER ORDERED** that the parties, counsel, the Clerk and participating members of the public adhere to the procedures set out above.

Entered: 05-05-2017

*1st Michael F. Urbanski*

Michael F. Urbanski  
United States District