IN RE: BRYAN, TEXAS, CHEMICAL EXPOSURE LITIGATION

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

LILLIAN HAYDEN, et al.,	§	
	§	
Plaintiffs,	§	
V.	§	
	§	
ATOCHEM NORTH AMERICA, INC., ELF AQUITAINE, INC., ELF ATOCHEM NORTH AMERICA, INC., and PENNWALT CORPORATION, name changed to ELF ATOCHEM NORTH AMERICA, INC.,	§	C.A. NO. H-92-1054
	§	
Defendants.	§	

PUBLISHED NOTICE OF CLASS ACTION, PROPOSED SETTLEMENT, AND NOTICE OF FAIRNESS HEARING

This notice is to advise all Class Members of a proposed settlement of the above-referenced case for injunctive relief, medical monitoring, cash payments totaling $55,075,000, and possible additional funds derived from pending litigation against third parties. This is an important LEGAL NOTICE. Please read this Notice carefully.

This notice may affect your rights.
Please read carefully

Si usted desea obtener una copia de este documento legal en Español, favor de actuar inmediatamente y llamar 1 (800) 852-2719 o escribir a "Class Counsel, P.O. Box 540288, Houston, Texas 77254."

TO: All persons who for any period from January 1, 1973 through April 10, 1995, resided at properties located within the area shown by the map identified as Figure 1, and who at any time make a claim for personal injury, emotional injury, mental anguish, wrongful death or medical monitoring as a result of exposure to a toxic substance or substances allegedly released from the agrichemicals plant now known as ELF Atochem North America, Inc., and formerly known as Pennwalt Corporation, at 201 West Dodge Street in Bryan, Brazos County, Texas; and

All persons or other entities who for any period from January 1, 1992 through April 10, 1995, owned real property located within the area shown by the map identified as Figure 1, and who at any time assert claims for property damage as a result of the past alleged releases of a toxic substance or substances from the agrichemicals plant now known as ELF Atochem North America, Inc. and formerly known as Pennwalt Corporation, at 201 West Dodge Street in Bryan, Brazos County, Texas; and

All persons who for any period from January 1, 1973 through April 10, 1995, were employed at locations, other than at 201 West Dodge Street, within the area shown by the map identified as Figure 2, and who at any time make a claim for personal injury, emotional injury, mental anguish, wrongful death or medical monitoring as a result of exposure to a toxic substance or substances allegedly released from the agrichemicals plant now known as ELF Atochem North America, Inc., and formerly known as Pennwalt Corporation, at 201 West Dodge Street in Bryan, Brazos County, Texas

IF YOU ARE A PERSON OR ENTITY WHO FITS THE DESCRIPTION ABOVE, READ THIS NOTICE CAREFULLY. IT WILL AFFECT YOUR RIGHTS.

This litigation was instituted in 1992 by certain individuals (Plaintiffs) whose Fifth Amended Complaint seeks injunctive relief, medical monitoring, and monetary compensation for property damages and personal injury damages, including those for wrongful death, claimed to have resulted from the alleged release of toxic substances, including arsenic and other hazardous substances, into their community. Plaintiffs contend that in the course of the manufacture of agricultural defoliants, herbicides, insecticides, fungicides, and desiccants at 201 West Dodge Street, Bryan,Texas. Defendants improperly released large quantities of arsenic and other toxic substances into the air, soil, surface water, and groundwater of the community. Plaintiffs have alleged that as a result of the release by Defendants of arsenic and other toxic substances, they have suffered property damage, including economic loss related to the ownership of real property, personal injuries, emotional injury, mental anguish, and wrongful death. In addition to compensation for the property damage and other injuries described above, Plaintiffs also seek an award of punitive damages. Plaintiffs include individuals who have lived, worked, and/or owned property in the community surrounding the agrichemicals plant at 201 West Dodge Street, Bryan, Texas. Although agreeing to the proposed settlement, the Defendants continue to deny any wrongdoing or any legal liability of any kind.

The court has issued preliminary approval of a proposed class action settlement which provides for both injunctive and monetary relief. Under the proposed settlement, the Court will issue an injunction that forever prohibits Defendants from producing, using, or handling arsenic, arsenic-containing materials or organophosphates at the agrichemicals plant located at 201 West Dodge Street, Bryan, Texas, except for purposes of dismantling the arsenic acid plant, remedial investigation, feasibility studies and remediation, including the activities of the remediation laboratory. This injunction will be effective upon the Court's entry of the Final Judgement and Order of Dismissal except as to activities of the Residue Chemistry Laboratory and the Quality Control Laboratory, for which the injunction will become effective on January 1, 1996. The Court will also require Defendants at their own expense to offer sampling and removal of certain arsenic-containing dust from the attics of certain residential properties. The Court will also administer a medical monitoring program for the benefit of class members. The proposed settlement also provides for payment of $55,075,000 in equal installments over a seven-year period, plus possible additional funds derived from litigation against third parties to create a fund to pay for the medical monitoring program and to compensate class members for property damage and personal injury claims, including claims for wrongful death.

If the Stipulation of Settlement is approved by the Court, the *Hayden* Lawsuit and all Released Claims (as defined below) will be dismissed with prejudice and all Class Members shall be forever barred from prosecuting a class, individual, or any other action against any Released Party (as defined below) arising out of the Released Claims. The term "Released Claims" means any and all actual or alleged present or future known or now unknown rights to compensation, injunction, recovery, or any other remedy premised on any and all present or future theories of recovery of whatsoever nature against the Released Parties, whether known or now unknown, to the extent but only to the extent that any of the foregoing directly or indirectly arises from or in connection with the presence of arsenic or other substances in the environment on or before the date the Final Judgement and Order of Dismissal is entered,whether such presence of arsenic or other substances is a direct or indirect result of the presence or operation of the agrichemicals plant located 201 West Dodge Street, Bryan, Texas, and any other real property owned or operated by the Defendants in Brazos County, Texas. Such theories of recovery comprehensively include, but are not limited to, all causes of action, demands, liability, suits, and judgements, whether arising in equity or under common law or any contract or any statute, regulation, or otherwise that have accrued or may ever accrue for any and all damages, whether known or now unknown. "Released Claims" also includes within its meaning any and all present or future elements of relief or recovery of whatsoever nature against any Released Party (as defined below), whether known or now unknown, and comprehensively includes, but is not limited to, actual damages of every description, such as property loss, economic loss related to the ownership of real property, personal injury, or wrongful death; any other item of loss or injury; statutory or treble or multiple or penal damages; attorney's fees; prejudgment or post judgement or other interest; equitable relief; expenses; and costs of court; to the extent but only to the extent that any of the foregoing directly or indirectly arises from or in connection with the presence or arsenic or other substances in the environment on or before the date the Final Judgement and Order of Dismissal is entered, whether such presence of arsenic or other substances is a direct or indirect result of the presence or operation of the agrichemicals plant located at 201 West Dodge Street, Bryan, Texas, and any other real property owned or operated by the Defendants in Brazos County, Texas. Notwithstanding the foregoing, "Released Claims" does not include a release of any claim for Defendants' breach of the terms of the settlement; nor does RELEASED CLAIMS include any waiver, relinquishment, or an election of remedies for any claim under the workers compensation laws of the State of Texas. The term "Released Party or Released Parties" means ELF Atochem North America, Inc., ELf Aquitaine, Inc,. The Missouri Pacific Company doing business as Union Pacific Railroad, the "Ogden Allied Entities" (as defined in the Stipulation of Settlement), and each of their respective parent corporations, sister corporations, subsidiary corporations, affiliate corporations, predecessor corporations, directors, officers, shareholders, past or present employees, agents, partners, attorneys, successors and assigns.

The Court will hold a hearing on June 8, 1995 to determine the fairness, adequacy, and reasonableness of the proposed Settlement Stipulation.

Persons and entities that have been identified as possible members of this class are being advised by mail of their rights with respect to the lawsuit and proposed settlement. This notice is being published because some class members may not receive mailed notice. If you are (or may be) a member of the class but did not receive individual notice of your rights by May 30, 1995, you are requested to call the Plaintiffs' Class Counsel at 1 (800) 852-2713 (English) or 1 (800) 852-2719 (Spanish) or write to "Plaintiffs' Class Counsel c/o Fund Administrator, P.O. Box 131647, Houston, Texas 77219," giving your correct name and current address and telephone number. You will then be mailed a more detailed explanation of your rights in this litigation and the proposed settlement and be placed on the mailing list for any future notifications regarding the suit. The proposed Class Certification is a mandatory certification. If you qualify as a Class Member, you will not have an opportunity to exclude yourself from the Class Settlement, and you will be bound by the Court's final judgement in this litigation.

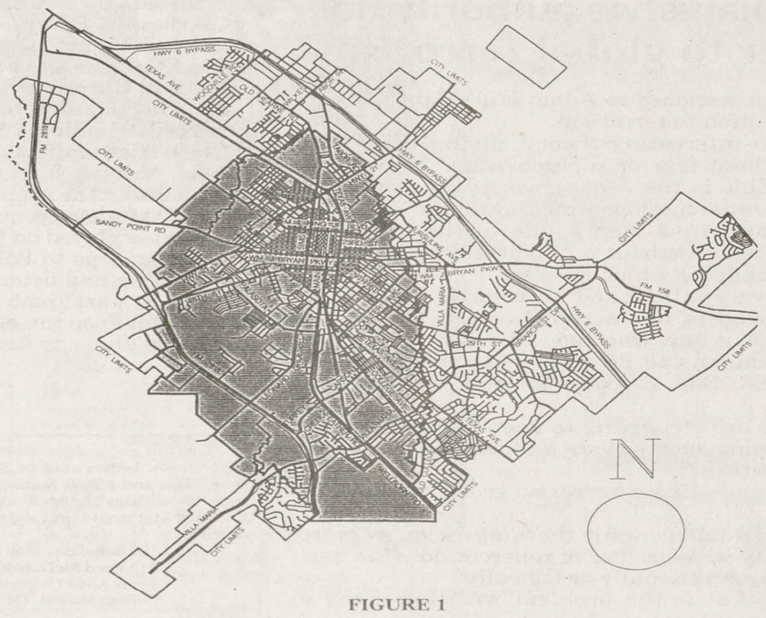

FIGURE 1

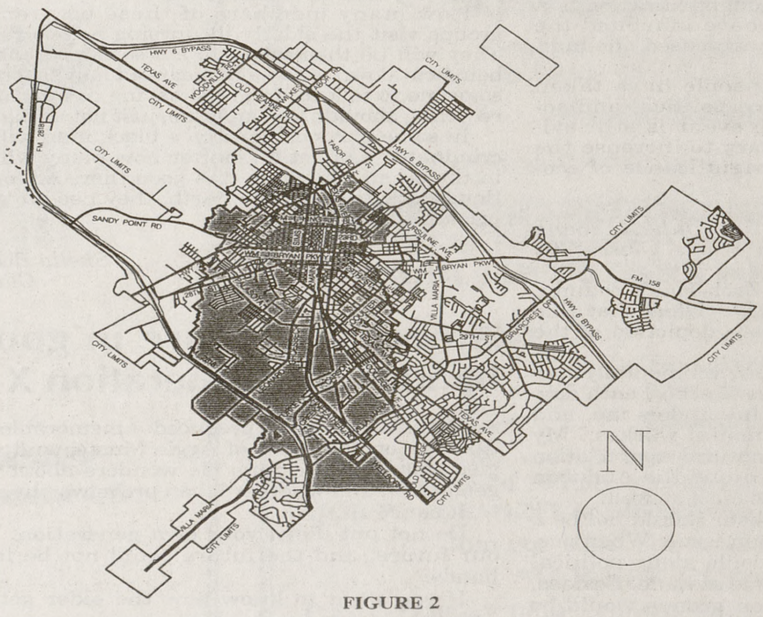

FIGURE 2