

DONALD BROPHY,	:	COURT OF COMMON PLEAS
	:	OF PHILADELPHIA COUNTY
Plaintiff,	:	
	:	CLASS ACTION
v.	:	
	:	JANUARY TERM, 2004
PHILADELPHIA GAS WORKS, et al.,	:	
	:	No. 197
Defendants.	:	

NOTICE OF PROPOSED CLASS ACTION SETTLEMENT

- TO: (1) All current owners or occupants of property in Philadelphia at which Philadelphia Gas Works has previously installed a natural gas regulator that contained mercury; and**
(2) All individuals who have been exposed to mercury from such a regulator.

PLEASE READ THIS NOTICE CAREFULLY. YOUR RIGHTS MAY BE AFFECTED BY THE PROPOSED SETTLEMENT OF THIS CLASS ACTION. PLEASE DO NOT CONTACT THE COURT OR PGW CONCERNING THIS NOTICE.

THIS IS NOT A NOTIFICATION THAT YOU HAVE BEEN SUED

This Notice is given pursuant to an Order by the Honorable Mark I. Bernstein, Judge of the Philadelphia County Court of Common Pleas. The purpose of this Notice is to inform you that a proposed Settlement has been reached in this class action lawsuit, and that you may be a class member that is entitled to participate in the settlement.

WHAT IS THE LAWSUIT ABOUT?

Donald Brophy filed this class action against Philadelphia Gas Works ("PGW") and Philadelphia Facilities Management Corporation (collectively, "Defendants"), related to Defendants' removal of gas regulators from some homes in Philadelphia. The regulators contained mercury, a hazardous substance. Mr. Brophy claimed that PGW's procedures for removing Mercury Regulators were deficient, constituting a "threatened release" of mercury, that is, the risk of mercury spilling, when the regulators were removed. Mr. Brophy brought this action, for himself and others, to obtain testing to determine whether or not mercury was spilled when PGW removed his and others' Mercury Regulators.

Defendants denied and continue to deny the allegations material to the plaintiff's claims, and deny that their procedures for removing Mercury Regulators were deficient or created the risk of a "threatened release" of mercury when a Mercury Regulator was removed.

The Court has not made any determination with respect to the validity of Mr. Brophy's claims or PGW defenses.

SHOULD I HAVE MY HOME TESTED FOR MERCURY?

Mercury is a hazardous substance, and long term exposure can cause adverse health effects, including personality changes, irritability, shyness, nervousness, tremors, vision changes, deafness, lack of muscle coordination, loss of sensation, and memory difficulties.

Defendants have removed Mercury Regulators from approximately 13,000 locations in Philadelphia. However, Defendants do not have records that enable them to identify each location from which a Mercury Regulator was removed. Accordingly, this notice is being sent to approximately 57,000 addresses. According to PGW's records and records maintained by the City of Philadelphia Board of Revision of Taxes, the address to which this notice is mailed (or, if you are a landlord, the location that you own) is serviced by intermediate or high pressure gas lines, and thus may have had a Mercury Regulator installed and subsequently removed. According to Defendants' records, of the 13,000 locations where a Mercury Regulator was removed, some amount of mercury was spilled on 34 occasions, and PGW cleaned up the mercury spilled. The purpose of this case was to provide Class Members with the opportunity to obtain testing in all locations from which PGW removed a Mercury Regulator to determine whether or not mercury was spilled in any other locations.

Similar testing was performed in homes in Detroit, Michigan and Chicago, Illinois, where Mercury Regulators had been removed. Of more than 300,000 homes tested, mercury spills were discovered in approximately 150 homes (0.5% of the homes). None of the persons tested who lived in those homes had elevated levels of mercury when tested for mercury concentrations in their urine, which is the accepted test to determine whether or not someone exposed to mercury may have resulting health effects requiring medical attention.

WHAT ARE THE GENERAL TERMS OF THE SETTLEMENT?

Plaintiff and Defendants have reached a settlement of all claims, subject to the Court's final approval. The Court will hold a hearing to determine whether the settlement will be approved.

Under the terms of the settlement, three separate settlement classes will be created: (1) the Site Testing Class, (2) the Medical Testing Class, and (3) the Mercury Regulator Removal Class. Each class is described below:

Each member of the Site Testing Class will be offered the opportunity to obtain testing paid by PGW, and at no cost to the member, to determine whether or not mercury was spilled during defendants' removal of Mercury Regulators, and remediation (i.e., clean up and restoration), when warranted, of the area in which the mercury spill (if any) occurred. Just because you receive this Notice does not necessarily mean that you are a member of the Site Testing Class. Your home may or may not have been one of the locations where a

Mercury Regulator had been installed. You are entitled to have your home tested for the presence of mercury vapors only if your home at some time had a Mercury Regulator removed by Defendants. A preliminary examination of the area where your gas meter is located at the time of inspection (if requested by you) would determine whether your home may have had a Mercury Regulator removed, which would entitle you to have your home tested for mercury vapors.

If mercury is detected above certain levels, each member of the Medical Testing Class will also be offered the opportunity to obtain a 24-hour urine test (to the extent not otherwise covered by the class member's health insurance), at no cost to the member, to determine whether or not any health impact has occurred.

Finally, each member of the Mercury Regulator Removal Class will receive the benefit of a Court requirement that PGW continue enhancements to PGW's former procedures for the removal of all Mercury Regulators, which PGW has now voluntarily changed, and has already implemented.

You may obtain a copy of the proposed settlement agreement and the opinions of the trial court and Commonwealth Court in this action at www.feldmanshepherd.com or by requesting a copy from Class Counsel.

HOW DO I DETERMINE IF I AM A CLASS MEMBER?

You are a class member if you are any one of the following:

- (1) The "Site Testing Class" consists of all individuals or entities who currently own or occupy property in Philadelphia constructed on or before December 31, 1979 from which PGW has removed a Mercury Regulator;
- (2) The "Medical Testing Class" consists of all individuals, including but not limited to those in the Site Testing Class, who have been exposed to mercury from Defendants' removal of a Mercury Regulator;
- (3) The "Mercury Regulator Removal Class" consists of all individuals or entities who currently own or occupy property in Philadelphia at which PGW has installed, but not yet removed, a Mercury Regulator.

WHY DID I RECEIVE THIS NOTICE?

You have received this Notice because records maintained by PGW and the City of Philadelphia's Board of Revision Taxes indicate that your home or building is serviced by intermediate or high pressure gas lines and was constructed on or before December 31, 1979, in which case PGW may have installed a Mercury Regulator, which either would have been removed or may still remain in your home or building.

IF I AM A CLASS MEMBER, HOW DO I PARTICIPATE IN THE SETTLEMENT?

If you are a member of the Mercury Regulator Removal Class -- that is, your home/property was constructed on or before December 31, 1979, is serviced by intermediate or high pressure gas lines, and PGW has not yet removed a Mercury Regulator from your home/property -- and wish to obtain the benefits of the proposed settlement, you need not do anything. If you do not wish to obtain the benefits of the proposed settlement, you should check the appropriate box on the accompanying Opt Out/Request for Site Testing Form by electing to Opt Out of the settlement and returning it to Class Counsel at the address listed below before the deadline set by the Court.

If you are a member of the Site Testing Class -- that is, your home/property was constructed on or before December 31, 1979, is serviced by intermediate or high pressure gas lines, and PGW has removed a Mercury Regulator from your home/property -- and wish to obtain the benefits of the proposed settlement, you must check the appropriate box on the accompanying Opt Out/Request for Site Testing Form, indicating your desire to have your home or property tested to determine whether or not mercury was spilled during Defendants' removal of a Mercury Regulator. You must complete the remainder of the form, sign it, and return the completed form to Class Counsel before the date set forth on the form. If this settlement is approved by the Court, you will then be called to schedule a time for PGW to test your home or property. You will be required to make and keep your appointment to have your property tested, and your property will not be tested if you fail to make or keep your appointment.

If you are a member of any of the Settlement Classes and do not wish to be bound by the terms of the proposed settlement, you must check the appropriate box on the accompanying form, indicating your desire to opt out of the Settlement Classes. If you opt out of the Settlement Classes, you will not be bound by the proposed settlement and will not be entitled to any relief, that is, you cannot request to have your property tested for mercury vapors as a member of the Site Testing Class. (See section below titled Release, Opt-Out Procedure, and Effect of Failure to Opt Out.)

If you do not wish to obtain the testing, but do not wish to exclude yourself from the settlement, you do not need to return the enclosed form. In such case, you will not receive the benefits of the proposed settlement, but you will be bound by its terms.

After the site testing is completed, further notice shall be provided of the testing results, only if they show the presence of mercury concentrations above levels that may be viewed to create a health risk, and you will be provided an opportunity to obtain medical testing if you are a member of the Medical Testing Class.

YOU SHOULD NOT CONTACT PGW OR THE COURT. IF YOU HAVE ANY QUESTIONS YOU SHOULD CONTACT LEAD CLASS COUNSEL BELOW:

Alan M. Feldman, Esq.
Thomas More Marrone, Esq.
Feldman, Shepherd, Wohlgeleinter, Tanner & Weinstock
1845 Walnut Street, 25th Floor
Philadelphia, PA 19103
(215) 567-8300
afeldman@feldmanshepherd.com
tmarrone@feldmanshepherd.com

**ATTORNEYS' FEES, COSTS AND EXPENSES, AND
NAMED PLAINTIFF'S INCENTIVE AWARD**

Plaintiff's counsel will request the Court's approval of reasonable compensation for their services, costs and expenses, in an amount not to exceed \$450,000. These fees will be paid by Defendants. The class members will not pay any attorneys' fees. In addition, Plaintiff's counsel will request the Court's approval of an incentive award for the named Plaintiff, Donald Brophy, in an amount not to exceed \$3,000. The incentive award will also be paid by the Defendants. Finally, Defendants shall pay Plaintiff's counsel the amount of \$10,000 toward costs of claims administration and any further notice required by the Court, and Plaintiff's counsel shall be responsible for all such additional notice and claims administration.

RELEASE, OPT-OUT PROCEDURE, AND EFFECT OF FAILURE TO OPT-OUT

Class members have the opportunity to "opt-out" of the Settlement, to object, or to be heard prior to the Court's consideration of final approval of this Settlement. Absent taking such actions, all class members shall be bound by the Settlement and all orders of the Court relating to the Settlement. If the Settlement is approved by the Court, and you have not elected to opt out of the Settlement, you shall be deemed conclusively to have settled, resolved and released certain claims you had, have or may have in the future against PGW and the Philadelphia Facilities Management Corporation, and each of their current, former and future subsidiaries, divisions, departments, successors, assigns, affiliates and parents, and each of their current, former or future directors, members, officers, elected and appointed officials, employees, heirs, executors, and administrators, and any and all representatives, shareholders, agents, accountants, attorneys, predecessors, successors and assigns of any of the foregoing.

In addition to releasing the two parties named as defendants in the lawsuit (PGW and Philadelphia Facilities Management Corporation), the settlement will also release claims against the City of Philadelphia (and all of its current, former, and future subsidiaries, commissions, boards, departments, divisions, successors, assigns and affiliates and their current, former or future directors, officers, commissioners, members, elected and appointed officials, and employees, and their heirs, executors, and administrators, and any and all representatives, shareholders, agents, accountants, attorneys, predecessors, successors and assigns of any of the foregoing), which was not named as a defendant in the lawsuit. Because PGW is not itself a separate entity, but is a collection of assets owned and operated by the City of Philadelphia for the distribution of natural gas services within the City of Philadelphia, the release of liability extends expressly to the City of Philadelphia so it should be clear that you may not assert the released claims against either the two named defendants or the City of Philadelphia.

Specifically, you will be barred and permanently enjoined from asserting any and all claims arising out of or related to the following: (i) the claims alleged in this lawsuit, including all dismissed claims; (ii) all claims related to the existence or removal of mercury and/or a Mercury Regulator; (iii) all claims related to the procedure to remove a Mercury Regulator; and (iv) all claims for medical monitoring, testing or surveillance on account of exposure to mercury from the presence of a Mercury Regulator or its removal. Notwithstanding the foregoing, you will not, by virtue of the Settlement, release any claims you may have for any bodily injury you may have suffered as a result of actual exposure to mercury, if any. If you are a member of the Site Testing Class, the Medical Testing Class, and/or the Mercury Regulator Removal Class, and you do not opt-out of the Settlement, and the Settlement is approved by the Court and becomes final, you will be deemed to have entered into this release whether or not you participate in the Settlement by submitting an Opt Out/Request for Site Testing Form and/or an Acceptance of Medical Testing Form.

If you opt out of the Settlement, you will not receive any benefits of the Settlement and will not be bound by its terms. If you wish to opt out of the Settlement, you must sign and return to Lead Class Counsel a letter requesting your exclusion from the Settlement or sign and return to Lead Class Counsel the accompanying Opt Out/Request for Site Testing Form, checking the appropriate box to opt out of the Settlement Classes to which you belong. This request to opt out must be postmarked no later than the date set forth on the Opt Out/Request for Site Testing Form, as evidenced by its postmark. The opt-out request must be signed by you and include your name, current address, and telephone number. In the event that 600 or more members of the Settlement Classes elect to opt out of the Settlement, Defendants have the exclusive right, exercisable in their sole discretion, to void this Settlement.

This Notice is not the Settlement Agreement and merely provides summary information regarding the Settlement. The Orders of the Court, rather than the Settlement Agreement, control the rights, interests and obligations of the parties. If you have any questions regarding this Notice, the Opt-Out Procedure, the Order, or the Settlement Agreement, you should contact Lead Class Counsel. If you

do not follow the procedures and deadlines that are described in this Notice, you may lose significant legal rights, including but not limited to the right to have your objections considered by the Court.

FAIRNESS HEARING AND COURT APPROVAL

The Court will hold a hearing to consider the fairness, reasonableness and adequacy of the proposed Settlement in Courtroom 246, City Hall, Philadelphia, PA 19107, on March 23, 2009 at 9:30 a.m. (the "Fairness Hearing"), or such other time as scheduled by the Court. If the date of the Fairness Hearing is rescheduled, you will not receive notice of the rescheduled date, and it is your responsibility to obtain the new date by communicating with Lead Class Counsel. At the Fairness Hearing, the Court will determine whether the proposed Settlement should be approved as fair, reasonable and adequate; whether the three proposed Settlement Classes should be certified; the amount of attorneys' fees, costs and expenses that should be awarded to plaintiff's counsel; the amount of any incentive award to be paid to Mr. Brophy; and any other matters that may be properly brought before the Court at that time. You may choose to appear in person or through an attorney (at your own expense) at the Fairness Hearing and be heard in support of, or in opposition to, the terms of the Settlement. You may also submit written objections to the proposed Settlement, which shall be heard by the Court.

If you wish to object to the Settlement, you may submit your objections in writing, along with the reasons for such objections, to Lead Class Counsel at the address below on or before March 6, 2009. If you do so, Lead Class Counsel will serve Defendants' Counsel and file with the Court copies of all such objections together with a statement of reasons, if any, why such objections should be overruled. You may also raise objections orally at the Fairness Hearing. If you intend to appear at the Fairness Hearing, you may (but are not required to) file with the Prothonotary, Philadelphia County Court of Common Pleas, Room 268, City Hall, Philadelphia, PA a notice of intention to appear, together with a statement that indicates the basis for your opposition along with any supporting documentation, including evidence that you are a member of one or more of the Settlement Classes. If you do so, you should serve copies of such notice, statement and documentation, together with copies of any other papers or briefs filed with the Court, either in person or by mail as follows:

Lead Class Counsel
Alan M. Feldman, Esq.
Thomas More Marrone, Esq.
Feldman, Shepherd, Wohlgelernter,
Tanner & Weinstock
1845 Walnut Street, 25th Floor
Philadelphia, PA 19103

Any class member who fails to object in the manner provided above shall be deemed to have waived such objections and shall be forever barred from making any objections (by appeal or otherwise) to the Settlement. Any class member who is satisfied by the Settlement need not appear at the Fairness Hearing. Any class member who has filed objections may, but need not, appear at the Fairness Hearing.

EXAMINATION OF PAPERS

This Notice is only a summary and does not describe all the details of the proposed Settlement, the Settlement Agreement, or the proceedings in the lawsuit generally. For complete information, or if you wish to discuss this lawsuit or have any questions concerning this Notice or your rights or interests with respect to these matters, please contact Lead Class Counsel:

Alan M. Feldman, Esq.
Thomas More Marrone, Esq.
Feldman, Shepherd, Wohlgelernter, Tanner & Weinstock
1845 Walnut Street, 25th Floor
Philadelphia, PA 19103
(215) 567-8300
afeldman@feldmanshepherd.com
tmarrone@feldmanshepherd.com

In addition, you may review complete files of papers submitted in this case during regular business hours at the Office of the Prothonotary, Philadelphia County Court of Common Pleas, City Hall, Philadelphia, PA 19107.

DO NOT CALL THE COURT OR PGW.

BY THE COURT
/s/ Mark I. Bernstein, J.
Honorable Mark I. Bernstein