

U.S.C. § 6972(a), because the alleged endangerment occurred or may occur in this judicial district.

3. The claims of Beatrice Holt and Sheila Holt-Orsted are hereby dismissed, and they are hereby terminated as Plaintiffs in this case.

II. CONTINUING JURISDICTION

4. The Court retains jurisdiction until March 31, 2022, to adjudicate any dispute arising under this Consent Order, and to enforce or modify the Order on motion of any party. On March 31, 2022, this Consent Order shall terminate.

III. DEFINITIONS

5. Except as otherwise provided herein, the terms used in this Consent Order shall have the meaning given those terms in RCRA, 42 U.S.C. § 6903, and that statute's implementing regulations. The following terms, as used in this Consent Order and for purposes of this Order only, are defined as follows:

- (a) "Chlorinated Solvent" means 1,1-Dichloroethene, *cis*-1,2-Dichloroethene, *trans*-1,2-Dichloroethene, Trichloroethene, Tetrachloroethene, and/or Vinyl Chloride.
- (b) "Consent Order" means this Consent Order, the Exhibit attached hereto, and all modifications to this Consent Order.
- (c) "County" means the County of Dickson, Tennessee.

- (d) “Effective Date” means the date on which the Court approves this Consent Order.
- (e) “Expanded Environmental Risk Area” means the expanded environmental risk area defined by the Expert Panel as described in section VI.9.(a).
- (f) “Expert Panel” means the expert panel established in section V.7.(a).
- (g) “Landfill” means those lands within Dickson County, Tennessee, that constitute the facility commonly known as the Dickson Landfill, encompassing without limitation (i) all lands registered under Tennessee Department of Environment and Conservation solid waste disposal facility permit number SNL-22-102-0065; (ii) all lands encompassed within parcels 12, 31, 31.01, and 31.02 as designated on State of Tennessee planimetric map number 109 for Dickson County (districts 1, 5; TN state plane 4100; compiled 2005, last revised January 2009), attached as Exhibit A to this Consent Order; and (iii) the areas known as the “Old County Landfill” or “County Landfill,” the “Old City Dump” or “City Dump,” and the “Balefill” located along Eno Road in the County of Dickson, Tennessee.
- (h) “Plaintiffs” means Natural Resources Defense Council, Inc. (NRDC), Beatrice Holt, and Sheila Holt-Orsted.

- (i) “Remedy Fund” means the remedy fund established in section IV.6.

IV. REMEDY FUND

- 6. The County shall create a Remedy Fund on or before January 1, 2012.
 - (a) Purposes. The purposes of the Remedy Fund are (i) to reduce or eliminate risks to human health and the environment associated with Chlorinated Solvent contamination in the vicinity of the Landfill and (ii) to ensure that any migration of such Chlorinated Solvents outside the Expanded Environmental Risk Area is detected and addressed in a manner that protects human health and the environment.
 - (b) Funding. The County shall deposit into the Remedy Fund the amount of \$5 million over ten years, as follows: one million four hundred thousand dollars (\$1,400,000.00) on or before March 15, 2012; and an additional four hundred thousand dollars (\$400,000.00) on or before March 15 in each year from 2013 through 2021. The County agrees to include in this funding the one million one hundred twenty thousand dollars (\$1,120,000.00) that the City of Dickson has agreed to pay the County as settlement of the City’s liability in this lawsuit. The County shall promptly notify NRDC’s counsel after each required annual deposit has been made.

- (c) Escrow Account. The County shall deposit all Remedy Fund moneys into an escrow account it shall establish with a federally insured bank in Tennessee. All requisite fees for opening and maintaining the account shall be paid from the Remedy Fund. In opening and maintaining the account, the County shall make its best efforts to minimize any such fees.
- (d) Fund Administrator. The County shall appoint a Fund Administrator. The Fund Administrator shall draw checks at the request of the Expert Panel, and otherwise act as the custodian of the Remedy Fund. The Fund Administrator shall make available to NRDC or the County, at either party's request, statements and other documents reflecting the balance and activity in the Remedy Fund account. The Fund Administrator shall not be compensated from the Remedy Fund or by Plaintiffs.
- (e) Expenditures from the Fund. Moneys shall be drawn from the Remedy Fund by bank or other third party check. There shall be no indication on the check concerning the original source of the funds. Any expenditure from the Remedy Fund exceeding \$5,000 must be approved by counsel for NRDC and the County (which approval shall not be unreasonably withheld). An expenditure exceeding \$5,000 proposed by the Expert Panel

shall be deemed approved unless counsel for either NRDC or the County lodges an objection with the Expert Panel and with counsel for the other party, within five business days of being notified of a proposed expenditure.

- (f) Surplus. Any surplus in the Remedy Fund shall be rolled over to the following year, without diminishing the County's annual funding obligation.
- (g) Offset for Grants and Gifts. The County, individually or in partnership with another entity, may seek and accept grants or gifts from federal, state, or local governments or other sources to fund remedy work consistent with the purposes for which the Remedy Fund is to be used. NRDC pledges its best efforts to assist the County in pursuing such grants should the County request such assistance. If a grant or gift is received that funds work the Expert Panel approves to implement the remedy contemplated by this Consent Order, then the County may offset its required annual deposit to the Remedy Fund by an amount not to exceed the amount of grant or gift funds received, to the extent that the grant or gift is spent on activities approved by the Expert Panel. The offset, if any, shall occur during the calendar year in which the grant or gift funds are deposited into the Remedy Fund; to the extent in any year the amount to be

offset to the Remedy Fund exceeds the County's annual deposit to the Remedy Fund, that excess shall roll over to the next year.

- (h) Residue. If at the expiration of this Consent Order any moneys are left in the Remedy Fund, the County and NRDC shall meet and confer in an attempt to reach agreement on the use of those moneys. If the County and NRDC are unable to agree in sixty days, the Court shall determine the disposition of those funds, consistent with the Remedy Fund's purposes.

V. EXPERT PANEL

7. NRDC and the County shall establish an Expert Panel, pursuant to the following terms.

(a) Membership.

- i. The Expert Panel shall consist of one or two expert representatives to be appointed by NRDC and one or two expert representatives to be appointed by the County.
- ii. NRDC and the County shall each designate their expert representatives within thirty days of the Effective Date.
- iii. NRDC and the County may substitute new expert representatives with seven days' notice to the other party.

- (b) Access to Information. The Expert Panel may request and the County and NRDC shall provide access to any information in their possession that the Panel deems necessary to perform its

work under this Consent Order. The County and NRDC shall assist the Expert Panel in attempting to obtain any information it requires from third parties.

(c) Decision Making.

- i. The members of the Expert Panel shall confer and vote on the matters delegated to the Expert Panel under this Order. The members of the Expert Panel shall make a good faith effort to reach consensus.
- ii. NRDC's and the County's representative(s) to the Expert Panel shall have a single vote on panel decisions. If NRDC appoints two representatives, those representatives shall share a vote. If the County appoints two representatives, those representatives shall share a vote.
- iii. The Expert Panel may meet in person or remotely.
- iv. The Expert Panel may decide when to meet, subject to the time frame for meetings and votes at paragraph V.7.(d).
- v. The Expert Panel may vote to engage additional consultants as necessary, in the Expert Panel's judgment, to inform its decision making.

(d) Time Frame for Meetings and Votes.

- i. The Expert Panel shall hold an initial meeting no later than forty-five days from the Effective Date and shall meet as necessary thereafter.
- ii. The Expert Panel shall make initial decisions and recommendations pursuant to paragraphs VI.8, VI.9 and VI.10 no later than one hundred five days from the Effective Date.
- iii. The Expert Panel shall meet within thirty days of a written request (by electronic mail or otherwise) for a meeting by any member or by counsel to NRDC or the County. The written request shall specify the issues the requestor believes reasonably require the Expert Panel to meet.
- iv. The Expert Panel shall meet within thirty days of receiving new information that in the judgment of any member indicates that (1) Chlorinated Solvents are present in a location where they have not previously been detected, or (2) there has been a potentially significant increase in the concentration of Chlorinated Solvents in any location. The Panel shall decide how to respond to the

new information within thirty days of any meeting held pursuant to this subparagraph.

(e) Notification of Decisions and Recommendations.

- i. The Expert Panel shall communicate its decisions and recommendations to NRDC and the County within five days of voting.
- ii. If the members of the Expert Panel do not agree on a decision or recommendation, each representative shall communicate in writing his or her recommended approach to NRDC and the County within five days of voting.
- iii. All decisions and recommendations of the Expert Panel, or any of its members, shall be communicated to NRDC and the County pursuant to the notice provisions in section XIII.24.

(f) Implementation and Dispute Resolution.

- i. If the Expert Panel agrees on a decision or recommendation for addressing any of the remedy issues in section VI below, that decision or recommendation shall be implemented by the County as described in paragraph 11.
- ii. If the Expert Panel cannot agree on a decision or recommendation by the deadlines set forth in paragraph

V.7.(d), the members of the Expert Panel shall, within fifteen days of that deadline, or such longer period as they deem necessary, jointly select and appoint a neutral expert of their choice to resolve the dispute and make the relevant decision or recommendation.

- iii. The neutral expert shall have sixty days from his or her appointment to recommend or decide on an approach, unless the members of the Expert Panel jointly agree that a longer time frame is necessary.
- iv. The neutral expert's decision or recommendation shall be implemented unless, within twenty-one days of that decision or recommendation, NRDC or the County appeals that decision or recommendation to this Court. This Court may order a remedy different from the neutral expert's decision or recommendation upon a showing by clear and convincing evidence that the neutral expert's decision or recommendation was arbitrary or capricious. In that case, the Court's revision to the decision or recommendation shall be implemented.

VI. REMEDY ACTIONS

8. In accordance with paragraphs VI.9 and VI.10 below, the Expert Panel shall decide on which remedy actions moneys from the Remedy Fund shall be expended and the relative priority of such remedy actions.
9. The Expert Panel shall:
 - (a) Define an Expanded Environmental Risk Area, to include areas of Dickson County that are or reasonably may be expected to become contaminated with Chlorinated Solvents that have emanated or may emanate from the Landfill, based on information available to the Expert Panel.
 - (b) Develop a groundwater monitoring program to be carried out by the County, including, as necessary, identifying existing wells and springs to use as monitoring locations, deciding on the location and construction details of any new monitoring wells, and deciding on the location, frequency, and methods of groundwater monitoring.
 - (c) Develop a surface water monitoring program to be carried out by the County, including deciding on the location, frequency, and methods of surface water monitoring.
 - (d) From time to time, review the results of the groundwater monitoring, surface water monitoring, any vapor intrusion study, and any other monitoring or study conducted under this

Consent Order, to determine whether to revise or amend any of the Expert Panel's decisions under this Consent Order including without limitation revising the Expanded Environmental Risk Area.

- (e) Make recommendations to the County and the Tennessee Department of Environment and Conservation (TDEC) to discontinue any monitoring currently required by TDEC and undertaken by the County that the Expert Panel deems unnecessary.
- (f) Taking into account the potential migration of contaminants, the depth and open or screened interval of particular wells, any required monitoring, the relative importance of different remedy actions, and the funding needed and available for those actions, decide whether to exempt any properties within the Expanded Environmental Risk Area from the requirement under paragraph 11.(a) that the County connect such properties to public water lines.
- (g) Decide on an appropriate schedule for connecting properties in the Expanded Environmental Risk Area to public water lines.
- (h) Approve educational material to be provided to landowners within the Expanded Environmental Risk Area concerning the

risks of contamination of groundwater, including Chlorinated Solvents, and the benefits of connecting to public water lines.

- (i) Revise its own decisions and recommendations as necessary to account for any new information, including without limitation revising the Expanded Environmental Risk Area and any monitoring program.
- (j) Take into account the finite nature of the Remedy Fund in its deliberations and prioritization of remedy decisions.

10. The Expert Panel shall consider whether to require any of the following actions:

- (a) Diligent efforts by the County to encourage deed restrictions on properties that are or may become contaminated with Chlorinated Solvents that have emanated or may emanate from the Landfill.
- (b) Closure of water wells in the Expanded Environmental Risk Area.
- (c) Other institutional controls in the Expanded Environmental Risk Area.
- (d) Studies and, if appropriate, response actions to address vapor intrusion or potential vapor intrusion associated with Chlorinated Solvents that have emanated or may emanate from the Landfill.

- (e) Other actions, inside or outside the Expanded Environmental Risk Area, that the Expert Panel may deem necessary considering any relevant information, including monitoring information concerning the migration or potential migration of Chlorinated Solvents or any increases or decreases in the concentration of Chlorinated Solvents.
 - (f) Other measures that the Expert Panel considers and recommends as reasonably necessary and appropriate to achieve the purposes of the Remedy Fund.
11. The County shall take the following remedy actions, the costs of which shall be paid from the Remedy Fund upon decision or recommendation by the Expert Panel:
- (a) On a schedule directed by the Expert Panel, offer to connect all homes and businesses within the Expanded Environmental Risk Area to public water lines, at no cost to the landowner, unless the Expert Panel decides to exempt one or more properties from this requirement.
 - (b) Pay not more than \$30.00 per month for a base supply of public water service, for five years, for any home or business connected to public water lines under this Consent Order.
 - (c) Provide educational materials, approved by the Expert Panel, to landowners within the Expanded Environmental Risk Area.

- (d) Monitor semi-annually any in-use well, any in-use spring, and any other well or spring identified by the Expert Panel on any property within the Expanded Environmental Risk Area.
- (e) Record deed restrictions on all properties owned by the County that constitute the Landfill that prohibit any future use of those properties for any residential, school, day care, hospital, public accommodation, or other institutional use, and to prohibit any future use of this land for any commercial or industrial use other than a use existing on the Effective Date or any use approved in writing by the Expert Panel.
- (f) Provide to NRDC and the Expert Panel copies of all groundwater and surface water monitoring reports, including lab data sheets, purging records, chain of custody forms, and associated records, for all monitoring conducted pursuant to this Consent Order, within seven days of receipt of such documents by the County or any consultant of the County.
- (g) Require that any laboratory analysis of groundwater or surface water conducted by the County or the County's consultant under this Consent Order be reported to the method detection limit, as defined in EPA Method 8260B, including any values below the estimated quantitation limit (and specifically including any values that are J flagged).

- (h) Carry out the decisions of the Expert Panel pursuant to paragraphs V.7.(c), V.7.(f), VI.8, VI.9 and VI.10.
12. Moneys from the Remedy Fund may be expended to carry out any decision or recommendation of the Expert Panel and to carry out any other remedy action required of the County under paragraph VI.11; to carry out any remedy action required by TDEC or the U.S. Environmental Protection Agency (“EPA”) with respect to the subject matter of this action, to the extent that the work is approved by the Expert Panel; and to pay the reasonable fees and expenses of any additional consultant engaged by, or neutral expert appointed by, the Expert Panel. Work ordered by TDEC or EPA shall not be funded from the Remedy Fund except to the extent the work is approved by the Expert Panel.
13. The Expert Panel shall work in good faith to resolve disputes before appointing neutral experts and shall be economical in its use of additional consultants and neutral experts, if any, to minimize the consultant and neutral expert costs borne by the Remedy Fund.
14. The reasonable fees and expenses of members of the Expert Panel for Panel service may be borne by the Remedy Fund, subject to the following caps: In the first year following the Effective Date, no more than \$10,000 total for the member(s) appointed by the County and \$10,000 total for the member(s) appointed by NRDC, and, in each

subsequent year, \$5,000 total for the member(s) appointed by the County and \$5,000 total for the member(s) appointed by NRDC. Money not expended to compensate the members of the Expert Panel for their fees and expenses shall remain in the Remedy Fund.

VII. ROLE OF ENSAFE

15. At the County's request, counsel and/or a technical representative of NRDC shall make themselves available to meet in person in Tennessee with one or more representatives of EnSafe, the County's environmental consultant. During that meeting, if it occurs, NRDC shall discuss with EnSafe NRDC's concerns about some of the work EnSafe has done in connection with the Landfill. Any expenses incurred by any party, representative, or consultant in connection with, or related to, the meetings described in this paragraph shall not be paid for from the Remedy Fund. Within a reasonable time after the Effective Date, if NRDC states in writing to the County its wish to eliminate or limit the role of EnSafe (or its principals or employees) in designing or carrying out tasks funded by the Remedy Fund, and the specific reasons for that wish, then NRDC's stated wishes shall control unless the reasons are arbitrary. If the County and NRDC do not agree as to whether the reasons are arbitrary, the determination of arbitrariness shall be submitted to the Expert Panel for resolution, including, if necessary, the dispute resolution provisions of paragraph

V.7(f). No EnSafe principal or employee shall serve on the Expert Panel without the consent of the County and NRDC.

VIII. RECORDS RETENTION

16. NRDC and the County shall retain and maintain copies of all reports, certifications, and other records required under or developed in carrying out this Consent Order for the duration of this Order or as otherwise required by law. Members of the Expert Panel, and any additional consultant engaged by, or neutral expert appointed by, the Panel, shall retain copies of all correspondence and other documents developed or received in carrying out their work under this Consent Order. Upon request and reasonable notice, the reports, certifications, correspondence, documents, and other records referenced in this paragraph shall be made available for inspection by NRDC, the County, and the Expert Panel.

IX. ATTORNEY FEES AND COSTS

17. The County will pay NRDC six hundred thousand dollars (\$600,000.00) in attorney fees and costs, in two equal installments. The County shall remit the first payment of three hundred thousand dollars (\$300,000.00) by January 31, 2012. The County shall remit the second payment of three hundred thousand dollars (\$300,000.00) by September 1, 2012. These payments shall be in addition to any payments to the Remedy Fund. The County shall make payments by

check payable to Natural Resources Defense Council, Inc., or by wire transfer, pursuant to instructions that NRDC shall provide to the County upon request. These payments shall fully satisfy any claim by any Plaintiff to recover attorney fees or costs in this litigation through the termination of this Consent Order, except as provided in paragraph X.18 below.

X. RESOLUTION OF DISPUTES NOT OTHERWISE COVERED

18. In the event that any dispute arises under or with respect to this Consent Order for which no dispute resolution procedure is provided elsewhere in the Consent Order, the County and NRDC shall meet and confer informally in a good faith effort to resolve the dispute. NRDC and the County shall have fourteen calendar days to resolve the dispute informally. If, at the end of fourteen days, the dispute is not resolved, NRDC or the County may file a motion with the Court seeking enforcement or modification of this Consent Order. If NRDC or the County unreasonably breaches a provision of this Consent Order and the other party responds by moving to enforce this Order, the enforcing party may recover its reasonable attorney fees and expenses incurred in enforcing the Order, to the extent the enforcing party prevails and the opposing party's conduct was not substantially justified.

XI. RELEASE

19. Plaintiffs and their respective successors, heirs, and assigns, including without limitation all present and future officers, directors, agents, attorneys, and representatives of Plaintiffs (collectively, “Plaintiff Releasing Parties”), hereby release and forever discharge the County, and its successors and assigns, as well as its directors, executive officers, employees, agents, attorneys, Commissioners, and representatives, from any and all claims, demands, causes of action, and suits of every kind or nature, contract, tort, statutory or otherwise, regarding the subject matter of this litigation: (a) which Plaintiffs made or could have made in this litigation, or (b) which may arise during the term of this Consent Order (together, the “Plaintiff Released Claims”). Plaintiff Releasing Parties further covenant and agree that they will not hereafter initiate any suit, demand, civil action, demand for arbitration or any other similar civil remedy against the County based in whole or in part on the Plaintiff Released Claims or any of them.
20. The County and its successors and assigns, including without limitation all present and future officers, directors, agents, attorneys, Commissioners, and representatives of the County (collectively, “County Releasing Parties”), hereby release and forever discharge Plaintiffs and their successors, heirs, and assigns, as well as their

directors, executive officers, employees, agents, attorneys, and representatives, from any and all claims, demands, causes of action, and suits of every kind or nature, contract, tort, statutory or otherwise, regarding the subject matter of this litigation: (a) which the County made or could have made in this litigation, or (b) which may arise during the term of this Consent Order (together, the “County Released Claims”). County Releasing Parties further covenant and agree that they will not hereafter initiate any suit, demand, civil action, demand for arbitration or any other similar civil remedy against the Plaintiffs based in whole or in part on the County Released Claims or any of them.

21. The releases and covenants in paragraphs XI.19 and XI.20 above do not apply to litigation initiated after termination of this Consent Order, so long as such litigation is based upon information first discovered by the party initiating the litigation after termination of this Consent Order.
22. The releases and covenants in paragraphs XI.19 and XI.20 above do not apply to any motion to enforce this Consent Order.

XII. MODIFICATION

23. NRDC and the County may, subject to Court approval, modify by written agreement the requirements of this Consent Order. NRDC and

the County shall file a joint motion to the Court requesting any such modification.

XIII. NOTICES

24. All notices required by this Consent Order shall reference the title, caption, and case number of this action, and shall be sent (a) electronically and (b) via certified U.S. Mail, overnight express mail, or hand delivery to the recipients and addresses below unless NRDC and the County agree that electronic notice is sufficient to comply with this Consent Order. Compliance periods triggered by notice under this Order shall commence on the date of first receipt of the relevant notice or communication.

(i) For Plaintiff Natural Resources Defense Council:

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(ii) For Defendant County of Dickson:

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and

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25. The County or NRDC may change its designated recipient(s) and/or address(es) by providing notice of such change to the other party.

XIV. FINAL JUDGMENT AND WAIVER OF APPEAL

26. Upon entry by the Court, this Consent Order shall constitute a final judgment, from which no appeal may be taken except with respect to subsequent orders of the Court.

XV. SIGNATORIES

27. Each signatory to this Consent Order certifies that he or she is fully authorized to enter into this Order, to agree to its terms and conditions, and to execute and legally bind the party he or she represents.

XVI. INTEGRATION CLAUSE

28. This Consent Order constitutes the final, complete, and exclusive agreement and understanding between the Plaintiffs and the County and supersedes all prior agreements and understandings, whether oral or written, with respect to the claims in this case. No other document nor any representation, agreement, understanding, or promise is part

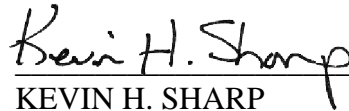
of this Consent Order, nor may such be used in construing the terms of this Order.

XVII. FINDING OF FAIRNESS

29. This Consent Order is fair, reasonable, and equitable; does not violate the law or public policy; comes within the general scope of the pleadings; and furthers the objectives of the statute on which Plaintiffs' operative complaint is based. For these reasons, the Consent Order is approved and entered by this Court.

It is so ORDERED.

ENTER this 9th day of December, 2011.



KEVIN H. SHARP
UNITED STATES DISTRICT JUDGE

Approved for Entry:

For Plaintiffs:

December 7, 2011

/s/ Michael E. Wall

Michael E. Wall (CA Bar # 170238), *pro hac vice*
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