

EXPERT PANEL
for
THE DICKSON COUNTY LANDFILL
DICKSON, TENNESSEE

Memorandum

TO: Timothy V. Potter, Esq., Reynolds Potter, Ragan & Vandivort, PLC
Michael K. Stagg, Esq., Waller Lansden Dortch & Davis, LLP
Michael E. Wall, Esq., Natural Resources Defense Council, Inc.

FROM: David E. Jackson, P.G., P.H.
David E. Langseth, Sc.D., P.E., D. WRE
Stavros S. Papadopoulos, Ph.D., P.E. NAE

MATTER: Natural Resources Defense Council, Inc., *et al.*, v. County of Dickson, Tennessee,
et al., No.: 3:08-cv-00229
Consent Order Entered December 9, 2011

DATE: August 24, 2012

SUBJECT: Expert Panel Communication No. 5
Recommendations No. 5 and 6, and Request for Information

This communication from the Expert Panel established under the referenced Consent Order presents recommendations to connect certain homes to public water supply, and to address the funding of resampling events when chlorinated solvents are detected in a sample from a previously “clean” source. It also includes requests for information related to the connection of residences to public water supply, to educational materials to be provided to landowners and/or residents within the Expanded Environmental Risk Area (EERA), and to sampling procedures used by the County’s consultants. Note that while we may expand upon the recommendations contained herein after we receive the requested information, these recommendations are not contingent upon the additional information. Prior to presenting the specific recommendation and information requests, however, we present some general comments on our interpretation of certain language in the Consent Order.

General Consent Order Interpretation Comments

We want to comment on our interpretation of the Consent Order provisions regarding use of the Remedy Fund and the provisions of Consent Order paragraph VI.11(b).

To: Timothy V. Potter, Esq., Michael K. Stagg, Esq., Michael E. Wall, Esq.
Date: August 24, 2012
Page: 2

Use of the Remedy Fund

Statements regarding use of the Remedy Fund may be found in Consent Order paragraphs VI.8, VI.11, and VI.12. In our view, there are some ambiguities among those three sections. We provide here a brief discussion of the ambiguities as we see them and thereafter state our understanding and intention regarding use of the Remedy Fund.

Paragraph VI.8 states:

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.

Paragraph VI.11 states:

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.

Paragraph VI.12 states:

"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:..."

Potential ambiguities include the following:

- Paragraph VI.12 uses the word "may" in reference to Remedy Fund use for actions required under paragraph VI.11, while paragraph VI.11 itself uses the "shall" in regard to the same topic.
- Paragraph VI.11(h) refers to actions taken pursuant to paragraphs VI.9 and VI.10, apparently invoking the language regarding Remedy Fund use in paragraph VI.11, which differs from that in paragraph VI.8, the initial paragraph governing Remedy Fund use for actions taken under paragraphs VI.9 and VI.10.
- Paragraph VI.12 refers to actions under VI.11, and since, as noted in the prior item, VI.11 refers back to VI.9 and VI.10, which are initially governed by VI.8, VI.12 implicitly refers back to VI.8, again with difference in language regarding Remedy Fund use.
- The paragraph VI.11 language is ambiguous on whether the reference to "...decision or recommendation by the Expert Panel." refers only to our directions regarding actions to be taken or also requires that we provide direction regarding use of the Remedy Fund.

We want to resolve these apparent ambiguities by stating our position that costs associated with implementing all remedy actions required under Section VI.11, implementing all Expert Panel directions or recommendations regarding remedy actions under any portion of the Consent

To: Timothy V. Potter, Esq., Michael K. Stagg, Esq, Michael E. Wall, Esq.
Date: August 24, 2012
Page: 3

Order, and responding to all Expert Panel requests for information should be paid for from the Remedy Fund unless the Expert Panel explicitly states otherwise. This statement applies not only to all the recommendations and requests for information in this memorandum, but also to all past and future recommendations and requests for information. Please inform us as soon as possible if this position is not consistent with the intent of the Consent Order.

Consent Order paragraph VI.11(b)

Consent Order paragraph VI.11(b) reads as follows:

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.

In our reading, this language has some ambiguity regarding whether the County could decide to pay a lesser amount than the maximum stated in the quoted language. We believe that this language should be interpreted as meaning that the County shall pay for the cost of public water service for a five year period up to a maximum of \$30.00 per month and that costs above \$30.00 per month would be borne by the household or business.

Recommendation 5:

Background

Recent groundwater sampling results obtained and reported by EnSafe (please see e-mail correspondence from Michael Stagg dated July 25 and 26, 2012 forwarding information provided by Shaun Winter of EnSafe) indicated the detection of trichloroethene (TCE) at concentrations below laboratory reporting limits ("J-flag" values) in the [REDACTED] well at [REDACTED] and the [REDACTED] well at [REDACTED]. In accordance with Consent Order paragraph V.7.(d)iv.(1), the Expert Panel met on July 27, 2012 to consider these recently reported sampling results. At that meeting we voted to issue the following recommendation in accordance with Consent Order Sections VI.9(g), and VI.11.(a) and (b).

Recommendation

As soon as practicable, the County should offer to extend public water connections to the [REDACTED] and [REDACTED] residences, respectively located at [REDACTED] and [REDACTED]. The County should at the same time offer to extend public water connections to the nearby [REDACTED] residences.

To: Timothy V. Potter, Esq., Michael K. Stagg, Esq, Michael E. Wall, Esq.
Date: August 24, 2012
Page: 4

Recommendation 6:

Background

The Expert Panel recognizes the value of the County's initiative to resample the [REDACTED] and the [REDACTED] wells discussed above. The Panel is in the process of developing an expanded monitoring program that will include sampling of surface water and of wells and springs (other than the "in-use" wells and springs within the EERA that are currently sampled semi-annually under the terms of paragraph VI.11 (c) of the Consent Order), and that will provide for the detection of potential contaminant migration to the outside of the EERA. The Panel wishes that resampling of wells, springs, or surface water becomes a standard practice of the monitoring program in the event of unexpected and unprecedented sampling results, suspected errors in sampling or laboratory procedures, or other instances in which resampling could resolve anomalies or ambiguities in newly obtained sampling data. Accordingly, we present the following recommendation concerning the funding of such resampling events.

Recommendation

During sampling events of residential wells, springs, or streams, if the chemical analysis results include one or more chlorinated solvents at concentrations above the method detection limit and the results from the prior sampling/analysis event did not show detectable concentrations for those chlorinated solvents, the Remedy Fund may be used to pay for resampling of that well, spring, or stream one time without prior Expert Panel approval. The Remedy Fund may not be used to pay for additional resampling (beyond the normally scheduled sampling) without prior Expert Panel approval.

Information Requests:

We request that the County provide the following information to the Expert Panel:

1. Estimated cost of extending public water lines to certain other residences in the vicinity of the residences listed in Recommendation 5 that also are dependent on well water, but that are located at relatively remote distances or across watercourses from these properties' respective road frontages. These properties include the [REDACTED], and [REDACTED] residences on [REDACTED].
2. Any educational materials that the County intends to provide to landowners or other residents in the EERA.
3. Copies of the protocols used, or to be used, by County's consultants for sampling residential wells, springs, and streams