

**IN THE UNITED STATES DISTRICT COURT FOR THE
MIDDLE DISTRICT OF TENNESSEE**

NATURAL RESOURCES DEFENSE)
COUNCIL, INC., BEATRICE HOLT,)
and SHEILA HOLT-ORSTED,)

Plaintiffs,)

v.)

COUNTY OF DICKSON, TENNESSEE,)
CITY OF DICKSON, TENNESSEE,)
ALP LIGHTING AND CEILING)
PRODUCTS, INC., NEMAK USA, INC.,)
and INTERSTATE PACKAGING)
COMPANY,)

Defendants.)

No. 3:08-cv-00229
Chief Judge Campbell
Magistrate Judge Bryant

**PLAINTIFFS' JOINT MOTION FOR PARTIAL
SUMMARY JUDGMENT**

Plaintiffs Natural Resources Defense Council, Beatrice Holt, and Sheila Holt-Orsted hereby respectfully move for partial summary judgment pursuant to Fed. R. Civ. P. 56 and Local Rules 7.01 and 56.01.

Plaintiffs specifically request that this Court order that:

- (1) this Court has jurisdiction under 42 U.S.C. § 6972(a) and Article III of the Constitution because (a) Plaintiffs provided statutorily required notice of their intent to sue under 42 U.S.C. § 6972(b)(2)(A); (b) the action is not statutorily precluded under 42 U.S.C. § 6972(b)(2)(B) or (C); and Plaintiffs have Article III standing to sue;
- (2) chlorinated solvents disposed at the Dickson Landfill “may present an imminent and substantial endangerment to health or the environment,” under section 7002(a)(1)(B) of the Resource Conservation and Recovery Act, 42 U.S.C. § 6972(a)(1)(B); and
- (3) defendants the City of Dickson, Tennessee, the County of Dickson, Tennessee, and Nemark USA, Inc. contributed to the disposal of waste that “may present an imminent and substantial endangerment to health or the environment” and therefore are liable under 42 U.S.C. § 6972(a)(1)(B).

If the Court does not render judgment on each of these matters, Plaintiffs respectfully request that, pursuant to Fed. R. Civ. P. 56(d)(1) & (2), the Court

order that specific facts or matters are established in this action, including those facts set forth in Plaintiffs' Statement of Material Facts in Support of Joint Motion for Partial Summary Judgment.

This motion is based on the pleadings and papers on file with this Court in this action and the following concurrently filed papers:

1. Plaintiffs' Joint Memorandum in Support of Motion for Partial Summary Judgment;
2. Plaintiffs' Notice of Filing of Unpublished Cases Cited in Joint Memorandum in Support of Motion for Partial Summary Judgment;
3. Plaintiffs' Statement of Material Facts in Support of Joint Motion for Partial Summary Judgment;
4. [Proposed] Order Granting Plaintiffs' Joint Motion for Partial Summary Judgment;
5. Declaration of Beatrice Holt (filed Oct. 22, 2010);
6. Declaration of Sheila Holt-Orsted (filed Oct. 22, 2010);
7. Declaration of Joyce Tucker (filed Oct. 22, 2010);
8. Declaration of Linda Lopez (filed Oct. 22, 2010);
9. Declaration of Stavros S. Papadopoulos in Support of Plaintiffs' Motion for Summary Judgment;
10. Declaration of Harlee Strauss in Support of Plaintiffs' Motion for Summary Judgment;

11. Declaration of Julian Lewis in Support of Plaintiffs' Motion for Summary Judgment;
12. Declaration of Kirk Wye Brown in Support of Plaintiffs' Motion for Summary Judgment;
13. Declaration of Amy Lorber in Support of Plaintiffs' Motion for Summary Judgment;
14. Declaration of Rebecca Riley in Support of Plaintiffs' Motion for Summary Judgment;
15. Declaration of Melissa Lupo in Support of Plaintiffs' Motion for Summary Judgment;
16. Declaration of Selena Kyle in Support of Plaintiffs' Motion for Summary Judgment;
17. Declaration of Joya Sonnenfeldt in Support of Plaintiffs' Motion for Summary Judgment.

For the reasons set forth in Plaintiffs' concurrently filed memorandum in support, Plaintiffs respectfully request that their motion be granted.

October 22, 2010

Respectfully submitted,

/s/ Michael E. Wall

Michael E. Wall (CA Bar #170238), *pro hac vice*
Selena Kyle (CA Bar # 246069), *pro hac vice*
Natural Resources Defense Council, Inc.
111 Sutter Street, 20th Floor
San Francisco, California 94104-4540
(415) 875-6100
mwall@nrdc.org; skyle@nrdc.org

Rebecca J. Riley (IL Bar #6284356), *pro hac vice*
Natural Resources Defense Council, Inc.
2 N. Riverside Plaza, Suite 2250
Chicago, IL 60606
(312) 651-7913
rriley@nrdc.org

Attorneys for Plaintiffs

Charles J. Ha (WA Bar #34430), *pro hac vice*
Ranjit Narayanan (WA Bar #40952), *pro hac vice*
Orrick, Herrington & Sutcliffe, LLP
701 5th Avenue, Suite 5700
Seattle, WA 98104
(206) 839-4343
charlesha@orrick.com; rnarayanan@orrick.com

Joe W. McCaleb (TN BPR No. 003505)
7910 Hilton Hollow Lane
Primm Springs, TN 38476
(615) 799-5706
mccalebhw@gmail.com

*Attorneys for Plaintiff Natural Resources
Defense Council, Inc.*

George E. Barrett (TN BPR No. 002672)
Douglas S. Johnston, Jr. (TN BPR No. 005782)
BARRETT, JOHNSTON & PARSLEY
217 Second Avenue North
Nashville, Tennessee 37201
(615) 244-2202
gbarrett@barrettjohnston.com

Joe R. Whatley, Jr.
Whatley, Drake & Kallas, LLC
1540 Broadway, 37th Floor
New York, NY 10036
jwhatley@wdklaw.com

*Attorneys for Plaintiffs Beatrice Holt and
Sheila Holt-Orsted*

CERTIFICATE OF SERVICE

I, Michael E. Wall, hereby certify that on October 22, 2010, I caused the foregoing document:

PLAINTIFFS' JOINT MOTION FOR PARTIAL SUMMARY JUDGMENT

to be served via the Court's electronic filing system on the following counsel of record:

Joe W. McCaleb & Associates
7910 Hilton Hollow Lane
Primm Springs, TN 38476
mccalebjw@gmail.com

Joe R. Whatley, Jr.
Whatley, Drake & Kallas, LLC
1540 Broadway, 37th Floor
New York, NY 10036
jwhatley@wdklaw.com

Charles J. Ha
Ranjit Narayanan
Orrick, Herrington & Sutcliffe, LLP
701 5th Avenue, Suite 5700
Seattle, WA 98104
charlesha@orrick.com; rnarayanan@orrick.com

George E. Barrett
Douglas S. Johnston, Jr.
Tim Miles
Barrett Johnston, LLC
217 Second Avenue, N
Nashville, TN 37201
gbarrett@barrettjohnston.com; djohnston@barrettjohnston.com;
tmiles@barrettjohnston.com;

Rebecca Riley
Natural Resources Defense Council, Inc.
2 N Riverside Plaza, Suite 2250
Chicago, IL 60606
rriley@nrdc.org

Mitchell S. Bernard
Natural Resources Defense Council, Inc.
40 W 20th Street
11th Floor
New York, NY 10011
mbernard@nrdc.org

Susan L. Kay
131 21st Ave., So.
Nashville, TN 37203
susan.kay@vanderbilt.edu

Kirk Vandivort
Timothy V. Potter
Hilary Hiland Duke
Patrick Brian Ragan
Reynolds, Potter, Ragan & Vandivort, PLC
210 E College Street
Dickson, TN 37055
kirk_vandivort@bellsouth.net; tim_potter@bellsouth.net;
hilary_duke@bellsouth.net; brian_ragan@bellsouth.net

William H. Farmer
Jones Hawkins & Farmer, PLC
One Nashville Place
150 Fourth Avenue, N
Suite 1820
Nashville, TN 37219
bfarmer@joneshawkinsfarmer.com

Keith C. Dennen
Sharon Orenstein Jacobs
Johnny C. Garrett, IV
William J. Haynes, III
Bone, McAllester & Norton, PLLC
Nashville City Center, Suite 1600
511 Union Street
Nashville, TN 37219
kdennen@bonelaw.com; sjacobs@bonelaw.com; jgarrett@bonelaw.com;
whaynes@bonelaw.com

Jennifer L. Brundige
Luna Law Group, PLLC
333 Union Street, Suite 300
Nashville, TN 37201
jbrundige@lunalawnashville.com

Frank J. Scanlon
Watkins, McGugin, McNeilly & Rowan
Samuel P. Helmbrecht
Watkins & McNeily, PLLC
214 Second Avenue, N, Suite 300
Nashville, TN 37201
frank@watkinsmneilly.com; sam@watkinsmneilly.com

Michael K. Stagg
Robert J. Martineau, Jr.
Paul G. Summers
Edward M. Callaway
Waller, Lansden, Dortch & Davis, LLP
Nashville City Center
511 Union Street, Suite 2700
Nashville, TN 37219
michael.stagg@wallerlaw.com; bob.martineau@wallerlaw.com;
paul.summers@wallerlaw.com; ed.callaway@wallerlaw.com

Thomas M. Donnell, Jr.
Kerry M. Ewald
Dickinson Wright, PLLC
Fifth Third Center, Suite 1401
424 Church Street
Nashville, TN 37219-2392
tdonnelljr@dickinsonwright.com; kewald@dickinsonwright.com

Sharon R. Newlon
Tammy L. Helminski
Dickinson Wright, PLLC
500 Woodward Avenue, Suite 4000
Detroit, MI 48226-3425
snewlon@dickinsonwright.com; thelminski@dickinsonwright.com

Anne E. Viner
Tzaivia Masliansky
Jonathan D. Sherman
Much Shelist Denenberg Ament and Rubenstein, P.C.
191 North Wacker Drive, Suite 1800
Chicago, IL 60606
aviner@muchshelist.com; tmasliansky@muchshelist.com;
jsherman@muchshelist.com

October 22, 2010

/s/ Michael E. Wall
Michael E. Wall