



HARPETH RIVER WATERSHED ASSOCIATION

May 1, 2007

Mr. Chuck Head
Senior Director Land Resources
Tennessee Department of Environment and Conservation
TN Department of Environment and Conservation
401 Church Street
L & C Annex, 6th floor
Nashville, TN 37243

RE: Harpeth River and Liberty Creek Hazardous Chemical Contamination via Egyptian Lacquer Manufacturing Company, Small Quantity Generator TND-09-314-8682 Franklin, Williamson County, Tennessee

Dear Mr. Head:

The Harpeth River Watershed Association (HRWA) has appreciated the opportunity to provide input and assist with the efforts related to the illegal release of hazardous chemicals from the Egyptian Lacquer Manufacturing Company (ELMCO) facility that is polluting the Harpeth River in downtown Franklin. As you know, HRWA's mission is to protect the Harpeth River and its watershed. As we have discussed since this problem became public in December 2006, HRWA continues to be concerned with the continued release of hazardous substances and wastes into the environment and lack of a remediation and corrective plan and effort. Since the beginning of this situation HRWA staff has been communicating with TDEC, City of Franklin, ELMCO, the State's and ELMCO's consultants, the nearby school and neighbors and the media. We have shared information and even located seeps of free product entering the Harpeth to help with the investigation process.

As of today, four months after our initial meeting, this situation is ongoing. Hazardous chemicals continue to flow into Liberty Creek and the Harpeth River via shallow groundwater paths that are easy to see and smell which is clearly in violation of state and federal laws protecting clean water and control of hazardous substances. On January 31st at a stakeholder meeting at TDEC, the agency committed to remediating the situation in a timely manner that included public involvement. We believe that the site is readily amenable for clean-up and elimination of the chemicals in the environment based on the nature of the shallow, karst geology in the area.

Therefore, we are formally requesting that the equivalent of a full RCRA Facility Assessment (RFA) and RCRA Facility Investigation (RFI) of the entire property to determine all current and past sources and paths of contamination of soil, air and ground and surface water so that the remediation process will begin and be completed as soon as possible. We believe that the entire

site as opposed to the just the area near the tank field and piping trench needs to be investigated because of 1) the site's past history as a depot for underground petroleum product storage, 2) the variety of chemicals that have been found in the soil and water in the area and 3) the results of the October 2006 Phase II Environmental Evaluation which indicate multiple contaminated locations on the property.

We are also interested in what TDEC is planning to do to protect human health and the environment in the short and long-term due to this continued illegal uncontrolled hazardous chemicals release and request another meeting with TDEC in the very near term. Specifically, please note for the administrative record:

Concern for Continued Release of Free Product and Emulsified Liquids

As you are aware, free product acetone and toluene continue to reach both Liberty Creek and the Harpeth River. We have been verbally informed that a "pool" of free product has been identified on the ELMCO property and that the direct push investigation has been completed. Further, as you know, acetone is 100% soluble in water and even though absorbent booms have been placed, they do nothing to prevent highly emulsified acetone from escaping. Both dissolved and free phase liquids represent a threat and violate Tennessee water quality standards.

Although TDEC has performed a one-time acute toxicity test on Liberty Creek water, we are concerned that the acceptance of the degree of toxicity exhibited by a single test that might not be representative of daily conditions. Visual stream conditions demonstrate a virtual complete absence of fish and aquatic life, which intuitively suggests that a yet-to-be-determined toxicity exists. Liberty Creek is afforded full protection by the Tennessee Water Quality Control Act for numerous designated uses. Most applicable is the designation for Fish and Aquatic Life. The obvious anoxic conditions in the stream bed (as evidenced by dead algae and/or bacteria masses) and the organic loading of the chemicals are sure to reduce the dissolved oxygen concentrations necessary to sustain fish and aquatic life. We are concerned that low oxygen levels will be exacerbated this summer when the river's natural low flow summer season arrives. Has TDEC tested the water regularly on a diurnal basis for dissolved oxygen and if so, what were the results compared to the allowable concentrations? Further, no floating materials including oils, slimes, bottom deposits, etc. are allowed where such are detrimental to designated uses. Obviously, free product and emulsified product violate this provision. Also, toxic substances in concentrations detrimental to fish and aquatic life are not allowed. Although Liberty Creek is not a human drinking water source, wildlife depend on this water to live and such wildlife are part of the food chain that ultimately reaches humans.

The Water Quality Control Act, Rule 1200-4-3-.02 requires that "existing pollution should be corrected as rapidly as practicable, and future pollution prevented through the best available technology economically available or that greater level of technology necessary to meet water quality standards". Clearly, continued and virtually unmitigated releases of contaminants into Liberty Creek and the Harpeth River do not meet this requirement.

RCRA Investigative Actions

Given that ELMCO is a Small Quantity Generator of hazardous wastes and there is evidence of a release of hazardous wastes and hazardous substances, we expect TDEC to issue enforcement directives for investigative and corrective actions. What specifically is TDEC's plan to issue a formal order against ELMCO? Further, what are TDEC's plans to conduct a facility-wide RCRA Facility Assessment (RFA) and a RCRA Facility Inspection (RFI) to determine all sources of

hazardous constituents released to the soil, groundwater, air, and surface water? There is ample evidence that hazardous substances exist in the subsurface at the above-ground tank farm, the piping trench, the hazardous waste drum storage area, the existing underground storage tank area, the former underground storage area, off-site beneath a high density residential area, and on public property owned by the City of Franklin, at a minimum.

The results of the Phase II Environmental Site Assessment completed in October 2006 by August Mack for ELMCO because of an interest in the purchase of the property indicated chemical constituents that can be directly attributable to the following possible sources: the reported existing and former underground storage tanks (including gasoline, diesel fuel, and fuel oil per Dwight Hinch of Triad); the wax storage area; and the hazardous waste drum storage area. These contamination areas are distinctively located away from the aboveground tank farm and the piping trench – the only sources mentioned by TDEC as being “sources”. Further, the likely presence of contamination beneath the building has not been assessed as a possible source.

A review of TDEC’s Division of Underground Storage Tank file in the Nashville Field Office did not indicate any evidence that any underground storage tank located on-site was ever formally closed. Depending on when the tanks were installed and/or removed from service, formal closure and investigative actions could have been required. The file indicated that one tank still exists for storing heating oil, and constituents in the subsurface in that area are indicative of fuel oil. Although that tank is apparently exempt from underground storage tank regulation, any release would still be regulated. This tank must be assessed as a possible source of contaminants.

Given that Shell Oil previously owned and operated this property for the bulk storage and transportation of petroleum products (Source: Phase II report) prior to being purchased by ELMCO, any RFA and RFI activities should also include those potential source areas. The likely constituents of concern from Shell Oil petroleum use and storage are similar to the constituents being observed on the property today and still being illegally released into the Harpeth River and Liberty Creek. Has TDEC collected information to evaluate this possibility? Has TDEC considered requiring that the water be tested for oxygenates such as MTBE and lead?

Triad and August Mack have presented their sampling data or have proposed to compare their sampling results to EPA Region IX Preliminary Remediation Goals (PRGs) to determine the relative threat to human health and the environment and to determine where remedial actions might be required. As you are aware, these Region IX concentrations are not meant to be final remedial concentrations but rather to define initial planning concentrations before knowing site-specific conditions. Although Triad has not specified whether the Region IX Migration-to-Groundwater, the Residential, or the Industrial PRG concentration will be the basis for comparison, we understand that TDEC will ensure that the most restrictive concentrations will be considered for initial planning. Further, we understand that TDEC will also consider other applicable screening standards such as the EPA Region III Risk-Based Concentrations (RBCs), including the likely soil transfer-to-air migration pathway, given the occurrence of free product, volatile compounds beneath residential homes. Are these two assumptions accurate? Before a final remedy is selected, the site-specific conditions need to be evaluated to develop a protective clean-up standard that includes the cumulative effects of constituents.

RCRA Corrective Actions

TDEC has the responsibility and authority to require that ELMCO initiate corrective actions. As was discussed in the January 31, 2007 meeting, the stakeholders were assured that decisive actions

would be initiated and Paul Sloan, TDEC Deputy Director, committed in that meeting that the site would be remediated. The various stakeholders continue to expect correction actions to be implemented in a timely manner.

Considering RCRA requirements alone, ELMCO is required to initiate remedial actions, including short-term, interim, and final remedies. Currently, two key RCRA environmental indicators have not been determined and are not being met. These indicators are the Current Human Exposures Under Control and Migration of Contaminated Groundwater Under Control. There is clear evidence that an aggressive form of corrective actions is necessary to mitigate these threats and to restore the groundwater and surface water to Tennessee Water Quality Control Act standards. In discussions and on site visits with outside experts, HRWA believes that this site is highly amenable for corrective action and remediation due to the site's characteristics including shallow, quick flowing ground water. The existence of free product on-site and off-property represent short-term direct and indirect threats that have yet to be defined - including such indirect threats as breathing contaminated vapors entering buildings from underlying groundwater, ingesting contaminated sediments, surface water, or fish that are contaminated from groundwater discharges to surface water, at a minimum.

As you are aware, the actual clean-up actions that you require must consider site-specific risks and characteristics. Use of generic screening levels such as the Region IX PRGs and Region III RBCs are only valid as clean-up values if the assumptive values are representative of the site-specific threats and pollution migration pathways.

Public Participation is a RCRA Requirement

When we met on January 31, 2007 at the TDEC office, TDEC committed to inform all interested stakeholders, to expeditiously stop the source(s) of the release, to define the nature and extent of the contamination, and to remediate the site. Now that site subsurface investigative activities seem to have been completed or nearing completion, HRWA and other non agency stakeholders have experienced slower and less detailed updates of completed activities. Public participation in all phases of RCRA--assessment, investigation and corrective action,-- is required. All affected parties and those with an interest should be completely and promptly informed of the ongoing activities. RCRA specifically established public notice and comment opportunities and timelines for corrective actions, in particular.

We look forward to receiving a detailed update on the status of investigative activities, TDEC's plans to require short-term and longer-term corrective actions, and information on what enforcement provisions will be required to protect the environment in the Harpeth River watershed. If there is anything that we can do to assist TDEC with its efforts, please do not hesitate to contact me or Pam Davee at 615-790-9767.

Sincerely,



Dorie Bolze
Executive Director

CC: Paul Sloan, Deputy Commissioner of TDEC
Mike Apple, Director Solid and Hazardous Waste Management

P.O. Box 1127 ■ Franklin, Tennessee 37065 ■ Phone: 615-790-9767 ■ Facsimile: 615-790-9767 ■ www.harpethriver.org

David Draughon, Senior Director for Water Resources
Paul Davis, Director Water Pollution Control
Nashville TDEC EAC Office Staff
Bonnie Bashor and staff at TN Department of Health
Susan Minor and Gail Powell, Battleground Academy
City of Franklin Board of Mayor and Aldermen and senior city staff
James Giattina, EPA Region IV, Director Water Management Division
Kumar Narindor, EPA Region IV, Chief RCRA and OPA Enforcement
Neighbors from Daniels Drive Neighborhood
Bill Penny, ELMCO legal counsel, Stities and Harbison
Dwight Hinch, TriAD
Kerry Maddox, General Manager for Egyptian Lacquer Manufacturing Company