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September 10, 1991

Dianne J. Walker
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U.S. Environmental Protection Agency
Region III (3HW21)
841 Chestnut Street
Philadelphia, PA 19107

Re: Supplemental Comments of Dublin Borough
to Proposed Plan for Early Action for
the Dublin TCE Superfund Site

Dear Ms. Walker:

These are additional comments for the Record of Decision on behalf of Dublin Borough. For convenience, I have divided the comments into three sections, as follows:

1. Basic Comment
2. Technical Comments
3. Comments on Getting the Job Done

1. Basic Comment

We understand that EPA's early action addresses only the supply of water to affected properties and that the aquifer clean-up will be addressed in the next several phases ("operable unit"). Our comments therefore are based upon the premise that there will be a serious commitment to overall site clean-up, and that the EPA/DER/PRP's will not at a future date claim that alternative 6 is a part of the operable unit of overall site clean-up.

AR301541

Dianne J. Walker
Remedial Project Manager
U.S. Environmental Protection Agency
September 10, 1991
Page Two

(A) Discussion of Borough Legal Constraints:

We also understand that alternative 2 consists of simply connecting the affected properties to an expanded Borough water system to be supplied by well Nos. 1, 2 and 3. Alternative 6 consists of the same thing, except the source of water supply will be a new contaminated well, No. 4, water from which has to be treated prior to delivery.

There is a very real sense of deja vu in that a similar proposal was on the table with Sequa, which rejected it back on August 31, 1990.

Frankly, alternative 2 is the simplest and most effective means of providing a clean, regulated drinking water source to affected residences. In addition, the water supply is available. The engineering is straightforward (and, to some extent, accomplished), the Borough does not need to get into the TCE water treatment operation and maintenance, and the Borough could probably (if funded) get the job done before the renovation of Route 313 by PennDOT. (Great expense if renovated road is torn up.)

Alternative 6, by necessary implication, involves (1) either the creation of a public utility company (66 Pa. C.S.A. 101, et seq.) independent of Dublin Borough, or (2) reaching accord with Dublin Borough on the costs and complications associated with implementation, compliance with Ordinance No. 200, the Tapping Fee Ordinance, the Plumbing Code, and several other concerns, not the least of which is operation and maintenance.

We understand from discussions with you and your staff that the estimates of cost and, in particular, operations and maintenance ("O & M") are "order of magnitude" figures, generated from a computer model, and are not hard engineering estimates. In addition, we are informed that Superfund would pay only one year of O & M, and the State would fund it thereafter, unless one or more of the PRP's fund the project. Considering the track record of Federal and State appropriations and the known parsimony of Sequa, it would not seem wise for Dublin Borough to become involved in a project. AR301542

Dianne J. Walker
Remedial Project Manager
U.S. Environmental Protection Agency
September 10, 1991
Page Three

a guaranteed or prepaid source of total O & M. In fact, 53 P.S. 46202(32) allows such a trust fund to be established.

There are other complications worth present discussion. One of the most important is whether a PRP or an EPA contractor could lawfully build a water system and then turn it over to Dublin Borough. §1402 of the Borough Code (53 P.S. 46402) requires competitive building in public works. I have investigated this very carefully. To the extent that others than Dublin Borough would build either alternative 2 or alternative 6, the competitive bidding statute would, in my opinion, preclude acceptance by the Borough of such a system, particularly if built by Sequa, because it would constitute "consideration" for some portion of the claims in litigation, which would be a contract in violation of §1402.

Since Sequa and Dublin are in litigation for damages and costs, including attorneys' fees, in any acceptance of such a system, the Borough will not want to incur an unfunded liability for attorney fees, which means that any agreement between a "private authorized entity" (such as if Sequa were to be the "utility") and the Borough would have to be court approved. (53 P.S. 47421) At the end of this letter is a partial list of the difficulties to be encountered if a private entity goes into the water business as a "public utility."

The point which I am suggesting is that if negotiations break down and a decision is made to have others than Dublin Borough build the facilities, whomever has that onus had best be prepared to operate it in perpetuity.

You will note that these points are addressed in Ordinance No. 200, as amended. A copy is attached.

(B) Discussion of Suggestions:

Both alternatives 2 and 6 call for monitoring of "the plume." There are, however, two "fingers" of the plume. Our comment and suggestion addresses the Elephant Road plume

AR301543

Dianne J. Walker
Remedial Project Manager
U.S. Environmental Protection Agency
September 10, 1991
Page Four

as the recommended target, with Well No. 4 being the existing monitoring well, modified for production.

(C) Discussion of Points of Agreement:

We believe that the EPA and the Borough are in agreement on:

- The need for the expansion of the public water system;
- The need for the supply of uncontaminated water to affected residences and businesses at no capital costs, i.e., no costs to the taxpayers or ratepayers of Dublin Borough;
- The principle of no abnormal O & M costs to Borough now or in future;
- The principle of no abnormal costs to persons supplied, i.e., this includes the payment of tapping fees and the cost of plumbing connection, and the resulting disconnection, demolition and removal of existing private systems (no cross-connections permitted).

(D) Discussion of Non-Legal Points of Serious Concern:

The Borough is concerned that alternative 6 could put the Borough into the long-term business of site clean-up, depending upon the location of the new well. We are quite concerned about being dragged into "clean-up." The Borough could support alternative 6 if the location of the new production well is the existing monitoring well. That well appears to be in the plume. Selection of that well site (monitoring well) for Well No. 4 would protect the Rosanelli well, No. 3, by intercepting the Elephant Road plume. Location of the well (No. 4) somewhere else would raise concerns expressed above. In addition, since "long-term" is defined by EPA in alternative 6 as 30 years, and "long-term" is defined by DER as until contamination reaches zero (forever), then, unless there is a serious commitment to clean up the site within 30 years, the O & M costs are therefore understated substantially in EPA estimates:

AR301544

Dianne J. Walker
Remedial Project Manager
U.S. Environmental Protection Agency
September 10, 1991
Page Five

(1) By use of a 10% discount rate which is not a historical interest rate over such a time period;

(2) By the use of 30 years, which is questionable as a clean-up time goal, knowing Sequa's record of procrastination.

As information, at 25 mils, total real estate tax revenues are \$93,000.00, approximately. There really is no way the Borough could function with increased overhead or pass on O & M costs to customers in rates. What is needed is an O & M trust fund to address this concern.

Another very serious concern is absolute liability of the Borough to provide clean water to customers. Insurance is expensive and hard to get. Again, we understand the construction cost and O & M figures are "order of magnitude" generated from a computer model, and actual projections need to be discussed in detail.

(E) Analysis:

The Borough or its "Authority" (Dublin Borough Authority) are the only local agencies with the stability, over the time periods contemplated, to provide regulated water service. The EPA reservation to alternative 2 is a hydrogeological concern that TCE and all the other chemicals may migrate* to Well No. 3. If so, then "MW," the monitoring well is the logical place to locate Well No. 4. We do have costs expended in this early warning monitoring well imposed upon us by DER. Developing that into a production well addresses this concern and makes sense.

*In fact, that well (MW) exists because Sequa is challenging the Dublin Borough Well No. 3 DER permit before the Pennsylvania Environmental Hearing Board on the basis that it might become contaminated. The monitoring well is supposed to detect and provide a means of protecting Well No. 3 from plume migration. Sequa has not paid for the monitoring well, nor has it advanced any funds for the Borough commitment to treat Well No. 3 water should the same become contaminated.

AR301545

Dianne J. Walker
Remedial Project Manager
U.S. Environmental Protection Agency
September 10, 1991
Page Six

(F) Summary of Basic Comments:

To summarize Dublin Borough's Basic Comments, a Borough (or its Municipality Authority), under State law, has:

•The legal machinery and expertise to design, publicly bid, administer construction and operate what could be an extension to an existing permanent regulated drinking water source for the affected persons and properties. Included in the legal machinery are the provisions of the Pennsylvania Borough Code and the Municipalities Authorities Act dealing with public water systems, ownership of Borough streets and rights-of-way and the power of eminent domain. The Borough/Authority are in a much better position than private ventures to build such a system. (Any private venture would have to fully conform to Ordinance No. 200 and others, prior to any system takeover.)

•Alternative 6 utilizes proven technology.

•Alternative 6, in the location stated (monitoring well), addresses a most important down gradient concern of travel of TCE toward Well No. 3.

•The monitoring well exists as a proven source for a production well, eliminating a lot of prospecting and hole drilling (risk) in a geological formation famous for dry holes, low yields and well interference.

2. Technical Comments

The comments of the Borough Engineer and hydrogeologist are attached.

In summary, the engineer is telling us three things, based upon engineering considerations:

(1) The scope of alternative 6 needs to be expanded.

AR301546

Dianne J. Walker
Remedial Project Manager
U.S. Environmental Protection Agency
September 10, 1991
Page Seven

(2) The pipe has to be of adequate size* (conform to Ordinance No. 200).

(3) Delay will multiply costs (PennDOT).

In summary, the hydrogeologist is telling us that the proposed well should be located at the monitoring well site (it is technically sound to do so). He also suggests that the Borough should have technical participation in the selection of the site, design and construction of the well, early on, and not after a decision has been made.

3. Comments on Getting the Job Done

EPA is about to select a partial remedial measure involving development of a new water supply well, provision of a water distribution system, connection to water of affected and potentially affected residents, and funding for future operation and maintenance. (EPA's August 8, 1991 Early Action Plan)

EPA has "estimated" the present worth of this remedial measure at \$5,000,000.00. At the public hearing on August

*Ordinance No. 200 says, under Subpart C(2), second sentence, "No public water system of any kind may be installed except in conformity to the plans and specifications developed by the Borough Engineer of record to the date of the application for a construction permit or as thereafter modified." There are two Cowan Associates, Inc. drawings of importance, one entitled "Preliminary Proposed Borough Wide Distribution System - Key Map - Water Distribution System for Dublin Borough" dated 4/26/89, which shows the Borough wide distribution system without waterline size indicated on Main street. The other is entitled "Sequa Corporation Portion - Key Map - Water Distribution System for Dublin Borough" last dated 4/24/90, which shows a 12" pipe on Main Street and Elephant Road to Deep Run Road. It also shows 8" pipe on Village Green Road.

AR301547

Dianne J. Walker
Remedial Project Manager
U.S. Environmental Protection Agency
September 10, 1991
Page Eight

26, 1991, it became clear, however, that while this estimate included plumbing charges for connecting 69+ homes, it did not include the Borough's one-time tap-in fee of \$2,250.00 per EDU. This would involve an additional amount of approximately \$155,250.00. We are not comfortable with the present estimates.

As a result of EPA's Record of Decision, there are several possibilities. First, the PRP's could agree to fund all of the work in cash (including O & M). This money could then be provided to the Borough, or EPA could contract for the work itself. Second, the PRP's could refuse to fund the work, and, eventually, EPA would use Superfund money to complete this remedial measure. Under this option, EPA could either provide the money to the Borough or could contract for the work itself. In the event that "others" do the work, there is no political guarantee that Dublin Borough would accept the burden(s) of the completed facility for a variety of reasons, the most important of which are discussed above.

Based upon experience, not only has Sequa rejected similar proposals to alternatives 2 and 6, but also the Borough has reservations that Sequa will be responsive if Odessa, Texas is an example of present corporate attitudes. We suspect that, during the time that Sequa has to respond, all of us will be only so much older. A recent example is DER's experiences with "force majeure" claims by Sequa (enclosure). Dublin did not create the problem, and it simply does not intend to incur debt now or in the future to solve the problem. If, however, sufficient funds are made available and an agreement is reached, including all contingencies, the job will not only be done more quickly, it will be done right and, in the long run, probably at much less expense.

With regard to the timing of the payment, this is largely up to EPA. At the public meeting, William Kee, P.E., Dublin's engineer, reiterated to EPA the importance of coordinating the installation of the water line with PennDOT's reconstruction of Main Street in Dublin scheduled for late 1991. In order to permit such coordination, funds for this remedial work need to be in the Borough's hands in enough time to design, bid and to make any required payments. This means

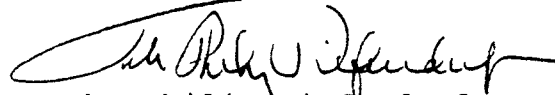
AR301548

Dianne J. Walker
Remedial Project Manager
U.S. Environmental Protection Agency
September 10, 1991
Page Nine

that EPA must act with all deliberate speed to secure a commitment from the PRP's or from the Superfund. We are seeking a letter from PennDOT which would be very helpful explaining: (1) what work is to be done in Dublin; (2) when the work is to be started/completed; (3) the cost of PennDOT's work; and (4) a statement that PennDOT will coordinate with the Borough in the installation of the water line. Our present information is attached.

As EPA is aware, EPA can make the PRP's cease their procrastinations by use of a CERCLA \$106 Order if prompt funding is not forthcoming. Failure to comply with a \$106 Order subjects the violator to not only treble damages, but \$25,000.00 per day civil penalties for each day the Order is violated.

Sincerely yours,



John Philip Diefenderfer
Stuckert and Yates

JPD:pah

Enclosures: DER force majeure letter
Cowan Associates letter
Mercuri letter
Portion of legal memorandum
Dublin Borough News - Route 313
Ordinances Nos. 200, 203 and 205
Sequa rejection letter

cc: Dublin Borough Council
Congressman Peter H. Kostmayer
William D. Kee, P.E.
Bruno M. Mercuri, D.Sc., P.G.
Albert J. Slap, Esquire
Michael Coren, Esquire
Anderson Lee Hartzell, Esquire

AR301549