



Giving Georgia's Environment Its Day In Court

Via Federal Express

August 5, 2010

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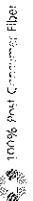
Mayor Heidi Davison
Athens City Hall
301 College Avenue
Athens, Georgia 30601-2770

Scott Gordon
Chief of Staff
U.S. Environmental Protection Agency, Region IV
Sam Nunn Federal Center
61 Forsyth Street, SW
Atlanta, Georgia 30303-8960

Dear Mayor and Gentlemen,

I am writing on behalf of Altamaha Riverkeeper, the Athens Grow Green Coalition, Georgia River Network and the Upper Oconee Watershed Network, organizations that represent citizens in Athens-Clarke County who are directly impacted by the recent spill at J & J Corporation's Athens facility that occurred on or around July 28, 2010. Specifically, I am writing to request a meeting with representatives of J & J Corporation and pertinent local, state and federal governmental representatives to address public concerns that have arisen as a result of the spill.

As we have learned from the recent BP spill in the Gulf of Mexico, it is critical to immediately establish open lines of communication with and engagement of the community in circumstances such as these where there is an event that may have a significant impact on natural resources and public health. It is our hope that we can create a dialogue among all of the relevant agencies,



representatives of J & J Corporation, and the local community that will help to allay public concerns and chart a path on how to best ensure that the public health and the environment are protected in the future.

We anticipate that the meeting will be comprised of representatives of Athens-Clarke County from both the Office of the Mayor and the Office of the Manager, the Georgia Environmental Protection Division, and the United States Environmental Protection Agency. Of course, in order to adequately address public concerns, such a meeting cannot be productive without a representative of J & J Corporation (and their legal counsel if they believe that is necessary). At the meeting would also be the representatives of the aforementioned organizations as well as a representative of GreenLaw.

At the meeting, we would like to address the following issues:

1. Public Information: As you can imagine, the public is understandably concerned about the impacts of the recent spill on public health and water quality. Thus far, the information about the spill has been piecemeal and incomplete at best, contradictory and confusing at worst. It is our hope that together we can find a method in which community questions can be answered in the most efficient and thorough manner.

You may be aware that, on August 2nd, citizens gathered to express their concerns about the spill. At this gathering, it became clear that local residents do not believe that they have received adequate information from the company and governmental agencies. Indeed, attached is a list of many of the questions that arose that night that remain unanswered. I hope that you will join us in working to address community concerns.

2. Restoration Plans: While the impact of the spill continues, it is important to begin thinking about how water quality will be restored in Trail Creek and other affected waterbodies. We would like to begin discussions on how J & J and governmental agencies anticipate restoring damaged areas and what opportunities the public will have to be involved in that process.

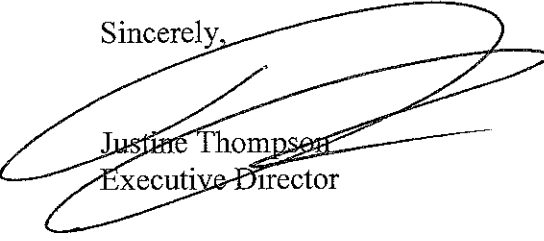
3. Future Prevention: From all tragedies, there are lessons to be learned. We hope to begin a candid discussion on how incidents such as the spill from J & J can be avoided in the future, and also, if they do occur, how to improve the response to such a crisis.

It is our intention to engage in open and meaningful discussions on how to properly inform the community of recent events, work to restore damaged areas, and prevent further incidents such as these in the future. Given that the community still does not have the answers that it needs to feel secure, we would like this meeting to occur **as soon as possible, but no later than August 13, 2010.**

Please contact me as soon as possible to set up a time for this meeting. I can be reached at (404) 659-3122 or by email at jthompson@green-law.org.

Thank you for your attention to this matter. I look forward to hearing from you.

Sincerely,



Justine Thompson
Executive Director

Attachments

cc w/ attachments:

Jim Ussery, Assistant Director, Environmental Protection Division, Georgia Department
of Natural Resources

W. Alan Reddish, Office of the Manager, Athens-Clarke County

Subash Patel, U.S. Environmental Protection Agency, Region IV Emergency Response
and Removal Branch

Questions from the Athens-Clarke Community
regarding the J & J Corporation chemical spill of July 28, 2010

Response Management Questions for the Georgia Environmental Protection Division:

1. How will long-term monitoring and remediation be funded? Is anyone setting up an escrow account to cover the costs of long-term monitoring and clean-up? Has the Attorney General been consulted about ensuring that long-term remediation and monitoring occur?
2. Was J&J Chemical Company in compliance with all state and federal regulations in terms of the storage of chemicals?
3. If J&J Chemical was in compliance with all applicable regulations, is the company considered the responsible party?
4. If J&J Chemical is responsible for funding the remediation and monitoring, what happens if the company declares bankruptcy?
5. Who actually performs the immediate and long-term clean-up? Who is responsible for the cost of that work?
6. How close is the J&J facility to the nearest stream? Are there any state or federal guidelines for permitting this type of facility (i.e., one that houses toxic chemicals including known carcinogens) to be located so close to a stream?
7. Was there a retention pond or berm on-site before the fire that was designed to prevent the flow of material from the site into surface waters? If so, where?
8. Was it possible to build a temporary berm or augment any existing berms on-site after the fire had started? Was this done?
9. Why weren't signs posted by government agencies near affected waterways? What is EPD's standard procedure in this regard? (Is this the responsibility of local government?)
10. Has there been a point person at Athens-Clarke County communicating with state agencies clearly, and requesting all the information that seems necessary for local government to have?
11. Who was overseeing the chemical spill response over the weekend?
12. Has the Greensboro water utility been fully informed of the potential danger from the chemicals released? Do they have the capability to detect the chemicals of concern? Have any other withdrawal permit holders been notified?
13. If the dye were not in the water, would the public have been informed?
14. Can you provide a timeline for the activity of EPD's Emergency Response office in relation to this incident? When was that office contacted? When did its staffer (Michelle Cortes) arrive on the scene? When did she depart the scene? In what office (i.e. where) is Cortes based?
15. Is a report by Michelle Cortes (EPD Emergency Response) on this incident completed yet? If so, is it available?
16. Is it true that GA EPD's Emergency Response office now has only four staffers in addition to a supervisor, when as recently as 2008 it had 12 staffers? If so, how has the geographic distribution of those staffers changed?

Scientific and Monitoring Questions for the Georgia Environmental Protection Division:

1. What chemicals were on site at the time of the fire? Is there a complete inventory available?
2. What chemicals entered the waterways anywhere at all?
3. EPD released sampling results Aug. 2 for formaldehyde and para-dichlorobenzene. An EPD official told the *Athens Banner-Herald* in a story dated Friday, July 30 that methanol and glutaraldehyde might also have entered the water. Did these chemicals also enter the water, or did they not? How do we know? What about any other chemicals, yet unnamed, from the site?
4. Are there known interactions between any of the chemicals released? (Or between any of these chemicals and other chemicals naturally occurring in surface waters?)
5. It seems possible that dangerous chemicals could persist in the stream after the odor and blue color have gone away. Do you have any way of knowing what to expect in this regard? Will you monitor at that point in time? Citizens will likely assume (correctly or incorrectly) that if the color and odor are gone, the water is safe for wading, fishing, etc.
6. The odor has been strong along both Trail Creek and the North Oconee River for much of the time that has passed since the spill. Were nearby residents safe in that period of time?
7. Are the water and the air (near affected water bodies) safe now?
8. Is air monitoring still being done? If so, where? Where was air monitoring performed during and after the fire?
9. Is some of the odor near affected water bodies also coming from formaldehyde?
10. Could the spill have been dammed up in the extensive, very low-gradient wetland near the site of the fire and prevented from flowing downstream through the creek? Is this option worth considering now?
11. Is there any kind of remediation that can be done other than dilution? Has a decision been made about remediation versus dilution? If so, what were the decision and its rationale? If not, when will the decision be made?
12. What is your best estimate on how long it will take for all of the chemicals to be released from the wetland and dispersed via downstream flow?
13. Do you expect there to be legacy contamination at the site, in the wetland, in the creek, or in the river? Alternatively, do you expect 100% clean-up and 100% dissipation? If so, when?
14. What do you expect the long-term ecological impact on Trail Creek to be?
15. What are the current and future human and ecological risks from the chemicals in the water and/or in sediment?
16. At how many points in time had water monitoring been done prior to Monday, August 2?
17. What frequency of water monitoring do you expect to be taking place during the week of August 2 as noted in the EPD press release dated August 2?
18. Who has analyzed water samples, EPD or HEPACO?

19. Are you concerned that the window of opportunity for useful monitoring (in the creek and in the river) has closed?
20. Will the report on the fish kill by the DNR Wildlife Resources Division include tissue analysis for toxins?
21. Has there been any collection of organisms by the DNR Wildlife Resources division in the time since the WRD fish kill investigation on Thursday? Has there been any collection of organisms by any other entity?
22. Is there anything that those who live near the creek can do, on a small scale, to remediate the spill?
23. Do you anticipate that any of these chemicals will enter groundwater?
24. UGA and Athens-Clarke County have background ecological data on Trail Creek, including a monitoring point in Dudley Park. Would this information be useful to you?
25. Would you be interested in further input from Ph.D research scientists at the University of Georgia? If so, please inform us of the best ways to provide this input.

Response Management Questions for the Athens-Clarke County Unified Government:

1. How will long-term monitoring and remediation be funded? Is anyone setting up an escrow account to cover the costs of long-term monitoring and clean-up? Has the Attorney General been consulted about ensuring that long-term remediation and monitoring occur?
2. Has Athens-Clarke County yet considered how long it will need to continue providing PSAs and signage warning the public to stay out of affected water bodies? These notices may still be needed if damaging chemicals are present after the color and odor are gone, when citizens may not reasonably be expected to stay out of the water of their own accord. Will Athens-Clarke County proactively consult with appropriate agencies to find the answer to this question?
3. Was J&J Chemical Company in compliance with all local regulations in terms of the storage of chemicals?
4. If J&J Chemical was in compliance with all applicable regulations, is the company considered the responsible party in this incident?
5. If J&J Chemical is responsible for funding the remediation and monitoring, what happens if they declare bankruptcy?
6. Who actually performs the immediate and long-term clean-up? Who is responsible for the cost of that work?
7. Is/was there a point person in the ACC government communicating with the public throughout the incident? What position(s) or office(s) perform or performed this role?
8. Does Athens-Clarke County need direction from state agencies in order to provide public information during an incident such as this?
9. Athens-Clarke County has an Emergency Management Coordinator. It appears that it is his role to coordinate incident response and communication between the different levels of government and several government agencies. Was this role performed throughout the incident? Is it being performed by the Emergency Management Coordinator currently?

10. How close is the J&J facility to the nearest stream? Are there any local guidelines for permitting this type of facility (i.e., one that houses toxic chemicals including known carcinogens) to be located so close to a stream? When was this facility permitted by Athens-Clarke County?
11. Was there a retention pond or berm on-site before the fire that was designed to prevent the flow of material from the site into surface waters? If so, where?
12. Was it possible to build a temporary berm or augment any existing berms on-site after the fire had started? Was this done?
13. Why weren't signs posted by government agencies near affected waterways in a timely fashion? Did ACC officials discuss doing so? If so, when? Does Athens-Clarke County need direction from state agencies in order to execute a local action such as this?
14. The ACC Manager was out of town during the weekend of July 30-August 1. Who took his leadership role in his absence?
15. Did this incident trigger NIMS, the National Incident Management System? If not, why not? Are there plans to examine these criteria locally and make any adjustments as needed?
16. Did Athens-Clarke County implement ICS, the Incident Command System? If not, why not?
17. Who was overseeing the chemical spill response over the weekend of July 30-Aug. 1?
18. In what situations is signage posted when there's a potential public health hazard? In what situations are PSAs released?
19. When was information about potential public health hazards associated with this spill first released to the public or posted on the ACC web site?
20. Can we receive assurances that in future incidents, Athens-Clarke County will err on the side of caution when *potentially* hazardous conditions may exist? There are ways to communicate potential harm without causing undue alarm.
21. What is the role of the ACC Environmental Coordinator in this type of incident?
22. Was the Neighborhood Notification Initiative used to notify the public? If so, when? Can our NNI be used for public health emergency notices? What about Neighborhood Watch groups with phone trees?
23. If the dye were not in the water, would the public have been informed?
24. What was the origin of the information in the repeated public statements by various officials at multiple levels of government that low dissolved oxygen levels, rather than toxins, caused the fish kill?
25. Is or was there any consideration given to closing the neighborhood parks near the affected waterways? If so, what rationale has been behind this decision-making?
26. Are there any emergency notification networks specific to the Winterville area?
27. Are there emergency notification networks specific to the industrial area of the county?

Response Management Question for State Legislators:

1. Are our state legislators addressing the budget cuts and staff reductions at EPD for the sake of public health?

Response Management Question for the University of Georgia:

1. Can the “UGA Alert” system, which works well, be used for incidents like this? Why or why not?

Response Management Questions for the United States Fish & Wildlife Service:

1. What NRDA (Natural Resource Damage Assessment) actions will be enforced due to the die-off of organisms in Trail Creek? These include fish, turtles, and *Corbicula* clams, if not others. (We assume as of this writing that invertebrates, etc. are also all dead throughout the creek. We hope to investigate microbial activity, or lack thereof. We are not sure that we have much information on amphibians, or if DNR WRD has such information.)
2. Under NRDA, do you anticipate fines to be levied on the responsible party or parties to fund mitigation?

Response Management Question for the Clarke County Health Department/ Northeast Health District:

1. Will the health department investigate the incidence of asthma cases coming into area emergency rooms as an indirect way of following up on levels of toxins (especially formaldehyde) in the air from the fire?