

11 NOVEMBER 2007

IN THE CHANCERY COURT FOR DICKSON COUNTY, TENNESSEE  
AT CHARLOTTE

DRAFT

HERBERT WRIGHT, MARY WRIGHT	)	
KIMBERLY SPRINGER, JEANETTE	)	
BUCHANON, BOBBY HOLT, LILLIE	)	
HORNER, CARMELLA HORNER, LOUIS	)	
HORNER, DEBBIE HAMILTON, and	)	
CAROL GRIMES	)	
	)	
Petitioners,	)	NO. 10728-07
	)	
vs.	)	
	)	
DICKSON COUNTY COMMISSION, and	)	
DICKSON COUNTY, TENNESSEE	)	
	)	
Respondents.	)	

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MOTION-ILLEGAL TO INSTITUTE WELL REGULATIONS WITHOUT  
FOLLOWING REGULATIONS GOVERNING PUBLIC NOTICE,  
RESEARCH REMEDIAITON, and PUBLIC MEETING

**I. Procedural History of Action and Writ of Certiorari**

On 2 January 2007, the Dickson County Commission held a Public Hearing concerning "Water Well Permitting and Spring Use Regulations" which restricted new well drilling within a defined area near the Dickson County Landfill.

On 16 January 2007, the Dickson County Commission unanimously approved, with one absence, the "Water Well Permitting and Spring Use Regulations".

On 5 February 2007, petitioners requested the Dickson County Commission to reconsider approval of the "Water Well Permitting and Spring Use Regulations". No action was taken.

On 19 March 2007, Petitioners Wright *et al* filed a Petition for a Writ of Certiorari in the Chancery Court of Dickson County with specific allegations including that the county Commission violated Rules of the Tennessee Department of Environment and

Conservation, Division of Solid Waste Management (“Rules”).

On 18 April 2007, Dickson County through Counsel filed “Answer to Petition for Writ of Certiorari”.

**II. Issue Presented to the Court in the Above Petition for Writ of Certiorari**

Did the Dickson County Commission and Dickson County as the landfill operator and owner create a regulatory scheme for groundwater polluted by the Dickson County Landfill based on arbitrary and capricious approval of “Well Drilling Regulations” which violated State Regulations and rights granted to named plaintiffs, ?

**III. Intent and Meaning of State Solid Waste Regulations Concerning Pollution of Ground Water By Landfills**

*Rule 1200-1-7-01 Solid Waste Control System: General* place specific, clear responsibility on landfill owners to

- A. Monitor all pollution of groundwater by Appendix II pollutants
- B. If a landfill causes ground water pollution of Appendix II pollutants, the landfill owner must follow very particular steps to evaluate pollution, consider methods to remediate, and assess the selected methods of remediation.
- C. State regulations have exact and particular criteria for each part of the remediation process.
- D. The landfill owner is fully responsible for remediating groundwater pollution caused by the landfill.
- E. There is a extremely high burden on the landfill owner to remediate groundwater pollution by Appendix II pollutants.
- F. The State of Tennessee Regulatory method for remediating groundwater polluted by solid waste landfills requires that regulators, site owners, and citizens have full access to knowledge and decision making.

**IV. State Regulations Stipulate What An Owner of a Landfill Must Do To Remediate Ground Water Polluted by a Landfill**

A. *Rule 1200-1-7-01 Solid Waste Control System: General, et al* delineates precise steps which landfill owners must take if a landfill has polluted groundwater.

B. *Rule 1200-1-7-04(iii)(6)* describes an **Assessment Monitoring Program** which must begin if a statistically significant increase in one or more listed constituents are found in groundwater.

1. *Rule 1200-1-7-04(iii)(6)(v)* requires the landfill owner to notify "...all persons who own land above the land or reside on the land that directly overlies any part of the plume of contaminants if the contaminants have migrated off-site as indicated by sampling of wells in accordance with sampling of wells in accordance with part 6(iii)(IV) of this subparagraph."

C. *Rule 1200-1-7-04(7)* describes an **Assessment of Corrective Measures** which must begin if pollutants exceed ground water protection standards.

1. As part of the **Assessment of Corrective Measures**, the owner or operator must discuss the results of the corrective measures assessment prior to the selection of a remedy in a public meeting with interested and affected parties.

D. *Rule 1200-1-7-04(8)* describes **Selection of a Remedy** based on the "Assessment of Corrective Measures" and the remedy must .

1. Protect human health and the environment
2. Attain groundwater protection standard as specified pursuant to Rule 1200-1-7-04(7)(a)(1) of this rule
3. Reduce or eliminate to the maximum extent practicable further release of Appendix II pollutants
4. Comply with standards for management of waste as specified in subpart (iv) of part 9 of this subparagraph. *Rule 1200-1-7-04(8)(ii)*

E. *Rule 1200-1-7-04(8)(iii)* lists twenty-nine (29)\*\* separate considerations which the landfill owner shall evaluate in selecting a remedy including (pages 79-81) \*\*\*list all 29? **LOCATE RULE 1200-1-7-04(7)(A)1 –PG. 82**

1. magnitude of reducing existing risks  
*Rule 1200-1-7-04(8)(iii)(I) I*

2. Magnitude of residual risks in terms of likelihood of further releases due to waste remaining following implementation of a remedy. *Rule 1200-1-7-04((8)(iii)(1) II*

3. The extent to which containment practices will reduce further releases and the extent to which treatment technologies may be used (*Rule 1200-1-7-04((8)(iii)(II) I & II*

4. The ease or difficulty of implementing a potential remedy(s) based on consideration of the following types of factors *Rule 1200-1-7-04((8)(iii)(III)(I)–(IV)*

5. The degree to which community concerns are addressed by a potential remedy(s). *Rule 1200-1-7-04((8)(iii)(IV)*

E. *Rule 1200-1-7-.04(9)* describes “**Implementation of the Corrective Action Program**” following Selection of a Remedy. [pg. 82]

1. Assessment monitoring program

2. Show effectiveness of corrective action remedy

3. Demonstrate compliance with the corrective action  
remedy

4. Demonstrate compliance with the **ground water protection standard pursuant to Rule 1200-1-7-.04(7)(a) of this rule**

5. Implement the corrective action remedy selected in Part  
8

6. Evaluate any interim measures *Rule 1200-1-7-04((9)(III)(I.–VII)*  
**(pg. 82)**

## **V. The Commissioner’s ORDER Did Not Waive Any Laws**

A. On 15 October 2001, the Commissioner of the The Tennessee Department of Environment and Conservation issued an ORDER which stated that no provision of the Tennessee Solid Waste Management Act or Tennessee Hazardous Waste Management Act or the regulations promulgated under these acts are waived. (Pg. 5, Reservation of Rights)

B. Mandated Dickson County to submit an Environmental Assessment Plan including

1. A description of all investigations and remedial activities
2. A soil investigation plan and horizontal and vertical extent of migration
3. A groundwater assessment plan
4. Remediation Plan

## **VI. Dickson County Did Not Follow Mandates of the State Solid Waste Regulations**

### **A. Dickson County Developed a “Ground Water Protection Plan”**

1. A 15 June 2007 State Memo from Assistant Commissioner for Environment Karen Stachowoski wrote “Dickson County is implementing a four-point Ground Water Protection Plan to address the ground water contamination problem” including “institutional controls” and “[a] county wide ordinance is being implemented to keep new wells from being installed in the area of impact.” (Ex. C–State Memo–15 June–2005).

2. EnSafe, the Dickson County water consultant described the elements of Dickson County “Groundwater Protection Plan” including water line extension, household treatment units, groundwater monitoring, and institutional controls. (15 February 2005)

3. EnSafe, Dickson County and Water Consultant, wrote that “‘Water Well Permitting and Spring Use Regulations’ were a key element of the Groundwater Protection Plan.(GWPP)...” (Ex. B– pg. 1, 31 January 2007 EnSafe letter)

4. Minutes from 16 January 2007 Commissioner Meeting demonstrate that “‘Water Well Permitting and Spring Use Regulations’ were adapted to comply with State requirements.

### **B. There is No Regulatory or Statutory Basis for Dickson County’s “Ground Water Protection Plan”**

1. The “**Ground Water Protection Plan**” developed by the State of

Tennessee and Dickson County is not defined by State Regulations and does not comply with the State Statute.

2. The term “**Ground Water Protection Plan**” is not a legal term under Federal law, State law or State Regulation.

3. Dickson County has not received a Waiver from the State for enforcement of Federal or State laws or State regulations governing *Solid Waste Processing and Disposing Rule 1200-1-7-04, et al.*

4. A 4 April 2007 letter from a TDEC Senior Director of Land Resources does not provide any regulatory basis of “Ground Water Protection Plan.” (Ex. ----)

5. The Dickson County “Ground Water Protection Plan”, a made up term of fiction, did not provide for mandated provisions of *The Solid Waste Processing and Disposing Rule 1200-1-7-04* including

Assessment Monitoring Program, Rule 1200-1-7-04(iii)(6)

Assessment of Corrective Measures, Rule 1200-1-7-04((7)

Selection of a Remedy, Rule 1200-1-7-04((8)

Implementation of the Corrective Action Program Rule 1200-1-7-.04)(9)

### **VIII. What Exactly Did Dickson County Fail To Do?**

A. Contravened carefully crafted structure of research, evaluation, and remediation of pollution based on detailed assessment of pollution, methods to remediate, and impact of pollution on water.

B. Dickson County failed to conduct an Assessment Monitoring Program *Rule 1200-1-7-04(iii)(6)* and subsequently failed to notify all persons who lived or owned land above the plume.

C. Dickson County did not comply with a requirement to complete an Assessment of corrective Measures *Rule 1200-1-7-04(7)* and thus failed to hold a public meeting to discuss corrective measures prior to the selection of a remedy in a public meeting.

D. Dickson County has not complied with the exact, rigorous

requirements of *Rule 1200-1-7-04(8)*, Selection of a Remedy so that petitioners will continue to live above polluted water.

E. Failure of Dickson County to follow *Rule 1200-1-7-.04(9)*, Implementation of the Corrective Action Program prevented petitioners and taxpayers of Dickson County from protection of environment.

**IX. What Were the DAMAGES to Respondents?**

**X. DOCUMENTS//Exhibits**

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**III. Rule 24.01—**

- Rule**
- Cases**
- Information Hear

**VII. Source**

- testify before the County Commission and provide documents
- appointed State Solid Waste Reduction Task Force
- arrange to testify and submit expert opinion
- years of research on solid waste, state regulations, and clean water
- Metro Nashville, County, and State governments on solid waste
- regulations in local and court of appeals

