

MLCA Statement to DNREC at Public Meeting on Hercules Tract Remediation Plan

Good Evening, my name is Bill Dunn and I'm President of the Milltown-Limestone Civic Alliance, the civic umbrella group that represents the area in which the Hercules Tract is and is proposed for residential development by Toll Brother's Builders. Based on the change in use, we took an interest in the development of this property shortly after it was announced to the community by Councilman Tansey and the County Land Use department back in the Fall of 2003. By January 2004, we had helped to establish what we call the Hercules Working Group to study and review Toll Brother's plans for the property and evaluate how those plans may impact the surrounding existing communities. Soon after the working group began to meet, we realized that State and Local elected officials were equally interested in how this plan might develop.

As everyone is aware, the environmental issues surrounding this property have become one of the two major concerns we all seem to have with Toll's plans. Also, we all could agree that Toll and their environmental engineering firm, Brightfield and Associates, have made significant efforts to evaluate this property, yet woefully inadequate for a 50+ year old golf course in which homes will be built and children will play.

I find it astounding that anyone who makes a living studying environmental issues could find the Remedial Action Plan as it exists today, if implemented, would adequately protect the present and future residents of the area. Some may think that is pretty strong language to describe all the work that has been done by Brightfield and others, but when discussed amongst our technical group of PhD's and technically degreed members of the community, the sentiment was that the testing was far to quickly focused on arsenic as the primary marker of the problems on the property and if it was remediated, all other contaminants would be resolve as well.

It's probably best at this point that I touch on a few of many questions that we have been developing. Hopefully, from the few that I'll be mentioning here, DNREC and others will quickly understand that the community is interested in getting answers to substantive issues that have yet to be adequately addressed.

1) DNREC has made it perfectly clear that they believe that this site does not qualify as a HSCA regulated site. But to help New Castle County out with the fact that they do not have environmental engineers on their staff, under a Memorandum of Understanding that has yet to be finalized, will act as a contracted agent to evaluate Toll and Brightfield's remediation plan based on HSCA regulations and standards.

Why isn't DNREC and/or the County requiring that Toll Brother's obtain insurance to provide the community with guaranteed legal recourse if the plan is poorly carried out and the contamination is spread to the surrounding communities during clean-up? Under normal HSCA-qualifying remediation, at the end of the clean-up process, the State and DNREC accepts legal responsibility for any future environmental problems tied to previous contamination. In this situation, the public doesn't have those assurances and Toll Brother's parent company, if the costs of settling any law suites got to great, could allow the local LLC to collapse and go bankrupt, leaving the community with no avenue for restitution.

2) In a county with one of the highest cancer rates in the nation, how is the community's best interest being served by permitting the mixing of soil with concentrations of arsenic more than three times the permissible limit, with soil of lower concentrations of arsenic until the overall ground has concentrations is below 11mg/Kg of soil? Don't get me wrong, I know how it represents Toll Brothers best interest. I just don't know how it represents the communities?

Lastly) Why is it that having log book entries confirming that 2,4-D, a dangerous and sometimes banned pesticide, was applied to the golf course and also, that Hercules was one of two major producers 2,4,5-T, another dangerous and now banned pesticide, and which Hercules would have likely applied it to their own golf course before the early 70's ban on it's use, that DNREC has not asked for and Brightfield has not done any testing for dioxin, that was a residual by-product in the production and application of these chemicals?

In an Oregon Department of Environmental Quality report providing guidance for Evaluating Residual Pesticides on Land Formerly Used for Agricultural Production dated January 2006, they recommend sampling for dioxins when either one of these pesticides has been used. In the Hercules log book we have records dating back to the '70's that 2,4-D was applied. But it wasn't until the 90's that the EPA began to require that the producers of 2,4-D reduce the level of dioxin in their product to less than 1 part per million. Although it is known that 2,4-D and other pesticides breakdown over time, it is also known that the original dioxin by-product is significantly more stable in soil and deteriorates at a dramatically slower rate. In turn, it's easily conceivable that either one of the original chemicals would be undetectable, but the dioxin would remain.

I could go on for over an hour asking questions developed by our technical group, but really wouldn't get to the point that needs to be made. Why is it a group of generally, technically qualified community members are telling our State's environmental protection agency what they should be doing to protect us? We're disappointed that DNREC has not taken a more proactive roll in identifying the problem and making sure their corrected. Also, not being an expert in environmental issues, I don't understand why Brightfield didn't recommend to their client that they evaluate the property for dioxin and readily known hazards from heavy pesticide use?

Finally, none of us from the community attests to being an authority in environmental engineering, nor do we want to. But of the people that have a technical background and/or work in the chemical research field, we find it surprising that someone of authority in this process isn't aware of what we believe to be extreme hazards associated with the improper clean-up of this property and that recommended clean-up standards seem to be based more on financial commitment than community protection.

Based on the lack of technical specificity, no testing for dioxin, lack of legal recourse for the community, lack of complete containment of processing and subsequent dust potential, we are in no way comfortable with the present remediation plan and will do everything we can to stop it's implementation until adequate safeguards are added to protect the present and future community. In many respects, the development of this golf course is a precedent setting situation and in some other respects we have found the systems set forth to protect the community disappointing.

Thank You,