

NEWS

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Southdown focus. of GEC suit over landfill clean-up

The Green Environmental Coalition is once again doing battle with its old nemesis, the Southdown Corporation.

The battle before was over the burning of hazardous waste at Southdown's cement kiln near Fairborn. It ended after four and a half years, when the company agreed not to burn any more hazardous waste in its kiln here and at other cement kilns it owns.

This time the issue is Southdown's alleged failure to take responsibility for cleaning up a landfill formerly owned by the company that has been leaching heavy metals into Mud Run Creek, a tributary of the Mad River.

The Coalition discovered contamination at the landfill in 1993 and filed a complaint in U.S. District Court that year charging Texas-based Southdown with violating the Federal Clean Water Act. Located near the well fields in Fairborn, the landfill, according to the Coalition, was used to deposit cement kiln dust from Southdown's Fairborn plant, Southwestern Portland Cement Company, chromium laden refractory brick and other debris from plant operations, and waste jet fuel from Wright-Patterson Air Force Base.

The 1993 complaint resulted in an agreement by Southdown and USX, which owned the property before Southdown purchased it, to develop a remediation plan to stop the discharge of pollutants into the creek.

The GEC said it was to meet last November to iron out problems with that plan, which the Coalition said was not acceptable. But before the meeting could take place, Southdown, according to the GEC, "secretly transferred" the 500-acre parcel on which the landfill is located to two "hastily formed" Dayton-based corporations "of dubious financial capabilities": Dirtvest, Ltd., formed August 8th, 1997, and 444-Sandhill, Inc., formed September 26th, 1997. The sale took place September 30th.

According to a Securities and Ex-

change Commission filing cited by the GEC, the property was sold "as is, where is" and the company assumed no obligations to remediate the property. The asking price, according to the GEC, was \$30 per acre.

The sale prompted the GEC, on March 3rd, to request that its original complaint be amended to add an additional claim: that Southdown had committed a fraudulent conveyance of the property in an effort to avoid responsibility for its clean-up. The Coalition petitioned the court for the maximum penalty of \$25,090 per day for the discharge that has been taking place since 1993, for a total of \$50 million.

There has been no ruling yet on the Coalition's motion to amend. The case is before U.S. District Court Judge Walter Rice.

"We've been proceeding with Southdown in good faith for the last five years," said GEC member and local resident Michael Jones of the effort to work with the company on a remediation plan. "We now contend that they have not been acting in good faith with us or with the court." The sale, he said, is "ultimately a challenge to the Clean Water Act."

The two companies that bought the property "have all the appearances of just being shell corporations," said Jones, noting that the GEC has been unable to "ascertain whether they have the capability to clean-up the property." The GEC has been able to determine, however, that the companies "are not conducting business. That's for certain," said GEC member Bruce Carnett.

Southdown attorney Quintin Lindsay contested the GEC's claim that the company had been ordered to develop a remediation plan. All parties involved with the landfill site-Southdown, USX and the GEC-"have had confidential discussions, but there was never any kind of agreement" to develop a remediation

Southdown

Continued from page 1

plan, said Lindsmith. "There was never any court order."

A document journalizing the results of a settlement conference held September 30th, 1994, appears to refute Lindsmith's claim, however. In it Judge Rice summarizes the results of negotiations between Southdown, USX and GEC. According to that summary Southdown and USX were to "arrive at a mutually acceptable plan for remediation of the site in question" within 60 days of the conference. It was also "agreed," according to the court document, "that any remediation proposal that results from these negotiations will be submitted to the Ohio Environmental Protection Agency for approval."

Cornett said that the court subsequently extended the deadline for development of a plan to two years, until spring of 1997. The Coalition, he said, supported that extension.

Lindsmith said that Southdown does "not believe it has ever had any legal liability" for clean-up of the landfill site, which was no longer being used when the company purchased the property in 1975. "The preceding owners put the stuff in there," said Lindsmith. He also said that the two companies that purchased the property "are not owned by anyone directly affiliated with Southdown."

The agent for Dirtvest, Ltd. did not return a call seeking information about the company. There was no listing for the agent and sole incorporator of 444-Sandhill in the phone book. According to an affidavit filed by a clerk in the Shostak Law Office, which represents the GEC, both Dirtvest and 444-Sandhill share the same address in downtown Dayton.

-Amy Harper

Continued on page 5