



**HARPETH RIVER  
WATERSHED ASSOCIATION**

August 22, 2008

Ms. Ashley Holt  
State Remediation Section  
Tennessee Division of Solid Waste Management  
5<sup>th</sup> Floor, L&C Tower  
401 Church Street  
Nashville, TN 37243

By Electronic Mail

RE: Comments on Egyptian Lacquer Manufacturing Company's (ELMCO) Second Proposed Corrective Action Plan

Dear Ms. Holt,

The Harpeth River Watershed Association's mission is to protect and restore the ecological integrity of the Harpeth. Our organization has hundreds of members throughout the Harpeth River watershed, including the area that has been contaminated by ELMCO. It is our intention through submission of these comments to provide TDEC with information to help with the determination of whether or not to accept ELMCO's second attempt at a Corrective Action Plan (CAP) submitted on June 24<sup>th</sup> 2008. In addition to these comments we respectfully submit those of Mr. Mark Quarles of Globally Green Consulting in the attached document. This technical review and commentary addresses inadequacies of the investigative activities that became the basis for technical decisions for the proposed CAP, the proposed CAP itself, and the Consent Order and Agreement.

The first proposed Corrective Action Plan which was submitted on August 21, 2007 and found deficient by TDEC on November 20, 2007 had so many shortcomings that were to have been addressed in this second attempt and were not. This leads us to ask our first question, "Why was the June 1, 2007 Consent Order ignored the first time and what are the penalties for this second instance of disregard for TDEC's authority?" We are 14 months past the Order and there is still no serious or approved plan for clean up. This company is clearly in violation of the State's Order and is continuing to pollute the Harpeth River and Liberty Creek with hazardous and carcinogenic chemicals every single day.

At issue, primarily, is the undeniable fact that ELMCO has yet to determine the nature and extent of the contamination of the environment with hazardous chemicals that they have caused through the illegal release of chemicals that they allowed to leave their property. Until there is a complete and thorough delineation of the contamination off site an effective plan cannot be proposed to TDEC or be in compliance with TDEC's own Consent Agreement and Order dated June 1, 2007. By default and unspoken in the second proposed CAP, if there is no plan to clean up ELMCO-contaminated property off site, then there *is* a plan to leave the contamination in place. This is essentially proposing monitored natural attenuation, (MNA) which is not acceptable per EPA guidelines as we covered in our first set of comments dated October 23, 2007. One key requirement for MNA is that the contamination plume be defined which has not been done here. MNA is also not appropriate in complex geologic conditions (such as karst or limestone bedrock) which we have here, when the contamination plume migrates off site, and only if the approach will be "protective of human health and the environment."

The fact that the contaminated plume migrates off site, under people's homes through the fissures in the karst bedrock into Liberty Creek and the Harpeth River, automatically signals that MNA would not be appropriate here. The location of the off site wells further demonstrates that there is not a serious plan for delineation of contamination because they are being sited where little or no contamination is likely to be found. Rather, wells need to be sited where contamination will likely be found and removed such as on individuals' property beyond the Driskill property or public property such as Fort Granger. The attorney for ELMCO stated in the *Tennessean* on August 19, 2008 when he was describing the two newest wells they have drilled, "We don't expect to find anything at those locations." This demonstrates the continued avoidance of finding and cleaning up ELMCO's contamination. As a part of the CAP, TDEC should require a dye study to be performed to determine the destinations of the ELMCO contaminants to help define the nature and extent of contamination.

The second crucial issue that has yet to be addressed in the second proposed Corrective Action Plan is that the tank farm is *not* the only source of contamination from ELMCO. This was not addressed in the first plan and further proof of the existence of contamination beyond the tank farm come to light since the first deficient plan was rejected. Other sources can no longer be ignored in the CAP. None of the soil borings before or after the BIOX treatment at the tank farm demonstrated any evidence of the presence of several of the VOCs that are used as raw materials by ELMCO that continue to be detected in the seeps in Liberty Creek and the Harpeth or in the well drilled on Daniels Drive. If the contamination was *only* from the tank farm why was there no benzene, n-propylbenzene, 1,2,3 trimethylbenzene, 1,3,5-trimethylbenzene, cis 1-2 dichloroethene, or methylene chloride at the farm and why do they continue to be detected in the creek and river and why were they found in the 2006 Phase II Environmental Assessment near the ELMCO building? We insist that the CAP include a complete investigation of *all* hazardous chemicals from *all* potential sources on the ELMCO property especially near and under the building, the drum storage area, and the underground storage tank area as was indicated in the Phase II Environmental study completed in 2006 by August Mack.

Additionally, a year and a half after ELMCO has taken responsibility for the off site contamination, they are still contaminating waters of the state every day and they have no

deadline by which they must stop. They have not provided any timeline to TDEC for which they will be accountable if they do not meet their clean up goals. In fact, they have not set any clean up goals such as federal standards that will be met when they complete their clean up or benchmarks on the way to their final goals during the clean up. This does not meet the requirements of a Corrective Action Plan and therefore it cannot be accepted. Also, we would recommend modifications to the Consent Order and Agreement to establish specific timelines and numeric standards for the clean-up process such that both ELMCO and the public would have clear expectations of when the remediation process should be completed and what the final results are expected to be. Additionally we recommend, as we did in our comments to the first proposed corrective action plan that the order be modified to adhere to the specific requirements of a RCRA equivalent facility assessment and investigation, and RCRA corrective measures study and implementation.

As the second proposed plan stands now it does not adequately monitor the river or provide notice to the public of hazardous waste contamination. The public uses the Harpeth River in downtown Franklin for recreation including swimming, wading, and fishing and swimming for pets. Until ELMCO controls the seeps to levels below Maximum Contaminant Levels (MCLs), TDEC should require ELMCO to post signs warning the public of the hazardous chemical discharges. These chemicals are unhealthy and are sometimes flowing at levels hundreds of times MCL's. No studies have been done demonstrating that exposure or direct contact with multiple, hazardous and carcinogenic chemicals *cumulatively* are safe such as those that are entering the River at seep 2. Therefore, signage warning the public it might not be safe should be posted.

The July seep sample for the Harpeth Seep 2, which is a public fishing location had benzene twice the MCL and toluene three hundred times the MCL plus acetone at one hundred and forty times the PRG *as well as* ethylbenzene, MEK, MIBK, n-Propyl-benzene, 1,2, 4-Trimethyl-benzene, 1,2,5-Trimethyl-benzene, xylenes and trace amounts of 2-hexanone, isopropylbenzene, and methylene chloride. These lab results are based on findings from a split sample which ultimately determined that the laboratory that ELMCO/TriAd has been using is inaccurate and will no longer be used, which brings into question *all* of the lab results reported by TriAd to date. The above results were from the state's lab which has better reproducibility, sensitivity, and accuracy and lower detection limits than the lab that was used.

Also, with respect to the last Seep Monitoring Report dated August 13, 2008 submitted by TriAd to TDEC, on page 4, Mr. Hinch indicated that ELMCO performed the August sampling event during the first full week of the month and, "will report to TDEC immediately if results indicate any significant increases." We certainly hope that this does not mean that the report to the public will only occur if there are increases in seep concentrations and only if those increases are "significant", which was not defined in the letter. This is not acceptable. All data gathered is public information. We would like for the monthly seep reporting to continue with the added mass concentration calculations posted to the TDEC web site.

These chemicals have continued to flow continuously into the Harpeth directly from Harpeth Seep 2 since at least their detection in January 2007 and almost continuously from Harpeth Seep 1 which is a few hundred yards downstream. The CAP gives the impression that

the contamination is becoming less and this conclusion simply cannot be drawn for the Harpeth or Liberty Creek. As a matter of fact the concentrations are actually increasing if you look at the latest seep report in the context of the mass loadings. As Mark Quarles explains in great detail in his comments (p.14-15) with the mass loading discharges that have been calculated starting with TDEC's records in 2007, there is no reduction, but cyclic increases and decreases depending on ground water flow. This is consistent with EPA standards for measuring contamination in groundwater. Trend conclusions cannot be drawn based solely on concentrations in ground or surface water.

Harpeth seep 2 adds to the contamination of Harpeth seep 1 which is downstream from seep 2 and upstream from Liberty Creek. Harpeth seep 1 is not monitored and the downstream confluence of Liberty Creek which also adds its contaminant load to these two seeps is not monitored. The only sampling/monitoring done is a few *miles* downstream where the contamination is extremely diluted at the Franklin wastewater treatment plant so no conclusions about health and safety or contaminant levels can be drawn because the most contaminated area is not being monitored for ecological receptors or for humans. For long term effective monitoring of impacts of contamination on the river, monitoring should be set up monthly at the Franklin Road Bridge as well as at Harpeth Seep1.

In addition to not addressing the deficiency of defining the nature and extent of the contamination which was listed as one of the nine deficiencies in the November 20, 2007 Notice of Deficiency, ELMCO also still has not laid out a timeframe for cleanup, done a thorough feasibility study of remedial alternatives, or provided any contingency plans should its recommended course of action fail. For instance, the proposed remedy of using EcoVac systems did not include the requisite criteria of explaining; 1) long term reliability and effectiveness, 2) ability to reduce the toxicity, mobility or volume of the contamination, 3) short-term effectiveness, 4) implementability, or 5) cost. This was the proposed remedy and they did not include this information in the second proposed CAP.

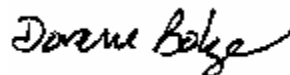
These are what HRWA finds to be the most important issues that have been inadequately addressed by the second proposed ELMCO Corrective Action Plan. Once again, we have many other more technical issues in the attached document prepared by Mark Quarles of Globally Green Consulting. If you have any questions please contact Pam Davee or Dorie Bolze at 615-790-9767 or Mr. Quarles at 352-0471.

Thank you for your time and consideration.

Sincerely,



Pam Davee  
Development Director and Policy Specialist



Dorie Bolze  
Executive Director

cc: Jimmy Palmer, Regional Administrator, Region IV, US EPA  
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State Representative Charles Sergeant  
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Residents of Daniels Drive Neighborhood adjacent to ELMCO  
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Kerry Maddox, General Manager ELMCO