
RAILING AGAINST THE RISKS

Switching Stories

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For a decade, the state Department of Environmental Quality sounded like a broken record on the polluted groundwater that runs under the River Road and Trainsong neighborhoods.

The levels of cancer-causing solvents seeping from the Union Pacific rail yard into the groundwater are so low that it's safe to use well water drawn from the ground for all but drinking, the agency repeatedly said.

"Any use of well water for recreation or gardening does not pose a threat," Greg Aitken, a DEQ official, said in the typical message of reassurance in November 2002.

So neighbors in the Trainsong and River Road neighborhoods went on using their private wells to wash their dogs, water their vegetables and fill their pools. For drinking water, they were supplied by Eugene Water & Electric Board lines.

But in recent years - unknown to residents - DEQ officials and Union Pacific consultants began to have doubts about the safety of the well water for non-drinking uses.

Research toxicologists had discovered that the type of solvents coming from the rail yard were more potent cancer causers than originally thought. And the state agency found a mistake in the original risk calculations for the private River Road and Trainsong wells.

"Those things made us realize, 'Oops we, in fact, might have a problem,'" Aitken said recently.

Late last year, the railroad notified eight of the 84 neighborhood households that have private wells that readings at their wells indicated a human health risk. The company suggested residents cap the wells to eliminate any exposure to the solvents.

But at the same time, the railroad hired consultants from around the country who developed an elaborate argument - eventually accepted by the DEQ - to prove the well water actually wasn't so bad after all and doesn't pose a risk if used for non-drinking purposes.

For residents, it has amounted to a baffling succession of switchbacks.

"They say the wells are OK, and then they come back and say, 'Oh you can't drink out of it.' Then they say nothing but animals can drink out of it. Then they come back and go: 'Oh, not even animals can drink out of it.' Then they come back and

say, "Oh, there's nothing wrong with it," said one well owner, millworker Thomas White.

Resident David Gerson, a retired landscaper, is cynical about the flip-flops.

"They discredit themselves when they pull this kind of farce," he said. "There is definitely what I consider a conspiracy going on between the railroad and the DEQ."

For 14 years, the railroad and the state have been studying and trying to clean up the Union Pacific rail yard in north central Eugene.

This year, neighborhood frustration has reached a new high. Consider:

- Residents have learned that the railroad and the state kept them in the dark for months while the sides privately argued about the potential harm from chemical vapors in crawl spaces under neighborhood homes and chemicals in private wells.
- The railroad is spending heavily on consultants who tirelessly pressure state regulators in order to limit railroad cleanup liability. The proceedings, slow and technical, spook some neighbors, who no longer believe DEQ and railroad reassurances that their health is not compromised by the pollution.
- Other neighbors say their property values have already been hammered by public perceptions that the neighborhood is tainted.
- Local politicians seem powerless to help their constituents in the midst of the pollution.

The toxic plume has seeped underground from the rail yard to the River Road neighborhood to the north and the Trainsong neighborhood to the south.

The pollutants - tetrachloroethylene and trichloroethylene - are solvents used to clean oil off metal. At the yard, the chemicals radiate from the former site of the roundhouse, where crews overhauled locomotives.

The DEQ with Southern Pacific and later Union Pacific - after the companies merged - has documented the plume through tests on 84 private residential wells and other specially drilled monitoring wells.

The plume is likely to remain for decades, the DEQ's Aitken said. The solvent is present in water between eight and 15 feet below the neighborhood.

Both solvents are linked with cancer in humans and trichloroethylene is "highly likely" to cause cancer, according to the U.S. Environmental Protection Agency.

In addition to being in private wells, the trichloroethylene, in areas of highest concentration, seeps upward through the soil, evaporates and collects in crawl spaces under homes, according to the DEQ. The railroad denies that's happening.

Many residents are alarmed.

"I wouldn't advise anybody to move into our neighborhood," said Eugene City Councilor Andrea Ortiz, adding that she's lived there for 27 years. "(But) I don't want people to feel like I'm not supporting them. I'm right there with them."

The railroad is spending excessively on consultants and tests aimed at proving the company is not responsible for the pollution, Ortiz asserted. "The railroad is going to deny as much as possible because for them to admit wrong, then they have to fix it," she said. "They would rather just keep testing until, who knows?"

The railroad and its consultants say that analyzing the pollution is difficult, and the company wants to make sure it is held liable only for damage it has caused.

Listening to the public

Union Pacific is the nation's largest railroad, with 32,400 miles of track across 23 states. It posted \$16 billion in operating revenue last year. The railroad lavishes big cash donations on federal lawmakers. Major politicians have sat on the company's board of directors.

But communicating with the railroad can be difficult, said Eugene Mayor Kitty Piercy.

Piercy said that when she was serving in the Oregon Legislature, she called the railroad on behalf of Trainsong residents and was shuffled from office to office around the country - never finding a railroad employee willing to address her questions.

In July, a railroad official publicly ignored the mayor in the midst of a community meeting.

At the meeting, Piercy asked that the railroad set up an Internet communications system through which neighbors could ask questions about the pollution.

Three railroad consultants running the meeting skirted her question. Union Pacific Environmental Manager Gary Honeyman, who was present, said nothing in answer to the mayor.

After a few awkward moments, a lawyer in the audience piped up: "You never did answer our mayor's question."

One of the consultants finally said he'd take the mayor's question back to the railroad.

Honeyman has complained up the DEQ chain of command that the DEQ's Eugene office engages in too much public involvement, DEQ records show. Honeyman declines to comment for newspaper stories, including this one.

"It's a commonly held belief by (polluting companies) that less is better when it

comes to public involvement," the DEQ's Aitken said.

DEQ records show that a consultant for Union Pacific demanded that the DEQ let the railroad write the official DEQ-letterhead fact sheet about the Eugene rail yard pollution. The DEQ refused the request.

However, the DEQ does run its own news releases past railroad officials before distributing them to the public.

"We don't give them first right of refusal on our messages or approach or strategies, but try to - as a matter of courtesy, if nothing else - let them know what we're planning to do," Aitken said.

The railroad's spokesman in Omaha said the railroad believes in openness. "We're trying to be as transparent as possible to ensure we take public considerations into account," the spokesman said.

Solvents in kiddie pools

The Union Pacific has much experience dealing with state environmental regulators. The railroad has 367 contaminated sites around the country, according to the company's annual report, and earmarks more than \$200 million annually for cleanups.

The railroad draws on a stable of consultants from across the country, who have experience at dozens of polluted sites in multiple states. They are a formidable force in negotiations with state regulators, who may be less familiar with railroad-specific contaminants.

In Eugene, the railroad doggedly pursued scientific arguments to limit its financial liability over the solvent-polluted wells.

Residents for years had been told not to use the polluted private wells for drinking water, so the homes get their potable water from EWEB hookups.

But a thorny dispute developed over whether the private well water was safe for other uses - filling a pool and having kids splash in it, for example.

For three years, the railroad used one consulting firm - Kennedy/Jenks out of Portland - to conduct technical analysis at the Eugene rail yard. It was Kennedy/Jenks that made the mistake in the human risk calculations, and it was Kennedy/Jenks that made the correction when a DEQ employee pointed out the error.

In fall 2006, Kennedy/Jenks sampled water in some of the 84 private wells and found eight with solvent levels high enough to theoretically cause harm in a lifetime of exposure in non-drinking uses.

If that analysis stuck, the railroad might be liable for extensive cleanup work. To this day, Kennedy/Jenks defends its work.

"We would stand by that until the cows come home, because we did everything technically the way the state requires," said Mark Ochsner, senior manager at the Portland consulting firm.

In December 2006, Kennedy/Jenks sent letters to the eight well owners reporting the news and offering to cap their wells.

The DEQ followed up with a letter suggesting other options. Filtering the well water was also possible - and so was compensation from the railroad for loss of the resource.

But the wells were never capped or filtered.

Instead, behind the scenes, Union Pacific got busy. The railroad brought in new consultants: S.S. Papadopoulos & Associates from Bethesda, Maryland; CTEH from Little Rock, Ark.; and CH2M Hill out of Sacramento, Calif.

This team challenged the Kennedy/Jenks risk analysis. Toxicologist Alan Nye, from Arkansas, argued that Oregon's standard for protecting residents from cancer-causing solvents in water was too stringent. The DEQ resisted the push to lower Oregon's standards, Aitken said.

"We roundly put (the Arkansas company) in its place, as we sometimes have to do with out-of-state consultants," he said.

Nye tried another argument. He zeroed in on the assumptions underlying Kennedy/Jenks' analysis of likely ways well users would be exposed to the solvents in the water.

That began a three-month discussion between Nye and the DEQ's technical experts over what they came to call the "kiddie pool scenario."

The point of contention: How much solvent would an infant absorb through his skin while playing in a backyard pool?

Nye argued that Kennedy/Jenks erred in calculating the level of solvent available to be absorbed because the Portland consultant failed to account for how much of the solvent would evaporate - or "off gas" - while the infant splashed around.

Nye figured that after three days of splashing only 2 percent of the solvent would be left in the water.

Lisa Arkin, executive director of the Eugene-based nonprofit Oregon Toxics Alliance, said Nye's argument is outrageous.

"A toddler is not in harm's way when sitting in a pool of water that's off gassing (solvents)?" she asked. "It's not their children, is it?"

Meanwhile, the railroad's Honeyman pressured the DEQ.

He accused the DEQ's Eugene staff of overstating the nature of the pollutant and he expressed frustration that the DEQ failed to dismiss health worries about the plume - given that he'd brought in national experts, DEQ records show.

"He is concerned that the DEQ is not interested in 'the truth' and that we are somehow misrepresenting the facts," says an internal DEQ memo. The memo also said Honeyman is worried residents will sue the railroad.

By summer, the Arkansas consultant won the DEQ over. That second look is not unusual, the DEQ's Aitken said.

"When there is an unfavorable determination, a responsible party will roll up its sleeves and put more consultant horsepower into looking at the data a second, third and fourth time.

"They take more time arguing their case with DEQ - and that's what's been done here - and that's their right and privilege" under the voluntary cleanup agreement the company has with the state.

"I suppose it looks like arm-twisting by Union Pacific and its hired guns ... but I can say with total confidence that isn't what happened," Aitken said.

The DEQ's decision means Union Pacific is no longer obligated to help the residents clean the solvents out of their private well water or to compensate them if they stop using the wells.

All this baffles neighbors, well owners and activists.

"If you ask enough people, sooner or later you're going to get the answers you want. That's what (the railroad is) basically doing," said David Becker, a retired railroad worker living in the River Road neighborhood. "They say, 'We'll just get some other firm to say it's OK.' It's cheaper than actually taking care of the problem."

But federal health investigators have bolstered the railroad's position on the wells. The Superfund Health Information Education Program found that use of the well water for other than drinking posed a negligible risk to residents.

The calculations by epidemiologist Jae Douglas, however, are based on the assumption that people don't regularly drink or bathe in the well water. In surveys, most residents say they use the water only for their lawns and gardens.

Also, Douglas said, it would be wise if mothers filled kiddie pools with municipal water and dogs sipped the same.

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