

ATTACHMENT A

**A RESOLUTION IN SUPPORT OF USING LANDFILL ENTERPRISE FUNDS TO FUND
THE ORANGE COUNTY NO FAULT PRIVATELY OWNED WELL REPAIR POLICY
Resolution No. 129/2009-10**

WHEREAS, in 1999, Orange County, the Towns of Chapel Hill, Carrboro, and Hillsborough entered into an agreement whereby Orange County assumed the responsibility for the disposal of solid waste county-wide; and

WHEREAS, among the many items covered in the agreement were provisions for the county to address various improvements within the area neighboring the landfill property; and

WHEREAS, at its February 2, 2010 meeting the Orange County BOCC approved the concept of establishing a No Fault Well Replacement Policy for residential wells that have failed within an area designated as the Landfill Impact Zone; and

WHEREAS, the policy is intended to allow for an orderly process to consider and respond to complaints from owners of properties within the area of the Landfill where residential wells have failed; and

WHEREAS, under the 1999 agreement, implementation of the proposed Well Replacement Policy requires the approval of all parties to that agreement;

NOW THEREFORE BE IT RESOLVED that the Carrboro Board of Aldermen supports and approves the proposed No Fault Well Replacement Policy to the extent that the expenditures called for in that policy are permitted by law.

**ORANGE COUNTY
BOARD OF COMMISSIONERS**

ACTION AGENDA ITEM ABSTRACT
Meeting Date: February 2, 2010

**Action Agenda
Item No. _____**

SUBJECT: Resolution Approving a No Fault Privately-Owned Well Repair Concept and Authorizing the Development and Implementation of a No Fault Privately-Owned Well Repair Policy for Properties Near the Orange County Landfill

DEPARTMENT: County Manager

PUBLIC HEARING: (Y/N)

ATTACHMENT(S):

INFORMATION CONTACT:

Frank Clifton, County Manager, 245-2300

Resolution Approving a No Fault Privately-Owned Well Repair Concept and Authorizing Staff To Proceed With the Development and Implementation of a No Fault Privately-Owned Well Repair Policy for Properties Near the Orange County Landfill (with Attachment – Orange County Solid Waste Landfill Impact Zone – No Fault Privately Owned Well Repair Policy Proposal)

Orange County Landfill Area 2008 with
3,000 Foot Buffer Selection

PURPOSE: To consider a resolution approving a no fault privately-owned well repair concept and authorizing staff to proceed with the development and implementation of a no fault privately-owned well repair policy for properties near the Orange County Landfill.

BACKGROUND: In 1999, Orange County, the Town of Chapel Hill, the Town of Carrboro and the Town of Hillsborough entered into agreement whereby Orange County (subject to the terms of the agreement) assumed the solid waste management responsibility for the disposal of solid waste county-wide. Among the many items covered in detail with the agreement were provisions for the County to address various improvements within the 'area' neighboring the landfill property at the time the agreement was established.

Since the County has assumed the responsibility for managing the Solid Waste Landfill property and its functions, residents have expressed concerns pertaining to several issues including unconfirmed or documented failures of personal, privately-owned wells and septic systems serving individual residents within the general area of the landfill.

In 2002, the Orange County Board of Health and the Orange County Board of Commissioners adopted a No Fault Well Repair Fund Policy as part of resolving issues associated with a mining operation conducted by Martin Marietta elsewhere within Orange County. Circumstances differ substantially from that of the Solid Waste Landfill operation but the parameters of that policy do align with the general aspects of addressing failed or failing personally owned private wells and septic systems. Similar in concept to the policy established in 2002 referenced above, a well repair policy could be established that would be funded via revenues generated by the Solid Waste operations:

Staff provided a draft proposal for such a policy at the Board's November 17, 2009 regular meeting to solicit input and feedback from the Board. In follow-up to that discussion, it is proposed that the Board approve the attached resolution approving the concept and authorizing staff to proceed with actual development and implementation of a formal policy. Staff would meet with the County's solid waste partners to assure concurrence and upon implementation initiate contact with residents within the impact area served by a non public water supply.

FINANCIAL IMPACT: The funds to support this no fault privately-owned well repair policy for properties near the Orange County Landfill will come from current landfill revenues/fees or a surcharge depending upon staff estimates and experiences at replacing wells.

RECOMMENDATION(S): The Manager recommends that the Board approve and authorize the Chair to sign the resolution approving a no fault privately-owned well repair concept and authorizing staff to proceed with the development and implementation of a no fault privately-owned well repair policy for properties near the Orange County Landfill.

ORANGE COUNTY BOARD OF COMMISSIONERS**Resolution Approving the No Fault Privately-Owned Well Repair Concept and Authorizing the Development and Implementation of a No Fault Privately-Owned Well Repair Policy for Properties Near the Orange County Landfill**

Whereas, in 1999, Orange County, the Town of Chapel Hill, the Town of Carrboro and the Town of Hillsborough entered into agreement whereby Orange County (subject to the terms of the agreement) assumed the solid waste management responsibility for the disposal of solid waste county-wide; and

Whereas, among the many items covered in detail with the agreement were provisions for the County to address various improvements within the 'area' neighboring the landfill property at the time the agreement was established; and

Whereas, since the County has assumed the responsibility for managing the Solid Waste Landfill property and its functions, residents have expressed concerns pertaining to several issues including unconfirmed or documented failures of personal, privately-owned wells and septic systems serving individual residents within the general area of the landfill; and

Whereas, staff developed the attached private residential well repair program proposal wherein wells within an impact area (3000 feet of the landfill's boundary) could qualify for consideration for repair or replacement; and

Whereas, this program is proposed for funding via revenues from current Solid Waste landfill revenues/fees or a surcharge depending upon staff estimates and experiences at replacing wells; and

Whereas, staff presented this program proposal to the Board of Commissioners at its November 17, 2009 regular meeting to solicit Board input and feedback; and

Whereas, the County Public Health Department would need to confirm the need for repair before any well repair or replacement actions commenced;

Now Therefore Be It Resolved that the Orange County Board of Commissioners approves the no fault privately-owned well repair concept and authorizes staff to proceed with the development and implementation of a no fault privately-owned well repair policy for properties near the Orange County Landfill.

Be It Further Resolved that the Board directs staff to meet with the County's solid waste partners to assure concurrence and upon implementation initiate contact with residents within the impact area served by a non public water supply.

This the 2nd day of February 2010.

Valerie P. Foushee, Chair
Orange County Board of Commissioners

ORANGE COUNTY SOLID WASTE LANDFILL IMPACT ZONE – NO FAULT PRIVATELY OWNED WELL REPAIR POLICY (PROPOSAL)

In 1999, Orange County, the Town of Chapel Hill, the Town of Carrboro and the Town of Hillsborough entered into agreement whereby Orange County (subject to the terms of the agreement) assumed the solid waste management responsibility for the disposal of solid waste county-wide.

Among the many items covered in detail with that agreement were provisions for the county to address various improvements within the 'area' neighboring the land fill property at the time the agreement was established.

Page 9-10 of the agreement provides:

PART 6. The County will finance community benefits from system funds to the extent legally permissible.

The Parties will cooperate to provide public benefits to the community of residents and property owners in the neighborhood of the existing landfill.

The Parties note the expected forthcoming report of the Landfill Benefits Committee that has been studying the question of community benefits. Upon the release of the report, each Part shall provide for its Governing Board to discuss the working group's proposal for community benefits, and shall provide for such legal and other staff analysis of the proposed list as it may deem appropriate (especially including legal analysis concerning the use of System funds to pay the costs of such benefits). After each Party has completed its own analysis, the Parties shall work together, diligently and in good faith, to reach an agreement as to community benefits to be provided. The purpose of determining community benefits shall continue to include participation by persons belonging to the relevant community. Final determinations of the public benefits to be provided, the sources of financing and the mechanisms for providing the benefits, however, shall be made only by further agreement of all the Parties.

The Parties state their preference that benefits be financed from System funds to the extent permitted by law. To the extent permitted by law and by generally accepted accounting principles, to the extent determined by the Parties and notwithstanding any other provision of this Agreement, the costs of providing public benefits as described in this Part 6 may be treated as an expense of the System and may be paid from System Revenues.

The public benefits contemplated by this Section are to be considered as separate and distinct from any compensation determined to be owed for any "taking" of an interest in property as determined by State or Federal law.

Action taken to address any issue determined to fall within the scope of the agreement of the Parties is subject to revenues attributed to the operation of the landfill or the willingness of the Parties to fund improvements beyond the scope of landfill revenues.

THE ISSUE FOR CONSIDERATION:

Since the County has assumed the responsibility for managing the Solid Waste Landfill property and its functions, over the years various citizens have complained about several issues including unconfirmed or documented failures of personal, privately owned wells and septic systems serving individual residents within the general area of the landfill.

It must be noted that the current landfill and its operations meet all established federal and state standards. There are numerous monitoring wells and various other environmental management activities in place that support the fact that the landfill has not been found to have had any direct impact on either the privately owned wells or septic systems within the area identified as being impacted by the landfill's location.

Numerous other factors could be impacting upon whether or not the privately owned wells and septic systems within the vicinity of the landfill meet established public health standards. Factors such as the age and uses applied to those systems; the depth of wells and techniques used in their initial installations as well as the location of wells and septic system within a close proximity; along with many other issues all could be factors resulting in individual failures of either or both systems at any particular location. Wells that are up-gradient from landfill operations likely are impacted by factors other than the landfill itself.

Surveys conducted by those other than the County's Public Health Department have presented evidence that individually owned wells within the neighborhoods near the landfill are not performing at acceptable public health standards. Knowledge of this fact does place the Board of Commissioners in a position of responsibility to pursue action aimed at corrective measures to ensure public health standards are met.

An unrelated set of circumstances may provide an example for use in establishing a course of action that could address the situation(s) outlined above in a manner consistent with the intent of the Parties to Solid Waste Management agreement of 1999.

In 2002, the Orange County Board of Public Health and the Orange County Board of Commissioners adopted a: **NO FAULT WELL REPAIR FUND POLICY** as part of resolving issues associated with a mining operation conducted by Martin Marietta elsewhere within Orange County. Circumstances differ substantially from that of the Solid Waste Landfill operation but the parameters of this policy do align with the general aspects of addressing failed or failing personally owned private wells and septic systems.

PAST EFFORTS AT SOLUTIONS

Efforts have been made by local governments to address the extension of public water and sewer systems in the general area of the Solid Waste Landfill. Several factors make the further extension of these public facilities both unlikely and prohibitively expensive:

1. This is a sparsely populated area impacting upon the cost per customer serviced
2. Many of these residential units are on large tracts of land located some distance from public rights of way meaning the cost of extending lines across private property could be a hurdle to providing services.
3. These areas border or exist in portions of the county where by agreement public utilities extensions may be prohibited.
4. There may be issues associated with the continuing monthly user costs to households for obtaining these public utility services and paying for them.
5. Based on the age of structures and plumbing fixtures within, service pressures from public water systems could require either pressure reducing equipment or replacement of plumbing within impacted structures.
6. Potential for rezoning, land use changes or the subdivision of larger parcels could impact the location of where utilities are to be extended.
7. The Solid Waste Enterprise Fund is committed to fund the on-going maintenance of the landfill for a period of thirty (30) years post closure. The SWEF can not provide a significantly large outlay of funding to support construction of an extensive public water and sewer system for the area surrounding the landfill.
8. Other issues.

PARAMETERS OF A NO FAULT WELL REPAIR FUND POLICY

Similar in concept to the policy established in 2002 referenced above a well repair fund could be established that would be funded via revenues generated by the Solid Waste operations. It is important that these issues be addressed sooner than later in that the actual operation of the landfill is scheduled to end within a short period of time. After that time, depending upon the course of action authorized by the Orange County Board of Commissioners, the revenue stream that supports the landfill operation may be drastically reduced. While the participating towns and county remain liable for the long term aspects of the landfills maintenance for 30 years after the landfill closes, budgetary constraints could impact upon positive responses to addressing these issues in the future.

If the Board of Commissioners supports this approach to addressing the well problems of residents within an impact area (3000 feet of the landfill's boundary) of the existing landfill operation, staff can formulate the policy; meet with the landfill partners to assure concurrence; and, once approved by the Board of Commissioners initiate contact with residents within the impact area served by a non public water supply.

In each case, the County Public Health Department would be involved in testing the wells and confirming the need for repair. In most cases, the County's effort would focus on repair or replacement of an existing well. IF, site conditions and or other conditions do not allow for a repair or replacement of an existing failed (failing) residential well,

consideration could be given to the possibility of extending a connection to a public water source if available. Those instances would be analyzed on a case by case basis and only pursued with agreement of the property owner with an understanding that the property owner or water user would have future responsibility for any user costs once the installation was complete.

SUMMARY

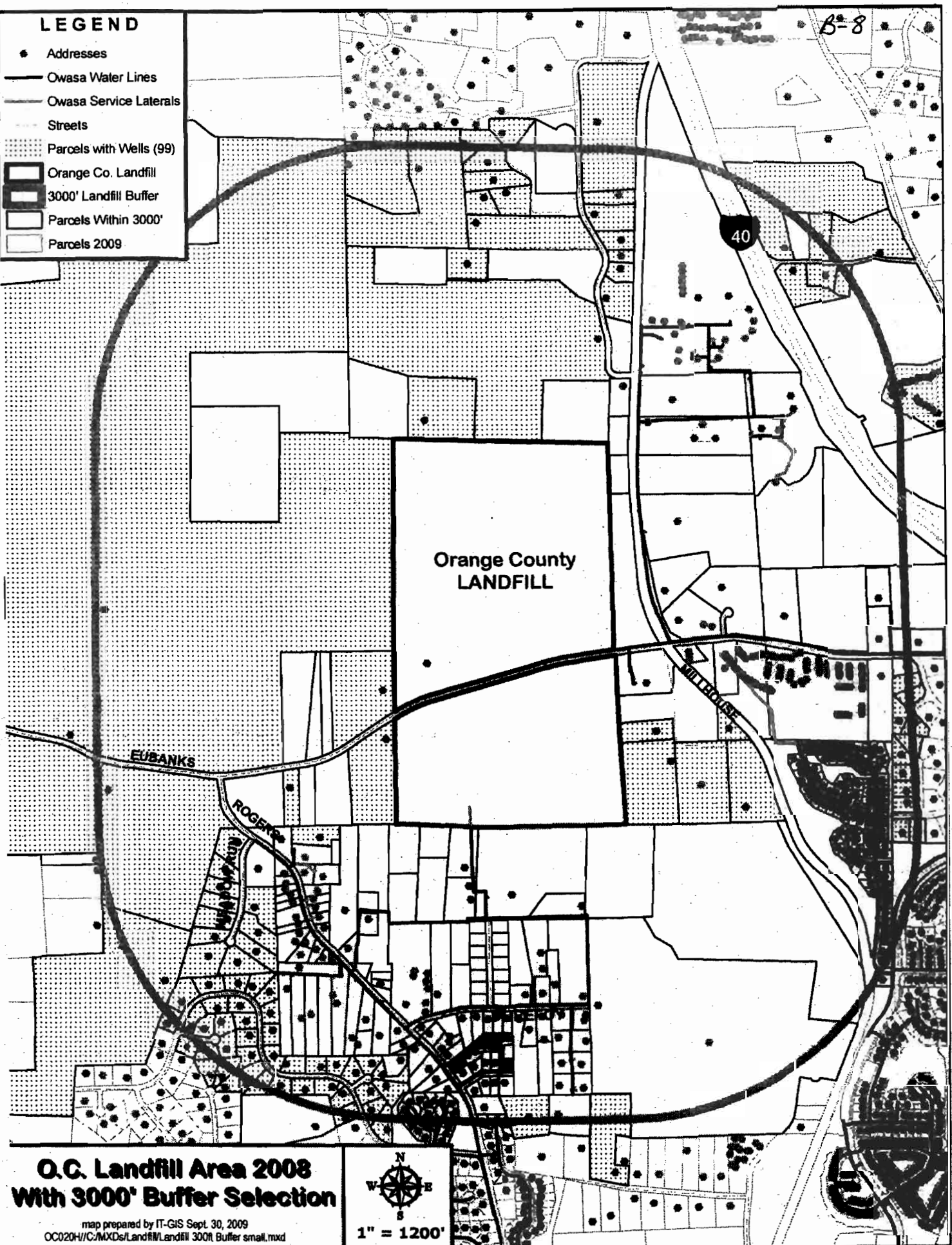
If the Board of Commissioners concurs with this approach, staff will initiate the actions necessary to bring a formal policy back to the Board for consideration and approval. There are several steps to be pursued. Since many of the basic parameters for this effort have been addressed within the scope of the program currently in place related to the Martin Marietta quarry project a timely response and follow up should occur.

Frank W. Clifton, Jr.
County Manager
11/3/9

LEGEND

- Addresses
- Owasa Water Lines
- Owasa Service Laterals
- Streets
- ▨ Parcels with Wells (99)
- ▭ Orange Co. Landfill
- ▭ 3000' Landfill Buffer
- ▭ Parcels Within 3000'
- ▭ Parcels 2009

B-8



O.C. Landfill Area 2008 With 3000' Buffer Selection



map prepared by IT-GIS Sept. 30, 2009
OC020H/C/MXD/Landfill/Landfill 3000' Buffer small.mxd

Sarah Williamson

From: James Harris
Sent: Monday, May 24, 2010 12:01 PM
To: Sarah Williamson
Subject: FW: no fault well replacement

Response to the general fund questions

From: Frank Clifton [mailto:fclifton@co.orange.nc.us]
Sent: Tuesday, April 20, 2010 2:16 PM
To: James Harris
Cc: Steven Stewart; Willie Best
Subject: RE: no fault well replacement

James:

While there is no direct link to the landfill operations and failed wells in the area of the landfill, there were provisions within the original agreement among the landfill partners that indicated a need and willingness to consider community improvements to the neighborhoods impacted by the landfill's location. Since the landfill has served all of Orange County, landfill revenues represent to best available option to address those needs.

The 3000 foot zone around the landfill is consistent with a similar type of arrangement established with a private rock quarry in another part of the County. The NO FAULT provision also applies in that case.

While someone might want to make a case that County General Funds should be used to address the Roger's Road area needs with regards to wells and septic tanks it is important to note that both Chapel Hill and Carrboro have annexed into the Roger's Road area and also have responsibilities with regards to providing infrastructure now or in the future. Additionally, outside of the town's utility service areas, thousands of county residents live on wells and septic tanks. Any use of General Fund Revenues for the Rogers Road area would create immense complications with regards the rest of unincorporated Orange County.

Hopefully, these responses answer your questions.

FWC

*Frank W. Clifton, Jr.
 County Manager*

From: James Harris [mailto:JHarris@ci.carrboro.nc.us]
Sent: Monday, April 19, 2010 8:51 AM
To: Frank Clifton
Cc: Steven Stewart
Subject: FW: no fault well replacement

Frank, Could you have your representative respond to the questions raised by Aldermen Coleman at the Board meeting on Tuesday night. It is my understanding that Willie Best will make the presentation. Could you or Willie let me and Steve know what the responses are prior to the meeting. Thanks

From: Steven Stewart
Sent: Monday, April 19, 2010 5:19 AM
To: Dan Coleman; Lydia Lavelle; Jacquie Gist; Joal Hall Broun; Randee Haven-O'Donnell; Sarah Williamson; Mayor Chilton; Sammy Slade
Cc: James Harris
Subject: RE: no fault well replacement

Sarah Williamson

From: James Harris
Sent: Monday, May 24, 2010 11:59 AM
To: Sarah Williamson
Subject: FW: No Fault Well Replacement!

Response to the two questions raised

From: Tom Konsler [mailto:tkonsler@co.orange.nc.us]
Sent: Monday, April 19, 2010 8:33 PM
To: Corinthia Barber; Craig Benedict
Cc: James Harris; Willie Best; Rosemary Summers
Subject: RE: No Fault Well Replacement!

Here are my responses to the two questions. Craig may be able to add more.

- 1)** if there is no evidence that there is any well contamination caused by the landfill, why should landfill funds be used to support this policy? **2)** given said lack of evidence, why does the policy use a 3000 ft perimeter? It seems a much narrower perimeter might be more appropriate particularly in areas where the landfill is 'down stream' from the property in question.

This arrangement can be compared with the No Fault Well Repair Fund that is in place for problems surrounding the American Stone Quarry. Remedies for problems that **are caused by the quarry** are not paid for from the fund. They are paid by the quarry. Those problems that **are not attributed to the quarry** operations and are within the area of interest (3000 feet) are paid for by the fund – hence the qualifier “no fault”. To repair or replace wells that are experiencing problems within this area around the landfill is a policy decision and could be viewed as compensation or a benefit extended to those residents who may be affected by living near the landfill. It is also a policy decision, not one based on cause and affect, as to what distance from the landfill property owners should be considered for this compensation.

Tom

From: Corinthia Barber
Sent: Monday, April 19, 2010 11:20 AM
To: Craig Benedict; Tom Konsler
Subject: No Fault Well Replacement!

Hello Craig & Tom,

Willie suggested I forward this email you two in responding to the questions from Alderman Dan Coleman, which are below.

Please respond ASAP with CC's to Willie and James Harris