

Letter emailed from Peter Gess to EPD Director Carol Couch, July 28, 2005

Shows what can happen when a county commission is actually out to protect citizens, and when EPD is willing to step up.

From: pgess@mindspring.com
Sent: Jul 28, 2005 4:07 PM
To: ccouch@dnr.state.ga.us
Subject: Taliaferro and Clarke

Dear Dr. Couch:

I recently read about Complex Environmental, Inc. and Taliaferro County in the *Public Administration Times* (attached below). Congratulations on your success and your dedication to protecting Georgia's people and environment.

I am sure you have heard about the controversy swirling (no pun intended) around Athens and the CertainTeed fiberglass insulation plant expansion. When I first compared the Complex Environmental and CertainTeed cases, I thought they were really very different. But the more I think about it, I realize that there are a lot of similarities. In fact, one could argue that the request from CertainTeed to more than double the amount of pollution it dumps into our air represents a greater threat than a landfill, simply because there are just too many uncertainties and risks involved.

We know that landfill technology has come a long way over the past several decades. Super-strong landfill liners, leachate and methane collections systems, and leakage warning systems have greatly limited the harm landfills cause to local communities and the environment. On the other hand, there is much controversy concerning whether or not fiberglass particles can be broken down in the lungs. Formaldehyde is a known human carcinogen (and there are formaldehyde-free fiberglass manufacturing processes). Even now the EPA is considering revising PM2.5 standards to make them more rigid. Clarke County is borderline "non-attainment." Not to mention the other industrial polluters in CertainTeed's neighborhood, the phenol and ammonia irritants, and the lack of air quality monitoring in the CertainTeed vicinity.

The Complex Environmental and CertainTeed cases are alike in another important aspect. The four census tracts around CertainTeed are 60% African-American (same percentage as Taliaferro County), while the other twenty-five tracts in the county are 23% African American.

I especially like this quote from the above-referenced article:

In her ruling, the judge noted that "there is nothing in Georgia's Solid Waste Management Act which would relegate the director's function in granting or denying permits to a mere ministerial function. On the contrary, the act requires that the director make independent 'investigations, analyses and inspections' to determine the appropriateness of a permit."

I would hope you would make an independent investigation, analysis and inspection in the CertainTeed case as well, and arrive at the only safe and logical decision to protect the people and environment in Clarke County: deny CertainTeed's permit application.

Thank you for your time and consideration.
Sincerely,
Peter L. Gess
Athens-Clarke County Resident
and PhD Candidate, Public Administration

The Case of Taliaferro County

David vs. Goliath in Georgia Environmental Justice

Thomas Chumbley, Virginia Loveless, John Peery and April Zahner

In the spring of 2003, Complex Environmental, Inc., a large waste disposal corporation, began to acquire property in one of the smallest, poorest and most rural counties in Georgia--Taliaferro--to construct a 1,030 acre landfill. The citizens rallied, and in a series of administrative decisions and court battles, succeeded in defeating Goliath.

The proposed landfill site lay along Georgia Highway 22 near Crawfordville in Taliaferro County. According to the 2000 Census, there are approximately 2,077 people living in the county, 60.3 percent of them are African-American. Of the 1,434 people that are 25 years or older, only 32.6 percent graduated high school or obtained a GED. The per capita income per household is \$15,498, and 22.3 percent of households are below poverty level. Poor, Black, and uneducated, Taliaferro County must have seemed the perfect target.

In Georgia, landfill developers must first secure a permit from the State of Georgia, through the Department of Natural Resources' (DNR) Environmental Protection Division (EPD) for the landfill. Permit requests are considered in accordance with requirements set out in the Georgia Comprehensive Solid Waste Management Act of 1990 (O.C.G.A. I2-8-20). The first step is to acquire a "letter of acceptance" which signifies the suitability of the site in question.

When the County Commissioners got wind of Complex Environmental's plans to use the property they were acquiring for a landfill, they quickly passed a new zoning ordinance to prohibit landfills. The company sued the Commissioners based on a technicality--the advertisement of the zoning proposal was placed on the wrong page of the local newspaper. In October of 2003, Superior Court Judge Purnell Davis ruled in favor of Complex Environmental. This decision had the effect of forcing the Commissioners to provide the required letter of acceptance.

The Commissioners refused. In their view, the landfill violated the County's established solid waste management plan. Moreover, the proposed site was near wetlands and a floodplain, posing a potential environmental hazard to the nearby Ogeechee River, and possible danger to neighboring counties. Concerned about the safety and health of County citizens, and mindful of the strength of local opposition to the landfill, the Commissioners refused to sign the letter of acceptance. As a consequence, Judge Davis found them in contempt of court and ordered them jailed.

Late in the night, the Commissioners decided to sign the letter stating that Complex Environmental's proposed landfill was in accordance with the County's established solid

waste management plan; although, none of them actually believed that to be true. They signed because they understood that the Judge could hold them indefinitely on contempt charges and charge the County a fine for every day they were in jail. They decided it was in the best interest of the County to sign and trust they would be able to fight back in other ways.

They were not disappointed. The community formed a grassroots organization, Taliaferro Countians Against Landfills (TCAL) to fight for environmental justice. TCAL contacted politicians and other influential leaders to help. When the Commissioners were arrested, TCAL organized a large rally. John McCown, co-director of the Sierra Club's national environmental justice program told the crowd "Taliaferro County doesn't want to become America's pay toilet." He called the decision to locate the landfill in Taliaferro County "environmental racism," alleging that the company targeted the poor, predominantly African-American county because he thought the citizens would not be able to fight back. Rev. Fred D. Taylor of the Southern Christian Leadership Conference (SCLC) and Joseph Lowry, former president of the SCLC were also present and stated that "Black and poor people are seen as expendable."

Once the letter of acceptance was signed, the battle moved to the offices of the Georgia Environmental Protection Division (EPD). On April 19th 2004, EPD Director Carol Couch rejected Complex Environmental's application for the landfill. Couch appropriately considered the facts included in the application, along with the County's long-established solid waste management plan. U.S. Representative Max Burns stated "This is a hard-fought victory not only for Crawfordville and Taliaferro, but for every small town and rural county in our Congressional district. We're not about to allow our communities to become a dumping ground for Atlanta, New York, or any other urban area."

Complex Environmental, however, did not give up. The company sued Couch, claiming she exceeded her authority in her decision to reject the company's application. On October 4, 2004, an administrative law judge agreed with the company and cleared the way for the landfill. Taliaferro County residents fought back. TCAL finally succeeded in gaining legal standing to have their views heard in court, and appealed the October ruling. In January of 2005, Judge Constance Russell sided with the residents. In her ruling, the judge noted that "there is nothing in Georgia's Solid Waste Management Act which would relegate the director's function in granting or denying permits to a mere ministerial function. On the contrary, the Act requires that the director make independent 'investigations, analyses and inspections' to determine the appropriateness of a permit."

Complex Environmental appealed this ruling to the Georgia Court of Appeals. On March 23, 2005, the court dismissed the company's appeal. Goliath's last option is to appeal to the Georgia Supreme Court. So far, it has not done so. The citizens of Taliaferro County, "David," have won their fight for environmental justice.

The authors of this article are all MPA students of ASPA and PA TIMES Board member Sandra Reinke who is director of the MPA Program at Augusta State University. E-mail: sreinke@aug.edu.