IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

HOBART CORPORATION, et al.,	:	CASE NO. 3:13-cv-115
Plaintiffs,	:	
	:	JUDGE WALTER H. RICE
v.	:	
THE DAYTON POWER & LIGHT COMPANY, et al.,	:	
Defendants.	:	

DEFENDANT THE DAYTON POWER AND LIGHT COMPANY'S RESPONSES TO PLAINTIFFS' FIRST REQUEST FOR ADMISSIONS

Pursuant to Rules 26 and 36 of the Federal Rules of Civil Procedure and Local Rule 26.1, Defendant Dayton Power and Light Company ("DP&L") hereby submits its responses and objections to Plaintiffs Hobart Corporation, Kelsey-Hayes Company, and NCR Corporation's (collectively, "Plaintiffs") First Request for Admissions as set forth below.

The responses reflect DP&L's present knowledge of the matters covered by the discovery requests and its best efforts to respond thereto. DP&L's efforts, however, are continuing, and it reserves the right to amend and/or supplement the responses contained herein as may be necessary or appropriate in the future.

GENERAL OBJECTIONS AND RESERVATIONS

1. DP&L objects to the discovery requests to the extent they require disclosure of information beyond the permissible scope of discovery required under the Federal Rules of Civil Procedure. DP&L's responses and any identification of documents included in said responses shall not waive or prejudice any objection DP&L may later assert, including, but

not limited to, objections to the admissibility of any of the answers or responses hereto, or to the admissibility of documents or categories of documents at trial.

2. DP&L objects to each request and part thereof to the extent that they call for information protected by: (a) the attorney-client privilege; (b) the attorney work product doctrine; (c) any privilege relating to confidential trade secrets or confidential communications; (d) the right of privacy; or (e) any other privilege. Any inadvertent identification subject to such privilege shall not waive those privileges.

3. DP&L objects to those discovery requests that are vague, ambiguous, unlimited in time, scope or subject, overly broad, unduly burdensome, oppressive, or call for unbounded discovery.

4. DP&L objects to the discovery requests to the extent they are not relevant to the subject matter of this action nor proportional to the needs of the case.

5. DP&L does not waive any objection to the admissibility, competency, relevancy, materiality, confidentiality or privilege attaching to any document, communication or information, supplied, nor to the right to object to additional discovery relating to the subject matter of the discovery requests herein.

6. DP&L objects to the discovery requests to the extent they request that DP&L produce information in the possession and control of individuals or entities over whom DP&L has no control or right of control. The following responses are made on behalf of DP&L and not on behalf of any other entities or persons.

7. DP&L objects to any request that exceeds the scope of the Federal Rules of Civil Procedure governing written interrogatories to a party.

8. DP&L reserves the right to object to any additional discovery procedures initiated by Plaintiffs and/or to file a Motion for Protective Order to the extent that any such subsequent discovery proceedings involve the subject matter or substantially the same areas of inquiry covered by these discovery requests.

9. DP&L reserves the right to add to, subtract from, or clarify any objections or responses which they give in response to the discovery requests. DP&L further notes that investigation of the areas of inquiry touched upon by the discovery requests shall continue through the time of trial, all of which may necessitate further action as described above.

10. DP&L objects to all discovery requests that are objectionable as to form.

11. DP&L objects to the discovery requests to the extent that they purport to call for information not known to DP&L and that is not reasonably ascertainable by DP&L.

12. DP&L objects to the discovery requests to the extent that they purport to call for legal conclusions or expert opinions or require DP&L to perform legal research for Plaintiffs.

13. DP&L objects to the discovery requests to the extent that they are overly broad, unduly and unreasonably burdensome and oppressive in that the burden of obtaining the information purportedly called for substantially outweighs any probative value to the information it has.

14. DP&L objects to the discovery requests to the extent that they purport to call for answers that are dependent in whole or in part on information to be obtained by DP&L from Plaintiffs or another person in the course of discovery.

15. DP&L objects to each of the discovery requests to the extent such are not reasonably limited in scope and time.

16. DP&L objects to each discovery request that seeks the production of documents or information that is confidential, proprietary, financially sensitive, or of a confidential nature that outweighs any arguable relevance the information could have to this proceeding.

REQUESTS FOR ADMISSION

REQUEST NO. 1: That You arranged for the Disposal of Waste at the Site.

RESPONSE: DP&L admits that it arranged for the disposal of waste material at the Site but denies that any such waste material constitutes a "hazardous substance" under CERCLA.

REQUEST NO. 2: That You arranged for the Disposal of a Hazardous Substance or Hazardous Substances at the Site.

RESPONSE: Denied.

REQUEST NO. 3: That You had a telephone conversation with EPA representatives Mr. Thomas Nash and/or Ms. Karen Cibulskis on or about June 9, 2009.

RESPONSE: Admitted.

REQUEST NO. 4: That You had a telephone conversation with EPA representatives Mr. Thomas Nash and/or Ms. Karen Cibulskis on or about June 9, 2009 concerning EPA's request for access to Your property across the street from the Site.

RESPONSE: Admitted.

REQUEST NO. 5: That You told Mr. Thomas Nash and/or Ms. Karen Cibulskis, in a telephone conversation on or about June 9, 2009, that You had evidence that You never took Waste to the Site, or words to that effect, as described in Exhibit 1 hereto.

RESPONSE: Denied.

REQUEST NO. 6: That You told Mr. Thomas Nash and/or Ms. Karen Cibulskis, in a telephone conversation on or about June 9, 2009, that You would not allow EPA access to Your property to collect data to complete a RI/FS, or words to that effect, as described in Exhibit 1 hereto.

RESPONSE: Denied. As noted in Exhibit 1 of Plaintiffs' First Request for Admissions, DP&L offered to grant EPA access to DP&L's property to re-drill and sample an existing well on DP&L's property. EPA and Plaintiff Hobart had not proposed any limitation on the number of wells that they might seek to drill in the course of the extent of the investigation. See attached letter of April 7, 2009. Under these circumstances, DP&L declined to offer EPA carte blanche access to DP&L property on June 9, 2009. DP&L took no actions, however, to oppose or challenge an Administrative Order that was issued in August 2009 under which EPA was allowed access to DP&L's property to conduct the requested activities. DP&L did provide comments on the draft Administrative Order issued by EPA on July 27, 2009. See attached.

As to the objections:

/s/ _____

Respectfully submitted,

/s/ _____

Frank L. Merrill (0039381) - Trial Attorney
Drew H. Campbell (0047197)
Daniel E. Gerken (0088259)
BRICKER & ECKLER LLP
100 South Third Street
Columbus, Ohio 43215-4291
Phone: (614) 227-2300
Fax: (614) 227-2390
fmerrill@bricker.com
dcampbell@bricker.com
dgerken@bricker.com

Attorneys for Defendant
The Dayton Power and Light Company

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing *Defendant The Dayton Power and Light Company's Responses to Plaintiffs' First Request for Admissions* was served via electronic mail on all counsel of record this 13th day of February, 2017:

/s/ _____
Frank L. Merrill (0039381)

DP&L

Working For You Today And Tomorrow

Randall V. Griffin
Chief Regulatory Counsel
937-259-7221
randall.griffin@dplinc.com

April 7, 2009

Ken Brown, CHMM
Environmental Engineer
Illinois Tool Works, Inc.
3600 West Lake Avenue
Glenview, IL 60026

Re: South Dayton Landfill Site: Access Agreement

Dear Mr. Brown

I am in receipt of your letter of March 18, 2009, and the memorandum of March 17, 2009, prepared by Conestoga-Rovers & Associates. After careful review of those documents and the prior information that you have provided, this letter is to inform you that The Dayton Power and Light Company (DP&L) is not willing to disrupt its operations to permit three large wells to be drilled on its property as you have requested.

In this regard, I would note that one of our primary concerns expressed earlier in a conference call with you was that the one sampling and monitoring well you were then proposing could be just a starting point for a more elaborate set of wells. Our concerns have only been heightened by the surprising request that is now presented seeking permission to install three wells. The potential disruption of operations only increases with multiple wells. Moreover, nothing in your letter suggests a commitment to ever remove the wells or even to hold the number of wells to three. Your letter in fact is to the contrary, suggesting that this might indeed be just a step towards a far more obtrusive and wide-spread investigation.

While this brief letter does not intend to respond to each statement made in the Conestoga-Rovers' memorandum, I would note just a couple of significant points of dispute that may help you understand our position.

DP&L disputes assertions that its property is upgradient and that the groundwater flows are only to the west and southwest. The Public Health Assessment for the South Dayton Dump and Landfill, September 30, 2008 states that: "Groundwater from beneath the site has been reported to flow to the southeast and to the southwest (Ohio EPA, 1996a). Groundwater is also suspected of discharging to the gravel pit immediately southwest of the site (PRC 1995). . . . The landowner's investigations over 1998 - 2004 included measurements of groundwater elevations that indicate that the direction of groundwater flow is to the southeast." During this time and through 2006, DP&L operated a water extraction well near its main building that may have had a significant effect on the groundwater movement under the DP&L property, tending to pull groundwater toward the DP&L property, not away from it.

As noted by the Conestoga-Rovers' memorandum, DP&L has been engaged in certain remediation activities since at least 1990. What is not explicitly noted is that those activities included the installation of a groundwater recovery well that was operated through 1998 with the specific intent of ensuring that any contaminants in the groundwater did not migrate away from the release site, but were recovered for treatment. The Conestoga-Rovers' memorandum also fails to note that the levels of BTEX and other volatiles are now down to exceptionally, albeit still measurable, low levels.

Conestoga Rovers' memorandum also notes that a 20,000 gallon dielectric oil (mineral oil) Underground Storage Tank (UST) on DP&L's property along with surrounding soils was removed in 1990, but fails to disclose that the tank was intact with only minor corrosion and analyses contemporaneously performed indicated that there was no PCB contamination in the surrounding soils. A letter of No Further Action was issued June 20, 2000 to DP&L from the Bureau of Underground Storage Tank Regulations (BUSTR). The prior existence of this UST does not in any way support the proposal to install monitoring wells on DP&L's property.

DP&L would also like to point out that there are at least five locations along the east side of the South Dayton Landfill property that have had documented or suspected releases from USTs, including what is presumed to have been an old service station at 2139 Dryden Road. This location is approximately 100 feet from the well with the highest concentration of benzene as identified in the groundwater sampling data provided to DP&L. Information on the UST release sites is available on the BUSTR website.

The claims made in the Conestoga-Rovers' memorandum regarding arsenic and lead are also misleading. While arsenic appears in the wells along Dryden Road (97 – 98 ug/l at depths below 700') this may be attributable to road-side pesticide and herbicide use rather than due to groundwater movement. It is significant that the wells further to the west show higher levels and in some cases much higher levels. The highest level of arsenic (3200 ug/l) is located near the center of the property. The north end of the property, in the location of the Dayton Recycling USTs, has the second highest level of arsenic, and the values decline as you move closer to Dryden Road. Lead levels show a similar pattern. The values are highest in the center of the South Dayton

Landfill property and decline as you move toward the DP&L property, especially if you look at levels found at the deeper elevations (below 700').

To the extent that the presence of arsenic, lead, chlorinated alphatics and other contaminants could be attributable to groundwater influences, it is the north-end of the South Dayton Landfill that should be given special attention. In the north-end of the property, and within approximately 200 ft of the Dayton Recycling USTs noted above, is an area that, to our knowledge, still contains buried hazardous waste drums. In 2000, buried hazardous waste drums containing high levels of metals, PCBs, and chlorinated alphatics were found while excavating for a sewer line. It is noted in the Public Health Assessment, September, 2008, that "additional drums were observed in the side-walls of the excavation but were left in place". Those facts do not support a theory that the ground water flow is to the west or southwest or that some portion of the arsenic or lead on the South Dayton Landfill site originates on DP&L property.

We recognize that there are some difficulties in reopening the existing well along Dryden Road, but think that those difficulties are far less significant than the amount of disruption that would be caused by your proposal. We remain willing to help you resolve the difficulties with respect to the existing well. To that end, if it would be helpful to give the work crews access to that well from our property, we would be willing to grant access rights for that purpose.

Very truly yours,

Randall V. Griffin

DP&L

Working For You Today And Tomorrow

Legal Department

Randall V. Griffin
Chief Regulatory Counsel
937-259-7221
randall.griffin@dplinc.com

August 12, 2009

Thomas C. Nash, Esq.
Office of Regional Counsel
United States Environmental Protection Agency
77 W. Jackson Blvd (C-141)
Chicago, Illinois 60604

Re: South Dayton Landfill Site: Administrative Order

Dear Mr. Nash

Attached are comments on the Administrative Order that we would request that you consider. While we believe that incorporating each of these comments into the Administrative Order would improve the accuracy of the findings and the Order as a whole, I would note that there are a couple areas that are of particular significance to us.

1) It is unclear to us whether the Administrative Order is in lieu of the draft contract that was previously sent to us or is, in effect, requiring us to execute the draft contract. In either event, we would request that the Administrative Order contain some language that specifies that the company that will actually be performing the drilling and sampling provide us with reasonable advance notice that they are coming on site, permit a DP&L employee to observe the activities, and that we receive split samples. We would also want some explicit recognition that they will work with us to minimize disruption and would be financially responsible for any damage that the contractor causes.

2) Paragraph 6 of the Administrative Order relating to allegations about DP&L waste being disposed of in the South Dayton Landfill contains no facts or allegations that would support an Administrative Order for access to DP&L property. These allegations are disputed in any event, but there is no need to address the merits at this point. These allegations even if true are irrelevant to the issue of ground water

migration or whether any contaminants from the DP&L property have migrated to the South Dayton landfill site or vice-versa. The paragraph should be deleted.

Sincerely,

Randall V. Griffin

cc: JoAnne C. Rau
Scott K. Arentsen

REQUESTED MODIFICATIONS AND COMMENTS OF
THE DAYTON POWER AND LIGHT COMPANY
WITH RESPECT TO ADMINISTRATIVE ORDER ISSUED JULY 27, 2009

The requested modifications and comments below are with respect to selected paragraphs of the Administrative Order. In many instances, however, there are findings, statements of fact or allegations, or other representations made concerning the South Dayton Landfill site ("Site"), which is an adjacent property about which The Dayton Power and Light Company ("DP&L") has little or no independent information. DP&L has generally not commented on such paragraphs, but is neither confirming nor denying the statements made therein. DP&L reserves all future rights that it may have to object or challenge any such finding, statement, or allegation, whether with respect to paragraphs not addressed herein or with respect to paragraphs that are addressed herein.

In addition to requested modifications and comments, DP&L also has identified some areas where it has questions as to the meaning or intent of the Administrative Order. They are raised here in order to facilitate discussion at the conference scheduled for August 13, 2009.

DP&L would also request clarification and a discussion of how it is to coordinate with the activities of the contractor(s) that EPA may designate for performing the drilling and monitoring activities. In order to follow existing safety and security procedures, it will be necessary to receive reasonable advance notice that the contractor will be entering the site. DP&L employees would then escort the contractor and monitor the contractor's activities. Some coordination will be necessary to establish precise locations for the monitoring wells to avoid hitting underground piping or electric lines that may be in the vicinity. To the extent necessary either in this Administrative Order or as an understanding going forward, DP&L would request that there be a statement or commitment that the contractor(s) will work with DP&L to minimize disruption during the drilling and monitoring phase and that the PRP group will pay for restoration of Respondent's Property after concluding monitoring.

Para. 2. The request made on March 17, 2009, did not indicate that the new wells would be permanent wells. Paragraph 36 suggests an intent to monitor for a period of approximately one year. DP&L would request that a modification be considered to paragraph 2 to establish a reasonable time limit before the monitoring wells could be filled in, with a right for the EPA to extend that period if such an extension is justified.

Para. 5. DP&L has no independent knowledge as to what other entities may have disposed at the Site, so it neither confirms nor denies such statements with respect to other entities. With respect to DP&L: extensive investigations done in the 2005-06 time frame indicate that DP&L disposed of no drums, solvents, or asbestos, or any other substance listed in paragraph 5, with the possible exception of fly ash.

DP&L's primary use of the Site was to dispose of normal and routine office waste, wood construction debris, and excavation spoils (concrete, dirt, blacktop, etc.).

Para. 6. DP&L requests that this paragraph be deleted as irrelevant to the need for access to DP&L property. All statements and allegation made within this paragraph relate to alleged disposal of materials at the Site, while the request for access is for the purpose of looking at the potential that contamination on Respondent's property has migrated to the Site or that contamination from the Site has migrated to the Respondent's property. Moreover, the allegations made by the witness are disputed. DP&L categorically denies that it ever disposed of any transformers at the Site. Transformers were and remain valuable and were not disposed of at the Site. DP&L had its own transformer reclamation group that reconditioned transformers for further use and, if unusable, sold the transformers for scrap metal to parties other than the Site. During the time in question, DP&L had contracts for disposal of other types of waste with other landfills in the vicinity. Extensive investigations done in the 2005-06 time frame indicate that DP&L disposed of no drums, solvents, asbestos, or any other substance except as described above with respect to paragraph 5.

Para. 9. The facts as presented are not denied, but should be supplemented with the fact that levels of arsenic, lead, trichloroethene, vinyl chloride, and cis-1,2 dichloroethene are many times higher at VAS-08 and VAS-09 on the Site just to the west and/or north of the wells that are near the Respondent's property (VAS-14, VAS-15 and VAS-21) , which would suggest that any migratory contamination came from other parts of the Site and not from Respondent's property.

Para. 12. DP&L confirms the facts stated with respect to 1989, but notes that the measured levels have been reduced substantially since then. Moreover, benzene, lead, and toluene, ethylbenzene levels within portions of the Site are far higher even than these figures.

Paras. 18-19. DP&L requests that these paragraphs be deleted as irrelevant to the requested need for access to determine whether there has been migration of contaminants from DP&L's property to the Site or vice-versa. There is no indication from any of the nearby wells on the Site of PCBs, so references to the existence of PCB on Respondent's property does not support the requested access.

Para. 21. DP&L agrees with statements made in other paragraphs that the subsurface flow direction is variable. The referenced statement regarding the 2001 RAP should clarify that this southwest flow measurement was at a shallow depth and as of the date that the measurements were taken.

Para. 25. See comment on paragraph 21.

Para. 26. DP&L requests that this paragraph be deleted. There has been no allegation at any time of any leaks or problems with any of the referenced tanks.

Para. 27. To the extent such rights exist, DP&L specifically reserves the right to dispute in the future any conclusion that there may have been migration of contaminants from DP&L's property to the Site. DP&L does not believe that the existing data supports the supposition that Respondent's Property has at any time contributed to the groundwater contamination along, and downgradient of the eastern boundary of the Site.

Para. 28. It is unclear from this paragraph whether EPA is also investigating whether there is contamination of Respondent's property from the Site. If that is an explicit purpose for the request for access, that should be made more clear.

Para. 30-33. DP&L has no proposed modifications to these paragraphs, but does wish to note that it continues to believe that it is highly unlikely that the proposed monitoring wells will yield any useful information with respect to contamination at the Site. On information and belief, located on the Site and along Dryden Road was a machine shop, an auto repair shop, and a gasoline service station. BUSTR records indicate that there were underground storage tanks at various addresses along Dryden Road at the Site: 1905 Dryden, 1951 Dryden, 2089 Dryden, 2139 Dryden, and 2205 Dryden. At least one of these addresses, 2139 Dryden, is listed as having an "active release." Irrespective of whether any contaminant may be identified as existing on DP&L's property through the monitoring wells, the contamination at the Site will still be far more likely to be the result of activities on the Site.

Para. 34. DP&L would like to understand how the sampling parameters were selected. To our knowledge, the only parameters above the MCLs for drinking water that have been identified in monitoring wells along Dryden Road are arsenic, lead, benzene, trichloroethene, cis-1,2 dichloroethene and vinyl chloride. The sampling parameters in the Administrative Order, however, also include pesticides, herbicides, PCBs and other chemicals that have not been identified as contaminants that may have migrated into the ground water either to or from the Respondent's Property.

Paras. 35-36. Objected to on the general grounds that the requested access is unnecessary for the reasons stated above.

Para. 43. DP&L does not dispute this paragraph to the extent it references with respect to being adjacent to a property with characteristics stated therein. DP&L denies all other statements relating to DP&L.

Paras. 44-45. DP&L disputes the need for access for reasons stated herein and in prior communications with the EPA and the Potentially Responsible Party group.

Para. 46-47. DP&L requests clarification of language herein referring to unrestricted access to the Property. It is assumed that the access to be provided is for the purposes expressed and is not intended to authorize access to the interior of buildings or portions of the Property that are not in proximity to the monitoring wells or is not needed to bring equipment to the location where the wells are to be drilled.

Paras. 56-57. DP&L has submitted a request for a conference and recognizes that it did so outside the time specified in the Administrative Order. It requests that this written submission be accepted and that a new Administrative Order be issued with the modifications proposed herein.

Para. 58. DP&L will withhold comment on this paragraph until after the conference.