

Part V: Problem solved! County takes over Truax Landfill, Bridges Golf Course built over it

The Truax Landfill saga is based on reviews of old newspaper stories (from Newspaper.Archive.com), publicly available government reports, and hundreds of government reports and communications obtained through open records requests. Given the many missing, withheld and/or incomplete public records—and numerous internal communications that were not written and therefore off the public record—there are a variety of unknowns and gaps in this story, and uncertainties about the accuracy of various details. Citations are removed. If you have questions about this history, know about details I didn't include, and/or are interested in sources for any of specific points in the story, please email mariapowell@mejo.us.

Continuing from [Part IV...](#)

Truax Landfill added to federal Hazardous Ranking System list (Superfund)

In spring 1994, while the landfill capping details were being negotiated, consultant Mark Williams (Williams Environmental Associates) visited Barb Gear at the DNR to talk about the hazard ranking score.¹ Williams had been contracted by DNR in 1993 to help score the Truax Landfill on the state's NR 550 "hazard ranking system" for closed landfills. When Williams queried in March 1994, according to Gear's notes, she "reviewed the description of the site he rewrote for the Haz. Ranking score" and thought "it looked better." This "description" and the "better" score were not located, but according to a 2016 Environmental Site Assessment, the site was added to the federal Hazardous Ranking System list (Superfund) sometime in 1994.²

Meanwhile, toxic wastes were still being dumped in parts of the landfill. In his March 1994 visit, Williams mentioned to Gear that he had seen "waste in a small ravine adjacent to the southwest corner of the landfill" that "seems to be an active dump, even recently." Gear's notes said "new" waste included sawdust, solvent cans, etc." So even as the city and county were purportedly "remediating" (capping) the landfill, *someone was still dumping there.*

The city and county continued to argue about who would pay for the capping. In June 1994, the DNR met with the city to discuss city landfills at their attorney's office. Gear's notes say "For Truax, most PRP's are contributing except for Dane County, which is not even sure it will contribute the cover soil, let alone cash. The City will continue to follow what is in the old order and in the proposed order, even though the order isn't signed." However, notes continued, "the city will not sign the order unless the County signs it, and the County will not sign until they are ready to contribute."

Specifics in the revised order were negotiated for months, and specific parameters to be monitored changed several times. In August, 1994, the consultant from Dames & Moore suggested

¹ On September 9, 1993, he had asked Gear for her opinion on groundwater conditions at the landfill, and she told him "the landfill is contributing to groundwater contamination but it isn't easy to verify where and how much. The City and County are putting two new wells in on the west side where contamination may be getting down into bedrock."

² DNR files, however, included an older (1991) hazard ranking score document for "WANG Truax." It was scored 51.91. The "case comments" were "WANG Truax is a large site with many contributing contamination sources: spills, burning pits, a UST, a landfill, groundwater contamination by VOCs & heavy metals threaten Madison's municipal H2O supply and seems to have contaminated Oscar Mayer's well surface water & soils have been impacted by VOCs and metlas. Soil contamination by metals leads to an air migration score. There is a wetland on the northern boundary of Truax."

that one point be reworded to say “the full extent of groundwater contamination from the landfill has not yet been determined.” A few days later, he also asked Gear to confirm in the consent order that “leachate monitoring was not needed at this site,” apparently because “there is no leachate ponding within waste that we know of”—even though leachate had in fact been observed in recent years.³

Groundwater contamination to the northwest, gas systems not approved—but county is itching to develop near the landfill

The landfill problem threw a wrench into the county’s desire to fully develop around the landfill—in an area called “Truax Air Park West.” In their January 1990 meeting, just after the DNR issued its first draft landfill consent order, responsible parties agreed that their “common goals” included “permit development at air park.” The “Truax Air Park West Master Plan” later that year said “the majority of the developable parcels within Air Park West are immediately developable, and it would be the intent of this Plan to be a tool used in helping marketing efforts. However, there are key parcels in Air Park West that are not immediately developable because of environmental constraints.”

Addressing these “environmental constraints” went on for years afterwards, and centered largely on how to manage toxic and potentially explosive landfill gases. The DNR, PRPs and consultants went back and forth many times on plans for the gas extraction system. On June 21, 1994, DNR sent a draft consent order to the city and county that included requirements for the gas extraction system and upgraded cap. In response, Dames & Moore submitted the “Work Plan, Truax Landfill Final Cover & Landfill Gas Extraction System” on August, 11, 1994. We didn’t find the draft consent order or this report in records released to us. This plan was amended a few times.

On July 12, 1995, DNR “conditionally” approved the proposed Landfill Final Cover and Gas Extraction System” proposed by Dames & Moore. The existing perimeter gas control system, the approval letter said, didn’t control explosive gases in non-perimeter parts of the landfill, and the cap also didn’t meet existing regulations. DNR ordered that “In order to prevent air intrusion, promote efficient combustion and to prevent fires in the landfill in a future gas extraction system, the landfill cap must be upgraded.” After that, the gas extraction system would also have to be upgraded. Dames & Moore was asked to submit additional plans and documentation for the improved cap and gas extraction system. It’s unclear how the controversies controlling hazardous air emissions were resolved; they weren’t mentioned in the letter.

The groundwater testing required by DNR was also still ongoing. In October 1994, Dames and Moore sent DNR monitoring well data from September 1993 to June 1994 showing extremely high levels of TCE and vinyl chloride (VC) at a “water table observation well” just off the northwestern edge of the landfill along Pankratz Street. A new well drilled after this, slightly deeper

³ These negotiations must have been very tense, because this entry, on August 11, 1994, said that the Dames & Moore consultant “taped conversations” and “indicated that he had been taping our telephone conversations in the past. I confronted him about not having told me that until now. He said it was only for his use, so he doesn’t have to take notes and that he erases the tapes later.”

at the request of DNR, showed lower contaminant levels, and consultants argued that this indicated that the contamination hadn't moved deeper so there was no need for another set of deeper wells.⁴

When one more test at this location a month later showed non-detectable levels of TCE and vinyl chloride in the deeper well, the consultants again argued that deeper groundwater testing was not needed. Despite this highly limited data (at only one location, though it is well known that VOCs fluctuate greatly with seasons and as groundwater levels change), presumably DNR accepted this, because no further groundwater VOC data was located after this.

Even as these tests were being done, the county was already making plans to develop the area, proposing a large hotel very near the landfill.⁵ Apparently they felt confident in whatever controls were in place at the time.

The city did not agree. An October 27, 1994 memo by city engineer Larry Nelson wrote to the head of the Dane County Regional Airport about their plans to rezone the area so they could build the hotel. He said it was “inappropriate to construct a large residential facility immediately adjacent to a deep landfill producing landfill gas” and he was “unable to provide a positive recommendation to the Plan Commission or the Common Council in regard to any residential development adjacent to the landfill until the city and county can agree on how to protect the occupants of that development.”

Airport director Peter Drahn penned a snarky response to Nelson about his letter and related comments at a meeting a couple days prior. “Nice try, but it didn't work,” Drahn began the letter. At the meeting, Nelson said he intended to block the hotel plans because the county hadn't contributed its “fair share” for remediation of the Truax landfill. Drahn was not pleased with this claim. “Larry, when it's in your best interest, you will do whatever you please. If you have ever wondered, as many of us do, why many businesses look outside the City of Madison for location or relation, your attitude explains it all. You should be bending over backwards for economic development which will create jobs and add value to this community. Your actions on the 25th clearly show your colors. In my opinion, you should stick with ‘nuts and bolts influence’ and leave economic development to others.”

Negotiations between city and county as nasty as ever

Negotiations among the PRPs about who would pay for the landfill mess continued in 1994 and 1995. City and county interactions remained as tense as they had been since the 1980s, perhaps more so.

In September 1994, Attorney Clifford wrote to the PRP group saying that both Oscar Mayer and the Department of Defense wanted one-time buyouts, but were “starting to quibble about the amount.” Interestingly, she added, Oscar Mayer was also “concerned about being required to

⁴ Water table well (60 feet) results from 1993-1994: TCE 95-120 ug/L, VC at 17-29 ug/L. The 87-foot deep new well (one test) results were TCE 1 ug/L and VC 0.84 ug/L. Interestingly, however, in contrast to the shallower well, this deeper well also had significant detections of PCE and several breakdown products of PCE and TCE (1, 1 dichloroethane, cis 1, 2-dichloroethene, 1,1,1 trichloroethane), which could indicate that these breakdown products were moving deeper in the groundwater.

⁵ The city had the Camp Woodchuck area assessed in 1994, but must have decided that the munitions bunkers (made of very heavy reinforced concrete built to withstand potential munitions explosions and bombardment from enemy attacks) were too expensive to demolish, because they remain there today.

maintain high capacity pumping indefinitely” (presumably this was part of the proposed agreement, so Oscar Mayer would continue to serve as de facto “pump-and-treat” for the landfill leachate plume.) She also noted that the State of Wisconsin “which is somewhat responsible for the ANG, wants to be assured that the DoD will pick up ANG’s share and that the state won’t get hit twice for the ANG through a higher U.W. share.”

The county clearly still felt the city duped it on the airport deal back in 1973 by including the landfill in the deal, and that it was continuing not to play openly and fairly in negotiations since then. In early March 1995, the airport director Peter Drahn wrote to County Executive Richard Phelps about a recent letter from the city attorney, in which he “summarily rejected the County’s last offer on remediating Truax landfill.”

“I can sum up the City’s entire negotiation strategy in three words: arrogant and unresponsive,” Drahn began. “It’s the same attitude they display in nearly all issues. In spite of our continuing concessions and the City’s reassurances to negotiate in good faith, they have only added to our share and the total project cost during our talks of the last two years. Somehow, they have become convinced that the County will do anything to avoid managing the effort. And, contrary to Peter’s assertion, the airport purchase “at nominal cost” really was a great deal for the City. The County purchased an airport with a half million dollar a year operating cost and a landfill that was never a part of the airport.”

“I have felt for quite some time that the cleanest approach would be to take over the landfill remediation and initiate legal action. I have no doubt that parties such as Rayovac and Mautz will only enter into negotiations, kicking and screaming, under threat of lawsuit. I am also convinced that Oscar Mayer will not easily come up with their fair share because of their negotiations with the City on other landfills and issues. I am absolutely convinced that we must begin immediate remediation efforts on our own and bring the unwilling PRPs into the courtroom. If we delay much longer, corporate memory will be lost, and we will have a difficult task of regaining the initiative. Additionally, we will have a more difficult time convincing the court and the public that we have a sense of urgency when it comes to environmental issues (although this landfill is really a “small potatoes” in the grand scheme of things).”

He went on to say that he and his staff didn’t see any “unsurmountable obstacles” to “picking up the pieces” of the technical project components, and would be meeting with the city and Dames & more soon on those. “Our willingness and resolve to rapidly conclude this project,” he opined, “should bode well publicly and in the court system.” He felt strongly that the county could complete the landfill project for far less money than was estimated by the City and “without taxpayer money as long as we prevail in court.”

Somehow, despite Drahn’s concerns, Oscar Mayer was convinced to cough up a lump sum very quickly. Two months after the letter above was penned, County Executive Phelps accepted an offer from the President of Oscar Mayer Foods Corp, Robert Eckert: “After careful consideration of our positions as well as discussions with other PRP’s involved at the Truax Landfill, I have decided to accept Oscar Mayer’s offer of a final and complete settlement at \$1.9 million as described in your April 7, 1995 letter. The settlement will forego a reopener clause in light of the company’s willingness to contribute an additional amount to the recently discovered cost overrun.”

Final cost allocation agreement between city and county

It seems that the county executive's plan was at least partially a success—the County agreed to take over nearly all of the responsibility and liability for the landfill. The “Final Cost Allocation Agreement” between the city and county, dated May 31, 1995, was signed by Mayor Paul Soglin, the City Clerk, City Comptroller and City Attorney on May 31, 1995, and by County Executive Richard Phelps and the County Clerk on June 8, 1995.

In addition to the \$683,277 the City had spent to comply with the Phase I (May 1990) and Phase II (April 1992) consent orders, it agreed to contribute \$2,209,582 towards costs for further investigations, monitoring, and remediation required by DNR, without admitting any “fact, responsibility, fault or liability” for the site. The County assumed “all obligations for long-term care and maintenance of the landfill on the Site” and agreed “to hold the City harmless.” The City handed over the Dames & Moore contract to the county, and all obligations related to it, and agreed to give the county access to all records from the site.

The agreement included a “covenant not to sue” by both parties, with the caveat that “either party may promptly commence litigation against the other party to enforce this Agreement should any breach of this Agreement occur.”⁶ The County also agreed to “indemnify and hold the City harmless from all claims, demands, actions, fines, penalties, assessments, damages, costs, and liability, whether currently known or unknown, accrued or unaccrued, arising in the past or to arise in the future, for or arising out of any investigation or remediation of the Site.”⁷ The County reserved the rights against “any person other than the City” in regard to any claims related to the site or work done at the site. The City agreed not to make any claims on its behalf against any party related to the site. The city would not “have either the right or the duty to control the work” to remediate the site, but “it is the intent of the parties that all remediation efforts be conducted in substantial compliance with” CERCLA (Superfund) and “all applicable statutory and regulatory requirements of the State of Wisconsin.”⁸ The Agreement superseded “all prior negotiations, representations or agreements either written or oral,” but could be modified if all parties agreed.

⁶ The agreement said: “The County covenants not to sue or bring any civil or judicial action against the City, its agents or employees for any claims available to the County under applicable federal or state laws with respect to any investigation or remediation costs incurred or to be incurred by the County for the Site. In addition, the County releases and discharges the City from any claims, demands or liability for damage to or loss of use or diminution in value of property owned by the County, including but not limited to the Site itself, in any way arising out of the past ownership or operation of the Site or any actual or threatened pollution or contamination at or originating from the Site or any claim arising out of the City's transfer of the Site to the County.” The city in return “covenants not to sue the County...under any theory of law, federal or state” in regard to the contribution described in the document.

⁷ This included those involved with complying with the past or future consent orders “or other orders, directives, injunctions, claims or judgments regarding any investigation or remediation of the Site,” from long term operation and maintenance of the landfill, any “arising from claims for natural resources damage,” “from “any investigation or remediation of any actual or threatened pollution or contamination off the Site but originating from the Site,” and “those arising under any theory of law, federal or state, including, without limitation, claims for contribution, cost recovery, or indemnity by any party who contributes to or is found liable for all or any part of the costs of investigation or remediating the Site as well as any and all claims which might be brought by the State of Wisconsin or the United States Environmental Protection Agency regarding investigation or remediation of the Site.”

⁸ “The City denies any and all liability to the State of Wisconsin, to all other parties, and to any and all PRPs presently or yet to be identified for any liability or fault of any kind arising out of or any way related to the ownership or

With this agreement in place, the county worked to recoup costs from other responsible parties in the next few years. A January 1997 memo from Ken Koscik to the Public Works and Facilities Management Committee said the U.S. Department of Defense had contributed, \$1.8 million, Oscar Mayer \$1.8 million, the University of Wisconsin \$364,000 and the City \$2,420,000 (not including “orphan share” or the county’s contributions).⁹

The remediation (capping), to be finished in 1997, would cost Dane County \$3,200,000 and the estimated landfill operation and maintenance costs would be \$2,850,000 over 40 years—for a total of \$6,050,000. Koscik proposed that the county should try to recoup between \$500,000 and \$1,000,000 total from Ray-O-Vac, Mautz, and Waste Management. “We need to review the numbers and determine what our course of action should be” and “hire the attorney in order to proceed,” the memo concluded.

A golf course over the former landfill and sewage plant will improve the creek!

It’s not clear how the county’s efforts to recoup costs worked out, but development at the landfill proceeded quickly. The zoning change proposed by the county in 1994 failed, and the hotel the county wanted to build next to the landfill was never built. But other types of buildings, including businesses and schools, were eventually developed there, just feet from the western boundary of the landfill.

In 1996, airport officials approached a real estate broker about building a \$3 million dollar, 18-hole golf course over much of the landfill—carefully circling the half-underground munitions bunkers—and also over part of the former sewage plant.¹⁰ The airport would draw revenue from leasing the land to a limited liability company that would run the golf course. The city raised a few concerns about impacts on the wetlands, but nothing was mentioned about the contamination from the former landfill or sewer plant. (Notably, however, one newspaper article casually mentioned that former “Camp Woodchuck” in the landfill had been used for military ammunition storage.)¹¹

The developer placated concerns about potential negative effects on wetlands by assuring that the DNR and Army Corps of Engineers would need to sign off on the development. He also

operation of the Site or facilities located thereon or participation in any other activities conducted at the Site or on adjacent lands comprising the former Truax Army Air Field. This Agreement shall not constitute or be used as evidence of any admission of liability or against interest by any signatory to this Agreement or any other person or entity. This Agreement is for the sole purpose of providing a vehicle for contribution of funds by the City toward the effort of the County to investigate and remediate possible environmental concerns at the Site. Further, the parties agree that this Agreement does not constitute and may not be used in any context, in or outside litigation, as an admission that any party is liable for all or any specific portion of the costs of investigation or remediation at the Site, or any other liability of any kind in connection with the Site, except to the extent such liability arises from the requirements of this Agreement. This Agreement may be used in litigation and may be introduced into evidence by either party in any action to enforce the terms of this Agreement.”

⁹ The University of Wisconsin contribution was actually a State of Wisconsin contribution since other state agencies sent waste to the landfill. A 1996 letter from Linda Clifford to the Wisconsin DOJ said “We have identified the Wisconsin Department of Transportation, the State Highway Commission (then separate entities), Central Wisconsin Colony, and the Department of Natural Resources as agencies that took waste to the site.”

¹⁰ The reported size of the golf course in papers varied from 140, 160, 200, to 240 acres. The size of the wetlands there also varied considerably.

¹¹ The Madison Plan Commission rezoned 240 acres of wetlands from manufacturing to conservancy to allow the course to be built.

opined that grass planted for the project would actually improve the quality of Starkweather creek. “I’ve gotten nothing but positive feedback from the city of Madison and the airport and the neighborhood associations,” he told The Capital Times. City of Madison and airport leaders knew how contaminated these areas were, but there’s no indication that neighborhood residents did. The golf course sailed through all city, county, and DNR approval processes and Bridges Golf Course was officially opened in 2000.^{12,13}

What toxic plume leaching from the landfill? Stop measuring it, and it’s no longer a problem!

In 1999, Dane County Regional Airport received final DNR approval for their monitoring program at the landfill.¹⁴ Despite the fact that city investigations in the 1980s had documented a leachate plume traveling from the landfill offsite under adjacent neighborhoods to the west, and surface leachates had been observed at the landfill many times since then, the DNR decided not to require the county to assess leachate—albeit with some caveats.

“While we are not requiring further investigations or monitoring of leachate at this time,” DNR’s approval letter said, “we wish to note for the record there may be more leachate in the landfill than previously thought, and this may need to be addressed sometime in the future.” While exploratory drilling in 1990 had only found leachate in one corner of the landfill, in 1995 when the gas extraction system and cap were being installed, DNR and consultants “observed leachate in many locations within the fill, both in trenches and at the surface as seeps on side slopes.”

But as far as we know, contaminant leachate in ponds and underground plumes emanating from the landfill were never assessed again, even as businesses, restaurants and schools—including Ale Asylum brew pub, Lakeland College, and Isthmus Montessori School—were built directly west of it in subsequent years. Methane gas and groundwater contaminant monitoring were done in wells at the landfill in years after this, and up to the present, but the number of wells and types of contaminants included in the monitoring are limited.

In semi-annual groundwater reports from the Truax landfill since Dane County began monitoring, through the present, several metals (arsenic, lead cadmium, iron, manganese), PCE and TCE, nitrate/nitrite, sulfate, alkalinity, hardness and specific conductance have been found over groundwater preventive action limits and/or enforcement standards. But consultants have dismissed these contaminants and levels as not being problematic—and remarkably, *as not even being from the landfill*. “Low concentrations of PCE [and TCE] are fairly ubiquitous in the deeper aquifers in this

¹² In October 2000, an earth science professor at MATC notified DNR about a drainage ditch at Bridges Golf Course that emptied into Starkweather. Prior to his report, Bridges had already been fined \$1000 by DNR for digging the ditch without a permit, but had applied for a permit (and DNR was presumably planning to issue it, because without the drainage ditch water pooled up and attracted wildlife—a hazard to aircraft). “Initially it seemed like a reasonable way to handle all that runoff,” the professor said. “But now you’ve got all that fertilizer and herbicide running from the golf course right into the lake.”

¹³ A new shallow well was sunk in 1998 in the area that became the golf course. That year Oscar Mayer also received conditional approval from DNR for a new well (to replace Well #3).

¹⁴ Airport engineer Mike Kirchner tried to convince the DNR to eliminate/reduce many of its key monitoring requirements including for pesticides.

former industrial area of Madison, and these detections are not related to former disposal practices at the Dane County Truax Landfill,” reports state.

More recent landfill reports assure that “concentrations in site wells have “trended downward for some time.” Supporting this claim, they explain that “at some well nests...deeper wells show higher concentrations than their shallower neighbors. This is an indication that the impact is not from downward migration of contaminants from the near surface (i.e., the landfill).” As for arsenic, iron, lead and manganese, consultants explain that they “are often naturally elevated above drinking water standards in groundwater.” Nitrogen compounds are “commonly found in groundwater in residential and agricultural areas due to infiltration of constituents found in most fertilizers” (interestingly, they do not mention golf courses’ use of fertilizers).

Further, landfill reports suggest that *there is no leachate plume(s) emanating from the landfill*—that it has somehow disappeared since it was documented in the 1980s. “No evidence suggests a contaminant plume is migrating away from the landfill,” because “[g]roundwater quality data exhibit both increasing and decreasing trends at wells both upgradient and downgradient of the landfill.” (These conflicting trends don’t refute the possibility that a plume is migrating away from the landfill. There are very few shallow monitoring wells a short distance from the landfill that do not assess where the plume has traveled over decades or where it is moving currently.)

In summary, decades after the city’s 1984 report documented a leachate plume traveling from the landfill—which led to the DNR issuing consent orders to the city and county to investigate and remediate the landfill—nobody knows how deep and wide the plume has traveled, because nobody has measured.

Postscript

Where has the plume traveled over many decades? Has it reached Well 7, as the 1984 city report that began the landfill saga predicted it would? Since Dane County consultants began monitoring the landfill, iron and manganese have been found in groundwater beneath it at levels exceeding state standards. Well 7 has had an iron/manganese filter on it for years.

PCE was first detected in Well 7 a couple years ago. PFAS was also recently detected in the well. The Madison Water Utility says iron and manganese are from "natural" sources, even though they are known to be common landfill contaminants. It will be harder for them to claim PCE and PFAS are from "natural" sources.