

COUNCIL ON ENVIRONMENTAL QUALITY



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September 18, 2012

The Honorable Dannel P. Malloy
Governor of Connecticut
State Capitol
Hartford, CT 06106

RE: Contamination in Tylerville (Haddam) and Systemic Problems in Remediation

Dear Governor Malloy:

I am writing to update you on the state's efforts to solve the chronic groundwater contamination problems in the Tylerville section of Haddam and the broader problems made evident by this case. Even as the Department of Energy and Environmental Protection (DEEP) continues to work on a plan for transforming remediation programs, it is important to note some of the reasons that actual progress, where it occurs, can be slow in the extreme.

The Council resolved to write this letter at its recent monthly meeting, the third anniversary of the initial complaint (pursuant to CGS Section 22a-13) from Tylerville residents regarding their 30-year endurance of contaminated wells. Since that first complaint, the Council has heard from numerous residents and town officials and has conferred regularly with staff of DEEP, DPH, DOT and other agencies.

The primary point is this: despite numerous enforcement actions, studies, bond allocations, meetings and negotiations, there has not been one actual physical step taken toward remediation or provision of a permanent alternative water supply. In the decades since contamination was discovered, residents have been provided filters by DEEP and their water has been tested by state and local officials. All other progress is conceptual only.

Tylerville has been identified for *years* as a high priority. In contrast to most other cases, possible responsible parties have been identified in Tylerville, and the area is exceptional in that DEEP received a Bond Commission allocation for \$600,000 in 2005 for investigation and \$2.1 million in 2011 for a new water supply. The community also has received DPH approval for loans of several hundred thousand dollars for a new water supply. Staff of DEEP are meeting regularly with DPH staff

and other parties to develop a permanent water-supply solution, but what the agencies consider to be an accelerated schedule can seem interminable to someone who has been waiting many years for a clean water supply.

At this time, the Council can identify three causes of delay, though doubtless there are more. We are hopeful that these can be addressed in the forthcoming proposals to redesign remediation statutes and programs, and in the meantime can be managed to the immediate benefit of Tylerville residents.

1. The enforcement process seems designed to accommodate delay. The case against the Sibley Company (a possible source of contamination) provides a good example. In April 2008, the Sibley Company submitted a required schedule for investigation and remediation. The required report of investigation was due in March 2010 but was not submitted. A Notice of Violation was issued, and in September 2010 DEEP and the Attorney General filed suit against the Sibley Company. The company submitted a report in September 2011. In January 2012, DEEP informed the defendant of additional investigation that was required. In March 2012, the defendant's consultant submitted an addendum. In July 2012, DEEP informed the defendant that the addendum was inadequate, and stated that the defendant must submit a scope of work for supplemental investigation by September 2012 – *four and a half years* after the Sibley Company submitted the first schedule, which was not implemented.

Defendants have every right to due process, but the Council can understand Tylerville residents' dismay when for years nothing appears to move except paper. We have no way to determine if the submittal of inadequate reports is a tactic used deliberately to delay action, but it certainly has that effect.

2. Large-area contamination cases pose special problems, and state government does not appear to have the necessary structure in place to address them in a timely way. As noted above, Tylerville is unusual in that the Bond Commission allocated \$600,000 for investigation in 2005. A portion of that was spent on a Phase I Assessment of the area – essentially a review of existing files and data – but plans for Phase II and III Assessments were put on hold, we understand, while the Sibley and other site-specific investigations are underway. Residents are not seeing benefits of Tylerville's high-priority status and the unusual availability of state funds. If this is true in Tylerville, what will cause or even allow remediation to move forward in other communities?

3. Responsibility for drinking water is divided among agencies. Private wells that are known to be contaminated are monitored by DEEP and local health officials, commercial wells are supervised by DPH, and loans to build an alternative water supply are administered by DPH while the grants are administered by DEEP.

In the case of Tylerville, DEEP's strong desire and efforts to extend the water lines of a private water company cannot be fulfilled until DPH is satisfied that the water company has sufficient supplies in the long term, a condition which has not yet been met. Both agencies have other duties related to the residents' drinking water, including enforcement. The Council recommends that all potable water programs be consolidated in one agency.

If the area cannot be remediated and the residents are expected to use filters or bottled water for the rest of their lives, those facts should be established. The current state of barely perceptible progress should not be accepted as inevitable.

The Council has been investigating the causes of delay since 2010 and recommends adoption of several steps that are beyond the reach of any single agency:

All potable water programs should be in one agency. This recommendation pertains to the supply of drinking water but not necessarily to programs such as the water diversion program that regulate environmental impact of withdrawals.

Residents of a community with contamination problems should have access to an ombudsman who can be a point of contact for the state's entire response. Ideally, this contact person should have authority to direct activities and hold the state's combined efforts to a reasonable timetable.

The DEEP and DPH should have the capacity to respond to high-priority problems in a logical way. A lump-sum approach to bonding should replace the piecemeal, case-by-case approach.

Also, the Council recommends that **DEEP and DPH be asked to review their programs to answer the following questions:** Which statutes hinder DEEP's ability to respond to reports of contamination and the DPH's ability to regulate drinking water wells? Are public expectations for remediation too high? Should the state promise action if none is realistically anticipated?

Again, the Council is aware that DEEP, DPH and other parties are working on solutions for Tylerville and beyond, but we thought it appropriate to write to you at this time because many of the potential solutions are beyond the scope of any one agency. We are taking the liberty of sending copies of this letter to Commissioners Esty and Mullen, as they are mentioned throughout.

Thank you for your attention to this matter. The Council has been in regular contact with all of the responsible agencies over the past three years, and stands ready to help develop the changes necessary to improve, quicken and streamline the state's response to Tylerville and other community-wide contamination problems. If you or your staff would like additional information, please do not hesitate to call me at my law office (860-657-4345) or our Executive Director, Karl Wagener, at 860-424-4000. We would welcome the opportunity to discuss this further with you or your staff.

Respectfully,

A handwritten signature in black ink, appearing to read "Barbara C. Wagner". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

Barbara C. Wagner
Chair

CC: Daniel C. Esty, Commissioner of Energy and Environmental Protection
Dr. Jewel Mullen, Commissioner of Public Health