Handling of LCP settlement documents draws criticism

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According to state officials at Tuesday night’s public meeting on the state's proposed settlement with Honeywell regarding the LCP Chemicals site, the law says the public is only entitled to the settlement document itself — the documents showing how negotiators came up with that agreement are to remain under wraps at least until the settlement becomes final.

Some attendees weren’t pleased with that, noting that it’s hard to judge whether something’s fair and equitable without knowing the facts of the case.

“The public has a great interest in recreational fishing policy, and it seems like the public should be able to see the secret things — they should no longer be secret,” said attorney Bob Killian. “If we’re asked to come comment upon it, how can we comment upon something that’s hidden from us?”
The News filed a Georgia Open Records Act request with the state Department of Natural Resources in December for documents related to the settlement, as did environmental organization One Hundred Miles.

DNR Deputy Executive Counsel Melanie Johnson sent two emails as the only documents she said could be released. Both emails dealt with a few slides created by Honeywell for, it appears, Tuesday night’s presentation, containing information already publicly available.

Johnson wrote in her email containing the attachments, “Please note other records and communications have been withheld pursuant to the exemptions in OCGA 50-18-72(a)(41) and (42) (see also O.C.G.A. § 24-9-24 and O.C.G.A. § 9-11-26(b)(3)), the work product privilege in anticipation of litigation and attorney client privilege.”

Jim Brown, program manager with the state Environmental Protection Division, said the settlement regarding recreational fishing losses is but one part of a larger natural resources damages assessment. He said that over a period of more than a decade, state and Honeywell staff negotiated on a global settlement regarding not only recreational fishing, but damage to dolphins, fish, upland birds, benthic creatures like crabs, etc., but could not come close to an agreement.

He said that, however, they were close on recreational fishing, so both sides decided to push ahead on this, individually, as negotiations for a settlement continued on the other categories.
But, how close DNR and Honeywell were at for damages for the other categories is unknown, as are specifics as to how they reached the $4 million number for recreational fishing losses.

State Senior Assistant Attorney General Tim Ritzka said the federal judge in Atlanta will have an opportunity to assess whether the agreement is fair or not.

“When we lodge a consent order, it’s — in the natural resources damage world, what happens is a complaint is filed and a settlement is launched,” Ritzka said. “The federal court looks at that settlement, and they have to determine whether it’s fair and reasonable and there’s a conclusion in the public’s interest. What the court does, they favor settlements, they will look at that, they will consider any comments that are made, and at the end of the day, the court will either accept it in toto or it’s withdrawn and (the court) will deny it.”

Ritzka said the state legislature crafted this system and its specific lack of transparency because of a belief the “too many cooks” theory could derail settlements that would otherwise occur.

“We looked at that question, and the Georgia General Assembly has told us that to encourage settlements — as for public meetings, negotiations, mediations — the only document that needs to be revealed is the final document,” Ritzka said. “That’s under the open records and open meetings act. We have negotiated back and forth, we’ve exchanged proposed documents, draft documents.... And our
experts discussed with (Honeywell’s) experts, and there were proposals as to what the value of these lost fishing opportunities were.”

He said it may be possible, however, to submit a GORA request after the process is finalized and receive the supporting documentation at that point. Before that point, he said the information released could pose a problem if the settlement was unsuccessful.

“We might be in court against Honeywell if this settlement falls through, and if we released everything, now the other side has all our data that we would use in court,” Ritzka said.

Should the settlement go through as proposed, $4 million would go into a fund that would be managed by a panel composed of representatives from DNR’s Coastal Resources Division, Honeywell, the city of Brunswick, Glynn County and a member of the local fishing community. They would assess proposed projects to fund, with the DNR commissioner giving the final say.

Brown said the idea is to keep specifications flexible as to what can be funded, but that the projects must tie into making up for recreational fishing losses in the marsh and nearby river system. The projects can be something new, or something already underway in which the controlling organization is looking for an additional or different funding source.
“We didn’t want to come into this with a preconceived notion of how we were going to spend the community’s money,” Brown said.

The public comment period on the proposed consent decree runs through Feb. 18. Those comments are to be sent to Jim Brown, Program Manager, Georgia Environmental Protection Division, 2 Martin Luther King Jr. Dr., Suite 1054, Atlanta, Ga. 30334.

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