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Judge rules in Brushy Creek sewage spill case

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A Travis County judge has handed down a ruling that could lead to both the city of Austin and Brushy Creek Municipal Utility District awarding damages to residents sickened during the 1998 Brushy Creek sewage spill.

Lora Livingston, who presides over the 250th District Court, partially granted Austin's summary judgment request, which would have cleared the city from fault in the civil case. Livingston denied the portion of the request

that would have denied the city of negligence in the case, while approving portions that exonerated Austin of trespassing or nuisance claims brought up by plaintiffs in the suit.

The judge altogether denied Brushy Creek MUD's summary judgment request, which was heard in court in January, along with the city of Austin's request. Although Austin attorneys could find some solace in the partial victory, MUD lawyers, confident that the target of the case was Austin, were dealt a surprising blow by Livingston's ruling.

"It was disappointing," said

MUD attorney Mark Rogstad, "but we are on track to getting it straightened out."

Prosecutors in the case applauded Livingston's decision, calling it a victory for the plaintiffs.

"It was a definite win for all the residents in Brushy Creek (MUD)," said plaintiff's attorney Jason Gibson. "We're pleased with the ruling."

On July 13, 1998, more than 170,000 gallons of raw sewage flowed into nearby Brushy Creek after lightning struck the Onion Creek Lift Station, owned by the city of Austin. Austin and Brushy

Creek MUD officials initially told residents in the area that their household water was safe to drink, although the utility district drew water from wells fed by the creek. Scientists later discovered *Cryptosporidium*, a waterborne parasite, in the district's drinking water.

Hundreds of residents blamed the parasite for diarrhea, stomach cramps and nausea they suffered soon afterward. A total of 316 residents became plaintiffs in the civil suit.

During the Jan. 16 hearing,

See JUDGE, page 2A

Judge sides in favor of plaintiffs in 1998 Brushy Creek sewage spill case ruling

JUDGE, continued from 1A

lawyers for the plaintiffs made it clear Austin was the prime subject of their case. Prosecutors blamed city officials for operating the lift station with a faulty alarm, which reportedly failed when the spill occurred. The operator of the lift station, ECO Resources, and the maker of the alarm, RACO Industries, are also defendants in the case but did not file summary judgments.

Prosecutors also cited a deposition given by the city's utility manager, who conceded Brushy Creek MUD was given incorrect information about contamination

after the spill.

Austin attorneys placed much of the blame on ECO for failing to check on the facility daily. They also noted that the lift station was in compliance with Texas Natural Resource Conservation Commission (TNRCC) regulations at the time of the spill.

Prosecutors blamed Brushy Creek MUD for failing to provide drinkable water to its 10,000 residents, who live in several, close-knit middle- to upper-class neighborhoods just west of Round Rock. Rogstad contended the district was told to keep their wells running by Austin and TNRCC officials. He also noted the sewage was released by a lift station owned by the city of Austin and the district.

The judge also ordered the parties involved go into mediation, in an attempt to work out an agreement. The city of Austin faces a maximum penalty of \$600,000, largely because of Livingston's partial granting of its summary judgment request.

The penalty varies more greatly for Brushy Creek MUD, which could be asked to pay as little as \$300,000.

As of Friday, the parties had yet to reach an agreement. They had been in mediation about a week.

MUD attorneys said they had an offer on the table. Prosecutors said they were close to reaching an agreement. Details of the proposal were not released.

Since the incident occurred, the utility district has kept its wells shut. Instead, it has relied solely on water pumped in by the city of Round Rock. The district, in search of a long-term water supply, is currently considering using the wells again. The district's contract with Round Rock runs out in 2006.

The spill also led to legislation requiring entities to report big spills to media in the area within 24 hours of their occurrence. Brushy Creek MUD residents helped push the bill while it was in front of state legislators.