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## POISON PARK

After Five Years  
and \$50 Million,  
*Still* There Are No  
Children Here



# Still Toxic After All These Years?

*The discovery of deep wells on the Barrie Park site has some Oak Park residents wondering if their neighborhood will ever be free from pollution left by a turn-of-the-century gas plant.*

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BY LULI BUXTON

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**O**ak Park residents who were looking forward to the rededication of Barrie Park, which has been closed for more than five years, may have to wait a bit longer, according to Maggie Carson, spokeswoman for the Illinois Environmental Protection Agency.

The agreed-upon process of removing contaminated soil from Barrie Park is almost finished. But the local park district that owns Barrie Park alleges the utilities that performed and paid for the cleanup may have more work to do.

And now some residents are asking if their own front and backyards are safe, especially in light of the discovery of contaminated underground wells on the park site.

“We bought this property because it was on this beautiful park,” said Curt Silvers. “We never enjoyed the park. We lived on the edge of a construction zone for five years.”

Silvers and Cindy Melin bought their house on the 1000 block of South Lombard Avenue in December 1998,

about three weeks before the park was closed. Silvers said the previous owners had not told him about the contamination. “I first found out about it when I was carrying my first box into the new house, and a guy came up with a flier,” he said.

Barrie Park was closed in January 1999, when contamination from a former manufactured gas plant was found in the soil.

The park was expected to be reopened this year after more than five years and \$50 million were spent to clean it up. Instead, this fall there may be yet another delay. This September will mark a deadline imposed by a June 11 letter that the Park District of Oak Park sent to Commonwealth Edison Co. (ComEd) and the Northern Illinois Gas Co. (Nicor Gas), whose predecessor companies were blamed for the contamination. The notice gave the utilities 90 days to address the alleged cleanup deficiencies or face a possible lawsuit.

The letter alleged that “the utilities’ past and ongoing actions regarding waste generated and disposed at the park may present an imminent and substantial endangerment to health or the environment.” It also said the utilities



PHOTOS: JENNIFER CATLIN

**Barrie Park (preceeding page and above) resembles a construction site more than a finished park. Nearby residents are worried about their lawns.**

refused to adequately investigate and address contamination in deep wells under the park's surface and the potential for that contamination to leak into groundwater and migrate into nearby communities.

The Park District, in its letter, also charged the utilities with inadequate testing and remediation of the park, claiming they sent an incomplete site investigation report to the Illinois EPA, underestimated the amount of contamination in the northern portion of the park, and declared prematurely that the cleanup was complete.

ComEd spokesman Ernesto Duran said ComEd has contested these allegations. "They completed the plan that all parties agreed to," said Duran.

### **Cook County Lawsuit**

But Melin and Silvers also are dissatisfied with the cleanup job and this past spring filed a civil suit in Cook County Court against the utilities, the Park District, and the Village of Oak Park, charging that the remediation of Barrie Park was a nuisance, causing them loss of enjoyment of their property.

The civil suit also charges damage to property due to contamination in the yard, economic damages and personal injury as a result of the utilities' pollution of the site, dishonesty in failing to inform the neighbors about the contamination, and conduct related to the remediation.

"If there is any liability that liability is the utilities'," said **Nancy Rich**, an at-

torney for the Park District. "We didn't cause the pollution, and as a result we thought it only fair that we shouldn't have to go through all the court proceedings."

The Village of Oak Park and the Park District are protected from these types of suits by a \$100 million insurance policy provided by the utilities. However, Rich said that although the insurance policy should cover judgments against the Park District, it's not a guarantee that it won't have some costs, at least initially.

So the Park District is considering filing a cross-claim lawsuit that would insure that if the court rules for the residents in lawsuits concerning Barrie Park, the utilities solely will be held responsible. However, the Park District is waiting to see if Silvers and Melin file a second lawsuit, this one in federal court. If the Park District is not named in the federal lawsuit, it won't have to file the cross-claim, Rich said.

### **Possible Federal Lawsuit**

Silvers and Melin are considering filing a federal suit under the Resource Conservation and Recovery Act, according to a March 31 notice the couple's attorneys sent to the Park District of Oak Park, the Village of Oak Park, ComEd, and Nicor Gas.

The Resource Conservation and Recovery Act allows private citizens to sue polluters and owners of polluted property and ask the federal court to compel them to clean up the pollution. The

couple's letter threatening the federal action charges that cleanup actions should also be performed on residential properties affected by contamination on the park site.

Silvers and Melin's letter of intent to file a federal suit said, "An extraordinary number of residents of the properties adjoining Barrie Park have contracted various forms of cancer and other illnesses consistent with exposure to coal tar." However, the Village of Oak Park's website assures residents that an Illinois Department of Public Health epidemiological study in 1999 "found that the differences in the incidence of cancer (in the Barrie Park area) as compared to similar populations were not statistically significant."

### **Manufactured Gas Plant Pollution**

The manufactured gas plant (MGP), located on the northern portion of Barrie Park, was in operation from 1893 until 1931. The site was owned by Cicero Gas Co., a corporate predecessor to ComEd and Nicor Gas. From 1931 until approximately 1938, the above-ground storage tanks at the site were used to store natural gas. In the late 1940s and 1950s, the land was used for a utility maintenance garage and a machine and meter shop. In 1960, the land was donated to the Village of Oak Park, and five years later it was made into a park. Currently it is the property of the Park District of Oak Park.

Manufactured gas plants were a popular means of creating energy in the late 19th and early 20th centuries, before the discovery of large repositories of natural gas. These plants extracted gas by heating coal in ovens, leaving an organic residue called "coal tar." Coal tar has been found to include carcinogenic compounds such as arsenic, benzene, and pollutants known as polycyclic aromatic hydrocarbons (PAH), according to the Environmental Protection Agency's Expedited Site Characterization and Source Remediation at Former Manufactured Gas Plant Sites study.

Coal tar stored in underground wells made of brick can pose a problem if the brick structure cracks and the tar seeps into the ground.

The Park District's notice letter claimed that the utilities' initial assessment of the contaminated land was flawed. In 1992,

the utilities notified the Park District of the existence of the plant, but assessed the risk at Barrie Park as “very low.”

The Park District’s letter alleged that the initial risk assessment was made without the inclusion of soil sampling. In late 1998, the utilities performed soil sampling and analysis and discovered serious soil contamination, including underground concentrations of PAH, benzene, and other compounds at levels exceeding Illinois EPA standards.

The utilities agreed to clean up the park and cover the costs of remediation. So far, the project has taken two years longer than planned, and cost more than \$50 million, according to Duran.

“We certainly believe that we have followed the plan agreed upon with the village, with the park, and with the IEPA,” said Duran. “There has been a tremendous amount of work on this park.”

### **No Superfund Funds**

In the 1980s the U.S. EPA adopted the Superfund program to address the most contaminated sites in the country.

According to Superfund guidelines, contamination is considered an imminent risk only if the pollutants are exposed. Most former manufactured gas plant sites, including Barrie Park, are not classified as Superfund sites because the contamination is underground. Only 14 of the more than 3,500 former MGP sites nationwide are on the EPA’s National Priorities List.

In 1989, states began adopting laws for the evaluation and remediation of non-Superfund sites, and the Illinois EPA created the Voluntary Site Remediation Program, in which companies responsible for the contamination enter into voluntary agreements with the Illinois EPA. One shortcoming in this process, said Park District executive director Gary Balling, is that the property owner is not part of the agreement unless the property owner is conducting the cleanup. So the Park District, the Village, and residents have to enter into separate agreements with the utilities if they want a say in the process.

Barrie Park is one of an estimated 120 former MGPs statewide, and one of 107 sites enrolled in the Voluntary Site Remediation Plan, according to state

EPA reports and officials. More than 40 of these sites were operated by ComEd and Nicor’s predecessors; cleanup has been completed at six sites, and remediation is underway at 22 others, according to the 2002-2003 Exelon Corp. Progress Report on Environment, Safety, and Community.

### **Extensive, Expensive Cleanup**

“The utilities are cleaning up sites everywhere,” said Carson, but, partially because so many parties are involved, “this is one of, if not the most, costly of its type.”

Because Barrie Park is on public land, located in a residential neighborhood and not in an industrial park or on a vacant lot, the Village and the Park District insisted on following the Illinois EPA’s most stringent criteria. After 16 months of negotiations, the utilities agreed to the criteria and entered into a binding agreement.

“This is the most extensive plan of its nature in the nation,” said Duran. “We have removed 300,000 tons of soil, when other comparable projects would typically call for 15,000 to 20,000. We have conducted 1,200 soil samples, and for this type of project it’s usually 50 or 60.”

The agreement included timely remediation and restoration, excavation of contaminated soil to a depth of 28 feet, removal of all source material (tar and other highly polluted material) no matter what the depth, use of rail to transport contaminated soil, full oversight by the Park District’s environmental representatives, compensation for both legal costs and costs associated with loss of use of the park, and indemnity and insurance against future claims.

Village environmental consultant Tom Hahne said this agreement was very comprehensive. “The extent of cleanup they have done at this site is very unusual,” said Hahne. “There has been a lot of political pressure to clean it up.”

The Park District’s letter of intent to sue claims the utilities have not met several criteria agreed to in the Voluntary Site Remediation Plan. The utilities strongly contest this point.

“The utilities believe that they have complied with every single aspect of the plan,” said Duran.

### **Work Delays**

The work has been halted several times, including a year-long delay beginning in February 2002, when the utilities, against the recommendations of the Park District and the Village, took down a temporary containment structure intended to keep pollutants from escaping into the air while workers dug out the contaminated soil.

When high levels of benzene were found in the air a month later, the utilities stopped work and proposed a scaled-back version of the agreement. After further negotiations with the Park District and Village, the utilities reinstalled a temporary containment structure and returned to work in February 2003.

The Park District also claimed the utilities endangered residents’ health and environment by prematurely announcing in December 2003, that cleanup was complete when they had not addressed the issue of contamination left in the soil from the maintenance garage and machine and meter shop operating during the 1940s and 1950s.

### **Discovery of Deep Wells**

In the summer of 2003, the utilities provided the Park District with a letter written in 1935 by an employee of the former MGP. The letter revealed the presence of four underground wells at Barrie Park, two of which were more than 1,700 feet deep.

Investigation into the wells found substantial coal-tar type contamination in Well 3 and an approximately six-foot deep layer of solvent contamination in Well 4, at a depth of 38 feet. The solvent contamination included toluene, naphthalene, and a naphtha-mineral spirits product. Investigation into the top 40 feet of Well 2 revealed the presence of the solvent acetone, according to Park District environmental consultant Ed Cooney.

Not only are these solvents pollutants in their own right, but they could create a bigger problem if they come into contact with any remaining coal tar, potentially causing the migration of coal tar into groundwater, according to the Park District letter.

There is an ordinance that prohibits the use of groundwater in the Village of Oak Park, according to Hahne. “But we

need to make sure it wouldn't migrate to another community," he said.

In response to the discovery of these solvents, the Park District has asked the utilities to demonstrate that the current remediation would address these new issues. The intended lawsuit claims the utilities have been unwilling to provide such documentation, and are therefore endangering not only future users of Barrie Park but also nearby residents through the potential contamination of groundwater.

### New Negotiations

The utilities are in negotiations with the Illinois EPA to come up with a plan to address the non-MGP contamination, according to Carson. "The utilities have kept us up to date on their progress," said Carson. "They plan to address the wells, but no formal report has been made." Balling, however, said that the utilities have refused to meet with Park District management since receiving the notice of intent to sue.

The Park District has conducted independent investigations into the deep wells and found trace amounts of acetone, according to Cooney. The traces were at levels below cleanup standards, but Cooney said he would not recommend sealing the wells until more is known about where the acetone came from. The Park District plans to test more water samples, especially in Well 2, where the acetone was discovered, Cooney said.

Although the utilities have requested the testing results, the Park District has not made them available, said Duran, who is waiting for these results to con-

clude his report to the Illinois EPA.

Melin and Silvers and 30 other families living near the park took advantage of a provision in the agreement that paid for relocation costs during the remediation, but when the utilities decided that excavation in the park was finished, they stopped paying relocation costs, even though contaminated soil lingers in many yards.

### Residential Remediations

The utilities have tested 53 nearby residential properties and have found enough concentrations of the compounds on 13 properties to require cleanup action as required by state guidelines, according to ComEd. However, the Illinois EPA puts that number at 20. Residents have been offered the opportunity to enter into separate voluntary agreements with the utilities to clean up their homes, and three families have done so, but no residential remediation has been started, according to Carson.

Silvers is now paying rent on a different location and trying to sell his house near Barrie Park. But since his real estate agent is supposed to show buyers a packet of information explaining that the soil in his yard is contaminated, "We've only had one offer, and it's been on the market for over a year," said Silvers, "and this is a town where property has been appreciating and selling like crazy."

This spring, the Village of Oak Park offered to buy the contaminated properties and oversee the remediation. Silvers said he is considering this option and hopes he can get the Village to include a clause that would protect him

from being named in future lawsuits involving his property. "It would be a nice closure to this whole thing," he said.

There are lessons to be learned from the Barrie Park remediation, said Hahne. "You have to weigh the disruption and the timeline against the benefits," he said. "This has disrupted the community for almost six years."

Hahne said it would have been better to have insisted on a more proactive use of air containment systems from the beginning and to have dealt with the residential properties sooner. "I think maybe it was done backwards," said Hahne.

"It's like running a marathon," said Balling. "We can start to see the finish line. But sometimes the last mile can be the toughest."

"We'll be glad when we get back to the day when we can get to our primary mission of providing quality parks and recreational services to our community," he said. **CC**

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