

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

In re:

OXFORD AUTOMOTIVE, INC., et al.

Case No.:04-74377

Chapter 11

(Jointly Administered)

Hon. Steven W.Rhodes

Debtors

**RESPONSE TO JOINT OBJECTION OF THE DEBTORS AND THE
POST-EFFECTIVE DATE COMMITTEE**

The Pine River Superfund Citizen Task Force (“Task Force”), a Michigan domestic non-profit corporation and the officially recognized U.S. Environmental Protection Agency community advisory group (CAG) for superfund sites in Gratiot County, Michigan, created under procedures of the U.S. EPA Office of Solid Waste and Remedial Response (OSWER Directive 9230.0-28), states as follows:

Introduction

The Joint Objection (“Objection”) signed June 22, 2005, is deficient in many specifics and for that reason should be dismissed until the more significant major public concerns with the distribution of the remaining resources of Oxford Automotive, Inc. et al. (“Oxford”) are fully resolved. We will list the major deficiencies of the Objection beginning with the Introduction to the Objection and where appropriate make reference to the appropriate numbered paragraphs of the Objection.

1. In the Introduction to the Objection, the first general objection is related to paragraphs 14-19, that the Task Force is a “watchdog” group and not related to government, other than as a recipient of “a U.S. EPA Technical Assistant Grant.” First, the Task Force actually has received two Technical Assistance Grants (“TAG”). Second, the precise U.S. EPA terminology for the “Task Force” is NOT a “watchdog” group; rather it is a community advisory group (“CAG”), which is a formal EPA term, with accompanying guidelines. The Task Force has a membership that includes one of the world’s foremost authorities on DDT, a retired Dow scientist, a Ph.D. chemist (the Task Force secretary), geologists (including the Chair of the Task Force’s Technical Committee), a geological engineer (including the Task Force’s Technical Advisor), and similar people of talent who serve as advisors, not mere “watchdogs” to the U.S. EPA. CAGs were created under EPA regulations in the early 1990s after many failures in superfund clean-ups, including the ones in Gratiot County. Their role is advisory, not simply watchdogs. As the first settlement unfolded for contamination in the Pine River, the Governor’s office discouraged the creation of a community advisory

group. In a remarkable letter to a county official, the governor's special assistant for the environment, Bill Rustem, urged the County Commission to help in avoiding formation of a citizen advisory committee, "We have learned from past experience that it's awfully easy to frighten the public to a degree which may be unwarranted about toxic chemical problems."¹ In the short run, the Governor won. If there had been a CAG in 1978-82, we might have avoided the absurdity of the first clean-up. It wasted \$38 million and allowed the dumping of a cocktail of contaminants, including heavy metals from Oxford/Lobdell, on the old Velsicol plant site. At the three sites in St. Louis in 1982, U.S. EPA reached what it called the most expensive settlement ever under superfund.² That settlement fully failed and now the taxpayers of the country are \$100 million into a second clean-up at the same sites, a clean-up that is about to enter a new phase, more than doubling the cost. CAGs are a corrective for such failures, composed of local volunteers more familiar with problems than EPA staff can be. As volunteers, the CAG members also lack the conflict of interest that regularly links other experts to the decision process.³

2. The Introduction to the Objection next states that the State of Michigan is the real party in interest. While the State of Michigan is truly a party in interest, the Task Force remains concerned about costs for which the State of Michigan is not the party of interest. Since November 1974 the Pine River has been subject to a total fishing ban.⁴ The loss of that natural resource to the people of the region, including the Saginaw Chippewa Tribe, which has treaty rights to the fishery that has been destroyed, creates more claimants for environmental consequences of Oxford's dumping than simply those linked to the state's claim.⁵ That the Task

¹ Letter from William R. Rustem to Arnold Bransdorfer, 27 March 1978.

² The failure of the remedy was not a surprise and was predicted at the time, see *New York Times*, 19 November 1982, A18, which quoted EPA officials saying, "it was the biggest financial settlement ever reached with a company for a cleanup." This story, the day after the settlement, correctly quoted Kristine Hall, of the Environmental Defense Fund, "It makes me nervous to think they are putting that stuff in clay so close to the river. It is very chancy."

³ The United States in documents submitted related to the Fruit of the Loom bankruptcy has formally recognized the role of the Task Force in matters related to the Pine River, see *In re: Fruit of the Loom, Inc., et al.*, No 99-4497 (PJW), United States' Motion and Memorandum of Law in Support of Motion to Approve Proposed Settlement Agreement under Environmental Laws, 9 August 2002, 24, where the Department of Justice states, "The [Task Force] commenters expressed concern about citizen group/public input into decisions and use of funding under the Agreement and plans for cleanup of the Facility so that it can be restored to public use. The United States very much appreciates the interest of [the Task Force] . . ." Given this appreciation, we believe the attorneys for the debtors should withdraw all references to the Task Force as a "watchdog" group. We have far greater competence than they in assessing the status of the river contaminants, their source, and the need for funds for remediation.

⁴ One reason for that ban was heavy metal contamination of fish in the Pine River, see State of Michigan, Department of Natural Resources, Water Quality Division, *Biological Survey of the Pine River 1974 and 1978*, Publication Number, 4635-5159, 10, which stated, "Elevated levels of copper (1.75 mg/kg) were found in fish sampled below the St. Louis impoundment. Mean Michigan background levels for lead and nickel in fish flesh were exceeded throughout the study reach."

⁵ See letter from Kevin Chamberlain, Tribal Chief, to Charles Hanson, Vice President, Velsicol Chemical, 15 July 1998, which explains the tribe's rights on the Pine River under Treaty of Saginaw, 7 Stat. 203 (1819); the Task Force included the Tribe's Environmental Technician from 1998-2001 and has consulted with the tribe since that time.

Force is concerned with securing funds for restoration of those damaged resources was recognized in the bankruptcy settlement for another river polluter, Fruit of the Loom (ultimate owner of the Velsicol plant site). In that settlement the United States recognized the Task Force's role on the Pine River and the need to secure all possible funds for natural resource damage.⁶

3. In the Introduction the last objection also is erroneous in stating that the claim is "against the wrong entity. . ." Repeatedly in the objection (paragraphs 8, 9, and 10) it is claimed that the debtor did not impact the superfund site which is the primary reason for the Task Force's claim. In fact, several studies of watershed contamination have noted problems with contaminants only introduced into the watershed in significant quantities by the debtor's operations. In support of the initial correspondence with the Court, the Task Force already submitted a copy of the Michigan Department of Natural Resources 1970 study documenting dumping large quantities of hexavalent chromium by Lobdell-Emery into sewers emptying into the Pine River.⁷ The objection does not deny this dumping took place, but bases the rejection of the Task Force claim on the assertion that the dumping did not impact the superfund site on the Pine River in St. Louis. Consequently, we must prove dumping from Oxford and its predecessors contributed to the superfund contaminants.

4. Before demonstrating the link, we must briefly explain the St. Louis superfund site of concern. The Objection states, in paragraph 6, there is no Pine River Superfund site. The above referenced correspondence from the National Oceanic and Atmospheric Administration (NOAA) and the U.S. Department of Justice each refer to the site by generic names, not the EPA's designation.⁸ There are three superfund sites in St. Louis. The site of primary concern here is what EPA identifies as Velsicol Chemical Site (Michigan). In superfund terminology it

⁶ Letter from Gwendolyn A. Wilkie, National Oceanic and Atmospheric Administration Attorney, to Jane Keon, Task Force Chair, 17 May 2002, "I would like to thank you and other members of the Pine River Superfund Citizen Task Force for contacting the National Oceanic and Atmospheric Administration (NOAA) and presenting your concerns and suggestions related to natural resource damages at the Pine River Superfund Site in St. Louis, Michigan." On the Task Force's concern with natural resource damage restoration, see *In re: Fruit of the Loom, Inc., et al.*, No 99-4497 (PJW), United States' Motion and Memorandum of Law in Support of Motion to Approve Proposed Settlement Agreement under Environmental Laws, 9 August 2002, 26-28 "The [Task Force] next request that priority be given for use of funding for the St. Louis Facility for natural resource damages restoration. . . . The United States agrees that if funding remains after the releases are addressed, The United States and the State should be permitted to agree that such funding be used for natural resource damage assessment or restoration without formally amending the Agreement."

⁷ State of Michigan, Department of Natural Resources, Bureau of Water Management, Michigan Water Resources Commission, *Pine River Water Quality Study: 1967-1970* (December 1970), 30.

⁸ Letter from Gwendolyn A. Wilkie, National Oceanic and Atmospheric Administration Attorney, to Jane Keon, Task Force Chair, 17 May 2002, "I would like to thank you . . . for contacting . . . (NOAA) . . . presenting your concerns . . . related to . . . the Pine River Superfund Site . . ." The Justice Department repeatedly uses the term "St. Louis Facility", see *In re: Fruit of the Loom, Inc., et al.*, No 99-4497 (PJW), United States' Motion and Memorandum of Law in Support of Motion to Approve Proposed Settlement Agreement under Environmental Laws, 9 August 2002, 26-28.

includes two operable units (“OU”). OU 1 is the 54-acre former site of the Velsicol Chemical plant. Between 1978 and 1984, the former plant was demolished on site and contaminants were brought from another superfund site (the Gratiot County Golf Course) and dumped in the ruins of the plant. In addition, because the company had dumped tons of contaminants into the Pine River, literally blocking river flow, they had dredged the river, as recently as 1972, dumping dredge spoil in a plant site area called the lagoon.⁹ OU 2 is the Pine River adjacent to the plant. Since 1998, the EPA has been removing contaminated sediment in OU 2 (at least 600,000 cubic yards by the end of the project). However, as the remediation has continued, EPA has found the plant site is leaking a substance with the consistency of syrup, called non-aqueous phase liquid (NAPL). The NAPL is a highly contaminated mix of substances dumped on the plant site before it was buried under a clay cap in 1984.¹⁰

In paragraph 30, the Objection identifies several criteria for determining if Oxford/Lobdell contributed to the Velsicol site. The criteria that applies is (d), “by contract, agreement, or otherwise arranged for disposal or treatment, or arranged with a transporter for transport.” Clearly by dumping heavy metals into a river upstream of a firm that periodically dredged the river, Oxford/Lobdell “otherwise” “transported” its metals to the Velsicol site.

5. In our claim, we have focused on chromium because it is the distinctive contaminant from Lobdell-Emery mentioned in a state report; however, we know Lobdell worked with many heavy metals, especially zinc, nickel, and lead. Because of a refinery adjacent to Oxford’s property, we cannot pinpoint sources of lead.
6. In response especially to paragraphs 9 and 10 of the Objection, we will begin with an early sampling in the St. Louis Impoundment, the old term for OU 2. In 1978, the Michigan Department of Natural Resources found the following results:

In 1974 sediments from the St. Louis impoundment below Michigan Chemical showed high levels of total DDT (293 mg/kg), phthalates (19.5 mg/kg), PBB (9.0 mg/kg) and oils (19,000 mg/kg). Levels of arsenic (19 mg/kg), copper (1000 mg/kg), cadmium(17 mg/kg), chromium (3000 mg/kg), zinc (2800 mg/kg), nickel (740 mg/kg), and lead (1900 (mg/kg) were also significantly elevated in St. Louis impoundment sediment.¹¹

⁹ See letter from John M. Rademacher, Vice President, Velsicol Chemical to Dale Bryson, Deputy Director, Enforcement Division, U.S. EPA, 11 April 1980, 5-6, which states: “Five-Acre Dredge Disposal Pond – The disposal pond is located on the plant property [now OU 1] and contains primarily magnesium hydroxide and calcium hydroxide. It was created in late 1972 and early 1973 . . . As detected in various samples (including results reported in a DNR memo dated October 31, 1978) it also contains trace quantities of various other chemicals and metals . . .”

¹⁰ On NAPL, see Weston, Inc., Velsicol Chemical Site: St. Louis, Michigan (20 March 2002) [Weston is the environmental contractor investigating the plant site for the Michigan Department of Environmental Quality.]

¹¹ Michigan, Department of Natural Resources, *Biological Survey of the Pine River 1974 and 1978*, 2.

The report concluded with the following statement about state sampling in what is now OU 2:

Sediment grab samples in the St. Louis impoundment had high levels of metals copper (1000 mg/kg), total chromium (2200 mg/kg), zinc (2800 mg/kg), nickel (740 mg/kg), and lead (540 mg/kg). Generally, the heavy pollution problem from these metals was not carried downstream of the impoundment in the Pine River. . .¹²

7. In further response to the chromium related points made in paragraph 10 of the objection, we would add that the recent focus at OU 2 has been on pesticide contamination, primarily DDT. Because of that focus, there has not been detailed analysis of sediment for heavy metals; however, the Michigan Department of Environmental Quality while focused below the St. Louis Impoundment, with a control site above Oxford/Lobdell's former outfalls, found significant amounts of chromium, copper, lead, strontium, and zinc many miles downstream from St. Louis, compared to trace amounts above Oxford.¹³
8. Further refuting the statements in paragraphs 29-34 of the Objection regarding the missing link of Oxford/Lobdell to the Velsicol site, the most disturbing recent link has come from analysis of the NAPL leaching out of the old Velsicol plant site. The NAPL is being produced as the mix of chemicals dredged from the river and dumped in the old lagoon percolate together and then move off-site. In 2002, the Michigan Department of Environmental Quality analysis of the NAPL found it contained five metals, including chromium, above safe levels. As we prepare this response to the debtor's objection, EPA and the State of Michigan are preparing a feasibility study, to be released for public comment in November on the full range of sample findings and possible remedies. The City of St. Louis and the Task Force have officially requested our elected representatives to demand EPA undertake a full removal of this toxic "stew" from the plant site. That mix clearly contains heavy metals released by Oxford/Lobdell.¹⁴
9. Again, the above referenced evidence is sufficient to indicate why it is premature to settle the creditor claims against Oxford. We believe the Court does not wish us to waste time correcting statements in the objection that are false on their face, such as the claim in footnote 6, p.11, that the state never sampled Lobdell's discharge. The report of which we copied the title page and related text, states exactly that. We did not submit the full report, since it is in the public domain,

¹² Ibid., 11.

¹³ State of Michigan, Department of Environmental Quality, Surface Water Quality Division, *Biological and Chemical Monitoring of the Pine River: Gratiot and Midland Counties, June and September 2000 and July and October 2001*.

¹⁴ State of Michigan, Department of Environmental Quality/Weston Phase I Technical Memo of May 20, 2002.

available from the Michigan Department of Environmental Quality (successor to the Michigan Dept. of Natural Resources for environmental reports).¹⁵

10. The Objection makes another claim that is fully invalid. On pages 3-4, paragraphs 7 and 8, there are several references to the Task Force receiving a Technical Assistance Grant (“TAG”) for the Velsicol Chemical Corp. site. While that is true, it has no relevance to our intervention against Oxford/Lobdell. The Task Force is a Michigan Non-Profit Corporation and at the incorporation made the decision to focus on all contamination in the watershed. TAG grants are given under the superfund, so the use of TAG funds is restricted to the Velsicol site. The Task Force however is free to intervene in other matters, as we have done and with the support of the United States. We have not singled out Oxford for our concern, but previously filed an identical intervention in the bankruptcy of Fruit of the Loom, as well as secured an \$8 million supplemental environmental project (SEP) in the litigation related to the closure of the Valero/UDS refinery adjacent to Oxford’s plant.¹⁶
11. Since attorneys for the debtors have proven their awareness of our TAG grant, which is the source of over 90 percent of our budget, they no doubt know there is a severe restriction in TAG grants on spending funds on adversarial legal costs.¹⁷ In 2000, The Task Force won a ruling by the U.S. EPA Office of General Counsel that we can use the TAG on legal research, but not on attorney fees that would be the subject of an attorney-client privilege.¹⁸ The Task Force has been fortunate to receive free legal research from the University of Michigan Law School. However we are severely disadvantaged in appearing before the Court. We beg the Court’s indulgence in needing to participate in this process as lay citizens, without an attorney. Please understand this inequity is not our choice.
12. We regret that we must spend time intervening in this case. As we have explained in correspondence to the attorneys for the unsecured creditors, we know the law, including the bankruptcy process, at best can only approximate an ideal of equity. This community, however, can see no evidence of equity for most persons impacted negatively by the operation and shut-down of Oxford/Lobdell. We believe the option for consideration of equity contained in the statute [11 USCS § 502 (j)] allows for attention to our claim and counters the arguments made in

¹⁵ State of Michigan, Department of Natural Resources, Bureau of Water Management, Michigan Water Resources Commission, *Pine River Water Quality Study: 1967-1970* (December 1970), 30.

¹⁶ SEP request see Edward C. Lorenz, Task Force Chair, to Nicole Cantello, Attorney, U.S. EPA – Region 5, 19 May 1999; SPE granted and included in Consent Decree, *United States v. TPI Petroleum, et al.*, DJ No. 90-5-2-1-2199.

¹⁷ U.S. Environmental Protection Agency, Technical Assistance Grant Program; Final Rule 40 CFR 35.4075, 2 October 2000.

¹⁸ Letter from Lois Gartner, National TAG Coordinator to Edward Lorenz, Task Force Chair, 29 August 2001, responding to letter from Edward Lorenz to Lois Gartner, 20 August 2001, related to legal research, said using TAG funds to pursue these questions is eligible within the TAG program’s statutory authority. Specifically, we believe your pursuit of these questions falls under the ‘interpreting information with regard to the nature of the . . . selection . . . of remedial action . . . or removal action’”

paragraphs 20-25 of the Objection. The company was allowed to dump contaminants indiscriminately for several generations, ignoring reports documenting the danger of the behavior for human health and the environment. The city “fathers,” workers and residents only tolerated the behavior in exchange for the jobs and taxes paid by the firm. Yet, the social contract implicit in this behavior long ago was broken. The firm began seeking major tax breaks and employees were constantly told to reduce wage and benefit demands to allow the firm to function. While the firm blamed the competitiveness of the auto parts industry for its problems, the leadership seemed always to be borrowing to build new facilities out-of-state and even out of the country and to facilitate mergers. Now with the bankruptcy, the community’s abandonment is complete. As we prepare this response, the local paper reported that former Oxford employees learned they lost their retiree health benefits.¹⁹ Conversations with the state Department of Environmental Quality reveal it assumes it will receive little if anything toward future environmental remediation costs. Perhaps of most concern are the reasons the community has finally come to the attention of the Centers for Disease Control. Currently, the Task Force is working with the CDC and the Michigan Department of Community Health to develop methods for tracking the impact of human exposure to the contaminants released by firms such as Oxford/Lobdell. For example, we are in the early stages of a study of fetal exposure to contaminants absorbed by expectant mothers. Local education officials worry that large numbers of special education students may reflect exposures to lead, a contaminant which Oxford/Lobdell dumped into our environment.²⁰

13. We say the above only to give context to the decision of the executive committee of the Task Force. While we understand there are other claimants for the meager remaining resources of Oxford Automotive, the Task Force must make an effort to assert a claim, however futile, hoping that the process will produce some resources that can be devoted to helping this community recover from the loss of Oxford and the other firms that flagrantly ignored their responsibility to the natural world, placed their worker’s and neighbor’s health at risk, and then abandoned the communities that tolerated them. We are prepared to discuss our options with the Court and work with other claimants to resolve expeditiously, all claims, including ours, in fairness. The points made in the Joint Objection contain so many errors, however, they cannot be a good start on the process.

14. Please understand that we do not take this course to be obstructionists nor to engage in a quixotic quest, we do this to try to make the process move from injustice to justice. We at least hope to use this process to convey to the Court,

¹⁹ *(Alma) Morning Sun*, 16 July 2005, 1.

²⁰ Letter from Edward Lorenz, Task Force, to Assistant Administrator, Agency for Toxic Substances Disease Registry (ATSDR), 30 April 2004, response from William Cibulas, Jr., Acting Director, Division of Health Assessment and Consultation, ATSDR, 24 June 2004; on 19 and 20 January 2005, the Task Force hosted a conference at Alma College along with the Centers for Disease Control, one outcome of which was the infant blood spot study, which is on-going.

the debtors, and the other claimants the need to focus on responsibility. To fully assess that responsibility will take time. We await, for example, the results of the Remedial Investigation (“RI”) for OU 1 at the Velsicol site. That report is scheduled for release in November 2005 and will reveal what contaminants have been found on the site that contribute to the NAPL. The publication of the RI will be followed within a few months by a Feasibility Study (“FS”) and then a Record of Decision (“ROD”). Because of expiration dates on Fruit of the Loom’s \$100 million environmental insurance policy, the Task Force, the City of St. Louis, as well as the Michigan Attorney General’s office want the process to be expedited.²¹

Wherefore, for the reasons more particularly stated in this response to the Joint Objection, the Pine River Superfund Citizen Task Force respectfully request that the Court (i) will delay any decision on this bankruptcy until the RI and FS have been reviewed by the public and a final ROD issued by U.S. EPA., and/or (ii) request that the attorneys for the debtors and the North American General Unsecured Creditors enter into negotiations with the Task Force to resolve our claim.²²

Pine River Superfund Citizen Task Force

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²¹ We are in the midst of a 30 day comment period on a settlement with Velsicol which will grant the public access to the insurance, see *In the matter of Velsicol Chemical Corp. and True Specialty Corp.* Region 5 Docket No. V-W-05-C-814. The comment period ends on 29 July 2005.

²² For the convenience of the Court, we have included copies of private letters referenced in the notes and to newspaper articles; we can provide copies of government reports, but assume they are easily available from the agency that produced each.