

June 27, 2000

Ms. Lois J. Schiffer
Assistant Attorney General
Environmental and Natural Resources Division
U.S. Department of Justice
Tenth Street and Pennsylvania Avenue, NW
Washington, D.C. 20530

Dear Ms. Schiffer:

It is with extreme sadness that I write this letter. However, after considerable thought I cannot leave the following unsaid.

Yesterday afternoon, June 22, 2000, I had a very disturbing conversation with one of your attorneys assigned to work with the Environmental Protection Agency, Annette Lang. She called me, in my role as Chair of the EPA community advisory group (CAG) called the Pine River Superfund Citizen Task Force, in St. Louis, Michigan. Initially she asked if the CAG would have "Comments" on a pending Consent Decree which would settle the case of U.S. EPA Region V v Ultramar Diamond Shamrock. The comment period ends on July 10, and she asked if we could get any comments to her by July 7. I had no problem with that request; however, the subsequent conversation greatly disturbed me.

After I pointed out that, if we had comments, they would quite likely be procedural ones (to make certain citizen rights to sue under natural resource damage provisions of relevant laws had been reserved), she became quite indignant about the community's lack of gratitude for this settlement. Without attempting to review every statement made during this conversation, the tone of hostility to the community, our elected officials, and a state environmental group [the Michigan United Conservation Clubs], took me aback. In fact, I should have been more prepared for this reaction, since for the last year we repeatedly have been accused of ingratitude and lack of perspective.

I do not claim we are always grateful, legally astute or cheerful in our predicament. However, I find the attitude of DOJ and EPA staff appalling. DOJ attorneys are suppose to help the public for whom they work and reserve their wrath for those who brake the law. Yet, your attorneys have complimented the refinery and been rude to the citizens. When I was in the military and for fourteen years a civilian employee in the government, I always remembered for whom I worked. In those positions, particularly as a medic in Vietnam, I served in far more unpleasant and exhausting positions than any DOJ attorney's can ever imagine, and I got paid much less. If I could remember that my bosses were the officials elected by the citizens and

ultimately the public itself, she should.

Without reviewing the entire history of this community, I believe DOJ and EPA officials need to understand when they come here, however benevolent their intent, that they are seen through two prisms which color their every step. First, we are the site of the Velsicol (Michigan) Chemical plant that mixed polybrominated biphenyls with cattle feed in 1973, contaminating the food chain throughout Michigan. The plant that made that error, already had contaminated hundreds of thousands of tons of river sediment with DDT. When the threats of DDT were first popularized by Rachel Carson's *Silent Spring*, Velsicol was the company that threatened Houghton Mifflin and the *New Yorker* (which serialized the book) with a liable suit if they went ahead with publication. When the PBB accident made the company so unpopular that it agreed to leave Michigan, the Consent Decree was so poor that Hugh Kaufman of EPA said, on November 19, 1982, "The action today sent out a 'clear signal' that companies that improperly dispose of hazardous wastes could negotiate with the agency at the last minute and wind up paying only administrative costs."

For such criticisms, Rita Lavelle, then head of Superfund, sent investigators from the EPA's IG office to find "dirt" on Kaufman. When she lied about such tactics in testimony before a House Committee in December 1982, perjury charges were brought against her by your department, resulting in her firing in February 1983 and eventual jail sentence. One month after that, the head of EPA resigned. St. Louis, meanwhile was left with a highly contaminated river and a Consent Judgement that forever exempted Velsicol from responsibility.

Second, we are the community in which from the 1930's until 1999 various refinery operations emitted large quantities of volatile organic compounds [VOCs] into the river above the Velsicol site. We know, even if DOJ and EPA do not, that VOCs make the DDT dumped by Velsicol more soluble. That explains why the fish tested in the last few years have shown increasing concentrations of DDT, even though the manufacturing of DDT ceased in the early 1960's. The fish samples were so bad that in 1997 the EPA began an emergency removal action in the river adjacent to the Velsicol site. Of course, because of the 1982 Consent Decree, Velsicol will pay none of the \$40 million estimated costs of the emergency removal or subsequent remediation.

Simultaneously with reopening the Velsicol site, the DOJ and EPA began the current litigation against Ultramar Diamond Shamrock (UDS). In the Spring of 1999, UDS announced the closure of the Alma Refinery, terminating 250 employees, and removing about 17 percent of the community's tax base. While the charges in the litigation stemmed from specific air and water emission violations, the CAG asked that a Supplemental Environmental Project be negotiated in lieu of fines to clean the worst river contamination (in a tributary called Horse Creek). To our delight the draft Consent Decree included a \$9 million SEP to clean the creek and an additional \$900,000 SEP for Alma.

While pleased with what is included in the Consent Decree, the community is extremely worried about what is not included. Given the interaction of petroleum byproducts and the DDT in St. Louis, we hoped the final settlement with the refinery would remove all significant refinery wastes upstream of St. Louis. We also worry about various surface and groundwater

contamination at the refinery. Theoretically, the Consent Decree provides a mechanism to correct problems on the plant site. However, the lack of specifics about the refinery site “corrective action,” worries a community so experienced in flawed consent decrees. Also the vehement insistence by both state regulatory officials and DOJ attorneys that there is no proof of links between refinery emissions and river contamination sound like a copy of the stories about the Velsicol site in the late 1970's and early 1980's. We now know hundreds of thousands of gallons of water pass from the Velsicol site into the Pine River each year.

This community may be worried needlessly about the Consent Decree and its implications. However, as citizens we have a right to make our case and to be HEARD. Repeatedly during the last year we have been told by Ms. Lang and EPA staff that they do not have to listen to us. They emphasize the public meeting they held on May 10, 2000, in Alma, on the Consent Decree was not required. They emphasize they did not have to extend the comment period on the Consent Decree.

While all of those statements may be true, they send a clear message that this community does not count. We believe, our experience, losing large numbers of jobs and significant tax resources, while not gaining anything approaching full remediation of the natural resources damaged by our polluters, entitles us to have our questions answered and concerns heard. As in 1982, when government attorneys said they had ‘carried out a corporate execution,’ we know better. Velsicol still exists. St. Louis lost 400 jobs and a third of its tax base. Now again we hear the settlement is a good one and we should be grateful. We’ve lost 250 jobs and 17 percent of Alma’s tax base. Who has been hurt? Your attorneys have their jobs. UDS is having record profits. The sediment in the Pine River below the refinery’s former and current out-falls is heavily contaminated with VOC.’s, which if not removed will resuspend the DDT that will remain around the old Velsicol site after the current remediation.

The people of this community are happy to get 9.9 million in SEPs, but they also are intelligent enough to know that that is not enough. Ms. Lang informed us she does not appreciate receiving voluminous comments. Because we want more, she has threatened to convert the Horse Creek SEP into a fine so we get nothing. She and other federal attorneys seem to want to rush through the process without hearing community concerns.

This has happened on several occasions in the past with both Velsicol and the refinery. An infamous 1995 public hearing on the refinery emissions was held after a memo circulated that the “public meeting would not be public noticed.” During the Velsicol settlement, the Governor’s office sent a letter to a county commissioner stating there would be no public advisory group because the people were too emotional. We could have saved \$40 million in public money if the government officials would have listened to the community in 1982.

Now, again, we hear that officials know better and are disgusted with our ingratitude. That must stop! The American system works not because we have experts making decisions. They had experts in the Soviet Union, South Africa, and Nazi Germany. Those systems came to an end. Our system works because we have open debate. Sometime the citizens know better than the scientists or the attorneys. We need the DOJ to show appreciation for that virtue of our system. The specific request at the heart of this letter is to ask that someone NEW be assigned

to review “Comments” to the Consent Decree. We need someone assigned who will really respect our comments. We believe Ms. Lang is either so busy, so contented with the **DRAFT** Consent Decree, or so unconcerned with our perspective that she will dismiss our comments out-of-hand.

This is a community of modest incomes. Most of our county’s residents are laborers and farmers, with the remnant population of the Saginaw Chippewa Tribe mixed in. About ten percent of our population are Hispanic families descendent from farm workers. We are people who usually get dismissed and pushed around by corporate leaders, government bureaucrats, and various professional experts.

However, more than a century ago a few Presbyterians endowed a college here, one that over the years has focused on community service, environmental studies, public health and public affairs. Alma College professors helped investigate river conditions decades ago. An Alma College economist from my Alma Mater, the University of Chicago, in the 1930's did a pioneering study of deforestation in the region. Alma faculty and students studied the PBB mistakes. Congressional hearings on PBB were even held on our campus. This college is not estranged from its community. If no one else does so, we are prepared to help our community be heard.

When we at the College first learned that EPA and DOJ were interested in our problems we were delighted. We expected that finally our community would be consulted. We were sure we would not see a repeat of the Velsicol mistake. Instead, we have been insulted by arrogant public employees, who dismiss the comments of our neighbor’s and, at best, tolerate us.

The problem for arrogant DOJ, EPA, and state bureaucrats is that we are articulate enough to express outrage. We become angry, not intimidated. We will defend our community if you will not.

Your employees tell us there are bigger communities with bigger problems. We know there are. I for one am involved in some of those, having filed a formal comment earlier this month for a sustainable water plan in El Paso. That is irrelevant, however, so long as we have fundamental environmental problems, which can be corrected under the law. We have to fight our battles - here. We are being harmed and then dismissed by your staff and then thrown a few crumbs. We must and will speak out.

I say a few crumbs because we know UDS has set aside \$171 million for potential environmental liabilities. We don’t expect or want all of that. We do think we are owed our share. At a minimum we deserve having the river cleaned sufficiently to remove the total fishing ban. The Treaty of Saginaw of 1819 seems to promise that to our tribal neighbors. Without question, our children deserve it. Anyone who thinks \$9.9 million is sufficient payment for what we have lost is sorely mistaken. Anyone who thinks the petroleum by-products in our river came from municipal wastes or businesses making auto parts (two alleged sources by those who wish to do no more) are not looking or listening to us.

The most distressing legacy of the current effort for our children, however, is not the contamination that will remain and the permanent fishing ban on our river. It is the negative lesson about democracy. Velsicol and UDS are thriving. Even Fruit of the Loom is going to

pull out of its financial woes now that it dumped its mismanagement team. While it is too soon to know the full extent of the UDS links to government, we do know what happened with Velsicol.

In the early 1980's Velsicol hired as CEO a former high level federal official, Michael Moskos, who now heads the Federal Reserve Bank of Chicago. Ben Heineman, the head of Velsicol's parent company, Northwest Industries, was a well connected former Presidential confidant. At the time of the PBB crisis, the firm retained the services of Joe Califano's (Secretary of HHS for the President) law firm. Velsicol's founder, Joseph Regenstein was one of the most revered philanthropists in Chicago, who even gave millions to the Art Institute, Chicago zoos, and my Alma Mater. Yet, in our community these people left a legacy of pollution and abandonment, in collusion with public officials. (Velsicol hired its lead attorney and Vice President for Environmental Affairs from EPA to negotiate with their former colleagues.) Of course, all the businesses involved in local contamination have made strategic campaign contributions. What does this tell our children about America.

I, for one, am determined to make this story change, for the sake of democracy, about which I teach as a historian and political scientist. I am determined that the conclusion of this story is that those responsible for contaminating and then abandoning our towns do what is fair. I would hope sane heads prevail and that the routine regulatory and political process gives us a restored environment. That is, I hope after understanding our history and experiences both our public officials and corporate executives agree to a voluntary plan to restore most of the natural resources which have been damaged. Furthermore, I hope they then commit to give this community the resources to recover. If that does not come through political discussion and reason, then we are prepared for citizen or natural resource trustee legal action to compel responsible behavior. We do not commit ourselves to that course in retaliation for what others have done to us but in the finest tradition of seeking to educate our youth that in a democratic system based on the rule of law, the public good can be identified and achieved.

This community would prefer to enter into an open and honest dialogue about the legal remedies we can pursue to recover from natural resource damages of the last seven decades. We cannot do that so long as our attorneys in our Justice Department are more critical of us than of the responsible parties. Please help us begin this process by reassigning those who are critical of us and replacing them with those who will seek to understand and support us.

Sincerely,

Edward C. Lorenz, Ph.D.
Reid-Knox Professor
[Chair, Pine River Superfund Task Force]