

**PINE RIVER SUPERFUND CITIZEN TASK FORCE
P.O. BOX 172
ST. LOUIS, MI 48801**

September 22, 2000

The Honorable David Lawson
U.S. District Court
219 Post Office Building
Bay City, MI 48708

Dear Judge Lawson:

We have been told by the U.S. EPA and confirmed by your clerk that you have assumed responsibility for the consent decree negotiated between the United States and TPI Petroleum, et al., case number 00CV10151. While we hesitate to intrude on your busy schedule, we would like to bring to your attention the many comments filed related to this consent decree by citizens in this region. The Task Force is the officially recognized community advisory group (CAG) for the Pine River watershed. We were established in late 1997 under regulations of the U.S. Environmental Protection Agency, Office of Solid Waste and Emergency Response (OSWER) [Environmental Justice Task Force Draft Final Report - EPA 540-R-94-004 and OSWER Directive 9230.0-28].

The Technical Committee of the Task Force, funded by an EPA Technical Assistance grant filed comments, as did the Michigan United Conservation Clubs, and myself as both CAG chair and professor at Alma College. While each of us believe TPI should be held responsible for fulfilling the obligations to which it committed under the draft consent decree, we believe that settlement properly can be only the beginning of the company's responsibilities to this community. We fear however, that the state Department of Environmental Quality, which is assigned a key role under the consent decree for oversight of refinery remediation is neither prepared for nor committed to a vigorous corrective action. The refinery has had a history of contaminating the Pine River with volatile organic compounds which DEQ does not plan to remediate. Those substances not only should be removed to restore the river above St. Louis, their presence makes the on-going EPA superfund clean-up in St. Louis less effective.

In late July, the city asked I and my wife to visit Casper, Wyoming to investigate a refinery remediation in that community. We returned seeing in their settlement components of a model settlement with TPI. Instead of setting dollar limits for off-site contamination, the federal court established a community oversight process that provides more funds for community recovery and the environment than does the TPI settlement. Yet, the Casper refinery was slightly smaller than the one in Alma and had similar problems of ground and surface water contamination. While no two situations can be identical, we believe the magnitude of the

impact of the refinery on the region's environmental and human health justifies concern with the adequacy of the TPI consent decree, given the Casper example.

Enclosed for your review is a copy of the letter I filed at the end of June as a comment to the draft consent decree. We would appreciate your review of this and the other comments before proceeding with this decree.

Thank you very much for the time you give this matter.

Sincerely,

Edward C. Lorenz
Chair

June 29, 2000

Ms. Annette M. Lang
Trial Attorney
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P. O. Box 7611
Washington, D.C. 20044-7611

RE: Consent Decree in United States v. TPI Petroleum, et al., DJ No. 90-5-2-1-2199

Dear Ms. Lang:

Thank you for arranging a public meeting and for welcoming comments on the above mentioned consent decree. I also appreciate the intense work that produced agreement on the decree. As a scholar who has authored peer reviewed, published studies on environmental policy in the Pine River watershed, I appreciate the challenges of understanding the complex history of environmental abuse and policy making in the region. I want to take advantage of the comment period to make six comments seeking clarification of the decree.

1. For the specific claims made by the U.S. in its complaint, I believe the Consent Decree may be an adequate remedy, and I welcome the two supplemental environmental projects (SEPs) included as part of the settlement of these charges. No one I know in this community wants the SEPs converted into fines which would not be used to reduce the impact of the emissions from the refinery and now its closure. However, I make this observation only in the context of the five comments below (2-6).

2. While the wording of the Consent Decree clearly reserves the right of the federal government and citizens to pursue additional charges against the TPI, the DOJ, as the attorney for the people of the United States should make clear that it will continue to pursue vigorously all legal options, including those available under statutes not mentioned in this case, such as the Oil Pollution Act of 1990, to bring about full assessment and, if found necessary, full restoration of the natural resources damaged by the refinery, especially the Pine River. Many in this community worry that an unwritten agreement has been reached with TPI that this Decree will resolve all claims for remediation of contamination off the refinery site. Given our experience with similar arrangements with the other major local polluter, Velsicol [Michigan] Chemical in 1982, and the subsequent need to spend \$40 million of public money to remediate its off-site contamination, it is in NO WAY inappropriate for this community to expect, prior to the finalization of this decree, iron clad statements that no such unwritten commitments have been made. It also would be appropriate to indicate that every effort will be made by federal and

state regulators to find a way to achieve agreement with UDS/TPI to remediate the Pine River.

3. As in two (2) above, while the wording of the Consent Decree does not limit the right of the State of Michigan to seek additional remediation under state law, statements made by Elizabeth Browne of the state Department of Environmental Quality both at the public meeting held on May 10, 2000, in Alma, and in subsequent conversations, indicate the state is not prepared to pursue aggressively river remediation and other off-site corrective action. It is extremely worrisome to hear such statements when we also know the state has not and is not prepared in the near future to conduct thorough assessments of natural resource damages resulting from refinery operations. Without complicating these comments unnecessarily with evidence, the predecessors of Ms. Browne, as early as the 1950's and 1960's, documented the refinery's impact on the Pine River.¹ That impact has been documented in state reports in every decade since. When she says to the community there is not a proven link between on-site refinery contamination (being addressed under the planned corrective action) and "the black oily mud"² everyone in town knows is in the river, we fear either incompetence, indifference, or worse. While we may not be able to change the opinions or approach of an individual state employee, the Consent Decree should be accompanied by a statement clearly committing our regulators to vigorous pursuit of all possible remedies for full river remediation.

4. Related to comments two(2) and three (3) above, a primary reason the federal and state governments should seek fuller remediation of petroleum residues in the Pine River is to save public money. Currently, the federal and state governments are spending \$40 million to reduce DDT in sediments at the Velsicol site in St. Louis to below 5 ppm. Since we know that petroleum residues make DDT more soluble, the petroleum residues above St. Louis must be significantly reduced or the concurrent Superfund remediation in St. Louis will fail. In other words, the standards being used to determine remediation limits at the Superfund site in St. Louis are inadequate because upstream petroleum residues, when they migrate into the St. Louis impoundment, make the DDT that will remain under the current Velsicol site clean-up plan so much more soluble that that clean-up will NOT meet public health standards. The only ways to make that clean-up comply with human health protection requirements, are either to remove much more DDT than currently planned or remove most petroleum residues in sediments above St. Louis. Since the second choice is far cheaper, fiscal prudence should require that this Decree be accompanied by a commitment to pursue upstream remediation that will allow the current DDT clean-up in St. Louis to succeed.

5. Generally, the current Consent Decree does not need revision. What we need are

¹See for example, State of Michigan, Water Resources Commission, *Water Resource Conditions and Uses in the Tittabassee River Basin*, 1960, p. 72, says of Leonard Refineries (later TPI), "Control of certain wastes that are discharged to the Pine River via a county drain has, at times, been found inadequate and measureable pollution has resulted." That report exonerates other Alma area businesses, specifically Alma Products, from contributing to river contamination.

²State of Michigan, Water Resources Commission, *A Biological Survey of the Pine River above Alma to M-30 to Determine Effects of Pollution*, 31 May 1955, p. 1.

assurances that this is the first, NOT THE LAST, step in restoration of the region from refinery pollution. Since the current generation of regulators at U.S. EPA and the Michigan DEQ lack sufficient knowledge of the links between refinery emissions and the wider community, a coalition of local governments and public interest groups have been considering asking that UDS/TPI endow at a moderate level (but larger than the total in this Consent Decree), a set of trust funds which could be drawn upon indefinitely until the environment of the region is fully restored. The \$9 million Horse Creek SEP could be part of that commitment, but at least double that amount would be needed to adequately support full assessment and phased remediation. We would like to be assured nothing in this Decree would preclude such a creative partnership which would do much to assure future generations that we (you, the EPA, DEQ, UDS, and the local communities) have acted responsibly.

6. We also want to assure that the community will be empowered to advise or even oversee use of the \$9 million Horse Creek remediation to gain the most impact of those limited funds. As has been found with the Velsicol site, local residents often know more about local contamination and remediation needs, and fiscal responsibility, than do outside experts.

I know you have invested much energy into hearing us and into crafting this consent judgement. Anyone who does such work has considerable pride of authorship and naturally resists the second guessing which always is so easy. However, I hope you can see our perspective and our concerns. While we have heard government regulators emphasize their concern with us and the law, we know 250 of our neighbors have lost their jobs and this community has lost 17 percent of its tax base. The situation is ominously like the Velsicol settlement, and again the river is not being cleaned. We know the Pine River contains oily sediments from TPI's property at Bridge Street in Alma through St. Louis and that those sediments may frustrate the gains made by the Velsicol remediation. UDS/TPI officials have their jobs and their record profits. State and federal regulators have their jobs and their environmentally safe residences. We need sympathetic support for all possible options to alleviate the devastating impact to this region of this most recent environmental enforcement.

Thank you for your careful review of these and other comments received from this community.

Sincerely,

Edward C. Lorenz, Ph.D.
Reid-Knox Professor

cc: The. Hon. Victoria Roberts