

TAG QUARTERLY PROGRESS REPORT

Date: 10/29/01

Report Number: 9

Report Period: July 1, 2001-Sept. 30, 2001

Site: Velsicol, St. Louis, Michigan

Grant Recipient: Pine River Superfund Citizen Task Force

Recipient Group Representative: Edward Lorenz

PROGRESS ACHIEVED:

During this period the Pine River Superfund Citizen Task Force (the CAG) moved forward with our assessment of the U.S. EPA sediment removal standards at the Velsicol site, impact of upstream contamination upon the DDT at St. Louis, and most importantly the integrity of the site containment system. The contractor we had retained to do an independent assessment of the site remediation, Public Sector Consultants, produced a draft report in June, 2001 and met with the CAG's technical committee to review clarifications of the draft. Because new data has come forward regarding possible failure of the Velsicol site containment system, the draft report needs revision to reference that information. While the final report was not completed before the end of the quarter, its imminent publication as of Sept. 30, 2001, should greatly help decision making related to the site.

Of course, during the summer great progress was made in removal of the remaining contamination on the south side of the river. This removal was briefly interrupted when a large leak appeared from under the coffer dam, apparently allowing river water to enter the site as a "geyser." However, that problem was quickly plugged and final removal continued. The hole created by this removal became rather spectacular and was the subject of innumerable visits by people from the community.

During the quarter, the CAG continued to worry about the willingness or even the ability of Fruit of the Loom to fulfill responsibilities for the Velsicol site. Ominously, the Fruit of the Loom representative no longer has money to travel to CAG meetings. He reported at the last meeting he attended that neither Fruit (the owner of the property) nor Velsicol had sufficient money to pay for slurry wall testing. Since we know that as of April 1, 2001, Fruit has \$100 million in insurance and cash set aside for environmental liabilities, the CAG decided to seek permission from EPA to use CAG funds to get answers to questions related to Fruit/Velsicol liability and resources. At the end of August, the CAG sent a formal request to Lois Gartner in Washington to see if funds could be spent on answering two technical questions that also were primarily legal. The letter said, in part:

We are worried that the Fruit of the Loom plea of poverty is influencing the decisions of federal and state environmental regulators about forcing the company to fulfill its responsibilities. We believe only expert legal advice can reassure regulatory staff to put the pleadings of Fruit of the Loom in their proper perspective.

The reason we are writing is that the CAG voted at our last meeting to seek expert

advice on the availability of the Fruit of the Loom environmental money and on the extent of protection of Fruit of the Loom/Velsicol under a 1982 Consent Decree. While we know there are restrictions on the use of TAG funds related to legal assistance, we want to learn if we can spend TAG money on technical assistance to answer either of the two questions below:

1. Are Fruit of the Loom's environmental reserves and insurance available for our sites, and what competing demands exist for those funds (what other superfund sites might need to claim those funds)?
2. Is contamination of the Pine River resulting from the failure of the Velsicol Superfund Site containment system (a matter currently being checked by the state in conjunction with the EPA) "new" natural resource damage and therefore not covered by the 1982 Consent Decree (where they specifically are freed of responsibility for their previous natural resource damages to the river)?

The point of each question above is not for the CAG to sue Fruit of the Loom. Rather, we need answers to the two specific, technical questions above to know what to ask regulators to do. However, because these technical questions are more related to law than chemistry or biology, we want to learn if we will violate TAG regulations in paying for such technical advice. It seems in reading the regulations (35.4075) that so long as we are not engaged in "legal action" and if we avoid a "relationship to which the attorney/client privilege would apply," we can seek such technical assistance.

To our great satisfaction we were told we could seek answers to these questions, so long as we did not spend TAG funds to enter into a lawyer-client relationship. Subsequently, we made contacts with several attorneys, primarily through the University of Michigan Law School.

Two other projects during the quarter helped us place clean-up decision making in perspective. First, the state completed sediment sampling in the river above St. Louis. We had hoped the results of that sampling would be known before the end of September, however, it now appears results will not be known until December. Those results may tell us if clean-up should move upriver. Second, in July three members of the CAG and a student who completed a series of interviews with community residents (funded by grant money, not TAG funds) were asked to attend a federal facilities conference at Amherst and Hampshire Colleges, our way paid through a DOE grant to Hampshire College. That conference provided us a great opportunity to share information with groups similar to the CAG at federal facilities. At least one of those groups also is involved intimately with Velsicol's Memphis (TN) plant. While none of this activity is funded under the TAG, it has allowed us to have a much better sense of direction on where community residents want us to focus.

DIFFICULTIES ENCOUNTERED:

As was noted at the end of last quarter, the chief difficulty in this period was a lack of time to pursue all projects that came upon us. In addition to TAG related work, the CAG has been in intense negotiations throughout the quarter with the National Institute for Environmental

Health Science regarding a much desired community health study. However, other than being a full time job for our volunteers, all projects are going well and the immense amount of donated time by many CAG members has allowed us to stretch our TAG funds as far as possible.

PERCENT OF PROJECT COMPLETED TO DATE:

By the end of September, the removal of about half of all contaminated sediment had taken place. Best of all, because the sediment removed first is the most contaminated, the vast majority of contaminants are now being taken from the river. The one concern with stating a percentage of completion is that if the site slurry wall is leaking, we may greatly increase the time and cost of proper remediation. Likewise the sediment sampling done by the state this summer may reveal other parts of the river in need of remediation.

MATERIALS PRODUCED THIS QUARTER:

In addition to monthly technical reports for the Task Force, we moved forward on the draft Pine River Cleanup Assessment being done for the CAG by Public Sector Consultants.

ACTIVITY ANTICIPATED IN NEXT QUARTER:

In the next quarter we anticipate moving forward in the following matters:

1. Publication of the final Public Sector Consultants study of clean-up plans and standards.
2. Determining if there is leakage from the Velsicol site.
3. Gathering more information of Fruit/Velsicol financial assets.
4. More information on progress of the community health study.
5. Progress on the watershed sediment study (samples collected in late June, 2001) and the long-term monitoring plan.
6. Depending upon slurry wall testing results, perhaps more brownfield redevelopment planning for the Velsicol site.