

PINE RIVER SUPERFUND CITIZEN TASK FORCE

**P.O. BOX 172
ST. LOUIS, MI 48880**

July 4, 2002

Mr. Thomas Sansonetti, Assistant Attorney General
Environmental and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044

Dear Mr. Sansonetti,

The Pine River Superfund Citizen Task Force, a Community Advisory Group (CAG) formally recognized by the EPA, hereby comments on the Proposed Settlement Agreement resolving certain claims of the United States and the States against Fruit of the Loom, Inc. (FTL), NWI Land Management Corp. (NWI) and Velsicol Chemical Corporation (Velsicol), now before the United States Bankruptcy Court for the District of Delaware (No. 99-4497 (PJW)). We have three major areas of concern regarding this settlement. First, the agreement does not go far enough in providing funding to assess and address the extensive Natural Resource Damages at the Pine River. Second, the agreement should contain a formal statement requiring the parties and the trusts to keep the Pine River Superfund Citizen Task Force Community Advisory Group and the public informed and involved in their decision making processes. Third, we request greater financial disclosure and transparency so that we will have a reasonable assurance that FTL, NWI, and Velsicol are all paying as much as they possibly can to counteract the severe environmental damage that they have caused.

1. The Proposed Settlement Fails to Permit Use of Custodial Trust to Assess and Restore Natural Resource Injury at the Pine River

By including allowed general unsecured claims totaling six million dollars for natural resource damages at the St. Louis site, the proposed agreement acknowledges the significance of the resource injury at the Pine River. As the CAG explained in a letter to the Department of Justice and other federal agencies dated February 8, 2002, our own research suggests that resource injury is substantial.

Since the middle of the twentieth century, official reports have documented the contamination of the Lake Huron watershed by Velsicol Chemical Company, Fruit of the Loom/NWI Land Management or their predecessors. Most recently, the Michigan Department of Environmental Quality, Office of the Great Lakes, Lake Huron Initiative Action Plan: March 2000, identified the Velsicol site as "[a] major source of DDT in the Lake Huron watershed" and "[a] major source of PBB in the Lake Huron watershed." [Appendix A: Lake Huron Critical Pollutants, available at www.deq.state.mi.us /ogl/huron.html]

While there are a number of critical pollutants in the Lake Huron watershed, the seriousness of the Pine River's contamination is distinctive in two ways. First, the river is one of only three in

Michigan with total fishing bans, on all species, at all times, for all people. That fishing ban has been in effect since 1974. However, as discussed below, despite the ban, some fishing continues in the river and some population groups, apparently those with lower incomes, rely on the river as a source of food. Second, the Pine River fishing ban is a result not of ubiquitous PCBs, but because of the presence of two contaminants made by a specific responsible party: DDT and PBB. Both were made and dumped in the river by Velsicol, Fruit of the Loom/NWI Land Management, and their corporate predecessors.

Before the Pine River's extensive contamination with DDT and PBBs, the Pine River served as a vital fishing and recreational resource for nearby communities. This region was historically blessed with an abundance of fish and game, a heritage that spawned cultures built on contact with the outdoors, whether that of the original Ojibway or that of the early European settlers. Archeological studies in the region indicate that fishing included such migratory species from Lake Huron as sturgeon (Fruip, 2001).

Contamination with DDT and PBB's caused substantial injury to Pine River natural resources. As noted above, DDT has been measured in concentrations higher than has ever been recorded in any river sediment in the United States. DDT, of course, causes severe disruption to aquatic and terrestrial ecosystems, most notably causing the thinning of eggshells that almost single-handedly caused the near extinction of the bald eagle and other bird species. PBB is a fire-retardant that has caused sterility in cattle and other livestock and poses a long-term risk for humans who have high exposures (see Karmaus, Lorenz, Borrello and Vickery, 2001). These chemicals alone are severely disruptive and injurious to the ecosystem in which they reside. However, the mixture of a multitude of chemicals that also reside in the Pine River sediment is particularly dangerous. The "cocktail" of chemicals acting together in many cases can be more toxic than the chemicals by themselves (Miller, 1999).

Caged fish studies conducted at several locations downstream of the former chemical plant have shown uptake of DDT(R) in fish higher and to a greater rate than has ever been recorded in the state of Michigan and perhaps anywhere in the country. Also, fish uptake of DDT was observed many miles downstream into Midland County (MDEQ, 2000). Even with the on-going and proposed cleanup of the river sediment under Superfund, DDT occurs upstream of the cleanup site in amounts 40 times what is deemed "safe" by the U.S. EPA (Brandon, et. al., 1991). Moreover, PBB has been found in river sediment and in non-migratory fish all the way into Saginaw Bay (Jaffe, et. al., 1985).

For decades after the chemical plant began operations, the Pine River adjacent to and downstream of the Velsicol plant was almost devoid of any species, whether tolerant of contaminants or non-tolerant, and to this day shows measurable signs of impairment (MDEQ, 1999; MDNR, 1993; 1990; 1979; 1970). Several student reports from Alma College, located near the Pine River, also have noted a lack of aquatic vegetation and sightings of frog and turtle species expected for a river such as the Pine, signaling significant ecosystem impairments. Moreover, fish have shown an increase in uptake of DDT over the past 15 years despite the fact that DDT has not been manufactured at the Velsicol plant since the late 1960's. Levels measured in carp showed DDT(R) levels 33 times the non-consumable limit set by the State of Michigan for whole fish (EPA RI/FS, 1997).

Currently, the fish populations immediately downstream from the plant are almost entirely carp species with some tolerant bass and catfish. Many of the fish exhibit visible signs of exposure to pollution. At a fishing derby in St. Louis in 2000, a carp with a bloody tumor was caught. In the spring of 2001, several Alma College students caught multiple fish downstream from the plant site; every species of fish caught except two small catfish showed visible lesions and bloody growths (especially in the genitalia region). These fish have been sent to Saginaw Valley State University and are awaiting chemical analysis (Borrello, et. al., 2001/2002, unpublished).

Moreover, though a fishing ban exists, there are still many people that use Pine River for subsistence fishing, near the plant site and downstream. When in 1998 the state Department of Community Health launched its most recent signing of the river to discourage consumption, it decided to make bi-lingual signs because of the reports that the region's large migrant population used the river as a food source. Even without migrants, the river communities have populations living in poverty well above the state average, a fact that entitled the communities to form a community advisory group for U.S. EPA. In the spring and summer of 2001, Alma College conducted a survey of 69 individuals fishing in the river and found the following disturbing results: 83 percent ate the fish they caught; 96 percent of those who ate fish, ate them more than once a month; 35 percent of those who ate fish, ate them on a daily basis; 94 percent of those people who fished had caught fish with visible lesions and tumors; 74 percent of the women who fished ate their catch at least on a monthly basis including a 14 year- old pregnant mother (Huckins, Borrello and Lorenz, 2001).

Given the significance of the resource injury, we object to the settlements' treatment of the natural resource damages claims. In particular, we object to the language in the decree that appears to permit the Custodial Trust to be used only to pay for response actions at the St. Louis site. Proposed Settlement Agreement, pg. 16, 21. For another site, for example, the Ventron/Velsicol/Berry's Creek Site, the government retains the discretion to use custodial trust fund money for response and for restoration of the site. Given the substantial nature of natural resource injury at this site, the government should similarly retain the discretion to use trust fund monies for natural resource injury assessment and restoration. We therefore propose that the following change be made to the Proposed Settlement Agreement to parallel the language for the Berry's Creek Site.

Paragraph 3(b) should be altered so that where it now reads, "28% for response action or response costs for the St. Louis facility" it will be changed to "28% for response action or response costs or Natural Resource Damages for the St. Louis facility."

2. The Proposed Settlement Fails to Adequately Assure Citizen Participation

As a Community Advisory Group composed of citizens in the area of St. Louis, Michigan, we think it is important that citizens be included in the decision-making processes regarding pollution control and cleanup. While we currently have a good relationship with all the governmental parties involved, we are concerned that the consent decree fails to formally provide that the input of the public be sought and considered in making decisions regarding these polluted sites. This is particularly important at this site, since the community's life is so closely intertwined

with the Pine River, and despite warnings, some components of the community appear to be depending on the river for subsistence fishing.

We would request that language be added to Paragraph 23 pledging that all parties involved, including the Custodial Trust and the Velsicol Environmental Trust Fund, shall put forth due effort to notify the public and seek public input regarding all actions taken to implement this agreement at this site, including not only environmental decisions, but financial decisions, such as proposed preferred stock sales and litigation settlements.

3. The Proposed Settlement Fails to Reveal Sufficient Information Regarding the Appropriateness of the Companies' Payments

Although we appreciate the public meeting that was held, and we understand that the Department of Justice has confidential information that cannot be publicly released, we find that it is nearly impossible for members of the public to determine whether this is a reasonable settlement or not. While we are heartened by the amounts of the claims that the governmental parties are being allowed as general unsecured claims by the Proposed Settlement Agreement (esp. Proposed Settlement Agreement pg. 27), we understand that it is extremely unlikely that those will ever get paid in full. We also understand that this agreement appears to finally resolve the liability of these entities for the environmental damage that they have caused at these sites in St. Louis and around the country. At the public meeting held in St. Louis, Michigan, none of the parties present was willing or able to say what kind of return could be expected from the claims against NWI and Velsicol, the sale of the Velsicol Preferred Shares, or the insurance policies.

In particular, we would request an “in-camera” or otherwise confidential proceeding to permit the Pine River Superfund Citizen Task Force or its representative to view the settling companies' budgeting, income, cash flow, short term debt, and federal and state income tax information. This representative of course could be duly bound to a confidentiality agreement to protect the sensitive nature of the information.

In summary, we ask that the following changes be made to the Proposed Settlement Agreement:

1. That Paragraph 3(b) should be altered so that where it now reads, "28% for response action or response costs for the St. Louiis facility" it will be changed to "28% for response action or response costs or Natural Resource Damages for the St. Louis facility.";
2. That language be added to Paragraph 23 indicating a pledge that all parties involved, including the Custodial Trust and the Velsicol Environmental Trust Fund, shall put forth due effort to keep the public informed of what is happening at these sites and to hear and take into consideration the opinions of the public regarding what is to be done at these sites.

We also ask for an appropriate, confidential opportunity to view financial information of the settling companies.

We appreciate the government's holding of a public meeting on June 19 in Michigan and answers to a number of our questions regarding the Proposed Settlement Agreement. However, we think the above changes and procedures are necessary to ensure that the consent decree is fair, reasonable, and in the public interest.

Sincerely,

Murray Borrello, Technical Committee Chair
Pine River Superfund Citizen Task Force