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November 15, 1994

Via Telecopier and Airborne Express

Ms. Carolyn Kwan
United States Environmental
Protection Agency
New York-Caribbean Superfund Branch
26 Federal Plaza
New York, New York

Re: Tutu Wells Site

Dear Ms. Kwan:

As you know, we are counsel to Paul Lazare and Andreas Gal, who were named as Potentially Responsible Parties ("PRPs") in a letter dated July, 1993. As requested at the meeting of November 2 and 3, 1994, this letter constitutes a "distilled" version of comments on behalf of our clients to the Draft Remedial Investigation Report ("RI") submitted by the Tutu Environmental Investigation Committee ("TEIC").

As a preliminary matter, the administrative record should reflect that the RI was prepared by consultants engaged by Esso and Texaco and operated under their direction and control. Although the consultants afforded other PRPs an opportunity to give comments and suggestions to TEIC, it was made clear to the other PRPs that the RI was TEIC's document and that final determinations as to its content were made by TEIC only. Lazare and Gal believe that this fact is relevant to the proper analysis of the RI, as it indicates that determinations that the Esso and Texaco facilities are not contributors to VOC contamination at the site are suspect due to the manner in which the investigation may have been steered.

Conclusions Regarding the Curriculum Center Site

Several references are made to a "disposal" or "waste" pit at the Curriculum Center (e.g., p. 5-8, p. 6-13). Even though the term "alleged" is sometimes used, there is no substantiation that any such pit ever existed. The only ground for the assertion that such a pit ever existed is hearsay testimony in a

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deposition, which is clearly anecdotal and not an appropriate basis for scientific inquiry. Those references give rise to an inference that the VOC plum "originates" at the Curriculum Center (see p. 5-37). That inference is incorrect and ignores evidence of releases from the UST at VIHA (see ¶ 4 of comments of Arthur D. Little, Inc, submitted herewith as Exhibit A).

It is also noteworthy that no attempt was made to fingerprint the compounds found in the soils and groundwater at the Curriculum Center. Without such analysis, it cannot be determined that the source of VOCs was operations by the former Laga operations (which ceased in 1978) or the documented later uses of solvents and storage of substances containing VOCs by the Department of Education. Nor can it be determined whether data indicating the presence of VOCs other than PCE such as 1,2 dichloroethene (cis/trans) and Vinyl chloride (which are found at concentrations significantly higher than PCE at, for example, MW-16) show that these other compounds are so-called "daughter products" of PCE or are the result of continued storing and disposal of other solvents.

This unsubstantiated characterization of other VOCs as "daughter" products of PCE (and thus presumably attributable to the use of PCE by the former Laga operations) is inconsistent with data regarding wells MW-1 and MW-1D, located at the border of the Curriculum Center and the Fire Department property, where concentrations of VOCs other than PCE are the predominant contaminants. There is not even a claim, let alone any evidence in any record that any activities relating to the disposal of PCE wastes ever occurred at that section of the premises¹. Yet, the RI continues to express conclusions by Geraghty & Miller these concentrations are the result of degradation of PCE used in Laga operations. In short, these conclusions were made "backwards" and are thus, not an appropriate basis for conclusions as to what activities gave rise to alleged contamination. These conclusions skew the analysis of remedial alternatives, particularly the apparent "belief" expressed that the VOCs emanating from the Curriculum Center site create a DNAPL problem at the Tutu Wells

¹While we recognize that it is not the purpose of these comments to address questions relating to the liability of any particular PRP, it should be noted for the record that there is no competent or credible evidence in the RI, in proceedings before Judge Brotman in Matter of Tutu Wells or in any of the documents delivered to TEIC which indicates that there was ever a release of PCE from the dry cleaning operations at the former Laga plant.

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Site.

The Texaco Tutu Service Center Site

By determining not to use the presence of contaminants in soils as an indication that this site was a contributor of VOCs to either the soil or the groundwater, Geraghty & Miller effectively shielded Texaco from responsibility for the presence of VOCs at the Tutu site. As noted in the accompanying comment letter from Arthur D. Little (the "ADL Letter"), the presence of VOCs in a soil pile is indicative of the use of VOCs and their discharge to soils as part of their operations. Summarily dismissing such indicia of VOC contamination is, in our and ADL's view, incorrect.

The Ramsay Motors Site

Despite the presence of total VOCs at a concentration of 1903 ppb in Well MW-15 (see, e.g., Figure 5-18), and evidence of (a) the use of solvents and degreasers, and (b) a UST which contained, among other things, waste oils (see, e.g., pp. 9-10 ADL October, 1993 Report, copies of which are submitted as Exhibit B), the RI does not include Ramsay Motors as a source of VOCs in groundwater. This is contrary to the selection criteria set forth in the RI.

The Esso Tutu Service Station

As stated on several occasions during the course of the November 3 and 4 meetings, and as will no doubt be expressed by other PRPs, the determination by Geraghty & Miller that the Esso Tutu Service Station is not a source of VOC groundwater contamination is so incredible as to cast doubts on the analytical basis of the entire RI. Specific findings by Soil Tech (which were the subject of hearings before Judge Brotman in the Matter of Tutu Wells litigation) indicated the presence of PCE in liquids stored on site at levels in excess of 400,000 ppb. That same report reflected, and several witnesses testified before Judge Brotman, that it was the regular course of business at the Esso Tutu Service Station to dispose of those liquids by flushing them down the toilet before the Esso Tutu Service Station was connected to the public sewer system. Copies of this testimony are is submitted herewith as Exhibit C.

Despite this data, and data indicating the presence of VOCs in soils at the site (see, e.g., Figure 5-10 and results from SS-4), Geraghty & Miller determined that the Esso Tutu Service

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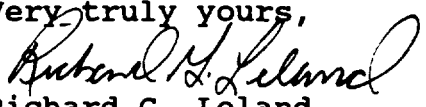
Station was not a source of groundwater contamination. We submit, as have other PRPs, that because of the damaging information in the Soil Tech report was suppressed until October, 1993, groundwater monitoring wells were not located so as to follow the movement of those high levels of PCE to the groundwater, particularly as that movement would have been affected by pumping at the Splash N' Dash Car Wash on the adjacent Four Winds property. We believe that the data presented by Geraghty & Miller relating to this release of concentrations of more than 400,000 ppb of PCE is, at best, incomplete. Before removing the Esso Tutu Service Station from the list of VOC sources, further analysis is clearly warranted.

The Western Auto Site

See ¶ 12 of the accompanying ADL Letter.

In conclusion, we submit that despite the time and expense that has gone into the RI, it is a flawed document which makes inconsistent conclusions about the contamination at the Tutu Wells Site. As such, it should not be accepted by EPA as a basis for naming some PRP sites as sources of contaminants and eliminating others. To do so would flaw attempts at an appropriate and efficient remediation and to create an inconsistent record for liability purposes.

Very truly yours,


Richard G. Leland

RGL/

cc: PRP Group
Mr. Andreas Gal
Mr. Paul Lazare