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THE WHITE HOUSE
WASHINGTON

Date: July 16, 1992

TO:

Cam Findlay

FROM:

ROBERT T. SWANSON
Assistant Counsel to the President

- ☐ Per your request
- ☒ FYI
- ☐ For review and comment
- ☐ For appropriate action
- ☐ For approval
- ☐ For signature
- ☐ Please add to the Financial File

of _____

**THE
MOSBACHER
CONNECTION**
COVER STORY

THREE MEN



EVERETT PECK

AND A BARGE

by Teresa Riordan

Three of
the most
powerful
men in
America
have a
little oil
venture on
the side.

PRESIDENT **GEORGE BUSH**, Secretary of Commerce **Robert Mosbacher** and Secretary of State **James Baker** are three of the most powerful men in the nation. They are also good friends who happen to share a longstanding financial interest in a Houston-based tank-barge business.

Their tank-barge investment seems a curious holdover from the days when Bush, Mosbacher and Baker were private citizens. Yet it deserves scrutiny for three reasons: 1) the Bush administration has proclaimed itself the environmental presidency, 2) the tank-barge industry is a major polluter of U.S. waterways, and 3) the company that manages the Bush-Mosbacher-Baker barges is one of the largest tank-barge companies in the United States; collectively its barges, which carry petroleum products, have spilled upwards of 200 times since 1980, government documents show.

The ultimate parent company of the Bush-Mosbacher-Baker barges is Hollywood Holding, an umbrella corporation splintered for tax and liability reasons into subsidiary partnerships and concerns — as a result there are no deep pockets in the case of a big spill or personal injury lawsuit. But the splintering is mostly on paper. Most of these subsidiary entities have a Hollywood appellation and share the same president, registering agent and mailing address. All of the subsidiaries have the same managing partner — Hollywood Marine Inc., which itself is a subsidiary of Hollywood Holding. Last year Hollywood collectively did more than \$100 million in business. According to Steve Valerius, a vice president of Hollywood Marine, Hollywood barges are leased to every major oil company in the Texas-Louisiana area, where at least 50 percent of U.S. refinery operations are located.

Because all of the Hollywood concerns are private, details of their activities and finances are hard to come by. However, *Common Cause Magazine* has pieced together the following information from thousands of pages of financial

disclosure statements, state incorporation and partnership papers, federal court proceedings, and Coast Guard documents obtained through the Freedom of Information Act:

■ Mosbacher, who the president has said is “as close a confidant as I’ve had,” initially invested several million dollars in Hollywood partnerships during the late 1970s and early 1980s. Mosbacher in 1978 cut his friends Bush and Baker in on one partnership, Hollywood L.P.G. No. 2. In 1985 Mosbacher bought 12.5 percent of Hollywood Holding, the umbrella corporation. Papers filed with the secretary of state in Texas indicate that Mosbacher acquired another 12.5 percent last year. As a major shareholder in Hollywood Holding, Mosbacher owns an interest in the entire Hollywood fleet of 220 barges. According to Coast Guard documents, those barges have polluted 117 times since 1985. As secretary of Commerce, Mosbacher oversees an agency whose mandate includes monitoring U.S. waters for pollution. Mosbacher declined to comment on the status of his holdings or potential conflict of interest.

■ While serving as vice president for eight years, Bush listed his only position held outside of government as a limited partner in the barge concern Hollywood L.P.G. No. 2, which he bought into for \$50,000 in 1978 (this is Bush’s sole Hollywood investment). Coast Guard records do not indicate that any of the four barges owned by Hollywood L.P.G. No. 2 polluted

Teresa Riordan is a freelance journalist. Research for this article was provided by Warren Cohen, Susan Freeman and Lolita Stricker. Research was partially funded by the Fund for Investigative Journalism.

QUANDARIES

George Bush appears to wear two hats comfortably, the cowboy hat of the Texas oil man and the woodsman's cap of the self-proclaimed "environmental president." Balancing the two roles is no easy feat, as became clear when Bush set out to forge a policy on offshore oil drilling.

On January 2 the prodigiously titled interagency Outer Continental Shelf Leasing and Development Task Force delivered a series of "options" to the president aimed at determining federal policy on the controversial issue. But two months later the president still hadn't made up his mind which offshore-drilling option to endorse.

Under President Ronald Reagan, the Interior Department sold 73 leases to the nine major oil companies in previously restricted federal waters, but lobbying by states and environmental organizations persuaded Congress to enact a one-year moratorium on virtually all offshore drilling. Renewed annually, it now extends to October 1, 1990.

Last year the state of Florida reinforced this moratorium by banning all drilling in the Keys. The oil lobby, led by Mobil and Unocal, appealed to the Commerce Department, headed by Texas oil man Robert Mosbacher, to preempt the ruling. Both companies do business with Hollywood tank barges. Mosbacher recused himself, assigning Deputy Secretary Thomas Murren to handle the appeal. But some observers think an eventual go-ahead is inevitable. One activist reports that Mobil and Unocal have been hiring personnel and subcontracting work in the Florida area as if certain the moratorium is about to end.

During his election campaign Bush supported the

from 1980 to 1989. On April 10, 1989, a little more than two weeks after the supertanker *Exxon Valdez* gushed oil onto hundreds of square miles of Alaska's Prince William Sound, Bush put his partnership interest into a qualified blind trust.

■ Jim Baker, who has been described as the most powerful unelected man in the nation, also invested \$50,000 in Hollywood L.P.G. No. 2 in 1978. Later, in 1979 and 1980, Baker invested at least \$125,000 more in 12 other Hollywood partnerships. More than half of the two dozen barges owned by those partnerships have polluted at least once since 1980, according to Coast Guard documents.

OLD BOYS IN TEXAS

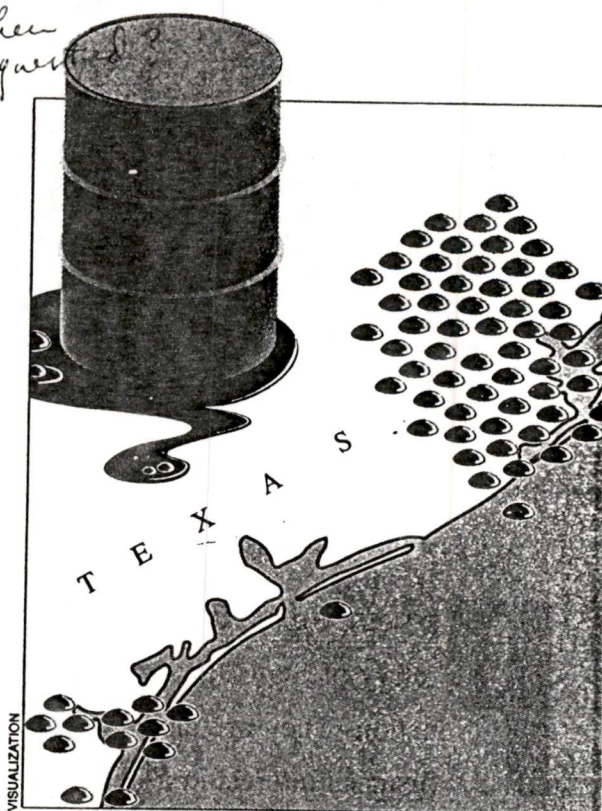
Bush, Mosbacher and Baker are three variations on a genteel theme. They have little in common with the glitzy Texan parvenus who got rich quick selling off mineral rights to their dusty acreage. Instead, Mosbacher and Bush lived privileged boyhoods and went to exclusive schools on the East Coast before moving to Texas to expand their fortunes by investing in the oil business. Princeton-educated Baker is from an old-line Houston family. His grandfather founded a bank that grew into Texas Commerce, and his father was instrumental in developing one of the region's largest law firms.

The financial wizard of the three has been Mosbacher, whose fortune has been estimated at more than \$200 million. As a fundraiser, Mosbacher first lent his financial acumen to Bush's political career in the 1960s during two unsuccessful Senate campaigns and a successful bid for a congressional seat. In 1980 Mosbacher's fundraising helped net about \$17 million for Bush's first presidential attempt. It was Mosbacher and Baker who helped convince Bush to withdraw from the 1980 race, thus putting their friend in line for the vice presidential nomination.

In his 1988 campaign, Bush gave Mosbacher the critical job of national finance director. Mosbacher did not disappoint: He deftly raised more than \$50 million for the primary and to help the general election effort, and ended up with the position of secretary of Commerce in the new Bush administration.

As the Hollywood partnerships suggest, Mosbacher has also used his financial know-how to enhance the personal finances of those close to him. So far Bush has reaped about \$130,000 from his original investment in the tank-barge partnership, and one of the managers of the partnership told *The Washington Post* that Bush will continue to receive about \$20,000 a year for the foreseeable future.

Bush's financial trust, excluding the partnership, is now valued at near \$1 million. But during the lean year of 1980 — when Bush was



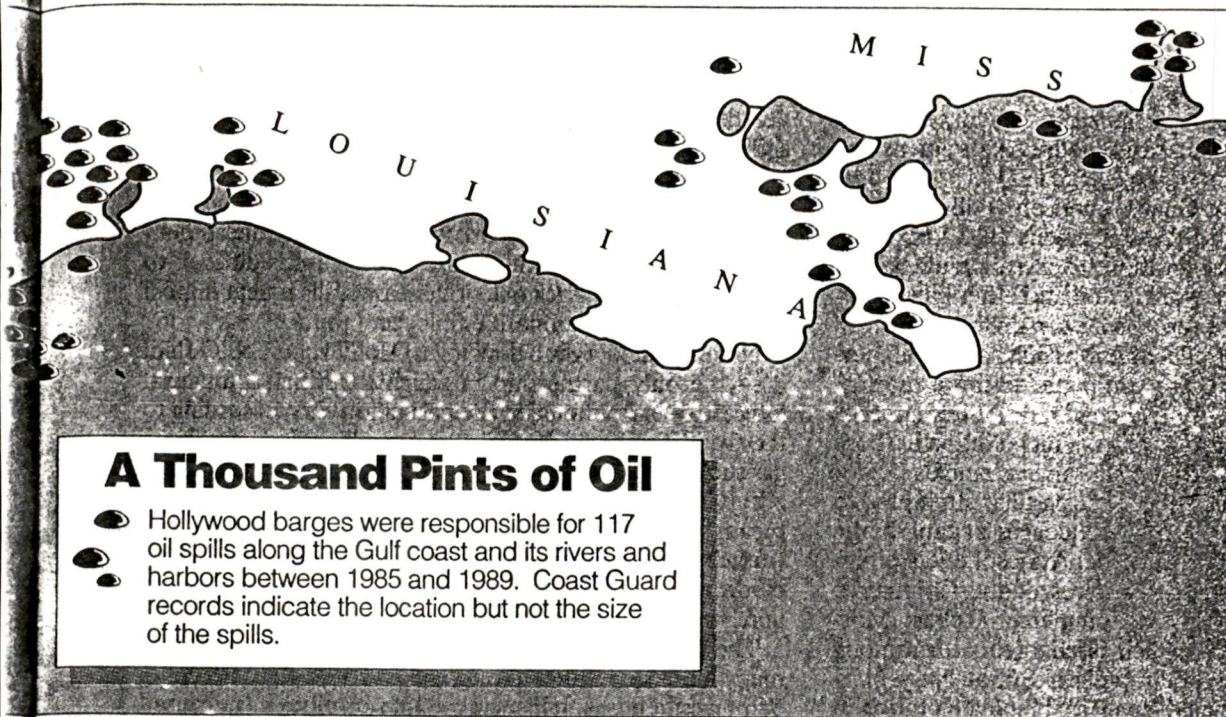
ultimately elected vice president — the Hollywood proceeds constituted about \$5,000 of his \$36,063 income. The barge business has turned out to be a "very, very good investment," Mosbacher told the *Post*. The L.P.G. No. 2 partnership was "not a big favor, but a favor," he said.

Because Baker's Hollywood partnerships were put in a qualified blind trust when he became Ronald Reagan's chief of staff in 1981, it is impossible to glean from financial disclosure reports the amount of profit they have earned. Bush put all of his assets, except for his Hollywood partnership and a real estate partnership (sold in 1985), into a qualified blind trust in 1981. But in April 1989, shortly after the *Exxon Valdez* accident, he transferred the partnership, too, and therefore, it will no longer appear on his financial disclosure statements. A Bush spokeswoman didn't explain the timing behind Bush's transfer of the partnership into the trust, saying only, now that Bush is president, "he wanted as much [of his investments] as possible to be in the blind trust."

When an office holder puts his assets into a qualified blind trust, he knows what his original investments are, and he is therefore obligated to recuse himself from decisions in which a conflict of interest would arise. If any of the office holder's original holdings are sold, he is notified and no longer has to recuse himself. He is not notified of acquisitions.

BARGING IN

Charles Berdon Lawrence, the president and majority stockholder of Hollywood Holding, was a social acquaintance of Robert Mosbacher during the mid-1970s. Lawrence had originally



A Thousand Pints of Oil

Hollywood barges were responsible for 117 oil spills along the Gulf coast and its rivers and harbors between 1985 and 1989. Coast Guard records indicate the location but not the size of the spills.

started a business in Hollywood, La. (hence the name), that involved inland drilling rigs. But in the late '70s and early '80s Hollywood began to move into tank barges. In this capital-intensive business, Lawrence raised money by creating limited partnerships, and he invited Mosbacher to invest in several.

Hollywood experienced a rapid growth spurt in 1985, when it acquired the aging fleet of the main Texas competition, Alamo Barge Lines, a subsidiary of Houston Natural Gas. Because the barge industry was at the bottom of a depression in 1985, Hollywood acquired the barges at a bargain rate.

To raise the cash to acquire Alamo, Lawrence sold some of his stock in Hollywood Holding and also issued new stock. At this time, Mosbacher bought 12.5 percent of Hollywood Holding. An equivalent amount of stock was purchased for about \$2 million by Equus Investments I, L.P., which specializes in leveraged buyouts and is technically a Delaware concern although it operates along with other Equus entities out of Houston. (Until last year, Mosbacher was a significant stockholder in Equus Capital Corp.; another Equus partnership, according to an annual report, owns 7.8 percent of Georgette Mosbacher's cosmetic company, La Prairie.)

By 1987 the tank-barge business was booming again. In February 1989 Equus Investments I doubled its 1985 investment by selling its 16,667 shares back to Hollywood Holding for more than \$4 million in cash, according to papers filed with the Securities and Exchange Commission. Shortly thereafter, according to Valerius, Mosbacher acquired new shares in

Hollywood Holding. Papers filed with the Texas secretary of state indicate that Mosbacher purchased 16,667 shares, bringing his ownership in the holding company up to 25 percent.

BARGES AND CRANES

Valerius describes a barge business as a "trucking company on the water." The barges, which are not self-propelled, have to be pushed or pulled by a tugboat, just as a trailer is pulled by a trucking rig.

Although tankers and tank barges are similar in function — they both transport petroleum products — there are significant differences between them.

Tankers, which hold millions of gallons of cargo as opposed to a tank barge's thousands, are self-propelled and transport crude oil on the open sea. By contrast, barges such as Hollywood's operate inland — in coastal waterways and rivers and harbors. The Hollywood barges typically transport petroleum products to and from storage and refining facilities. A Hollywood sales staff solicits oil and petrochemical companies to charter its vessels on a "fully found basis," meaning that Hollywood provides the towboat, the barges and the personnel.

Tankers like the *Exxon Valdez* or the *American Trader*, which was recently involved in a spill off the California coast, produce the most spectacular accidents and elicit public outrage. Yet, ironically, tank barges, which relentlessly pollute in small quantities, can cause more total pollution than tankers. Moreover, barges pollute inland, in bodies of water that are more fragile ecologically than the open sea. For ex-

popular moratorium and on entering office suspended further lease sales. But at a recent news conference he made clear his inclination as a former oil man to allow at least some drilling: "I have said that we're not going to have new drilling in highly sensitive places, but I'll be darned if I think we ought to shut down all offshore drilling everywhere."

Enter the interagency task force. When Bush set the group up last year to examine the economic and ecological implications of drilling, he said its recommendations would guide administration policy. While the task force was deliberating, its chairman, Interior Secretary Manuel Lujan, angered environmentalists by saying the administration should prepare for future lease sales. Though Lujan and Bush have asserted that offshore oil drilling can be done in an environmentally sound manner, since 1984 federal inspectors have cited offshore operations for more than 16,000 environmental and safety violations.

Offshore oil opponents seem to be gathering strength. Because of the political stakes involved, the White House asked the task force to avoid making recommendations and to submit the options instead, a Commerce Department source says. One reason is that a strong endorsement of drilling might endanger Republican gubernatorial chances in two key races — California and Florida.

In fact, with the important '90 election campaigns already under way, political sensitivities are such that the task force report has yet to be publicly released. And in early March an administration spokesman would only say the options are still "under review."

—Warren Cohen

ample, the Intracoastal Waterway near Corpus Christi, Texas, is home to the endangered whooping crane species. Three-thousand times a year, barges — some of them Hollywood barges — cut through the crane habitat. Environmentalists are worried that barge pollution threatens the crane population.

The most recent Coast Guard report on "Polluting Incidents in and around U.S. Waters" covers 1983 and 1984. According to that report, in those two years tank barges spilled 4,328,676 gallons' worth of oil and other hazardous substances; tankers were responsible for spilling 2,120,010 gallons. These numbers reflect known spills. About 55 percent of oil pollution in those two years — more than 23 million gallons — came from unidentified sources, according to the report. About 65 percent of oil pollution in those years occurred in ports, harbors and river channels.

One government agency that in the past has attempted to alert the public to ecological consequences of tank-barge pollution is the National Oceanic and Atmospheric Administration, which is under the auspices of the Commerce Department. As secretary of Commerce, Robert Mosbacher oversees NOAA, which is charged with, among other things, monitoring pollution in U.S. waterways.

Two weeks before Ronald Reagan's first inauguration in 1981, the secretary of Commerce under Jimmy Carter released the "Ninth Annual Report of the National Advisory Committee on Oceans and Atmosphere." The problems raised by the advisory committee's conclusions were ignored by the incoming administration, and seemed to have been overlooked by environmentalists as well. Among the report's findings:

- "Spills from inland barges account for an ever increasing percentage of the total volume of oil released in United States waters. Spillage from tank barges was responsible for more than 80 percent of total volume discharge in 1978 as compared to 30 percent in 1971 and 20 percent in 1972."

- "Due to the confined nature of inland spills in rivers and estuaries, there is a greater likelihood that oil will be stranded on banks and shores than that of an equal volume spilled at sea from ocean-going vessels. The primary dispersal mechanisms in rivers and estuaries, downstream flow and tidal flushing, contribute to the problem by spreading the oil over a larger area and increasing the opportunity for oil to strand in adjacent habitats."

- "The average per gallon cleanup cost of spills occurring in inland waterways is probably higher than for open-water marine spills."

This was the last serious report to be issued by the Committee on Oceans and Atmosphere. During the 1980s, NOAA — which oversaw the committee — suffered from cuts proposed by the Office of Management Budget (OMB) and from the replacement of scientists with political appointees, not only on the advisory committee but the agency itself, according to a career Commerce official who left the department two years ago. President Reagan even tried to appoint Anne Burford, who had been drummed out of the Environmental Protection Agency during the Superfund scandal in March 1983, to the committee. Soon after, Congress capitulated to OMB and cut funding for the committee altogether. "The reports coming out of there were so Reaganized that they were useless," one Senate Commerce Committee staffer explains.

SPILLBOUND

According to information acquired from the Coast Guard's Marine Pollution Retrieval System data base under the Freedom of Information Act, Hollywood barges spilled at least 200 times from 1980 to 1989. Personnel negligence contributed to 65 percent of those spills, records show. The computer printout provided to *Common Cause Magazine* by the Coast Guard does not quantify the amount spilled — information the Coast Guard says is difficult to locate. "Trying to track one of these oil spills is near impossible," says a Coast Guard employee.

None of the barges belonging to Hollywood L.P.G. No. 2 — the only partnership in which Bush has a financial interest — has polluted in the past nine years, according to the Coast Guard. "L.P.G." stands for liquefied petroleum gas such as butane and propylene, which must be transported under pressure in what is in effect a double hull. This means that in case of a collision or grounding two "skins" (rather than one) separate the cargo from the water. According to a Coast Guard official, L.P.G. barges have a much better pollution record than regular barges.

The rest of the Hollywood fleet is licensed to transport many kinds of petroleum cargo, from crude oil to benzene. Ruptures in hoses, hulls, cargo tanks or pipes have caused 35.5 percent of the Hollywood spills between 1980 and 1989. The ruptures were triggered mostly by collision, corrosion or both. The average age of a Hollywood barge is 16 years, according to Valerius, and barges acquired from Alamo are among the company's oldest. "Those [former Alamo] barges are in pretty bad shape," says a Coast Guard official in the Gulf Coast area. "They spill a lot because of corrosion."

Between 1980 and 1989, 40 percent of the spills from Hollywood barges were caused not by collisions or corrosion, but by tank overflows while cargo was being loaded. By law, a certified tankerman is required to be on board while cargo tanks are being emptied or filled. This is a safety and environmental precaution, in case the automatic shut-off valve doesn't work, "which many times it doesn't," says a Coast Guard official speaking on the condition of anonymity. The Coast Guard official says that frequently tank overflows cause only a small amount of pollution. "But if the tankerman's a long ways away, we could be talking about many, many gallons."

A spot check of inspection reports for Hollywood barges reveals that tankermen have often been away from their vessels during cargo transfers. For example, the Coast Guard issued a fine of \$2,000 because on August 5, 1986, "the tankerman did not remain at the site of the transfer," Hollywood Chem 104. This barge is owned by L.P.G. No. 2, in which Bush, Baker and Mosbacher are all partners. Although the maximum fine was \$5,000, the average Coast Guard fine for this violation is about \$400.

On another barge the Hollywood tankerman was found "lying down amidship during oil transfer operations." In a third case, "Coast Guard boarding officers observed the tankerman . . . to be on the attending tug fishing during a crude oil transfer."

The Coast Guard and the Justice Department are charged with fining and prosecuting polluters. But from all appearances neither agency vigorously pursued spillers during the 1980s.

THE MOSBACHER CONNECTION

On one hand, the Coast Guard's environmental cleanup budget was eviscerated by OMB during the Reagan years. According to law, the Coast Guard is supposed to step in and take over spill cleanup when the polluting party isn't doing an adequate job. However, the Coast Guard doesn't have many resources to do the cleanup itself. Its 311K Fund — which is supposed to pay for spills but be replenished when cleanup costs are recovered from polluting companies — has dwindled from \$33 million in the late '70s to \$5 million today. "Basically, if you spill you're in charge of your own cleanup," says Erik Olson of the National Wildlife Federation. "The Coast Guard can't make a credible threat that it will take charge."

On rare occasions the Coast Guard in the field takes over a spill and passes the violator on to Coast Guard lawyers, who ultimately pass the case on to the Justice Department. But "the wheels of Justice move so slowly that Coast Guard lawyers get frustrated trying to solve the spill through court action," Olson says. A Coast Guard employee says that it's widely known in the industry that Justice does not consider it cost-effective to recover cleanup costs of less than \$50,000.

In addition, the Coast Guard has been accused of becoming more of a lap dog than a watchdog. In January the Alaska state commission investigating the *Valdez* spill blamed the disaster partly on the Coast Guard's "unduly friendly relationship with industry." Because the Coast Guard commandant is selected by the president, the report said, he is likely to reflect the administration's perspective.

Under Reagan that perspective was one of industrial self-regulation. A fisherman testifying before the Alaska Commission complained that long before the *Valdez*, Coast Guard employees had demonstrated an unquestioning relationship with industry.

At least in the case of Hollywood, the Coast Guard and Justice appear to have been fairly aggressive in the 1970s. An example from the days before Hollywood L.P.G. No. 2 was formed: On August 5, 1976, two Hollywood barges left Exxon facilities in Baytown, Texas, and headed east on the Intracoastal Waterway. One of the barges became grounded, fracturing its shell plating. According to court documents, the tugboat mate saw oil spilling from holes in its port and starboard sides. Hollywood began clean-up operations but stopped after a few hours on the advice of its insurer. The Coast Guard was forced to hire an outside contractor to finish the job.

After much litigation and appeals, the U.S. District Court in Houston ruled in 1981 that Hollywood and its insurance agent pay nearly \$62,000 for the cleanup.

In a second mid-1970s spill, a Hollywood barge was being towed westbound in the Corpus Christi ship channel when it ran aground. The tug mate waited for high tide and then continued on his way as the barge bubbled heavy, dark oil out its starboard side, resulting in a three-mile-long slick along the south shoreline of the Corpus Christi channel's Spoil Island. Coast Guard eyewitnesses saw the barge leaking oil, according to court papers, and tests identified the oil as belonging to the barge. Still, Hollywood's lawyers contended that the oil could have come from anywhere. The Justice Department was ultimately triumphant in 1981, however, and collected \$16,477.42 plus 9 percent interest and a fine of \$2,500.

WHAT'S THE HURRY?

Proposals for an oil spill liability plan, which in short would increase industry liability and impose new safety measures, have languished in Congress for about 15 years. However, spurred by the *Valdez* accident, both the Senate and House last fall passed different versions of a new liability bill.

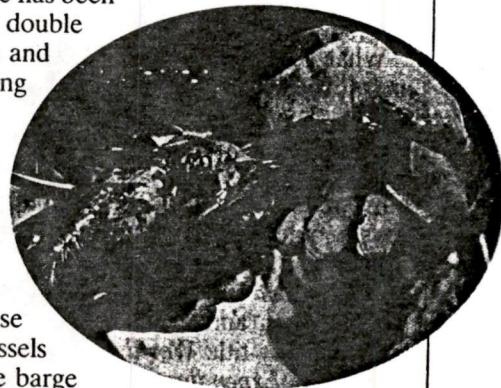
At press time Congress was pushing hard to send the bill to President Bush by the time of the anniversary of the *Valdez* spill. A major sticking point in the House-Senate conference committee has been whether to require double hulls in both tankers and tank barges. According to Capitol Hill staffers and environmentalists, lobbyists for tank-barge companies were aggressively lobbying against a provision that would phase out single-hull vessels within 15 years. "The barge industry has been all over the Hill for a month," says one environmental lobbyist.

Dena Wilson is a lobbyist with the American Waterways Operators, a trade association that represents Hollywood and other tank-barge companies. Wilson argues that the double-hull provision is economically infeasible and that it would result in only a modest reduction in pollution.

Contrary to arguments made by the tank-barge industry, an environmental impact statement issued more than 10 years ago by the Coast Guard concluded that an entirely double-hulled fleet would reduce total barge pollution by 80 percent. This statement — made in conjunction with a proposed regulation to phase out single-hulled vessels — said that although only 20 percent of tank-barge pollution incidents occurred during transport they accounted for almost 85 percent of the volume of oil discharged from tank barges.

According to a press spokesman for the Department of Transportation, the Bush administration is not in favor of phasing out single-hulled vessels but is in favor of further study. The double-hull provision was not expected to survive congressional negotiations.

During a recent interview Steve Valerius declined to say how much of Hollywood's fleet was double-hulled. However he did say he had just returned from a lobbying trip to Washington. With American Waterways Operators coordinating efforts, Valerius and "a variety of industry executives were there to talk to different congressmen, senators and the Coast Guard," he said. He said he did not talk to any of the three political heavyweights who have invested in Hollywood, remarking that the tank-barge issue was not enough of a national issue to warrant their attention. ♦



Barges pollute invisibly and relentlessly, damaging ecologically sensitive inland waters.

DRAFT

CHRONOLOGY

1978 -- GB (with JB) invests in Hollywood LPG No. 2, a limited partnership which owns four inland barges for the transport of liquified petroleum gas. The barges are double-hulled. [Common Cause Magazine] The managing partner of the partnership is Hollywood Marine, Inc. [check] It manages several other limited partnerships that lease inland barges for the transport of oil and oil products in Louisiana and Texas. [check]

1979-80 -- JB invests in 12 other Hollywood Marine limited partnerships. [Common Cause Magazine]

1980 -- GB is elected President. \$5000 of his approximately \$36,000 in 1980 income comes from Hollywood LPG No. 2. [Common Cause Magazine]

1980-81 -- GB establishes a qualified diversified blind trust. [check date] All assets placed in the trust are automatically "blinded," and GB receives no report on sales or purchases of assets in the trust. Hollywood LPG No. 2 is not placed in the trust because of the diversification requirement for this type of blind trust. [Common Cause Magazine, Terri Lacy]

1980-81 -- JB establishes a qualified blind trust. [Common Cause Magazine] Assets placed in the trust are not "blinded" until the trustee provides notification that the asset has been sold. (The trustee still has not sold some of the Hollywood Marine limited partnerships. [Ed Williamson])

March 1981 -- The Vice President's Task Force on Regulatory Reform announces that it will review, among other rules, a proposed Coast Guard regulation that would require all U.S. oil barges to be double hulled after a certain period of time. [WSJ] The proposed rule would have forced two of the barges owned by Hollywood LPG No. 2 out of commission by 1985. [WSJ/conflicts with Common Cause]

March 1982 -- The Coast Guard withdraws the proposed regulation. [WSJ] The withdrawal is based in part on a National Academy of Sciences study that the Task Force "required" the Coast Guard to commission. [WSJ] The NAS panel that produced the study included the president of Hollywood Marine. [WSJ]

August 1982 -- The Task Force cites withdrawal of the Coast Guard's double hull rule as one of its major accomplishments.

Late March 1989 -- The Exxon Valdez accident takes place in Prince William Sound, Alaska.

DRAFT

April 10, 1989 -- GB places Hollywood LPG No. 2 in his qualified blind trust. [Trust document] (Is this his qualified diversified blind trust?) From this date on, GB is "blinded" with respect to Hollywood LPG No. 2.

April 20, 1989 -- OGE approves this action. [OGE letter]

May 1989
1990 -- The Administration proposes ^{oil spill} legislation ~~that would require U.S. tankers and barges to be double hulled~~. A Senate substitute weakens the requirements that the Administration's proposed legislation would have placed on inland waterway vessels, like those owned by Hollywood LPG No. 2. [CF]

April 27, 1990 -- Secretary Skinner concurs in the recommendation of his staff and decides that the Administration will agree that inland barges do not have to be double-hulled until 2015. The staff recommendation cites the 50 year estimated life of inland barges as the basis for the decision. [Memo from Jeffrey Shane to SKS]

May 9, 1990 -- Secretary Skinner writes Walter Jones, Chairman of the Conference Committee on Oil Spill Legislation. Secretary Skinner indicates the Administration will support the looser restrictions proposed on the Hill for inland waterway vessels. He cites the longer lives of such vessels, in contrast to oceangoing vessels, as the reason for agreeing to the looser restrictions. [Letter to WBJ from SKS]

1990 -- The President signs the legislation. The legislation does not require inland waterway vessels to be double-hulled until 2015, but requires oceangoing vessels to be double hulled by the year 2000. [WSJ] This legislation affects two of the vessels owned by Hollywood LPG No. 2, which are single-hulled. [WSJ]

~~that would~~ that addressed ~~only~~ liability and compensation issues. The Administration bill did not address vessel construction standards for any type of vessel.

1990 -- ~~After~~ Congress produces ~~several versions~~ works on (over)

oil spill legislation. The House
~~passes~~ ^{passed} ~~proposes~~ a bill ~~requiring~~
double hulls for most ~~off~~
vessels but exempts inland
barges. The Senate



U.S. Department of
Transportation
Office of the Secretary
of Transportation

400 Seventh St., S.W.
Washington, D.C. 20590

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7/15/92

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Transportation

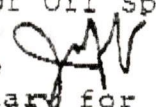
Office of the Secretary
of Transportation

Memorandum

Subject: **ACTION:** Departmental Position on Double
Hull Provision of Oil Spill Bill

Date:

APR 27 1990

From: Jeffrey N. Shane 
Assistant Secretary for Policy
and International Affairs

Reply to N. MacRae
ATTN: Ex69512

To: The Secretary
The Deputy Secretary

We have given our briefing on double hulls/double bottoms to both House and Senate staff, and we have achieved our objective of stimulating a reassessment of the Senate substitute proposal. The House is expected to offer its own substitute in the near future. We are now prepared to recommend a revised position for the conferees on double hulls. We request your guidance on that position and on whether or not to make that position public through a letter to the conference chairman.

Issues

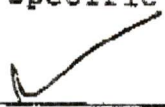
On April 18 the oil spill bill team (P, C, B, I, USCG, and MarAd) met to go over the outstanding issues. The issues discussed and the consensus of the attendees are outlined below.

Issue #1: Double Hull Requirements for New Vessels

The consensus was that we would give general support to double hulls for newly constructed vessels. The Senate substitute bill calls for double hulls on all vessels for which the keel was laid after passage of the Act; the House substitute requires double hulls on vessels for which a contract was signed after passage. We prefer the House language as more realistic, but may have an alternate approach to offer. It does not seem likely that we are going to be able to persuade the Congress to include independent regulatory authority for you to accept alternate technologies.

Recommendation: That the Department support a double hull requirement in some form for new vessels and work with the Congress on specific language.

Agree



Disagree

Issue #2: Retrofit of Existing Vessels

It was agreed that retrofit was not technically safe in most cases, and that vessel owners would not normally choose that option, but would instead reconstruct or replace a vessel. However, Coast Guard believes that decision would have to be made on a case-by-case basis. The Senate substitute contains a detailed compliance schedule based on age and size that is unacceptable, but does not specifically mandate retrofit. The House substitute, with a simpler compliance schedule, does not require retrofit, either.

Recommendation: That the Department remain silent on the issue, but if asked, that we oppose a retrofit requirement, citing safety concerns.

Agree _____

Disagree ✓ Issue #3: Phase-Out of Existing Single-Hull Self-Propelled Vessels

Since phase-out is the most likely option for vessel owners, it is important to establish criteria that will strike the right balance between risk reduction and economic impact. The group considered three elements: timeframe, tonnage coverage, and U.S. vs. foreign-flag applicability.

Recommendation: That vessels that are 25 years or older in 2000 be required to have double hulls, and that for each year thereafter vessels reaching that age fall under the requirement. The group agreed that 30 years would be considered the useful life of a vessel, and that it would be acceptable to err on the side of caution in recommending a slightly earlier replacement or reconstruction. As noted above, the Senate substitute contains an unacceptable schedule. The House substitute is the same as our recommendation except for the absence of a firm date (it is at this point blank).

Agree ✓

Disagree _____

Recommendation: That all tank vessels be covered and that no difference in the compliance schedule be established for larger and smaller vessels. The Senate substitute made this distinction, but the House substitute does not.

Agree ✓

Disagree _____

Recommendation: That no distinction be made between U.S.- and foreign-flag vessels. Neither substitute would do that.

Agree ☒Disagree ☐

Issue #4: Coverages for Barges

The group considered whether barges on the inland waterways and oceangoing barges should both be covered by this provision, and so in what way. The Senate substitute makes no distinction between the two, but establishes a timetable for vessels less than 10,000 dwt separate from the timetable for larger vessels. The House substitute bill covers oceangoing barges but exempts inland waterway barges.

Recommendation: That oceangoing barges fall under the same requirements and time schedule as tank vessels (as described in Issues #1, #2, and #3). Oceangoing barges are similar to tankers in their operations; furthermore, the average age of coastal barges is 19 years, and few have double hulls.

Agree ☒Disagree ☐

Recommendation: That inland barges be required to have double hulls by 2015, whatever their age. Most new tank barges are built with some sort of double skin. The group agreed on an economic life of 50 years for inland barges.

Agree ☒Disagree ☐

Issue #5: Exemption for LOOP

The issue is whether to carve out a special exemption from the double hull requirement for tank vessels calling at the Louisiana Offshore Oil Port (LOOP), in recognition of its offshore location. The Senate substitute provides an exemption until 2010; while the House substitute gives such an exemption until 2015.

Recommendation: That we register no objection to such an exemption to the extent that it is not inconsistent with international agreements. This position would preclude the possibility that, if IMO agreement is reached mandating double hulls, vessels that did not want to comply with that requirement would be attracted to LOOP. The group recommends that we support the date of 2015.

Agree ☒Disagree ☐

Issue #6: Lightering Operations

The group discussed whether we should support imposition of the double hull requirement on ships lightering (i.e., transferring oil from one ship to another) in the Exclusive Economic Zone (EEZ). Such operations take place regularly today. The Senate substitute imposes the requirement on vessels engaged in oil transshipping or lightering operations in the EEZ. The House substitute does not explicitly address this issue; however, the language can be interpreted as applying to such operations.

Recommendation: That we support such a provision.

Agree

Disagree

Letter to the Conferees

If you agree with the above positions, the next step is to decide whether or not to send a letter to the conferees and, if the answer is yes, when. If we decide not to but instead continue to work informally with the conferees through technical assistance, we have maximum flexibility and do not have to face any criticism from either environmental groups or industry. On the other hand, if we send a letter to the conferees, we will be establishing a benchmark that is reasonable and yet sensitive to environmental concerns. It would be a position consistent with our staff briefings and with the analysis we have done, so it could be defended with data. Thus, it might cut off support for more extreme proposals. In general, our position is similar to that which we expect the House conferees to offer to the Senate in the next few weeks. The Senate has already indicated that, on the basis of our briefing, it will reconsider its position, and it is waiting for the House offer. We believe that under these circumstances we will gain more than we lose by sending a letter to the conferees.

Recommendation: That you send a letter to the conferees establishing a new Administration position, while we at the same time continue consultations at the staff level. If you agree, we will send a letter within a week.

Agree

Disagree



U.S. Department of
Transportation

Office of the Secretary
of Transportation

Memorandum

Subject: Comparison of Barge Company Double Hull
Proposal with Departmental Proposal

Date: MAY 7 1992

From: Jeffrey N. Shane
Assistant Secretary for Policy
and International Affairs

Reply to
Attn of

To: The Secretary
The Deputy Secretary

We have received for review a double hull proposal that is being put forth by one U.S. company that primarily operates oceangoing tank barges. Per the Deputy Secretary's request, we have conducted an analysis of this proposal and compared it to the consensus proposal the Department developed for presentation to you in Jeff Shane's decision memo, which you now have. Below is summary of that comparison, section by section.

Issue #1: Double Hull Requirement for New Vessels

Department Consensus: That the Department support a double hull requirement in some form for new vessels and work with the Congress on specific language. In general, the House substitute, which requires double hulls for all vessels for which a contract was signed after passage of the bill, is acceptable.

Company Proposal: Similar to the House proposal, except that it would cover both newbuilding and major conversion. It also differentiates between a "tank vessel" and a vessel "for use as a tank vessel," evidently to cover some vessels that are not presently tank vessels. The proposal also offers a definition: the age of a tank vessel is determined from the date of initial delivery following construction or, in the case of a wrecked vessel, from the date of initial documentation pursuant to section 14 of title 46, United States Code.

Analysis: We consider the two proposals roughly comparable. We agree that a definition might be useful, but this definition is problematic because of its handling of wrecked vessels. We could accept a definition that would say "initial delivery following construction or reconstruction."

Recommendation: Continue to support a double hull requirement for new vessels.

Issue #2: Retrofit of Existing Vessels

That issue is not relevant to this analysis.

Issue #3: Phase-Out of Existing Single-Hull Self-Propelled Vessels

Department Consensus: That vessels that are 25 years or older in 2000 be required to have double hulls, and that for each year thereafter vessels reaching that age fall under the requirement.

Company Proposal: The proposal establishes a complicated schedule whose bottom line is that vessels can be 40 years old before they can no longer call at U.S. ports. The phase-out begins five years sooner than our position -- in 1995 -- for vessels 35 years old in 1990 and proceeds to 2000 for vessels 30 years old in 1990, with a flat cutoff for all vessels between 25 and 30 years old in 1990 when they reach 40. For vessels between 11 and 25 years old in 1990, they fall under the requirement in 2005 except for double-bottomed vessels, which may operate until they are 30 years old. Finally, vessels less than 11 years old in 1990 may operate until they are 25 unless they have double bottoms, in which case they may operate until they are 30.

Analysis: This provision is in one respect more stringent than the Department's proposal, but in most respects less stringent. It phases out very old vessels sooner, but in all other categories it is either the same or the schedule is stretched out by five years or more. There are problems with this approach: (1) it is extremely complicated, making enforcement difficult; (2) it allows older vessels to continue to operate for 40 years, when Coast Guard considers the useful life to be 25 years, and at the same time phases out newer vessels after 30 years, which makes no sense; and (3) it has no rationale. We believe it is simply tailored to the needs of this specific company. The drafting language is also sloppy from a technical standpoint: it imposes its requirements on vessels "operating" in waters of the United States, which could include vessels in innocent passage -- not our intention at all. The Department's proposal can be justified on the basis of ease of enforcement and the Coast Guard's estimate of useful, safe life (with the acceptance of some older vessels still operating for the next ten years for the sake of maintaining a supply while new vessels are built).

Recommendation: Continue to support Department's position -- double hulls at 25 years of age beginning in 2000. We do not recommend supporting any aspect of the company proposal.

Issue #4: Coverage for Barges

Department Consensus: That oceangoing tank barges fall under the same requirements and time schedule as tank vessels, and that

inland barges be required to have double hulls by 2015, whatever their age.

Company Proposal: This bill would require new oceangoing and inland barges to have double hulls. It is silent on oceangoing non-self-propelled vessels 25 years or older, which means they fall under the same requirements as self-propelled vessels -- that is, they can operate until they are 40 years old. Oceangoing barges 11-25 years old are phased out beginning in 2010, and barges 1-11 years old are phased out when they reach 30 years of age, except that if they are equipped with double bottom or sides they may operate until 35 years of age. Inland barges are exempted from any phaseout schedule.

Analysis: We see no reason for inland barges to be exempted totally from the phase-out, for the reasons stated in the decision memo. In particular, we note that their useful life can be as long as 50 years, and that they operate in environmentally sensitive areas. In terms of oceangoing barges, the industry proposal is less stringent than ours, and it has an inappreciable bias against newer vessels.

Recommendation: Continue to support the double hull requirement on inland barges by 2015.

Issue #5: Exemption for LOOP

Department Consensus: That we register no objection to an exemption for vessels calling at LOOP until 2015, unless an international convention on double hulls is developed before that date.

Company Proposal: It calls for an exemption for vessels calling at LOOP until 2015.

Analysis: Ours is the superior position because it provides for an IMO agreement.

Recommendation: Continue to support our consensus position.

Issue #6: Lightering in the Exclusive Economic Zone

Company Proposal: The bill contains a provision requiring ships



U.S. Department of
Transportation
Office of the Secretary
of Transportation

400 Seventh St., S.W.
Washington, D.C. 20590

U.S. DOT TELECOPIER COVER SHEET

7/15/92
DATE

TIME

NUMBER OF PAGES (INCLUDING THIS PAGE) _____

TO: CAM F.

FROM: WALLY B.

PHONE: 456-1121

PHONE: 366-9192

SUBJECT: _____

COMMENTS REQUESTED BY: _____

The number for this FAX machine is 366-6031. If you have any questions or problems, please call 366-9191.



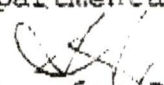
U.S. Department of
Transportation

Office of the Secretary
of Transportation

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Proposal with Departmental Proposal

Date MAY 7 1992

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Company Proposal: The proposal establishes a complicated schedule whose bottom line is that vessels can be 40 years old before they can no longer call at U.S. ports. The phase-out begins five years sooner than our position -- in 1995 -- for vessels 35 years old in 1990 and proceeds to 2000 for vessels 30 years old in 1990, with a flat cutoff for all vessels between 25 and 30 years old in 1990 when they reach 40. For vessels between 11 and 25 years old in 1990, they fall under the requirement in 2005 except for double-bottomed vessels, which may operate until they are 30 years old. Finally, vessels less than 11 years old in 1990 may operate until they are 25 unless they have double bottoms, in which case they may operate until they are 30.

Analysis: This provision is in one respect more stringent than the Department's proposal, but in most respects less stringent. It phases out very old vessels sooner, but in all other categories it is either the same or the schedule is stretched out by five years or more. There are problems with this approach: (1) it is extremely complicated, making enforcement difficult; (2) it allows older vessels to continue to operate for 40 years, when Coast Guard considers the useful life to be 25 years, and at the same time phases out newer vessels after 30 years, which makes no sense; and (3) it has no rationale. We believe it is simply tailored to the needs of this specific company. The drafting language is also sloppy from a technical standpoint: it imposes its requirements on vessels "operating" in waters of the United States, which could include vessels in innocent passage -- not our intention at all. The Department's proposal can be justified on the basis of ease of enforcement and the Coast Guard's estimate of useful, safe life (with the acceptance of some older vessels still operating for the next ten years for the sake of maintaining a supply while new vessels are built).

Recommendation: Continue to support Department's position -- double hulls at 25 years of age beginning in 2000. We do not recommend supporting any aspect of the company proposal.

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Department Consensus: That oceangoing tank barges fall under the same requirements and time schedule as tank vessels, and that

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Company Proposal: This bill would require new oceangoing and inland barges to have double hulls. It is silent on oceangoing non-self-propelled vessels 25 years or older, which means they fall under the same requirements as self-propelled vessels -- that is, they can operate until they are 40 years old. Oceangoing barges 11-25 years old are phased out beginning in 2010, and barges 1-11 years old are phased out when they reach 30 years of age, except that if they are equipped with double bottom or sides they may operate until 35 years of age. Inland barges are exempted from any phaseout schedule.

Analysis: We see no reason for inland barges to be exempted totally from the phase-out, for the reasons stated in the decision memo. In particular, we note that their useful life can be as long as 50 years, and that they operate in environmentally sensitive areas. In terms of oceangoing barges, the industry proposal is less stringent than ours, and it has an unsupportable bias against newer vessels.

Recommendation: Continue to support the double hull requirement on inland barges by 2015.

Issue #5: Exemption for LOOP

Department Consensus: That we register no objection to an exemption for vessels calling at LOOP until 2015, unless an international convention on double hulls is developed before that date.

Company Proposal: It calls for an exemption for vessels calling at LOOP until 2015.

Analysis: Ours is the superior position because it provides for an IMO agreement.

Recommendation: Continue to support our consensus position.

Issue #6: Lightering in the Exclusive Economic Zone

Department Consensus: That we support a provision requiring ships lightering in the EEZ to be covered by the double hull requirements.

Company Proposal: That vessels lightering or transshipping in the EEZ more than 60 miles from the territorial baseline (but only those not traveling between the lightering point and U.S. ports) be under the same exemption as LOOP.

Analysis: This proposal is not acceptable, because no comparison can be made between LOOP and lightering. Operations through LOOP are subject to Coast Guard regulation and monitoring, which is impossible for lightering. Support for this proposal would undercut our support for the LOOP exemption by encouraging lightering.

Recommendation: Continue to support inclusion of lightering in the double hull requirement.

DOUBLE HULL SIDE-BY-SIDE COMPARISON

ISSUE	HOUSE OFFER	MARITRAN OFFER	DOT
New Construction	All, after date of enactment	All, after date of enactment	All, after date of enactment, consistent with NAS showing safe and best protection.
Phase-Out		<u>Single skin</u>	
	2000 - Age 25	Age in 1990 Must be double-hulled by	All, 2000 - Age 25
		35+ 1995 (Age 40)	
		30-35 1999 (Age 39-44)	
		25-30 Reach Age 40	
		11-25 2005 (Age 26-40)	
		0-11 Age 25	
	Double bottom 2000- Age 30	Double bottom 2005 or Age 30	
Inland barges	Exempt - if operating within boundary line	Exempt - if operating within the boundary line	2015 - all must have double hull
Ocean-going barges	Same as Tankers 2000 - Age 25	<u>Single skin</u> New All, after date of enactment 1-11 Age 30 11-25 2010 25 + Same as Tankers (Age 40) Double bottom Age 35	Same as Tankers 2000 - Age 25

ISSUE	HOUSE OFFER	MARITRAN OFFER	DOT
Great Lakes Tankers	Same as Tankers 2000 - Age 25	Same as Tankers	2015 - all must have double hull
LOOP vessels	2015 - all must have double hull	2015 - all must have double hull	2015 - all must have double hull Sooner - IMO standard
Lightering vessels	Not mentioned	2015 - all must have double hull	Treat as Tankers 2000 - Age 25

MEMORANDUM
OF CALL

Previous editions usable

TO:

Cam

☒ YOU WERE CALLED BY- ☐ YOU WERE VISITED BY-

Wally

X 603 /

OF (Organization)

☒ PLEASE PHONE ☐ FTS ☐ AUTOVON

366 - 9192

☐ WILL CALL AGAIN ☐ IS WAITING TO SEE YOU.

☐ RETURNED YOUR CALL ☐ WISHES AN APPOINTMENT

MESSAGE

RE: He has good news
concerning the barges. Call
Wally or Jane DeCell
366 - 4687.

RECEIVED BY

GW

DATE

7/15

TIME

5:15

63-110 NSN 7540-00-634-4018

STANDARD FORM 63 (Rev. 8-81)
Prescribed by GSA
FPMR (41 CFR) 101-11.6

* U.S. GPO: 1990 - 262-080

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Following Page

MEMORANDUM
OF CALL

Previous editions usable

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Cam

☒ YOU WERE CALLED BY- ☐ YOU WERE VISITED BY-

Wally

OF (Organization)

☐ PLEASE PHONE ☐ FTS ☐ AUTOVON

☐ WILL CALL AGAIN ☐ IS WAITING TO SEE YOU

☐ RETURNED YOUR CALL ☐ WISHES AN APPOINTMENT

MESSAGE

RE: Letter on OPA exempts
barges until 2015. - The
Administration did not object
to this exemption.

RECEIVED BY

GW

DATE

7/15

TIME

3:00

63-110 NSN 7540-00-634-4018

STANDARD FORM 63 (Rev. 8-81)
Prescribed by GSA
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* U.S. GPO: 1990 - 262-080

U.S. Department of Transportation
General Counsel
400 Seventh St. S.W.
Washington, D.C. 20590

Fax: 456-1121

U.S. DOT TELECOPIER COVER SHEET

July 15, 1992
date

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Number of pages transmitted, including this page

3

To:

Cam Findlay
W.H.

(phone #) -

From:

Nally Burnett
DOT

SUBJECT:

Secretary's letter to Oil Spill
Conference on Double Halls
supporting barge exemption until
2015

COMMENTS ARE DUE IN THIS OFFICE BY: _____

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THE SECRETARY OF TRANSPORTATION

WASHINGTON, D.C. 20590

May 9, 1990

The Honorable Walter B. Jones
Chairman, Conference Committee on
Oil Spill Legislation
House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

The comprehensive oil pollution legislation passed by the House last November, H.R. 1465, mandated double hulls on all tank vessels built after passage of the act and on existing vessels within fifteen years. In the section-by-section analysis on the two oil spill bills, H.R. 1465 and S. 686, transmitted to Congress on February 27, 1990, the Administration stated its preference for the comparable Senate bill provision, which gave the Secretary some discretion for new construction and did not apply the requirement to existing vessels. Since then, we have had an opportunity to review the Senate's offer to the House on double hulls. It is the Senate offer that prompts this letter, which establishes a modified Administration position.

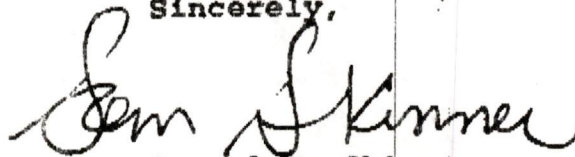
The Administration generally supports requiring double hulls on new construction of oceangoing tank vessels, if consistent with findings in the National Academy of Sciences report that double hulls are safe and afford a better protection to the environment than other design features. We believe that existing single-skin, oceangoing tank vessels should be phased out after they are twenty-five years old, including vessels lightering within the United States Exclusive Economic Zone, beginning in the year 2000. This will give both foreign and U.S. tank vessel owners approximately ten years to replace their older vessels with new, double-hulled tank vessels. On the basis of the Louisiana Offshore Oil Port's (LOOP) distance from land and excellent record, we do not object to an exemption for vessels servicing a deepwater port licensed under the Deepwater Port Act of 1974, until the year 2015, provided that such an exemption would end when and if before that date an international double hull standard is implemented.

*
[With regard to tank barges servicing the inland waterway system and tank vessels operating exclusively in the Great Lakes, we would support a double-hull requirement beginning in the year 2015. Since such freshwater vessels have generally longer lives than oceangoing vessels, this deadline is reasonable, yet would serve as a strong encouragement to owners to build only double-hulled inland barges and Great Lakes tank vessels.

We look forward to working with the conferees to achieve a consensus provision that will afford the greatest protection to the environment without disrupting oil supplies, sending American refining jobs offshore or imposing unjustified burdens on the American consumer.

The Office of Management and Budget has advised that, from the standpoint of the Administration's program, there is no objection to the submission of this letter for the consideration of the conferees.

Sincerely,

A handwritten signature in cursive script, appearing to read "Sam Skinner".

Samuel K. Skinner

No recall from since 16 Dec - no
- can't Double Hull problem

1. Mosbacher has never lobbied Skinner on double hull issues -
- either while Skinner was at DOT or since Skinner has been Chief of Staff. If the allegation is simply that Mosbacher violated his one-year cooling-off period by contacting Skinner after leaving the Cabinet -- (1) Skinner left DOT before Mosbacher left Commerce, and (2) there is no general prohibition against former Cabinet members contacting the White House Chief of Staff.

2. The allegation that Skinner "lobbied" Congress for a 15-year delay on double hulls for barges is not correct. DOT's position -- per Skinner following Exxon Valdez -- was that tankers and barges should be double-hulled uniformly and as soon as possible. The American Waterway Operators, the tug and barge trade association, successfully pushed for a 15-year delay for barges in Congress, arguing that barges have longer economic lives. In a letter to Committee Chairman Walter Jones, DOT agreed to Congress's 15-year delay.

Ignore de Cell

Can't recall a double hulls - didn't know he had interest in company

had it in role as Commerce Secy

THE WALL STREET JOURNAL.

DOW JONES & COMPANY, INC.

Publishers

1025 CONNECTICUT AVENUE N.W.

SUITE 800

WASHINGTON, D. C. 20036

Boyden Gray.

F A X

TO: MARLIN FITZWATERFROM: TOM PETZINGERNUMBER OF PAGES TO FOLLOW: 2If there is a problem with transmission, please call 202-862-92 31

Rob Swanson is here.

Thinks you need to

see this now —

TO: Marlin Fitzwater

FROM: Tom Petzinger and Ed Pound, The Wall Street Journal.

Dear Mr. Fitzwater:

The Wall Street Journal has been reviewing a series of actions taken by Mr. Bush as Vice President. Your response to a number of questions is urgently required.

By way of background, Mr. Bush, as chairman of the Presidential Task Force on Regulatory Relief, publicly announced in March 1981 that numerous federal regulations were being targeted for possible delay or withdrawal. These regulations included a pending Coast Guard rule that would have required all U.S. oil barges to have double hulls after a certain time period. (CGD 75-083a)

This regulation would have severely harmed Hollywood Marine Inc., the general partner in Hollywood LPG No. 2 Ltd., of which Mr. Bush, Secretary Baker and Secretary Mosbacher are limited partners. In addition, this regulation would have forced two barges owned by Hollywood LPG No. 2 Ltd. out of service by 1985, as these barges were not double-hull vessels within the meaning of the proposed Coast Guard regulation.

In March 1982, one year after Mr. Bush's commission publicly targeted the double-hull rule, the Coast Guard withdrew the regulation. The withdrawal was based in part on a study by the National Academy of Sciences that Mr. Bush's task force had required the Coast Guard to commission. The NAS panel included the president of Hollywood Marine.

In August 1982, the Presidential Task Force, still under the leadership of Mr. Bush, publicly cited the Coast Guard's withdrawal of the rule among its "achievements in regulatory reform." The two barges owned by President Bush, Secretary Baker and Secretary Mosbacher thus remained in service, continuing to produce generous financial returns.

The Wall Street Journal soon expects to publish an account of these facts, which give rise to the following questions:

1. Mr. Bush's leadership of a task force that scuttled a tank-barge regulation--at the very time that he held a significant financial investment in tank barges--would seem to represent a stark conflict of interest. What is the President's comment?

2. Has Mr. Bush discussed any aspect of barge regulation with any official or agent of Hollywood Marine in the time he has served as Vice President or President?

3. The President continues to draw a significant portion of his annual income from Hollywood LPG No. 2 Ltd. By our calculations, he has received income totaling \$211,500 from the partnership since investing \$50,000 in it in 1978. Does the President dispute these figures? Does this represent his single most profitable investment since 1978?

4. Why did Mr. Bush wait until the Exxon Valdez incident to place his Hollywood LPG investment in his blind trust?

5. On May 9, 1990, Transportation Secretary Skinner wrote to Rep. Walter Jones, who was chairing the conference on oil-spill legislation, requesting that tank barges be given until the year 2015 to comply with new double-hull rules, compared with the year 2000 for other vessels. This would enable two barges owned by the

President's partnership--the vessels known as Hollywood Chem 103 and 104--to remain in service much longer than the regulations otherwise would permit. What is the President's comment on this?

6. Has the President or anyone else connected with Hollywood Marine ever discussed this or any other aspect of double-hull legislation with Mr. Skinner or any official of the Transportation Department?

7. Hollywood LPG No. 2 Ltd. owns four barges, according to Coast Guard records. Why did you state in the White House briefing of April 12, 1989, that this partnership consisted of "just one" vessel? Further, why did you describe this barge as a "liquid petroleum gas tanker" when Mr. Mosbacher, in his financial disclosure reports, states that the partnership's vessels are engaged in "tank barge transportation of petroleum and petrochemical products?"

As always, we would be delighted to review this material and discuss your response in person. In any event, we will need your comments and clarifications by 10 a.m. Friday.

Please accept my sincere thanks in advance. My telephone number is 202-862-9231. My telecopier number is 202-862-9266.

Yours truly,



Thomas Petzinger Jr.
Staff Reporter

*** END OF DOCUMENT ***

July 14, 1992

Project on Government Procurement (PGP) is a group that has been investigating a matter for approximately 3 to 4 months. Their telephone number is (202) 466-5539. They are looking at a corporation called Hollywood Marine, which is believed to be located in Louisiana, that has tankers for transporting petrochemical products.

The initial issue they were looking into was that allegedly Bush, Baker and Moshbacher have had and some currently own part of this company. They allegedly got a "sweetheart deal" between Hollywood Marine and the petrochemical industry in Mexico. (This information was given to Jim Cicconi some months ago and he said he would look into it.)

Subsequently two other issues have been investigated by PGP. First, allegedly while Moshbacher was in federal government he got an interest free loan from Hollywood Marine. Second, after Moshbacher left government he lobbied through Sam Skinner for the benefit of Hollywood Marine regarding double hulled tankers.

PGP has contacted Hollywood Marine and gotten responses on these matters. However, PGP does not think they are truthful and believes it has additional evidence that can refute Hollywood Marine's responses.

Allegedly PGP has contacted the Wall St. Journal and two reporters are working on the story.

NOT FOR DISTRIBUTION - BACKGROUND

The Wall St. Journal has been embargoed from contacting the White House on this story until Wednesday, July 15, 1992. The story is tentatively to run next Monday, July 20, 1992, on the front page.

PROJECT ON GOVERNMENT PROCUREMENT

To Bayda Gray
Adise?

July 2, 1992

Marlin Fitzwater
Press Secretary
The White House
Washington, DC

Dear Mr. Fitzwater,

The Project on Government Procurement (soon to be renamed The Project on Government Oversight) is a non-profit non-partisan research organization devoted to fostering accountability in all aspects of the government's practices. Along these lines, The Project has investigated issues involving Hollywood Marine, a Houston-based barge company in which President George Bush, Secretary of State James Baker and former Commerce Secretary Robert Mosbacher are investors.

The Project's investigation into Hollywood Marine has raised several questions about the company's relationship with President Bush as well as former Commerce Secretary Mosbacher. I would appreciate a response to the following questions no later than Wednesday, July 8. The Project is preparing a report on this issue, and we must have a response within this time period if it is to be incorporated in our publication.

The following is our list of questions concerning Hollywood Marine:

- 1) In 1982, then-Vice President Bush's Task Force on Regulatory Relief killed a Coast Guard proposal to put double hulls on barges, records show. At that time, Hollywood Marine was leading the industry's charge against the proposal, arguing that double hulls are too expensive. Please comment on the President's conflict of interest since he had been a Hollywood investor since 1978. Also, please comment on the fact that the President may have helped not only his own investment --- but James Baker and Robert Mosbacher's larger interests in Hollywood Marine --- by killing the double hull proposal.
- 2) Please comment on the following: Because Bush killed the double hull proposal in 1982, Hollywood's single-hulled barges continue to pollute the nation's waterways. Most recently on Memorial Day, a single-hulled Hollywood barge spilled nearly 8,000 gallons of oil -- endangering the drinking water supply of the New Orleans area.
- 3) Shortly after the Exxon Valdez disaster, President Bush placed his Hollywood investment in blind trust. However, under Office of Government Ethics guidelines, that portion of the President's trust is not blind since Bush did not liquidate the investment. Please comment on the President's conflict of interest during the debate over oil spill legislation in 1989-90. At that time former Transportation Secretary Skinner lobbied for special treatment of barges on the double hull mandate. Skinner argued that barges should receive an additional 15 years to construct double hulls on their vessels.

4) Please comment on the fact that Hollywood Marine has acquired contracts with the Mexican government to transport oil products. While Bush, Baker and Mosbacher have been negotiating with top Mexican officials for a trade agreement with expanded energy provisions, Hollywood began chartering tankers to trade with Mexico last February.

5) Please comment on the fact that Robert Mosbacher received approximately \$250,000 in interest-free loans from Hollywood Marine President C. Berdon Lawrence while he was Commerce Secretary.

If you have any questions or need to contact me for any reason, please feel free to call me. I look forward to your response in this matter.

Sincerely,

Liz Galtney
Project Director

07/20/92 20:12

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+++ WHITE HOUSE

003/004

This proposal is designed to deal with the real problem associated with cases like Presley, without having to put every change in the way state and local governments do business through the Voting Rights Act preclearance process. What we want to prevent is racially motivated manipulation of the powers of government officers that is designed to disenfranchise the voters who elect those officers -- to make those voters' choices ineffective, or less effective than other voters' choices, because of the voters' race.

For example, suppose a particular water district with an equal vote on a water works board is heavily populated by members of a racial minority and that the state legislature eliminates all the powers of the member elected from that district and reduces him to a purely ceremonial role on the ground that it would be preferable to spend the city's money on the needs of the racial majority. Such a decision would violate this provision.

Similarly, this amendment would deal with the case where authority is transferred from an official elected by a district to an official elected at-large because the first official comes from a district that consists largely of members of a racial minority, where the transfer was done in order that the votes of the minority-group members would be less effective than those of the majority-group members who can control the election of the official elected at-large. When motivated by the purpose of racial disenfranchisement, such a transfer of authority would violate this provision.

New file:
Voting
Rts
Act

7/23/92

Please file for

Cam Findlay -

Voting Rights Act

07/20/92 20:13

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TALKING POINTS: AMENDMENT TO H.R. 5236

- o The amendment would delete H.R. 5236's requirement that political jurisdictions now covered under section 5 of the Voting Rights Act submit for pre-clearance (i.e., advance approval by the Civil Rights Division of the Justice Department or the federal district court in Washington, D.C.) all "changes of procedural rules, voting practices, or transfers of decision making authority that affect the powers of an elected official or position."
- o The amendment to section 5 contained in H.R. 5236 would impose a new set of federal controls on a large percentage of the routine decisions of state and local governments in covered jurisdictions. It would subject the vast range of perfectly innocent governmental policy choices to veto from Washington.
- o As it now stands, section 5 of the Voting Rights Act applies only to a limited number of jurisdictions, chosen on the basis of their history with respect to voting and voting practices. It is arbitrary to apply the new rule of H.R. 5236 only to covered jurisdictions, because that rule has no connection to the history that underlies section 5.
- o By deleting the section 5 provision of the bill, this amendment would eliminate the large amount of needless work that local governments in covered jurisdictions and the Department of Justice would have to do to pre-clear even minor changes in decision making authority. H.R. 5236's pre-clearance requirement would greatly burden the affected governmental entities without contributing commensurately to the protection of individuals' rights.
- o The amendment would preserve H.R. 5236's establishment of a right for an individual to sue when his right to vote has been denied or abridged on the basis of race or color because of a government entity's transfer of decision making authority. This right would apply to any person in any State or local political subdivision in the United States.
- o However, the amendment would ensure that excessive litigation does not occur by requiring that any individual who brings suit show that the change in decision making authority was done with the intent and with the effect of denying or abridging a U.S. citizen's right to vote on the basis of race or color. This requirement would ensure that serious cases of disenfranchisement based on race or color have a remedy, while discouraging frivolous or unjustified litigation.

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Please file for
Cam Findlay :
Torch Lake NPL Site

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June 29, 1992

*NOT ADMITTED TO NEW YORK BAR.
**CONSEIL JURIDIQUE IN FRANCE ONLY.

F. Henry Habicht, II, Esq.
Deputy Administrator (A-101)
U.S. Environmental Protection Agency
401 M Street, S.W.
Washington, DC 20460

Re: Torch Lake NPL Site

Dear Mr. Habicht:

We are attorneys appearing on behalf of Universal Oil Products, Inc. with respect to Operable Unit I of the Torch Lake National Priorities List Site. We write to bring to your attention certain serious violations (both substantive and procedural) of the Comprehensive Environmental Response Compensation and Liability Act, 42 U.S.C. § 9601 et seq. ("CERCLA") by EPA Region 5 in issuing a proposed remedial plan for the Torch Lake site.

The Torch Lake site is located in Michigan's Upper Peninsula in an area that was once the most productive copper producing region in the United States. Mining and smelting operations were commenced in this region before the

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U.S. Environmental Protection Agency

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American Civil War, grew dramatically until the 1930s, and diminished thereafter to a point of cessation in the 1960s.

Operable Units I and III of the Torch Lake site are respectively the western shore of Torch Lake itself and twelve distant locations in the Upper Peninsula. The material of concern at these locations is predominantly stamp sands generated during the mining process, although there are a few locations where slag from smelting operations is located as well.

After four years of investigation, in May 1992, EPA issued a remedial investigation/feasibility study and Administrative Record for Operable Units I and III which demonstrated the following:

- ° *Even using the very conservative method of assessing cancer risks that EPA employs, there is no meaningful cancer risk arising from conditions at the Torch Lake site. EPA acknowledges that these risks are not sufficient to justify any action.*
- ° *Residents in the Torch Lake area do not display any adverse health effects related to the area's environment.*
- ° *Torch Lake is a healthy and productive fishery and is safe in terms of water quality for all recreational uses. MDNR studies of the Lake's fish population show it to be among the cleanest of all inland lakes evaluated in Michigan. A study of 455 fish in 1988 showed no abnormalities at all.*
- ° *Stamp sands do not have any significant potential for leaching copper and other metals to groundwater. Slag is immobile and stable. Neither*

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material is adversely affecting water quality in the Lake.

- ° *Studies of eagles and gulls in the area show that the birds have suffered no adverse impact on wildlife.*
- ° *There is no significant transportation by either rain or wind of materials either from the stamp-sands areas or the slag areas into the Lake.*

See Exhibits 2 and 3 attached hereto.

On May 1, 1992 EPA issued its Proposed Plan for Torch Lake. One reads in vain in the Plan for any reference into the encouraging and undisputed findings listed above. Instead, EPA has ignored most of the data and mischaracterized the rest in a transparent attempt to justify a proposed remedy that requires 1000 acres of stampsands and slag to be covered with topsoil and plant life at an estimated cost of \$7.2 million.

Region 5's principal rationale for the Plan is that certain bottom dwelling organisms do not thrive in the sandy bottom areas of Torch Lake and that this constitutes and environmental loss. The upper food chain -- fish, birds and other wildlife -- do not show any harm from this alleged condition. The same argument could be made with respect to every manifestation of man's presence on earth. Civilization has altered our environment in numerous ways; every change cannot possibly justify corrective action under

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CERCLA. Moreover, the remedy -- control of wind blown sands -- is demonstrated by studies in the record to be unnecessary and of no possible beneficial impact.

Almost no one in the Torch Lake area supports EPA's Proposed Plan for the simple reason that it is unnecessary and wasteful. Moreover, as the public has repeatedly stated, by insisting upon a remedy when no action is warranted, EPA has unnecessarily stigmatized the entire area as a toxic waste site, thereby injuring it in both economic and recreational terms. These views have been made known to EPA repeatedly during the comment period, as is demonstrated by the material attached as Exhibit 4.

In a transparent attempt to deflect this opposition, in the midst of the public comment period an EPA official appeared on a radio talk show and informed members of the public, including municipal and landowner PRPs, that they should not oppose the Proposed Plan because EPA would only make large corporate PRPs pay for it. The official stated that EPA was prepared to issue covenants not to sue to all municipal PRPs and landowner PRPS, and presumably give them contribution protection as well, in exchange for only access to the sites in question. The EPA official said:

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[I]n the ideal case, municipalities can give us that access to us and get the covenant not to be sued and then we just deal with the major three companies, basically, and then negotiate. But if they [the municipalities and landowners] have a covenant not to be sued, these three major PRPs have no choice to negotiate with us whatever terms we have.

(Exhibit 1 at 5-6). No monetary settlements, de minimis or otherwise, would be required from this favored group. A copy of the transcript of the May 24, 1992 radio broadcast is enclosed as Exhibit 1. EPA representatives have repeated these representations on a number of occasions since the initial radio broadcast.

These actions by Region 5 are violative of both the plain language and spirit of CERCLA. First, a message has been clearly delivered to certain PRPs, including local governments and current landowners that, if they cooperate, no cost recovery will be required of them. This message was intended to, and will, stifle free expression in the form of comments on the merits of the Proposed Plan.

This conduct has seriously undermined the public comment provisions of CERCLA's remedy selection procedures. The National Contingency Plan ("NCP") states, as part of its mandated evaluation of alternatives, that EPA consider the following:

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(I) **Community acceptance.** This assessment includes determining which components of the alternatives interested persons in the community support, have reservations about, or oppose. This assessment may not be completed until comments on the proposed plan are received.

* * *

4. *Final remedy selection.* (i) In the second and final step in the remedy selection process, the lead agency shall reassess its initial determination that the preferred alternative proves the best balance of trade-offs, now factoring in any new information or points of view expressed by the state (or support agency) and community during the public comment period. The lead agency shall consider state (or support agency) and community comments regarding the lead agency's evaluation of alternatives with respect to the other criteria. These comments may prompt the lead agency to modify aspects of the preferred alternative or decide that another alternative provides a more appropriate balance.

40 C.F.R. § 300.430(e)(9)(iii)(I); 300.430 (1991).

By unlawfully attempting to remove opposition to its Plan through threats and inducements, Region 5 has demonstrated it regards opposition as not something to be evaluated, as required by CERCLA, but to be suppressed. The National Contingency Plan requires that the views of the local community be considered in a remedy selection. Rather than observe this requirement, Region 5 has attempted to manipulate the process to suppress all opposition.

In addition, Region 5 apparently does not even deem worthy of consideration the issue of whether it is fair

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and equitable to unilaterally assign all PRP liability to three corporations. Compare 42. U.S.C. § 9613(f).

Region 5's message here is equally clear: Corporate PRPs are deep pockets to be exploited, irrespective of CERCLA requirement that the costs of remedial action be equitably shared among PRPs and that allocation issues be addressed after remedy selection. This is bias, plain and simple.

This country faces very real environmental problems, but Torch Lake is not one of them. In an era of limited financial resources, it should be inconceivable that a federal agency would allocate vast sums to an unnecessary action such as Region 5's Proposed Plan on the basis of the Administrative Record assembled here. The scientific data show that Torch Lake is a safe, healthy, productive resource. The data shows that there is no meaningful risk to people or the environment from conditions there. None of the justifications for a Superfund remedy is present at Torch Lake.

For reasons we believe can only be an institutional bias against "no action" remedies, Region 5 is insisting upon a capping and vegetation remedy that will cost many millions of dollars. When challenged by the public as to the need for the remedy, EPA's response has

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U.S. Environmental Protection Agency

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been "Don't worry. We will only make businesses pay for it."

We urge you to review in detail the Administrative Record for Torch Lake. We further urge you to inform Region 5 of your view of the substance of its Proposed Plan and of its misguided efforts to curry political support for it. If a fair consideration of the record here is performed, EPA will select a no action remedy for Torch Lake and allow the area's residents to get on with their lives. Since the comment period expires on July 13, 1992, we request that you to perform this evaluation as soon as possible.

Very truly yours,


Gaines Gwathmey, III

mb
enclosures

cc: Samuel K. Skinner
Clayton Yeutter
C. Boyden Grey, Esq.
Richard D. Darman
David McIntosh
Valdas V. Adamkus
Peter Felitti

May 24, 1992
Radio Interview

[Note: ellipsis ... indicate an unclear understanding of what actually was being said.]

Dick Storm (interviewer)
Jae Lee, Remedial Project Manager, Remedial and Enforcement
Branch for the U.S. Environmental Protection Agency

Re: Torch Lake Superfund Site

STORM: Thanks for consenting to do our interview today.
It's kind of nice seeing you again after several
months or last week, Jae.

LEE: Hi. It's nice to see you again.

STORM: Of course, you were here and had a packed house in
Hancock -- what was your reaction to the comments
that you heard here, what was going through your
mind as you left that meeting room?

LEE: Well, the comments from people is some ... than what
I expected, when I prepared this meeting, is
basically about the liability issue, is basically
who is going to pay this expected \$7.2 million.
This is somewhat different issue than whether the
proposal we made, the remedial action we proposed --
whether the ... of this proposal is ..., a totally
different issue than the liability issue. So I'm
not really surprised by the reaction from the
people.

STORM: Okay. Let's talk about both of those issues. Now,
they call this a Superfund Site. A Superfund, I
gather is federal money that was supposed to be
spent on cleaning up hazardous waste sites. So, if
this is Superfund Site, how come they're talking, I

mean, doesn't the federal government pay for this, or how does this work?

LEE: Well, it's a Superfund Site, doesn't necessarily mean that the federal government uses superfund money to clean up the site. If there is no liable PRPs (potentially responsible parties), we call it an "Open Site." There is no PRPs, then the EPA will spend superfund money for the Site. But, if there are viable PRPs, then, basically, we enforce the law to ask the PRPs to implement the proposed remedy. And basically ask them to spend their money to clean up the site.

STORM: How do you determine who is a potentially responsible party?

LEE: By the law, the responsible party, the defined original generators -- in this case the one who disposed the mine tailings in the Lake, and those who operated it at the time of disposal, and those who transported this material to this area. And also, we define the current property owners also as potentially liable for the site. There is in when we implemented this law, there is also strict difference between the original generators versus current property owners. And, somehow, in this case, we have basically three issues. The first issue is the local townships or city municipalities, they are the current property owners. That's the first issue. And, second issue is the individual property owners, basically, the individual person who owned the property. And, third issue is the people who currently operate the business, such as

... company, ... tailings, and ... Houghton County is using some of these materials to make the ice damage process in the wintertime. There are three basic different issues, and EPA is aware of these issues. And we somehow resolve this issue as peacefully and also efficient as possible.

STORM: So, you have not determined who the PRPs are for this area yet.

LEE: Basically, those who generate original tailings. At the beginning of this investigation, we defined the three PRPs, Universal Oil Products, whose inheritor was the Calumet & Hecla Mining Company, second is the Quincy Mining Company and third one is Quincy Development Corporation. The three PRPs named here and it is possible we name more PRPs based on the property owner issues. Those who currently own some of this property will be also named as a PRP and we will send notice later, in the future, not necessarily to get the same liability issue. Its more we would like to send the notice to the current property owners, such as municipalities and individual owners to get the site access. So, for example, if some county such as Houghton County or a city like Hancock, they own some of the tailing piles, they will get the notice letter from EPA, and they come to the negotiation table and they only have to give us that access. Basically, they say 'okay we will give you access' that EPA will do some work for our tailing pile, and they can have covenants not to be sued and that's what the basic approach will be. *And that means that any individual property owners or municipalities*

currently the owner of these tailing piles can give the site access and get the covenants not to be sued. [Emphasis added.] And then most of the PRP who have to pay the cost will be mostly those companies who originally generated this materials. Or the company who bought or purchased or inherited this original mining company will be the one who mostly has to pay for the cost.

STORM: Are you saying that you're willing to tell a person or anyone who owns a piece of property that you'd be willing to agree not to have them sue, that they'll give you access to it -- is that what you said?

LEE: Yes. I don't think the government will go after individual property owners or municipalities to get the money. It's basically purpose of what the issue in ... to them is to get the site access. We need access to get the property to work something on it. So, they come to the negotiating table, and then they can sign the site access agreement, and they'll get the covenant not to be sued. And that will be the flexibility of the negotiation. The impression I got from this meeting that people somehow misunderstand that somehow that they are the PRPs or responsible parties or make that they pay the \$7.2 million, not necessarily.

STORM: Well, then the only ones that would be probably liable are the three you mentioned earlier: UOP, Quincy and Quincy Development.

LEE: Yes.

STORM: Those are the main ones?

LEE: Yes. The most they pay if it is that the viable PRPs, those who are the original generators, usually EPA probably deal with them mostly for the monumetary issues. And if these PRPs, three companies, come to us and saying that if they don't have enough money to pay for it, there's always a way that we can share this burden together with EPA and these PRPs.

STORM: Okay. So if a company, what happens for instance if you say UOP or Quincy, Quincy Development Company, you're liable, and they "well I am, I'm not going to pay it"?

LEE: If they say they're not going to pay for it, then there is a possibility the EPA, as you said earlier, ends up paying most of the money. And then we will decide whether we go after these three PRPs or not. That's what we decide internally. *So, the reasons why the municipalities or property owners is important to come to the negotiation table and give us that access and they should have covenants not to be sued. So, in case, whether we go after these PRPs and to get all the money back that we spent from superfund money, then they will turn around and then sue this municipality to get their money back. So that's what's important for municipalities to get the covenant not to be sued from the EPA. And then give us that access. So, in the ideal case, municipalities can give us that access to us and get the covenant not to be sued and then we just deal with the major three companies, basically, and then*

negotiate. But if they have a covenant not to be sued then these three major PRPs have no choice but to negotiate with us with whatever terms we have. [Emphasis added.] Then, if EPA is willing to share some money with the state, maybe you have a state and EPA and also these three PRPs, we can share the cost of burden. Or, if some other negotiation, some other techniques or what assessment can be made can be made very easily. And there is no reason for municipalities to assume that they have to pay all this and should back away from this and completely object this remedial options purportedly made. And that somehow is a misunderstanding I think that most of the municipalities have. And this is not an unusual issue. I mean, this is very common throughout the whole open site. But there are so many other open sites. In other cases like the municipal landfill, there is a lot of landfill and they ... the bank of the local county or local city and then we deal with the local county or city because we have to get access and then we define who generated this toxic material. There's a lot of company who generated who send them to the municipal landfill and then we usually go after these company who generated the material and then basically have the site access from the municipalities and they will get the covenant not to be sued. And they won't be sued very carefully in most case. But that kind of pattern, that kind of assessment can easily be made here. But if the municipality doesn't cooperate with EPA, doesn't come to the negotiation table, then more legal problems occur later.

STORM: As you said, Jae, the other issue was the fine itself, and we're going to talk about that in just a moment, etc.

My guest on this section of our Copper Country Today program is Jae Lee, who is the remedial project manager for the Torch Lake Superfund Site, U.S. Environmental Protection Agency. We'll return with more on our Copper Country Today, after this.

[break]

STORM: Brief re-introduction. First, we just talked to Jae about the major issue of concern, I guess, at least at the end of that meeting was who pays, but the other thing is the plan itself.

LEE: Let me add one more thing.

STORM: Yeah.

LEE: The issue about the current operating business -- in the meeting there was a concern about the ... company, the ... corporation, located in the ... tailing and also there was the Houghton County who currently the use of this tailings cause a point to spread it above ice, ice damage assessment -- the concern is that somehow this remedial action will somehow stop the operation giving more cost of burden on it. Let me suggest this that EPA has no concern or has no reason to, as this point, to bankrupt or stop any kind of operation, basically business. And at the negotiation table there is a lot of flexibility can be built out. We can allow, in this case, the local companies or any of the businesses can still, they can operate. And also some

of these Houghton County's the use of this material, the ice damage, they can still also operate under whatever terms we can have. We know that there is certain economy problems that your county has, your local community has. We have no desire to put anybody in backward in that sense. So, we can build a good negotiation teams in the table, and we can make everybody happy, because everybody who are living around the tailing pile, they can be happy because it's all covered, and they don't have to be harassed by this air pollution or dust problem. Hopefully, we will eliminate all the environmental problems you have and also, we like to make happy all these current operating businesses, including this Houghton County. We can have some negotiation technique developed that they can continue to operate their business, and hopefully the EPA will be happy and all the PRPs will be happy. It basically depends on how we develop the negotiations, and the flexibility is always there and there is a lot of rooms available. Everybody wins in this situation, and that's something that I'd like to strongly emphasize on this case and that there is room, yes, at the negotiation for everybody who participates in the negotiation will be happy.

STORM: Well, some people said as they walked out of the meeting that "it doesn't matter what we say the EPA has already made up its mind." What you're saying is that's not true.

LEE: Oh, that's not true. At this point we have, I think, a lot of negative comments about this proposal action, but mostly the negative comments is

because of the liability issue, not necessarily the remedial action itself. So, we have not determined yet at this point our, internally at EPA, I have to go to upper management to our briefing process, and I will forward all these concerns and comments I receive from the people and probably some time next month, sometime middle July or at the end of July, my upper management will make a final determination. At this point, I don't know what will be at that point. But, even if we make a decision that we want to do something about the site, the flexibility about that the small details about whether we will shut down the local businessmen or we want to let them keep operating their current businesses as it is, cause there are more jobs and all this. And, yes, there is certainly flexibility, and EPA has *no interest* to shut down anybody's business, and anybody's currently operating good business, and so, yes, there is a lot of flexibility in the negotiation, and we can have a win-and-win situation in this case without any problems.

STORM: Okay, the comment period is open until July 1, you said then what. Sometime in July, you're going to decide whether you're actually, whether this is the plan that's going to be adopted?

LEE: Yes. After we receive all the comments from people until July 1, so sometime middle July we will make a final determination whether we want to change our proposal plan into the no action or something else, or we just we proposed at the last ... meeting, and just have a final decision. At this point we have

not decided. We have to wait until the final public comment period.

STORM: Now, we have been talking about what you have designated as Operable Units 1 and 3. What about Operable Unit 2?

LEE: Well Operable Unit 2 is a little bit different issue. Operable Unit 2 is involving the groundwater is more like 14 miles the shoreline of groundwater given only in the Torch Lake case. And also we have a surface water and almost 2,500 acres of the Torch Lake sediment. We talk, we dealing with this huge area, and at this point we have not decided what is the problem. The only thing we know is that the sediment in the Torch Lake is a little bit contaminated. It's about at what we call the protection level that the EPA considers. And, there are two scenarios right now that we are looking at. The first scenario is that either we propose no action for the entire Lake and entire groundwater and that's the first scenario because it's too large. I mean it costs too much money to do something about it. That's the reason why we propose no action. Second scenario will be we probably propose some remedial action to the hot spot in the Torch Lake area. As I mentioned in the meeting, there is around two or three acres nearby on the western shore of Torch Lake, very highly contaminated area. So we might propose some kind or remedial action only for this hot spot. That will be how our second scenario will be. So we still have not decided yet whether we want to go for more action or we go for some kind of partial remedial action for the hot

spot. That's something we have not decided yet and still we are addressing any potential issues. And hopefully, we will go for to the public sometime next year whatever decision we made for the second Operable Unit.

STORM: Well, I guess the decision on Operable Unit 2 is what's holding up action by the U.S. Congress on the national historic park.

LEE: Second Operable Unit is nothing to do with this historical park issue. The historical park is designated on the Calumet area and one in the ... area. So, the only area, the two areas within our site is proposed ..., one is the ... site and one is the Calumet Lake tailing. And we propose no action to Calumet smelter site. So, I don't think there is any problem for the Congress to pass the legislature to propose the area as historical landmark site. I don't think there's any problem. As we said, there is no problem, that's what we are saying to the Congress.

STORM: So the EPA has signed off on the national historic park thing?

LEE: Oh, we don't, our ... sign up anything on it, but basically, if we, the decision, if the proposed plan we proposed last meeting is decided or determined as it is, somehow my upper managers, the end of July they sign up, I will be direct of decision without changing anything from the proposal I made at last meeting. That means that we are telling Congress that yes there is no problem, there is no problem in

the area that you propose is a national historical park or had proposed it, there is no problem. That's basically what we are saying there.

STORM: Okay, now if you decide to go ahead with the plan that you're going for, the re-vegetation and so on, how soon could that project get started?

LEE: Um. We will, let's say if at the end of July we make a determination, and then after that it will take maybe two or three months, we have to send the notice letters to responsible parties, and they start at negotiation, basically. Usually we allow four months of negotiation, 120 days of negotiation. If we have a good, everybody comes to negotiating table and then it will turn out to be good, then hopefully we can conclude all this negotiation by the end of this year, maybe early January, February of next year. And then, they have to go to the court to enter this, to ... this consent decree or the legal process comes into play. I presume that earliest we can implement this remedial action is probably early 1994, probably, somewhere in 1994 be good time to start with it. But, in between, there is a lot of legal issues coming in play, doesn't work out so well, then we will take more time probably on this legal time.

STORM: So, you don't just go in there and say "okay, this is the plan, these PRPs aren't agreeing, we're going to do it and then we'll, you know, we'll bill them later" -- you don't do that?

LEE: Well, by simplest, I mean, there are so many options at this point. Basically, we each notice to PRPs and people, you know, the PRPs being if their reaction was "hey we're not going to do this, this is crazy, we're not going to do this" and then EPA will decide either we order them to do, we send what you call ... letter order, we order them to do, or we say, well if they don't want to do it then we will do it. Then basically EPA will start designing. If EPA decide to start design an action, then it can start as early as next year, next spring we can start with it. But, if they decide to participate in this process, PRPs, and then it will take more time, they have to the consent decree to sign and all this legal process involved, and it will take some time. So, at this point I don't know which way it will turn out to be. It could be everybody involved would be willing to come and negotiate and could the consent decree signed up and then you go to the court to enter and log it, and then it will take some time on this legal process. A second option is that if they don't want to do it then EPA decide we going to spend our superfund money, then maybe we start early next year. So, it has some different directions that we would like in the future.

STORM: Well, you considered a couple of different alternatives. You know, fencing off the slag piles was one, removing the stuff which would be very expensive, doing nothing and the vegetation. Those are the four basic alternatives you decided. What made you decide to cover instead of taking no action which is what many people are calling for, which I

thought was kind of strange, because most of the time people say the government doesn't do enough, now you're proposing to do something, and they don't want you to do it.

LEE: Well, it did too material. The one, the first was the tailings. Tailings we have only two alternatives to be evaluated. First, no action was the soil problem in vegetation. And, based on all this issue we have human health issue, cancerous and non-cancerous, and there is also potential leak into the groundwater to the surface water and the erosion to the lake sediment and also there is, we have a serious problem in ... problems. And, also we did in the great lakes area of concern. All this problem, we, in comprehensive prospective, we thought the no action is not a good idea. Then you are saying the soil problem based vegetation with \$7.2 million is the fastest solution, is not that expensive. The typical open site, the remedial action calls for every \$25-\$35 million. \$7.2 million is not a really expensive remedy so we believe that this is the most recommendable remedy to the public for tailing. However, the slag material put the fence around or remove the slag to other locations up site disposal is very expensive, is not really practical so we believe that the slag material in the local harbor maybe put some soil and probably vegetation would do best the remedial actions we can propose. That's what we are proposing to the public. However, ... the slag is in this area of the proposed ... area wants develop the national park we will believe there is not much

risk involved. That's why we are proposing no action to this ... land.

STORM: Well, I guess what the people here have said, you know, and I want to go back to kind of clarify a statement that I made earlier. You know, what they're saying is that even though, you know, a lot of times, "geez we'd like the government to do something for us and they're not doing," what they're telling you is that "hey, we'd rather have you do nothing than what you're planning." [PAUSE] Right?

LEE: Uh. Is it more like asking or more like the perception people have about the?

STORM: Isn't that basically what they're telling you that they'd rather have you do nothing than what you're planning.

LEE: Well, I don't know, I mean, no comment, about what people believe about what our federal plan is but. We are saying that basically this is the best thing for the people and for the environment in this area. And, basically, people are saying to us that what propose no action because, because we might have to pay for it. That's what they are saying.

STORM: Oh, okay.

LEE: Not necessarily, they are thinking, "hey believe there's no problem, don't do anything." It's not like they are asking, they are challenging about the plan itself, they are asking about "well the plan is a good idea, this is all we are looking for a long

time, but if we end up paying for it, no, we don't want to do it." And, I'm saying that no, you don't have to pay for it, that's what I'm saying. I'm saying that there is room at the negotiation desk. *All you have to do is give us access, and you'll get the covenant not to be sued. And somebody, either federal government or the companies who originally put the tailing, they might end up paying for it. There's what, there are different opinions, this plan we propose is the same plan proposed by Michigan Technical University in 1983 and the same plan proposed by local counties.* [Emphasis added.] And currently they are working on the sludge and the mason tailings and the Lake Linden people are working on to fill up the tailings of Lake Linden basically. And there is also the local county, with MTU and Universal Oil Products, they cover the soil tailing harbor and the ... filling tailings. It's basically people ten years ago or five years ago people thought that the best thing for us to do is cover up this tailing with soil and good vegetation. That's what they thought the best thing for them, and they tried to get all the necessary resources, either from the PRPs, that is the original mining companies or state or federal EPAs or local community volunteers. They all tried to do these, and now we the EPA can, we say the same conclusion they made five or ten years ago, yes the best thing for this is to cover up with soil and vegetation. That's what we are saying, and then people somehow misunderstood us that it's good, but we might have to pay for this, \$7.2 million, we don't have any money, so basically they asking no action please. And that I strongly suggest that you don't

necessarily have to pay for this. There is a lot of flexibility in the negotiation. All you have to do is provide us access and have the covenant not to be sued.

STORM: Interesting. Can people still make comments on this plan, they can make comments until July 1, as I understand, right?

LEE: Yes. I'm still receiving comments from people. A lot of people sending letter to me that they like this idea. All the people live around the area, they believe this is the best remedy for them because, if you have all the tailing to cover with soil and vegetation, you will be really nice, to see to live around this area. But, those who own the property or currently operating their businesses is kind of afraid that they might have to pay some money for this, and some of them are rejecting this. But they said that ... this time that not necessary they have to pay for this.

STORM: I want to remind people that the comment deadline is open upon the 1st of July. You can send your comments -- would you prefer that they be sent to you or the Phil Schutte?

LEE: Phil Schutte is the one who receives all these comments.

STORM: Okay. Community Relations Coordinator, Office of Public Affairs of the U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago 60604. I

have the address here for anyone who would want it.
Thank you for being our guest today.

LEE: Okay, thank you.

STORM: Hold on a second, okay? Jae Lee, who is the
remedial project management of the U.S. Environ-
mental Protection Agency for the Torch Lake
Superfund Site.

Geraghty & Miller, Evaluation of the Torch Lake Risk
Assessment - Operable Unit 1, dated March 22, 1992

**EVALUATION OF THE
TORCH LAKE RISK ASSESSMENT
OPERABLE UNIT I**

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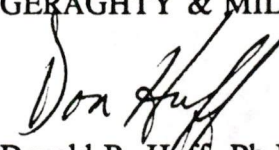
March 25, 1992

**EVALUATION OF THE
TORCH LAKE RISK ASSESSMENT
OPERABLE UNIT I
TORCH LAKE SUPERFUND SITE
HOUGHTON COUNTY, MICHIGAN**

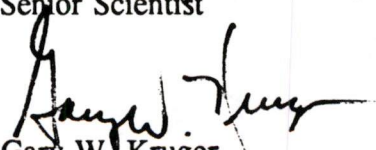
March 25, 1992

Geraghty & Miller, Inc. is submitting this comment report to Mr. Gaines Gwathmey of Paul, Weiss, Rifkind, Wharton & Garrison, in reference to the Baseline Risk Assessment Report prepared for Operable Unit I of the Torch Lake Superfund Site located in Houghton County, Michigan. The Baseline Risk Assessment Report that is the subject of this comment document has been prepared by Life Systems, Inc., under contract with the United States Environmental Protection Agency. If you have any questions or comments concerning this comment report, please contact one of the individuals listed below.

Respectfully Submitted,
GERAGHTY & MILLER, INC.



Donald R. Huff, Ph.D.
Senior Scientist



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3-2	Comparison of Subchronic Noncarcinogenic Health Hazards
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1.0 INTRODUCTION

In October 1991, the United States Environmental Protection Agency (USEPA) released to the public an Information Update (the Update) relating to the Torch Lake Superfund Site in Houghton County, Michigan. The Update reported that the USEPA had received a Final Baseline Risk Assessment for Operable Unit I (OU I) of the site from Life Systems, Inc., and that the "risk to public health posed by the contaminants [there] is within the range acceptable to the EPA." Although acknowledging that risks within the acceptable range mean generally that no action is warranted, the Update nevertheless stated that the USEPA was continuing to evaluate cleanup options.

Geraghty & Miller has evaluated the Final Baseline Risk Assessment Report for Torch Lake, Operable Unit I prepared by Life Systems, Inc., for the USEPA dated July 18, 1991. Included in this evaluation is an analysis of the baseline risk assessment and an interpretation of the results with regard to remedial action decisions. This analysis of the OU I baseline risk assessment revealed that the risk assessment utilized unrealistic and overly conservative assumptions in many of its risk estimations and overstates the health risks associated with OU I. These overly conservative assumptions, as well as certain errors and omissions, are identified below. In addition, information is set forth concerning natural material background conditions so as to permit a meaningful comparison to risks from naturally occurring inorganic elements such as copper, beryllium, and arsenic. These data, even when evaluated in accordance with the USEPA's extremely conservative methodology, show a health risk from OU I that is within or below ranges of risks acceptable by the USEPA. The data show that there is no human health basis for remedial action on the site.

2.0 SUMMARY OF BASELINE RISK ASSESSMENT

Data used in the baseline risk assessment consisted primarily of analytical data from surface and subsurface tailings samples collected during the remedial investigation. Air sample data collected during the remedial investigation were not used due to quality control problems (the small number of samples were not believed by the USEPA to be representative of long-term conditions, the data could not be extrapolated to other exposure points, and laboratory analyses were not completed for all contaminants of potential concern). Air concentrations were estimated using modelling approaches.

Four exposure populations were identified and assessed: (1) current and future off-site residents (adults and children); (2) workers (lagoon and sludge spreaders); (3) campers (adults and children); and, (4) future on-site residents. Current residents at Lake Linden, Hubbell/Tamarack City, Mason, and Hubbell Slag Pile/Beach Area were included in separate assessments. Future residents along the east shore of Torch Lake across from Lake Linden and Mason as well as future residents in stamp sand sampling sectors 1/2, 6/7, and 9 were evaluated separately for potential human health risks. The exposure pathways that were evaluated were inhalation of particulates and ingestion of slag and tailings (stamp sands). Noncarcinogenic (subchronic and chronic) and carcinogenic risks were estimated for each applicable population/exposure pathway combination.

2.1 BASELINE RISK ASSESSMENT RESULTS AND CONCLUSIONS

The baseline risk assessment concluded (p. 7-4) that:

[excess lifetime carcinogenic risks for] all current residential populations are equal

to or below $1.0\text{E-}06$ except at the Hubbell residences (excess lifetime cancer risk = 10^{-4}) whose backyards are in the vicinity of the slag pile and slag beach. The [excess lifetime] cancer risks posed at assumed future residential exposure points on the tailings piles range from $1.0\text{E-}5$ to $3.0\text{E-}05$. Chemicals contributing to these risks include arsenic, beryllium, and chromium.

[Excess lifetime cancer] risks to lagoon workers range from $1.0\text{E-}05$ to $8.0\text{E-}06$. This risk is attributable primarily to ingestion of tailings containing arsenic and beryllium.

No [excess lifetime] cancer risks greater than $1.0\text{E-}6$ were calculated for future residents on the eastern lake shore, for the campground scenario or the occupational sludge spreading exposure scenario at Sector 9.

The baseline risk assessment also found that noncarcinogenic hazard indices (where a hazard index greater than one is interpreted to mean that there may be concern for potential noncancer effects), did not exceed one for any chronic (adult) exposure pathway. Subchronic (child exposures) hazard indices exceeded one for current residents at Hubbell (near slag pile/beach), future residents living on tailings, and campers at Lake Linden campground. However, the baseline risk assessment concluded that:

Only one chemical, copper, at the slag pile/beach scenario contributed an HQ (hazard quotient) that exceeded one.... Since all chemicals [contributing to elevated hazard indices] have different [human health] endpoints, only the HI [hazard index] calculated for the slag pile/beach area [where the HQ for copper is 2] appears to be a cause for concern.

Further review of the noncarcinogenic results indicates that copper at the slag pile was the only element driving the elevated hazard index for this scenario.

2.2 RISK ASSESSMENT DEFICIENCIES

A significant number of deficiencies in the risk assessment have been identified, virtually all of which result in overly conservative conclusions. These points, which are discussed in the sections to follow, include:

- (1) USEPA Guidance states that the carcinogenic risk levels as found at this site are at levels that generally do not warrant remedial action;
- (2) Background concentrations of copper, arsenic, beryllium, and other contaminants of concern were not considered when drawing conclusions regarding the significance of risk from these materials;
- (3) The inedible constitution of the material from the slag pile was not considered or mentioned when drawing conclusions regarding the significance of ingestion risks from that area;
- (4) Period of exposure estimates are unrealistically high, and many of the estimates used did not agree with current USEPA recommended exposure periods;
- (5) The reference dose (RfD) for copper that was used to formulate the only potentially significant noncarcinogenic risk for the site is not an EPA-accepted toxicity value;
- (6) Soil ingestion rates are excessive as they do not use realistic exposure assumptions regarding worker exposure to soil;
- (7) Soil ingestion rates are excessive as they do not account for the 149 days of annual snow cover that

blankets the area;

- (8) Air inhalation rates for children are overestimated and do not follow USEPA guidelines;
- (9) The majority of risks (and maximum concentrations used for risk calculations) associated with organic chemicals of concern on the site were dominated by the use of "non-detect" values with detection limits that were commonly an order of magnitude higher than concentrations actually detected; and,
- (10) The assumption that all detected chromium on-site is hexavalent chromium is most likely inaccurate and is overly conservative.

3.0 CORRECTIONS IN RISK ASSESSMENT ASSUMPTIONS AND INTERPRETATION

3.1 TOXICITY THRESHOLD ASSUMPTION FOR CARCINOGENIC RISKS

On page 7-2 and 7-4 of the baseline risk assessment report it is stated that 10^{-6} (one in a million) is the level of concern for excess lifetime cancer risks. However, recent USEPA guidance on the role of the baseline risk assessment in Superfund remedy selection decisions (USEPA, 1991a) recommends that 10^{-4} (one in ten thousand) be used as an action level for most sites. This guidance states that:

Generally, where the baseline risk assessment indicates that a cumulative site risk to an individual using reasonable maximum exposure assumptions for either current or future land use exceeds the 10^{-4} lifetime excess cancer risk end of the risk range, action under CERCLA is generally warranted at the site. For sites where the cumulative site risk to an individual based on reasonable maximum exposure for both current and future land use is less than 10^{-4} , action generally is not warranted, but may be warranted if a chemical specific standard that defines acceptable risk is violated or unless there are noncarcinogenic effects or an adverse environmental impact that warrants action.

Later in this same guidance it is stated that:

Furthermore, the upper boundary of the risk range is not a discrete line at 1×10^{-4} , although EPA generally uses 1×10^{-4} in making risk management decisions. A specific risk estimate around 10^{-4} may be considered acceptable if justified based on site-specific conditions, including any remaining uncertainties on the nature and extent of contamination and associated risks. Therefore, in certain cases EPA may consider risk estimates slightly greater than 1×10^{-4} to be protective.

Carcinogenic risks reported in the baseline risk assessment report were all less than or

equal to 10^{-4} , no chemical specific standards for the materials found on the site were reported to be violated, noncarcinogenic risks associated with the site are not significant when background levels of copper are considered, and no adverse environmental impacts were identified. Furthermore, the summary of the uncertainties assessment of the baseline risk assessment report notes that "the risks derived for this site should be considered approximate and are more likely high than low." Therefore, even if the baseline risk assessment's values are not corrected, carcinogenic risks for the Torch Lake Operable Unit I are below the regulatory level of 10^{-4} . Thus, in agreement with current USEPA guidance, it is reasonable to conclude that current conditions at the operable unit are protective of human health (carcinogenic risks) and do not warrant a remedial action, even when using the uncorrected and overly conservative USEPA baseline risk assessment values.

3.2 NATURAL BACKGROUND RISKS

The majority of the risks from the Torch Lake Superfund Site as identified in the baseline risk assessment are associated with inorganic constituents. However, the baseline risk assessment fails to address the fact that background concentrations of many of these elements pose potential risks equal to or greater than the risks currently calculated for the slag and the stamp sands associated with the site.

All of the inorganic chemicals of potential concern are naturally occurring in soil. It is important recognize that the very reason why the area surrounding Torch Lake is inhabited to the extent it is today is due to the naturally high background levels of a naturally occurring element, specifically copper. Other naturally occurring elements, such as arsenic, chromium, silver, aluminum, and beryllium, are commonly found in native soils, and the area surrounding Torch Lake is rich in naturally occurring elements.

For the inorganic potential chemicals of concern, the highest hypothetical carcinogenic risks were dominated by arsenic and beryllium, and the only non-carcinogenic risk calculated above a hazard quotient of 1.0 in the baseline risk assessment was due to copper. The impact of common background levels of these naturally occurring elements on the site are discussed below.

3.2.1 Copper

The Lake Superior district of the Upper Peninsula of Michigan is the only place in the world where native copper has been found in great abundance (Newton & Wilson 1942), and the Keweenaw Peninsula is one of the few remaining sources of native copper. It is here that copper has been found in its unadulterated (up to 99.9% pure) elemental state.

The Calumet conglomerate ore body, which runs very near the Torch Lake area, was responsible for almost half of the entire production of copper from the region before it was closed in 1939, and the richest mineralizations in this ore body occurred near to the surface (Benedict 1952). These deposits were mined from the surface centuries before the traditional mines were opened in the mid 1800's. There is substantial evidence that surface mining of copper was conducted by a prehistoric race circa 200 A.D., and this early mining practice stopped by at least by 1200 A.D. (Jensen & Bateman 1979; Benedict 1952). The Indians followed these early miners by surface mining themselves, as documented by Franciscan missionaries that occupied the area in the 1600's (Benedict 1952).

Copper is therefore ubiquitous in the area, and has existed in naturally high concentrations (999,000 mg/kg) at or near the surface for thousands of years. The largest concentration of copper found on the site in the materials in question (i.e., stamp sands and slag)

pertains to a single sample from the slag pile which was found to contain 12,800 mg/kg of copper. With the naturally high concentrations of copper throughout the area, it is fallacious to assign a meaningful risk number to the levels of copper found at the site.

As mentioned in Section 3.2 of this report, the risk as calculated in the USEPA baseline risk assessment is based on a non-EPA accepted reference dose (RfD). Regardless of any theoretical risk from copper, when the history of the area and the prevalence of copper in the region is considered, any increased potential risk posed by copper at the Torch Lake site is not significantly greater than background risks.

3.2.2 Arsenic and Beryllium

The Torch Lake region has been known for thousands of years as an area that is rich in metals. Often associated with the deposit of a major metal (e.g., copper) are deposits of other minerals (e.g., arsenic and beryllium), as well.

The USEPA in the Torch Lake Remedial Investigation Report for Operable Unit I (USEPA 1990) reported that naturally occurring background concentrations of arsenic typically range from 1 to 40 mg/kg. However, the copper deposits located in the Torch Lake area are often associated with arsenic (Jensen & Bateman 1989; Newton & Wilson 1942), and thus the typical common native range for this element would be expected to be higher in the Torch Lake area. Analyses of melting furnace copper from the smelting operations conducted in the Torch Lake area have revealed that the mixture naturally contains approximately 4,000 mg/kg of arsenic (Newton & Wilson 1942); this represents the naturally occurring arsenic that is associated with the copper and copper-bearing material that is common to this area.

Stamp sands on the site have revealed extremely low levels of arsenic, with approximately 65% of the samples showing levels of arsenic that are below detection limits. Stamp Sands demonstrated an average arsenic concentration of approximately 1.5 mg/kg and a *maximum* arsenic concentration of only 8.3 mg/kg. These levels are well within the lower end of the typical background soil concentrations of 1 to 40 mg/kg for arsenic as quoted by the USEPA (USEPA 1990), let alone those one would expect to find in an area naturally rich in arsenic.

The highest detected level for arsenic on the site was from a single sample obtained from the slag pile (118 mg/kg). Although this sample is above the range one would expect to find occurring naturally in a typical soil, elevated levels of naturally occurring arsenic are not atypical on sites such as Torch Lake that are naturally rich in mineral deposits.

When considering the beryllium occurring on the site, the USEPA Remedial Investigation Report identifies naturally occurring concentrations of beryllium typically ranging from 0.1 to 40 mg/kg. The *maximum* concentration of beryllium found on the site was a relatively low 1.7 mg/kg found in the stamp sands. It should be noted that beryllium was only detected in two (2) of the 58 samples taken of the tailings, and was detected once in a singular sample at slag beach. The lack of regular detection and the extremely low concentration of beryllium found at the site yields any significance to the hypothetical risk posed by beryllium questionable, at best. Due to the low detection frequency and minor concentrations of beryllium found on the site, it is unknown why beryllium was retained as a chemical of concern.

3.3 CONSTITUTION OF SLAG PILE

Ingestion risks associated with the slag pile are contingent on the assumption that the slag

material is actually ingestible. The slag at the slag pile, however, was formed as the molten slag liquid was poured from rail cars onto the ground where it cooled into a large, solidified mass. The vast majority of the slag at the slag pile (estimated from site visits by Geraghty & Miller personnel to be greater than 95% of the slag material in this pile) consists of pieces of slag that are too large to swallow. Conclusions drawn from all calculated ingestion risk values for the slag pile must therefore be tempered with the knowledge that the ingestibility of the vast majority of the slag in this pile is an unreasonable assumption. As a matter of fact, the USEPA correctly stated in the Remedial Investigation report for the site that "the amorphous massive structure of these [slag] materials do not contribute risk using reasonable exposure scenarios" (USEPA 1990).

3.4. PERIODS OF EXPOSURE

Various exposure assumptions do not agree with current recommended assumptions (USEPA, 1991b). The following are exposure assumptions that were used along with more appropriate replacement values:

- EF (exposure frequency) for adult and child residents should be changed from 365 to 350.
- ED (exposure duration) for adults should be changed from 70 to 30.
- Subchronic and chronic ATs (averaging times) should be adjusted to equal the corresponding ED values.

Worker exposure frequencies were not consistent among information reported in the text and tables of the report. For example, the 36 week exposure period for lagoon workers is not consistent with the 149 days of snow cover per year. A more appropriate assumption would be 31 weeks of exposure for lagoon workers. Similarly, the exposure frequency for sludge

spreaders is 84 days/yr in the text, 108 days/yr in Table 3-6, and 180 days/yr on Table 3-7. The most appropriate assumption appears to be the 84 days/yr as discussed in the text.

The baseline risk assessment makes the unrealistic assumption that 60% of the material ingested in the Hubbell area are from the slag pile and slag beach. There is no rationale for this assumption provided in the report. These values are clearly overly conservative considering the relative area of slag pile and slag beach as compared to other more frequented areas (e.g., backyards, playgrounds, parks, etc.) In order to ingest these materials in this ratio, one would have to spend 60% of their time (30% slag pile and 30% slag beach) on the slag areas. Compounding this overly conservative exposure scenario is the assumption that all slag material is in a form that can actually be ingested (see Section 3.3 above). A more realistic conservative assumption would be that 10% of the soils ingested in the Hubbell area (5% slag pile and 5% slag beach) come from these areas.

3.5 VALIDITY OF COPPER REFERENCE DOSE

The evaluation of risks due to ingestion exposures to copper in soils in the baseline risk assessment uses copper (an essential nutrient) as a noncarcinogenic constituent of concern. Therefore, a hazard quotient was estimated for copper based on the ratio of the estimated dose to an RfD. The RfD value of 0.037 mg/kg/d used in the baseline risk assessment was derived from the MCLG of 1.3 mg/L. However, according to the Heath Effects Assessment Summary Tables (USEPA 1991), toxicity data were inadequate for calculation of an RfD for copper. It should be noted that since the RfD is not an EPA accepted toxicity value, it is difficult to make a meaningful assessment of the risks associated to exposures to copper.

3.6 SOIL INGESTION RATES

The baseline risk assessment assumes that residential soil ingestion exposures are consistent throughout the year, regardless of snow cover. This is unusual since the USEPA did properly account for the snow cover factor when calculating risks associated with inhalation of contaminants. When calculating the airborne exposure to the blowing sands, the USEPA accounted for the 149 days of average snow cover on the site by reducing the overall contaminant exposure via air pathway by a factor of 149/365. Since this snow cover factor has been accounted for in the assessment of air exposure, it is also prudent to consistently assume that soil exposures via direct contact and ingestion would also be reduced by this factor (41%) due to snow cover.

The use of the 480 mg/day soil ingestion rate for lagoon workers and 100 mg/day for sludge spreaders is also too conservative. Recommended soil ingestion rates for industrial/commercial workers and agricultural workers are 50 and 100 mg/day, respectively (USEPA, 1991b). The 480 mg/day value has been used to designate high soil exposure activities such as landscape workers. It is not realistic to assume that a sludge worker will consider sludge as innocuous as a landscaper considers the soil. Therefore, the 100 mg/day rate would be more appropriate for the lagoon worker and 50 mg/day would be more appropriate for sludge spreaders.

3.7 AIR INHALATION RATES

On page 3-13 of the baseline risk assessment it is stated that a "time-activity weighting for children results in an estimated upper-bound inhalation rate of 1.9 m³/hr...." By estimating breathing rates in this way it is incorrectly assumed that children are at rest only 12.5% (3

hours) of the resident child's 24 hour day, and the remainder of the day is spent in light to heavy activity. Using activity patterns (Table 5-8, p. 5-25) and inhalation rates (Table 3-1, p. 3-4) presented in the USEPA "Exposure Factors Handbook" (USEPA 1989), it is estimated that resident child inhalation rates would be approximately 0.96 m³/hr and child campers would be approximately 1.1 m³/hr. These values would more accurately estimate child inhalation exposures.

3.8 USE OF NON-DETECTS IN RISK DETERMINATION

The use of assumed exposure point concentrations for those samples for which there were no detectable quantity of a particular chemical of concern had a marked effect on the individual risk numbers for the site, particularly for the organic contaminants of potential concern in the slag pile and slag beach areas (see Table WK14 on Page A3-29 of the USEPA baseline risk assessment). In these areas, unlike in the stamp sand areas, positive values were assigned in cases where a contaminant was not detected in any sample. For the slag pile, for example, a value of 0.34 mg/kg was assigned to all of the polycyclic aromatic hydrocarbon (PAH) exposure concentrations, and yet none of the PAHs listed were found above detection limits. Similarly, 9 of the 14 listed PAHs were undetected in the slag pile sample, yet the value of 0.34 mg/kg was assigned to those non-detects, as well. Of the 5 PAHs that were detected at the slag pile, all levels detected were an order of magnitude below the 0.34 mg/kg level assigned to the non-detects. Therefore, a substance that remained undetected in the slag material was assigned a significantly higher exposure point concentration than any substance that was actually detected in the slag material. The assignment of exposure point concentrations that are an order of magnitude higher than those values actually detected in the material in question is inappropriate.

Any hypothetical risk number associated with the existence of the small concentrations

of PAHs found on the site must be tempered with the realization the major source of PAHs in the study area is most likely from the wood burning practices common to the area. The burning of wood to heat homes during the long northern winters is a common practice in the Torch Lake area, and the act of wood burning produces a large quantity of airborne PAHs. Geraghty & Miller has also observed the practice of open burning of tree pruning waste, yard waste, discarded furniture and other combustible waste adjacent to the lake. The open burning or uncontrolled combustion of any of these products produces airborne PAHs in significant quantities, and a majority of the PAHs detected on the site may be attributable to these private burning practices.

3.9 TOTAL CHROMIUM VS. HEXAVALENT CHROMIUM

Chromium is a naturally occurring element that is present in the environment in several forms, two forms of which are trivalent chromium and hexavalent chromium. Chromium compounds are most stable in the trivalent state and occur in nature in this form in ores, such as ferrochromite (FeCr_2O_4); hexavalent chromium rarely occurs naturally (USEPA 1984, Hurlburt 1971).

Chromium is evaluated in the baseline risk assessment as both a carcinogenic and noncarcinogenic constituent. It was assumed in the USEPA baseline risk assessment that all of the detected chromium, which was analyzed as total chromium, existed at the site only in the hexavalent state. Hexavalent chromium is the more toxic of the two most stable states of chromium, with trivalent chromium, an essential nutrient, posing less of a threat to human health (ATSDR 1991). Hexavalent chromium is not known to be used or produced in any manner during the copper mining or refining processes. It is therefore reasonable to assume that all or most of the chromium found on the site is naturally occurring, and it is overly conservative to

assume that all chromium measured on the site is present in the more toxic and less common hexavalent state.

4.0 REVISED RISK ESTIMATES

Geraghty & Miller re-evaluated the quantitative risk estimates according to the revised exposure assumptions noted in Section 3.0, and using the same exposure point concentrations as presented in the risk assessment. Risk calculations are summarized on Tables 3-1 through 3-3. In conformity with the approach used in the baseline risk assessment, carcinogenic risks were estimated separately for a 6 year period of child exposure and a 24 year period of adult exposure. Therefore, the results presented on Table 3-1 are directly comparable the carcinogenic risks in the baseline risk assessment.

Estimated excess lifetime cancer risks were generally less than those estimated in the baseline risk assessment. Corrected excess lifetime cancer risks were less than 10^{-4} (one in ten thousand) in all cases. Therefore, all cancer risks were found at the level where USEPA guidance generally recommends no action. The exposure scenario with the highest estimated lifetime cancer risk (10^{-5} or one in one hundred thousand) was for future hypothetical residents in Sector 9 of the site. The majority of the risk for the hypothetical Sector 9 residents was due to the inhalation exposures to chromium in dust from the tailings (stamp sands) in this area. However, all detected chromium was assumed to be in the more toxic hexavalent state even though trivalent chromium (an essential nutrient) is the more common valence state (see Section 3.9 of this report). This conservative assumption was deemed necessary due to the lack of species-specific chromium data, but will inaccurately distort the calculated risk from this chemical. It is Geraghty & Miller's opinion that the revised 10^{-5} risk for this area still significantly overestimates the increased potential risk due to the continued assumption that all chromium on the site exists in the more rare and more toxic hexavalent state.

Other carcinogenic risks on the Torch Lake site were attributed to arsenic and beryllium

ingestion exposures; these risks, however, were associated with concentrations of naturally occurring elements that could be expected to be found in uncontaminated portions of this mineral-rich area. Therefore, the risks associated with these elements on the site can be largely attributed to natural background levels of these materials expected in the area (see Section 3.2 of this report).

Subchronic noncarcinogenic hazard indices were less than those estimated in the baseline risk assessment in all cases. Although subchronic noncarcinogenic hazard indices for two scenarios (future residents at Sector 9 and Lake Linden Campground) exceeded one, neither indicated a potential a cause for concern after evaluating the human endpoints (target organs or organ systems) potentially affected by the chemicals of concern. No single constituent or group of constituents that affect a similar human endpoint was found to have a hazard quotient (or index) greater than one; therefore, there is no significant noncarcinogenic risk associated with any scenario for OU I.

5.0 SUMMARY AND CONCLUSION

A re-evaluation of the data gathered for the baseline risk assessment revealed that excess lifetime cancer risks for all exposure scenarios were less than or equal to 10^{-5} (one in one hundred thousand). Since 10^{-4} (one in ten thousand) is the currently recommended action level for Superfund sites (USEPA, 1991a), the site would not appear to warrant a remedial action due to the excess cancer risks. Furthermore, naturally occurring levels of arsenic account for much of the estimated excess lifetime cancer risks, and therefore distort the significance of the calculated risk number.

With the exception of two scenarios, the cumulative hazard indices for all exposure scenarios were less than one, indicating a low potential for adverse human health effects. For the two scenarios that did have hazard indices of greater than one, the constituents of potential concern do not effect the same human health endpoints. Thus when evaluated with regard to affected endpoint as recommended by USEPA guidance (USEPA 1989a), neither of the scenarios has constituents associated with a hazard quotient of greater than one. Therefore, there does not appear to be a potential cause for concern due to noncarcinogenic health impacts.

In conclusion, Geraghty & Miller's re-evaluation of risks indicate that potential carcinogenic risks and noncarcinogenic hazards posed by the slag pile, slag beach, and tailings at Operable Unit I (OU I) on the Torch Lake site are at a level that USEPA guidance currently considers as generally not warranting a remedial action. The low levels of potential risks calculated for the site (along with the multitude of extremely conservative assumptions that drive these calculations) support the no remedial action conclusion. Based on a review of the data collected for the site, an analysis of the USEPA baseline risk assessment for the site, and a review of the history of the Torch Lake area, it is Geraghty & Miller's opinion that the potential

risks posed by any contaminants at OU I on the Torch Lake superfund site are insufficient to justify any remedial action on the site.

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TABLES

TABLE 3-1 COMPARISON OF CARCINOGENIC RISK

Exposed Population	Exposure Point	Exposure Medium	Exposure Route	Baseline Risk Assessment			
				Cancer Risk		Revised Estimate	
				Adult	Child	Adult	Child
Current Resident	Lake Linden	Air	Inhalation	3E-07	2E-07	1E-07	2E-07
	Hubbell/Tamarack City	Air	Inhalation	2E-07	2E-07	7E-08	1E-07
	Mason	Air	Inhalation	1E-06	8E-07	3E-07	6E-07
	Hubbell	Slag Pile	Ingestion	9E-05	6E-05	3E-06	6E-06
		Slag Beach	Ingestion	9E-06	6E-06	7E-07	1E-06
		Air	Inhalation	<u>2E-07</u>	<u>2E-07</u>	<u>7E-09</u>	<u>1E-08</u>
			Total	1E-04	7E-05	4E-06	7E-06
Future Resident	East lake shore (across from Lake Linden)	Air	Inhalation	4E-07	3E-07	1E-07	3E-07
	East lake shore (across from Mason)	Air	Inhalation	9E-07	7E-07	2E-07	5E-07
	Sector 1 and 2	Air	Inhalation	6E-06	5E-06	4E-06	7E-06
		Tailings	Ingestion	<u>1E-05</u>	<u>7E-06</u>	<u>1E-06</u>	<u>2E-06</u>
			Total	2E-05	1E-05	5E-06	9E-06
	Sector 6 and 7	Air	Inhalation	3E-06	2E-06	6E-07	1E-06
		Tailings	Ingestion	<u>9E-06</u>	<u>6E-06</u>	<u>4E-06</u>	<u>7E-06</u>
			Total	1E-05	8E-06	5E-06	8E-06
	Sector 9	Air	Inhalation	2E-05	2E-05	4E-06	7E-06
		Tailings	Ingestion	<u>7E-06</u>	<u>5E-06</u>	<u>1E-06</u>	<u>3E-06</u>
			Total	3E-05	3E-05	5E-06	1E-05
Camper	Lake Linden Campground	Air	Inhalation	1E-07	3E-07	7E-08	1E-07
		Tailings	Ingestion	<u>2E-07</u>	<u>5E-07</u>	<u>4E-07</u>	<u>7E-07</u>
			Total	3E-07	8E-07	5E-07	8E-07
Worker	Lake Linden Lagoon (Sector 1)	Air	Inhalation	7E-07	NA		
		Tailings	Ingestion	<u>9E-06</u>	NA		
			Total	1E-05			
Worker	Houghton Lagoon (Sector 6)	Air	Inhalation	3E-07	NA		
		Tailings	Ingestion	<u>8E-06</u>	NA		
			Total	8E-06			2E-06
Worker	Sludge Spreading (Sector 9)	Air	Inhalation	1E-07	NA		
		Tailings	Ingestion	<u>5E-07</u>	NA		
			Total	6E-07			3E-07

NA – Not Applicable. Workers are adults only.

TABLE 3-2 COMPARISON OF SUBCHRONIC NONCARCINOGENIC HEALTH HAZARDS

Exposed Population	Exposure Point	Exposure Medium	Exposure Route	Baseline Risk Assessment	Revised Estimate
				Hazard Index	Hazard Index
Current Resident (Child)	Lake Linden	Air	Inhalation	3E-02	2E-02
	Hubbell/Tamarack City	Air	Inhalation	1E-02	9E-03
	Mason	Air	Inhalation	1E-01	5E-02
	Hubbell	Slag Pile	Ingestion	2E+00	2E-01
		Slag Beach	Ingestion	9E-01	8E-02
		Air	Inhalation	<u>1E-02</u>	<u>9E-04</u>
			Total	3E+00	3E-01
Future Resident (Child)	East lake shore (across from Lake Linden)	Air	Inhalation	4E-02	2E-02
	East lake shore (across from Mason)	Air	Inhalation	9E-02	4E-02
	Sector 1 and 2	Air	Inhalation	7E-01	3E-01
		Tailings	Ingestion	<u>1E+00</u>	<u>6E-01</u>
			Total	2E+00	9E-01
	Sector 6 and 7	Air	Inhalation	2E-01	1E-01
		Tailings	Ingestion	<u>8E-01</u>	<u>5E-01</u>
			Total	1E+00	6E-01
	Sector 9	Air	Inhalation	2E+00	7E-01
		Tailings	Ingestion	<u>9E-01</u>	<u>6E-01</u>
			Total	3E+00	1E+00
Camper (Adult)	Lake Linden Campground	Air	Inhalation	6E-02	
		Tailings	Ingestion	<u>2E-01</u>	
			Total	3E-01	
Camper (Child)	Lake Linden Campground	Air	Inhalation	6E-01	3E-01
		Tailings	Ingestion	<u>2E+00</u>	<u>1E+00</u>
			Total	3E+00	2
Worker	Lake Linden Lagoon (Sector 1)	Air	Inhalation	2E-02	
		Tailings	Ingestion	<u>4E-01</u>	
			Total	4E-01	1E-01
Worker	Houghton Lagoon (Sector 6)	Air	Inhalation	8E-03	
		Tailings	Ingestion	<u>3E-01</u>	
			Total	3E-01	4E-02
Worker	Sludge Spreading (Sector 9)	Air	Inhalation	7E-03	
		Tailings	Ingestion	<u>5E-02</u>	
			Total	6E-02	3E-02

ND- Value Not Determined

TABLE 3-3 COMPARISON OF CHRONIC NONCARCINOGENIC HEALTH HAZARDS

Exposed Population	Exposure Point	Exposure Medium	Exposure Route	Baseline Risk Assessment	Revised Estimate
				Hazard Index	Hazard Index
Current Resident (Adult)	Lake Linden	Air	Inhalation	2E-02	2E-02
	Hubbell/Tamarack	Air	Inhalation	1E-02	7E-03
	Mason	Air	Inhalation	5E-02	5E-02
	Hubbell	Slag Pile	Ingestion	2E-01	2E-02
		Slag Beach	Ingestion	1E-01	1E-02
		Air	Inhalation Total	<u>1E-02</u> 3E-01	<u>7E-04</u> 3E-02
Future Resident (Adult)	East lake shore (across from Lake Linden)	Air	Inhalation	3E-02	2E-02
	East lake shore (across from Mason)	Air	Inhalation	5E-03	4E-03
	Sector 1 and 2	Air	Inhalation	1E-01	1E-01
		Tailings	Ingestion	<u>5E-01</u>	<u>2E-01</u>
			Total	6E-01	2E-01
	Sector 6 and 7	Air	Inhalation	1E-01	1E-01
		Tailings	Ingestion	<u>9E-02</u>	<u>6E-02</u>
			Total	2E-01	2E-01
	Sector 9	Air	Inhalation	7E-01	7E-01
		Tailings	Ingestion	<u>1E-01</u>	<u>6E-02</u>
			Total	8E-01	8E-01
Camper (Adult)	Lake Linden Campground	Air	Inhalation	2E-02	2E-02
		Tailings	Ingestion	<u>6E-03</u>	<u>1E-02</u>
			Total	2E-01	3E-02
Camper (Child)	Lake Linden Campground	Air	Inhalation	1E-01	
		Tailings	Ingestion	<u>5E-02</u>	
			Total	2E-01	ND
Worker	Lake Linden Lagoon (Sector 1)	Air	Inhalation	1E-01	
		Tailings	Ingestion	<u>3E-01</u>	
			Total	4E-01	2E-01
Worker	Houghton Lagoon (Sector 6)	Air	Inhalation	4E-02	
		Tailings	Ingestion	<u>2E-01</u>	
			Total	2E-01	7E-02
Worker	Sludge Spreading (Sector 9)	Air	Inhalation	2E-02	
		Tailings	Ingestion	<u>3E-02</u>	
			Total	5E-02	9E-02

ND- Value Not Determined

Geraghty & Miller, Review of the Fish Consumption
Advisory on Walleye and Sauger in Torch Lake, dated
June 4, 1992

**REVIEW OF THE
FISH CONSUMPTION ADVISORY ON
WALLEYE AND SAUGER IN
TORCH LAKE
HOUGHTON COUNTY, MICHIGAN**

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June 4, 1992

REVIEW OF THE FISH CONSUMPTION ADVISORY ON WALLEYE AND SAUGER IN TORCH LAKE HOUGHTON COUNTY, MICHIGAN

In 1983, the Michigan Department of Health (MDPH) issued (and has since annually renewed) a voluntary fish consumption advisory for walleye and sauger in Torch Lake, Houghton County, Michigan. This review report summarizes the studies performed and other data collected relating to condition of Torch Lake and the basis for the advisory. As is more fully set forth below, all available information shows that the fish advisory is unnecessary and the basis for the advisory no longer exists. Despite repeated requests by the Michigan Department of Natural Resources (MDNR) to have the fish advisory lifted based on data from a number of studies that demonstrate the overall health and diversity of the fish population in Torch Lake, the MDPH has failed to rescind the advisory.

The original issuance of the fish advisory in 1983 was based on the observation of what was perceived to be an elevated number of external and internal tumors on two species of fish (walleye and sauger) in Torch Lake. Data did not show other species of fish from Torch Lake to have had abnormal tumor rates (MDNR 1987). In these tumor studies, only tumors of the liver and some unique perivisceral (internal organ) masses are of potential concern due to their historical association with water pollution in studies of fish in other water bodies (MDNR 1987). External tumors, especially in older fish, are not uncommon to these species in all lakes throughout the region, and these tumors are commonly associated with viruses and bacteria (MDNR 1987; MDNR 1988; Black 1989; USEPA 1983).

The MDPH issued the walleye and sauger fish advisory in Torch Lake purely as a precautionary measure, even though it was known that the tumors on the fish could not transmit cancer to humans (MDNR 1987). This type of fish advisory was unusual, since fish advisories are normally placed as a precaution relating to known or suspected human health risks associated with the consumption of known contaminants within the fish.

Numerous other fish tumor studies have been conducted following the initial study that was conducted in the mid-1970's, and the results of these have been summarized in several technical documents (MDNR 1987; MDNR 1988; MDNR 1990; MTU 1986). After reviewing the Torch Lake tumor data that had been collected to date through the Mid 1980's, the MDNR concluded that these data demonstrate that only old sauger and some old walleye have had high incidences of certain types of tumors or abnormal growths, and that the studies reporting the incidence of liver tumors did not consider the fundamental fact that these types of tumors are more common in older animals (MDNR 1987). The perceived increased incidence of tumors of concern reported in the studies previously performed, therefore, may be explained by the unusually high age of the fish population sampled.

Although the studies that were completed by Michigan Technological University (MTU) personnel in the mid-1980's concluded that the incidence of tumors in fish were increasing (Spence 1986), a review of the literature proved this conclusion to be false. The MDNR's review of the Spence study indicated that the study contained "errors or omissions of fact, misleading statements, faulty data interpretation, a lack of any statistical analysis, and apparent lack of understanding of the sampling regime required for fish population analysis and therefore the [inaccurate] determination of tumor or parasite infection rates" (MDNR 1988). The MDNR also stated in their review that the conclusions in the Spence report regarding increases in tumors and other growths in the fish in Torch Lake were "speculation based on faulty analysis, error and oversight."

A report from MTU (MTU 1986) that suggested that the growths found in the original tumor study conducted in the mid-1970's included cancerous liver tumors was also found to be false. Dave Tomljanovich, the individual who conducted this first tumor study as an MTU graduate student, has informed colleagues that the suggestion that the tumors found in his study were cancerous was "not true at all," and that contrary to what the MTU

researchers had indicated, experts had stated that the growths appeared to be non-cancerous (TVA 1987). Mr. Tomljanovich also related that at the time of his study he "would not have recognized a liver tumor even if he had seen one" (Black 1987). These revelations cast serious doubts on the significance of the initial tumor study.

Follow-up tumor studies conducted in 1988 have confirmed the absence of tumors in sauger, walleye, or any other fish species sampled in Torch Lake. The MDNR collected 455 fish representing 18 different species from Torch Lake in 1988, and none of the specimens revealed any tumors (MDNR 1989; MDNR 1990). In addition, bioassays of Torch Lake sediment have revealed that significant amounts of mutagenic or carcinogenic (cancer causing) substances are apparently absent from Torch Lake at this time (MDNR 1987; MDNR 1990). The MDNR concluded that these data strongly suggest that the liver tumor inducing agents above background concentrations do not exist in the Torch Lake/Portage Lake fishery (MDNR 1989).

Based on the lack of fish tumor abnormalities cited in studies of Torch Lake fish conducted over the past six years, the basis of the fish advisory for the consumption of walleye and sauger in Torch Lake no longer exists. The MDNR and others have recognized that the basis for the fish advisory no longer exists, and that the advisory should therefore be rescinded (MDNR 1987; MDNR 1989; MDNR 1990; Black 1989).

In response to the data showing no abnormal incidences of tumors on the fish in Torch Lake, the absence of tumoragens in the lake sediment, and the extremely low levels of contaminants found in fish from Torch Lake, the MDPH contacted the USEPA as early as December of 1989 and stated that they were considering lifting the fish advisory (MDPH 1990). However, the MDPH further stated that they were delaying the final decision to lift the advisory "at least another year," primarily due to the ongoing underwater drum sampling

program. The MDNR had earlier disagreed with such logic, however, stating that although multiple studies have revealed no site-specific tumor causing agents, the tumor problem appears to be due to historical exposure to short-lived organics, and it is therefore unlikely that these agents will be found in the lake (MDNR 1987). Regardless of the technical appropriateness of this delay in rescinding the advisory, the underwater drums in question were located and removed from the lake in 1991 during a thorough on-land and underwater drum search and removal program (G&M 1992).

Besides the fish advisory itself, the potential uses of Torch Lake by the community at large remain unimpaired. Numerous leaching studies have concluded that the stamp sands have a very low leaching potential, and thus very little metal will be released from the stamp sands to the lake (USDI 1991a; USDI 1991b; USBM 1991; Rose et al. 1986). In addition, the Torch Lake surface water and sediments do not present a human health threat to swimmers (MTU 1984; MDPH 1984; WUPDHD 1984). Recent studies have also concluded that the surface water does not have a significant adverse affect on fish (USEPA 1990; USEPA 1991), and MDNR testing of contaminants in the flesh of fish throughout the state revealed that the fish in Torch Lake are amongst the cleanest from all the inland lakes studied in Michigan (MDNR 1989; MDNR 1990).

The MDNR has noted that an abundant fishery existed in Torch Lake many years prior to the cessation of copper refining operations (MDNR 1986), indicating that the copper processing activities did not apparently have an significant adverse affect on the fish at that time. The MDNR has also stated that although the elevated copper concentrations in the lake are apparently toxic to some small benthic (bottom dwelling) organisms, the plants and animals currently found in the lake indicate a lake of very good quality, and Torch Lake continues to provide a good fishery (MWRC 1970; MDNR 1986). Site specific data collected on fish populations in an around Torch Lake have therefore shown that the reduced

benthic community within the sediments of Torch Lake does not substantially impact the overall quality of the lake.

In summary, a review of the literature surrounding the issuance of the walleye and sauger fish consumption advisory in Torch Lake has revealed the following:

- 1) The issuance of a voluntary fish advisory was initiated by the Michigan Department of Public Health in 1983 based on apparent evidences of abnormal tumors in walleye and sauger discovered in the lake in the 1970s; no other fish species were suspect.
- 2) The fish advisory was issued as a precaution, and was not connected with a known or suspected human health risk associated with consuming any known contaminants within these fish.
- 3) Fish tumors were only found in very old sauger and walleyes, many of the tumors were common to these species throughout their range in North America, and many tumors observed may have been caused by viruses or bacteria.
- 4) The exact cause of any abnormal incidences of tumors in Torch Lake fish has never been determined, but bioassays of the sediments in Torch Lake have found that significant levels of carcinogens are absent from the lake sediment.
- 5) Recent follow-up fish tumor studies conducted on numerous fish have found that abnormal incidences of tumors no longer exist in the Torch Lake/Portage Lake fishery.
- 6) Numerous leaching studies on the stamp sands indicate that very little metal is likely to be released to the lake water; this has been substantiated with tests on the lake water itself.
- 7) Flesh samples analyzed by the MDNR from fish collected in Torch Lake revealed that these fish are amongst the cleanest of

all inland lakes tested in the program.

- 8) The MDPH has apparently delayed lifting the fish advisory until the underwater drums had been characterized; these drums have subsequently been characterized, removed, and disposed.
- 9) Torch Lake water is safe for other uses, such as swimming.
- 10) Torch Lake continues to have a diverse, healthy population of fish and plant life, indicating that Torch Lake is of very good quality, and neither the lake water nor the sediments are toxic to fish.

From this review, it is evident that the basis of the fish advisory for walleye and sauger no longer exists, and all other known issues that could be causing the delay of lifting the advisory have been resolved. Based on data that have been collected over the past six years, the MDNR has repeatedly recommended to the MDPH that this fish advisory be rescinded. These requests have been met with no success. It is unknown as to why the fish advisory has not been lifted by the MDPH to date.

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Press Materials and Comments
Concerning the Proposed Plan

Leaders want EPA out of way

By PAUL PETERSON
Gazette writer

HOUGHTON — This area can't afford to be a Superfund site, said community and business representatives who came together for a special meeting Thursday.

The local contingent called for no action on the Environmental Protection Agency's \$7.2 million proposed cleanup plan for the Torch Lake Superfund site and asked that the designation be removed. At the meeting were EPA and Michigan Department of Natural Resources representatives who were told that being a Superfund site could cost the area both in dollars and reputation.

The group — which includes representatives of Houghton, Hancock, Houghton County, Keweenaw County and Michigan Tech — presented a statement to EPA Remedial Project Manager Jae Lee at the meeting at Houghton City Centre. In it, local leaders asked EPA to take Torch Lake off its Superfund site list.

The statement — read by Hancock City Mayor Mary Tuisku — said that EPA studies have "reassured us that the mining residues do not present a significant health or environmental risk."

But it was also pointed out that the region does not warrant continued spending of Superfund monies or resources, which would be better put to use in other places that do present a real risk to public health.

"Further, placement of essentially our entire community on the National Priorities List brings with it a most unwelcome and undeserved notoriety," the statement said.

The statement also emphasized that lending institutions will not loan money on current, past, or potential hazardous waste sites and that people will not wish to move to an area designated as such.

It was noted that Superfund

law requires EPA to recover the cost of the plan back from the community. The EPA recommends covering stamp sand and tailings with soil and vegetation.

Local leaders estimate that the plan could cost between \$25 to \$30 million, rather than the EPA's \$7.2 million estimate.

The EPA considers the area harmful, but has said that either action or no action may be taken.

Houghton City Manager Ray Kestner said the city has been listed as one of the top ten small cities in the country to live in. He said that action by the EPA would effectively block several projects the city has going — including one on the Isle Royale Sands.

"We take our environment very seriously," Kestner said. "We see it (EPA action) as a real threat to what we're attempting to do."

Kestner also said that the city's water source on the Isle Royale Sands could be threatened if the EPA takes an action position. He said the sands project includes creating a series of canals, 43 one-acre lots, a DNR trail, jogging trails and a 3½ acre wetlands area.

"This is a true community effort," he said, adding that EPA action "would dry up any kind of financing" for the project.

Property owner Dan Lorenzetti said that the financial resources to remove the sands are not available.

"If the entire Isle Royale Sands is removed foot by foot, the city's plan is dead in the water," Lorenzetti said.

Houghton County Road Commission Engineer Jim Manderfield said that stamp sand from former mill areas is used on roads in the winter.

"We looked for the most economical way to sand roads and that was it," Manderfield said. "Not having it would definitely cause some problems."

Manderfield said the county currently has about 30 years of stamp sand left from its source and would have to seek other

means at a higher cost if it was lost.

Houghton County Commissioner Gerald Perreault, D-Lake Linden, said that the county can't afford to get involved in litigation that may result in cost recovery lawsuits that usually follow superfund remediation.

"We just spent \$380,000 dealing with a lawsuit that was frivolous," Perreault said. "Any lawsuits involving this situation would no doubt be more costly."

The Keweenaw National Historical Park project has been hung up in Congress because of the EPA's Torch Lake action. Rev. Robert Langseth, chairman of CLK Foresight, said his group will be in Washington next week to testify on behalf of the park project.

"We're very close to accomplishing our goal of a national park," Langseth told Lee. "Your decision will delay or stop it. We can't attract tourists if they have to drive through a Superfund site."

The DNR is supporting the EPA in the matter, according to Region 1 Deputy Director Frank Opolka.

"The DNR fully approves the EPA process," Opolka said, adding that the Torch Lake site doesn't fall under the state's 307 site designation.

But Opolka said the state has worked in the past with Houghton County and will work with local government to try to reach a solution in the matter.

For his part, Lee said he will study the matter and continue getting local input. He said a decision on whether to keep Torch Lake from the Superfund list may come by the end of the August.

Keweenaw County Commissioner Barb Foley, like many of the local representatives present, noted that officials are united in their effort.

"We will work together to remove the stigma. This is being done to benefit the entire area," Foley said.

6-26-92

Township requesting that Torch Lake be removed from EPA's priorities list

By VICKY SLOAN
Gazette writer

CALUMET — The Calumet Township Board voted Friday afternoon to sign the Statement of Position regarding the Torch Lake Superfund Site, joining other local units of government in requesting the area be removed from the Environmental Protection Agency's National Priorities List.

The Statement of Position, already signed by the cities of Houghton and Hancock, Calumet Village, Houghton County, the Houghton County Road Commission, Portage Lake Water and Sewer Authority, CLK Foresight, and the National Park Committee, recommends the EPA's Alternative S1 (No Action) and goes on to explain why

the superfund site designation is harmful to the community.

The four-page document outlines the effects of labeling the area hazardous, including lower property values and a negative impact on tourism. The statement also says that the proposed vegetation cap is "unnecessary and grossly excessive," and that it would "obliterate evidence of this region's mining history."

The cost of the project and who would pay for it were also listed as serious concerns. The vote to sign the document was unanimous.

On another matter, Dave Love of U.P. Engineering addressed the board about progress on the township's sewer project which is now 27 percent completed. Septic tanks at the Wolverine No. 4 site will be installed next

week, according to Love. He also explained the required maintenance of the pump stations, and the board voted to request that the sewer authority maintain the system on a time and materials basis for one year.

Elmer Haltunen, township resident, asked the board to explain why his section of road did not get the dust control material which was spread last week. Supervisor Paul Lehto explained that no homes more than 500 feet off the dirt road received dust control, but Haltunen said road dust is a problem at his residence and that anyone who pays taxes should receive the benefit of dust control. Board members agreed to look into the situation.

In other business, the board:

□ Learned that a suit against a township resident and the

township on behalf of a woman who was knocked to the sidewalk by a dog was turned over to the township's insurance company.

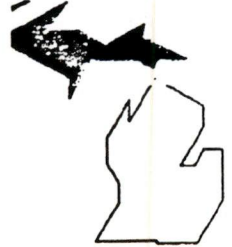
□ Agreed to donate \$500 to members of the National Park Committee for a trip to Washington D.C. to testify in favor of the National Historic Park in Calumet.

□ Approved the writing of a Recreation Trust Fund grant in order to purchase the 707 acres of ski trails in Swedetown.

□ Approved the appointment of Tom Tikkanen to the vacancy on the board.

□ Heard a request from Joseph Mihal, Calumet Village clerk, that the township repair the holes in the train depot roof, citing increased damage to the historic structure. The board agreed to look into the matter.

6/27/92

Operation Action U.P.

616 Sheldon Ave. #214
Houghton, Michigan 49931
Telephone (906) 482-3210

Richard Dunnebacke
Executive Director

Executive Committee

Gary D. Bantle, Co-Chairman
President
Lake Superior & Ishpeming Railroad
Marquette, Michigan
Walter R. Sauer, Co-Chairman
President
First of America Bank—U.P.
Marquette, Michigan
Willard A. Bodwell, Secretary
President
Resource Exploration, Inc.
Marquette, Michigan
Kenneth R. Saari, Treasurer
Division Manager
Michigan Gas Company
Pigeon, Michigan

June 24, 1992

Mr. Jae Lee
Project Manager
Torch Lake Clean-up Site
USEPA, Region 5, PS-19J
77 W. Jackson Boulevard
Chicago, IL 60604

Dear Mr. Lee:

The proposed EPA remediation plan for Torch Lake sites (OU I & OU III) is unnecessary and unjustified.

Covering with topsoil and revegetating the large areas of inert mining tailings will be far more expensive than your estimates show. The experience of former mining companies and municipal units which have attempted in the past to revegetate portions of these stamp sands clearly show that difficulties in placement, stabilization, and irrigation of the topsoil rapidly drives up costs and makes repeated coverings and seedings necessary. Working with these crushed rock sands is an inexact agricultural science requiring much trial, error, and retrieval. These uncertainties remain despite years of research and study by competent soil scientists at Michigan Technological University. They spell unknown, unpredictable and substantial cost escalations in EPA's proposed plan.

But most importantly, your EPA plan is not justified by the minimal risks involved. By your own previous admission there are no human health risks which are not tiny, normal and acceptable to EPA. Moreover, The risks to the environment, as brought out by your own studies, are small and not unlike natural erosion or leaching activities taking place all around us all the time.

In fact, placement of additional soils on the sands are likely to increase the risk to the environment.

1. Erosion at shorelines (which after these many years are basically stabilized and not a problem) will increase and contain new, unidentified fines and silt from the added topsoil.

2. Leaching of subsurface minerals will increase, not decrease, due to moisture retention and

Stephen W. Bohlert
U.P. Manager Corporate Services
Michigan Bell Company
Marquette, Michigan
David J. Bruke, President
M. J. Electric, Inc.
Iron Mountain, Michigan
E. Lloyd Bushong, President
U.P. Michigan Building & Construction Trades Council
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Upper Peninsula Power Company
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Jeffrey A. Heam, Vice President
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Paul D. Mahala, Partner
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Ramon Rosal, Executive Vice President
Vanner Logging America, Inc.
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Northern Michigan University
Marquette, Michigan
William C. Verrone, President
Champion, Inc.
Iron Mountain, Michigan

long-term action caused by the organic, vegetative matt on the surface.

Therefore, neither for human health reasons nor for environmental protection is the proposed EPA remediation plan justifiable, and under expected conditions will make the situation worse. It is unconscionable that a public agency persist in promoting a plan which is patently preposterous.

In the end, there is no justifiable reason for continuing to call Torch Lake a Superfund site, and there probably never was cause to identify it as such in the first place. The stigma placed on this community is a serious degradation of its social and economic well-being. Who, for example, would dare to invest or lend funds where supposedly potential environmental liabilities are entombed?

As an organization having more than 30 years experience with industrial and economic development in the Upper Peninsula, Operation Action U.P. urges EPA to quickly remove this undeserved stigma which is a serious brake on the Copper Country's future advancement.

Do not plunge this struggling area into decades of acrimonious legal battles over who is responsible and who should pay when none today had anything to do with original mining or milling; do not unjustifiably expend large sums of taxpayer superfund monies to attempt burying a non-problem; do not persist in implementing a plan which needlessly perpetuates a public stigma for future generations; in short, do not take any action on the Torch Lake sites.

Sincerely,



Richard Dunnebacke

RD/sjy

STATEMENT OF POSITION REGARDING THE
TORCH LAKE SUPERFUND SITE

We are appreciative of the EPA's efforts in investigating and evaluating the potential health and environmental effects of copper mining residues in our community. That considerable body of work has benefitted the community in two important respects: caused the removal of drums which were buried in Torch Lake, and, perhaps, more importantly, it has reassured us that the mining residues do not present a significant health or environmental risk. Quoting page 11 of your May proposed plan, "Because the human health risk for OU I and OU III are generally within U.S. EPA's acceptable range, Alternative T1 and Alternative S1 (No Action) are feasible alternatives. The remaining Alternatives (T2, S2, S3, and S4) would meet all applicable health and environmental regulations." For this we are grateful and we thank the EPA.

Given the above, the community does not believe that it should continue to be treated, en masse, as a superfund site. To continue to do so is not an appropriate or necessary use of superfund monies or resources, which are greatly needed at other locations which present a real risk to public health and the environment. Further, placement of essentially our entire community on the National Priorities List brings with it a most unwelcome and undeserved notoriety. This label will have an unquestionably negative effect upon property values. People will not wish to move to an area designated as a hazardous waste dump site to build homes and raise their families. Prudent lending institutions will not loan money on current, past, or potential hazardous waste sites and are reluctant to accept mortgages on adjacent properties. The many tourists upon which our economy so heavily depends will not wish to vacation at a place where they have

wonder if the beaches and waters are hazardous. This may even affect the visitors to the proposed Keweenaw National Historic Park. Students wishing to attend the local university and college will think twice before spending four or more years in the environs of a superfund site. Finally, as the economic growth and value of this area declines, the occurrence of wasteful litigation is likely to increase. Property owners and businesses will become embroiled in the cost recovery lawsuits which inevitably follow superfund remediation, and the area may become a fertile spawning ground for civil personal injury suits.

Application of this label to the community adds insult to the injury which is caused by the proposed remedy. We feel that the engineering of an enormous soil and vegetation "cap" over a large part of our community is unnecessary and grossly excessive. If its stated purpose is the reduction of blowing and airborne dust, the ripping up of existing vegetation and the driving of heavy machinery over those areas would seem to be completely at odds with that purpose. Once this cap is in place, it will present significant restrictions of the sale and development of that property by ordinary residents as well as the business community. Pursuant to Michigan's Environmental Response Act (Act 307), deed restrictions may be imposed upon any land so treated.

The activities suggested in Operable Unit II, which essentially involves the digging-up of large portions of our lakes, will have devastating consequences on the lakes themselves as well as upon fishing.

These activities are designed to obliterate evidence of this region's mining history. The community has a legitimate interest in

historic preservation, which is not outweighed by standards of beauty rather than health. We believe that our unique history is an asset, not an eyesore.

Finally, very little has been said with regard to how the \$7.2 million cost for all of this activity will be paid. It is important to understand that the superfund law requires EPA to recover this cost back from the community. Under that law, the liable parties are the owners of the contaminated property as well as those responsible for the generation and deposit of hazardous materials. Even if EPA chooses not to sue someone, those parties from which EPA does extract payment have a right to do so.

Simply put, we do not feel the EPA's estimate of \$7.2 million is realistic for the actual scope of work proposed and may be totally inadequate. No additional local governmental unit costs have been included. Preliminary engineering estimates indicate that an increase in local property taxes will be required to support related costs of \$17 million. These costs along with cost over-runs may push the actual overall Superfund Site costs to \$25 to \$30 million. It is the community's position that a "no action" record of decision is entirely warranted in this matter, given the ongoing community programs, all of which have remedial effect, and the overriding national interest in preserving these unique evidences of the historic mining industry for posterity.

For instance, the Portage Lake Water and Sewage Authority has been engaged in a sludge-spreading project for some 20 years, which has already resulted in the re-vegetation of many acres of stamp sands. Re-vegetation will continue. It is being resolved as a local problem with a local solution. The City of Houghton is planning to develop a

large portion of the Isle Royale sands into a residential community and series of canals, which will result in those areas becoming covered by vegetation, buildings, and streets. The City of Hancock has a waterfront plan which calls for extensive residential, commercial, and recreational development. A local committee is well on its way towards turning sections of old mining ruins into a national park and tourist attraction. We are supportive of these uses, and it is our desire to work with EPA to find other such productive and creative solutions for those limited areas where blowing sand is a concern, as opposed to the extremely expensive and potentially counter-productive "capping" approach.

It is the community's goal to be taken off the National Priorities List. We believe that the results of the EPA's own studies demonstrate that this characterization of our community is inappropriate overkill. To the extent that limited and discrete environmental problems exist, we would prefer to see these treated on a state and local level.

We support the preceding course of action for the Torch Lake SuperFund Site.

Mary J. Trustin	Mayor	City of Hancock
Susan C. Cook	Comptroller	Village of Calumet
Franklin Trust	City Manager	Houghton
James B. Mandel	County Highway Eng	Houghton CRC
Doc Leggett	Pres	SBC
E. Robert Daulton	Chairman	Portage Lake Water & Sewage Authority
Willy J. Daulton	PRESIDENT	CLK FORESIGHT, INC.
Gerald A. Pincant	County Commissioner	Houghton County (+ resident of Lake Linden)
Rev. Robert V. Langreth	Chairman	Natl. Park Committee

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County Road Commissioners
HOUGHTON COUNTY

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Portage Township

GABRIEL J. MASINI, Member
Hancock

P. O. BOX 269
HANCOCK, MICHIGAN 49930
1-906-482-3600

May 15, 1992

JAMES B. MANDERFIELD
County Highway Engineer

WILLIAM E. OBST
Office Manager

Mr. Philip Schutte
Community Relations Coordinator
Office of Public Affairs (PS-19J)
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, Illinois 60604

Re: Public comments Torch Lake Superfund Site, Houghton County, Michigan

Dear Mr. Schutte:

This letter is to state that the Houghton County Board of Road Commissioners goes on record **strongly** opposing the plan to eliminate the availability of stamp sand as a public resource used extensively as a winter road abrasive and road building construction commodity in Houghton County, Michigan.

This administrative board has been very sensitive to environmental issues and can find no plausible reason why stamp sand deposits in the Keweenaw Peninsula should be covered over and made useless when there has been absolutely no proof that these materials are harmful to humans or the environment of our pristine area.

Our agency uses appropriate deposits of stamp sand very extensively for road abrasives for five months of the year when our roads (and stamp sand deposits) are covered with up to 30 feet of snow each winter.

This man-made resource, by coincidence, falls within a desirable range of specifications found nowhere in natural occurrence.

The material which we use contains almost no very fine material (0-3%) which allows it to be used without adding large amounts of environmentally harmful chlorides to the material itself while it is in storage to prevent it from freezing in piles.

The material, in it's present state, contains no particle sizes over 3/8". On rural, high speed highways, if abrasives containing over 3/8" diameter are used, extensive windshield breakage occurs.

In addition, the particles of stamp sand are 100 percent fractured and are unequalled in their ability to stick to slippery roads in below 0°F temperatures experienced in Houghton County.

Mr. Philip Schutte
Page 2
May 15, 1992

Stamp sand cannot be equalled economically for commercial use in our area.

Substitute, and much inferior, rounded particle, natural sands can be washed and graded to closely compare with these stamp sands, however, much greater amounts of this material would have to be used in order to equal the performance of this man-made resource, thus further depleting another natural resource at a faster rate.

Stamp sand is also used extensively for subbase on our roadways and it's superior qualities as described above, also allow less quantities to be used to achieve equal results against natural resource sands.

In our area where a high percentage of native clay soils are present, this valuable road building material is unequalled for strength where 6' to 10' deep frost occurs and weakens roads for 50 to 70 days each spring when all economic trucking for timber products, farm commodities and general commerce must be halted each year.

When all of the factors are taken into consideration, the elimination of these resources for use on and in roadways alone have been calculated to cost 15 to 20 million dollars over the next 30 years, in an area which is already economically depressed.

The importance of stamp sand is most certainly going to increase as the eventual reduction or elimination of environmentally questionable chlorides occurs in the future.

The Houghton County Road Commission has purchased a source of stamp sand for future use (OU III, site 10) of some 50 acres and intends to manage that site responsibly, by removing only amounts that are excessive, without disturbing the Portage Waterway, and eventually covering up the remaining material with heavy, vegetation supporting soils.

Our site, and others, are being presently managed and considered for development resulting in the slow elimination of exposure to the environment, as economic conditions will allow, even if the EPA doesn't intercede.

The Houghton County Board of Road Commissioners, again, goes on record, strongly opposing EPA action to cover over and eliminate the use of stamp sand for the great benefits of Houghton County taxpayers, for no apparent justifiable reason.

Very truly yours,

FOR THE BOARD:

BOARD OF COUNTY ROAD COMMISSIONERS

PETER J. FAUSONE, CHAIRMAN
ROBERT R. RAISANEN, VICE CHAIRMAN
GABRIEL J. MASINI, MEMBER


James B. Manderfield, P.E.
County Highway Engineer

JBm/pp

Document Originally
Attached to
Following Page

Please file for Cam Findlay

Indian Gaming

THE WHITE HOUSE
WASHINGTON

DATE: Apr. 13, 1992

TO: Cam Findlay

FROM: **EDE HOLIDAY**
Assistant to the President
and Secretary of the Cabinet

We're working on this. I'll
get back to you.

Attachment

file:
Indian
gaming



United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, D.C. 20240

April 10, 1992

MEMORANDUM FOR EDE HOLIDAY
ASSISTANT TO THE PRESIDENT
AND SECRETARY OF THE CABINET

FROM: TIMOTHY W. GLIDDEN
COUNSELOR TO THE SECRETARY

SUBJECT: INDIAN GAMING

Numerous Attorneys General, governors, and other state officials blame, in large part, the Federal Government for various problems they are having in dealing with Indian tribes pursuant to the 1988 Indian Gaming Regulatory Act.

The 1988 Act created a Federal Indian Gaming Commission to regulate Indian Bingo and provided that tribes and states could enter into certain compacts relating to other forms of gaming. These problems center around a perception that gambling is being forced upon the states by the tribes.

Generally speaking, these problems encountered by state officials are created not by the Administration, but by fuzzy, vague, unclear provisions in the 1988 Act.

In order to counter what may turn into a campaign to blame the Bush Administration for all of these problems, we suggest that the Administration make its position, in favor of family values and against forcing unwanted gambling upon the states, known by proposing amendments to the 1988 Act.

We further suggest that these amendments be drafted and presented in a manner which will make it clear that the Administration is neither siding with those Nevada gaming interests, who oppose Indian gaming for reasons of competition, nor siding with those Indian tribes which have chosen to go beyond the scope of the intent of the 1988 Act.

Here are some suggested amendments to the 1988 Act based upon the problems that have arisen:

1. Amend the 1988 Act to provide that a tribe may negotiate a gaming compact which will cover only that form of gaming permitted in a state. Some tribes have taken the position that if a state permits any form of gaming, even though it prohibits other forms of gaming, those tribes are entitled to negotiate a compact for all forms of gaming.

2. Amend the 1988 Act to clearly distinguish between the type of gaming regulated by the Indian Gaming Commission (Bingo) and the type of gaming which is to be the subject of tribal-state compacts. The problem here is that the 1988 Act does not clearly define whether or not video machines are or are not to be the subject of a tribal-state compact.

3. Amend the 1988 Act to define what is meant by the requirement that a state negotiate a compact with a tribe in "good faith." Some states feel that this good faith requirement is being used to force them to accept provisions in a compact which they do not want.

4. Amend the 1988 Act to remedy other less controversial problems which have arisen.

