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Status of Reilly Tar Negotiations and Potential Impact on the Superfund Program

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On May 14, 1985 technical negotiations with respect to implementation of a remedy at the Reilly Tar site in St. Louis Park, Minnesota concluded with an agreement by Reilly to implement the Remedial Action Plan designed by the State and EPA. Some legal issues still remain.

At the beginning of this last round of negotiations which started about four weeks ago, the Court appointed a Special Master (a former Judge) to mediate the negotiations. The Special Master, then, reported progress to the trial Judge. The Special Master separated technical discussions regarding remedy from legal discussion involving past costs and language in the Consent Decree. The technical group comprising Reilly's engineers, the MPCA and EPA staff agreed to the technical specifications of the RAP including the schedule for implementation of the remedy.

The remaining settlement issues relate to the Consent Decree and past costs which the lawyers representing the Agencies and Reilly are discussing. They anticipate resolution of these issues by friday, May 17, or monday, May 20, 1985. Presuming these issues are negotiated, then a settlement is plausible during the week of May 20th.

The programmatic issues are the following:

1) The EPA and MPCA have a Cooperative Agreement for design of a Granular Activated Carbon plant to be completed by the MPCA contractor. The design work completed, thus far, is approximately $20,000 and produces piping, instrumentation building layouts and cost estimates. The plans and specifications have not been drawn by the contractor yet. Reilly proposes to pay back the amount spent on design work conducted up to the day Reilly signs the consent decree, which could be next week. Reilly, then, proposes to complete the design and construct the Agencies' choice for GAC treatment on the same schedule proposed by the Agencies.

2) The EPA has initiated a Federal-lead RI/FS at the site. The amount of expenditures escalates significantly next week (May 27th) when drilling rigs are mobilized and monitoring wells are being drilled. Again, Reilly proposes to pay back the costs thus far incurred for the Federal-lead RI/FS up until the time Reilly signs the consent decree, after which they will implement the RI/FS on the time frames prescribed in the Remedial Action Plan included in the consent decree.

I told Reilly's representatives that all work under the CA and RI/FS would continue as scheduled and the decision to stop work should be made by EPA management after Reilly had signed the consent decree, but there was no assurance that we (EPA) would terminate the CA or RI/FS contracts at anytime.

Another issue regarding the technical remedy also needs consideration by management. This regards the cost to investigate a 900 feet deep aquifer which may or may not be contaminated. The costs to determine whether the aquifer is contaminated, the costs for remedial action and the dubious benefits of such action are generated by the MPCA and Reilly in separate documents. The analysis can be summarized here and can be presented in technical detail if desired in another memo. In summary, if the aquifer is contaminated it will cost almost 1 million dollars to be certain and tens of thousands of dollars of O/M per year to remove. If it is not contaminated, it will cost at least $400,000 to be reasonably certain. In any case the travel times to affect a user of the aquifer (a drinking water well) would be 50 to 150 years. Less than 0.5 miles^2 of aquifer would be degraded if no-action were taken. Thus, due to the uncertainty of contamination in the aquifer and the amount of time necessary to affect current drinking water use, the RAP specifies contingencies in that aquifer. Reilly will provide treatment to any existing well if it should become contaminated, which is unlikely, and Reilly will also provide treatment to any new well drilled into the aquifer in the future, during the life of the consent decree.

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