

UNITED STATES DISTRICT COURT

DISTRICT OF MAINE

MAINE PEOPLES ALLIANCE
and
NATURAL RESOURCES DEFENSE
COUNCIL, INC.,

Plaintiffs

v.

HOLTRACHEM MANUFACTURING
COMPANY, LLC, and
MALLINCKRODT, INC.,

Defendants

Civil No. 00-69-B-C

Gene Carter, Senior U.S. District Judge

ORDER APPROVING PHASE I REPORT

The Court has now carefully reviewed the Study Panel's Phase I Report to the Court (Docket Item No. 382) and the comments and Objections (Docket Item Nos. 387, 388, and 389) of the parties. The Court now accepts the Study Panel's Phase I Report and its recommendations, with some emendations, that it proceed to a Phase II of the Study, to be concentrated on understanding where and when methyl mercury (MeHg) is produced in the system, how it is transported and bioaccumulated in the lower River, north of Fort Point Light, and on accumulating the scientific data necessary to evaluate and determine with reasonable accuracy the practicality and efficacy of potential mitigation measures and whether those will be more beneficial and expedient than permitting the normal processes of natural attenuation to clear the mercury pollution in the Penobscot River.

It is now established in the record that mercury (Hg) deposited in the Penobscot River in significant quantities and to substantial negative effect from the HoltraChem site has and is now in the process of methylation posing a danger to the health of the wildlife in the River and risks of a substantial nature to the well-being of human beings who ingest the products of the River. That is the distillation of the factual predicate on which this case is to proceed.

The Court is fully satisfied that the prior evidentiary record, the Court's previous findings, and the data derived from Phase I of the Study establish and confirm that the Penobscot River, north of the Fort Point Light, is contaminated with significant quantities of mercury deposited at the HoltraChem site. The record further demonstrates that such mercury contamination poses substantial endangerment of some wildlife species that frequent or reside on the River or in its environs, significant risks to fish and shellfish tainted by their ingestion and processing of mercury and/or methyl mercury in the sediments and the water column of the River. The analysis and findings set out in the Phase I Report are of sufficient weight and evidentiary impact to establish these conclusions without resort to further detailed analysis of the data of Phase I of the Study, as contemplated by the Defendant's Objection to the Report. In the absence of any clear, positive showing that the data have been improperly used or disregarded by the Study Panel, there is little, if any reason, to believe that the delay of the Study's progress, which would be considerable and might well jeopardize its ongoing status and ability to survive, and the extra expense that would necessarily be entailed in a further detailed study of such data is justified or will result in any conclusion other than that Phase II is warranted under the law and facts and should proceed with all due dispatch.

The central issues to be addressed in Phase II are whether it is necessary and feasible to ameliorate mercury and the methylation of mercury in the Penobscot River now and in the future by means that will exceed the benefits likely to be had by allowing the natural attenuation processes in operation in the River to accomplish over time and, if so, what reasonable human processes will accomplish that end.

Accordingly, it is **ORDERED** that:

- (1) the Phase I Report with the Court's indicated emendations be, and it is hereby, **ACCEPTED**;
- (2) the Phase II Study Plan shall be docketed and the parties shall file written comments and objections thereto on, or before, March 28, 2008;
- (3) the conduct of Phase II of the study be restricted to the conditions of the Penobscot River and its environs north of Fort Point Light;
- (4) the Study Panel forthwith provide to all counsel all existing summary sheets with data; and
- (5) the Study Panel arrange forthwith to conference with the parties, by a mutually acceptable modality of communication, to discuss the conduct of Phase II of the Study. Thereafter, the Court will conduct, if then requested to do so, a conference of counsel at Portland to discuss any outstanding issues in respect to the conduct of Phase II or other concerns of counsel or the Court.

/s/Gene Carter
Senior U.S. District Judge

Dated at Portland, Maine this 7th day of March, 2008.