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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
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IN RE: MTBE MDL 1358

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New York, N.Y.
January 18, 2013
3:00 p.m.

Before:

HON. SHIRA A. SCHEINDLIN,

District Judge

APPEARANCES

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1 THE COURT: So we need a date. The last time I
2 counted two weeks, I managed to skip a week. I'll try harder.
3 So February 1st would be exactly two weeks. I think I
4 gave a little more before. February 6th, February 8th,
5 something like that. So that's when these files are due.
6 After you've had a chance to review them, Mr. Riccardulli,
7 either write a letter or just ask for a conference and we'll go
8 over it.
9 MR. RICCARDULLI: OK. Thank you, your Honor.
10 THE COURT: So for now, I've addressed the issues in
11 the letters before me; is that right or wrong?
12 MR. RICCARDULLI: That's right, your Honor.
13 THE COURT: I think so.
14 MR. RICCARDULLI: There's other -- well, two others
15 issues. We have now received the sort of revised report of
16 Anthony Brown. And there are a couple of issues that we wanted
17 to raise with the Court.
18 The first -- and Mr. Kaufmann and I spoke this
19 morning, so I'm doing this more I think for the record so we
20 can just put our agreement on the record. Mr. Brown has
21 revised the report to remove the specific references to
22 receptors outside of the delineation.
23 However, in his narrative report, after he finishes
24 the narrative section about each of the sites, he then refers
25 the reader to a Figure 1, which is a map of the site, which

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1 still identifies by name receptors, both inside and outside of
2 the delineation. Obviously, for us we want make sure that it's
3 clear that anything outside the delineation is not in -- he
4 can't point to them, either in the text of his report or in
5 Figure 1. Mr. Kaufmann, I believe, agrees that for those
6 outside of the delineation, that they are not to be shown to
7 the jury in any way, that that figure would have to be amended
8 to make sure that there is no reference to those specific
9 receptors outside of the delineations. And I wanted to make
10 sure that our agreement is clear and just put it on the record.

11 MR. KAUFMANN: That's correct, your Honor. Assuming
12 that type of figure were to go to the jury, it would be excised
13 or edited in accordance with your Honor's order.

14 MR. RICCARDULLI: OK.

15 The next issue, your Honor, is that when Mr. Brown
16 revised his report for each of the -- and there's an individual
17 sort of packet or section for each site -- he's now added the
18 language, particularly a sentence that has caused us some
19 concern, and it reads: "The analysis of impacts to groundwater
20 from MTBE released at the site has been limited by the Court to
21 a delineated area in order to efficiently present evidence.
22 Contamination released at the site will continue to migrate
23 with groundwater, and without remediation, the contamination
24 may migrate beyond the delineation boundaries."

25 We're somewhat concerned, at least troubled, by the

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