

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

CIA ⑦

UNITED STATES OF AMERICA

CIVIL 79-989C

-vs-

HOOKEE CHEMICALS and PLASTICS CORP., et. al.

SIR: Take notice that an ORDER was duly granted and entered
in the above entitled action, on the 7th day of August, 1981

DATED: Buffalo, New York
August 7, 1981

John K. Adams, Clerk
U.S. District Court
604 U.S. Courthouse
Buffalo, New York 14202

TO: Jack Penca, AUSA
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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Plaintiff,

-vs-

CIV-79-989

HOOKEE CHEMICALS AND PLASTICS CORPORATION,
HOOKEE CHEMICAL CORPORATION, OCCIDENTAL
PETROLEUM INVESTMENT CORPORATION, and
OCCIDENTAL PETROLEUM CORPORATION (HYDE
PARK LANDFILL),

Defendants.

The Proposed Settlement, styled "Stipulation and Judgment Approving Settlement Agreement," of this lawsuit was lodged with the Clerk on January 19, 1981. That Settlement, which has been the object of much public debate and many court submissions, requires the court to state that it is "fully advised in the premises" of the Settlement. Stipulation and Judgment,
¹
Document No. 40, at 1-2.

In addition, there is the residual duty of any equity court to satisfy itself that a settlement it is asked to enforce
²
meets at least some minimal standards. }

The Settlement in the instant case is a long, complicated document which uses relatively arcane language and sophisticated engineering and hydrologic concepts. These do not yield gently to understanding by the layman. They are the result of months of negotiations and considerable familiarity with the sciences involved. It would indeed be surprising if they could be freely understood by the uninitiated. Nonetheless, yield they

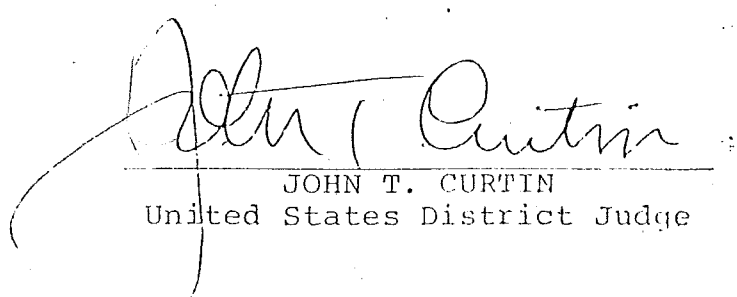
must if the "premises" of the Settlement are to be understood both by the court and interested citizenry, and if the court is to enter the proposed judgment.

In order to facilitate this educational process, a fact-finding effort will be undertaken in the nature of a court hearing. The primary proponents of the Settlement, here the governmental plaintiffs and defendant Hooker, shall have leave to present testimony in order to explain the various elements of the Settlement in the simplest language possible. The amici shall have leave to cross-examine these experts and present limited testimony of their own. In order to expedite the process and further focus the testimony, I have set out some representative questions which the court has in the Appendix.³ The parties shall have all necessary witnesses present in the courtroom and available to testify, using the categories of the Appendix as an agenda.

The court anticipates the hearing will last two to three days, during the week of September 8, 1981.

A scheduling order will follow.

So ordered.


JOHN T. CURTIN
United States District Judge

Dated: August 7, 1981

FOOTNOTES

1 In addition, the Settlement vests the court with power to grant relief in the event that a party fails to comply with any of its terms. Id., at 27, ¶16. There is also a procedure for the court to propose modifications to the parties prior to entry of the Judgment, Id., at 27, ¶17, and an express recognition that the court retains the jurisdiction to "modify and enforce" the terms of the Settlement. Id., at 29, ¶18.

2 Which standard to apply has been much discussed by the parties and amici. We are cited to many judicially articulated standards. Determining the precise standard applicable to this lawsuit need not detain us at this stage because the express language of the Settlement calls on the court to acknowledge it has been fully acquainted with the premises and because of the Settlement's own procedure for the court's suggesting modifications. See generally, United States v. City of Alexandria, 614 F.2d 1358 (5th Cir. 1980); Airline Stewards Local 550 v. American Airlines, 573 F.2d 960 (7th Cir.), cert. denied, 439 U.S. 876 (1978); United States v. Agri-Mark, Inc., 512 F. Supp. 737 (D. Vt. 1981); Williamsburg Fair Housing Committee v. New York City Housing Authority, 450 F.Supp 602 (S.D.N.Y. 1978); United States v. Ketchikan Pulp Co., 430 F. Supp. 83 (D. Alas. 1977); Patterson v. Newspaper & Mail Deliverys Union, 514 F.2d 767 (2d 1975), cert. denied 427 U.S. 911 (1976); United States v. Automobile Manufacturers Assoc., Inc., et al., 307 F. Supp. 617 (C.D. Cal. 1969); Village of Wilsonville, et al. v. SCA Services, Ill. (May 22, 1981).

3 With respect to those questions seeking solely definitions of terms, it may be useful for the parties to set out the requested definitions in writing prior to the hearing date.

APPENDIX

I. PRELIMINARY MATTERS

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- 1 Have all the parties shared with each other all geological, chemical, and other scientific data? 2 Is there any material, subject to discovery, which has not changed hands?
- 3 If so, what are the general categories of information withheld?
- 4 Does it reveal information relevant to safety of people or to the environment of the Hyde Park area? 5 Is there any reason why such information could not be revealed?

6 What provisions have been made to make all protocols and scientific data freely available to the public and court? 7 Is there provision to make such information publicly available at the same time it is made available to the parties?

8 What assurance can the United States give the court that they will remain an active participant in this lawsuit throughout the at least 35-year term of this settlement?

II. MAPPING

9 What evidence is there that the "fingerprint" chemicals are in fact the correct identifiers of the landfill chemicals? What chemicals were rejected as fingerprints and why?

10 How close do the experts estimate is the closest point of chemical contamination of soil, bedrock, or watertable

to the Niagara River, its tributaries, or other avenues, such as the conduits of the Power Authority of the State of New York to the river?

" 6 At what rate of speed have the chemicals moved from the landfill? ¹² What is the best estimate of the experts? ¹³ In which direction has the migration occurred? ¹⁴ How quickly is it likely to continue?

N, W, S (?) TAM

Much has been written concerning the research of Richard H. Johnston concerning the Niagara Frontier. Please supply a copy of the United States Geological Survey study referred to and summarize what relevance its general observations has for the specific problems associated with containment of the landfill.

Diagram Drs. Mason, Kleppinger, and Anderson all refer to the "piezonmetric head" in the Lockport Formation. ¹⁵ Explain what this is and what its significance is. ¹⁶ Also, what is a piezonmeter? Addendum II-2.

III. CONTAINMENT

On page I-17 of the Settlement and on page 5 of the Reply Brief of the United States, there is a list of specific technologies. There is a reference to possibly building a "grout curtain wall," using a technology of "controlled fractures," and installing a "purge well" system, etc.

What do these terms mean? ¹⁷

~~Explain, in layman's language, how mechanically these technologies will operate to contain the contents of the landfill.~~ ¹⁸

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* What are the advantages and disadvantages of each of the technologies listed? Discuss with respect to:

- 1. Safety to people.
 - 2. Effectiveness in containment.
 - 3. Safety to environment.
 - 4. Cost.
- + removal.*
- Design engineer*

Is incineration one of the technologies under consideration? If not, why not? If so, explain under what circumstances it might be employed.

What other technologies not listed might be contemplated? Why were they not listed? When would they be used?

Without undertaking any irrevocable commitments, under what circumstances would each technology be used? What considerations would cause the selection of one technology over another?

What are the major strengths and weaknesses associated with each technology?

There are several references in the list of technologies to migration of non-aqueous phase liquids from the landfill "up to 15 feet below the top of the Lockport Bedrock Zone." What is the significance of the 15-foot figure? How was it arrived at? E.g., Addendum I-17, I-22.

Dr. Mason's affidavit, at paragraph 15, refers to a French Drain effect. What does this term mean? How is it significant?

no leak
fault
reburial
excavation removal
incin.

Explain what a "leachate collection system" is and how it works.

What is a "recharge area?" What is its significance? Mason Affidavit, ¶24. The affidavit refers to "additional purge wells." Will these provide an effective containment system? .

The Overburden Barrier-Collection System shall consist primarily of a tile drain. Why was this system selected? What alternative technologies were rejected? Why were they rejected?

The Overburden Barrier-Collection System is to be installed at least 10 feet below ground level, but in no event below the top of the Weathered Zone. What is the significance of the 10-foot figure? How was it arrived at? Addendum I-22. What is the Weathered Zone? Why must the drain be below it?

To the best of the knowledge of each party, is the Rochester Shale Zone permeable? Explain the basis for the conclusions reached. How reliable is the current evidence?

Have any of the test borings thus far cut into the Rochester Shale Zone?

Is there any evidence that the landfill contents may contain corrosives which would damage the Rochester Shale Zone?

What is split spoon sampling? Addendum I-12.

Distinguish "survey wells," "observation wells," and "monitoring wells." When are each used? Addendum I-12, 16.

IV. TREATMENT

What is an activated carbon waste water treatment system? What are examples of performance equivalents? Addendum I-25.

On Addendum page I-27 there is a list of tests to be performed on effluents and the intervals during which they are to be performed. How was the sampling frequency determined? How were the treatment levels generated? Given the severe health danger posed by some of these chemicals, particularly dioxin, are the sampling frequencies adequate to protect the public safety?

What is "spent media?" Addendum I-29, 30, 32.
How can it be regenerated?

There are several forms of treatment proposed for the residue materials. Addendum I-29. These include: incineration, disposal, or treatment which is the "performance equivalent." How were these chosen?

Under what circumstances would each be used?

What are the strengths and weaknesses of each?

Are there any available technologies not listed?
Why not?

On page 23 of the Reply Brief of the United States, the government acknowledges that it has chosen to "contain this landfill and treat wastes as they are collected." Have the parties drawn any conclusions yet how waste will be treated?

What considerations will influence the decision? If a decision has been made, will it be done on site or transported for treatment elsewhere? Who will perform the treatment? Where will the residue be stored? Addendum I-25.

What interim steps have already been taken to contain the landfill and its contents?

Is there any evidence to date of particulate migration? Addendum I-52. If so, how concentrated? Is there any danger to human life? What remedies have been undertaken?

Hooker may store spent media and residue in existing lagoons. Addendum I-33, ¶8(b). Is this likely to exacerbate the contamination? E.g., how will the chemicals be kept from the air, sinking anew, creating new plumes? How safe is the proposal to store this material for up to a year without significant monitoring or containment precautions?

What considerations will be taken into account in deciding whether to cap or excavate Bloody Run Creek? Why does determination of the final boundary of the containment area only depend on detection of TCDD and not other chemicals? Addendum I-40.

V. MONITORING

If the purge well system is used and at some time in the next 35 years there is a change in the geological structure of the landfill area--whether by tremors, shifts, changing soil and rock formations, or by non-natural forces such as pipe-bursts, explosions or construction--such that the existing technology

will no longer meet specification, who will install new technology?

Who will pay for such an eventuality?

Who will monitor the site after the maintenance period is terminated? Addendum II-12.

How long are the containment technologies likely to last without replacement? Who has the obligation to effect repairs? Addendum II-12, III-1, III-2, ¶G.

Is it possible that the direction of migration could change after a four-year hiatus? Addendum III-2.

What is the possibility of the chemicals drifting downward to the Rochester Shale?

How likely is it that such a drift would not be detected using current technology?

How likely is it that these chemicals will change direction? How likely is it that such a change will be detected?

It is possible that the chemicals could migrate downward without detection, then change directions for the Niagara River?

✱ How impermeable is the Rochester Shale? Once the chemicals are in contact with or corrode the bedrock, is there any possibility of stopping or channeling the migration?

Under what specific factual circumstances is it contemplated the Barrier-Collection Systems may be suspended? Addendum I-35, 42.

Addendum I-45. What is a "porcupine or a sponge pig?"

There appear to be no plans to monitor directly the area immediately below the landfill. Addendum II-2, II-12. Can sinkage and downward seepage be adequately detected without a monitoring well or the like? What evidence is there for this conclusion? II-10. Is there a safety or containment consideration arguing against such a well?

In the event migration beyond the parameters is detected by the periodic monitoring called for at Addendum II-3, will monitoring be stepped up?

What is the significance of "stabilization?" Addendum II-6.