

M E M O R A N D U M

TO: Hooker Chemicals File

FROM: Toby

RE: Court Order of February 12, 1981

DATE: 27 May 1981

On February 10, 1981 the Court heard the presentation by the parties in the Hooker case setting forth the elements of their proposed settlement. Because of the public interest in this case and the need for retaining extensive continuing jurisdiction, the court finds it useful to have oral presentations. The parties indicated there would be a public hearing on February 19th and the transcript would be filed with the court. All comments received and government responses sent pursuant to 23 CRF Section 50.7 would be filed with the court. The court stated that the settlement would not be approved until both the transcript and comments are received and studied by the court. Court indicated that a subsequent session at which time the court would have additional questions concerning the settlement may be necessary. The court raised the following matters:

1. The question of appointing an expert to advise the court on the difficult technical issues raised in the settlement.
2. The terms requisite remedial technology, etc. whether they have been used.
3. What action can the court take if local government bodies refuse to issue permits necessary.
4. How would easements be compelled.
5. Under what circumstances might relocation take place.
6. The settlement of visions potentially and perpetually existant to the landfill. How will the site be maintained after the 35 year period.

The court says it is not asking for any amendment of the proposed settlement rather it wishes to understand what the parties have agreed to.

Response to court order submitted by U.S.A., State of New York, Hooker Chemicals, dated March 17, 1981.

1. Re appointment of expert: They say at this juncture it is impractical and would unduly delay initiation of the remedial activities. They do say that following entry of judgment the appointment of an expert under rule 706 may be appropriate.

They say the remedial program is not the design of a single person or a single discipline. They cite that geologists, hydrologists, engineers, and chemists were necessary. They use 44 technical advisors and consultants. They say they have spent twelve months collecting and evaluating the raw data and that it provides one of the most comprehensive and technically advanced remedial programs ever undertaken. They say the court itself would have to appoint a large interdisciplinary team of experts and coordinate their work.

Dispute resolution following approval. The agreement provides that any party may petition the court to refer such technical issues to a master. The court would, at that time, be aware of a particular expert to review the matter. They say right now there are no technical issues in dispute.

2. They say requisite remedial technology is frequently utilized in the settlement agreement. They say the goal is to protect against the endangerment to human health and the environment in the Hyde Park - Bloody Run area.

N.B. - The technologies are a) a barrier collection system, tapping, and closure of the Hyde Park landfill; b) clean-up excavation and/or tapping of the basin and gorge area clean-up; c) treatment and disposal of collected materials; d) monitoring and maintenance of the remedial program; e) health and safety procedures during construction activities. The parties recognize it is not practical to specify technologies in two circumstances: a) where Hooker is obliged to conduct surveys to determine the extent of migration from the landfill; b) where contingency technologies may be used. They use the term requisite remedial technology and not best available technology. They chose the term because it had no prior legal history.

As a matter of U.S. EPA policy all federal consent agreements entered to date which relate to groundwater contamination have included provisions for a) surveying the extent of chemical migration from the landfill using test and protocols acceptable to EPA and, b) studying to what extent remedial efforts should be undertaken in light of the data generated by the survey.

Defines requisite remedial technology.

3. Local permits. Programs will take place in the Town of Niagara, the Town of Lewiston, and the City of Niagara Falls. The parties anticipate that every effort will be made to resolve such dispute without resorting to the court and paragraph 8 as a settlement agreement sets out a procedure. Any party may also petition the court to change the terms of the permit.

4. Easements. The procedures are similar to those for obtaining local permits.
5. Relocation of individual homeowners.
6. The parties say that the 35 year date is consistent with but more stringent than existing statutes and regulations (30 years).