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ct. Order  
Feb 12/81  
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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,

Plaintiff,

-vs-

CIV-79-989

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

Defendants.

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7.80 or 81

On February 10, 1980, the court heard a presentation by the parties in this case setting forth the elements of their proposed settlement. Because of the public interest in this case and because of the need for retaining extensive continuing jurisdiction, I deemed it useful to have the oral presentation.

At the court session the parties indicated that there would be a public hearing on February 19 at 7 p.m. at Niagara University and that a transcript of that hearing would be filed with the court. In addition, the United States indicated that all comments received and government responses sent pursuant to 28 CFR § 50.7 would be filed with the court. [The court made clear that the settlement would not be approved until both the transcript and the comments are received and studied by the court.] The court further indicated that a subsequent session at which time the court would have additional questions concerning the settlement may be necessary.

Finally, the court raised the following matters:

1. The court gave notice that it was considering appointing an expert to advise the court on the difficult technical issues raised in the settlement, Federal Rules of Evidence 706, and because of the settlement's own provision for possible appointment of a special master. Proposed Judgment ¶19 at p. 29; Federal Rules of Civil Procedure, Rule 53. See generally Scott v. Spanjer, 298 F.2d 928 (2d Civ. 1962); II Wigmore on Evidence §563 at 648-49 (3d ed. 1940); and Beuscher, The Use of Experts by the Courts, LIV Harv. L. Rev. 1105, 1117 (1941). The court invites comment by the parties as to the advisability of such action.

2. The terms "requisite," "requisite remedial technology," and "appropriate remedial technology" are used repeatedly in the proposed settlement. Have these terms been used in other environmental settlements? If so, please provide copies. Have these terms been litigated in similar lawsuits? If so, please provide citations.

3. If local governmental bodies refuse to issue permits necessary to effectuate all or part of the settlement, what action can this court take?

4. Similarly, how would easements be compelled? In which court would condemnation proceedings be commenced? Who would pay for such rights?

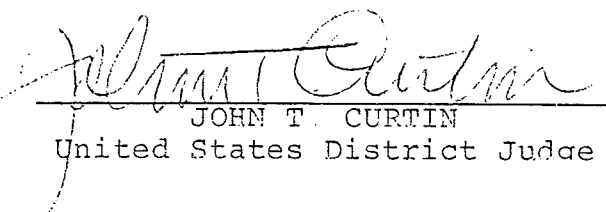
5. Under what circumstances might relocation of individual homeowners take place?

6. The settlement envisions potentially the perpetual existence of the Hyde Park Landfill. How will the

site be maintained after the 35-year period envisioned by  
the judgment?

With respect to these questions, the court wishes to make plain that it is not asking for any amendment of the proposed settlement. Pather, the court wishes to understand what it is that the parties have agreed to. If the parties are unable to submit joint responses to these questions and wish to make their responses under seal, they may do so.

So ordered.

  
JOHN T. CURTIN  
United States District Judge

DATED: February 12, 1981  
FILED: Feb. 13, 1981

*Barbara Morrison*

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,  
THE STATE OF NEW YORK,

Plaintiffs,

v.

HOOVER CHEMICALS & PLASTICS CORP.;  
OXY CHEMICAL CORPORATION; HOOVER  
CHEMICAL CORPORATION; OCCIDENTAL  
PETROLEUM INVESTMENT CO.; OCCIDENTAL  
PETROLEUM CORPORATION; THE TOWN OF  
LEWISTON; THE TOWN OF NIAGARA,  
(Hyde Park Landfill)

Defendants.

Civil Action No. 79-989

RESPONSE TO COURT ORDER OF FEBRUARY 12, 1981

Submitted by:

United States of America  
State of New York  
Hooker Chemicals & Plastics Corp.

March 17, 1981