

TO: Hooker-Hyde Park Landfill File
FROM: Toby
RE: Comments by Niagara County Citizens Alliance
DATE: 27 May 1981

The following is a summary of points raised by the Niagara County Citizens' Alliance in their follow-up comments on the January 19th, 1981 stipulation and judgement approving settlement agreement.

1. The Court should 1) publish notice of the citizens' suit sections of the Clean Water Act and of the Resource Conservation and Recovery Act and 2) formally enquire from all potentially affected persons whether they wish to take advantage of the statutory opportunities.

The NCCA is concerned about the scope and focus of the proposed consent. The only private party to the lawsuit is Hooker. NCCA is a voluntary membership association of residents of the City of Niagara Falls and Town of Niagara. There are 30 members.

The Government files this lawsuit pursuant to the Clean Water Act and the RCRA for the statutes include citizens' suit sections, citizens possessing an interest which is or may be adversely effected may intervene as a matter of right as party plaintiffs.

Note that the government has an inherent responsibility to look at and care for the health, safety and well-being of its people. They believe the consent decree has ignored this governmental responsibility.

2. Because the evidentiary and technological material which shaped the proposed consent decree has not been made public, effected persons and other interested parties are not able to adequately analyze and assess that decree. Comments must be highly speculative. They cannot know whether the decree is consistent with their concerns.
3. To improve the public comment process the Court should order publication of the material that gave rise to the decree.
4. NCCA raises concerns regarding the adequacy of the decree.

They read the decree and the Federal Government's amended complaint dated June 18, 1980.

- a. The decree makes inadequate provisions for industrial and residential relocation.

The Government says that Hooker's waste continues to enter Bloody Run drainage basin through broken berms, from the surface of the landfill and from migrating leachate.

The Government says that the migration of hazardous waste contaminant through sub-surface waters beneath the Hyde Park Landfill continue to occur.

The continuing action of chemicals dumped within the landfill continues to cause the enlargement of cracks in the bedrock beneath the landfill.

The hazardous chemical contaminants continue to migrate through the atmosphere.

The Government says that the drainage basin area contains measurable amounts of dioxin, benzene hexachloride (lindain), tetrochloroethylene, and trichloroethylene.

The Government says that dioxin has been identified in Bloody Run area sediment.

Official EPA water quality criteria for the protection of human health for dioxin, benzene hexachloride, etc. is zero.

Nine families within a thousand feet of Bloody Run drainage basin and three industrial firms with more than 350 workers just adjacent to the landfill. The Government says medical disorders of residents and workers nearby.

1. The consent decree makes no provision at all for industrial relocation and promises residential relocation only when consent decree related reveal activities create additional dangers to residents.

No protection for individuals living and working in the Hyde Park Bloody Run drainage basin area.

2. The adopted consent decree must provide opportunity for permanent residential and industrial relocation.
 3. In the alternative, residents and workers should be allowed to petition the court at any time during the life of the consent agreement regarding implementation of all activities and responsibilities.
- b. The decree must include guarantees of comprehensive medical studies of all the residents and workers whose health may at any time since 1973 have been affected. This is not in the proposed consent decree.
1. Chemicals which are present and have been migrating are chemicals which adversely affect human health.
 2. NIOSH have identified dioxin, lindain, and mirex in the workplace environment of three industrial facilities near Hyde Park Landfill.

- c. Acceptable soil survey levels, plume determination levels, and treated effluent discharge levels agreed on by the parties are inconsistent with existing U.S. EPA health protection standards, inconsistent with a proper regard for public health, safety and well-being.

The Government has said there are no safe levels for exposure to certain chemicals. They believe that the consent decree should provide that acceptable, positive effluent levels should be reduced in accordance with changes in technology over a time.

- d. The decree should mandate that Hooker has perpetual responsibility and liability for maintaining sampling and monitoring.

Only 35 year period of time for responsibility and liability; though it can be expanded by the discretionary action of the court. This was a change from the Government position.

- e. While Hooker should be financially responsible for the initial development and implementation of the remedial plan, an independent entity should exercise the day to day responsibility over the plan.

Too much reliance on Hooker.

- f. The decree does not adequately deal with the potential of Government inattention, inaction or resource scarcity.

Unless the Government responds to Hooker initiative, it must be adopted by the courts. The clauses should be modified so that when the Government fails to respond to any Hooker action, Hooker is mandated to notify the court of such Government inaction and upon such notification the court must order the Government to so respond.

- 2. There should be a commitment by the state and federal governments to fund their consent decree related activities.

- g. Page II-11 and II-12, the decree limits the circumstances under which Hooker would be responsible for guaranteeing the effectiveness of the decrees mandated remedial program.

NOTE

The NCCA's interest is for workers and residents in the immediate area. It only represents 30 members of the residents of the City of Niagara Falls and the Town of Niagara and residents of the Hyde Park Landfill and Bloody Run drainage basin area. There is no comments on international boundary waters or impact on the Canadian public health and environment.

August 11, 1981
714 Buffalo Avenue
Niagara Falls, New York 14303

Hon. John T. Curtin
United States District Court
United States Court House
68 Court Street
Buffalo, New York 14202

Re: United States v. Hooker Chemicals
(Hyde Park, 79-989)

Dear Judge Curtin:

I have received and read a copy of the Court's August 7, 1981 Order scheduling a two to three day fact-finding court hearing on the pending Hyde Park landfill litigation during the week of September 8.

The Court's August 7 Order does not dispose of the pending motions to intervene filed by the College Heights Property Owners Association and the Niagara County Citizens Alliance. These organizations filed intervention motions on March 20 and April 3, 1981.

Both the College Heights Property Owners Association and Niagara County Citizens Alliance appreciate the Court's August 7 Order and its accompanying appendix of representative questions relating to data access, mapping, containment, treatment, and monitoring. Both organizations believe that the Order demonstrates that the Court carries a commitment to the residents and users of the Hyde Park landfill and College Heights area to approve a settlement agreement which protects the health and safety of those individuals.

The College Heights Property Owners Association and Niagara County Citizens Alliance also believe that the Court's August 7 Order is consistent with the organizations' pending motions to intervene because it is premised on the necessity for the full disclosure of all relevant facts, and for the full and open discussion of all relevant issues and interests prior to the entry of any final settlement order. Further, those organizations believe that since they and their interests are most affected by the (settlement of the) Hyde Park litigation, it is critical that they be able to assist the Court in protecting themselves and their interests.

For these reasons, the College Heights Property Owners Association and Niagara County Citizens Alliance, through their counsel, request leave of the Court to participate fully in the impending September hearings. If this request would necessitate the Court to act on the organizations' pending motions to intervene, Counsel for these organizations would also respectfully request that the Court reach a decision on the merits of those motions.

The College Heights Property Owners Association and Niagara County Citizens Alliance have arranged for additional counsel with appropriate expertise and experience so that their participation in the September hearings would provide the Court with the fullest possible understanding of the terms, meaning, and implications of the proposed settlement order as it relates to the health and safety of the residents and users of the Hyde Park landfill and College Heights area.

In the event that the Court desires the College Heights Property Owners Association and Niagara County Citizens Alliance to file a formal motion with respect to any of these matters, Counsel would quickly do so and awaits any such instructions.

The already-scheduled hearings are due to begin in less than a month. Because of the time required to prepare for these hearings, Counsel for College Heights Property Owners Association and Niagara County Citizens Alliance also respectfully requests that the Court give prompt consideration to the matters raised in this letter.

Finally, in the event that the Court determines to allow the College Heights Property Owners Association and Niagara County Citizens Alliance to participate in the September hearings, Counsel for those organizations requests the scheduling of a pre-hearing attorney conference to jointly discuss the Court's agenda and the appropriate time for the mutual sharing of information relative to the items within that agenda. Such a pre-hearing conference could, at the Court's discretion, be in the presence of the Court.

Very respectfully yours,



Lewis Steele, attorney for
College Heights Property Owners Ass'n
Niagara County Citizens Alliance

cc: Jack Penca, Esq.
Marsha Cleveland, Esq.
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