



Canadian Environmental Law Association
L'Association canadienne du droit de l'environnement

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7 May 1981

The Honourable John T. Curtin
U.S. District Court
Federal Court House
Buffalo, New York

Dear Sir:

Re: U.S. v. Hooker Chemicals et al
(Hyde Park Landfill) Civil Action No. 79-989

The Canadian Environmental Law Association has been retained by two environmental public interest groups, Pollution Probe and Operation Clean Niagara, in regard to the above-noted matter.

It came to our clients' attention only within the past week that the proposed settlement agreement in the Hyde Park Landfill case is before your Court for ratification. While we realize that we are late in seeking to appear on this matter, we feel that this settlement has far-reaching international implications which have not been addressed. Therefore, we wish to inform you of our intention to bring a motion to appear as amicus curiae in this case. We hope to have the necessary documents filed through American counsel by May 18, 1981 or soon thereafter. We will be seeking permission to appear pro hac vice to argue our motion for amicus curiae status.

Pollution Probe, founded in 1969, is a non-profit, charitable foundation dedicated to providing public education on environmental matters, fostering public understanding on the nature and extent of the deterioration of the environment and undertaking scientific research related to the environment. Pollution Probe, since its inception, has been committed to the improvement of water quality in lakes and rivers across the Province of Ontario.

Operation Clean Niagara is a citizens' group based in Niagara-on-the-Lake, which takes its water supply from the Niagara River. Operation Clean Niagara feels it has a direct interest in ensuring that the water quality of the Niagara River is not adversely affected.

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The Niagara River is an international waterbody shared by the United States and Canada, and as such is covered by the Great Lakes Water Quality Agreement of 1978. Pollution Probe and Operation Clean Niagara are concerned that the proposed settlement agreement may be in breach of the purpose and certain specific objectives of the Great Lakes Water Quality Agreement. For example, Article I states that a policy of the parties is that:

"The discharge of toxic substances in toxic amounts be prohibited and the discharge of any or all persistent toxic substances be virtually eliminated."

Our clients are also concerned that the proposed settlement agreement does not take into account the January 20, 1981 Special Report by the International Joint Commission "On Pollution in the Niagara River" or matters raised in the January 28, 1981, IJC's Interim Report under the Great Lakes Water Quality Agreement. In that document the Commission notes that it is concerned about the quality of the Niagara River, which does not at present meet or is close to exceeding a number of Specific Objectives contained in the 1978 Agreement including that for "unspecified organic compounds".

It is crucial that the settlement agreement effectively provide for the isolation of chemicals that might migrate into boundary waters.

The Hyde Park Landfill drains into Bloody Run Creek which drains into the Niagara River and ultimately into Lake Ontario. Our clients feel that the settlement agreement must contain conditions stringent enough to ensure that international waters are not contaminated.

Because we realize that time is of the essence we wanted to inform you now of our intent to apply as amicus curiae in this case. We would be pleased to accept any further directions on how to proceed expeditiously.

Thank you for your attention to this matter.

Yours truly,
CANADIAN ENVIRONMENTAL LAW ASSOCIATION



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