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THE HONOURABLE ANDREW S. BRANDT
MINISTER OF THE ENVIRONMENT

A STATEMENT TO THE LEGISLATURE

ON

MINISTRY OF THE ENVIRONMENT REPRESENTATIONS
AT THE S-AREA HEARINGS IN BUFFALO

MAY 7, 1984

MINISTER'S STATEMENT

MR. SPEAKER:

OVER THE LAST FEW DAYS, MY MINISTRY HAS BEEN SUBJECTED TO SEVERE CRITICISM IN RESPECT OF THE HANDLING OF OUR INTERVENTION IN THE S AREA LANDFILL PROCEEDINGS IN BUFFALO. MUCH OF THIS CRITICISM HAS BEEN CENTRED ON THE POSITION TAKEN BY MR. PHILIP SUNDERLAND, OUR LAWYER, AND HIS MANNER OF PRESENTING OUR CASE. MR. SUNDERLAND IS A PARTNER IN ONE OF THE MOST HIGHLY RESPECTED LAW FIRMS SPECIALIZING IN THE ENVIRONMENTAL FIELD IN THE UNITED STATES. ACTING ON MANY OCCASIONS FOR SUCH GROUPS AS SIERRA CLUB AND THE NATIONAL WILDLIFE FEDERATION, THE FIRM HAS AN IMPRESSIVE RECORD. MR. SUNDERLAND SUCCESSFULLY ARGUED THE PRECEDENT SETTING CASE IN WHICH ONTARIO WAS GRANTED FULL PART STATUS IN THE "S" SITE LITIGATION. THERE IS NO QUESTION OF THE COMPETENCE OF THIS FIRM.

THE POSITION TAKEN BY MR. SUNDERLAND AT THE HEARING HAS BEEN CONSISTENT WITH MY STATED POSITION THROUGHOUT.

ON APRIL 10, 1984, I TOLD THE HOUSE THAT:

"THE BASIS OF THE SETTLEMENT IS A PLAN TO CONTAIN THE WASTES IN THE S-AREA SITE. WE DO NOT ACCEPT THAT CONTAINMENT FOR SEVERAL DECADES, POSSIBLY EVEN HUNDREDS OF YEARS, PROVIDES ADEQUATE PROTECTION FOR THE NIAGARA RIVER. WE SHALL,

THEREFORE, REQUEST PHYSICAL REMOVAL OF THE S-AREA CONTAMINANTS."

IN HIS OPENING STATEMENT, MR. SUNDERLAND SAID THAT WHILE CONTAINMENT IS VIABLE AS A SHORT-TERM MEASURE, ELIMINATION WAS THE ONLY ACCEPTABLE LONG-TERM SOLUTION AND MUST TAKE PLACE AS SOON AS IT IS TECHNOLOGICALLY FEASIBLE TO DO SO. LET ME QUOTE HIM FROM PAGES 33-35 OF VOLUME 1-A OF THE TRANSCRIPT:

"...DUE TO THE NATURE OF THE CHEMICALS AT THE S-AREA SITE, AND DUE TO THE ENVIRONMENTAL CONDITIONS IN WHICH THEY WILL CONTINUE TO EXIST, THE NAPL, THE NON-AQUEOUS PHASE CHEMICAL CONTAMINANTS CAN BE EXPECTED TO CONTINUE WITHIN THE LANDFILL SYSTEM FOR HUNDREDS AND HUNDREDS OF YEARS, FOR PERIODS FAR BEYOND WHICH HOOKER OR ITS PARENT CAN BE EXPECTED TO OPERATE THE SYSTEM..." IN SHORT, THE AGREEMENT PROVIDES IN OUR VIEW A SHORT-TERM SOLUTION TO A LONG-TERM PROBLEM. IT PROVIDES WHAT CAN ONLY BE SEEN AS TEMPORARY RELIEF FROM THE IMMEDIATE CONSEQUENCES OF THE S-AREA ENDANGERMENT WHILE RETAINING EVERY BIT OF THAT UNDERLYING ENDANGERMENT."

HE ASKED THAT THE SOURCE BE ELIMINATED AND CALLED EVIDENCE TO SHOW THAT THIS COULD BE DONE.

I ASSURE YOU THAT MR. SUNDERLAND HAS, AT ALL TIMES, ACTED WITHIN HIS INSTRUCTIONS.

MR. SUNDERLAND CALLED DR. MCKAY, A CHEMICAL ENGINEER AND PROFESSOR AT THE UNIVERSITY OF TORONTO, TO GIVE EVIDENCE THAT, ASSUMING THAT THE CONTAINMENT SYSTEM WORKED, THE CHEMICALS PRESENT WOULD NOT CHANGE FROM THEIR HIGHLY TOXIC STATE IN MANY HUNDREDS OF YEARS. THIS EVIDENCE JUSTIFIES OUR DEMAND FOR ULTIMATE ELIMINATION OF THE SOURCE.

DR. MCKAY WAS CRITICIZED IN THE MEDIA BECAUSE, ALTHOUGH HE HAD READ THE TECHNICAL REPORTS, HE HAD NOT READ THE SETTLEMENT AGREEMENT. THE AGREEMENT IS A LENGTHY AND COMPLEX LEGAL DOCUMENT AND IRRELEVANT TO HIS CONCLUSIONS ON THE LONGEVITY OF THE CHEMICALS TO BE CONTAINED IN THE SITE. THIS CRITICISM IS, THEREFORE, INAPPROPRIATE AND GROSSLY UNFAIR.

DR. EDWARD MARTIN, AN EXPERT IN HAZARDOUS WASTE DISPOSAL TECHNOLOGIES AND ACTS AS A CONSULTANT TO INDUSTRY WAS CRITICIZED FOR NOT HAVING VISITED THE S AREA SITE. HE WAS CALLED TO PROVE THAT THE ELIMINATION OF A SITE OF THE SIZE AND NATURE OF THE S AREA IS FEASIBLE TODAY OR IN THE NEAR FUTURE. THIS TESTIMONY WAS BASED ON BROAD EXPERIENCE WITH ELIMINATION OF HAZARDOUS WASTES OF THE TYPE DISPOSED OF AT S SITE.

HE WAS NOT BEING ASKED TO DESIGN A SITE SPECIFIC ELIMINATION PROGRAM. HE WAS ASKED WHETHER THIS COULD BE DONE. HE DID NOT NEED TO VISIT THE SITE IN ORDER TO SAY THAT IT CERTAINLY COULD.

LAST WEEK, THE LEADER OF THE OPPOSITION ASKED ME IN THE HOUSE WHY THE CASE WAS CLOSED EARLY WHEN THE MINISTRY'S EXPERT WITNESS, DR. GRISAK, WAS NOT PREPARED?

I CAUTIONED HIM THAT IT WAS TOTALLY IMPROPER FOR THE LEADER OF THE OPPOSITION TO BE INTERFERING IN A PROCESS THAT IS BARELY UNDER WAY.

NOW THAT WE HAVE THE TRANSCRIPT IS AVAILABLE, I DIRECT THE LEADER OF THE OPPOSITION'S ATTENTION TO PAGES 132-135 OF VOLUME III-B.

DR. GRISAK HAD CONSIDERED THE MIGRATION OF INSOLUBLE LIQUIDS FROM S SITE IN THE BEDROCK UNDER THE RIVER TO THE CANADIAN SIDE. HIS ASSESSMENT OF THIS POSSIBILITY WAS BASED ON THE ASSUMPTION THAT A VERY SIGNIFICANT PORTION OF THE WASTE DISPOSED OF IN S SITE WAS INSOLUBLE. IN A SURPRISE MOVE, HOOKER CALLED EVIDENCE FOR THE FIRST TIME TO SHOW THAT THE PERCENTAGE OF INSOLUBLE LIQUID DISPOSED OF AT THE SITE WAS MUCH LESS THAN FORMERLY BELIEVED BY EVERYONE INVOLVED INCLUDING THE ENVIRONMENTAL PROTECTION AGENCY. THE INFORMATION WAS WITHHELD BY HOOKER FROM US AND FROM THE EPA NOTWITHSTANDING OUR EARLIER REQUESTS FOR IT. THIS NEW INFORMATION HAD TO BE REASSESSED BY DR. GRISAK BEFORE HE COULD TESTIFY, AND BY MINISTRY COUNSEL BEFORE DECIDING WHETHER TO PRESENT EVIDENCE ON THIS ISSUE. THE COURT VERY PROPERLY ADJOURNED AN HOUR EARLY THAT DAY

HAVING REVIEWED THE NEW INFORMATION WITH DR. GRISAK, MR. SUNDERLAND CONCLUDED THAT HIS EVIDENCE WOULD NOT ASSIST THE COURT.

CERTAIN REPORTS HAVE SUGGESTED THAT MR. SUNDERLAND WAS REBUKED BY THE COURT FOR THE "SILLY" WAY IN WHICH HE WAS PRESENTING THE CASE.

WHEN MR. PETERSON SUGGESTED LAST THURSDAY, THAT THE MINISTRY "COMPLETELY BOTCHED THE CASE", I CAUTIONED HIM THAT IT WAS NOT FAIR OR REASONABLE TO CRITICIZE OUR PRESENTATION BEFORE THE CASE HAD REALLY GOT UNDER WAY.

I WOULD, ONCE AGAIN, DIRECT THE LEADER OF THE OPPOSITION'S ATTENTION TO PAGES 100-108 OF VOLUME III-B FOR MAY 3. MR. SUNDERLAND, MINISTRY COUNSEL OFFERED TO THE COURT AS A WITNESS, A DR. MCKAY. DR. MCKAY WAS TO TESTIFY WITH RESPECT TO THE LONGEVITY OF THE TOXIC CHEMICALS DISPOSED OF IN THE S SITE. IT IS THIS VERY LONGEVITY WHICH WE SEE AS THE JUSTIFICATION FOR OUR DEMAND THAT THE SOURCE BE ELIMINATED. COUNSEL FOR HOOKER AND EPA WISHED TO PREVENT THIS EVIDENCE FROM BEING HEARD AND RAISED OBJECTIONS. A DISCUSSION INVOLVING ALL COUNSEL AND THE COURT ENSUED. FINALLY, THE COURT SAID "I THINK ITS A SILLY DISCUSSION WE'RE HAVING HERE... BUT I'M WILLING TO LISTEN TO ANY QUESTIONS THAT YOU WANT TO PUT TO DR. MCKAY. SO GO AHEAD."

THE COURT OVERRULED THE OBJECTIONS TO THIS TESTIMONY AND DIRECTED MR. SUNDERLAND TO PROCEED. IN OTHER WORDS, HE WON THE POINT!

I AM DISAPPOINTED AND PERPLEXED THAT POLLUTION PROBE AND OPERATION CLEAN NIAGARA, HAVING BEEN GRANTED THE RIGHT AS FRIENDS OF THE COURT, TO CALL EVIDENCE AND TO CROSS EXAMINE WITNESSES, HAVE CHOSEN NOT TO DO SO. I WOULD HAVE PREFERRED THAT THEY JOIN WITH US IN OPPOSING THE APPROVAL OF THIS AGREEMENT.

THE COURT HAS NOT YET HEARD ARGUMENT OR REACHED A DECISION. WE BELIEVE THAT THE OUTCOME OF THE CASE WILL NOT BE ADVERSELY AFFECTED BY MISINFORMATION.

5