

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,
THE STATE OF NEW YORK,

Plaintiffs,

- vs -

AFFIDAVIT IN SUPPORT
OF REQUEST FOR
AMICUS CURIAE STATUS

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

Defendants.

COUNTRY OF CANADA)
PROVINCE OF ONTARIO)
REGIONAL MUNICIPALITY OF NIAGARA) ss.:
TOWN OF NIAGARA-ON-THE-LAKE)

I, MARGHERITA HOWE, a resident of the town of Niagara-on-the-Lake, Province of Ontario, Canada, hereby swear as follows:

1. I am chairperson of Operation Clean Niagara, Niagara-on-the-Lake, Ontario.

2. Operation Clean Niagara, founded in June, 1979, is a charitable foundation registered with the Department of National Revenue (Registration No. 0566349-59-16).

3. Operation Clean Niagara is a non-profit organization formed for educational and scientific purposes and to prevent pollution of the environment by hazardous chemicals and radioactive waste. Operation Clean Niagara is committed to protecting the quality of the Niagara River.

4. Operation Clean Niagara, based in Niagara-on-the-Lake, represents residents of the Niagara region, and has 600 members.

5. The town of Niagara-on-the-Lake, with a population of 3500 people, is the only community downstream from Niagara Falls that takes its water supply directly from the Niagara River.

6. Operation Clean Niagara has established a Technical Committee that includes representatives from the academic, business and scientific communities, with expertise in engineering, biology and hydrogeology. This committee serves pro bono and advises Operation Clean Niagara on technical and scientific matters related to water pollution.

7. Operation Clean Niagara appeared as a Party-in-the-Interest at both Phase I and Phase II of the State of New York Department of Environmental Conservation hearings into the application of a major waste disposal company for permission to discharge toxic chemicals into the Niagara River, for renewal of their licence to operate and for permission to build an additional landfill on their site under the New York State Pollutant Discharge Elimination System ("SPDES").

8. After consultation with Pollution Probe and members of Operation Clean Niagara's Technical Committee, it is Operation Clean Niagara's position that the proposed settlement agreement will

not prevent the migration of toxic chemicals from the Hyde Park landfill into the Niagara River. Leachate from this site presently enters Bloody Run Creek which drains into the Niagara River.

9. The town of Niagara -on-the-Lake is approximately 8 to 10 miles downstream from the point at which Bloody Run Creek runs into the Niagara River. The community of Niagara-on-the-Lake is therefore the segment of the Canadian public ^{immediately} ~~most~~ affected by the proposed settlement.

10. This Affidavit is made in support of an Application to appear as amicus curiae.

Sworn to before me)

this _____ day of)

May, 1981.)

A Commissioner, etc.

MARGHERITA HOWE

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,
THE STATE OF NEW YORK,

Plaintiffs,

- vs -

AFFIDAVIT IN SUPPORT
OF REQUEST FOR
AMICUS CURIAE STATUS

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

Defendants.

COUNTRY OF CANADA)
PROVINCE OF ONTARIO)
MUNICIPALITY OF METROPOLITAN TORONTO) ss.:
CITY OF TORONTO)

I, ANNE WORDSWORTH, a resident of the City of Toronto,
Province of Ontario, Canada, hereby swear as follows:

1. I am a director of environmental research at
Pollution Probe Foundation, 12 Madison Avenue, Toronto, and my
responsibilities include water quality investigation and policy
analysis.

2. Pollution Probe Foundation (hereinafter "Probe")
was incorporated in February of 1971 under the laws of the Province
of Ontario and is a non-profit public interest corporation registered

with the Department of National Revenue as a charitable foundation (Registration No. 0384750-53-13).

3. Probe's Board of Directors incorporates expertise from the business and academic communities. The Board, which serves pro bono, advises and directs the public interest work of the Foundation.

4. Probe's environmental activities include scientific and policy research and investigation, as well as public education with respect to the nature and extent of the deterioration of the environment and the availability of remedial technologies that could prevent such deterioration.

5. Probe staff have addressed toxic waste and, specifically, water quality issues for the past three years; participated in numerous professional and educational conferences; and appeared at major waste disposal hearings in Ontario. In addition, Probe was requested to provide testimony before the Legislative Assembly of Ontario Standing Committee on Resource Development respecting the disposal of Liquid Industrial Waste.

6. Probe has an ongoing Toxic Waste Project evaluating the potential for the recovery and re-use of industrial waste generated by small and medium sized businesses. Probe established a Toxic Waste Advisory Committee in 1979 which includes representatives from the Canadian federal and provincial governments, industry and universities, to provide expert advice and assistance in accomplishing the goals of the project.

7. In 1979, Probe participated in the New York State Administrative hearings involving an application by a major hazardous waste disposal firm for modifications to its State Pollutant Discharge

Elimination System permit ("SPDES"). The permit modifications addressed the source, volume and concentration of numerous chemicals to be discharged into the Niagara River.

8. On May 1, 1981, while attending an environmental conference at the University of Buffalo, I was first advised that a settlement of U.S. et al v. Hooker et al. (Civil No. 79-989, Hyde Park Landfill) had been proposed by the major parties to the action and was before this Court for ratification.

9. After extensive review and evaluation of the proposed settlement with scientific and technical experts, including an official from the Canadian Federal Department of the Environment (the equivalent of the U.S. Environmental Protection Agency), Probe has concluded that the settlement as proposed is inadequate to prevent the migration of toxic chemicals from the Hyde Park site into the Niagara River, or to eliminate the emission of airborne contaminants that also increase the levels of toxic chemicals in the Niagara River and Lake Ontario.

10. It is Probe's position that the damage ^{that has already occurred} ~~that would~~ ^{continue and increase} result from the leaching of dioxin and other highly toxic wastes ~~would occur~~ over the hazardous lifetime of the chemicals, that is, in perpetuity, if the proposed settlement ^{is} ~~were~~ implemented ^{without modification} ~~without~~.

11. I have also reviewed the comments on the proposed settlement agreement prepared for this Court by the Ecumenical Task Force of the Niagara Frontier, and share many of the concerns raised in that document. However, that document did not address the short and long-term impacts of toxic chemical migration into international boundary waters nor the acute and chronic effects on the Canadian aquatic ecosystem, drinking water and public health.

The Niagara River Flows into Lake Ontario.

12. Upon information and belief, four million Canadians take their drinking water from ~~the Niagara River and~~ Lake Ontario. In addition, millions of Canadian citizens catch and/or consume fish from Lake Ontario.

13. On May 12, 1981, I sent a letter to The Honourable John Roberts, Canadian Minister of the Environment, expressing our extreme concern over the proposed terms of the Hyde Park settlement, as it affects the Canadian public interest.

(See letter annexed hereto as Exhibit "A".)

14. On May , 1981, The Honourable John Roberts, Canadian Minister of the Environment replied to our letter, through our counsel, stating the government's support for this application and offering technical expertise of his Department to assist in reviewing the proposed settlement.

(See letter annexed hereto as Exhibit "B".)

15. Three other U.S. et al v. Hooker et al. actions involving Love Canal, "S" area and the 102nd street dump are pending before this Court and each will address many of the same material issues. Therefore, resolution of the Hyde Park case will be precedent setting and will establish what will constitute viable remedial technology and adequate financial and custodial responsibility.

16. This Affidavit is made in support of an Application to appear as amicus curiae.

Sworn to before me)
this _____ day of)
May, 1981.)

ANNE WORDSWORTH

.....

A Commissioner, etc.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,
THE STATE OF NEW YORK,

Plaintiffs,

- vs -

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

AFFIDAVIT IN SUPPORT
OF REQUEST FOR
AMICUS CURIAE STATUS

Defendants.

COUNTRY OF CANADA	)	
PROVINCE OF ONTARIO	)	
MUNICIPALITY OF METROPOLITAN TORONTO	)	ss.:
CITY OF TORONTO	)	

TOBY VIGOD, being duly sworn, deposes and says:

1. I am a lawyer duly admitted to practice law in the Province of Ontario and am employed by the Canadian Environmental Law Association in Toronto, Ontario. I have been retained as legal counsel for Pollution Probe and Operation Clean Niagara. I am submitting this Affidavit in support of a motion by Pollution Probe and Operation Clean Niagara to appear as amici curiae in these proceedings.

2. The Canadian Environmental Law Association (hereinafter "CELA"), founded in 1970, is a non-profit, public interest, environmental law organization committed to the enforcement and improvement of environmental laws. CELA is primarily government funded and operates as a legal aid clinic. CELA is the only public interest organization ^{exclusively} practising environmental law in Eastern Canada.

3. CELA has been involved in water quality ^{and} toxic ~~chemicals and~~ waste issues through civil, criminal and administrative hearings; appearances before Canadian Federal and Provincial Standing Committees; legal research and consulting work; and through publications in national and international law journals. CELA has technical and legal expertise available from its Board of Directors as well as its staff lawyers and researchers.

4. CELA was retained by Pollution Probe and Operation Clean Niagara for the specific purpose of reviewing the adequacy of the terms of the proposed Hyde Park landfill settlement as it would impact on the Canadian public interest by affecting boundary waters. CELA seeks to ensure that the agreement does not violate principles of international law and equity.

5. The original action was brought to abate existing and prevent future impairment of public health and the environment, including the deterioration of water quality of the Niagara River.

6. The Court should assure itself of the technical and financial adequacy of the proposed settlement to prevent the migration of toxic chemicals from the site into international boundary waters.

7. It is the position of Pollution Probe and Operation Clean Niagara that there exists a significant Canadian public interest in the technical and financial adequacy of the proposed settlement ^{as it affects the integrity of water quality in} ~~to protect the waters of~~ the Niagara River and Lake Ontario. They ^{have concluded} ~~believe~~ that the proposed settlement will result in ^{irreparable damage to the} ~~the impairment of~~ water quality in international boundary waters downstream from the Hyde Park landfill site.

8. Pollution Probe and Operation Clean Niagara with their experience and resources in water quality and toxic waste matters and the support of the Canadian Government, are in a unique position to bring to the attention of this Court concerns about the Niagara River and Lake Ontario ecosystems.

9. Pollution Probe and Operation Clean Niagara therefore seek to submit a brief on the issues raised herein, ^{by a date} ~~and~~ ^{deemed reasonable by this Court,} ~~to participate in oral argument thereon.~~ In addition, Pollution Probe and Operation Clean Niagara seek to participate in any further proceedings, evidentiary or otherwise, to the extent that this Court, in its discretion, determines that such participation would protect the Canadian public interest.

Sworn to before me this)
)
 day of May, 1981.)
)
)
)
)
)

TOBY VIGOD

A Commissioner, etc.