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

UNITED STATES OF AMERICA,

Plaintiff,

v.

HOOKER CHEMICALS AND PLASTICS
CORPORATION, HOOKER CHEMICAL
CORPORATION, OCCIDENTAL
PETROLEUM INVESTMENT CORPORA-
TION OCCIDENTAL PETROLLUM
CORPORATION, and THE CITY OF
NIAGARA FALLS, NEW YORK ("S"
Area Landfill),

Defendants.

Civil Action No.

COMPLAINT FOR INJUNCTIVE RELIEF,
AND RESTITUTION

As its Complaint herein, the United States of America for the Administrator of the United States Environmental Protection Agency ("EPA") alleges that.

Statement of the Case

1. As explained in more detail below, from about 1947 to 1975, the Hooker Chemical Corporation and its predecessors in interest disposed of their chemical wastes at the "S" Area landfill in Niagara County, New York. The migration of these wastes and the exposure of these wastes to human beings and the environment gives rise to this action.

2. This is a civil action instituted pursuant to:

(a) Section 1431 of the Safe Drinking Water Act ("SDWA"), 42 U.S.C. 300i, for injunctive relief concerning an imminent and substantial endangerment to the health of persons,

(b) Section 7003 of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. 6973, for injunctive relief concerning an imminent and substantial endangerment to health and the environment,

(c) Section 504 of the Clean Water Act ("CWA"), 33 U.S.C. 1364, for injunctive relief concerning an imminent and substantial endangerment to the health of persons or the welfare of persons;

(d) The Common Law of Nuisance, for injunctive relief concerning the escape of hazardous chemical wastes from the "S" Area landfill into the environment where citizens of the United States may come in contact with those wastes;

(e) Section 13 of the Rivers and Harbors Act of 1899 ("the Rivers and Harbors Act" or "the Refuse Act"), 33 U.S.C. 407, for injunctive relief concerning violations of that section.

Jurisdiction

3. This court has jurisdiction over the subject matter of this case pursuant to 28 U.S.C. 1331, 28 U.S.C. 1345, 33 U.S.C. 1364, 42 U.S.C. 6973, and 42 U.S.C. 300i.

4. Notice of the commencement of this action has been given to the State of New York pursuant to 42 U.S.C. 6973.

Defendants

5. Hooker Chemicals and Plastics Corporation ("HCPC") is a wholly owned subsidiary of defendant Hooker Chemical Corporation. It is incorporated in the State of New York.

6. Hooker Chemical Corporation ("HCC") is a wholly owned subsidiary of defendant Occidental Petroleum Investment Corporation. It is incorporated in the State of California.

7. Occidental Petroleum Investment Corporation ("OPIC") is a wholly owned subsidiary of Occidental Petroleum Corporation. It is incorporated in the State of California.

8. Occidental Petroleum Corporation ("Occidental") is a corporation organized and existing under the laws of the State of California. It has no parent organization.

9. For the purpose of this action, HCPC, HCC, OPIC, and Occidental are one entity, jointly and severally liable for one another's acts and the acts of their predecessors in interest. Hereafter in this Complaint, HCPC, HCC, OPIC, Occidental, and their predecessors in interest will be referred to as "Hooker."

10. Hooker operates a chemical manufacturing plant in Niagara Falls, New York which produces phenolic resins, metal finishing chemicals and equipment, agricultural chemicals, fertilizers, plastics and industrial chemicals. Its Niagara Falls operations have produced and continue to produce thousands of tons of chemical wastes each year.

11. The City of Niagara Falls, New York ("the City") is a public entity incorporated under the laws of the State of New York. The City owns and operates a Drinking Water Treatment Plant on Buffalo Avenue in the City of Niagara Falls which is located near, and affected by, Hooker's wastes from the "S" Area. The City is named herein as a defendant only to insure that the remedial measures requested by plaintiff can be fully carried out by the City's taking actions in regard to its own property.

Definitions

12. Several terms or expressions of particular importance will be repeated in the course of this Complaint. These terms are defined or explained in the following paragraphs so that they will be more readily understood in the text:

- a. The "Ambient Level" of a chemical in any particular place is the amount of the chemical scientists would ordinarily expect to measure in the absence of an incremental amount of the chemical resulting from an outside source.

b. The term "Water Quality Criteria" refers to a qualitative or quantitative estimate of the concentration of a pollutant in ambient waters which, when not exceeded, will insure a water quality sufficient to protect a specified water use. Two types of criteria are set by EPA: human health criteria and aquatic life criteria. The aquatic life criteria set in EPA's Water Quality Criteria establish levels of maximum chemical concentration in ambient water which can be tolerated while still maintaining protection of aquatic life. The human health criteria represent levels of chemical concentration which may exist and still not pose an undue risk to humans who drink the water without further treatment or who eat fish or shellfish from the water. The criteria reflect the latest scientific knowledge on the identifiable effects of pollutants on public health and welfare, aquatic life and recreation. In addition, with respect to carcinogens, the maximum human health protection criteria is zero, to reflect the fact that it is EPA's policy that there is no scientific basis for estimating safe levels for carcinogens. Because the achievement of levels of zero may be infeasible at this time, EPA has considered the range of 10^{-5} (one additional cancer in an exposed population of 100,000) to 10^{-7} (one additional cancer in an exposed population of 10,000,000) as a maximum target risk. The range

represents chemical concentrations estimated to pose various degrees of incremental cancer risk. The range is presented for information purposes only and does not indicate any acceptable risk level, since the only known exposure guaranteeing maximum protection of human health is zero. Some of these criteria have been published in the Federal Register, 44 F.R. 15925 (March 15, 1979), 44 F.R. 43660 (July 25, 1979), and 44 F.R. 56628 (October 1, 1979).

- c. The term "Carcinogen" refers to any substance which has been proven to cause cancer or is suspected to cause cancer in humans, animals, or both.
- d. The term "Mutagen" refers to any chemical substance that causes a change in the character of a gene that is perpetuated in subsequent offspring or divisions of the organism or cell in which the change occurs.
- e. The term "Teratogen" refers to any chemical substance that causes abnormal development of the fetus, manifested as deficient, redundant, misplaced or grossly misshapen body parts.
- f. The term "Environment" refers to all free and uncontaminated air, water, sediment and soil, and to plants and animals which are in the public domain.
- g. The term "Exposure" refers to actual contact with a chemical by a living organism, whether by inhalation, absorption through the skin, or ingestion.

- h. The term "Subsurface Water" refers to water in upper subsurface layers, whether contained in bedrock or flowing through soil.
- i. The term "Groundwater" refers to subsurface water found in the zone of saturation, the top of which is known as the water table. The zone of saturation is that area where all voids are filled with water.
- j. The term "Hydrogeology" refers to the characteristics of underground soil and rock formations as they relate to and affect the flow of water. Hydrogeology also refers to the general study of these characteristics.
- k. The term "Landfill" refers to a site used for the disposal of chemical wastes.
- l. The term "Leachate" refers to any liquid or semi-liquid material which is formed when subsurface or surface water mixes with chemicals disposed of in a landfill and migrates from the landfill.
- m. The term "Migration" refers to the movement of chemicals or leachate away from the landfill, whether by runoff, drainage, seepage through the soil, or through the air.
- n. The term "Persistent" refers to the ability of a chemical to withstand for a prolonged period of time the processes which cause chemical breakdown. These processes consist of, inter alia, reaction with microbes, reaction with soil constituents and photodecomposition. Persistent chemicals may remain in the environment for many years, posing long term risks to human health and the environment.
- o. The term "Synergistic" refers to the capacity for the combined toxicological effects of two or more

chemicals to be greater than the sum of their individual effects.

- p. The term "Toxic" or "Toxicological Effect" refers to the adverse biological or health effects which result from either acute (short-term) or chronic (long-term) exposure to a chemical. Toxicological effects in humans include, but are not limited to, respiratory diseases, liver abnormalities, birth defects, central nervous system disorders, skin irritations, nausea and, ultimately, mortality.
- q. Terms of chemical measurement used in this Complaint are: "Milligram Per Kilogram" (measured in soil or sediment) and "Milligram Per Liter", (measured in water), each of which is equal to "Part Per Million" ("ppm"); "Microgram Per Kilogram" and "Microgram Per Liter", each of which is equal to "Part Per Billion" ("ppb"); and "Nanogram Per Kilogram" and "Nanogram Per Liter", each of which is equal to "Part Per Trillion" ("ppt"). For purposes of illustration, mixed terms may be justifiably compared, e.g., microgram per kilogram and microgram per liter, each represents the expression part per billion.

GENERAL ALLEGATIONS

The Site

13. The "S" Area is a landfill of approximately four acres located in the southeastern corner of Hooker's Buffalo Avenue chemical manufacturing plant in the south central section of the City of Niagara Falls, New York. The "S" Area is bordered on the south by the Robert Moses Parkway, on the east by 53rd Street, and on the north and west by other property owned by Hooker. The "S" Area is situated approximately 200 yards to the west of the Drinking

Water Treatment Plant of the City of Niagara Falls ("the Drinking Water Treatment Plant") and about 200 yards north of the Niagara River. (See map attached hereto and incorporated by reference herein as Exhibit 1).

14. The property on which the "S" Area is situated was originally beneath the Niagara River. [Between 1933 and 1947, that portion of the Niagara River was filled with a loose and porous mixture of cinders, stone, slag, dirt and carborundum abrasives.

15. Hooker purchased the property on which the landfill is located from the Niagara Power and Light Company on December 12, 1947 and immediately started using it for disposal of its chemical manufacturing waste. Landfill operations continued until 1975, although major use was curtailed in 1961.

16. The Drinking Water Treatment Plant now in place was built in 1952, and currently provides about 50 million gallons of water per day to industry and to a population of about 50,000 people. The present Drinking Water Plant was built to replace an older drinking water treatment plant which, for many years before the use of the "S" Area as a waste disposal site, occupied a site approximately 100 yards north of the present plant.

The Wastes Which Were Dumped at the Site

17. Hooker disposed of the following types of chemical wastes in the amounts indicated in the "S" Area disposal site:

<u>Type of Waste</u>	<u>Quantity (in tons)</u>
Organic phosphates	200
Miscellaneous Acid Chlorides	400
Phenol Tars	800
Thionyl Chloride	4,200
Chlorendic Acid (HET)	500
Miscellaneous Chlorination Residues	400
Dodecylmercaptans	8,100
Trichlorophenols	200
Benzoyl Chloride	3,300
Liquid Disulfides/Monochlorotoluene (LDS/MCT)	2,200
Metal Chlorides (catalysts)	900
Hexachlorocyclopentadiene (C-56)	17,400
Chlorobenzenes	18,900
Benzyl Chlorides	1,600
Thiodan (Endosulfan)	700
Sulfides	4,200
Miscellaneous Residues	6,400

70,400 tons

18. The chemicals described in the following subparagraphs have been detected migrating from the landfill at levels where contact with the chemical in water would adversely affect human health and the environment. In some cases, these chemicals were detected in the public drinking water supply but did not exceed levels set by EPA or the State of New York that would require that the drinking water supply not be used.

A. TETRACHLOROETHYLENE

(1) Tetrachloroethylene exhibits adverse effects on the central nervous system and is also a carcinogen. Its effects include depression, nausea, and at high exposure, unconsciousness and death. Exposure to tetrachloroethylene also causes liver dysfunction.

(2) The official EPA Water Quality Criterion for tetrachloroethylene is zero. The risk of cancer posed by exposure to 200 nanograms per liter (ppt) of tetrachloroethylene is one additional cancer case per one million people exposed.

(3) Tetrachloroethylene was detected in water samples from twelve monitoring wells - seven at the "S" Area and five at

the Drinking Water Treatment Plant. Analyses of these samples detected tetrachloroethylene at levels as high as 28,000 micrograms per liter (ppb) in the "S" Area and 300 micrograms per liter (ppb) in Drinking Water Treatment Plant property. These levels of tetrachloroethylene found in water used for drinking or recreation, or found in fish or shellfish used for human consumption, would exceed the level, established in EPA's Water Quality Criteria, posing an incremental cancer risk of one additional cancer in an exposed population of one million by 140,000 and 1,500 times, respectively. The compound was also detected in the incoming and outgoing drinking water of the Drinking Water Treatment Plant itself at 8 micrograms per liter (ppb) and 15 micrograms per liter (ppb).

B. HEXACHLOROBENZENE

(1) Hexachlorobenzene is a carcinogen and teratogen. Toxic effects manifested by the compound in test animals include liver and kidney damage as well as neurological damage creating a detrimental effect on conditioned reflexes.

(2) The Water Quality Criterion for maximum protection of human health from the potential carcinogenic effects of exposure to hexachlorobenzene is zero. The level of exposure to hexachlorobenzene which can be expected to pose a cancer rate of one additional case of cancer in one million people exposed is 125 nanograms per liter (ppt).

(3) Hexachlorobenzene was detected in water samples from eight monitoring wells - seven at the "S" Area and one at the Drinking Water Treatment Plant. Analyses of these samples detected hexachlorobenzene at levels as high as 12,000 micrograms per liter (ppb) in the "S" Area and 400 micrograms per liter (ppb) in Drinking Water Treatment Plant property. These levels of hexachlorobenzene found in water used for drinking or recreation, or found in fish or shellfish used for human consumption, would exceed the

level, established in EPA's Water Quality Criteria, posing an incremental cancer risk of one additional cancer in an exposed population of one million by 96,000 and 3,200 times, respectively.

C. TRICHLOROETHYLENE

(1) Trichloroethylene (TCE) is a potent central nervous system depressant and can cause severe neurological symptoms such as dizziness, loss of appetite and loss of motor coordination. It produces liver damage at sufficient exposure levels and causes cell mutations and cancer.

(2) The official EPA Water Quality Criterion for TCE is zero. The level of exposure to TCE which can be expected to pose a cancer rate of one additional case of cancer in an exposed population on one million people is 2.1 micrograms per liter (ppb).

(3) Trichloroethylene was detected in water samples from eleven monitoring wells - seven at the "S" Area and four at the Drinking Water Treatment Plant. Analyses of these samples detected trichloroethylene at levels as high as 8,800 micrograms per liter (ppb) in the "S" Area and 300 micrograms per liter (ppb) in Drinking Water Treatment Plant property. These levels of trichloroethylene found in water used for drinking or recreation, or found in fish or shellfish used for human consumption, would exceed the level, established in EPA's Water Quality Criteria, posing an incremental cancer risk in an exposed population of one million by 4,190 and 142 times, respectively. Trichloroethylene was detected, but not quantified, in incoming and outgoing water at the Drinking Water Treatment Plant itself, and it was detected in tap water taken from the plant's distribution system at 4 micrograms per liter (ppb).

D. BENZENE

(1) Benzene is a carcinogen and is highly toxic. Exposure to benzene may result in intoxication, blood chemistry changes, fatigue, anorexia, and other central nervous system disorders. The impact of exposure to benzene may be increased drastically by synergistic interaction with other chlorinated hydrocarbons, such as those also found at the "S" Area landfill (e.g., trichloroethylene, tetrachloroethylene, phenol).

(2) The official EPA Water Quality Criterion for benzene is zero. The level of exposure to benzene which can be expected to pose a cancer rate of one additional case of cancer per million people exposed is 1.5 micrograms per liter (ppb).

(3) Benzene was detected in water samples from nine monitoring wells - six at the "S" Area and three at the Drinking Water Treatment Plant. Analyses of these well samples detected benzene at levels as high as 1,600 micrograms per liter (ppb) in the "S" Area, and 880 micrograms per liter (ppb) in Drinking Water Treatment Plant property. These levels of benzene found in water used for drinking or recreation, or found in fish or shellfish used for human consumption, would exceed the level established in EPA's Water Quality Criteria of one additional cancer in an exposed population of one million by 1,066, 2,220, and 586 times, respectively. Benzene was also detected, but not quantified, in drinking water leaving the Water Treatment Plant.

E. BENZENE HEXACHLORIDE

(1) The alpha isomer of Benzene Hexachloride ("BHC") is a carcinogen. It is also toxic to the liver and the central nervous system.

(2) Benzene hexachloride is water soluble, which increases its ability to migrate through groundwater, bedrock and otherwise solid materials.

(3) The Environmental Protection Agency has set zero as the safe level of exposure to alpha BHC. The Water Quality Criterion for alpha BHC for protection of human health is zero. The level of exposure to alpha BHC which can be expected to pose a cancer rate of one additional case of cancer in an exposed population of one million people is 1.6 micrograms per liter (ppb).

(4) The Environmental Protection Agency has detected concentrations of 120 and 12 micrograms per liter (ppb) of alpha BHC in subsurface water on the property of the Drinking Water Treatment Plant. These levels of alpha BHC found in water used for drinking or recreation, or found in fish or shellfish used for human consumption, would exceed the level established in EPA's Water Quality Criteria posing an incremental cancer rate of one additional cancer in an exposed population of one million by 75 and 7 times, respectively. Alpha BHC was also detected in "S" Area subsurface water at a level of 2,100 micrograms per liter (ppb). This level of alpha BHC found in water used for drinking or recreation, or found in fish or shellfish used for human consumption, would exceed the level posing an incremental cancer risk of one additional cancer in an exposed population of one million by 1,312 times.

19. The chemicals listed in the following subparagraphs have migrated from the landfill. They can adversely affect human health and the environment. They may now, or in the future could be, at levels sufficient to adversely affect human health and environment.

A. PHENOL: Phenol is acutely toxic to humans and animals. It acts upon the central nervous system. The predominant acute reaction upon exposure to phenol is sudden collapse, and unconsciousness. Detectable symptoms of phenol exposure are discernible after five minutes of exposure. Kidney and liver functions are impaired upon prolonged exposure. Phenol is readily absorbed by humans through all routes of exposure.

B. CHLOROBENZENE. Chlorobenzene is a central nervous system depressant. Exposure to sufficient doses of chlorobenzene can be fatal in short time periods. The Environmental Protection Agency has established a Water Quality Criterion for chlorobenzene which sets 20 micrograms per liter (ppb) as the human health maximum exposure level. Above 450 micrograms per liter (ppb) chlorobenzene produces toxic effects.

20. The following wastes were among those disposed of at the "S" Area by Hooker: benzyl chloride, benzoyl chloride, thiodan (endosulfan), hexachlorocyclopentadiene (C-56), liquid disulfides/monochlorotoluene (LDS/MCT), and trichlorophenol. These chemicals are either carcinogenic, cause toxic effects, or both. Their very presence in the "S" Area presents the risk that they may migrate from the site and thereby enter the environment at levels sufficient to affect adversely the health of humans or the environment.

21. The off-site detection of some of the chemicals identified in paragraphs 18 and 19 suggests a capacity for migration of chemical wastes from the site, and suggests that other hazardous chemicals in the site, which were neither looked for nor detected, may have migrated or be migrating from the site in significant amounts.

22. Although none of Hooker's hazardous wastes have yet been detected in the drinking water supply at the level that would require immediately ceasing the use of the Drinking Water Treatment Plant, the presence of these wastes in close proximity to the plant, under the conditions described above, threatens that, at any moment, a slug of toxic waste could migrate from the "S" Area into the drinking water supply itself. The detection of some of Hooker's hazardous wastes already in the drinking water supply system at high levels indicates the very real susceptibility of the Drinking Water Treatment

Plant to hazardous chemical infiltration. A slug of hazardous chemicals, such as those described in paragraphs 18 and 19, infiltrating the Drinking Water Treatment Plant in high enough concentrations could result in a human health disaster.

How the Migration Occurs

23. Prior to the construction of the Robert Moses Parkway just south of the "S" Area in 1958, a hydrogeological connection existed between the "S" Area and the Niagara River. The natural direction of movement of the shallow subsurface water beneath the surface area was and is southward, toward the Niagara River. The water level within the site varied and continues to vary several feet on any given day as the river washed in and out of the subsurface of the "S" Area. In addition, leaching to the Niagara River of Hooker's chemical wastes occurred because of the porous nature of the fill at the "S" Area landfill, the high water table, and high and low river level impacts on the site. The Robert Moses Parkway, however, does not completely inhibit the migration of "S" Area wastes toward the Niagara River.

24. At various times since construction of the Robert Moses Parkway, subsurface water from the "S" Area has migrated eastward toward the Drinking Water Treatment Plant of the City of Niagara Falls, carrying with it Hooker's chemical wastes. Since the natural direction of movement of the shallow subsurface water below the surface of the "S" Area is southward, this migration indicates that construction of the Parkway may have inhibited the southward flow and may have encouraged the eastward flow of subsurface water and leachate.

25. In August 1978, samples of sediment in abandoned water intake structures, the forebay and shor shaft sections of the operating areas of the Drinking Water Treatment Plant indicated the presence of Hooker's wastes. Among the wastes found were chemicals identified in paragraphs 18 and 19 reported to have carcinogenic, mutagenic, teratogenic, or other adverse effects.

26. Below the reclaimed fill of the "S" Area is a layer of Lockport Dolomite, the top of which is fractured and jointed. Contaminated subsurface water and leachate containing Hooker's wastes has migrated into this bedrock. Further, some of the chemicals Hooker disposed of at the site have contained and released hydrochloric acid, which will dissolve Lockport Dolomite and thereby increase the size of the solution openings and fractures within the bedrock and exacerbate the migration of leachate. Hooker's chemicals have migrated through the bedrock and have infiltrated the intake system of the Drinking Water Treatment Plant.

27. Given the nature of the soil in the vicinity of the "S" Area and the Drinking Water Treatment Plant, the age of the Treatment Plant's pipes and their load bearing capacity, there is a high probability, if not a certainty, that some of the Drinking Water Treatment Plant's subsurface pipes will crack or leak within the next fifty years. Because the Drinking Water Treatment Plant is situated amid a quagmire of hazardous chemicals, each break, crack, or leak presents a situation where Hooker's hazardous chemical wastes are likely to enter the water supply.

28. Hooker has created a situation where the Drinking Water Treatment Plant and its distribution system sit amid soil and subsurface water contaminated with Hooker's hazardous chemical wastes. Chemicals such as those noted in paragraphs 18 and 19, which have been found migrating from the "S" Area, are persistent. If no remedial action is taken, hazardous chemicals will continue to leach out of the "S" Area landfill for the foreseeable future and the concentration of chemicals in the soil and subsurface water will increase as the less soluble, more viscous chemicals migrate toward the Drinking Water Treatment Plant. Given the nature and the persistence of these chemicals, the soil and subsurface water surrounding the plant will be highly contaminated for generations.

29. The "S" Area trenches have now been covered and two treatment lagoons for fluoride waste have been constructed above grade and are now in operation. The presence of the fluoride treatment lagoons over the "S" Area landfill has created hydraulic pressure upon the wastes buried in the site, thus exacerbating the migration of Hooker's wastes off the site.

30. The presence of Hooker's wastes in the intake structure of the Drinking Water Treatment Plant is attributable to migration of the wastes from the "S" Area.

31. Contractors hired by Hooker have detected a "plume" of contamination containing Hooker's wastes reaching from the "S" Area to the grounds of the Drinking Water Treatment Plant.

Hooker's Conduct With Regard to the Wastes

32. Hooker disposed of its chemical wastes in the "S" Area by directly discharging liquids and dumping drums into parallel trenches dug approximately fifteen to eighteen feet deep. Liquid waste was transported to the site in trailers and emptied from the trailers into the trenches. Drums were punctured, and their contents emptied into the trenches.

33. Hooker knowingly deposited its chemical wastes at the "S" Area either into the fill material which was used to reclaim land from the Niagara River or directly into water that had permeated the fill.

34. Even with this knowledge, however, Hooker did not monitor the site for migration of its wastes either during the landfill's active life or after its closure.

35. Hooker was aware that the City of Niagara Falls operated a Drinking Water Treatment Plant on property adjacent to the "S" Area when Hooker began depositing chemicals at the site. Hooker was also aware that the City built a new Drinking Water Treatment Plant within 200 yards of the "S" Area in 1952. Yet, Hooker continued to dispose of its hazardous chemical wastes at the "S" Area after that date.

36. Hooker was aware that the ground beneath the fill was porous, yet it continued to dispose of chemical wastes which would permeate the porous subsurface.

37. Hooker encountered subsurface water within four feet of the surface of the "S" Area during excavations, yet it continued to dispose of its chemical wastes in trenches dug fifteen to eighteen feet deep.

38. Hooker failed to notify the State of New York or any other party that construction of the Robert Moses Parkway would force leachate from the "S" Area to flow into the soil beneath the Drinking Water Treatment Plant.

39. EPA has determined that the implementation and performance of remedial measures required to eliminate the hazards resulting from Hooker's disposal of chemical wastes in the "S" Area will cost approximately \$50,000,000.

FIRST CLAIM FOR RELIEF

Section 1431 of the Safe Drinking Water Act,

42 U.S.C. 300i

40. Plaintiff realleges and incorporates by reference herein, the allegations of paragraphs 13 through 39.

41. SDWA Section 1431, 42 U.S.C. 300i, provides that the Administrator of EPA may bring suit "upon receipt of information that a contaminant which is present in or likely to enter a public water system may present an imminent and substantial endangerment to the health of persons and that appropriate State and local authorities have not acted to protect the health of such persons."

42. SDWA Section 1401(6), 42 U.S.C. 300f(6), defines "contaminants" as "any physical, chemical, biological or radiological substance or matter in water."

43. Hooker's wastes disposed of in the "S" Area and Hooker's wastes found migrating from the landfill are "contaminants" as defined in SDWA Section 1401(6).

44. SDWA Section 1401(4), 42 U.S.C. 300f(4), defines a "public drinking water system" as:

a system for the provision to the public of piped water for human consumption, if such a system has at least fifteen service connections or regularly serves at least twenty-five individuals.

45. The Drinking Water Treatment Plant is a public drinking water system as defined in SDWA Section 1401(4), 42 U.S.C. 300f(4).

46. Hooker's wastes disposed of in the "S" Area have entered the drinking water supply of the Drinking Water Treatment Plant. Additional quantities of Hooker's wastes are likely to enter the drinking water supply.

47. The allegations incorporated by reference herein in paragraph 40 establish that Hooker's contaminants may present an imminent and substantial endangerment to persons.

48. Remedial efforts initiated by the State of New York, the County of Niagara and the City of Niagara Falls at the "S" Area and at the Drinking Water Treatment Plant do not include the injunctive relief requested herein by plaintiff. Thus, further action, not taken by the City, County or State, is necessary to protect the public health of Niagara Falls' residents.

SECOND CLAIM FOR RELIEF

Section 7003 of the Resource Conservation and Recovery Act,

42 U.S.C. 6973

49. Plaintiff realleges and incorporates by reference herein the allegations of paragraphs 13 through 39.

50. Section 7003 of the Resource Conservation and Recovery Act, 42 U.S.C. 6973, provides that the Administrator of EPA may bring suit for appropriate relief "upon receipt of evidence that the handling, storage, treatment, transportation or disposal of any solid or hazardous wastes is presenting an imminent and substantial endangerment to health or the environment."

51. Hazardous wastes are defined in RCRA Section 1004(5), 42 U.S.C. 6903(5), as follows:

The term "hazardous waste" means a solid waste, or combination of solid wastes, which because of its quantity, concentration, or physical, chemical, or infectious characteristics may --

(A) cause, or significantly contribute to an increase in mortality or an increase in serious irreversible, or incapacitating reversible, illness; or

(B) pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, or disposed of, or otherwise managed.

52. Hooker's wastes disposed of at the "S" Area landfill and Hooker's wastes found migrating from the landfill are hazardous wastes as defined in RCRA Section 1004(5), 42 U.S.C. 6903(5).

53. Hooker placed its hazardous wastes in the "S" Area landfill for purposes of disposal.

54. Hooker's wastes have escaped, are now escaping, and threaten to continue to escape from the "S" Area landfill into the surrounding environment. Hooker's hazardous wastes and the hazardous leachate that is formed by water moving through the various levels of waste in the landfill remain hazardous to human health and the environment after leaving the landfill.

55. The escape and threat of escape into the surrounding environment of hazardous wastes from the "S" Area landfill have endangered, now endanger, and threaten to continue to endanger the

health of persons living or working near the site, and to endanger the environment itself.

56. The endangerment to human health and the environment presented by the "S" Area landfill is imminent, it has threatened and threatens to cause or to contribute to adverse effects on human health and the environment.

57. The endangerment to human health and the environment presented by the "S" Area landfill is substantial, migration of chemicals from the site has threatened and threatens to cause or contribute to an increase in medical disorders, including, but not limited to, birth defects, spontaneous abortions, miscarriages, congenital malformations, epileptic convulsions, depression, liver abnormalities, sores, respiratory problems, headaches, cancer, and other latent diseases in the surrounding community.

58. The escape of Hooker's wastes from the "S" Area landfill into the environment presents an imminent and substantial endangerment to health and the environment in violation of Section 7003 of RCRA.

THIRD CLAIM FOR RELIEF

Section 504 of the Clean Water Act,

33 U.S.C. 1364

59. Plaintiff realleges and incorporates by reference herein the allegations of paragraphs 13 through 39.

60. CWA Section 504, 33 U.S.C. 1364, provides that the Administrator of EPA may bring suit "upon receipt of evidence that a pollution source or combination of sources is presenting an imminent and substantial endangerment to the health of persons or to the welfare of persons, where such endangerment is to the livelihood of such persons."

61. The "S" Area landfill is a "pollution source" within the meaning of CWA Section 504, 33 U.S.C. 1364.

62. The allegations incorporated by reference herein in paragraph 59 establish that Hooker's wastes migrating from the "S" Area landfill are hazardous wastes presenting an imminent and substantial endangerment to the health of persons or to the welfare of persons in violation of CWA Section 504, 33 U.S.C. 1364.

FOURTH CLAIM FOR RELIEF

Public Nuisance

63. Plaintiff realleges and incorporates by reference herein allegations of paragraphs 13 through 39.

64. Approximately 50,000 people who are residents of the City of Niagara Falls draw their drinking water from the City's Drinking Water Treatment Plant. In addition, thousands of United States citizens visit the Niagara Falls area each year while travelling in interstate commerce; these citizens also draw their drinking water from the City's Drinking Water Treatment Plant during their stay in the Niagara Falls area.

65. The United States has an interest in protecting the health of its citizens including those who are travelling in interstate commerce.

66. Hooker owed the United States the duty to design, operate, maintain and monitor the "S" Area landfill properly in order to insure that its chemical wastes would not migrate from the landfill and harm or endanger the health of United States citizens.

67. Hooker knew or should have known that its conduct with respect to its wastes would permit those wastes

to migrate from the landfill into the environment, thereby substantially harming the Niagara River and threatening to harm substantially the health of United States citizens, including those travelling in interstate commerce.

68. Hooker's design, operation and maintenance of the "S" Area landfill has permitted and continues to permit its chemical wastes to migrate from the "S" Area landfill to the Drinking Water Treatment Plant, thereby endangering the health of United States citizens who draw their drinking water from the Drinking Water Treatment Plant.

69. Hooker's acts and failures to act, described in paragraphs 32 through 38 were and are negligent. Hooker is liable to the United States for any harm caused by Hooker's negligent acts or negligent failures to act.

70. The diseases and medical problems associated with exposure to many of the chemical wastes which have escaped and continue to escape from the "S" Area landfill into the environment can result in permanent incapacity or death.

71. The close proximity of the Drinking Water Treatment Plant and the porous condition of the fill composing the "S" Area landfill made it likely that hazardous wastes would escape from the "S" Area landfill, enter and contaminate the Water Treatment Plant.

72. Hooker's disposal of its hazardous chemical wastes in the "S" Area landfill creates an abnormal risk of harm to persons and property in close proximity to the "S" Area landfill.

73. Hooker's disposal of hazardous chemical wastes in the "S" Area landfill has caused and continues to cause the migration of those wastes to the Drinking Water Treatment Plant.

74. The significant risk that disposal of the chemical wastes which have escaped and continue to migrate from the "S" Area landfill to the Drinking Water Treatment Plant would cause severe harm to persons, regardless of the degree of care exercised by Hooker, renders the disposal of those wastes an ultrahazardous or abnormally dangerous activity. Hooker is therefore strictly liable for all harm caused by its disposal of those wastes in the "S" Area.

75. Hooker's negligent acts and failures to act as described in paragraphs 32 through 38 have interfered unreasonably and continue to interfere unreasonably with the interest of the United States in protecting the health of its citizens including those travelling in interstate commerce.

76. Hooker's disposal of its chemical wastes in the "S" Area landfill, an ultrahazardous activity, has interfered unreasonably and continues to interfere unreasonably with the interest of the United States of America in protecting the health of its citizens, including those travelling in interstate commerce.

77. Hooker's continuing unreasonable interference with the aforesaid interests of the United States of America constitutes a public nuisance.

FIFTH CLAIM FOR RELIEF

Section 13 of the Rivers and Harbors Act of 1899,

33 U.S.C 407

78. Plaintiff realleges and incorporates by reference herein the allegations of paragraphs 13 through 39.

79. Section 13 of the Rivers and Harbors Act, 33 U.S.C. 407 provides:

It shall not be lawful to throw, discharge, or deposit, or cause, suffer, or procure to be thrown, discharged, or deposited either from or out of any ship, barge, or other floating craft of any kind, or from the shore, wharf, manufacturing establishment, or mill of any kind, any refuse matter of any kind or description whatever other than that flowing from streets and sewers and passing therefrom in a liquid state, into any navigable water of the United States, or into any tributary or any navigable water from which the same shall float or be washed into such navigable water; and it shall not be lawful to deposit, or cause, suffer, or procure to be deposited material of any kind in any place on the bank of any navigable water, or on the bank of any tributary of any navigable water, where the same shall be liable to be washed into such navigable water, either by ordinary or high tides, or by storms or floods or otherwise, whereby navigation shall or may be impeded or obstructed.

Section 13, 33 U.S.C. 407, then authorizes the Secretary of the Army, acting through the Corps of Engineers, to permit the deposit of any of the above-named materials.

80. The Niagara River is a navigable water pursuant to Section 13 of the Rivers and Harbors Act, 33 U.S.C. 407.

81. Section 13 of the Rivers and Harbors Act, 33 U.S.C. 407, prohibits the deposit of refuse or other material in navigable waters or the placement of such refuse or other material where it will be suffered to be deposited into navigable waters, unless the depositor has obtained a permit from the Secretary of the Army authorizing said deposit.

82. Hooker never applied to the Secretary of the Army for, and does not have a permit authorizing, the deposit of wastes in the navigable waters at the "S" area landfill.

83. The physical condition of the "S" Area landfill made it likely that Hooker's wastes, deposited at the "S" Area landfill, would reach navigable water.

84. Hooker's deposit of wastes in the "S" Area landfill, where such wastes were likely to and did reach navigable waters, violates Section 13 of the Rivers and

Harbors Act of 1899, 33 U.S.C. 407.

PRAYER FOR RELIEF

85. Wherefore, plaintiff United States of America prays:

A. That the Court issue a mandatory permanent injunction ordering that Hooker do as follows:

1. Install and maintain a perpetual monitoring program for all subsurface water at the "S" Area. This program shall include monitoring wells on-site and off-site into each water bearing zone, the location and design of monitoring wells and frequency of monitoring to be established with the approval of the Environmental Protection Agency. Monitoring may be discontinued only if the United States agrees that it is no longer necessary.

2. Pursuant to appropriate approval by EPA and the State of New York, install grout curtain vaults down to and penetrating bedrock, isolating the landfill from the Niagara Falls Drinking Water Treatment Plant and both the landfill and the Drinking Water Treatment Plant from the Niagara River. These vaults shall encircle the "S" Area and Drinking Water Treatment Plant property respectively. To define the length of the western boundary of the grout curtain wall, undertake, pursuant to the approval of EPA, a sampling program which includes core samples into underlying soil and rock down to and penetrating bedrock.

3. Within the grout curtain vaults, cover the entire area with a suitable clay cap, graded with top soil, and seeded.

4. Install a leachate collection system by draw-down well, tile drainage, or as appropriate according to the evidence. Filter the leachate withdrawn through

granulated activated carbon filters and incinerate the liquid residue and carbon in accordance with specifications set by EPA.

5. Vent the area within the grout curtain vaults in the following manner:

(a) crown vents shall be established as determined necessary by EPA on the basis of the rate, composition and volume of gas generated beneath the surface;

(b) the vents shall be monitored periodically to determine the composition of the gases being generated;

(c) the gases shall be directed into an air manifold which is connected to the carbon filtration system used to treat leachate.

6. Isolate all pipes and structures of the Drinking Water Treatment Plant from contaminated materials; seal off the current intake system of the Drinking Water Treatment Plant and construct an alternative intake system which will be free of leachate migrating from the "S" Area; and pay for the installation and operation of an optimized pilot granular activated carbon treatment system at the existing Drinking Water Treatment Plant. In the alternative to the measures listed in the previous sentence, pay for the construction of a new Drinking Water Treatment Plant. Pay for continuous monitoring of the public drinking water supply until the remedial measures identified in the paragraph are completed.

7. Clean the water distribution system that presently is used to provide water to the public, including the systems of the Drinking Water Treatment Plant and test all systems for pressure integrity, and replace

all systems where clean up cannot be accomplished to the level required by EPA and the State of New York.

8. Perform in perpetuity any additional remedial measures which EPA determines to be necessary on the basis of monitoring reports.

B. That the Court order the City of Niagara Falls to cooperate fully with the implementation of all the remedial measures required by subparagraph "A".

C. To insure the payment of funds to finance the measures ordered in subparagraph "A" that the Court order Hooker, either to:

1. Deposit \$50,000,000 in an annuity trust account for the accomplishment of those measures, or,

2. Obtain a bond immediately against their insolvency insuring that funds will be available to finance the measures ordered in subparagraph "A".

D. That the Court order defendants HCC, HCPC, OPIC, and Occidental to reimburse the United States of America for all funds expended for remedial actions related to the discharge of defendants' wastes from the "S" Area landfill, including but not limited to funds expended by the Administrator of EPA in identifying and analyzing defendants' wastes.

E. That the Court retain jurisdiction in this matter until such time as all remedial measures have been effectuated.

F. That the Court award plaintiff its costs of suit herein from Hooker and any other relief the Court finds just and appropriate.

Dated: _____

Respectfully submitted,

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