

102nd St.

United States District Court

FOR THE

WESTERN DISTRICT OF NEW YORK

CIVIL ACTION FILE NO. _____

UNITED STATES OF AMERICA

Plaintiff

v.

SUBPOENAS

HOOKEE CHEMICALS AND PLASTICS
CORPORATION; HOOKEE CHEMICAL
CORPORATION; OCCIDENTAL PETROLEUM
INVESTMENT CORPORATION;
OCCIDENTAL PETROLEUM CORPORATION;
OLIN CORPORATION; and THE CITY
OF NIAGARA FALLS, New York (102nd
Street Landfill) Defendants

To the above named Defendant :

You are hereby summoned and required to serve upon the United States Attorney
for the Western District of New York

plaintiff's attorney , whose address 502 United States Courthouse, Buffalo, New York
14202

an answer to the complaint which is herewith served upon you, within 20 days after service of this
summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be
taken against you for the relief demanded in the complaint.

Clerk of Court.

Deputy Clerk.

Date:

[Seal of Court]

NOTE:—This summons is issued pursuant to Rule 4 of the Federal Rules of Civil Procedure.

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 CORPORATION;
OCCIDENTAL PETROLEUM CORPORATION;
OLIN CORPORATION; and THE CITY
OF NIAGARA FALLS, New York,
(102nd Street Landfill)

Defendants.

Civil Action

No.

COMPLAINT FOR INJUNCTIVE RELIEF

As its Complaint herein, the United States of America, for the Administrator of the United States Environmental Protection Agency (hereafter referred to as "EPA"), alleges that:

STATEMENT OF THE CASE

1. As explained in more detail below, from the early 1940s until 1972, Hooker Chemical Corporation, its predecessors in interest, and Olin Corporation deposited hazardous chemical wastes at the landfill known as the 102nd Street site. The migration of these hazardous wastes from the landfill has resulted in the entry of these wastes into waters of the United States. The migration of these wastes from the landfill and their exposure to human, animal and plant life gives rise to this action.

2. This is a civil action instituted pursuant to:

a. 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;

b. 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;

c. 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;

d. Section 309 of the Clean Water Act, 33 U.S.C. 1319, for injunctive relief and civil penalties for violations of the Clean Water Act;

e. Section 404 of the Clean Water Act, 33 U.S.C. 1344, for injunctive relief and civil penalties for violations of the Clean Water Act.

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, 42 U.S.C. 6973, 33 U.S.C. 1364 and 33 U.S.C. 1319.

4. Notice of the commencement of this action has been given to the State of New York pursuant to 42 U.S.C. 6973 and 33 U.S.C. 1319(b).

DEFENDANTS

5. Defendant 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 defendant 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 purposes 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, fertilizer, plastics and industrial chemicals. Its Niagara Falls operations have produced and continue to produce thousands of tons of chemical wastes each year.

11. Hooker owns, in part, the waste disposal site located in Niagara County, New York, known as the 102nd Street landfill, and has conducted and conducts waste disposal activities at that site.

12. Olin Corporation ("Olin") is a corporation organized and existing under the laws of the State of Virginia. It has no parent organization.

13. Olin operates two chemical manufacturing plants in Niagara Falls, New York, which produce industrial chemicals.

Its Niagara Falls operations have produced and continue to produce thousands of tons of chemical wastes each year.

14. Olin owns, in part, the waste disposal site located in Niagara County, New York, known as the 102nd Street landfill, and has conducted and conducts waste disposal activities at that site.

15. 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 maintains Griffon Park, a public park located just west of Hooker's 102nd Street landfill. 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 this property.

DEFINITIONS

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

- a. The term "Aquifer" refers to any underground rock or subsurface geological formation which stores or conveys water or is capable of storing or conveying water.
- b. The "Ambient Level" of a chemical in any particular place is the amount of the chemical scientists would expect to measure in the absence of

an incremental amount of the chemical resulting from an outside source.

- c. 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 criterion 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, the Agency 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. 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), 44 F.R. 56623 (October 1, 1979).

- d. 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.
- e. 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.
- f. 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.
- g. The term "Environment" refers to all free and unconstrained air, water and

soil, and to plants and animals which are in the public domain.

- h. The term "Exposure" refers to actual contact with a chemical by a living organism, whether by inhalation, contact with or absorption through the skin, or ingestion.
- i. The term "Subsurface water" refers to water in subsurface geological layers, whether contained in bedrock or flowing through soil.
- j. 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.
- k. The term "Landfill" refers to a site used for the disposal of wastes including 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 a landfill, whether by runoff, seepage through the soil, or through the air.
- n. 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.

- o. 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, death.
- p. The term "Seep" refers to a spot where leachate in the ground oozes out.
- q. The term "Wetland" refers to areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include playa lakes, swamps, marshes, bogs, and similar areas such as sloughs, prairie potholes, wet meadows, prairie river overflows, mudflats, and natural ponds.
- r. 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

17. The 102nd Street landfill is located on Buffalo Avenue in Niagara Falls, New York. It borders on the Niagara River and lies less than 1/4 of a mile directly south of the area known as the Love Canal, separated from the Canal by the La Salle Expressway. It has a surface area of about 21 acres, 17 owned by Hooker and four owned by Olin. Hooker owns the western parcel which is bordered on its west by Griffon Park, a municipal park owned by the City of Niagara Falls. (See map attached hereto and incorporated by reference herein as Exhibit 1.)

18. The area surrounding the 102nd Street landfill includes, but is not limited to, a little league baseball diamond and picnic grounds in Griffon Park, immediately west of the site, homes located about 100 yards to the northwest, homes and boat moorings on Cayuga Island about 150 yards downstream to the west, a productive wetland area adjacent to the site, and the Niagara River on which the site is located, to which it drains, and from which the City of Niagara Falls draws its drinking water supply.

19. The entire 102nd Street Site was originally a low-lying marsh before landfill operations began there.

20. Just to the south of the central portion of the site is an indentation in the landfill of about one acre in size. This indentation contains a small wetland. A bulkhead wall separates the wetland on its east, north and west sides from the landfill. The south side of the wetland is open to the river.

21. From about the early 1940s until 1972, Hooker dumped more than 23,000 tons of chemical waste at the 102nd Street site.

22. From the early 1940s until 1972, Olin dumped approximately 66,000 tons of chemical waste at the 102nd Street site.

The Wastes Which Were Dumped at the Site

23. Hooker disposed of the following types of chemical waste in the amounts indicated at the 102nd Street landfill:

<u>Type of Waste</u>	<u>Quantity (in tons)</u>
Inorganic phosphates	900
Organic Phosphites	100
Sodium Hypophosphite	20,000
Benzene Hexachloride cake, including Lindane	300
Chlorobenzenes	100
Miscellaneous	<u>2,100</u>
Total	23,500 tons

24. Olin disposed of the following types of chemical waste in the amount indicated at the 102d Street landfill:

<u>Type of Waste</u>	<u>Quantity (in tons)</u>
Black Cake (Sodium Chloride, Sodium Chlorite, Sodium Chlorate, Carbon, Calcium Carbonate, Calcium Hydroxide)	20,000
Graphite	692
Benzene Hexachloride and Trichlorophenol mixture	65
Trichlorobenzene	150
Unsymmetrical Tetrachlorobenzene	1,100
Benzene Hexachloride Cake (Lindane residue)	1,250
Lime sludge	23,900
Brine sludge	20,000
Trichloroanisole	Unknown
Hexachlorobenzene	<u>60</u>
Total	66,000 tons

The Chemicals Which Have Migrated from the Site and Entered the Environment

25. The chemicals described in the following subparagraphs have been detected migrating from the landfill at levels where contact with the chemicals in water would adversely affect human health and the environment.

A. 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 102nd Street 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 in an exposed population of one million people is 1.5 micrograms per liter (ppb).

(3) EPA has detected benzene at levels of 47 micrograms per kilogram (ppb) in the soil below a discernible seep in the Hooker side of the landfill and 120 micrograms per kilogram (ppb) in the soil below a discernible seep in the Olin side of the landfill. At one point on the Hooker side of the landfill, surface soils were found to contain a benzene level of 7.9 micrograms per kilogram (ppb). Samples from some subsurface water wells show that subsurface water in Hooker's portion of the site contains 313 and 350 micrograms per liter (ppb), and in Olin's portion of the site well samples show 3.6 and 8.0 micrograms per liter (ppb) of benzene. These levels of benzene found in water used for drinking or recreation, or found in fish or shellfish used for human consumption, would exceed levels posing an incremental cancer risk established in EPA's Water Quality Criteria of one additional cancer in an exposed population of one million by 31, 80, 5, 209, 233, 2, and 5 times, respectively.

B. TETRACHLOROETHYLENE

(1) Tetrachloroethylene is toxic to the central nervous system and is a carcinogen. Its effects include depression, nausea, and, at high exposure levels,

unconsciousness and, ultimately, death. Exposure to tetrachloroethylene also causes liver dysfunction.

(2) The official EPA Water Quality Criterion for tetrachloroethylene is zero. The level of exposure to tetrachloroethylene which can be expected to pose a cancer rate of one additional cancer case per one million exposed people is 200 nanograms per liter (ppt).

(3) EPA has detected tetrachloroethylene in soil samples taken from the site, and in soil below discernible seeps in both the Hooker and Olin sides of the landfill. The concentrations of tetrachloroethylene in soil beneath the seeps are 27 micrograms per kilogram (ppb) on the Hooker side and 6.4 micrograms per kilogram (ppb) on the Olin side. In the soils of the landfill the concentrations detected at two sampling points, both on the Hooker side, are 1.5 and 42 micrograms per kilogram (ppb). These levels of tetrachloroethylene found in water used for drinking or recreation, or found in fish or shellfish used for human consumption, would, respectively, 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 135, 32, 7.5, and 210 times.

C. TRICHLOROETHYLENE (TCE)

(1) 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 cancer case in an exposed population of one million people is 2.1 micrograms per liter (ppb).

(3) EPA has detected TCE in soil on the Niagara River shoreline at points of discernible seeps from the landfill at levels of 3.2 and 29 micrograms per kilogram (ppb), respectively from the Hooker and Olin sides. These levels of TCE found in water used for drinking or recreation, or found in fish or shellfish used for human consumption, would, respectively, 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 1.5 and 14 times.

26. The chemicals listed in the following subparagraphs have migrated from the 102nd Street site. They can adversely affect humans and the environment. They may now, or in the future could be at levels sufficient to affect adversely human health and the environment.

A. BENZENE HEXACHLORIDE (BHC): Two isomers of BHC are potent carcinogens: the gamma isomer (known as Lindane) and the alpha isomer. Both isomers also have toxic effects upon the central nervous system, such as epileptiform seizures and convulsions.

B. TETRACHLOROBENZENE: This chemical causes deterioration of blood, liver, and adrenal gland function. It is lethal to animals at low doses.

C. PHENOL: Phenol is highly 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.

27. Safety hazards, such as fires and explosions, can be caused by the mixing of the phosphate and chlorate wastes disposed of at the site. Skin burns may be caused by contact with phosphorus-laden wastes.

28. The detection of some of the chemicals identified in paragraphs 24 and 25 in one or more environment medium indicates a great 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.

How the Migration Occurs

29. The chemicals discussed in paragraphs 24 and 25 have migrated from the site and escaped into the environment in the following manner.

A. A hydrological connection exists between the landfill and the Niagara River. The water table within the property fluctuates with the level of the river. This connection allows river water to flow into the landfill when the level of the river is higher than the water table within the landfill. When the river level is lower than the water table, water and leachate flow from the landfill into the river and the wetland.

8. Leachate containing Hooker's and Olin's wastes also seeps through a bulkhead wall around both the Hooker and Olin sites and outside the wall at Griffon Park, collecting in the river bank below. In addition, leachate now is migrating to the Niagara River marsh. Direct migration from the landfill to the Niagara River is occurring.

Impact on Human Health
and the Environment

29. Persons walking across the 102nd Street site have been seriously burned by explosions of Hooker's or Olin's wastes due to cross-contamination between chlorates and inorganic phosphorus at the 102nd Street landfill.

30. The migration of Hooker's and Olin's wastes into the Niagara River exposes animals and aquatic life to those wastes and their harmful effects.

31. The migration of the wastes has adversely affected the productive wetland located just outside the bulkhead wall which separates the wetland from the landfill.

32. The continuing exposure to the environment of Hooker's and Olin's wastes from the 102d Street site creates a risk of additional adverse effects upon human health and the environment. Any boating, swimming, or other activity whereby one could come into contact with defendants' wastes, or soil, sediment or water contaminated by those wastes is clearly dangerous.

Hooker's and Olin's Conduct with
Respect to the Wastes

33. Before using the marsh for chemical waste disposal, neither Hooker nor Olin prepared it in any way to insure that the wastes disposed of there would remain contained within the site. Rather, Hooker and Olin merely disposed of their wastes directly into the marshy land. Landfill operations for both Hooker and Olin consisted of dumping solid, liquid, and drummed waste into excavations and backfilling with the excavated dirt.

34. To date, Hooker and Olin have failed to install barriers sufficient to prevent access to the 102nd Street landfill. There is easy access to the 102nd Street landfill from the river side. Further, there are no signs posted on the fence or elsewhere on or near the property, warning that hazardous chemical wastes are buried there or that injury or death could be suffered as a result of entry to the property.

35. In 1970 and 1971, Hooker and Olin were warned by the Army Corps of Engineers that their disposal practices at 102nd Street were in violation of the Rivers and Harbors Act. In 1972, Hooker and Olin ceased actively using the 102nd Street landfill and completed construction of a bulkhead against the Niagara River. Cessation of operations and construction of the bulkhead were ordered by the Army Corps of Engineers under the Rivers and Harbors Act.

36. Despite the construction of the bulkhead at the 102nd Street landfill and the alleged cessation of Hooker's and Olin's active use of the site for waste disposal, hazardous waste contained in leachate continues to reach the Niagara River.

37. EPA has determined that the implementation and performance of remedial measures required to eliminate the hazards resulting from Hooker's and Olin's deposits of chemical wastes at the 102nd Street site will cost approximately \$16,500,000.

FIRST CLAIM FOR RELIEF

Section 7003 of the Resource Conservation and Recovery Act, 42 U.S.C. 6973

38. Plaintiff realleges and incorporates by reference herein the allegations of paragraphs 16 through 37.

39. 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.

40. 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 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.

41. Hooker's and Olin's wastes disposed of at the 102nd Street site and Hooker's and Olin's wastes found migrating

from the landfill are hazardous wastes as defined in RCRA Section 1004(5), 42 U.S.C. 6903(5).

42. Hooker and Olin placed the hazardous wastes in the 102nd Street landfill for purposes of disposal.

43. Hooker's and Olin's wastes have escaped, are now escaping, and threaten to continue to escape from the 102nd Street landfill into the surrounding environment.

44. Hooker's and Olin's 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.

45. The diseases and medical problems associated with the hazardous wastes which have escaped and continue to escape into the environment from the 102nd Street site can result in permanent incapacity or death.

46. The entry of Hooker's and Olin's hazardous wastes into the environment, the discharge of their hazardous wastes into the waters and the emission of their hazardous wastes into the air present an imminent and substantial endangerment to health and the environment.

47. Hooker and Olin have violated Section 7003 of the RCRA, 42 U.S.C. 6973.

SECOND CLAIM FOR RELIEF

Section 504 of the Clean Water Act, 33 U.S.C. 1364

48. Plaintiff realleges and incorporates by reference herein the allegations of paragraphs 16 through 37, and 43 through 46.

49. 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 the welfare of persons, where such endangerment is to the livelihood of such persons."

50. The 102nd Street landfill is a "pollution source" within the meaning of CWA Section 504, 33 U.S.C. 1364.

51. The allegations incorporated by reference in paragraph 48 establish that Hooker's and Olin's wastes migrating from the 102d Street landfill are hazardous wastes presenting an imminent and substantial endangerment to the health of persons or to the welfare of persons pursuant to CWA Section 504, 33 U.S.C. 1364.

THIRD CLAIM FOR RELIEF

Public Nuisance

52. Plaintiff realleges and incorporates by reference herein the allegations of paragraphs 16 through 37.

53. The Niagara River is an international water, forming a portion of the border between the United States and Canada. Between the shoreline on the United States side of the River and its midway point, the river is a territorial water of the United States over which the United States exercises exclusive sovereignty and in which the United States has an interest.

54. The 102nd Street wetland is a territorial water of the United States, used by migratory birds for breeding, feeding and shelter, over which the United States exercises exclusive sovereignty and in which the United States has an interest.

55. At least 50,000 people reside in the Niagara Falls area. In addition, thousands of United States citizens, travelling in interstate commerce, visit the Niagara Falls area each year.

56. The United States has an interest in restoring and maintaining the chemical, physical and biological integrity of the Niagara River and the 102nd Street wetland.

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

58. Hooker and Olin owed the United States of America the duty to insure that their chemical wastes would not migrate from the dumpsite and contaminate the Niagara River or the 102nd Street wetland, or threaten to cause harm to the health of United States citizens.

59. Hooker and Olin permitted their wastes to migrate from the 102nd Street site, enter and significantly harm the Niagara River and the 102nd Street wetland, and threaten to cause significant harm to the health of United States citizens.

60. The diseases and medical problems associated with exposure to the types of chemical wastes which have escaped and continue to escape from the 102nd Street site into the environment can result in permanent incapacity or death.

61. The close proximity of the Niagara River and residential areas to the 102nd Street wetland made it likely that if hazardous wastes escaped from the 102nd Street site they would enter and harm the Niagara River and the 102nd Street wetland, and threaten the health of United States citizens.

62. Hooker's and Olin's disposal of their hazardous chemical wastes created an abnormal risk of harm to persons and property in close proximity to the landfill.

63. Hooker's and Olin's disposal of hazardous waste at the Canal has caused and continues to cause the discharge of those wastes to the Niagara River; the Niagara River has been severely damaged.

64. The significant risk that disposal of the chemical wastes, which have escaped and continue to escape from the 102nd Street site into the environment, would cause severe harm to persons and property regardless of the degree of care exercised by Hooker and Olin renders the disposal of these wastes an ultrahazardous or abnormally dangerous activity; Hooker and Olin are therefore strictly liable for all harm caused by their disposal of these wastes at the 102nd Street site.

65. Hooker's and Olin's disposal of hazardous wastes at the 102nd Street site has caused and continues to cause those wastes to be discharged to the Niagara River and the 102nd Street wetland. The Niagara River and the 102nd Street wetland have been severely, perhaps irreparably, damaged. Therefore, Hooker's and Olin's disposal of hazardous wastes at the 102nd Street site has interfered and continues to interfere with the interest of the United States in restoring and maintaining the chemical, physical and biological integrity of those waters.

66. Hooker's and Olin's disposal of hazardous chemical wastes at the 102nd Street site threatens to cause significant harm to the health of United States citizens who are residents of the Niagara Falls area and threatens to cause significant harm to United States citizens travelling

in interstate commerce. Therefore, Hooker's and Olin's disposal of their chemical wastes at the 102nd Street site interferes unreasonably with the United States' interest in protecting the health of its citizens, including those who are travelling in interstate commerce.

67. Hooker's and Olin's continuing unreasonable interference with the aforesaid interests of the United States constitutes a public nuisance.

FOURTH CLAIM FOR RELIEF

Section 13 of the Rivers and Harbors Act
of 1899, 33 U.S.C. 407

68. Plaintiff realleges and incorporates by reference herein the allegations of paragraphs 16 through 37.

69. Section 13 of the Rivers and Harbors Act, otherwise known as the Refuse 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 of 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 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.

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

71. 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 such deposit.

72. Neither Hooker nor Olin have a permit from the Secretary of the Army authorizing the deposit of wastes into navigable waters at the 102nd Street site.

73. Neither Hooker nor Olin ever applied to the Secretary of the Army for a permit authorizing the deposit of wastes into navigable waters at the 102nd Street site.

74. Hooker's and Olin's deposit of wastes at the 102nd Street site, 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.

FIFTH CLAIM FOR RELIEF

Section 309 of the Clean Water Act, 33 U.S.C. 1319

75. Plaintiff realleges and incorporates by reference herein the allegations of paragraphs 16 through 37.

76. Sections 301(a) and 402 of the Clean Water Act, 33 U.S.C. 1311(a) and 1342, provide that it is unlawful for any person to discharge pollutants from a point source into waters of the United States without a National Pollutant Discharge Elimination System (NPDES) permit issued by EPA or the State.

77. Hooker's and Olin's 102nd Street landfill is a discrete conveyance of pollutants to waters of the United States and therefore constitutes a point source as defined in Section 502(14) of the Clean Water Act, 33 U.S.C. 1362(14).

78. The Niagara River and the wetland adjacent to the landfill are waters of the United States pursuant to the Clean Water Act.

79. Hazardous wastes deposited at the 102nd Street landfill by Hooker and Olin are being discharged from the landfill into the Niagara River and adjacent wetland.

80. Neither Hooker nor Olin has or has applied to the U.S. Environmental Protection Agency or the State of New York for a NPDES permit for the discharge of waste from the 102nd Street landfill to waters of the United States.

81. Hooker and Olin have discharged, are discharging, and unless prevented from doing so, will continue to discharge their hazardous wastes from an unpermitted point source into waters of the United States in violation of the Clean Water Act.

82. Hooker and Olin are jointly and severally liable for violations of 33 U.S.C. 1311(a) and 1342.

83. Pursuant to 33 U.S.C. 1319, plaintiff is entitled to seek injunctive relief to prevent unpermitted discharges from entering waters of the United States and to be awarded civil penalties from defendants of \$10,000 per day for each and every day they have violated 33 U.S.C. 1311.

SIXTH CLAIM FOR RELIEF

Section 404 of the Clean Water Act, 33 U.S.C. 1344

84. Plaintiff realleges and incorporates by reference herein the allegations of paragraphs 16 through 37.

85. Sections 301(a) and 404 of the Clean Water Act, 33 U.S.C. 1311(a) and 1344, provide that it is unlawful to discharge dredged or fill material into waters of the United States without a permit issued by the Secretary of the Army, acting through the Corps of Engineers.

86. In or about July, 1979, Hooker caused to be deposited fill material in the wetland immediately adjacent to the 102nd Street landfill.

87. The wetland area is a water of the United States pursuant to the Clean Water Act.

88. Hooker's deposit of fill material constitutes a discharge of dredged or fill material into a water of the United States.

89. Hooker does not have and did not apply to the Secretary of the Army for a Section 404 permit for the discharge of dredged or fill material.

90. Hooker's deposit of fill material in the wetland has had, is having, and unless removed will continue to have an adverse impact on the wetland.

91. Pursuant to 33 U.S.C. 1319, plaintiff is entitled to seek injunctive relief and to be awarded civil penalties from Hooker at \$10,000 per day for each and every day Hooker has violated 33 U.S.C. 1311(a).

PRAYER FOR RELIEF

92. Wherefore, plaintiff United States of America prays:

A. That the Court issue a mandatory permanent injunction requiring Hooker and Olin to do as follows:

(1) Install a grout curtain wall extending to bedrock from 93rd Street and Frontier Avenue southward to the Little River, along Little River and the Niagara River (excluding the wetland) to a point north of 102nd Street, north to Frontier Avenue, and then west to 93rd Street.

(2) Place an impermeable clay cap over the entire site.

(3) Install a leachate collection system within the grout curtain wall near the Niagara River to facilitate leachate withdrawal.

(4) Filter the leachate withdrawn through granular activated carbon filters and incinerate the liquid residue and carbon in accordance with specifications to be set by EPA.

(5) Treat incinerated wastes further to eliminate any toxic characteristics.

(6) Dispose of incinerated wastes in an appropriate manner prescribed by the State and Federal governments.

(7) Undertake immediately and in perpetuity (a) the continued upkeep of the 102nd Street site, including but not limited to maintenance of soil integrity, slope and vegetative cover of the surface and all diversion and drainage structures; (b) monitoring of subsurface water and leachate, with collection and analysis of samples in the manner and frequency specified in proposed federal regulations set forth at 43 F. R. 59022 (Dec. 18, 1978); (c) maintenance of surveyed bench marks; (d) monitoring of the vertical and horizontal escape of gases; and (e) restricting access to the site as deemed appropriate by EPA on the basis of monitoring reports and the planned future use of the site.

(8) Vent the area within the grout curtain wall 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.

(9) Hooker and Olin immediately to take all steps necessary to prevent any of their hazardous wastes from reaching the Niagara River and the wetland adjacent to the landfill and also take all steps necessary to remove all hazardous wastes from the Niagara River and the wetland adjacent to the landfill.

(10) Cease unpermitted discharging of pollutants into waters of the United States.

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

B. That the Court order Hooker to remove the fill material deposited in the wetland adjacent to the landfill and to restore the wetland to its former productivity.

C. That the Court order Hooker and Olin each to pay to the plaintiff a civil penalty of \$10,000 per day for each and every day they have violated the Clean Water Act.

D. That the Court order defendants to reimburse the United States of America for all funds expended for remedial action related to the discharge of defendants' wastes