

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

Nov. 18/80

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THE UNITED STATES OF AMERICA and
THE STATE OF NEW YORK,

Plaintiffs,

-against

HOOKEE CHEMICALS & PLASTICS CORP.,
HOOKEE CHEMICAL CORPORATION, OCCIDENTAL
PETROLEUM INVESTMENT CORPORATION, OCCIDENTAL
PETROLEUM CORPORATION, and THE CITY OF
NIAGARA FALLS, NEW YORK (S-Area Landfill),

Defendants.

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: Civil Action
No. 79-988 (JTC)
:
COMPLAINT OF THE
: STATE OF NEW YORK
:
:
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Plaintiff the State of New York, by its attorney
ROBERT ABRAMS, the Attorney General of the State of New York,
alleges:

PRELIMINARY STATEMENT

1. This complaint is brought by the State of New York to eliminate the harm and threat of harm to the public health and environment of the State resulting from acts and omissions of certain defendants. This danger has arisen from the presence and migration of chemical wastes at the S-Area Landfill in Niagara County, New York, where over 70,000 tons of chemicals were dumped by defendants Hooker Chemicals & Plastics Corp., Hooker Chemical Corporation, and Occidental Petroleum Corporation. These chemicals, many of which have hazardous properties, were the waste products from the manufacture of numerous organic and inorganic chemical substances, some of which were used as pesticides and herbicides. From the time the chemicals were dumped and continuing thereafter, these defendants' acts and omissions caused the wastes to migrate from the landfill into the air, land and water of the State of New York and to threaten the water supply of the City of Niagara Falls. These hazardous chemicals seriously threaten the health, well-being, and safety of substantial numbers of people, and the plaintiff State of New York seeks an order directing these defendants to completely

and permanently abate the public nuisance constituted by the presence and migration of these hazardous chemicals. In addition, damages are sought against these defendants for the harm caused to the State's natural resources, and penalties are sought pursuant to New York State Environmental Conservation Law.

JURISDICTION

2. The claims herein arise under the laws of the State of New York. The jurisdiction of this Court is premised upon the Court's order of June 11, 1980, joining the State of New York in this action pursuant to Rule 19(a) of the Federal Rules of Civil Procedure, and the doctrine of ancillary jurisdiction.

PARTIES TO THIS COMPLAINT

3. Plaintiff State of New York is a body politic and a sovereign entity and brings this complaint on behalf of itself and as parens patriae on behalf of all residents and citizens of the State of New York.

4. Defendant Hooker Chemicals & Plastics Corp. is a corporation organized and incorporated under the laws of the State of New York, and has its principal office and place of business in Niagara Falls, New York.

5. Defendant Hooker Chemicals & Plastics Corp. has operated in, done business in, and been incorporated under the laws of the State of New York, under the name Hooker Electrochemical Company, from 1909 to 1958; under the name Hooker Chemical Corporation (hereinafter "Hooker Chemical Corporation [N.Y.]"), from 1958 to 1974; and under its present name, from 1974 to date.

6. Defendant Hooker Chemical Corporation (hereinafter "Hooker Chemical Corporation [Calif.]") is a corporation organized and incorporated under the laws of the State of California, with its principal office and place of business in Houston, Texas.

7. Defendant Occidental Petroleum Corporation is a corporation organized and incorporated under the laws of the State of California, with its principal office and place of business in Los Angeles, California.

8. In 1968, defendant Occidental Petroleum Corporation acquired Hooker Chemical Corporation (N.Y.).

9. In or about December 1973, defendant Hooker Chemical Corporation (Calif.) was incorporated in the State of California.

10. In or about January, 1974, defendant Hooker Chemicals & Plastics Corp. changed its corporate name in New York State from "Hooker Chemical Corporation" to "Hooker Chemicals & Plastics Corp."

11. Defendant Hooker Chemicals & Plastics Corp. is a wholly-owned subsidiary of a wholly-owned subsidiary of defendant Hooker Chemical Corporation (Calif.), which is itself a wholly-owned subsidiary of a wholly-owned subsidiary of defendant Occidental Petroleum Corporation.

12. Both Hooker Chemical Corporation (New York) and Hooker Chemical Corporation (Calif.) have been described by Occidental Petroleum Corporation as the "Hooker Chemical Division" of Occidental Petroleum Corporation.

13. On information and belief, defendant Hooker Chemical Corporation (Calif.) did and/or does business within the State of New York, or transacted business within the State

of New York out of which one, some, or all of the causes of action enumerated herein arose.

14. On information and belief, defendant Occidental Petroleum Corporation did and/or does business within the State of New York or transacted business within the State of New York out of which one, some, or all of the causes of action enumerated herein arose.

15. At all times relevant to this action, defendant Hooker Chemicals & Plastics Corp. and its predecessors manufactured numerous organic and inorganic chemicals for use as pesticides, herbicides, fungicides, solvents, caustics and other products.

16. On information and belief, Hooker Chemical Corporation (Calif.) is a successor to Hooker Chemical Corporation (N.Y.), and as such has assumed the liabilities, assets, duties, and obligations of Hooker Chemical Corporation (N.Y.), and is responsible for the acts and omissions of Hooker Chemical Corporation (N.Y.) and its predecessors.

17. As used in this complaint, (a) the word "Hooker" refers to defendant Hooker Chemicals & Plastics Corp. and its predecessors; and to defendant Hooker Chemical Corporation (Calif.) and its predecessors; and to each of these two defendant corporations; (b) the term "corporate defendants" refers jointly to Occidental Petroleum Corporation, Hooker Chemical Corporation (Calif.), and Hooker Chemicals & Plastics Corp.

18. 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 which is located near, and affected by, wastes migrating from Hooker's S-Area landfill. The City is named as a defendant herein solely because it is a necessary party

over whom the Court has jurisdiction to insure that the remedial measures necessary to completely and permanently abate the public nuisance hereinafter described can be fully carried out.

THE FACTS

THE S-AREA LANDFILL

19. From approximately 1947 to approximately 1975, in the course and conduct of its chemical manufacturing business, Hooker used land in the southern portion of The City of Niagara Falls, New York, near its Buffalo Avenue chemical manufacturing plant, as a waste disposal site, or landfill.

20. The area so used, known as the S-Area landfill, consists of approximately seven acres and is bordered on the south by the Robert Moses Parkway, on the east by the property line of the City of Niagara Falls Water Treatment Plant, and on the north and west by other property owned by Hooker.

21. The S-Area landfill is built on filled-in land. Before 1933, the area was below the water level of the Niagara River. Between 1933 and 1947, that area of the Niagara River was filled in with a permeable mixture which included cinders, stone, slag, dirt and carborundum abrasives.

22. The Niagara River is located about 200 yards south of the S-Area landfill.

23. Since before Hooker began to dump at the S-Area landfill, the City of Niagara Falls Drinking Water Treatment Plant (hereinafter "Water Treatment Plant") has been located in the immediate vicinity of the landfill.

24. The Water Treatment Plant provides a yearly average of about 50 million gallons per day of water, including drinking water, to industry and to approximately 100,000 people in the City of Niagara Falls and other areas of Niagara Falls.

25. The Water Treatment Plant's water intake system draws its water from the Niagara River into the Plant, where it is processed and then distributed for use.

26. Portions of the intake system are located in and near bedrock.

27. The area under the surface of the S-Area landfill is permeable and has a high water table; the bedrock which underlies the area is highly fractured.

28. Because of the facts set forth in paragraphs 20 through 27 herein, the S-Area landfill was and is not a suitable area for the disposal of chemical wastes.

HOOKER'S ACTS

29. In December, 1947, Hooker purchased the property on which the S-Area landfill is located and thereafter began to use it as a dumpsite for its chemical wastes.

30. Hooker dumped over 70,000 tons of chemical wastes at the S-Area landfill.

31. Hooker dumped chemical wastes at the S-Area landfill by various means, including but not limited to, discharging liquids and other wastes directly into trenches from trailers and punctured drums, and depositing containers of waste directly in the ground.

32. These wastes included hazardous materials which cause or are suspected of causing cancer (carcinogens), birth defects (teratogens), mutations or changes in the characteristics of genes (mutagens), and/or other acute and chronic adverse conditions in human beings, including, but not limited to, reproductive injury and damage to the liver, kidneys, skin, blood, lungs, and nervous system, and which are known or thought to damage plant and animal life.

33. Since the time they were dumped at the S-Area landfill by Hooker, the chemical wastes have migrated out of the landfill and continue to migrate into the air, soils, sediments, bedrock, groundwater and other water, including the Niagara River.

34. Some of the chemical wastes dumped by Hooker at the S-Area landfill have been broken down and altered, through the passage of time and intermingling of wastes, to form by-products and chemical compounds in addition to the chemical substances originally deposited by Hooker. For the purposes of this complaint, the terms "chemical wastes" or "chemicals" refer not only to wastes originally placed in the fill by Hooker, but also to any by-products, contaminants or new compounds that have resulted from the wastes originally deposited.

35. Hooker terminated its waste disposal activities at the S-Area landfill in or about 1975.

36. Since 1975, Hooker has constructed two settling lagoons on the S-Area landfill site which have exacerbated migration of wastes off the site.

37. At all times relevant hereto, Hooker knew or should have known the facts set forth in paragraphs 20 through 36 herein.

38. In its choice of the S-Area landfill as a site for chemical waste disposal, in its manner of preparing the site, in its manner of disposing of chemical wastes, and in its manner of terminating waste disposal operations, Hooker failed to prevent migration of its chemical wastes out of the S-Area landfill.

39. Since it began its chemical waste disposal operations at the S-Area landfill and continuing thereafter, Hooker failed and continues to fail to monitor, safeguard, contain or remove the chemical wastes dumped at the S-Area landfill so as to prevent migration of chemical wastes out of the landfill.

40. From the time it first dumped chemical wastes at S-Area and continuing thereafter, Hooker failed to warn or inform the public of the hazardous nature of the chemicals disposed of at the S-Area landfill, of the danger of migration of those chemicals out of the S-Area landfill, or of the danger to people and the environment of exposure to such chemicals.

OCCIDENTAL'S ACTS

41. On information and belief, at all times relevant hereto, defendant Occidental Petroleum Corporation knew or should have known the facts set forth in paragraphs 19 through 40 herein.

42. On information and belief, since it acquired Hooker Chemical Corporation (N.Y.) in 1968, Occidental Petroleum Corporation has dominated and controlled the business, policies, and practices of Hooker and Hooker's acts and omissions alleged herein.

43. Since 1968, Occidental Petroleum Corporation has performed and is responsible for the acts and omissions which are alleged herein as Hooker's acts and omissions at paragraphs 19, and 30 through 40.

HOOKEr CHEMICAL CORPORATION'S (CALIF.) ACTS

44. On information and belief, at all times relevant hereto, Hooker Chemical Corporation (Calif.) knew or should have known the facts set forth in paragraphs 19 through 40 herein.

45. On information and belief, since it came into existence in 1973, Hooker Chemical Corporation (Calif.) has dominated and controlled the business, policies, and practices of Hooker Chemicals & Plastics Corp., and Hooker Chemicals & Plastics Corp.'s acts and omissions alleged herein.

46. Since 1973, Hooker Chemical Corporation (Calif.) has performed and is responsible for the acts and omissions which are alleged herein at paragraphs 19, and 30 through 40 as Hooker's acts and omissions.

INJURY

47. The chemical wastes dumped by the corporate defendants at the S-Area landfill threaten grave harm to the health, safety and well-being of persons who come in contact with air, ground or water contaminated by such chemicals.

48. Portions of the water intake system of the Water Treatment Plant have been contaminated by chemical wastes, including chemicals known or thought to have carcinogenic, mutagenic, teratogenic, or other adverse effects on human, animal, and plant life.

49. Laboratory analyses of samples taken from the water intake system show that those chemical wastes are Hooker's wastes.

50. Hazardous, noxious, and offensive chemical wastes at the S-Area landfill have entered, are entering, and are likely to continue to enter the water which feeds into the Water Treatment Plant.

51. Chemical wastes which have migrated from the S-Area landfill in both aqueous and non-aqueous form, have contaminated and continue to contaminate the ground in, under, and around the subsurface pipes and other structures of the Water Treatment Plant.

52. These chemical wastes threaten to enter the drinking water, provided by the Water Treatment Plant, through seepage or other migration from the ground into the pipes and structures of the Water Treatment Plant.

53. The chemical wastes dumped by the corporate defendants at the S-Area landfill threaten harm to the environment of the State of New York, including its animal and plant life, and its land and water resources.

54. Animal and plant life, including aquatic life, has been exposed to and harmed by and continues to be exposed to and harmed by these hazardous chemical wastes.

55. The land and water resources of the State of New York have been contaminated and harmed by and continue to be contaminated and harmed by these hazardous chemical wastes.

56. Fish in Lake Ontario and the Niagara River have been and continue to be contaminated and harmed by these hazardous chemical wastes, thereby endangering people and animals who consume such fish.

57. The corporate defendants have failed to take actions which are necessary and sufficient to permanently remedy and abate the existing and threatened harm resulting from the presence of hazardous chemical wastes at the S-Area landfill and their migration and threat of migration therefrom.

58. The continuing presence of hazardous, noxious, and offensive chemical wastes at the S-Area landfill and their migration and threat of migration therefrom, causing harm and threatening to cause harm to a substantial number of persons and other living things, and to the land and water resources of the State of New York, constitute a continuing public nuisance, in accordance with the common law of the State of New York and with New York Real Property Actions and Proceedings Law § 841, which is created and continued by the corporate defendants' acts and omissions herein described.

59. The continuing presence of hazardous, noxious and offensive chemical wastes at the S-Area landfill, and their migration and threat of migration therefrom, constitute violations of New York Environmental Conservation Law §§ 17-0501, 17-0301, 17-0701, 17-0803, and 71-1929, for which the New York State Commissioner of Environmental Conservation has authorized the Attorney General to seek redress.

FIRST CAUSE OF ACTION
FOR PUBLIC NUISANCE

60. Plaintiff State of New York repeats and realleges paragraphs 1 through 59 as if fully set forth herein.

61. The disposal of dangerous chemical wastes at the S-Area landfill by each of the corporate defendants constituted an ultra hazardous and abnormally dangerous activity on the part of each corporate defendant.

62. Each of the corporate defendants, by disposing of dangerous chemical wastes at the S-Area landfill, created the continuing public nuisance described in paragraph 58.

63. Each of the corporate defendants, by disposing of dangerous chemical wastes at the S-Area landfill, has caused and continues to cause injury to plaintiff State of New York, as described in paragraphs 47 through 59 herein.

SECOND CAUSE OF ACTION
FOR PUBLIC NUISANCE

64. Plaintiff State of New York repeats and realleges paragraphs 1 through 59 as if fully set forth herein.

65. In the initial and continuing choice of the S-Area landfill as a chemical dumpsite, in the manner of preparing the site for chemical waste disposal, in the manner of disposal of chemical wastes at the S-Area landfill, and in the manner of terminating waste disposal operations at the S-Area landfill, each of the corporate defendants failed to act in a manner which would prevent the migration of chemicals out of the landfill.

66. By virtue of the negligent acts and omissions set forth above, the corporate defendants have, jointly and severally, negligently created the continuing public nuisance described in paragraph 58.

67. By reason of any one, some, or all of the foregoing negligent acts and omissions, plaintiff State of New York has suffered and continues to suffer the injuries set forth in paragraphs 47 through 59 herein.

THIRD CAUSE OF ACTION
FOR PUBLIC NUISANCE

68. Plaintiff State of New York repeats and realleges paragraphs 1 through 59 as if fully set forth herein.

69. Since it began its chemical waste disposal operations at the S-Area landfill, and continuing thereafter, Hooker failed and continues to fail to monitor, safeguard, contain or remove the chemical wastes dumped at the S-Area landfill so as to prevent migration of chemical wastes out of the landfill.

70. Since 1968 and continuing thereafter, Occidental Petroleum Corporation failed and continues to fail to monitor, safeguard, contain or remove the chemical wastes dumped at the S-Area landfill so as to prevent migration of chemical wastes out of the landfill.

71. Since 1973 and continuing thereafter, Hooker Chemical Corporation (Calif.) failed and continues to fail to monitor, safeguard, contain or remove the chemical wastes dumped at the S-Area landfill so as to prevent migration of chemical wastes out of the landfill.

72. By virtue of the negligent acts and omissions set forth above, the corporate defendants have, jointly and severally, negligently created and maintained the continuing public nuisance described in paragraph 58.

73. By reason of one, some, or all of the foregoing negligent acts and omissions, plaintiff State of New York has suffered and continues to suffer the injuries set forth in paragraphs 47 through 59.

FOURTH CAUSE OF ACTION
FOR PUBLIC NUISANCE

74. Plaintiff State of New York repeats and realleges paragraphs 1 through 59 as if fully set forth herein.

75. From the time it first dumped chemical wastes at the S-Area landfill, and continuing thereafter, Hooker failed to warn or inform the public of the hazardous nature of the chemicals disposed of at the S-Area landfill, of the danger of migration of those chemicals out of the S-Area landfill, or of the danger to people and the environment of exposure to such chemicals.

76. Since 1968, Occidental Petroleum Corporation failed to warn or inform the public of the hazardous nature of the chemicals disposed of at the S-Area landfill, of the danger of migration of those chemicals out of the S-Area landfill, or of the danger to people and the environment from exposure to such chemicals.

77. Since 1973, Hooker Chemical Corporation (Calif.) failed to warn or inform the public of the hazardous nature of the chemicals disposed of at the S-Area landfill, of the danger of migration of those chemicals out of the S-Area landfill, or of the danger to people and the environment of exposure to such chemicals.

78. By virtue of the negligent acts and omissions set forth above, the corporate defendants have, jointly and severally, negligently created and maintained the continuing public nuisance described in paragraph 58.

79. By reason of any one, some, or all of the foregoing negligent acts and omissions, plaintiff State of New York has suffered and continues to suffer the injuries set forth in paragraphs 47 through 59 herein.

FIFTH CAUSE OF ACTION
FOR PUBLIC NUISANCE

80. Plaintiff State of New York repeats and realleges paragraphs 1 through 59 as if fully set forth herein.

81. At all times relevant hereto, the corporate defendants each knew that adequate protective measures had not been taken and that chemical wastes were migrating, or were substantially certain to migrate into ground and water in the vicinity of the S-Area landfill, and to interfere substantially with the health, safety, and well-being of the public and of the environment of the State of New York.

82. Despite the knowledge set forth in paragraph 81, each of the corporate defendants, in initially and continually choosing the S-Area landfill as a chemical dumpsite, in preparing the site for chemical waste disposal, in disposing of chemical wastes at the landfill, and in the manner of terminating waste disposal operations at the landfill, failed to prevent migration of chemical wastes out of the landfill.

83. By virtue of the intentional acts and omissions set forth above, the corporate defendants have, jointly and severally, intentionally created and maintained the continuing public nuisance described in paragraph 58.

84. By reason of one, some, or all of the foregoing intentional acts and omissions, plaintiff State of New York has suffered and continues to suffer the injuries set forth in paragraphs 47 through 59 herein. ~

SIXTH CAUSE OF ACTION
FOR PUBLIC NUISANCE

85. Plaintiff State of New York repeats and realleges paragraphs 1 through 59 as if fully set forth herein.

86. At all times relevant hereto, the corporate defendants each knew that adequate protective measures had not been taken and that chemical wastes were migrating, or were substantially certain to migrate into ground and water in the vicinity of the S-Area landfill and to interfere substantially with the health, safety, and well-being of the public and of the environment of the State of New York.

87. Despite the knowledge set forth in paragraph 86, the corporate defendants each failed and continue to fail to monitor, safeguard, contain or remove the chemical wastes dumped at the S-Area landfill so as to prevent migration of chemical wastes out of the landfill.

88. By virtue of the intentional acts and omissions set forth above, the corporate defendants have, jointly and severally, intentionally created and maintained the continuing public nuisance described in paragraph 58.

89. By reason of one, some, or all of the foregoing intentional acts and omissions, plaintiff State of New York has suffered and continues to suffer the injuries set forth in paragraphs 47 through 59 herein.

SEVENTH CAUSE OF ACTION
FOR PUBLIC NUISANCE

90. Plaintiff State of New York repeats and realleges paragraphs 1 through 59 as if fully set forth herein.

91. At all times relevant hereto, the corporate defendants each knew that adequate protective measures had not been taken and that chemical wastes were migrating or were substantially certain to migrate into ground and water in the vicinity of the S-Area landfill and to interfere substantially with the health, safety, and well-being of the public and of the environment of the State of New York.

92. Despite the knowledge set forth in paragraph 91, the corporate defendants each failed and continue to fail to warn or inform the public of the hazardous nature of the chemicals disposed of at the S-Area landfill, of the danger of migration of those chemicals out of the S-Area landfill, or of the danger to people and the environment of exposure to such chemicals.

93. By virtue of the intentional acts and omissions set forth above, the corporate defendants have, jointly and severally, intentionally created and maintained the public nuisance described in paragraph 58.

94. By reason of one, some or all of the foregoing intentional acts and omissions, plaintiff State of New York has suffered and continues to suffer the injuries set forth in paragraphs 47 through 59 herein.

EIGHTH CAUSE OF ACTION FOR VIOLATION OF
NEW YORK STATE ENVIRONMENTAL CONSERVATION LAW § 17-0501

95. Plaintiff State of New York repeats and realleges paragraphs 1 through 59 as if fully set forth herein.

96. New York State Environmental Conservation Law (hereinafter "ECL") § 17-0501 provides that it "shall be unlawful for any person, directly or indirectly, to ...discharge into ... waters organic or inorganic matter that shall cause or contribute to a condition in contravention of" standards adopted by the New York State Department of Environmental Conservation (hereinafter "DEC") pursuant to ECL § 17-0301.

97. Pursuant to ECL § 17-0301, DEC has adopted standards which apply to the groundwaters in the vicinity of the S-Area landfill, which have been duly classified as Class GA waters. 6 NYCRR § 703.5

98. The migration of chemical wastes, disposed of by the corporate defendants, from the S-Area landfill into the groundwaters in the vicinity of the S-Area landfill constitutes an unlawful discharge which has caused or contributed to a condition in contravention of the standards imposed by ECL § 17-0301 for such waters, and as such violates ECL § 17-0501.

99. Pursuant to ECL § 71-1929, the corporate defendants are each liable to the State of New York for a civil penalty of up to \$10,000 per day for each day of violation of ECL § 17-0501.

NINTH CAUSE OF ACTION FOR VIOLATION OF NEW YORK
STATE ENVIRONMENTAL CONSERVATION LAW §§ 17-0701, 17-0803

100. Plaintiff State of New York repeats and realleges paragraphs 1 through 59 as if fully set forth herein.

101. Pursuant to ECL §§ 17-0701 and 17-0803, it is unlawful for any person to make or use an outlet or point source for the discharge of pollutants, wastes, or the effluents therefrom into the waters of the State of New York without a lawful permit issued by DEC.

102. None of the corporate defendants has ever had or received a lawful permit issued pursuant to ECL §§ 17-0701 or 17-0803, to discharge chemical wastes from the S-Area landfill into the waters of the Niagara River.

103. The migration of chemical wastes from the S-Area landfill into the waters of the Niagara River constitutes an unlawful discharge without a permit and violates ECL §§ 17-0701, 17-0803.

104. Pursuant to ECL § 71-1929, the corporate defendants are each liable to the State of New York for a civil penalty of up to \$10,000 per day for each day of violation of ECL §§ 17-0701, 17-0803.

TENTH CAUSE OF ACTION FOR VIOLATION OF NEW YORK
STATE ENVIRONMENTAL CONSERVATION LAW §§ 17-0701, 17-0803

105. Plaintiff State of New York repeats and realleges paragraphs 1 through 59 as if fully set forth herein.

106. Pursuant to ECL §§ 17-0701 and 17-0803, it is unlawful for any person to make or use an outlet or point source for the discharge of pollutants, wastes, or the effluents therefrom into the waters of the State of New York without a lawful permit issued by DEC.

107. None of the corporate defendants has ever had or received a lawful permit issued pursuant to ECL §§ 17-0701 or 17-0803, to discharge chemical wastes from the S-Area landfill into the groundwaters in the vicinity of the landfill.

108. The migration of chemical wastes from the S-Area landfill into the groundwaters in the vicinity of the S-Area landfill constitutes an unlawful discharge without a permit and violates ECL §§ 17-0701, 17-0803.

109. Pursuant to ECL § 71-1929, the corporate defendants are each liable to the State of New York for a civil penalty of up to \$10,000 per day for each day of violation of ECL §§ 17-0701, 17-0803.

WHEREFORE, plaintiff State of New York requests this Court to award judgment in favor of plaintiff State of New York and against the corporate defendants, jointly and severally, as follows:

1. On account of the public nuisance set forth in the 1st through the 7th causes of action, a judgment for plaintiff State of New York:

a. directing the corporate defendants, jointly and severally, to abate the nuisance at the S-Area landfill caused by the presence, migration, and threat of migration of hazardous chemical wastes, by taking such actions as the court shall find to be necessary and sufficient to completely and permanently abate the migration and threat of migration of these chemical wastes, including all actions necessary and sufficient to protect permanently the safety of the water furnished by the City of Niagara Falls Water Treatment Plant.

b. awarding plaintiff State of New York, against the corporate defendants, jointly and severally, the following damages:

i. for injury to the air, land and water resources of the State of New York, the sum of \$100 million;

ii. punitive damages in the sum of \$100 million.

2. On account of the corporate defendants' violation of ECL §§ 17-0501, 17-0701, and 17-0803, as set forth in the 8th, 9th and 10th causes of action, a judgment in favor of plaintiff State of New York, and against the corporate defendants, jointly and severally, for civil penalties, pursuant to ECL § 71-1929, in the amount of:

a. \$10,000 per day for each and every day of violation of statutory groundwater quality standards;

b. \$10,000 per day for each and every day the corporate defendants have discharged chemical wastes into the waters of the Niagara River without a lawful permit;

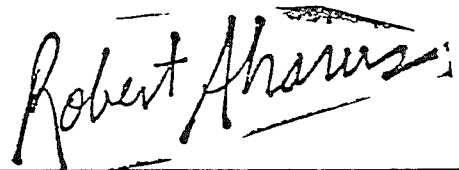
c. \$10,000 per day for each and every day the corporate defendants have discharged chemical wastes into the groundwaters in the vicinity of the S-Area landfill without a lawful permit.

3. That the Court retain jurisdiction over this matter until the nuisance has been permanently abated;

4. Such other and further relief as the Court deems just and proper, together with

5. Interest, reasonable attorneys' fees, and the costs and disbursements of this action.

Dated: New York, New York
November 18, 1980



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