

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Plaintiff,

-vs-

CIV-79-989

HOOKEE CHEMICALS AND PLASTICS CORPORATION,
HOOKEE CHEMICAL CORPORATION, OCCIDENTAL
PETROLEUM INVESTMENT CORPORATION, and
OCCIDENTAL PETROLEUM CORPORATION (HYDE
PARK LANDFILL),

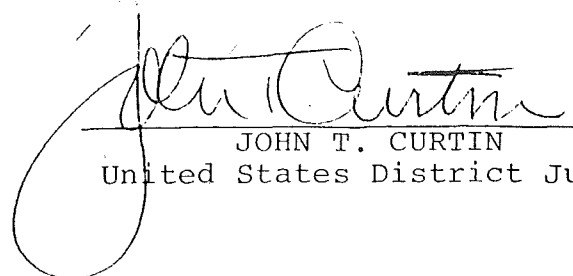
Defendants.

The court has now had an opportunity to study
the proposed settlement as well as the submission by amicus.

In a well drawn brief, amicus raises a number of
objections to a specific remedial strategy. Most important,
amicus argues that there will be no impermeable "floor" to
contain the toxic substances in the Hyde Park landfill.
Because of the nature of the material in the landfill and the
plaintiffs' duty to protect the public interest, I am most
concerned about these charges.

The parties shall have until July 29, 1981, to
respond in order to explain their positions and whether the
requisite remedial technology will accommodate the problems
raised by amicus.

So ordered.


JOHN T. CURTIN
United States District Judge

Dated: July 10, 1981

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Plaintiff,

-vs-

CIV-79-989

HOOKEER CHEMICALS AND PLASTICS CORPORATION,
HOOKEER CHEMICAL CORPORATION, OCCIDENTAL
PETROLEUM INVESTMENT CORPORATION, and
OCCIDENTAL PETROLEUM CORPORATION (HYDE
PARK LANDFILL),

Defendants.

In accordance with my order of August 7, 1981, a hearing shall be set for September 9 and 10, 1981, to begin on September 9 at 10 a.m.

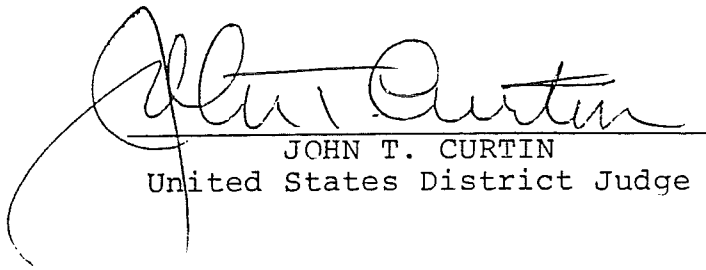
The court has had two conference calls with a number of the attorneys in this case to discuss the logistics of the hearing. ¹ At the direction of the court, the parties and amici will submit what papers they believe should be before the court in preparation for the hearing. These papers shall be received by the parties and the court by September 4, 1981.

Furthermore, the parties and the amici will provide the names of all witnesses to one another and to the court, their resumes, and a brief statement of their likely testimony. In addition, counsel for Hooker and amici shall meet to discuss the witness lists as well as, if possible, the more substantive issues which may be before the court at the hearing.

There is a final matter which must be addressed before the hearing. The court has had under submission two

motions to intervene. Because of the difficult legal problems posed by these motions and the press of other business, the court will not be able to resolve these matters prior to the September hearing. In order to preserve the rights of the applicants for intervention, they shall have leave to participate in those hearings to the same extent as amici.

So ordered.



JOHN T. CURTIN
United States District Judge

Dated: August 12, 1981

FOOTNOTE

1

The court contacted attorneys David Floyd for defendants, Jack Penca for plaintiff United States, Lorelei Borland for plaintiff State of New York, and Barbara Morrison for amici. Although the court regrets not being able to include counsel for all of the many parties in the conference calls, the need to proceed with expedition prompted the court's acting in this fashion. Moreover, the court is satisfied that the interests of all parties were adequately represented and safeguarded in these discussions concerning the logistics of the hearing.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Plaintiff,

-vs-

CIV-79-989

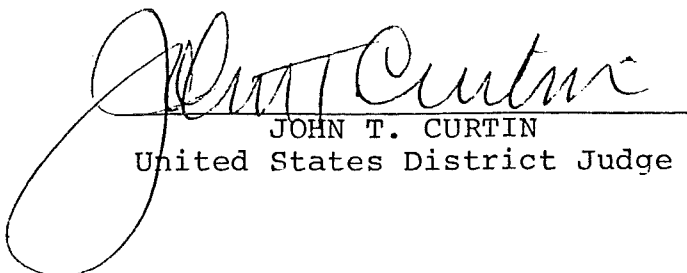
HOOKEr CHEMICALS AND PLASTICS CORPORATION,
HOOKEr CHEMICAL CORPORATION, OCCIDENTAL
PETROLEUM INVESTMENT CORPORATION, and
OCCIDENTAL PETROLEUM CORPORATION (Hyde
Park Landfill),

Defendants.

The attorneys for amicus curiae, The Ecumenical Task Force of Niagara County, and Pollution Probe-Operation Clean-Niagara have advised the court that they will be unable to comply with the December 22, 1981, deadline for the filing of reply memoranda in this case.

The court will grant the amicus until January 4, 1982, to file a brief in response to the government's motion to withdraw the testimony of Dr. David Twedell.

So ordered.



JOHN T. CURTIN
United States District Judge

Dated: December 30, 1981

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Plaintiff,

-vs-

CIV-79-989C

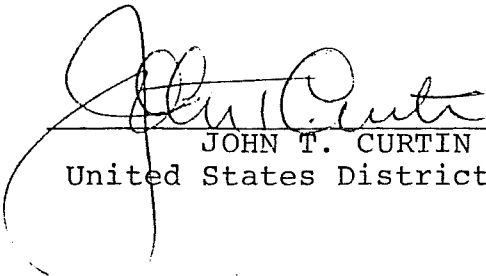
HOOKEE CHEMICALS AND PLASTICS CORPORATION,
HOOKEE CHEMICAL CORPORATION, OCCIDENTAL
PETROLEUM INVESTMENT CORPORATION, and
OCCIDENTAL PETROLEUM CORPORATION (Hyde
Park Landfill),

Defendants.

Amici have requested an opportunity to respond to the Geological Survey by Morris L. Maslia and Richard H. Johnston entitled Simulation of Ground-Water Flow in the Vicinity of Hyde Park Landfill, Niagara Falls, New York, which was filed with the court on February 24, 1982. The court shall grant this request.

Accordingly, amici shall file responsive papers on or before March 12, 1982.

So ordered.



JOHN T. CURTIN
United States District Judge

Dated: March 4, 1982

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA and
THE STATE OF NEW YORK,

Plaintiffs,

-vs-

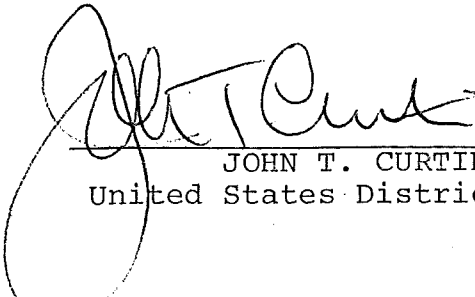
CIV-79-989C
(Hyde Park Landfill)

HOOKEE CHEMICALS AND PLASTICS CORPORATION,
HOOKEE CHEMICAL CORPORATION, OCCIDENTAL
PETROLEUM INVESTMENT CORPORATION, and
OCCIDENTAL PETROLEUM CORPORATION,

Defendants.

Oral argument in this matter, originally scheduled
to take place on Thursday, September 16, 1982, at 11 a.m., is
adjourned until Tuesday, September 28, 1982, at 1 p.m.

So ordered.



JOHN T. CURTIN
United States District Judge

Dated: September 22, 1982

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA and
STATE OF NEW YORK,

Plaintiffs,

-vs-

CIV-79-989C
(Hyde Park Landfill)

HOOKEER CHEMICALS & PLASTICS CORP.;
HOOKEER CHEMICAL CORP.; OCCIDENTAL
PETROLEUM INVESTMENT CO.; OCCIDENTAL
PETROLEUM CORP.; THE TOWN OF LEWISTON;
and THE TOWN OF NIAGARA, NEW YORK,

Defendants.

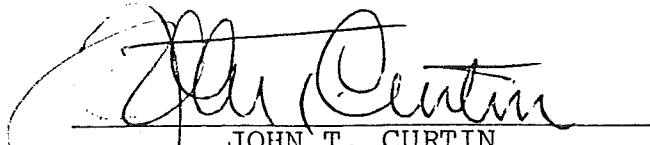
SUPP. ORDER #1

On October 27, 1982, the court considered oral argument on the application of the Colege Heights Property Owners Association to enjoin the drilling of survey wells at the Hyde Park Landfill Site. Applicants argue that the work being conducted is covered by the definition of special construction activity, and because of that, air monitoring equipment must be used at the drilling of each well.

During the hearing, an explanation was made of the work being conducted. After listening to the argument, the court decided that the drilling of the survey wells as described was not covered under the definition of special construction activity. An oral decision was made, and a transcript of the order shall be filed.

The application for a restraining order is denied.

So ordered.


JOHN T. CURTIN
United States District Judge

Dated: November 23, 1982

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

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

Plaintiffs,

-vs-

CIV-79-989C
(Hyde Park Landfill)

HOOKEER CHEMICALS & PLASTICS CORP.;
HOOKEER CHEMICAL CORP.; OCCIDENTAL
PETROLEUM INVESTMENT CORP.; OCCIDENTAL
PETROLEUM CORP.; THE TOWN OF LEWISTON,
NEW YORK; AND THE TOWN OF NIAGARA, NEW
YORK,

Defendants.

Plaintiff-Intervenor College Heights Property Association has submitted a motion for clarification of responsibilities of the parties to the Hyde Park Settlement Agreement, which was approved by this court on April 30, 1982. See United States v. Hooker Chemicals & Plastics Corp., 540 F. Supp. 1067 (W.D.N.Y. 1982). Plaintiff-Intervenor has requested information, as well as a mechanism for its participation in various aspects of the settlement agreement. These requests include advance notice of scheduling arrangements for implementing the terms of the settlement agreement, information concerning the exchange and submission of documents required by the agreement, as well as access to and freecopies of relevant materials.

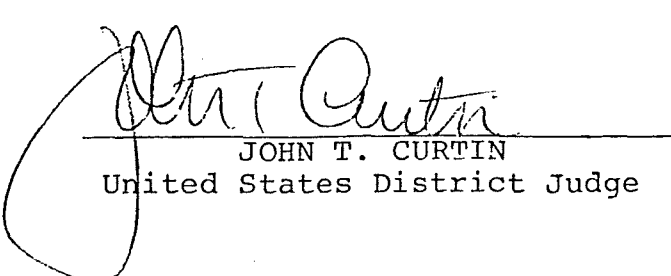
Many of these requests are important to the efforts of involving citizens in the decision-making process, and these concerns are recognized and shared by the court and the named parties to the agreement. At oral argument, the State and

federal governments outlined their proposal for the Hyde Park Community Relations Plan. This plan seems designed to assist in meeting many of the concerns expressed by the intervenor in providing and maintaining access to information as well as a means to involve citizens and receive public comments concerning the settlement agreement.

The court directs that the State circulate draft copies of this proposed plan to the court and the parties for comments. Upon receipt of these comments, the State may wish to make modifications, and a final plan shall be filed with the court by November 4, 1982.

Plaintiff-Intervenor also requests that the court permit it to attend meetings of two or more of the named parties to the settlement agreement. As explained at oral argument, such a request is both unmanageable and unwarranted at this time. The present efforts of the named parties to consult with and involve intervenor in the settlement agreement are sufficient to include the intervenor in these ongoing discussions.

So ordered.



JOHN T. CURTIN
United States District Judge

Dated: October 5, 1982

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA and
THE STATE OF NEW YORK,

Plaintiffs

-vs-

HOOKER CHEMICALS & PLASTICS CORP.;
THE TOWN OF LEWISTON AND THE TOWN OF
NIAGARA, NEW YORK,
(Hyde Park Landfill)

Defendants

CIVIL NO. 79-989-C

ORDER

SUPP ORDER #6

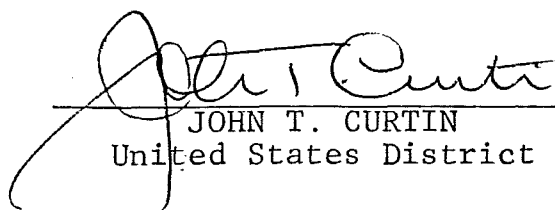
In a meeting in Chambers on March 11, 1983, concerning the motion for a temporary restraining order, filed by plaintiff intervenor, College Heights Property Owners' Association on March 7, 1983, the plaintiff, United States, indicated to the Court that certain air monitoring data and other information would be submitted to the Court and parties by Friday, March 18, 1983. By letter dated March 16, 1983, the plaintiff, United States, informed the Court and the parties of the reasons why it could not meet that deadline and a request was made for an extension to permit submission of some data by March 25, 1983, with all reports and data to be submitted no later than April 1, 1983. Having considered the Government's request and all the facts and circumstances surrounding this matter, it is hereby

ORDERED that the plaintiff, United States, submit all data, including reports and other pertinent information, to

the Court with service on all parties, no later than March 25, 1983, and it is further

ORDERED that all parties meet with the Court on March 29, 1983 at 1:00 p.m. to discuss further proceedings in this matter.

DATED: Buffalo, New York, March 21, 1983



JOHN T. CURTIN
United States District Judge

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA, et al.,

Plaintiffs,

-vs-

CIV-79-989C
(Hyde Park Landfill)

HOOKEr CHEMICALS & PLASTICS CORPORATION,
et al.,

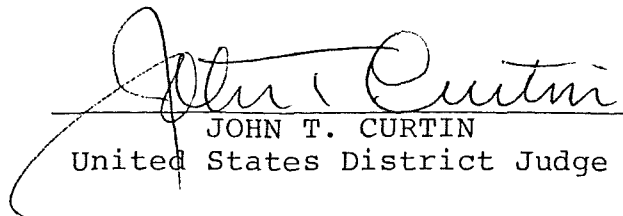
Defendants.

SUPP. ORDER #7

After a review of the affidavits filed in this case concerning the Past Particulate Migration Study [PPMS], the court directs that counsel for the College Heights Property Owners Association and the State of New York meet with the court on May 25, 1983.

The purpose of this meeting is to discuss the progress and implementation of the PPMS and related matters. In this respect, the attendance of State agency representatives involved in the PPMS may also prove to be most helpful.

So ordered.


JOHN T. CURTIN
United States District Judge

Dated: May // , 1983



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U.S. Department of Justice

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United States Attorney
Western District of New York

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U.S. DISTRICT COURT
W.D. OF N.Y.

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MSE:gw
Civ. 79-989-C

United States Courthouse
Buffalo, New York 14202

June 7, 1983

JUN - 7 1983

BY COURIER JOHN T. CURTIN
UNITED STATES DISTRICT JUDGE
WESTERN DISTRICT OF NEW YORK

Hon. John T. Curtin
Chief Judge,
U. S. District Court
624 U. S. Courthouse
Buffalo, New York 14202

Re: United States, et al v. Hooker Chemicals
and Plastics Corp., et al
(Hyde Park Landfill) - Civ. 79-~~989~~⁹⁸⁸-C *989c*

Dear Judge Curtin:

This is to confirm my telephone conversation of June 2, 1983, with Mr. Dellinger, concerning the time for filing response briefs to the motion for costs and attorneys' fees in the above-entitled action.

As I indicated to Mr. Dellinger, the Supreme Court recently heard argument in Burford v. Sierra Club, No. 82-242, September Term, 1982 and, consistent with the Supreme Court's normal practice, we expect that a decision will be announced before the Court's Summer recess. Because Sierra Club involves an award of costs and fees under a statute authorizing such awards where "appropriate", the Government expects the Court's decision to either control or offer substantial guidance on the issue presented by the motion before the Court.

In order to avoid the possibility that additional briefs may be necessary to address the anticipated decision in Sierra Club, I suggested to Mr. Dellinger that the response briefs should not be filed until Sierra Club is decided and he indicated that this procedure would be acceptable to the Court. If, for some reason, Sierra Club is put over to the 1983 term, we would, of course, file our response briefs promptly.

The State of New York and OCC concur with the Government's suggested procedure and Mr. Steele opposes. Mr. Steele indicated his belief that the response briefs should be filed as scheduled and that another round of briefs be filed after Sierra Club is decided. However, we believe that Mr. Steele's suggestion would result in an unnecessary waste of the parties' time and resources, not to mention those of the Court, and, accordingly, we intend to file our briefs in accordance with my June 2, 1983 conversation with Mr. Dellinger, as confirmed by this letter, unless, of course, the Court directs otherwise.

Respectfully,

ASSISTANT ATTORNEY GENERAL
Land and Natural Resources Division
U. S. Department of Justice

Michael Elder

By:

MICHAEL S. ELDER
Attorney, Environment
Enforcement Section

cc: Mr. Truitt
Mr. Watson
Mr. Wasser
Ms. Burns
Mr. Steele

*applicant granted
for Extension of
Briefing until*

7/19/83

John T. Cuntz

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA, et al.,

Plaintiffs,

-vs-

CIV-79-988C
("S" Area Landfill)

HOOKEr CHEMICALS & PLASTICS CORPORATION,
et al.,

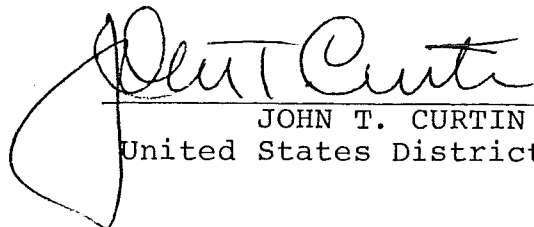
Defendants.

Order #7

Counsel for proposed intervenors Ecumenical Task Force of the Niagara Frontier, et al., has requested additional time to submit a reply brief concerning their intervention motion.

Counsel may submit a reply brief by July 8, 1983. After this brief is filed, the court shall set a date for oral argument on the motion.

So ordered.


JOHN T. CURTIN
United States District Judge

Dated: June 30, 1983

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA, et al.,

Plaintiffs,

-vs-

CIV-79-989C
(Hyde Park Landfill)

HOOKEER CHEMICALS & PLASTICS CORPORATION,
et al.,

Defendants.

SUPP. ORDER #7

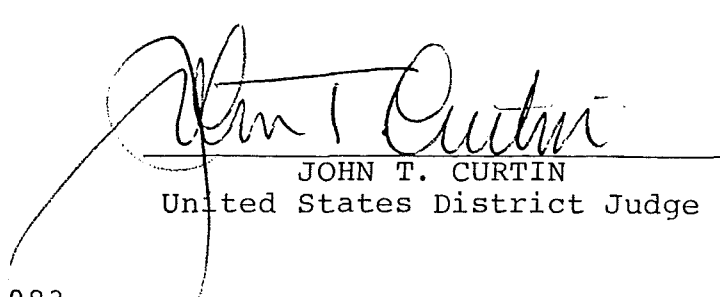
This order summarizes the status of the Past Particulate Migration Study [PPMS]. In response to the court's order directing the State to show cause why the Study cannot be undertaken as soon as possible (Supp. Order #5, March 9, 1983), the court has had several meetings with the parties, and the State has submitted an agenda for implementing this Study (Docket Item 284).

Copies of the final draft of the study have now been sent to federal and State agencies, private institutions, the defendants, intervenor College Heights Property Owners Association, and the Association's technical representatives for their comments. The State Department of Health will receive these comments by July 15, 1983, and the Department will assess these comments and finalize the Study during the month of August, 1983. Hopefully, the implementation of the Study may be undertaken in late August;

however, the court understands that under the present Department of Health plan, the Study will be implemented no later than October 1, 1983. The Department of Health has also agreed to submit a report of all external review written comments, along with its rationale for incorporating or not incorporating these comments into the final PPMS protocol. It is anticipated that completion of the Study will take approximately one year.

The State Department of Health has also agreed that if any substantial changes in this schedule occur, it will apprise the court of these changes and give reasons in writing as to why any delay is necessary. With this schedule now in place, the court is confident that the Past Particulate Migration Study will be implemented as soon as practicably possible.

So ordered.



JOHN T. CURTIN
United States District Judge

Dated: July 7, 1983

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA, et al.,

Plaintiffs,

-vs-

CIV-79-989C
(Hyde Park Landfill)

HOOKEER CHEMICALS & PLASTICS CORPORATION,
et al.,

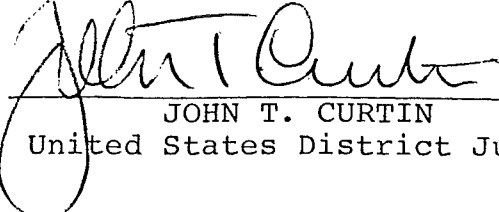
Defendants.

SUPP. ORDER #8

Plaintiffs United States of America and the State of New York and defendant Hooker Chemical Company have all requested additional time to submit responses to plaintiff-intervenor College Heights Property Owners Association's motion for costs and attorneys' fees.

In light of the Supreme Court's very recent decision in Burford v. Sierra Club, No. 82-242, which may affect this case, the parties are directed to file a response to plaintiffs' motion on or before August 17, 1983.

So ordered.



JOHN T. CURTIN
United States District Judge

Dated: July 13, 1983

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA, et al.,

Plaintiffs,

-vs-

CIV-79-989C
(Hyde Park Landfill)

HOOKEER CHEMICALS & PLASTICS CORPORATION,
et al.,

Defendants.

SUPP. ORDER #9

In the spring of 1983, intervenor College Heights Property Owners Association brought several motions to halt drilling activity taking place at the Hyde Park Landfill. This activity is part of the remedial efforts now underway at the landfill site. On March 8, 1983, the court denied intervenor's motion for a temporary restraining order, since it was not clear that the drilling plan would cause irreparable harm to the Association (Supp. Order #4). At the same time, the court directed the federal government to obtain further information from the Environmental Protection Agency [EPA] concerning its air monitoring program at the site.

The Association now believes that the court should order that modifications be made in the current health and safety plan at the landfill site. Specifically, the Association requests that the State and federal governments

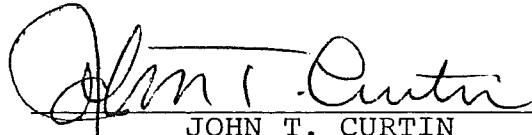
as well as the defendants undertake "comprehensive and continuous vapor, particulate and flamability" air monitoring. The Association also believes that additional safety measures and guidelines are necessary.

The EPA has been conducting a limited air monitoring study, and an evaluation of the collected data has now been filed with the court (Docket Item 275). The EPA has concluded that their "field data do not support the conclusions that drilling activities are having or will have adverse impacts in the community." (Docket Item 257, Spatola Affidavit, ¶39; Docket Item 275, Spatola Affidavit, ¶7.) Further, the State has established new safety procedures after the release of methane gas from a well on March 9, 1983 (Docket Item 251).

For these reasons, the court does not find it essential to implement the Association's proposed modifications at this time. While the exposure to chemicals found in the landfill should be minimized in every possible way, there has been no demonstration of the requisite irreparable harm to warrant a preliminary injunction or a demonstration that the present safety procedures are inadequate. This does not mean that future modifications may not be appropriate, but at this time and under these circumstances, the safety procedures are satisfactory to

protect the workers at the landfill site and the adjacent local residents.

So ordered.



JOHN T. CURTIN
United States District Judge

Dated: July 13, 1983