

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,
THE STATE OF NEW YORK,

Plaintiffs,

v.

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

Defendants.

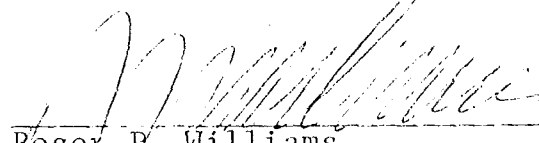
Civ. Action No. 79-989

MOTION TO WITHDRAW TESTIMONY AND AFFIDAVIT
OF DAVID BRUCE TWEDELL AND TO ENTER THE
PROPOSED JUDGMENT AND STIPULATION
APPROVING SETTLEMENT AGREEMENT

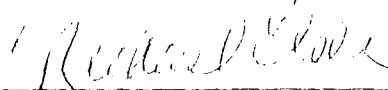
The United States respectfully moves the Court (1)
for leave to withdraw from the record in this case the
testimony and Affidavit of David Twedell and (2) to enter the
proposed Stipulation and Judgment Approving Settlement
Agreement. The grounds in support of this motion are set
forth in the attached memorandum and affidavits.

Respectfully submitted,

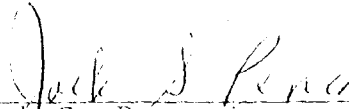
CAROL E. DINKINS
Assistant Attorney General
Land and Natural Resources Division
Department of Justice
Washington, D.C. 20530



Roger B. Williams
United States Attorney



Michael Elder, Attorney
Environmental Enforcement Section
Land and Natural Resources Division
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(202) 633-5252



Jack S. Penca
Assistant United States Attorney

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AFFIDAVIT OF
MICHAEL ELDER

Michael Elder, duly sworn, deposes and says:

1. I am an attorney employed by the United States Department of Justice and am counsel of record in the captioned case now pending in the United States District Court for the Western District of New York.

2. On March 17, 1981, the United States submitted in response to this Court's order of February 12, 1981 a list of twenty-one (21) experts who had participated in the formulation of the proposed Stipulation and Judgment Approving Settlement Agreement ("proposed Settlement"). Attached as Exhibit A were the resumes of the federal experts.

3. Among the federal experts so listed was "Dr. David Twedell." Response of March 17, 1981 at 4. Mr. Twedell's resume, which had been provided to EPA by his former employer, JRB Associates, Inc., was included among those submitted by the United States as Exhibit A.

4. In the resume submitted to EPA and included in Exhibit A, Mr. Twedell refers to himself as "Dr. Twedell" and states that he received an B.S. degree and PhD in geology from the University of Houston in 1975 and 1979, respectively.

5. On July 28, 1979, Mr. Twedell signed under oath an affidavit which was submitted by the United States in support of its memorandum of July 29, 1981 urging entry of the proposed Settlement.

6. In this affidavit,, which is styled "Affidavit of Dr. David Twedell," Mr. Twedell states that he is "a hydrologist by profession, with a Bachelor of Science and doctoral degrees in geology from the University of Houston, Clear Lake City, Texas." Mr. Twedell also states that "I have also taken graduate level courses in hydrology as part of my educational training."

7. On September 10-11, 1981, the United States presented Mr. Twedell as a witness in the hearing conducted by this Court concerning the adequacy of the proposed Settlement. Based on the information contained in his resume and on information provided by Mr. Twedell in a series of pre-hearing interviews for the purpose of preparing his testimony, I represented to the Court that Mr. Twedell held a B.S. and PhD in geology from the University of Houston.

8. On November 20, 1981, Robert C. Morgan of EPA, whose affidavit is also submitted herewith, received information casting doubts on the accuracy of the information submitted by Mr. Twedell to the Court and to the government concerning his educational background.

9. In order to advise the Court, the government has conducted a preliminary investigation to determine what degrees are held by Mr. Twedell.

10. A preliminary investigation has been made of records maintained by the University of Houston which show that Mr. Twedell received a B.A. degree in Physical Science from the University of Houston, Clear Lake City, Texas in 1979. This preliminary investigation, which was conducted by me as counsel for the government, does not indicate that Mr. Twedell holds a B.S. and PhD degrees in geology as represented.

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11. I have recommended that further investigation for possible criminal violations is warranted and the matter has been referred to the Criminal Division and to the Office of Professional Responsibility of the United States Department of Justice.

12. My preliminary investigation has not revealed any allegations or evidence concerning any misrepresentations by Mr. Twedell in his affidavit or testimony concerning the substance of the proposed Settlement.

all opinion testimony

→ unusual. to give opinion & evd.

Michael Elder

Michael Elder

Subscribed and sworn before me this 27th day of November, 1981.

[Signature]
Notary Public
Dist. of Cal.

My Commission Expires Nov. 30, 1983

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,
THE STATE OF NEW YORK,

Plaintiffs,

v.

HOOKEE CHEMICALS & PALSTICS CORP.;
OXY CHEMICAL CORPORATION; HOOKEE
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PETROLEUM INVESTMENT CORPORATION;
OCCIDENTAL PETROLEUM CORPORATION;
THE TOWN OF LEWISTON; AND THE
TOWN OF NIAGARA
(Hyde Park Landfill)

Defendants.

Civ. Action No. 79-989

AFFIDAVIT OF
W. LAMAR MILLER

I, W. Lamar Miller, being duly sworn, depose and swear
that:

1. I am currently acting as the Technical Director of
the Office of Waste Programs Enforcement of the United States
Environmental Protection Agency (hereinafter referred to as "EPA").
My qualifications, duties, and responsibilities are set out in
detail in the Testimony of W. Lamar Miller, T. 35-37, 47-8. My
responsibilities also specifically include administration of the
Office of Waste Programs Enforcement contract funds and systems.

2. I had supervisory authority for the review and
approval of the technical provisions of the Stipulation and Judgment
Approving Settlement Agreement in United States, et al. v. Hooker

Chemicals & Plastics, et al., Civ. Action No. 79-989.

3. On Thursday, November 19, 1981, I was informed of the allegations that David Twedell does not hold a Ph.D. I am also aware that the government intends to withdraw his affidavit and testimony from the record and concur with that action.

4. EPA personnel, myself, Robert C. Morgan, Environmental Scientist, Dr. Frode Ulvedal, and William J. Walsh, Attorney-Advisor, have reviewed the Hyde Park Settlement Agreement to determine whether the proposed Settlement should be withdrawn or modified in view of the allegations concerning Mr. Twedell. I have been fully briefed by those personnel and I have also reviewed again the proposed Agreement.

5. I have determined that no changes are necessary or appropriate at this time for the following reasons:

*they reached this
dec. on basis of T.*
(a) The final geology and hydrology of the site and the necessary remedial technology (except for capping and installation of overburden tile drains) will not be finally determined until after more data is obtained and evaluated under the proposed Settlement.

(b) Mr. Twedell was one of twenty-one (21) federal experts who participated in the formulation of the proposed Settlement. Jerry Thornhill of EPA's Ada, Oklahoma Environmental Laboratory also provided advice in the area of hydrogeology and the expert opinions of the State negotiators were also relied upon.

My staff have informed me that while Mr. Twedell was an active participant in the negotiations and provided technical advice which was taken into account, his input was corroborated and supported by

who
other qualified experts in both the Federal and State governments.

went to CMS
(c) EPA's contract for technical support was with JRB Associates of which Mr. Twedell was an ^{exec} employee. Mr. Twedell served as liaison between JRB and the federal negotiators, participated in the negotiations and generally supervised the contract.

Most of the other technical support, i.e., calculations, literature searches, and other technical evaluations, were primarily provided by Dr. Sidney Paige, an environmental scientist, Robert Wetzel, a civil engineer, and others on the JRB staff. *under T. - not testified*

(d) Following agreement by the staff level negotiators, the proposed Settlement was reviewed at supervisory levels by EPA legal and technical personnel.

(e) Mr. Twedell did not provide recommendations to me concerning the Hyde Park proposed Settlement Agreement. He did function as a member of a team of technical personnel, headed by Mr. Robert C. Morgan. Mr. Morgan provided briefings and recommendations to me on the proposed Agreement. I also received briefings and recommendations from our legal personnel and both technical and legal personnel from the State teams.

(f) My approval of the proposed Settlement and the approvals of the proposed Settlement by other supervisory legal and

*Morgan
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technical personnel were made independent of any advice and recommendations given by Mr. Twedell.

6. I have instructed that Mr. Twedell not be permitted to perform any additional work whatsoever for EPA in connection with the proposed Settlement. I have directed that EPA's contracting mechanisms be used as expeditiously as possible to make available competent and qualified experts on hazardous waste containment technology and hydrogeology to aid in our evaluation of the further data collected pursuant to the proposed Settlement.

7. Additionally, I have directed EPA's liaison with the United States Geological Survey ("U.S.G.S.") to utilize an existing arrangement with the U.S.G.S. in order to provide technical assistance in interpreting future Hyde Park geological and hydrological data, and more specifically the plans submitted under the proposed Settlement Agreement.

8. I have also directed that arrangements be made with EPA's Ada, Oklahoma and Las Vegas Environmental Monitoring Systems Laboratories to have those laboratories assist the Office of Waste Programs Enforcement in interpreting the geological, hydrological, and chemical migration data and to assist in quality assurance of the data obtained pursuant to the proposed Settlement.

9. EPA is willing to provide additional qualified experts in appropriate scientific fields to perform any analysis that may be or may become necessary.

10. As indicated above, I have reviewed the proposed Settlement in view of the allegation that Mr. Twedell has mis-

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represented his educational background. I remain convinced that the technical decisions made by EPA leading to the proposed Settlement are sound and correct and that the proposed Settlement is a favorable settlement of this litigation in so far as the federal government is concerned and that it is reasonable and adequate to protect public health and the environment. ✓

W. Lamar Miller
W. Lamar Miller

DISTRICT OF COLUMBIA
Sworn before me on this 27 day
of November, 1981

[Signature]
Notary Public

My Commission Expires July 31, 1982

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AFFIDAVIT OF
ROBERT C. MORGAN

I, ROBERT CHARLES MORGAN, being duly sworn, depose
and swear that:

1. I am employed as an Environmental Scientist
with the Technical Support Branch, Technical Division, Office
of Waste Programs Enforcement, United States Environmental
Protection Agency. My qualifications and responsibilities in
connection with this case are described in my testimony of
September 9, 1981.

2. I was the federal government's chief staff
level technical coordinator in connection with the above
referenced litigation involving the Hyde Park landfill. My
duties included supervising the collection and review of data

and providing to the federal government's attorneys the scientific expertise necessary to evaluate the data and provide technical advice concerning settlement proposals.

3. Because of the complexity of the environmental problems presented by the disposal of large amounts of chemical wastes at the Hyde Park landfill, it was necessary to assemble a multi-disciplinary team of senior level scientists for the purposes described above and to consult with other scientists from EPA and other federal agencies.

4. During the negotiation of the proposed Stipulation and Judgment Approving Settlement Agreement, I reported directly to W. Lamar Miller, Acting Technical Director of the Office of Waste Programs Enforcement, for approval of staff level decisions made by me and EPA and Justice Department Attorneys.

5. JRB Associates, Inc., was hired by EPA in late 1979 to provide information concerning the costs of the remedies enumerated in the Complaint filed in this case December 20, 1979. The JRB project manager at that time was Dr. Sidney Paige.

6. Prior to David Twedell's involvement in this case, Mr. Jerry Thornhill, of EPA's Ada, Oklahoma, Environmental Monitoring Systems Laboratory and Mr. Lyle Silka, EPA, Office of Drinking Water, Washington, D.C. and Ben Mason, a soil

scientist, ~~had reviewed~~ existing data and provided their interpretations of hydrogeologic conditions at the landfill.

{ As a result of problems concerning the availability of Mr. Thornhill and Mr. Silka, it was determined that additional expert assistance would be needed for the actual negotiations.

7. JRB was subsequently re-hired to provide additional technical assistance to EPA in connection with the negotiations with Hooker and the State of New York concerning Hyde Park. The primary JRB employee assigned to assist EPA was David Twedell.

8. [After February, 1980, Mr. Twedell's role was to provide technical advice to the federal negotiators during negotiating sessions and to manage the contract between JRB and EPA. Mr. Twedell was assisted by Dr. Sidney Paige, Roger Wetzel and other JRB staff.]

[9. Mr. Twedell reviewed chemical analyses, well logs, water elevation data and other information and provided preliminary interpretations of hydrogeologic conditions at the landfill.]

10. Mr. Twedell was not responsible for providing, and did not provide, any of the chemical analyses, well logs, water evaluation data, or other raw data on which technical evaluations concerning the landfill site were based.

11. The federal government's staff level negotiators also considered information and opinions provided by the State's scientists, particularly Mr. Kernan Davis, a geologist and Paul Counterman, an engineer, both employed by the New York Department of Environmental Conservation, on technical issues including hydrogeology.

6A. 12. The technical advice provided by Mr. Twedell was consistent with the evaluations of the other experts on major technical issues including the direction of groundwater flow and the relative permeabilities of the various geologic strata.

13. While Mr. Twedell was an integral part of the federal negotiating team after February, 1980, because of the multi-disciplinary approach used by EPA in the negotiations as well as the assistance of other federal and state geologists and hydrogeologists { no significant decisions were made at the staff level concerning the proposed settlement which were based solely on Mr. Twedell's work product or advice. }

14. All staff level decisions concerning the technical elements of the proposed Settlement were reviewed independently by EPA legal and technical supervisory personnel including Dr. Miller, Douglas MacMillan, Acting Director Office of Waste Programs Enforcement, and James Bunting, Acting Director, Legal Division, Office of Waste Programs Enforcement.

15. On November 19, 1981, I received a call from Mr. Twedell advising me of allegations that he did not have a PhD degree.

16. Subsequently, I received a call from Mr. Robert Colona of JRB Associates, Inc., who was formerly Mr. Twedell's supervisor. Mr. Colona stated that he could only verify that Mr. Twedell possessed a B.A.

17. After Mr. Colona's call I also received a call from a former JRB employee who also stated that Mr. Twedell did not have a PhD degree.

18. As a result of these communications, I informed the following personnel:

William Walsh, Attorney, Office of Waste Programs Enforcement, Environmental Protection Agency

Michael Elder, Attorney, Environmental Enforcement Section, Department of Justice

Ms. Barbara Elkus, Branch Chief, Technical Support Branch, Office of Waste Programs Enforcement, EPA

W. Lamar Miller, Director, Technical Division Office of Waste Programs Enforcement, EPA

19. Mr. Elder asked me to call the registration office of the University of Houston to inquire about the degrees earned and dates awarded for Mr. Twedell. I did so, but was unable to verify that Mr. Twedell had received a PhD.

Kathy
Stumak
(review
in March)

20. The only information concerning Mr. Twedell that I could verify was that he had received a B.A. in Physical Sciences from the University of Houston, Clear Lake, Texas, in 1979.

21. This information is contrary to the information put forth by Mr. Twedell and JRB Associates, Inc. in Mr. Twedell's resume.

22. Mr. Elder conducted his own investigation and he has informed me that his findings are consistent with my own.

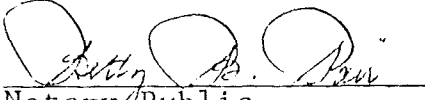
23. Upon the advice of the Department of Justice, EPA has concluded that in view of possible misrepresentations by Mr. Twedell concerning his educational qualifications, Mr. Twedell's affidavit and testimony should be withdrawn from the record in this case and that he should not be permitted to perform any additional services for EPA pending the outcome of the Department of Justice investigation of this matter?

24. I have reviewed the proposed settlement in view of the allegations concerning Mr. Twedell's alleged misrepresentation of his educational background, and I remain convinced that the technical decisions made by EPA are correct

and that the proposed settlement is reasonable and adequate
to protect public health and the environment.


Robert C. Morgan

Subscribed and sworn before me the 29th day of
November, 1981


Notary Public

My Commission Expires October 14, 1983

Form No. 680

CIVIL No. 79-989

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FOR THE

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MOTION TO WITHDRAW TESTIMONY AND AFFIDAVIT
OF DAVID BRUCE TWEDELL AND TO ENTER THE
PROPOSED JUDGMENT AND STIPULATION APPROVING
SETTLEMENT AGREEMENT

ROGER P. WILLIAMS
UNITED STATES ATTORNEY
WESTERN DISTRICT OF NEW YORK
UNITED STATES COURT HOUSE
BUFFALO, NEW YORK 14202

Filed _____, 19__

_____, Clerk.

By _____, Deputy.

Ecology and Environment Inc.

1700 N. Main St.

LOCATION: Arlington, Va. 22209

Dr. Dave Toddall

Box 138

Round Hill, Va. 22141

BILLING. Same As "Ship To"

Our office director would like to see all correspondence, including mailing lists, and phone logs.

NO 1347

PURCHASE REQ. NO.: _____ DATE: _____

SHIP VIA: _____ FOR: _____

TERMS: See Reverse DELIVERED EX-FACTORY

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