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Clerk

United States District Court

FOR THE

WESTERN DISTRICT OF NEW YORK

CIVIL ACTION FILE NO. _____

UNITED STATES OF AMERICA

Plaintiff

SUBDIONS

HOOKER CHEMICALS & PLASTICS CORP.;
HOOKER CHEMICAL CORP.; OCCIDENTAL
PETROLEUM INVESTMENT CORP.;
OCCIDENTAL PETROLEUM CORP.;
(Hyde Park Landfill)

Defendant

To the above named Defendant :

You are hereby summoned and required to serve upon RICHARD J. ARCARA
UNITED STATES ATTORNEY, Western District of New York.

plaintiff's attorney , whose address is 502 U. S. Courthouse, 68 Court Street,
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.

Civil Action No.

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

Defendants.

COMPLAINT FOR INJUNCTIVE RELIEF,
RESTITUTION, AND CIVIL PENALTIES

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

STATEMENT OF THE CASE

1. As explained in more detail below, from about
1953 until 1975, the Hooker Chemical Corporation and its
predecessors in interest disposed of its chemical wastes at
the Hyde Park landfill in Niagara County, New York. The
migration of these wastes from the landfill site has resulted
in the entry of these wastes into waters of the United States,
soil outside the landfill site, and the ambient air in the
vicinity of the landfill site and in the vicinity of waters
contaminated with these wastes. The migration and exposure
of these wastes 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) The Common Law of Nuisance, for injunctive relief concerning the escape of hazardous chemical wastes from Hyde Park into the Niagara River and the escape of hazardous chemical wastes from the Hyde Park landfill into the environment where citizens of the United States have come and continue to come in contact with those wastes;

(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 penalties for violation 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. 1343, 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, joint 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.

DEFINITIONS

11. 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 "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 concentrations in ambient water which can be tolerated while still maintaining protection of aquatic life.

The human health criteria represent levels of chemical concentrations 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 of carcinogens. Because the achievement of levels of zero may be infeasible at this time, EPA has considered the range 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. This range represents chemical concentrations estimated to pose various degrees of incremental cancer risk. The range is presented for information purposes

only and does not indicate any acceptable risk level, since the only known exposure guaranteeing maximum protection to human health is zero. Some of these criteria have been published in the Federal Register, 44 F.R. 15925 (March 15, 1979), 44 F.R. 43660 (July 25, 1979), 44 F.R. 56628 (October 1, 1979).

- b. The term "Bioaccumulation" refers to the tendency of animals and plants to accumulate particular chemicals in their bodies. For example, a fish may ingest an ounce of algae that contains 10 milligrams of a toxic chemical. The natural elimination processes of the fish may dispose of 5 milligrams; the remaining 5 milligrams accumulate in tissue or organs of the fish. When the fish next ingests a 10 milligram dose of the toxic, it would add 5 more milligrams and so on as the fish ingests more of the toxic, building up to the point where the retentive capacity of the fish for the toxic is exceeded.

Bioaccumulation may result in accumulation of the toxic to the point where normal biological functions, such as growth and reproduction, are adversely affected.

- c. The term "Carcinogen" refers to any substance which has been proven to cause, or is suspected to cause, cancer in humans, animals or both.
- d. The term "Mutagen" refers to any chemical

substance that causes a change in the character of a gene that is perpetuated in subsequent offspring or divisions of the organism or cell in which the change occurs.

- e. The term "Teratogen" refers to any chemical substance that causes abnormal development of the fetus, manifested as deficient, redundant, misplaced or grossly misshapen body parts.
- f. The term "Environment" refers to all free and unconstrained air, water, sediment and soil, and to plants and animals which are in the public domain.
- g. The term "Exposure" refers to actual contact with a chemical by a living organism, whether by inhalation, contact with or absorption through the skin, or ingestion.
- h. The term "Subsurface water" refers to water in upper subsurface geological layers, whether contained in bedrock or flowing through soil.
- i. The term "Groundwater" refers to subsurface water found in the zone of saturation, the top of which is known as the water table. The zone of saturation is that area where all voids are filled with water.
- j. The term "Landfill" refers to a site used for the disposal of wastes, including chemical wastes.
- k. 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.

- l. 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.
- m. The term "Persistent" refers to the ability of a chemical to withstand for a prolonged period of time the processes which cause chemical breakdown. These processes consist of, inter alia, reaction with microbes, reaction with soil constituents and photo-decomposition. Persistent chemicals may remain in the environment for many years posing long-term risks to human health and the environment.
- n. 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, unconsciousness, skin irritations, nausea and ultimately, death.
- o. 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

12. The Hyde Park landfill is owned by Hooker and is situated in the extreme northwest corner of the Town of Niagara, New York, in a small industrial complex on the fringe of a residential area. It is immediately bounded by the National Lead Company, Niagara Steel Finishing Co., Greif Brothers, Inc. and a New York Power Authority right-of-way. The disposal site is roughly triangular in shape with dimensions of approximately 1750 feet by 600 feet and a surface area of somewhat less than 15 acres. (See Map attached hereto and incorporated by reference herein as Exhibit 1).

13. Hooker has owned the Hyde Park landfill at least since 1953.

14. The natural drainage channel for the Hyde Park landfill is Bloody Run. Two drainage ditches running along the northern and western edge of the landfill empty into Bloody Run at the northwest corner of the landfill. This drainage pattern has existed at least since 1959.

15. From the landfill, Bloody Run flows through a culvert beneath Power Authority Road, then above ground for a number of yards until it is culverted again below the Greif Brothers barrel plant, which discharges cooling water into Bloody Run. From there, the Creek flows out into an open

channel, past a few homes in the area to the edge of the Niagara University campus, where it drops into an underground storm drain that is 20 or 30 feet below ground level. It then runs west through the Niagara Gorge into the Niagara River.

16. In 1953 Hooker discontinued disposing of wastes from its chemical manufacturing operations at the Love Canal landfill in the City of Niagara Falls, New York, and began disposing of those wastes in the Hyde Park landfill.

The Wastes Which Were
Dumped at the Site

17. From 1953 to 1975, Hooker disposed of more than 80,000 tons of chemical wastes in the Hyde Park landfill.

18. Hooker disposed of the following types of chemical wastes in the amounts indicated in the Hyde Park landfill:

<u>Type of Waste</u>	<u>Quantity (in tons)</u>
Calcium Fluoride	400
Mercury brine sludge	100
Hexachlorocyclopentadiene (C-56) derivatives	4,500
Organic phosphates	4,400
Inorganic phosphates	100
Hypo Mud (Contains thiosulfate)	1,000
Miscellaneous acid chlorides	1,200
Chlorendic acid (HET acid) (Thiodan precursor)	2,100
Decchlorane (Mirex) residues	200
Miscellaneous chlorinations (still bottoms)	1,600
Benzotrifluoride derivatives	2,900
Dodecylmercaptans (DDM)	4,500
* Trichlorophenols (still bottoms)	3,300
Liquid Disulfides/Monochlorotoluene (LDS/MCT)	900
Benzotrifluorides	5,600
Benzoyl Chloride	6,200

Metal chlorides	100
Hexachlorocyclopentadiene (C-56)	1,100
Benzene Hexachloride (Lindane derivatives)	2,000
Chlorobenzenes	16,500
Chlorotoluenes	1,700
Benzoic chlorides	1,700
Benzyl Chlorides	3,400
Thiodan (Endosulfan)	1,000
Sulfides	6,600
Miscellaneous of above	<u>7,300</u>
Total	80,400 tons

* 19. 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 or the environment.

A. DIOXIN

(1) There are many isomers of dioxin. The most prevalent, 2,3,7,8-tetrachlorodibenzo - para-dioxin (TCDD), is one of the most potent toxins known to science. It is acutely toxic at low doses; it causes cancer, birth defects, mutations, fetal death in laboratory animals, and can be fatal to children and adults.

(2) Dioxin is persistent in the environment and is bioaccumulative.

(3) The official EPA Water Quality Criterion for 2,3,7,8-TCDD for protection of human health is zero. The level of exposure to dioxin which can be expected to pose a cancer rate of one additional cancer case per million people is .000000046 micrograms per liter (ppb).

(4) TCDD has been detected in Bloody Run sediment at 220, 80, and 18 micrograms per kilogram (ppb).

These levels of dioxin found in water used for drinking or recreation, or found in fish or shellfish used for human consumption, would respectively exceed the level posing an incremental cancer risk established in EPA's Water Quality Criterion of one additional cancer in an exposed population of one million by 4,782,600,000, 1,739,130,000 and 391,304,000.

B. BENZENE HEXACHLORIDE ("BHC")
or Hexachlorocyclohexane

(1) The "gamma" and "alpha" isomers of BHC have been detected at significant levels migrating from the landfill. The gamma isomer is also known as the toxic pesticide "Lindane."

(2) Both isomers are acutely toxic and are carcinogenic. They have also been implicated in causing liver disease. They induce chemical poisoning symptoms, and adverse central nervous system disorders, including convulsions and epileptiform seizures. Both are lethal to aquatic organisms at low exposures.

(3) Lindane has been shown to cause adverse effects in the reproductive capacity of exposed animals. Exposure to Lindane reduces reproductive capacity and increases embryonic and fetal mortality.

(4) The Water Quality Criterion for protection of human health for BHC is zero. The levels of exposure to Lindane and the alpha isomers of BHC which can be expected to pose a risk of one additional cancer in one million people are 5.4 micrograms per liter (ppb) and 1.6 microgram per liter (ppb), respectively.

(5) Sampling by the Environmental Protection Agency has detected Lindane in Bloody Run water samples at a

level of 15 micrograms per liter (ppb). This level of Lindane exceeds 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 2.0 times.

(6) Sampling by EPA has found alpha BHC in Bloody Run water samples at four locations. The levels of alpha BHC detected were 10, 15, 5, and 3 micrograms per liter (ppb). These levels of alpha BHC 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 6.3, 9.4, 3.1, and 1.9 times, respectively.

(7) In addition to EPA sampling, sampling by a Hooker consultant has found Lindane in stream bed sediments from Bloody Run to the Niagara Gorge at the following levels: 10,486 micrograms per kilogram (ppb), 231 micrograms per kilogram (ppb), and 12,082 micrograms per kilogram (ppb) in stream sediment, and 767 micrograms per kilogram (ppb) in the Gorge. These levels of Lindane found in water used for drinking or recreation, or found in fish or shellfish used for human consumption, would exceed the level established in EPA's Water Quality Criteria, posing an incremental cancer risk of one additional cancer in an exposed population of one million by 1950, 42.9, 2247.2, and 142.7 times, respectively.

(8) Moreover, sampling by Hooker's consultant detected alpha BHC at levels of 27,710 micrograms per kilogram (ppb) and 33,319 micrograms per kilogram (ppb) in stream sediment and 3,683 micrograms per kilogram (ppb) in the Gorge. These levels of alpha BHC found in water used for drinking or recreation, or found in fish or shellfish used for human consumption, would exceed the level, established in EPA's Water Quality Criteria, causing an incremental cancer risk of

one additional cancer in an exposed population of one million by 17,318; 20,824; and 479 times, respectively.

C. TETRACHLOROETHYLENE

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

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

(3) Sampling by the Environmental Protection Agency has detected levels of tetrachloroethylene as high as 105 micrograms per liter (ppb) in Bloody Run water. This level of tetrachloroethylene found in water used for drinking or recreation, or found in fish or shellfish used for human consumption, would exceed the level established in EPA's Water Quality Criteria, posing an incremental cancer risk of one additional cancer in an exposed population of one million, by 525 times.

(4) High levels of tetrachloroethylene have been found at three other locations in water along the course of Bloody Run. These levels were 3.5, 23 and 27 micrograms per liter (ppb), respectively. These levels of tetrachloroethylene found in water used for drinking or recreation, or found in fish or shellfish used for human consumption, would exceed the level established in EPA's Water Quality Criteria,

posing an incremental cancer risk of one additional cancer in an exposed population of one million, by 17.5, 115 and 135 times, respectively.

D. TRICHLOROETHYLENE (TCE)

(1) Trichloroethylene 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 TCE which can be expected to pose a cancer rate of one additional case of cancer in an exposed population of one million is 2.1 micrograms per liter (ppb).

(3) Trichloroethylene has been detected in water from Bloody Run at 2.8, 9.8, 19 and 16 micrograms per liter (ppb). These levels 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 1.3, 4.7, 9, and 7.6 times, respectively.

E. 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.

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

(2) Samples of water from Bloody Run by the Environmental Protection Agency have contained benzene at levels of 7.8, 11 and 3.3 micrograms per liter (ppb) respectively. These levels of benzene⁴ 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 5.2, 7.3 and 2.2 times, respectively.

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

A. HEXACHLOROBENZENE (HCB): HCB is a carcinogen. There is no safe level of human exposure. It is toxic to the central nervous system, kidney and the liver. Studies have shown HCB to be lethal at 500 milligrams per kilogram (ppm).

B. TOLUENE: Toluene exhibits effects on the central nervous system. In sufficient doses it causes narcosis, addiction, and blood chemistry deficiencies.

C. TETRACHLOROBENZENE: Tetrachlorobenzene is toxic to the liver and kidney.

D. CHLOROBENZENE: Chlorobenzene is toxic to the central nervous system. It is a strong narcotic and is associated with liver and kidney damage.

E. PHENOL: Phenol is acutely toxic to humans and animals. It acts upon the central nervous system. The pre-dominant 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.

21. The following wastes were among those disposed of at the Hyde Park landfill by Hooker: (1) hexachloro-cyclopentadiene (C-56), (2) dieldrin (Dieldrin), (3) chlordane (Endosulfan). These chemicals are either carcinogenic or cause other toxic effects. Although these chemicals have not yet been detected migrating from the Hyde Park landfill, their very presence at the Hyde Park landfill presents the risk that they may migrate from the site and thereby enter the environment at levels sufficient to affect adversely human health and the environment.

22. The detection of some of the chemicals identified in paragraphs 19 and 20 in one or more environmental medium indicates a great capacity for migration of chemical waste from the site, and suggests that other hazardous chemicals in the site, which were neither looked for nor detected, may have migrated or are migrating from the site in significant amounts.

How the Migration Occurs

23. The aforementioned chemical wastes have migrated from the landfill through three principal routes: surface waters, subsurface water and air.

24. Hooker's wastes have entered and continue to enter Bloody Run from a variety of sources, including:

A. Leachate has migrated into and continues to migrate into the ditches, which flow into Bloody Run.

B. Rainwater and water resulting from melting snow have mixed and continue to mix with Hooker's wastes on the surface of the Hyde Park landfill and to run off into the ditches which abut the landfill and flow into Bloody Run.

C. On several occasions an external berm system at the landfill was breached during periods of high runoff. Contaminated water flowed from the landfill into the ditches that abut the landfill and into the Bloody Run drainage system.

D. On occasion Hooker has discharged wastes from trucks to the surfaces of the landfill. These wastes flowed from the landfill into the ditches that abut the landfill and into the Bloody Run drainage system.

25. Migration of wastes from the Hyde Park landfill through subsurface water beneath the site has occurred and continues to occur.

26. Some of the chemicals which Hooker deposited at the landfill can form acids which enlarge openings in the bed-rock exacerbating the migration of contaminated subsurface water.

27. Hooker's wastes are migrating and have migrated from the site through the air from several sources, including the following:

a. A lagoon which holds leachate collected from the landfill was left uncovered until the Spring of 1979 (and then only temporarily covered) allowing chemicals to volatilize into the ambient air.

b. Hooker's wastes which have reached the drainage ditches around the landfill and Bloody Run volatilize into the ambient air.

Impact on Human Health and the Environment

28. There has been and continues to be human exposure to Hooker's wastes from the Hyde Park landfill which creates a risk of substantial harm to those who have been and are being exposed.

29. Medical examinations of residents of the area near the Hyde Park landfill and medical studies of workers in nearby industries who have come in contact and continue to come in contact with air from the landfill or from contact with Bloody Run have indicated physical disorders associated with some of the chemicals identified in paragraphs 19 and 20 including respiratory problems, skin disorders, and miscarriages.

30. Animals and aquatic creatures have ingested and continue to ingest Hooker's wastes by consuming water from Bloody Run and the Niagara River and animals have inhaled and continue to inhale Hooker's wastes which have been emitted and continue to be emitted into the air at Hyde Park.

Hooker's Conduct With Respect
to the Wastes

31. Hooker's disposal practices at the Hyde Park landfill consisted of burial by dumping truck loads of drummed or liquid waste into open holes, followed by backfilling the area. Hooker gave no consideration to either the permeability of the soil underlying the landfill or to leachate control in its disposal of wastes at the site. As a rule, segregation of wastes, with the possible exception of sulfides, was not considered.

32. The wastes eventually entered and contaminated the Niagara River. Hooker deposited chemical wastes at the Hyde Park landfill at a grade level where no impermeable

material was present. These wastes mix with subsurface water, migrate into Bloody Run, and eventually enter the Niagara River. Hooker has not installed any impermeable barrier to prevent this migrating.

33. Hooker has been aware of problems caused by the migration of its wastes from the Hyde Park landfill at least since June 1964, when the Niagara County Health Department informed Hooker of complaints about the site. At the instigation of the Niagara County Health Department, Hooker initiated plans to close the site in 1971. Although Hooker ceased active waste disposal operations at the Hyde Park landfill in 1975 and has recently completed its closure of the site, Hooker's closure plans do not provide adequate measures for the containment of wastes from the site or the clean up of the surrounding environment which has been contaminated by the wastes.

34. The EPA has estimated that the implementation and performance of remedial measures required to eliminate the hazards resulting from Hooker's deposit of wastes in the Hyde Park landfill alone will cost approximately \$6,080,000.

FIRST CLAIM FOR RELIEF

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

35. Plaintiff realleges and incorporates by reference herein, the allegations of paragraphs 12 through 34.

36. 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.

37. Hazardous waste is defined in RCRA Section 1004(5), 42 U.S.C. 6903(5) as:

a solid waste, or combination of solid wastes, which because of its quantity, concentration, or physical, chemical, or infectious characteristics may--

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

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

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

39. Hooker placed the hazardous wastes in the Hyde Park landfill for purposes of disposal.

40. Hooker's wastes have escaped, are now escaping and threaten to continue to escape from the Hyde Park landfill into the surrounding environment. Hooker's hazardous wastes and the hazardous leachate, 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.

41. Hooker's hazardous wastes have entered and continue to enter the environment and have been discharged and continue to be discharged to subsurface waters, to Bloody Run and to the Niagara River.

42. The escape and threat of escape into the surrounding environment of hazardous wastes from the Hyde Park landfill has endangered, now endangers, and threatens

to continue to endanger the health of persons living or working near the site, as well as the environment itself.

43. The continuing escape of Hooker's wastes from Hyde Park presents an imminent and substantial endangerment to health and the environment in violation of Section 7003 of RCRA.

SECOND CLAIM FOR RELIEF
Section 504 of the Clean Water Act,
33 U.S.C. 1364

44. Plaintiff realleges and incorporates by reference herein the allegations of paragraphs 12 through 34.

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

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

47. The allegations incorporated by reference herein in paragraph 44 establish that Hooker's wastes migrating from the Hyde Park 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

48. Plaintiff realleges and incorporates by reference herein the allegations of paragraphs 12 through 34.

49. The Niagara River is a water of the United States.

50. The Niagara River is an international water, forming a portion of the border between the United States of America 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 of America exercises exclusive sovereignty and in which the United States of America has an interest.

51. 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.

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

53. The United States has an interest in restoring and maintaining the chemical, physical and biological integrity of the Niagara River.

54. Hooker owed the United States the duty to design, operate and maintain properly the Hyde Park dumpsite in order to insure that its chemical wastes would not migrate from the Hyde Park landfill and contaminate the Niagara River.

55. Hooker's design, operation, and maintenance of the Hyde Park landfill has permitted and continues to permit its chemical wastes to migrate from the Hyde Park landfill and contaminate the Niagara River. Hooker therefore failed to design, operate and maintain the Hyde Park landfill properly.

56. Hooker knew or should have known that its conduct with respect to its wastes would permit those wastes to migrate from the landfill into the environment, thereby substantially harming the Niagara River and threatening to ~~harm substantially the health of United States citizens,~~
~~including those travelling in interstate commerce.~~

57. Hooker's disposal of its hazardous chemical wastes at the Hyde Park landfill and Hooker's failure to construct an adequate barrier at the Hyde Park landfill to prevent the escape of its wastes caused and continues to cause the discharge of carcinogenic, teratogenic and mutagenic chemicals into the Niagara River. These discharges have violated and continue to violate the chemical, physical and biological integrity of the Niagara River.

58. Hooker's acts and failures to act, described in paragraphs 31 through 34 were and are negligent. Hooker is liable to the United States for any harm caused by Hooker's negligent acts or negligent failures to act.

59. The diseases and medical problems associated with many of the chemical wastes which have escaped and continue to escape from the Hyde Park landfill into the environment can result in permanent incapacity or death.

60. During the time in which Hooker disposed of its wastes at the Hyde Park landfill there were residential areas within one half mile of the site.

61. The close proximity of residential areas and the Niagara River made it likely that if hazardous wastes escaped from the Hyde Park landfill they would contaminate the Niagara River and harm the health of United States citizens.

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

63. The significant risk that disposal of the chemical wastes which have escaped and continue to escape from the Hyde Park landfill into the environment may cause severe harm to persons and property regardless of the degree of care exercised by Hooker renders the disposal of these wastes an ultrahazardous or abnormally dangerous activity. Hooker is therefore strictly liable for all harm caused by its disposal of these wastes at the Hyde Park landfill.

64. Hooker's disposal of hazardous wastes at the Hyde Park landfill, an ultrahazardous activity, has caused and continues to cause the discharge of those wastes to the Niagara River; the Niagara River has been severely damaged. Hooker has therefore interfered and continues to interfere unreasonably with the United States' interest in restoring and maintaining the chemical, physical and biological integrity of the Niagara River.

65. Hooker's disposal of hazardous wastes at the Hyde Park landfill, an ultrahazardous activity, threatens to harm the health of United States citizens exposed to those wastes. Hooker has therefore interfered and continues to interfere unreasonably with the United States' interest in protecting the health of its citizens.

66. Hooker'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

67. Plaintiff realleges and incorporates by reference herein the allegations of paragraphs 12 through 34.

68. 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 the same shall be liable to be washed into such navigable water, either by ordinary or high tides, or by storms or floods or otherwise, whereby navigation shall 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.

69. The Niagara River is a navigable water pursuant to Section 13 of the Rivers and Harbors Act of 1899, 33 U.S.C. 407. Bloody Run is a tributary of a navigable water pursuant to Section 13 of the Rivers and Harbors Act of 1899, 33 U.S.C. 407.

70. 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.

71. Hooker never applied to the Secretary of the Army for a permit nor has it received any authority to deposit its wastes in Bloody Run or the Niagara River.

72. Hooker's deposit of wastes at the Hyde Park landfill, where such wastes were likely to and did reach a navigable water, 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

73. Plaintiff realleges and incorporates by reference herein, the allegations of paragraphs 12 through 34.

74. 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 without a National Pollutant Discharge Elimination System (NPDES) permit issued by EPA or the State.

75. The discharge of the two drainage ditches running along the northern and western edges of the Hyde Park landfill are point sources as defined by Section 504(14) of the Clean Water Act, 33 U.S.C. 1362(14).

76. Bloody Run is a water of the United States pursuant to the Clean Water Act.

77. Hooker has discharged hazardous wastes by means of the two drainage ditches on the northern and western edges of the Hyde Park landfill to waters of the United States.

78. Hooker has discharged, is discharging, and unless prevented from doing so, will continue to discharge hazardous wastes from unpermitted point sources into waters of the United States in violation of the Clean Water Act, 33 U.S.C. 1311(a) and 1342.

79. 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 Hooker of \$10,000 per day for each day it has violated sections 301(a) and 402, 33 U.S.C. 1311(a) and 1342.

PRAYER FOR RELIEF

80. Wherefore, plaintiff United States of America prays:

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

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

(2) In addition to the subsurface water monitoring required by subparagraph (1), install and maintain a perpetual program of periodic sampling of air, soil, streams, and sediment in the vicinity of the Hyde Park landfill, to determine the effectiveness of the immobilization efforts for Hyde Park landfill leachate. As with subsurface water monitoring, this monitoring may discontinue only with the approval of the United States.

(3) Conduct or pay for complete medical studies of all workers and residents in a one mile radius of the Hyde Park landfill who worked or resided in the area from 1953 to the present to determine the extent to which any person may experience adverse health effects; undertake or pay for a health monitoring program that will track past and present workers and residents who worked or resided within a one mile radius of the Hyde Park landfill and the offspring of those workers and residents for their lifetimes.

(4) Restructure present Hyde Park landfill closure operations according to EPA specifications, eliminating improper crown slope, moisture infiltration, and erosion; and provide for treatment of runoff from the site to prevent any hazardous waste from reaching Bloody Run. Maintain, monitor and upgrade as necessary the existing leachate collection, treatment, and disposal program.

(5) Install a grout curtain down to bedrock completely surrounding the site. Install a new leachate collection system within the grout curtain wall. 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.

(6) 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 to an air manifold which is connected to the carbon filtration system used to treat leachate.

(7) Divert Bloody Run by excavation, conduit, or as otherwise appropriate in accordance with the specifications of EPA, the United States Army Corps of Engineers and the State of New York, in order to allow the clean up of existing contamination and prevent future contamination, and in particular remove all dioxin in Bloody Run and dispose of it in an environmentally sound manner with the approval of EPA.

(8) Determine whether the storm sewer near Niagara University is contaminated, and if so, clean it up.

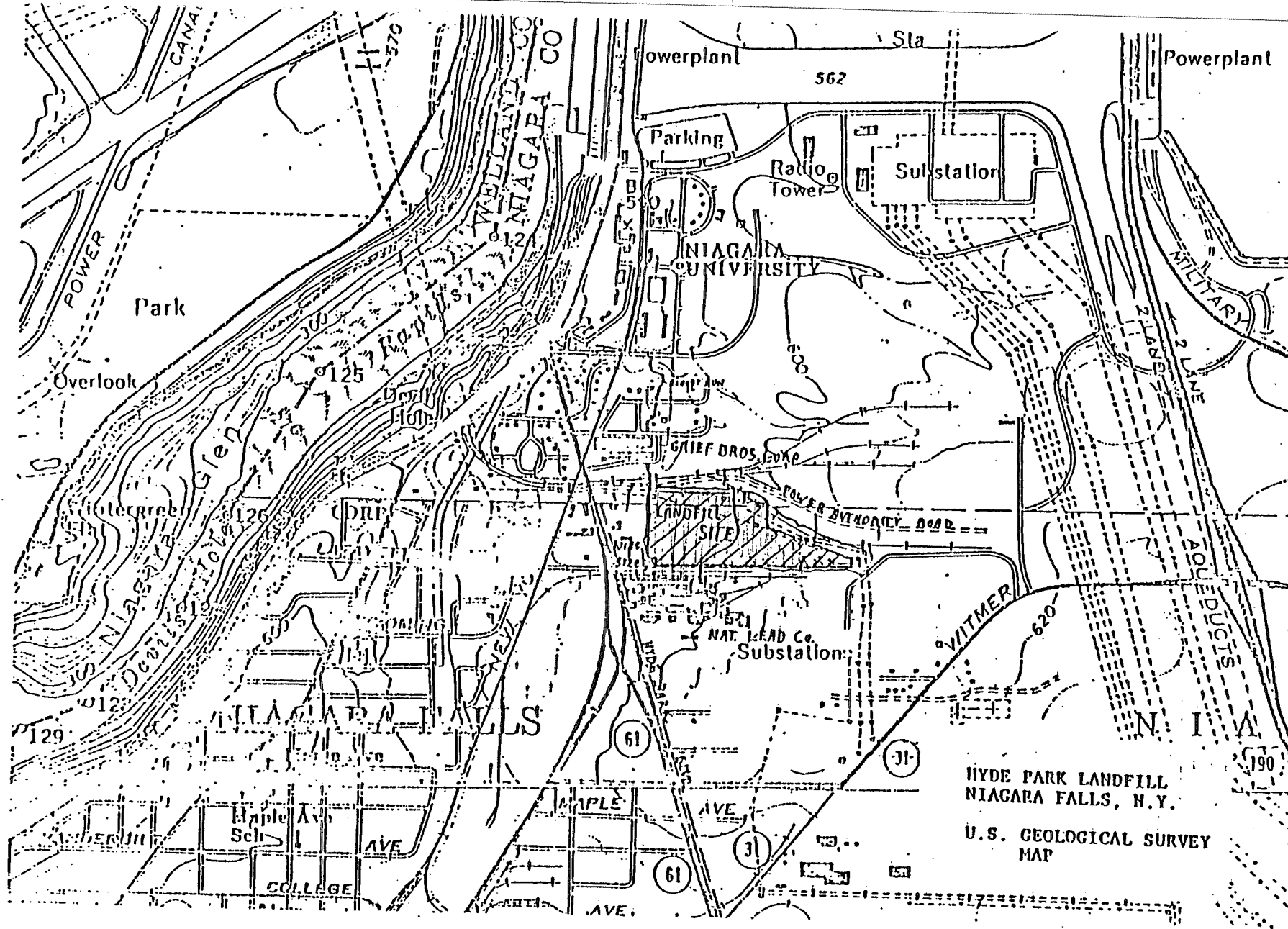
(9) Determine whether Hooker contaminants have infiltrated property at surrounding work sites, and if so, undertake measures to clean up and prevent future contamination.

(10) In perpetuity after closure of the site, in accordance with the above requirements, provide necessary maintenance of the site, as follows:

- a. Maintain the soil integrity, slope, and vegetative cover of the final cover and all diversion and drainage structures;
- b. Maintain the groundwater and leachate monitoring systems and collect and analyze samples from these systems in the manner and frequency specified in Section 250.43-8, Federal Register, Vol. 43, No. 243;
- c. Maintain surveyed bench marks;
- d. Maintain and monitor the gas collection and control system where such a system is installed to control the vertical and horizontal escape of gases;
- e. Restrict access to the landfill as deemed appropriate by EPA on the basis of monitoring reports and the post-closure use of the landfill;
- f. Monitor air emissions from various points on and around the landfill;
- g. Perform any additional remedial measures which EPA determines to be necessary on the basis of monitoring reports.

(11) Take all other steps necessary to prevent any of its hazardous wastes from reaching Bloody Run or the Niagara River and also to take steps necessary to remove hazardous wastes from these bodies of water.

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



HYDE PARK LANDFILL
NIAGARA FALLS, N.Y.
U.S. GEOLOGICAL SURVEY
MAP

1:50,000