

September 8, 1981

The Honourable Mark MacGuigan
Secretary of State for
External Affairs
Lester B. Pearson Building
125 Sussex Drive
Ottawa, Ontario
K1A 0G2

Dear Mr. MacGuigan:

Re: US v. Hooker Chemicals and Plastics Corp. et al
Hyde Park Landfill

The Canadian Environmental Law Association represents Pollution Probe and Operation Clean-Niagara in regard to the above-noted matter. On May 29, 1981, our clients were granted amicus curiae status in U.S. Federal District Court in Buffalo to file a brief responding to the proposed settlement agreement for the Hyde Park Landfill. The agreement was signed on January 21, 1981 between Hooker Chemicals and Plastics Corp., U.S. Environmental Protection Agency and the State of New York, the parties in this case.

Our brief, filed jointly with the Ecumenical Task Force of the Niagara Frontier, represented by attorney Barbara Morrison, on June 30, 1981, concluded that the proposed settlement agreement would not prevent the continued migration of highly toxic chemical leachate to the Niagara River and Lake Ontario. Our expert consultants also believe that the proposed remedial technology is based on wrong assumptions of the hydrogeological setting of the site and that excavation of the contaminated soil and chemical wastes is the only viable option. We therefore urged the Judge to either disapprove the agreement or hold a fact finding hearing to ascertain the validity of the representations of the parties.

Subsequent to the filing of our brief, Judge Curtin ordered the parties to respond to the concerns raised in our brief. The parties filed three separate and often contradictory responses in which U.S. EPA and New York state said that excavation could be part of a remedial strategy, while Hooker said that they would have never entered into the agreement if it

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dealt with possible excavation of the wastes. The Judge on August 7, 1981, in a precedent setting decision, ordered a fact finding hearing to take place starting September 9, 1981. We will be given an opportunity to present testimony and cross-examine experts on a detailed set of specific questions regarding the proposed agreement.

We are concerned about the role that External Affairs is playing in regard to this case and the situation generally regarding the pollution of the Niagara River from Hooker landfilling activities. (Hyde Park is the first of 4 lawsuits launched by U.S. EPA in 1979 to be settled - "S" Area, Love Canal and 102nd Street Dump are to follow.)

While Environment Canada has been extremely cooperative in providing technical assistance to us, they have stated that they cannot directly intervene in any of the Hooker cases and can only proceed through "diplomatic channels". We understand that in addition to a number of diplomatic notes sent between the U.S. State Department and your department, there has been a meeting held during July in Washington to discuss the proposed settlement agreement. It is our understanding that the U.S., at that time, tried to reassure the Canadian government that the settlement agreement was wide open for the implementation of any remedial technology, including excavation, if it was found to be appropriate. Of course, it now appears that the parties do not even agree amongst themselves as to whether excavation is contemplated in their agreement.

We met with Environment Canada to review the contradictions in the U.S. EPA, New York State and Hooker's responses to our amicus brief and suggested that Canada ask for clarification by U.S. EPA of various representations it had made to the Canadian government. In a subsequent meeting, with Environment Canada, we were told that External Affairs would not ask any questions of clarification.

We strongly believe that the remedial strategies agreed upon for the four Hooker landfill sites will affect the drinking water of approximately 4 million Canadians for many years into the future. It is obvious that the forum in which these agreements will get hammered out will be the U.S. courts and not through diplomatic channels.

In order that the Canadian public interest be protected to the fullest, we feel that the government should take a more active role in these settlement agreements. We cannot blindly accept the "good faith" representations on the part of the U.S. environmental agencies, but must critically evaluate what is specifically provided for in these agreements.

We therefore feel that it would be beneficial to all concerned if Anne Wordsworth of Probe and myself could meet with you to discuss the implications of these settlements and the Canadian Government's role in this matter.

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Due to our limited budgets, we would appreciate it if this meeting could take place in Toronto or if arrangements could be made for us to come to Ottawa, if necessary.

Thank you for your consideration of the issues raised in this letter.

Yours truly,

CANADIAN ENVIRONMENTAL LAW ASSOCIATION

Toby Vigod
Counsel

TV/afc

cc. Honourable John Roberts
Minister of the Environment