



GLENN SPRINGS HOLDINGS, INC.

1795 Baseline Road Grand Island, NY 14072-2010

A Subsidiary of Occidental Petroleum Corporation

Telephone (716) 773-8300

FAX (716) 773-8333

WNY Office

*Ben King
FYI
Judicial
Consent
Judgment*

March 19, 1998

Mr. Gerald J. Rider, P.E.
Chief of Operations & Support
Bureau of Hazardous Site Control
Division of Hazardous Waste Remediation
NYSDEC
50 Wolf Road
Albany, NY 12233

MAR 26 1998

RE: Love Canal Coordinator

Dear Mr. Rider:

Pursuant to Paragraph 5(b) of the Consent Judgment between Occidental Chemical Corporation (OCC) and the State of New York, I am advising you that the coordinator and alternate will change effective April 1, 1998.

Coordinator:

Mr. George Luxbacher
Director
Glenn Springs Holdings, Inc.
P. O. Box 1520
Lexington, KY 40591-1520

Alternate:

Mr. Donald Tubridy
Site Manager
Glenn Springs Holdings, Inc.
805 - 97th Street
Niagara Falls, NY 14304

Respectfully,

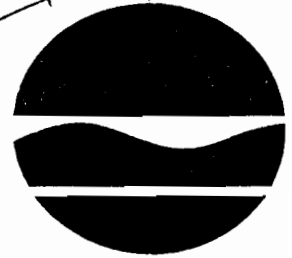
Gene M. Dworzanski
Gene M. Dworzanski
Love Canal Coordinator

GMDW192S

cc: G. Luxbacher
D. Tubridy

New York State Department of Environmental Conservation
50 Wolf Road, Albany, New York 12233-7010

John P. Cahill
J. R.



John P. Cahill
Commissioner

FEB 17 1998

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Jay Cull
Occidental Chemical Center
360 Rainbow Boulevard South
P.O. Box 728
Niagara Falls, NY 14302

Re. Love Canal, Site No. 9-32-020
Civil Action No. 79-990-C
Partial Consent Decree signed May 1989
Judicial Consent Decree signed June 1994

Dear Mr. Cull:

Enclosed is a Cost Summary of Expenditures incurred by the New York State Department of Environmental Conservation (NYSDEC) for its activities outlined in the Partial Consent Decree dated May 1989 and in the Judicial Consent Decree dated June 1994. This bill represents a combination of the third bill associated with the Partial Consent Decree and the first bill associated with the Judicial Consent Decree. The Department is crediting a total of \$84,855.42 to Occidental Chemical Corporation for costs that were included in Bill No. 2 of the Partial Consent Decree and were also included in the summary of past costs which resulted in the \$98 million dollar settlement.

The NYSDEC is requesting payment in the amount of \$681,557.92 within 30 days from receipt of this letter. The check should be made payable to the New York State Department of Environmental Conservation and sent to the address below which differs from the address in the Partial Consent Decree:

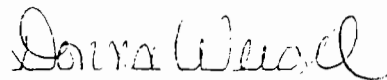
New York State Department of Environmental Conservation
Division of Environmental Remediation
50 Wolf Road, Room 260A
Albany, NY 12233-7010
Attn: Bureau Director

The enclosed cost summary includes personal service expenditures associated with the Partial Consent Decree which were incurred after September 22, 1993 and non-personal service expenditures which were incurred after September 30, 1993. It also includes the personal service and non-personal service costs recoverable under the Judicial Consent Decree (i.e., costs incurred after May 18, 1994). All personal service costs are reported through February 5, 1997 and non-personal service costs are reported through June 13, 1997.

The payment amount is explained in detail with various documentation. A table of contents has been included for your information. However, if you have any questions regarding this matter, please contact Dottie Norvik at (518) 457-0900.

Thank you for your attention to this matter.

Sincerely,



Donna Weigel
Director, Bureau of Program Management
Division of Environmental Remediation

Enclosures

cc: Eugene Martin-Leff, NYSDOL

cc: FILE 932020

w/Cost Summary
C. Sullivan (DEE)
D. Weigel
D. Norvik
L. Zeppetelli

w/Cost Summary & Contractual Cost Summary
J. Rider
R. Schick
C. Jackson

932020.bil

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION
 DIVISION OF ENVIRONMENTAL REMEDIATION
 BUREAU OF PROGRAM MANAGEMENT

COST SUMMARY

SITE NAME: LOVE CANAL
 SITE NO.: 9-32-020

COST CATEGORY	COSTS DUE UNDER THE PARTIAL CONSENT DECREE	COSTS DUE UNDER THE JUDICIAL CONSENT DECREE	TOTAL AMOUNTS
* DIRECT PERSONAL SERVICES	\$5,845.99	\$393,511.73	\$399,357.72
** CONTRACTUAL	(\$65,215.05)	\$314,052.76	\$248,837.71
** TRAVEL	(\$1,605.62)	\$5,332.04	\$3,726.42
** OTHER	(\$18,034.75)	\$47,670.82	\$29,636.07
GRAND TOTAL	(\$79,009.43)	\$760,567.35	\$681,557.92

* PERSONAL SERVICES ARE REPORTED THROUGH 2/5/97. SEE PERSONAL SERVICE COST SUMMARY

** NON-PERSONAL SERVICES ARE REPORTED THROUGH 6/13/97. SEE NON-PERSONAL SERVICE COST SUMMARY

New York State Department of Environmental Conservation
Division of Environmental Remediation
Bureau of Program Management

**Contractual Cost Summary
for
State Costs due under the Judicial Consent Decree**

Site Name: Love Canal
Site No.: 9-32-020

<u>Contract</u>	<u>Contractor</u>	<u>Expenditure</u>	<u>Footnote</u>
D003077	Sevenson	39,959.94	A
7163		26,941.60	B
D002852-10	Malcolm Pirnie	15,125.42	C
D003371	Marcor of NY	18,711.93	D
D002472-5	ABB(f.k.a ECJ)	168,043.85	E
C002989	RECRA Env. Inc.	13,872.00	F
N/A	Division of Operations	7,014.00	G
D002409	Sevenson	9,500.00	H
D002898	Entech Mgt.	6,445.02	I
D002740	Tricil Env. Response	8,439.00	J
Total		314,052.76	

Footnotes:

- A. Contract no. D003077 with Severson Industrial Services, Inc. was for carbon removal and tank cleaning. The entire expended amount of this contract, \$39,959.94, was expended after 5/18/94. Final payment has been made against this contract and the retainage has been released. In addition to this expenditure being included in the Non-Personal Service Detailed Expenditure Report, it is also documented in Exhibit A with a copy of the last Contractor's Application for Payment (CAP) no. 5.
- B. As noted in the Judicial Consent Decree (JCD) Appendix B under Item 5.A, contract no. 7163 was executed for the purchase of carbon. This expenditure is included in the Non-Personal Service Detailed Expenditure Report (page 71).
- C. Contract no. D002852 work assignment (WA) 10 with Malcolm Pirnie was for the Remedial Design (RD) and the Construction Oversight (CO) of the well decommissioning at five sites. Federal grant V002962-93 paid for 90% of the costs on this WA that were associated with the Love Canal site. However, the State was responsible for a 10% state match (SM) amount. The entire amount associated with the Love Canal site was expended after 5/18/94. Final payment has been made against this contract and the retainage has been released. The expenditure amount of \$15,125.42 reflects the 10% SM for the Love Canal site. In addition to this expenditure being included in the Non-Personal Service Detailed Expenditure Report, it is also documented in Exhibit C with a copy of the last CAP no. 38(22).
- D. Contract no. D003371 with Marcor of NY was for the Construction (CN) of the well decommissioning at two sites. Federal grant V002962-93 paid for 90% of the costs on this contract that were associated with the Love Canal site. However, the State was responsible for a 10% SM amount. All expenditures under this contract that were associated with the Love Canal site were expended after 5/18/94. Final payment has been made and the retainage has been released. The expenditure amount of \$18,711.93 reflects the 10% SM for the Love Canal site. In addition to this expenditure being included in the Non-Personal Service Detailed Expenditure Report, it is also documented in Exhibit D with a copy of the last CAP no.7.
- E. Contract no. D002472 WA 5 with ABB (formerly known as ECJ) was for technical assistance regarding the Love Canal Leachate Treatment Facility. All of the expenditures that were incurred prior to 5/18/94 have been omitted from this summary. Final payment has been made and the retainage has been released. The expenditure amount of \$168,043.85 reflects costs after 5/18/94. In addition to this expenditure being included in the Non-Personal Service Detailed Expenditure Report, it is also documented in Exhibit E with a copy of the last CAP no. 61 and CAP no. 41 (which documents costs prior to 5/18/94).

Footnotes:

- F. Contract no. C002989 with RECRA Env. Inc. is a standby analytical contract. The total amount of \$13,872.00 reflects payments made after 5/18/94 using State funds. In addition to this expenditure being included in the Non-Personal Service Detailed Expenditure Report, it is also documented in Exhibit F with copies of the Standard Vouchers for each invoice processed.
- G. A total of \$7,014.00 was used by Division of Operations (DOO) for their services at the Love Canal site. DOO provides maintenance at the site; that is, they mow the lawns, etc.. This expenditure is included in the Non-Personal Service Detailed Expenditure Report (pages 70 and 71).
- H. The State made payment totaling \$9,500.00 under this contract after 5/18/94. Contract no. D002409 with Severson was for the Operations and Maintenance (O&M) upgrade of power, control and signal telemetry of the field leachate collection pumping system. In addition to this expenditure being included in the Non-Personal Service Detailed Expenditure Report, it is also documented in Exhibit H with a copy of the retainage release CAP no. 12.
- I. Contract no. D002898 with Entech Management was for CN and O&M of Frontier Avenue, 100th Street and EDA lots. Federal grant V002445-82 paid for 90% of the CN costs. The total of \$6445.02 reflects the 10% state match costs for the CN and 100% State costs for the O&M incurred after 5/18/94. Final payment has been made against this contract and the retainage has been released. In addition to this expenditure being included in the Non-Personal Service Detailed Expenditure Report, it is also documented in Exhibit I with copies of the last two payments made under this contract. CAP no. 7 shows the State charge of \$3,653.92 and CAP no. 8 shows \$2,791.10 , totaling \$6,445.02.
- J. Contract no. D002740 with Tricil Environmental Response, Incorporated was for CN at the 93rd Street School (which was included in the Love Canal Emergency Declaration Area). Federal grant V002445-82 paid for 90% of the CN costs. The total of \$8,439.00 reflects the 10% state match costs incurred after 5/18/94. Final payment has been made against this contract and the retainage has been released. In addition to this expenditure being included in the Non-Personal Service Detailed Expenditure Report, it is also documented in Exhibit J with copies of the last two payments made under this contract. CAP no. 10 shows the State charge of \$8,239.01 and CAP no. 11 shows \$199.99, totaling \$8,439.00.



GLENN SPRINGS HOLDINGS, INC.

1795 Baseline Road Grand Island, NY 14072-2010

A Subsidiary of Occidental Petroleum Corporation

Telephone (716) 773-8300

FAX (716) 773-8333

WNY Office

February 13, 1998

Gerald Rider
NYSDEC
50 Wolf Road, Room 260
Albany, NY 12233-7010

Dear Mr./Ms. Rider:

Occidental Petroleum Corporation has decided to consolidate all remedial activities under its subsidiary Glenn Springs Holdings, Inc. Effective January 1, 1998, I have relocated to Glenn Springs Holdings, Inc. at the following address:

Glenn Springs Holdings, Inc.
1795 Baseline Road
Grand Island, NY 14072

Telephone: 716-773-8321
Fax: 716-773-8333
E-Mail alan_weston@oxy.com

Please use this address for all future communications. If you have any questions, please contact me.

Alan F. Weston
Director
Remedial Programs

AFW/7465/Dist/3

FEB 24 1998

Ben please look at order. This is also I recall However let's send copy to mention Jeff & Reg 9 TJS 2/26

June 30, 1997

re: Love Canal

Brian Sadowski >

This refers to your undated message to Joe Ryan which he has referred to me.

There are two possible questions here: the first is, What authorization must the facility possess? and the second is, What standards must the facility meet?

As far as I can tell, the question you are asking is the first question. And the answer to that question is set out at 6 NYCRR § 375-1.7(a): when the Department engages in an activity the Department is automatically exempt from a requirement to get a Departmental permit as long as § 375-1.7(b) is met; when a responsible party engages in an activity pursuant to an order, it may be exempted from a requirement to get a Departmental permit as long as § 375-1.7(b) is met. Since OxyChem is now engaging in the activity of operating the subject facility, whether or not it is required to get a permit is a judgment-call by the Department, and by Org.&Del. Memo. # 95-24 ¶ 4 that judgment-call may be made by the Division Director on the Commissioner's behalf. One of the elements necessary to meet § 375-1.7(b) is that the "activity satisfies all substantive technical requirements applicable to like activity conducted pursuant to a permit as determined by the Department". In other words, whether the activity is authorized by a permit or whether the activity is authorized by an order, in either case, the facility must meet permit-quality standards: the answer to the first question doesn't impact the answer to the second question because the applicable permit-quality standards are whatever they are no matter which procedural device is used to make them applicable to the operation of the facility.

What permit-quality standards apply in this particular case is the second question, and one that should be posed to air regulatory program staff, because the answer to that question is beyond my expertise....

JME

< Jim Eckl

cc: J. Ryan, G. Rider

Ben
File
Initial Decree

no
proceed



GLENN SPRINGS HOLDINGS, INC.

1795 Baseline Road Grand Island, NY 14072-2010

A Subsidiary of Occidental Petroleum Corporation

*Ben
of
file*

Telephone (716) 773-8300

FAX (716) 773-8333

WNY Office

April 25, 1997

Mr. Gerald J. Rider, P.E.
Chief of Operations & Support
Bureau of Hazardous Site Control
Division of Hazardous Waste Remediation
NYSDEC
50 Wolf Road
Albany, NY 12233

ADP ?

Subject: Love Canal Coordinator

Dear Mr. Rider:

Pursuant to Paragraph 5 (b) of the Consent Judgment between Occidental Chemical Corporation (OCC) and the State of New York, I am advising you that the coordinator and alternate are as follows:

Coordinator

Mr. Gene M. Dworzanski
Project Manager
Glenn Springs Holdings, Inc.
1795 Baseline Road
Grand Island, NY 14072
Phone: (716) 773-8303
Fax: (716) 773-8333

Alternate

Mr. Donald Tubridy
Site Manager
Glenn Springs Holdings, Inc.
674 Walck Road
North Tonawanda, NY 14120
Phone: (716) 695-7851
Fax: (716) 695-7723

Respectfully,

Gene M. Dworzanski
Gene M. Dworzanski
Project Manager

cc: D. Tubridy



New York State Department of Environmental Conservation

MEMORANDUM

File

TO: Donna Weigel, Resource Management & Cost Recovery Section
FROM: Gerald J. Rider, Jr., Chief, Operation, Maintenance & Support Section
SUBJECT: Love Canal Remaining Issues

Gerald J. Rider, Jr.

DATE:

MAR 23 1997

APR - 2 1997

There are a couple of issues still remaining to be resolved in relation to the Love Canal 1994 Consent Judgement.

Since the Love Canal well decommissioning project has now been completed, and final payments made, I believe we may now prepare and submit a bill to Occidental for reimbursement of expenses as stipulated in the Consent Judgement. With the exception of Region 9 performing minor O&M oversight in the future DEC will no longer spends funds for remedial work at this site.

Also, the equipment list needs to be finalized so that an official Department printout may be submitted to Occidental.

The attorney general has said that all files are confidential (except those that were in the public information office). The Department may need a legal liaison to handle requests from the public (attorneys) for copies of documents. There are hundreds of private lawsuits outstanding. The files will start going to the record center soon.

I would like to resolve these three issues. Please call me if I can help.

3/31/97

Gerry

cc: E. Barcomb
J. McKeon
P. Buechi, Reg. 9
B. Loreda

I have assigned Laura the billings associated with Love Canal and will give it top priority for April. I will also have her help me resolve the equipment issues after the billings are done

a:lcremain.wp6:BL:GR:et

I leave the legal liaison issue with you to resolve with DEC. You have a letter handle on the Love Canal files

*cc Laura
Dottie
Gack*

Gene Dwork
FUI + fill
Julia Johnson
copy to
Patricia S.
Peter B.

73
101

September 6, 1996

Mr. Gerald J. Rider, Jr.
Chief, Operation, Maintenance and Support Section
Bureau of Hazardous Site Control
New York State Department of
Environmental Conservation
50 Wolf Road
Albany, NY 12233-0001

Re: Responses to NYSDEC Comments
Love Canal 1995 Monitoring Report
Niagara Falls, New York

Dear Mr. Rider:

The following are Occidental Chemical Corporation's (OxyChem's) responses to the New York State Department of Environmental Conservation (NYSDEC) comments received July 31, 1996 regarding the document entitled "1995 Monitoring Report" for the Love Canal submitted on March 22, 1996.

Pursuant to the NYSDEC recommendations, OxyChem agrees to incorporate the following in future Long-Term Monitoring reports:

- i) a QA/QC review including the items listed in the NYSDEC analytical recommendations;
- ii) flow-net diagrams; and
- iii) a note identifying the datum used for groundwater levels as the U.S. G.S.'s 1927 North American datum.

Pursuant to OxyChem's letter dated April 25, 1996, please submit future correspondence to Gene Dworzanski who has replaced John Nichter as OxyChem's Love Canal Coordinator. If you have any questions, please call me at (716)286-3044.

Sincerely yours,

Klaus Schmiedtke

for Gene Dworzanski

KDS/csm/1

c.c.: L. Wood



Occidental Chemical Corporation

Corporate Environmental Affairs

Occidental Chemical Center

360 Rainbow Boulevard South, P.O. Box 728 Niagara Falls, NY 14202-0728

716 286-3000



**RESPONSES TO NYSDEC COMMENTS
RECEIVED JULY 31, 1996
REGARDING THE 1995 MONITORING REPORT
FOR THE LOVE CANAL
SUBMITTED MARCH 22, 1996**

The following are Occidental Chemical Corporation's (OxyChem's) responses to the New York State Department of Environmental Conservation (NYSDEC) comments received July 31, 1996 regarding the document entitled "1995 Monitoring Report" for the Love Canal submitted on March 22, 1996.

A) ANALYTICAL DATA

1. The methylene chloride and acetone concentrations detected in the trip blanks, which were reported as estimated values (J qualifier), were reported as such because they were below the quantitation limit of 10 µg/L. Concentrations for compounds which were detected in the corresponding laboratory method blank were qualified with the B qualifier.
2. Food grade vinyl tubing was used to collect the groundwater samples. This is the same tubing used by NYSDEC when they collected the samples. The tubing blank was obtained by pouring deionized water through a section of new tubing.
3. The source for the phenol detected in the glove blank rinse is not known. OxyChem believes it is not appropriate to speculate on what a potential source may be.
4. The pesticide/PCB results from the glove blank rinse were rejected due to the extremely low surrogate recovery observed on both columns during analysis.
5. Sources of the bis(2-ethylhexyl) phthalate were the food grade vinyl tubing (tube blank result = 25 µg/L) and from the laboratory.

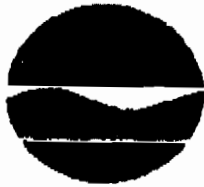
Recommendations

Future Love Canal Long-Term Monitoring (LTM) reporting will include a QA/QC review as an appendix to the report. The review will include the items listed in NYSDEC's recommendation.

6. It is believed that the detection limits are sufficiently low enough to provide the "early warning" described in the NYSDEC's recommendation. "NDx" will continue to be used for compounds not present at or above the detection limit, where "x" is the detection limit.

B) FLOW DIAGRAMS

1. Flow-net diagrams will be included in future Love Canal LTM reporting.
2. The datum used in the 1995 Monitoring Report was the U.S. G.S. 1927 North American datum, the same used by the NYSDEC. A note will be added in the appendix table which lists the quarterly groundwater levels in future LTM reporting.



New York State
Department of Environmental Conservation
Region 9

FAX

*See for
FYI Please
file.*
BEN
OK
8/15

*file
KC
Judicial
Declar*

DATE: 8/5/96
 NUMBER OF PAGES BEING SENT 4 (INCLUDING THIS ONE)
 SENT TO: Gerald Riker FYI
 FAX NUMBER: 457-8989
 FROM: Ann Adomski

MESSAGE: *Scope of additional work at Love
provided by CRA. Approved for release
Don King with copy on 8/2/96.*

CONFIDENTIALITY NOTICE

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NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION
 270 MICHIGAN AVENUE, BUFFALO, NEW YORK 14203-2599
 (716)851-7220, TELECOPY (716)851-7226
 716-447-4704 716-447-5686

Cheryl Korman

441-5680

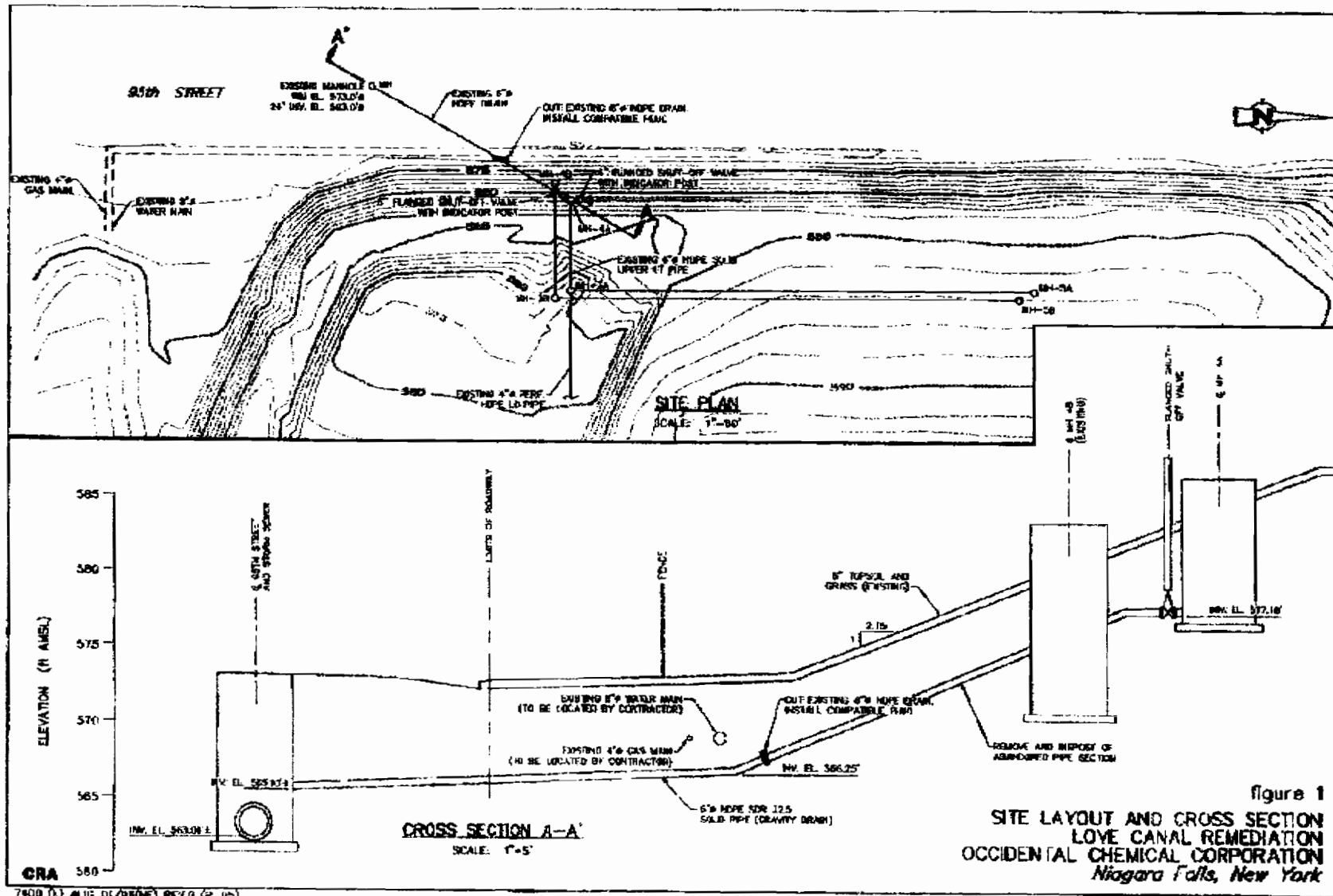
**ATTACHMENT A
SCOPE OF WORK
ADDITIONAL WORK AUTHORIZATION
LOVE CANAL DCF
NIAGARA FALLS, NEW YORK**

The scope of work included in this Additional Work Authorization is as follows:

- i) removal and abandonment of the DCF Cell B upper leachate collection system connection to the City storm sewer, as shown on Figure 1, including:
 - a) performance of a utility location to identify and locate an 8-inch diameter water main and a 4-inch diameter gas main adjacent to the proposed work area,
 - b) cutting, removal and disposal of the 6-inch diameter HDPE gravity drain pipe,
 - c) installation of a compatible watertight pipe plug (to be approved by Engineer and OxyChem), and
 - d) restoration of the area including installation of 6-inches of topsoil and grass seed; and

- ii) repair of six existing monitoring wells located along the east edge of the DCF, including:
 - a) cutting of each monitoring well casing, using a wheel-type pipe cutter, to a height of 30-inches above proposed finished grade,
 - b) cutting of each protective casing to a finished length of 66-inches, and
 - c) installation of the protective casing including excavation, grouting and restoration as shown on Figure 2.

The work specified herein shall be done in accordance with the project plans and specifications and applicable OxyChem safety procedures.



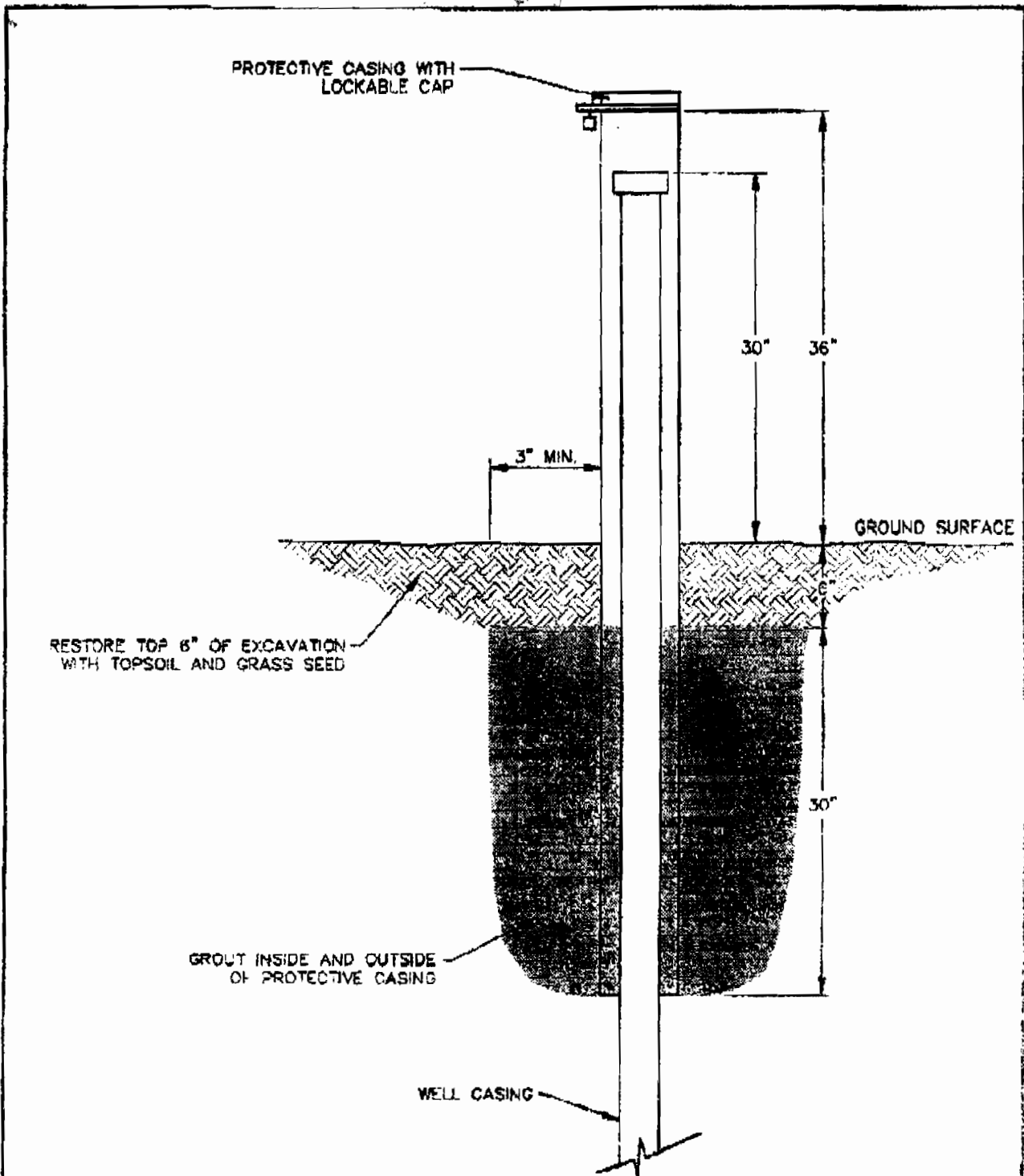


figure 2
 PROTECTIVE CASING INSTALLATION DETAIL
 LOVE CANAL REMEDIATION
 OCCIDENTAL CHEMICAL CORPORATION
 Niagara Falls, New York

CRA

7400 (L) AUG 01/96(NF) REV.0 (D-04)

Beer
+
file

April 25, 1996

Mr. Gerald J. Rider, P.E.
Chief of Operations & Support
Bureau of Hazardous Site Control
Division of Hazardous Waste Remediation
NYSDEC
50 Wolf Road
Albany, NY 12233

Subject: *Love Canal Coordinator*

Dear Mr. Rider:

Pursuant to Paragraph 5 (b) of the Consent Judgment between Occidental Chemical Corporation (OCC) and the State of New York, I am advising you that the coordinator and alternate will change effective May 1, 1996.

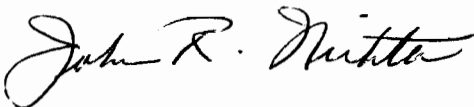
Coordinator:

Mr. Gene M. Dworzanski
Project Manager
Special Environmental Programs
Occidental Chemical Corporation
360 Rainbow Blvd.
Niagara Falls, NY 14302-0728
Phone: 716-286-3044
Fax: 716-286-3141

Alternate:

Mr. David Wilde
Senior Process Engineer
Waste Treatment Operations
Niagara Plant
Buffalo Ave & 47th Street
Niagara Falls, NY 14302
Phone: 716-278-7651
Fax: 716-278-7581

Respectfully,



John R. Nichter
Love Canal Coordinator
Special Environmental Programs

cc: G.M. Dworzanski, D. Wilde



Occidental Chemical Corporation

Corporate Environmental Affairs

Department of Chemical Center

2000 Carlow Boulevard South, P.O. Box 1080, Niagara Falls, NY 14305

Telephone: (716) 286-3000



April 25, 1996

Chief, NY/Caribbean Superfund Branch
Office of Regional Counsel
U.S. Environmental Protection Agency, Region II
290 Broadway
New York, New York 10007-1866
ATTN: LOVE CANAL ATTORNEY (1)

Chief, NY/Caribbean Compliance Branch
Emergency and Remedial Response Division
U.S. Environmental Protection Agency, Region II
290 Broadway
New York, New York 10007-1866
ATTN: LOVE CANAL SITE PROJ.MGR.
DAMIAN DUDA (3)

Chief, National Project Branch
Office of Enforcement and Compliance Monitoring
U.S. Environmental Protection Agency LE-134S
401 M Street, S.W.
Washington, D.C. 20460
ATTN: LOVE CANAL ATTORNEY (1)

Chief, Environmental Enforcement Section
Land & Natural Resources Division
U.S. Department of Justice
Benjamin Franklin Station, P.O. Box 7611
Washington, D.C. 20044
ATTN: LOVE CANAL ATTORNEY (1)

Gentlemen:

Effective May 1, 1996, the Coordinator and Alternate Coordinator for Occidental Chemical Corporation for the Love Canal Partial Consent Decree will change as follows:

Coordinator:
Alan F. Weston, Ph.D
Program Manager
Occidental Chemical Corporation
360 Rainbow Blvd.
Niagara Falls, NY 14302-0728
Phone: 716-286-3607
Fax: 716-286-3141

Alternate:
Mr. James Thornton
Project Engineer
Corporate Engineering Dept
360 Rainbow Blvd.
Niagara Falls, NY 14302-0728
Phone: 716-286-3543
Fax: 716-286-3511

Respectfully,



John R. Nichter
Project Coordinator
Special Environmental Programs
JRN48m

Bureau of Environmental Exposure Investigation
New York State Department of Health
2 University Place
Albany, New York 12203
ATTN: DIRECTOR, G.ANDERS CARLSON (1)

New York State Department of Law
Environmental Protection Bureau
120 Broadway - 26th Flr.
New York, New York 10271
ATTN: EUGENE MARTIN-LEFF, ESQ. (1)
ASSISTANT ATTORNEY GENERAL

Bureau of Site Control
NYSDEC
50 Wolf Road
Albany, New York 12233
ATTN: EARL BARCOMB (4)
DIRECTOR

Chief of Operations and Support Section
Bureau of Hazardous Site Control
Division of Hazardous Waste Remediation
NYSDEC
50 Wolf Road
Albany, NY 12233
ATTN: GERALD J. RIDER, P.E. (1)



Occidental Chemical Corporation

Corporate Environmental Affairs
Occidental Chemical Center
360 Rainbow Boulevard South, P.O. Box 728, Niagara Falls, NY 14302-0728
716 286-3000



NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION
50 Wolf Road, Room 260A, Albany, NY 12233-7010
(518) 457-0927 FAX (518) 457-8989



DEC - 8 1995

Eugene Martin-Leff, Esq.
Assistant Attorney General
New York State Department of Law
Environmental Protection Bureau
Room 26-124
120 Broadway
New York, NY 10271

Dear Mr. Martin-Leff:

RE: Occidental Chemical Corporation's Certificate of Insurance
Love Canal Consent Judgement Agreement

Enclosed please find a copy of a Certificate of Insurance submitted by Occidental Chemical pursuant to paragraph 7(d), subparagraph (i) of the Consent Judgement between Occidental and New York State.

Please contact me at (518) 457-0927 if you have any questions.

Sincerely,

Gerald J. Rider, Jr., P.E.
Chief, Operation, Maintenance & Support Section
Bureau of Hazardous Site Control
Division of Hazardous Waste Remediation

Enclosure

a:occinsag.wp6:GR:et

WILLIS CORROON



November 17, 1995

NY State Department of Environmental Conservation
50 Wolf Road
Albany, New York 12233
Attn: Mr. Jeff Lacey
Director, Division of Environmental Enforcement

Willis Corroon
Marine & Energy/
Americas Insurance Services
801 N. Brand Blvd.
Suite 400
P.O. Box 29004
(Zip 91209-9004)
Glendale, CA 91203
Telephone 818-548-7500
Fax 818-548-7578

RE: Certificate of Insurance

To Whom It May Concern:

In accordance with information provided by Occidental Petroleum Corporation, please find attached a Certificate of Insurance evidencing insurance coverage for the term November 1, 1995 to November 1, 1996.

Please advise if your interest is not as shown on the Certificate.

Sincerely,

Barry McKenzie
Senior Vice President

BM/lb

CERTIFICATE OF INSURANCE

The following is provided pursuant to California Insurance Code Section 384:

"This certificate or verification of insurance is not an insurance policy and does not amend, extend or alter the coverage afforded by the policies listed herein. Notwithstanding any requirement, term or condition of any contract or other document with respect to which this certificate or verification of insurance may be issued or may pertain, the insurance afforded by the policies described herein is subject to all terms, exclusions and conditions of such policies."

**CERTIFICATE
ISSUED TO:**

SEE ATTACHED SCHEDULE #1

NAMED INSURED:

Occidental Petroleum Corporation, its divisions and subsidiaries, and any entity for which Occidental Petroleum Corporation or its divisions or subsidiaries have responsibility for placing insurance, including Occidental Chemical Corporation, et al.

POLICY NO.:

IMB 921-08-01, ME95-415, ME95-413, ME95-410, ME95-411, ME95-706
ME95-420, 83-88, 80-88, 81-88, 84-88, 82-88.

COMPANY:

National Union Fire Insurance Co. of Pittsburgh, PA; Underwriters at Lloyd's London; Oil Insurance Limited; and Certain Other Insurance Companies

TERM:

November 1, 1995 to November 1, 1996.

COVERS:

ALL PROPERTY

LIMITS:

\$10,000,000
Full repair/replacement
Each and Every Occurrence-Physical Damage

INSURES:

"All Risk" replacement cost, subject to the terms and conditions as set forth in the policies listed above with regard to the property which is subject to the Love Canal Consent Judgement Agreement.

Number 39
Love Canal Consent
Judgement Agreement

**CANCELLATION
NOTICE:**

The company(ies) will give the Lessor Thirty (30) days prior written notice of any cancellation or material change in coverage.

**SPECIAL
CONDITIONS:**

The entity named in Schedule #1 is hereby named Additional Insured and Loss Payee for the purposes of the policies which provide that in the event an Additional Insured or Loss Payee is so named in a Certificate of Insurance such policies shall be deemed to have been endorsed accordingly.

Willis Corroon Marine & Energy/Americas Insurance Services
801 N. Brand Blvd., Suite 400
Glendale, CA 91203

By: _____


Authorized Representative

DATE: November 1, 1995
ORIGINAL: Certificate Holder
COPY: Occidental Chemical Corporation
Risk Management/OPC-LA

Number 39
Love Canal Consent
Judgement Agreement

November 1, 1995

SCHEDULE #1 TO CERTIFICATE OF PROPERTY INSURANCE

CERTIFICATE ISSUED TO:

NY State Department of Environmental Conservation
50 Wolf Road
Albany, New York 12233
Attn: Mr. Jeff Lacey
Director, Division of Environmental Enforcement

12/5/95

Serry,

We received this in DEE. Can you pass this on to whoever needs it. As you know, there is nobody left upstairs that is aware of DEE's Order requirements.

Call me if you have any questions

Thanks

Michael Lesser
DEE
457-7938



Willis Corroon
Marine & Energy/
Americas Insurance Services
801 N. Brand Blvd.
Suite 400
P.O. Box 29004
(Zip 91209-9004)
Glendale, CA 91203
Telephone 818-548-7500
Fax 818-548-7578

BM
Does this meet
the decree?
If so, file + send
a copy to Martin Jeff
Thanks
Jerry
12/6/95

um Corporation,
nce coverage for

BM/lb

WILLIS CORROON



November 17, 1995

**NY State Department of Environmental Conservation
50 Wolf Road
Albany, New York 12233
Attn: Mr. Jeff Lacey
Director, Division of Environmental Enforcement**

**Willis Corroon
Marine & Energy/
Americas Insurance Services
801 N. Brand Blvd.
Suite 400
P.O. Box 29004
(Zip 91209-9004)
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Telephone 818-548-7500
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To Whom It May Concern:

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Please advise if your interest is not as shown on the Certificate.

Sincerely,

**Barry McKenzie
Senior Vice President**

BM/lb

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"This certificate or verification of insurance is not an insurance policy and does not amend, extend or alter the coverage afforded by the policies listed herein. Notwithstanding any requirement, term or condition of any contract or other document with respect to which this certificate or verification of insurance may be issued or may pertain, the insurance afforded by the policies described herein is subject to all terms, exclusions and conditions of such policies."

CERTIFICATE

ISSUED TO:

SEE ATTACHED SCHEDULE #1

NAMED INSURED:

Occidental Petroleum Corporation, its divisions and subsidiaries, and any entity for which Occidental Petroleum Corporation or its divisions or subsidiaries have responsibility for placing insurance, including Occidental Chemical Corporation, et al.

POLICY NO.:

IMB 921-08-01, ME95-415, ME95-413, ME95-410, ME95-411, ME95-706
ME95-420, 83-88, 80-88, 81-88, 84-88, 82-88.

COMPANY:

National Union Fire Insurance Co. of Pittsburgh, PA; Underwriters at Lloyd's London; Oil Insurance Limited; and Certain Other Insurance Companies

TERM:

November 1, 1995 to November 1, 1996.

COVERS:

ALL PROPERTY

LIMITS:

\$10,000,000
Full repair/replacement
Each and Every Occurrence-Physical Damage

INSURES:

"All Risk" replacement cost, subject to the terms and conditions as set forth in the policies listed above with regard to the property which is subject to the Love Canal Consent Judgement Agreement.

Number 39
Love Canal Consent
Judgement Agreement

**CANCELLATION
NOTICE:**

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**SPECIAL
CONDITIONS:**

The entity named in Schedule #1 is hereby named Additional Insured and Loss Payee for the purposes of the policies which provide that in the event an Additional Insured or Loss Payee is so named in a Certificate of Insurance such policies shall be deemed to have been endorsed accordingly.

Willis Corroon Marine & Energy/Americas Insurance Services
801 N. Brand Blvd., Suite 400
Glendale, CA 91203

By: _____


Authorized Representative

DATE: November 1, 1995
ORIGINAL: Certificate Holder
COPY: Occidental Chemical Corporation
Risk Management/OPC-LA

Number 39
Love Canal Consent
Judgement Agreement

November 1, 1995

SCHEDULE #1 TO CERTIFICATE OF PROPERTY INSURANCE

CERTIFICATE ISSUED TO:

**NY State Department of Environmental Conservation
50 Wolf Road
Albany, New York 12233
Attn: Mr. Jeff Lacey
Director, Division of Environmental Enforcement**

Ben
Jerry
Love Canal Issues



October 23, 1995

This memo is to keep you apprised of recent Love Canal issues and to obtain your assistance in resolving them. Donna and I met with Jim Eckl to discuss the following:

1. The issue of management of all the site equipment. I provided Jim with my draft letter to Eugene Martin Leff.
2. The issue of a \$13.5 million credit from remediation that can be applied to other federal projects. EPA is disputing it due to our settlement with OCC. Since the FEMA loan issue is still outstanding it was thought that an agreement to have the credit balance the loan was a realistic solution that should be given serious consideration as the State continues to rack up interest charges on the original \$7.5 million loan (with interest is now in the \$13 million range somewhere).
3. In the tabulation of costs to OCC include the final microfilming of the administrative record which will be used to retrieve information for the very numerous personal and insurance company lawsuits as well as the federal case which has not yet been settled.

In a followup conversation with Jim, I mentioned that we have to resolve establishing a legal liaison for information requests from legal parties based on my discussion with Eugene Martin-Leff. Eugene Martin -Leff and I agreed that the Public Information Office records can be distributed as is since we kept them intact and they were previously released to the public. However, the remaining record would have to be screened prior to release to anyone.

In addition, the following statement to be placed on each file box and on each roll of microfilm has to be agreed upon: **Confidential may be prevledged, not to be reproduced without prior approval.**

One last issue in my discussions with Eugene Martin-Leff was an issue relative to redesignating the waste that was sent to the OCC main plant to F039. Please see Craig Jackson and define this issue and then we can discuss it with Eugene Martin- Leff an decide on the next course of action. It is an issue that could require reviewing of the Decree and the ROD.

cc: E. Barcomb
D. Weigel
J. Eckl

Post-It™ brand fax transmittal memo 7671		# of pages ▶	
To	Gerry Rider	From	Michael Podd
Co.	NYS DEC	Co.	NYS DEC Region 9
Dept.	24M 457 0927	Phone #	716 851 7220
Fax #	518 457 1088	Fax #	851 7008

Buffalo News:
 Saturday, June 3, 1995;
 Page C-5

Falls gets \$8 million in Love Canal deal

By JOANN SCIELSA
News Niagara County Bureau

NIAGARA FALLS — The City of Niagara Falls will get \$8 million from the Love Canal settlement under an agreement reached Friday in Albany by the Assembly, State Senate and Gov. Pataki, according to Assemblyman Joseph T. Pillittere, D-Lewiston.

The city will receive the funding in two equal installments on June 1, 1996, and June 1, 1997, said Pillittere.

"It's not the \$10 million Gov. Cuomo had promised, but ... it's \$8 million more than they had yesterday," he said.

Former Gov. Mario Cuomo promised Niagara Falls \$10 million last October, shortly before the election, with the money to be shared with city schools.

Pillittere said the city will get all of the \$8 million for its operating budget because the school district could not have used the money for operations without losing state aid.

The money will come from a \$98 million settlement the state reached with Occidental Chemical Corp. to reimburse costs of the 1979 Love Canal evacuation. All of the settlement is supposed to be used for hazardous waste cleanup. Pataki had decided to use the first \$50 million payment to compensate state taxpayers for the cost of the Love Canal cleanup and to help close the state's budget gap. City officials protested, saying the city had suffered economic hardship as well as the effects of the bad publicity.

To Gerry Rider, DHHR

Post-It™ brand fax transmittal memo 7671		# of pages	1
To	Gerry Rider	From	Eugene Martin-Leff
Co.		Co.	NYS DO L
Dept.	NYS DEC	Phone #	
Fax #		Fax #	

MAY 18

File
LC Medical
Decease

(212) 416-8465

May 16, 1995

BY FAX--(214) 404-3957

Alan Mack, Esq.
Occidental Chemical Corp.
Occidental Tower
5005 LBJ Freeway
P.O. 809050
Dallas, Texas 75380

Re: United States of America and State
of New York, et al. v. Occidental
Chemical Corp., et al., Civil Action
No. 79-990C (Love Canal Landfill)

Dear Alan:

On behalf of the Chief of the Environmental Protection Bureau of the New York State Department of Law, I am providing the following information for executing the transfer of \$15,000,000 from OCC to the State on June 1, 1995, pursuant to paragraph 4(c) of the Consent Judgment between the State of New York and Occidental Chemical Corporation in the above-referenced case:

A.B.A. Routing No. 021300336
Onbank & Trust Co.
Beneficiary: Occidental CD
Att'n: Municipals

Please let me know if you need any additional information.

Very truly yours,

EUGENE MARTIN-LEFF
Assistant Attorney General

bcc: Gerry Rider, NYSDEC

raibank.ltr

To: Bob
From: Jerry
Subject: File Storage



FILE COPY

March 29, 1995

I have a store room 10 feet by 15 feet full of the Love Canal Administrative Record. We are currently working on the last stage of preparing to turn over these files to Jack McKeon's Bureau for final microfilming and storage at the record center before final placement in the archives. Our best estimate is that we will need until June to complete the work since we have some files yet to be received from the site and we need some reasonable weather to work at the store room. The cost of the store room and the microfilming is being reimbursed by Occidental Chemical Corporation under a Judicial Consent Decree. Allowing us to complete this project will at this storage location will save time and multiple shifting of the records.



7. IS THE SUBJECT PARCEL WHOLLY WITHIN THE LINES OF A PRESENT OR FORMER

Stream yes no Lake yes no Street yes no Road yes no
Highway yes no Right of Way yes no

If answer is yes give particulars

See maps entitled The Love Canal Project 1 Site Containment System (2 sheets)
Map No. 10210A.

8. ASCERTAIN IF THERE ARE ANY OTHER EASEMENT RIGHTS IN FAVOR OF ADJACENT OWNERS WHICH AFFECT THE SUBJECT PARCEL. GIVE PARTICULARS

See maps entitled The Love Canal - Project 1 - Site Containment System (2 sheets)
Map No. 10210A.

9. STATE ANY OTHER FACTS RESPECTING THE PHYSICAL CONDITION OF THE LAND INSPECTED, ESPECIALLY IN SO FAR AS THEY MAY AFFECT THE TITLE

Letter dated October 14, 1994 submitting revised As-Builts.
Letter dated January 3, 1995 with attachments:

1. Love Canal Prints in addition to the October 1994 As-Builts dated 12/27/94 (2 pages)
2. Summary of Potential Future Maintenance at the Love Canal Site dated 1/3/95 (1 page)
3. Suggested Operation and Maintenance Improvements at the Love Canal Site dated January 3, 1995 (2 pages).

Equipment Inventory Love Canal dated January 3, 1995 (5 pages).

10. FROM WHOM DID OWNER ACQUIRE LAND

State did not acquire property. State has a permanent easement. See maps entitled
The Love Canal - Project 1 - Site Containment System (2 sheets) Map No. 10210A.

11. DEED WAS RECORDED ON

N/A

IN DEED BOOK NUMBER

N/A

AT PAGE NUMBER

N/A

COUNTY

N/A

12. IF OTHER THAN DEED EXPLAIN

N/A

13. IF BY WILL OR INHERITANCE IN WHAT STATE/COUNTY WERE PROCEEDINGS TAKEN ON ESTATE OR PRIOR OWNER?

N/A

14. IS ABSTRACT AVAILABLE?

yes no

WILL IT BE LOANED TO NEW YORK STATE?

yes no

N/A

15. WHO HAS ABSTRACT NOW?

N/A

ADDRESS

16. ARE THERE ANY BOUNDARY LINE AGREEMENTS BETWEEN ADJOINING OWNERS?

Yes No

If yes provide data

N/A

DEPARTMENT OF ENVIRONMENTAL CONSERVATION

DATE

BY

TIME

REPORT OF PHYSICAL INSPECTION OF REAL PROPERTY

PROJECT NUMBER Site #9-32-020	REGION NUMBER 9
CATEGORY	
CITY OR TOWN Niagara Falls	COUNTY Niagara
REPORTED OWNER (See maps entitled The Love Canal - Project 1 - Site Containment System (2 sheets) Map No. 10210A)	
ADDRESS	
CITY	STATE
ZIP CODE	

NOTE CAREFULLY THAT:

- (1) LAND AFFECTED refers to the entire farm or lot including the SUBJECT PARCEL.
 - (2) SUBJECT PARCEL refers to parcel to be acquired.
- ANSWER all questions with yes or no and use item 9 or another sheet if additional space is required, referring to item number.

1. IS LAND AFFECTED?

Improved yes no Timber yes no Cleared yes no Wild yes no Wetland yes no
Cultivated yes no

State general conditions and nature of improvements, if any

Collection system, clay cap, synthetic liner, vegetative cover, administration building, treatment plant, fence, decontamination and drum storage facility, dewatering facility, roads, water wells, utilities, sediment dewatering facility.

2. IS LAND AFFECTED OCCUPIED?

yes no

Set forth names and addresses of occupants, nature and extent of occupancy and interest claimed. As to each occupant, state whether or not occupancy or interest affects the subject parcel and furnish particulars.

Used during processing of leachate and other operation and maintenance activities.

3. IS LAND AFFECTED ENCLOSED?

yes no

If enclosed, state nature, extent and condition of enclosure

8 foot chain link fence enclosing site from Colvin Blvd. to the North, 95th St. to the West, Frontier Avenue on the South side and 100th St. on the East side. See map entitled The Love Canal - Project 1 - Site Containment System (2 sheets) Map #10210A.

4. ARE THERE ON, UNDER OR OVER OR ACROSS THE LAND AFFECTED ANY

Poles <input checked="" type="checkbox"/> yes <input type="checkbox"/> no	Wire Lines <input checked="" type="checkbox"/> yes <input type="checkbox"/> no	Towers <input type="checkbox"/> yes <input checked="" type="checkbox"/> no	Conduits <input checked="" type="checkbox"/> yes <input type="checkbox"/> no
Pipe Lines <input checked="" type="checkbox"/> yes <input type="checkbox"/> no	Sewer Lines <input checked="" type="checkbox"/> yes <input type="checkbox"/> no	Springs <input type="checkbox"/> yes <input checked="" type="checkbox"/> no	Water Wells <input checked="" type="checkbox"/> yes <input type="checkbox"/> no
Gas Wells <input type="checkbox"/> yes <input checked="" type="checkbox"/> no	Oil Wells <input type="checkbox"/> yes <input checked="" type="checkbox"/> no	Mines <input type="checkbox"/> yes <input checked="" type="checkbox"/> no	Billboards <input type="checkbox"/> yes <input checked="" type="checkbox"/> no
Signs <input type="checkbox"/> yes <input checked="" type="checkbox"/> no	Other Fixtures or Structures <input checked="" type="checkbox"/> yes <input type="checkbox"/> no	Dump or Evidence of Toxic Waste <input checked="" type="checkbox"/> yes <input type="checkbox"/> no	

List ownership of each item

Underground leachate collection system and roads also exist. Utilities by utility company - Niagara Mohawk, National Fuel; roads and water and sewers by the City of Niagara Falls. Remaining items the Federal Government.

5. DO ANY OF THE BURDENS IN ITEM 4 AFFECT SUBJECT PARCEL?

yes no

If so, state particulars

Not useable for public access due to security necessary for hazardous waste operations and cap integrity.

6. ARE THERE ON, OVER OR ACROSS THE LAND AFFECTED ANY OF THE FOLLOWING, WHICH ARE ALSO ON, OVER OR ACROSS ANY PORTION OF THE SUBJECT PARCEL?

Street <input type="checkbox"/> yes <input checked="" type="checkbox"/> no	Lake <input type="checkbox"/> yes <input checked="" type="checkbox"/> no	Street <input checked="" type="checkbox"/> yes <input type="checkbox"/> no	Road <input checked="" type="checkbox"/> yes <input type="checkbox"/> no
Highway <input type="checkbox"/> yes <input checked="" type="checkbox"/> no	Right of Way <input type="checkbox"/> yes <input type="checkbox"/> no		

If answer is yes, give particulars including whether public or private. If adjacent owners are involved give names, addresses and interests claimed

Closed street R.O.W. Access roads for operation and maintenance use.

7 IS THE SUBJECT PARCEL WHOLLY WITHIN THE LINES OF A PRESENT OR FORMER

Stream yes no Like yes no Street yes no Road yes no
Highway yes no Right of Way yes no

If answer is yes give particulars

See maps entitled The Love Canal Project 1 Site Containment System (2 sheets)
Map No. 10210A.

8 ASCERTAIN IF THERE ARE ANY OTHER EASEMENT RIGHTS IN FAVOR OF ADJACENT OWNERS WHICH AFFECT THE SUBJECT PARCEL. GIVE PARTICULARS

See maps entitled The Love Canal - Project 1 - Site Containment System (2 sheets)
Map No. 10210A.

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3. Suggested Operation and Maintenance Improvements at the Love Canal Site dated January 3, 1995 (2 pages).

Equipment Inventory Love Canal dated January 3, 1995 (5 pages).

10 FROM WHOM DID OWNER ACQUIRE LAND

State did not acquire property. State has a permanent easement. See maps entitled
The Love Canal - Project 1 - Site Containment System (2 sheets) Map No. 10210A.

11 DEED WAS RECORDED ON

N/A

IN DEED BOOK NUMBER

N/A

VI PAGE NUMBER

N/A

COUNTY

N/A

12 IF OTHER THAN DEED EXPLAIN

N/A

13 IF BY WILL OR INHERITANCE IN WHAT STATE/COUNTY WERE PROCEEDINGS TAKEN ON ESTATE OR PRIOR OWNER?

N/A

14 IS ABSTRACT AVAILABLE?

yes no

WILL IT BE LOANED TO NEW YORK STATE?

yes no

N/A

15 WHO HAS ABSTRACT NOW?

N/A

ADDRESS

16 ARE THERE ANY BOUNDARY LINE AGREEMENTS BETWEEN ADJOINING OWNERS?

Yes No

If yes provide data

N/A

DEPARTMENT OF ENVIRONMENTAL CONSERVATION

DATE

BY

TITLE

REPORT OF PHYSICAL INSPECTION OF REAL PROPERTY

SUBJECT NUMBER Site #9-32-020		REGION NUMBER 9	
CATEGORY			
CITY OR TOWN Niagara Falls		COUNTY Niagara	
REPORTED OWNER (See maps entitled The Love Canal - Project 1 - Site Containment System (2 sheets) Map No. 10210A)			
ADDRESS			
CITY			STATE
			ZIP CODE

NOTE CAREFULLY THAT:

- (1) LAND AFFECTED refers to the entire farm or lot including the SUBJECT PARCEL.
- (2) SUBJECT PARCEL refers to parcel to be acquired.

ANSWER all questions with yes or no and use item 9 or another sheet if additional space is required, referring to item number.

1. IS LAND AFFECTED?

- Improved yes no Timber yes no Cleared yes no Wild yes no Wetland yes no
- Cultivated yes no

State general conditions and nature of improvements, if any.

Collection system, clay cap, synthetic liner, vegetative cover, administration building, treatment plant, fence, decontamination and drum storage facility, dewatering facility, roads, water wells, utilities, sediment dewatering facility.

2. IS LAND AFFECTED OCCUPIED?

- yes no

Set forth names and addresses of occupants, nature and extent of occupancy and interest claimed. As to each occupant, state whether or not occupancy or interest affects the subject parcel and furnish particulars.

Used during processing of leachate and other operation and maintenance activities.

3. IS LAND AFFECTED ENCLOSED?

- yes no

If enclosed, state nature, extent and condition of enclosure.

8 foot chain link fence enclosing site from Colvin Blvd. to the North, 95th St. to the West, Frontier Avenue on the South side and 100th St. on the East side. See map entitled The Love Canal - Project 1 - Site Containment System (2 sheets) Map #10210A.

4. ARE THERE ON, UNDER OR OVER OR ACROSS THE LAND AFFECTED ANY

- Poles yes no Wire Lines yes no Towers yes no Conduits yes no
- Pipe Lines yes no Sewer Lines yes no Springs yes no Water Wells yes no
- Gas Wells yes no Oil Wells yes no Mines yes no Billboards yes no
- Signs yes no Other Fixtures or Structures yes no Dump or Evidence of Toxic Waste yes no

List ownership of each item.

Underground leachate collection system and roads also exist. Utilities by utility company - Niagara Mohawk, National Fuel; roads and water and sewers by the City of Niagara Falls. Remaining items the Federal Government.

5. DO ANY OF THE BURDENS IN ITEM 4 AFFECT SUBJECT PARCEL?

- yes no

Furnish particulars.

Not useable for public access due to security necessary for hazardous waste operations and cap integrity.

6. ARE THERE ON, OVER OR ACROSS THE LAND AFFECTED ANY OF THE FOLLOWING, WHICH ARE ALSO ON, OVER OR ACROSS ANY PORTION OF THE SUBJECT PARCEL?

- Street yes no Easement yes no Street yes no Road yes no
- Highway yes no Right of Way yes no

If answer is yes, give particulars including whether public or private. If adjacent owners are involved give names, addresses and interests claimed.

Closed street R.O.W. Access roads for operation and maintenance use.

REPORT OF PHYSICAL INSPECTION OF REAL PROPERTY

PROJECT NUMBER		REGION NUMBER	
CATEGORY			
CITY OR TOWN		COUNTY	
REPORTED OWNER			
ADDRESS			
CITY		STATE	ZIP CODE

NOTE CAREFULLY THAT:

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(2) SUBJECT PARCEL refers to parcel to be acquired.

ANSWER all questions with yes or no and use item 9 or another sheet if additional space is required, referring to item number.

1 IS LAND AFFECTED?

Improved yes no Timber yes no Cleared yes no Wild yes no Wetland yes no
Cultivated yes no

State general conditions and nature of improvements, if any

2 IS LAND AFFECTED OCCUPIED?

yes no

Set forth names and addresses of occupants, nature and extent of occupancy and interest claimed. As to each occupant, state whether or not occupancy or interest affects the subject parcel and furnish particulars

3 IS LAND AFFECTED ENCLOSED?

yes no

If enclosed, state nature, extent and condition of enclosure.

4 ARE THERE ON, UNDER OR OVER OR ACROSS THE LAND AFFECTED ANY

Poles yes no Wire Lines yes no Towers yes no Conduits yes no
Pipe Lines yes no Sewer Lines yes no Springs yes no Water Wells yes no
Gas Wells yes no Oil Wells yes no Mines yes no Billboards yes no
Signs yes no Other fixtures or Structures yes no Dump or Evidence of Toxic Waste yes no

List ownership of each item

5 DO ANY OF THE BURDENS IN ITEM 4 AFFECT SUBJECT PARCEL?

yes no

Furnish particulars

6 ARE THERE ON, OVER OR ACROSS THE LAND AFFECTED ANY OF THE FOLLOWING WHICH ARE ALSO ON, OVER OR ACROSS ANY PORTION OF THE SUBJECT PARCEL?

Stream yes no Lake yes no Street yes no Road yes no
Highway yes no Right of Way yes no

If answer is yes, give particulars including whether public or private. If adjacent owners are involved give names, addresses and interests claimed.

7. IS THE SUBJECT PARCEL WHOLLY WITHIN THE LINES OF A PRESENT OR FORMER

Stream yes no

Lake yes no

Street yes no

Road yes no

Highway yes no

Right of Way yes no

If answer is yes, give particulars.

8. ASCERTAIN IF THERE ARE ANY OTHER EASEMENT RIGHTS IN FAVOR OF ADJACENT OWNERS WHICH AFFECT THE SUBJECT PARCEL. GIVE PARTICULARS.

9. STATE ANY OTHER FACTS RESPECTING THE PHYSICAL CONDITION OF THE LAND INSPECTED, ESPECIALLY INsofar AS THEY MAY AFFECT THE TITLE

10. FROM WHOM DID OWNER ACQUIRE LAND.

WHEN:

11. DEED WAS RECORDED ON

IN DEED BOOK NUMBER

AT PAGE NUMBER

COUNTY

12. IF OTHER THAN DEED, EXPLAIN.

13. IF BY WILL OR INHERITANCE IN WHAT STATE/COUNTY WERE PROCEEDINGS TAKEN ON ESTATE OR PRIOR OWNER?

14. IS ABSTRACT AVAILABLE?

yes no

WILL IT BE LOANED TO NEW YORK STATE?

yes no

15. WHO HAS ABSTRACT NOW?

ADDRESS

16. ARE THERE ANY BOUNDARY LINE AGREEMENTS BETWEEN ADJOINING OWNERS?

Yes No

If yes, provide data:

DEPARTMENT OF ENVIRONMENTAL CONSERVATION

DATE

BY

TITLE

NA
↓



December 29, 1994

JAN - 3 1995

Mr. Jeff Lacey, Director
Division of Environmental Enforcement
NYSDEC
50 Wolf Road
Albany, New York 12233

**Subject: Consent Judgment Between State of New York and Occidental
Chemical Corporation - Filed June 21, 1994**

Dear Mr. Lacey:

Pursuant to Paragraph 7 (d) of the subject judgment, OCC is submitting the enclosed insurance certificate for insurance liability. The certificate for property insurance [(subparagraph (i))] will be sent to you directly by OCC's broker, Willis Carroon.

Respectfully,

John R. Nichter
Love Canal Coordinator
Special Environmental Programs

JRN184m

cc: Gerald Rider, Jr. - NYSDEC



Occidental Chemical Corporation

Corporate Environmental Affairs

Occidental Chemical Center

10000 W. Alameda Boulevard, Suite 1000, Boulder, CO 80501

Phone: 303-440-3000



ACORD. CERTIFICATE OF INSURANCE

30863

ISSUE DATE (MM/DD/YY)

10/04/94

PRODUCER
Marsh & McLennan, Incorporated
 777 South Figueroa Street
 Los Angeles, CA 90017-5822

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

COMPANIES AFFORDING COVERAGE

COMPANY LETTER	A NATIONAL UNION FIRE INS. CO.
COMPANY LETTER	B
COMPANY LETTER	C
COMPANY LETTER	D
COMPANY LETTER	E

INSURED
Occidental Chemical Corp.
 5005 LBJ Freeway
 Occidental Tower
 Dallas, TX 75244

COVERAGES

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED, NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES.

CO LTR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS	
A	GENERAL LIABILITY	RMGL3199183	11/01/94	11/01/95	BODILY INJURY OCC.	\$
	<input checked="" type="checkbox"/> COMPREHENSIVE FORM				BODILY INJURY AGG.	\$
	<input checked="" type="checkbox"/> PREMISES/OPERATIONS				PROPERTY DAMAGE OCC.	\$
	<input checked="" type="checkbox"/> UNDERGROUND EXPLOSION & COLLAPSE HAZARD				PROPERTY DAMAGE AGG.	\$
	<input checked="" type="checkbox"/> PRODUCTS/COMPLETED OPER.				BI & PD COMBINED OCC.	\$ 5000000
	<input checked="" type="checkbox"/> CONTRACTUAL				BI & PD COMBINED AGG.	\$
	<input checked="" type="checkbox"/> INDEPENDENT CONTRACTORS				PERSONAL INJURY AGG.	\$
	<input checked="" type="checkbox"/> BROAD FORM PROPERTY DAMAGE					
<input checked="" type="checkbox"/> PERSONAL INJURY						
A	AUTOMOBILE LIABILITY	RECA1437115	11/01/94	11/01/95	BODILY INJURY (Per person)	\$
	<input checked="" type="checkbox"/> ANY AUTO	RMCATX1437116	11/01/94	11/01/95	BODILY INJURY (Per accident)	\$
	<input type="checkbox"/> ALL OWNED AUTOS (Priv. Pass.)				PROPERTY DAMAGE	\$
	<input checked="" type="checkbox"/> HIRED AUTOS				BODILY INJURY & PROPERTY DAMAGE COMBINED	\$ 5000000
	<input checked="" type="checkbox"/> NON-OWNED AUTOS					
	GARAGE LIABILITY					
	EXCESS LIABILITY				EACH OCCURRENCE	\$
	<input type="checkbox"/> UMBRELLA FORM				AGGREGATE	\$
	<input type="checkbox"/> OTHER THAN UMBRELLA FORM					
A	WORKER'S COMPENSATION AND EMPLOYERS' LIABILITY	RMWC3175473	11/01/94	11/01/95	<input checked="" type="checkbox"/> STATUTORY LIMITS	
					EACH ACCIDENT	\$ 1000000
					DISEASE-POLICY LIMIT	\$ 1000000
					DISEASE-EACH EMPLOYEE	\$ 1000000
	OTHER					

DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/SPECIAL ITEMS

(SEE REVERSE AND/OR ATTACHED)

CERTIFICATE HOLDER

Dept. of Environmental Conservation
 50 Wolf Road
 Albany, NY 12233

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING COMPANY WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO MAIL SUCH NOTICE SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE COMPANY, ITS AGENTS OR REPRESENTATIVES.

AUTHORIZED REPRESENTATIVE

Keith F. Ferber

DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/SPECIAL ITEMS

CERTIFICATE #30863

(CONTINUED)

INSURED : Occidental Chemical Corp.

HOLDER : Dept. of Environmental
Conservation
50 Wolf Road
Albany, NY 12233

PLEASE ALSO NOTE THE FOLLOWING WORKERS' COMPENSATION POLICIES:

<u>POLICY NUMBER</u>	<u>INSURANCE COMPANY</u>
RMWC 317-5472	National Union Fire Ins. Co.
RMWC 317-5473	National Union Fire Ins. Co.
RMWC 317-5474	Birmingham Fire Ins. Co.
RMWC 170490	Illinois National Ins. Co.
RMWC 170491	National Union Fire Ins. Co.
RMWC 170492	National Union
RMWC 170493	Birmingham Fire Ins. Co.
RMWC 170500	National Union Fire Ins. Co.

The United States of America and the State of New York are included as Additional Insureds as respects the Love Canal Partial Consent Decree.

OxyChem®

December 1, 1994

DEPT. OF ENVIRO. CONSERVATION

Attn:

50 WOLF ROAD

ALBANY, NY 12233

RE: Certificate of Insurance - Workers' Compensation Coverage


Dear Certholder:

Please be advised that Occidental Chemical Corporation is a licensed self-insurer for Workers' Compensation in the following states as evidenced by the applicable certificate/employer numbers:

AL	SI-1769	NJ	W1510
FL	010081	NY	W558696
DE	151	PA	1509
LA	04886-0	TX	CSI-94-0056
NC	21786	WA	700,319-00-7

In addition we participate in the state funds of Ohio (risk number 0272501-3) and West Virginia (risk number 080008200). Coverage in all other states is afforded under the Certificate of Insurance provided to you by our broker, Marsh & McLennan.

Regards,



Barbara J. Raffman
Analyst, Risk Management

G:\RSKMGTCOMMOMCOIWCSI.DOC

Occidental Chemical Corporation

Corporate Office - Occidental Tower

P. O. Box 809050

Dallas, Texas 75380-9050



STATE OF NEW YORK
DEPARTMENT OF LAW
120 BROADWAY
NEW YORK, N.Y. 10271

G. OLIVER KOPPELL
Attorney General

(212) 416-8465

JAMES SEVINSKY
Bureau Chief
Environmental Protection Bureau

September 1, 1994

Anthony L. Young, Esq.
Piper & Marbury
1200 19th Street, N.W.
Washington, D.C. 20036

Re: United States and State of
New York et al. v. Occidental
Chemical Corporation et al.,
No. 79-990C (Love Canal
Landfill)

Dear Tony:

In accordance with paragraph 5(b) of the Consent Judgment between the State and OCC, the State's O & M Coordinator will be Gerald J. Rider, Jr., Chief, Operation, Maintenance and Support Section, Bureau of Site Control, Division of Hazardous Waste Remediation, New York State Department of Environmental Conservation, 50 Wolf Road, Albany, New York 12233-0001. The Alternate will be Brian Sadowski, Senior Treatment Plant Operator, located at the site.

Please direct all mail to the Coordinator, with a copy to the Alternate. However, all verbal communications relating to O & M under the Consent Judgment should be made through the Alternate. If the Alternate is not available after reasonable efforts are made, then the Coordinator may be contacted directly.

Very truly yours,

EUGENE MARTIN-LEFF
Assistant Attorney General

cc: Norman Parratt

EM-L:FC D:Young2.ltr

Post-It™ brand fax transmittal memo 7671		# of pages > 1
To GERRY RIDER	From GENE MARTIN-LEFF	
Co. DEC	Co. NYSDOL, EPB, NYC	
Dept.	Phone #	
Fax # 518 457 8989	Fax # 212 416 6007	



New York State Department of Environmental Conservation

MEMORANDUM

TO:
FROM:
SUBJECT:

Gerald J. Rider, Jr., Chief, Operation, Maintenance & Support Section
Ben Loredo, EEL, Operation, Maintenance & Support Section
Status of Love Canal Judicial Consent Decree

BL

*File
Judicial
Decree*

DATE:

AUG 31 1994

The following is a list of topics and their status as of August 31, 1994:

A. Carbon Removal/Tank Cleaning and Carbon Supply

- i. Carbon Removal/Tank Cleaning Contract #D003077 still open, but no more work is anticipated since all tanks are now clean and the new carbon is in place. Total paid to date: \$39,959.94 (including Change Order No. 1).
- ii. Carbon Supply Purchase Order #7163 with Calgon Carbon Corp. has been executed.

B. Monitoring Well Decommissioning

Maurice Moore and Dave Foster still reviewing the list of 143 wells to be decommissioned. NYSDEC is also collecting Love Canal well documentation for the well decommissioning work assignment. The items being collected are:

i. Well Survey Map:

ABB-ES was requested to submit extra copies to DEC. The copies are not in yet.

ii. Well Boring Logs:

C.J. to sort out files and take out the 143 well logs.

iii. Historical Analytical Data:

C.J. to collect any historical analytical data in the files.

C. ABB Work Assignment

Most of the deliverables due before work assignment close-out are still outstanding. ABB is still working on them:

Task 3. Clarifier. Work on the clarifier repair and inspection has been transferred to OCC with the recommendation to replace the unit. OCC will take over the work.

Task 4. Corrosion Monitoring and Tank Design. Tank drawings and specifications are now complete. DEC's consultant to submit stamped drawings. The other maintenance work, as described in the Consent Decree, is not part of this Task, but Task 7.

Task 5. Electrical System Inspection and Love Canal As-Built. Electrical system inspection was completed in December 1991. As-built drawings have been reviewed and some modifications are being made.

Task 6. Site Survey. Status is the same as described in the Consent Decree. This work is complete except to include the DCF segment in the cross sections. OCC shall complete this portion of the work the next time it surveys the cap to check settlement.

Task 7. RCRA/OSHA Compliance. Sludge waste analysis plan being drafted by Dec's consultant. Specifications for the miscellaneous maintenance work (roof repair, building crack repair, wallpainting, coating of asphalt pavement) are being drafted by the consultant.

D. Miscellaneous Issues

A. Equipment Purchased with State Funds

Equipment list still to be developed.

a:statlejd:wp6:BL:ct

*File
Judicial
Decree*



Langdon Marsh
Commissioner

M E M O R A N D U M

TO: Jerry
FROM: Ben *BF*
SUBJECT: Status of Love Canal Judicial Consent Decree
DATE: AUG 29 1994

The following is a list of topics and their status as of August 29, 1994:

A. Carbon Removal/Tank Cleaning and Carbon Supply

- i. Carbon Removal/Tank Cleaning contract #D003077 still open, but no more work is anticipated since all tanks are now clean and the new carbon is in place. Total paid to date: \$39,959.94 (including change order No. 1).
- ii. Carbon Supply Purchase Order #7163 has been executed.

B. Monitoring Well Decommissioning

Maurice Moore still reviewing the list of 143 wells to be decommissioned. The following items were requested by A.K. Gupta for the well decommissioning work assignment:

1. Well Survey Map:

ABB-ES was requested to submit extra copies to DEC. The copies are not in yet.

2. Well Logs:

C.J. to sort out files and take out the 143 well logs.

3. Historical Analytical Data:

Dave Foster to submit it in electronic form.

C. ABB Work Assignment

Most of the deliverables due before close-out are still outstanding. ABB is still working on them.

D. Miscellaneous Issues

1. Equipment Purchased with State Funds

Equipment list still to be developed. I am not aware of who is in charge of it.

Judicial
Consent
Decree

FILE COPY

Originator Alvord 2/29/94
Reviewer _____
Reviewer _____
Reviewer _____

JUN 29 1994

TO: Eugene
From: Jerry
Subject: Draft letter to OCC relative to section 5(b).

Norm asked me to start this for you:

According to Section 5(b) of the Judicial Consent Decree the coordinator will be Gerald J. Rider, Jr. Chief, Operation, Maintenance and Support Section, Bureau of Site Control, Division of Hazardous Waste Remediation New York State Department of Environmental Conservation 50 Wolf Road- Room Albany, New York. The alternate will be Brian Sadowski, Senior Treatment Plant Operator located at the site. Please direct all mail to the coordinator with a copy to the alternate. All verbal contact on this Judicial Consent Decree relative to operation and maintenance of the plant and oversight activities are to be made through the alternate. If the alternate is not available after reasonable efforts are made than the coordinator made be contacted directly.

I have written it this way since most questions will be day to day O&M or scheduling oversight activities. Mr. Sadowski will be at the site and afterwards he will be located at the Region 9 office. Mr. Sadowski is well qualified to handle most issues and will keep me information ^{on} a regular basis.

Please call me with any questions.

- cc. E. Barcomb
- P. Buechi
- B. Sadowski

FILE COPY

FAX MEMO

PAGES 1 DATE 7/29/94 FAX # 357 2 281

TO NORM PARRELL

FROM JERRY RIDER

CO. _____

FAX # _____

Originator [Signature] 7/29/94

Reviewer _____

Reviewer _____

Reviewer _____

JUL 29 1994

TO: Eugene
 From: Jerry *[Signature]*
 Subject: Draft letter to OCC relative to section 5(b).

Norm asked me to start this for you:

According to Section 5(b) of the Judicial Consent Decree the coordinator will be Gerald J. Rider, Jr. Chief, Operation, Maintenance and Support Section, Bureau of Site Control, Division of Hazardous Waste Remediation New York State Department of Environmental Conservation 50 Wolf Road- Room Albany, New York. The alternate will be Brian Sadowski, Senior Treatment Plant Operator located at the site. Please direct all mail to the coordinator with a copy to the alternate. All verbal contact on this Judicial Consent Decree relative to operation and maintenance of the plant and oversight activities are to be made through the alternate. If the alternate is not available after reasonable efforts are made than the coordinator made be contacted directly.

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Please call me with any questions.

- cc. E. Barcomb
- P. Buechi
- B. Sadowski

FAX MEMO
 # PAGES 1 DATE 7/29/94 FAX # 212 416 6007
 TO EUGENE MARTIN CEF
 FROM JERRY RIDER
 CO. _____
 Ext # _____ FAX # _____

FILE COPY

Originator [Signature] 7/29/94
 Reviewer _____
 Reviewer _____
 Reviewer _____

JUL 29 1994

TO: Eugene
 From: Jerry
 Subject: Draft letter to OCC relative to section 5(b).



Norm asked me to start this for you:

According to Section 5(b) of the Judicial Consent Decree the coordinator will be Gerald J. Rider, Jr. Chief, Operation, Maintenance and Support Section, Bureau of Site Control, Division of Hazardous Waste Remediation New York State Department of Environmental Conservation 50 Wolf Road- Room Albany, New York. The alternate will be Brian Sadowski, Senior Treatment Plant Operator located at the site. Please direct all mail to the coordinator with a copy to the alternate. All verbal contact on this Judicial Consent Decree relative to operation and maintenance of the plant and oversight activities are to be made through the alternate. If the alternate is not available after reasonable efforts are made than the coordinator made be contacted directly.

I have written it this way since most questions will be day to day O&M or scheduling oversight activities. Mr. Sadowski will be at the site and afterwards he will be located at the Region 9 office. Mr. Sadowski is well qualified to handle most issues and will keep me information ^{on} a regular basis.

Please call me with any questions.

cc. E. Barcomb
 P. Buechi
 B. Sadowski



New York State Department of Environmental Conservation

file

MEMORANDUM

COPIES: N. K...
C. J...
J...
- file

TO: Distribution
FROM: Jeffrey T. Lacey *Jeff Lacey*
SUBJECT: Occidental Chemical Corporation/Love Canal Settlement
DATE: June 20, 1994

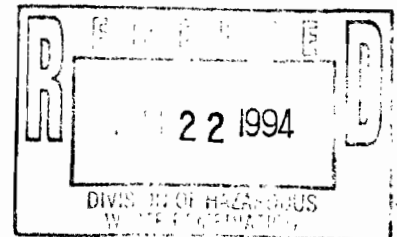
Attached please find the final Judicial Consent Decree which we anticipate being filed with the court on June 21, 1994.

Thank you.

Distribution

- Commissioner Marsh
- P. Sistrom
- J. Martens
- M. Gerstman
- A. DeBarbieri
- M. Gallo
- J. Lacey
- M.J. O'Toole, Jr.
- N. Parratt

JUN 24 1994



UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

-----X

UNITED STATES OF AMERICA; :
STATE OF NEW YORK; and :
UDC-LOVE CANAL, INC., :

Plaintiffs, : Civil Action No. 79-990C

v. :

OCCIDENTAL CHEMICAL CORPORATION; :
CITY OF NIAGARA FALLS, NEW YORK; :
and BOARD OF EDUCATION OF THE :
CITY OF NIAGARA FALLS :
("Love Canal Landfill"), :

Defendants. :

-----X

CONSENT JUDGMENT BETWEEN
THE STATE OF NEW YORK AND
OCCIDENTAL CHEMICAL CORPORATION

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

-----X

UNITED STATES OF AMERICA;	:	
STATE OF NEW YORK; and	:	
UDC-LOVE CANAL, INC.,	:	
 Plaintiffs.	:	 Civil Action No. 79-990C
 v.	:	
OCCIDENTAL CHEMICAL CORPORATION;	:	
CITY OF NIAGARA FALLS, NEW YORK;	:	
and BOARD OF EDUCATION OF THE	:	
CITY OF NIAGARA FALLS	:	
("Love Canal Landfill"),	:	
 Defendants.	:	

-----X

**CONSENT JUDGMENT BETWEEN
THE STATE OF NEW YORK AND
OCCIDENTAL CHEMICAL CORPORATION**

WHEREAS, the United States of America ("the United States"), on behalf of the Administrator of the United States Environmental Protection Agency ("EPA"), filed a Complaint in this matter on December 20, 1979, asserting against Occidental Chemical Corporation ("OCC") and affiliated companies various federal statutory and common law claims arising from the disposal by OCC of hazardous wastes, from the production of chemicals, at the Love Canal landfill and naming, for purposes of relief only, the City of Niagara Falls, the Board of Education of the City of Niagara Falls, and the Niagara County Health Department, and the United States filed a Second Amended Complaint on January 17, 1984, adding claims pursuant to Sections 106

EML

and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. §§ 9606 and 9607, for the recovery of response costs and further remediation at the Love Canal landfill:

WHEREAS, on April 28, 1980, the State of New York and UDC-Love Canal, Inc. served OCC with a Complaint in an action in the Supreme Court of the State of New York, Niagara County, asserting various common law claims of public and private nuisance and restitution and compensation for damages for injury to the air, land and water resources of the State and for punitive damages, arising from the disposal by OCC of hazardous wastes, from the production of chemicals, at the Love Canal landfill, and such proceeding was stayed upon a motion by OCC;

WHEREAS, upon motion by OCC, the State was ordered to be joined in this Court, and the State filed a Complaint in this matter on September 18, 1980, asserting various common law claims of public and private nuisance and restitution and compensation for damages for injury to the air, land and water resources of the State and for punitive damages, arising from the disposal by OCC of hazardous wastes, from the production of chemicals, at the Love Canal landfill, and the State subsequently filed a Supplemental and Amended Complaint on January 17, 1984, amending the claims previously asserted and adding claims pursuant to Section 107 of CERCLA, 42 U.S.C. § 9607, for the recovery of response costs and further remediation at the Love Canal landfill and for compensation for damages to the air, land and water resources of the State;

WHEREAS, OCC filed counterclaims and cross-claims against the State, the United States, the City of Niagara Falls, the Board of Education of the City of Niagara Falls and the County of Niagara for contribution and indemnification and a cross-claim against OCC was filed by the City of Niagara Falls;

WHEREAS, pursuant to Article 27, Title 13, of the Environmental Conservation Law, the New York State Department of Environmental Conservation ("DEC") placed the Love Canal site on the New York State Registry of Inactive Hazardous Waste Sites in June 1980;

WHEREAS, pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, EPA placed the Love Canal site on the National Priorities List by publication in the Federal Register (47 Fed. Reg. 58476 (Dec. 30, 1982) (proposed rule), 48 Fed. Reg. 40658 (Sept. 8, 1983) (final rule), 40 C.F.R. Part 300, Appendix B);

WHEREAS, on February 23, 1988, the Court granted the motions of the State and the United States for partial summary judgment against OCC for liability as a responsible party pursuant to Section 107 of CERCLA;

WHEREAS, on February 10, 1989, OCC served the State with a Claim in the Buffalo District of the Court of Claims of the State of New York (Claim No. 78285) for the uncompensated appropriation and extinguishment of OCC's alleged rights under the deed of transfer of the Love Canal property from OCC to the Board of Education of the City of Niagara Falls dated April 28, 1953, and said proceeding was stayed;

WHEREAS, on August 25, 1989, the Court granted the State's motion for partial summary judgment against OCC for liability under the common law of public nuisance;

WHEREAS, on September 8, 1989, the State advised the Court that it was not pursuing its common law claim of restitution;

WHEREAS, on September 19, 1989, the Court approved a Partial Consent Decree in this action, and Modification No. 1 thereto, pursuant to which OCC has undertaken the processing, transport and temporary storage of sewer and creek sediments and other wastes excavated from the Love Canal Area, and is obligated to provide for their thermal destruction or other permanent treatment;

WHEREAS, on June 6, 1990, the Court granted the motion of Niagara County for summary judgment and dismissed the cross-claim of OCC against the County in this action;

WHEREAS, by Stipulation and Order dated August 28, 1990, Occidental Petroleum Corporation, Oxy Chemical Corporation, Occidental Chemical Holding Corporation, and Occidental Petroleum Investment Company provided to the United States, the State, UDC-Love

Canal, Inc., and the City of Niagara Falls a Guarantee of the performance of any liability of OCC for monetary and/or injunctive relief and said companies. in consideration of such Guarantee, were dismissed from this action with prejudice; and

WHEREAS, on March 17, 1994, after a trial commencing on October 24, 1990 and terminating on June 25, 1991, the Court issued a Decision and Order which concluded that the State had failed to establish its claim against OCC for punitive damages;

NOW, THEREFORE, it is ORDERED, ADJUDGED and DECREED, upon the consent of the State and OCC, as follows:

1. JURISDICTION

This Court has jurisdiction over the subject matter of this action and the parties to this Consent Judgment pursuant to Sections 106 and 113 of CERCLA, 42 U.S.C. §§ 9606 and 9613, and 28 U.S.C. §§ 1331, 1345 and 1367. The parties to this Consent Judgment waive all objections and defenses that they may have to this Court's jurisdiction to enter and enforce this Consent Judgment. Venue lies in this Court pursuant to Section 113(b) of CERCLA, 42 U.S.C. § 9613(b).

2. PARTIES BOUND

This Consent Judgment shall apply to and be binding upon the State and UDC-Love Canal, Inc., and upon OCC, its successors and assigns. Each signatory to this Consent Judgment represents that she or he is fully authorized to enter into the terms and conditions of this Consent Judgment and to bind the party represented by her or him. Any change in ownership or corporate status of OCC, including, but not limited to, any transfer of assets or real or personal property shall in no way alter OCC's responsibilities under this Consent Judgment.

3. DEFINITIONS

(a) "Love Canal Area" means the area in the City of Niagara Falls and the Town of Wheatfield, New York, which encompasses the "Love Canal Emergency Declaration Area," as defined by Section 213 of the Superfund Amendments and Reauthorization Act of 1986, Pub. L. No. 99-499, 100 Stat. 1613, as well as those portions of the sewers and creeks at which remedial actions have been taken pursuant to the 1985 and 1987 EPA Records of Decision relating to sewers and creeks in the vicinity of Love Canal. A map indicating the location of the Love Canal Area is attached hereto as Appendix A.

(b) "Operation and Maintenance" or "O&M" shall mean the activities necessary to prevent the migration of chemical wastes through operation of the Love Canal leachate collection system and treatment plant; maintenance and repair of the cap over the Love Canal Landfill, the leachate collection system, the treatment plant, related facilities, and the monitoring system; and monitoring of the effectiveness of the remediation within the Love Canal Area.

(c) The "State" shall include the State of New York and all its agencies and instrumentalities, including, but not limited to, the New York State Department of Environmental Conservation ("DEC"), the New York State Department of Health, the New York State Department of Transportation and UDC-Love Canal, Inc., a public corporation incorporated under the laws of the State of New York.

4. PAYMENTS BY OCC

(a) To resolve the remaining claims between the parties, OCC shall pay the sum of \$47,500,000 into an escrow account, as described below, for the benefit of the State of New York, within 14 days after the entry of this Consent Judgment.

(b) The State shall, within 14 days of the entry of this Consent Judgment, establish an interest-bearing escrow account at a federally insured commercial bank designated by the Comptroller of the State of New York for certain moneys to be paid by OCC to the State

pursuant to this Consent Judgment. Within the same period, the State shall provide OCC with the account information, deposit instructions and a copy of the escrow agreement. The escrow agreement shall require the bank to furnish to the State monthly account statements and to credit the account with accrued interest on a monthly basis. The escrow agreement shall provide that all payments to the State shall be in accordance with instructions to be furnished by the Chief, Environmental Protection Bureau, New York State Department of Law, 120 Broadway, New York, New York. All expenses incident to the maintenance and administration of such account shall be borne by OCC. The escrow agreement shall provide that the State may take the balance in the escrow account immediately upon the effective date of this Consent Judgment. The escrow agreement shall provide that only the designated agent of the State may make withdrawals or receive payments of principal or interest in the account, or direct the return of payments and interest in accordance with subparagraph (f) below.

(c) To further resolve the remaining claims between the parties, OCC shall make the following additional payments on the following dates:

June 1, 1995	\$15,000,000
June 1, 1996	\$15,000,000
June 3, 1997	\$18,000,000

Each of the foregoing additional payments shall be made directly by OCC to the State in the manner specified for payments in subparagraph (b) above, unless the due date of any such additional payment is prior to the effective date of this Consent Judgment, in which event OCC shall make such additional payment to the bank for the benefit of the State.

(d) Upon the occurrence of the events specified in paragraph 19, the State shall instruct the bank to pay to it forthwith the balance in the escrow account, including all principal and interest. A copy of such notification shall be furnished to OCC three business days prior to the date it is issued to the bank. No such notification shall be made prior to the effective date of this Consent Judgment.

(e) To further resolve the remaining claims between the parties, the parties agree that OCC shall pay the sum of \$2,500,000 for one or more special projects located in Niagara County to be designated by the State with the purpose of educating or serving as a resource to the community on environmental issues or enhancing the environment. The State shall consult OCC prior to the final designation of the project(s). Such amount, or portions thereof specified by the State, shall be paid within 30 days after OCC receives notice in writing from the State of the project(s) and shall be paid into the escrow account identified in subparagraph (b) above or, if the due date of such payment is after the effective date of this Consent Judgment, directly to the State in the manner specified for payments to the State in subparagraph (b) above.

(f) If this Consent Judgment does not become effective, then the State shall return to OCC any payments of principal made to the State under this paragraph and the State shall promptly direct the bank to pay to OCC any payments of principal which it holds as well as all accumulated interest.

5. OPERATION AND MAINTENANCE

(a) Within 90 days after the effective date of this Consent Judgment, OCC agrees to assume responsibility for, and to undertake the O&M requirements set forth in Appendix B, as may be modified or supplemented in the future pursuant to the terms of this Consent Judgment. With the consent of the State, OCC may utilize a contractor[s] for part or all of the O&M requirements, which consent shall not be unreasonably withheld.

(b) OCC and the State shall each designate a Love Canal O&M Coordinator (hereinafter "Coordinator") and an alternate. Within 15 days following the effective date of this Consent Judgment, each such party shall advise the other of the names and titles of the persons so designated. At any time OCC or the State appoints a new Coordinator, alternate, or both, the other party shall so advise in writing. To the maximum extent possible, communications between OCC and the State concerning Love Canal O&M shall be made between said

Coordinators. The designated Coordinators shall receive all monitoring reports and all other relevant information concerning the performance of the Love Canal O&M program pursuant to the terms and conditions of this Consent Judgment. Each Coordinator shall be responsible for assuring that all communications from the other are appropriately disseminated. The Coordinators shall have no personal civil liability with respect to any action taken pursuant to this Consent Judgment.

(c) Compliance with Applicable Guidance Documents. The O&M shall be consistent with the National Contingency Plan, and any applicable EPA and DEC technical and administrative guidance documents or their equivalents. The currently applicable technical and administrative guidance documents are set forth in Appendix B. If any additional technical and administrative guidance documents or their equivalent are, or become, applicable to O&M, then DEC shall so notify OCC in writing and shall provide OCC with a reasonable opportunity to comply with the requirements of such documents. After notice and a reasonable opportunity to comply, OCC shall comply with the requirements of such additional guidance documents subject to OCC's rights under the Dispute Resolution provisions of this Consent Judgment.

(d) Continuance and Modification/Termination.

(i) The O&M, as set forth in Appendix B and as modified or supplemented in the future pursuant to the terms of this Consent Judgment, shall be continued by OCC as long as required to protect the public health or the environment. In the event that OCC applies to the Court for a determination that continuation of O&M is no longer required to protect the public health or the environment, the burden of proof shall be upon OCC.

(ii) The O&M is subject to modification or supplementation only by written agreement, except as provided in subparagraph (c). If, within 30 days of the date of the proposal, either party to this Consent Judgment does not agree to a modification or supplementation proposed in writing, then the proposing party may request a conference with the Court, and/or take other action to seek Court approval for the proposed modification or supplementation.

(iii) The O&M, as set forth in Appendix B and as modified or supplemented in the future pursuant to the terms of this Consent Judgment, may be terminated only with approval of the Court.

(e) Payment of Oversight Costs

(i) OCC shall reimburse the State for all costs incurred by the State in providing oversight of the O&M activities, as set forth more fully in Appendix B, including all fringe benefits and indirect costs, as well as all costs and attorneys' fees for enforcing the terms of these O&M provisions. The State represents that its best estimate of the 1994-1995 annual costs of oversight activities associated with this Consent Judgment, exclusive of any costs or benefits associated with Section 2.A. of Appendix B, is \$30,000.

(ii) OCC shall pay all O&M and oversight costs evidenced by invoices which were not paid by the State before May 18, 1994 and which invoices are for work or services provided to the State for work in the Love Canal Area. OCC also shall pay all State personal service and non-personal service costs incurred after May 18, 1994, which costs are for work in the Love Canal Area.

(iii) The State reserves the right to hire contractors to perform part or all of its oversight activities, if said contractor costs are comparable to DEC's costs. The costs of such contractor[s] shall be paid by OCC.

(iv) The State shall provide OCC with a written statement in reasonable detail of any costs or oversight costs on a periodic basis, which statement shall include:

(A) a summary of personal service costs;

(B) a summary of the fringe benefits and indirect costs attributable to the personal service costs identified in the statement;

(C) a summary of non-personal service costs, including, but not limited to, supplies, travel costs, equipment and contractual expenses; and

(D) any other costs incurred in oversight activities.

Disputed costs that remain unresolved at the end of the 30-day negotiation period shall be reserved for consideration by the Court pursuant to the Dispute Resolution provisions of this Consent Judgment. In any such proceeding, OCC shall have the burden of proof that costs incurred by the State were inconsistent with this Consent Judgment or with the NCP.

(f) Either party generating or receiving environmental sampling or analytical data under this Consent Judgment shall provide such data to the other party to this Consent Judgment within a reasonable time after such data becomes available to the party generating such data.

(g) Except as otherwise provided in this Consent Judgment, where this Consent Judgment or its Appendix B requires OCC to submit a plan, design or request for modification to the State, such plan, design or modification shall not be implemented until it has been reviewed and approved by the State or until such implementation is permitted by a determination of this Court. The State shall review any such plan, design or modification and notify OCC in writing within 90 days, unless a longer period of time to respond is set forth or agreed to by OCC, whether such plan, design or modification is acceptable, or if it is not acceptable, specify the reason or reasons for any determination that such plan, design or modification is unacceptable.

6. USE AND OCCUPANCY

(a) Pursuant to easements presently held by the State, OCC shall have the exclusive use and occupancy of the premises described in Appendix C (the "Premises"), commencing on a date agreed upon by OCC and the State, but no later than 90 days after the effective date of this Consent Judgment, and continuing until OCC's O&M responsibilities are terminated pursuant to this Consent Judgment, and subject to the right of the State to enter and inspect the Premises at any time as provided in paragraph 7.

(b) OCC shall pay the cost of all utilities on the Premises associated with the O&M during the term hereof and obtain insurance as provided in paragraph 7.

(c) The Premises shall be used by OCC as an inactive hazardous waste disposal site and treatment facility in accordance with and subject to all applicable federal and State laws, rules and regulations and the O&M provisions of this Consent Judgment. The Premises may not be used for any other purpose without the prior express written consent of the State.

(d) The Premises are accepted in their condition on the date of commencement of OCC's occupancy thereof as evidenced by the inventory of State assets attached hereto as Appendix D and by a Report of Physical Inspection in the form attached hereto as Appendix E, which shall be completed by mutual agreement of the parties prior to occupancy. OCC may install appropriate fixtures on the Premises, and remove such upon its cessation of its occupancy.

(e) Except as provided in paragraph 5, OCC agrees that the State, during the term hereof, has no duty or obligation to make any repairs, all such repairs being the responsibility of OCC.

(f) Any notices permitted or required under this paragraph and addressed to OCC or to the State may be sent to them by first class mail at the address of their Coordinators recited in paragraph 5 or any subsequent address provided by them.

7. EASEMENTS, ACCESS AGREEMENTS AND INSURANCE

(a) The State shall use its best efforts to obtain on a timely basis such further easements, rights of way or rights of entry, which may be necessary to carry out any of OCC's O&M obligations under this Consent Judgment. OCC shall reimburse the State for all costs of obtaining such easements, rights of way or rights of entry, including but not limited to fair market value compensation to owners of real property, survey and appraisal fees, expert witness costs, filing fees and the personnel costs, including fringe benefits and indirect costs, of attorneys and other State employees. All such easements, rights of way or rights of entry shall contain provisions to prohibit interference with O&M. If the State does not obtain the aforementioned easements, rights of way or rights of entry on a timely basis or obtains them with terms and conditions which effectively prevent compliance with the terms and conditions of this Consent Judgment, the time for performance of OCC's obligations pursuant to this Consent Judgment shall be extended as appropriate.

(b) The State shall have access to all property to which OCC has access at all times necessary to oversee OCC's O&M activities and to take samples relating to soil, groundwater and air conditions at, beneath, or near the Love Canal Area. The State shall have the right to obtain split samples or, at its option, duplicate samples of all materials or substances sampled by OCC in the course of the performance of its obligations hereunder. OCC shall have the right to obtain split samples or, at its option, duplicate samples of all materials or substances sampled by the State in the course of its oversight activities hereunder. The State shall give OCC reasonable notice of all activities to be conducted by or on behalf of the State in the Love Canal Area.

(c) Nothing herein limits or otherwise affects any right of entry to the Love Canal Area by the State pursuant to applicable laws, regulations, or permits.

(d) OCC shall, prior to commencing any O&M in the Love Canal Area under this Consent Judgment, obtain and submit to the State for its approval, a certificate of insurance or

certificates or other evidence of insurance, with insurers licensed to do business in the State, and provide further proof to the State if requested, including the following :

(i) insurance of the Premises, as defined in paragraph 6, from loss by fire or other casualty in the amount of \$10,000,000, such insurance to run to the benefit of the People of the State of New York, and DEC as their interests may appear;

(ii) general liability insurance against any loss due to the use and occupancy of the Premises by OCC in the amount of \$5,000,000, such insurance to run to the benefit of the People of the State of New York, and DEC as their interests may appear;

(iii) all workers' compensation, disability and other similar insurance coverages required by law; and

(iv) all motor vehicle insurance coverage required by law for any motor vehicles operated on the Premises.

All such insurance shall be maintained for the duration of the O&M in the Love Canal Area.

8. INDEMNIFICATION

(a) OCC shall indemnify, defend and hold harmless the State and its officers, employees and representatives, from claims, suits, actions, damages and costs of every name and description brought against the State arising out of or resulting from OCC's negligent performance or negligent or intentional failure to perform its O&M obligations hereunder.

(b) (i) The State shall indemnify, defend and hold harmless OCC and its officers, employees and representatives from any claims that the State of New York through DEC improperly acquired its right, title and interest in any property within the Love Canal Area in violation of or in nonconformity with the statutes that govern the acquisition process used by the

State. The State also shall indemnify, defend and hold harmless OCC from any claims for compensation due and owing the fee owners on account of such acquisition.

(ii) The duty to indemnify, defend and hold harmless prescribed by this paragraph shall be conditioned upon (A) delivery by OCC to the Attorney General of the State of New York of the original or a copy of any summons, complaint, process, notice, demand or pleading within five business days after it is served with such document, (B) representation by the Attorney General or representation by private counsel of OCC's choice, subject to the approval of the Attorney General, whenever the Attorney General determines in his or her sole discretion based upon his or her investigation and review of the facts and circumstances of the case that representation by the Attorney General would be inappropriate, and (C) the full cooperation of OCC in the defense of such action or proceeding and in defense of any action or proceeding against the State based upon the same act or omission, and in the prosecution of any appeal.

9. **CONTINUED EFFECT OF PARTIAL CONSENT DECREE**

The Partial Consent Decree in this case approved by the Court on September 19, 1989, and Modification No. 1 thereto, shall remain in full force and effect.

10. **FORCE MAJEURE**

(a) OCC shall not be in default of compliance with this Consent Judgment or be subject to any proceeding or action under this Consent Judgment, if it cannot comply with any requirement of this Consent Judgment because of an action beyond OCC's reasonable control, including, but not limited to, an action of a governmental body (other than an action taken under this Consent Judgment), an action of a court, or an act of God. "Force Majeure" does not include delay or noncompliance which could have been prevented or avoided by the exercise of due care or foresight by OCC. OCC shall notify the State in writing within seven working days after it

obtains knowledge of any such condition and request an appropriate modification of the pertinent requirement or other appropriate relief. Such notification shall include a written statement of (i) the reason(s) for the delay and the anticipated duration of the delay; (ii) any measure taken by OCC to minimize or prevent the delay; and (iii) a schedule for implementation of any such measure. Failure to comply with the notification requirement of this subsection shall constitute a waiver of any claim of Force Majeure.

(b) For purposes of this Section, Force Majeure shall not include increased costs or expenses associated with OCC's compliance with its obligations incurred under this Consent Judgment, changed financial circumstances or nonattainment of the requirements of this Consent Judgment.

11. RELEASE OF OCC AND COVENANT NOT TO SUE

(a) Except as provided in paragraph 12, OCC, its past, present and future officers, directors, employees, agents, successors, assigns, parents, subsidiaries, or affiliates thereof shall be fully discharged and released from all claims by the State, including claims for cost recovery, restitution, compensatory damages, interest, injunctive relief, fines or penalties, under the common law or any State or federal statutes administered or enforced by the State, which were or could have been raised in this action, arising out of or relating to (i) response costs, abatement costs, compensatory damages and all other costs incurred by the State as a result of the past release or threatened release of hazardous substances, hazardous wastes, chemicals or chemical wastes, as these terms are used in the State's complaint in this action, within or arising out of or relating to the Love Canal Area; (ii) further remedial measures to be taken within or arising out of or relating to the Love Canal Area, except as provided elsewhere in this Consent Judgment; and (iii) natural resources damages, including, but not limited to, resources within the Love Canal Area, the Niagara River and Lake Ontario, to the extent that such damages are attributable

to releases of hazardous substances, hazardous wastes, chemicals or chemical wastes, arising out of or relating to the Love Canal Area.

(b) The State shall, within seven days of the effective date of this Consent Judgment, file a Stipulation of Discontinuance and voluntarily dismiss with prejudice, subject to the terms of this Consent Judgment, its Complaint dated April 28, 1980 against OCC in the Supreme Court of the State of New York, Niagara County.

(c) The parties shall submit to the Court a Final Judgment as to the Decision and Order dated March 17, 1994 relating to punitive damages to become effective three days prior to the effective date of this Consent Judgment. However, nothing in this paragraph shall affect the right of the State to seek modification of or an appeal from said Decision and Order if this Consent Judgment does not become effective in accordance with the terms of paragraph 19.

(d) Except as provided in paragraph 12, and in consideration of OCC's compliance with the provisions of this Consent Judgment, the State hereby covenants not to sue, execute judgment, or take any civil, judicial, or administrative action under federal or State law, against OCC arising out of or relating to past releases or threatened releases of hazardous substances, hazardous wastes, chemicals or chemical wastes, as these terms are used in the State's complaint, within or arising out of or relating to the Love Canal Area, or damages resulting therefrom, or the past conduct of OCC relating to Love Canal.

(e) Nothing herein shall be construed to affect the liability of OCC for any claim arising out of or relating to releases or threatened releases of hazardous substances, hazardous wastes, chemicals or chemical wastes, from or to any site other than Love Canal, including, but not limited to, the 102nd Street Landfill.

(f) Nothing herein shall be construed to limit the right of the State to obtain an order enforcing the terms of this Consent Judgment and/or the Stipulation and Order and Guarantee of August 28, 1990.

12. REOPENERS

(a) This paragraph shall not apply to costs, including interest, incurred by the State prior to May 19, 1994, nor to compensatory damages for injury to natural resources caused by past releases, nor to claims for fines or penalties that could have been brought for past releases, threatened releases or conduct. Otherwise, the discharge and release provisions and the covenants not to sue provided in paragraphs 11 and 13 shall be null and void upon, and to the extent of, any of the following circumstances:

(1) the discovery of any release or threatened release of hazardous substances or any other condition within the Love Canal Area which (i) was not known, detected or contemplated on or before the effective date of this Consent Judgment, (ii) indicates that remedial action taken heretofore within the Love Canal Area is not protective of human health or the environment, and (iii) was not solely caused by the negligence of the State or its contractors in the design, construction, operation or maintenance of remedial facilities, or by the disposal activities of any person or entity other than OCC or its predecessors; or

(2) the receipt by the State of additional information which was not available at the time of, or prior to, the effective date of this Consent Judgment, which indicates that remedial action taken heretofore within the Love Canal Area is not protective of human health or the environment.

For purposes of subparagraph (a)(1)(iii) above, the burden of proof with respect to causation shall be upon OCC. Evidence of oversight activities by EPA or others shall not be considered in the determination of any alleged causation by the State or its contractors.

(b) If the State informs OCC that in its opinion the circumstances described in subparagraph (a)(1) or (2) have occurred, claims by OCC, which the State contests, that the State is liable for contribution or indemnification under CERCLA and the common law of nuisance with respect to costs incurred or to be incurred as a result of such circumstances shall be

determined by this Court upon a review of the transcript and other evidence introduced during the 1990-1991 Phase I trial in this case. The amount of the liability, if any, of the State shall be determined in a separate proceeding, at which additional evidence may be introduced, including, but not limited to, evidence that such circumstances could have been prevented by the exercise of due care or foresight by the State or its contractors in connection with remedial action taken heretofore within the Love Canal Area. The law governing such liability and such determination of an amount shall be CERCLA and the common law of nuisance as in effect during the 1990-1991 trial.

13. RELEASE OF THE STATE AND COVENANT NOT TO SUE

(a) The State, its officers, employees, agents, and assigns are fully discharged and released from all claims by OCC or any successor, assign, parent, subsidiary or affiliate thereof for contribution, damages, just compensation, or any other relief under the common law or any State or federal environmental or eminent domain statutes, which were or could have been raised in this action, arising out of or relating to the Love Canal Area or any property situated therein.

(b) Except as provided in paragraph 12, OCC hereby covenants not to sue, execute judgment, or take any civil, judicial, or administrative action under federal or State law, with respect to any claim against the State arising out of or relating to past releases or threatened releases of hazardous substances, hazardous wastes, chemicals or chemical wastes, as these terms are used in the State's complaint, within or arising out of or relating to the Love Canal Area, or damages resulting therefrom.

(c) OCC shall, within seven days of the effective date of this Consent Judgment, file a Stipulation of Discontinuance with the Clerk of the Court of Claims and voluntarily dismiss with prejudice, subject to the terms of this Consent Judgment, its Claim No. 78285, served upon the State in the Court of Claims of the State of New York, Buffalo District, on February 10, 1989.

(d) Nothing herein shall be construed to affect the liability of the State, if any, for any claim or counterclaim arising out of or relating to releases or threatened releases of hazardous substances, hazardous wastes, chemicals or chemical wastes, from or to any site other than Love Canal, including, but not limited to, the 102nd Street Landfill.

14. ASSIGNMENT

Except with respect to payments by OCC set forth in paragraph 4 and notwithstanding the third sentence of paragraph 2, OCC may, with the consent of the State, assign its obligations and responsibilities under this Consent Judgment to any other person or entity. Consent under this paragraph shall not be unreasonably withheld.

15. DISPUTE RESOLUTION

(a) This Section applies to any unresolved dispute between the parties arising under this Consent Judgment.

(b) Any party may move this Court to resolve a dispute. In its motion, the moving party shall describe the nature of the dispute and shall include a proposal for its resolution. The filing of a motion shall not in itself postpone the deadlines for OCC under this Consent Judgment.

(c) In any such dispute relating to paragraph 5, OCC shall have the burden of demonstrating that its position is consistent with the O&M requirements of this Consent Judgment.

16. CONTINUING JURISDICTION

This Court shall retain jurisdiction to modify and enforce the terms and conditions of this Consent Judgment and to resolve all disputes arising hereunder as may be necessary or appropriate for the construction or enforcement of this Consent Judgment.

17. MODIFICATIONS BEFORE EFFECTIVE DATE

Because the terms and language of this Consent Judgment represent the agreement of the parties hereto, any modifications to such terms or language as filed that may be proposed by the Court prior to the effective date of this Consent Judgment shall require the written consent of each party to the Consent Judgment. If both parties do not so consent to all such modifications within ten days after the Court submits the modifications to them, this Consent Judgment shall be void and of no force and effect and shall be inadmissible in this action for any purpose.

18. COSTS AND DISBURSEMENTS

Except as indicated above, each party shall bear its own costs and disbursements of this action.

19. EFFECTIVE DATE

The effective date of this Consent Judgment shall be one week after the date on which any appeal from the entry of this Consent Judgment must be filed or three days after entry of Final Judgment by the Court as specified in paragraph 11(c) of this Consent Judgment, whichever occurs later. If any appeal from the entry of this Consent Judgment is filed, OCC's and the State's obligations under this Consent Judgment, except for OCC's obligations to make payments into the escrow account established pursuant to paragraph 4, are stayed until the Consent Judgment becomes final.

The authorized representatives of the State and OCC, having reviewed the terms and conditions of this Consent Judgment, hereby consent to its terms and conditions.

State of New York

G. OLIVER KOPPELL
Attorney General of the State
of New York
New York State Department of Law
120 Broadway
New York, New York 10271

Dated: *June 16, 1994*

By: *Eugene Martin-Leff*
Eugene Martin-Leff
Robert Emmet Herman
H. Johannes Galley
Janice Taylor
Chevon Fuller
Assistant Attorneys General

Attorney for Plaintiffs State of New York
and UDC-Love Canal, Inc.

LANGDON MARSH
Acting Commissioner
New York State Department of
Environmental Conservation
50 Wolf Road
Albany, New York 12205

Dated:

Langdon Marsh
d *by substitution*

Occidental Chemical Corporation

PIPER & MARBURY
Thomas H. Truitt
Steven K. Yablonski
Anthony L. Young
1200 Nineteenth Street, NW
Washington, D.C. 20036

and

PHILLIPS, LYTLE, HITCHCOCK,
BLAINE & HUBER
David K. Floyd
3400 Marine Midland Center
Buffalo, New York 14203

and

PHILLIPS, NIZER, BENJAMIN,
KRIM & BALLON
Louis Nizer
George Berger
31 West 52nd Street
New York, New York 10019

Dated:

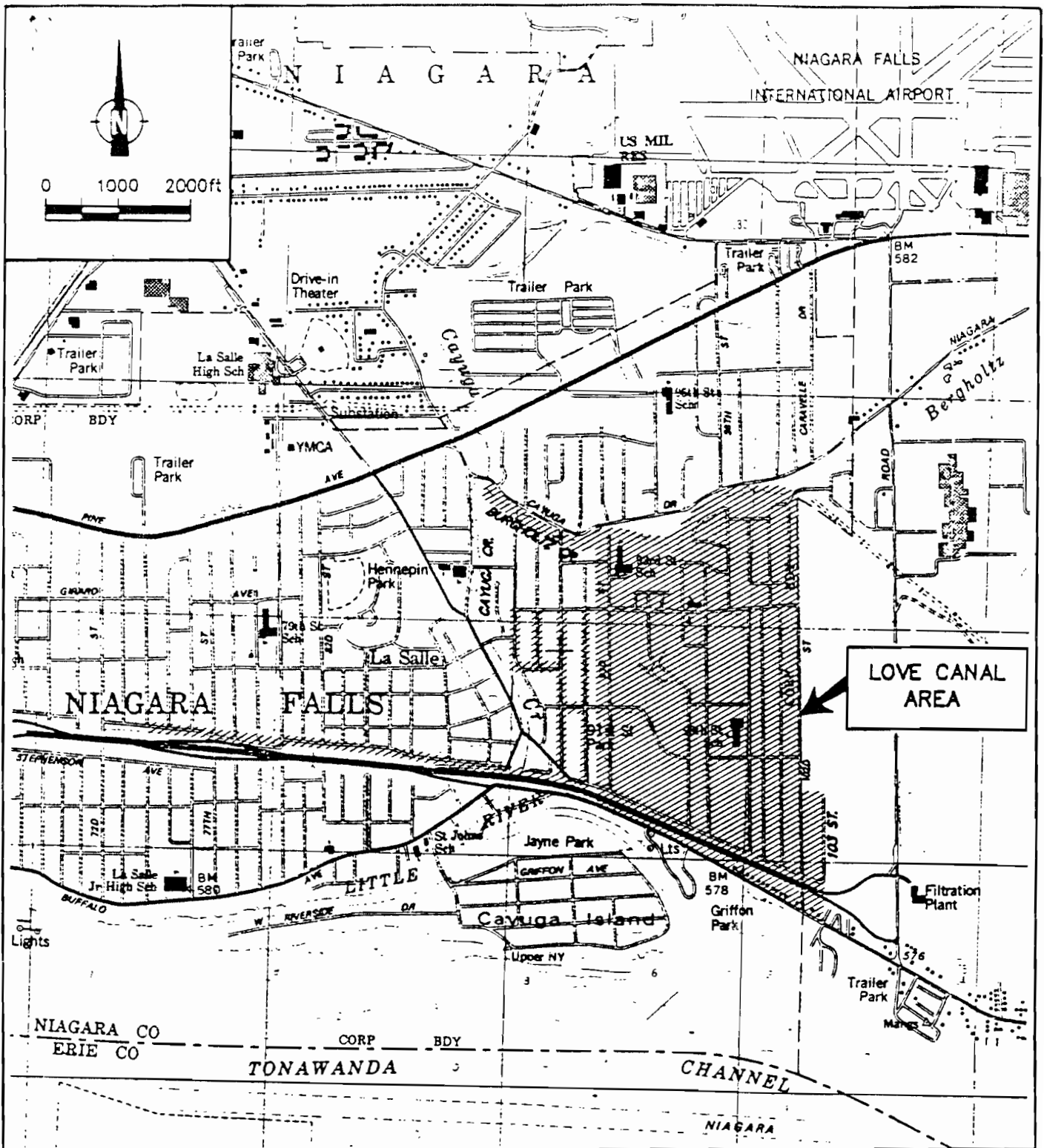
By: _____
Thomas H. Truitt, Esq.

Attorneys for Defendant
Occidental Chemical Corporation

So Ordered and Adjudged:

United States District Judge

Dated:



SOURCE: USGS QUADRANGLE MAP (TONAWANDA WEST, N.Y.)

APPENDIX A



LEGEND

LOVE CANAL AREA "INCLUDES SEWERS EXTENDING WESTERLY ALONG FRONTIER AVE. TO 74th STREET AND OTHER SEWERS ADJACENT TO THE LOVE CANAL AREA."

CONSENT JUDGMENT BETWEEN
STATE OF NEW YORK AND
OCCIDENTAL CHEMICAL CORPORATION

CRA

LOVE CANAL AREA MAP
Occidental Chemical Corporation

APPENDIX B
OPERATION AND MAINTENANCE REQUIREMENTS

1. The operation and maintenance requirements, including monitoring, are those shown in the document entitled, "Operation and Maintenance Requirements for the Love Canal Containment Facility, May 1994," attached hereto as Exhibit 1 and incorporated herein, which summarizes the required major O&M activities necessary to prevent the migration of chemical wastes through operation of the Love Canal leachate collection system and treatment plant; maintenance and repair of the cap, the leachate collection system, the treatment plant, related facilities, and the monitoring system; and, monitoring of the effectiveness of the remediation within the Love Canal Area. All the other activities normally associated with operating an industrial plant are required, including, but not limited to, inspecting equipment, replacing and repairing piping, pumps, electronics, and tanks; keeping records of inspections, training, as-built and O&M manual modifications for plant changes and upgrades; maintaining the contingency plan; and maintaining safety equipment and training. One operator and one other person qualified and trained under the Health and Safety Plan and the Contingency Plan are required to be on site when the plant is operating. Monitoring of the performance and effectiveness of the remedy on an annual basis is also part of the O&M activities.

2. DEC OVERSIGHT ACTIVITIES: To assure that the containment and monitoring system is maintained and operated under effective, continuous, and clearly accountable management the following oversight activities will be performed:

A. DEC will assign three (3) O&M full-time Trainers/inspectors to the O&M project for a period of three (3) months commencing when OCC takes over the O&M, and DEC retains the option, at its sole discretion, to assign one (1) Trainer/Inspector for any three-month period at any time within the first two (2) years.

B. DEC inspections will be performed quarterly for the first year after the end of three (3) months and annually thereafter. Check samples of the effluent discharge and of between five and ten monitoring wells will be taken yearly. The inspection will cover the

applicable items included in NYSDEC form 47-15-14(2/94). "Inspection Form. New York State Industrial Hazardous Waste Management Act," or the equivalent form.

C. Reporting requirements will involve submitting an annual report to DEC outlining the activities performed at the site, including the monitoring program. The report is to describe the operation of the plant and any modifications made; evaluate the performance of the collection system in maintaining inward gradients; evaluate the treatment plant in meeting the sewer use discharge permit; and evaluate the overall effectiveness of the remedy in preventing chemical migration. Other separate annual report requirements applicable to hazardous waste generation, transportation and storage are required. In addition, the City of Niagara Falls requires a quarterly report of sewer discharges. Any spills are to be reported according to the appropriate regulations.

D. OCC shall obtain written approval from the DEC when major modifications to the Plant are proposed, with OCC preserving its rights under the Dispute Resolution provisions; in any use of the Dispute Resolution provisions, OCC shall have the burden of proof. Replacement of in-kind equipment does not require approval.

E. The costs of DEC's oversight, including, but not limited to, the costs referred to above, shall be paid by OCC as provided under the terms of the Consent Judgment.

3. OTHER AGENCY OVERSIGHT:

- A. City of Niagara Falls inspections are performed semi-annually and include a sample of the effluent. In addition, the City performs an annual test of the water backflow preventer.
- B. Other inspections will periodically be made by other agencies, including OSHA, local building and fire departments.

4. CITIZEN PARTICIPATION

OCC is to make available to the public the annual report at a location accessible to local residents. The annual report is also to be mailed to individuals on the regular short mailing list (not to exceed 50 copies) by April 1. The initial list is to be provided by DEC and subsequently maintained by OCC.

5. TRANSITION OF ONGOING PROJECTS

A. Carbon Removal/Tank Cleaning and Carbon Supply

Carbon Removal and Tank Cleaning is a two year contract (#D003077) which extends into 1996. The total contract cost is \$51,717.60 and \$32,290.92 has been paid to date. In addition, Purchase Order (#7163) for \$27,000 was recently executed for carbon; carbon will likely not be needed again until 1996.

B. Monitoring Well Decommissioning

During site investigation and remediation activities, groundwater monitoring wells and piezometers were installed on and around the site within the Love Canal Emergency Declaration Area. In a recent inventory, approximately 143 groundwater monitoring wells and piezometers installed during remedial investigation and action phases were deemed no longer needed. These 143 wells are targeted for decommissioning through the Federal Assistance Cooperative Agreement No. V002962-93-0. This agreement provides Federal funds for the decommissioning of wells at the Love Canal Site, in addition to other sites. This work requires a 10% State match.

A Standby Consultant (WA #D002852-11) has been tasked for the development of well decommissioning procedures for work near or within a hazardous waste site and to prepare detailed, biddable plans and specifications (Bid Documents) for the decommissioning of wells at the five NPL sites including the Love Canal Site. To date \$10,000 has been committed to develop the work plan for this project.

DEC will complete the well decommissioning. OCC shall pay all the costs associated with the decommissioning of wells in the Love Canal Area.

C. ABB Work Assignment

Pursuant to contract #D002472-5, Tasks 1, 2, 8 & 9 are completed. Tasks 3 thru 7 have additional work to be completed.

Task 3 - Clarifier. The clarifier developed a small pinhole leak, and DEC is close to completing plans and specifications for conducting an inspection of the clarifier. The concept design for a standby clarifier in case the clarifier fails or needs replacement has been completed. DEC will proceed with the inspection and minor repairs if it is determined cost effective compared to replacing the

clarifier. If it is determined that the clarifier needs replacing, OCC shall do the work.

Task 4 - Corrosion Monitoring and Tank Design. DEC is in the process of replacing the sludge tanks. The design and specifications are nearly complete and DEC will complete them and transfer these documents to OCC. OCC may have an alternative to managing the sludge and may desire to forgo installing new tanks subject to the review and approval of DEC. The task includes other maintenance work such as roof repair, painting interior ceilings and walls, coating of asphalt pavements, building crack repair, and removal of the sludge thickener tank which is not needed.

Task 5 - Electrical System Inspection and Love Canal As-Built. DEC will complete this work including the final review and modifications to the as-built drawings.

Task 6 - Site Survey. This work is complete except to include the DCF segment in the cross sections. OCC shall complete this portion of the work the next time it surveys the cap to check settlement.

Task 7 - RCRA/OSHA Compliance. All but one of the items have been completed.

The remaining RCRA/OSHA item is the preparation of a sludge waste analysis plan. DEC's consultant is drafting this plan, and upon Department approval of this plan, or a functional equivalent proposed by OCC, such plan will be instituted.

6. MISCELLANEOUS ISSUES

- A. Any equipment located at the Love Canal facility that was purchased with State funds which were not charged to a Love Canal cost center shall remain the property of the State and shall be removed from the Love Canal facility prior to OCC assuming responsibility for O&M. DEC will provide to OCC a list of that equipment. OCC shall be provided with an offset against its obligations to pay oversight and O&M costs, in an amount equal to the depreciated value of the Plasma Arc Generator Equipment previously charged to the Love Canal project.
- B. OCC shall comply with all federal, State and local laws, rules and regulations applicable to the Love Canal Area.

- C. If such materials are deemed acceptable by the State and the United States for use as intermediate fill at the 102nd Street Landfill, OCC shall, subject to the review and approval of the DEC, remove all or part of the Dewatering Containment Facility ("DCF") and its contents and the soil pile in the northeast corner of the fenced portion of the Love Canal Area, create new grades or reestablish the original grades thereof, and seed these areas. All of these soils and materials are non-hazardous.

EXHIBIT 1

OPERATION AND MAINTENANCE REQUIREMENTS FOR THE LOVE CANAL CONTAINMENT FACILITY MAY 1994

OBJECTIVE: The objective of the Love Canal Containment Facility is to prevent the migration of chemical wastes from the Love Canal Landfill. The objective of the Love Canal Operation and Maintenance Program is to keep the facility functioning as designed. The Love Canal Emergency Declaration Area Decision on Habitability (NYSDOH, September 1988) states that conclusions regarding habitability in the neighboring Love Canal Area require "the containment system to be maintained and operated under effective, continuous and clearly accountable management".

BRIEF DESCRIPTION: The majority of operation and maintenance activities are focused on the batch pumping of contaminated groundwater collected in the site's perforated tile drain. The 7,000 foot long drain surrounds the buried chemical wastes. Intercepted groundwater is pumped from the ground, nonaqueous phase liquid settles out and the remaining liquid is treated to sewer permit requirements via carbon adsorption prior to sewer discharge. On average, about 40,000 gallons of leachate is batch treated in a day; three to four million gallons of leachate is treated yearly.

During treatment plant operation, two treatment facility operators must be on site. Typical maintenance in a day may call for the removal of a pump motor for repair, grass mowing, sampling monitoring wells, providing a tour for Fire Department pre-planning, removing water from a pump chamber and checking holding tank levels. Office work includes maintaining daily records and keeping specific records current including the O&M Manual, Contingency Plan, personnel training and as-built drawings. Larger maintenance projects, such as activated carbon replacement and wet well cleaning, are also required.

SCOPE: Operation and Maintenance includes all work pertaining to the Love Canal Area.

SUMMARY OF REQUIRED MAJOR OPERATION ACTIVITIES

<u>OPERATION</u>	<u>EXAMPLES</u>	<u>PERFORMANCE STANDARD</u>	<u>"AVERAGE" FREQUENCY</u>
A. Operate field collection pumps to remove leachate continually from field.	Check pump logic journal to be sure pumps are activated at high level.	Wet wells must not remain in a high-level condition. A daily log must be kept of all site activities.	Daily*
B. Operate treatment system.	Turn on compressor, control pumping rate, take samples, monitor tank levels.	Discharge in accordance with municipal permit.	2/week*
C. Long-Term Monitoring.			
1. Monitor groundwater level in the vicinity of the barrier drain and at other selected locations.	Measure water levels in piezometers.	Provide enough data to evaluate hydraulic performance of drain.	Quarterly
2. Collect and analyze groundwater samples from long-term monitoring well network.	Purge well and draw sample. (37 wells minimum; 42 wells average.)	Provide data for effectiveness evaluation of any contaminant migration that may be occurring.	Yearly
3. Interpret and evaluate data.	Prepare flow nets from groundwater levels.	Assess results and compile data summaries; publish a report of findings annually.	
D. Conduct Annual Review of Performance and Effectiveness of Remedy.		In accordance with NCP and DEC requirements.	Annual

* "Average" is based on past experience. Any changes in conditions at the site or climate may change the "Average".

SUMMARY OF REQUIRED MAJOR MAINTENANCE ACTIVITIES

<u>MAINTENANCE</u>	<u>EXAMPLES</u>	<u>PERFORMANCE STANDARD</u>	<u>"AVERAGE" FREQUENCY</u>
A. Leachate Collection			
1. Keep collection pipes and wells free of sediment and debris.	Hydraulically flush pipe; vacuum wells.	Inward hydraulic gradient continues.	Clean wells yearly. Clean drain every 5 years.
2. Maintain pumps, replace when necessary.	Lubricate to schedule; check impellers for wear.	No down-time > 24 hrs. in any pump chamber.	Rebuild every 5 years or after useful life replace with rail system similar to tank 3.
3. Maintain electronic communication between field and operator terminal.	Monitor alarm/event log and take necessary action.	No communication down-time > 24 hrs.	Daily
B. Leachate Treatment			
1. Keep treatment units and process equipment functional and reliable.	Periodically clean tanks; change pump diaphragms; remove sludge; change bag filters; change activated carbon.	Treatment facility performs to expectations. Spare parts supply available.	Clean tanks every 2 years. (See individual cleaning frequency recommendations). Carbon absorber change every 2 years; diaphragms every 18 months; carbon canisters approximately 3 months.
2. Keep health and safety and spill equipment available and functional.	Keep respirators clean; fire extinguishers charged; spill cleanup inventory.	Equipment functional; meets OSHA and RCRA requirements.	Monthly.
3. Ensure all wastes are stored properly.	Inspect drums and sludge tanks.	Per RCRA requirements.	Drums - weekly. Tanks - daily. Pump out secondary containment monthly.

C. Site

- | | | | |
|----------------------------|---|--|------------------|
| 1. Continue cap integrity. | Mow grass; grade and seed when necessary; fertilize. | No evident erosion. First cutting after grass produces seed. | 4/Year. |
| 2. Maintain site security. | Change gate locks periodically; fix holes in fence; adjust lighting timers. | Fence is aligned and continuous; all gates locked. | Check daily. |
| 3. Maintain roads. | Plow snow; pave when needed. | Unrestricted access by emergency vehicles. | Plowing 10/year. |

D. Buildings

- | | | | |
|--|---|--|---|
| 1. Keep all buildings functioning and in good condition. | Service heating units; repair roofs; mop and vacuum floors; paint as necessary. | Improvement to meet building code; all stock is neatly and properly stored. | Check twice yearly. |
| 2. Maintain security. | Check and service all detectors. | Maintain 24-hour electronic security in treatment plant and administration building; provide 24-hour on-call staff. Review contingency plan with staff, contractors and local emergency units. | Yearly or at time of construction with contractors. |

* "Average" is based on past experience. Any changes in conditions at the site or climate may change the "Average".

DETAILED

REQUIREMENTS:

Detailed descriptions on how to carry out the operation and maintenance program at Love Canal are explained in the site's operation and maintenance manual. The manual consists of three parts: Volume I covers how to operate the treatment system; Volume II is a compilation of all equipment manuals at the site; Volume III covers specific operation and maintenance tasks in detail.

TECHNICAL DOCUMENTS:

Love Canal Operations and Maintenance Manual Volume I
(Conestoga Rovers and Associates, December 1980;
NYSDEC revised 1988)

Love Canal Operations and Maintenance Manual Volume II
(NYSDEC, Revised 1992)

Love Canal Operations and Maintenance Manual Volume III
(NYSDEC, Revised 1992)

Love Canal Remedial Project Task V-C
Implementation of a Long-Term Monitoring Program
(E.C. Jordan, June 1987)

Recommendation for Modification of the Love Canal Long-Term
Monitoring Program (March 1992).

APPENDIX C

LOVE CANAL -- MAP OF THE PREMISES

APPENDIX D
INVENTORY OF STATE ASSETS

EQUIPMENT INVENTORY

LOVE CANAL

No
No

<u>Item Description</u>	<u>Number</u>	<u>User</u>	<u>Serial Number</u>
Detector (Gas)	16381	General Use	---
Detector (Smoke)	00170	General Use	---
Detector (Smoke)	00171	General Use	---
Dictator	Z007	Pub. Info. Off.	--- 2 OK Padet
Dictator	Z008	Pub. Info. Off.	--- 2 OK Emily
Drill Press	34352	General Use	6171R142 2 OK Plant
Earth Auger	34251	General Use	---
Ektaprint Counter (Kodak)	01764		---
Emergency Escape Unit	18553	General Use	--- 2 OK Plant
Emergency Escape Unit	18554	General Use	---
Fume Hood	16882		--- 2 OK Plant
Ice Maker	94223		--- 2 OK Plant
Indicator (Water)	16043	General Use	--- 5 OK Plant
Indicator (Water)	16275	General Use	12-8 2 OK Plant
Interface Card	16764		---
Lawn Tractor	87-J012	General Use	M00160T381655 2 OK Plant
Locker (Gray)	39320		---
Locker Model A1072	94782		---
Manhole Cover	00015		---
Motor 2 HP	Z010		---
Overhead Projector	22209	General Use	HPL290DLX 2 OK PIO
Oxygen Unit	16722	General Use	113263 2 OK Plant
Portable Blower	16723		---
Portable Water Meter	16801		0 OK Plant
Printer	45159		J012630

No

EQUIPMENT INVENTORY

LOVE CANAL

	<u>Item Description</u>	<u>Number</u>	<u>User</u>	<u>Serial Number</u>
No	Printer Stand	16297		--- 2 OK PIO
	Pump	82G001	General Use	---
	Pump	16448	General Use	233979
	Pump	16449	General Use	234010
	Pump	17184	General Use	00180
	Pump	17257	General Use	880057 2 OK Plant
	Pump	34196	General Use	530636
	Pump Masterflex	34239		--- 2 OK Plant
	Pump (Goulds)	34266	General Use	Q774C646
	<i>Pump (hand pump)</i>	<i>34392</i>	"	<i>278630</i>
	Purifier (Water)	16758	General Use	--- 4 OK Plant
No Have	Racal-Vadic	00154	General Use	307270
	Radio	00910	General Use	422AJU0194
	Radio	00911	General Use	422AJU0195
	<i>Radio</i>	<i>51823</i>	" "	<i>422AJU0646</i>
	Refrigerator	96859	"S" Area	---
	Refrigerator/Freezer	92872	General Use	---
	Regulator (Gas)	16218	General Use	---
	Safety Light			--- D151960
	Safety Light	00019		--- 2 OK Plant
H	Scott Ska Pak	17689		A21182 2 OK Plant
	Snow Plow		General Use	--- 2 OK Plant
No	Sound-Slide Projector/Recorder	22210	General Use	--- 2 OK PIO
	Strip Chart Recorder	17542	General Use	--- 2 OK Plant
No	Sofa	95560	Pub. Info. Off.	--- 2 OK PIO
No	Table	95556	Pub. Info. Off.	--- 2 OK PIO
	Tractor	87-3012	General Use	M981651381655
	Typewriter	45521	Pub. Info. Off.	6705116139846 2 OK Plant
	Weather Measure	18777	General Use	--- 2 OK P

EQUIPMENT INVENTORY

LOVE CANAL

<u>Item Description</u>	<u>Number</u>	<u>User</u>	<u>Serial Number</u>
Welder	34296	General Use	---
Winch System	32187	General Use	---
Winch System	32188	General Use	---
<i>(Wrench)</i> Workbench	<i>34857</i> 32120	" "	<i>286213</i> --- 2 OK Plant
No Wrench (Air Impact)	32220	General Use	--- 2 OK Plant

page 3 of 14

adio (handoff) 50446 LCTP Yp S/4
③ 50447 " 20K Plant
50448 "

Equipment 897001 LCTP 2 OK Plant
& Access 30773489

page 4 of 14

EQUIP. ID # Equipment assigned to the Love Creek
Power Division, Pooled, Necessary

- #86-5001: John Deere Snow Blower
- #87-4004: Grist Hooks for Tractor
- #87-4002: Ryd-90 Wood Rotary Mower
Replaced by Ford flail mower. See
att. memo.

- #86-7189: Ford 545A Tractor
- #89-2001: Grist air compressor on Geopond

- #87-5012: John Deere Riding Lawn Tractor
- ~~#87-4002: Chevrolet pickup (Dodge)~~

- #87-4005: Chevrolet Stake Bed
- #89-3525: Chrysler Ram

- #994
TROY BUILT LAWN TRACTOR
BATTERY POWERED HAND FALL TRUCK
Aerial Work Platform LIFT
STEAM JENNY
PRESSURE WASHER (LANDA)

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION
BUREAU OF REAL PROPERTY

REPORT OF PHYSICAL INSPECTION OF REAL PROPERTY

PROJECT NUMBER		REGION NUMBER	
CATEGORY			
CITY OR TOWN		COUNTY	
REPUTED OWNER			
ADDRESS			
CITY		STATE	ZIP CODE

NOTE CAREFULLY THAT:
(1) **LAND AFFECTED** refers to the entire farm or lot including the **SUBJECT PARCEL**.
(2) **SUBJECT PARCEL** refers to parcel to be acquired.
ANSWER all questions with yes or no and use item 9 or another sheet if additional space is required, referring to item number.

1. IS LAND AFFECTED?
Improved yes no Timber yes no Cleared yes no Wild yes no Wetland yes no
Cultivated yes no
State general conditions and nature of improvements, if any.

2. IS LAND AFFECTED OCCUPIED?
 yes no
Set forth names and addresses of occupants, nature and extent of occupancy and interest claimed. As to each occupant, state whether or not occupancy or interest affects the subject parcel and furnish particulars.

3. IS LAND AFFECTED ENCLOSED?
 yes no
If enclosed, state nature, extent and condition of enclosure.

4. ARE THERE ON, UNDER OR OVER OR ACROSS THE LAND AFFECTED ANY
Poles yes no Wire Lines yes no Towers yes no Conduits yes no
Pipe Lines yes no Sewer Lines yes no Springs yes no Water Wells yes no
Gas Wells yes no Oil Wells yes no Mines yes no Billboards yes no
Signs yes no Other Fixtures or Structures yes no Dump or Evidence of Toxic Waste yes no
List ownership of each item.

5. DO ANY OF THE BURDENS IN ITEM 4 AFFECT SUBJECT PARCEL?
 yes no
Furnish particulars.

6. ARE THERE ON, OVER OR ACROSS THE LAND AFFECTED ANY OF THE FOLLOWING WHICH ARE ALSO ON, OVER OR ACROSS ANY PORTION OF THE SUBJECT PARCEL?
Stream yes no Lake yes no Street yes no Road yes no
Highway yes no Right of Way yes no
If answer is yes, give particulars including whether public or private, if adjacent owners are involved give names, addresses and interests claimed.

APPENDIX E

REPORT OF PHYSICAL INSPECTION

Page 1 of 2

Stream yes no
 Highway yes no
 Right of Way yes no
 Street yes no
 Road yes no

8. ASCERTAIN IF THERE ARE ANY OTHER EASEMENT RIGHTS IN FAVOR OF ADJACENT OWNERS WHICH AFFECT THE SUBJECT PARCEL. GIVE PARTICULARS.

9. STATE ANY OTHER FACTS RESPECTING THE PHYSICAL CONDITION OF THE LAND INSPECTED, ESPECIALLY INsofar AS THEY MAY AFFECT THE TITLE.

10. FROM WHOM DID OWNER ACQUIRE LAND.

 WHEN:

11. DEED WAS RECORDED ON AT PAGE NUMBER	IN DEED BOOK NUMBER COUNTY
--	-----------------------------------

12. IF OTHER THAN DEED, EXPLAIN.

13. IF BY WILL OR INHERITANCE IN WHAT STATE/COUNTY WERE PROCEEDINGS TAKEN ON ESTATE OR PRIOR OWNER?

14. IS ABSTRACT AVAILABLE? yes no
 WILL IT BE LOANED TO NEW YORK STATE? yes no

15. WHERE HAS ABSTRACT NOW?

 ADDRESS

16. ARE THERE ANY BOUNDARY LINE AGREEMENTS BETWEEN ADJOINING OWNERS?
 Yes No
 If yes, provide data:

DEPARTMENT OF ENVIRONMENTAL CONSERVATION

DATE _____ BY _____ TITLE _____

EQUIPMENT CONDITION CERTIFICATION REPORT

Handwritten notes:
 1. 10/1/93
 2. 10/1/93

JUN 15 1994 11:25 NYSDEC LGTF DHR

LOCATION: LOVE CANAL
 BUREAU: CONSTRUCTION SVCS

PLATE NO.	MAKE	MODEL	SERIAL NO.	COUNTY	IDENT CODE	DESCRIPTION	WEIGHT	LICENSE POINTS
828908	SHIPMATE	2009c	J1-4-628969	29 NIAGARA	B 2 21B5	DUMP TRAILER	92000	0000 (P) (X)
826001	BORNER RUPP	1171AR-8	698440	29 NIAGARA	B 2	PUMP		0000 (P) (X)
626013	NOPELITE	111111/2	12001518	41 SARATOGA	6228 15	LOVE CANAL		6200 () ()
646003	CH & E		3103P662	29 NIAGARA	6516 20	LOVE CANAL		0000 (P) (X)

I CERTIFY THAT AN INVENTORY HAS BEEN CONDUCTED AND THAT THE INFORMATION ABOVE IS CORRECT.

Handwritten date: 3/10/93

Handwritten signature: [Signature]

DATE: 3/10/93
 SIGNATURE: [Signature]
 PROGRAM SUPERVISOR

EQUIPMENT CONDITION CERTIFICATION REPORT

BUREAU

WESTM RENEW ACTION

893525 DODGE

RANCHARGER 3B4HM17Y4KM95316B 29 NIAGARA

321U8AAAG

06400
-06120

0000 (G) (X)

893525 DODGE

RANCHARGER 3B4HM17Y4KM95316B 29 NIAGARA

321U8AAAG

06400

0000 (G) (X)

892001 GAST

P6D 10-A 0189

29 NIAGARA

Z 7

DILLESS AIR COMP

0000 (F) (X)

I CERTIFY THAT AN INVENTORY HAS BEEN CONDUCTED
AND THAT THE INFORMATION ABOVE IS CORRECT.

3/10/93

David P. Schwab

DATE

SIGNATURE

PROGRAM SUPERVISOR

page 6 of 14

EQUIPMENT LISTED ON PROGRAM INVENTORY SHEETS BUT NOT LOCATED IN PROGRAM

page 8 of 14

14:28 FROM 11-1991
 34403 NISUC R 9 Buffalo
 TO
 Love Canal P. 21

<u>ID#</u>	<u>Program Name</u>	<u>Type</u>	<u>Serial #</u>	<u>Description</u>	<u>Location County/Person</u>
2153 ?		30033 ?		TRAPD. SAFETY	ERIE 2 OK Plant
2154		33002		SCOTT PUMP AIR OPERATED	ERIE
34194		30068		JACK, SERVICE 6 TON	ERIE
34250		30016		WEVER LIFT THRU POST HYDR	CATT
34357		30027		MILLE MINCH	ERIE
94464		60917		GENERAL FREEZ REFRIG-FREEZER	ERIE
93921	2 OK Plant	61300		ELKAY WATER COOLER	ERIE
50303		12101	880213	TRACR DETECTING CHEMICAL	ERIE
53797		10602	11545	SAMPO METER PORT. WATER	ERIE
34102	2 OK Plant	30082	605420499	AMSIG American Sigma COMPRESSOR, AIR-ACC	MA
34403		30092	507733489	AMSIG COMPRESSOR, AIR-ACC	MA
34416	2 OK Plant	30005	89322	CONBL COMPRESSOR-TRUCK	MA
18300		10100	85-04-050	BRSTD ANALYZER, AIR	ERIE
90773		60917		AMSIG REFRIG-FREEZER	MA 2 OK Plant

EQUIPMENT MANAGEMENT UNIT
NON-AUTOMOTIVE EQUIPMENT INVENTORY VERIFICATION AND CONDITION REPORT

LOCATION/UNIT CODE

900001

ID. NO	MFG	MODEL	REGION	TYPE	PROGRAM UNIT	LOCATION		OK/INC	STATUS
			9		WESTERN RNDIAL ACT	CENTRAL OFFICE			
			SERIAL NUMBER		DESCRIPTION	CNTY	COND		

1 SCIENTIFIC AND LABORATORY EQUIPMENT									
17184	KINEO	5A51-G482X	00180	11801	PUMP, VACUUM & LAB	NIAG	(2)	(OK)	(Plant)

END OF 1 SCIENTIFIC AND LABORATORY EQUIPMENT

3 SHOP EQUIPMENT									
34298	LMCLM	AC/DC225		30011	WELDER, ACETYLENE	ERIE	(2)	(OK)	(Plant)
34355	UP-RT	UL-20-26	2747	30035	PLATFORM/AERIAL/PERSONNEL LIFT	ERIE	(2)	(OK)	(Plant)
34374	TECUM	MM5-25A	6F3087C632356	30081	COMPRESSOR, AIR, OVER 2 H.P.	ERIE	()	()	()

END OF 3 SHOP EQUIPMENT

1 SCIENTIFIC AND LABORATORY EQUIPMENT									
51823	MOTOR	MT-500	422ANE0646	12303	TRANSCEIVER, PORTABLE	ERIE	(2)	(OK)	(Plant)

END OF 1 SCIENTIFIC AND LABORATORY EQUIPMENT

6 FURNITURE									
96356	WHIRL	ED19TKXMR	554922282	60917	REFRIGERATOR-FREEZER	ERIE	()	()	()

END OF 6 FURNITURE

I CERTIFY THAT AN INVENTORY HAS BEEN COMPLETED AND THAT THE ABOVE INFORMATION IS CORRECT.

DATE PROGRAM SUPERVISOR

Love Canal P.02 TO TO BUFFALO FROM 14:09 1991

186 page
JUN 15 '94 11:35 NYSDEC LCTF DVAR

91/02/12
FVNA05

NYS DEPARTMENT OF ENVIRONMENTAL CONSERVATION

PAGE 462

EQUIPMENT MANAGEMENT UNIT
NON-AUTOMOTIVE EQUIPMENT INVENTORY VERIFICATION AND CONDITION REPORT

LOCATION/UNIT CODE

99160E

ID. NO	MFG	MODEL	REGION	TYPE	PROGRAM UNIT	LOCATION			STATUS
			SERIAL NUMBER		WESTERN REML ACTN	LOVE	CANAL	OK/INC	
1	SCIENTIFIC AND LABORATORY EQUIPMENT								
S3105	ZENTH	286	0050F000444	10300	COMPUTER	ERIE	()	()	()

END OF 1 SCIENTIFIC AND LABORATORY EQUIPMENT

I CERTIFY THAT AN INVENTORY HAS BEEN
COMPLETED AND THAT THE ABOVE INFORMATION
IS CORRECT.

DATE

PROGRAM SUPERVISOR

4/19/01
JUN 15 '94 11:35 NYSDEC LCTF DHR
Page 10 of 14

EQUIPMENT MANAGEMENT UNIT
NON-AUTOMOTIVE EQUIPMENT INVENTORY VERIFICATION AND CONDITION REPORT

LOCATION/UNIT CODE

9910QE

ID. NO	MFG	MODEL	REGION		TYPE	PROGRAM UNIT		LOCATION			STATUS	
			SERIAL NUMBER	9		WESTERN RENOL ACTN	DESCRIPTION	LOVE	CANAL	COND		OK/INC
6 FURNITURE												
04593	CORRE				60504	FILE, LEGAL, 3 DRAWER		NIAG	(2)	(OK)	(PIO))
04594	CORRE				60504	FILE, LEGAL, 3 DRAWER		NIAG	(2)	(OK)	(PIO))
END OF 6 FURNITURE												
3 SHOP EQUIPMENT												
34392	WRUPP	SBI 1/2-A	278630		33002	PUMP, AIR OPERATED		NIAG	(2)	(OK)	(Plant))
34448	BLUGT	PT-W4	9030085		30013	LIFT TRUCK		NIAG	(2)	(OK)	(Plant))
END OF 3 SHOP EQUIPMENT												
4 OFFICE EQUIPMENT												
46252	MURTA	F40	1700036274		40504	TELECOPIER		NIAG	(2)	(OK)	(PIO))
END OF 4 OFFICE EQUIPMENT												
6 FURNITURE												
99367	GLDBL	48"X30"X29			60113	WORKSTATION-COMPUTER		NIAG	(2)	(OK)	(PIO))
END OF 6 FURNITURE												
1 SCIENTIFIC AND LABORATORY EQUIPMENT												
S1296	IBMCO	PS/2-50Z	72-7189420		10300	COMPUTER		NIAG	(2)	(OK)	(PIO))
S1301	IBMCO	8513	23-PM254		10312	MONITOR		NIAG	(2)	(OK)	(PIO))
S1306	IBMCO	QW-III	11-7551943		10303	PRINTER		NIAG	(2)	(OK)	(PIO))
S1309	IBMCO	QW-III	11-7540924		10303	PRINTER		ERIE	()	()	())
S1311	IBMCO	SHEETFEED	171226		10304	PRINTER ACCESSORY		NIAG	(2)	(OK)	(PIO))
S1314	IBMCO	SHEETFEED			10304	PRINTER ACCESSORY		ERIE	()	()	())
S3104	ZENTH	286	005DF000527		10300	COMPUTER		ERIE	()	()	())

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EQUIPMENT NOT LISTED ON PROGRAM INVENTORY SHEETS BUT LOCATED IN PROGRAM

ID#	Program Name	Type	Serial #	Description	County/Person
32187	Love Canal	Evalok		Retracting Steel Life Line	Niagara Plant
32188	Love Canal	Evalok		Retracting Steel Life Line	Niagara Plant
N/A	Love Canal	Evalok		Retracting Steel Life Line	Niagara Plant
N/A	Love Canal	Miller	286213	Hand Winch	Niagara Plant
16275	Love Canal	Soilttest		Water Level Indicator	Niagara Plant
32160	Love Canal	Continental	106185	Bench Grinder	Niagara Plant
N/A	Love Canal	National		Pontoon Boat	Niagara Plant
N/A	Love Canal	Mercury		Boat Motor, 7.5 HP	Niagara PIO
N/A	Love Canal	ACP		Dual Compressor, 1.5 HP Ea.	Niagara Plant
N/A	Love Canal	Honda		Water Pump, 5 HP	Niagara Plant

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JUN 15 '94 11:34 NYSDEC LCTF DHR

EQUIPMENT NOT LISTED ON PROGRAM INVENTORY SHEETS BUT LOCATED IN PROGRAM

ID#	Program Name	Type	Serial #	Description	County/Person
20375	Love Canal PIO	Kodak	1154097	Carousel 750 Slide Projector	Niagara PIO
97941	Love Canal PIO	Corcraft		5 Drawer, Legal File Cabinet	Niagara PIO
97942	Love Canal PIO	Corcraft		5 Drawer, Legal File Cabinet	Niagara PIO
95558	Love Canal PIO	Corcraft		5 Drawer, Legal File Cabinet	Niagara PIO
95559	Love Canal PIO	Corcraft		5 Drawer, Legal File Cabinet	Niagara PIO
N/A	Love Canal	Gast	0440-V2C	3 HP Air Pump, Seam Tester	Niagara PIO
16248	Love Canal	MSA		Portable Combustion Gas/O2 Alarm	Niagara Plant
16801	Love Canal	Fisher		PH Meter, Model 360	Niagara Plant
18779	Love Canal	HWU		10.2 EV Air Probe/Analyzer	Niagara Plant
18582	Love Canal	HWU		10.7 EV Air Probe/Analyzer	Niagara Plant
N/A	Love Canal	Radio Shack	13031260	Daisy Wheel Printer	Niagara Plant
N/A	Love Canal	G.E.	387161	Refrigerator Freezer	Niagara Plant
16221	Love Canal	Ecodyne	377022	Chemical Feed Pump	Niagara Plant
17418	Love Canal	Epson		Computer Printer	Niagara Plant
17314	Love Canal	IBM	5252074	Computer XT	Niagara Plant
17315	Love Canal	IBM		Monitor	Niagara Plant

re. }
 {

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 JUN 15 '94 11:33 NYSDEC LCTF DPAR

EQUIPMENT INVENTORY

LOVE CANAL

<u>Item Description</u>	<u>Number</u>	<u>User</u>	<u>Serial Number</u>
Air Dryer	16669	General Use	--- 2 OK Plant
Amplifier	01171	General Use	---
Analyzer, HNU	00909		41508 2 OK Plant
Back Flow Prev. & Water Meter	16604		31411288 2 OK Plant
2 Burglar Alarm System	16940	General Use	---
Cabinet (File) (5)	00262	General Use	--- 2 OK Plant
Cabinet (File) (5)	94068	General Use	--- 2 OK Plant
Cabinet (File) (5)	96779	General Use	--- 2 OK Latko
Cabinet (File) (5)	96780	General Use	--- 2 OK Latko
Cabinet (Safety)	94514	General Use	---
Cabinet (Storage)	92782	General Use	---
Cabinet (Storage)	94783	General Use	---
Camera	Z015	Comm. Relations	--- 2 OK PIO
Cart	94640	General Use	--- 2 OK Plant
Chair (Flex)	Z023	Pub. Info. Off.	--- 2 OK PIO
Chair (Flex)	Z024	Pub. Info. Off.	--- 2 OK PIO
Chair (Flex)	Z025	Pub. Info. Off.	--- 2 OK PIO
Chair (Flex)	Z026	Pub. Info. Off.	--- 2 OK PIO
Chair (Flex)	Z027	Pub. Info. Off.	--- 2 OK PIO
Chair (Flex)	Z028	Pub. Info. Off.	--- 2 OK PIO
Chair (Secretarial)	Z029	General Use	--- 2 OK Latko
Chair (Swivel)	94669	Pub. Info. Off.	--- 2 OK Padel
Clock (Multispeed Timer)	17568	General Use	113727-84
Clock (Multispeed Timer)	17569	General Use	113728-84
Combination Bench & Pipe Vice	32149	General Use	---
Compressor	34874	Latko	GF 5084063256
Copier 283ZMR	45792	General Use	9923019 + OK PIO
Desk	95557	Pub. Info. Off.	--- 2 OK Latko
Desk	95594	Pub. Info. Off.	--- 2 OK Plant
Desk	95603	Pub. Info. Off.	--- 2 OK Padel

CONFIDENTIAL

Notes of issues and questions during the development of OCC Concernt Decree for the settlement of the Love Canal site.

*File in
~~Section~~
Judicial Decree
12/18*

All costs incurred on or after May 18, 1994 are to be added to the settlement.

Environmental Monitor is probably not a good choice to describe oversight activity, since the activity involves a short duration (in concept) and the activity is primarily training and oversight. We are going to call the individuals maintenance & operation trainer and inspector.

PESH is the OSHA equivalent for municipal facilities excluding federal facilities.

The financial assurance issue may be substituted with a Guarantee provision which binds OCC and all their companies (I believe). I am still not totally comfortable with this method long term ie. corporate changes via sale. There does appear to be a clause which allows the assignment of responsibility which should take care of a proposed sale and allows the state to determine the financial capability of the buyer. This does not solve the issue of the future economic stability of the company, however in this case we have several companies responsible.

ANSWER TO PUNCHLIST FOR OCC-DATED 5/23/94

DEC does not anticipate repair or replacement of any major remedial components other than the clarifier and sludge tanks mentioned in the summary memo to Mike O'Toole dated 5/18/94.

The yearly costs of cleaning the tanks and wells is \$6,200 based on our current contract.

The drain lines were last cleaned in November 1991.

The performance standards listed by DEC on the outline of O&M activities will remain the same.

The design of the new sludge tanks is expected to be completed in about a month. The replacement of the tanks will be the decision of OCC because OCC may have an alternative management scheme for this material.

The three trainers / inspectors are the current staff employed by the state. These individuals have been working at the site between 8 to 14 years.

A copy of the most recent City inspection report was sent to Loyd Wood on May 23, 1994. See this letter listing all the items sent and the status of any violations found. In summary all have been addressed.

Robert Herson is to contact Donna Weigle on the issue of outstanding invoices. One cost left out of the summary memo to M. O'Toole dated 5/18/94 was the final change order and retainage to

the Entec contract (#D002898) for the Area 4 /Frontier Avenue work. These costs are \$34,910.67 for change order number 4 and \$19,417.85 for retainage equaling \$54,328.52.

OCC may review and comment on the well decommissioning contract before it is bid. Bid prices should be the same whether bid by OCC or the state. EPA has review responsibilities on the products produced. If OCC is paying the state and federal costs no approval is necessary. OCC may operate under the existing permit until it is renewed by OCC. The permit must be renewed by July 1995 which provides plenty of time . No need to obtain EPA approval on our settling relative to this project since OCC is paying for the Love Canal work.

No RCRA permit is required to operate this hazardous waste site remedial measure because it is exempt under both CERCLA and Part 375 providing the substantial technical requirements are met and no waste from another site is managed there.

Bob Herson will contact Donna Weigle on how to respond to the request for a list of all outstanding invoices. I indicated that \$10,000 is about the order of magnitude at the most, however, I discovered that some of the costs (such as personal services) have only been provided through about mid February. This could add another \$10,000 or so to the costs outstanding to date not covered in the status memo to Mike O'Toole dated 5/18/94.

Comments on FAX dated 5/23/94

Approval of an OCC subcontractor (to operate the plant) would be a good feature in case their contractor performs poorly.

I understand that instead of stipulated penalties for failure to perform O&M properly we have the ability to approach the court under the Consent Decree.

Under payment of oversight costs we should either have OCC pay the actual cost of the known activity or allow for the increased costs due to inflation.

Do not try to totally describe all the O&M requirements in the Appendix. This document was intended to be an outline of the major activities . Therefore add after Appendix A "plus any other activities required and normally associated with operating a facility of this type."

See letter to Loyd Wood on additional items sent ie. March 5, 1992 "Recommendations for Modifications of Love Canal Long-Term Monitoring Program" ;Memmoranda on health and safty inspections dated 8/17/92; 8/27/92; 4/26/93; Love Canal Leachate Treatment Facility Sampling Program-1994.

Tables showing proposed oversight costs for first year and subsequent years. 28,100 for the first year and between 13,200 and 22,750 the second and future years depending on number of samples taken and not counting inflation nor any unusual oversight needs.

Comments on 5/26/94 FAX

OCC will take over the plant and the transition period will begin 90 days after signing the Consent Decree. This is acceptable because OCC will have to hire staff and the court has to approve the agreement. Tentative schedule June 6, 1994.

All costs on or after May 18, 1994 will be paid by OCC. This is one day earlier than previously reported.

The number of wells to be decommissioned is to be approximately 143.

We decided that a statement of condition is implied because of the description of the projects and the completion of corrective measures based on inspections. We do not want to generate the desire for an inspection by OCC just to verify that the plant is in good condition which it is. After all, it is 14 years old and we have laid out the maintenance activities necessary at this point in time.

The sludge waste analysis plan will be completed by DEC. OCC's request to use the analysis from their procedure prior to burning as the waste analysis plan is acceptable since according to our schedule it would have to be done every two years. This analysis is far more extensive than what the waste analysis plan will recommend.

OCC wanted to know where the Plasma Arc generator is. DEC is using this equipment, therefore, since we want to keep it we will depreciate the generator and provide OCC with a credit. The Plasma Arc itself will remain OCC's. The generator was purchased under contract #D 000732. I will continue to try and resolve the title issue so OCC will have unquestioned ownership and the ability to move it.

The technical documents are to include the three volumes of the O&M manual and the Long term monitoring report by Jordan-1987 plus add "Recommendation for Modification of the Love Canal Long-Term Monitoring Program (March 1992). Revise the average frequency column of the summary of activities to show elevations performed quarterly.

Met with real property services to develop the final easements that are necessary to operate the site so they can develop paperwork to transfer the easement to OCC. The only outstanding issue is whether any easements will be required for monitoring wells. The department will complete the well decommissioning program so that we will eliminate the need for most of them. We will identify and obtain any that are required including access to DOT, UDC, LCARA, private owners and the City of Niagara Falls. We have tried to eliminate this problem by choosing wells appropriately. The current easements that are necessary to operate the site and perform the vast majority (if not all) of the monitoring program are in place and will be transferred.

All the major contracts were pulled from storage to determine the status of indemnification.

The fixed asset inventory was obtained to identify property to be transferred. This documentation is not very detailed so I suggested we refer to the as-built drawings. That is the way we are going to go.

OCC proposed the DEC renew the city discharge permit. NO! OCC will be responsible for this. If the Mayor gives OCC a hard time unreasonably then the department would intervene by using the court if the issues cannot be resolved.

On the issue of requiring OCC to provide insurance for the buildings we will obtain a figure using past construction costs adjusted for inflation since we need a number now. We will use a 10 million dollar figure for the buildings. I increased the value from the 6 million dollar figure roughly calculated using inflation estimates because the construction of the plant in those days did not require all the code restrictions and procedures of today. FAXED the calculation to Norm 5/26/94.

OUTSTANDING ITEMS

Monitoring memorandum-Ben, Maurice

Appendices of monitoring report-John, Maurice

Depreciation of Plasma Arc generator- John

Necessary well easements-John, Will

Old Decree- time frame to remove wastes-Jerry

CERCLA / PART 375 the need for a permit- Jerry

For issues and tracking refer to Transition Team Task List.

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA;
THE STATE OF NEW YORK;
UDC-LOVE CANAL, INC.,

Plaintiffs,

v.

OCCIDENTAL CHEMICAL CORPORATION;
OXY CHEMICAL CORPORATION;
OCCIDENTAL CHEMICAL HOLDING
CORPORATION; OCCIDENTAL PETROLEUM
INVESTMENT CORPORATION; OCCIDENTAL
PETROLEUM CORPORATION; CITY OF
NIAGARA FALLS, NEW YORK; COUNTY
OF NIAGARA; and BOARD OF
EDUCATION OF THE CITY OF
NIAGARA FALLS (Love Canal
Landfill),

Defendants.

Civil Action No. 79-990C

PARTIAL CONSENT DECREE

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UNITED STATES OF AMERICA;
THE STATE OF NEW YORK;
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v.

Civil Action No. 79-990C

OCCIDENTAL CHEMICAL CORPORATION;
OXY CHEMICAL CORPORATION;
OCCIDENTAL CHEMICAL HOLDING
CORPORATION; OCCIDENTAL PETROLEUM
INVESTMENT CORPORATION; OCCIDENTAL
PETROLEUM CORPORATION; CITY OF
NIAGARA FALLS, NEW YORK; COUNTY
OF NIAGARA; and BOARD OF
EDUCATION OF THE CITY OF
NIAGARA FALLS (Love Canal
Landfill),

Defendants.

PARTIAL CONSENT DECREE

WHEREAS, the United States of America ("United States"), on behalf of the Administrator of the United States Environmental Protection Agency ("EPA"), filed a Complaint in this matter on December 20, 1979, asserting various federal statutory and common law claims arising out of the migration and threatened migration of hazardous substances from the Love Canal landfill in Niagara Falls, New York. The United States filed a Second Amended Complaint on January 17, 1984, adding claims pursuant to Sections 106 and 107 of the Comprehensive

Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. §§ 9606 and 9607, for the recovery of response costs incurred by the United States and for the performance of remedial actions in response to the release and threatened release of hazardous substances into the environment from the Love Canal landfill.

WHEREAS, the State of New York (the "State") filed a Complaint in this matter on September 18, 1980, asserting various common law of public nuisance and restitution claims, arising from the disposal by defendants of hazardous wastes at the Love Canal landfill, which resulted in the migration or threatened migration of these wastes from the landfill. Subsequently, the State filed a Supplemental and Amended Complaint on January 17, 1984, amending the claims previously asserted and adding claims pursuant to Section 107 of CERCLA, 42 U.S.C. § 9607, for cost recovery and further remediation.

WHEREAS, pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, EPA placed the Love Canal site on the National Priorities List by publication in the Federal Register. 47 Fed. Reg. 58476 (Dec. 30, 1982) (proposed rule); 48 Fed. Reg. 40658 (Sept. 8, 1983) (final rule); 40 C.F.R. Part 300, Appendix B.

WHEREAS, hazardous wastes have migrated from the Love Canal landfill into Love Canal area sanitary and storm sewers and certain stretches of Black and Bergholtz Creeks.

WHEREAS, pursuant to a cooperative agreement with EPA, the New York State Department of Environmental Conservation

("NYSDEC") retained a contractor to prepare a remedial investigation/feasibility study ("RI/FS") to evaluate the need for remedial action in five areas adjacent to the Love Canal Site, including principally the need to address contamination in Love Canal area sewers and creeks. The RI/FS report, entitled "Environmental Information Document: Site Investigations and Remedial Action Alternatives at Love Canal," was released for public comment in October 1983.

WHEREAS, EPA retained a contractor to prepare a supplemental FS to evaluate remedial action alternatives to address contamination of Love Canal area sewers and creeks. The supplemental FS report, entitled "Love Canal Sewer and Creek Remedial Alternatives Evaluation and Risk Assessment," along with EPA's proposed remedial action plan, was released for public comment on March 1, 1985.

WHEREAS, on May 6, 1985, EPA issued a Record of Decision ("1985 ROD") in which EPA selected a remedy for the Love Canal area sewers and creeks, explained the reasons for its decision, and responded to each significant comment received during the public comment period. The 1985 ROD provided for, inter alia, the hydraulic cleaning of specified sanitary and storm sewers, the dredging of dioxin-contaminated sediment from specific stretches of Black and Bergholtz Creeks, and the temporary storage of the excavated sewer and creek sediments at the Love Canal site pending development of a viable option for

permanent disposal of the sediments. The State concurred with the remedy selected in the 1985 ROD.

WHEREAS, pursuant to a cooperative agreement with EPA, NYSDEC completed the hydraulic cleaning of the sanitary and storm sewers, certain related response actions, and design of the creek sediment excavation and temporary storage facility.

WHEREAS, EPA released for public comment an Addendum FS, entitled "Alternatives for Destruction/Disposal of Love Canal Sewer and Creek Sediments," on June 24, 1987, and a "Proposed Plan for the Destruction/Disposal of Love Canal Sewer and Creek Sediments" on August 5, 1987. A technical workshop and public meeting were held to discuss the Addendum FS and proposed plan on August 12, 1987, and August 25, 1987, respectively.

WHEREAS, on October 26, 1987, EPA issued a Record of Decision ("1987 ROD") in which it selected the remedy for destruction and disposal of the sewer and creek sediments and other remedial wastes stored at Love Canal, explained the reasons for its decision, and responded to each significant comment received during the public comment period. Specifically, the 1987 ROD provided for temporary storage of contaminated sewer and creek sediments in a dewatering and containment facility ("DCF") and thermal destruction of the sediments, along with certain remedial wastes and sludge from the Love Canal Leachate Treatment Facility, in a transportable thermal destruction unit ("TTDU"). The 1987 ROD further provided that, in the absence of available off-site facilities, both the DCF and TTU would be located at

the Love Canal site and that non-hazardous residues remaining after thermal destruction would be disposed of on-site in areas that would not impinge on the integrity of the existing cap. The State concurred with the remedy selected in the 1987 ROD.

WHEREAS, pursuant to a cooperative agreement with EPA, NYSDEC commenced implementation of the 1987 ROD in August 1988.

WHEREAS, in February 1988, Occidental Chemical Corporation ("OCC") submitted a proposal to EPA and the State under which OCC would implement portions of the 1987 ROD. Specifically, OCC proposed to store the excavated sewer and creek sediments and other waste materials, including waste generated at other OCC hazardous waste sites in western New York, in a centralized, permitted waste storage facility to be constructed at its Buffalo Avenue plant site in Niagara Falls, New York, and to thermally destroy the materials in a centralized, permitted thermal destruction unit also to be constructed at its plant site.

WHEREAS, on February 23, 1988, the Court entered partial summary judgment against OCC, holding it liable pursuant to Section 107(a)(2) of CERCLA, 42 U.S.C. § 9607(a)(2), as the former owner and operator of the Love Canal landfill, for costs incurred in response to the release and threatened release of hazardous substances from the Site. United States v. Hooker Chemicals & Plastics Corp., 680 F. Supp. 546 (W.D.N.Y. 1988). The potential liability of other parties and the amount of

recoverable costs and other appropriate relief are the subject of continuing litigation in this action.

WHEREAS, in March 1988, EPA and NYSDEC informed OCC that they were not prepared to delay implementation of the 1987 ROD, but advised OCC that it could pursue its proposal by applying for the necessary State and Federal permits for its centralized storage facility and thermal destruction unit.

WHEREAS, OCC submitted a permit application for its centralized storage facility on September 14, 1988, and subsequently submitted revised applications. OCC submitted an initial permit application for its centralized thermal destruction unit on January 9, 1989.

WHEREAS, following submission of OCC's revised permit applications, EPA and the State decided to enter into negotiations with OCC regarding implementation of the 1987 ROD. Pursuant to Section 121(f)(1)(F) of CERCLA, 42 U.S.C. § 9621(f)(1)(F), EPA informed the State of its intention to enter such negotiations and provided the State with an opportunity to participate in the negotiations and be a party to the decree.

WHEREAS, pursuant to Section 122(j) of CERCLA, 42 U.S.C. § 9622(j), EPA notified the Federal natural resource trustees of its negotiations with OCC and encouraged the Federal natural resource trustees to participate in those negotiations.

WHEREAS, OCC has agreed to implement portions of the 1987 ROD, as modified and further delineated in this Partial Consent Decree ("Decree").

WHEREAS, the Settling Parties, as hereinafter defined, believe that the remedial actions required to be implemented by OCC under this Decree are protective of human health and the environment, are cost-effective, utilize permanent solutions and alternative treatment technologies to the maximum extent practicable, and are consistent with CERCLA and the National Contingency Plan.

WHEREAS, pursuant to Section 117(c)(3) of CERCLA, 42 U.S.C. § 9617(c)(3), EPA is, concurrently with the lodging of this Decree, publishing an explanation of the significant differences between the remedial actions selected in the 1987 ROD and the remedial actions to be implemented pursuant to this Decree.

WHEREAS, the Settling Parties recognize the obligation to inform the public of the nature and status of remedial actions and related work to be carried out pursuant to this Decree and acknowledge that final approval and entry of this Decree are subject to applicable Federal and State public participation requirements.

WHEREAS, pursuant to Section 122 of CERCLA, 42 U.S.C. § 9622, the Settling Parties have each stipulated and agreed to the making and entry of this Decree.

WHEREAS, the Settling Parties recognize that this Decree constitutes only a partial settlement of this action and, therefore, agree that this Decree, including the foregoing recitals, shall not waive or compromise any rights, defenses,

positions, comments or objections that the Settling Parties may have with respect to any claim for reimbursement of costs, damages or other relief that is not expressly covered by this Decree.

NOW THEREFORE, it is ORDERED, ADJUDGED, AND DECREED as follows:

I.

JURISDICTION

1. The Court has jurisdiction over the subject matter of this action and the parties to this Decree pursuant to Sections 106, 107, and 113 of CERCLA, 42 U.S.C. §§ 9606, 9607, and 9613, and 28 U.S.C. §§ 1331 and 1345. The Settling Parties, as hereinafter defined, waive all objections and defenses that they may have to this Court's jurisdiction to enter and enforce this Decree. The Court has venue over this action pursuant to Section 113(b) of CERCLA, 42 U.S.C. § 9613(b).

II.

PARTIES BOUND

2. This Decree applies to and is binding upon the undersigned parties and their officers, directors, employees, agents, contractors, receivers, trustees, successors and assigns. The undersigned representatives of each party to this Decree certify that they are fully authorized by the party whom they represent to enter into the terms and conditions of this Decree and to execute and legally bind that party to it. OCC shall provide a copy of this Decree to each contractor retained to

perform any Work required by this Decree and shall require, pursuant to contractual arrangement, that each such contractor provide notice of this Decree to any subcontractor retained to perform any part of the Work required by this Decree. OCC shall be solely responsible for monitoring and otherwise ensuring that its contractors and subcontractors perform the Work contemplated herein in accordance with this Decree.

III.

DEFINITIONS

3. Whenever the following terms are used in this Decree, the following definitions shall apply:

a. "Centralized Storage Facility" or "CSF" means the centralized waste storage facility which is proposed to be located at the OCC Plant Site and permitted and used for temporary storage of Love Canal Remedial Wastes and wastes from certain other OCC hazardous waste sites.

b. "CERCLA" means the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. § 9601 et seq.

c. "Contractor" means the company or companies, including any subcontractors, retained by or on behalf of OCC to undertake and complete any Work required by this Decree.

d. "Creek Sediments" means all materials that are removed during excavation of Black and Bergholtz Creeks pursuant to the 1985 and 1987 RODs and which are described under Creek Remediation in Table 1 of the 1987 ROD, including any material

removed from in or under the haul roads, the temporary dewatering pad, and the decontamination areas associated with the project, except that the term does not include large debris and free liquids removed from such materials in accordance with this Decree.

e. "Day" means calendar day unless otherwise stated. In computing any period of time under this Decree, if the last day falls on a Saturday, Sunday or legal holiday, the period shall run until the end of the next day which is not a Saturday, Sunday or legal holiday.

f. "Decree" means this Partial Consent Decree and all Appendices hereto.

g. "Dewatering and Containment Facility" or "DCF" means the waste storage facility to be constructed at the Love Canal Site pursuant to the 1987 ROD. A map indicating the proposed location of the DCF is attached hereto as Appendix A.

h. "ECL" means the New York State Environmental Conservation Law.

i. "Engineer" means the company or companies retained by or on behalf of OCC to prepare the construction plans and specifications necessary to accomplish the Remedial Actions and to supervise the performance of all Work required by this Decree.

j. "EPA" means the United States Environmental Protection Agency.

k. "Governments" means the United States, the State of New York, and the agencies thereof.

l. "Large Debris" means solid materials, such as tree trunks, tires, refuse and boulders, that are removed from Black and Bergholtz Creeks and are not suitable for incineration in the physical condition in which they are collected.

m. "Liquid Waste Incinerator" means the existing liquid hazardous waste incinerator located at the OCC Plant Site for which OCC has submitted applications for permits to treat liquid wastes from the Hyde Park landfill and other OCC remedial sites, pursuant to the Stipulation and Order on Procedure Concerning Incineration of Hyde Park NAPL entered by the Court on August 11, 1986, in United States v. Hooker Chemicals & Plastics Corp., 641 F. Supp. 1303 (W.D.N.Y).

n. "Love Canal Area" means the area in the City of Niagara Falls and the Town of Wheatfield, New York, which encompasses the "Love Canal Emergency Declaration Area," as defined by Section 213 of the Superfund Amendments and Reauthorization Act of 1986, Pub. L. No. 99-499, 100 Stat. 1613, as well as those portions of the sewers and creeks at which remedial actions have been or are to be taken pursuant to the 1985 and 1987 RODs. A map indicating the location of the Love Canal Area is attached hereto as Appendix A.

o. "Love Canal Leachate Treatment Facility" or "LTF" means the treatment facility located within the Love Canal Site and operated by NYSDEC to treat leachate collected from the

Love Canal containment system. A map indicating the location of the LTF is attached hereto as Appendix A.

p. "Love Canal Remedial Wastes" means all Love Canal Sewer Sediments, Creek Sediments, O&M Wastes, LTF Sludge and Large Debris, as those terms are defined in this Decree.

q. "Love Canal Site" or "Site," for purposes of this Decree, means the area in the City of Niagara Falls, New York, located within the chain link fence that surrounds the LTF and the former Love Canal landfill, along with the reaches of Black and Bergholtz Creeks to be remediated pursuant to the 1985 and 1987 RODs, the OCC Staging Area, adjacent areas, and areas to which access is required to carry out the creek cleaning project and the OCC staging operations and temporary storage prior to transportation to the OCC Plant Site. A map indicating the location of the Love Canal Site is attached hereto as Appendix A.

r. "LTF Sludge" means liquid phase containing organic material that has resulted or will result from the collection or treatment of leachate at the LTF and has been or will be stored at the Love Canal Site.

s. "National Contingency Plan" or "NCP" means the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, and codified at 40 C.F.R. Part 300, including any amendments thereto.

t. "NYSDEC" means the New York State Department of Environmental Conservation.

u. "NYSDOH" means the New York State Department of Health.

v. "Occidental Chemical Corporation" or "OCC" means Occidental Chemical Corporation, and its officers, directors, agents, contractors, receivers, trustees, successors and assigns, except with regard to the obligations to perform Work or to pay penalties in which case the terms mean Occidental Chemical Corporation itself, and its receivers, trustees, successors and assigns.

w. "OCC Plant Site" means OCC's chemical production facility located on Buffalo Avenue in the City of Niagara Falls, New York.

x. "OCC Staging Area" means the area located on the 93rd Street School site which is to be used by OCC and its contractors for handling and preparing Creek Sediments and other Love Canal Remedial Wastes prior to their transportation to the OCC Plant Site or to the DCF. A map indicating the location of the OCC Staging Area is attached here to as Appendix A.

y. "OCC Staging Area Temporary Storage Pad" means that area within the OCC Staging Area upon which OCC will temporarily store Love Canal Creek Sediments and Sewer Sediments prior to transporting these materials from the OCC Staging Area.

z. "O&M Waste" means all spent activated carbon residues, solids that result from the collection or treatment of leachate at the LTF, and other waste materials contained in drums, including drill cuttings, equipment, sampling gear, soil

and sediment, that have been or will be generated during the operation and maintenance of the Love Canal LTF and containment system and other activities undertaken to ensure the continued effectiveness of remedial actions at the Love Canal Site or to respond to findings of contamination within the Love Canal Area that present an imminent and substantial endangerment to public health, welfare or the environment or constitute a public nuisance.

aa. "On-Site Work" means any Work or activity conducted or to be conducted within the boundaries of the Love Canal Site, as defined by this Decree.

bb. "Permanent Staging Area" means the area within the Love Canal Site which is located north of the DCF and is intended to be used for staging operations. A map indicating the location of the Permanent Staging Area is attached hereto as Appendix A.

cc. "Plans and Specifications" means those documents required to be submitted under this Decree which include, as appropriate, the detailed engineering and technical plans, procedures, specifications, designs, protocols, schedules, and drawings necessary to carry out any On-Site Work or the transportation of Love Canal Remedial Wastes under this Decree, and all modifications to such Plans and Specifications agreed to by the Settling Parties.

dd. "Record of Decision" or "ROD" means the Record of Decision relating to the Site signed on October 26,

1987, by EPA's Assistant Administrator for Solid Waste and Emergency Response, and all attachments thereto ("1987 ROD"), or the Record of Decision relating to the Site signed on May 6, 1985, by EPA's Acting Assistant Administrator for Solid Waste and Emergency Response, and all attachments thereto ("1985 ROD").

ee. "Remedial Actions" means those remedial measures authorized by the 1987 ROD, as modified herein, which OCC commits to perform pursuant to this Decree.

ff. "Settling Parties" means the United States, the State of New York, and Occidental Chemical Corporation.

gg. "Sewer Sediments" means all materials that have been or will be removed from Love Canal Area sewers pursuant to the 1985 and 1987 RODs.

hh. "State" means the State of New York.

ii. "Thermal Destruction Unit" or "TDU" means the solid waste incinerator which is proposed to be permitted and used by OCC to thermally destroy Love Canal Remedial Wastes, as set forth herein.

jj. "Transportable Thermal Destruction Unit" or "TTDU" means the transportable thermal destruction unit proposed to be erected at the Love Canal Site under the 1987 ROD and intended to be removed from the Site following thermal destruction of all Love Canal Remedial Wastes.

kk. "Work" means all work, activities, measures or other actions necessary to implement the Remedial Actions required by this Decree, including the design, implementation,

monitoring, and operation and maintenance of the Remedial Actions, and the preparation and implementation of Plans and Specifications, reports and other submissions required under the Decree.

4. All terms not otherwise defined herein shall have their ordinary meanings, except that those terms defined in Section 101 of CERCLA, 42 U.S.C. § 9601, or in the NCP shall have the meanings set forth therein.

IV.

PURPOSE

5. The purpose of this Decree is to protect the public health, welfare, and the environment by providing for the temporary storage and thermal destruction of Sewer and Creek Sediments and certain other waste materials that have been or will be generated during remediation of the Love Canal Area, by providing a schedule and framework for OCC to assume responsibility for the removal of Love Canal Remedial Wastes from the Love Canal Site and for temporary storage and thermal destruction or other permanent treatment of these materials, by ensuring that the Work required by the Decree is performed in a timely and proper manner so as not to delay the present schedule for excavation of the creeks and the storage of creek sediments as adopted by NYSDEC, and by ensuring that the Governments are reimbursed for all costs incurred in connection with the activities carried out under, or with respect to, this Decree, as provided herein.

V.

GENERAL PROVISIONS

A. Commitment to Perform Remedial Actions

6. OCC shall perform the following Remedial Actions and related Work: (a) receive or pick up, process, and, if necessary, temporarily store at the Love Canal Site, Sewer Sediments, Creek Sediments, and Large Debris; (b) pick up, and prepare for transportation to the OCC Plant Site, O&M Wastes and LTF Sludge; (c) diligently seek permits for a Centralized Storage Facility at the OCC Plant Site for storage of, among other things, Creek Sediments, Sewer Sediments, Large Debris, and O&M Wastes, and, if the permits are issued, operate the facility; (d) transport all Love Canal Remedial Wastes to the OCC Plant Site for temporary storage and thermal destruction or other permanent treatment; (e) diligently seek permits for an incinerator at the OCC Plant Site to thermally destroy, among other things, Sewer Sediments, Creek Sediments, and O&M Wastes and, if the permits are issued, construct and operate the incinerator; (f) thermally destroy Creek Sediments, Sewer Sediments, O&M Wastes, LTF Sludge and, where practicable, Large Debris; (g) dispose of residues remaining after thermal destruction of such wastes in accordance with all applicable laws and regulations; and (h) reimburse the Governments for all costs incurred not inconsistent with the NCP in connection with the activities carried out under, or with respect to, this Decree.

7. OCC shall complete the Remedial Actions and Work referred to in Paragraph 6, above, and more particularly set forth in Section VI, below, in accordance with the standards, specifications, and requirements, and within the time periods, prescribed in Section VI, the Project Schedule approved pursuant to Paragraph 16, and all Plans and Specifications approved by the Governments pursuant to this Decree.

8. OCC shall assume any and all liability arising from or relating to its acts or omissions in the performance of the Remedial Actions and Work required by this Decree or its failure to perform fully or complete any requirements of this Decree.

B. Compliance with Law

9. OCC shall perform all Work required by this Decree in accordance with CERCLA, the NCP, the ECL, and any amendments thereto. Except as provided in Paragraph 10, OCC shall also perform all Work required by this Decree in accordance with all other applicable State and Federal laws and regulations, including the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et seq. ("RCRA"), and any amendments thereto.

C. Permits and Approvals

10. Except as provided in Section 121(e)(1) of CERCLA, 42 U.S.C. § 9621(e)(1), OCC shall diligently seek to obtain all permits or approvals required to perform any Work under this Decree and shall submit timely applications and requests for any such permits and approvals to the appropriate government agency. The Governments will use their best efforts to diligently review

and process all such applications and requests in accordance with applicable laws, regulations, and policies. Pursuant to Section 121(e)(1) of CERCLA, 42 U.S.C. § 9621(e)(1), no Federal, State or local permits shall be required for any Remedial Action or Work that is conducted entirely on-site.

11. This Decree is not intended by the Settling Parties to be, nor shall it serve as, a permit issued pursuant to any Federal, State or local law or regulation. Nothing in this Decree shall confer upon the Court jurisdiction to review disputes concerning the terms, or determinations regarding the issuance, of any State or Federal permits for Work to be conducted off-site. Such disputes shall be brought only in the forum, and pursuant to the procedures, authorized by applicable law.

D. Approval of Plans, Specifications, and Other Submissions

12. Except as otherwise provided in Paragraph 28, whenever this Decree requires OCC to submit Plans and Specifications, reports or other submissions for governmental approval, the Governments shall use their best efforts to respond to the submission within 21 days after its receipt or as otherwise provided in the Project Schedule or as agreed to by the Settling Parties. The Governments shall either approve the submission or require modifications and shall notify OCC in writing of such approval or required modifications.

13. All Plans and Specifications, reports or other submissions which require governmental approval under this Decree

shall, upon receipt of such approval, be deemed to be incorporated in and made an enforceable part of this Decree.

14. Except as otherwise provided in Paragraph 28, if the Governments require modifications of any Plans and Specifications, report or other submission, OCC shall submit a revised submission incorporating or addressing the required modifications within 14 days of receipt of the Governments' notice or as otherwise specified in the Project Schedule or as agreed to by the Settling Parties. If the Governments require additional time to review any submission under Paragraph 12, OCC's time to submit a revised submission shall be extended by a like number of days.

15. Except as otherwise provided in Paragraph 28, if the Governments notify OCC that any Plans and Specifications, report or other submission required to be resubmitted pursuant to Paragraph 14 cannot be approved by the Governments, the Governments and OCC shall meet within five days of such notification to attempt to agree upon such Plans and Specifications, report or other submission. If, after meeting, the Governments and OCC are unable to reach agreement, the Governments shall so notify OCC in writing and may either require OCC to make further modifications in the submission or modify the submission themselves. OCC shall implement any Plans and Specifications or other submission which is approved or modified by the Governments pursuant to this paragraph. If OCC disputes any portion of the Plans and Specifications or other submission

modified by the Governments, it may, within ten days of receipt of the Governments' modifications, seek a determination from the Court that the Governments' action is arbitrary and capricious.

E. Project Schedule

16. Within five days after the lodging of this Decree, OCC shall submit to EPA/NYSDEC for their approval a Project Schedule that shall, at a minimum, provide a schedule for submission and review of all Plans and Specifications required by this Decree and a schedule of construction and processing milestone dates.

F. Other Matters

17. OCC shall include in all contracts or subcontracts entered into for the performance of Work required by this Decree a provision stating that such contractor or subcontractor, including its agents and employees, shall perform all Work required by the contract or subcontract in compliance with this Decree and all applicable laws and regulations.

18. All of the On-Site Work to be performed by OCC under this Decree shall be under the direction and supervision of a qualified professional engineer licensed and currently registered to practice in the State of New York. At least 21 days prior to the initiation of any On-Site Work under this Decree, OCC shall notify EPA/NYSDEC in writing of the name, title, and qualifications of the engineer who will be responsible for directing or supervising such Work. EPA/NYSDEC may, by

written notice to OCC, disapprove any such engineer based upon professional qualifications.

19. At least 14 days prior to the commencement of any On-Site Work or the transportation of Love Canal Remedial Wastes under this Decree, OCC shall notify EPA/NYSDEC in writing of the name and qualifications of any contractor or subcontractor who has been retained to perform or participate in any portion of such Work. EPA/NYSDEC may, by written notice to OCC, disapprove any such contractor or subcontractor based upon professional qualifications.

20. OCC shall give EPA/NYSDEC 14 days advance notice of all field activities to be performed pursuant to this Decree, except if previously set forth in a Schedule of Work, and shall furnish EPA/NYSDEC with as much notice as possible of any necessary changes to the Schedule of Work to be performed under the Decree.

VI.

WORK TO BE PERFORMED

A. General Requirements

21. The 1987 ROD is attached hereto as Appendix B and, to the extent that this Decree or any Plans and Specifications or other submission approved by the Governments pursuant to this Decree requires implementation of the 1987 ROD, it is made an enforceable part hereof.

22. OCC shall finance and perform portions of the 1987 ROD, as modified by this Decree, by implementing the Remedial

Actions and Work specified in Paragraph 6 and more fully set forth in Subsections B through F, below.

B. OCC Centralized Storage Facility

23. OCC shall diligently seek to obtain State and Federal permits for a Centralized Storage Facility ("CSF") at the OCC Plant Site, which facility shall be used for temporary storage of, among other things, all Love Canal Sewer Sediments, Creek Sediments, Large Debris, and O&M Wastes.

24. OCC shall complete construction of one of the bag storage buildings at the CSF and have it ready for operation by August 1, 1989, or the day that NYSDEC's contractor first delivers Creek Sediments, Sewer Sediments or Large Debris to the OCC Staging Area, whichever is later, and shall complete construction of the remainder of the CSF and have it ready for operation by August 15, 1989, or 14 days after the day that NYSDEC's contractor first delivers Creek Sediments, Sewer Sediments or Large Debris to the OCC Staging Area, whichever is later.

C. Processing, Temporary Storage, And Transportation Of Creek Sediments, Sewer Sediments, and Large Debris

25. OCC shall pick up or receive, process, temporarily store at the Love Canal Site, if necessary, and transport to the OCC Plant Site all Creek Sediments, Sewer Sediments, and Large Debris in accordance with all applicable laws and regulations and Plans, Specifications, and schedules approved by the Governments pursuant to this Decree.

26. Within five days after the lodging of this Decree, OCC shall submit to EPA/NYSDEC for their approval final Plans and Specifications for on-site receipt, processing, and temporary storage, and off-site transportation, of the Creek Sediments, Sewer Sediments, and Large Debris. The Plans and Specifications shall include:

a. Plans, specifications, and a schedule for constructing at the OCC Staging Area, the DCF, the Permanent Staging Area or other areas at the Love Canal Site any facilities that are necessary to receive, process, or temporarily store the Creek Sediments, Sewer Sediments, and Large Debris prior to their transportation to the OCC Plant Site;

b. Plans and specifications for storing, treating, and disposing of water collected during the receipt, preparation, and storage of the Creek Sediments, Sewer Sediments, and Large Debris, including (i) the location and capacity of the treatment facility, (ii) the manner, schedule, and frequency of treatment, (iii) the procedures and equipment for collecting and transporting water to the treatment facility, and (iv) OCC's plans and schedule for obtaining all permits or approvals required to treat and/or discharge the water;

c. Plans and specifications for receiving, processing, and temporarily storing Large Debris and a schedule for transporting the Large Debris to the OCC Plant Site;

d. Plans and specifications for receiving and processing the Creek Sediments and Sewer Sediments prior to

loading the materials into polypropylene bag containers, including (i) the procedures and equipment to be used, (ii) the specifications for all equipment, additives, and other materials to be used, (iii) the protocols and results of all laboratory and field tests used to determine the optimal procedures and materials to be used, and (iv) the procedures to be used to assure continued compliance with the performance standard during the course of the Work;

e. Plans and specifications for loading the Creek Sediments and Sewer Sediments into polypropylene bag containers, including (i) the procedures, equipment, and materials to be used, (ii) the specifications for the bags and all other equipment and materials to be used, and (iii) the protocols and results of all laboratory and field tests used to determine the optimal procedures and materials to be used;

f. Plans and specifications for temporarily storing Creek Sediments, Sewer Sediments, and Large Debris in the DCF, if necessary, prior to transporting these materials to the OCC Staging Area or OCC Plant Site, including (i) the location, manner, and duration of storage, (ii) any modifications to the DCF for storage of the materials in bulk pursuant to Paragraph 31(e) or in bags, (iii) the installation of any temporary cover and any intermediate cover, (iv) maintenance of the facility, and (v) the manner, schedule, and frequency of collection, treatment, and disposal of water collected during storage of these materials in the DCF;

g. Plans and specifications for transporting the Creek Sediments, Sewer Sediments, and Large Debris within the Love Canal Site and from the Love Canal Site to the OCC Plant Site, including (i) the types of vehicles to be used, (ii) the equipment and procedures to be used in loading, securing, and unloading the wastes, (iii) the equipment and procedures to be used in decontaminating the vehicles, (iv) the transportation route(s) to be followed, (v) the frequency of trips, and (vi) assurances that all manifest, application, and other government requirements will be met;

h. Maps, flow charts, layouts, and critical path diagrams, as appropriate, depicting the location and sequence of each of the actions specified in subparagraphs (a) through (g), above;

i. A Spill Contingency Plan describing the procedures to be used in responding to spills of waste materials during any of the actions specified in subparagraphs (a) through (g), above, including the procedures to be used in (i) notifying the appropriate government agencies, (ii) analyzing the nature and content of the spilled waste material, (iii) collecting and disposing of such material, and (iv) decontaminating the area of the spill.

27. Within five days after the lodging of this Decree, OCC shall submit to EPA/NYSDEC/NYSDOH for their approval a detailed Health and Safety Plan for all of the Work specified in Paragraph 26(a) through (i). The Health and Safety Plan shall

incorporate, where applicable, the Health and Safety Plan prepared by NYSDEC's contractor for the Love Canal creek cleaning project. To the extent that the existing State Health and Safety Plan is not applicable to the Work to be performed by OCC pursuant to this Decree, OCC shall add elements or modify the existing plan to accommodate its activities. The Health and Safety Plan shall satisfy the requirements of the Occupational Safety and Health Guidance for Hazardous Waste Site Activities (October 4, 1985 (DHH 5 NIOSH) Publication No. 85-115) and EPA's Standard Operating Safety Guides (November 1984), or any amended versions thereof.

28. If the Governments notify OCC that the Plans and Specifications submitted pursuant to Paragraphs 26 and 27 cannot be approved by the Governments, the Governments and OCC shall meet within five days of such notification to attempt to agree upon such Plans and Specifications. If, after meeting, the Governments and OCC are unable to reach agreement, the Governments shall so notify OCC in writing and may, in their sole discretion, either (i) require OCC to make further modifications in the Plans and Specifications or modify the submissions themselves in accordance with Paragraph 15 or (ii) undertake the processing and temporary storage of the Creek Sediments and Large Debris themselves in accordance with the design document "Contract Documents for the Love Canal Black and Bergholtz Creeks Remediation" (December 1987), as amended. The Governments'

determination to undertake Work pursuant to this paragraph shall not be subject to judicial review.

29. Within 60 days after the lodging of this Decree, OCC shall submit to EPA/NYSDEC for their approval Plans, Specifications, and a schedule for the following Work:

a. Removal of Creek Sediments, Sewer Sediments, and Large Debris, in bulk and/or in bags, from the DCF or Permanent Staging Area for processing and/or transportation to the OCC Plant Site, OCC Staging Area or Permanent Staging Area;

b. Decontamination and closure of the DCF in the event it is used to store Creek Sediments, Sewer Sediments or Large Debris;

c. Decontamination and demobilization of the OCC Staging Area (including the removal of any pads or structures installed by OCC), the Permanent Staging Area or any other area at the Love Canal Site used by OCC to process or store Creek Sediments, Sewer Sediments or Large Debris.

30. Upon delivery of the Creek Sediments, Sewer Sediments, and Large Debris to the OCC Staging Area by NYSDEC's contractor or upon placement of the materials in the DCF (except where the Governments place materials in the DCF pursuant to Paragraph 28(ii)), OCC shall assume custody of and responsibility for these materials and shall implement the Plans and Specifications approved by the Governments pursuant to Paragraphs 26 through 29 of this Decree. Creek Sediments and Sewer Sediments will be capable of passing the paint filter test upon

delivery to the OCC Staging Area. It is the Governments' present expectation that there will be no additional sewer cleaning in the Love Canal Area, other than that associated with the creek cleaning project.

31. a. If the CSF is permitted and operational at the time NYSDEC's contractor first delivers Creek Sediments, Sewer Sediments or Large Debris to the OCC Staging Area and the Plans and Specifications referred to in Paragraphs 26 and 27 have been approved, OCC shall commence and thereafter continue the processing and transportation to the OCC Plant Site of the Creek Sediments, Sewer Sediments, and Large Debris at a rate which leaves the OCC Staging Area Temporary Storage Pad no more than 75 percent occupied at any given time, unless a higher percentage is approved by NYSDEC/EPA.

b. If the CSF is not operational at the time NYSDEC's contractor first delivers Creek Sediments, Sewer Sediments or Large Debris to the OCC Staging Area, but the Plans and Specifications referred to in Paragraphs 26 and 27 have been approved, OCC (i) shall process and place the Creek Sediments and Sewer Sediments in temporary storage in the DCF at a rate which leaves the OCC Staging Area Temporary Storage Pad no more than 75 percent occupied at any given time, unless a higher percentage is approved by NYSDEC/EPA, and (ii) shall, upon completing the processing of the Creek Sediments and Sewer Sediments, place the Large Debris in temporary storage in the DCF or the Permanent Staging Area if approved by the Governments. For purposes of

this provision, temporary storage of Creek Sediments and Sewer Sediments in the DCF means placing the sediments in the DCF in polypropylene bag containers and installing a temporary cover over the DCF.

c. If the CSF is permitted and becomes operational at any time after NYSDEC's contractor first delivers Creek Sediments, Sewer Sediments or Large Debris to the OCC Staging Area and the Plans and Specifications referred to in Paragraphs 26 and 27 have been approved, OCC (i) shall process and transport to the OCC Plant Site any remaining Creek Sediments, Sewer Sediments, and Large Debris delivered to the OCC Staging Area at a rate which leaves the OCC Staging Area Temporary Storage Pad no more than 75 percent occupied at any given time, unless a higher percentage is approved by NYSDEC/EPA, and (ii) shall remove all Creek Sediments, Sewer Sediments, and Large Debris in the DCF and transport the materials to the CSF as soon as practicable.

d. If the CSF is not permitted and operational by August 1, 1990, but the Plans and Specifications referred to in Paragraphs 26 and 27 have been approved, OCC shall install an intermediate cover on the DCF and maintain the DCF as a waste pile in accordance with Plans, Specifications, and a schedule approved by the Governments pursuant to this Decree. The Creek Sediments, Sewer Sediments, and Large Debris shall remain in the DCF until the CSF, the TDU, or an alternative treatment method approved by the Governments pursuant to this Decree is

operational, whichever occurs first. OCC shall maintain the DCF, as directed by NYSDEC/EPA, until the Creek Sediments, Sewer Sediments, and Large Debris are removed for temporary storage at the OCC Plant Site or for incineration or other permanent treatment. Whenever the CSF, TDU or an alternative treatment method approved by the Governments becomes operational, whichever occurs first, OCC shall remove all Creek Sediments, Sewer Sediments, and Large Debris in the DCF and transport the materials from the Love Canal Site in accordance with Plans, Specifications, and a schedule approved by the Governments pursuant to this Decree; provided, however, that the removal of these materials from the DCF shall not be initiated between November 1 and April 1, unless otherwise approved by EPA/NYSDEC.

e. If OCC is unable to receive and/or process the Creek Sediments at the rate at which they are delivered to the OCC Staging Area, NYSDEC's contractor shall place the Creek Sediments and Large Debris in the DCF in bulk as provided for by the current NYSDEC contract or in any area of the DCF modified for this purpose in accordance with Plans and Specifications submitted by OCC and approved by EPA/NYSDEC. OCC shall remove the Creek Sediments and Large Debris from the DCF for processing as soon as capacity becomes available at either the OCC Staging Area or the CSF.

f. If the Governments commence, but have not yet completed, the placement of the Creek Sediments, Sewer Sediments, and Large Debris in the DCF pursuant to Paragraph 28(ii), the

Governments may, in their sole discretion and upon approval of the Plans and Specifications referred to in Paragraphs 26 and 27, authorize OCC to process and transport the remaining Creek Sediments, Sewer Sediments, and Large Debris and remove for processing and transport the Creek Sediments, Sewer Sediments, and Large Debris placed in the DCF in accordance with subparagraphs (a) through (e), as applicable. If the Governments complete the placement of the Creek Sediments, Sewer Sediments, and Large Debris in the DCF pursuant to Paragraph 28(ii), OCC shall, within 30 days of the permitting or approval of the CSF, TDU or an alternative treatment method approved by the Governments pursuant to this Decree, whichever occurs first, submit to EPA/NYSDEC for their approval Plans, Specifications, and a schedule for removing the Creek Sediments, Sewer Sediments, and Large Debris from the DCF and transporting the materials to the OCC Plant Site for processing and storage. Upon approval of the submissions, OCC shall remove and transport these materials in accordance with said Plans, Specifications, and schedule.

g. OCC shall ensure that there is sufficient storage capacity at the CSF for the Creek Sediments, Sewer Sediments, Large Debris, and O&M Wastes. If the Governments determine, based on OCC's processing of the Love Canal Remedial Wastes, that the volume of Creek Sediments, Sewer Sediments, Large Debris, and O&M Wastes removed from the Love Canal Site may exceed the storage capacity of the CSF, the Governments shall so notify OCC and OCC shall diligently apply for and seek to obtain

State and Federal permits or permit modifications for additional storage facilities at the CSF or elsewhere at the OCC Plant Site. If the Creek Sediments, Sewer Sediments, Large Debris, and O&M Wastes being removed from the Love Canal Site exceed the storage capacity of the CSF, and the materials cannot be placed in temporary storage elsewhere at the OCC Plant Site or at a RCRA-permitted facility, the materials shall, as a last resort, be placed in temporary storage in the DCF and covered, as appropriate, until sufficient storage capacity becomes available at the CSF, elsewhere at the OCC Plant Site or at a RCRA-permitted facility.

h. Except where the Governments act pursuant to Paragraph 28(ii), whenever any Creek Sediments, Sewer Sediments or Large Debris are placed in the DCF pursuant to this Decree, OCC shall assume responsibility for, and all liability related to, operation and maintenance of the facility.

i. Upon completion of the processing of all Creek Sediments, Sewer Sediments, and Large Debris, OCC shall decontaminate and demobilize the OCC Staging Area (including the removal of any pads or structures installed by OCC), the Permanent Staging Area or any other area at the Love Canal Site used by OCC to process Creek Sediments, Sewer Sediments, and Large Debris, in accordance with Plans, Specifications, and schedules approved by the Governments pursuant to this Decree.

j. Upon completion of the removal of any Love Canal Remedial Wastes from the DCF pursuant to subparagraphs (c),

(d), (e), (f) or (g), OCC shall decontaminate and, as appropriate, close the DCF in accordance with Plans, Specifications, and schedules approved by the Governments pursuant to this Decree.

k. Except as otherwise provided in subparagraph (f), whenever OCC is required under this Decree to remove Creek Sediments, Sewer Sediments or Large Debris from the DCF, it may, at its option, process the Creek Sediments, Sewer Sediments, and Large Debris at the Love Canal Site or the OCC Plant Site. If OCC intends to process the Creek Sediments, Sewer Sediments, and Large Debris that have been placed in the DCF at the Love Canal Site, it may, after completion of the creek cleaning project and upon approval of EPA/NYSDEC, relocate its processing facility from the OCC Staging Area to the Permanent Staging Area.

D. Removal And Transportation Of O&M Wastes And LTF Sludge

32. OCC shall pick up, prepare for transportation, and transport to the OCC Plant Site all O&M Wastes and LTF Sludge in accordance with all applicable laws and regulations and Plans, Specifications, and schedules approved by the Governments pursuant to this Decree.

33. Within 120 days after the lodging of this Decree, OCC shall submit to EPA/NYSDEC for their approval Plans and Specifications for picking up, preparing for transportation, and transporting to the OCC Plant Site all O&M Wastes. Within 30 days after OCC, pursuant to Paragraph 38, has the capacity and approvals to thermally destroy LTF Sludge, OCC shall submit to

EPA/NYSDEC for their approval Plans and Specifications for picking up, preparing for transportation, and transporting to the OCC Plant Site all LTF Sludge and solid materials remaining in the LTF Sludge storage tanks after LTF Sludge is removed from the tanks. Such Plans and Specifications shall include, as appropriate:

a. Plans, specifications, and a schedule for modifying any facilities at the Love Canal Site that are necessary to pick up and prepare these materials for transportation to the OCC Plant Site;

b. Plans, specifications, and a schedule for picking up, loading into containers and/or onto vehicles, and transporting to the OCC Plant Site (i) O&M Wastes and LTF Sludge presently stored at the Love Canal Site and (ii) O&M Wastes and LTF Sludge generated subsequent to the transport of the wastes described in subparagraph (i), above;

c. Plans, specifications, and a schedule for removing and preparing for transportation to the OCC Plant Site all solid materials that remain in the LTF Sludge storage tanks after LTF Sludge is removed from the tanks;

d. Plans and specifications for transporting O&M Wastes and LTF Sludge from the Love Canal Site to the OCC Plant Site, including (i) the types of vehicles to be used, (ii) the equipment and procedures to be used in receiving, loading, securing, and unloading the wastes, (iii) the equipment and procedures to be used in decontaminating the vehicles, (iv) the

transportation route(s) to be followed, (v) the frequency of trips, and (vi) assurances that all manifest, application, and other government requirements will be met;

e. Maps, flow charts, layouts, and critical path diagrams, as appropriate, depicting the location and sequence of each of the actions specified in subparagraphs (a) through (d), above;

f. A Spill Contingency Plan describing the procedures to be used in responding to spills of waste materials during any of the actions specified in subparagraphs (a) through (d), above, including the procedures to be used in (i) notifying the appropriate government agencies, (ii) analyzing the nature and content of the spilled material, (iii) collecting and disposing of the material, and (iv) decontaminating the area of the spill.

34. Concurrent with the submission of Plans and Specifications pursuant to Paragraph 33, OCC shall submit to EPA/NYSDEC/NYSDOH for their approval a detailed Health and Safety Plan for all of the Work specified in said Plans and Specifications. The Health and Safety Plan shall satisfy the requirements of the Occupational Safety and Health Guidance for Hazardous Waste Site Activities (October 1985 (DHH 5 NIOSH) Publication No. 85-115) and EPA's Standard Operating Safety Guides (November 1984), or any amended versions thereof.

35. If EPA/NYSDEC notify OCC that LTF Sludge is likely to exceed the existing storage capacity at the Love Canal Site,

OCC shall, within 30 days of such notification, submit to EPA/NYSDEC for their approval Plans, Specifications, and a schedule for the transfer of a portion of the LTF Sludge to the OCC Plant Site for storage or destruction. Upon approval of the submissions, OCC shall transfer a portion of the LTF Sludge from the Love Canal Site to the OCC Plant Site for storage or destruction in accordance with the Plans, Specifications, and schedule approved by the Governments pursuant to this Decree.

E. Thermal Destruction Of Love Canal Remedial Wastes

36. OCC shall diligently seek to obtain State and Federal permits for a Thermal Destruction Unit ("TDU") to be used to thermally destroy, among other things, Love Canal Remedial Wastes at an operating capacity of at least two tons per hour. If the TDU is permitted and becomes operational, OCC shall expeditiously commence incineration at the TDU of the Love Canal Creek Sediments, Sewer Sediments, O&M Wastes and, where practicable, Large Debris. OCC shall dispose of Large Debris that cannot be incinerated in accordance with all applicable laws and regulations.

37. a. If the TDU is not permitted and operational within five years after the lodging of the Decree, OCC shall, within 30 days of the fifth anniversary of the lodging of this Decree, and annually thereafter, submit to the Governments for their approval a report proposing an alternative method for accomplishing thermal destruction of Love Canal Remedial Wastes at the OCC Plant Site. If no alternative method for

accomplishing thermal destruction at the OCC Plant Site is available, OCC shall submit to the Governments for their approval a report proposing an alternative method for accomplishing thermal destruction of Love Canal Remedial Wastes at another facility. If no alternative method for accomplishing thermal destruction of Love Canal Remedial Wastes at another facility is available, OCC shall submit to the Governments for their approval a report proposing an alternative method for permanent treatment of the Love Canal Remedial Wastes which, at a minimum, shall permanently reduce the mobility and toxicity of the wastes and meets all applicable legal requirements, or explaining why no such alternative method is available.

b. The report required to be submitted pursuant to subparagraph (a) shall include, at a minimum, a detailed description of the alternative method proposed by OCC, including the technology and/or facility to be used, the location of the facility or operations, and the manner and schedule for implementing the method, and a detailed description of all other alternative methods examined by OCC and the basis for OCC's determination that such methods are not available.

c. For purposes of this paragraph, a method is "available" if (i) it has been effectively utilized on a full-scale basis to destroy or permanently treat wastes with physical and chemical characteristics that are similar to those of the Love Canal Remedial Wastes, (ii) there is sufficient capacity to treat the Love Canal Remedial Wastes and adequately dispose of

the treatment residues within a reasonable period of time, (iii) personnel and ancillary equipment necessary to implement the method are commercially available, (iv) in the case of an off-site facility, the owner or operator of the facility holds all government approvals necessary to destroy or treat materials with physical and chemical characteristics that are similar to those of the Love Canal Remedial Wastes, and (v) in the case of a commercial facility, the charges for treatment or destruction do not exceed the fair market rate for such treatment or destruction or, if no market rate exists or can be inferred, the charges are not disproportionate to the costs incurred by the facility for treatment or destruction.

d. Upon approval by the Governments of an alternative treatment method pursuant to this paragraph, OCC shall implement the method in accordance with all applicable laws and regulations and schedules approved by the Governments. If the Governments and OCC cannot reach an agreement on the availability of an alternative treatment method, either the Governments or OCC may refer the matter to the Court for a determination regarding the availability of such method. If the Court determines that an alternative treatment method is available pursuant to subparagraphs (a) through (c), OCC shall promptly implement the method for the destruction or treatment of the Love Canal Remedial Wastes.

e. If, at any time a report is due under subparagraph (a), OCC is diligently pursuing its applications for

governmental approvals to construct and operate the TDU or is constructing the TDU, the Settling Parties may by agreement or by order of the Court extend the deadlines for complying with the reporting requirements of subparagraph (a).

38. a. Upon entry of this Decree, OCC shall diligently seek to qualify the LTF Sludge for thermal destruction in the OCC Liquid Waste Incinerator.

b. If the Liquid Waste Incinerator is permitted and qualified to thermally destroy LTF Sludge, OCC shall promptly transport to the OCC Plant Site and commence thermal destruction of the LTF Sludge in the Liquid Waste Incinerator consistent with any then existing plans to thermally destroy wastes from other OCC hazardous waste sites.

c. If the Liquid Waste Incinerator is not permitted and qualified to thermally destroy LTF Sludge within five years after the entry of this Decree, OCC shall apply for a permit modification to thermally destroy the LTF Sludge in the TDU or dispose of it in accordance with an alternative treatment method approved pursuant to Paragraph 37 of this Decree.

F. Certification

39. OCC shall, upon the conclusion of each Remedial Action described below, provide the Governments with a certification from a licensed professional engineer currently registered to practice in the State of New York that the Work performed was in conformance with the Plans and Specifications for that Work:

- a. Processing and transportation to the OCC Plant Site of all Creek Sediments, Sewer Sediments and Large Debris, and decontamination, demobilization, and closure, as appropriate, of the OCC Staging Area or any other area at the Love Canal Site that was used to process or store these materials;
- b. Transportation to the OCC Plant Site of all O&M Wastes referred to in Paragraph 33(b)(i);
- c. Transportation to the OCC Plant Site of all LTF Sludge referred to in Paragraph 33(b)(i);
- d. Thermal destruction or other permanent treatment of all Creek Sediments, Sewer Sediments, Large Debris, and O&M Wastes referred to in Paragraph 33(b)(i), and disposal of all residues resulting from such destruction or treatment;
- e. Thermal destruction or other permanent treatment of all LTF Sludge referred to in Paragraph 33(b)(i).

With regard to transportation to the OCC Plant Site and thermal destruction or other permanent treatment of O&M Wastes and LTF Sludge referred to in Paragraph 33(b)(ii), OCC shall provide such certification on an annual basis.

VII.

CESSATION OF GOVERNMENT WORK

40. a. It is the Governments' intention to complete the design of the TTDU. The Governments shall not proceed with the development of the TTDU, other than completion of the design phase, as long as OCC is making satisfactory progress toward removing the Love Canal Remedial Wastes from the Love Canal Site. Upon completion of the removal of Creek Sediments, Sewer Sediments, and Large Debris from the Love Canal Site, the Governments shall cancel the TTDU contract.

b. If none of the Creek Sediments, Sewer Sediments, and Large Debris has been removed from the Love Canal Site by November 1, 1990, the Governments may, in their sole discretion, recommence development of the TTDU and shall so notify OCC in writing by December 1, 1990. The Governments' determination to recommence development of the TTDU pursuant to this subparagraph shall not be subject to judicial review under this Decree.

c. If, at any time after November 1, 1990, any Creek Sediments, Sewer Sediments, and Large Debris remain at the Love Canal Site and the Governments determine that OCC either is not diligently seeking to remove these materials from the Love Canal Site or is not diligently pursuing a permit for the CSF, TDU or alternative treatment method as required by this Decree, the Governments may, upon 20 days written notice to OCC, recommence development of the TTDU. If OCC disputes the Governments' decision to recommence development of the TTDU, it may, within ten days of receipt of the Governments' notification, seek a determination from the Court that the Governments' action is arbitrary and capricious.

d. Upon OCC's receipt of notification that the Governments intend to recommence development of the TTDU or, if OCC disputes the Governments' decision to recommence development of the TTDU, upon order of the Court affirming the Governments' decision, OCC's obligations under this Decree to store at the OCC Plant Site and to incinerate or otherwise treat the Love Canal

Remedial Wastes remaining at the Love Canal Site shall be terminated.

VIII.

PROJECT COORDINATORS

41. Within seven days of the lodging of this Decree, the Settling Parties shall notify each other, in writing, of the name, address, and telephone number of a designated Project Coordinator and an Alternate Project Coordinator who shall be responsible for monitoring the progress of the Work and coordinating communications among the Settling Parties. The Settling Parties may change their respective Project Coordinators by notifying the other parties in writing at least seven days prior to the change where possible, and concurrently with the change in the event that advance notification is not possible.

42. The State Project Coordinator shall have the authority vested in the On-Scene Coordinator by the NCP, as well as the authority to ensure that the Work is being performed in accordance with all Plans and Specifications and this Decree. The State Project Coordinator shall also have the authority to require a cessation of the performance of any Work conducted on-site or during transportation of Love Canal Remedial Wastes to the OCC Plant Site if, in his or her opinion, the Work may present an endangerment to human health or the environment or cause or threaten to cause the release of hazardous substances into the environment. If the State Project Coordinator suspends any Work under the Decree, he or she shall promptly confer with

the OCC and EPA Project Coordinators to determine how to perform or modify the Work in a manner that is consistent with this Decree and mitigates the endangerment or release or threat of release that caused the Work to be suspended. The Governments, in their sole discretion, may extend all or part of the compliance schedule for the period of time of the suspension of Work or such longer period as may be necessary in light of the suspension. The Governments shall notify OCC, in writing, of any such unilateral extension.

43. OCC's Project Coordinator shall have technical expertise sufficient to oversee adequately all aspects of the Work. He or she may assign other representatives, including contractors, to serve as a site representative for oversight of performance of daily operations during remedial activities. OCC's selection of a Project Coordinator shall be subject to EPA/NYSDEC approval which approval shall not unreasonably be withheld.

44. The Governments may designate other representatives, including Government employees or contractors or consultants, to serve as site representatives for oversight of performance of daily operations during remedial activities.

IX.

SITE ACCESS, SAMPLING, DOCUMENT AVAILABILITY

45. The Governments and their representatives shall have access at all times to those areas of the OCC Plant Site, the Love Canal Site, or any other premises upon which any Work is

being or will be performed under this Decree or at which relevant documents are stored, for purposes of monitoring the progress of the Work, verifying the data or information submitted to the Governments, conducting investigations relating to contamination at or near those areas, obtaining samples at or near those areas, inspecting and copying records, operating logs, contracts or other documents required to assess OCC's compliance with this Decree, or for other purposes reasonably related to Government oversight of the implementation of this Decree. OCC reserves any right it may have to withhold any document or record which is privileged under Federal, State or common law, provided that it promptly provides the Governments with a description of such material and substantiation of the claim of privilege.

Notwithstanding any other provision herein, the Governments reserve all rights they may have to seek to compel the production of any materials so withheld.

46. To the extent that any area where Work is to be performed under this Decree is owned or controlled by persons or entities other than those bound by this Decree, OCC shall use its best efforts to obtain from such persons or entities access for itself, as well as for the Governments and their authorized representatives, as necessary to effectuate the Decree. For purposes of this paragraph, "best efforts" includes, but is not limited to, seeking judicial assistance and offering fair market value in consideration of access. If access is not obtained within 30 days of the date of entry of this Decree, OCC shall

promptly notify the Governments. Upon receipt of such notification, the State will use its best efforts to assist OCC in obtaining such access consistent with its legal authority, including, where appropriate, the exercise of the power of eminent domain. The United States may, in its sole discretion, also assist OCC in obtaining access. OCC shall, in accordance with the procedures set forth in Section XVI, reimburse the appropriate Government for all costs incurred by it in obtaining access.

47. Nothing in this Decree shall, in any way, waive or restrict the information-gathering, access or inspection authorities and rights of the Governments under CERCLA, RCRA, and any other applicable law or regulation.

48. Within seven days of a request by either Government, OCC shall provide to both Governments the results of all sampling and/or tests or other data and copies of all documents available to OCC and generated by or on behalf of OCC with respect to the implementation of this Decree. Within seven days of a request by OCC, either Government shall provide to OCC the results of any sampling and/or tests available to that Government and generated by or on its behalf with respect to implementation of this Decree.

49. At the request of either Government, OCC shall provide split or duplicate samples to that Government, or allow split or duplicate samples to be taken by that Government or its authorized representatives, of any samples collected by OCC

during implementation of this Decree. OCC shall notify the Governments at least 14 days prior to any sample collection activity except if previously set forth in a Schedule of Work. Nothing herein shall restrict either Government from taking any additional samples that it believes are necessary. At OCC's request, the Government taking such additional samples shall provide split or duplicate samples to OCC, or allow split or duplicate samples to be taken by OCC or its authorized representatives.

50. All environmental sampling and analysis undertaken pursuant to, or with respect to implementation of, this Decree shall conform to EPA-approved methods, to the extent such methods are applicable and available. If EPA-approved methods are not applicable or available for any environmental sampling and analysis that must be undertaken pursuant to or with respect to implementation of this Decree, OCC shall submit protocols for such sampling and analysis to EPA/NYSDEC for their approval.

X.

PUBLIC INSPECTION

51. All data, factual information, and documents submitted by OCC to the Governments pursuant to this Decree shall be available for public inspection. OCC shall not assert a claim of confidentiality regarding any monitoring or hydrogeologic data, any information specified under Section 104(e)(7)(F)(i) through (viii) of CERCLA, 42 U.S.C. §§ 9604(e)(7)(F)(i)-(viii),

or any other chemical, scientific or engineering data related to the Remedial Actions or Work performed pursuant to this Decree.

XI.

REPORTING REQUIREMENTS

52. In addition to any other requirement of this Decree, OCC shall provide to the Governments periodic written progress reports which shall: (1) describe the actions which have been taken toward achieving compliance with this Decree during the preceding period; (2) include all results of sampling and tests and all other data generated or received by OCC during the preceding period in the course of the Work; (3) describe all Work which is scheduled for the next period and provide other information relating to the progress of design and construction as is customary in the industry; (4) include information regarding percentage of completion, delays encountered or anticipated that may affect the future schedule for implementation of the Remedial Actions and Work, and a description of all efforts made to mitigate those delays or anticipated delays; and (5) summarize all complaints received by OCC from the public and explain what actions OCC took, if any, to address each complaint. These progress reports shall be submitted following the date of lodging of this Decree in accordance with the following schedule:

a. Every month, on the tenth day of the following month, until six months following the first delivery of Creek Sediments and Large Debris to the OCC Staging Area;

b. Thereafter, every other month, on the fifteenth day of the month following every second month, until one month after all Love Canal Remedial Wastes, except those described in Paragraph 33(b)(ii), have been transported to the OCC Plant Site;

c. Thereafter, semi-annually, on the twenty-first day of the month following every sixth month, until one month after all Love Canal Remedial Wastes, except those described in Paragraph 33(b)(ii), have been thermally destroyed or otherwise permanently treated pursuant to this Decree;

d. Thereafter, annually, in accordance with Paragraph 53, below.

53. Once each year, within 15 days of the anniversary of the entry of this Decree, OCC shall submit to the Governments for their review and approval an annual report describing the progress of the Work required by this Decree and the status of OCC's compliance with this Decree. Upon approval of the annual report by the Governments, OCC shall submit the annual report to the Court.

54. Upon the occurrence of any event during performance of the Work which, pursuant to Section 103 of CERCLA, 42 U.S.C. § 9603, requires reporting to the National Response Center, OCC shall, within one day, orally notify the EPA and State Project Coordinators or Alternate Project Coordinators or, in the event of their unavailability, the Response and Prevention Branch, Region II, EPA, and Director, Bureau of Western Remedial

Action, Division of Hazardous Waste Remediation, NYSDEC, in addition to the reporting required by Section 103. Within 20 days of the onset of such an event, OCC shall provide to the Governments a written report setting forth the events which occurred and the measures taken, and to be taken, in response thereto. Within 30 days of the conclusion of such an event, OCC shall submit a report setting forth all actions taken in response thereto.

XII.

RETENTION OF RECORDS

55. OCC shall preserve and retain all records and documents (in the form of originals, exact copies, or microfiche or microfilm of originals) now in its possession or control, or which may come into its possession or control, that relate in any manner to any portion of the Work required by this Decree, regardless of any document retention policy to the contrary, for six years after receiving a Certification of Completion regarding that portion of the Work. After this document retention period, OCC shall notify the Governments at least 90 days prior to the destruction of such documents and, upon a request by either Government, shall relinquish custody of the originals or exact copies, microfiche or microfilm of the originals to that Government.

XIII.

RESPONSE AUTHORITY

56. Nothing in this Decree shall be deemed to limit the response or enforcement authorities of EPA or the State under Sections 104 or 106 of CERCLA, 42 U.S.C. §§ 9604 or 9606, the ECL, the common law of public nuisance, or any other Federal or State authority, except as specifically provided in Section XVIII.

XIV.

FORCE MAJEURE

57. "Force Majeure" is defined for purposes of this Decree as an unanticipated grave natural disaster or other event arising from causes or circumstances beyond the control of OCC, which delays or prevents the performance of an obligation under this Decree and which delay or noncompliance could not have been prevented or avoided by the exercise of due care or foresight by OCC. "Force Majeure" does not include unanticipated or increased costs, changed financial circumstances, nonattainment of the requirements of this Decree, failure to make timely and complete application for permits, access and any other necessary authorizations, or failure of OCC to obtain necessary permits to construct and operate the CSF or TDU.

58. When circumstances occur which may delay or prevent the performance of any requirement under this Decree -- whether or not such circumstances are caused by or constitute a Force Majeure event -- OCC shall notify the Governments' Project

Coordinators or Alternate Project Coordinators, or in the event of their unavailability, the Chief of the New York/Caribbean Compliance Branch, Emergency and Remedial Response Division, Region II, EPA, and the Director of the Bureau of Western Remedial Action, Division of Hazardous Waste Remediation, NYSDEC, orally of the circumstances within one day after OCC first becomes aware of them. Within seven days after the date when OCC first becomes aware of such circumstances, OCC shall provide to the Governments a written explanation of the causes of any actual or expected delay or noncompliance, the anticipated duration of such delay or noncompliance, whether OCC contends that the delay or noncompliance was caused by a Force Majeure event and, if so, the basis for its contention, the measures taken and to be taken by OCC to prevent or minimize the delay or correct the noncompliance, and the timetable for implementation of such measures. Such notice shall be accompanied by all available pertinent documentation. Failure to give timely oral and written notice to the Governments in accordance with this paragraph shall constitute a waiver of any claim of Force Majeure with respect to the circumstances in question. OCC shall use its best efforts to discover and keep apprised of any circumstances which may delay the completion of any part of the Work.

59. If the Settling Parties agree that a delay or noncompliance is or was caused by a Force Majeure event and agree upon the amount of time necessary to compensate for the delay or noncompliance, they shall modify this Decree, or the affected

Plans and Specifications incorporated in the Decree, to provide such additional time as is necessary to compensate for the delay or noncompliance.

60. If the Settling Parties do not agree that the delay or noncompliance is or was caused by a Force Majeure event, or upon the amount of time necessary to compensate for the delay or noncompliance, OCC may seek to resolve the dispute according to Section XV of this Decree. OCC shall have the burden of proving that the delay or noncompliance is or was caused by a Force Majeure event and that the amount of additional time requested is necessary to compensate for those circumstances.

XV.

DISPUTE RESOLUTION

61. This Section applies to any unresolved disputes between the Governments and OCC arising under this Decree, except that this Section shall not apply to disputes to which the dispute resolution provisions of Paragraphs 15, 28, and 40 apply or disputes involving the terms, or determinations regarding the issuance, of permits or approvals for off-site activities.

62. Any dispute arising under this Decree shall in the first instance be the subject of informal negotiations among the parties to the dispute for a period of 20 days from the time notice of the dispute is given. The period for negotiations may be extended or shortened by agreement of the parties.

63. If the parties cannot resolve a dispute by informal negotiations under the preceding paragraph, then the

final written position advanced by the Governments shall be binding unless, within 14 days after the end of the informal negotiation period, OCC files a petition with the Court setting forth the matter in dispute, the efforts made by the parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of this Decree. The Governments may file a response to OCC's petition. Notwithstanding Paragraph 62, any party may present a disputed matter to the Court before the end of the informal negotiation period if the matter concerns stipulated penalties or a suspension of Work under Paragraph 42, or if the party determines that the matter requires early resolution. Except as otherwise provided herein, the dispute resolution procedures of this Section shall be the exclusive mechanism for resolving disputes arising under or with respect to this Decree.

64. The filing of a petition pursuant to this Section shall not of itself extend, postpone or affect any obligation of OCC under this Decree, except that payment of stipulated penalties with respect to a disputed matter shall be stayed pending resolution of the dispute. Notwithstanding the stay of payment, stipulated penalties shall accrue from the first day of noncompliance with any applicable provision of this Decree. In the event that OCC does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in

Section XVI, unless otherwise ordered by the Court for good cause shown.

65. Except as otherwise provided herein, the scope and standard of judicial review in proceedings on any dispute arising under the Decree shall be governed by applicable law.

XVI.

REIMBURSEMENT

66. OCC shall pay all costs incurred by the Governments not inconsistent with the NCP in connection with the activities carried out under, or with respect to, this Decree, including:

a. All costs incurred by either Government in monitoring or enforcing compliance with, or conducting oversight of Work performed under, this Decree, with the exception of costs incurred in overseeing construction compliance with permits by personnel directly responsible for overseeing such compliance;

b. All costs incurred by either Government in reviewing any Plans and Specifications or other documents required to be submitted pursuant to this Decree, with the exception of costs incurred in reviewing or processing permit applications by personnel responsible for the review and issuance of such permits;

c. All costs, including contract damages or penalties, incurred by either Government as a result of any delay, cessation, change, modification, mobilization, demobilization or recommencement of work caused by OCC's

performance of or failure to perform its obligations under this Decree; and

d. All costs incurred by either Government in assisting OCC in obtaining access to areas where Work is required to be undertaken.

67. Following the end of each Federal fiscal year in which costs are incurred, the Governments shall provide OCC with an accounting of the costs incurred for which they seek reimbursement pursuant to this Section. Within 30 days of the receipt of any such accounting, OCC shall either pay the amount requested or notify EPA or the State, as the case may be, as to those costs to which OCC, in good faith, objects and, within ten days, shall pay any undisputed costs. Upon receipt of OCC's objections, the Governments shall provide to OCC, at its expense, a detailed accounting of the disputed costs. This accounting shall include the identity and position of each individual whose activities are reflected in the accounting, a time and activity record showing the amount of time spent on reimbursable activities, the basis for the rate or other compensation assigned to the individual, including an estimate of indirect costs and fringe benefits, an accounting of non-personnel expenses, including supplies, travel, equipment and contractual expenses, and any other costs incurred with respect to reimbursable activities. Within ten days after receipt of the detailed accounting, OCC shall pay any amounts to which it no longer objects and shall invoke the dispute resolution provisions of

Section XV to resolve its objections with respect to the remaining disputed costs; provided, however, that the Settling Parties agree that, with respect to disputes as to the recoverability of costs under this Decree, the costs shall be recoverable unless OCC can demonstrate, on the administrative record, that the decision to incur the costs was arbitrary and capricious or otherwise not in accordance with law.

68. By accepting partial payment of a disputed account, the Governments do not waive any rights to assert claims for the amount in dispute.

69. All payments required to be made to EPA under this Section shall be made by cashier's or certified check payable to the "EPA Hazardous Substances Superfund" and shall reference on their face the "Love Canal Site" and the civil action number of this case. Payment shall be deemed made when received at the following address:

EPA -- Region II .
Attention: Superfund Accounting
P.O. Box 360188-M
Pittsburgh, PA 15251

OCC shall transmit copies of each check to the persons specified in Paragraph 87(a).

70. All payments required to be made to the State under this Section shall be made by cashier's or certified check payable to the "New York State Department of Environmental Conservation" and shall reference on their face the "Love Canal

Site" and the civil action number of this case. Payments shall be mailed to:

Michael Bryce, Esquire
New York State Department of Law
Environmental Protection Bureau
120 Broadway
New York, New York 10271

OCC shall transmit copies of each check to the persons specified in Paragraph 87(b).

XVII.

STIPULATED PENALTIES

71. OCC shall pay to the Hazardous Substances Superfund stipulated penalties in the amounts set forth below for each day or part thereof that OCC (a) fails to submit a Plan and Specifications or other document within the time prescribed by this Decree or the Project Schedule approved pursuant to Paragraph 16, (b) fails to meet any other milestone date set forth in the Project Schedule approved pursuant to Paragraph 16, or (c) continues, after receiving five days written notice, to fail to satisfy any other material obligation set forth in this Decree or in any Plans and Specifications approved pursuant to this Decree (including any obligation to pay costs pursuant to Section XVI), unless such failure or noncompliance is excused under the terms of Section XIV. Such penalties shall be due and payable within 15 days of OCC's receipt from EPA of a notification of noncompliance describing the noncompliance and indicating the amount of penalties due. Such sums shall be remitted in the manner specified in Section XVI. All penalties

shall begin to accrue on the first day of failure to achieve compliance and shall continue to accrue through the final day of correction of the noncompliance. No penalties shall accrue until this Decree is approved and entered by the Court. Payment of penalties shall not affect or alter OCC's obligation to comply with any of the requirements of this Decree.

72. Stipulated penalties shall accrue as follows for each failure or noncompliance referred to in Paragraph 71:

<u>Period of Noncompliance</u>	<u>Penalty per violation per day</u>
1st through 14th day	\$ 3,000
15th through 30th day	\$ 6,000
31th through 60th day	\$12,000
Beyond 60 days	\$25,000

73. Pursuant to 31 U.S.C. § 3717, interest shall accrue on any amounts overdue under this Section at a rate established by the Department of Treasury for any period of such delinquency. A handling charge shall be assessed at the end of each 30-day late period, and a six percent per annum penalty charge shall be assessed if the penalty is not paid within 90 days of the due date.

74. The stipulated penalties set forth above shall be in addition to, and shall in no way waive, any other remedies, sanctions or penalties which may be available to the Governments by virtue of OCC's failure to comply with the requirements of this Decree; provided, however, that the Governments agree not to seek civil penalties for any failure or noncompliance referred to

in Paragraph 71 for which they have sought stipulated penalties pursuant to this Section.

XVIII.

COVENANT NOT TO SUE

75. In consideration of actions which will be performed and upon payments which will be made by OCC under this Decree, and except as otherwise specifically provided in this Decree, the Governments covenant not to sue OCC for Covered Matters. For purposes of this Decree, "Covered Matters" means any and all civil and administrative claims available to the Governments under Sections 106(a) and 107(a) of CERCLA, 42 U.S.C. §§ 9606(a) and 9607(a), Section 7003 of RCRA, 42 U.S.C. § 6973, the ECL, and the State common law of public nuisance, for the performance of the Remedial Actions and Work required under this Decree and for the reimbursement of costs defined in Paragraph 66, above. This Covenant Not to Sue shall take effect with respect to a Remedial Action required under this Decree upon EPA's issuance of a Certificate of Completion with respect to that Remedial Action in accordance with Section XXVIII.

76. "Covered Matters" does not include:

- a. Claims based on a failure by OCC to meet a requirement of this Decree, including, but not limited to, claims for injunctive relief and claims for civil penalties pursuant to Section 122(1) of CERCLA, 42 U.S.C. § 9622(1);

- b. Liability for the disposal of any hazardous substances removed from the Site;
- c. Liability for damages for injury to, destruction of, or loss of natural resources resulting from the release of hazardous substances at or from the Site;
- d. Liability for violations of Federal or State law which occur during implementation of the Remedial Actions;
- e. Liability for response actions or work other than that specifically required to be undertaken by OCC pursuant to this Decree;
- f. Liability for all response costs incurred by the Governments with respect to the Site, other than the costs specifically defined in Paragraph 66.

77. Notwithstanding any other provision in this Decree, the Governments reserve the right jointly or separately to institute proceedings in this action, issue an order or commence a new action: (1) seeking to compel OCC to perform additional response action at the Site (or at any other area affected by a release or threat of release of hazardous substances at or from the Site), regardless of whether the additional response actions are within the scope of the Work required by the 1987 ROD, as modified and delineated by this

Decree, or (2) seeking reimbursement of the Governments' response costs, if:

- a. For proceedings prior to EPA's issuance of a Certificate of Completion of any Remedial Action,
 - (1) conditions in the Love Canal Area, previously unknown to the Governments, are discovered after the entry of this Decree, or
 - (2) information is received, in whole or in part, after the entry of this Decree, and these previously unknown conditions or this information indicates that the Remedial Action is not protective of human health and the environment; or
- b. For proceedings subsequent to the Governments' issuance of a Certificate of Completion of any Remedial Action,
 - (1) conditions in the Love Canal Area, previously unknown to the Governments, are discovered after the issuance of the Certificate of Completion, or
 - (2) information is received, in whole or in part, after the issuance of the Certificate of Completion,

and these previously unknown conditions or this information indicates that the Remedial Action is not protective of human health and the environment.

78. Notwithstanding any other provision in this Decree, the Covenant Not to Sue in this Section shall not relieve OCC of its obligation to meet and maintain compliance with the requirements of this Decree, and the Governments reserve their right to take or authorize response actions at the Site in the event of a breach of the terms of this Decree and to seek recovery of costs incurred after entry of the Decree: (a) resulting from a breach; (b) relating to any portion of the Work funded or performed by the Governments and not reimbursed by OCC; or (c) incurred by the Governments as a result of having to take administrative action or seek judicial assistance to remedy conditions at or near the Site, and caused by conditions at the Site.

79. Nothing in this Decree shall constitute or be construed as a release or a covenant not to sue regarding any claim or cause of action against any person, firm, trust, joint venture, partnership, corporation or other entity not a signatory to this Decree for any liability it may have arising out of or relating to the Site.

XIX.

NATURAL RESOURCES DAMAGES

80. This Decree shall not be construed to affect, in any way, any claims that the Governments may have against OCC for any liability for damages to, destruction of, or loss of natural resources in connection with or arising from the Site, and nothing in this Decree constitutes or shall be construed as a release or covenant not to sue OCC for any claims arising from damages to, destruction of, or loss of natural resources, or as the agreement of any Federal or State natural resource trustee to covenant not to sue OCC pursuant to Section 122(j)(2) of CERCLA, 42 U.S.C. § 9622(j)(2).

XX.

OTHER CLAIMS

81. OCC agrees to indemnify, save, and hold harmless the Governments and their representatives from any and all claims or causes of action arising from acts or omissions of OCC and/or its contractors or any other person acting on its behalf in the performance of the Remedial Actions or Work required by, or from its failure to comply fully with the terms of, this Decree.

82. The Governments are not to be construed as parties to, and do not assume any liability for, any contract entered into by OCC in carrying out the Remedial Actions or Work required by this Decree. The proper completion of the Remedial Actions or Work under this Decree is solely the responsibility of OCC.

83. OCC waives any claims for damages or reimbursement from the Governments or for set-off of any payments made or to be made to the Governments, arising from or on account of any contract, agreement or arrangement between OCC and any person performing Work required by this Decree, including, but not limited to, claims on account of construction delays.

84. OCC waives any rights it may have to challenge, or assert a claim against the Governments, with respect to any portion of the 1987 ROD which it implements pursuant to this Decree or any other Work which it implements pursuant to this Decree.

XXI.

CLAIMS AGAINST THE FUND

85. OCC waives any rights it may have to assert any claims pursuant to Sections 106(b)(2), 111, 112 or 122(b) of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9611, 9612, or 9622(b), or any other provision of law, for reimbursement from the Hazardous Substances Superfund for any past costs or costs incurred in connection with Work performed pursuant to this Decree. Nothing in this Decree shall be construed as a pre-authorization by EPA of a CERCLA claim against the Hazardous Substances Superfund within the meaning of 40 C.F.R. § 300.25.

XXII.

INSURANCE/FINANCIAL RESPONSIBILITY

86. Prior to commencing any On-Site Work or the transportation of Love Canal Remedial Wastes under this Decree,

OCC shall obtain and maintain for the duration of such Work general liability and automobile insurance with limits of five million dollars, combined single limit, naming as an additional insured the United States and the State. Such insurance shall name as insured all employees, agents, contractors and subcontractors acting on behalf or under control of OCC in connection with any Work performed under this Decree. In addition, with regard to all Work required by this Decree, OCC shall satisfy all applicable laws and regulations regarding the provision of workmen's compensation insurance. Prior to the commencement of Work under this Decree, OCC shall submit to EPA/NYSDEC for their approval a certificate of insurance and, if requested by the Governments, a copy of the insurance policy or policies required by this Decree. If OCC demonstrates by evidence satisfactory to EPA/NYSDEC that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering the same risks but in a lesser amount, then with respect to that contractor or subcontractor, OCC need provide only that portion of the insurance described above which is not maintained by the contractor or subcontractor.

XXIII.

NOTICES

87. Whenever, under the terms of this Decree, written notice is required to be given or a report or other document is required to be submitted by one party to another, the notice, report or other document shall be sent to the following

individuals at the addresses specified below unless those individuals or their successors give notice to the other parties in writing. Written notice to the parties below shall constitute satisfaction of any written notice requirement of the Decree with respect to the Settling Parties.

(a) As to the United States:

- 1 copy: Chief, New York/Caribbean Superfund Branch
Office of Regional Counsel
U.S. Environmental Protection Agency, Region II
26 Federal Plaza, Room 437
New York, New York 10278
Attention: Love Canal Attorney
- 3 copies: Chief, New York/Caribbean Compliance Branch
Emergency and Remedial Response Division
U.S. Environmental Protection Agency, Region II
26 Federal Plaza, Room 747
New York, New York 10278
Attention: Love Canal Site Project Manager
- 1 copy: Chief, National Projects Branch
Office of Enforcement and Compliance Monitoring
U.S. Environmental Protection Agency LE-134S
401 M Street, S.W.
Washington, D.C. 20460
Attention: Love Canal Attorney
- 1 copy: Chief, Environmental Enforcement Section
Land and Natural Resources Division
U.S. Department of Justice
Benjamin Franklin Station
P.O. Box 7611
Washington, D.C. 20044
Attention: Love Canal Attorney

(b) As to the State:

- 4 copies: Director
Bureau of Western Remedial Action
Department of Environmental Conservation
50 Wolf Road
Albany, New York 12233
Attention: Edward R. Belmore, P.E.

1 copy: Director
Bureau of Environmental Exposure Investigation
New York State Department of Health
2 University Place
Albany, New York 12203
Attention: Ron Tramontano, P.E.

1 copy: New York State Department of Law
Environmental Protection Bureau
120 Broadway
New York, New York 10271
Attention: Michael Bryce, Esquire

(c) As to OCC:

3 copies: Mr. Jay Cull
Technical Manager
Special Environmental Programs
Occidental Chemical Center
360 Rainbow Boulevard South
P.O. Box 728
Niagara Falls, New York 14302

1 copy: Mr. J. Alan Mack
Associate General Counsel
Occidental Chemical Corporation
5005 LBJ Freeway
P.O. Box 809050
Dallas, Texas 75380

XXIV.

PUBLIC PARTICIPATION

88. Final approval and entry of this Consent Decree are subject to the requirements of Section 122(d)(2) of CERCLA, 42 U.S.C. § 9622(d)(2), and 28 C.F.R. § 50.7, and the State's public participation requirements.

XXV.

MODIFICATION

89. This Decree may be modified only upon order of the Court or upon the written consent of the Settling Parties, which

modification and consent shall be filed with the Court. Nothing in this paragraph shall be deemed to alter the Court's power to supervise or modify this Decree.

XXVI.

CONTINUING JURISDICTION

90. The Court retains jurisdiction over both the subject matter of this Decree and the Settling Parties for the duration of the Decree for the purpose of issuing such further orders or directions as may be necessary or appropriate to construe, implement, modify, enforce, terminate, or reinstate the terms of this Decree or for any further relief as the interests of justice may require. Nothing in this Decree shall affect the jurisdiction of the Court over issues not encompassed by this Decree.

XXVII.

COMMUNITY RELATIONS

91. OCC shall cooperate with the Governments in providing information regarding the Work to the public. As requested by the Governments, OCC shall participate in the preparation of such information for dissemination to the public, in the preparation of responses to public comments, and in public meetings which may be held or sponsored by the Governments to explain activities relating to this Decree.

XXVIII.

TERMINATION

92. The Governments shall issue a Certificate of Completion upon their determination that OCC has satisfactorily completed any Remedial Action as to which it has submitted a certification pursuant to Paragraph 39, and has made all payments required under this Decree relating to such Remedial Action.

93. The Covenant Not to Sue provided in Section XVIII shall become effective with respect to each Remedial Action covered by a Certificate of Completion upon submission of the Certificate to the Court.

94. With the exception of the obligation to pick up, transport, and thermally destroy the Love Canal Remedial Wastes described in Paragraph 33(b)(ii), and all provisions relating thereto, this Decree shall terminate upon the issuance of a Certificate of Completion for all of the Remedial Actions listed in Paragraph 39.

XXIX.

USE OF PARTIAL CONSENT DECREE

95. This Partial Consent Decree was negotiated and executed by the Settling Parties in good faith to avoid further litigation with respect to matters resolved herein, and is a settlement of disputed claims to such matters. The execution of this Decree is not and shall not be an admission of any fact or liability on any issue, nor shall it have any precedential effect

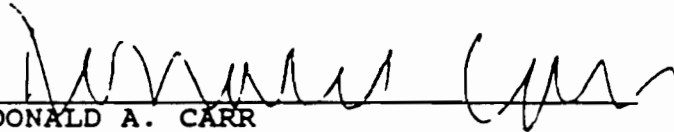
as to any issue of law unrelated to this Decree, in this action or any other proceeding.

APPROVED and ENTERED this day of 1989.

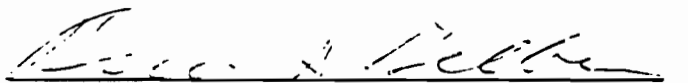
JOHN T. CURTIN
United States District Judge

WE HEREBY CONSENT to the entry of this decree.

FOR THE UNITED STATES OF AMERICA:


DONALD A. CARR
Acting Assistant Attorney General
Land and Natural Resources Division
U.S. Department of Justice


Dated: 5-30-89


BRUCE S. GELBER
Senior Attorney
Environmental Enforcement Section
Land and Natural Resources Division
U.S. Department of Justice


Dated: 5/30/89

ROGER P. WILLIAMS
United States Attorney
Western District of New York

By:


MARTIN J. LITTLEFIELD
Assistant United States Attorney
Western District of New York

Dated: _____

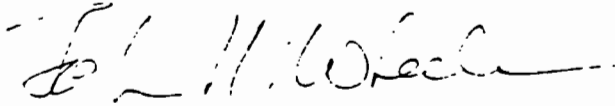

EDWARD E. REICH
Acting Assistant Administrator
for Enforcement and Compliance
Monitoring
U.S. Environmental Protection Agency

Dated: 5/30/89



WILLIAM J. MUSZYNSKI, P.E.
Acting Regional Administrator
U.S. Environmental Protection Agency
Region II

Dated: 5/19/89



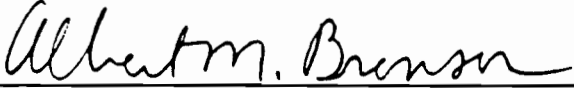
JOHN WHEELER
Senior Attorney
National Project Branch
OECM Waste Enforcement Division
U.S. Environmental Protection Agency

Dated: 5/22/89

FOR THE STATE OF NEW YORK

ROBERT ABRAMS
Attorney General of the State of New York
New York State Department of Law


By:



ALBERT M. BRONSON
Assistant Attorney General

Dated: 5/26/89

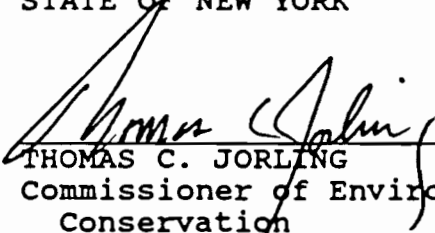
By:



C. MICHAEL BRYCE
Assistant Attorney General

Dated: 5/30/89

Attorneys for Plaintiff,
STATE OF NEW YORK



THOMAS C. JORLING
Commissioner of Environmental
Conservation
State of New York

Dated: May 26, 1989

FOR OCCIDENTAL CHEMICAL CORPORATION

Michael J. Rudick
MICHAEL J. RUDICK
Vice President and General Counsel
Occidental Chemical Corporation

Dated: May 11, 1989

Thomas H. Truitt
THOMAS H. TRUITT
ANTHONY L. YOUNG
Piper & Marbury

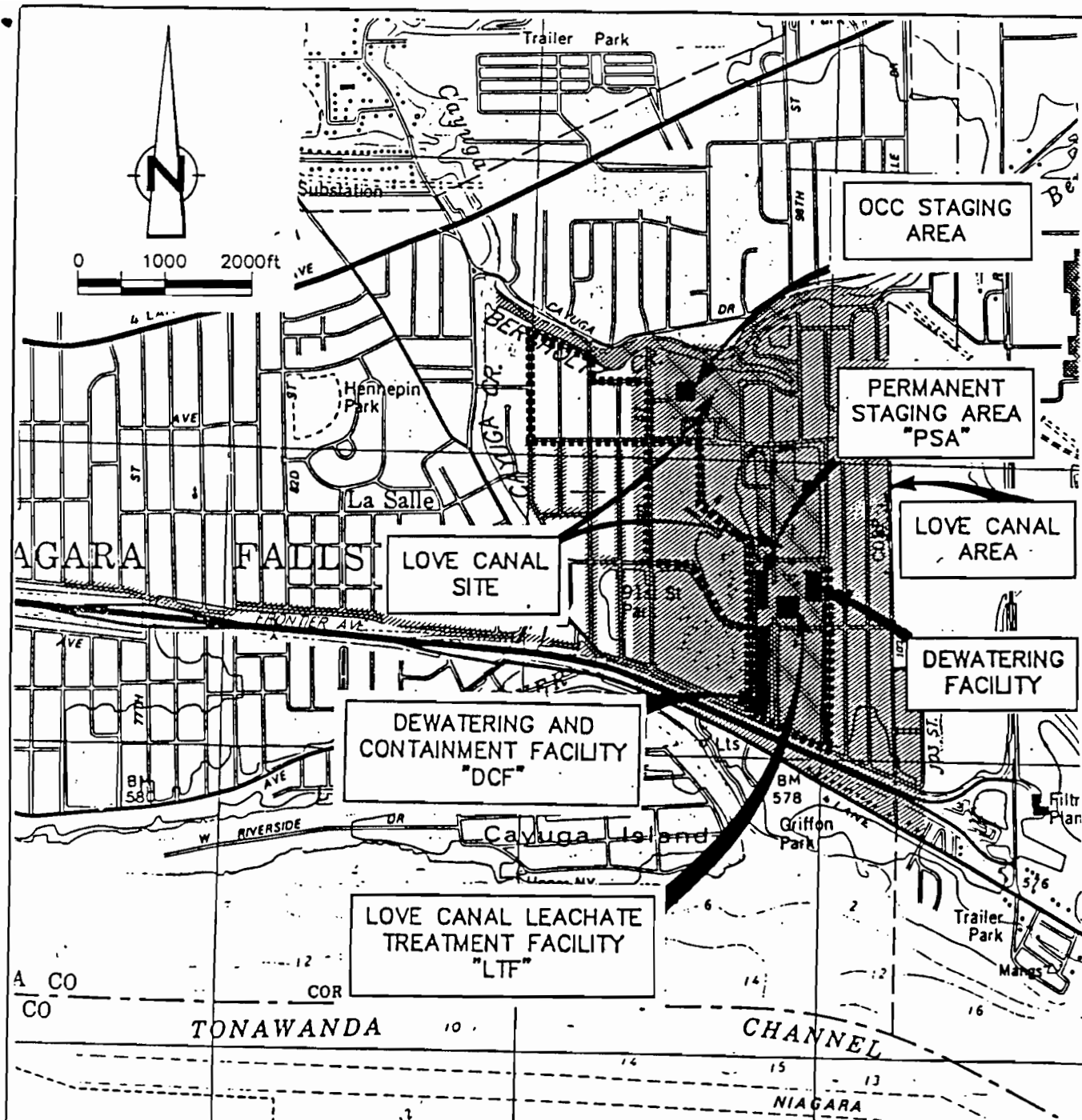
Dated: May 12 - 89

David K. Floyd
DAVID K. FLOYD
Phillips, Lytle, Hitchcock,
Blaine & Huber


Dated: MAY 12, 1989

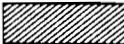
George Berger / Wasser
GEORGE BERGER
Phillips, Nizer, Benjamin,
Krim & Ballon

Dated: May 15, 1989



LEGEND

 LOVE CANAL SITE AND ON-SITE TRANSPORTATION ROUTES

 LOVE CANAL AREA "INCLUDES SEWERS EXTENDING WESTERLY ALONG FRONTIER AVE. TO 74th STREET AND OTHER SEWERS ADJACENT TO THE LOVE CANAL AREA"

LOVE CANAL AREA AND SITE MAP
Occidental Chemical Corporation