

## Lesson 2 Documents

### Document No. 6

#### Account of Eckardt C. Beck, Administrator of Region 2, United States Environmental Protection Agency, on his visit to Love Canal, August 1978:

“It is a cruel irony that Love Canal was originally meant to be a dream community. . . . In the late 1950s, about 100 homes and a school were built at the site. Perhaps it wasn’t William T. Love’s model city, but it was a solid, working-class community. For a while.

“On the first day of August, 1978, the lead paragraph of a front-page story in the *New York Times* read: ‘Niagara Falls, N.Y. --- Twenty-five years after the Hooker Chemical Company stopped using the Love Canal here as an industrial dump, 82 different compounds, 11 of them suspected carcinogens, have been percolating upward through the soil, their drum containers rotting and leaching their contents into the backyards and basements of 100 homes and a public school built on the banks of the canal.’ . . .

“I visited the canal area at that time. [After a record amount of rainfall], corroding waste-disposal drums could be seen breaking up through the grounds of backyards. Trees and gardens were turning black and dying. One entire swimming pool had been popped up from its foundation, afloat now on a small sea of chemicals. Puddles of noxious substances were pointed out to me by residents . . . in their yards. . . in their basements . . . on the school grounds. Everywhere the air had a faint, choking smell. Children returned from play with burns on their hands and faces. . . . The New York State Health Department is continuing an investigation into a disturbingly high rate of miscarriages, along with five birth-defect cases detected thus far in the area. . . . A large percentage of people in Love Canal are also being closely observed because of detected high white-blood-cell counts, a possible precursor of leukemia. . . . ‘We knew they put chemicals into the canal and filled it over,’ said one woman, a long-time resident of the Canal area, ‘but we had no idea the chemicals would invade our homes. We’re worried sick about the grandchildren and their children.’ Two of this woman’s four grandchildren have birth defects. The children were born and raised in the Love Canal community. A granddaughter was born deaf with a cleft palate, an extra row of teeth, and slight retardation. A grandson was born with an eye defect. . . .

“On August 7, [1978], New York Governor Hugh Carey announced to the residents of the Canal that the State Government would purchase the homes affected by chemicals. On that same day, President [Jimmy] Carter approved emergency financial aid for the Love Canal area (the first emergency funds ever to be approved for something other than a ‘natural’ disaster). . . . By the month’s end, 98 families had already been evacuated. Another 46 had found temporary housing. Soon after, all families would be gone from the most contaminated areas -- a total of 221 families have moved or agreed to move. State figures show more than 200 purchase offers have been made, totaling nearly \$7 million. A plan is being set in motion now to implement technical procedures designed to meet the seemingly impossible job of detoxifying the Canal area. . . . I have been very pleased with the high degree of cooperation in this case among local, State, and Federal governments, and with the swiftness by which the Congress and the President have acted to make funds available.”

Source: Eckardt C. Beck, “The Love Canal Tragedy,” *Environmental Protection Agency Journal*, January, 1979, pp. 1–5. <http://www2.epa.gov/aboutepa/love-canal-tragedy>

**Document No. 7****Text of United States District Court Decision in the Case of the *United States, the State of New York, and UDC-Love Canal, Inc. v. Hooker Chemicals Plastics Corporation et al.*, May 12, 1988:**

“Congress enacted CERCLA [Comprehensive Environmental Response Compensation and Liability Act] in December 1980 in response to the severe environmental and public health effects posed by the disposal of hazardous wastes. CERCLA establishes three basic mechanisms to achieve its objectives. First, CERCLA provides the federal government with the necessary authority to respond to hazardous substance sources in an attempt to remove threats to the environment and to public health. Second, CERCLA creates a fund (the so-called “Superfund”) to finance federal clean-up and responses efforts. Third, CERCLA establishes a liability scheme to insure that those responsible for the release or threatened release of hazardous substances will be made to pay for the response costs and for damage to natural resources. . . . CERCLA authorizes the Environmental Protection Agency (EPA) to take a response action whenever there is a release or threatened release of ‘hazardous substances’ or any other ‘pollutants or contaminants’ into the environment. The ‘response’ actions which are permissible under CERCLA include a broad category of investigative, evaluative, and clean-up activities. . . .

“The liability scheme established by CERCLA identifies four classes of potentially liable defendants: 1) current owners and operators of hazardous waste facilities; 2) past owners and operators of hazardous waste facilities; 3) persons . . . who arrange for the disposal or treatments of hazardous waste; and 4) transporters of hazardous wastes. . . . Generally, the governments . . . need only show a given defendant meets the criteria of a ‘responsible party’ . . . in order to be held liable under CERCLA. . . . The conveyance of property to a third party . . . will not relieve a responsible party of liability. . . . The record establishes, that during the approximately 11 years OCC [Occidental Chemical Corporation] used the property for the disposal of chemicals, it deposited more than 21,000 tons . . . of various wastes into the Love Canal. Included in these wastes were numerous hazardous substances . . . [which] were subsequently detected in the surface water, groundwater, soil, the basements of homes, sewers, creeks, and other locations in the area surrounding the Love Canal landfill during the 1970s.

“In the late 1970s, the United States commenced the funding of a remedial program for the Love Canal. In 1982, the United States and New York entered into a cooperative agreement to provide additional remedial and investigatory work there. . . . Both the United States and New York now contend that they are entitled to partial summary judgment against OCC . . . [and] argue that OCC is liable under CERCLA as an owner and/or operator at the time of the 1942-53 disposal . . . [for] removal and remedial costs in responding to the release of hazardous substances from the Love Canal. . . .

“OCC claims that ‘its own activities were not at all a contributing cause of subsequent problems at the Love Canal site . . . and that rupture of the enclosure was due exclusively to the acts and omissions of third parties.’ . . . ‘The Love Canal was well-suited for the disposal of wastes because of its location and hydrogeological characteristics; . . .

OCC's disposal practices were proper, and that the wastes it deposited were left covered with clay in separate facilities in a safe and secure condition. OCC further maintains that but for various incursions directly into the facilities and alterations of the hydrogeological regime by parties other than OCC—occurring after OCC sold the site—exposure of chemicals and migration of leachate to adjacent yards, house basements, and sewers would not have occurred. . . . The Board of Education of the City of Niagara Falls installed a subsurface drain around the school it built immediately adjacent to the site. This drain became a direct pathway for migration. The City of Niagara Falls installed roads and sewers through the property which also became conduits for chemical migration. The State of New York, during construction of the LaSalle Expressway, relocated Frontier Avenue directly through buried wastes—again, breaking through the barrier walls which had secured the site and creating pathways for chemical migration. These structures and activities, along with other actions by these and other entities, . . . not OCC's placement of the wastes in the Canal originally—caused chemicals in the Canal to migrate outward away from the Canal property toward residential areas.' . . . OCC alleges that the chemical landfill at Love Canal was 'secure' at the time that the company conveyed the property to the Board of Education of the City of Niagara Falls in 1953 and that it contained . . . barriers which prevented chemical migration. . . .

"For the reasons set forth below, this court now grants plaintiffs' [the United States government and the State of New York] motions for partial summary judgment. I find that OCC is strictly, jointly, and severally liable for CERCLA response costs incurred by the plaintiff governments in connection with the release and threatened release of hazardous chemicals from the Love Canal landfill, including the costs incurred prior to the passage and implementation of the CERCLA statutory scheme. . . . It is beyond dispute that OCC is a potential liable party as defined in CERCLA. . . . Its legislative history suggests that the statute was enacted as a means of compelling the waste disposal industry to correct its past mistakes and to provide a solution for the dangers posed by inactive, abandoned waste sites. . . . Once it is accepted that a defendant may be liable for its pre-CERCLA acts, it is irrelevant . . . whether the government commenced clean-up before or after the Act [CERCLA] became law on December 11, 1980. . . . 'CERCLA authorizes recovery of response costs whether incurred before or after its enactment.' . . . OCC's disposal practices were at least partially responsible for the release or threatened release of the chemicals from the Love Canal landfill during the subsequent years. . . . Plaintiffs' motions for partial summary judgment against defendant OCC are granted."

Chief Judge John Thomas Curtin,

United States District Court for the Western District of New York

Source: *United States, the State of New York, and UCD-Love Canal, Inc. v. Hooker Chemicals Plastics Corporation et al.*, United States District Court, Western District New York, Case No. 680 F. Supp. 546 May 12, 1988, pp. 1–53.

[https://www.casetext.com/case/us-v-hooker-chemicals-plastics-corp-4#.U\\_ylTMVdUyl](https://www.casetext.com/case/us-v-hooker-chemicals-plastics-corp-4#.U_ylTMVdUyl)

**Document No. 8****Text of United States Department of Justice and Environmental Protection Agency,  
Press Release, December 21, 1995: Occidental Chemical Corporation's Love Canal  
Settlement:**

"In a successful end to a toxic dump disaster that became synonymous with the hazards of environmental pollution, and that gave birth to the nation's Superfund program to clean up the most hazardous toxic waste sites, the Justice Department and the Environmental Protection Agency announced today that the Occidental Chemical Corporation will pay the government \$129 million dollars to cover the costs of the Love Canal incident that began in the late 1970s. The agreement results from a Justice Department lawsuit filed 16 years ago after a toxic waste nightmare forced the evacuation of more than one thousand homes, an elementary school and an entire neighborhood in Niagara Fall, New York.

"... EPA Administrator Carol M. Browner said, 'The Love Canal settlement underscores this Administration's firm commitment to ensuring that polluters -- not the American people -- pick up the tab for cleaning up toxic waste dumps. Strong enforcement of our nation's environmental laws is vital to protecting the health of the one in four Americans who still lives near toxic waste dumps.

"Under the terms of today's settlement, the federal government would get back all of the \$101 million it spent on cleanup and \$28 million in interest. Occidental will pay \$102 million to the EPA Superfund and \$27 million to the United States on behalf of the Federal Emergency Management Agency. FEMA funded early cleanup and relocation activities, prior to the enactment of the Superfund law in December 1980.

"In 1977, Love Canal area residents began complaining about the strange substances oozing into their basements. Between 1978 and 1980, President Jimmy Carter used disaster relief authority to declare two Federal emergencies in the area. The government funded the initial cleanup efforts and relocated hundreds of area residents. The disaster led Congress, in 1980, to enact the Superfund law [Comprehensive Environmental Response Compensation and Liability Act (CERCLA)], which established a cleanup program for toxic waste sites around the nation and required waste dumpers to pay cleanup costs. . . . The federal government, working in tandem with the State of New York, cleaned up the Love Canal site. Dioxin was removed from creeks and sewers adjacent to the Love Canal to ensure the safety of children who played in the creeks and residents who might eat contaminated fish. Federal and state authorities also improved and continued to operate a leachate collection system . . . to prevent contaminated groundwater from spreading outward from the Canal. Groundwater around the Canal was monitored to make sure the collection system was working. Extensive additional studies of the area were done.

"In 1988, the [New York] state and federal government declared that most of the area was again suitable for residential use, and the Love Canal Area Revitalization Authority began selling the abandoned homes to private citizens. Virtually all remedial activities at the site . . . were completed by 1989.

"The Federal District Court in Buffalo had already ruled that Occidental was a 'responsible party' under the Superfund law. . . . In the lawsuit, Occidental had charged that

the United States was also a responsible party and should contribute toward the cleanup costs based on regulatory actions or alleged dumping by several federal agencies. The United States denied Occidental's charges. . . . In today's settlement, the government agreed to pay an additional \$8 million of the total cleanup costs to resolve these claims. . . . One of the reasons the case was not settled earlier was that Occidental pursued extensive litigation to test the limits of the Superfund law. . . . The Federal Emergency Management Agency also expressed satisfaction with the settlement."

Source: United States Department of Justice and Environmental Protection Agency, Press Release, December 21, 1995, concerning Occidental Chemical Corporation's Love Canal Settlement. [http://www.justice.gov/opa/pr/Pre\\_96/December95/638.txt.html](http://www.justice.gov/opa/pr/Pre_96/December95/638.txt.html)

## **Document No. 9**

**Text of United States District Court Decision in the Case of the *United States, the State of New York, and UDC-Love Canal, Inc. v. Occidental Petroleum Corporation et al.*, May 30, 1997:**

"The only claims remaining in the case are the claims and crossclaims between the City of Niagara Falls and Occidental [Chemical Corporation]. In this order, the court will address liability only. OCC [is] . . . seeking contribution from the City [of Niagara Falls] for its 'equitable proportionate share' of costs under both CERCLA [Comprehensive Environmental Response Compensation and Liability Act] and the common law of public nuisance. OCC also asserts as a defense to the City's counterclaim that the covenant not to sue executed between Hooker and the Board [of Education of Niagara Falls] renders the City solely liable for the costs of remediation of the public nuisance. . . . Moreover, the fact that the land was purchased for one dollar indicates that the Board of Education and OCC bargained for the assumption of liability by the Board. In addition, the provision in the deed between the Board and the City . . . incorporated the original covenant not to sue, and amounted to an endorsement and adoption of the covenant by the City.

"The City argues that even if there is a valid covenant not to sue, it cannot be bound by it because it engaged in the cleanup not as a landowner, but rather under its 'police power' to abate a public nuisance. . . . This court concluded that it would harm the public good to completely bar recovery by the City 'for the costs it incurred, on lands properly acquired, in exercising its police power to protect the public health.' . . . Against the public interest, the court weighs the important fact that Hooker sold the parcel to the Board for one dollar, based on Hooker's understanding that it would not be sued for any environmental liability. Were the City a private entity, the covenant might well be valid, and this court does not disturb that bargain lightly.

"However, the greater good is served by voiding the covenant. If the City were a private entity, or had considered engaging in remedial efforts simply as a landowner, it would have been able to litigate the extent of its liability before paying for any remediation, while the EPA funded immediate work on the site. As a public entity, the City was obliged to act

immediately, without regard to the extent of its liability, in order to address a public health threat. If the court were to enforce the covenant, the City would be stripped of its rights to contribution from other parties after acting. Such a situation would do significant disservice to the citizens of Niagara Falls. The court therefore declares the covenant not to sue void for the purposes of this order.

“[Regarding another issue], OCC argues that the City is . . . liable as the current owner of the property under CERCLA and as the party that owned the property at the time hazardous substances were disposed of under CERCLA. The City argues that it is exempted from those provisions by CERCLA which exempts local governments that acquire property by necessity and do not contribute to the release of hazardous wastes. The City argues that in purchasing the property to build roads, [a school] and a park, it was making an involuntary purchase because these are functions that a sovereign [government] must perform. . . . The City’s definition of involuntary is inconsistent . . . with CERCLA. First, the statute clearly states that . . . State and local governments are not distinguished from private entities . . . [and] sets out the types of involuntary acquisitions, [such as] . . . bankruptcy, tax delinquency, and abandonment. . . . Finally, the circumstances of the acquisition do not satisfy the plain meaning of the word involuntary. The City evaluated the land carefully and considered the problems of the buried waste before taking title. . . . This is clear evidence that the City purchased the land voluntarily. . . .

“The City now claims that it cannot be held liable in public nuisance because it did not know of the nuisance and when it did learn of problems it addressed them reasonably. . . . The Court of Appeals stated simply that . . . a landowner is ‘liable for maintenance of a *public* nuisance irrespective of negligence or fault.’ The City clearly knew of the conditions giving rise to the public nuisance. The covenant not to sue executed as part of the deed between Hooker and the Board of Education, set out that the property had been ‘filled, in whole or in part, . . . with waste products resulting from the manufacture of chemicals by the grantor.’ The covenant clearly contemplated that the nature of the waste was not benign, and might in the future cause significant injury. . . . The covenant specifically covered ‘injury to a person or persons, including death resulting therefrom, or loss of or damage to property caused by, in connection with or by reason of the presence of said industrial wastes.’ . . . The court concludes that the City knew or should have known that the waste was present. . . . The City [claims] it addressed the problems reasonably as they arose over the years. As noted, reasonable abatement efforts are not a defense to public nuisance liability. . . . Consequently, the City is jointly and severally liable for the public nuisance.”

Chief Judge John Thomas Curtin,

United States District Court for the Western District of New York

Source: *United States, the State of New York, and UDC-Love Canal, Inc. v. Occidental Petroleum Corporation et al.*, United States District Court, Western District New York, Case No. 965 F. Supp. 408 May 30, 1997, pp. 1–5.

[http://www.leagle.com/decision/19971373965FSupp408\\_11319.xml/U.S.%20v.%20OCCIDENTAL%20CHEMICAL%20CORP.](http://www.leagle.com/decision/19971373965FSupp408_11319.xml/U.S.%20v.%20OCCIDENTAL%20CHEMICAL%20CORP.)