

Occidental will pick up a cleanup tab

Occidental Chemical will spend an estimated \$30-40 million to clean up a hazardous waste dump near a company plant in Niagara Falls, N. Y. Agreement on the cleanup of the site, known as the "S-Area" dump, followed four years of litigation between Occidental and government agencies. The agreement spells out remedial actions that are to be taken by Occidental to protect the city's drinking water from toxic chemicals migrating from the site. Occidental is also obligated to take "whatever additional action is necessary," should proposed strategies fail. And the company will pay the City of Niagara Falls some \$3.6 million to monitor drinking water quality for at least the next 35 years. The move marks the second negotiated settlement between Occidental and the federal government for cleanup of sites in the Niagara Falls area. Still pending against the company are two federal actions, including a \$45 million suit brought in December 1982 that seeks to recover Superfund monies spent by EPA.

Stauffer wins an inspection suit against EPA

Stauffer Chemical can keep Environmental Protection Agency contractors out of its facilities. But the U. S. Supreme Court, in handing the company a victory on the controversial issue, refused to lay down a rule that will apply to all companies. Stauffer says that it fears that production secrets may get in the hands of competitors if private contractors are allowed to troop through its plants, and had gotten the U. S. Courts of Appeals in Denver and Cincinnati to agree that the government cannot expand its search warrant powers to cover employees of independent companies hired by EPA to run inspections. EPA took the Cincinnati ruling to the high court, but the justices, rather than deciding the warrant issue, ruled unanimously that the government should not have pressed that case against Stauffer, having lost the point in the Denver proceeding.

Kerr-McGee loses the latest Silkwood ruling

Kerr-McGee is one step closer to having to pay millions of dollars in damages to the estate of Karen Silkwood, who had been a laboratory analyst at its Crescent, Okla., plutonium plant. After she was killed in an automobile accident in 1974, her father sued Kerr-McGee for injury done to her by plutonium contamination, and a jury awarded the estate \$5,000 in property damages, \$500,000 in personal damages and a whopping \$10 million in punitive damages. The U. S. Court of Appeals in Denver threw out all but the \$5,000 award, holding that personal injuries could

be collected only through workmen's compensation and that no punitive damages could be awarded. The judges reasoned that the federal government had the exclusive right to regulate nuclear safety, and that punitive damages interfered with the Nuclear Regulatory Commission's authority. By a 5-4 vote, the Supreme Court ruled that there is no conflict between the award and federal regulatory programs.

Six-month sentence for former waste program chief

Rita M. Lavelle, former head of the Environmental Protection Agency's hazardous waste program, was sentenced last week to six months in jail for lying to congressional committees about her involvement in a hazardous waste case. In addition, the 36-year-old Lavelle was fined \$10,000 and given five years probation. She will be eligible for parole after five months in prison. In December 1983, Lavelle was found guilty on four felony counts of perjury and obstructing a congressional inquiry in connection with a possible settlement at the Stringfellow site in California. But she will appeal her conviction.

Recombinant DNA committee to reevaluate its role

Members of the National Institutes of Health's Recombinant DNA Advisory Committee will try to respond to continued queries about RAC's proper role at their Feb. 6-7 meeting at NIH headquarters. Committee members will study whether the NIH/RAC recombinant-DNA guidelines should be restricted solely to biomedical research and work done in laboratories. Such restrictions would cancel RAC's reviews of rDNA field tests or agricultural experiments. The panel will also consider accepting research proposals only from scientists funded by NIH or other federal agencies, a move that would prevent review of industry experimentation. RAC will also consider opening its sessions to the public, which could cause NIH to cease accepting any proprietary data for review.

USDA will fund grants for alcohol fuels research

The Agriculture Dept. expects to set aside \$520,000 in fiscal year 1984 for a research program on alcohol fuels. At least \$130,000 will be reserved for such research as the identification and development of suitable agricultural products as raw material for production. At least another 25% of the funds will go toward technologies that increase the energy efficiency and commercial feasibility of alcohol production. Each grant award will be limited to \$80,000, and to projects that take a maximum of three years. Funding proposals must be received by the USDA Grants Administrative Management Office by Apr. 6.

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Oxy may settle over Love Canal

National awareness of the dilemma posed by toxic-waste dumps sprang largely from the experiences of the residents of the now-quarantined Niagara Falls, N.Y., community of Love Canal. And last week, former residents were at the center of a major development in the growing national debate over the compensation of citizens alleging illnesses caused by toxic-waste exposure.

In a move with broad implications for the chemical industry, Occidental Petroleum announced that a "basic accord" has been reached on an out-of-court settlement of \$16 billion on personal injury claims that were brought by former res-

If so, the move is a major precedent in the field of victims' compensation suits. Previously, both chemical companies and industry trade associations, such as the Chemical Manufacturers Assn., have vigorously opposed injury-related compensation settlements on the basis that no scientific link has been established between human illnesses and exposure to hazardous waste. "We are not opposed to victims compensation; we just don't know whether there are any victims to be compensated," says Geraldine Cox, CMA's vice-president for technical affairs.

During the next two months, attorneys for both sides will negotiate the protocol for disbursing settlement funds among the some 1,800 individuals participating in the suit. Once determined, the allocation protocol is to be forwarded to federal district court in Buffalo, N.Y., for comment.

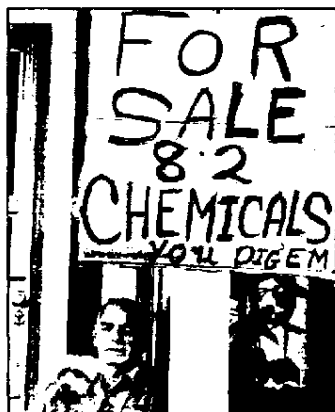
According to an Occidental spokesman, the firm is set to contribute \$6 million to the settlement fund. Further funds will come from insurance companies but the total cost is unknown.

However, Richard Lippes, attorney for the Love Canal plaintiffs, warns there is "no settlement," though there have been "some significant breakthroughs" in the talks with Occidental. The major breakthrough, he says, is that the company finally made a "conditional settlement offer."

Wrapping it up. According to Lippes, there are "still a number of significant issues" to be resolved, including the total sum of the settlement, how it will be paid, to which plaintiffs, and the form of release that the plaintiffs would be required to sign freeing Occidental from further claims. A major problem now, says Lippes, is to deal with the issue of some plaintiffs accepting a settlement and others not.

At *Chemical Week's* press time, it was not clear how much insurance companies would contribute to any settlement. There have been coverage disputes in California and New York between Occidental and its insurers, including Lloyd's of London, Hartford Accident and Indemnity, and Argonaut Insurance (*CW, Feb. 6, 1980, p. 23*).

Both New York State and the federal government have also filed suits against Occidental over Love Canal. No talks are underway in those actions, but the federal government is negotiating over two other Niagara Falls sites. □



Residents are seeking \$16 billion in damages.

idents of Love Canal against Hooker Chemical, now Occidental Chemical, as well as the City of Niagara Falls and other local public authorities. "We choose to seek resolution of these suits out of court, even though the record does not support the claim that chemical wastes buried at the site caused illnesses or injury," said Armand Hammer, chairman and chief executive officer of Occidental Petroleum, the chemical company's parent, in a prepared statement.

Occidental officials decline to comment on the specific terms of the proposed settlement. But a source close to the case says that awards to residents will be based on such factors as the nature of the alleged illness and years of residence in the Love Canal community. Says the source: "Some residents will be receiving more than others."

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LOVE CANAL CLEANUP: EPA revamps plan, safety decision

Fourteen months after the federal government declared the Love Canal area of Niagara Falls, N.Y., habitable once measures were taken to prevent further leakage of toxic chemicals from the dump and already tainted sites were cleaned up, the Environmental Protection Agency has pirouetted saying that new evidence of contamination will push back the decision on habitability until 1985 at the earliest. Further, the finding of contamination beyond the area that was to have been surrounded by a containment wall has forced the agency to revamp its remedial cleanup program.

EPA's announcement of a revised plan for handling the remaining contamination at Love Canal was prompted by a contractor's finding of "significant migration of chemicals beyond the proposed wall location," and by a close review of a recent Office of Technology Assessment study. That study faulted EPA's environmental monitoring data, and the use by the Department of Health & Human Services of that flawed data as a basis for its habitability decision.

Rep. John J. LaFalce (D.-N.Y.), whose district includes Love Canal and who, along with New York's two U.S. Senators had requested the OTA study, says that EPA now has "in effect admitted that the \$8 million environmental assessment was inadequate for its intended purposes." And Sen. Daniel P. Moynihan (D.-N.Y.) has suggested that EPA ask the National Academy of Sciences for "recommendations on the scope and design of additional sampling and environmental monitoring at Love Canal."

James Marshall, EPA's director of external programs for Region II, says HHS's habitability decision was contingent "on a series of remedial mea-



Moynihan: seek advice from NAS

asures being carried out." In the course of carrying out those measures—placing a clay cap over the dump site, building a containment wall which was to surround the canal and its leachate collection and French tile drainage systems, and designing cleanup procedures for dioxin-contaminated creeks and sewers—a contractor found contamination at the wall site that had not been detected by EPA's massive monitoring study. Marshall says the contractor's most significant finding was a "group of phthalates in the high-ppb to low-ppm range," though lindane, benzene, chloroform, and several other organic chemicals were also detected in the soil in the low parts-per-billion range. Marshall says that the contractor found no dioxin, and that this information was "all disclosed in Niagara Falls this July."

Joel S. Hirschhorn, OTA senior associate and an author of the OTA report, says the discovery that chemicals had migrated beyond the site of the proposed wall would "suggest the wisdom of doing more environmental monitoring studies." Yet, as LaFalce points out, EPA's "pronouncements do not include a firm commitment to additional monitoring for the express purpose of making a habitability decision."

What EPA is committed to is a thorough review of existing data, perhaps more studies to fill in the gaps, and cleanup on a timetable that begins running this month and continues through February 1988. And according to Marshall, EPA, which three months ago had decided not to build the containment wall, now will be reviewing options for containing the migrating chemicals. A decision on an alternative to the wall will be made in six to eight months, he says. In the meantime, "remedial work is going on," Marshall says. The clay cap will be completed before this winter, and the creeks and sewers will be cleaned up by the end of next year.

In the revised plan, EPA and New York state have divided the Love Canal area into three zones. Cleanup will proceed from the most contaminated zone outward, and "incremental" decisions on livability will be made in the reverse order. Habitability decisions will be made by the Centers for Disease Control and by the N.Y. Department of Health beginning as early as March 1985 and proceeding through 1988.

The finding of additional contamination, EPA's decision to do new studies, and the extension of the decision-making timetable, "make everything at Love Canal more uncertain and more loaded with ambiguity," Hirschhorn says. □

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Mutual respect, better dialogue

Generalizations are usually untrue, sometimes dangerous, and often useful. On that note, we think we see an encouraging trend in the relationship between the major environmental organizations and the chemical industry (*cover story*, p. 48).

As we have noted previously, industry and environmentalists are beginning to sit down together and negotiate on issues. Both want to avoid the paperwork, delays and uncertainties of the prolonged regulatory process. And both want to avoid costly litigation.

It's hard to tell how far this trend will go. Some of the gaps that separate the positions of the two parties are pretty wide, as in the current right-to-know struggle. But over the long haul, there is much reason for hope that such gaps can be bridged by healthy compromise. That's because between the two sides there's a growing, though still wary, respect.

Many environmentalists now seem more willing to acknowledge that there will always be degrees of risk in our interaction with our environment, since we have neither the know-how nor the

resources to eliminate all such risk. As a corollary, they recognize that human beings may be more willing to accept a certain level of risk than to depress their material standard of living or to force an employer to become uncompetitive. They are beginning to understand that industry executives, despite the pressure to maximize profits, do care about the environment, too. And they have learned that industry people sometimes can offer good solutions to environmental problems.

On the other side, many industry executives now concede that some of their environmentalist adversaries know what they're talking about. They can deal with economic tradeoffs, and they have access to sound science.

Despite all this, the relationship between industry and environmentalists is bound to remain adversarial for the foreseeable future. Laws, cops and gadflies are still needed to help change the sloppy industrial habits of a century. But we hope that negotiation will continue to displace litigation. And we believe that the dialogue will now be less shrill and more constructive. □

Paying up at Niagara Falls

Love Canal, in the popular imagination, stands for the chemical horrors that may lurk, unseen, almost anywhere. And it is a landmark case in the confrontation between industry and environmentalists.

Now, five years after that chemical-waste dump in Niagara Falls, N.Y., sprang upon our consciousness, it appears that Love Canal may also set an important precedent in the law. Occidental Petroleum says it has offered to pay \$5.6 million as part of a settlement with 1,300 parties to a class-action suit who claim to have been injured by leakage from the dump (p. 17).

That payment would surely be just the tip of the iceberg, with insurers stuck for the rest. The suit was for \$16 billion, and no one will speculate on what the total payment might be. And, assuming the offer is accepted, it will be a while before the parties work out the details of how the payment is to be allocated among the claimants.

A settlement would be significant for a number of reasons. Foremost is the

fact that, so far as we can tell, there was no substantial negligence on the part of Hooker Chemical, now Occidental Chemical, in its disposal of toxic wastes at Love Canal. The company followed approved procedures for toxic-waste landfills. The leakage occurred after the cap was disturbed, which happened after Hooker had sold the land and despite the company's warnings. And there are questions as to the extent of any long-range health damage.

Occidental's willingness to settle in light of those facts shows how all-encompassing the courts' view of liability has become. It is a clear signal that chemical companies must exercise not just normal care but extraordinary care to ensure safe disposal of toxics.

Just as important, there is much interest across the nation in developing equitable means of compensating the victims of exposure to toxic chemicals. If and when the details of the Love Canal settlement are worked out, they will almost certainly serve as a powerful precedent for future cases. □

HAZARDOUS WASTE CRITERIA AND LISTINGS

EPA DESIGNATION OF 2,4-D AS AN "ACUTELY HAZARDOUS" CHEMICAL UNDER RCRA IS BEING DISPUTED BY CHEM-LAWN CORP -- JULY 16, PAGE 12.

EPA IS ADDING 18 "INTERIM FINAL" HAZARDOUS WASTES TO ITS RCRA REGULATIONS AND IS PROPOSING TO INCLUDE ANOTHER SEVEN WASTES -- JULY 16, PAGE 14.

EPA'S HAZARDOUS WASTE RULES HAVE BEEN DEFENDED BY EPA'S OFFICE OF SOLID WASTE -- AUG. 20, PAGE 10.

RCRA COMMENTS ON EPA'S INTERIM FINAL LISTING OF NINE INDUSTRIAL WASTES ARE DUE IN OCTOBER -- SEPT. 17, PAGE 2.

EPA'S RCRA SMALL QUANTITY GENERATOR EXEMPTION IS BEING CHALLENGED BY THE NATIONAL SOLID WASTE MANAGEMENT ASSOCIATION -- OCT. 22, PAGE 22.

EPA HAS FINALIZED ITS LIST OF 80 HAZARDOUS WASTES, DELISTING FOUR WASTES FROM ITS INTERIM FINAL LIST AND DEFERRING FINAL ACTION ON FIVE WASTES PREVIOUSLY LISTED OR PROPOSED FOR LISTING -- NOV. 12, PAGE 24.

LOVE CANAL

ACCORDING TO AN AMENDMENT CONTAINED IN FY 1980 SUPPLEMENTAL APPROPRIATIONS APPROVED IN HOUSE-SENATE CONFERENCE REPORT NO. 96-1149, PRESIDENT CARTER WOULD HAVE THE AUTHORITY TO RELOCATE FAMILIES AT LOVE CANAL -- JULY 9, PAGE 42.

LOVE CANAL POLLUTION MONITORING CONTRACT FOR \$5.4 MILLION WAS AWARDED TO GCA CORP. OF BEDFORD, MASS. -- JULY 23, PAGE 2.

LOVE CANAL EPIDEMIOLOGY WORK GROUP MEETING TO DISCUSS EPIDEMIOLOGIC STUDY PROTOCOLS ON HEALTH EFFECTS OF CHEMICAL CONTAMINATION OF THE LOVE CANAL AREA WILL BE HELD IN AUGUST AT THE CENTER FOR DISEASE CONTROL, ATLANTA, GA. -- AUG. 6, PAGE 2.

THE CARTER ADMINISTRATION HAS OFFERED NEW YORK STATE A \$15 MILLION LOAN TO BE USED FOR THE RELOCATION OF LOVE CANAL RESIDENTS -- AUG. 6, PAGE 15.

TOXIC CHEMICALS FOUND IN THE BLOOD OF LOVE CANAL RESIDENTS ARE "IN THE SAME RANGE AS PUBLISHED VALUES FOR THE GENERAL POPULATION," ACCORDING TO A NEW STUDY BY THE EPA -- AUG. 6, PAGE 18.

LOVE CANAL ENVIRONMENTAL TESTING BY EPA -- INCLUDING WATER SAMPLING AND SAMPLING IN HOMES -- WILL BEGIN SOON -- AUG. 13, PAGE 2.

THE LOVE CANAL HOMEOWNERS ASSOCIATION HAS WRITTEN EPA A LETTER CONCERNING ITS PROPOSED PLANS FOR TESTS -- AUG. 20, PAGE 32.

LOVE CANAL HOMEOWNERS ASSOCIATION REVIEWS EPA'S PROPOSED PLANS TO TEST AT CANAL AREA -- AUG. 27, PAGE 29.

A \$4.1 MILLION STUDY OF RESIDENTS LIVING NEAR THE LOVE CANAL AREA IS NOW UNDER CONSIDERATION BY THE CENTER FOR DISEASE CONTROL AND THE NEW YORK UNIVERSITY MEDICAL SCHOOL AT BUFFALO -- SEPT. 3, PAGE 5.

LOVE CANAL ENVIRONMENTAL MONITORING BY EPA IS EXPECTED TO BE FINISHED BY THE END OF THE MONTH -- OCT. 22, PAGE 2.

ENVIRONMENTAL DATA COLLECTED BY EPA AT LOVE CANAL AS PART OF THE AGENCY'S EFFORTS TO ASSESS THE HEALTH RISKS IN THE AREA WILL BE MADE AVAILABLE TO THE PUBLIC BY JANUARY -- NOV. 5, PAGE 25.

RESIDENTS OF LOVE CANAL IN NIAGARA FALLS, N.Y., DON'T APPEAR TO HAVE HIGHER CANCER RATES THAN OTHER PERSONS LIVING IN NEW YORK STATE, ACCORDING TO A STUDY BY THE NEW YORK STATE HEALTH DEPARTMENT -- JUNE 17, PAGE 13.

NOTIFICATION

HAZARDOUS WASTE NON-NOTIFIERS COULD BE SUBJECT TO PENALTIES OF UP TO \$25,000 A DAY UNDER RCRA 3010 PROVISIONS -- AUG. 13, PAGE 10.

EPA'S OSM COUNTS ABOUT 60,000 RCRA NOTIFIERS AND HAS MAILED OUT ABOUT 28,500 RCRA PERMIT APPLICATION PACKAGES -- NOV. 12, PAGE 2.

LATEST EPA ESTIMATES COUNT RCRA NOTIFICATIONS AT ABOUT 56,000 -- JAN. 7, PAGE 2.

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Television In Review

By KENNETH R. CLARK
UPI TV Reporter

NEW YORK (UPI) - When John Brunner wrote "The Sheep Look Up" a decade ago, few outside the ranks of science fiction buffs paid any attention to his futuristic nightmare of chemical pollution gone berserk. Then, at a place called the Love Canal, it happened.

People living in the Niagara Falls, N.Y., neighborhood suddenly found their basements full of benzene, their drinking water full of dioxin and their children's bodies full of poisons so exotic the doctors could only puzzle over the symptoms.

The Love Canal was a chemical dump of unparalleled lethality, and the chemicals were leaking death into everything.

Tonight from 9-11 p.m., EST, CBS will recount the Love Canal nightmare, the terror of the people caught in the middle of it and, above all, the transfiguration of a housewife named Lois Gibbs.

Marsha Mason, who could turn a soap can label into a dramatic script, is fine in the title role of a timid rabbit who becomes a marauding tigress when state and federal bureaucrats menace her cube with their pig-headed political evasion.

Before Lois Gibbs - thrust into dreaded leadership by her neighbors - is through with

Summer Math

(Continued from Page 5)
Professor of mathematics at
"Ivory College"

the bureaucracy, it has no hole deep enough in which to hide, and to the distress of her husband, she is no longer the shy creature he married.

"Lois Gibbs and the Love Canal" - based on the factual book, "Laying Waste," by Michael Brown, one of the first news reporters to break the story - would play as good drama if it were fiction. That it is fact gives it an extra edge of dread.

Throughout the film, the big chemical plant across the river looms between towns like a malevolent monster, reminding all who watch that the Love Canal is not the nation's only potential death trap.

The connection may not be quite fair to the chemical industry in general, but it does serve to emphasize the warning sounded 10 years ago by the siren of science fiction.

Under the influence - benign or malevolent - of today's technology, science fiction has a disturbing habit of ceasing to be fiction almost before it is off the press.

The Public Broadcasting Service will open a four-part salute to Black History Month tonight with the dramatized story of a man who became a civil rights activist when the question was slavery, not just discrimination.

"Denmark Vesey's Rebellion," which airs nationwide under various local PBS listings, recalls the life of a

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