

2021 Hazardous Waste Scanning Project

File Form Naming Convention.

(File_Type).(Program).(Site_Number).(YYYY-MM-DD).(File_Name).pdf

Note 1: Each category is separated by a period "."

Note 2: Each word within category is separated by an underscore "_"

Specific File Naming Convention Label:

Consent Order. HW. 932020. 1994-06-21, Consent Decree.pdf

M. Padd

New York State Department of Environmental Conservation

MEMORANDUM

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

Jeff Lacey

COPIES: N. Newcomb
C. Yeddard
D. Weigel
J. Rides

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file

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. Siström
- J. Martens
- M. Gerstman
- A. DeBarbieri
- M. Gallo
- J. Lacey
- M.J. O'Toole, Jr.
- N. Parratt

JUN 24 1994
OPERATIONS & MAINTENANCE
SECTION

RECEIVED
JUN 22 1994
DIVISION OF HAZARDOUS
WASTE REMEDIATION

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

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Plaintiffs,

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

Defendants.

-----X

Civil Action No. 79-990C

**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

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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

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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 Hernan
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
by ML

Em L

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.

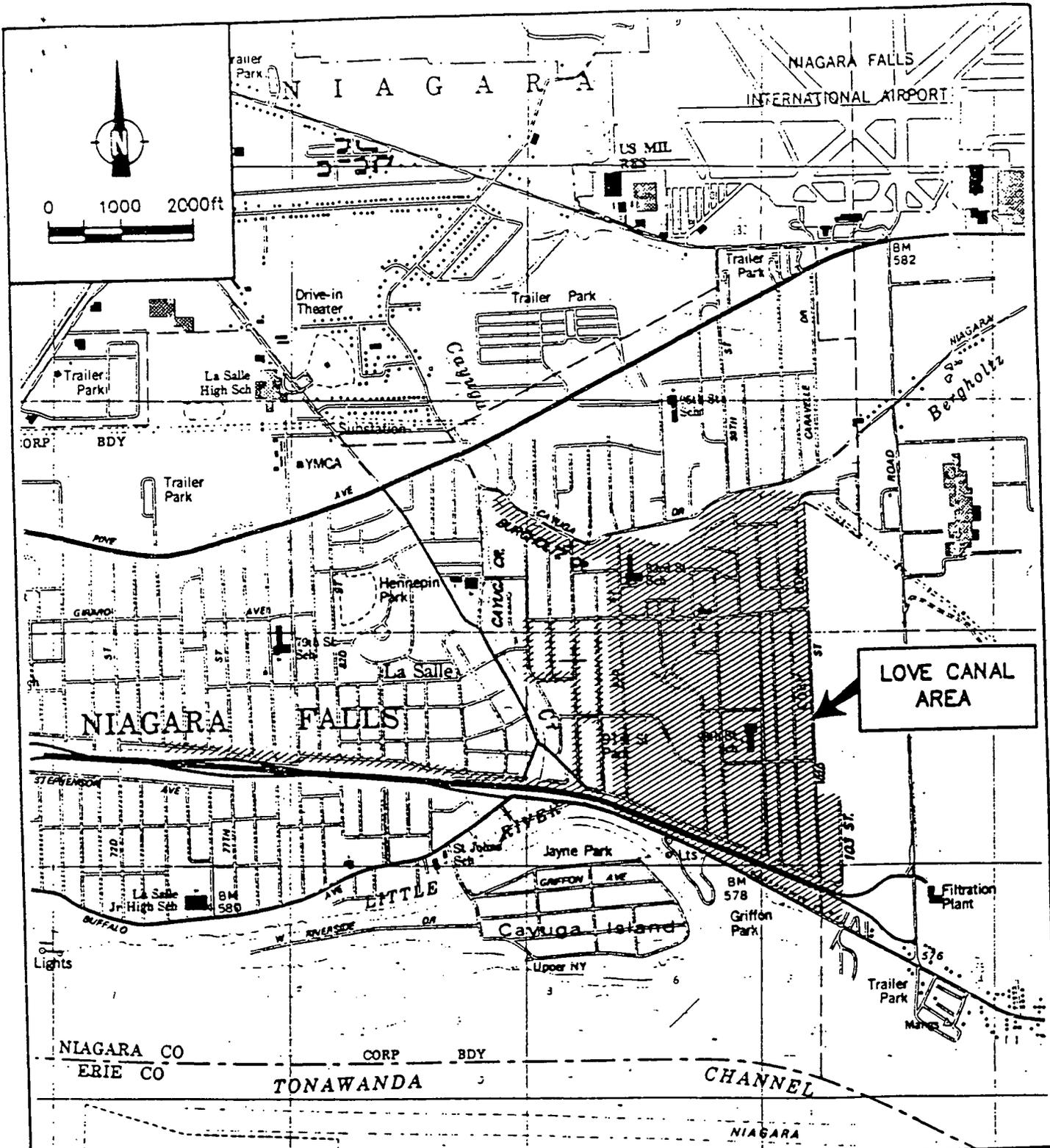
Attorneys for Defendant
Occidental Chemical Corporation

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

LOVE CANAL AREA MAP
Occidental Chemical Corporation

CRA

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-Builts. 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	2007	Pub. Info. Off.	--- 2 OK Podol
Dictator	2008	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	2010		---
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		2 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)	34256	General Use	Q774C646
	<i>Pump (sand pipe)</i>	<i>34392</i>	"	<i>278C 30</i>
	Purifier (Water)	16758	General Use	--- 4 OK Plant
No	Racal-Vadic	00154	General Use	307270
Have	Radio	00910	General Use	422AJU0194
	Radio	00911	General Use	422AJU0195
	<i>Radio</i>	<i>51823</i>	" "	<i>422 AYE 0646</i>
	Refrigerator	96859	"5" Area	---
	Refrigerator/Freezer	92872	General Use	---
	Regulator (Gas)	16218	General Use	---
	Safety Light			--- D151960
	Safety Light	00019		--- 2 OK Plant
	4 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	1981651381855
	Typewriter	45521	Pub. Info. Off.	6705116139846 2 OK Plant
	Weather Measure	18777	General Use	--- 2 OK F

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>Wincher</i> Workbench	<i>34857</i> 32120	" "	<i>286213</i> ---
No Wrench (Air Impact)	32220	General Use	--- 2 OK Plant

radio (handover) 50446 LCTP Yp 2/5
③ 50447 " 20K Plant
50448 "

2 in computer 897001 LCTP 2 OK Plant
& access 60773489

page 4/14

EQUIP. ID # Equipment assigned to the Love Creek Power Division, Pallets, Accessories

86-5001: John Deere Snow Blower

87-1004: Best Tools for Tractor

87-1002: Ryd-90 Woods Rotary Mower
Replaced by Ford flail mower. See
att. memo.

86-7189: Ford 545A Tractor

89-2001: Best air compressor on Geopond

87-5012: John Deere Riding Lawn Tractor

~~87-4000: Chevrolet pickup (Best)~~

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)

* duplicated on 91 inventory present from following
Address: All inventories sent to the...

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

REPORT OF PHYSICAL INSPECTION

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. WHERE HAS ABSTRACT NOW?

ADDRESS

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

DEPARTMENT OF ENVIRONMENTAL CONSERVATION

DATE: _____ BY: _____

**APPENDIX B
 REPORT OF PHYSICAL INSPECTION**

**THE FOLLOWING IMAGE(S) ARE THE
BEST COPY AVAILABLE**

InStream, LLC

EQUIPMENT CONDITION CERTIFICATION REPORT

JUN 15 94 11:25 NYSDEC LCTF DHAR

Handwritten: 10/11/93
page

BUREAU LOVE CANAL
CONSTRUCTION SVCS

PLATE NO.	MAKE	MODEL	SERIAL NO.	COUNTY	IDENT CODE	DESCRIPTION	WEIGHT	LICENSE SCORE	STATUS
828908	SHIPMATE	2009c	J1-4-628969	29 NIAGARA	B 2 2185	DUMP TRAILER	92000	2000 (P) (X)	
828001	COMMON RUPP	1170AR-8	699448	29 NIAGARA	B 2	PUMP		0000 (P) (X)	
626015	NOPELITE	1110411/2	12801518	41 SARATOGA	0228 25	LOVE CANAL		6200 () ()	
846003	CH & E		3103P562	29 NIAGARA	6316 20	LOVE CANAL		8000 (P) (X)	

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

Handwritten: 3/10/93
DATE

Handwritten Signature: Andrew P. Adewusi
SIGNATURE
PROGRAM SUPERVISOR

EQUIPMENT CONDITION CERTIFICATION REPORT

BUREAU

WESTM REED ACTION

893525 DODGE

RANCHARGER 3B4HM17Y4KM95316B 29 NIAGARA 321U8AAAG

0640
-0420

0000 (C) (X)

893525 DODGE

RANCHARGER 3B4HM17Y4KM95316B 29 NIAGARA 321U8AAAG

0000 (C) (X)

893525 DODGE

RANCHARGER 3B4HM17Y4KM95316B 29 NIAGARA 321U8AAAG

0000 (P) (X)

892001 GAST

P6D 10-A 0189 29 NIAGARA Z 7

OILLESS AIR COMP

0000 (F) (X)

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

3/10/93

Amir P. Schwab

DATE

SIGNATURE

PROGRAM SUPERVISOR

10/14/93

STATION 15 - 11125 NEXCEL CT - DHR

EQUIPMENT LISTED ON PROGRAM INVENTORY SHEETS BUT NOT LOCATED IN PROGRAM

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P.21
Love Canal
CT
010496 R 9 Buffalo
MSUC R 9 Buffalo
MSUC R 9 Buffalo
MSUC R 9 Buffalo

ID#	Program Name	Type	Serial #	Description	Location County/Person
2153 ?		30033 ?		TRIPOD, SAFETY	ERIE 2 OK Plant
2154		33002		SCOTT PUMP AIR OPERATED	ERIE
3419A		30088		JACK, SERVICE 6 TON	ERIE
34250		30016		WEVER LIFT THRU POST HYDR	CATT
34357		30027		MILLE NINCH	ERIE
9446A		60917		GENERAL PART REFRIG-FREEZER	ERIE
93921	2 OK Plant	61300		ELKAY MATERIAL COLE	ERIE
50303		12101	880213	TRACR DETECTING CHAMBER	ERIE
53797		10602	11545	SAMPO METER PORT. JOURNAL	ERIE
34102	2 OK Plant	30082	6054209-89	AMSIG American Sigma COMPRESSOR, AIR-ACC	MA
34403		30092	507735489	AMSIG COMPRESSOR, AIR-ACC	MA
34416	2 OK Plant	30005	89322	CONBL COMPRESSOR-TWYH.	MA
18300		10100	85-04-050	BRSTD ANALYZER, AIR	ERIE
90773		60917		AMINA REFRIG-FREEZER	NIA 2 OK Plant

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

LOCATION/UNIT CODE

900001

ID. NO	MFG	MODEL	SERIAL NUMBER	TYPE	PROGRAM UNIT WESTERN RMDIAL ACT DESCRIPTION	LOCATION CENTRAL OFFICE		OK/INC	STATUS
						CNTY	COND		
1 SCIENTIFIC AND LABORATORY EQUIPMENT									
17184	KIMEO	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	2717	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									
4 SCIENTIFIC AND LABORATORY EQUIPMENT									
51823	MOTOR	MT-500	422ANE0646	12303	TRANSCEIVER, PORTABLE	ERIE	(2)	(OK)	(Plant)
END OF 4 SCIENTIFIC AND LABORATORY EQUIPMENT									
6 FURNITURE									
96356	WHIRL	ED19TKMVR	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

NYSDEC R 9 Buffalo

FROM

14:09

1991-11-11

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JUN 15 '94 11:35 NYSDEC LCTF DWR

P.9

91/02/12
FVNA05

NYS DEPARTMENT OF ENVIRONMENTAL CONSERVATION

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

LOCATION/UNIT CODE

99160E

ID. NO	MFG	MODEL	REGION 9 SERIAL NUMBER	TYPE	PROGRAM UNIT WESTERN REVDL ACTN DESCRIPTION	LOCATION			STATUS
						LOVE CNTY	CANAL COND	OK/INC	
1	SCIENTIFIC AND LABORATORY EQUIPMENT					ERIE	()	()	()
S3105	ZENTH 286		005DF000444	10300	COMPUTER				

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

11/20/94
JUN 15 '94 11:35 NYSDEC LCTF DHR

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

LOCATION/UNIT CODE

9916QE

ID. NO	MFG	MODEL	REGION 9 SERIAL NUMBER	TYPE	PROGRAM UNIT WESTERN REVDL ACTN DESCRIPTION	LOCATION		COND	OK/INC	STATUS
						LOVE	CANAL CNTY			
6 FURNITURE										
04593	CORRE			60504	FILE, LEGAL, 5 DRAWER	NIAG	(2)	(OK)	(PIO))
04594	CORRE			60504	FILE, LEGAL, 5 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	GLOBL	48"X30"X29		60113	WORKSTATION-COMPUTER	NIAG	(2)	(OK)	(PIO))
END OF 6 FURNITURE										
1 SCIENTIFIC AND LABORATORY EQUIPMENT										
51296	IBMCO	PS/2-502	72-7189420	10300	COMPUTER	NIAG	(2)	(OK)	(PIO))
51301	IBMCO	8513	23-PM254	10312	MONITOR	NIAG	(2)	(OK)	(PIO))
51306	IBMCO	QW-III	11-7551943	10303	PRINTER	NIAG	(2)	(OK)	(PIO))
51309	IBMCO	QW-III	11-7540924	10303	PRINTER	ERIE	()	()	())
51311	IBMCO	SHEETFEED	171226	10304	PRINTER ACCESSORY	NIAG	(2)	(OK)	(PIO))
51314	IBMCO	SHEETFEED		10304	PRINTER ACCESSORY	ERIE	()	()	())
53104	ZENTH	286	0050F000527	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	Soiltest		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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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
ne } 18779	Love Canal	IRRU		10.2 EV Air Probe/Analyzer	Niagara Plant
18582	Love Canal	IRRU		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

h1031304

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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	2015	Comm. Relations	--- 2 OK PIO
Cart	94640	General Use	--- 2 OK Plant
Chair (Flex)	2023	Pub. Info. Off.	--- 2 OK PIO
Chair (Flex)	2024	Pub. Info. Off.	--- 2 OK PIO
Chair (Flex)	2025	Pub. Info. Off.	--- 2 OK PIO
Chair (Flex)	2026	Pub. Info. Off.	--- 2 OK PIO
Chair (Flex)	2027	Pub. Info. Off.	--- 2 OK PIO
Chair (Flex)	2028	Pub. Info. Off.	--- 2 OK PIO
Chair (Secretarial)	2029	General Use	--- 2 OK Latko
Chair (Swivel)	94669	Pub. Info. Off.	--- 2 OK Poded
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 3084063256
Copier 283ZMR	45792	General Use	9923019 2 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 Poded