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More witnesses against Army appear Judge told 4 have come forward to attest to Love Canal dumping

By Carolyn McMeekin
Niagara Gazette

BUFFALO — Four more eyewitnesses who say they saw the Army dump at Love Canal have come forward since secret federal documents were unsealed two weeks ago, the federal judge hearing the Love Canal trial was told on Tuesday.

U.S. District Court Judge John T. Curtin heard the news when the trial resumed with the opening of the Occidental Chemical Corp.'s case against the federal government for alleged Army dumping.

The four, and possibly another seven eyewitnesses now living in Buffalo, will need to give depositions before being called on to testify. Because of that, federal attorneys asked Curtin for a two-week delay after this week's testimony. The judge said he would decide today when the trial continues in U.S. Dis-

trict Court. Also today, Occidental will call the first of its original six eyewitnesses.

On Tuesday, the seven-month-old trial's final chapter began with Occidental asking Curtin to find the government partially liable for the costs of cleaning up and relocating residents from Love Canal. That could total \$700 million. So far, Occidental is the only party that has been found liable.

Thomas H. Truitt, Occidental's lead attorney, said the government should be held liable for Army dumping because wartime chemicals made for it by the former Hooker Chemicals and Plastics Corp., now Occidental, were dumped in the canal. He cited another case in which the U.S. won a Superfund verdict against the manufacturer of pesticide ingredients. The manufacturer's defense had been that the contract



was for a valuable product, not waste — the same defense the government is now using at Love Canal, Truitt said.

But federal attorney Lewis M. Barr said there was no Superfund precedent to find the government guilty. "When Congress enacted (Superfund) in 1980 it had the situation with Hooker at Love Canal in mind. Those who were responsible for pollution were to pay to clean it up. For Hooker and Occidental, the bill has come due. Occidental is trying to shift the responsibility to the taxpayers of Western New York and the United States," he said.

Truitt also said a nuclear engineer would testify that a radioactive substance — Cesium 137 — found at the canal could have come only from the government. "These levels cannot be explained away as mere background or atmospheric fallout," Truitt said.

But Barr said the government would call its own witness to testify that the radioactivity did come from airborne fallout. And he faulted the eyewitnesses' testimony as "anecdotal and unpersuasive."

Barr also noted that Occidental destroyed copies of some wartime contracts it had with the government, a fact the company admits. Therefore, the company has no evidence that the government had anything to do with the materials' burial at Love Canal, Barr said. But Truitt said the government has not produced its copies of the contracts and charged they were either destroyed or lost.

As its first witness, Occidental

called Jay A. Cull, the company's technical manager for special environmental programs. Cull, who testified previously, investigated the company's records and wartime contracts and estimated the amount of residues from those substances buried in the canal.

Cull testified that Hooker produced hexachloroethane, a substance used for smoke bombs, under the government's order during World War II. The contract for this was not destroyed. Cull said it showed that the government paid \$50,000 to Hooker to build the plant, retained ownership rights for the facility's machines, and provided the raw materials to make the substance. Although the contract was for 7.2 million pounds of the toxic substance, Hooker wound up making 12 million pounds for the government, Cull said. He estimated that nearly 300 tons of its residue were buried in Love Canal.