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## NEWS

# Plaintiffs in Nash Road landfill lawsuit get favorable ruling

*Attorneys told WIVB that the fact-finding mission is next when they begin to file for discovery*



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Several hundred people suing over a toxic landfill off Nash Road that once contained Love Canal waste received some favorable rulings recently in Federal District Court for Western New York, their attorneys said.

Mike Stag, one of the attorneys for the plaintiffs, said the court recently ruled that a lawsuit seeking environmental cleanup and damages against Occidental and the Town of Wheatfield can proceed.

Residents living near the Nash Road Landfill, a hazardous waste Superfund site in the Town of Wheatfield next to the border with North Tonawanda, alleged in the lawsuit that Occidental dumped toxic Love Canal waste at the town's unlined municipal landfill.

The state Department of Environmental Conservation said that by 2015 it had removed the Love Canal waste from the landfill and planned to conduct more studies to determine the current state of the landfill. Those studies found more contamination but the DEC said it was not related to any Love Canal waste, which neighborhood residents doubted for years.

DEC and Niagara County health department records show that the town allowed other companies to dump industrial waste into the landfill for years without any modern landfill lining or precautions.

The lawsuit claimed that the toxic chemicals migrated into the surrounding residential neighborhood – in some cases chemicals were found inside homes, attorneys said – sickening people and causing a multitude of serious illnesses, including cancer, cardiac, neurological, endocrine, and reproductive disorders.

Judge Christina C. Reiss issued two orders, one on March 17 and another on March 19, to grant the residents leave to amend their claims and denied the dismissals sought by the defense.

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- Recovery of all costs for environmental cleanup pursuant to the Federal Comprehensive Environmental Response, Compensation, and Liability Act, commonly known as “CERCLA”;
- Federal civil rights claims (42 U.S.C. §1983) against the Town of Wheatfield for its alleged “deliberate indifference” in violating the constitutional rights of Plaintiffs by knowingly arranging the disposal of toxic chemicals at the unprotected site;
- Tort claims for trespass and negligence against the Town of Wheatfield for their deliberate acts which caused the migration from the landfill onto private property; and
- Strict liability against all Defendants for abnormally dangerous or ultra-hazardous activity.

The lawsuit now includes more than 350 plaintiffs.

“Our ongoing environmental investigation has revealed more homes impacted, increasing the number of residents filing suit,” Stag said.

“With this favorable ruling, we are moving forward to prepare for trial. We expect to take depositions and seek records from the defense showing exactly what Occidental and the other defendants knew when they dumped their toxic waste next to this residential neighborhood.”

The defendants include the Town of Wheatfield, as successor of Niagara sanitation company, Occidental Chemical Corporation, Bell Helicopter Textron Inc. as successor of Bell Aircraft Corp., Crown Beverage Packaging LLC as successor of Continental, Greif Inc. as successor of Greif Bros. Cooperage Corp., Republic Services as successor of Niagara Sanitation Co. Inc., Honeywell International as

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Ceramics LLC as successor of the Carborundum Company Carborundum.

“Attorneys for the residents, Stag Liuzza, Napoli Shkolnik, and Christen Civileto, welcome the recent rulings, which will finally allow the residents suffering from toxic chemical exposure to move forward toward trial,” Stag said in a statement.

“It is expected the defense will now be required to disclose evidence of what they did and what they knew about the health hazards of the waste they dumped at the landfill.”

A spokesman for Occidental Chemical said its legal team succeeded in having a number of the plaintiffs’ claims dismissed last month, as well.

“Following a thorough investigation, the New York State Department of Environmental Conservation informed the landfill’s neighbors that there is no migration of contaminants from the landfill adversely impacting surrounding properties and no exposure to contamination from the landfill,” the company spokesman said.

“We believe the remaining claims are without merit and will continue to vigorously defend the cases.”

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