When America's leading chemical company buries millions of pounds of poisonous chemicals in the ground right next to a major drinking water supply, then explains that it thought the chemicals would "disappear" in the ground, what are we to think?

DuPont is the tenth largest U.S. corporation with assets in excess of $30 billion and several thousand chemists on the payroll, every one of whom knows that chemicals cannot "disappear" when you bury them in the ground. The first law of thermodynamics--which is taught to all freshmen chemists, and has been for at least a hundred years--makes it impossible for anyone educated in physics or chemistry to believe that chemicals can "disappear." Yet in 1988 a representative of the DuPont company (Richard Knowles) looked straight into an educational TV camera and said with a steady voice, "As an industry developed here [along the Niagara River in northern New York state], practices that were similar to those used around the world were used here with respect to disposal. Just as we did in our homes, we sometimes threw the trash in our back yards.... It was done at a time when people were just unaware of what the impact of these things would be. There was the expectation that somehow they would disappear and not become a problem."

Since it cannot be true that DuPont believed the chemicals would disappear, what did they think would happen? It is evident: they believed they wouldn't get caught and, if they did, they could put enough lawyers into the field to fend off serious trouble like major fines or jail sentences for executives. (At that time, the death sentence for polluters wasn't even being considered.)

The video TESTING THE WATERS confirms that this strategy was a pretty good one. The video tells the story of what has happened since 1979 when DuPont, Olin Corp. and Occidental Chemical got caught dumping hundreds of thousands of tons of toxics into a drinking water supply used by 5 million Canadians and Americans--the Niagara River, which feeds into Lake Ontario. The video is instructive because it makes clear how America's "hazardous waste management" system actually works. It shows corporations, government and citizens in action. This is what "civics" is about.

The video focuses on Occidental Chemical (known locally as Oxy), probably because Oxy created so many huge dumps along the river, including the dump at Love Canal. In 1979 when the discovery of Love Canal forced Uncle Sam to search for other dumps, Oxy's Hyde Park site came to light almost immediately. Hyde Park contains 80,000 tons of toxic chemicals, including one ton of 2,3,7,8-TCDDD, the deadliest of the dioxins.

Hyde Park sits less than a mile from the Niagara River. The geologic formation between the dump and the river consists of fractured rock. The fractures in the rock act like small pipes, through which the chemicals flow constantly toward the river. TESTING THE WATERS shows chemicals dripping out of the rock face of the Niagara gorge, with the river flowing below.

In 1979, Uncle Sam approached Oxy and demanded that the site be cleaned up. Oxy simply refused, "Sue us," they said. Uncle Sam did. Then Oxy fielded a team of lawyers and technicians who outgunned the government at every turn.

For five years, Oxy and the U.S. Environmental Protection Agency (EPA) negotiated behind closed doors. Then the EPA emerged to the blare of trumpets and held a press conference. Chris Daggett, then EPA chief for the New York region, announced a "far-reaching" agreement between Uncle Sam and the company. Daggett said that the plan would "curb and reclaim the chemicals that have migrated from this landfill." He then went on to say that the "standards of protection for the public, for the river, and for the environment" are "equal to or greater than any the EPA or New York state has established anywhere."

Next Robert Abrams, the attorney general of New York state, faced the cameras and said that, "Today's agreement is a vindication of the entire process" of negotiation behind closed doors.

A reporter asks the obvious question: how do you intend to retrieve the wastes that are already loose in the ground and flowing toward the river?

An EPA lawyer answers by pointing to a map showing a "ring of wells" to be placed in the ground around the site. The wells will be pumped. The reporter does not ask any followup questions, so the EPA's plan goes unchallenged. No one asks how the EPA will know where to place the wells so that they intersect the "pipes" (fractures) that are carrying the toxics toward the river. Now one asks what happens if the toxics are flowing through fractures in the rock which aren't tapped by the wells. No one asks how long it will take to pump the 80,000 tons of toxics to the surface using the ring of wells. No one asks what happens if the ground shifts, as has happened in the past, and a huge slug of toxics pours into the River all at once.

The remainder of the video adds details that the EPA omitted from their press conference. For example, in 1981, Oxy and EPA both took the official position that toxics were not flowing from Hyde Park into the river. A coalition of citizen groups gathered evidence that forced EPA and Oxy to admit toxics were reaching the river.

What civics lessons can we derive from this video?

1) Once you make toxic chemicals, there's almost nothing that can be done about them because even if technologies are available to remedy the situation, government doesn't have what it takes to force a company like Oxy to spend the necessary money. Citizens must force companies to reduce their use of toxics.

2) The government negotiates behind closed doors and this gives industry the upper hand. In working out "consent decrees" and other agreements with polluters, the government needs to open up the process so citizens can see what's going on. Industry wins behind closed doors because government just doesn't have what it takes. Open scrutiny of the process by citizens could give government officials the necessary leverage.

Furthermore, government is easily fooled by polluters. For example, no technically competent professionals believe the "ring of wells" around Hyde Park can capture the pollution that is seeping through the fractured rock into the Niagara River. Oxy has pulled a fast one on the government and has literally gotten away with murder. Since we offer few real benefits and protections for government (civil service) workers, industry will always be able to field a better team than government. With few exceptions, our government workers only remain on the job until the polluters offer them more money.

Open scrutiny of the negotiating process would be a way of augmenting the government's capabilities, allowing interested citizens, including those with technical training, to critique the work being done.

3) The courts are a losing arena for achieving cleanup. EPA would be better off taking their case directly to the people and whipping up public sentiment against the polluters, rather than taking them to court. Government could urge citizens to boycott polluters' products, government could open its files to citizen action groups and urge citizens to hold their own public hearings. Public outrage is a more effective lever against polluters than the law can ever be. Government should rethink its strategy and avoid the courts.

4) Government officials never ask the key question: Is this plan adequate to protect public health and safety? Instead, they ask, "Is this better than what we had last year?" Twice on this video, we see this reaction from government. Once when Daggett announces the Hyde Park agreement--he doesn't say it will do the job, he says it's more far-reaching than any agreement the government has ever
signed before. Then when a reporter asks EPA attorney Bill Walsh why they didn't allow more public participation in the process, he says he allowed more than EPA had allowed in any other process—avoiding the main issue, which is that huge segments of the public were excluded and complained bitterly about it. Mr. Walsh's process may have been better than last year's, but it wasn't adequate to meet the public's needs.

5) Lastly, it is now clear that the government is committed to avoiding real solutions to Superfund problems. The only real solution to Hyde Park is to excavate the chemicals and detoxify them by chemical processing (which may involve heat, or may not). The government has a silent rule that guides all Superfund negotiations: we will not excavate wastes, we will leave them in the ground, no matter what the cost to future generations. As this video makes clear, if there ever was a case to be made for excavating a dump, Hyde Park is it. Sooner or later, if the chemicals are left in the ground at Hyde Park, they will end up in Lake Ontario. It is inevitable. The lake today contains an estimated 8 ounces of dioxin and that is already sufficient to cause health officials to issue warnings about consumption of fish in many parts of the lake. If a ton of dioxin moves into the lake (or even 10% of a ton), the Lake as we know it today will be destroyed. To risk that possibility just to save Oxy some money is nearly unthinkable. But that is what our EPA has done. An open process, involving the public at every step, might well have reached a different conclusion. That's what the 4th of July is really about.

Get: TESTING THE WATERS from Bullfrog Films, Oley, PA 19547; phone (800) 543-3764; $350 purchase or $75 rental for schools. For citizen action groups, $75 purchase or $25 rental. You won't be disappointed.

--Peter Montague

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Descriptor terms: niagara river; dupont; occidental petroleum; olin corp; remedial action; landfilling; hazardous waste; hyde park, ny; great lakes; chemical industry; love canal; epa; groundwater; superfund; ny;