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COLLECTION:

Clinton Presidential Records
Council on Environmental Quality
Kathleen "Katie" McGinty
OA/Box Number: 2888

FOLDER TITLE:

EPA [Environmental Protection Agency] Documents- WTI [Waste Technologies Industries]

2012-0769-F

kc2007

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

- P1 National Security Classified Information [(a)(1) of the PRA]
- P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
- P3 Release would violate a Federal statute [(a)(3) of the PRA]
- P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
- P5 Release would disclose confidential advice between the President and his advisors, or between such advisors [(a)(5) of the PRA]
- P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

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Freedom of Information Act - [5 U.S.C. 552(b)]

- b(1) National security classified information [(b)(1) of the FOIA]
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- b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
- b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]



United States Senate

COMMITTEE ON COMMERCE, SCIENCE,
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TO: PAM / KATIE

FROM: Tony Sacchi

TOTAL # PAGES (INCLUDING COVER): 3

Installment 2

PHOTOCOPY
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9523.1983(03)

JUN 17 1983

MEMORANDUM

SUBJECT: Land Owner Signature on Part A

FROM: John Skinner
Director
Office of Solid Wastes (WH-562)PHOTOCOPY
PRESERVATIONTO: Tom Devine
Director
Air & Waste Management Division
Region 4

Pursuant to §270.10 both the owner and operator are required to sign a permit application for a hazardous waste management facility. This dual signature requirement is the subject of a recent proposal in the Federal Register (July 23, 1983) which modifies the requirements for both signatures so that, in certain identifiable situations, the owner's signature may be waived by the Director. The preamble to the proposal summarizes the legal basis behind the present signature requirements. These regulations were proposed as a result of the NRDC settlement. They will have no effect on your questions.

~~The answers to your specific questions are:~~

1. Are incorrect signatures a criminal violation? Yes, if the signer knowingly signs the permit application either falsely or incorrectly.
2. To what extent should we try to ascertain who is the property owner (title search)? You should generally assume the person claiming to be the property owner is the property owner. A title search is an inappropriate use of resources unless you have good reason to believe the applicant is not the property owner.
3. What risk and liability does EPA encounter if we issue a permit to the wrong party based on the part A which is incorrect? None, however a permit writer who accepts a signature that he knows is false or incorrect and whose conduct is fraudulent under applicable state or Federal law, may be guilty of fraud.

4. Whose resources should be used to check proper title? In the rare case where a title search is needed, the permitting authority should conduct the title search.
5. Should we be concerned at all or just let the Public Notice serve to inform and if none comes forward assume the Part A signature is correct? EPA must assume applicants are dealing in good faith, except in those situations where EPA has good reason to believe the applicant is not. Public notice should serve to inform the public as to who owns and who operates the facility. If members of the public know of an error, they should so inform EPA.

cc: Hazardous Waste Branch Chiefs Regions I-X

PHOTOCOPY
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94-563:CM111er:3243:24535:6/16/83:ethan diox

ROBERT C. KNAPP, M.D.
701 SHARON ROAD
BEAVER, PENNSYLVANIA 15009
TELEPHONE (412) 775-4797

**PHOTOCOPY
PRESERVATION**

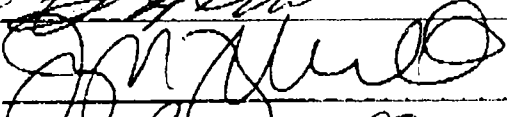
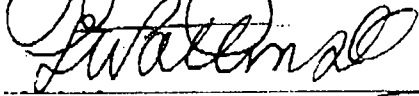
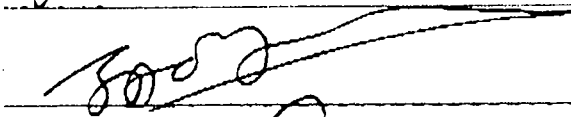
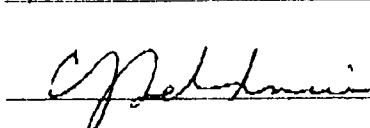
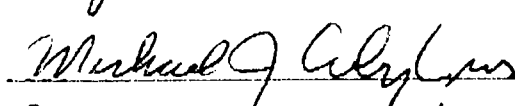
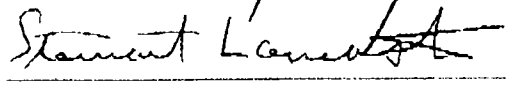
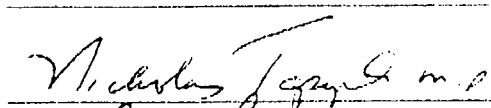
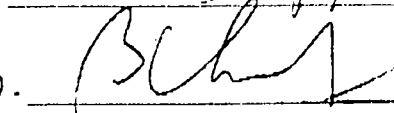
Dear President Clinton and Vice-President Gore,

We, the undersigned physicians from Ohio Valley communities threatened by the Waste Technologies Incinerator (WTI) in East Liverpool, Ohio, wish to convey to you our thanks for your commitment to withhold all permits for this facility pending a culmination of the investigation by the General Accounting Office.

Essentially all the medical associations of the region are currently on record opposing this facility for its myriad threats to public health. The location of this facility gravely concerns us; the legally permitted emissions of dioxin, heavy metals and other toxic chemicals pose significant health risks to valley residents, especially the children. From a public health perspective, the difference between test-burning and full commercial operation is simply a matter of semantics.

We applaud your commitment to investigate this potentially catastrophic situation before proceeding with any further permits. We are confident that an impartial investigation will conclude that this facility was illegally sited and is incapable of safe operation.

Sincerely,

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George R. Holler MD
Jay R. Edunek D.O.
L T PALLONE D.O.
S. A. DHABAT MD
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JOHN D BAYUK MD

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D. Appleton

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A. BHASSIN, M.D.

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HOWARD M. GENDELL, MD

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| 111. <u>Melanie Richman, M.D.</u> | <u>MELANIE RICHMAN, MD</u> |
| 112. <u>J.L. Funkhouser MD</u> | <u>J.L. FUNKHOUSER MD</u> |
| 113. <u>Jose J. SIA MD</u> | <u>JOSE J. SIA MD</u> |
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| 116. <u>John Notaro MD</u> | <u>JOHN NOTARO MD</u> |
| 117. <u>George W Brett MD</u> | <u>GEORGE W BRETT MD</u> |
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| 119. <u>Linda Thompson MD</u> | <u>LINDA THOMPSON, MD</u> |
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| 121. <u>Morris M. Book MD</u> | <u>MORRIS M. BOOK MD</u> |

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 Kamlesh Aggarwal, M.D. - Internal Medicine/Oncology
 Dharam Batish, M.D. - Family Practice
 Emil Ros, M.D. - Family Practice
 Inder S. Gujral, M.D. - Orthopedic Surgery
 Orlando R. Castro, M.D. - General Surgery
 Ted Hill, D.O. - Family Practice
 Cheng H. Pan, M.D. - Ears, Nose, Throat
 Janis Lauva, M.D. - Family Practice
 Mokhtar Nasir, M.D. - Internal Medicine/Nephrology
 Rekha Parulkar, M.D. - Family Practice
 Rajinder Singh, M.D. - Pulmonary Medicine
 Gerard McLaughlin, M.D. - Internal Medicine/Psychiatry
 Surinder K. Singh, M.D. - Psychiatry
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 John P. Koren, D.O. - Nuclear Medicine

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

77 WEST JACKSON BOULEVARD

CHICAGO, IL 60604-3590

JAN - 8 - 1993

REPLY TO THE ATTENTION OF:

R-19J

Waste Technologies Industries
c/o D. J. Blake Marshall, President
Von Roll (Ohio), Inc.
Managing Partner
3080 Northwoods Circle
Suite 200
Norcross, Georgia 30071

RE: Waste Technologies Industries
East Liverpool, Ohio
OHD 980 613 541
Trial Burn Plan

Dear Mr. Marshall:

In a December 24, 1992, letter, the United States Environmental Protection Agency (U.S. EPA) requested additional information from Waste Technologies Industries (WTI) regarding the trial burn plan for the East Liverpool, Ohio, hazardous waste incineration facility. The U.S. EPA deemed the requested information necessary prior to approval of the trial burn plan.

In response, the U.S. EPA received four letters from WTI or its representatives. The first letter, dated December 28, 1992, was from Charles Waterman III of Bricker and Eckler, addressing issues raised in U.S. EPA's letter concerning the Chemical Waste Management, Inc., supply contract and regarding the role that Von Roll, Inc., would play during the trial burn.

The second and third letters, dated December 29 and December 30, respectively, were from Ms. Heidi J. Dugan of WTI. These letters addressed the issues in our December 24 letter associated with quantitative residue analysis and with the relationship between flue gas flow and induced draft fan current.

The fourth letter, dated January 5, 1993, was from Ms. Deborah Rushin. This letter transmitted modified pages for inclusion in Trial Burn Plan Revision 4, adding references to metals testing in the spray dryer feed.

My staff has reviewed the additional information provided in the four responses and has determined that the responses are complete. The U.S. EPA finds that the trial burn, as described in Revision 4 of the Trial Burn Plan, including the information provided on January 5, is approvable based upon the following findings:

- (i) The trial burn is likely to determine whether the incinerator performance standard set forth in 40 CFR 264.343 can be met;

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- (ii) The trial burn itself will not present an imminent hazard to human health and the environment;
- (iii) The trial burn will help the Agency determine the operating requirements to be specified under 40 CFR 264.345; and
- (iv) The information sought in findings (i) and (iii) above cannot reasonably be developed through other means. 40 CFR 270.62(b)(5)

Revision 4 of the Trial Burn Plan is therefore approved, subject to the conditions and stipulations contained within the remainder of this letter.

Prior to commencement of trial burn testing, WTI must perform two activities during the shakedown period. These activities are as follows:

- 1) WTI must successfully demonstrate during the shakedown period that all waste feed cutoff control equipment operates as designed; and
- 2) WTI must provide the U.S. EPA with the number of steel containers which will be fed to the incinerator per hour during the trial burn. This information is necessary to determine the maximum capability of the kiln in handling drummed waste in steel containers.

Please be advised that final conditions of the permit for maximum allowable metals concentrations in the scrubber water blowdown (spray dryer feed) will be based on the conditions under which the trial burn is conducted, and will reflect values observed during the trial burn tests. For this reason, it is recommended that WTI maximize concentrations of metals in the spray dryer feed prior to beginning trial burn testing.

Following the trial burn, WTI must submit for U.S. EPA review and approval a certification of compliance with permit emission limits for carbon monoxide (Condition C.13 of the permit) and particulate matter (Condition C.4 of the permit). Such certification must include sufficient preliminary test data to document compliance. Until the U.S. EPA approves such certification, WTI is not authorized to burn hazardous waste pursuant to Condition C.13 of the permit.

Von Roll, Inc. (VRI) is not authorized as an "operator" of the WTI facility within the meaning of the Resource Conservation and Recovery Act (RCRA). Accordingly, VRI shall not operate the incinerator during trial burn or at any other time. The incinerator shall be operated exclusively by WTI and/or Von Roll (Ohio), Inc. (VRO), as managing partner of WTI, and the trial burn shall proceed under their exclusive direction and control. VRI shall not exercise independent decision-making authority regarding the operation of the incinerator, or regarding any other aspect of the facility, and VRI shall have no independent control over the operation of the incinerator. VRI's role shall be strictly limited as described above, regardless of any contractual provisions between VRI and WTI that might be construed to give VRI operational control over the facility during the trial burn.

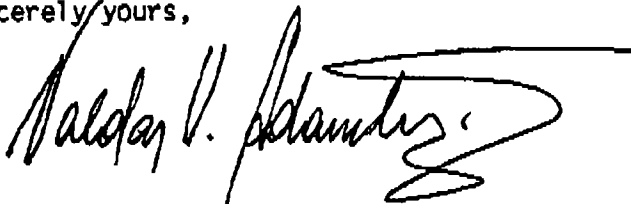
The U.S. EPA may at any time impose such additional terms and conditions in WTI's permit as are necessary to protect human health and the environment under the authority of RCRA Section 3005(c)(3).

In Appendix E of Trial Burn Plan Revision 4, WTI submitted proposed permit conditions for incorporation into the RCRA permit. The U.S. EPA's approval of Trial Burn Plan Revision 4 does not constitute concurrence with or approval of WTI's proposed permit conditions as contained in Appendix E, nor does U.S. EPA concur with any general comments or clarifications contained in any transmittal letters associated with the Trial Burn Plan.

This approval letter is part of and is hereby incorporated into the approved Trial Burn Plan.

Should you have any questions regarding this letter, please contact Ms. Nancy-Ellen Zusman or Mr. Gary Victorine of my staff, at 312-886-7161 or 312-353-0398 respectively.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Valdas V. Adamkus", with a large, sweeping flourish extending to the right.

Valdas V. Adamkus
Regional Administrator

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Council on Environmental Quality
Kathleen "Katie" McGinty
OA/Box Number: 2888

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EPA [Environmental Protection Agency] Documents- WTI [Waste Technologies Industries]

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STATEMENT OF
HUGH B. KAUFMAN
BEFORE THE
HOUSE JUDICIARY COMMITTEE
SUBCOMMITTEE ON ADMINISTRATIVE LAW AND GOVERNMENT OPERATIONS
MAY 7, 1992

Mr. Chairman, Members of the Subcommittee, thank you very much for inviting me to testify today on the subject of the Environmental Protection Agency's (EPA) process of regulating the hazardous waste disposal industry, as exemplified by the WTI case in East Liverpool, Ohio.

As you are aware, I am an engineer employed by the EPA, and have worked in the field of hazardous site control and hazardous waste management for twenty (20) years. In the 1970's I was EPA's chief investigator of hazardous sites, and I worked on drafting both the Resource Conservation and Recovery Act (RCRA) and the Superfund Law and associated regulations since that time. Because I was the "whistleblower" on the Love Canal case and the so-called "Burford-Lavelle-EPA Abuse" case, I have a consent agreement with EPA which has allowed me, over the past ten (10) years, to provide technical assistance to grassroots citizens monitoring waste disposal projects and clean-ups in their locales.

My comments before you today are based on my experience in the field of hazardous site investigation, and do not necessarily reflect the policies of the present administration.

Hugh B. Kaufman, Testimony
May 7, 1992
Page 2

During the past year I have provided in-depth help in investigating the key issues being discussed here today on the WTI case.

Because this is the first time Congress has held hearings on how the process of regulating hazardous waste facilities is actually working, I feel privileged to be invited to provide my observations and insights.

Both the Superfund Law and RCRA are based on using law and regulation to assure that liability and accountability continue to rest on the backs of those business entities who earn and save the billions of dollars associated with the generation and disposal of hazardous waste. If the laws and regulations enacted by federal and state governments are not enforced, or are abused, as is the case here with WTI, the business entities being enriched can successfully transfer their liabilities to the taxpayers.

The WTI case is a symptom of a national problem that demonstrates that the EPA process for regulating the waste disposal industry is riddled with deceit and deception at best, and fraud at worst. The ramifications to America are more serious than those of the savings and loan scandal: we are not just dealing with money. When EPA's regulatory process breaks down, we are also endangering the health of our citizens.

The EPA, and associated State agencies, are required to assure that key regulations to guarantee full accountability and liability remain with the owners and operators of hazardous waste disposal facilities by enforcing and abiding by the rules of law. If, as is the case here, the regulator and regulated evade and avoid compliance with the law, the public health and environment will not be protected.

The following is a list of some of the irregularities uncovered that demonstrate the breakdown of the regulatory process at WTI:

1. The EPA permit for WTI, which was issued on June 24, 1983, was deceptive and invalid because it failed to include the land owner, the Columbiana County Port Authority, as a permittee. The Port Authority did not sign the permit application, as required by EPA regulations (45 Fed. Reg. 33074, May 19, 1980), and was not identified in the permit application as an owner of the facility. The Regional Administrator, in a December 2, 1991 Letter to Senator Jay Rockefeller, admitted that he knew the Port Authority owned the land at the time of permit application. On February 3, 1992, as a result of Congressional investigations, EPA

illegally added the Port Authority to the permit, even though the Port Authority did not apply, and in fact, their attorney wrote to EPA saying the Port Authority refuses to be a co-permittee.

2. The EPA permit for WTI is deceptive and invalid because it fails to identify the facility's operator, Von Roll (Ohio), Inc., a company that did not come into existence until 1986, three (3) years after the permit was issued.
3. The EPA permit for WTI is deceptive and invalid because the partnership that currently owns the incinerator is owned and comprised of different companies than the partnership in whose name the permit was issued. EPA regulations (40 CFR 270.42(d)) require a revised permit application 90 days prior to ownership change.
4. The attorney for Waste Technologies Industries, Charles H. Waterman III, altered the dates of issuance and expiration on the original signature page of the EPA-issued permit for WTI.
5. The February, 1992 signature page of the EPA permit was amended by EPA to allow expansion of authorized activities at the WTI site (Surface Impoundment). The Regional Office claims that this was due to clerical error, but to my knowledge this has never been corrected.

The deceptive and blatant violations of EPA regulations described earlier prevents the government and the public from holding any entity fully accountable and liable to pay for damages, fires, explosions, loss of property value, increased infrastructure costs, and other problems that occur at these types of facilities, even after they cease operations. In fact, in investigating the WTI site, a citizen investigator, Connie Stein, from West Virginia, found approximately four dozen different companies were created and dissolved to effectuate a "corporate shell game", to protect the revenues that the WTI site will generate. In a sense this "shell game" with dozens of corporate entities having confusingly similar names, stitches the deep pockets of the WTI owners shut, thus denying entry to anyone but the actual owners (whoever they are).

The regulator (EPA), for all intents and purposes, is tacitly deregulating the hazardous waste management industry, with no legal authority. This is occurring at all the sites I have investigated over the past four (4) years from Nebraska to Pennsylvania. Because this situation recurs, the question of motive is always asked. I have no direct proof of motive, however, I do know that in each situation I have investigated, the EPA and the hazardous waste promoters have stated that more commercial hazardous waste management facilities are needed for

Hugh B. Kaufman, Testimony
May 7, 1992
Page 6

each state to be in compliance with its Capacity Assurance Plan, mandated by the Superfund Law. The threat of loss of Superfund money is always cited as a reason for promoting more sites. These arguments are being made for the WTI site, too. The truth is, according to the March, 1992 "Review of Capacity Assurance Process" performed by EPA and the National Governor's Association, there is an over-abundance of national hazardous waste treatment, storage, and disposal capacity well into the future. This report further documents the fact that Ohio is one of the leading importer states of incinerable hazardous waste without the WTI facility, and that Ohio is a net importer of incinerable hazardous waste.

All of these irregularities and problems have arisen at the early stage of regulation, the permitting process. We must ask ourselves, in light of these revelations, how well EPA can regulate this facility, if it becomes operational.

Thank you again for inviting me to testify before you today. I will be happy to answer any questions you may have.



Environmental NEWS RELEASE



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For Immediate Release: July 9, 1992

No. 92-M142

WTI RISK ASSESSMENT INFORMATION AVAILABLE; REGION GRANTS TEMPORARY AUTHORIZATION WITH CONDITIONS

U.S. Environmental Protection Agency (EPA) Region 5 today announced that the first phase of the Agency's risk assessment of Waste Technology Industries (WTI) hazardous waste incinerator in East Liverpool, OH, is complete and available to the public. (A fact sheet summarizing the Region's two-phase risk assessment for the WTI facility is attached.)

The first phase is a screening document based on conservative assumptions about the risks associated with inhalation. Its overall conclusion is that no adverse health effects would be expected to result from the operation of the incinerator with the spray dryer.

The screening document finds that concentrations of lead in the ambient air could slightly exceed the regulatory standard without further lead emission limits. Because EPA has set this standard well below the level of concern for health, Region 5 emphasizes that no adverse health effects are expected.

-More-

Therefore, Region 5 has decided to grant WTI a temporary authorization which prohibits commercial operation and is effective for no more than 180 days. Region 5 denied WTI's request for a blanket temporary authorization and has issued one with specific conditions.

The temporary authorization allows WTI to complete construction of the spray dryer and to conduct "start-up" of the incinerator. During the start-up period, WTI is allowed to burn restricted types of hazardous wastes for a period of no longer than 720 hours. In addition, the temporary authorization may allow WTI to conduct a trial burn if two mandatory provisions are met.

The first provision is that WTI must fully respond to the Region's formal request for legal information regarding its partnerships and the underlying corporate structure. Region 5 issued this request on July 7, 1992. WTI has 10 days to reply and failure to do so could result in civil penalties. EPA considers the information vital to a fuller evaluation of WTI's ability to comply with the financial assurance requirements of the Resource Conservation and Recovery Act (RCRA).

The second provision is that WTI must have its trial burn plan approved by Region 5. Currently, the plan has not been approved. The trial-burn approval will include additional lead limits beyond the existing regulatory standards.

The trial burn will provide the site-specific emissions data needed for the second, more precise phase of the risk assessment.

On February 3, 1992, Region 5 approved WTI's request to add a spray dryer to its air pollution control equipment. Six petitions for review of the Region's decision on the spray dryer are before EPA's Environmental Appeals Board in Washington, DC. These petitions effectively stayed construction and operation of the spray dryer and, therefore, the incinerator.

On March 13, 1992, WTI requested a temporary authorization to use the spray dryer. Region 5 has the authority to make decisions on temporary authorization requests. In this case, concurrence also was obtained from EPA Headquarters in Washington, DC, due to tremendous public concern about this facility.

Public comment period is not required for temporary authorizations. However, Region 5 deemed it important to formally respond in a summary document to the issues raised in the many letters received on the subject. The summary document will be sent to those who sent comments, and is available from Region 5 upon request.

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

OPA

FAX TO:
TONY SOCCI

27 pages

REPLY TO THE ATTENTION OF:

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MEMORANDUM

SUBJECT: Waste Technologies Industries
~~July 20~~, 1992 Briefing

FROM: Nancy-Ellen Zusman *NEZ*
Assistant Regional Counsel

TO: See Below

DATE: ~~July 21~~, 1992

This memorandum serves to memorialize the schedule of items to be accomplished in relation to the Waste Technologies Industries ("WTI") hazardous waste incinerator in East Liverpool, Ohio, which was discussed in a briefing of the Regional Administrator on ~~July 20~~, 1992.

It was agreed that the following activities would take place in regard to the above referenced facility:

1. ORC will write a letter to the Ohio Attorney General's Office formally requesting its determination on the ownership and operational control issues for the WTI permit.
2. Bill Muno will contact HQ (Rich Guimond) and explain what actions the Region intends to take with regard to the WTI facility.
3. U.S. EPA will inspect the WTI facility on 8/25 and 8/26 to determine compliance with its permit.
4. A "Dear Interested Party" letter will be sent by OPA explaining recent developments at the WTI facility, including the lead issue (raised in the IG report) and

What was removed

the July 24, 1992, ruling by the Environmental Appeals Board. (Week of 8/24/92)

5. U.S. EPA will issue a letter to WTI stating the results of the technical inspection and that there are problems with the permit in relation to the ownership and operational control of the facility. Until those issues are cleared up to U.S. EPA's satisfaction no hazardous waste will be permitted to be brought on site. (Early Sept.)
6. A "Note to Correspondents" will be sent by OPA explaining the inspection results and that no waste will be brought on site until the ownership and operational control issues have been cleared up to the Agency's satisfaction. (Early Sept.)
7. The real estate transaction between the Columbiana County Port Authority and WTI/Von Roll will be consummated, clearing up the property owner problem. (Mid Sept.)
8. WTI will submit its revised permit application, as previously requested. (Mid Sept.)
9. The Ohio AG's Office will give U.S. EPA its preliminary assessment of the owner/operator issues. (Mid Oct.)
10. U.S. EPA will respond to the IG Report. (Due Oct. 15)
11. U.S. EPA will take enforcement action against WTI for failure to notify and will request a Class 2 modification to correct the problems with the current permit. (Mid Oct.)
12. Ohio will issue its formal determination. (Early Nov.)
13. WTI will initiate a Class 2 modification. (Early Nov.)
14. The permit will be modified to correct the owner/operator issue. (Jan. - Feb. 1993)
15. HQ (Guimond) will respond to the Metzenbaum letter. (Feb. 1993)
16. WTI will be allowed to bring hazardous waste on-site. (Feb. 1993)

The majority of these dates are tentative. The dates and/or milestones may change at any time if U.S. EPA determines that human health or the environment is not being protected. At some point during this timeframe it is presumed that the trial burn plan will be approved by U.S. EPA and that Ohio EPA will issue a permit to operate to WTI. The West Virginia lawsuit, Palumbo v.

WTI, U.S. EPA, Ohio EPA, et al., will also be ongoing. OPA will issue "Notes to Correspondents" to let the public know about milestones. There is nothing to indicate that the original permit is invalid, nor that the Agency did not have a viable liable party to pursue for violations of the WTI permit at all times. For any questions about any of these issues, I can be reached at 6-7161.

Addressees: Valdas V. Adamkus
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Dan O'Riordan
Mary Canavan
Tami Odell

DRAFT MEMORANDUM

DATE: August 20, 1992

TO: Nancy-Ellen Zusman
Assistant Regional Counsel, SWERB V

FROM: Ignacio Arrazola
Law Clerk, SWERB V

SUBJECT: Possible transfer of the WTI RCRA permit.

ISSUE: 1) Whether there has been an unapproved transfer of ownership of Waste Technologies Industries for purposes of the RCRA permit.

2) If ownership of Waste Technologies Industries was improperly transferred, should the RCRA permit be revoked?

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FACTS: On June 26, 1981 four corporations, (1) Waste Technologies, Incorporated, (2) Energy Technology Company, (3) Von Roll America, Inc., and (4) Koppers Environmental Corporation, signed a "Joint Venture Agreement of Waste Technologies Industries". The Joint Venture Agreement was entered into with the specific purpose of constructing and operating a hazardous waste management facility at a site in East Liverpool, Ohio.

On June 24, 1983, U.S. EPA Region V issued a permit under the Resource Conservation and Recovery Act (RCRA) authorizing Waste Technologies Industries (WTI) to construct a commercial hazardous waste incinerator in East Liverpool, Ohio. The permit became final and effective on January 25, 1985 after an appeal to

the Administrator was denied. See, In the Matter of Waste Technologies Industries, RCRA Appeal No. 83-5 (Dec. 17, 1984).

On October 29, 1987 a Certificate of General Partnership was filed by Waste Technologies Industries with the Secretary of State of Ohio. The Certificate was signed by (1) Waste Technologies Incorporated, (2) Energy Technology Company, (3) Von Roll (Ohio), Inc., and (4) Environmental Elements Ohio (Inc.).

On November 4, 1987, the Joint Venture Agreement was amended, making, among other changes, Von Roll (Ohio), Inc. as the sole "Managing Partner" of WTI for the duration of the Joint Venture Agreement.

On February 3, 1992, the Region granted a request by WTI to make a Class 3 modification of the 1983 permit so a spray dryer could be added to the incinerator's pollution control equipment. A number of petition for review were filed with U.S. EPA's Environmental Appeals Board in opposition of the spray dryer modification. The appeals regarding the spray dryer modification were denied. See, In the Matter of Waste Technologies Industries, Consolidated RCRA Appeal Nos. 92-7, et alia, (July 24, 1992). (Order Denying Review in Part and Remanding in Part).

During the years since the Joint Venture was signed, the participants in the Waste Technologies Industries organization have engaged in numerous transactions, such as stock transfers, name changes, corporate reorganizations, sale and purchase of assets (i.e., partnership interests), and mergers. The following is a list of the more important transactions:

- 1) The transfer of the Waste Technologies, Incorporated interest in Waste Technologies Industries

(the partnership, hereinafter "WTI") to WTI Acquisition, Inc. in a December 1, 1986 Asset Purchase Agreement. Also transferred was the right of WTI Acquisition, Inc. to use the name of Waste Technologies Industries. WTI Acquisition, Inc. later changed its name to Waste Technologies Incorporated.

2) The transfer of Von Roll America, Inc.'s interest in WTI to its subsidiary Von Roll (Ohio), Inc. in a October 31, 1986 contract titled "Assignment of Joint Venture Interest". In consideration for the WTI interest, Von Roll (Ohio), Inc. transferred 100 shares of common stock to Von Roll America, Inc. on the same date through a subscription agreement.

3) The sale of Waste Technologies Incorporated stock held by Stephens Holding Co., Inc. to Von Roll America, Inc. on December 21, 1987 through the exercise of a stock option.

4) The sale of Energy Technology Company stock held by Mustang Production Company to Von Roll America, Inc. on December 21, 1987 through the exercise of a stock option.

5) A June 22, 1990 Agreement between Environmental Element (Delaware), Inc. and Von Roll America, Inc. to sell and purchase all of the issued and outstanding stock of Environmental Elements (Ohio), Inc. to Von Roll America, Inc.

Thus, by June 22, 1990, Von Roll America, Inc. was the sole shareholder of Von Roll (Ohio), Inc., Waste Technologies Incorporated, Energy Technology Company, and Environmental Elements (Ohio), Inc. -- the four purported general partners of WTI. Waste Technologies Incorporated, Energy Technology Company, and Environmental Elements (Ohio), Inc. have only one asset, their interest in WTI. The November 4, 1987 Amendment effectively transfers that interest by assigning all profits and losses in WTI as well as management of WTI to Von Roll America. None of these three corporations have any employees.

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basis?

DISCUSSION

Introduction

RCRA permits are subject to certain regulatory conditions, one of which deals with transfers of the permit:

This permit is not transferable to any person except after notice to the Director. The Director may require modification of revocation and reissuance of the permit to change the name of the permittee and incorporate such other requirements as may be necessary under RCRA.

40 CFR §270.30(1)(3). The regulations further state that:

A permit may be transferred by the permittee to a new owner or operator only if the permit has been modified or revoked and reissued . . . to identify the new permittee and incorporate other requirements as may be necessary and appropriate under the Act. . . . Changes in the ownership or operational control of a facility may be made as a Class 1 modification with prior written approval of the Director

40 CFR §270.40(a) and (b).

These regulations raise the issue of whether the complex history of the WTI partnership involved a "transfer" of the permit. This issue turns on the interaction between principles of partnership law and the putative scope of the regulations dealing with transfers of RCRA permits. Section I addresses this interaction.

If there was a transfer of the permit, WTI did not seek "prior written approval of the Director" for such transfers. This creates a question of what the Administrator should do in the face of possible unapproved transfers of the WTI permit. Section II discusses the Administrator's options.

It should be noted that much of this discussion passes into uncharted areas of the law. Good faith legal arguments can be made to either buoy or sink WTI's existing permit. Ultimately, the decision of whether the permit should pass through the legal niceties unscathed is a policy determination.

I. POTENTIAL TRANSFERS OF WTI'S RCRA PERMIT

A. The Scope of 40 CFR § 270.40(a) and (b).

Whether a particular transaction constitutes a transfer of a permit within the scope of Section 270.40 is not easily determined. No federal or state cases directly discuss the parameters of this section.¹ No administrative cases broach the issue, either. A demarcation of the class of transactions that comprise a "transfer" of the permit must therefore focus on the legislative intent of the rulemakers. A May 1983 proposed amendment to the rule on the transfer of hazardous waste permits provides a concise description of the original rule's boundaries. See, 48 FR 21003 (May 10, 1983). This discussion relies heavily on that description.

The rule on transfers of RCRA permits originally required the Administrator to decide whether a proposed change in

¹ One case peripherally discusses the regulation. See, Goodwill Industries of Chicago v. The Valspar Corp., No. 81 C5116 (N.D. Ill. March 9, 1990) (LEXIS, Genfed library, Dist file) (RCRA permit holder or one with interim status may not avoid liability for permit violations by simply transferring title to the site of the facility).

ownership or operational control should involve (1) a revocation and reissuance of the permit; (2) a "major" modification to the existing permit; or (3) a minor modification to the existing permit. See, 48 FR 21003 (May 10, 1983). The Administrator's decision to modify or revoke the existing permit depended on the type of change proposed.

In the original rule, a transfer may have been handled as a minor modification to the permit if the Administrator "determines that no changes to the permit [are made] other than the change in ownership or operation control . . . provided that a written agreement containing a specific date for transfer of permit responsibility, coverage, and liability between the current permittee and new permittee has been submitted to the [Administrator]". Id. An example of such a transfer is "a transfer of control between subsidiaries of the same corporation" involving only a change in name. Id.

In contrast, a "major" modification was required where the new permittee proposed changes "to the closure or post-closure plan, or financial mechanisms, but not the actual operation of the currently permitted facility". Id. The Administrator could also require revocation and reissuance of the permit where "[a]s a practical matter, . . . the new owner or operator proposes significant changes to the facility such as changes in the processes used and the wastes handled". Id.

Thus, if the various transactions changing the shape of WTI are deemed transfers that change only the identity of the

permittee, only a "minor" modification (now a Class 1 modification) would be necessary. Today, the equivalent of a "minor" modification under the rule is a Class 1 modification. The rulemakers, in amending the rule to its present form, wished to retain the pre-existing level of Agency oversight, but provide the additional public participation opportunities contained in the Class 1 procedure. 53 FR 37912 (September 28, 1988). The boundaries set out in the discussion of the original rule therefore remain relevant to the present discussion.

In any case where there is a transfer, however, "the permittee must wait for the EPA to act on the modification before the transfer may take place". *Id.* Because WTI did not request approval of any putative transfers, it is not clear whether a mere change in the identity of the ownership or operational control of the facility warrants a Class 1 Modification of the permit or something more stringent.

A number of the more significant transactions in WTI's history appear to be similar to the example of a transfer given by the rulemakers (i.e., the transfer of control from one subsidiary to another). For instance, one of the participants in the joint venture agreement, Waste Technologies, Incorporated, transferred its interest in WTI (the purported partnership) to WTI Acquisition, Inc. Both were subsidiaries of Stephens Inc. After the transfer, WTI Acquisition, Inc. changed its name to Waste Technologies Incorporated (without a comma). However, unlike the straightforward transfer of operational control

between subsidiaries contemplated by the rulemakers by way of example, the WTI transaction was within the framework of a general partnership. Whether this transaction and the others described above were "transfers" contemplated by the rulemakers requires an examination of partnership law.

B. Partnership Defined.

The Ohio Uniform Partnership Law defines a partnership as "an association of two or more persons to carry on as co-owners a business for profit" RC §1775.05(A). A preliminary question, then, is whether WTI is an "association of two or more persons".

WTI appears to be a valid partnership on paper because there a four validly existing corporations acting as general partners. However, these corporations, through a series of capital stock transfers, are now wholly owned by one parent corporation, Von Roll America, Inc. If these subsidiaries are the "mere instrumentalities" of Von Roll America, Inc., a valid argument could be made that WTI is no longer a legitimate partnership because it is no longer an association of two or more persons. A single individual or entity cannot be the owner of a partnership. 59A Am. Jur.2d PARTNERSHIP §15 (1987). Von Roll America, Inc., as the sole shareholder of the four subsidiaries is arguably not the owner of a partnership.

On the other hand, it may be argued that although the subsidiaries/partners are wholly owned, they retain as an asset their interest in WTI. Moreover, there is no evidence at this

junction that corporate formalities have not been observed. The four subsidiaries were validly incorporated and maintain directors and officers (directors and officers, however, are identical for each of the four subsidiaries).

C. Aggregate versus Entity Theories of Partnership in Ohio.

Even if the assumption is made that WTI has been in continuous existence as a partnership, the aggregate theory of partnership raises the question of whether the numerous changes in the identity of individual partners should be considered "transfers" for purposes of 40 CFR §§ 270.30(1)(3) and 270.40(a) and (b).

Ohio courts have not interpreted the Uniform Partnership Act as making a partnership an independent juristic entity except to the extent necessary for procedural or conveyancing purposes. See, Church Budget Envelope Co. v. Cornell, 2 OO2d 158, 136 NE2d 101 (Ohio App. 1955). Ohio therefore considers a partnership to be an aggregation of individuals and not a separate legal entity. A more recent case states the rule as follows:

The common law does not recognize a partnership as a legal entity distinct from and independent of the persons composing it. . . . There is no statute in Ohio authorizing actions in partnership obligations against a partnership as a separate legal entity, therefore an action to enforce partnership liabilities must be brought against the individual partners.

Colango v. Cashelmar Co., Nos. 57581, 57871 (Ohio App. Ct. Nov. 21, 1990) (LEXIS States library, Ohio file) (trial court did not

Colangelo v. Cashelmar Co.

err in imposing liability for contract reformation on individual partners).

Whether the aggregate theory of partnership applies to the permit will be an important consideration in the determination of whether there has been an unapproved transfer of the permit. If the proper focus is on the partners themselves, as opposed to the partnership as an entity, the transfer of partnership interests are arguably transfers for purposes of the regulations.

However, whether Ohio courts follow the aggregate theory or entity theory of partnerships is somewhat confused. For instance, the court in State of Ohio v. Gowitzka Fisheries held that a partnership was an artificial entity separate from the partners for purposes of the Fifth Amendment Privilege against self-incrimination and that partnerships may not assert that privilege. No. OT-80-29, slip op., (Ohio App. Ct. August 28, 1981). Furthermore, in bankruptcy cases, a partnership is considered a distinct legal entity from the partners who formed it. See, Buckeye Linen Service, Inc. v. The New Reeb's, Ltd., No. 87AP-1425 (Ohio App. Ct. June 28, 1990) (LEXIS, States library, Ohio file), citing, Liberty Nat'l Bank v. Bear, 276 U.S. 215 (1928). More importantly, the Ohio Uniform Partnership Law allows firms to convey title to real property in the name of the partnership. See, RC § 1775.09.

It may be argued, then, that WTI should be considered the permittee as a separate legal entity because the name of the permittee is a mere procedural matter. In this way, it may be

See 1775.09
2307.24 10
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sworn in on name

argued that there is no new permittee and thus no violation of 40 CFR § 270.40(a) and (b). A response to this argument, however, is that the naming of a permittee is not a mere procedural matter because of the Agency's regulatory concern about ensuring that "facilities are transferred to financially viable firms". See, 51 FR 16422 (May 2, 1986).

D. The Doctrine of Dissolution.

The Uniform Partnership Law vaguely defines dissolution of a partnership as "the change in the relation of partners caused by the partner's ceasing to be associated in the carrying on as distinguished from the winding up of the business" RC §1775.28. The dissolution of a partnership may thus be seen as the first step in the termination of a partnership. Dissolution is not the equivalent of termination because the partnership continues to exist until the winding up of partnership affairs is completed. RC §1775.29. However, once a partnership has dissolved, partners may only engage in business related to winding up and do not have authority to otherwise act for the partnership. RC §1775.32. The doctrine of dissolution is relevant to this discussion because if WTI dissolved at any time, it is arguable that there was an unapproved transfer of the permit.

In Ohio, dissolution may be triggered by a number of different events enumerated under the statute as well as by the common law. The Ohio Uniform Partnership Law lists the following causes of dissolution:

(A) Without violation of the agreement between the partners; (1) By the termination of the definite term or particular undertaking specified in the agreement; (2) By the express will of any partner when no definite term or particular undertaking is specified; (3) By the express will of all the partners who have not assigned their interest or suffered them to be charged for their separate debts, either before or after the termination of any specified term or particular undertaking, (4) By the expulsion of any partner from the business bona fide in accordance with such a power conferred by the agreement between the partners;

(B) In contravention of the agreement between the partners, where the circumstances do not permit a dissolution under this section, by the express will of any partner at any time;

(C) By any event which makes it unlawful for the business of the partnership to be carried on or for the members to carry it on in partnership;

(D) By the death of any partner;

(E) By the bankruptcy of any partner or the partnership;

(F) By decree of court under section 1775.31 of the Revised Code.

RC §1775.30. Ohio courts also recognize the common law rule that withdrawal of a partner results in dissolution.

Circumstances otherwise working a dissolution of a partnership may not have that effect where the partnership agreement expressly provides that the partnership will continue and that dissolution and winding up are not required on the occurrence of certain events. 59A Am. Jur. PARTNERSHIP §812 (1988), citing, Cagnolatti v. Guinn, 140 Cal. App.3d 42, 189 Cal. Rptr 151 (4th Dist). However, a partner always has the power (not the right) to dissolve the partnership by his or her express will, in contravention of the partnership agreement, although exercise of that power may make the partner liable for breach of contract.

The June 26, 1981 Joint Venture Agreement is therefore an important consideration in determining whether a dissolution of the WTI partnership has occurred. The Joint Venture Agreement expressly provides that dissolution is only to occur in certain circumstances and thus overrides the statutory and common law causes, with the exception that a partner has the power to dissolve the partnership at any time. See, RC §1775.30(B). The Agreement states in pertinent part that:

The Joint Venture Shall be dissolved upon the first to occur of:

- (a) The filing with the Joint Venture of a written notice of its termination signed by all Venturers;
- (b) The withdrawal of all Venturers from the Joint Venture in accordance with Article 8;
- (c) The incorporation of the Joint Venture in accordance with Section 2.2; or
- (d) The commencement by a Venturer of any proceeding under any applicable bankruptcy or insolvency law

Joint Venture Agreement of Waste Technologies Industries, §3.2 (June 26, 1981). Moreover, Section 3.3 of the Agreement, which is captioned "No Dissolution Winding Up or Termination Prior to Termination Date", states that:

The Venturers recognize that because of the special, unique and extraordinary purposes of the Joint Venture, . . . it is necessary that the Joint Venture continue in existence in accordance with Section 3.2 . . . [E]ach Venturer expressly waives and relinquishes any rights which it may have on its own to cause the dissolution . . . prior to such time as dissolution may occur in accordance with Section 3.2.

Joint Venture Agreement, §3.3. The November 4, 1987 "Amendment to the Joint Venture Agreement of Waste Technologies Industries" suspended subsections 3.2(b) and (c) as well as the reference to Article 8 in 3.3(a), otherwise leaving those provisions in tact.

Given the contractual provisions governing dissolution, the numerous transfers of stock and transfers of partnership interest, when analyzed as discrete transactions, did not effect a dissolution of the partnership. The transactions that pepper the history of WTI arguably are not ones triggering dissolution under the Agreement.

When viewed as a whole, however, the result of these transactions may have effectuated a dissolution because "an assignment of partnership interests which effectively reduces the membership to a single partner may cause dissolution, in the absence of an agreement to the contrary" 59A Am. Jur. PARTNERSHIP §834. When the entire capital stock of each of the four general partners was transferred to Von Roll America, Inc., it is arguable that the partnership was effectively reduced to a single partner. This argument is bolstered by the fact that the subsidiaries share the same directors and officers.

The Alabama Supreme Court has held that the fact that a bank's wholly owned subsidiary was a general partner in a partnership did not make the bank a partner, in the absence of a showing that the subsidiary was "a mere adjunct, instrumentality, or alter ego" of its parent corporation. See, Broadmoor Realty, Inc. v. First Nationwide Bank, 568 So.2d 779 (Ala. 1990). This case, given the limited information available about the four subsidiaries/partners, can cut both ways. On the one hand, the fact that the subsidiaries are the wholly owned subsidiaries of Von Roll America, Inc. does not make Von Roll America, Inc. the

sole partner of WTI. On the flip side, the fact that the subsidiaries share the same directors and officers, have no employees, have transferred management control of the facility to Von Roll (Ohio), Inc., and have no assets except their interest in WTI, tends to make a showing that the subsidiaries are merely "instrumentalities" of Von Roll America, Inc. The partnership is thus reduced to a single partner, Von Roll America, Inc., and it may be maintained that the partnership is therefore dissolved.

On the other hand, an argument may be made that the Joint Venture Agreement does not contemplate reduction of membership to a single partner as a cause for dissolution. See, Joint Venture Agreement, §3.2, (quoted above) Furthermore, it may be argued that there has not been a change in the identity of each corporate partner. Rather, there has merely been a change in the shareholder of each corporate partner, leaving the same corporations in place as partners. Finally, there is no Ohio precedent in favor or against a rule of dissolution where there has been a reduction to a single partner.

E. Delegation of Control of the Business.

A person may be a partner even though he entrusts his control of the business exclusively to his associates, provided the other essential partnership elements remain. 59A Am. Jur.2d PARTNERSHIP § 159. Thus, making one of the parties to a partnership agreement manager of the business does not necessarily defeat the partnership status. Id. The test is

whether the participant has the right to exercise control in the management of the business regardless of whether he actually does so. Each party must have a legal right to a voice in the partnership's direction and control. Id.

The November 4, 1987 Amendment to the Joint Venture Agreement appoints Von Roll (Ohio), Inc. as the Managing Partner of WTI: "[t]he Partners hereby appoint VR Ohio as the Managing Partner of WTI. VR Ohio shall not be removed as Managing Partner except upon termination of this Amendment." 1987 Amendment at p.

4. Whether this provision defeats the partnership status is an open question.

At first glance, it appears that the partners have given up their right to any voice in the control and direction of the partnership. The provision essentially hands over management of the business until the partnership is terminated. The non-managing partners are thus left with not an iota of control -- they have delegated everything to Von Roll (Ohio), Inc.

Furthermore, the subsidiaries do not even retain the other essential elements of a partnership.

There are several important defining elements of a partnership. For instance, the Ohio Uniform Partnership Law states that "[t]he receipt by a person of a share of the profits of a business is prima-facie evidence that he is a partner in the business". RC § 1775.06. In addition, the property rights of a partner are "his rights in specific partnership property, his interest in the partnership, and his right to participate in the

management". RC § 1775.23. These rights have been effectively transferred to Von Roll (Ohio), Inc. and its parent Von Roll America, Inc. through the 1987 Amendment: "all income, losses, deductions and credits related to . . . activities of WTI under the Agreement shall be allocated solely to VR Ohio and all cash flow from these sources shall be distributed exclusively to VR Ohio." 1987 Amendment at page 5. Thus, the partners have not only handed over control of the business to Von Roll (Ohio), Inc. but their right to share in the profits and losses of the enterprise as well. This delegation of ultimate control, thus, arguably defeats the partnership status of WTI

On the other side, the provision does not necessarily delegate all control to Von Roll (Ohio), Inc. The right of a partner to be heard on fundamental and vital aspects of the partnership enterprise should not be deemed surrendered unless the intention is clearly expressed. Bromberg, Alan and Larry E. Ribstein, Bromberg and Ribstein on Partnership, § 6.03 (1988), citing, Wilzig v. Sisselman, 182 N.J. Super. 519, 142 A2d 1021, 1030 (1982). Management rights are extremely important since partners are generally liable jointly for all obligations arising from conduct of the partnership business. Thus a flat designation of a partner as "controlling", does not mean that the other partner may be wholly excluded from participation in the partnership. Id.

II. MODIFICATION OR REVOCATION OF THE PERMIT

Assuming that a transfer of the permit has occurred, the Administrator must decide whether to modify the permit or to revoke and reissue it. Because the scheme of 40 CFR § 270.40 is set out for proposed changes in ownership, a post hoc determination by the Agency that a transfer of ownership or operational control has occurred does not allow for a ready decision of whether to modify or revoke the permit.

The rule contemplates that proposed transfers that merely change the identity of the permittee and add no significant changes to the permit are relatively minor modifications (Class 1). Whether an unapproved transfer warrants a Class 1 Modification or something else is essentially a policy decision left to the discretion of the Administrator. The legislative intent behind the rule is the concern that a new permittee comply with the financial assurance provisions of Subpart H of the regulations. See, 51 FR 16422 (May 2, 1986). Moreover, the rulemakers wanted to allow public participation in the Agency's approval of such transfer. See, 53 FR 37912 (September 28, 1988). A decision to either modify or revoke should therefore consider these two goals. Which path will (1) best secure assurance that a new permittee is financially viable and (2) bring in public participation into the process?



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

SEP 30 1992

OFFICE OF
GENERAL COUNSEL

Mr. Hugh B. Kaufman
1219 Fourth St., S.W.
Washington DC 20024

SUBJECT: Your Testimony in Mario J. Palumbo, et al. v. Waste Technologies Industries, Inc., et al., C.A. No. 91-0072-W(S)

Dear Mr. Kaufman:

3
What?
The purpose of this letter is to inform you of a matter that William Sanjour brought to our attention. It is our opinion that your proposed testimony in the subject litigation would be inconsistent with Government-wide ethical standards for Federal employees. I have a copy of the affidavit dated July 25, 1992 which you provided in the subject litigation, and I understand that the plaintiffs intend to call you as a witness regarding the matters discussed in this affidavit.

I understand that the litigation is a citizens' suit under the Resources Conservation and Recovery Act (RCRA) challenging issuance of a RCRA permit for a hazardous waste incinerator. The "style" of the case quoted in the letter indicates that the State of West Virginia is bringing the action as "parens patriae," along with other plaintiffs, on behalf of "certain citizens of West Virginia." EPA is a defendant in the litigation.

For the reasons discussed below, it is my opinion that the "general standards" of Executive Order 12674 of April 12, 1989 (and similar provisions in its predecessor Executive Order 11222 of May 1, 1965) as implemented by the Office of Government Ethics, bar your testimony as an "expert witness" in this litigation. Such testimony would violate the Government-wide restriction against engaging in outside activities that conflict with your official Government duties. I also believe that your July 25 affidavit was objectionable for the same reasons.

Your affidavit indicates that you would be testifying as an "expert witness" regarding your opinion of the meaning and effect of EPA regulations and practices, as well as the risks of hazardous waste incinerators.

Appearances by Government employees as "expert witnesses" in court proceedings in which the United States "is a party or has a direct and substantial interest," other than as official duty assignments, have long been regarded as inconsistent with the

"general standards" of Executive Order 11222 of May 1, 1965 as modified by Executive Order 12674 of April 12, 1989 which prohibit "outside employment or activities * * * that conflict with official Government duties and responsibilities."¹

Section 2635.805 of Office of Government Ethics final regulations published August 7, 1992 at 57 Fed. Reg. 35006 explicitly bars an employee from serving as an expert witness, with or without compensation, in any proceeding before a court or agency of the United States in which "the United States is a party or has a direct and substantial interest" unless the agency ethics official determines that (1) the testimony will serve the Government's interest or (2) that "the testimony does not relate to the employee's official duties within the meaning of § 2635.807(a)(2)(i)."² Under this provision, testimony "relates to * * * official duties" if

(B) The circumstances indicate that the invitation to engage in the activity was extended to the employee primarily because of his official position rather than his expertise on the particular subject matter; * * *

(E) * * * [T]he subject of the activity deals in significant part with:

(1) Any matter to which the employee presently is assigned or to which the employee had been assigned during the previous one-year period; [or]

(2) Any ongoing or announced policy, program or operation of the agency * * * .

I have concluded that your July 25 affidavit establishes that your services would be in the nature of "expert testimony" and that the invitation to testify was extended "primarily"

¹ See Office of Government Ethics (OGE) Informal Opinion 83 x 1 (January 17, 1983); EPA regulations at 40 C.F.R. Part 3, Subpart A, Appendix A; page 13 of "U.S. Environmental Protection Agency Guidance on Ethics and Conflicts of Interest (February 1984)"; and page 5 of "Ethics in a Nutshell: Ethical Conduct for EPA Employees in Brief." These materials have been widely distributed to EPA employees.

² The effective date of this regulation is February 3, 1993. However, OGE has advised all agencies to use the regulation as "guidance" in the meantime, to the extent that it is not inconsistent with existing agency regulations. The new OGE regulation is entirely consistent with existing EPA regulations at 40 C.F.R. Part 3.

3

because of your employment with EPA rather than because of any subject matter expertise that you possess.

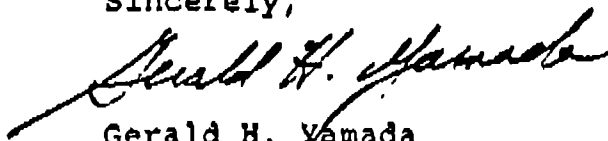
I have also concluded that your testimony would not "serve the Government's interest" because information regarding EPA policies and programs is a matter of public record. In any event, since EPA is a defendant in this litigation, the proper method of requesting the official appearance of a witness to discuss EPA policies or actions is through the discovery process. Finally, your July 25 affidavit establishes that your testimony would deal in significant part with an EPA policy, program, or operation.

Accordingly, I cannot approve your providing testimony in the subject litigation or accepting travel expenses or any other compensation for doing so.³

For the reasons discussed above, it is also my opinion that your July 25 affidavit in the subject litigation was improper.

Relevant portions of the cited materials are enclosed.

Sincerely,



Gerald H. Yamada
Principal Deputy General Counsel
Designated Agency Ethics Official

Enclosures

cc: Office of Government Ethics
Richard J. Guimond (OS-100)

³ As you are aware, Section 2636.202(b) of OGE regulations published January 17, 1991 at 56 Fed. Reg. 1721 bars an employee from accepting travel expenses for "speaking or writing on subject matter that focuses specifically on his official duties or on the responsibilities, policies and programs of his employing agency." Of course, the statutory ban on receiving honoraria for any "appearance, speech, or article" applies to receipt of compensation other than travel expenses, and, in the circumstances here, Section 2636.202(b) of the cited OGE regulations also bars designating a charity to receive the payment.

01-06-93 03:34PM

TO 313043873932

P001/002

JAN-06-1993 14:14 FROM SWIDLER & BERLIN TO 526#344901#2246519# P.02

JAN-06-1993 13:39 FROM TO SWIDLER-BERLIN P.02



State of Ohio Environmental Protection Agency

Northwest District Office

1170 E. Adams Road

Cincinnati, Ohio 45202-1900

(616) 424-0171

FAX (616) 424-0700

George V. Vanevorin
Governor

January 6, 1993

RE: WASTE TECHNOLOGIES INDUSTRIES
OHD 900 615 541/02-15-0582
COLUMBIANA COUNTY
TRIAL BURN PLAN

Debbie Rushin
Waste Technologies Industries
1250 St. George St.
P.O. Box 1026
East Liverpool, Ohio 43920-6026

Dear Ms. Rushin:

On August 6, 1991, Waste Technologies Industries (WTI) submitted an updated trial burn plan to the Ohio EPA for incorporation into the approved hazardous waste permit application for the facility. The trial burn plan was revised on March 13, 1992, August 5, 1992, October 28, 1992, October 29, 1992, December 9, 1992, December 11, 1992 and January 1, 1993 in order to respond to comments from the Ohio EPA and the U.S. EPA.

The trial burn plan was submitted in order to comply with Condition C.6 of the Ohio Installation and Operation Permit and Section 3745-50-62 of the Ohio Administrative Code. In addition, as agreed between WTI, Ohio EPA, and as required by the federal permit for the WTI facility, the trial burn plan was also drafted to meet the criteria for metals, products of incomplete combustion (PIC's), and HCl/Cl₂ emissions as specified in the rules for boilers and industrial furnaces as promulgated in Part 266 of Title 45 of the Code of Federal Regulations. WTI has also agreed to sample stack emissions for specific organic compounds identified as potential PIC's as specified in Section 5.3 of the trial burn plan.

The trial burn plan reviewed by the Ohio EPA meets all of the criteria specified in the Installation and Operation Permit referenced above, subject further to the tasks listed below. Therefore, the trial burn, as submitted on January 3, 1993, is hereby incorporated into the approved Part 9 permit application for the WTI facility.

Prior to initiating the trial burn, WTI must complete the following tasks:

1. WTI must demonstrate that all automatic waste feed cutoff controls are fully functional prior to the trial burn.

There are no other pages

01-26-93 03:34PM

TO 313043873932

P002/002

JAN-26-1993 14:14 FROM

SWIDLER & BERLIN

TO

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P.03

JAN-26-1993 13:33 FROM

TO

SWIDLER-BERLIN

P.03

Bobbie Rushin
January 6, 1993
Page -2-

2. WTI must demonstrate operation at maximum operational kiln temperature prior to the trial burn.
3. WTI must develop the calibration relationships for the induced draft fan and other flow monitoring equipment as specified in Condition C.9 (a) of the Installation and Operation Permit.
4. Information regarding the number of steel drums to be fed to the incinerator during the trial burn must be submitted to the Ohio EPA prior to the trial burn.

Notifications regarding the items outlined above must be made to the Northeast District Office of the Ohio EPA, in writing, at least five (5) business days prior to conducting these activities. In addition, WTI must provide similar notification to the Northeast District Office five (5) business days prior to initiating the trial burn.

Please be aware that the Ohio EPA has not accepted the proposed permit conditions which were submitted by WTI with the trial burn plan. These proposed permit conditions will be used for informational purposes when Ohio EPA drafts final permit conditions following the receipt of certified trial burn results. In addition, Ohio EPA reserves the right to require modification of the trial burn plan should operation of the WTI incinerator during the shakedown period indicate that additional permit conditions not contemplated at this time are necessary.

If you should have any additional questions regarding this matter, please feel free to contact me.

Sincerely,

Paul Anderson

Paul Anderson
Environmental Supervisor
Division of Hazardous Waste
Management

cc: Scott Williams, DERM, XERO
Ed Lim, DERM, CO
Johnston Teerkey, DERM, CO
Gary Vintonzine, U.S.EPA

TOTAL P.03

TOTAL P.03

01-08-93 02:18PM P003 #50

R-94X

PAGE.003

FROM GREENPEACE, USA-D.C. 05:1 06. 8 NAC

STATEMENT OF
HUGH B. KAUFMAN
BEFORE THE
HOUSE JUDICIARY COMMITTEE
SUBCOMMITTEE ON ADMINISTRATIVE LAW AND GOVERNMENT OPERATIONS
MAY 7, 1992

Mr. Chairman, Members of the Subcommittee, thank you very much for inviting me to testify today on the subject of the Environmental Protection Agency's (EPA) process of regulating the hazardous waste disposal industry, as exemplified by the WTI case in East Liverpool, Ohio.

As you are aware, I am an engineer employed by the EPA, and have worked in the field of hazardous site control and hazardous waste management for twenty (20) years. In the 1970's I was EPA's chief investigator of hazardous sites, and I worked on drafting both the Resource Conservation and Recovery Act (RCRA) and the Superfund Law and associated regulations since that time. Because I was the "whistleblower" on the Love Canal case and the so-called "Burford-Lavelle-EPA Abuse" case, I have a consent agreement with EPA which has allowed me, over the past ten (10) years, to provide technical assistance to grassroots citizens monitoring waste disposal projects and clean-ups in their locales.

My comments before you today are based on my experience in the field of hazardous site investigation, and do not necessarily reflect the policies of the present administration.

Hugh B. Kaufman, Testimony
May 7, 1992
Page 2

During the past year I have provided in-depth help in investigating the key issues being discussed here today on the WTI case.

Because this is the first time Congress has held hearings on how the process of regulating hazardous waste facilities is actually working, I feel privileged to be invited to provide my observations and insights.

Both the Superfund Law and RCRA are based on using law and regulation to assure that liability and accountability continue to rest on the backs of those business entities who earn and save the billions of dollars associated with the generation and disposal of hazardous waste. If the laws and regulations enacted by federal and state governments are not enforced, or are abused, as is the case here with WTI, the business entities being enriched can successfully transfer their liabilities to the taxpayers.

The WTI case is a symptom of a national problem that demonstrates that the EPA process for regulating the waste disposal industry is riddled with deceit and deception at best, and fraud at worst. The ramifications to America are more serious than those of the savings and loan scandal: we are not just dealing with money. When EPA's regulatory process breaks down, we are also endangering the health of our citizens.

The EPA, and associated State agencies, are required to assure that key regulations to guarantee full accountability and liability remain with the owners and operators of hazardous waste disposal facilities by enforcing and abiding by the rules of law. If, as is the case here, the regulator and regulated evade and avoid compliance with the law, the public health and environment will not be protected.

The following is a list of some of the irregularities uncovered that demonstrate the breakdown of the regulatory process at WTI:

1. The EPA permit for WTI, which was issued on June 24, 1983, was deceptive and invalid because it failed to include the land owner, the Columbiana County Port Authority, as a permittee. The Port Authority did not sign the permit application, as required by EPA regulations (45 Fed. Reg. 33074, May 19, 1980), and was not identified in the permit application as an owner of the facility. The Regional Administrator, in a December 2, 1991 Letter to Senator Jay Rockefeller, admitted that he knew the Port Authority owned the land at the time of permit application. On February 3, 1992, as a result of Congressional investigations, EPA

illegally added the Port Authority to the permit, even though the Port Authority did not apply, and in fact, their attorney wrote to EPA saying the Port Authority refuses to be a co-permittee.

2. The EPA permit for WTI is deceptive and invalid because it fails to identify the facility's operator, Von Roll (Ohio), Inc., a company that did not come into existence until 1986, three (3) years after the permit was issued.
3. The EPA permit for WTI is deceptive and invalid because the partnership that currently owns the incinerator is owned and comprised of different companies than the partnership in whose name the permit was issued. EPA regulations (40 CFR 270.42(d)) require a revised permit application 90 days prior to ownership change.
4. The attorney for Waste Technologies Industries, Charles H. Waterman III, altered the dates of issuance and expiration on the original signature page of the EPA-issued permit for WTI.
5. The February, 1992 signature page of the EPA permit was amended by EPA to allow expansion of authorized activities at the WTI site (Surface Impoundment). The Regional Office claims that this was due to clerical error, but to my knowledge this has never been corrected.

The deceptive and blatant violations of EPA regulations described earlier prevents the government and the public from holding any entity fully accountable and liable to pay for damages, fires, explosions, loss of property value, increased infrastructure costs, and other problems that occur at these types of facilities, even after they cease operations. In fact, in investigating the WTI site, a citizen investigator, Connie Stein, from West Virginia, found approximately four dozen different companies were created and dissolved to effectuate a "corporate shell game", to protect the revenues that the WTI site will generate. In a sense this "shell game" with dozens of corporate entities having confusingly similar names, stitches the deep pockets of the WTI owners shut, thus denying entry to anyone but the actual owners (whoever they are).

The regulator (EPA), for all intents and purposes, is tacitly deregulating the hazardous waste management industry, with no legal authority. This is occurring at all the sites I have investigated over the past four (4) years from Nebraska to Pennsylvania. Because this situation recurs, the question of motive is always asked. I have no direct proof of motive, however, I do know that in each situation I have investigated, the EPA and the hazardous waste promoters have stated that more commercial hazardous waste management facilities are needed for

Hugh B. Kaufman, Testimony
May 7, 1992
Page 6

each state to be in compliance with its Capacity Assurance Plan, mandated by the Superfund Law. The threat of loss of Superfund money is always cited as a reason for promoting more sites. These arguments are being made for the WTI site, too. The truth is, according to the March, 1992 "Review of Capacity Assurance Process" performed by EPA and the National Governor's Association, there is an over-abundance of national hazardous waste treatment, storage, and disposal capacity well into the future. This report further documents the fact that Ohio is one of the leading importer states of incinerable hazardous waste without the WTI facility, and that Ohio is a net importer of incinerable hazardous waste.

All of these irregularities and problems have arisen at the early stage of regulation, the permitting process. We must ask ourselves, in light of these revelations, how well EPA can regulate this facility, if it becomes operational.

Thank you again for inviting me to testify before you today. I will be happy to answer any questions you may have.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

December 22, 1992

OFFICE OF
SOLID WASTE AND EMERGENCY RESPONSE

MEMORANDUM

SUBJECT: EPA Office Director Giving Instructions on Violating
Laws

FROM: William Sanjour, Policy Analyst
Office of Solid Waste

A handwritten signature in dark ink, appearing to read "W Sanjour", is written over the "FROM:" line.

TO: John Martin
Inspector General

The attached memorandum from Ms. Sylvia Lowrance, Director of the EPA Office of Solid Waste, dated September 22, 1992 is an instruction to EPA regional waste management division directors on how to evade the requirements of the law. It instructs them on how to issue permits to operate hazardous waste incinerators which do not meet EPA minimum performance standards and places the public health in jeopardy.

Background

EPA regulations¹ require hazardous waste incinerators to be able to destroy 99.99% of the so-called POHCs (principal organic hazardous constituents) of the waste burned. This is referred to as a DRE (destruction and removal efficiency) of four nines. For some wastes which contain the highly toxic dioxins and furans, the DRE is 99.9999% or six nines².

Before issuing a permit, EPA regulations require the applicant to conduct trial burns to guarantee that the incinerator is capable of meeting the performance standards. The regulations do not require all possible future wastes to be tested but only require surrogates, which represent the most difficult wastes, to be tested. The preamble to the regulations³ explains:

Although the DRE performance standard applies to each waste feed burned, this does not mean that a separate trial burn for each waste or each different mixture of wastes is required. ... If the owner or operator established (through a trial burn) operating conditions for those wastes which are most difficult to destroy, this could provide the alternative documentation for the permitting official to allow certain other wastes



to be burned at the same conditions.

There are several wastes, particularly those which are designated as hazardous waste because they contain dioxins or furans, in which the hazardous constituents are present in very low concentrations, i.e. parts per million or less. These particular wastes, which are referred to as the dioxin-listed wastes, are denoted by EPA as FO20, FO21, FO22, FO23, FO26, and FO27. These wastes are designated as hazardous only because of the very minute quantities of toxic chemicals they contain and for no other reason⁴. As stated before, EPA regulations require that a permitted incinerator be required to destroy these wastes to six nines.

In recent trial burns conducted on a new Superfund incinerator in Jacksonville, Arkansas, it was found that the DRE for dioxin in the waste was not six nines, and was not even four nines, but was only 99.96%⁵. As a result of the publicity generated by this finding by Greenpeace⁶, the whole subject of the ability of incinerators to meet EPA standards for low concentration wastes has come under scrutiny. It is now clear that incinerators cannot achieve the required DRE for very low concentrations of toxics in the waste and that DRE decreases with decreasing concentration. Furthermore, this fact has been well known in EPA since the early eighties⁷⁸⁹ but has not been widely disseminated..

Issue # 1

The memo states:

The regulations ... require that an incinerator burning [the dioxin-listed wastes] achieve a DRE of 99.9999% ... and that this performance be demonstrated in a trial burn ...

But then goes on to say:

... an incinerator which demonstrates six nines DRE on harder-to-burn POHCs complies with the DRE performance standard applicable to dioxin-listed wastes, even if six nines is not actually achieved on low levels of dioxin present in the waste [emphasis added].

The memo goes on to instruct how, in writing a permit, the permit writer should select surrogate POHCs for trial burns in such a way that the DRE is achieved, even though the required DRE cannot be achieved for the POHC in low concentration wastes such as the dioxin-listed wastes.

The purpose of a trial burn is to demonstrate that the

incinerator can meet the minimum performance standards. The performance standard is 99.99% destruction or removal of POHCs in the waste (not surrogates) and 99.9999% DRE for dioxin-listed wastes (again, not surrogates). The surrogates are not the standard. As stated in the previously quoted preamble passage; "the DRE performance standard applies to each waste feed burned". The surrogates are supposed to be selected to serve the purpose of demonstrating that the standards can be met. They are not supposed to be used to thwart the standards as Ms. Lorange is doing here.

Issue # 2

Ms. Lowrance's memo recognizes that incinerators often cannot meet EPA's performance standards. The memo says:

The data show that a properly operated incinerator, which reached 99.99% DRE (four nines) on higher concentrations of POHCs, will often achieve less than four nines when the concentration of a POHC (principal organic hazardous constituent) in the waste is less than 1,000 ppm. At this time, we have not determined a definitive scientific explanation for this phenomenon [emphasis added].

An incinerator which cannot achieve four nines when the concentration of a POHC is less than 1,000 ppm (parts per million) cannot meet EPA minimum performance standards for many wastes including, but not limited, to the dioxin-listed wastes. The prejudice of the author of the memo is clearly seen in the fact that she considers an incinerator to be properly operated which does not meet EPA's minimum performance standards.

Issue # 3

The prejudice of the writer is again shown in the above quotation when she illogically concludes that a high concentration of a surrogate POHC is harder to burn than a low concentration of dioxin even though it achieves a higher DRE.

Issue # 4

Again in reference to the above quotation it should be noted that dioxin is only present in very low concentrations in wastes. It is never present in high concentrations. But even with these extremely low concentrations, EPA found it necessary to require a higher DRE than most other wastes in order to protect human health. The Agency originally proposed a standard of four nines, but after considering the data in the comments on the proposed

regulation, the Agency concluded that a minimum of six nines was necessary to protect human health, in spite of the very low concentrations of dioxins present in the wastes. These issues are discussed at length in the Federal Register preamble to EPA's dioxin regulations¹⁰.

The attempt by Ms. Lowrance to downplay the importance of achieving six nines DRE for dioxin-listed wastes by emphasizing their low concentration flies in the face of her own published regulations.

Issue # 5

Having instructed the regions on how to issue permits without requiring the incinerators to meet the minimum performance standards, Ms. Lowrance then goes on to instruct them in how to deal with the public concern over dioxin poisoning. The memo says:

Given the public concern over dioxin-listed wastes, we believe that it is necessary to perform a site-specific risk assessment ...

And later:

Thus we believe that it is appropriate to perform site-specific risk assessments for incinerators proposing to burn such wastes with low levels of dioxins ...

However the EPA regulations explicitly rejected this approach as being both illegal and impractical. The preamble to the regulations in the Federal Register states¹¹:

The first [option] considered was to establish "acceptable" levels of risk and to use risk modeling on a case-by-case basis ...

The first option is now effectively precluded by statute. See RCRA amended Section 3004(a)(1)(B) ...

The Agency also rejected the first option because ... it is extremely resource intensive ... It also requires agreement on the models, assumptions, and acceptable risk levels. Since such modeling is inherently subject to debate, EPA questions its practicality for case-by-case applications in this context.

Issue # 6

By substituting the site-specific risk assessment approach for the approach laid down in the law, Ms. Lowrance is writing her own regulations in violation of the Administrative Procedures Act which requires public notice and the opportunity for public comment.

Issue # 7

The memo says:

The trial burn for the incinerator could be used to demonstrate six nines DRE on POHCs more difficult to burn than dioxin. If successful, these data could be used as a basis for the permit. The permit would require the facility notify the permit authority and test for dioxin emissions when it burns its first shipment of dioxin-listed wastes [emphasis added].

In keeping with the rest of the memo, the "more difficult" surrogate POHCs would be present in much higher concentrations than are the dioxins in dioxin-listed wastes so as to assure a successful trial burn. The permit would then be issued based on these fallacious trial burn results.

Experience has shown that once a permit is issued, it is almost impossible to revoke or even to enforce in spite of countless violations. This was the subject of a memo I recently wrote which documented EPA's lack of enforcement against hazardous waste incinerators even when they violate basic permit conditions over long periods of time¹².

It is therefore disingenuous to suggest that once a facility has a permit, that some vague risk assessment procedure can be used as a meaningful enforcement tool.

Issue # 8

The regulations state that a permit issued under the conditions put forward by Ms. Lowrance (i.e. the incinerator does not comply with the minimum performance standards for some wastes) is not a valid permit and can be revoked. The preamble says¹³:

If test ^yopr other data indicate non-compliance with the performance standard, then the Agency will have grounds to modify, revoke, or re-issue a permit so as to insure that the performance standards will be met.

Issue # 9

In the preamble to the EPA regulations for dioxin-listed wastes we find the following discussion¹⁴:

One commenter argued that incinerators burning [dioxin-listed] wastes should be required to demonstrate compliance with the incinerator performance standard for organics by conducting trial burns for dioxins, rather than by using a surrogate Principal Organic Hazardous Constituent (POHC) that is more difficult to incinerate. ...

Although the commenter's point is desirable in theory, determining compliance with a six 9s DRE (or even a four 9s DRE) would be very difficult if not impossible ... The concentrations ... in these wastes are too low to find measurable amounts in the stack gas (at six 9s DRE) at present limits of detection.

Those words were written in 1984 and published in 1985. Since then the state of the art has advanced to the point where these very low concentrations can now be measured. The proof is in the measurements performed on the Jacksonville, Arkansas incinerator.

An EPA manager, concerned about the public's exposure to toxic chemicals, would have used this new capability to do what the regulation thought desirable and require trial burns to use low concentration dioxin-listed wastes rather than high concentration surrogates. Nothing in the regulation precludes doing so.

Instead, when faced with this enhanced measurement capability which revealed the shortcomings of some incinerators, Ms. Lowrance chose to paper over the problem.

Issue # 10

Early in the memo there is an admission that it is not known why the DRE decreases with decreasing concentration of the POHC. Nevertheless, further down the memo, in the discussion labeled Regulatory Interpretation, there is an attempt made to put forward the theory that the six nines DRE really is achieved but then new dioxins are formed, called PICs (products of incomplete combustion), and it is these PICs that cause the DRE to appear to be exceeded. The implication being that the problem is not a problem of the incinerator not being able to achieve the minimum performance standard but rather a problem of PIC formation and therefore the incinerators can be permitted while EPA tries to figure out what to do about PIC formation.

There are several things wrong with this analysis. First of all,

the PIC theory is nothing more than an unproven hypothesis. As the memo says earlier, no one really knows why the DRE decreases with decreasing concentration of the POHC. Second, it is not the only theory. Other theories have been put forward by research scientists¹⁵. Thirdly there is the moral question of why the taxpayers should bear the burden of trying to figure out how to make hazardous waste incinerators work while they are being poisoned by them. Remember that the incinerator operators have been assuring the public for years that they can meet the EPA performance standards.

However, none of this is really relevant since the regulations define DRE as the difference between what goes in the furnace and what comes out the stack¹⁶. What happens in between has no bearing in the law. Therefore, Ms. Lowrance's approach is an attempt to redefine "DRE" without going through appropriate rule-making procedures.

Conclusion

Ms. Lowrance is breaking the law in two ways. First, she is violating the requirement of EPA regulations to conduct trial burns so as to assure that incinerators are capable of meeting the minimum EPA performance standards. Second, she is promulgating new regulations for permitting hazardous waste incinerators in violation of the Administrative Procedures Act and EPA rule-making procedures.

She has shown callous disregard for the health of people exposed to toxic fumes from hazardous waste incinerators and a determined bias in favor of the hazardous waste incinerator operators. In this regard she is part of the culture of EPA hazardous waste management officials as seen in the recent example of the permitting of the WTI incinerator in East Liverpool, Ohio¹⁴. This culture seems to view the transgressions of incinerator operators as victimless crimes because they never see or hear from the victims. They make glib assurances to the public about their concern for public health, but when the chips are down, the financial health of the incinerator operators always seems to take precedence over the public's health.

attachment

cc: William Reilly
Sylvia Lowrance

END NOTES

1. 40 CFR 263.343(a)(1).
2. 40 CFR 263.343(a)(2).
3. 46 FR 7675 (January 23, 1981).
4. 40 CFR 261 App. VII.
5. Allyn M. Davis, Director, Hazardous Waste Management Division, EPA Region 6, letter to Mr. Randall Mathis, Director, Arkansas Department of Pollution Control and Ecology, March 2, 1992.
6. Pat Costner, *The Incineration of Dioxin in Jacksonville, Arkansas: A Review of Trial Burns and Related Air Monitoring at Vertac Site Contractor's Incinerator, Jacksonville, AR* (Washington, DC: Greenpeace Toxics Campaign, January 29, 1992).
7. A. Trenholm and others, *Performance Evaluation of Full-Scale Hazardous Waste Incinerators* [EPA/600/2-84-181]. U.S. EPA, November, 1984.
8. John C. Kramlich and others, *Experimental Investigation of Critical Fundamental Issues in Hazardous Waste Incineration* [EPA/600/2-89/048]. U.S. EPA, September, 1989.
9. Peter Montague, "All Hazardous Waste Incinerators Fail to Meet EPA Regulations, EPA Says," *Rachel's Hazardous Waste News* #280 (April 7, 1990). Environmental Research Foundation, P.O. Box 73700, Washington, DC 20056-3700.
10. 50 FR 1990-1992 (January 14, 1985).
11. 50 FR 1991 (January 14, 1985).
12. William Sanjour, "EPA's Regulation of Commercial Hazardous Waste Incinerators". Memorandum to David Bussard, October 8, 1992.
13. 46 FR 7670 (January 23, 1981).
14. 50 FR 1991 (January 14, 1985).
15. See e.g. Kramlich op. cit.
16. 40 CFR 264.343(a)(1)
14. William Sanjour, Letter to John Martin, EPA Inspector General re WTI incinerator in E. Liverpool, Ohio, May 15, 1992.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

1992
SEP 22 1992

OFFICE OF
SOLID WASTE AND EMERGENCY RESPONSE

MEMORANDUM

SUBJECT: Assuring Protective Operation of Incinerators Burning
Dioxin-listed Wastes

FROM: Sylvia K. Lowrance, Director *Sylvia K. Lowrance*
Office of Solid Waste

TO: Waste Management Division Directors
Regions I - X

I would like to call your attention to, and provide guidance on, an issue which was brought to our attention recently related to incineration of wastes containing low levels of dioxins. A recent case, and review of incinerator data in general, indicates that a well-operated incinerator meeting the regulatory Destruction and Removal Efficiency (DRE) on a harder-to-burn surrogate compound may have difficulty in achieving high DREs on dioxin itself due to the low levels at which the dioxin is normally present. Although we believe a well-operated incinerator is capable of destroying dioxin to below risk-based levels, we are recommending site-specific testing and risk assessment to confirm protectiveness at individual sites in view of the level of concern over dioxin.

We believe this issue may arise at other sites where it is proposed to burn dioxin-listed wastes. The following is a discussion of the technical aspects of this finding, our interpretation of the RCRA regulations as they relate to this issue, and our recommendations on how this issue should be addressed if encountered.

Technical Background

The low dioxin DRE in this recent case was consistent with our current body of incinerator performance data, which show a very clear trend of decreasing DRE for hazardous constituents with decreasing incoming concentration of the constituents in the waste feed. (That is, the lower the constituent concentration in the waste, the lower the DRE.) The data show that a properly operating incinerator, which reached 99.99% DRE (four nines) on higher concentrations of POHCs, will often achieve less than four nines when the concentration of a POHC (principal organic

hazardous constituent) in the waste is less than 1,000 ppm. At this time, we have not determined a definitive scientific explanation for this phenomenon. There appears to be some small level of constituents that remain in the emissions even from well-operated incinerators, possibly due to reformation of these compounds as products of incomplete combustion (PICs). It should be noted, however, that even though the measured DRE decreases at lower POHC concentrations, emission rates of, and thus the risks associated with, these compounds stay relatively constant or decrease at trace levels.

Regulatory Interpretation

The regulations at 40 CFR 264.343(a)(2) require that an incinerator burning hazardous wastes F020, F021, F022, F023, F026, or F027 achieve a DRE of 99.9999% (six nines) for each POHC in its permit, and that this performance be demonstrated in a trial burn on POHCs that are more difficult to incinerate than specified dioxins and furans. The regulations do not specifically set a DRE standard for dioxins and furans themselves. Thus, an incinerator which demonstrates six nines DRE on harder-to-burn POHCs complies with the DRE performance standard applicable to dioxin-listed wastes, even if six nines is not actually achieved on low levels of dioxin present in the waste. Dioxin itself is not likely to be chosen as a POHC because it would normally not be present in the waste at high enough levels to assure sound sampling and analysis, and an accurate six nines DRE calculation.

To assure detection of POHC compounds in the stack to enable the DRE calculation to be performed, and to override any effects of PIC formation on calculated DREs, POHCs are normally spiked into the trial burn waste at high concentrations. We believe that this approach is a sound way of assuring a good test of POHC destruction and removal, which in turn assures that an incinerator is operating at an optimum level of performance. (We believe that PICs should be addressed directly, separate from DRE, as explained below.) However, spiking of dioxin itself to higher levels is not desirable due to its toxicity.

Estimates of risk to public health resulting from PICs based on available emissions data indicate that these emissions do not pose significant risks when incinerators are operated at optimum conditions. Nonetheless, to ensure that emissions of total residual organic compounds, that is, trace levels of unburned organic compounds in the waste plus organic compounds generated during combustion as PICs, do not pose a significant risk, we recommend following the relevant portions of the PIC approach presented in the Boiler and Industrial Furnace (BIF) Rule (56 FR 7134, February 21, 1991), and, when updated, the guidance on addressing PIC emissions from incinerators. This approach

involves setting a maximum carbon monoxide or hydrocarbon level to assure that overall PIC emissions are low. The BIF approach also requires testing for dioxin and furan emissions and performing a risk assessment at facilities operating under specific conditions considered to be conducive to production of dioxins and furans as PICs, to be sure these compounds are not present at levels of concern.

Recommended Approach for Dioxin-listed Wastes

Risk assessment:

Given the public concern over dioxin-listed wastes, we believe that it is necessary to perform a site-specific risk assessment as an additional check at facilities proposing to burn such wastes, to demonstrate that the DRE and PIC controls will control emissions of chlorinated dioxins and furans to levels that will not pose a hazard to human health and the environment. The preamble to the January 14, 1985 (50 FR 1978), promulgation of the management standards for dioxin-containing wastes F020, F021, F022, F023, F026, and F027 discusses risk assessments performed over a range of incinerator sizes, dioxin concentrations, and DREs, and appears to indicate that the risk assessments supporting the final dioxin incineration standards assumed six nines as the DRE for dioxin. Since the concentration of dioxins in dioxin-listed wastes is normally very low, the data indicating lower DREs at low concentrations lends uncertainty to the six nines assumption.

For this reason, the risk assessment calculations performed in the course of the dioxin rulemaking may not be representative in some cases. Thus, we believe that it is appropriate to perform site-specific risk assessments for incinerators proposing to burn such wastes with low levels of dioxins, to demonstrate that the performance standards are protective of human health and the environment. Such a site-specific risk assessment should use actual chlorinated dioxin and furan emissions data obtained while the incinerator is burning the low-concentration dioxin wastes.

Testing:

We also believe that in most cases where a facility is applying to burn dioxin-listed wastes, the incinerator should be tested on non-dioxin wastes first to demonstrate six nines DRE on harder-to-burn POHCs prior to testing it on actual dioxin-listed wastes, to assure that the incinerator is operating at optimum performance before dioxin is burned. One situation where burning dioxin-listed wastes may not, in itself, warrant this approach would be where the dioxin concentrations in the waste are so low that, even assuming zero DRE, the stack gas concentrations of dioxin would be nondetectable. In such a situation, the need for

dioxin testing would be determined on the basis of whether it is likely to be formed as a PIC. Until the PIC guidance is updated, the BIF rule and the Office of Solid Waste can be consulted for assistance in making this determination. Such testing, if needed, could be done simultaneously with the DRE testing.

To implement the recommended testing approach for a commercial incinerator applying to burn dioxin-listed wastes, dioxin wastes need not be "imported" prior to permitting the incinerator. The trial burn for the incinerator could be used to demonstrate six nines DRE on POHCs more difficult to burn than dioxin. If successful, these data could be used as a basis for the permit. The permit would require that the facility notify the permit authority and test for dioxin emissions when it burns its first shipment of dioxin-listed wastes.

Design and operation:

We would also like to emphasize the importance of assuring that incinerators burning dioxin wastes are designed and operated in a manner to maximize DRE of dioxin and minimize its formation as a PIC. For example, studies on municipal waste combustors have identified a temperature range for particulate matter control devices that is associated with the potential for elevated levels of chlorinated dibenzodioxins and dibenzofurans. The BIF preamble at 56 FR 7162-4 (February 21, 1991) provides a discussion of this issue. We recommend that this factor be taken into account in reviewing or developing specifications for incinerator designs and test plans.

In closing, we would like to note that we believe that well-operated incinerators are capable of meeting the performance standards and destroying dioxin to below risk-based levels. Further, none of our data from hazardous waste combustion devices shows dioxin formed as a PIC at levels of concern. However, given the degree of concern over dioxin, we believe a site-specific evaluation is warranted to demonstrate protective operations at individual sites where dioxin wastes are to be burned.

We discussed this issue with the Waste Combustion Permit Writers' Workgroup during its February, 1992, meeting and on the April, 1992, conference call. We will continue to evaluate data related to this issue and will keep the Workgroup, including OERR contacts, informed. If you need additional guidance on how to address this issue at an individual site, feel free to contact Sonya Sasseeville of my staff at (202) 260-3132.

cc: Henry Longest
Bruce Diamond
Waste Combustion Permit Writers' Workgroup



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OFFICE OF
GENERAL COUNSEL

MEMORANDUM

SUBJECT: Waste Technologies Industries
Ownership and Operational Control

FROM: Nancy-Ellen Zusman *Nancy-Ellen Zusman*
Assistant Regional Counsel
Region 5

Brian Grant *B. P. Grant*
Attorney
Water Division (LE-132W)

TO: File

DATE: October 1, 1992

This memorandum serves as the Office of Regional Counsel and the Office of General Counsel's analysis of the ownership and operational control issues for the Waste Technologies Industries ("WTI") facility in East Liverpool, OH (the "Facility").

I. BACKGROUND AND SUMMARY

This analysis is in response to questions concerning the ownership and operational control of the Facility raised by the public and at a Congressional Hearing which took place on May 7, 1992. On July 7, 1992, Region V sent a RCRA Section 3007 Request for Information to WTI on the ownership and operational control issues as they related to financial assurance. WTI submitted a certified response on July 23, 1992. The Office of Regional Counsel ("ORC") sent a follow-up request on August 4, 1992, and WTI responded to that request on August 5, 1992. Finally, in response to requests from the Office of General Counsel ("OGC") that WTI explain certain inconsistencies in the information submitted, WTI submitted supplemental certified responses on September 24, 1992, and September 30, 1992. ORC worked closely with the OGC in completing its analysis of these issues, and, therefore, this memorandum is from both ORC and OGC jointly.

In addition to the written documentation submitted by WTI, a meeting was held with WTI and its counsel on September 15, 1992, and a meeting was held with a number of citizens on September 22, 1992, to discuss these issues. Counsel for WTI, Bricker & Eckler, asked the law firm of Squire, Sanders & Dempsey ("Squire, Sanders") to provide EPA with an analysis of the ownership issues, which it did by way of September 22, 1992, and September 30, 1992, opinion letters. In a telephone conversation on September 24, 1992, we attempted to discuss these same issues with Elliott Klayman, an associate professor of business law at Ohio State University who apparently has been retained by certain of the East Liverpool citizens who oppose the WTI incinerator. Professor Klayman informed us that his clients did not wish him to convey his analysis to EPA. We told him that we were very interested in discussing the WTI issues with him, and particularly in discussing any legal authority or principles that might be applicable to the ownership issues. He said he would talk to his clients and call us if they authorized him to discuss the issues with us; he never called. We also consulted with the Ohio Attorney General's Office (the "OH AG"), which is conducting a state background investigation of WTI, because our analysis involved an interpretation of Ohio partnership law.

An Inspector General report dated July 15, 1992, requested that Region make a formal analysis of these issues by October 15, 1992. However, because both Region V and U.S. EPA Headquarters desired to resolve these issues prior to the receipt of waste at the Facility, ORC and OGC have analyzed these issues as quickly as possible. The following is our analysis of these issues based on all the above-referenced information. It is important to keep in mind that U.S. EPA does not usually interpret state law on partnership issues and that the OH AG has not completed its review or reached any formal conclusions.

Based on our review of all the information supplied to us, we believe that the WTI permit is valid and that WTI is the owner of the facility, as well as an operator of the facility. However, we believe that WTI's managing partner, Von Roll (Ohio), Inc. ("VRO"), is also an operator of the facility, and that WTI should have submitted a permit modification request to add VRO as an operator, and VRO should have submitted a signed permit application, at least 90 days prior to entering certain agreements that made VRO an operator. The Region's preliminary analysis of these issues, as reflected in a letter to WTI dated September 8, 1992, was that VRO should be added to the facility permit as an operator, that Von Roll America, Inc. ("VRA") should be added as an owner, and that WTI as presently constituted should be identified as an owner. We still believe that VRO should be added as operator. However, as explained below, we now believe that WTI is the correct legal owner of the Facility based on the determination that there has been no legal change in the partnership. Therefore, we do not believe USEPA needs, or has

authority, to add VRA to the permit, or to replace WTI in its original structure with WTI in its present structure. The RCRA regulations contemplate that persons -- including partnerships and corporations -- who own and operate facilities must have permits. 40 CFR 270.1(c), 270.2 (definition of "person"). The regulations do not contemplate that individual partners or parent corporations be included on permits, unless those partners or parent corporations individually exercise operational control over the facility, and are thus "operators" within the meaning of 40 CFR 270.2.

II. OWNERSHIP OF THE FACILITY

With respect to the ownership issues, concern has been expressed that WTI was created pursuant to a joint venture agreement and applied for a RCRA permit in 1981, but did not apply for a partnership license in the State of Ohio until November 1987. We understand "partnership license" to refer to the "certificate of partnership" filed with the Secretary of State of Ohio on November 3, 1987. We do not believe that a general partnership in Ohio is required to file a certificate of partnership in order to do business in the State. The filing of the certificate is necessary to enable a general partnership to commence or maintain an action on or on account of a contract in the partnership's name in state court, or to transfer a conveyance of real estate to or from the partnership. Oh. Rev. Code Sections 1777.02, 1777.04. We do not believe that WTI was required to file the certificate in order to be recognized as a bona fide partnership in Ohio, or to apply for a RCRA permit.

Concerns have also been expressed about changes in the ownership of WTI, and whether these changes have caused WTI to dissolve or become a different legal entity than the entity that applied for and received a RCRA permit. Based on our review of the materials submitted by WTI and meetings regarding this issue with both concerned citizens and WTI, we have no basis to conclude that there has been a legal change in the partnership entity.

In analyzing the ownership of the WTI facility, we determined that the following questions were relevant under Ohio law: 1) whether WTI, under its present structure, is a valid partnership, and, 2) if it is valid, whether it is a different partnership as a result of changes in the partners than the partnership that applied for and received the RCRA permit. EPA's principal concern is to ensure maximum enforceability of the WTI RCRA permit. Specifically, we are concerned about the possibility that, if EPA or citizens attempted to enforce conditions of the permit, WTI might raise as a defense the argument that it is not a valid legal entity, or not the same entity as the WTI that obtained the permit, and that therefore the permit is not enforceable against it. While the requirements of RCRA would be

fully enforceable against WTI in any event as de facto owner and operator of the facility, it is desirable from a practical and evidentiary standpoint to have the technically correct legal entity on the permit.

There have been several changes in the partners since the formation of the partnership. The original four partners in the partnership were Koppers Environmental Corp., Energy Technology Co., Waste Technologies, Inc. (with a comma), and VRA. Since 1981, Stephens Inc., which owned 98.96% of the stock of Waste Technologies, Inc., sold Waste Technologies, Inc.'s interest in WTI to WTI Acquisition, Inc., which was wholly owned by Stephens. WTI Acquisition, Inc. then changed its name to Waste Technologies Inc. (without a comma). As a result of this transaction, Stephens Inc., became the sole owner of the partner company. In addition, VRA created VRO as a subsidiary, and sold its interest in the partnership to VRO. Koppers changed its name to Environmental Elements Ohio (Inc.), and there has been no change with respect to Energy Technology Co. Finally, although the four original companies had separate corporate parents, all are now owned by VRA.

A. Whether the Partnership Is Valid

From the information we have received, we have no basis to conclude that the partnership is not valid. Our principal concern related to the fact that VRA owns 100% of the stock of the four corporate partners, and that VRA and the four partners have substantially identical officers. In addition, three of the four corporate partners have no employees and no interests outside of their interests in the partnership. We investigated whether, under these circumstances, an Ohio court would disregard the corporate form and conclude that the partners were mere instrumentalities of VRA. Under Ohio case law, and based on the information supplied by WTI in response to the RCRA 3007 request, we do not believe that a court would disregard the corporate form.

At the outset, we note that, according to the documentation submitted by WTI, the four corporations comprising the partnership are validly incorporated, registered in Ohio, and in good standing both in their states of incorporation and in Ohio. The partners filed separate 1991 K-1 Schedules with the Internal Revenue Service to report their individual shares of income, credits, deductions, etc. for tax purposes. These schedules report the partners' shares of the partnership profits and loss as being equivalent to their respective ownership interests in the partnership (although they also report that no income has yet been generated by the partnership). This is consistent with the June 26, 1981 joint venture agreement creating WTI, which provided that income and losses would be allocated to the

partners on the basis of their respective percentage interests in the partnership. Section 5.3.

Despite these manifestations of corporate separateness, equity will look behind the fiction of a corporation to its shareholders where the ends of justice cannot be served in any other way. 11 Oh. Jur. 3d Section 93. However, the courts

are generally slow to disregard the corporate entity. The principle of the corporate entity as separate and distinct from the entity of its shareholders is both an accepted and fundamental concept in the law of corporations. It is the norm -- disregard of this norm is the exception and not the rule.

Id.

The decision whether a corporate entity will be disregarded must be made on the facts of each case; critical to a decision to ignore the corporate form is the determination that respect for the form would result in a fraud or other wrong under the facts presented. A leading Ohio case states that courts will ignore the corporate form "only when circumstances justify it, where it is used as a blind or instrumentality to defeat public convenience, justify wrong, or perpetrate a fraud." North v. Higbee Co., 3 N.E.2d 391, 393 (Oh. 1936) (quoting Majestic Co. v. Orpheum Circuit, 21 F.2d 720 (8th Cir. 1927)). Although it is difficult to formulate a precise test, a recent decision states that the corporate fiction should be disregarded when

(1) domination and control over the corporation by those to be held liable is so complete that the corporation has no separate mind, will, or existence of its own; (2) that domination and control was used to commit fraud or wrong or other dishonest or unjust acts, and (3) injury or unjust loss resulted to the plaintiff from such control and wrong.

Bacvyrus-Erie Co. v. General Products Corp., 643 F.2d 413, 418 (6th Cir. 1981) (decided under Ohio law but, in this instance, citing Brunswick Corp. v. Waxman, 459 F. Supp. 1222, 1229 (E.D.N.Y. 1978), aff'd, 599 F.2d 34 (2d Cir. 1979), applying New York law).

In North, the court held that the fact that a parent owned all of the stock of a subsidiary corporation, and that the two corporations had the same directors, did not in itself justify disregarding the corporate form to allow the plaintiff to recover from the parent corporation rent due from the subsidiary. The Court stated that, in order to justify disregarding the corporate entity,

it is not enough that the subsidiary is so organized and controlled as to make it merely an instrumentality, conduit or adjunct of its stockholders but it must further appear that to recognize their separate entities would aid in the consummation of a wrong.

North, 3 N.E.2d at 394 (quoting Gledhill v. Fisher & Co., 262 N.W. 371 (Mich. 1935)).

Based on these cases, we do not believe an Ohio court would disregard the corporate separateness of the WTI partners. At the very least, the element of wrong or harm is lacking. The materials submitted by WTI provide no basis to conclude that WTI has used the corporate forms of the partners to perpetrate a fraud or other wrong. We are aware of no authority in Ohio for the proposition that corporate form will be disregarded simply because of interlocking directorates, common ownership, or other evidence of control by a parent over a subsidiary. Rather, the concept of disregard for the corporate entity is an equity doctrine applied in individual cases where respect for the corporate form would result in injustice to a particular plaintiff. North, 3 N.E.2d at 393-93. See also Kardo Co. v. Adams, 231 F. 950, 966-67 (6th Cir. 1916) (applying Ohio law) (court refused to disregard corporate form where respect for form did not result in injury); Baker v. Central Trust Co., 235 F. 17, 28 (6th Cir. 1916) (applying Ohio law) (court will not disregard corporate separateness of parent and subsidiary where dealings between subsidiary and plaintiff were based upon separate and independent existence of subsidiary, and dealings were in good faith on both sides).

In addition, we believe that a court would not permit WTI to question its own status as a partnership in an action to enforce requirements of RCRA. Courts will disregard the corporate form to avoid injustice to plaintiffs; we are not aware of any situations where a court has disregarded a corporate entity at the urging and to the benefit of the entity itself, thus allowing the entity to avoid its obligations. Such a result would pervert the concept of ignoring the corporate form in order to avoid injustice to other parties. We do not think equity would permit such a result. Moreover, under Ohio law, persons representing themselves as a partnership will be estopped from claiming that they are not a partnership when others have relied on the representations. E.g., Main Cloak & Suit Co. v. Rosenbaum, 181 N.E. 556 (Oh. App. 1931); cf. Oh. Rev. Code section 1775.15. Because WTI has consistently held itself out as a partnership, in its certified response to EPA's RCRA 3007 request among other places, we consider it unlikely that a court would permit it to contest the validity of the partnership in a RCRA enforcement action by EPA or in a citizens suit.

7

Finally, we analyzed whether the appointment of VRO as managing partner, and the formalization of that appointment in a September 21, 1990, operating contract between WTI and VRO, vitiated the partnership by concentrating management authority in one of the partners. We do not believe that this arrangement vitiated the partnership. The contract gives VRO substantial responsibility and discretionary authority over the day-to-day operations of the facility, free from interference by WTI. The contract does, however, provide that VRO is subject to the general supervision of WTI (section I, 1.1(iii)), and that WTI has ultimate authority to determine, based on regular reports by VRO, whether plant operations should be reduced or suspended (section I, 1.10). Under Ohio law, partners may, through express agreement or gradual usage, relinquish their authority to a single managing partner, and the authority of the remaining partners may be limited or even eliminated entirely. 13 Oh. Jur.3d section 967. Under these principles, we do not think the operating contract vitiated the WTI partnership.

The September 21, 1992, and September 30, 1992, opinion letters provided to EPA by Squire, Sanders reach the same conclusions.

B. Whether WTI Is a New Partnership

Under state law, it appears that the changes of the WTI partners might well have resulted in the dissolution of the original partnership absent a provision to the contrary in the agreement among the partners. Oh. Rev. Code section 1775.28 (dissolution of partnership is "the change in relation of the partners caused by any partner's ceasing to be associated in the carrying on as distinguished from the winding up of the business"); Fairway Dev. Co. v. Title Ins. Co., 621 F. Supp. 120 (N.D. Oh. 1985). However, the June 26, 1981, WTI joint venture agreement expressly limits the grounds for dissolution, and contemplates that the partnership will continue notwithstanding changes in the partners. Specifically, the agreement provides four grounds for dissolution -- notice of termination signed by all partners, withdrawal of all partners, incorporation of the partnership, and the commencement by a partner of bankruptcy or insolvency proceedings in certain circumstances. Section 3.2. According to the information submitted by WTI, none of these events has occurred. The agreement further provides, in Section 3.3(a), that the partnership is intended to continue in existence "until its dissolution as set forth in Section 3.2," and that any disposition of partnership interest that would have the effect of dissolving the partnership "shall not be effective," Section 7.6. Finally, the agreement provides that, if the partnership is dissolved notwithstanding these provisions, the remaining partners who did not cause the dissolution can continue the business under the same name and with other persons who become partners under the terms of the agreement. Section 3.3(b).

We are aware of no reported Ohio authority directly on the point of whether provisions in a partnership agreement against dissolution are effective to prevent a dissolution from occurring upon a change in members. However, we think that an Ohio court would probably honor such an agreement. Cases in other jurisdictions honor provisions against dissolution in partnership agreements. See, e.g., Heath v. Spitzmiller, 663 S.W.2d 351 (Mo. App. 1983); Hunter v. Straube, 543 P.2d 278 (Or. 1975); Adams v. Jarvis, 127 N.W.2d 300 (Wis. 1964). It appears to be the general rule that, "[w]here a partnership agreement specifically provides that the firm will not dissolve on the withdrawal of a partner, the courts recognize that the partnership continues to exist after a partner's withdrawal." 59A Am. Jur. 2d Section 829. This appears to be a specific application of the general principal that

[t]he courts are duty bound to give legal effect to the parties' agreement, if complete, at least as between the parties, so far as their agreement and intention can be ascertained. In short, the partners may literally write their own ticket, overriding the otherwise applicable common law and statutes, supplanting even the provisions of the Uniform Partnership Act by contrary agreement, so long as the agreement does not destroy the essential characteristics of the partnership relation. . . . Where an express agreement does not cover situations or questions which arise, they are determined under applicable law, which generally [and in the case of WTI] means the Uniform Partnership Act.

Id. Sections 101-102.

An unpublished opinion of an Ohio Court of Appeals supports the conclusion that an Ohio court would honor the WTI non-dissolution provisions. The defendant in the case, Cherry Valley Corp. v. Estate of Riley, 1-82 WL 5555 (Oh. App.), the wife of a deceased partner, sought to avoid certain provisions of the partnership agreement entered into by her husband. The agreement provided, inter alia, that the partnership would not dissolve upon the death of a partner but that the interest of the deceased partner would pass to his personal representative. The defendant argued that, notwithstanding this provision, the death of her husband dissolved the partnership under Oh. Rev. Code section 1775.30(D), which provides that a partnership will dissolve upon the death of a partner. The court interpreted this provision as controlling only "when no contrary provision has been made between the parties which would in any way control dissolution." p.2. The court concluded that the express agreement of the parties governed and that "neither a dissolution nor a winding up of affairs occurred since the agreement. . . specifically mandates that no dissolution, in fact, occurs." p.3. Pursuant to Ohio

Supreme Court Rule 2(G), this unpublished opinion is not controlling authority; however, it may be cited, and it is persuasive authority within the judicial district in which it was decided. We think it provides insight into how an Ohio court would resolve the present issue.

We have not found other cases in Ohio directly ruling on the issue. An old case states that the death of a partner dissolves a partnership except in two cases: "First, where the articles of association provide for a continuance of the business; and, [s]econd, where by will the deceased partner has provided for carrying on the business." Peters v. Campbell, 2 O. Dec. Rep. 526, 527 (Ct. Common Pleas 1861). This authority is undercut, at least with respect to wills, by a subsequent (although still old) case, addressing a provision in a will of a partner that his executor should continue the business of the partnership. The court concluded that such provisions do not prevent the partnership from dissolving but merely authorize the formation of a new partnership. McGrath v. Cowan, 49 N.E. 338, 340-41 (Oh. 1893). Because the partnership agreement determines the nature and "rules" of the partnership and sets out the agreement of the parties, we think authority involving will provisions is not determinative. In a later case, plaintiffs, faced with the general rule of dissolution upon death, urged that an exception to the rule arises where a partnership agreement expressly stipulates that the partnership will not dissolve. Pater v. Schumaker, 153 N.E.2d 230 (Oh. App. 1926). The court concluded that this issue was not presented in the case because the partnership agreement, in fact, specifically provided for dissolution upon the death of a member, and so did not reach the issue. All of these cases were decided before the adoption by Ohio of the Uniform Partnership Act.

In sum, we are not aware of any authority in Ohio suggesting that an Ohio court would reject what appears to be the general rule that courts will honor provisions in partnership agreements against dissolution upon the transfer of a partner's interest or withdrawal of a partner. The decision in Cherry Valley Corp. indicates that such provisions will be honored.

The opinion letters of Squires, Sanders reach the same conclusion, applying the above reasoning and on an additional basis. The letters opine that the original partners that transferred their interest in the partnership -- Waste Technologies, Inc. and VRA -- have not withdrawn from the partnership within the meaning of the Uniform Partnership Act because, as disclosed in the section 3007 submittal, they did not transfer interests in partnership property. In addition, the partnership agreement provides that, where a partner transfers its interest to an "affiliated corporation" within the meaning of the agreement, which was the nature of the Waste Technologies, Inc. and VRA transfers, the original partner "shall remain liable

for all obligations incurred by such Venturer [partner] pursuant to this Agreement prior to such transfer and for all obligations incurred by any such assignee pursuant to this Agreement after such transfer." Section 7.4. On this basis, Squire, Sanders concludes that the transfers of interests were not withdrawals but merely conveyances of partnership interests which, under Oh. Rev. Code section 1772.26(A), does not result in the dissolution of the partnership. We have not independently evaluated this analysis, but it may provide another basis to conclude that the changes in the WTI partners did not dissolve the partnership.

Because these are difficult, technical issues of state law, we will continue to monitor the inquiry into WTI presently being conducted by the Ohio Attorney General's Office as part of its routine background check of RCRA facility owners, and we are of course receptive to any other new information or arguments on the issues. In addition, we are forwarding to the Ohio Attorney General's office documents and information received in the course of our inquiry into WTI's ownership, including information provided by local citizens. However, it should be noted that, regardless of the resolution of these technical issues, the de facto owners and operators of RCRA facilities are fully liable for compliance with RCRA regardless of whether they are on the permit, and USEPA has full authority to enforce the applicable statutory and regulatory requirements against all such parties. We do not believe that the enforceability of a RCRA permit turns on technical issues of state business association law.

In addition, with respect to the financial assurance mechanisms obtained by the facility pursuant to regulatory requirements, 40 CFR Part 264 Subpart H, the required liability insurance was obtained by WTI (the partnership) effective December 31, 1991. Thus, even if the above-referenced transactions effected a change in the partnership (and, as explained above, we believe they did not), they all occurred prior to the date the policy was issued, and the policy therefore would be held by WTI as presently constituted. The standby letter of credit for closure, also required by the regulations, was obtained by VRO, which is a properly incorporated entity according to the information and documentation submitted by WTI. U.S. EPA Region 5 is taking steps to add VRO to the permit a facility operator.

A final issue that has been raised with respect to the ownership status of the facility is whether the absence from the permit as originally issued of the land owner, the Port Authority of Columbiana County, renders the permit invalid. It does not. Although USEPA's regulations require that landowners be included on RCRA permits, the practice in USEPA regional offices at the time of permit issuance varied, and WTI's permit, as well as others, was issued without identifying the landowner as permittee. The failure to include the Port Authority was inadvertent, and the issue was not raised by anyone during two

rounds of public comment on the draft permit. The time period provided under RCRA for legal review of the permit has long expired. In any event, the issue is now moot because WTI purchased the land from the Port Authority, effective September 18, 1992.

III. OPERATIONAL CONTROL OF THE FACILITY

With respect to the operational control issues, WTI entered into a contract with VRO on September 21, 1990, assigning substantial independent operational discretion and control to VRO. We believe that, under this arrangement, VRO is an "operator" of the facility within the meaning of RCRA and that the arrangement should have been effected through a Class I permit modification with prior approval. 40 CFR Section 270.40. We further believe that a 1987 amendment to the WTI joint venture agreement making VRO managing partner and giving VRO exclusive authority to manage and control the partnership made VRO an "operator" prior to the execution of the 1990 contract and required prior approval. WTI maintains that the 1990 contract simply reflected VRO's role as managing partner under the 1987 amendment. Finally, VRO obtained the letter of credit for facility closure, which is a responsibility of the facility owner or operator, 40 CFR 264.143. We therefore believe that WTI violated the RCRA regulations by effecting this change without approval.

However, the error does not affect the validity of the permit. As stated above, VRO is fully liable for compliance with RCRA requirements as a de facto operator of the facility regardless of whether it is on the permit. In addition, USEPA typically has not required that individual partners or shareholders of owner and operator companies be identified as owners or operators on the permit. However, where individual partners or shareholders exercise such independent discretion and control that they themselves fall within the definition of "operator" in 40 CFR Section 270.2, we believe they must be included on the permit, see In re Southern Timber Products, Inc., RCRA Appeal 89-2 (February 28, 1992). WTI maintains that, under USEPA's permit regulations, an individual partner acting in its capacity as manager is not itself an "operator," and that therefore a permit modification was not necessary to delegate management authority to VRO. We disagree with WTI's reading of the regulations based on the substantial independence and control exercised by VRO, but the determination of whether an individual or entity falls within the "operator" definition is a fact-specific determination that must be made on a case-by-case basis.

IV. INCONSISTENCIES IN INFORMATION SUBMITTED BY WTI

At the September 22, 1992, citizens meeting, citizens pointed out discrepancies within the information supplied by WTI in its response to the RCRA 3007 request, and discrepancies between the

RCRA 3007 information supplied to EPA and statements that WTI has made elsewhere. We requested from WTI and received, on September 24, 1992 and September 30, 1992, certified supplements to the RCRA 3007 information explaining the inconsistencies. Specifically, WTI has certified that variations, with respect to the placement of commas and parentheses, of the following corporate names were the result of typographical errors, and that there is only one company represented by each of the names, which is the company for which WTI has submitted documentation, including certificates of incorporation: Environmental Elements (Maryland), Inc.; Environmental Elements (Delaware) Inc.; Environmental Elements Ohio (Inc.); Von Roll America, Inc. Similarly, WTI certified that references to Stephens, Inc. and Stephens Inc. both refer to the same company, which they believe is correctly punctuated as Stephens Inc. In addition, WTI has certified that Von Roll Inc. and Von Roll, Inc. are the same Delaware corporation, correctly punctuated without a comma, but that it is at times incorrectly punctuated with a comma, and was so incorrectly punctuated when it registered to do business in Ohio. In addition, the company clarified that Energy Technology Co., an Oklahoma corporation, was qualified to do business in Ohio under the name Enertech Development, Inc., because there apparently was another company doing business in Ohio under a name confusingly similar to Energy Technology Co. The certificate of good standing for the corporation in Ohio reflects the fact that the State knowingly registered the company under an assumed name.

WTI in addition certified that a January 24, 1990 letter from its attorney to EPA inaccurately describing the then-present partners as "original" partners in WTI was, in context, intended to refer to the partners as "original" with respect to a proposed stock transfer being referenced in the letter, not as the original 1981 partners of the partnership. WTI certified that a reference in a letter by the president of Von Roll Inc. to the company as managing partner of WTI was a mistake, and that the letter was intended to advise EPA of Von Roll Inc.'s status as construction manager and equipment supplier; WTI certified that, as its RCRA 3007 response stated, Von Roll Inc. has never been a partner in WTI. WTI submitted in its original RCRA 3007 response contracts relating to WTI's retention of Von Roll Inc. to act in the capacity of construction manager and equipment supplier. In addition, WTI certified that Waste Technologies Inc. -- the Oklahoma corporation for which it submitted articles of incorporation and certificates of good standing -- is at times abbreviated "Wastetech," "WasteTech," and "WasTech," but that these variable abbreviations refer to the same Oklahoma company.

We have no basis to conclude that the certified information submitted by WTI is untruthful and, therefore, no basis to conclude that WTI has violated its permit by changing ownership without requesting a permit modification. We are, however,

submitting the supplemental responses to the RCRA 3007 request to the OH AG along with the information supplied by the citizens in the September 22nd meeting so that the State can consider the information as part of the extensive, standard background investigation of WTI it is presently conducting.

Finally, WTI explained in its September 24th supplemental response that its submission of a revised RCRA Part A application to Ohio EPA in connection with a modification of WTI's permit erroneously designated VRO as the "operator" of the facility, rather than as managing partner. Whatever the reason was for this designation, as explained above we believe that VRO is an operator of the facility and is taking steps to add VRO to the permit. We believe that the statement in the revised Part A supports our conclusion in this regard.

V. CONCLUSION

In conclusion, we believe the WTI permit is valid. We do not have a basis to conclude that WTI is not the legal owner of the facility. We believe that VRO is, along with WTI, an operator of the facility, and that WTI violated its permit by giving operational control to VRO without proceeding through the Class I permit modification process. However, we do not believe this violation affects the validity of the permit.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

REPLY TO THE ATTENTION OF:

DEC - 2 1992

HRP-8J

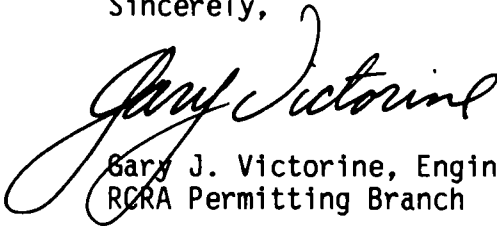
Mr. Anthony Sosci
United States Senate Commerce Committee
427 Hart Building
Washington, D.C. 20510

Dear Mr. Sosci:

Enclosed is a copy of the inspection report (attached to a transmittal letter dated September 25, 1992) that you requested regarding the Waste Technologies Industries hazardous waste facility in East Liverpool, Ohio. I have also enclosed two other letters from the United States Environmental Protection Agency to WTI for your information.

If I can be of further assistance, or if you have any questions about these documents, please call me at 312-886-1479.

Sincerely,


Gary J. Victorine, Engineer
RCRA Permitting Branch



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

77 WEST JACKSON BOULEVARD

CHICAGO, IL 60604-3590

25 SEP 1992

REPLY TO THE ATTENTION OF:

R-19J

CERTIFIED MAIL: P 664 392 820
RETURN RECEIPT REQUESTED

Mr. D. J. Blake Marshall
President
Waste Technologies Industries
3080 Northwoods Circle
Suite 200
Norcross, Georgia 30071

RE: Waste Technologies Industries
OHD 980 613 541

Dear Mr. Marshall:

Pursuant to Condition A.15 of the Resource Conservation and Recovery Act permit issued to Waste Technologies Industries (WTI) by the United States Environmental Protection Agency (U.S. EPA), WTI may not commence the treatment, storage, or disposal of hazardous waste until the U.S. EPA has inspected the facility after completion of construction and finds it in compliance with the conditions of that permit. On August 25 and 26, 1992, representatives of U.S. EPA inspected the WTI facility. Overall, the U.S. EPA found the facility to be constructed in compliance with the conditions of the permit. A copy of the report from that inspection is enclosed.

One of the findings of the August 25-26 inspection was that certain additional measures must be taken before WTI can be considered to be fully in compliance with the requirements of Condition B.11 of the permit. Condition B.11 addresses arrangements and agreements with emergency authorities.

WTI must take the following action before the U.S. EPA can find the facility in compliance with the conditions of the RCRA permit:

1. Waste Technologies Industries must write letters to both the East Liverpool Police Department (ELPD) and the East Liverpool Fire Department (ELFD) requesting verification that each is the primary authority. In addition, both the ELPD and the ELFD should be asked to verify that any additional police or fire departments potentially called during an emergency would provide a support role to the primary authority.

2. Waste Technologies Industries must send a letter to the East Liverpool Hospital, transmitting a copy of the approved Contingency Plan, and a list of all chemicals to be handled at the site. The present documentation only indicates that WTI will send a copy of the Contingency Plan upon request.

Before WTI can be authorized to accept hazardous waste at the East Liverpool site, the following events and approvals must take place:

1. U.S. EPA must receive copies of the above-referenced letters sent to the emergency authorities and hospital, and determine they are adequate;
2. U.S. EPA must approve the revised Contingency Plan, which will be based on the letters to the ELPD and ELFD referenced in item 1;
3. U.S. EPA must approve the revised Waste Analysis Plan. U.S. EPA is awaiting receipt of WTI's clarifying letter on this point; and
4. Seven-day notice must be given to all parties pursuant to the stipulation agreement, dated September 1, 1992, in Palumbo v. WTI, Civil Action No. 92-0072 W(S), before hazardous waste can be received.

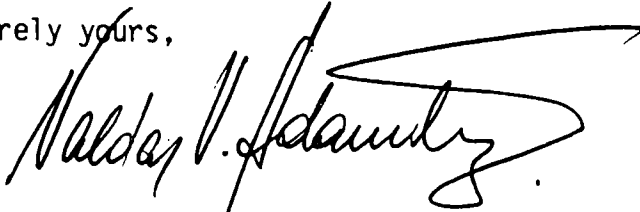
In addition, the U.S. EPA will inform WTI of its decision on the owner/operator issue no later than October 1, 1992. U.S. EPA Region 5 will be making this decision in full consultation with U.S. EPA Headquarters and U.S. EPA's Office of General Counsel. Until this issue is resolved, WTI may not accept hazardous waste on-site.

In a September 18, 1992, letter from Laurie Stevenson of the Ohio Environmental Protection Agency (OEPA) to WTI, the OEPA gave its determination that WTI had adequately addressed the deficiencies that OEPA had previously noted in WTI's financial assurance and liability coverage documentation. This letter resolved the outstanding issues regarding the revised Closure Plan. Accordingly, the U.S. EPA hereby approves revised Closure Plan, dated July 31, 1992.

Conditions A.1 and A.2 of Attachment XI of the RCRA permit also require the Regional Administrator's approval of an updated inspection plan and of piping and instrumentation diagrams prior to commencement of hazardous waste operations. The U.S. EPA hereby approves the updated Inspection Plan, dated August 19, 1992, and all piping and instrumentation diagrams submitted to U.S. EPA Region 5 by WTI.

If you have any questions regarding this matter, please contact
Mr. Gary Victorine of my staff at 312-886-1479.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Valdas V. Adamkus". The signature is stylized with a large, sweeping flourish that extends to the right and then loops back down.

Valdas V. Adamkus
Regional Administrator

Enclosure

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION V

DATE: SEP 1 1992

SUBJECT: Report from August 25-26, 1992, Inspection of Waste Technologies Industries (WTI) Facility in East Liverpool, Ohio.

FROM: Gary J. Victorine, Engineer
RCRA Permitting Branch

TO: WTI File

[Handwritten signature] 9/24/92

Attached is the inspection report from the inspection performed by myself and Wen Huang at the WTI facility on August 25 and 26, 1992. The report concludes that the facility is in compliance with the applicable Conditions of the RCRA permit, with the exception of Condition B.11. This Condition deals with arrangements and agreements with emergency authorities.

WTI must take the following action before the U.S. EPA can find the facility in compliance with Condition B.11 of the RCRA permit:

1. Waste Technologies Industries must write letters to both the East Liverpool Police Department (ELPD) and the East Liverpool Fire Department (ELFD) requesting verification that each is the primary authority. In addition, both the ELPD and the ELFD should be asked to verify that any additional police or fire departments potentially called during an emergency would provide a support role to the primary authority.
2. Waste Technologies Industries must send a letter to the East Liverpool Hospital, transmitting a copy of the Contingency Plan, and a list of all chemicals to be handled at the site. The present documentation only indicates that WTI will send a copy of the Contingency Plan upon request.

INSPECTION REPORT

Facility: Waste Technologies Industries (WTI)
East Liverpool, Ohio
OHD 980 613 541

Dates of Inspection: August 25-26, 1992

Purpose of Inspection: To verify compliance with the conditions of the RCRA permit prior to initial receipt of hazardous waste.

Lead Inspectors: Mr. Gary Victorine, Engineer, U.S. EPA Region 5
Mr. Wen Huang, Engineer, U.S. EPA Region 5

Additional Inspectors: Mr. David Barlow, Engineer, U.S. EPA Region 5, EDO
Mr. Paul Anderson, Ohio EPA
Mr. Frank Popotnik, Ohio EPA
Mr. Scott Williams, Ohio EPA

Representing WTI: Mr. Jerry Sahutski
Mr. Jim Grum
Ms. Deborah Rushin
Mr. Norman Crabb
Mr. Martin Scott

Report Authors: Gary Victorine and Wen Huang

Report Date: September 23, 1992

I. General walk-through and specific inspections:

After an initial meeting between U.S. EPA and WTI to discuss the specific items we intended to look at, we were joined by the Ohio EPA (OEPA) representatives and walked through the plant to look at all areas in general. Mr. Victorine and Mr. Huang also paid special attention to certain details which they had previously decided to inspect for verification of compliance with the terms and conditions of the permit.

- A. We verified that the appropriate water sprinkler, pre-action sprinkler, or water-foam sprinkler systems were in place in the truck sampling area, truck unloading area, container storage area, container processing area, truck wash building, and organic waste tank farm. We inspected the emergency diesel-powered firewater pump room (two redundant diesel pumps, with battery-powered starter) and the foam/water mix room. We observed the explosimeter (to detect the presence of flammable gases) in the ductwork which pulls any potential organic vapors from the sump in the organic waste tank farm. We asked questions and received answers regarding the operation of the fire protection system.

Reportedly, the local Fire Marshall has been involved in the design details of the fire protection system. Possible followup: Contact the Fire Marshall to verify that all potential concerns have been addressed.

We also viewed the 1000 KW emergency generator. Reportedly, this unit was recently tested by having the power company cut power, and it can be running and providing emergency power within 10 seconds of a power outage. The emergency generator allows emergency operation of the control system, critical pumps and valves, and even the induced draft (ID) fan.

- B. We inspected the entire perimeter security fence, and interviewed Mr. Martin Scott (Safety and Security Manager) regarding the security system. All small gates were posted with signs. The main gate is normally kept open, but is manned 24 hours per day. If necessary, the main gate can be manually closed. There is normally one Emergency Medical Technician on-site at any time.
- C. The container storage area is equipped with steel racks which will hold pallets of drums. Aisle space was at least 5 feet, as required in the permit. An additional sprinkler system (additional to the ceiling-mounted system) is built into the storage racks. Absorbing pads are strategically located throughout the storage area. Emergency escape corridors and fire dampers have been incorporated in the design of the building.
- D. We inspected the container receiving area. Drums are to be individually weighed, and given a bar code for tracking. Certain drums will be sampled, and the shipment will be held in an adjacent staging area until the chemical sample is analyzed and the shipment approved for acceptance. The weight of each drum is entered into the computer along with the bar code number. The analytical results are also entered into the lab computer for communication through a LAN system to the master tracking computer. The sample station has individual moveable hoods which collect the light vapors, and floor vent ducts to collect heavy vapors. Vapors are exhausted either to a carbon adsorption system or to the incinerator (depending on whether or not the incinerator is operating).
- E. We inspected the container processing area. In this area, containers of hazardous waste will be taken out of storage, as selected by the computer system, and loaded onto a conveyor system equipped with suspension buckets, one for each drum. The conveyor system takes each drum to the appropriate destination, as described below:
 - 1. Drums of pumpable liquid go to one of several manual pumpout stations, as determined by the computer, based on the drum's bar code and the corresponding information in the computer system for that drum. Each pumpout station has a moveable

overhead hood to collect light vapors and a floor vent duct to collect heavy vapors, similar to the system described above. The bar code is again read at the pumpout station, and if the information agrees, the computer will automatically open the appropriate valves to direct the liquid waste to a specific tank or to the liquid waste guns in the incinerator.

2. Containers of certain viscous wastes are directed to an enclosed extruder, which punches a large hole in the drum and squashes the drum flat under a nitrogen blanket. The extruded waste is pumped either directly to the incinerator sludge guns or to the appropriate tank for blending. The flattened drums (referred to as "pancakes") will reportedly be RCRA-empty.
3. The container handling system can take certain drums to the incinerator for direct charging into the kiln. There is an indoor holding area, analogous to a "railroad switchyard," for the material handling system, just prior to the incinerator drum-feed area. The holding area can reportedly store up to 18 hours of drum feed for the incinerator.

F. We inspected the truck sampling/holding area:

We noted that WTI had installed the telephone and safety chains requested by the OEPA during its recent inspection.

The concrete pad had numerous large cracks which had been repaired to prevent liquid from any potential spills from leaking into the ground. It was evident to the inspectors that either poor design or overloading of the slabs had caused the cracking. In order to prevent future overloading and deterioration of the floor slabs, WTI should post signs which give the maximum design loadings for each area which may experience high loadings.

Such repaired cracks were also noted in other areas of the plant, but not to the extent seen at the truck sampling/holding area. It should be noted that a repaired floor slab does not have the same integrity as an uncracked floor. Although no additional action is required at this time, and although this does not represent a violation of the permit, subsequent U.S. EPA inspections should include this item to ensure that the repairs hold, and to ensure that no further cracking occurs.

G. We inspected the incinerator system:

1. The DeNOx system, which was not part of the original permitted design, has not been installed. Evidently, the

system will not actually be necessary in order to meet NOx standards. This system is not a requirement of the permit.

Fabricated piping for the DeNOx system is on-site, but no Company decision had been made as to when or if the system will be installed.

2. We inspected the annular seal between the rotary kiln and the secondary combustion chamber (SCC). Although the seal seems tight, this item will need to be observed during operation.
3. We went into the continuous monitor room to view the monitoring equipment.
4. We inspected the "airlock" charging system. The charging system can either take drums/pails through a door in the side, or loose solid waste through a feed chute in the top. The top feed utilizes swinging gates, and we discussed the potential for hangups of waste in these gates. The system reportedly has a steam jet system to extinguish any potential fires in the charging system, should a hangup occur which allows waste to become trapped inside the chute and subsequently ignite.

We also observed the atomizing guns which are to be used for feeding pumpable hazardous wastes into the kiln.

- H. We walked the berm to ensure it is level and continuous. Recommended followup would be to shoot elevations to ensure the berm stands at or above 696' MSL. The berm reportedly stands at 697' MSL.

- I. We inspected the control room twice over the 2 days we were at WTI.

The first inspection was to gain general knowledge of the capabilities of the Distributed Control System (DCS). A control room operator gave us a demonstration of all the major help screens available on the CRT monitor, and we were able to see where various parameters (e.g., incinerator SCC temperature, and tank temperature and fill level) show up in the shared display. At the time, the Company was filling tanks with water and manually checking the levels against the displays on the screen.

On our second inspection of the control room, we asked the operator to bring up a screen which showed the "permissives" for operation of the waste feed guns. We compared the values displayed on the screen (e.g., "SCC Temp above 2012F" and

"CO < 100ppm") to the conditions listed in the permit for the shakedown period, and found no incorrect set points.

We also interviewed Mr. Steve Goldman, who supervises the control room operators, regarding the set points relative to automatic waste feed cutoff. Mr. Goldman provided us with a recently completed checklist which had been used by the Company to manually check the operation and calibration of electronic set points for permissives. The Company made a claim of confidentiality on this checklist because it shows many specific operating set points for its equipment, and it would reportedly put the Company at an economic disadvantage if its competitors had access to the checklist.

- J. On the second day of the inspection, W. Huang made a close inspection of the entire combustion train, including kiln, SCC, spray dryer, ESP, wet scrubber, ID fan, Recirculated Flue Gas (RFG) fans, and ash handling systems. In general, they appeared to have been installed in accordance with the information submitted to the U.S. EPA. WTI representatives indicated that an initial nonwaste shakedown had been completed. It appears that all equipment has been installed in a workmanlike manner. However, some final touchup work was still in progress. Workers were painting the platform rails, repairing pumps (with pump casings open), etc. Covers for the spray dryer rotating disks remained to be installed.

In addition, Condition A.3 of Attachment XI of the permit was discussed. The importance of maintaining a steady-state scrubber blowdown solids concentration was again stressed. WTI has addressed the means of controlling the total solids in the scrubber water through its previous correspondence, dated October 18, 1991, and a followup discussion on February 26, 1992. WTI proposed to manually control the total solids concentration through scrubber water sampling and analysis. Due to a large scrubber water retention capacity, any potential increase in total solids concentration will be so gradual as to allow the operators to manually adjust their waste feed operation without causing solids exceedance. However, WTI was requested to consider additional equipment instrumentation that could monitor the instantaneous liquid density and solids concentration in the scrubber water to the spray dryer head tank.

Condition A.3 of Attachment XI requires the submittal of documents indicating that provisions have been made to the spray dryer system for removing sludge and solids from the scrubber sump and the neutralizing tank. The purpose of this permit condition was to allow for a means of reducing the concentration of total solids or chemical constituents (e.g., heavy metals) in the water to the spray dryer should these concentrations build up to a level

which threatens to exceed the specific level demonstrated during the trial burn.

Piping and Instrumentation Drawings (P&IDs) and other information submitted by the Company show that the following system is in place:

- 1) If concentrations were to approach unacceptably high levels, the first line of defense would be to change the type of waste being burned to try to bring concentrations back down.
- 2) If burn modifications cannot achieve the necessary reductions in concentration, fresh water can be added at the 10,000-gallon spray dryer feed tank to dilute the feed to the head tank (see the simplified diagram of the scrubber/dryer system in Attachment 1 to this report). If addition of water to the spray dryer tank causes that tank or either of the two neutralization tanks upstream of the spray dryer tank to overflow, they would overflow to the process scrubber sump, which would convey the overflow to the scrubber water holding tanks. The piping associated with the scrubber water holding tanks includes a fitting to allow off-loading to a tank truck.

The two neutralization tanks and the spray dryer feed tank are all continuously mixed to help prevent settling, therefore any overflow or draining of any of these tanks would simultaneously draw off liquids and suspended solids. The drawings indicate that the scrubber tower sump also has an overflow and manual drains which all drain to the process scrubber sump.

The information submitted by the Company relative to this issue appears to meet the requirements of Condition A.3 of Attachment XI of the permit.

II. Interviews and Audits of Records:

A. Inspection Plan:

Attachment V of the permit contains all the permit requirements for inspection of the facility. In addition to Attachment V, the facility has a detailed inspection plan, dated August 19, 1992, which gives more specific details and schedules, and examples of daily, weekly, and monthly checklists for inspections. Mr. Victorine reviewed the August 1992 inspection plan against permit Attachment V, and found no contradictions. The facility has a copy on-site.

Condition A.1 of Attachment XI of the permit requires submittal of an updated inspection plan to add items associated with the spray

dryer. The August 19, 1992, inspection plan seems to meet this requirement. Condition A.1 of Attachment XI refers to the Regional Administrator's written approval of this updated document. This approval has not yet been given.

We interviewed Mr. Martin Scott (Safety and Security Manager) regarding inspections. Actual inspections will be performed according to checklists generated by a computer. The computer checklist will include all the inspections listed in the RCRA permit inspection plan, plus other inspections necessary for routine maintenance of equipment (for example, a pump manufacturer may recommend that its pump be serviced every 90 days; the WTI computer will automatically add this service item to the checklist once every 90 days).

Since the facility was not yet in operation, the Company has not done any inspections yet. Possible followup: If waste is allowed on-site and operations begin, make arrangements for a U.S. EPA inspector to go along with a Company inspector on a Company inspection.

We also discussed Subpart BB inspections, although there is no permit requirement to perform these. These inspections (e.g., "sniffing" valves with an organic vapor detector) will be jobbed out to a consultant. The Subpart BB inspection plan, which also covers obligations under the air program, was approved by NOVAA on July 7, 1992.

B. Contingency Plan:

The State approved the June 22, 1992, version of the Contingency Plan, and the U.S. EPA is presently considering approval of the August 10, 1992, update to the Contingency Plan. This update replaces the reference to Waste Management Branch at Region 5 with the more correct "Waste Management Division," and lists the phone number of the Emergency Response Branch instead of Karl Bremer's phone number. A copy is on-site, as required by the permit. Since the copy of the Contingency Plan that the U.S. EPA representatives brought with them on the inspection did not have copies of the arrangement letters with the local emergency agencies, and did not include the phone number change, WTI provided two complete correct copies.

The wording of the arrangement letters with the East Liverpool Police Department, Fire Department, East Liverpool City Hospital, and the Ohio Dept. of Commerce (Chemical Emergency Response) was analyzed against the requirements of 40 CFR 264.37. It appears that the requirements of 40 CFR 264.37(a)(1) and (3) have been met. However, it does not appear that the coordination agreements completely reflect the requirements of 40 CFR 264.37(a)(2) or (a)(4). A separate letter will be prepared and sent to the

Company detailing the necessary action. See more details on this matter in the "Conclusions" section of this report.

We interviewed Mr. Martin Scott on issues associated with implementation of the Contingency Plan, and were allowed to look through the summary report regarding an emergency drill which had taken place at the facility. In order to gain a greater understanding of how the Contingency Plan would work, Mr. Victorine posed the scenario of a tank rupture and fire in the organic waste tank farm. Mr. Martin gave details of responsibilities, and produced checklists which the communications control people would use to prompt information (by two-way radio) from the Incident Coordinator at the scene of the emergency, in order to properly advise the outside emergency agencies.

We also talked about discussions which the WTI representatives had with the local hospital regarding the degree of decontamination which might be necessary to perform on an injured spill victim before the hospital would accept the patient. Reportedly, the hospital only asks that reasonable decontamination steps be taken, and that in a life-threatening situation, decontamination is not necessary.

Under Condition A.24 of the permit, WTI cannot begin hazardous waste operations until the U.S. EPA Region 5 approves the Contingency Plan. Since the Contingency Plan contains the updated list of emergency equipment referred to in Condition A.24(a)(iii), any approval of that Plan will satisfy both Conditions A.24(a)(iii) and A.24(b)(ii) of the permit.

C. Closure Plan

As of the date of this inspection report, the U.S. EPA has not given final approval of the revised Closure Plan. Nonetheless, the facility did have a copy of the Closure Plan on-site. The State has approved the July 31, 1992, Closure Plan. Condition A.1 of Attachment XI requires the Regional Administrator's approval of this document.

The State had noted some wording problems in the financial assurance documents, and the Company is presently making the changes requested by the State. Upon satisfactory resolution of the wording problems, the Closure Plan should be ready for approval by the U.S. EPA.

D. Training Plan

A copy of the March 16, 1992, employee training plan was on-site. This is the training plan which has been approved by U.S. EPA as an update of the original training plan in the permit. Approval

of the updated training plan was pursuant to Condition A.24(a) and Condition A.1 of Attachment XI of the RCRA permit.

Mr. Victorine interviewed the WTI training coordinator, and she produced printouts from the computer tracking system which WTI uses to log each employee's training. She also demonstrated how files are maintained for each employee's documentation of training (certificates, examinations, etc.) and for the paperwork of each course (handouts, etc.). The computer system contains a list of the required training for each position description; and that list includes those specified in the RCRA permit training plan. The computer tracking system also acts as a tickler file for renewals, etc.

In order to audit the Company's documentation of training, Mr. Victorine chose the specific position "Operations Manager," and asked for verifying records. The training coordinator pulled a computer list of relevant training that the employee had attended, and also pulled the employee's training file for review. The records appeared to be in order.

E. Piping and Instrumentation Diagrams (P&IDs):

One requirement of the permit is for the submittal for approval of all P&IDs. These Diagrams have been submitted a few at a time over the past several years. When asked whether all current P&IDs have now been sent, the Company representatives confirmed that they indeed have been sent. According to Condition A.24(a)(iv) and Condition A.2 of Attachment XI of the RCRA permit, these need approval by the U.S. EPA Region 5 before hazardous waste operations can begin at the site. As of the date of this writing, this approval has not been given. However, the drawings have been reviewed and are ready for approval.

F. Waste Analysis Plan and tour of the laboratory:

Mr. Norman Crabb, laboratory director, gave a detailed tour of the on-site laboratory. This laboratory is made up of several separate rooms with different functions. In addition, critical analytical instrumentation (e.g., ICAP, AA, GC and GC/MS) are housed in their own rooms to prevent cross-contamination. Other equipment includes a differential scanning calorimeter to look for reactions in test mixtures, a microwave digester, an infrared spectrophotometer, and TCLP apparatus.

Mr. Crabb took those attending through the lab sequentially, as if the inspectors were waste samples. He also described the computer tracking system which will be used to track all samples, which again uses bar codes. The waste tracking software (viz., Laboratory Information Management System, or LIMS) was not yet

completely installed, and so any initial pre-acceptance sample analysis presently being performed (under 40 CFR 261.4(d)) is being tracked manually on paper. Mr. Crabb anticipates that the computer tracking system will be fully functional by the end of November 1992. When the system is on-line, it will also have the capability of reading a bar code on each staff member's nametag to automatically record chain-of-custody.

We met briefly to discuss issues which still need to be clarified before Region 5 can approve the updated Waste Analysis Plan, and we resolved to have a followup meeting at the plant site between Mr. Crabb and Ms. Rushin of WTI, Ms. Kleiman and Mr. Victorine of U.S. EPA, and Mr. Williams of OEPA. The Waste Analysis Plan has already been approved by OEPA, but will also need to be approved by U.S. EPA before the facility can take waste on site.

III. CONCLUSIONS:

Condition A.15 precludes the Permittee from commencing the treatment, storage, or disposal of hazardous waste until the U.S. EPA Region 5 has inspected the newly constructed facility and finds that it is in compliance with the RCRA permit. The inspection showed the facility to substantially be in compliance with the conditions of the permit.

One item, dealing with arrangements and agreements under 40 CFR 264.37, needs to be resolved before the facility can be considered to be in compliance with the conditions of the RCRA permit.

The copies of arrangements, as required by Conditions A.24(b)(iii) and B.1 and the regulations found at 40 CFR 264.37, were analyzed against the requirements of those Conditions and regulations. The requirements of Condition B.11 include:

1. Familiarizing the emergency response agencies (or documenting their refusal to make arrangements) listed in the Contingency Plan with the layout of the facility, properties of the hazardous waste handled at the facility and the associated hazards, places where facility personnel will normally be working, entrance roads, and possible evacuation routes;
2. In situations where more than one police or fire department might have jurisdiction, agreements with these departments as to which has prime authority and which will have a support role. (Since this facility is in the City of East Liverpool, there does not appear to be any potential multiple jurisdiction situation.)
3. Making agreements with State Emergency Response teams, emergency response contractors, etc.; and

4. Familiarizing the local hospital with the properties of the hazardous waste handled at the site and the types of injuries or illnesses which could result from facility operations.

While the East Liverpool PD and FD have reportedly been on-site numerous times for tours and training, the letters produced on-site during our inspection did not adequately document that the arrangements discussed in permit Condition B.11(a)(i) (and in paragraph 1, above) had been made. Additional documentation regarding these arrangements was subsequently provided to the U.S. EPA by WTI, and was found to adequately document familiarization of the emergency response agencies.

In conjunction with the analysis of this matter, it should be noted that in a letter dated August 28, 1992, Mayor James F. Scafide of East Liverpool, Ohio, informed Mr. Adamkus that WTI had not met an Ohio State requirement to establish an Emergency Services Contract with the East Liverpool PD and FD. Mayor Scafide maintained that without such Agreements, the Contingency Plan is incomplete.

However, Federal RCRA regulations do not require an "Emergency Services Agreement," but rather only require that arrangements be made to familiarize the appropriate emergency response agencies with the layout of the facility, the nature of the waste, etc., as mentioned above. In places where there may be some argument over which police or fire department has jurisdiction over a facility, an agreement is required to establish who has primary jurisdiction and who has the support role, as mentioned above.

Mr. Victorine discussed the State requirements with Mr. Ed Lim of the OEPA, and was informed that the State of Ohio has no requirement for an "Emergency Services Agreement" either.

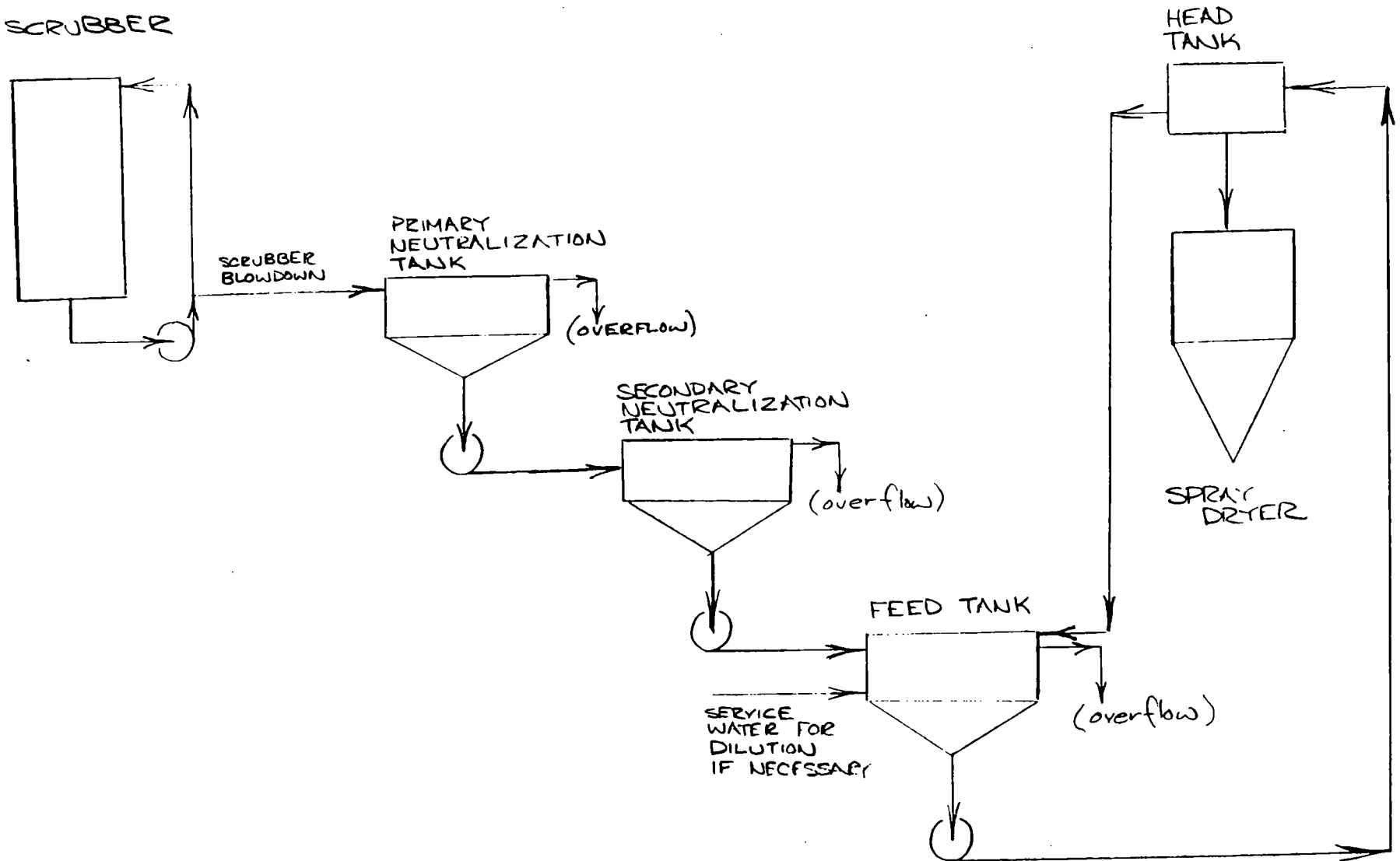
In addition, 40 CFR 264.37 requires a facility to attempt to establish an agreement with State Emergency response teams, emergency response contractors, and equipment suppliers. The letters provided in the Contingency Plan appear to adequately document this.

We have reviewed the supplied documents and suggest the following corrective measures:

1. To more completely fulfill the requirements of 40 CFR.37, the Company should write a letter to the PD and the FD requesting verification that each is the primary authority and that any additional police or fire departments called by them during an emergency situation will provide a support role to the primary authority.

2. The facility should send a letter to the East Liverpool Hospital, transmitting a copy of the Contingency Plan, and a list of all chemicals to be handled at the site. The present documentation only indicates that WTI will send a copy of the Contingency Plan upon request.

SCRUBBER



ATTACHMENT 1



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

77 WEST JACKSON BOULEVARD

CHICAGO, IL 60604-3590

30 SEP 1992

REPLY TO THE ATTENTION OF:

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

R-19J

Waste Technologies Industries
c/o D.J. Blake Marshall
President
Von Roll, Inc.
3080 Northwoods Circle
Suite 200
Norcross, Georgia 30071

RE: Waste Technologies Industries
OHD 980 613 541

Dear Mr. Marshall:

This letter serves to notify you of the United States Environmental Protection Agency's ("U.S. EPA's") analysis regarding outstanding issues of ownership and operational control for the Waste Technologies Industries ("WTI") incinerator in East Liverpool, Ohio (the "Facility"). This letter also serves as approval of the August 7, 1992, Waste Analysis Plan in conjunction with the September 23, 1992, clarifying letter and approval of WTI's Contingency Plan, dated August 10, 1992.

U.S. EPA has concluded that there has been no change in ownership for the purposes of the Resource Conservation and Recovery Act ("RCRA") which would require modification of the WTI permit. However, we do believe that there has been a change in operational control and that Von-Roll (Ohio), Inc. ("VRO") is now an operator of the Facility. The change in operational control should have been effected through a Class 1 modification with prior Agency approval.

In making this analysis, Region V consulted extensively with U.S. EPA Headquarters. The legal review was conducted by the Office of Regional Counsel and the Office of General Counsel working closely to analyze both the operational control and ownership issues.

Currently, U.S. EPA is processing, as a Class 1 modification, your June 18, 1992, request to modify the WTI permit to add VRO as an operator at the Facility. However, we note that the

revised permit application which you submitted on August 25, 1992, was not signed. Please provide us with a signed copy.

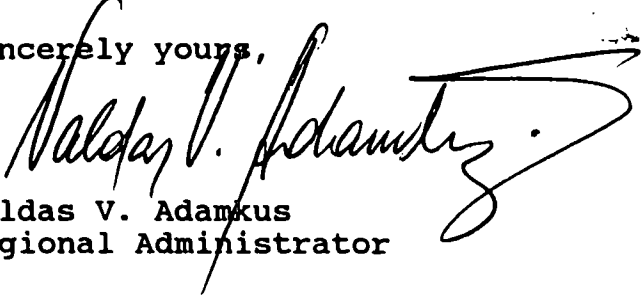
U.S. EPA will be initiating a thirty (30) day public comment period on the request to add VRO to the permit beginning October 2, 1992, and running until November 2, 1992. In addition, U.S. EPA will also accept comments during this period on the Facility ownership issues. After the close of the public comment period and preparation of a formal Response to Comments, U.S. EPA will make a final determination on the addition of VRO to the permit as an operator. Should new information come to light during the public comment period or subsequent to this analysis which indicates that the Facility ownership has changed under RCRA, U.S. EPA reserves its right to take appropriate action in either the permitting or the enforcement context. U.S. EPA also reserves its right to take an enforcement action at a later date regarding the change in operational control of the Facility without prior approval.

In the interim, the WTI permit remains valid, enforceable, and effective. You must give all the parties in Palumbo v. WTI, et. al, seven days notice before accepting hazardous waste at the Facility pursuant to the September 1, 1992, Stipulation.

Additionally, it is our understanding that pursuant to a land transaction which was consummated on September 18, 1992, WTI now owns the land upon which the incinerator is situated, the land which was previously owned by the Columbiana County Port Authority. Therefore, U.S. EPA believes that issues related to the landowner are now moot.

In the next few days, you will be receiving additional correspondence from the Agency relating to compliance with permit Condition C.4(e) during shakedown burning. If you have any technical questions, please contact Gary Victorine of my staff at (312) 886-1479.

Sincerely yours,



Valdas V. Adamkus
Regional Administrator

OCT 09 1992

H-7J

CERTIFIED MAIL: P 664 392 856
RETURN RECEIPT REQUESTED

Mr. D. J. Blake Marshall
President
Waste Technologies Industries
3080 Northwoods Circle
Suite 200
Norcross, Georgia 30071

RE: Waste Technologies Industries
East Liverpool, Ohio
OHD 980 613 541

Dear Mr. Marshall:

Pursuant to Condition C.4(e) of its permit under the Resource Conservation and Recovery Act (RCRA), Waste Technologies Industries (WTI) must comply with the emission standards for metals, HCl, and chlorine contained in the final regulations promulgated by the United States Environmental Protection Agency (U.S. EPA) regarding the combustion of hazardous waste in boilers and industrial furnaces (BIF), published February 21, 1991. The U.S. EPA has developed interim maximum stack emission levels and feed rates for the toxic and carcinogenic metals specified in the BIF regulations to ensure WTI's compliance with the appropriate Reference Air Concentrations (RACs) and Risk Specific Doses (RSDs) for these metals. The U.S. EPA believes that these interim emission levels and feed rates are necessary for WTI to demonstrate compliance with Condition C.4(e) of the permit during the shakedown period of operation, and will consider WTI to be in violation of its RCRA permit if these emission levels and/or feed rates are not maintained.

The appropriate maximum emission levels given in the enclosed Attachment 1 to this letter are based on the Reference Air Concentrations and Risk Specific Doses contained in the BIF regulations, and on the dispersion factor of 1.5 *micrograms per cubic meter per gram per second* developed as part of the U.S. EPA's Preliminary Risk Assessment regarding the WTI facility.

In addition to the interim maximum stack emission levels and feed limits given on Attachment 1, the BIF rule requires that emissions of arsenic, beryllium, cadmium, and chromium together must not result in a total increased cancer risk to the maximum exposed individual (as defined in the BIF rule) greater than 1×10^{-5} . Please note that the levels and rates given for arsenic,

beryllium, cadmium, and chromium in Attachment 1 are based on maximums for each of the four metals when only one of the four metals is being fed to the incinerator. Feed rates for each carcinogenic metal will need to be lower than the respective value given in Attachment 1 if more than one carcinogenic metal is being fed to the incinerator simultaneously (for a further discussion of this issue, see 40 CFR 266.106(d)(3)).

The U.S. EPA will consider the interim maximum metals feed rates given in Attachment 1 to be necessary to demonstrate compliance with Condition C.4(e) until WTI provides the U.S. EPA with at least one of the following:

1. Preliminary test data from the East Liverpool plant demonstrating to the satisfaction of the U.S. EPA that the actual efficiency of the air pollution control system is higher than the U.S. EPA preliminary estimate, and that compliance with the appropriate RACs/RSDs can therefore be maintained at higher metals feed rates than those given in Attachment 1; or
2. Other information which demonstrates to the satisfaction of the U.S. EPA that compliance with the appropriate RACs/RSDs and Condition C.4(e) can be maintained at higher metals feed rates than those given in Table 1.

It is my understanding that WTI will, within the next week, submit to the U.S. EPA data regarding the expected efficiency of the incinerator pollution control train. If such information demonstrates to the satisfaction of the U.S. EPA that higher metals feed rates than those given on Attachment 1 would not result in a violation of the applicable emission rates, the U.S. EPA will change the maximum metals feed rates as appropriate.

Emission levels and/or feed rates for toxic and carcinogenic metals applicable to the trial burn phase of operation will be specified when the trial burn plan is approved. We anticipate that emission levels and/or feed rates necessary to demonstrate compliance during the post trial burn phase of operations will be developed at a later date.

If you have any questions regarding this matter, please contact Mr. Gary Victorine of my staff, at 312-886-1479.

Sincerely,

**ORIGINAL SIGNED BY
WILLIAM E. MUNO**

William E. Munro
Acting Director
Waste Management Division

Enclosure

cc: Deborah Rushin, WTI
Jerry Sahutski, WTI
Ed Lim, OEPA
Paul Anderson, OEPA
Scott Williams, OEPA
Paul Gotthold, U.S. EPA Region 3

bcc: Matt Hale OSW
Frank McAlistier OSW
Victoria VanRoden OSW
Sonya Sasseville OSW
Brian Grant OGC
Wen Huang
Dan O'Riordan
Nancy-Ellen Zusman
Carol Braverman
Gary Victorine

ATTACHMENT 1

Metal	RAC ($\mu\text{g}/\text{m}^3$)	RSD ($\mu\text{g}/\text{m}^3$)	Interim Maximum Stack Emission Level	Interim Maximum Feed Rate
Sb	0.30		1.59 lb/hr	39.8 lb/hr
Ba	50		265 lb/hr	none
Pb	0.09		0.47 lb/hr	11.75 lb/hr
Mn	0.08		0.42 lb/hr	2.1 lb/hr
Ag	3.0		15.9 lb/hr	795 lb/hr
Tl	0.50		2.64 lb/hr	66 lb/hr
As		.0023	.0121 lb/hr	0.30 lb/hr
Be		.0042	.0222 lb/hr	1.11 lb/hr
Cd		.0056	.0296 lb/hr	0.74 lb/hr
Cr ⁶⁺		.00083	.00439 lb/hr	0.22 lb/hr

TRI STATE ENVIRONMENTAL COUNCIL
DRAFT

**Chronology of WTI Violations
and other relevant information**

1) March 14, 1977 -

Columbiana County commissioners create Columbiana County Port Authority

April 12, 1978 -

Ernst and Ernst Port Feasibility study concludes that a new port facility "built with tax money was not needed or justified in Columbiana County" (Similar conclusions were reached in an earlier study. A positive study was needed to gain financial support from the legislature.)

March 21, 1979 -

East Liverpool Chamber of Commerce Director Ray Lorello concludes in his "Port Potential Survey" that a new port in Columbiana County was viable and could be highly successful.

2) July 30, 1979 -

Ohio General Assembly appropriates \$4 million to Ohio Department of Transportation (ODOT) "to acquire property and make such improvements as are necessary to enhance the use of Ohio Rivers"

(NOTE: The use of the Port Authority property for a Hazardous Waste Incinerator violates the terms of the state funding grant.

Columbiana County Port Authority has not complied with its responsibility to develop river port facilities and thus has violated the covenants running with the land. (To date, no port exists.)

January 28, 1980 -

Agreement between the State of Ohio, acting by and through the Department of Transportation (ODOT) and the Columbiana County Port Authority to purchase land for a port facility on behalf of the CCPA. Agreement states: "the appropriation... made to the Department shall be used to acquire property and make such improvements as are necessary to enhance the use of Ohio rivers..." (ODOT Agreement No. 8275) ODOT was also given the responsibility of coordinating the development of "transportation facilities", defined as "publicly owned modes and means of transporting people and goods,..."

February 6, 1980 -

Stephens Consultant Service, Inc. changes its name to Waste Technologies, Incorporated.

May 19, 1980 -

EPA hazardous waste permitting regulations were adopted to implement the Hazardous Waste Permit Program of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (RCRA).

Sept 16 1980. - Army Corp Engineers approved permit for river port facility and prohibits handling.

The regulations in effect at the time the WTI permit was sought specifically required that the landowner of an RPA permitted hazardous waste management facility must be held equally responsible with the operator and must co-sign the permit application.

February 11, 1981 -

Wayne Disposal Inc. in Dearborn, Michigan, submits an application to U.S. EPA Region 5 for a Hazardous Waste Management Facility. Application is signed by both the landowner, Ford Motor Company, and the facility owner, Wayne Disposal Inc.

May 15, 1981 -

Waste Technologies, Incorporated ^{is no longer involved in project} signs Lease Option Agreement to lease 22.5 acres of riverfront property from the CCPA on which to build a commercial hazardous waste incinerator. (Note: Waste Technologies, Inc., a subsidiary of Stephens Inc., was an Arkansas Corporation which later formed the partnership of Waste Technologies Industries.) Land still legally owned by River Services.

(NOTE: The 1981 Lease Agreement between WTI and the land owner (Columbianna County Port Authority) is invalid due to the Port Authority's lack of authority to enter into such lease.

A hazardous waste facility was not included in the required Port Authority development plan approved August 25, 1980, such that the Port Authority was, and still is, without the authority to develop such a facility.)

June 26, 1981 -

Joint Venture Agreement for Waste Technologies Industries	Claim to be wholly owned subsidiaries of:
Koppers Environmental Corporation	Koppers Company, Inc.
Energy Technology Company	Mustang Fuel Corporation
Waste Technologies, Incorporated	Stephens, Inc.
Von Roll America, Inc.	Von Roll AG

August 18, 1981 -

Land taken by CCPA and ODOT under eminent domain from River Services Company for \$923,700 in compensation. *Can't take land for eminent for commercial. State money - quick claim deed transfer*

September 4, 1981 -

Waste Technologies Industries files permit application with US EPA to build hazardous waste incinerator on CCPA land taken under eminent domain. The RCRA permit application lacks the landowner signature as required by the RCRA regulations 45CFR 83074, May 19, 1980.

July 28, 1982 -

WTI files permit application with State of Ohio. The State permit lacks the landowner signature as required by Ohio Administrative Code 8745-50-41 (B) at the time of permit issuance.

November 17, 1982 -

U.S.EPA writes to Ohio EPA concerning WTI:

"[B]ecause of high background levels, Waste Technologies Industries may significantly contribute to violations of both short-term and

annual primary TSP standards. These violations have not been adequately addressed."

December 29, 1982 -

Ohio Department of Natural Resources writes:

"Executive Order 11988 (Floodplain Management), Section 2(a) states that "If an agency has determined to.... allow an action to be located in a floodplain, the agency **shall consider alternatives to avoid adverse effects and incompatible development in floodplain.**"

"[R]egardless of site preparation, flood hazard areas are inappropriate for a hazardous waste management facility."

(NOTE: The construction of WTI at this site violated Executive Order 11988 - Floodplain Management of May 24, 1977)

February 8, 1988 -

Koppers Environmental Corporation changes its name to Environmental Elements Ohio (Inc.)

Spring 1988 -

19,000 gallon xylene loss at barge unloading area on CCPA property with no clean up action taken. (WTI is built directly on top of this contamination)

March 15, 1988 -

According to the Foreign Corporation Application for License Environmental Elements Corporation was incorporated on March 15, 1988

(NOTE: At this point in time on the chronology, there appear to be two separate and distinct corporations by the name of Environmental Elements Corporation. The first as noted above. The second according to the Application for License to do business in Ohio, has an incorporation date of March 18, 1974.)

March 28, 1988 -

Michigan Disposal, Inc. in Dearborn, Michigan, submits an application to U.S. EPA Region 5 for a Hazardous Waste Management Facility. Application is signed by both the landowner, Ford Motor Company and the facility owner, Michigan Disposal, Inc.

April 15, 1988 -

Environmental Elements Corporation, gave consent to Koppers Environmental Corporation to use the name of Environmental Elements Ohio (Inc.)

June 14, 1988 -

In his report to the Hazardous Waste Facility Approval Board, Hearing Examiner Richard Brudzinski recommends **DENYING the WTI permit**, based on an **INCOMPLETE** application. Inadequacies included: Waste Analysis, Closure Plan, Contingency Plan, Personnel Training and Performance Standards, etc.

In Brudzinski's "Conclusions of Law," he cites the Ohio code for which he based his recommendation of denying permit because **it did not meet state mandated requirements for completeness.**

RCRA 40 CFR 270.10 (c), which became law on April 1, 1988, states: "The Director **shall not issue a permit** before receiving a **complete application ...**"

Federal law in effect two months prior to the issuance of the RCRA permit also required completeness, yet the permit was issued in blatant disregard for both state and federal regulations, based on an incomplete application.

June 17, 1988 -

Memorandum written by John Skinner, U.S. EPA Director, Office of Solid Waste, to ALL Hazardous Waste Branch Chiefs Regions I - X.
Subject: **Landowner Signature on Part A**

(Note: Mr. Skinner put all the EPA Regions on notice that the **landowner must sign the permit as required by the regulations or the permit is not valid or legal**)

June 24, 1988 -

U.S. EPA issues Federal RCRA Permit to WTI **without the required landowner's signature and based on an incomplete application**, both of which violate **federal RCRA regulations**, making it an invalid and illegal permit.

Spring 1984 -

88,000 gallons mineral spirits chemical loss through storage tank leak on CCPA property. (WTI is built directly on top of this contamination)

April 27, 1984 -

Ohio Hazardous Waste Facilities Approval Board issues permit to WTI **without the required landowner signature and based on an incomplete application**, both of which violate **state regulations**, making it an invalid and illegal permit.

June 22, 1984 -

Ohio Emergency Response receives call from U.S. EPA Oil and Hazardous Material Coordinator Dan Papcke regarding a **200,000 gallon chemical loss** at Charter Oil on CCPA property as received by FBI. (WTI is built directly on top of this contamination)

July 30, 1984 -

Second memo by John Skinner issued to all Regions concerning requirement of **landowner signature** on RCRA permits.

August 1984 -

Ohio enacts new siting criteria which would **prohibit WTI's facility being sited in its current location**. (Siting criteria includes at least a 2000 foot setback from any school, hospital, prison or residence or in a flood plain.)

January 25, 1985 -

Supposedly, the Federal RCRA permit issued on June 24, 1988 did not become EFFECTIVE until January 25, 1985, when all of the appeal and review processes had been resolved.

(NOTE: This final agency action represented an opportunity for Region 5 to seek the signature of the landowner on this invalid and illegal permit. Because the permit did not become effective until January 25, 1985, the Ohio EPA should also have reopened the permit to consider the new Ohio Siting Criteria.)

February 25, 1985 - Third memo issued to all Regions concerning requirement of **land owner signature** on RCRA permit.

December 1985 - Hydrogeologic and Groundwater Quality Conditions at the proposed WTI plant site with **Hydrocarbon contamination of soil and upper aquifer documented.**

February 24, 1986 - Von Roll (Ohio), Inc. incorporates in Delaware.

November 19, 1986 - WTI Acquisition, Inc. incorporates in Arkansas.

December 1, 1986 - Waste Technologies, Incorporated changes its name to WTI, Inc.

December 2, 1986 - Environmental Elements (Delaware) Inc. incorporates in Delaware.

December 4, 1986 - Waste Technologies, Incorporated gives consent to WTI acquisition, Inc. to use a similar name: **Waste Technologies Incorporated.**

December 29, 1986 - Stephens Holding Company incorporates in Delaware.

March 25, 1987 - U.S. EPA Air and Radiation Branch Memo from Branch Chief Steve Rothblatt to Deputy Regional Counsel David Ullrich states:

"When this permit was issued, the 110 (a) (2) (I) construction ban was in effect for particulate matter for an area including the site of the proposed facility."

"[C]onstruction of this source is prohibited."

May 20, 1987 - U.S. EPA Air and Radiation Branch Memo From Branch Chief Steve Rothblatt to Deputy Regional Counsel David Ullrich

"[S]ince the construction ban is a Federal regulation, USEPA should consider the **permit invalid.**"

"U.S. EPA commented on the draft permit on November 17, 1982, but did not raise the issue that the source was **inappropriately made minor and thus illegally avoided the construction ban.**"

July 8, 1987 - U.S. EPA David Kee characterizes the WTI permit as **"invalid for Federal purposes."** He also writes,

"In the opinion of Region V, it is **not a valid permit for the construction of a non-major source.**" (U.S. EPA had warned of the same problem in 1982.)

July 10, 1987 -

**Certificate of General Partnership
Partnership pursuant to Section 1777.02
of the Ohio Revised Code, filed in
Columbiana County**

Environmental Elements Ohio (Inc.)
Energy Technology Company
Waste Technologies Incorporated
Von Roll (Ohio), Inc.

November 4, 1987 -

**Amendment to the
Joint Venture Agreement**

**Claim to be wholly-
Owned subsidiaries of:**

Environmental Elements (Ohio) Inc.	Environmental Elements (Delaware) Inc.
Energy Technology Company	Mustang Production Company
Waste Technologies Incorporated	Stephens Holding Company
Von Roll (Ohio), Inc.	Von Roll (America), Inc.

December 8, 1987 -

WTI applies for financing assistance from the Ohio Water Development Authority (OWDA) requesting OWDA permission in issuing tax free revenue bonds for up to \$189,000,000. In WTI's description of permitted equipment, WTI lists, among other things, a **spray dryer**.

December 81, 1987 -

WTI, Inc. (formerly Waste Technologies, Incorporated) is dissolved.

(NOTE: By 1987, all of the parent corporations had changed, and three fourths of the subsidiaries (the WTI "partners") had changed.)

Two of the corporate entities considered to be current partners and two of the corporate entities considered to be current parent corporations were not even incorporated until 1986:

Von Roll (Ohio), Inc.	Incorporated February 20, 1986
Waste Technologies Incorporated	Incorporated November 19, 1986
Environmental Elements (Delaware) Inc.	Incorporated December 2, 1986
Stephens Holding Company	Incorporated December 29, 1986

February 11, 1988 -

According to the Business Disclosure Statements for the Ohio Attorney General, the officers and directors of Environmental Elements Ohio, Inc., Energy Technologies, Inc. (dba Enertech Development, Inc.), Waste Technologies Incorporated, and Von Roll (Ohio), Inc. are the same for each company and all took office on this date.

August 14, 1989 -

WTI **fined \$9,500** for failure to provide information as requested by U.S. EPA under Section 8007 of RCRA.

October 1989 -

Ohio EPA completes Capacity Assurance Plan as required by the federal Superfund law, showing that **Ohio has more than 2 1/2 times the capacity needed** by the state to burn all of the hazardous waste generated in Ohio. (With the addition of WTI, Ohio will have roughly 4 times the incineration capacity needed)

January 24, 1990 -

"Original Partnership according to WTI Attorney Charles Waterman in a letter to Ed Lim of Ohio EPA for the purpose of providing " requisite assurances to lenders."

Mr. Waterman claims that these four "original" partners were owned by four shareholders as follows:

Environmental Elements (Ohio), Inc
Energy Technology Company
Waste Technologies Incorporated
Von Roll (Ohio), Inc.

Environmental Elements Corporation
Mustang Fuel Corporation
Stephens, Inc.
Von Roll America, Inc.

March 1990 -

Groundwater and soil sample at WTI site indicate presence of several organic constituents: benzene, toluene, ethylene, ethylbenzene, xylene and acetone. (There has been no remediation to date. WTI did not commence construction until the fall of 1990, and the facility is fully built on this contaminated site.)

April 26, 1990 -

Compilation of information on Partners/Partnership Interest from Business Concern Disclosure Statements submitted to Ohio Attorney General:

Environmental Elements Ohio, (Inc.)
Energy Technologies, Inc.
(dba Energetech Development, Inc.)
Waste Technologies Incorporated
Von Roll (Ohio), Inc.

May 7, 1990 -

U.S. EPA contends that records indicate construction commenced on May 7, 1990. In reality initial site preparation began in the form of site elevation with "fill dirt" to artificially raise site out of flood plain.

May 15, 1990 -

Federal prosecutors in Switzerland open preliminary investigation proceedings against Von Roll for suspicion of illegal manufacture and export of war material to Iraq.

June 22, 1990 -

Agreement between Environmental Element (Delaware), Inc. and Von Roll America, Inc. to sell and purchase all of the issued and outstanding stock of Environmental Elements (Ohio), Inc. * to Von Roll America, Inc.

(*NOTE: The original partner in WTI was Koppers Environmental Corporation, which changed its name to Environmental Elements Ohio (Inc.) on April 15, 1988. This is not the same entity as Environmental Elements (Ohio), Inc.

July 9, 1990 -

WTI files request for 8 changes to its permit including the deletion of individual tank pressure monitoring instrumentation.. Included in these changes is the addition of a spray dryer., which WTI characterized as advanced pollution control equipment that will bring the WTI facility "up to date" making it "state-of-the-art"

September 21, 1990 -

Operating contract signed by WTI as owner and Von Roll (Ohio), Inc. as operator indicating management control by Von Roll (Ohio), Inc. This change in operational control was done in direct violation of RCRA regulations which specifically require 90 day notice and written pre-approval of the administrator.

October 8, 1990 -

The Ohio EPA classifies WTI's July 9, 1990 permit changes, including the spray dryer, as revisions.

(NOTE: Permit changes requested by WTI have been narrowly classified and addressed to prevent the application of more recent siting criteria and other standards, the consideration of new information on health effects, and most importantly, the opportunity for public scrutiny. It is believed that these changes should have been classified as "modifications" to allow for discovery and the hearing process before the Ohio Hazardous Waste Facility Board. The information available to the public is inadequate to allow scrutiny in the limited forum available for review of "revisions.")

January 20, 1992 -

Von Roll President Blake Marshall writes Associate Director office of Cabinet Affairs, James Fitzhenry, The White House, saying, among other things:

"As discussed last week, we would appreciate whatever assistance you can provide in dealing with the EPA staff. In particular, we would encourage:

1. Serious consideration by Region V of a 180 day temporary authorization to operate the spray dryer, as provided for in 40 CFR 270.42 (e) (a detailed request for such authorization has been submitted to Region V);
2. No rejection by Region V of the class 1 permit change for the evaporative quench operation (which has been requested by WTI); and
3. Prompt review by Director Reilly's office of any administrative appeals of the spray dryer approval when it is finally issued by Region V.

We want to resolve this matter amicably, we would rather work with U.S. EPA cooperatively, but we are facing extinction as a consequence of Region V's inexplicable posture. Because Ohio has mandated the spray dryer technology, we cannot return to the original, permitted design. Because Region V will not allow us to build and operate the spray dryer, we cannot implement the state's mandate. We cannot go forward, we cannot go back. We need your help."

January 30, 1991 -

WTI cited by Ohio EPA for four (4) construction violations:

- * failure to elevate site to required 695 feet prior to construction.
- * failure to meet the required 8000 lbs per square foot load bearing capacity.

- * failure to construct an earthen berm around perimeter of site
- * failure to notify EPA of non-compliance with conditions of permit.

March 18, 1991 - Investigations being conducted into Von Roll AG in Bern, Switzerland for illegal supplies of war material to Iraq. The Upper House of Parliament authorizes public prosecution proceedings and orders a preliminary examination by the investigating magistrate.

April 12, 1991 - WTI files request for nine more changes to its permit.

(NOTE: On January 30, 1991, several months after commencement of construction the Ohio EPA issued a notice of violation with respect to four construction permit violations. in response, WTI filed the April 12, 1991 permit change request to change the requirements it had violated.)

April 22, 1991 - WTI submits revised hazardous waste facility permit application, in conjunction with the addition of the spray dryer, listing Von Roll (Ohio), Inc. as the operator, even though WTI had made no formal requests to change the permit to reflect this change in operational control.

May 1991 - Draft Contingency Plan lists Von Roll (Ohio), Inc. as the operator of the WTI facility.

May 15, 1991 - Memo from William McDowell to George Zerniak, both of U.S. EPA Air Enforcement, concerning the WTI permit, states:

"[T]he permit is invalid ..."

"[T]he original permit may have legally expired since construction had not begun until after 1987."

July 28, 1991 - Record of a Telephone Conversation between USEPA Region V and Congressman Santorum in which his office inquires about the permit status and his concerns about WTI being in violation of major source thresholds. The record states:

"Bill (McDowell) and David (Kee) are both concerned about what the Congressman knows" (Emphasis added. Last names supplied.)

July 29, 1991 - U.S. EPA writes to Ohio EPA warning them again that the violations of the permit for Prevention of Significant Deterioration requirements had not been corrected.

August 21, 1991 - Ohio EPA classifies WTI's April 12, 1991 permit change request as revisions.

(NOTE: WTI's requested changes of July 9, 1990 and April 12, 1991 constitute "modifications", "not revisions" and should have been sent to the Ohio Hazardous Waste Facility Board (OHWFB) for review under Section 8734.05 (I) (1).

If these requests had been correctly classified as modifications, the permit would have been reviewed by the OHWFB. The Board would have had to consider Ohio's new Siting Criteria of August 1984 which prohibits any hazardous waste facility from being located within 2000 feet

from any residence, school, hospital, or prison, or within the 100 year floodplain. WTI is built 300 feet from residences, 1100 feet from an elementary school with 400 school children and in the 100 year flood plain. The EPA would also have been forced by Federal Law to reconsider the suitability of the WTI site. According to 40 CFR 270.41 (c): the suitability of facility location will be considered at the time of permit modification if new information or standards indicate a threat to human health and the environment exists which was unknown at the time of permit issuance. Expert testimony that the addition of the spray dryer would increase harmful emissions should have forced EPA to address the siting under federal law, yet they broke the rules again and did not consider suitability of the WTI site.)

September 4, 1991 -

Subsequent to a February 28, 1991 Freedom of Information Request, citizens were denied two-thirds of the WTI file. This decision was appealed on October 23, 1991. U.S. EPA responded on November 7, 1991 acknowledging the appeal. A second appeal was written on June 27, 1992 without response from the U.S. EPA.

September 9, 1991 -

U.S. EPA roundtable meeting with citizens in East Liverpool, Ohio. U.S. EPA Combustion Engineer Wen Huang admits that the addition of the spray dryer would have increased the harmful toxic emissions but that WTI had "completely reengineered the whole system."

This was the first time that the citizens were made aware of these changes. This "reengineering" and redesigning took place after the public hearing on the spray dryer and without any formal application or approval as mandated by EPA regulations.

September 17, 1991 -

U.S. EPA letter to OEPA stating that the August 30, 1991 revisions did not satisfy USEPA's guidance on limiting the potential to emit greater than major source thresholds.

November 13, 1991 -

Staff of U.S. Senators from Ohio and West Virginia meet with affected citizens and U.S. EPA officials in Washington, DC U.S. EPA region 5 official in charge of permitting the WTI incinerator, Bill Munro,

- * stated that EPA chose not to revoke WTI's permit because he "had to treat (EPA's) constituents (the permit holders) in a fair and equitable manner."

- * admitted that EPA knew, at the time of permit issuance in 1983, that CCPA was the facility landowner and should be included on the permit.

Mr. Skinner's 1988 memo: "Landowner Signature on Part A" makes it clear that the landowner must sign the permit. Additionally, his memo states:

"A permit writer who accepts a signature that he knows is false or incorrect and whose conduct is fraudulent under applicable State or Federal law, may be guilty of fraud."

We have been informed that Mr. Bill Munro was the WTI permit writer.

Mr. Muno admitted was aware from the beginning that the landowner was not the same as the facility owner. Mr. Muno knowingly accepted the WTI permit without the required landowner signature.

December 8, 1991 -

Regional Administrator Valdas Adamkus lies to Senator Rockefeller in official correspondence concerning RCRA required landowner signature on WTI permit, saying:

"In 1988 the Agency did not make the distinction between property owners and facility owners. WTI owns the facility; it does not own the property. Since 1988, the Agency has changed it's policy." (Emphasis added)

December 20, 1991 -

U.S. EPA Region 5 Counsel Nancy Ellen Zusman notifies the CCPA by letter of Region 5's intent to modify the U.S. EPA - WTI permit wherein the U.S. EPA would reissue the permit to the CCPA as co-permittee.

January 9, 1992 -

After having been warned numerous times by U.S. EPA, WTI proceeds with unauthorized construction and installation of spray dryer equipment. Fined \$129,000 by U.S. EPA

January 30, 1992 -

J. Michael Kapp, Attorney for the CCPA responds to U.S. EPA letter of December 20, 1991 notifying the U.S. EPA that the CCPA did not wish to be named as Co-Permittee.

February 8, 1992 -

U.S. EPA issues RCRA permit (including approval for a spray dryer) to WTI and Columbiana County Port Authority over CCPA's objections.

February 27, 1992 -

Note to Misty Parsons OEPA from John Gaitskill USEPA

"[E]mission limits in chapter 18 apply. It appears the scrubber must maintain at least 96.7% removal efficiency to prevent >250 T/Yr SO₂. RCRA documents say 98.8% control will be achieved, but the European examples say < 90%."

(NOTE: Paul Christowsky expert witness testifying under oath on behalf of WTI in Oct. 1992 stated that best achievable removal efficiency for the scrubber would be 80% to 90%.)

March 8, 1992 -

CCPA's appeals EPA's February 8, 1992 decision, considered by Region 5 to be a class 1 modification, to add the CCPA to the WTI permit as Co-Permittee. CCPA requests a review of Region 5's decision.

March 18, 1992 -

On July 9, 1992, in a "Dear Interested Party" letter, Mr. Bill Muno informed the public that on March 18, 1992, WTI made a request to the U.S. EPA for temporary authorization to operate the incinerator for a period of 180 days. The request for temporary authorization included operation of the spray dryer which did not have an effective Federal permit under RCRA.

May 7, 1992 -

Congressional hearing on regulatory process related to WTI permitting. EPA's Hugh Kaufman puts on record Sept. 21, 1990 operating contract showing management control by Von Roll (Ohio), Inc. U.S. EPA admits violating federal law through:

- issuing permit without CCPA listed as facility owner;
- permit modified by EPA without public comment.

May 20, 1992

Ohio Senator Metzenbaum introduces an amendment prohibiting WTI from burning hazardous waste until court and administrative appeals have been fully resolved.

May 21, 1992 -

Von Roll President Blake Marshall writes Vice President Quayle, saying, among other things:

--"The valid permits to construct we once had are now invalid" (emphasis supplied) in contrast to Von Roll's February 24, 1992 statement that all permits are valid.

--"To move forward we must have a 180 day temporary authorization permit from U.S. EPA ... (emphasis supplied)."

June 10, 1992 -

Proponents meet at the White House with Vice President Quayle's Competitiveness Council, and with representatives from the White House Office of Management and Budget, the President's Council of Economic Advisors, the White House's Domestic Policy Office, and a deputy assistant administrator of EPA.

June 12, 1992 -

U.S. EPA informs WTI's attorney that the September 21, 1990 operating contract evidences a change in operational control and that WTI should have notified the Agency within 90 days of the change.

July 7, 1992 -

U.S. EPA Region 5 formal information request inquiring into the identification of the corporate partners of WTI. (Under Section 8007, RCRA)

July 9, 1992 -

U.S. EPA Region 5 issues 180-day temporary permit while continuing to try to find out who really owns and operates the facility.

July 20, 1992 -

Meeting set up jointly by concerned citizens and EPA officials at EPA headquarters in Washington DC for EPA to present answers to all the public's key questions related to the validity of WTI's permit. At the meeting, top EPA officials said they did not have answers to even the most basic questions regarding the real identity of the owner and the operator, and whether the permit is actually valid. EPA officials refused to certify either that the permit is valid or that the permit will be revoked because of invalidity. EPA officials said they lacked sufficient information to sign either certification. Citizens then asked that EPA not allow waste on site or startup until EPA can determine whether or not the permit was valid. When, after meeting with EPA officials for six hours, the citizens stated that they would not leave EPA's premises until EPA signed a document certifying to one of the requested choices, EPA had all citizens participants arrested and thrown in jail.

July 22, 1992 -

U.S. EPA Assistant Administrator Don R. Clay, in a summary of WTI issues and communication strategy, made the decision that, "It is true that the **individual partners constituting WTI have changed**, but this does not affect the permit status." (Emphasis added)

This important **policy decision** was sent **only** to certain assistant and Associate Administrators, Regional Administrators and to the **White House**.

(NOTE: It is obvious that regardless of changes in ownership, the EPA backed WTI, and no matter what would be revealed during the investigation, the EPA would give WTI the "green light" to proceed. Mr. Clay told EPA Administrators that the WTI permit was valid, despite the agencies public statements that it was still investigating the issues.

In the memo, Clay identified ownership of the plant as a major issue. He told EPA Administrators that **EPA had determined the permit should remain unchanged, even though the EPA didn't receive all of the ownership information until September 80, 1992.**

Clay wrote,

"The incinerator permit was issued to the overall WTI corporation, which we believe has remained unchanged since the permit was issued. **It is true that the individual partners constituting WTI have changed**, but this does not affect the permit status." (Emphasis added)

This clearly shows predetermination by the EPA. The "fix" is in!

July 28, 1992 -

WTI Attorney Charles Waterman responds to U.S. EPA's 8007 ownership information request in a letter to Nancy Ellen Zusman. Documents confirm:

- * The WTI incinerator is now owned and operated by a 1986-created affiliate corporation of a Swiss corporation: Von Roll (Ohio), Inc.
- * Ownership and operational control have changed without the mandatory EPA notification and pre-approval.

New partners are:

- * Energy Technology Company;
- * Waste Technologies Incorporated;
- * Environmental Elements Ohio (Inc.); and
- * Von Roll (Ohio), Inc.

Even Charles Waterman, WTI attorney, understands the consequences of WTI's actions involving the partnership. In his July 28, 1992 response to EPA's 8007 request, Mr. Waterman writes:

"In fact, but for the fact that **merging** the various partners would have had the undesirable effect of causing **WTI to cease to exist under general partnership law** (thereby leaving the RCRA permit with no "owner"), Von Roll America, Inc. might well have done just that to avoid the costs and administrative headaches of maintaining four separate partners." (Emphasis added)

Mr. Waterman admits that the reason for maintaining the four separate corporations at substantial cost was so that the "partnership" could be maintained, otherwise, there is no permit holder. The EPA admitted on September 8, 1992 that Von Roll America, Inc. is the owner, and WTI must request a modification to reflect the change in ownership. In effect, this confirms that the **WTI partnership no longer exists**, and there is no permit holder. Likewise the **permit for WTI no longer exists**.

July 24, 1992 -

Environmental appeals board of the U.S. EPA overturned EPA Region 5's decision of February 8, 1992 to arbitrarily add the CCPA to the WTI permit, stating in the press release:

"[T]he Board overturned, solely on procedural grounds, the regional office's addition of the Columbiana County Port Authority to the permit as a co-permittee. The Board said that, although the region is completely correct in wanting to add the Port Authority to the permit, the procedural mechanism it used was incorrect. Although the permit remains valid, the Board ordered the regional office to withdraw the modification which added the Port Authority and to **use other available mechanisms**." (Emphasis added)

August 1, 1992 -

CCPA announces it wants to sell the land (taken by eminent domain and paid for with state tax dollars) to WTI.

August 2, 1992 -

Vice President Quyle visits Columbiana County to collect campaign funds.

August 4, 1992 -

Ohio EPA Director Don Schregardus ordered the CCPA to add their name as Co-Permittee to the WTI permit. The Ohio EPA press release stated:

"State Law [Ohio Administrative Code 3745-50-41 (B)] requires property owners to sign the permit application for hazardous waste facilities located on their property. This law was in effect when the WTI permit was in effect in 1984, and the Port Authority should have signed the permit application at that time.

Schregardus said that unless the Port Authority submits the permit application within thirty days, he will have to take enforcement action to force them to comply. The addition of the Port Authority will be considered a modification to the WTI hazardous waste permit, and will therefore be sent to the Ohio Hazardous Waste Facility Board for review."

August 11, 1992 -

CCPA and WTI signed a real estate purchase contract for \$5 million for the sale of CCPA public property (taken by eminent domain) to WTI.

August), 1992 -

Draft Memorandum prepared for U.S. EPA Region 5 Counsel Nancy-Ellen Zusman by Law Clerk Ignacio Arrazola. The issue of the memorandum was "Whether there has been an unapproved transfer of the ownership of Waste Technologies Industries for purposes of the RCRA permit" and if so "should the permit be revoked?"

This memo discussed Ohio Partnership law and the Ohio Uniform Partnership Law extensively.

Mr Arrazola writes:

"Good faith legal arguments can be made to either buoy or sink WTI's existing permit. Ultimately, the **decision of whether the permit should pass through the legal niceties unscathed is a policy determination.**" (Emphasis added)

"The fact that the subsidiaries share the same directors and officers, have no employees, have transferred management control of the facility to Von Roll (Ohio), Inc., and have no assets except their interest in WTI, tends to make a showing that the subsidiaries are merely "instrumentalities" of Von Roll America, Inc. The **partnership is thus reduced to a single partner, Von Roll America, Inc. and it may be maintained that the partnership is therefore dissolved.**" (Emphasis added)

August 21, 1992 -

Secret memorandum written by U.S. EPA Regional Counsel Nancy-Ellen Zusman which "**serves to memorialize the schedule of items to be accomplished** in relation to the Waste Technologies Industries ("WTI") hazardous waste incinerator in East Liverpool, Ohio, which was discussed in a briefing of the Regional administrator on August 20, 1992" (Emphasis added)

The statement "**It was agreed that the following activities would take place ..**" preceded a sixteen point list and timetable, including,

"The real estate transaction between the Columbiana County Port Authority and WTI/Von Roll **will be consummated**, clearing up the property owner problem. (Mid Sept.)" (Emphasis added)

"The permit **will be modified to correct the owner/operator issue.** (Jan-Feb. 1993)" and ending in February 1993 when "**WTI will be allowed to bring hazardous waste on-site.** (Feb. 1993)" (Emphasis added)

(NOTE: This memo clearly shows that the "fix" is in, and that the decision to allow the incinerator to move forward had been made prior to the completion of the ownership investigation. The final **submittals** in response to U.S. EPA's 8007 request for ownership information were not even turned in until September 30, 1992.)

August 24, 1992 -

U.S. EPA Regional Counsel Nancy Ellen Zusman wrote to Paula Cotter in the Ohio Attorney General's Office formally requesting "Ohio's analysis of the change of ownership and partnership status for Waste Technologies Industries ("WTI")." She continues, " ... U.S. EPA is also examining these issues, but is uncomfortable interpreting state law." Ms. Zusman concludes by writing, "**Both U.S. EPA and Ohio are under a lot of pressure to come up with an analysis as quickly as possible ...**" "... the sooner you could give me some kind of preliminary analysis, the better off I would feel with U.S. EPA making its own analysis." (Emphasis added)

(NOTE: In reality, Ms. Zusman knew that Law Clerk Ignacio Arrazola had already done analysis of Ohio partnership law, at her request, four days earlier, and that decisions concerning the WTI permit had already been predetermined as outlined in the above August 21, 1992 secret memo.)

September 8, 1992 - U.S. EPA Region 5 Counsel Nancy Ellen Zusman, in a September 8 letter to WTI Attorney Chuck Waterman, Wrote,

"U.S. EPA has reviewed WTI's response to the initial July 7, 1992, Section 3007 Resource Conservation and Recovery Act Request for Information and the additional information requested on August 5, 1992.

As a result of U.S. EPA's review, U.S. EPA requests that your client submit a formal Class 1 modification request to list on the Facility permit ... Von Roll America, Inc. as an owner of the Facility."

Ms. Zusman continued,

U.S. EPA believes that with these modifications, the WTI permit will accurately reflect the ownership status and operational control of the Facility, as required by federal regulations, and will assure maximum accountability in the operation of the Facility."

September 18, 1992 - Sale of Port Authority property to WTI consummated.

(NOTE: The Port Authority is a public entity. The land on which WTI is built was purchased by the state under eminent domain using taxpayers money to develop a port for public use. Now this piece of public property has been sold to a private, for-profit Swiss Corporation who will profit at the expense of our children's health!)

September 30, 1992 - U.S. EPA Region 5 Administrator Valdas Adamkus, in a September 30, 1992 letter to WTI President Blake Marshall, wrote:

U.S. EPA has concluded that there has been no change in ownership for the purposes of the Resource Conservation and Recovery act ("RCRA") which would require modification of the WTI permit."

(Note: Just 3 weeks earlier on September 8, 1992, U.S. EPA had determined that Von Roll America, Inc. should be added to the WTI permit as an owner!)

October 1, 1992 - U.S. EPA Press Release states,

"WTI May accept hazardous waste and begin shakedown; EPA begins 80-day comment period on proposed approval of WTI permit modification.

October 5, 1992 - Senator Howard Metzenbaum in a letter to U.S. EPA Administrator William Reilly, concerning a 3 page secret memo prepared by USEPA Regional Counsel Nancy Ellen Zusman and addressed to all senior EPA regional personnel working on WTI, wrote,

"I was shocked by the contents of the memorandum"

"The memo outlined a sixteen point chronology of steps that USEPA would undertake culminating in a date certain in which, "WTI would be allowed to bring hazardous waste on site (Feb. 1998)." What the memo makes clear is that it was the position of USEPA all along to give WTI the go-ahead. The questions raised by the USEPA Inspector General, the administrative appeals and other outstanding issues were merely to be handled for public relations purposes. There would be no serious examination of the issues, just a resume of steps to be completed before announcing the final decision to bring hazardous waste on site."

"I don't believe that I have ever seen such irresponsibility on the part of government officials. The Region V staff from the Administrator down through the fourteen other individuals to whom the Zusman memo was addressed are so completely compromised that the public has no chance of getting a fair determination. And I am frank to say to you that you don't seem to understand that you are being made a party to this. I urge you to suspend the WTI permit, and to designate an entirely new team to undertake a complete review of the WTI/RCRA situation."

October 22, 1992 -

Two Ohio residents, Alonzo Spencer and Jeff Bennett, filed a "complaint for Declaratory and Injunctive Relief" against the CCPA, ODOT and WTI for the illegal sale of CCPA (a public entity) property to a private, for-profit Swiss Corporation.

if we are not sure Port Authority was land owner, how
are we sure that correct landowner was identified?

1) The role of the landowner on the RCRA Permit.

The EPA permit for WTI, issued on June 24, 1983, did not include the land owner, possibly the Columbiana County Port Authority although this question remains unresolved, as a permittee. The Port Authority did not sign the permit application, as required by EPA regulations (45 Fed. Reg. 33074, May 19, 1980) and was not identified in the permit as an owner of the facility.

The Region V office clearly knew how to process these permits -- on Feb 11, 1981 they processed a Michigan application where the landowner was different than the operator. Further, the office was reminded by the US EPA on June 17, 1983 by John Skinner, head of the Headquarters Office of Solid Waste, that landowners must be identified on the permit or the permit is neither valid or legal. The permit was approved without the landowners signature by the US EPA on June 24, 1983 (and by Ohio on April 27, 1984.)

pre-
judgment
EPA
did
wrong

In a meeting with Senatorial Staff on November 12, 1991 with Bill Muno, a EPA Region V official, Muno admitted that EPA Region V knew that WTI was not the landowner while WTI was the operator even though the permits did not reflect the name of the true landowner. Again on May 7, 1992, EPA admitted in Congressional testimony to violating federal laws by excluding the Landowner from the original permit, and then by adding the landowner (allegedly the CCPA) to the permit -- without their permission -- and without public comment.

proof?

The CCPA was added to the original permit on February 3, 1992, even though the Port Authority did not apply and if fact, their attorney wrote to EPA saying the Port Authority refused to be a co-permittee because of liability problems. date of letter?

In December of 1991, Region V Administrator Adamkus wrote to Senator Rockefeller concerning landowner signatures on permits, stating that "In 1983 the Agency did not make the distinction between property owners and facility owners. WTI owns the facility; it does not own the property. Since 1983, the Agency has changed its policy." This contradicts, however, the memo from John Skinner, head of HQ Office of Solid Waste, to EPA's Regional offices in 1983 which reiterated the regulation which mandated that landowners must be on the permit. (Note also that EPA Region V had required a landowner signature on the Michigan permit referred to earlier).

* Need actual quotes

EPA said again in a memo dated Sept. 30, 1992 that "Although US EPA's regulations require that landowners be included on RCRA permits, the practice in US EPA regional offices at the time of permit issuance varied, and WTI's permit, as well as others, was issued without identifying the landowner as permittee. As we have explained, the failure to include the Port Authority was inadvertent, and the issue was not raised by anyone during two rounds of public comment on the draft permit... In any event, the issue is now moot because WTI purchased the land from the Port Authority effective Sept. 18, 1992". (Note that the land was taken under eminent domain after a lease was signed with WTI for a hazardous waste incinerator. Although the land was paid for with state funds allocated to the Ohio Department of building a port facility.)

1?

SPECIFIC QUESTIONS:

a) Who has owned the land on which the WTI incinerator is built under Ohio law since 1977 and for what periods of time? Please provide

earlier reference indicates a knowledge of what he said. do we have in permit can we quote from it or not?
evidence of all deeds/ court records for the transactions between the companies involved in taking, transferring, and purchasing the land on which WTI sits.

b) Was the taking of land under ^{SP} eminent domain for commercial purposes legal under Ohio and federal laws? (The lease option between the Ohio Department of Transportation, River Services Company, CCPA and the original WTI was clearly for commercial purposes, and not for a port.) */ proof*

c) What did Office of Solid Waste head John Skinner state was the penalty for knowingly omitting the name and signature of the land owner in permit applications? Was Mr. Skinner correct and if not?

d) The Army Corps of Engineers permit for a port specifically said the port development was not to handle hazardous waste. What are the ramifications of the violation of this permit? *dam, etc.*

2) Ownership of WTI has changed since the original permit.

not the permit?
been asked?
is the answer to this question?
The original four partners in the permit were Koppers Environmental Corp, Energy Technology Co, Waste Technologies, Inc., and Von Roll America, Inc. However, through name changes, corporation creations and corporation dissolutions, WTI was sold to WTI Acquisitions, wholly owned by Stephens, Inc. Apparently, VRA created Von Roll (Ohio), Inc. as a subsidiary, and then sold its shares to VRO. Koppers changed its name to Environmental Elements Ohio, Inc. Although the four original companies had separate corporate parents, all are now owned by VRA. Apparently, 44 different corporations were created and dissolved during the 12 years that have transpired. *passed*

The EPA permit for WTI does not identify the facilities operator, Von Roll (Ohio), Inc., because VRO did not come into existence until 1986, three years after the permit was issued.

Although Nancy Ellen Zusman of Region V EPA wrote to WTI on September 2, 1992 and asked that the permit be modified to reflect that Von Roll (America) Inc. was now the owner of the facility and Von Roll (Ohio) Inc, the operator, that decision was mysteriously overturned three weeks later when Region V Administrator Adamkus wrote to Blake Marshall on September 30, stating that "US EPA has concluded that there has been no change in ownership for the purposes of the Resource Conservation and Recovery Act which would require modification of the WTI permit." *// need to prove*

Regarding the dissolution of the original four partners of WTI, US EPA has since determined that "based on the express provisions of the joint venture agreement, we cannot conclude that the transfer of partnership interest dissolved WTI." However, an Ohio State University business law professor has written that "the WTI of 1981 is not the WTI of 1992...WTI does not meet the definition of a partnership in Ohio law any longer." He based this determination on the fact that not only had all the partners changed, but also on the fact that Von Roll (America), Inc. owns all the stock in the corporate entities now, but does not share those profits with these entities. VRA is not one of the partners claimed by the owners (Von Roll (Ohio), Inc.) of the plant.

The Ohio AG's office is conducting an investigation into the violations of ohio law but at this time do not believe that although formal legal law probably has been broken with regards to the original permit, they do not think the partnership is a sham. The original

do not include here - not til final/ public & can be passed on

These questions should be asked 1st. Is there any established? ① that there was a change ② that there was no prior notification of the change ③ legal ramifications
partnership may be different, but the AG's office does not think this was done in willful attempt to defraud.

The August 20, 1992 EPA memo written by an EPA law clerk assigned to determine the legal status of this partnership concluded that "good faith legal arguments can be made to either buoy or sink WTI's existing permit. Ultimately the decision of whether the permit should pass through the legal niceties unscathed is a policy determination." This same clerk concluded that "WTI appears to be a valid partnership on paper because there are four validly existing corporations acting as general partners... If these subsidiaries are the mere instrumentalities of Von Roll America Inc, a valid argument could be made that WTI is no longer a legitimate partnership because it is no longer an association of two or more persons. A single individual or entity cannot be the owner of a partnership." Stock records should help clarify whether WTI is an instrumentality of VRA.

SPECIFIC QUESTIONS WE WOULD LIKE ANSWERED:

- a) Under what authority does EPA have to waive the federal requirements of a minimum 90 day pre-notification/approval process pending a change in owner or operator of a facility? Please provide citations and copies of applicable laws.
- b) ~~Under~~ what authority does EPA have ~~the authority~~ to issue negotiable financial instruments in the hazardous waste? I.e. can EPA transfer the original permit for WTI to a new owner/operator if that company was not in existence at the time of the permitting?
- c) Please provide a copy of all stock certificates, board of directors lists and meetings of all companies named as original or later owners of WTI since 1981.
- d) Did WTI and/ ~~or~~ ^{the} Von Roll (Ohio), Inc. (the managing partner of WTI) notify EPA ~~prior~~ the change of operational control vis-a-vis the Sept. 21, 1990 Operation Contract that established Von Roll (Ohio), Inc as the operator of the facility? If so, when?
- e) When was the EPA permit modified to show Von Roll (Ohio), Inc. as the managing partner and Von Roll (America), Inc. as owner?

3) Why was the original permit altered?

is this not pre-judging the case?
EPA's original permit for WTI was issued on June 24, 1983 and identified June 1983 as the expiration date. However, at some point after 1985, the original signature page of the permit document, kept at Region V EPA, was altered. The dates of the beginning and termination of the permit were whited out and the signature page was replaced with a falsified page that moved the dates of issuance and termination from 1983 to 1985 and 1993 to 1995, respectively.

- a) Who whited out the original signature page?
- b) When was this done?
- c) Who replaced the original signature page?
- d) When was the original signature page altered?
- e) Under what legal authority is such an alteration permissible? Please provide copies of these laws and regulations.

(g) What ~~is the~~ are the legal ramifications

f) What federal criminal statutes discuss the alteration of official federal documents?

4) What was the role of the Competitiveness Council in allowing EPA to issue a temporary start up permit?

On January 20, 1992, Von Roll President Blake Marshall wrote to the Associate Director of the Office of Cabinet Affairs, James Fitzhenry, at the White House saying that regulatory relief was needed for his company. He particularly asked for relief in granting consideration for EPA Region V to approve a spray dryer for the facility, since the dryer was not approved in the original WTI permit. Ohio had approved the permit but EPA had not at the time the spray dryer was built. Hence, EPA fined Von Roll \$129,000 for this violation.

Blake Marshall wrote to the Council again on May 21, 1992, asking for help. Although the permit for the spray dryer is approved at this point, Marshall wants a shakedown approval. He states that "To move forward we must have a 180 day temporary authorization permit from US EPA." Von Roll representatives subsequently meet with the Council and White House staff on June 10, 1992. EPA then issued on July 5 -- without precedent and provided for under no federal law -- a temporary authorization for WTI to bring in hazardous waste and proceed with shakedown while the ownership issue was still up in the air.

An EPA memo from Nancy-Ellen Zusman dated August 20 sets out a timeline for approval of WTI, even though the report from the EPA law clerk on the legal aspects of the permits did not come out until that day. Was the approval of WTI a foregone conclusion after the Competitiveness Council meeting?

On December 7, 1992, Blake Marshall responds to the request for a GAO investigation with a statement that "The Company did not receive permission for a temporary permit because of a visit to the Competitiveness Council. To our knowledge, the Competitiveness Council never took any interest in the plight of incineration advocates in general, or WTI in particular." We know this is not true, as a meeting was held on June 20, 1992 with the Council.

SPECIFIC QUESTIONS WE WOULD LIKE ANSWERED:

a) What previous contact, either written or verbal, did WTI have with the White House or Competitiveness Council besides the Jan 20 and May 21st letters and the June 10 meeting? What contact did the Competitiveness Council have with EPA after the June 10 meeting?

b) Who was at the June 10 meeting and what was discussed? Please provide all notes, agendas or telephone logs from EPA and the White House.

Am
Hardy
67960
3863

January 14, 1993

TO: Pam/Katie

FROM: Tony

RE: Additional suggested questions for GAO investigation, and edits of 1st cut of questions.

At the very inception of the WTI/Von Roll incinerator siting in E. Liverpool, and thereafter up to the present, what was the nature of the discussions, transactions, negotiations, etc., which took place, and among whom did they take place? What were the exact or explicit nature and substance of these discussions, particularly from within WTI and its precursor(s)? Where did they take place, and at whose expense? Who was present?

Are there tapes, computer disks, notes, etc., of any or all of these discussions? Where are these notes etc., and what light can be shed, from such materials, on the hows, whys, etc., of the siting of this toxic waste facility? What were the driving forces involved, the consummation of a business deal primarily, and other reasons? How much of these discussions focused on the substance and impact of this industry, healthwise and food-chain-wise, as opposed to the finances alone or principally, and what are the implications of this?

From the very beginning, going back to 1981 or earlier, to the present, what was the sum and substance of all public relations efforts, campaigns, advertising, etc, during the evolution of this permitting process and during the introduction and evolution of this particular waste facility in E. Liverpool, OH, on the part of WTI, Von Roll, and the original owners of the waste facility in question in E. Liverpool?

How many companies do the corporate officers of WTI/Von Roll Ohio serve, as corporate officers, in addition to WTI/Von Roll Ohio? Are any of these waste industries? Are any under investigation by the FBI or any other investigative body presently, or have been under investigation in the past? If so, why, for what reasons? Who was involved, and what were the circumstances? Would any of those affiliations, etc., have preempted permitting of WTI under federal or Ohio statutes of any kind, particularly EPA/health statutes and bad-boy laws? What bearing or implications do these investigations have on WTI/Von Roll Ohio itself? Is there a conflict of interest, and more serious implications?

Are any corporate members of WTI or it's affiliates, subsidiaries and subcontractors under investigation by any federal or state agency, such as Waste Management, Inc., and/or Chem Waste? If so, why, and what are the implications for WTI/Von Roll Ohio, USA, Switzerland, in E. Liverpool, OH and elsewhere?

Is it fair to say that there remains, and has been, a pattern of avoiding having to go through the permitting process a second time, in terms of state and federal regulations, on the part of WTI? If so, why? Why was it necessary for all of the permitting to have been completed prior to January 20th? What about the issue of safety? What was the momentum for rushing forward at all times, on the part of WTI/Von Roll? Was safety/health not the first and foremost concern? What was the rush?

WTI/Von Roll/Blake Marshall, Charles Waterman, III, and PR people/firms, indicated that WTI had to move quickly through the permitting process because it was risking losing money and had to serve clients and contracts already signed, not the least of which was a 10-yr. contract with Dupont, to deliver toxic waste to WTI? Was this an accurate statement at the time or times it was made? Wasn't the contract with Dupont, in fact, a 3-yr. contract with Dupont, not 10, at the time these and/or similar statements were made? Wasn't Dupont, in fact, at the time many of these statements were made, actively out soliciting sources of waste to bring to WTI? What do all of the records, computer, telephone, appointment calendars, etc., indicate regarding these statements? What PR people/firms were involved, including affiliations?

How was it that Blake Marshall/WTI/Von Roll could have committed to any contracts prior to successfully completing the permitting process, to have waste brought on site, and taken offsite? Are there not implications here regarding placing the proverbial cart before the horse? What about safeguards? Where in all of this is concern for safety, life and safeguards? Does it not appear that WTI/Mr. Marshall proceeded as if the issue of permits was a non-issue, or one which had already been decided upon? Had these and other matters already been decided upon as memos from Nancy-Ellen Zusman, Don Clay and others would indicate? What does this suggest about the integrity of the permitting and oversight process at the hands of EPA and the federal government in general? Does any of this fall into the realm of criminality and/or conspiratorial behavior to side-step EPA's own regulations and regulatory processes?

Do the memos of Nancy-Ellen Zusman, Donald Clay, William Munro, Lewis Crampton and others not, in fact, indicate that the permitting of WTI had already been decided upon beforehand, and that it was just a matter of creating the

right public posture to proceed, while not disclosing that and other facts? Do these and other memos, notes, telephone logs, appointment calendars, etc., from these individuals not indicate a policy of deception within EPA, at the very least? And what about the impact upon the process itself? Is the question of substance not begged here?

There are 16 to 17 toxic waste incinerators nationwide, which were built during the past 12 years? Where is the record of monitoring of these facilities on the part of EPA? Where is the data base of 12 or fewer years of performance and toxicity measurements of this industry, of community health monitoring on the part of EPA, which would/should have established a clear track record of the actual performance and impact of these facilities nationwide, and which would, in turn, have had significant bearing upon WTI itself, especially given its uniquely precarious location? Why was such data not routinely and systematically collected? And what about this industry's track record of collecting data, etc., part of which is housed in a multiplicity of court records? Is there a policy of not wanting to know the actual performance and track record of this industry, and its impact upon life across the board? What does this suggest about the integrity of the regulatory process itself and the federal government?

What role did members of the Whitehouse, and specifically, Mr. Fitzhenry, Vice-President Quayle, members of the Quayle Council, EPA officials Don Clay, William Muno, Valdas Adamkus, William Riley, Blake Marshall of WTI/Von Roll, Charles Waterman, III, attorney for WTI/Von Roll, and others play in discussions and the issuing of a test-burn permit to WTI on or about January 8, 1993? What were the PR strategies discussed and employed, on the part of any, or all of the above, regarding the specific issue of the test-burn permit? What do the notes, computer disks, files, memos, telephone logs, appointment calendars, indicate regarding the issue of the test-burn permit, with respect to those mentioned above, and any others involved in this matter?

How was the issue of protestors, protests, and arrests, dealt with within WTI/Von Roll, the EPA, Ohio EPA, the White House, Vice-President Quayle's office, the Quayle Council, and PR people and organizations deliberating upon these and other matters? What do the documents, files, telephone logs, appointment calendars, etc., indicate? Who said what, and why?

Regarding EPA's original permit for WTI, issued on June 24, 1983, expiring in June of 1992, and the subsequent altering of these dates, what do all of the records, notes computer disks, files telephone logs, appointment calendars, etc., indicate regarding discussions about this, and any

testimony provided on this issues, to the present? Who was involved? Who gave Charles Waterman, attorney for WTI, the order to alter this document or have it altered? What discussions took place thereafter? To what extent was the Whitehouse, vice-president Quayle, EPA staff and officials, Ohio EPA staff and officials, members of the Quayle Council involved? What was the chain of command or pathway of information surrounding this issue? Who was involved? Is Charles Waterman currently, or was he very recently, involved in a dispute over the wording of the transcript of a May 7, 1992 hearing before the Judiciary Committee of the House, at which Waterman testified? What exactly is in dispute here, and why?

What is the chronology and substance, on paper and otherwise, of communications, meetings, discussions, etc., between and among Blake Marshall, vice-president Quayle, members of the Quayle Council, members of the White House, especially Mr. Fitzhenry, and EPA employees, Donald Clay, William Munro, William Riley, Nancy-Ellen Zusman, and Lewis Crampton, Valdus Adamkus, and other EPA employees, and Charles Waterman, III of WTI? How many face-to-face visits did Mr. Marshall make with any of the above? Who requested the meeting and how was it initiated? When did those meetings take place, where, and what was discussed? Where are the notes, etc., from those meetings?

Was Blake Marshall an employee of Waste Management Inc., or any of its affiliates, or mother company, in Canada as well? If so, when, and in what capacity? How did it come about that in the aftermath of declaring bankruptcy for \$60 million dollars of debt, in Canada, that Mr. Marshall could emerge in the US a few years later as CEO of Von Roll America? Who bankrolled Marshall in the aftermath of his bankruptcy in Canada? Why was Marshall bankrolled after a 60 million dollar bankruptcy? What was Marshall's mandate/license as CEO for Von Roll America? What was Marshall specifically asked/hired to do on behalf of Von Roll Switzerland, or what did he propose to do for them, and how? What are the documents, computer disks, appointment calendars, notes, etc., surrounding these events, including court documents from Canada and elsewhere? Are there matters of serious conflict of interest here, or matters which would/should have been of concern in the evolution of WTI? Are these matters of concern to the state of Ohio, and statutes such as Ohio "bad-boy" laws? How much money did WTI, Marshall, Von Roll USA, Von Roll America, Von Roll Switzerland, etc., donate to the Bush/Quayle re-election effort, and elections in the state of Ohio, including congressional elections?

What is the record of personal and business phone calls, letters, notes, etc., between Blake Marshall/WTI/other employees of WTI/Von Roll Ohio/Von Roll America/Von Roll

Switzerland/Von Roll, and variations thereof of Von Roll names, and Vice-President Quayle and/or members of Quayle's council on competitiveness, and other members of the Bush/Quayle Whitehouse, such as Mr. Fitzhenry, members of Congress, Governor George Voinovich of Ohio, and his staff, as well as members of the Ohio state legislature, federal EPA officials and employees, Ohio EPA officials and employees, and vice-versa, including president Bush and staff? What do telephone logs, appointment calendars, personal and other notes, secretaries' notes and logs indicate regarding the above communications? How far back in time do such communications extend, and what do they indicate from an historic and substantive perspective?

Is there any indication that certain documents, notes, tapes, computer disks, files, telephone logs, appointment calendars etc., are, or seem to have been destroyed or missing? Is so what is missing and who is responsible, and what are the implications? Where is the information? How was it destroyed or lost, and who was involved? What are the implications? Were these criminal acts?

Why was Blake Marshall and other employees of WTI/Von Roll given access, often direct, to Vice President Quayle, high officials of EPA, including Riley, members of the Quayle Council, members of the White House such as Fitzhenry, etc., while residents of E. Liverpool, OH and adjacent areas, such as Alonzo Spencer, Terri Swearingen, etc., were continually denied access to the same? Was this influence peddling, and if so, to what end? If so, what was the cost of this influence peddling to WTI, Blake Marshall, Von Roll Ohio, Von Roll USA, Von Roll Switzerland? Was this cost tax deductible? Were the constitutional rights of these citizens violated? In what way was this inaccessibility, on the part of average citizens lacking large sums of money, to EPA and government in general, particularly with EPA's alleged Environmental Equity/Justice philosophy or policy, an alleged welcome mat on the part of EPA, to citizens to come and discuss problems, and open door policy?

Whose idea was it to target Greenpeace as outside agitators, from the perspective of WTI? Upon what information or proof was this conclusion based? Did Greenpeace break any laws other than those related to members of Greenpeace climbing over the fence at WTI?

When did WTI first take note of a problem with its fan within its smokestack? What are the complete body of records regarding the malfunction/repairwork on the stack fan, including requests to have the repairwork done, telephone logs, notes, files, floppy disks, and appointment calendars? What was the nature of the problem? How long did the problem persist? Who was placed in charge of dealing with this problem, and how was the problem dealt with, and over what

period of time, and who was called in to work on it? Why was WTI still racing ahead with its schedule to acquire all permits, in light of this problem? Is it not true that the fan had to be shut down several times during the recent shake-down process?

In what way was inaccessibility to appropriate government employees and agencies consistent with EPA's own alleged program/philosophy/office of Environmental Equity/Justice, part of which was an alleged welcome mat to discuss any matters of concern with EPA, an open door policy? Was this not then a ruse, or at least, a deliberate policy of evasion and duplicity, on the part of EPA, the White House and the Quayle Council? What is the significance of the Lewis Crampton EPA memo suggesting a policy of preventing certain groups from joining forces so to speak, against environmental inequity, the siting of waste on impoverished communities, preferentially, on the part of EPA and other parts of the federal and state governments? Was this memo not at least an implicit violation of the first and other constitutional rights of these citizens?

Is it also not true that in early October, 1992, the very same Lewis Crampton of EPA, went to work as a vice president for Waste Management, Inc., an organization with an extraordinary number of violations of EPA statutes to date, some criminal, with heavy fines as well? And didn't Crampton also double his salary in the process? When did Crampton start negotiating with Waste Management, Inc., and who, specifically was involved in these discussions? How did they come about? When did the overtures begin, and what were the circumstances? Who called whom, etcetera? Where is the paper and computer records of these discussions, etc., including telephone logs, appointment calendars, notes, and the like?

Wasn't Crampton's memo the measure of the real environmental equity program at EPA? How could Crampton have been representing EPA to citizens of E. Liverpool and nearby regions, and cutting his own deal with Waste Management, who, at that time, was, and remains, a contractor to WTI to haul waste onsite and ash offsite? And was Blake Marshall himself not a former employee of Waste Management, Inc.? Isn't the web here just a little too incestuous to maintain the integrity of the EPA regulatory process? How could it be maintained that EPA was acting in good faith here?

Was it also not true, that in July of 1992, the same Lewis Crampton had the citizens of E. Liverpool, OH and adjacent regions, taken out of the EPA building in Washington, by force, at the hands of federal Marshall's and later arrested and jailed? What were the specific charges in these arrests? Who gave the orders to have this done? What is the body of paper records, computer records, notes, etc.,

surrounding this incident? What was the nature of the discussions within and between EPA, Blake Marshall/WTI and employees/Von Roll Ohio and employees, etc., the Whitehouse or members, the Quayle Council or members, including Quayle, before and after this event? What was the strategy beforehand, and who set it up and in motion? What was the chain of command for the flow of information and knowledge among all of the above?

What were the offices and individuals involved in the flow of information/decisions regarding the evolution and permitting of WTI and its precursor, from EPA to the Quayle Council members, Quayle's office and staff, Quayle himself, the White House or members of the White House, EPA employees William Riley, Don Clay, William Munro, Nancy-Ellen Zusman and others?

Were any public relations or advertising firms or individuals versed in PR, hired, or drawn from Von Roll or other related companies? Who, which ones? Who, by name and affiliation, was involved in this process? Where are the records of this effort? What do they show? Where are the notes, tapes, computer disks, etc., which embody the sum total of this effort, and what do they suggest? What about pertinent information contained within appointment calendars, schedules, and telephone logs, computer disks, notes, etcetera, regarding this PR campaign/effort(s)? What was generated, distributed and discussed in this public relations effort all along, since at least, 1981, even if the company name was then not the same? What were the strategies discussed in this effort? Who hired these PR people/organizations, and why? What was the cost of this effort? Was Greenpeace deliberately portrayed as rabble rousers, in these PR efforts? Whose decision was it to do so? Where are the working documents, notes, etc., surrounding this matter? Is all public relations work tax deductible?

Was Von Roll Switzerland involved in these PR efforts, and to what extent, substantively and dollar-wise? What was the cost of this PR effort, dollar-wise and personnel-wise, in total, on the part of WTI/Von Roll? Who were the principal targets of this effort? Did the effort also include donations or extensions of money, even loans or gifts? If so, to whom, why, and what was the value, dollarwise?

To whom did WTI and Von Roll (Swiss, USA, and Ohio, specifically and collectively) donate money or give gifts of money from 1980 to the present and why? Who was involved? What do documents, tapes, computer disks, notes, etc., state regarding these donations/gifts? Were these gifts/donations made to smooth the permitting process, or did they have that effect in the end? Did these donations/gifts serve to buy

good will on the part of WTI/Von Roll? What were the strategies beforehand, on the part of WTI, Von Roll?

What communications took place between WTI/Von Roll/Blake Marshall, and EPA and Ohio EPA officials, officials of the State of Ohio, Governor Voinovich and members of his staff, etcetera? What do telephone logs, secretaries notes, computer notes, appointment calendars, etcetera indicate, regarding these communications.

What are the historical nuts and bolts of how this business of WTI/Von Roll came to set up shop in SE Ohio. How did it all start? What are the particulars? Did someone go out soliciting a waste facility to be set up in E. Liverpool? Who? Were permits purchased by individuals and then sold to waste companies exclusively, principally from a standpoint of profit? What about this business of the selling of permits in the first place, exclusively to businesses which will bring in the highest dollar value? Is this really the essential criteria for siting a toxic waste facility? In other words, was the reason for originally siting the WTI facility in this location profit, from a business perspective alone? Where is the paperwork, notes, computer disks, tapes, etc., of these transactions?

Wasn't WTI/Von Roll wooed into this region for precisely these reasons, to realize the maximum dollar value for a permit in the first place, to build a waste facility? Given the nature of this industry, should this really have been the basis for locating WTI in the first place, in a valley, in E. Liverpool, OH, or should other concerns have been the principal driving force here, and what are the implications after the fact?

Weren't the RCRA rules established precisely to preclude, among other things, the trading of permits for dollars, as was the case at the inception of WTI, for obvious reasons, given the importance and need to concern oneself with health implications, moreso than dollars alone in some cases, or principally, especially in the instance of toxic waste?

What is the reason or rationale for having created the corporate shells or subsidiaries which surround WTI, some 45 to 65 of such, to date, by some accounts? Why, by comparison do we not see this practice of creating corporate shell companies or affiliates, in other industries? Where are the notes from internal, company discussions which preceded, in each case, the decision to create, destroy, or change the name of a corporate shell or shells surrounding/affiliated with WTI and/or Von Roll America, Inc, Von Roll USA, Von Roll Ohio, etcetera, including WTI and its predecessor company? Who was involved, by name and affiliation, and why?

What are the deliberative and functional reasons for having created and changed this intricate web of alleged corporate affiliates to the so-called mother company in this case? Does this web of corporations surrounding WTI have any bearing on the issue of responsibility on the part of the owner in terms of potential damage to health and the environment? Would it not be important to know whom the owner of such a facility is if one's health were directly affected by it, and for legal reasons as well, somewhere down the road? Would it not be difficult to trace ownership through such a maze, and hence implicit liability should one need to do so after the fact?

Who is the owner of WTI, and what is the proof of that ownership? Explain the breakdown of WTI's stocks/Von Rolls stocks, in this case, and proof of ownership through those stock holdings? Are there important linkages between knowing precisely who the owner of such a facility is, in terms of financial and health responsibilities down the road? Is EPA absolutely certain as to who owns WTI? If not, why not? For what period of time, or over what period of time was the ownership of WTI uncertain and/or unknown with certainty, and why was it unknown for so long? Was it not a requirement of permitting? What are the remaining sources of doubt or lack of knowledge over the issue of ownership of WTI? If ownership is still unresolved or uncertain, how could the permitting process have gone forward (see Adamkus letter to Blake Marshall of late December, 1992)?

Regarding the recent failed attempt by the Attorney General of West Virginia to be granted a temporary restraining order against WTI, who asked/requested that the US Justice Department be present and play a role, and when was Justice first notified? What was the Justice Department specifically asked to do in this case? What was the chain and chronology of orders here within the federal government? What WTI/Von Roll officials were involved? What does the body of paper, computer disks, files, telephone logs, appointment calendars suggest was taking place here, and what are the implications?

The Justice Department effectively gagged Hugh Kaufman and William Sanjour, both outspoken critics of aspects of the EPA regulatory process surrounding this industry, and WTI, in particular, on the alleged basis of ethics violations, on grounds that their testimony might hurt the EPA's credibility, and on the grounds that Kaufman and Sanjour had no applicable expertise here. Yet at the same time, despite the fact that the judge in this case had removed the EPA, and the Ohio EPA from the suit, leaving the suit between WTI and the state of West VA, WTI called upon EPA witnesses to bolster their case, virtually all of whom had little or no experience in these matters. Consequently, how could justice maintain that Kaufman and Sanjour had no expertise here, by

comparison to the experience represented by the EPA witnesses used by WTI in this case? Weren't Sanjour's and Kaufman's constitutional rights violated here, and consequently, was this trial then null and void? Are the statutes invoked by the Justice Department to gag Kaufman and Sanjour in this case, constitutional, many of which were executive orders? Were these statutes actually in effect at the time? Were they not recommendations as opposed to carrying legally binding criteria? Were these statutes mistated and/or misused by the Justice Department in this case?

What contact did Charles Waterman, Blake Marshall and other WTI officials have with the Justice Department before this trial in West Virginia? Was was discussed, and who were the parties to these discussions? Where is the paper and computer, and tape records of these discussions? Waterman was observed and overheard to be shouting instructions to the Justice Dept. attorney during the trial, regarding which EPA documents to withhold or suppress? Who gave Waterman/WTI this authority to dictate to the Justice Department? What was Greer Goldman told to do on behalf of the Justice Dept. at this trial? What were her instructions, and from whom did they come? Is it constitutional to preclude the testimony of government witnesses if their testimony might, in fact, make a federal agency appear corrupted in some way, as was done to Sanjour and Kaufman?

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FOR IMMEDIATE RELEASE:
February 9, 1993

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EPA WITHHELD STUDY SHOWING HIGHER CANCER RISK AT WTI

EPA TESTIMONY MAKES OPPONENTS CASE

Cleveland - A scientist for the U.S. Environmental Protection Agency (EPA) testified yesterday that the Agency knew that dioxin emissions from the proposed Waste Technologies Industries (WTI) incinerator in East Liverpool, Ohio, would pose substantial risks to human health. The Testimony of Dr. Matthew Lorber, a scientist in EPA's Office of Research and Development, confirmed the contents of a January 22, 1992 memorandum to EPA Administrator Carol Browner. The memo was leaked to the attorneys representing Greenpeace.

Lorber's testimony revealed that the EPA knew that dioxin releases from the incinerator posed an increased health threat to surrounding communities as they accumulated in the food chain. This confirms the testimony of experts testifying on behalf of Greenpeace and the Ohio Valley residents who filed the lawsuit. Dr. Lorber's testimony confirmed the contents of the leaked memo which said, "a preliminary assessment done by ORD (the Office of Research and Development) does show that risks from beef and milk consumption can be 1,000 times higher than risk from inhalation near the WTI facility."

EPA's previously stated risk estimates relied solely on the risks imposed by inhalation of emissions from the incinerator and ignored all other pathways of contamination, such as food consumption. The ORD study described in today's testimony considered projected emissions, beef grown in the surrounding communities, the proximity of the school and local residences to the site.

"Today's events demonstrate that the EPA under the Bush Administration abandoned its duty to protect the public health and the environment in their zeal to site this facility," said Beth Newman of Greenpeace. "The Agency is totally compromised at this point. President Clinton must now fulfill his December 7 transition promise and order Deputy Administrator Morgenstern to revoke WTI's permits and prohibit any future operations until a full investigation can be completed," she said.

"As a local farmer, this raises grave concerns about the beef which our family eats and sells." Said Joy Allison, a local farmer whose family raises cattle and vegetables.

"The leaked memorandum and EPA's own expert testimony catches the EPA redhanded, suppressing important health information while they continued to defend the WTI facility," said Terri Swearingen, one of the opponents of the facility. "We believe this was an intentional circumvention of federal environmental regulations in order to prevent the ORD study from being used to prove that all incinerators pose a substantial threat to public health through food chain contamination."

Greenpeace and local opponents of the facility filed for and obtained a Temporary Restraining Order on January 15, 1993, to stop the test burn at WTI. The current proceedings will determine whether a Preliminary Injunction will be issued to stop the imminent test burn and commercial operations at the facility until the lawsuit filed by the plaintiffs has been fully heard. The hearings are underway in the Federal Court in Cleveland, Ohio, with Judge Ann Aldrich presiding.

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FOR IMMEDIATE RELEASE:
February 8, 1993

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CORRECTION ... CORRECTION ... CORRECTION ... CORRECTION

Earlier today, you received a press release from us discussing a memo which was leaked to our attorneys on Friday, February 5, 1993, from EPA personnel. This memo pertained to potentially higher dioxin risk posed by the Waste Technologies Industries (WTI) incinerator in East Liverpool, Ohio. In this press release, we indicated that based on information from the leaked memo, the food-chain dioxin risk assesment would be 1,000 times higher than risks from inhalation near the WTI facility. We regret to inform you that the number "130" stated in our press release should have been "1300". We apologize for any inconvenience this may have caused you.

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PHOTOCOPY
PRESERVATION

January 22, 1993

PHOTOCOPY
PRESERVATION

Note to: Carol Browner, Administrator

From: Richard Guilmond, Acting Assistant Administrator,
Office of Solid Waste and Emergency Response

Subject: WTI Incinerator Issues

BACKGROUND: This note is to bring you up to date on the activities we have underway to evaluate the issues relative to the Waste Technologies Incorporated (WTI) incinerator in Ohio. This incinerator has obtained all of the necessary permits to conduct a trial burn. However, strong opposition from local citizen groups has led to a court hearing (which was to have been today but has been postponed until February 8) on whether a temporary restraining order should be imposed to prevent operation of the facility. WTI has verbally agreed not to commence the trial burn or limited commercial operation until after the hearing.

ISSUES: The immediate issue is whether the WTI risk assessment prepared by EPA is adequate. This assessment, which by EPA policy is site-specific, showed that risks from the incinerator emissions (including emissions of dioxins) were within the range of risks historically considered acceptable by EPA. A longer term issue, which will require Agency-wide consultation, is how to devise a national policy regarding indirect exposure assessments for dioxin. This could have major implications for numerous EPA programs and could require a reevaluation of risks at many other sources of air emissions.

The risk assessment was prepared by the Region 5 office for the WTI facility. It focused primarily on risks associated with inhalation of the emissions, an approach which the Agency has historically used in evaluating air emissions. Region 5 concluded that indirect exposure routes (e.g., consumption of food raised in the area) were not likely to present significant additional risk based on a draft dioxin risk assessment for another combustion unit.

The Office of Research and Development (ORD) has a draft document, "Estimating Exposures to Dioxin-Like Compounds," which describes a methodology and provides an example of how indirect exposures, such as exposures from soil contamination and subsequent food chain contamination resulting from air emissions, can be evaluated.

Greenpeace used a specific example from this document to attempt to show that risks from consuming products from cattle raised near the incinerator can be 10,000 times greater than the risks from inhalation and are, therefore, unacceptable. The use of the example from the ORD report in the WTI situation is not appropriate, since the risks from air emission sources are very highly dependent on site-specific factors. However, a preliminary

assessment done by ORD does show that risks from beef and milk consumption can be 1,000 times higher than risks from inhalation near the WTI facility. It is important to note that, even using the worst-case indirect exposure analysis, the risks to the public during the trial burn period would be within what has been considered acceptable. The Greenpeace submittal also contains other analyses that show very high risks. However, both the Office of Solid Waste and Emergency Response (OSWER) and ORD agree that these analyses use extreme, unrealistic assumptions.

There are very significant implications associated with adopting risk assessment procedures based on indirect exposure routes for air emission sources. These analyses have a much greater degree of uncertainty because they involve a large number of exposure-related assumptions. If conservative assumptions are used for all exposure related parameters, risk estimates can be unrealistically high. The analyses of the WTI situation show that many air emission sources could be affected if EPA were to adopt the indirect exposure analysis procedures in assessing exposure risks.

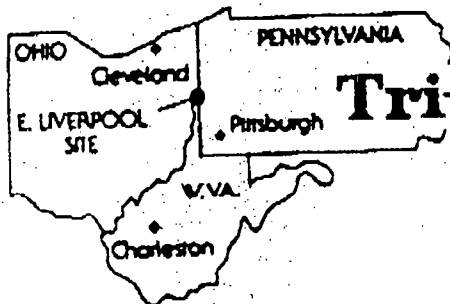
ACTIVITIES UNDERWAY: My staff met with ORD on Friday, January 22 to discuss the analytical steps that must be undertaken in preparation for the upcoming District Court hearing. In addition, my staff is reviewing all of the risk assessment efforts related to WTI and the ORD report on dioxin exposures to ensure that any differences can be explained. Staff are also working with ORD to collect relevant data on dioxin emissions from different sources and on risk assessments which have been done on those sources. Finally, the Agency must address the court's question concerning why we need the trial burn data in order to prepare a more comprehensive risk assessment.

For the immediate future, we have scheduled a technical meeting on Monday, the 25th, which will include personnel from Region 5 to review all of the risk assessment issues. We will then hold a management level meeting on Tuesday, the 26th, to develop recommendations on how we should proceed.

We are also developing an in-depth briefing for you on the WTI issues. We will work with your staff to schedule the meeting. Please let me know if you have any questions or need any other information.

cc: Linda Fisher
Dick Morgenstern
Mike Vandenberg
Loretta Ucelli
Diane Regas

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PRESERVATION



Tri-State Environmental Council

Rd 1, Box 365
Chester, WV 26034

January 31, 1993

*Nothing has changed.
When will you
take action?*

The Honorable William Clinton, President
The Honorable Albert Gore, Vice President
1800 Pennsylvania Avenue NW
The White House
Washington, DC 20500

RE: Waste Technologies Industries (WTI) Commercial Hazardous
Waste Incinerator, East Liverpool, Ohio

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Dear President Clinton and Vice President Gore,

Congratulations on your inauguration and best wishes for success and prosperity during your tenure!

We are writing to ask that you take immediate action to halt all operations at the Waste Technologies Industries (WTI) incinerator in East Liverpool, Ohio, to fulfill the promise you made when you said "the new Clinton-Gore Administration would not issue the plant a test burn permit until ... questions are answered."

As you are aware from previous communications, WTI had notified the U.S. EPA of their intent to begin a test burn on January 13, 1993, even with the awareness of your opposition to any operation of the facility prior to the completion of the General Accounting Office (GAO) investigation. Following the test burn approval by the Bush EPA, a group of Tri-State area residents and the organization Greenpeace filed for a temporary restraining order (TRO) to prevent WTI from beginning its test burn. On January 15, 1993 after WTI refused to stipulate that they would not begin their test burn until a hearing could be held and a decision made, Judge Ann Aldrich issued a TRO against such activity at the facility. The hearing was scheduled for January 22. The plaintiffs were prepared to proceed with the hearing as scheduled. Expert witnesses had flown in to testify about the adverse impact WTI would have on human health and the environment during the test burn and subsequent operation. The Justice Department, representing the U.S. EPA, requested a postponement, saying that more time was needed to prepare their defense. The TRO obtained by the plaintiffs remains in effect until the Preliminary Injunction Hearing, scheduled to begin on February 7, 1993, has been completed and a decision has been made.

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Prior to your inauguration, you may not have had the authority to take the action you promised. We have effectively stalled the operation of WTI. Now that you are officially in office, we trust that you will seize the opportunity we have provided you to fulfill the commitment you made to not allow WTI to conduct a test burn until questions are answered about the plants safety and the process by which it had received regulatory clearance.

Mr. President and Mr. Vice President, we cannot forget the statements you made in Weirton, WV on July 19, 1992:

Mr. Vice President, you said, "I'd like to say that I admire your fight. I'm familiar with exactly what you're fighting against, and I think that it's important for us as a nation to learn from the struggle that you are now engaged in. I think you deserve help and I think our country deserves help with this garbage crisis which has led to the WTI controversy that you are dealing with here. [T]he Reagan/Bush/Quayle Administration has done nothing whatsoever ... [T]hey just want to keep things the way they are."

You continued by saying, "and the very idea of putting (WTI) in a flood plain you know it's unbelievable to me" but the longer range larger answer to this question is to reduce the amount of garbage and waste we are producing, re-engineer our processes to be more efficient and recycle all of the waste that we possibly can so that we don't need these incinerators and these solid waste landfills and I'll tell you this, a Clinton/Gore Administration is going to give you an environmental presidency to deal with these problems. We'll be on your side for a change instead of the side of the garbage generators the way they have been.

Mr. President, you also made some very bold and encouraging statements that day when you said, "We are not in power now, you haven't elected us yet and I wish that we could do more, but one of the things we ought to make sure we do is stiffen the regulations on the siting of these incinerators. I mean the federal government should not permit permitting of incinerators where you are going to have on-site storage of garbage in a flood plain ... that should not be done. You ought to have some jurisdiction at the state level about how close they get to schools and other things which are really troubling, but that's a national issue and we should not be doing that.

We believe in your integrity, and we are confident that you will uphold the promises that you have made regarding the WTI issue.

We share your outrage and concern over the siting of the WTI incinerator in a flood plain and so near to homes and an elementary school. We agree wholeheartedly that the federal government should never have permitted WTI to build in this location. There is no margin of safety for this site.

After learning of the many problems associated with hazardous waste incinerators and the industries track record of fires, explosions and accidents, we don't believe there is

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such a thing as an "appropriate site" for a commercial hazardous waste incinerator, and certainly common sense dictates that you don't build one next to a school. Perhaps that is why in 1984 the Ohio State Legislature enacted more protective siting criteria requiring at least a 2,000 foot setback from any school, home, hospital or prison. Ironically, it serves to protect the rest of Ohio citizens, but does nothing to protect the children living 320 feet from WTI or those who attend East Elementary School less than 1100 feet from the WTI stack!

Communities hosting hazardous waste incinerators are faced with serious adverse health problems related to the operation of the incinerator. Just recently the Agency for Toxic Substances and Disease Registry (ATSDR) released the results of a study of residents living in the vicinity of the Caldwell Systems Incinerator in Lenoir, NC., which operated from 1977 to 1988. The study confirmed that those who lived near the incinerator reported nine times more respiratory disorders and nearly two and one-half times the incidence of neurological diseases.

These health problems should never have occurred. You were correct when you said that the Bush/Quayle Administration just wanted "to keep things the way they are." As early as 1986, the Office of Technology Assessment (OTA) was reporting that industry could reduce the volume of hazardous waste being generated by 50% within five years with off-the-shelf technology. But with the Bush Administrations "business as usual" attitude of maintaining the status quo, we only saw an increase in the amount of hazardous waste being generated, the permitting of more and more hazardous waste management facilities, and ultimately more poisons introduced into our environment - all needlessly and at great expense to human health and the environment.

The National Governors' Association, in conjunction with the EPA, reviewed the capacity assurance process and found nearly 70% overcapacity nationally for the disposal of hazardous waste. According to Capacity Assurance Plan (CAP) figures for Ohio, the state already has approximately two and one-half times the incineration capacity necessary to burn all of the hazardous waste generated in the state of Ohio. With the addition of WTI, Ohio will have roughly four times the incineration capacity it needs, making it absolutely certain that WTI will act as a magnet in attracting waste from all over the country, and the world, since WTI is permitted to receive waste from foreign countries.

Ohio has been declared the third most polluted state in the country. The situation in East Liverpool and the Ohio River Valley is particularly bad because the area is prone to air inversions that trap toxic emissions in the valley. The area is already so polluted and the cancer rates are so high, many believe that the area has been designated as a "Sacrifice Zone" where, supposedly, no one will notice a "little more" pollution. The people of this valley cannot tolerate more pollution and further exposure to toxic substances in their environment. Information recently released by the Ohio Department of Health concerning Cancer rates for East Liverpool indicate that women living in East Liverpool have a 590% greater risk of dying of cancer of the cervix than the national average. Citizens living in East Liverpool have a 300% greater risk of dying of liver cancer. In fact, the mortality (death) rates per 100,000 are higher in East

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Liverpool for seven of nine cancer groupings.

As a registered Nurse, I have seen near epidemic proportions of respiratory ailments among the citizens of the Ohio Valley, most especially the children. Everyone is at risk from the effects of toxic pollution, but at greater risk are the children because of their fragile developing systems and immature immune system.

We cannot afford to leave the legacy of WTI to our children. WTI came into our economically depressed, impoverished river town and took advantage of the fact that the people desperately needed jobs. They came into the minority neighborhood of our community under the guise of a waste-to-energy plant, boasting that they would build the world's largest commercial hazardous waste incinerator, provide an economic boost, badly needed jobs and cheap energy that would attract new industry. They also said that the only thing that would come out of their stack was "water vapor"! Since then, through extensive research, we've learned that commercial hazardous waste incinerators are not safe, they are not wanted, and they are not needed. And in the case of WTI, we have learned that their permits are illegal! The sole purpose behind the project is to generate huge profits for greedy investors at the expense of our children's health.

President Clinton, as we listened to your inaugural address, it was as if your message was directed at us.

We understood what you meant when you said, "Though our challenges are fearsome, so are our strengths." WTI challenged us where we are most vulnerable: they threatened our children. And yet, out of that vulnerability came the strength to fight, to say NO to a politically and financially powerful multinational Swiss corporation who would poison our children for their profit.

We agree that politics need to be reformed "so that power and privilege no longer shout down the voice of the people." The voices of the people in the Ohio Valley have been shouted down for 12 years under the Reagan/Bush Administration. Knowing what is at stake, we have no choice but to continue our struggle. We have truth and love on our side. We have the facts. We know we are right. Our children's health and future are in jeopardy. We've been forced to make many sacrifices, but any suffering we've had to endure in the last 12 years will pale in comparison to the suffering that will result if WTI is ever allowed to operate. Our sacrifices have been made easier knowing that if we don't take action now to stop this injustice, it will be our children who will be sacrificed later.

The people of the Ohio Valley have sacrificed enough and have struggled far too long. Not only have we been willing to sacrifice our freedom by spending time in jail for trying to protect our families, many parents made the ultimate sacrifice during a forty-three day hunger strike when they were willing to put their own lives on the line for their children. The sacrificing continues, and as of February 3, many people face additional jail time as a result of WTI's attempt to restrict our rights to protect our families.

It is time for you to put an end to the strife by fulfilling the promise you made when you said "the new Clinton-Gore Administration would not issue the plant a test burn permit until these questions are answered." It is time for you "to face hard truths and take strong steps" by halting all activity at WTI until the GAO investigation is complete, the outcome of which will confirm that WTI should never be allowed to operate.

We took WTI into court hoping to prevent the test burn in order to buy the new administration time. Prior to January 20th you were not officially in office, which may have limited your ability to take strong action. But we were successful in delaying the test burn. We carried the ball for you. Now that you are officially in office, it is time for you to act.

President Clinton, your inaugural address gave us further hope and encouragement and a belief that you would fulfill your promises when you said "Our founders saw themselves in the light of posterity. We can do no less. Anyone who has ever watched a child's eyes wander into sleep knows what posterity is. Posterity is the world to come - the world for whom we hold our ideals, from whom we have borrowed our planet, to whom we bear sacred responsibility." By these words, we believe that you truly understand what we are fighting for. It has now become your sacred responsibility. Take action now, for we cannot afford to wait.

For our children, and our children's children ...

Sincerely,


Terri Swearingen

cc: Senator Howard Metzenbaum
Senator Robert Byrd
Senator Harris Wofford
Congressman Alan Mollohan
Congressman James Traficant
Congressman Tony Hall
Attorney General Lee Fisher

Senator John Glenn
Senator John D. Rockefeller
Congressman Barney Frank
Congressman Douglas Applegate
Congressman Bob McEwen
Attorney General Mario Palumbo
U.S. EPA Administrator Carol Browner

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Environmental NEWS RELEASE



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For Immediate Release: January 8, 1993

No. 93-M007

WTI'S TRIAL BURN PLAN APPROVED

U.S. Environmental Protection Agency (EPA) Region 5 today approved Waste Technologies Industries' (WTI) plan to conduct a trial burn at its incinerator facility in East Liverpool, OH.

According to the terms of the approval, WTI cannot begin even limited commercial operation until EPA approves WTI's certification that the incinerator meets specific permit requirements that indicate incinerator effectiveness. The trial burn will be overseen and monitored on-site by technical staff from both EPA and Ohio EPA.

Under the Federal Resource Conservation and Recovery Act (RCRA) permit, WTI must conduct a trial burn to demonstrate the incinerator's ability to meet permit standards. If warranted by the results of the trial burn, EPA may impose further restrictions on the permit, including tighter emission limits.

-More-

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Region 5 received the first version of WTI's trial burn plan in August 1991. After an extensive technical review, involving several rounds of comments and revisions, Region 5 determined that WTI's trial burn plan meets all technical and legal requirements.

"The decision to approve the trial burn plan has been a very difficult one," said Region 5 Administrator Valdas V. Adamkus. "In making it, I have been fully aware of the company's rights as well as the local community's expressions of deep concern about the health impacts of incineration and the need for jobs. By allowing the trial burn to take place -- but requiring certification prior to even limited commercial operation -- I have done my best to fulfill my legal responsibility in this matter."

WTI has had a full permit under RCRA since 1985. The permit was modified in 1992 to add a spray dryer to its pollution control equipment. The modification was challenged but upheld by EPA's environmental appeals board on July 24, 1992.

The permit has withstood numerous administrative and judicial challenges, most recently in November 1992, before a Federal judge in Wheeling, WVA.

#

January 22, 1993

TO: Al /Katie /PAM

FROM: Tony Socci

RE: Important Development with Regard to WTI

On Friday, January 15, sometime after five PM, a female judge in Cleveland, OH, granted a temporary restraining order against WTI forging ahead with its test burn. The suit was filed on behalf of Greenpeace, citizens of E. Liverpool, OH, and elsewhere, and the Government Accountability Project, by attorneys for the Government Accountability Project. This latter organization was also partially successful with similar arguments presented before a court in Jacksonville, Arkansas, regarding the dioxin incinerator company, Vertak.

I think it is profoundly significant and otherwise noteworthy, that the TRO was granted on the basis of concerns over the potential damage to the food chain posed by WTI, as toxic by-products of the incineration process itself, facts which EPA and WTI were well aware of for quite some time. The same was true in the Vertak case as well. Let's face it, it suggests, as others have done, including Richard Hembra, the Director of GAO, that permitting violations are mere technicalities when compared to the actual nuts and bolts of this facility, in other words the so-called science and actual performance of this industry, and the health risks or potential adverse impact upon life, and not just the lives of humans, which, in fact, are a small component of the risk to life-restoring and life-sustaining processes overall, the food chain. But that is not to trivialize violations of the permitting process itself, which are designed to protect against abuses and safeguard safety as well.

As part of their argument presented by attorneys for the Government Accountability Project, it was made clear to the judge that EPA had granted WTI a permit to conduct a test-burn after only having in hand or requiring completion of Phase II of its Health Risk Assessment. The EPA/WTI had stated that they would supply Phase II of this report sometime after the permitting process was complete, somewhere down the road. As the attorneys underscored however, the point is this - Phase I of this Assessment is confined exclusively to the health risk due to airborne particles/gases which, for the most part, remain airborne. What EPA has never disclosed, yet is contained in their own reports, is the fact that what remains in the air is less than 1% of the effluent which emerges from the stack.

Most of what comes out of that stack, greater than 99% by volume, enters the food chain, a fact which is again contained in EPA documents. In addition, it was also pointed out to this judge that somewhere between 60 to 90% of the gases/compounds emitted from the stack are unknown. In other words, most of the reactions of materials moving through this hot stack, are unknown. This too is well known by EPA and contained in their reports as well. In fact, some reactions/compounds which form in the stack, are more toxic than some of what went in for burning and alleged de-toxification.

There are little or no model studies of these reactions. And again I would ask, why not. Where has EPA been and what have they been doing for twelve years? We ought to know a lot about the performance and health effects of this industry and we know next to jack shit. How come?

So, quite logically and quite correctly, the emphasis in that risk assessment should be where the greatest risk will be, in this case, the food chain (synonymous with health as well). So, the judge asked, why did EPA not produce that assessment before permitting WTI, especially with the right to proceed with a test burn? As the attorneys for the Government Accountability Project maintained in their brief, the reason EPA/WTI have not produced Phase II of the Health Risk Assessment, the risk to the food chain, before being granted a test-burn permit, and others, is that WTI was virtually certain of being unable to meet the EPA cutoff for acceptable health risks (number of cancer-related deaths per million population - in this case I believe the acceptable level of risk determined by EPA is 10 cancer deaths per million population), by at least 3 to 4 orders of magnitude! In other words, 1000 to 10,000 additional cancer deaths beyond the minimum acceptable level of risk established by EPA!

} ? evidence?

In addition, neither Phase I nor Phase II health assessments address the heavy metals such as lead, mercury, cadmium and other things, which are known, toxic by-products of incinerators. Let it also not be forgotten that this region was slated to be identified, or was identified, as a superfund site. The lead levels in many children examined in this region are dangerous according to EPA standards.

Charles Waterman, III, attorney for WTI, along with Greer Goldman, attorney for the US Dept. of Justice, and EPA officials(?) thereafter only served to anger this judge, as indicated by the tone and content of this judge's questions which were focused on the issue of the impact upon the food chain. She was appalled that EPA would give WTI a test-burn permit in the absence of this assessment. This judge then reminded EPA, WTI, and the Justice Department, of the enormous damage to life which occurred recently when 190

→ EPA does not have to look at previous levels in setting permiting.

thousand tons of a highly toxic substance leaked into the Sacramento River this past summer, and other incidents as well. The point here again, in this judge's profound astuteness, is that WTI has the capacity to store hundreds of thousands of gallons of toxic material/liquid, in storage tanks which sit right in the Ohio River, at best on the floodplain, with no containment. The potential risk here is obvious and real. The judge apparently became very angry with EPA in particular. One thing was certain, this judge was not about to be bullshitted by Justice, WTI, or EPA. She was well read, bright and gutsy.

If one succumbs to some form of cancer, nervous disorder, or other form of poisoning from the effluents of this industry, there is no dollar amount known in the civilized world, to my knowledge, that would be sufficient to restore one's health, and the health of the biosphere, which is the real concern here, the entire biosphere/the food chain. Worrying about damages to health due to toxins, much like superfund sites, are a literal sink for as much currency as the world can produce, and the net result will even then have largely only likely resulted in transferring the problem from A to B. The effort has to be placed in prevention and/or vastly more efficient technology, a technology built upon solid science and creativity, and run by scientists/technologists, not the mob, or would-be entrepreneurs, for profit. These are not gambling casinos.

What's Blake Marshall's real knowledge of this business/industry, aside from the money part of it? How about zero? This industry is life-threatening, and therefore, requires more regulation and monitoring (there is presently zero monitoring of this industry once permitted), not that I am advocating incineration.

There are 18 incinerators on line today, and in virtually all of these areas there has been emerging, if not very visible health problems, and these plants are in areas where there are no special atmospheric effects such as temp./cloud inversions helping to trap gases, as is the case with WTI. Yet over the last 12 years what little data base there is, is completely untrustworthy, in my view, and the wholesale lack of a monitoring and data gathering program over this time is criminal in and of itself. The court records of this industry, many of the same players now involved in WTI itself, is atrocious, replete with criminal violations, fines (of which EPA has never seen an actual dime), fraud, permanently impaired health of living things, and death. And believe it or not, the judge in this case asked EPA just that: where is the track record of this industry from the monitoring of 18 such facilities over the last twelve years?

Getting back to the granting of the TRO against WTI, the judge called for the hearing of arguments on Monday, which would likely have gone through Tuesday. However, I have learned that EPA and Justice cannot pull things together until Friday or this coming week, apparently. I have just learned that the EPA showed up for this hearing in Cleveland and asked for an extension of time to further prepare their case. The judge set a new hearing date for February 7th.

Let me remind you of some important matters here Al which may have fallen by the wayside in the miles of information generated by this case. In at least two instances, October of 1991, when Terri Swearingen and others went to court, and most recently, in West Virginia, when the Attorney General of West Virginia sought a TRO against WTI and others, Swearingen, the State of WVA, and others had world-class experts ranging in expertise from the health effects and impact of dioxins, and dioxin-like compounds, lead (Herbert Needleman - whose work paved the way for removing lead from gasoline - who has also been accused by hired guns for the lead industry, for doing fraudulent science, only to be completely exonerated - in the process however, and since, NIH and the Univ. of Pittsburgh have made his life difficult - Health and Human Services and the Justice Dept., have within the last month, sought records of Needleman's data from the Univ. of Pittsburgh - neither the Univ. of Pittsburgh nor the Justice Dept. will give him a copy of what they obtained from the Univ. of Pittsburgh - investigators at HHS are same ones from NIH under Healy, who earlier tried to undercut Needleman - they since moved over to HHS - Needleman needs protection Al in the worst way - we've talked at great length, and he's asked for help as well - they are out to get him - his science is world class and first rate - his work on the health effects of lead has been corroborated independently many times over since he first made the claim - industry and govt. are after him), and mercury, including the hazards of transporting toxic waste along roads surrounding WTI, as well as the history of the inversions within the valley where WTI sits, and the microclimate. These experts will be there on Thursday/Friday. This part of the country also has one of the highest incidences of accidents involving the transport of toxic waste products.

There is a great deal of world-class, outright refutation of EPA's and WTI's contentions of safety here, much of which has remained unknown due to the efforts of Justice to keep the lid on, WTI, and others. Only in the last two months, for example, have Swearingen's attorney's been provided with a copy of the transcript of her trial in October of 1991, and even that was on diskette! None of this testimony has ever been seen outside of these court proceedings, and that's no accident. What happened to fundamental justice? Why too was it more important to put

protestors, most of whom were members of the community surrounding WTI, at the head of the list for sentencing and jailing, when hard-core criminals were, in some cases, waiting 3 years to go to jail. Protesting was more dangerous to society than hard-core crimes apparently. WTI has bought justice. It cannot be had for the average person.

In response to Friday's court action, WTI tried to go back to their friendly judge in West VA (Bush appointee), to obtain a restraining order preventing those mentioned above, from being able to acquire a TRO in Cleveland, on the grounds that the same information was heard in West VA, where the judge ruled in WTI's favor, by a cat's whisker, according to that judge. This is not true however, and the argument has not been accepted in Cleveland. In fact, when asked by the judge in Cleveland, if WTI would agree not to proceed with burning while she reviewed the case, WTI stated that they would not agree not to continue burning over that period of time. And with that, the judge issued the TRO against WTI. How come WTI is always in a rush Al?

Al, if you were looking for support of your call for an investigation, the actions of this judge, in my view, re-affirm your concerns, and strengthen your position considerably, as well as serving to provide a platform for you to underscore and redouble your concerns once again. I am certain that the National Academy of Sciences would weigh in their concerns as well, if asked. In every instance, as the pressure mounted, WTI (and EPA by association) reverted more and more to a PR firm, Paul Wirth and Associates of Washington, the same firm that was hired by a consortium of waste and chemical industries (Dupont was one of the leaders as I recall) to defeat a referendum on the toxic labelling law which Nader supported in Ohio recently. WTI's response was to highlight the need for haste in permitting. The last thing that anyone should be with regard to this industry, given the stakes, is hasty. What's the rush? In WTI's view, principally money, not health. Just look at all of their PR and the record of the courts. What about holding this company to proving that it can deliver the goods? We know they know how to take money.

In short Al, this recent decision to grant a temporary TRO against WTI could, in my view, be used as a platform to highlight the fact that there is very good reason for concern, as you have indicated.

The citizens of WTI are also willing to drop the legal action, if there is some signal from the new Administration that WTI will be held up pending an investigation. Otherwise, they will proceed in the courts, but at considerable personal cost which they would prefer to avoid.

Moreover, I have remained convinced that food chain effects are pre-eminently important considerations, even fundamental, as a legally viable and important concept as well. In my opinion, there is no less scientific resolvability here than in the realm of global warming or global climate change. It seems to me that we went a long way in the realm of global warming, and on very solid footage, in a realm which most would have considered very gray, vastly moreso than the measured or predicted effect/impact of toxic waste incineration by-products.

In light of this, I wish to underscore once again Al the value of emphasizing concern for toxification of the food chain by pointing to the recent court decision born out of the compelling and substantive basis for concern here. This is the heart and soul of this industry, the goods it purports to deliver. As far as I am aware, the GAO investigation, as presently envisioned, will not specifically address the issue of the food chain or other matters of substance, and I remain concerned and troubled over this, as well as GAO itself. As I said before, the Natl. Academy of Sciences could do a lot here. They just produced a terrific report on the history of the handling of the mustard gas issue, and the effects of mustard gas. It is my understanding that the report includes a strong censure of government and corporate corruption.

I and others have done our best to try to strap GAO in tight to maximize the likelihood of getting a solid, unbiased investigative effort here, into this whole matter. I have also taken the liberty of addressing the food chain issue as well, in these questions, which can be edited or removed as seen fit. If WTI, EPA and the Justice Dept. can get away with this, what's disallowable anymore, and where can't a toxic waste facility be cited?

Furthermore, it has been rumored that industry types and others have approached Roy Neel, arguing that it is pointless to pursue an investigation into WTI, especially since it is already built, in addition to there being no smoking gun. If true, my only comment is, is this not the environmental equity issue in itself, in a nutshell? How can it be argued at this point, or allowed to be argued, by WTI or others, that the reason, in part, that nothing can be done at this point, is that the facility is already built? My response to this is that it's all too convenient to bulldoze and bastardize every permitting process, and then turn around and use the fact that the facility now exists and is operational, as the reason why it must now continue to exist. If that isn't the essence of corporate arrogance, hypocrisy and outright bullshit, what is? And wasn't that the game plan all along?

In my view Al, much of the outcome of this matter is predicated upon your resolve, your conviction, and your singlemindedness. When this industry sees itself in trouble how does it respond? By addressing the problems? No, by hiring an advertising agency, as a tax deductible business expenditure. Grass-roots organizations can't do likewise. Even worse, they must bear the burden of the cost of fighting against companies like WTI, a case of sling shots versus high tech weaponry, while helping to pay for the PR campaigns directed against them and others. Is this not inequitable as well, in addition to being fiscally insane? As a side note, Jim Baker's first decision as campaign director for the re-election of Bush/Quayle was to attend to Bush's television image.

Al, I am convinced that WTI and others cannot withstand a full-blown investigation, or for that matter the EPA, parts of which I consider a rat's nest. Most of this industry has avoided court proceedings because they sought to avoid having to turn over materials in the discovery process. WTI began as an entrepreneurial venture on the part of an individual(s) looking to augment his personal wealth. It began by the selling of a permit to Von Roll, for a very healthy sum of money. Bear in mind that RCRA rules were established, in large part, to pre-empt the sale of permits as a means of profiteering. Let me also reiterate that this country has toxic waste facilities whose capacity exceeds the waste by 70%. Am I to understand then that WTI was built just to make money? And EPA sanctioned this? That's one hell of a reason to have a toxic waste facility on a river in a valley subject to inversions 70% of the time (I have enclosed the story of the town of Dunora, PA - the site of this country's worst toxic waste disaster, arguably, involving the death of 20 or 21 people, and six thousand others who succumbed to illnesses - Dunora is 20 minutes from the WTI site, in the same valley system).