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WTI [Waste Technologies Industries] Pertinent

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001. letters	E Liverpool Health Commissioner to Parents re Lead Study results [partial] (6 pages)	09/00/1992	b(6)
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COLLECTION:

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

FOLDER TITLE:

WTI [Waste Technologies Industries] Pertinent

2012-0769-F

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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]
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- b(1) National security classified information [(b)(1) of the FOIA]
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- b(6) Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]
- b(7) Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
- 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]

**PHOTOCOPY
PRESERVATION****OHIO VALLEY UNIONS AFFIRM SUPPORT FOR HALT TO WTI INCINERATOR**

February 3, 1993

Dear President Clinton & Vice-President Gore,

We are writing to express our complete support for your commitment to a full investigation by the Government Accounting Office (GAO) into the Waste Technologies Incorporated (WTI) incinerator in East Liverpool, Ohio. Although the Bush Administration made every effort to expedite a trial burn at this facility, a temporary restraining order has now postponed this test long enough to allow your Administration full authority to implement your December 7, 1992 commitment to "not issue the plant a test burn permit until these questions are answered." Given the record of behavior by this facility, we urge you to take this action today and to also halt the additional "shakedown" burning that WTI is now requesting.

Because this facility is the first new industrial plant to be constructed in the Ohio Valley in a generation, its owners have argued that this is exactly what you have in mind when you speak of new environmental industries and new jobs. We hope not. From our perspective, workers in this valley are being subjected to jobs blackmail by the Swiss-based Von Roll and other multinational toxic waste brokers. WTI's incinerator is certainly not the key to revitalization of the Ohio Valley economy.

The people of the Ohio Valley have been promised that the WTI facility is the key to future development and investment in this area. Yet neither Von Roll, EPA, nor any other proponent of the plant can point to a single community in the United States that has prospered after siting a hazardous waste facility within its borders. To the contrary, the experience of places like Emelle, Alabama or the South side of Chicago teach that hazardous waste sites lead to lower land values, a less diversified local economy and a decline in population.

In our view, this community is being exploited by the hazardous waste industry, which has calculated that East Liverpool will accept what no other community wants due to its depressed economic condition. Time and again, Von Roll and its agents have ignored the valid concerns of the community, made a mockery of local democratic processes and forced this project forward over the vocal opposition of most Ohio Valley residents. We expect better than to be targeted as a national dumpsite and scrap heap for the next generation of American industry. We would prefer to send thousands of skilled workers to clean and efficient manufacturing facilities that might locate here, rather than send a hundred to unsafe jobs burning the waste generated by thriving manufacturing communities elsewhere.

We interpret your commitment to good jobs and environmental protection to mean skilled jobs in modern, efficient industries that match or better our global competitors. We do not agree that the toxic waste treatment industry ought to be the cornerstone of that vision.

For these reasons, we applaud your commitment to a full GAO investigation of WTI facility in East Liverpool. We are confident that an impartial review of the record will find the facility is both unsafe and illegal.

Thank you for your continuing support.

Sincerely.

George Danford, President
AFL-CIO Local 478
Hancock County Federation of Teachers
West Virginia Federation of Teachers
American Federation of Teachers

**PHOTOCOPY
PRESERVATION**

David Kimmel, President
Local 1714
United Auto Workers

Rick Ramm
Local Union 4300
Communication Workers of America

Lawrence R. Mallas
United Steelworkers of America
Local 1190

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GREENPEACE

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FEBRUARY 6, 1993

PHOTOCOPY
PRESERVATION

TO: President Bill Clinton and Vice President Al Gore
c/o Katie McGinty

FR: Barbara Dudley, Executive Director

RE: U.S. EPA's role in the WTI incinerator in Ohio

As you may already know, myself and a delegation of residents of the Ohio Valley and other Greenpeace staff met with your EPA Administrator Carol Browner today regarding the Waste Technologies Industries (WTI) hazardous waste incinerator in East Liverpool, Ohio. After a short discussion, Ms. Browner had to recuse herself from this case for specific ethical reasons. We certainly commend Ms. Browner for her most appropriate behavior in regards to this matter.

We are, however, concerned that the individual who is assigned to this case may not be fully aware of the position your Administration has taken on this facility. As you recall, you announced on December 7, 1992, that you would not allow the issuance of a testburn permit for this facility until a full investigation by the General Accounting Office.

We request that your office instruct Mr. Dick Morganstern, Acting Deputy Administrator appointed by the Reagan/Bush/Quayle EPA Administrator William Reilly, of the stand your Administration has taken on WTI.

Thank you for your immediate attention to this most critical matter. I look forward to hearing from you - there is no time to waste.

cc: Media

Morning Journal
12/18/92 p.1

EPA won't wait

Agency to act before Jan. 20

From staff, wire reports

EAST LIVERPOOL — President Bush's lame-duck Environmental Protection Agency will act on Waste Technologies Industries' request to conduct a test burn at its hazardous waste incinerator here, outgoing EPA administrator William Reilly said Thursday in Washington, D.C.

He told reporters the EPA's regional office would handle the WTI permit request before Democrats take over on Jan. 20.

"There will be action taken on that before then," Reilly said. "I'm not going to say what it is."

"They will have action on their trial burn proposal in the very near future."

He didn't provide a timetable and no one was available at the regional EPA office in Chicago to respond to questions late Thursday.

Mark Floegel of Greenpeace said he believes Reilly's announcement will create problems for a smooth transition from the Bush to the Clinton administration.

"It's just part of the pattern of inappropriate behavior of the Bush/Reilly EPA," Floegel said. "I'm outraged."

WTI spokeswoman Julia Bircher did not return calls for comment by press time last night.

Vice President-elect Al Gore is seeking further study of the hazardous waste incinerator, and in the meantime wants no action on its final stage testing permit.

Gore said the EPA has

(Continued on Page 3A)

EPA...

(Continued from Page 1A)

"downplayed or ignored" questions about the health effects of lead and mercury emissions, construction standards and location of the facility.

Reilly conceded problems with the location, saying "It could have been better sited ... but siting is not in the jurisdiction of EPA."

The incinerator is about 300 feet from the nearest neighborhood, 1,100 feet from an elementary school and atop freshwater aquifers.

The \$160 million incinerator

on the Ohio River already has regulatory permission for a "shakedown burn" of hazardous wastes.

If the shakedown is successful, a trial burn involving hazardous wastes would follow. Regulatory approval for that test is the issue Reilly wants to resolve before Jan. 20.

**MOONLIGHT
MADNESS**

CURRENT DEVELOPMENTS

2029

to high-level waste standards, released in early December. The review by NAS's National Research Council Board of Radioactive Waste Management began at a conference Sept. 23-24 (23 ER 1468). Technical issues under discussion were human intrusion, uncertainty propagation, transuranic waste equivalence unit, multi-mode release limits, and collective dose (23 ER 1381).

The Department of Energy and EPA have had significant differences over the development of high-level and TRU waste standards, with DOE maintaining that many technical issues are still unresolved (22 ER 2437). The Department of Energy is charged with managing and disposing of the United States' high-level and TRU wastes, while EPA is charged with developing standards for disposal.

But Durman said the report's findings indicate that DOE's approach is not technically supported, and is not as protective as EPA's. "We don't feel that EPA will be required to take a basically different direction," he said.

OMB Review By End Of Year

EPA is on schedule in developing its high-level and TRU waste regulations, which it has made a high priority over the past year, Durman said. The agency has finished an internal draft, which it expects to go to the Office of Management and Budget within the next week, he said. To meet a congressionally imposed deadline of April 8, 1993, the agency has asked OMB to review the standards within a few weeks, he said. Durman said he expects OMB to support the standards.

EPA is required to develop final disposal standards by April 8 by the WIPP Land Withdrawal Act (S 1671), signed Oct. 30, which enables the government to open the Waste Isolation Pilot Plant in eastern New Mexico to shipments of radioactive waste (23 ER 1591). The law reinstated EPA standards that were published in 1985 (40 CFR 191) except for a part that was invalidated by a federal appeals court (*NRDC v. EPA*, 824 F.2d 1258, 1987, 26 ERC 1233).

Subpart B of 40 CFR 191, which sets standards for disposal, was remanded to the agency. The only new parts of the upcoming regulations will deal with ground water protection and individual protection, Durman said.

Disposal and management standards would apply to all facilities regulated by the Nuclear Regulatory Commission, DOE facilities that are not licensed under NRC, and facilities in states with which NRC or the Atomic Energy Commission has entered into agreements under the Atomic Energy Act of 1954.

Information on the report, *Review of Analyses by the U.S. Department of Energy of Selected Technical Issues in the Environmental Protection Agency Standards for High-Level and Transuranic Radioactive Wastes* (40 CFR 191), is available from Craig Hicks of the National Academy of Sciences at (202) 334-2138.

Hazardous Waste

GORE SAYS CLINTON ADMINISTRATION WILL BLOCK TRIAL BURN OF WTI INCINERATOR

Vice President-elect Al Gore announced Dec. 7 that the Clinton administration would block a trial burn at a new Ohio hazardous waste incinerator, pending an investigation by the General Accounting Office.

Gore was backed by six members of Congress in seeking the GAO study and said the Clinton administration would fulfill a campaign promise to stop the trial burn at the Waste Technologies Industries site in East Liverpool, Ohio, pending the investigation.

The \$140 million incinerator is now complete and fully permitted and is conducting a shakedown burn, which precedes a trial burn and operational burn. If built to its full permitted capacity, WTI's incinerator would be the fourth largest in the world.

The trial burn application is now under review by the federal Environmental Protection Agency and the state EPA. An EPA Region V spokeswoman told BNA. She said the Clinton transition team has not asked for a delay in EPA approval, but she added that even under normal circumstances, the trial burn might not be approved until after the presidential inauguration. Company officials had said earlier that they wished to move ahead quickly and hoped to begin a trial burn before the end of the year.

Gore said a thorough investigation was "urgently needed" due to "safety and health of local residents rightfully concerned" about the incinerator. He said he was following up on a promise to local residents made during campaign sweeps through the area and said preliminary investigations by his staff convinced him of the need for a major investigation.

"Too many questions remain unanswered about the impact of this incinerator and the process by which it was approved," Gore said. He singled out concerns over legality of the federal permit, ownership of the corporation, health effects of lead and mercury emissions from the incinerator, construction standards, and the facility's location.

"I am cautiously elated," Connie Stein, a local opponent, told BNA. "But there has got to be a flaw in a system that forces law-abiding people to put their bodies on the line in order to bring pressure on the government just to do their job. I'm a 43-year-old housewife. I never thought I'd have to get arrested over this. I've never even had a traffic ticket."

WTI officials did not return phone calls.

12-Year Battle

WTI has been beset by community opponents since its 12-year battle began when it first applied for a permit in 1981. Von Roll A.G., the Swiss corporate owner of WTI, has been challenged by opponents for a wide range of concerns, including those identified by Gore.

They sued, went on hunger strikes, and were arrested at the site, at the Ohio EPA headquarters, and at the federal EPA's offices in Washington, D.C. Most recently, more than 100 protesters were arrested in demonstrations outside the facility's gates in the weeks before the company planned to begin a shakedown burn in late November (23 ER 1910).

Both state and federal EPAs, however, granted needed permits, and recently a U.S. District Court judge also upheld the state and federal approvals, ruling on a suit by West Virginia (*West Virginia v. Waste Technologies Inc.*, DC NWVa. No. CA 92-0072-W(S), 11/12/92). Critics charged, however, that limits placed on witnesses by the judge and the Department of Justice greatly weakened the state's ability to present its case.

The vice president-elect had visited the community during campaign trips through Ohio in July, and at that time, he spoke in opposition to the incinerator and its location, 1,100 feet from an elementary school, near homes, and 300 feet from the Ohio River, a source of drinking water for several million people.

In the past few weeks, community opponents told BNA that they have besieged Gore's office with calls. However, before the announcement, Gore and Clinton press officials had refused to answer inquiries over Gore's eventual decision.

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ENVIRONMENT REPORTER

Administration 'Litmus Test'

Community incinerator opponents said they welcomed the announcement and called it a "litmus test" for the new Clinton administration.

"If they allow this multinational polluter to go on, it will just show business as usual," Terri Swearingen, a spokeswoman with the Tri-State Environmental Council, told BNA. "But if they do a full, thorough investigation and look into the illegal permits and high emissions, it will finally show the government can act in the people's interest."

Swearingen said she was surprised by the announcement. The same was true for EPA Region V, Anne Rowan, a region official told BNA.

She said Gore staff and members of the Clinton/Gore transition team have had "one or two consultations" with EPA Region V over WTI, but no formal meetings had taken place or have been planned.

"We welcome the scrutiny," she said, "although we have been investigated before."

Concerning when a trial burn might be approved, she said, the federal EPA, Ohio EPA, and WTI have had several discussions as the shakedown burn takes place. "We certainly aren't going to rush [a trial burn approval]," she added, however.

"We have not been asked to delay the trial burn until after the inauguration, either," she noted. "We plan to cooperate with the transition team on this."

The supporting members of Congress are Sens. Robert C. Byrd (D-WVa), John Glenn (D-Ohio), Howard M. Metzenbaum (D-Ohio), John D. Rockefeller (D-WVa) and Harris Wofford (D-Penn) and Rep. Alan B. Mollohan (D-WVa). GAO has been asked to look into:

- How EPA handled the original request for a permit required under federal law;
- Ownership of WTI, because over the years, the name changes and buy-outs have reshaped the original groups that sought the permits;
- The role of the White House Competitiveness Council in allowing EPA to issue a temporary permit while a ruling was still pending before EPA;
- Safety and health concerns; and
- Whether the plant meets all federal and state environmental standards.

Air Pollution**SOME NRC-LICENSED PLANTS WOULD BE EXEMPT FROM RADIONUCLIDE NESHAPS UNDER EPA PROPOSAL**

Emission standards for radionuclides duplicate Nuclear Regulatory Commission requirements and should not apply to some NRC-licensed facilities, the Environmental Protection Agency proposed Dec. 1 (57 FR 56877).

The EPA proposal applies to facilities other than commercial nuclear power plants, such as hospitals, medical research laboratories, and radiopharmaceutical makers. The agency proposed a similar rule that applied to nuclear power plants Aug. 5, 1991 (22 ER 1026).

At issue is whether NRC regulations for these plants are tough enough to provide "an ample margin of safety to protect public health."

EPA studies of nuclear power plants and on other NRC-licensed facilities have shown radionuclide emissions fall below even those limits set by EPA. Environmentalists have criticized the move to exempt the facilities from the standards because EPA limits are more stringent.

The radionuclides NESHAP limits emissions to an "effective dose equivalent" of 10 millirem per year per person from any facility regulated by NRC. This standard is enforced by EPA. The Clean Air Act, as amended in 1990, said EPA need not regulate radionuclide emissions from NRC-licensed facilities if it determined existing NRC regulations were strict enough.

Environmentalists argued that the limits in the NESHAP administered by EPA were 10 times tougher than the NRC limits. NRC reduced its allowable dose limit for one person from 500 millirem/year to 100 millirem/year Dec. 13, 1990. The tighter standards do not take effect until January 1994.

In calculating the doses at every nuclear reactor site, EPA found they did not exceed 1.0 millirem/year—10 times less than the EPA standard—based on 1988 data.

EPA said it surveyed 6,000 non-nuclear reactor plant facilities to estimate doses and gather data. It found that "the highest estimated doses received by any member of the public from airborne emissions of radionuclides from any facility was 8.0 millirem/year."

None of the facilities exceeded EPA's limits, the agency said.

NRC rules "encourage" each licensee to "make every reasonable effort" to keep radiation exposures and releases in unrestricted areas "as low as reasonably achievable." In a memorandum of understanding with EPA, the commission agreed to issue a regulatory guide on "designing and implementing a radiation protection program to ensure that doses from these facilities will remain" as low as reasonably achievable.

EPA issued a rule April 15, 1991, staying the effectiveness of the NESHAP provision for NRC facilities other than nuclear power plants until Nov. 15, 1992, in order to collect data (21 ER 2285).

The stay has expired, and the EPA limits are currently in effect at all NRC-licensed facilities except nuclear power plants.

An EPA official told BNA, however, that these facilities must comply with the NESHAP, but "they don't have to submit a report until March 30, 1993." This essentially precludes enforcement action until that time. The agency is expected to issue a final version of the Dec. 1 proposal by the end of March 1993.

A similar stay on the NESHAP provisions is in effect for nuclear power reactors until Nov. 15, 1993.

More information can be obtained from Fran Jones, EPA, Air Standards and Economics Branch, Office of Radiation Programs, Washington, D.C. 20460; or call (202) 233-9229.

Air Pollution**CLEAN AIR ACT WAIVER EXPECTED BY YEAR'S END TO CLEAR WAY FOR CALIFORNIA VEHICLE PROGRAM**

The Environmental Protection Agency probably will grant California a waiver under the Clean Air Act at the end of the December so the state can proceed with its own emission reduction program, an agency official said Dec. 2.

Top officials from the agency's air office briefed Administrator William K. Reilly Dec. 3 on the waiver, which would pave the way for California to begin a strict program designed to drastically cut air pollution by requiring low-emission vehicles.

Environmentalists, state regulators, and health officials have joined California in working to persuade EPA to clear the way for a strict program to control air pollution from vehicles, officials from several organizations told BNA.

WTI**WASTE TECHNOLOGIES INDUSTRIES**Telephone: (404) 728-0500
Telex: (404) 728-0403

c/o Von Roll, Inc. • 3080 Northwoods Circle • Ste. 200 • Norcross, GA 30071

C.C. Adamus

Bauer

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Munn

TONY SOCCI

4 pages

January 20, 1992

JH

1/27/92

Mr. James A. Fitzhenry
Associate Director
Office of Cabinet Affairs
The White House
Washington, D.C. 20500

Re: Waste Technologies Industries
East Liverpool, Ohio

Dear Mr. Fitzhenry:

As you know, Von Roll is the owner of Waste Technologies Industries, which is in the process of building an industrial waste incineration facility in the upper Ohio River Valley, about 40 miles west of Pittsburgh. As a result of trying to do the right thing, we find ourselves facing a bureaucratic nightmare in Region V U.S. EPA which could spell the doom of this project.

By way of background, after an exhaustive permit and appeal process that began in 1981, final state and federal permits for the facility were effective and nonappealable in 1987 and 1988, respectively. Following substantial design and engineering work and preliminary site preparation, construction of foundations began in 1990. The facility is now 95% complete, at a cost of \$140 million. You should know that the facility has the support of the Ohio Manufacturers Association, the Ohio and East Liverpool Chambers of Commerce, and the majority of citizens living in East Liverpool, and will add substantial employment and tax revenues to that city.

The entire waste treatment capacity of the facility has been sold for the next 10 years to primarily Ohio Valley industries, with substantial participation by DuPont and BASF, two major Ohio Valley employers. Availability of this waste treatment capacity in the second quarter of 1992 is critical to these customers' plans for their operations, production and employment in the eastern United States in 1992.

Mr. James A. Fitzhenry
January 20, 1992
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Had the facility been built as originally permitted it would be completed and operating today, and it would meet or exceed performance requirements under state and federal law. However, based upon operating test data from a similar facility in Germany, late in 1989 Von Roll determined that performance of the facility would be enhanced by the addition of a component to the incineration system called a "spray dryer," which would include new proprietary technology developed by Von Roll. Including a spray dryer at the Ohio facility will eliminate up to 160,000 gallons per day of liquid hazardous waste residues requiring deepwell disposal, minimize formation of dioxins, and greatly improve capture of potentially harmful pollutants from the flue gas.

Although inclusion of a spray dryer was neither necessary nor beneficial from a cost standpoint, WTI approached the state and federal EPAs early in 1990 with its spray dryer proposal. (Ohio has authority to administer RCRA on the basis of its virtually identical state program; however, because the federal permit was issued prior to the grant of that authority, U.S. EPA Region V continues to administer the federal permit for the facility.) At the state level, following an eighteen-month review, the state authorized and required installation and use of the spray dryer technology, citing it as offering substantial environmental benefits. At the federal level, Region V instructed WTI to submit a "class 2" permit modification request for the spray dryer, which was completed October 29, 1990. In January 1991, Region V asked for 30 days in addition to the legally allowed 90 days to consider the request, which WTI granted. At the end of that 30-day extension, WTI was orally notified that because of "public concern", and in spite of the fact a public meeting and public hearing had produced no substantive comments on the spray dryer, Region V had determined to follow the time-consuming "class 3" modification procedures, which would include another public meeting and another public comment period, as well as a lengthy administrative appeal process.

WTI determined not to sue U.S. EPA but rather to continue in good faith to cooperate with the Regional Office. Finally, by notice in August 1991, Region V undertook the "class 3" procedures (which are more extensive than the procedures required for a new facility permit), commenced a second comment period, and conducted a second public meeting on the spray dryer.

Concerned because of this inordinate delay, WTI met with Region V staff in October 1991, almost one year after submitting the spray dryer request, to determine when Region V would finally act. At that meeting, WTI was informed that it could commence

Mr. James A. Fitzhenry
January 20, 1992
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construction of the spray dryer, but could not operate it until final U.S. EPA action, which was expected before the end of the calendar year. U.S. EPA also indicated it would consider granting WTI temporary authorization to operate the spray dryer immediately, as provided in the governing rules.

On December 18, 1991, the state gave its final approval to construct the spray dryer, which WTI undertook to do. However, in a series of telephone calls and correspondence from December 23 to January 8, Region V Assistant Regional Counsel tried to argue that WTI should not build the spray dryer until final federal action (in spite of the October meeting advice and a provision in the rules authorizing such construction); Region V would not grant the 180-day temporary authorization to operate the spray dryer; Region V would not allow WTI to use the spray dryer simply as a flue gas quencher to cool hot gases and minimize dioxin formation; and WTI could not operate the spray dryer if a request for administrative review of Region V's approval of the spray dryer was filed, a year-long process. On January 9, Region V sued WTI for \$156,250 for proceeding with construction of the spray dryer. We ceased construction on issuance of the complaint. That matter remains pending.

In sum, WTI wanted to provide an environmental improvement to the facility's operation; WTI was encouraged by U.S. EPA to undertake that change, and told it would be a simple matter processed in 90-120 days; and in reliance WTI secured \$140 million in project financing, engineered the spray dryer, and employed 250 construction workers and 100 permanent employees. We are now being penalized. Region V, which has repeatedly changed the rules of the game throughout the process, thus far has indicated they are completely unwilling to either grant a temporary authorization to operate the spray dryer provided for by rule, or to allow WTI to operate the spray dryer simply as an evaporative quencher so that WTI can begin both testing its facility and commercial operations to meet the needs of American industry. Region V's pointless rigidity jeopardizes the very existence of this modern, state-of-the-art industrial waste treatment facility and the company that built it.

→ 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

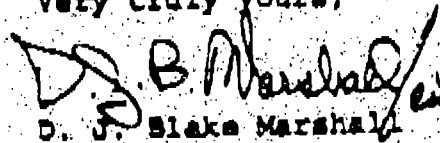
Mr. James A. Fitzhenry
January 20, 1992
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- authorization has been submitted to Region V);
2. no rejection by Region V of the class 1 permit change for the evaporative quench operation (which has been requested by WTI); and
 3. prompt review by Director Bailly'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.

Please contact me if you have any questions.

Very truly yours,


D. J. Blake Marshall

CHW/vac
ACLOAF47



STATE OF WEST VIRGINIA
OFFICE OF THE ATTORNEY GENERAL
CHARLESTON 25305

MARIO J. PALUMBO
ATTORNEY GENERAL

RICHARD L. GOTTLIEB
CHIEF DEPUTY ATTORNEY GENERAL

(304) 348-2021
FAX 348-0140

December 7, 1992

VIA FEDERAL EXPRESS

The Honorable Albert Gore, Jr.
United States Senate
393 Senate Russell Building
Washington, D.C. 20510

Dear Senator Gore:

Thank you for your efforts to stop the operation of the Waste Technologies Industries hazardous waste incinerator at East Liverpool, Ohio, until a thorough investigation is conducted by the General Accounting Office.

This action is the best Christmas present that you could give to our children who live in the Northern Panhandle of West Virginia.

Very truly yours,

A handwritten signature in cursive script that reads "Mario J. Palumbo".

MARIO J. PALUMBO
ATTORNEY GENERAL

MJP/jy
AGOEX

OHIO

PAULA COTTER

for

(614) 466-3843

Attorney General Lee Fisher

- Michael Fisher, Scheduler

- Julie Graham, Public Information Officer

PH: 614/466-3376

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NEW JERSEY

Governor Jim Florio

- Greg Lawler, Chief of Staff

PH: 609/292-6000

2766

3843

614/466-9680

SPECIAL REPORT:
WASTE TECHNOLOGIES INDUSTRIES:
East Liverpool, Ohio

There has been an on-going debate regarding the safety and location of the WTI industrial waste incinerator for over a decade. While there were irregularities in the original EPA permit granted to WTI, the debate has assumed such proportion because of the effectiveness of the outside agitation and propaganda of Greenpeace.

When the Crucible Steel Company of Midland, Pa. closed down in the early eighties, East Liverpool fell into hard times. When the big pottery mills shut their gates, the town of 14,000 was left economically crippled. The local Chamber of Commerce decided to undertake a radical plan of action in the hope of revitalizing the city. It was decided to construct a large commercial port facility because of the town's location and existing infrastructure. (East Liverpool is the Northern-most point of the Ohio river accessible by large ships. There is also a great deal of industry located on the river within a fifty-mile radius of East Liverpool. It is also an ideal location should plans to construct a canal linking the Ohio river with Lake Erie become a reality.) The plan was approved in Columbus, and a partial disbursement of funds was given to the Columbiana County Port Authority. Unfortunately, because of the subsequent financial crunch faced by Ohio, the rest of the funds were eliminated, and the Port Authority was told to make due with the money in hand. The

income generated by WTI will finance the Columbiana Port, and an anticipated 1,000 jobs will be a reality.

East Liverpool's unemployment rate of 10% belies the fact that a vast majority of the local population is underemployed ("burger flippers"); Aid to Dependent Children, and free school lunch program participants are roughly double the national average. WTI directly offers 160 jobs to the community (100 full time, 60 construction-related, with a payroll of \$4 million), for which it has received in excess of 11,000 applications. 90% of WTI's employees are local. It is also anticipated that WTI will attract more industry to the area (although many citizens fear that the tactics of Greenpeace will scare off potential industry.) But the most important economic factor for consideration will be the direct revenue from WTI. The city of East Liverpool will receive a "tipping fee" of \$10 per ton. As WTI has already contracted out a full decade of service (primarily to BASF, Du Pont, and Chemical Waste Management (1)), revenues are certain to be \$600,000 the first year. When WTI adds a second kiln (projected 1995), that revenue will double to \$1.2 million (with their second kiln, capacity and emissions will double as well). East Liverpool's current budget is \$2.5 million. Additional revenue will be generated by property taxes, city income taxes, a school tax, and the attendant economic ripple effect. (Much of this revenue is earmarked for badly-needed downtown renewal.)

The fact that WTI is opposed by Greenpeace would seem strange. WTI is "green technology" that disposes of hazardous waste. (Greenpeace is the only environmental organization that opposes this plant, with the exception of one local chapter of the Sierra Club.)

Because of the industry of the Ohio River Valley, there is a great deal of hazardous waste produced, and the current method of dealing with it is to send it to landfills. Decreasing capacity of landfills and the not-in-my-backyard-syndrome has raised the question of what to do with this by-product of industrial activity. WTI, through incineration, will vastly reduce the volume of waste that must be dumped into landfills, and will permanently destroy the hazardous organics in the waste, thereby preventing future environmental problems (EPA standards limit emissions to a maximum of 0.0001, one ten-thousandth, of hazardous compounds in the waste, WTI's emissions will actually be a minute fraction of the EPA standard). The Resource Conservation and Recovery Act of 1976 (RCRA) favors the destruction of hazardous waste rather than its storage in landfills. (Von Roll has pioneered the technology that makes it possible to destroy this waste while maintaining emissions standards that exceed those stipulated by Ohio EPA, and US EPA by far. A tour of the plant leaves one with the realization that an overwhelming commitment to safety exists at WTI. The redundancies and safety features of the plant are truly impressive. It should be noted that although WTI is sited on the bank of the Ohio river, no deliveries will be taken by way of the river. WTI maintains an open door policy, and was very forthcoming and cooperative.)

One of the most attractive features of WTI is its commitment to the community. They have already invested some \$150 million in the plant, and are losing \$2 million per month because of the delays caused by Greenpeace (the incinerator was supposed to be in full operation by 1985.) In addition, this disruption has cost East

Liverpool a Pillsbury plant that was to locate next to WTI with the intention of purchasing WTI's steam by-product to power the plant. No one knows how many potential industries have shied away from the area because of the activities of Greenpeace. WTI has taken many steps to make itself attractive to the community, and the community has responded in kind. (The attitude of the residents is far from a reckless love of industry, but is "Open this plant, but keep it monitored.")

The community is not divided over this issue. The press has latched on to this view because of the activities of very vocal minority of about 40. Residents of East Liverpool overwhelmingly desires this plant to go on line as soon as possible. It is estimated that better than 85% of the city favors the plant. This conservative figure was derived from the only referendum concerning WTI, in which the community approved a measure to allow WTI to use municipal water storage. Because of advances in the plant technology, WTI will no longer need the use of the water storage.

The opposition to WTI comes chiefly from Greenpeace, and a handful of local activists. While the plant will greatly reduce hazardous waste, Greenpeace maintains that the ability to reduce such waste will encourage industry to produce more hazardous waste. (Greenpeace maintains that "pollution is a sin, not a cost, and should be outlawed, not taxed -- even if that means shutting down industry." Additionally, "Greenpeace gives research grants but doesn't fund research on cleaning up toxic or nuclear wastes. Why? Greenpeace says its role is to prevent pollution rather than cleaning it up. It seems that finding solutions to the safe disposal of such

wastes undermines the Greenpeace objectives of eliminating the industrial processes that create waste." Forbes 11/11/91.)

In their opposition to WTI, Greenpeace has bussed in outside professional agitators and Greenpeace staff to protest. Greenpeace has conducted a reign of terror in an effort to silence proponents of the plant, issuing death threats, committing violence and vandalism, attacking and intimidating WTI employees, and demanding boycotts of the businesses that support WTI. Most of these events have not been publicized for fear of inciting more of the same. The degree of sophistication indicates a professional expertise (for instance, death threats sent to a member of the Chamber of Commerce were not pursued by the FBI because the threats were "too general" -- these eco-terrorists know exactly how far they can go before they can be prosecuted.)

In addition, Greenpeace has distorted and cited out of context every aspect of this affair. (Imagine my surprise when Greenpeace included Rep. Traficant in their list of congressional allies united against WTI! They had of course, deeply exaggerated the scope and intent of the Applegate amendment.) Greenpeace has conducted a truly admirable smear campaign based on lies, omissions, distortion, and unsubstantiated innuendo. Almost every issue of contention has a pat answer, including ownership.

WTI is wholly owned by Von Roll America, an affiliate of Von Roll AG, a multi-national, publicly-owned corporation based in Switzerland. Their American subsidiary, Von Roll America, based in Norcross, Georgia owns Von Roll Ohio, which is responsible for the day-to-day operation of the plant. (Ultimate accountability lies with

Von Roll America, but because of cradle-to-grave culpability of hazardous material disposal, the hazmat client shares responsibility for the material.) (The question of ownership was brought up because WTI requested a new permit so they could introduce a technological breakthrough, the "spray dryer" technology that eliminates the aforementioned contaminated waste water. On the new permit, Von Roll was listed as the owner, as the delay in opening the plant and Greenpeace's stalling tactics caused the other business partners to pull out. Von Roll America is the sole owner.)

Von Roll AG has been around since 1823, and has extensive operations in the U.S., Japan, and all over Europe. There is no shell game, as is alleged by Greenpeace. According to WTI's lawyer, "Much of the confusion which seems to have arisen on the WTI ownership issue has been engendered by misplaced commas and careless use of abbreviations in the various corporate names over the past ten years. The fact is, however, that the ownership history of WTI is quite straightforward. WTI started out in 1981 with four partners, one owned by each: Stephens, Inc. of Little Rock, Arkansas (2), Mustang Production Company of Oklahoma City, Oklahoma, Koppers, Inc. of Pittsburgh, Pennsylvania (3) and Von Roll AG of Switzerland. The permitting and development phases took a great deal longer than was originally envisioned by the four original participants and over the years, all but Von Roll America, Inc., decided they did not want to proceed. As a consequence, Von Roll America, Inc., bought out the other participants by buying the stock of each of the other partners of WTI."

Greenpeace activists also maintain that the plant's location (1,100 yards) near an elementary school is reason to keep the plant from opening. In reality, for the type of facility WTI is, it is well within US EPA and Ohio EPA guidelines (one should recall that WTI's emissions are absolutely minimal, much lower than EPA regulations). WTI met this challenge by installing an unrequired sensor at the school (cost= \$1 million) that will automatically shut the incinerator down should emissions exceed their prescribed levels. (In addition, there are such sensors in the kiln's exhaust stack, as well as at another independent on-site station.) The opponents also maintain that the site is on a 100-year floodplain. This is simply not true. The plant is situated above the 500-year floodplain. With regard to the question of land ownership, (Greenpeace effectively used a red-herring regarding land ownership to further question the validity of the site of WTI), the Port Authority is selling the land to WTI. (I have seen the documents, it was approved by the Port Authority Aug.10. Actual transfer will happen Sept. 10.)

Von Roll is serious about WTI. They are losing \$2 million per month because of these delays. It is the intention of Von Roll to use this facility as their "International Showcase Facility," bringing potential customers to East Liverpool to show their corporate gem. It is the most-modern, technologically-advanced waste incinerator anywhere in the world. Waste incineration is regarded as safe by the EPA. There have been no environmental mishaps that have occurred with them. (By contrast, the local PPG plant has been using their private hazardous materials incinerator for years with no ill effect.)

While Greenpeace has created the image that opposition to WTI is formidable, it is my opinion that this opposition consists essentially of outsiders. Of the local opponents, many can be dismissed out of hand as disenfranchised individuals who are made to feel important by their inclusion (their face on TV, a quote in the paper, and a feeling of belonging). Having met and talked to several, I was left with the feeling that these people are quite cynical to the point of being paranoid, they all make allegations about government plots and EPA corruption to "poison the children" of this region.

As a point of interest, Rep. Staggers vociferously opposed WTI. Many back in the district feel this was a major factor in his resounding primary defeat. Sen. Metzenbaum congratulated the hunger-strikers, but called for them to end it, and leave this problem to the court and EPA appeals process. Rep. Kostmayer has completely missed the point with his amendment addressing this problem. It is obvious that he has spoken only with Greenpeace representatives and has no input from the community. This may work out for him, but then this is not his district, and his district stands to gain very little economic benefit from WTI's opening. In addition, Kostmayer is in great danger of being ousted this election.

The Applegate amendment (calling for a GAO study of WTI's permitting process) is certainly one possible option to pursue, although the EPA has modified and investigated the scope of the ownership information rendering most of its investigation redundant. Many district residents feel that the 6-month investigative delay plays right into the hands of Greenpeace (also it would translate into a \$12 million sacrifice for WTI.) Sen. Glenn supports a test-burn, and

will oppose the facility if it fails. Sen. Rockefeller acknowledges that this is an Ohio state issue, but has also opposed waste incineration from the outset.

OPTIONS:

A) Meet with the East Liverpool Chamber of Commerce. They want to get to know you, and some expressed fear that the new part of your district will be neglected.

B) Support a test-burn. If the plant fails, shut it down. If it is as good as they claim...

C) Support WTI. The town would love you. Those who are opposed to the plant in no way resemble civic-minded citizens who vote, and most are not from your district. As an expert on the incinerator, I can answer many questions, and have the resources and contacts to find the answers to those I don't have readily available.

HOWEVER, your support is sure to draw the ire of Greenpeace to the extent that harassment, veiled intimidation, threats, sit-ins, and like tactics will be directed against you, your staff, and probably your family. Greenpeace has good relations with the press and has mounted very effective smear campaigns against their enemies. This would generate additional publicity for you, and give you the opportunity to take on a radical "hippie movement" that many in your district, and America, do not like. Greenpeace is quite be popular with the media, but not among the American people.

D) Do nothing. Leave this to the EPA and the courts.

E) Launch your own investigation. WTI maintains an open-door policy.

* * *

OTHER CONSIDERATIONS:

- 1) Chemical Waste Management -- a significant patron of WTI. Chem Waste is contracting agreements with local industries to take their waste to WTI. In 1985, one of Chemical Waste's affiliates was found guilty of violating hazardous waste disposal laws in their operation of the Vickery, Ohio landfill, for which they were fined \$12.5 million. Chemical Waste is an affiliate of Waste Management, Inc.
- 2) Jackson Stephens, chairman of Stephens Inc. is a fat-cat who has raised \$100,000 for the Clinton campaign, as well as extending the campaign \$2 million line of credit through a bank partially owned by his family. He also contributed \$100,000 to the Bush campaign. However, he sold his interest in WTI to Von Roll in 1990.
- 3) Koppers Environmental Corporation -- name changed 2/15/83 to Environmental Elements Ohio (Inc.). Was bought by Von Roll America 6/22/90.

* * *

This report is based on extensive interviews with approximately 40 individuals concerned with the impact WTI will have on East Liverpool including Greenpeace agitators and spokesmen, hunger strikers, local opponents, local proponents, WTI spokesmen, WTI plant laborers, Von Roll America spokesmen, representatives of the East Liverpool Chamber of Commerce, the Columbiana County Port Authority, members of the press, members of local civic organizations including Rotary and Lions Club, a doctor, a lawyer, local businessmen, and a member of the board of directors

of the First Potters bank, senior citizens, and local youth. (All interviews were conducted on behalf of I.E., Inc.)

I am available to answer any questions you may have, And to provide you with back-up material.

UPDATE:

SALE OF LAND FROM COLUMBIANA PORT AUTHORITY TO WTI:

During the meeting of the Columbiana Port Authority on Aug.10 to consider the motion to sell land to WTI, the motion was approved unanimously. Transfer of land ownership will occur on Sept.10. However, during the proceedings, the roughly 40 members of the anti-WTI (this group is the only real opposition to WTI) contingent took the opportunity to incite a riot. 25 police officers responded, and one female members of the Port Authority was injured when one of the Greenpeace goons pushed her through a glass door. The agitator has since gone to the press and claimed it was the woman who pushed him through the window. Threats and intimidation were yet again directed against the members of the Port Authority. This example is included to demonstrate the business-as-usual tactics of the opponents.

NIGHTLINE BROADCAST 8/10/92

All of the major arguments for and against WTI raised in the Nightline broadcast are presented in this report. With regard to Terri Swearingen's allegations of corruption at the Region 5 EPA headquarters should be dismissed out of hand. I have asked for any confirmation regarding her allegations, and each time she ignores the

question and launches into a diatribe about how the US Government is breaking the law with no substantiation.

Pat Cooper

I.E., Inc.

(703)318-7252 (office)

(703)335-1562 (home)

maintained partnership as
original permits.

Won't say that partnership
is sham. That would necessary
that permit.

→ Haven't found truth to allegations -
Company Washington State gro WTI
CO. bought by WMT - acquired WTI

- Port authority question - advised
EPA that needed to get
revision - small
modification big - might address
school floodplain

Sept 18, 1992 - doubt that
modification to board.

Ohio EPA reviews permit application
recommend to board. Holds
hearing; review, change, permits.

have same function as EPA-
divided in gtm

Indy ph 614- 466-7482

fax: 614 844-9084

Cotter.

→ Pam

-
- Real question - what is significance of legal -
 - extreme - month ~~or~~ or so.

Real opposition - deep -

Ohio - new part

→ school After original
→ flood plain permit

Ohio EPA, hazwaste board has discretion to waive.

- more specific data available on data -

- VRA owns the stock - run

Ohio law will ignore formalities

if it doesn't express true reality

- if done to defraud somebody.

Under law - this is not d

- Jan: stay off it. - Amendment to
Appellate: offered calling for study: JHO
to make sure it was up; up - 6 mo burning
period.

- something should have been done long ago.
Leadership - unlikely people would vote against co.
Most things have been done up.

- Work out agreement w/ WTI - Buy old
School or pay for new construction -

- open to doing things up.

fuck about - not living in East Liverpool

have moved from SA - is reason for
this, Article:

Kim Harris

Geoff Shavlin

E. S. Summit
Dec 14, 15

in L-R
at 11:15

at 11:15
at 11:15
at 11:15

at 11:15
at 11:15
at 11:15

- Fire

At 10:00

to Keanter

that Kater

Fire name

mention

At 10:00 - PI added to list

went from the list

PI called in the Kater

PI called in the Kater

she should come

at 11:15

at 11:15

at 11:15

- Steve Viedeman
Richard More
where at
3:00
10-15 folks

Preliminary mtg
212 684 6577

John Fox
(415) 973-2091

back
at 11:15
at 11:15
at 11:15

Local 2050

Mr. Gordon Binder
Chief of Staff
Environmental Protection Agency

Dear Mr. Binder:

I am writing on behalf of a number of EPA professionals who are members of the Environmental Equity Workgroup, and other EPA professionals who are concerned about the Environmental Equity Report. Many of these employees who have expressed concern are also members of minority employee associations including Blacks In Government, the Hispanic Advisory Counsel, and the Asian Pacific American Community.

On behalf of these professionals, I request that you include the attached Dissenting Opinion in the Environmental Equity Report.

If you have any questions regarding this matter, please contact Mr. Tyrone Aiken, NFFE President-elect, 260-2383, NE302.

Sincerely,

703-308-7031; civil
rights
situation

Dwight A. Welch → 260-2383,
President, NFFE

Attachment

cc: Robert Wolcott
Reina Milligan

Exhibit C National Federation of Federal Employees,
Dissenting Opinion (Feb. 20, 1992)

DISSENTING OPINION

A number of the members of the Environmental Equity Workgroup dissent from this Report, in that it does not include any input from outside organizations which have been active in identifying the issue of environmental equity.

The original meeting with the Administrator and the charter for our Workgroup included the understanding that outside organizations would have the opportunity for input and comment on the Report. Indeed, one of the main findings and recommendations of the Report is that "Great opportunities exist for EPA and other government agencies to improve communication..." and "EPA should expand and improve the level and form with which it communicates with racial minority and low-income communities and should increase efforts to involve them in environmental policy-making."

We believe that the Agency should not issue this Report without considering the comments by racial and low-income organizations which are involved in this issue.

Submitted by the National Federation of Federal Employees, Local 2050, on behalf of concerned members of the Environmental Equity Workgroup and other concerned EPA professionals.

November 4, 1987 -

**Amendment to the
Joint Venture Agreement**

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

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

Environmental Elements (Delaware) Inc.
Mustang Production Company
Stephens Holding Company
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 31, 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 1980:

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 3007 of RCRA.

October 1989 -

Ohio EPA completes Capacity Assurance Plan as required by the federal Superfund law, showing that Ohio has more than 3 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 Enertech 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 Ohio EPA Installation and Operation Permit. Included among other changes, are:

- * The addition of a spray dryer to the incineration system
- * Enclosure for the organic tank farm
- * deletion of individual tank pressure monitoring devices

(Note: Enclosure of the organic tank farm may create an **increased risk** of explosion given the greater potential for the accumulation of volatile fumes within the enclosure.)

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**.

* Appeals filed with the Ohio Environmental Board of Review (EBR) concerning these changes are **still pending**.

(NOTE: Permit changes are considered "modifications" and must be submitted to the Ohio Hazardous Waste Facility Board (HWFB) for public hearings if they impact Ohio Siting Criteria. Ohio EPA, however, did not do an independent analysis of increased emissions or risk associated with these changes. Ohio EPA relied completely on unsupported statements by WTI that changes would not impact emissions. Ohio EPA Ed Lim stated that independent review at that time was unimportant since compliance with original permit standards would be required at the time of the trial burn. - **AFTER the plant was built!**

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.)

October 29, 1990 -

WTI requests only one change to its U.S. EPA RCRA permit for the addition of the **spray dryer**, which was characterized by WTI as advanced pollution control equipment that would bring the WTI facility "up-to-date", making it "state-of-the-art".

No changes to the U.S. EPA RCRA permit were requested for the items that were the subject of the July 9, 1990 and April 12, 1991 changes to the Ohio EPA Installation and Operation Permit, even though the 8000 pound per square foot load bearing capacity **remains a requirement** of the U.S. EPA RCRA permit that is currently being **violated** by WTI.

October 30, 1990 -

Hundreds of **frightened** children were **evacuated** from **East Elementary School**, located **less than 400 yards** from WTI, when construction crews accidentally ruptured a gas main at the WTI construction site. WTI failed to notify the proper officials.

The odor of gas was so strong at the elementary school that school officials believed that a gas line had ruptured **in** the school building.

In addition to being scared, many children complained of headache and nausea, with a few of the children vomiting.

January 17, 1991 -

Ohio EPA holds a public hearing regarding the permit change request for the Ohio EPA Air Pollution permit to add the **spray dryer**.

Experts testify that the addition of the spray dryer will **increase the harmful toxic emissions, especially mercury, emitted from the WTI stack**.

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 3000 lbs per square foot load bearing capacity prior to construction.
- * failure to construct an earthen berm around perimeter of site.
- * failure to notify EPA of non-compliance with conditions of permit.

March 16, 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 Ohio EPA Hazardous Installation and Operation 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 proposed changes, including the addition of the spray dryer, to the Ohio Hazardous Waste permit, 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, concerning the WTI Ohio EPA Air Pollution Permit, from William McDowell to George Zerniak, both of U.S. EPA Air Enforcement Branch, states:

"The purpose of this memorandum is to call your attention to an apparent **violation** of the Federal Prevention of Significant Deterioration (PSD) regulations and the Ohio State Implementation Plan as it applies to new sources in non attainment areas."

"[T]he permit is **invalid** as written ..."

"[T]hat original permit may have **legally expired** since construction had apparently not begun until after 1987. Therefore, I recommend that the Enforcement Section investigate this case for possible Federal **violations** and appropriate enforcement action."

May 24, 1991 - Ohio EPA approves the addition of the spray dryer to the Ohio EPA Air Pollution Permit.

(Appeals filed before the Ohio Environmental Board of Review on the addition of the spray dryer are **still pending**. No independent analysis has ever been done to determine what impact operation of the **spray dryer** will have on WTI emissions.)

June 16, 1991 - In a presentation to the 84th annual meeting of the Air and Waste Management Association in Vancouver, British Columbia, Von Roll engineer Alfred Sigg writes:

Mercury remains to be a problem pollutant (see Table XI) especially at installations which use a spray dryer to dispose of scrubber blowdown.

Other facilities with similar arrangements have experienced similar problems. The mercury is readily removed in the wet scrubber. However the recirculation of the scrubber blowdown to the spray dryer causes mercury to revolatilize. This causes the mercury to concentrate in the scrubber/spray dryer loop and eventually drives the emission rates up to levels similar to the uncontrolled rates.

(Note: This confirms the findings of Dr. Paul Connett and Dr. Michael McCawley as presented at the January 17, 1991 Ohio EPA public hearing on the spray dryer, that the addition of the spray dryer would increase harmful toxic emissions.)

July 28, 1991 : Record of a Telephone Conversation between U.S. EPA Region 5 and the Office of Congressman Rick Santorum in which inquiries are made about the WTI permit status and concerns about WTI being in violation of source thresholds.

"Bill (McDowall) and David (Kee) are both concerned about what the Congressman knows" (Emphasis added. Last names supplied as referenced in the record.)

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.

* Appeals filed to classification decision before the Ohio EBR still pending.

(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 800 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 12, 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 Muno,

- * 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 1988, 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 Muno 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 2, 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 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 20, 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 3, 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.
- March, 1992 -** National Governor's Association, in conjunction with the U.S. EPA issues report, **Hazardous Waste Management In The States: A Review of the Capacity Assurance Process**, which indicates that there is a 70% over capacity nationally for the disposal of hazardous waste.
- 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 3007, RCRA)

July 9, 1992 -

After company officials hold a private meeting with Vice President Quayle's Council on Competitiveness regarding "regulatory delays", U.S. EPA, while still trying to find out who owns and who will operate WTI, improperly and illegally grants WTI a temporary authorization to proceed with shakedown.

July 10, 1992 -

About 50 citizens from the Ohio Valley travel to Washington, D.C. to protest U.S. EPA's decision to illegally grant WTI a 180 day temporary authorization to burn wastes. Twelve of these citizens entered and occupied the office of U.S. EPA Administrator William Reilly. **Associate Administrator Lew Crampton** was assigned to handle all discussions and negotiations with the citizens, who refused to leave until EPA's temporary authorization was revoked or delayed. By the end of the day, **Lew Crampton** was assigned to be "community liason for the concerned citizens. Mr. Crampton described himself as the peoples "advocate".

It was agreed at that meeting that there would be a ten day stay of the temporary authorization, and that **Mr. Crampton** would visit the WTI site on July 16.

July 16, 1992 -

Mr. Crampton visits East Liverpool, meeting with leaders of 11 different area citizen organizations who present him with documentation of WTI's illegalities.

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, including **Associate Administrator Lew Crampton**, 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 Quayle 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 8745-50-41 (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 20, 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 3007 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 25, 1992 - U.S. EPA Region 5 Administrator Valdas Adamkus writes to WTI President Blake Marshall, Stating:

"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."

September 30, 1992 - U.S. EPA Region 5 Administrator Valdas Adamkus writes to WTI President Blake Marshall, stating,

"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 8 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 30-day comment period on proposed approval of WTI permit modification."

"EPA is seeking public comment on its legal determination on issues of ownership and operational control."

"After a 2-month review of information on WTI's ownership and operational control, EPA has determined that a minor, or Class I, modification is appropriate to name Von Roll (Ohio), Inc., as an operator of the facility. WTI has requested a Class I modification to reflect this change. The Agency further decided that the permit correctly identifies WTI as the owner and an operator of the facility. EPA Region 5 fully consulted EPA Headquarters on this legal matter and the decision was made jointly."

October 5, 1998 -

Senator Howard Metzenbaum in a letter to U.S. EPA Administrator William Reilly, concerning a 8 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 5, 1998 -

Associate Administrator Lew Crampton, self proclaimed "people's advocate" assigned to act as "community liason" between the U.S. EPA and citizens concerned about WTI, leaves U.S. EPA to work for Waste Management, Inc.

October 22, 1998 -

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.

TRI STATE ENVIRONMENTAL COUNCIL

DRAFT

Nov 5, 1992

Chronology of WTI Violations and other relevant information

- March 14, 1977 -** Columbiana County commissioners create Columbiana County Port Authority (CCPA).
- 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.
- 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"**
- 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. 3275) 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,..."

(NOTE: **The use of the Port Authority property for a Hazardous Waste Incinerator violates the terms of the state funding grant and Ohio Port Authority law requiring port authorities to comply with development plan.**

Columbiana County Port Authority has not complied with its responsibility to develop river port facilities and thus has violated the terms of the grant which provided state funding for land acquisition. (To date, no port exists.)

- 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).

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

- May 24, 1980 -** Public notice published by Columbiana County Port Authority to adopt development plan for intermodal **river port facility.**
- June 1980 -** Army Corps of Engineers public hearing on permit for **river port.**
- July 17, 1980 -** Public hearing held on **river port development plan.**
- August 25, 1980 -** Columbiana County Port Authority approves **river port facility development plan.**
- September 16, 1980 -** Army Corps of Engineers approves permit for **river port facility** and **prohibits the handling of hazardous waste at port.**
- 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 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 joined with three other corporations to form the partnership of Waste Technologies Industries.*) **Land still legally owned by River Services and lease agreement signed by Waste Technologies, Incorporated and the CCPA.**

(NOTE: **The 1981 Lease Agreement and subsequent lease agreements between WTI and the land owner (Columbiana 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**

Koppers Environmental Corporation
Energy Technology Company
Waste Technologies, Incorporated
Von Roll America, Inc.

**Claim to be wholly
owned subsidiaries of:**

Koppers Company, Inc.
Mustang Fuel Corporation
Stephens, 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. (All of the land which comprises the CCPA was taken by the state under eminent domain for the purpose of developing a **public port facility**.)
- 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 33074, May 19, 1980.
- July 23, 1982 -** WTI files permit application with Ohio EPA for state hazardous waste permit. The State permit **lacks the landowner signature** as required by Ohio Administrative Code 3745-50-41 (B) at the time of permit issuance. Application is referred to the Ohio Hazardous Waste Facility Board for public hearing and permit approval.
- October 8, 1982 -** The Ohio EPA proposed draft Permit to Install (Air Pollution Permit) for WTI administered by Ohio EPA under the Federal Clean Air Act.
- November 17, 1982 -** U.S. EPA comments on proposed Ohio EPA Air Pollution permit for WTI stating,
- "[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 to U.S. EPA Region 5 concerning the issuance of a Federal RCRA permit to WTI, stating,
- "Protection to the 500-year flood level, as proposed by the Port Authority, does not adequately assure complete protection from pollution from toxic wastes. Because the proposed HWMF will be receiving, storing and treating hazardous and toxic waste, it is inappropriate to locate it in a flood hazard area so near public water supply provided by the Ohio River."
- "It ... appears to be unnecessary that this facility is located right on the water. 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.**" Based on this and other considerations, it appears that siting considerations and alternatives were not fully and properly evaluated in this case."

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

- February 2, 1988 -** Ohio EPA issues State Air Pollution Permit to WTI.
- 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, 1983

(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 23, 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 7, 1988 -** Congressman Doug Applegate writes to U.S. EPA Administrator William Ruckelshaus concerning the WTI permit, stating:
- "Part of the proposal by Waste Technologies Industries includes estimates of particulate emissions in Columbiana County -- a non-attainment area for particulates -- of 95 tons per year in particulates. This figure is predicated on the electrostatic precipitator operating at 99.6% efficiency. Simple mathematics will tell you that a decrease of .05% in efficiency will result in emissions in excess of 100 tons per year -- in excess of the "trigger" figure needed to require a Clean Air Act Discharge Permit WTI could not obtain. Both environmentalists and the industry tell me that the 99.6% efficiency figure is optimistic, possibly unrealistic considering the types and combinations of wastes to be incinerated."
- June 14, 1988 -** In his report to the Hazardous Waste Facility Approval Board, Hearing Examiner Richard Brudzinski recommends **DENYING the WTI State Hazardous Waste permit**, based on an INCOMPLETE application. Inadequacies included: Waste Analysis, Closure Plan, Contingency Plan, Personnel Training and Performance Standards, no analysis of composition or magnitude of emissions, 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, 1983, 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, 1983 -

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, 1983 -

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. Other problems related to the WTI permit caused the State of West Virginia to appeal the decision by U.S. EPA to issue WTI 2 RCRA permit.

Spring 1984 -

33,000 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 25, 1983 -

Congressman Doug Applegate writes to U.S. EPA Administrator William Ruckelshaus concerning WTI's permit, stating, among other things,

"I have raised questions concerning the incompleteness of the permit application and have provided your office a copy of remarks made by the Hearing Examiner for the Ohio Hazardous Waste Facilities Board. The response was "not applicable to RCRA." I have raised concerns about the process used to permit the facility used by the U.S. EPA -- frankly, I am not sure the procedures have adequately safeguarded the public in this instance. Again, the response "not within the scope of RCRA." Finally, I have raised technical questions that have brought

about a slew of non se'quitors and bureaucratic rhetoric -- and no real answer except "we believe them."

The run-around I have gotten from your agency and the lack of response to most of my inquiries does not lend itself to the credibility and trust you were chosen to instill in the U.S. EPA's function.

"Using WTI's estimate for particulate discharge of 95 tons per year, simple mathematics demonstrate that an overall reduction of .05% in the ESPs performance will result in emissions in excess of 100 tons per year. This is in excess of the "Trigger" figure needed to require a discharge permit under the Clean Air Act that WTI could not obtain; East Liverpool is nearly twice the accepted national standard for particulate pollution and is, therefore, a non-attainment area."

"In sum, Mr. Ruckelshaus, I would be much more comfortable with this situation if it were not for a decided feeling that EPA wants this facility as much as WTI does and that this permit is too important to the agency to deny no matter what the consequences are to East Liverpool."

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, 1983 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 - Memo by U.S. EPA Air and Radiation Branch Chief Steve Rothblatt to Deputy Regional Counsel Dave Ullrich concerning WTI's Air Pollution Permit issued by the Ohio EPA 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 - Memo by U.S. EPA Air and Radiation Branch Chief Steve Rothblatt to Deputy Regional Counsel Dave Ullrich concerning WTI's Air Pollution permit issued by Ohio EPA states:

"The location of the proposed construction is under Section 110(a) (2) (I) construction ban for total suspended particulate (TSP) ..."

"[T]he permit would allow a major source to construct in violation of the Federal construction ban. The permit may be considered valid by the Ohio EPA because the state would consider only Ohio law. However, since the construction ban is a Federal regulation, U.S. EPA 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.
Energy Technology Company
Waste Technologies Incorporated
Von Roll (Ohio), Inc.

Environmental Elements (Delaware) Inc.
Mustang Production Company
Stephens Holding Company
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 \$139,000,000. In WTI's description of permitted equipment, WTI lists, among other things, a **spray dryer**.

December 31, 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 3007 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 Enertech 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, 1983. This is not the same entity as Environmental Elements (Ohio), Inc.
- July 9, 1990 -** WTI files request for 8 changes to its Ohio EPA Installation and Operation Permit. Included among other changes, are:
- * The addition of a spray dryer to the incineration system
 - * Enclosure for the organic tank farm
 - * deletion of individual tank pressure monitoring devices
- (Note: Enclosure of the organic tank farm may create an increased risk of explosion given the greater potential for the accumulation of volatile fumes within the enclosure.)
- 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**.

* Appeals filed with the Ohio Environmental Board of Review (EBR) concerning these changes are **still pending**.

(NOTE: Permit changes are considered "modifications" and must be submitted to the Ohio Hazardous Waste Facility Board (HWFB) for public hearings if they impact Ohio Siting Criteria. Ohio EPA, however, did not do an independent analysis of increased emissions or risk associated with these changes. Ohio EPA relied completely on unsupported statements by WTI that changes would not impact emissions. Ohio EPA Ed Lim stated that independent review at that time was unimportant since compliance with original permit standards would be required at the time of the trial burn. - **AFTER the plant was built!**

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.)

October 29, 1990 -

WTI requests only one change to its U.S. EPA RCRA permit for the addition of the **spray dryer**, which was characterized by WTI as advanced pollution control equipment that would bring the WTI facility "up-to-date", making it "state-of-the-art".

No changes to the U.S. EPA RCRA permit were requested for the items that were the subject of the July 9, 1990 and April 12, 1991 changes to the Ohio EPA Installation and Operation Permit, even though the 3000 pound per square foot load bearing capacity **remains a requirement** of the U.S. EPA RCRA permit that is currently being **violated** by WTI.

October 30, 1990 -

Hundreds of **frightened** children were **evacuated from East Elementary School, located less than 400 yards from WTI**, when construction crews accidentally ruptured a gas main at the WTI construction site. WTI failed to notify the proper officials.

The odor of gas was so strong at the elementary school that school officials believed that a gas line had ruptured **in** the school building.

In addition to being scared, many children complained of headache and nausea, with a few of the children vomiting.

January 17, 1991 -

Ohio EPA holds a public hearing regarding the permit change request for the Ohio EPA Air Pollution permit to add the **spray dryer**.

Experts testify that the addition of the spray dryer will **increase the harmful toxic emissions, especially mercury, emitted from the WTI stack**.

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 3000 lbs per square foot load bearing capacity prior to construction.
- * 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 Ohio EPA Hazardous Installation and Operation 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 proposed changes, including the addition of the spray dryer, to the Ohio Hazardous Waste permit, 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, concerning the WTI Ohio EPA Air Pollution Permit, from William McDowell to George Zerniak, both of U.S. EPA Air Enforcement Branch, states:
- "The purpose of this memorandum is to call your attention to an apparent **violation** of the Federal Prevention of Significant Deterioration (PSD) regulations and the Ohio State Implementation Plan as it applies to new sources in **non attainment** areas."
- "[T]he permit is **invalid** as written ..."
- "[T]hat original permit may have **legally expired** since construction had apparently not begun until after 1987. Therefore, I recommend that the Enforcement Section investigate this case for possible Federal **violations** and appropriate enforcement action."
- May 24, 1991 -** Ohio EPA approves the addition of the spray dryer to the Ohio EPA Air Pollution Permit.
- (Appeals filed before the Ohio Environmental Board of Review on the addition of the spray dryer are **still pending**. No independent analysis has ever been done to determine what impact operation of the **spray dryer** will have on WTI emissions.)
- June 16, 1991 -** In a presentation to the 84th annual meeting of the Air and Waste Management Association in Vancouver, British Columbia, Von Roll engineer Alfred Sigg writes:
- Mercury remains to be a problem pollutant (see Table XI) especially at installations which use a spray dryer to dispose of scrubber blowdown.

Other facilities with similar arrangements have experienced similar problems. The mercury is readily removed in the wet scrubber. However the recirculation of the scrubber blowdown to the spray dryer causes mercury to revolatilize. This causes the mercury to concentrate in the scrubber/spray dryer loop and eventually drives the emission rates up to levels similar to the uncontrolled rates.

(Note: This confirms the findings of Dr. Paul Connett and Dr. Michael McCawley as presented at the January 17, 1991 Ohio EPA public hearing on the spray dryer, that the addition of the spray dryer would increase harmful toxic emissions.)

July 23, 1991 - Record of a Telephone Conversation between U.S. EPA Region 5 and the Office of Congressman Rick Santorum in which inquiries are made about the WTI permit status and concerns about WTI being in violation of source thresholds.

"Bill (McDowall) and David (Kee) are both concerned about what the Congressman knows" (Emphasis added. Last names supplied as referenced in the record.)

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.

* Appeals filed to classification decision before the Ohio EBR still pending.

(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 3734.05 (D) (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 12, 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 1983 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. Munro admitted was aware from the beginning that the landowner was not the same as the facility owner. Mr. Munro knowingly accepted the WTI permit without the required landowner signature.

December 2, 1991 -

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

"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." (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 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, 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 3, 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 3, 1992 -** CCPA's appeals EPA's February 3, 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 13, 1992 -** On July 9, 1992, in a "Dear Interested Party" letter, Mr. Bill Muno informed the public that on March 13, 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.
- March, 1992 -** National Governor's Association, in conjunction with the U.S. EPA issues report, ***Hazardous Waste Management In The States: A Review of the Capacity Assurance Process***, which indicates that there is a 70% over capacity nationally for the disposal of hazardous waste.
- 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 3007, RCRA)

July 9, 1992 -

After company officials hold a private meeting with Vice President Quayle's Council on Competitiveness regarding "regulatory delays", U.S. EPA, **while still trying to find out who owns and who will operate WTI**, improperly and illegally grants WTI a temporary authorization to proceed with shutdown.

July 10, 1992 -

About 50 citizens from the Ohio Valley travel to Washington, D.C. to protest U.S. EPA's decision to illegally grant WTI a 180 day temporary authorization to burn wastes. Twelve of these citizens entered and occupied the office of U.S. EPA Administrator William Reilly. **Associate Administrator Lew Crampton** was assigned to handle all discussions and negotiations with the citizens, who refused to leave until EPA's temporary authorization was revoked or delayed. By the end of the day, **Lew Crampton** was assigned to be "community liaison for the concerned citizens. **Mr. Crampton** described himself as the peoples "advocate".

It was agreed at that meeting that there would be a ten day stay of the temporary authorization, and that **Mr. Crampton** would visit the WTI site on July 16.

July 16, 1992 -

Mr. Crampton visits East Liverpool, meeting with leaders of 11 different area citizen organizations who present him with documentation of WTI's illegalities.

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, **including Associate Administrator Lew Crampton**, 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 23, 1992 -

WTI Attorney Charles Waterman responds to U.S. EPA's 3007 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 23, 1992 response to EPA's 3007 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 3, 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 Quayle 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 20, 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. 1998)**" and ending in February 1998 when "**WTI will be allowed to bring hazardous waste on-site. (Feb. 1998)**" (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 3007 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 25, 1992 - U.S. EPA Region 5 Administrator Valdas Adamkus writes to WTI President Blake Marshall, Stating:

"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."

September 30, 1992 - U.S. EPA Region 5 Administrator Valdas Adamkus writes to WTI President Blake Marshall, stating,

"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 30-day comment period on proposed approval of WTI permit modification."

"EPA is seeking public comment on its legal determination on issues of ownership and operational control."

"After a 2-month review of information on WTI's ownership and operational control, EPA has determined that a minor, or Class I, modification is appropriate to name Von Roll (Ohio), Inc., as an operator of the facility. WTI has requested a Class I modification to reflect this change. The Agency further decided that the permit correctly identifies WTI as the owner and an operator of the facility. EPA Region 5 fully consulted EPA Headquarters on this legal matter and the decision was made jointly."

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. 1993)." 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 5, 1992 -

Associate Administrator Lew Crampton, self proclaimed "people's advocate" assigned to act as "community liason" between the U.S. EPA and citizens concerned about WTI, **leaves U.S. EPA to work for Waste Management, Inc.**

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.

Withdrawal/Redaction Marker

Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. letters	E Liverpool Health Commissioner to Parents re Lead Study results [partial] (6 pages)	09/00/1992	b(6)

COLLECTION:

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

FOLDER TITLE:

WTI [Waste Technologies Industries] Pertinent

2012-0769-F
kc2008

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]

C. Closed in accordance with restrictions contained in donor's deed of gift.

PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).

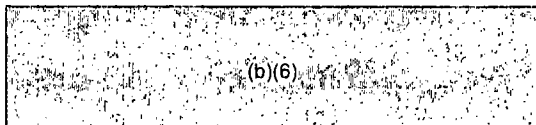
RR. Document will be reviewed upon request.

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

- b(1)** National security classified information [(b)(1) of the FOIA]
- b(2)** Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
- b(3)** Release would violate a Federal statute [(b)(3) of the FOIA]
- b(4)** Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]
- b(6)** Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]
- b(7)** Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
- 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]

[001]

09/11/92



Dear Parent:

Thank you for taking part in the East Liverpool lead study conducted by the East Liverpool Department of Health and the Ohio Department of Health. Your cooperation has been helpful in providing information on the lead values of children in East Liverpool.

The results for Angelene's lead test on 08/29/92 were:

Lead 31 ug/dL

A lead level below 10 indicates your child is not lead poisoned. Blood lead levels of 10 to 14 are in a border zone. The Ohio Department of Health recommends that children with blood leads between 10 and 14 should be screened again in six months to make sure their lead levels have not gone up. We will be asking all children who were screened in this study to be rescreened in about six months.

If your child had a confirmed blood lead level above 15 there is a need for some concern. You should call the East Liverpool Health Department right away to schedule a re-test to confirm your child's level (386-7901). We recommend that you contact your doctor or health center, if you have any questions about these results.

You can do a number of things to decrease your child's exposure to lead in the home; in general you need to pay extra attention to nutrition and housecleaning. A child should eat regular meals and foods with plenty of iron and calcium. A child's hands and face should be clean before eating meals. Toys and pacifiers should be washed regularly. Obviously, a child should not be allowed to eat, suck, or handle chips of paint. Please contact the health department, if you would like to know more about decreasing your child's exposure.

Again, thank you very much for your assistance.

Sincerely,

Gary Ryan
E. Liverpool Health Commissioner
E. Liverpool Dept. of Health
126 W. 6th Street
E. Liverpool, Ohio 43920-2992

(001)

09/11/92



(b)(6)

Dear Parent:

Thank you for taking part in the East Liverpool lead study conducted by the East Liverpool Department of Health and the Ohio Department of Health. Your cooperation has been helpful in providing information on the lead values of children in East Liverpool.

The results for Louis's lead test on 08/29/92 were:

Lead 48 ug/dL

A lead level below 10 indicates your child is not lead poisoned. Blood lead levels of 10 to 14 are in a border zone. The Ohio Department of Health recommends that children with blood leads between 10 and 14 should be screened again in six months to make sure their lead levels have not gone up. We will be asking all children who were screened in this study to be rescreened in about six months.

If your child had a confirmed blood lead level above 15 there is a need for some concern. You should call the East Liverpool Health Department right away to schedule a re-test to confirm your child's level (386-7901). We recommend that you contact your doctor or health center, if you have any questions about these results.

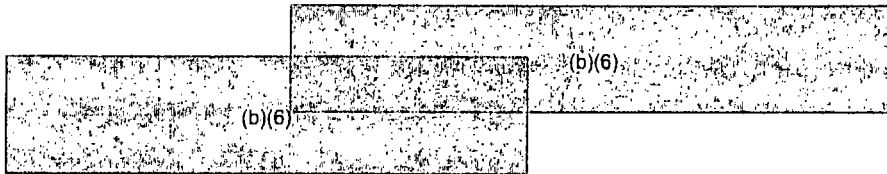
You can do a number of things to decrease your child's exposure to lead in the home; in general you need to pay extra attention to nutrition and housecleaning. A child should eat regular meals and foods with plenty of iron and calcium. A child's hands and face should be clean before eating meals. Toys and pacifiers should be washed regularly. Obviously, a child should not be allowed to eat, suck, or handle chips of paint. Please contact the health department, if you would like to know more about decreasing your child's exposure.

Again, thank you very much for your assistance.

Sincerely,

Gary Ryan
E. Liverpool Health Commissioner
E. Liverpool Dept. of Health
126 W. 6th Street
E. Liverpool, Ohio 43920-2992

Blood
Lead



09/16/92

[001]

Dear Parent:

Thank you for taking part in the East Liverpool lead study conducted by the East Liverpool Department of Health and the Ohio Department of Health. Your cooperation has been helpful in providing information on the lead values of children in East Liverpool.

*
The results for Thomas's lead test on 08/27/92 were:

Lead 11 ug/dL

A lead level below 10 indicates your child is not lead poisoned. Blood lead levels of 10 to 14 are in a border zone. The Ohio Department of Health recommends that children with blood leads between 10 and 14 should be screened again in six months to make sure their lead levels have not gone up. We will be asking all children who were screened in this study to be rescreened in about six months.

If your child had a confirmed blood lead level above 15 there is a need for some concern. You should call the East Liverpool Health Department right away to schedule a re-test to confirm your child's level (386-7901). We recommend that you contact your doctor or health center, if you have any questions about these results.

You can do a number of things to decrease your child's exposure to lead in the home; in general you need to pay extra attention to nutrition and housecleaning. A child should eat regular meals and foods with plenty of iron and calcium. A child's hands and face should be clean before eating meals. Toys and pacifiers should be washed regularly. Obviously, a child should not be allowed to eat, suck, or handle chips of paint. Please contact the health department, if you would like to know more about decreasing your child's exposure.

Again, thank you very much for your assistance.

Sincerely,

Gary Ryan
E. Liverpool Health Commissioner
E. Liverpool Dept. of Health
126 W. 6th Street
E. Liverpool, Ohio 43920-2992

[001]

09/16/92

(b)(6)

Dear Parent:

Thank you for taking part in the East Liverpool lead study conducted by the East Liverpool Department of Health and the Ohio Department of Health. Your cooperation has been helpful in providing information on the lead values of children in East Liverpool.

The results for Michael's lead test on 09/04/92 were:

Lead 23 ug/dL

A lead level below 10 indicates your child is not lead poisoned. Blood lead levels of 10 to 14 are in a border zone. The Ohio Department of Health recommends that children with blood leads between 10 and 14 should be screened again in six months to make sure their lead levels have not gone up. We will be asking all children who were screened in this study to be rescreened in about six months.

If your child had a confirmed blood lead level above 15 there is a need for some concern. You should call the East Liverpool Health Department right away to schedule a re-test to confirm your child's level (386-7901). We recommend that you contact your doctor or health center, if you have any questions about these results.

You can do a number of things to decrease your child's exposure to lead in the home; in general you need to pay extra attention to nutrition and housecleaning. A child should eat regular meals and foods with plenty of iron and calcium. A child's hands and face should be clean before eating meals. Toys and pacifiers should be washed regularly. Obviously, a child should not be allowed to eat, suck, or handle chips of paint. Please contact the health department, if you would like to know more about decreasing your child's exposure.

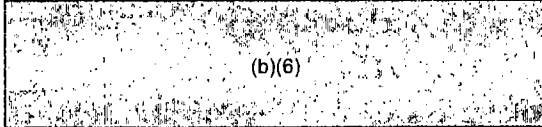
Again, thank you very much for your assistance.

Sincerely,

Gary Ryan
E. Liverpool Health Commissioner
E. Liverpool Dept. of Health
126 W. 6th Street
E. Liverpool, Ohio 43920-2992

[001]

09/11/92



Dear Parent:

Thank you for taking part in the East Liverpool lead study conducted by the East Liverpool Department of Health and the Ohio Department of Health. Your cooperation has been helpful in providing information on the lead values of children in East Liverpool.

The results for Jayson's lead test on 08/31/92 were:

Lead 21 ug/dL

A lead level below 10 indicates your child is not lead poisoned. Blood lead levels of 10 to 14 are in a border zone. The Ohio Department of Health recommends that children with blood leads between 10 and 14 should be screened again in six months to make sure their lead levels have not gone up. We will be asking all children who were screened in this study to be rescreened in about six months.

If your child had a confirmed blood lead level above 15 there is a need for some concern. You should call the East Liverpool Health Department right away to schedule a re-test to confirm your child's level (386-7901). We recommend that you contact your doctor or health center, if you have any questions about these results.

You can do a number of things to decrease your child's exposure to lead in the home; in general you need to pay extra attention to nutrition and housecleaning. A child should eat regular meals and foods with plenty of iron and calcium. A child's hands and face should be clean before eating meals. Toys and pacifiers should be washed regularly. Obviously, a child should not be allowed to eat, suck, or handle chips of paint. Please contact the health department, if you would like to know more about decreasing your child's exposure.

Again, thank you very much for your assistance.

Sincerely,

Gary Ryan
E. Liverpool Health Commissioner
E. Liverpool Dept. of Health
126 W. 6th Street
E. Liverpool, Ohio 43920-2992

[001]

09/11/92

(b)(6)

Dear Parent:

Thank you for taking part in the East Liverpool lead study conducted by the East Liverpool Department of Health and the Ohio Department of Health. Your cooperation has been helpful in providing information on the lead values of children in East Liverpool.

The results for David's lead test on 08/31/92 were:

Lead 19 ug/dL

A lead level below 10 indicates your child is not lead poisoned. Blood lead levels of 10 to 14 are in a border zone. The Ohio Department of Health recommends that children with blood leads between 10 and 14 should be screened again in six months to make sure their lead levels have not gone up. We will be asking all children who were screened in this study to be rescreened in about six months.

If your child had a confirmed blood lead level above 15 there is a need for some concern. You should call the East Liverpool Health Department right away to schedule a re-test to confirm your child's level (386-7901). We recommend that you contact your doctor or health center, if you have any questions about these results.

You can do a number of things to decrease your child's exposure to lead in the home; in general you need to pay extra attention to nutrition and housecleaning. A child should eat regular meals and foods with plenty of iron and calcium. A child's hands and face should be clean before eating meals. Toys and pacifiers should be washed regularly. Obviously, a child should not be allowed to eat, suck, or handle chips of paint. Please contact the health department, if you would like to know more about decreasing your child's exposure.

Again, thank you very much for your assistance.

Sincerely,

Gary Ryan
E. Liverpool Health Commissioner
E. Liverpool Dept. of Health
126 W. 6th Street
E. Liverpool, Ohio 43920-2992

POISON IN THE WORKPLACE: WTI AND ECONOMIC BLACKMAIL

Communities facing proposed hazardous waste incinerators are often promised that the incinerator will bring jobs and long-term prosperity. Initially the construction of an incinerator creates many jobs, but once built, the construction jobs disappear. How many jobs will the incinerator provide the community once built?

An operating hazardous waste incinerator typically employs between 50 and 100 people. The highest salaried jobs at hazardous waste incinerators require engineering or other kinds of training. Employees who fill these positions are usually shifted from other company operations or from other out-of-state industries. Local people rarely benefit, since they may not have the specific technical experience (or connections) required to fill the more lucrative positions. For instance, a recent Morning Journal article ["Salineville man named WTI project manager," (9/25/91)] refers to a man who only recently moved into the area; he is originally from Switzerland, Von Roll's headquarters.

where is the survey
Many of the jobs provided to local residents are positions which put the workers at high risk. Truck washers and waste handlers, for instance, risk constant exposure from inhalation and skin absorption of toxic chemicals. A recent nationwide survey of commercial hazardous waste incinerators conducted jointly by OSHA, USEPA and various state environmental agencies concluded that "EPA and OSHA are concerned with the widespread deficiencies in the area of worker health and safety training, which could potentially lead to operational and exposure problems."

Workers exposed to different chemicals at hazardous waste incinerators put their lives at risk. Recent examples of injuries suffered by workers at hazardous waste incinerators include:

- ** Caldwell County, North Carolina. At least five incinerator workers have suffered permanent, irreversible brain damage as a result of working at the Caldwell Systems hazardous waste incinerator. Other chronic problems suffered by the workers are severe tremors, premature arthritis, nausea, balance problems, memory loss and severe rashes. Some workers reached an out-of-court settlement with the company, but it is not enough for the medicines, hospital care and doctors they require, and won't compensate for permanent psychological and physical damage.
- ** El Dorado, Arkansas. A 1987 Department of Health survey at the Ensco hazardous waste incinerator noted elevated air levels of PCBs in various areas, including the lunchroom, break rooms and shower room. Health Department officials found a third of the workers had extremely high levels of PCBs in their blood.

- ** Houston, Texas. A man was killed at the Rollins hazardous waste incinerator in Deer Park in 1988 when a chunk of chemical slag dislodged and fell on him and another worker.
- ** Calvert City, Kentucky. In 1990 three workers who breathed vinyl acetate fumes at Liquid Waste Disposal were hospitalized. Years before another employee was seriously burned when a spark ignited the fumes in an empty tanker car he was about to clean out.
- ** In order to make as much money as they could, plant managers at the Chemical Waste Management (one of the companies involved in the WTI project) incinerator in Chicago put workers at high risk by telling them to "burn as much waste as possible." Much of the waste that was burned was not even tested before incineration. The result: an explosion in February of 1991 that rocked the facility, shutting it down for months. Under pressure from plant managers to cut corners and ignore regulations, workers had deliberately filed false forms, shut off pollution control monitors and ignored PCB spills.
- ** Explosions have also hit the GSX incinerator in Cleveland in 1989 (hospitalizing over a dozen people), the Ensco incinerator in Arkansas, and an incinerator owned by Rollins in New Jersey (1979, several killed).

"COMMERCIAL HAZARDOUS WASTE MANAGEMENT FACILITIES DO NOT BRING ABOUT INDUSTRIAL GROWTH, RATHER THEY TEND TO ECONOMICALLY DEPRESS ANY AREA IN WHICH THEY ARE LOCATED" --William Sanjour, US EPA, May 10, 1990

The claim that an incinerator brings prosperity to a community has to be met with much skepticism: since almost all of the waste comes from out-of-county, and most from out-of-state, the facility could hardly be considered necessary to the prosperity of local businesses. Once operating, incinerators can be deterrents to continued growth, especially to the growth of food processing and other industries related to agriculture. A Von Roll facility in Europe, for instance, contaminated a bed of mussels nearby with heavy metals.

Incinerator companies deliberately target economically-depressed areas for new facilities. In communities where incinerators are proposed, average property values are 35 percent lower than the national average. (1980 U.S. Census Data) Once constructed, however, incinerators fail to deliver the promised prosperity: Property values in communities hosting incinerators are 38 percent lower than the national average.

THE CHOICE SHOULDN'T BE TOXIC JOBS VS. NO JOBS AT ALL

TRI-STATE CITIZENS STAND IN SOLIDARITY WITH WORKERS FOR SAFE JOBS!

THE STRUGGLE IS FOR CLEAN JOBS: DIRTY INDUSTRIES DESTROY OUR FUTURE

DEMAND SAFE EMPLOYMENT AND A CLEAN ENVIRONMENT: STOP WTI



CONGRESSMAN HENRY A. WAXMAN NEWS

2418 RAYBURN HOUSE OFFICE BUILDING
8425 WEST 3rd STREET

WASHINGTON, D.C. 20515
LOS ANGELES, CALIF. 90048

202 - 225-3976
213 - 651-1040

For immediate release:
February 24, 1992

For more information, please contact Greg
Wetstone or Phil Barnett at (202) 226-7620

ENVIRONMENTAL EQUITY REPORT IS PUBLIC-RELATIONS PLOY

Internal Memoranda Reveal Report to Be Misleading

Today, Rep. Henry A. Waxman, chairman of the House Health and the Environment Subcommittee, released an analysis of EPA's report on environmental equity. "Environmental equity" refers to the disproportionate impact of pollution on minority populations.

Rep. Waxman said, "internal EPA documents show that the agency views the environmental equity initiative as a public relations matter, not an opportunity to understand and respond to the very real health problems faced by people of color. The agency is concerned about appearances, not substance."

According to the internal EPA memoranda released by Waxman, top EPA officials fear that environmental fairness could become "one of the most politically explosive environmental issues yet to emerge." To prevent the issue from reaching a "flashpoint" in which activist groups enlist mainstream civil rights groups in a campaign demanding EPA action, EPA's chief communication official prepared a confidential "communication plan" designed to co-opt the mainstream groups.

"The communication plan is a cynical 'divide and conquer' strategy. It seeks to drive a wedge between activist groups and traditional civil rights organizations. It shows no appreciation of the serious environmental threats faced by minority communities," said Waxman.

"I urge Administrator Reilly to renounce the communication plan. Federal policy should strive to reduce risks, not merely to sound good while doing nothing," said Waxman.

Other EPA memoranda released by Waxman highlight shortcomings of the equity report. One memorandum from a high-ranking official calls the report "less than candid" about the agency's commitment, adding that the report "serves only to document the meagerness of our efforts."

Also released is a dissenting opinion filed by members of the EPA's environmental equity workgroup who object to EPA's failure to consider comments on the report by civil rights organizations. This dissenting opinion has been suppressed by EPA in today's release of the report.

Rep. Waxman singled out EPA's failure to address lead poisoning, as the best-documented instance of an ignored disproportionate impact. "If the Bush Administration wanted to deal with the environmental problems of people of color, it would support federal legislation to combat lead poisoning. Instead, the agency is fighting congressional efforts to establish even a minimal federal lead program."

The Bush Administration's commitment to environmental equity and the questions raised by the EPA's internal memoranda will be explored at a Subcommittee hearing on February 25 at 9:45 a.m. in 2123 Rayburn House Office Building.

S - J 2087

**The Real Story Behind
EPA's Environmental Equity Report:
An Evaluation of Internal EPA Memoranda**

**Staff Report
HENRY A. WAXMAN
Chairman
Subcommittee on Health and the Environment
Committee on Energy and Commerce
U.S. House of Representatives**

February 24, 1992

The Environmental Protection Agency is scheduled to release its long-awaited report on "environmental equity" on February 24, 1992. Environmental equity refers to the disproportionate impact of pollution on minority populations. The ostensible purpose of the report is to increase the priority that EPA gives to issues of environmental equity.

This staff report summarizes important internal agency documents that address the equity report. These documents show (1) that the confidential EPA "communication plan" for the report promotes an agenda that conflicts with the stated objectives of the report; (2) that the equity report is "less than candid about EPA's track record"; (3) that minority members of the environmental equity workgroup filed a dissenting opinion that has been suppressed by EPA; and (4) that EPA has opposed initiatives to address proven instances of disproportionate impact.

I. The "Environmental Equity Communication Plan"

The agency's communication plan for the equity report is described in a confidential memorandum from Lewis Crampton, EPA's Associate Administrator for Communications, to Gordon Binder, Administrator Reilly's Chief of Staff (exhibit A).

As set forth in the memorandum, the goal of the "environmental equity communication plan" is not to promote understanding of, and responses to, the environmental problems faced by minority communities. Instead, the goal is to defuse political pressure for action by driving a wedge between activist groups and traditional civil rights groups. The memorandum states, "our goal is to make the agency's substantial investment in environmental equity and cultural diversity an unmistakable matter of record with mainstream groups before activists enlist them in a campaign that could add the agency ... as a potential target" (exh. A at 1).

The memorandum asserts that "long-simmering resentment in the minority and native American communities about environmental fairness could soon be one of the most politically explosive environmental issues yet to emerge" (exh. A at 2). The memorandum then urges action to "win recognition" before "the minority fairness issue reaches the 'flashpoint' – that stage in an emotionally charged public controversy when activist groups finally succeed in persuading the more influential mainstream groups (civil rights organizations, unions, churches) to take ill-advised actions" (exh. A at 2-3).

The memorandum states that "we must act now," because "at this stage, we can still expect the churches, unions, civil rights community and environmentalists – although skeptical – to listen to a reasonable presentation of the evidence" (exh. A at 3). The memorandum characterizes the activist groups as seeking "recognition and visibility" and as "not receptive to a straightforward presentation of evidence" (exh. A at 3). The memorandum does not assess the extent to which the activist groups raise legitimate grievances against EPA.

The memorandum proceeds to outline a detailed 13-point campaign for the news media and a 16-point campaign for "constituent outreach" (exh. A at 4-9). Steps in the campaign are "draft targeted op-eds," "develop select list of top minority media outlets ... to consider for Administrator interviews," and "draft list of mainstream leaders for Administrator's personal briefing."

The marginal notations in the memorandum are the notes of Chief of Staff Binder. Check marks by Binder appear to indicate his endorsement of nearly all the concrete steps proposed by Associate Administrator Crampton.

II. A "Less than Candid" Message

The "message" identified in the November 15, 1991, communication plan is that "the agency is committed to assuring fair treatment in environmental decision-making" (exh. A at 1). However, in a December 1991 memorandum, Ed Hanley, a Deputy Assistant Administrator for Administration and Human Resources, directly criticizes this message (exhibit B). The Hanley memorandum states that the message is "less than candid about EPA's track record" (exh. B at 1).

According to the Hanley memorandum, "it is more than a bit ingenuous [sic] to say that 'EPA managers and staff have a strong commitment to environmental equity.' Despite the laudable efforts of a very few, EPA's record on this issue shows exactly the opposite" (exh. B at 2). Hanley argues that the list of initiatives in the environmental equity report "serves only to document the meagerness of our efforts" (exh. B at 2).

III. Dissenting Views Likely to Be Suppressed

On February 20, 1992, the National Federation of Federal Employees, on behalf of members of EPA's environmental equity workgroup and other EPA professionals, filed a dissenting opinion to the equity report (exhibit C). The dissenting opinion opposed issuance of the report on the grounds that the environmental equity report "does not include any input from outside organizations which have been active in identifying the issue of environmental equity" (exh. C at 2).

It is expected that this dissenting opinion will not be released on February 24, 1992, with the equity report. Instead of releasing the dissenting opinion as the NFFE requested, EPA is likely merely to replace the cover sheet of the report, changing the title from a "final" report to a "draft" report.

IV. Failure to Support Initiatives to Alleviate Proven Inequity

EPA's official policy is that "the consequences of environmental pollution should not be borne disproportionately by any segment of the population." However, EPA has opposed legislation to address the one instance of disproportionate impact that it recognizes.

On January 17, 1992, EPA prepared a draft of the environmental equity report (exhibit D). This draft found one clear area of inequity: "A significantly higher percentage of Black children compared to White children have unacceptable blood lead levels" (exh. D at 3). In fact, in some inner city communities, one out of every two African-American children may be lead poisoned.

Nevertheless, despite its recognition of the adverse impacts of lead poisoning on minority children, EPA opposes legislation (H.R. 2840) that would establish a minimal federal program to protect minority and other children from lead hazards. Among the provisions opposed by EPA are the following (exhibit E contains a more complete summary of H.R. 2840):

- * A requirement that renters and home buyers be warned of lead hazards.
- * A requirement that schools and day care centers be inspected for lead hazards.
- * Federal regulations that define safe methods of abating lead hazards.
- * Acceleration of the 20-year schedule in current EPA regulations for elimination of lead in drinking water.

V. Subcommittee Hearing

The Subcommittee will hold a hearing on February 25 at 9:45 a.m., in room 2123 of the Rayburn House Office Building to examine the issue of environmental equity, with a particular focus on lead poisoning. Witnesses will include the leaders of national civil rights and environmental organizations, EPA and other federal officials, and grass-roots activists. A complete witness list is attached as exhibit F.

VI. List of Exhibits

- | | |
|-----------|---|
| Exhibit A | Memorandum on Environmental Equity Communication Plan, from Lewis Crampton, Associate Administrator, to Gordon Binder, Chief of Staff (Nov. 15, 1991) |
| Exhibit B | Memorandum from Ed Hanley, Deputy Assistant Administrator for Administration, to Clarice Gaylord (Dec. 1991) |
| Exhibit C | National Federation of Federal Employees, Dissenting Opinion (Feb. 20, 1992) |
| Exhibit D | EPA, Draft Environmental Equity Report (Jan. 17, 1992) |
| Exhibit E | Summary of H.R. 2840 |
| Exhibit F | Witness List, Hearing on Impact of Lead Poisoning on Minority Communities (Feb. 25, 1992) |

PRIORITY ~~CONFIDENTIAL~~



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

WASHINGTON DC 20460

DETERMINED TO BE AN ADMINISTRATIVE

NOV 15 1991

MARKING INITIALS: MAY DATE: 2/7/91

OFFICE OF COMMUNICATIONS
AND PUBLIC AFFAIRS

MEMORANDUM

SUBJECT: Environmental Equity Communication Plan

FROM: Lewis S.W. Crampton LC
Associate Administrator

TO: Gordon L. Binder
Chief of Staff

See
N/S
H. out
Here, as promised, is the draft environmental equity communication plan.

My staff and I have met several times over the last two weeks to consider the most effective, immediate measures my office can take to draw attention to EPA's equity-related initiatives and achievements, and these are reflected in the communication plan.

fine I suggest we meet with the appropriate members of the 12th floor, OPPE, OSWER and other staffs as soon as possible to consider these ideas, using this document as a straw man.

cc: Hank Habicht

Attachment

> Reply to [unclear]
Lew: I want to be sure
a detailed reply to SW Network is being
drafted. as Bill ~~agreed~~ promised - when
can we expect it?

Exhibit A

Memorandum on Environmental Equity Communication Plan, from Lewis Crampton, Associate Administrator, to Gordon Binder, Chief of Staff (Nov. 15, 1991)

~~CONFIDENTIAL~~
(Do not copy or distribute)

ENVIRONMENTAL EQUITY
PROPOSED COMMUNICATION PLAN SUMMARY

VISIBILITY: high

MESSAGE: The agency is committed to assuring fair treatment in environmental decision-making not only by finding ways to reduce risk to disadvantaged, minority and native American communities and by encouraging them to become more involved in decision-making, but also by giving them a greater voice in the process through cultural diversity programs.

ACTION: This plan builds on agency activities already announced or underway (like the agency's lead strategy and its cultural diversity programs) and those about to be announced (like the environmental equity task force report). A major component of this plan is to sharpen education and outreach programs to better reach minorities and the disadvantaged. recommending additional initiatives to emphasize the agency's sensitivity to environmental equity.

STRATEGY: Our goal is to make the agency's substantial investment in environmental equity and cultural diversity an unmistakable matter of record with mainstream groups before activists enlist them in a campaign that could add the agency to industry and local officials as a potential target. We propose a targeted, two-track strategy that concentrates our primary effort on a series of immediate steps to get our message to the mainstream groups--while continuing to give the more activist groups the attention they demand as part of a secondary effort.

AUDIENCE: Although the activist groups remain a part of this strategy, our emphasis is on reaching the major civil rights, church, union and community groups, like the NAACP, the National Urban League and the AFL-CIO. We also see an opportunity to further demonstrate our concern to activist and mainstream groups by publicly asking industry and trade associations--like the National Association of Manufacturers, the Chemical Manufacturers Association and API--to follow our example.

(NOTE: THESE PRELIMINARY NOTES DO NOT REPRESENT IN ANY WAY OFFICIAL POLICIES, RECOMMENDATIONS OR OPINIONS OF THE AGENCY OR ITS OFFICIALS)

DETERMINED TO BE AN ADMINISTRATIVE

MARKING INITIALS: MAY DATE: 2/7/2017

~~CONFIDENTIAL~~
(Do not copy or distribute)

ENVIRONMENTAL EQUITY
PROPOSED COMMUNICATION PLAN

**BACK-
GROUND:**

The formation of groups like the Southwest Network for Environmental and Economic Justice and the National Council of Churches' Eco-Justice Task Force and events like the National People of Color Leadership conference are early signs that long-simmering resentment in the minority and native American communities about environmental fairness could soon be one of the most politically explosive environmental issues yet to emerge. Fortunately, this agency has already demonstrated a sensitivity to their concerns, having taken the initiative to find ways to advance environmental equity and cultural diversity, especially on behalf of native Americans. Unfortunately, no one seems to know it.

Despite the release and widespread distribution in August of our Minority Academic Institutions (MAI) Task Force Report, for example, our efforts in this area have not attracted much attention in the major media. Including the MAI program, the agency has underway or is planning to announce equity-related activities in four broad, sometimes overlapping areas:

- 1) Cultural Diversity and Education: such as the agency's professional minority recruitment programs, the MAI task force.
- 2) Environmental Equity: the Environmental Equity Workgroup.

3) Regulatory Action: Farmworker protection standards, the lead strategy, the National Bioaccumulation Survey and TAG ~~studies~~.

4) Regional Programs: Region II Superfund case study, Region III multi-cultural Chesapeake Bay program.

**DETAILED
STRATEGY:**

The goal of this strategy is to win the recognition the agency deserves for its environmental equity and cultural diversity programs before the minority fairness issue reaches the "flashpoint"--that stage in an emotionally charged public controversy when activist

2 DETERMINED TO BE AN ADMINISTRATIVE

MARKING INITIALS: MAY DATE: 7/7/2017

✓ Be careful of
this → it's a
warning!

We need
a comprehensive
inventory

→ A

is Equity Task Force pulling one together?

This
should
be all, &
even
more
activities.

1987.
groups finally succeed in persuading the more influential mainstream groups (civil rights organizations, unions, churches) to take ill-advised actions. From what we've begun seeing in the news, this issue is reaching that point.

Since reasonable dialogue becomes nearly impossible once that line is crossed, we must act now. We propose a series of practical steps we can take immediately to bring the agency's record to the attention of the mainstream groups--including news events, speeches, constituent and congressional briefings and targeted mailings. These measures represent the first and primary track of this strategy. At this stage, we can still expect the churches, unions, civil rights community and environmentalists--although skeptical--to listen to a reasonable presentation of the evidence.

At the same time, we should continue meeting with the activist groups driving the minority fairness issue. Because, like many activist movements, these groups lack recognition and visibility, they are not as receptive to a straightforward presentation of evidence. But we may be able to deflect some of their hostility from the agency by taking the initiative to grant them the respect and access they want and by finding some common ground on which we can agree. Talking with and listening to these groups is the second track of the strategy.

Both tracks depend entirely on the degree to which our messages are credible. The range of equity-related agency programs we describe should be limited to the concerns of the particular group we're addressing. In other words, we should talk to urban community groups about the lead strategy or certain unions about farmworker safety standards, but these may not be the appropriate audiences for describing the agency's cultural diversity plans, which would be more the concern of minority advancement groups. Trying to approach every segment of the minority community with a generic recitation of the agency's minority accomplishments risks having us appear insincere and could backfire. This plan attempts to match the programs (the four areas described above) to the audiences we believe are appropriate.

REACHING THE MAINSTREAM (FIRST TRACK)

Staff Special Recommendations

by 12/2

o Designate Administrator's special assistant for environmental equity. We recommend the Administrator either appoint a special assistant for environmental equity or designate an assistant administrator, or at least someone at the deputy level, to serve as the agency's point person on equity issues. The administrator could hold a press briefing to introduce the new person or make the announcement as part of the press conference releasing the environmental equity report.

o Tap minority network. External Relations is designing a separate strategy to approach the minority establishment--doctors, church leaders, community leaders--to help the agency design materials and distribute them throughout their communities.

by 1/15/92

o Special TRI analysis. As part of the release of the environmental equity report, have available an analysis of TRI data to determine the extent to which toxic emissions have a disproportionate effect on minorities.

o Translating regulations and guides. We should begin working with the programs to translate summaries of regulations and guidebooks into languages spoken predominantly by those communities affected by agency actions and programs (i.e.: Clean air guide into Spanish, dry cleaners NESHAAP into Korean).

News Media

done

o Expand MAI report distribution. The press division has assembled a television and radio list and is preparing a mailing to augment its August minority print media distribution.

o Conducted news clip search. OCEPA's special projects in monitoring the national news media through the news clips, NEXIS and other sources to try to determine how much media activity the equity movement is generating (so far, we've found only a few stories like those in the Washington Post and the New York Times).

already begun o Promote Enforcement appointment. The press

✓
division is contacting Jet and Ebony magazines to persuade them to run profiles of the new assistant administrator for enforcement.

✓
o Prepare environmental equity report press mailing lists. The press division has acquired minority, union and church media mailing lists.

✓
o Draft targeted op-eds. OCEPA is drafting a boilerplate op-ed that can be tailored by us and the regions to highlight the particular concerns of each community newspaper.

immediately

o Develop select list of top minority media outlets. Draft list of top minority broadcast programs, magazines and newspapers to consider for Administrator interviews.

by 12/28

o Tape Administrator for ABC radio spots. Interview the Administrator to prepare a series of equity-related radio spots, which ABC can transmit to affiliates during January.

o Prepare fact sheet on agency programs that have reduced risk. OCEPA can work with the appropriate offices--OSWER, OPPE--to draft a fact sheet on agency programs and initiatives, like 33:50, that have reduced risk in minority communities. This fact sheet would be released as part of the environmental equity announcement.

o Arrange major media opportunities for the Administrator's environmental equity announcement. Contact the network morning shows, McNeil/Lehrer and other public affairs programs to persuade them to include the Administrator in panels likely to include advocates like Chavez the day of the environmental equity press conference.

✓
o Encourage regions to promote their equity programs. We can ask the regions to report on their environmental equity programs in conjunction with the headquarters equity announcement.

o Environmental equity report press conference. We recommend having the Administrator release the environmental equity report the week before Martin Luther King's birthday to take advantage of the media's heightened coverage of civil rights issues.

don't forget
clean air
act, ✓

by 1/17

Not on
panels in which
brownsides are
them - Javis is
Not a good debate
partner - & B.I.
refers 1:1
1/17

Priming goal
but Bill will
be Calif -
& Bough - possible for
week of Jan 8th

SF announced when he's there
Jan 8th all hands old previous some
... to know what report says before
... press conf.

need a Jan mfr of the High-Corp to hear their leaders

1/20

o Roundtable media event. Assemble a panel of distinguished experts on the environment and equity-related issues to discuss the report on C-Span, National Public Radio, or even PBS. The panel could include Ben Chavel, chemical and waste company CEOs, environmentalists and civil rights leaders and could be moderated by someone like Jim Vance or William Raspberry.

o Regional roundtables. Ask regional administrators to work with local public broadcast stations to hold local environmental equity roundtables in conjunction with a national broadcast. (Mayor Bradley's office has offered to facilitate a west coast version with the Administrator.)

Related Regulatory Announcements

We will be looking for opportunities to tie the following announcements to our overall environmental equity strategy. For any of these equity-related announcements from this point on, we will consider supplementing the press and constituent lists with the minority media and mainstream group lists we're developing, and we will work with the programs to hold special equity-related briefings wherever appropriate.

underway

- o Lead strategy.
- o Dioxin re-evaluation.
- o Risk analysis of those consuming dioxin-contaminated fish.
- o Farmworker protection standards.
- o National bioaccumulation survey.
- o Cooling Our Communities handbook.
- o Citizens Guide to Incineration.
- o Water quality inventory report to Congress.

1/?/92

2/?/92

Meetings and Constituent Outreach

already begun

o Identify mainstream groups. External Relations within OCEPA has assembled a list of mainstream organizations--church and civil rights groups, environmentalists and unions--that the agency needs to reach within the next few months.

immediately

o Identify minority professional groups. External Relations has prepared a list of black, hispanic and native American professional societies the agency must reach to promote its cultural diversity programs. *we shd have pgs. at the annual mto as pgs*

o Develop an environmental equity speaker's bureau. Identify agency officials who can serve as spokespeople on these issues at minority and native American conventions and conferences.

o OPPE-OCEPA environmental equity report strategy meetings. Direct OPPE and OCEPA to begin holding joint communication strategy meetings to combine efforts to release the equity report.

o Attend minority conventions and conferences. We are checking the calendars of the major civil rights and other minority organizations for opportunities to exhibit, talk about or listen to presentations on equity.

by 12/2

o Draft constituent briefing invitation lists for environmental equity report release. External relations has begun assembling a list of mainstream minority group, church and union representatives and leaders for the Administrator's announcement. *envir pgs too*

by 12/2

o Draft list of mainstream leaders for Administrator's personal briefing on environmental equity. External relations will develop a select list of mainstream minority group, church and union leaders the Administrator can brief on environmental equity the day the report is released and during the following weeks. *he's in Calif - other? personal notes developed*

1/17

o Environmental equity report congressional briefings. The administrator's designated representative will pre-brief Congress on the environmental equity report.

o Administrator briefs mainstream leaders on environmental equity. After the press conference, the Administrator briefs a select cross-section of key mainstream leaders on the equity report.

o Environmental equity report constituent briefing. The administrator's designated representative will release the equity report to a general audience of constituents in conjunction with the press conference.

after 1/17

✓ Administrator meets black religious leaders. External Relations will arrange to have the Administrator meet a select group of leaders representing most of the predominantly black churches.

✓ Administrator meets black college presidents. External Relations will arrange to have the Administrator meet a select group of college presidents of black colleges.

✓ Administrator talks to hispanic leaders in Spanish. External Relations will arrange to have the Administrator meet a select group of hispanic leaders in a session in which he can address them using his fluency in Spanish.

✓ Deputy Administrator meets trade association, industry representatives. By this point, we should identify and schedule opportunities for the Deputy Administrator to publicly encourage them to promote environmental equity.

✓ Environmental equity regional outreach workshop. Invite regions together with headquarters staff to share ideas on outreach to the minority, native American and low-income communities.

○ Host national/regional conference on access to the agency. In conjunction with the regions, invite the minority community to participate in a national workshop on how the agency works and how to become more involved in the regulatory process, including TRI, TAG grants, the public comment process and hotlines.

✓ Environmental equity constituent mailing list. External relations has assembled and is continuously revising this list to make it available to the Administrator and the rest of the agency for mailings on Title III, TAG grants, environmental education and other announcements.

○ Environmental equity report. Have OPPE work with OCEPA's publications division to produce a more readable, attractive document. Of a Summary

○ Prepare fact sheet on agency programs that have reduced risk. OCEPA can work with the appropriate

might not work
he'd need
practice time
+ dialogue wld be
difficult - he's ok
it not fluent - not

by 7/15/92

why
wait?

by 4/1/92

why not
Reg'l conferences
+ mter - get
products

done

immediately

by 1/17/91

Chen
an

offices--OSWER, OPPE--to draft a fact sheet on agency programs and initiatives, like 33:50, that have reduced risk in minority communities. This fact sheet would be released as part of the environmental equity announcement.

by 2/18/92 ✓

o Agency employee newsletter. We can devote a large section of the first issue of the newsletter to the agency's cultural diversity goals.

by 3/1/92

o Educational self-help materials. Assuming funding is available, we can produce (in cooperation with the minority community and featuring minority personalities) a series of short publications and multi-media materials, including 10- to 15-minute self-help videos, to show minority and low-income families how to reduce environmental risks, like lead exposure.

by 4/1/92 ✓

o Special Journal issue. OCEPA is shifting its Journal schedule to allow publication of a special environmental equity issue.

Environmental education

We will take advantage of the environmental education conference and all other opportunities and forums to publicize the strong minority focus of the agency's education program.

1/?/92 ✓

o "Earth Notes" teachers periodical. The environmental education office is launching a new periodical for teachers. The first issue will be centered around minority issues, and these will be a regular feature of the publication.

2/?/92 ✓

o Black and hispanic colleges. The agency is working with black and hispanic colleges and universities to train teachers in environmental issues as a result of the \$1.7 million grant to a consortium of universities under the National Environmental Education Act.

3-4/?/92 ✓

o Environmental education grants. The agency will award \$2.4 million in education grants to support "grass-roots" programs to raise environmental awareness and interest students in environmental sciences and careers. Minorities and outreach to large urban areas will be key priorities for this general grants program.

by Fall 92 ✓

o Internship and fellowship program. Under the education act, the agency will manage a federal environmental, internship and fellowship program

that will target minority students and teachers for participation.

REACHING THE ACTIVISTS (SECOND TRACK)

already begun o Continuing meetings. Although External Relations is serving as the primary point of contact with the activist community, the regions will continue to play a prominent role in outreach to these groups.

after 1/17 o Enlist activists for data collection. External relations would invite the groups driving the equity movement to participate in the data collection process to be recommended in the environmental equity report.

should get the report.

Should be included in interview. Admin. This means

→ Gen. notes.

SHD play the primary role
state/local groups

Need to approach each proposal w/ an understanding of objectives.

Possibility of objectives -
wld be open to category
prob. not but a process or
Regulatory type process or
in adv. sup process
might work.

December

Submitted by
Ed Hanley
See you at
3:45 p.m. - Clarice

NOTE

TO: CLARICE GAYLORD
FROM: ED HANLEY
RE: DRAFT "EQUITY" REPORT

The draft Environmental Equity report is a very good piece of work. I have forwarded it to Chris for his review and, in the meantime, I have only a few comments:

- ✓ p. 7: The mention of "seven sub-groups" after listing four "tasks" is a bit confusing. It would be better to leave out the reference to the sub-groups, since they are never mentioned again. If they have to be mentioned, the text should list and explain them.
- p. 8: The effort to define "equity" seems more confused than a section this important should be. I understand the point being made -- that the only way to clarify this crucial issue is through a public dialogue, but it seems to me we should do better. I wish I could provide more useful comments, but this is a very hard section to write, and I certainly cannot do better than the author off the top of my head. Maybe the answer is less philosophy and more examples of what is entailed and at stake in applying some concept of "equity" to the business of EPA and to environmental protection choices overall. It might also help to illustrate the conflict between equity and other cherished values such as local and state control of land use and market-based decision-making.
- FINA corp.
- p. 16-17 The discussion of the UCC report on p. 16 and Table 5 on p. 17 are confusing in one respect. Reference is made to "the largest" or the "five largest" landfills or hazardous waste facilities without defining the universe of concern. Largest in the country, the state, the Zip Code area?

Section summary: take out
Finally, I would like to raise a more fundamental issue. I believe that the report is less than candid about EPA's track record, and as a result, reduces its value as an impetus for reform. More specifically, the report refers more than once to the "strong commitment of EPA managers and staff to address equity issues". It also goes to great pains to avoid the issue of EPA's record in hiring and promoting minorities and in supporting minority academic institutions.

Exhibit B

Memorandum from Ed Hanley, Deputy Assistant Administrator for Administration, to Clarice Gaylord (Dec. 1991)

The workgroup's reluctance to criticize the very EPA managers and staff that it now wants to take up the cause of "equity" is understandable. The value of listing illustrative "equity" projects in Appendix Two is also clear. The list, however, serves only to document the meagerness of our efforts to date -- most of the listed projects are barely underway, and were started after the UCC raised the issue and the workgroup was launched.

It is more than a bit ingenuous to say that "EPA managers and staff have a strong commitment" to environmental equity". Despite the laudable efforts of a very few, EPA's record on this issue shows exactly the opposite. In fact, the record shows quite clearly that EPA has not understood the issue at all until very recently. The report would be more credible and more useful as a stimulus for action if it were more candid on this point. The Appendix should be offered solely as evidence of the potential and feasibility of action, rather than as proof of our "strong commitment".

Put in section re connection
I also understand why the workgroup has gone to such pains to avoid repeating the work of others in the areas of minority academic institutions and EPA hiring. However, in avoiding any discussion of these areas, I think the report misses an opportunity. The Agency's minority profile and hiring history are a matter of record, and despite initiatives launched by Administrator Reilly, they are not very laudable. The lack of minorities, especially in positions of influence, almost certainly has contributed to the lack of insight into equity issues that the workgroup found to be characteristic of both EPA and our traditional constituency groups.

By highlighting the relationship between the make-up of EPA's workforce and our success in carrying out our basic mission, the report could provide a powerful programmatic rationale for improved minority hiring and minority academic relations. EPA has proven resistant to the generic rationale for minority hiring for over two decades, and it is not clear that the Reilly initiatives will change things in any fundamental way. EPA managers and staff might embrace the Federal Government's long-standing affirmative action policies more enthusiastically, however, if they believed that doing so would improve their effectiveness in the one area where we know they do have "a strong commitment" -- namely, to protecting human health and the environment.

GREG
SMITH

4 pages

TRI-STATE ENVIRONMENTAL COUNCIL

FOR IMMEDIATE RELEASE

Contact: Beth Newman, Greenpeace Toxics Campaign, 304-387-1007
Terri Swearingen, Tri-State Environmental Council,
304-387-0574

RECORDING STAR RICHARD MARX VISITS EAST LIVERPOOL
TO SUPPORT WTI HUNGER STRIKE

"HUNGERING FOR JUSTICE" RALLY SCHEDULED

July 22, 1992 - East Liverpool, Ohio - Top Ten Capitol Records recording artist, Richard Marx, will be visiting the Ohio River Valley today to express his concern and support for at least 13 area citizens who have begun a fast as part of their commitment to stop the proposed operations of Waste Technologies Industries (WTI), the world's largest capacity hazardous waste incinerator, now nearly completed on the banks of the Ohio River, just 1100 feet from an elementary school in East Liverpool, Ohio. A press conference will be held at 5:30 pm at 1418 Etruria Street in East Liverpool, the home of Robert and Sandy Estell, whose family residence sits just a few hundred feet from the incinerator's smokestack. Following the news conference, a rally will be held at 7:30 pm at East Elementary School, 1417 Etruria Street in East Liverpool. Marx is scheduled to play several songs in support of local groups.

While Richard Marx himself grew up in Chicago, his family and roots are in the Ohio Valley. Marx has two young cousins who attend East Elementary School, sitting on a ridge overlooking the hazardous waste facility. "Operating a hazardous waste incinerator so close to where people live, work and go to school is insane," Marx stated in a press release from Capitol Records. "I'll do whatever I can to see that the public becomes more aware of what's going on in East Liverpool today so that they can prevent it from happening in their backyard tomorrow." Marx says he wants to look at both sides of the issue while in East Liverpool and will take a tour of WTI at 3:30 pm today. He will give his impressions on the WTI issue at the 5:30 pm press conference.

Citizens from Ohio, Pennsylvania and West Virginia began their fast at 4:30 pm on Monday, July 20, while in the national

- more -

offices of the Environmental Protection Agency in Washington, DC at a meeting with Agency officials. Ohio Valley residents had scheduled the meeting in order to discuss what actions, if any, the EPA would take to halt all progress at WTI based on illegalities in the facility's hazardous waste permits. Despite preliminary results from a government investigation which show the permit's validity to be in question and despite the EPA's failure to produce documentation for their claims of the permits legality, Agency officials Lewis Crampton, Robert Guimond and William Muno refused to place additional delays on the incinerator's operations (all progress at the incinerator is currently halted by an EPA agreement which could expire as early as Friday, July 24). With the toxic burner just days or weeks away from burning hazardous wastes, citizens refused to leave the EPA building until officials would agree to uphold the law and further delay the WTI permit. The twelve citizens participating in the meeting announced at 4:30 pm on Monday that they would not eat until the WTI hazardous waste incinerator was indefinitely delayed or its illegal permits revoked. All twelve Ohio Valley residents were arrested by Federal Marshalls at 6:00 pm and turned over to District of Columbia police. The twelve were held until 4:00 am in a District police station, then arraigned at 9:00 am on Tuesday morning. By 4:00 pm Tuesday, all twelve had pled "guilty" to the misdemeanor charge of "unlawful entry," and paid a \$50 fine to the Superior Court in Washington. "Whatever we have suffered in the last 48 hours is nothing compared to the poisonous consequences to the children if WTI is ever allowed to operate," says Terri Swearingen. "Our commitment to stopping WTI must be stronger than the corruption and greed which put the incinerator here in the first place; that's why we're hungering for justice in East Liverpool."

So far, at least fifteen Ohio Valley residents, including nine of those arrested in Washington, have committed to the hunger strike, which they vow to continue until permits for the WTI hazardous waste incinerator have been revoked or an indefinite delay is placed on the huge facility. Biographies of each of the hunger strikers will be available to the media at this evening's press conference.

Local citizens opposed to the WTI incinerator are excited about musician Marx's return to the Ohio Valley to aid their cause. "If there was ever a time for a native son to return to his family's hometown and lend a hand, the time is now," says Terri Swearingen, one of the hunger strikers and member of the Tri-State Environmental Council. "People all over the nation are finding out about what kind of disastrous injustice WTI and the EPA are doing here and we're thrilled that Richard Marx took time out of his busy tour to lend his support."

Background information on Richard Marx can be faxed by request at 304-387-1007 and will also be available at this evening's news conference.

PARTICIPANTS IN "HUNGERING FOR JUSTICE IN EAST LIVERPOOL

- DAVID AMMON - 38 years old, Dave is a steelworker and father of two. Dave and Becky Ammon live in East Liverpool, Ohio. Dave and Becky are lifelong residents of the Ohio River Valley.
- BECKY AMMON - Becky Ammon works for Employment Development, Inc. with Mentally Retarded and Developmentally Disabled adults in Columbiana County, Ohio. Becky and Dave Ammon live in East Liverpool, Ohio and have two sons.
- ALONZO SPENCER - Alonzo Spencer is President of Save Our County, a citizens group which has been fighting the WTI incinerator since it was first proposed over 12 years ago. Alonzo is 64 years old and a retired steelworker. He is a lifelong resident of East Liverpool.
- TERRI SWEARINGEN - Terri is 35 years old and a lifelong resident of Chester, West Virginia, just across the Ohio River from East Liverpool. Terri is a Registered Nurse and mother of one daughter, Jamie Swearingen. Terri has devoted 12-14 hours a day to fighting WTI for the last two and a half years, but has been involved for about 10 years.
- JUNE ARCHER - June is the School Nurse for the East Liverpool City Schools and is a resident of East Liverpool. June is 48 years old and has one son, Patrick.
- CHUCK SMITH - Chuck is a resident of Negley, Ohio. He is 47 years old and owns a tree service business which he manages with his wife, Diane. Chuck is a lifelong resident of the Ohio River Valley.
- SCOTT SIKORA - Scott is 34 years old and works as a steelworker at Weirton Steel in Weirton, West Virginia, about 30 miles south of East Liverpool on the Ohio River. Scott is a lifelong resident of the Ohio River Valley.
- BETH KNAPP - Beth is 27 years old. She is a Registered Nurse and mother of one son, Justin. The Knapps reside in Beaver, Pennsylvania. Beth is a lifelong resident of the Ohio River Valley.

page two

MICK CASEY - Mick is 47 years old and works at his own business as a real estate broker. Mick is father of two children and lives in Wintersville, Ohio. Mick is a lifelong resident of the Ohio River Valley.

CAROL HICKS - Carol is a Registered Nurse who works at the Ohio Valley Hospital. She lives in Weirton, West Virginia with her husband and two children. Carol is 45 years old. Carol is a lifelong resident of the Ohio River Valley.

MIKE FITCH - Mike works with Becky Ammon at Employment Development, Inc., also working with Mentally Retarded and Developmentally Disabled citizens. He is 33 years old and lives in East Liverpool.

CARL UCCELINI - Carl lives in Ohioville, Pennsylvania and is a lifelong resident of the Ohio River Valley.

DENISE COX - Denise is 27 years old. Denise is a part-time photographer and works part-time at the Beaver County Geriatric Center. Denise lives in Ohioville, Pennsylvania and is a lifelong resident of the Ohio River Valley.

MARJORIE MCKINNON - Marjorie is a mother, homemaker and lifelong resident of East Liverpool. The home where Marjorie and her family live is just a few hundred feet away from the WTI smokestack.

*Thanks for
everything
Greg!
I LOVE YA !!*

Excerpted

THE AGENT ORANGE COVERUP: A CASE OF FLAWED
SCIENCE AND POLITICAL MANIPULATION

TWELFTH REPORT

BY THE

COMMITTEE ON GOVERNMENT
OPERATIONS

together with
DISSENTING VIEWS



August 9, 1990. Committed to the Committee of the Whole House on the
State of the Union and ordered to be printed

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(11)

LETTER OF TRANSMITTAL

HOUSE OF REPRESENTATIVES,
Washington, DC, August 9, 1990.

Hon. THOMAS S. FOLEY,
Speaker of the House of Representatives,
Washington, DC.

DEAR MR. SPEAKER: By direction of the Committee on Government Operations, I submit herewith the committee's twelfth report to the 101st Congress. The committee's report is based on a study made by its Human Resources and Intergovernmental Relations Subcommittee.

JOHN CONYERS, Jr., *Chairman.*

(111)

there is no difference between the "high" and "low" exposure opportunity scores), it will be unknown if the failure to find a difference was due to limited Agent Orange exposure in Vietnam or to misclassification of the scores.⁵⁸

The same memorandum also stated that, while the blood serum assay was a legitimate tool for validating CDC exposure methodology, "it should be noted that current TCDD levels could bear an imperfect correlation with exposure to Agent Orange because of individual variability in both the metabolic half-life of dioxins and in post-service exposure to dioxin containing compounds."⁵⁹

More than a year earlier, in January 1986, the senior statistician on the Agent Orange Project expressed serious reservations about using dioxin measurements to validate exposure. The statistician warned that a TCDD analysis had a substantial likelihood that there will be essentially no correlations:

[... there is a great danger of very poor correlation in adipose measurements separated by a long period of time. Thus, there is a substantial chance that we will find at best a very weak relation between exposure score and the adipose measurement ... we are asking for trouble if we do TCDD measurements.⁶⁰

NOTE

The Director of the Center for Environmental Health and Injury Control stated that the senior statistician did not know what he was talking about. Dr. Houk testified, "I think he has been proven to be wrong and I discussed with him that it would be inappropriate for a senior laboratory scientist to comment on the inadequacies of: very elegant statistical design and analysis."⁶¹ Dr. Houk's criticism is curious, given that he had selected this same statistician to direct the analysis of the study's results.⁶²

The evidence is compelling that CDC was aware that the blood test study could not be the final word on the Agent Orange study. In 1987, the scientists working on the blood serum study cautioned in a provisional report:

The study reported here measured TCDD levels as a marker of prior exposure to Agent Orange. It was *not* designed to detect "biologically meaningful" differences in serum TCDD levels because:

1. Levels of TCDD in man at which adverse health effects become manifest are not known;
2. Even if toxic levels of TCDD were known, the tissue half-life of TCDD in man is not precisely known, so that it would be difficult to extrapolate current

⁵⁸ "Evaluation of residual dioxin levels in Vietnam veterans as a validation of Agent Orange exposure opportunity scores," Memorandum from Peter M. Layde, M.D., M.Sc., Acting Director, Agent Orange Project, to James O. Mason, M.D., Dr.P.H., Director, Centers for Disease Control, March 17, 1986, p. 3.

⁵⁹ Ibid.

⁶⁰ "Trip Report on Meeting with Tavia Gordon, Max Halperin, and Shelby Stanton," Memorandum from John M. Karon, Senior Statistician, Agent Orange Project, to Dan McGee, Director, Agent Orange Project, January 9, 1986, p. 6.

⁶¹ Hearing, 1989, p. 67.

⁶² Ibid.

levels in veterans back 20 years to when exposure may have occurred; and

3. The component of Agent Orange that may have been responsible for adverse health effects is not known. Although attention has focused on the TCDD contaminant, the two active Agent Orange ingredients, 2,4-D and 2,4,5-T, also may cause adverse health effects. . . . Different components of Agent Orange may have been responsible for different manifestations.⁶³

One of the scientists on the Agent Orange Project testified that CDC, despite its public claims to the contrary, "had no idea about its [dioxin's] half-life. We had some conjectures about the half-life of dioxin but we didn't have anything certain."⁶⁴ He added:

Also, we weren't certain about the dosage that would produce an effect. No one knew the relative importance of the various routes of exposure. We didn't know much at all about the distribution of dioxin within the body. There's an assumption that it stores itself in fat tissue 11 times more frequently than in serum but this sort of information, I think, is very questionable.⁶⁵

CDC had already diluted the study protocol to the point it would not identify the veterans most likely to have been exposed, to avoid a lengthy document review. The decisions to dilute were made for reasons of expediency. With its manipulation of the half-life of dioxin, CDC seemed to be trying to justify an intentionally flawed exposure assessment methodology with the blood serum analysis. The blood assay test was more a method of convenience than an exhaustive scientific approach. As Dr. Smith testified:

We damned the historical records with overemphasis on minor problems with ESG. We ignored other sources of records and relied too much on unreliable, anecdotal reports. We played with the half-life of dioxin using only those studies and reports that would advance the concepts of what the model which we wanted to use would say at the time. . . .

We ignored most of the medical literature on dioxin. We had some excellent references but we only focused on a few papers, especially when the adipose tissue proposal came along. The focus was only on a few papers that supported what we had in mind, or, what we had ultimately come to.⁶⁶

Dr. Michael Kafritsen worked on the Agent Orange Projects and had been asked by CDC to evaluate the half-life of dioxin in the human body. Although he said there was some preliminary evidence indicating a half-life of 7.1 years for dioxin in humans in:

⁶³ "Comparison of Serum Levels of 2,3,7,8-TCDD with Indirect Estimates of Agent Orange Exposure in Vietnam Veterans—Provisional Report," Agent Orange Project, Division of Chronic Disease Control, Center for Environmental Health, Centers for Disease Control, July 1987, p. 11.

⁶⁴ Hearing, 1989, Smith testimony, p. 81.

⁶⁵ Ibid.

⁶⁶ Ibid., p. 82.

some situations, he stated, "I don't believe at this time there is sufficient information to say that this number obtains for all men at all times under all physical circumstances."⁶⁷ Dr. Kafriksen also testified that "We did not know all of the critical levels—and I don't believe we now know—of dioxin that is going to effect a problem in humans. For that reason, we were concerned with the possibility that men may have been affected, may have been exposed and that we would no longer be able to judge that based on these laboratory specimens."⁶⁸

The assumption that dioxin had a longer half-life in the human body than previously believed was based on studies of individuals who were directly exposed to high doses of dioxin in laboratory accidents, one study of a scientist who ingested dioxin in high doses to evaluate half-life, and tests conducted of veterans who worked in Operation Ranch Hand, directly spraying and handling Agent Orange in large amounts. These subjects cannot be compared to Vietnam veterans who had less direct exposure, possibly over longer periods of time. The large, short-term exposure to undiluted chemicals as the result of industrial accidents is quite different from the possible long-term exposure to Agent Orange in which the contaminants were diluted with other substances. Obviously, dioxin exposure is different in these subjects and the elimination of dioxin traces would be entirely different than in the subjects mentioned earlier. While studying the half-life of dioxin in highly exposed veterans and workers was relevant to the CDC Agent Orange Study, the committee finds the conclusion that the 7.1 years half-life in highly exposed individuals can be extrapolated to all Vietnam veterans to be unsupportable.

Even the method by which CDC determined the half-life—called first order kinetics—may not have been the correct way of assessing dioxin elimination from the human body. The scientists who conducted the half-life study cautioned:

With just two serum 2,3,7,8-TCDD values per veteran, it is not possible to definitively state that a first-order kinetic model is appropriate to describe the decline in serum 2,3,7,8-TCDD concentrations over time or that a more complex model is needed.⁶⁹

Based on the complete record of the CDC Agent Orange Studies, the committee believes there was a two-part course selected by the Agency that guaranteed the eventual cancellation of the study. First, CDC ignored the military records experts at the Pentagon, created its own use of the records to establish exposure, and then diluted the study to the point that numerous veterans who were most likely to have high exposure were eliminated from the study. Second, using the flawed exposure definition it had developed, CDC then attempted to justify it with the blood serum assay, which, itself, was based on false assumptions about the chemical's half-life in the human body. Unsound assumptions about the half-life of

⁶⁷ Ibid. Testimony of Michael E. Kafriksen, M.D., former epidemiologist, Centers for Disease Control, p. 107.

dioxin were used to validate badly-designed exposure assessments. Given these restrictions, it would have been impossible to validate exposure.

The committee also finds that, in adopting these courses of action, CDC disregarded or ignored the warnings from its own scientists, Defense Department officials, and the expert committee assembled by the IOM.

D. THE WHITE HOUSE COMPROMISED THE INDEPENDENCE OF THE CDC AND UNDERMINED THE STUDY BY CONTROLLING CRUCIAL DECISIONS AND GUIDING THE COURSE OF RESEARCH AT THE SAME TIME IT HAD SECRETLY TAKEN A LEGAL POSITION TO RESIST DEMANDS TO COMPENSATE VICTIMS OF AGENT ORANGE EXPOSURE AND INDUSTRIAL ACCIDENTS

The subcommittee's review of Executive Branch records demonstrates that two components of the White House, the Agent Orange Working Group (AOWG) and the Office of Management and Budget (OMB), monitored and controlled the CDC Agent Orange Project. Top administration officials such as Attorney General Edwin Meese and White House Chief of Staff James Baker had ultimate decisionmaking authority for approving and eventually canceling the exposure study, but the nuts and bolts of the work were handled by the AOWG and OMB.

While Agent Orange was the impetus for the establishment of the White House advisory committee under President Carter, the panel's mandate was not limited to the war-time deloliant. Its purview included the effect of herbicide contaminants in addition to Agent Orange.

The first responsibilities of the White House panel were to instruct the Air Force to conduct the study of Ranch Hand personnel and to oversee both the Ranch Hand study and the epidemiological study of Agent Orange.⁷⁰

In June 1983, the Reagan Administration decided to revise the charter of the White House panel by eliminating its mandate to explore the effects of all herbicides and contaminants and concentrating the work of the group only on Agent Orange. In a memorandum from Robert B. Carleson, Special Assistant to the President, to White House aide Jack Svahn, it was decided:

... the task of the Working Group on Agent Orange be concentrated so that its work can be completed in a timely manner. Therefore, please ensure that your working group deals only and specifically with the possible long term adverse health effects of exposure to Agent Orange and Vietnam veterans.⁷¹

The AOWG was the successor to the White House Advisory Committee on Special Studies Relating to the Possible Long-Term Health Effects of Phenoxy Herbicides and Contaminants. The origi

⁷⁰ Memoranda to the Secretary of Defense and the Administrator of Veterans Affairs, from Stuart E. Eizenstat, Assistant to the President for Domestic Affairs and Policy, September 1, 1983.

⁷¹ "Assignment of the Working Group on Agent Orange," Memorandum from Robert B. Carleson, Special Assistant to the President, to Jack Svahn, Chairman, Working Group on Agent Orange, June 2, 1983.

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* A national advisory committee was established on December 11, 1979, in a memorandum drafted by Stuart E. Eizenstat, Assistant to President Jimmy Carter for Domestic Affairs and Policy. The advisory panel's mission was to assure that all Federal research into herbicides and contaminants provide reliable data, and to provide technical support to Federal agencies working on the research.⁷²

* The original mandate to focus the White House panel on the effects of all herbicides was abruptly altered by the Reagan White House. By focusing the work of AOWG on Agent Orange only, the administration laid the groundwork for manipulating the study to the point of uselessness.

* A possible reason that the White House chose this path is revealed in confidential documents prepared by attorneys in OMB. The White House was deeply concerned that the Federal Government would be placed in the position of paying compensation to veterans suffering diseases related to Agent Orange and, moreover, feared that providing help to Vietnam veterans would set the precedent of having the United States compensate civilian victims of toxic contaminant exposure, too.

These concerns were included in a series of memoranda prepared by an OMB attorney about pending legislative proposals to compensate victims exposed to Agent Orange and nuclear radiation. These proposals, OMB warned, "have enormous fiscal implications, potentially in the hundreds of billions of dollars."⁷³ In discussing H.R. 1961, a bill pending in the House of Representatives that would provide compensation to veterans exposed to Agent Orange and nuclear radiation, OMB called the legislation "our first key challenge on toxic compensation—and it has significant ramifications for other, more costly compensation proposals. It is therefore extremely important that we organize our position and response."⁷⁴

The ramifications feared by the White House were delineated in a second memorandum. A major worry was that the legislation, if passed, would make it hard for the White House to prevent compensation to victims of other types of contaminants:

The bill will make it far more difficult to stop broader victims compensation schemes involving hazardous wastes and substances. Dioxin—the toxic ingredient in Agent Orange—is a major issue in this area (Love Canal and Times Beach are largely dioxin exposure cases). We will be in the tenuous position of denying dioxin exposure compensation to private citizens while providing benefits to veterans for in many instances lower levels of exposure.⁷⁵

* The White House also feared that passage of the legislation would damage its efforts to prevent compensation for claims invol-

⁷² Charter, Advisory Committee on Special Studies Relating to the Possible Long-Term Health Effects of Phenoxy Herbicides and Contaminants," as amended May 1984.

⁷³ "Compensation for Low-Level Radiation Exposure and Related Developments," Executive Office of the President, Office of Management and Budget, Memorandum to Ed Meese, Joe Wright, Jay Keyworth, Fred Fielding, and M.B. Oglesby, from Mike Horowitz, December 6, 1983, p. 1.

⁷⁴ Ibid., p. 3.

⁷⁵ "Agent Orange/ation Compensation Legislation," Executive Office of the President, Office of Management and Budget, Memorandum to Dave Stockman, Joe Wright, Jay Keyworth,

ing nuclear radiation. "The radiation portion of the bill will undermine the United States' position in pending radiation litigation. The Allens case, involving \$2 billion in claims, is still under advancement before a Utah federal judge."⁷⁶

A subsequent memorandum reiterated these concerns and expanded upon them. In regard to nuclear radiation, OMB warn-

Many residents near the test sites received cumulative exposures far in excess of the single doses to which veterans were exposed. These residents will undoubtedly demand compensation for these far greater levels of cumulative exposure. . . . There is understandable concern at Justice that H.R. 1961 will effect the outcome of that case.

The bill will certainly be used by anti-nuclear extremists as providing credibility for their alarmist claims on the dangers to the public from nuclear weapons facilities, nuclear reactors, transportation of nuclear materials, underground testing, etc. This may have serious national security ramifications.⁷⁷

EPA LIABILITY TO STATES
So strident was the administration in its belief that the Federal Government should not be liable for exposure to toxic chemicals that the Justice Department ordered the Defense Department to assist the Special Master overseeing the legal settlement between the manufacturers of Agent Orange and Vietnam veterans.

On May 22, 1986, the Director of the Defense Department's ESG asked the Justice Department if he could assist the Special Master in the evaluation of herbicide spray and troop movement records already provided to the Special Master. The assistance, the director wrote, would "prevent duplication, delay, misinterpretation and costs against the funds set-aside for Veterans' awards."⁷⁸

The Justice Department ordered the Defense Department not to cooperate with the Special Master, advising that "government employees not be made available to render advice and assistance concerning the allocation of settlement fund proceeds."⁷⁹

A month later, the Director of ESG was asked to testify before a subcommittee of the House Committee on Veterans Affairs about the results of the work of the Agent Orange Working Group. In a memorandum to the Defense Department Adjutant General, the Director reported that much of his testimony was "deleted" by OMB. . . . Such results are neither forthright or responsive. . . the testimony has been rewritten and its guts torn out. . . ."⁸⁰

In light of these confidential actions by the Justice Department and OMB, and given the White House's legal concerns that the Federal Government could be liable in toxic contaminant law suits, it is apparent why the charter of the AOWG was revised and lim-

⁷⁶ Ibid.

⁷⁷ "H.R. 1961, Agent Orange and Atomic Veterans Relief Act," Executive Office of the President, Office of Management and Budget, Memorandum to Ed Meese, Jack Svahn, Jay Keyworth and B. Oglesby, from Mike Horowitz, February 6, 1984, p. 2.

⁷⁸ Letter from Robert C. Longstreth, Trial Attorney, Torta Branch, Civil Division, Department of Justice, to Richard S. Christian, Director, U.S. Army and Joint Services Environmental Support Group, June 3, 1986. (Letter cites Christian letter of May 22, 1986.)

⁷⁹ Ibid.

⁸⁰ Memorandum from Director, Environmental Support Group, to The Adjutant General, June 30, 1986.

ed to Agent Orange only. At the time of the revision, numerous Federal research projects were being conducted of domestic and civilian worker exposure to herbicides.⁸¹ By revising the charter to ignore the dozens of Federal studies dealing with herbicides other than Agent Orange, the White House forced the AOWG to overlook a wide range of issues, not only related to Agent Orange, but vital to the health of civilian workers, as well. Thus, the White House would not have to deal with potential liabilities involving herbicides other than Agent Orange.

The committee believes that, given the White House's predisposition against compensating victims of toxic contamination, White House officials should have recused themselves from involvement in the deliberations about the CDC Agent Orange Studies and that the AOWG should not have been given the authority to approve or

⁸¹ The following studies were reported to the Agent Orange Working Group in a document, "Federally Sponsored Human Studies Related to Agent Orange," April 11, 1983, National Institute of Occupational Safety and Health (NIOSH), Investigation of Leukemia Cluster in Madison County, Kentucky, Allegedly Associated with Pentachlorophenol Treated Ammunition Boxes; Centers for Disease Control (CDC), Birth Defects and Military Service in Vietnam Study; NIOSH Dioxin Registry; National Institute of Environmental Health and Safety (NIEHS), Establishment and Maintenance of an International Registry of Persons Exposed to Phenoxy Acid Herbicides and Contaminants; NIOSH Soft Tissue Sarcoma Investigation, National Cancer Institute (NCI), Case Control Study of Lymphoma and Soft Tissue Sarcoma; NCI Study of Mortality Among Pesticide Applicators from Florida; CDC Epidemiologic Study of Ground Troops Exposed to Agent Orange during the Vietnam Conflict; Veterans Administration (VA), Vietnam veterans Mortality Studies, Vietnam veteran Identical Twin Studies, Survey of Patient Treatment File for Vietnam veteran In-Patient Care, Agent Orange Registry Examinations, TCDD in Body Fat of Vietnam veterans and Other Men, Retrospective Study of Dioxins and Furans in Adipose Tissue of Vietnam Era Veterans; Department of Defense (DOD), Epidemiologic Investigation of Health Effects in Air Force Personnel Following Exposure to Herbicide Orange, Armed Forces Institute of Pathology Agent Orange Registry of Vietnam veteran Biopsy Tissues; Environmental Protection Agency (EPA), Report of Assessment of a Field Investigation of Six-Year Spontaneous Abortion Rates in Three Oregon Areas of Relation to Forest 2,4,5-T Spry Practices, National Pesticide Monitoring Project of Human Adipose Tissue; Department of Agriculture (DOA), A Case Control Study of the Relationship Between Exposure to 2,4-D and Spontaneous Abortions in Humans, Exposure Measurements of Mixers, Loaders and Applicators of 2,4-D on Wheat, Exposure of Forest Workers to Ground Applications of 2,4-D; Department of Health and Human Services (HHS), Bioassay of Octachlorodibenzo-p-dioxin, Carcinogenesis Bioassay of 2,3,7,8-Tetrachlorodibenzo-p-dioxin in Swiss Webster Mice, Carcinogenesis Bioassay of 2,3,7,8-Tetrachlorodibenzo-p-dioxin in Osborne-Mendel Rats and B6C3F1 Mice, Bioassay of a Mixture of 1,2,3,6,7,8- and a Mixture of 1,2,3,6,7,8-Hexachloro-dibenzo-p-dioxins for Possible Carcinogenicity, Comparative Species Evaluation of Chemical Disposition and Metabolism of 2,3,7,8-Tetrachlorodibenzofuran in Rat, Monkey, Guinea Pig and Two Strains of Mice, Neurotoxicity of 2,4-D in Rodents, Studies of the Chemical Disposition and Metabolism of Octachlorodibenzodioxin, Effects of Agent Orange Components on Male Fertility and Reproduction, Mutagenicity Studies of TCDD, Implications of Low Level Exposure of Dioxins, Mechanisms of Toxicity of the Chlorinated p-dioxins, Research Toward Understanding the Molecular Level Mechanisms of Toxicity of TCDD and Related Compounds; Synthesis of Selected Tetrachlorodibenzo-p-dioxins and Related Compounds as Analytical Standards, Matrix Effect and Sub Parts-per-billion Quantitative Analysis of TCDD by Mass Spectrometry—With Special Reference to Milk, Toxic Actions of Dioxins, Xenobiotic Induction of Meiotropic Responses in Liver, Molecular, Biochemical Actions of Chlorinated p-dioxins, Mechanisms for Toxicity of Chlorinated Dibenzo-dioxins, Modular basis of Dioxin toxicity in Keratinocytes; EPA, Evaluation of Large Scale Combustion Sources, Evaluation of Municipal Waste Combustors, Bacterial Decomposition of TCDD, Investigation of Bioavailability to Fresh Water Fish of TCDD's in Fly Ash, Analysis of Environmental Samples for PCDD's and PCDF's, DOA, Survey of Phenoxy Herbicide Use by Agricultural Community, Survey of Phenoxy Herbicide Literature, Photolysis of 2,4,5-T, Biological and Economic Assessment of 2,4,5-T and Silves, TCDD Residue Monitoring in Deer; DOD, Environmental Chemistry of Herbicide Orange and TCDD; VA, Review of Literature on Herbicides, Including Phenoxy Herbicides and Associated Dioxins, Urinary 6-Hydroxy Cortisol: Physiological and Pharmacologic Studies, Effect of TCDD on Lipid Metabolism, Mechanisms of Dioxin Induced Toxicity Using the Chloracne Model, Behavioral Toxicity of An Agent Orange Component of 2,4-D, Effects of 2,3,7,8-Tetra-chlorodibenzodioxin on Hepatobiliary Function in Animals, Mechanisms of TCDD Absorption and Toxicity on Lipid and Lipoprotein Metabolism, Metabolism of the Herbicides Present in Agent Orange and Agent White, TCDD Exposed Rhesus Monkeys Effects on Behavior and Stress Hormones, Neuromuscular Toxicity of Agent Orange, Effects of Low Dose TCDD

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* disapprove CDC's activities. The potential to wrongly influence the outcome of the CDC studies inherent in this conflict of interest was realized when White House officials directly interceded in the decision that steered the study in the wrong direction, and ultimately resulted in its failure.

A July 18, 1986, OMB memorandum provides evidence that it was the White House, not CDC, that was making decisions during possibly the most crucial phase of the Agent Orange exposure study. It was a time when the military records were considered unsuitable for use in the study, and the entire project was in danger of being canceled. The cancellation was averted when CDC proposed testing the blood of Vietnam veterans for dioxin traces. The memorandum presents information about the White House AOWG's "decision to proceed with the development of a protocol for testing the dioxin levels in blood for Vietnam ground troop veterans."⁸² The memorandum states that the decision on whether to cancel the study will be influenced by CDC's public testimony before the House Veterans Affairs Committee on July 31, 1986. According to the memorandum, "It is important that the hearing testimony leave the AOWG with options on the future of the Agent Orange study. In particular, the testimony should point out that the blood test may only have a very limited usefulness in studying individuals with low levels of dioxin exposure."⁸³

The memorandum contains an admission that the final decision was based on the Federal Government's legal culpability, not necessarily the independent work of scientists.

The decision should take into account the legal implications of the blood test (the risks associated with testing individuals and the potential that claims against the government would be made by individuals who have higher than "normal" dioxin levels in their blood). I have discussed these issues briefly with Justice attorneys who would be available to evaluate the pilot study proposal for the legal risks. Any evaluation should be done prior to the next AOWG meeting so that the information may be used in the decision on the pilot study.⁸⁴

So fearful was the White House that it might have to compensate Americans exposed to contaminants, it pressured CDC to refute the blood serum test as a measure of exposure to Agent Orange, even before it commenced. To avert possible future claims for compensation from veterans, the memorandum states, "It is important that testimony and other public comments not associate the measurement of dioxin in blood with causation."⁸⁵ The memorandum recommended that the White House contact the Director of CDC and encourage him to "be explicit that developing a measure of dioxin content in blood is neither a link to cause of exposure nor proof of a cause and effect relationship between dioxin and disease."⁸⁶

⁸² "Agent Orange Study," Executive Office of the President, Office of Management and Budget, to Debbie Steelman from Sarah Ducich, July 18, 1986, p. 1.

⁸³ Ibid., p. 2.

⁸⁴ Ibid.

⁸⁵ Ibid.

The memorandum also represents evidence that the CDC study was doomed to failure by the White House, long before its final cancellation. Why else would the conclusions be reached that the blood dioxin measurement cannot be linked to Agent Orange, even before the test began? Perhaps most instructive of the White House's attitude is that it was its panel, the AOWG, that canceled the Agent Orange study, not CDC.

When the blood test, which the White House had allowed but classified as inconclusive even before it began, was finally completed in 1987, apparently showing no higher levels of dioxin in the blood of Vietnam veterans, the AOWG moved quickly. On August 27, 1987, the Chairman of the AOWG informed the Chairman of the White House Domestic Policy Council, "it has been concluded that military records cannot support a valid epidemiological study of the health effects of Agent Orange exposure on Vietnam veterans . . . I advise you to recommend to the Domestic Policy Council that the Agent Orange exposure study be cancelled."⁸⁷

Two months later, the Director of CDC acknowledged the instructions to cancel the study. ". . . AOWG has instructed CDC to begin the process of cancelling the contracts and closing out all activities related to the Agent Orange Exposure Study."⁸⁸

The AOWG had been riding herd over CDC from the beginning of the study. The AOWG had ordered that all Federal research be submitted to the White House panel prior to public release. On September 20, 1984, the panel ordered that ". . . all documents relating to Agent Orange research studies slated for review by any person or organization outside the Federal Government be submitted first to the Chair, AOWG."⁸⁹ After the study was canceled, the White House maintained its insistence on controlling any Federal scientific efforts related to Agent Orange. On April 1, 1988, the Chairman of the AOWG sent a memorandum to members of the panel, advising them that the future release of any information related to Agent Orange must be cleared by the AOWG.

The release of any report, without the review mandated by the Agent Orange Working Group procedures, could constitute a serious breach and may undercut our credibility. Any premature release could cause embarrassment to the government.

Research findings and conclusions must be submitted to the AOWG 48 hours prior to release for review, comment and clearance before going to Congress or the public.⁹⁰

⁸⁷ Letter from Don M. Newman, Chair Pro Tempore, Domestic Policy Council Agent Orange Working Group, to Edwin Meese, Chair Pro Tem, Domestic Policy Council, The White House, August 27, 1987.

⁸⁸ Hearing, 1989, pp. 55-56. Note to Don Newman, Chair, Domestic Policy Council Agent Orange Working Group, from James O. Mason, M.D., Director, Centers for Disease Control, October 28, 1987.

⁸⁹ "Accomplishing the AOWG Mission," Memorandum From Edward N. Brandt, M.D., Chair, Pro Tempore, to Members, Cabinet Council Agent Orange Working Group, September 20, 1984.

⁹⁰ "Clearance of all studies and press releases by the Domestic Policy Council Agent Orange Working Group," from Don M. Newman, Chairman, Domestic Policy Council Agent Orange Working Group, to Members, Domestic Policy Council, Agent Orange Working Group (DPC/

E. THE FEDERAL GOVERNMENT HAS SUPPRESSED OR MINIMIZED FINDINGS OF ILL HEALTH EFFECTS AMONG VIETNAM VETERANS THAT COULD BE LINKED TO AGENT ORANGE EXPOSURE

The Agent Orange Exposure Study was one of three parallel projects assigned to CDC involving the health of Vietnam veterans. The other two were the Vietnam Experience Study (VES), to determine the health status of veterans of Vietnam, and the Selected Cancers Study, conducted to determine if Vietnam veterans had been susceptible to a group of rare cancers. The key to the White House's legal strategy of not paying compensation for any type of toxic contamination was the cancellation of the exposure study. Once the exposure phase of the studies was canceled, on the premise that assessing exposure was scientifically impossible, Federal scientists were able to dismiss any link between diseases and maladies they discovered and Agent Orange.

Two examples involve the CDC's findings regarding birth defects involving the offspring of Vietnam veterans and the semen analysis conducted of the Veterans in the VES. CDC found that Vietnam veterans were more likely than non-Vietnam veterans to report birth defects. The study also concluded that Vietnam veterans reporting exposure to herbicides are at even greater risk of reporting miscarriages, birth defects, serious health problems, and infant mortality.⁹¹

Any possible link between herbicide exposure and the reported birth defects was dismissed by CDC because of the cancellation of the exposure study.

The findings from a recent study in which current dioxin . . . body burdens in Vietnam and non-Vietnam veterans were assessed suggest that self-reported herbicide exposure may not be a valid estimate of actual herbicide exposure. Among Vietnam veterans, there was no evidence of elevated serum dioxin levels, and no correlation between average dioxin levels and self-reported exposure to herbicides in Vietnam. Thus, the herbicide exposure index used here may reflect the level of concern and anxiety Vietnam veterans have about the impact of Agent Orange on their health and health of their children.⁹²

CDC's review of birth records found that the offspring of Vietnam veterans were twice as likely to have digestive system birth defects and were also twice as likely to suffer early neonatal death.⁹³ The birth records' review also indicated that the offspring of Vietnam veterans were more susceptible to cerebrospinal malformations, such as spina bifida, anencephaly, and hydrocephalus. CDC explained this problem as an underreporting of the birth defects among non-Vietnam veterans, rather than an excess among Vietnam veterans.⁹⁴ CDC's semen analysis of Vietnam veterans also found problems:

⁹¹ "Health Status of Vietnam Veterans, Volume V, Reproductive Outcomes and Child Health," Vietnam Experience Study, Centers for Disease Control, January 1989, pp. 21-29.

⁹² Ibid., pp. 41-42.

⁹³ Ibid., pp. 72-73.

⁹⁴ Ibid., pp. 84-85.

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NOTE

The Danger to Human Health and the Environment

Having studied for a few years now the risks that municipal and hazardous waste incineration pose to both human health and the environment, I can tell you with some confidence that as incineration is practiced today in this country, there is no such thing as a truly safe incinerator. Both hazardous and municipal solid waste incinerators, even the supposedly "state-of-the-art" models, are known to emit through their stacks hundreds and perhaps thousands of distinct types of toxic and carcinogenic chemicals. These chemicals include: acids; heavy metals such as lead, mercury, cadmium and arsenic; organic molecules such as PCBs (polychlorinated biphenyls) and chlorinated dioxins and furans; carbon monoxide; ozone-forming and acid-forming nitrogen oxides; and many, many other chemicals.

Many, if not most, of these toxic chemicals persist in the environment and concentrate in living systems. Dioxins can last decades in soil before breaking down. Metals do not break down at all, and under some conditions can poison ecosystems indefinitely.

Experts estimate that we may have identified only about 10% of the types of toxic and carcinogenic chemicals emitted from incinerator stacks. I'll give a quick overview of a few that have been identified and studied to some extent. Let me say first that, as is widely known to be the case with lead, many toxins most severely injure young, rapidly developing organisms, including and perhaps especially fetuses.

1) is true?

Lead-- A potent and persistent toxin, lead can severely and permanently retard mental and physical developmental, weaken and deform the skeleton, disrupt motor coordination, cause miscarriages, and damage the liver and kidneys. Lead is known to cross the placenta, and is now recognized by the US EPA as a probable human carcinogen. As stated by Dr. Janet Phoenix, of the Alliance to End Childhood Lead Poisoning, during the recent Montgomery County incinerator case, scientists now understand that there is no threshold of safety for lead exposure, that any amount of lead can damage the health of the exposed child. Several million children in the US already carry enough lead in their bodies to at least be at risk for intellectual impairment. The permits issued by the EPA to WTI would allow it to emit 4.7 tons of lead per year. **AIRBORNE?**

1) is this excessive for incinerators?

Mercury-- Mercury is known to cause birth defects, neuromuscular disorders, loss of short-term memory, organ damage, and the disease acrodynia, which causes acute, sometimes constant pain in the extremities. Mercury is known to cross the placenta. People or animals who eat fish from contaminated waters are at especially great risk. Fish can, and often do, concentrate mercury in their flesh at levels 100,000 to 10 million times the levels found in the water they inhabit. This process is known as "bioconcentration". Mercury also becomes more concentrated as it moves up the food chain, as one organism eats another. This process is known as "biomagnification". Twenty-one US states,

1) what are
tech. for removing
mercury? Scrubbers!

including Ohio, have already issued mercury advisories for fish caught in their waters. (The fact that a state has not issued a mercury advisory does not, for a number of reasons, mean that its fish do not carry unsafe mercury concentrations.) Because it is so volatile, mercury is one of the most difficult incinerator emissions to control. The permits issued by the EPA to WTI would allow it to emit 1.28 tons of mercury per year.

Dioxins and Furans-- Dioxins and furans comprise two large and very complex families of organic molecules, all of which are based upon the same chemical structures. We will focus here on a single dioxin, 2,3,7,8 tetrachloro-dibenzo-p-dioxin (2,3,7,8 TCDD). This chemical has two benzene-like rings, two oxygen atoms, and four chlorine atoms. The US EPA recognizes 2,3,7,8 TCDD as a probable human carcinogen. More importantly, the EPA classifies this chemical as the most potent carcinogen ever studied. Dioxin is known to: cause birth defects; damage the liver; cause miscarriages; suppress the immune system; and cause a deforming, deeply scarring skin disease known as *cloracne*. New evidence indicates that 2,3,7,8 TCDD may act more powerfully as an immunosuppressor than it does as a carcinogen.

There are literally thousands of types of dioxins and furans. Some substitute elements such as sulfur for the oxygens in 2378-TCDD. Others substitute bromine and fluorine for the chlorines, in myriad combinations. Some do both. 2,3,7,8 TCDD is simply the most studied at this point.

There are also of thousands of dioxin and furan-like chemicals. A growing body of evidence indicates that at least one of these chemical classes, the thiophenes, which substitute sulfur for the oxygen in furans, may be as powerfully carcinogenic as dioxins and furans.

As with lead, there appears to be no level at which 2378-TCDD is safe. Like mercury, 2,3,7,8 TCDD becomes more concentrated as it moves up the food chain. Dioxins and furans concentrate in fatty tissues. 2,3,7,8 TCDD is known to cross the placenta and to be passed through human mother's milk.

Can **SOx, NOx, and Ozone--** Sulfur oxides, nitrogen oxides, and ozone ~~are~~ all damage the lungs and bronchi. The ailments they can cause or exacerbate include asthma, chronic bronchitis, emphysema, and chronic pulmonary obstructive disease. The EPA has granted WTI a permit to release hundreds of tons of NOx and SOx every year. NOx react with volatile organic compounds, which WTI will also release, to form ozone.

SOx and NOx can react with water in the atmosphere to form acid mists and acid precipitation. Acid mists are highly irritating to the eyes and to the respiratory tract. Ohio, West Virginia, and Pennsylvania are part of the core of North America's acid rain belt. Much of Maryland is on the edge of that core area.

The EPA has licensed WTI to burn virtually any kind of hazardous organic waste, including PCBs and benzenes, both of which are highly toxic and carcinogenic. Advocates of incineration make two great

claims for the process. One is that it reduces the volume of the toxic waste. The other is that it reduces or eliminates its toxicity. While the first is certainly true, industry claims of how great a reduction occurs are exaggerated. The second claim has some truth to it as well, but here too the degree of reduction is exaggerated, and incinerationists generally ignore or gloss over three very important points. First, metals are not destroyed by combustion. The toxic metals that will be "burned" at WTI will either go out the stack or into the residue left after combustion. Second, the complex chemical reactions which take place in the incinerator's furnace, in its stack, and perhaps even just outside the stack lead to the creation of toxins and carcinogens (including dioxins and furans) some of which are more dangerous than the materials being burned. Third, combustion is never complete. Industry often fails to match its claims of 99.99% destruction of toxic organics. The unburned toxics that remain, together with the unburnable metals and the newly created toxics, all must find their ways either out the stack or into the incinerator's ash.

is true?
with the derived from rule?
if hazardous why in landfills?
Most ash samples even from municipal garbage incinerators violate federal standards for toxic metals. All ash from hazardous waste incinerators such as WTI is considered by federal law to be hazardous waste. Ash is generally disposed of in landfills. To this date, no landfill has lasted more than a relatively few years without leaking, and thereby threatening local ground and surface waters.

Neither the US EPA nor the Ohio EPA has ever required either a comprehensive health risk assessment or an environmental impact statement be conducted to determine the impacts that WTI would have on the environment and public health. Instead, the Ohio Department of Health has proposed that the impacts be learned by studying blood and urine samples taken from local children after WTI has been fired up in full commercial operation. Local health officials have been joined by some of the nation's leading toxicologists in condemning this proposal as unworkable and immoral, and virtually all of the health profession associations in the region have condemned the siting and permitting of WTI. I am including copies of a number of their statements. The Mayor of Pittsburgh was denied access to drafts of a preliminary health risk assessment that only now is supposedly being conducted.

East Liverpool was once a center for steel and ceramics production. These two industries alone may have contaminated the local environment to levels beyond what any community should have to endure. The ground on which the WTI incinerator has been built had already been contaminated through previous industrial spills of toxic and carcinogenic chemicals such as benzene and toluene. This contamination had in turn leached into a small, shallow aquifer beneath the site. A thick layer of rock protected a much larger, deeper aquifer from the contamination above. In building their plant, WTI's owners drove pilings through this protective rock, thereby providing a route for the contamination to reach the pure aquifer below.

The mortality rates of virtually all cancers, except a few

childhood leukemias, are still rising in this country. The rates of respiratory, kidney, and liver diseases are also increasing, as is the number of birth defects. I am including two sets of maps in this packet. One, produced by the National Cancer Institute, shows in black those states where the rates of death due to cancer are the highest; the other, produced by Greenpeace, shows the sites of all existing and proposed municipal solid waste and hazardous waste incinerators in the country. The point here is not that incinerators are responsible for all the difference between states with high death rates and states with low death rates. The point is that there is strong correlation between industrialization, which has led to greater exposure to toxic chemicals, and high cancer death rates.

A few last points on health. The fetus and the breast-feeding infant are at the top of the human food chain. They therefore receive the most concentrated doses of toxics and carcinogens. This fact and their uniquely rapid development place them at the greatest risk of harm from environmental contamination.

The greatest tragedy of what has taken place in East Liverpool and in many communities across the country is that most or all of this suffering is preventable and unnecessary. The technology exists to reduce, and even eliminate, the production and use of many toxic chemicals. Less dangerous technologies exist for rendering existing toxics less harmful. Many corporations have found that they save money in both the long and the short-term when they reduce their reliance on production processes that either produce or require toxic chemicals.

The critical question that remains is whether we, as a society, have the will to consume conscientiously, to demand that industries not poison people and the environment, to fund research into safe alternatives, and to see to it that our regulatory agencies are invested with the will and the resources to fulfill their missions of protecting and restoring both the public's health and the environment. In any case, the cost of cleaning up should be born by the producers and consumers of toxics, not imposed selectively on communities who lack the political or economic clout to fight off dangerous facilities.

The following tabulation shows, as to the named executive officers of the Company and all executive officers as a group, the net value of shares (market value less exercise price) realized during the specified period upon the exercise of such options.

	<u>R.J. Pasquarelli</u>	<u>W.J. Maler</u>	<u>P. Roik</u>	<u>G.L. Hudson</u>	<u>J.R. Sullivan</u>	<u>All Executive Officers as a Group</u>
Period—December 1, 1987 through November 30, 1988:						
Exercised:						
Number of Shares	99,000	—0—	39,000	39,000	8,000	185,000
Net value realized (market value less exercised price)	1,602,482	—0—	633,750	614,250	122,960	2,973,442

CERTAIN TRANSACTIONS

On September 13, 1988, the Company acquired 4,210,350 shares of Common Stock, par value \$.001 per share, of A.J. Ross Logistics, Inc. ("Ross"), or 33.3% of the outstanding shares of Ross. The Company has the right to receive or purchase one-third of any future common stock issuances, subject to certain exceptions. The Company granted Thomas Petrizzo, President of Ross, a written proxy to vote all of its shares on all matters requiring a vote of Ross' stockholders. Paul Roik, Vice President—Finance of the Company, is a Director of Ross. Ross is a customer of the Company and accounted for approximately 17% of the Company's sales in the fiscal year ending November 30, 1988. At November 30, 1988, approximately \$7,700,000 of the Company's accounts receivable were due from Ross.

On January 13, 1989, the Company loaned \$3,500,000 to Von Roll, Inc. of Cranford, New Jersey, a subsidiary of Von Roll Ltd., the Company's majority stockholder. The loan is payable in twelve quarterly installments of \$291,666.74 plus interest commencing April 28, 1989 with the last payment due on January 31, 1992, bears interest at the prime rate of Midlantic National Bank, and is guaranteed by Von Roll Ltd.

The Company has a Technical Services and Management Consulting Agreement with Von Roll dated as of April 1, 1987 pursuant to which Von Roll provides certain management and operational services to the Company. Pursuant to the Agreement, in fiscal 1988 the Company paid Von Roll an annual fee of \$640,000. The Agreement is for a three year term until March 31, 1990 and from year to year thereafter. The fee payable under the Agreement is to be renegotiated annually. The Company has agreed to pay to Von Roll a fee of \$610,000 for fiscal year 1989. The terms of any extension, amendment or modification of the Agreement will be no less favorable to the Company than those that could be obtained from unaffiliated third parties. The amount of the annual fee and the terms of any extension, amendment or modification will be approved by the Board of Directors and a majority of the directors who are not employees of the Company or Von Roll.

The Company has an Indemnity Agreement with Von Roll dated as of April 1, 1987 pursuant to which Von Roll has agreed to indemnify the Company from any claims or expenses in connection with the action entitled *New Jersey Steel Acquisition Corp. v. Von Roll AG, Monteforno, S.A. and New Jersey Steel Corporation*.

The Company on occasion makes relocation loans to employees in connection with their purchases of housing. At November 30, 1988 there was a loan of \$132,000 to Mr. Roik. Mr. Roik's loan bears interest at the rate of 9.5% per annum and matures in September of 1989.

Walter H. Beebe, a director, is a partner in the law firm of Jacobs Persinger & Parker, general counsel to the Company. Jacobs Persinger & Parker also provides legal services to Von Roll.

last year and told him he wanted to stay on as family boss. Gotti endorsed him. Orena bragged about Gotti's backing and Persico moved from behind bars to block Orena.

One morning in the spring, as Orena walked out of his house at Buckingham Road, he carefully scanned the block, a habit born of years of caution. He spotted four men in a parked car, all trying to duck out of sight.

The four men in the car were alleged Persico loyalists Henry Smurra, Carmine Sessa, John Pate and Robert Zimbardi. Smurra has since been murdered.

The message was clear. Orena scrambled out of his house another way and went into hiding through most of the summer. Even from his hiding place, though, he was marshaling strength. By late August he had the backing of most of the other family leaders and 75 of the approximately 100 family soldiers.

Lined up with Orena were such veteran reputed family members as William Cutolo, Joseph Scopo, Nicholas Grancio, Patsy Amato, Benny Aloï, Joseph Tolino and Thomas Petrizzo.

Reputed members still loyal to Persico included Theodore Persico, Gregory Scarpa Sr., Sessa, Pate, Zimbardi and Joseph and Anthony Russo.

Orena's next move was a hit on Scarpa. A car filled with Orena gunmen pulled alongside Scarpa's car at a still undisclosed location in the city sometime late this summer.

Because the car glass was so darkly tinted, the gunmen didn't learn until they were ready to fire that Scarpa wasn't in the car. The driver was Scarpa's daughter and she had a baby on the front seat next to her.

The would-be killers turned and fled, but not before harmlessly exchanging shots with Persico backers who were either in the neighborhood or riding shotgun on Scarpa's car. His daughter and the baby escaped unharmed.

But on Nov. 24, Smurra, a Scarpa aide, was found murdered, shot in the head, in his red 1988 Lincoln in the Sheepshead Bay section of Brooklyn.

Now the entire New York metropolitan area has become a Colombo family killing ground.

GRAPHIC: Newsday Photo by Ozier Muhammad-John Gotti, Gambino family boss

Metzenbaum

WTI info.

Ellen Bloom

will meet w/
you if necessary
to discuss.

NEW JERSEY STEEL CORPORATION

(A DELAWARE CORPORATION) → OWNED BY

VON ROLL

NOTICE OF
1989 ANNUAL MEETING OF STOCKHOLDERS

See second
page for
Petrizzo.

June 13, 1989

NOTICE IS HEREBY GIVEN that the Annual Meeting of Stockholders of NEW JERSEY STEEL CORPORATION (the "Company") will be held at The Woodbridge Hilton, 120 Wood Avenue South, Iselin, New Jersey 08830 on Tuesday, June 13, 1989 at 10:30 A.M. for the following purposes as set forth in the attached Proxy Statement:

- (1) To elect five (5) directors; and
- (2) To consider and act upon such other business as may properly come before the meeting.

In accordance with the By-Laws, the Board of Directors has fixed the close of business on April 21, 1989 as the record date for the determination of stockholders of the Company entitled to notice of and to vote at the meeting. The transfer books of the Company will not be closed.

Whether or not you expect to be present at the meeting, please mark, date and sign the enclosed proxy and return it to the Company in the self-addressed envelope enclosed for that purpose. The proxy is revocable and will not affect your right to vote in person in the event you attend the meeting.

By Order of the Board of Directors

Thomas W. Jackson,
Secretary

Dated: April 28, 1989
Sayreville, New Jersey

Requests for additional copies of the proxy material should be addressed to Assistant Treasurer, New Jersey Steel Corporation, North Crossman Road, Sayreville, New Jersey 08872.

Served ON AUG. 26, 1990

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA**

**MARIO J. PALUMBO, ATTORNEY
GENERAL OF WEST VIRGINIA,
as parens patriae of certain
Citizens of West Virginia; the
CITY OF CHESTER, WEST VIRGINIA;
and THE STATE OF WEST VIRGINIA by
DAVID C. CALLAGHAN, in his
official capacity as Director of the
West Virginia Department of
Environmental Protection,**

Plaintiffs,

v.

Civil Action No. 92-0072-W(S)

**WASTE TECHNOLOGIES INDUSTRIES,
an Ohio partnership; VON ROLL (OHIO),
INC., a Delaware Corporation; ENERGY
TECHNOLOGY, Inc., an Ohio Corporation;
WASTE TECHNOLOGIES INCORPORATED, an
Arkansas Corporation; ENVIRONMENTAL
ELEMENTS OHIO (INC.), a Delaware
Corporation; the OHIO ENVIRONMENTAL
PROTECTION AGENCY; and the UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY,**

Defendants.

AMENDED COMPLAINT

I.

INTRODUCTION

This action is brought to protect the environment, health, safety and welfare of the citizens of the Northern Panhandle (Ohio, Brooke, and Hancock Counties) of West Virginia who are expected to be endangered by the proposed operation in East

Liverpool, Ohio, of one of the Nation's largest hazardous waste incinerators by the defendant Waste Technologies Industries. The anticipated operation of this facility and the resulting discharges present an imminent and substantial endangerment to the aforesaid citizens of West Virginia and the City of Chester, who have no other adequate remedy at law to prevent the harm which is expected to be imposed upon them.

II.

PARTIES

1. Plaintiff Mario J. Palumbo is the duly elected and qualified Attorney General of the State of West Virginia. He brings this action as parens patriae for the benefit of certain citizens and their environment in West Virginia that are imminently and substantially endangered by the proposed operation of the hazardous waste incineration plant in East Liverpool, Ohio. These citizens reside in West Virginia where the emissions from the plant will impact, and include, but are not limited to, individuals such as farmers, women of child bearing age, children and elderly persons all of whom are particularly susceptible to the harm that is expected to occur from the emissions, spills, and discharges from the hazardous waste incinerator.

2. Plaintiff City of Chester is a duly incorporated municipality of the State of West Virginia, and is situated on the Ohio River in Hancock County, West Virginia. The City brings this action on its own behalf and on behalf of its citizens and their environment to protect them from the imminent endangerment that is expected to occur from the emissions, spills, and discharges of the hazardous waste incinerator.

3. Plaintiff the State of West Virginia brings this action by David C. Callaghan, the Director of the West Virginia Department of Environmental Protection. As such, Director Callaghan is charged by statute and executive order with

protecting the environment of the State of West Virginia, including, but not limited to, protecting against the potential harm to the water and air surrounding the hazardous waste incinerator as alleged herein.

4. Defendant Waste Technologies Industries (WTI) is an Ohio partnership consisting of the following partners who are accordingly named as defendants: Energy Technology, Inc.; Waste Technologies Incorporated; Environmental Elements Ohio (Inc.); and Von Roll (Ohio), Inc. Except as herein specifically provided, "WTI" refers to both the partnership and individual partners. WTI maintains places of business in East Liverpool, Ohio, and Chester, West Virginia. WTI is the owner of the proposed hazardous waste incineration plant, which is located on property owned by the Columbiana County (Ohio) Port Authority (CCPA). The property is immediately adjacent to the Ohio River, which forms the border between West Virginia and Ohio, and is situated directly across the river from the City of Chester, West Virginia.

5. The WTI partner, defendant Von Roll (Ohio), Inc., upon information and belief, is a Delaware corporation. It is the operator of the hazardous waste incinerator.

6. The WTI partner, defendant Waste Technologies Incorporated, on information and belief, is an Arkansas corporation.

7. The WTI partner, defendant Energy Technology, Inc., on information and belief, is an Ohio corporation.

8. The WTI partner, defendant Environmental Elements Ohio (Inc.), on information and belief, is a Delaware corporation.

9. Defendant Ohio Environmental Protection Agency (OEPA) is an agency of the State of Ohio, and is charged by the laws of the State of Ohio and of the United States of America with duties and responsibilities incident to the review and

issuance of permits for the siting, construction, and operation of hazardous waste facilities located in the State of Ohio. OEPA has been authorized since June 20, 1989, by the United States Environmental Protection Agency (US EPA) to issue or deny permits pursuant to the Resources Conservation and Recovery Act (RCRA), 42 U.S.C. § 6901, et seq., concerning hazardous waste disposal facilities.

10. The US EPA is an agency of the United States government. The US EPA is required by federal law to promulgate and enforce regulations governing state agencies (such as OEPA) which are authorized to administer permit programs pursuant to RCRA. The US EPA has (and had) the authority to issue RCRA permits to hazardous waste facilities in those states which do not (or did not) have an authorized program. Further, the US EPA is required to monitor OEPA's administration of Ohio's permit program in compliance with all applicable federal laws, regulations and requirements.

III.

JURISDICTION

11. The United States District Court for the Northern District of West Virginia has jurisdiction over this matter pursuant to 28 U.S.C. § 1331 (federal question), and 42 U.S.C. § 6972(a)(1)(B) (citizen suit under RCRA), as this Amended Complaint alleges in all Counts that WTI, OEPA, and US EPA are contributing to the handling, storage, treatment, or disposal of hazardous wastes, all of which present an imminent and substantial endangerment to the health or environment of certain citizens of the State of West Virginia, and to the City of Chester, West Virginia, and its citizens.

12. The United States District Court additionally has supplemental jurisdiction over the claim raised herein in Count IX under 28 U.S.C. § 1367, as that

CERTIFICATE OF SERVICE

Service of the foregoing AMENDED COMPLAINT was had upon all parties by forwarding a true copy thereof to their counsel by regular United States Mail, postage prepaid, this 26th day of August, 1992, as follows:

Greer S. Goldman, Esq.
Environmental & Natural Resources Division
Environmental Defense Section
U.S. Department of Justice
P.O. Box 23986
Washington, D.C. 20026-3986

Nancy-Ellen Zusman, Esq.
U.S. Environmental Protection Agency
Office of Regional Counsel
Region V (Mail Code: CS-3T)
77 West Jackson Street
Chicago, IL 60604

Patrick M. Flatley
Assistant United States Attorney
U.S. Attorney's Office
Northern District of West Virginia
P.O. Box 591
Wheeling, WV 26003

Paula T. Cotter
James O. Payne, Jr.
Ohio Attorneys General
15th Floor
30 East Broad Street
Columbus, OH 43215

Robert D'Anniballe
Alpert, D'Anniballe & Visnic
3173 Main Street
Weirton, WV 26062
Local Counsel for Paula T. Cotter
and Ohio EPA

Ashley C. Schannauer
Mary K. Conturo
City of Pittsburgh
Department of Law
313 City-County Building
Pittsburgh, PA 15219

Joseph M. Reidy
Gibson & Robbins-Penniman
131 North High Street
Suite 320
Columbus, OH 43215
Save Our Country, Inc.

Thomas W. Rodd
264 High Street
Morgantown, WV 26505
Local Counsel for Save Our Country, Inc.

Robert J. Shostak
Jeffrey A. Kodish
Sowash, Carson & Shostak
39 N. College Street
P.O. Box 2629
Athens, OH 45701
LIVE

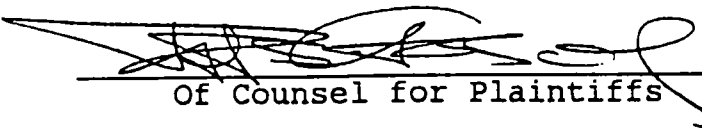
Joshua I. Barrett
DiTrapano & Jackson
604 Virginia Street East
Charleston, WV 25301
Local Counsel for LIVE

Randolph C. Wiseman
Charles H. Waterman, II
Bernadette J. Bollas
Bricker & Eckler
100 South Third Street
Columbus, OH 43215
Waste Technologies, et al.

Jeffrey A. Holmstrand
Bachmann, Hess, Bachmann & Garden
1226 Chapline Street
P.O. Box 351
Wheeling, WV 26003
Local Counsel for WTI, et al.

Patrick C. McGinley, Esq.
737 South Hills Drive
Morgantown, WV 26505

Donald R. Schregrardus, Director
State of Ohio Environmental Protection Agency
1800 Watermark Drive
Columbus, OH 43215


Of Counsel for Plaintiffs

A Few of the Legal Issues

The Ohio Valley citizens who oppose WTI have sued to stop the permitting and construction of WTI, and they have leveled substantive, and quite serious, allegations against both the Ohio EPA and the Region V Office of the US EPA. They have provided to senior EPA administrators and to Congress documented evidence that EPA's Region V administrators have violated the Agency's own regulations in issuing permits to WTI. The City of Pittsburgh and the State of West Virginia have each sued in federal court to halt construction.

In May of this year, the Ohio Valley citizens brought their charges of EPA's wrongful permitting of WTI before the US House of Representatives' Judiciary Sub-Committee. Dr. Hugh Kaufman, director of the US EPA Hazardous Waste Division, has been a steadfast and vocal advocate for the citizens, and he testified before the subcommittee that the citizens' charges against Region V had merit. The subcommittee has since undertaken an investigation. I will list four of the main charges that the citizens brought before the sub-committee:

- 1) That the original permit for the incinerator, issued in June, 1983, was defective in that it failed to include the owner of the land, the Columbiana County Port Authority, as a permittee. Federal law requires that the owners of the site, the owners of the facility, and the proposed operators must all sign applications for permits. In a December 2, 1991 letter to Senator Rockefeller, of West Virginia, EPA Region V Administrator Valdas Adamkus, stated that at the time the permit was issued, the EPA did not distinguish between owners of facilities and operators of facilities. This statement is clearly untrue. On February 3, 1992, the EPA added the Port Authority as a co-permittee, despite the fact that the Port Authority's had stated in a letter to EPA that it did not wish to be added to the permit.
- 2) The permit for the facility is defective in that it fails to include the required certification by the facility's operator, Von Roll (Ohio), Inc. Federal law requires that operators obtain permits, and that owners must co-sign. WTI was listed as the operator in the original permit application, but has since contracted with Von Roll (Ohio), Inc. to operate the incinerator. Von Roll (Ohio), Inc. never filed for the permit modifications required by law.
- 3) The partnership that now owns the incinerator is made up of companies other than those that obtained the original EPA permit. The citizens assert that this represents a change in ownership of the incinerator, and that EPA should have required that the permit should have been modified to reflect these changes. The changes in ownership have been numerous and complicated, but through it all WTI has remained the nominal owner. It appears that this elaborate corporate shell game is meant to obscure the involvement of Waste Management, Inc. Under Ohio law, companies with felony records are prohibited from

obtaining licenses to handle hazardous waste. (I am including with this letter a copy of Rachel's Hazardous Waste News, which outlines Waste Management's role in WTI.).

4) The attorney for Waste Technologies Industries, Charles Waterman, without apparent authority, altered the signature page of the permit to change the dates of issuance and expiration. Such permits are good for ten years from the date of issuance. If construction of a permitted facility is not complete by the expiration date, then that facility's owners and operators must apply for a new permit. The original Hazardous Waste Management Permit for WTI was signed by Mr. Adamkus, Region V Administrator, on June 24, 1983. In a letter dated February 19, 1991, Mr. Waterman EPA Region V seeking to have the date of issuance changed to July 30, 1984. On March 12, 1991, the EPA advised Mr. Waterman in writing to formally request this permit modification in accordance with federal law. Mr. Waterman never made this request, and EPA now maintains that its written advice was orally modified. On June 17, 1991, Mr. Waterman sent the EPA a revision of its own original permit, on which the dates of issuance and expiration had been changed to January 25, 1985 and January 25, 1995 respectively. It appears that Mr. Waterman simply whited out and replaced the original dates. Mr. Adamkus's signature and the date of signature were unchanged.

Why the changes? Citizen challenges, and perhaps other factors have held up the construction of WTI. The plant's designed pollution control equipment is two or three generations behind the current "state-of-the-art". This fact, the four charges outlined above, and numerous other factors would make it very difficult, if not impossible, for WTI to obtain permits under federal law and under the current level of scrutiny that its opponents have brought to bear.

Suggested Actions

- Hold the Ohio Valley hunger strikers, and their neighbors and children, in your prayers.
- Inform friends, family, and neighbors about WTI. Ask them to do the same and to join you in the following actions.
- Call and write your Senators Mikulski and Sarbanes. Writing is preferable. If possible, visit them personally to appeal on behalf of the Ohio Valley citizens. Urge them to:
 - a) Call for a halt to all construction and permitting.
 - b) Call for a full investigation.
 - c) Support legislation put forth by Senator Howard Metzenbaum, of Ohio, that matches the actions in a) and b).

Senator Barbara Mikulski
320 Hart Senate Building
Washington, DC 20510
Ph: (202) 224-4654
FAX: (202) 224-1651

Senator Paul Sarbanes
309 Hart Senate Building
Washington, DC 20510
Ph: (202) 224-4524
FAX: (202) 224-8858

- Call and write your congressional representative. Again, writing is preferable. In this case, ask them to support the efforts of Congressman Harley Staggers, of West Virginia. I'm giving you the contact info for Congresswoman Connie Morella below. If your representative is someone else and you need the information, you get it easily by calling, the Capitol's general number: (202) 224-3121.

Congresswoman Constance Morella
1024 Longworth House Office Building
Washington, DC 20515
Ph: (202) 225-5341
FAX: (202) 225-1389

- Attend and/or organize candlelight vigils to bear witness to the Ohio Valley hunger strike. The valley coalition is hoping that communities around the country will hold vigils on the night of Saturday, August 1. A group of concerned DC-area residents will hold a vigil that night beginning at 7:00, in the plaza in front of the EPA's national headquarters: 401 M, SW, one block from the new Green Line Waterfront Metro. If you come to this vigil, please bring a candle with you, and maybe a spare for someone without. If you organize your own local vigil, call the local press and let them know why you're holding your vigil.
- Do whatever you can to expand the network of people acting to help the valley coalition. It would be especially powerful if you would invite other churches, synagogues, and temples in the area, as well as the Archdiocese of Washington, to join in this campaign.

If you would like to set up a sister community relationship with a church in the East Liverpool area, the Reverend John Cheetham, of First Presbyterian Church, in Chester West Virginia, has strongly opposed WTI.

Reverend John Cheetham
First Presbyterian Church
Chester, West Virginia 20634

• Call and write the Ohio Valley citizens themselves, and personally express your support. If you decide to call, please have one person make a quick call for your group. Some of these folks have been at this night-and-day for years.

Terri Swearigen
Tri-State Environmental Council
RD #1 Box 365
Chester, West Virginia 20634
(304) 387-0574

Alonzo Spencer
Save Our County
1233 Pennsylvania Avenue
East Liverpool, Ohio 43920
(216) 385-4584

Sandy Estell
Save Our County
1410 Eturia Street
East Liverpool, Ohio 43920

If you would like more information about the candlelight vigils or the valley campaign against WTI, please call me at (202) 408-0034.

Many thanks,

Greg Smith

TESTIMONY OF TERRI SWEARINGEN
TRI-STATE ENVIRONMENTAL COUNCIL
BEFORE THE SUBCOMMITTEE ON ADMINISTRATIVE LAW AND
GOVERNMENTAL RELATIONS

COMMITTEE ON THE JUDICIARY
UNITED STATES HOUSE OF REPRESENTATIVES

MAY 7, 1992

WASHINGTON, D.C.

COMMITTEE ON THE JUDICIARY

SUBCOMMITTEE ON ADMINISTRATIVE LAW AND GOVERNMENTAL RELATIONS

Hearing to examine the EPA's Handling of a Hazardous Waste Management Permit for a Hazardous Waste Incinerator in East Liverpool, Ohio.

May 7, 1992

10:00 A.M.

2154 RHOB

WITNESSES

PANEL

Ms. Terri Swearingen, Tri-State Environmental Council, Chester, West Virginia

Mr. Hugh Kaufman, Assistant to the Director, Hazardous Site Control Division, United States Environmental Protection Agency

PANEL

Charles H. Waterman, Esq., Brucker & Eckler, Columbus Ohio; attorney for Waste Technologies Industries; accompanied by Carol Cookerly, VonRoll America

United States Environmental Protection Agency
Mr. William Muno, Associate Division Director for RCRA, Region 5; accompanied by Ms. Gail Ginsberg, Regional Counsel

Statement for the Record

The Honorable William F. Clinger

Mr. Chairman, members of the committee; thank you. My name is Terri Swearingen. I am a member of a grassroots citizens group monitoring the development of what is potentially the world's largest commercial hazardous waste incinerator in East Liverpool, Ohio. There are thousands of citizens in the Tri-State area who concerned not only about human health and the environment, but they are concerned about the breakdown in the governmental process that has allowed this project to go forward in ways not allowed by law or regulation.

I was brought up to trust the government and its agencies. I had believed that if there was a threat to the public that our government would protect us. I believed in the system. I believed that it worked. As a result of my experience with the WTI issue, I now believe otherwise. My involvement in the research and investigation of the WTI situation has caused me to second-guess my faith in the so-called "Environmental Protection Agency".

I have found that the EPA -- the agency that was established to protect human health and the environment -- has not only failed to enforce the law, but they have also broken the law. This was a shocking revelation. Even more shocking was the reason for EPA's actions: During a November 12, 1991, meeting with staff members of various U.S. Senators and Congressmen, U.S. EPA Region 5 Division Chief, Bill Muno, told us that the EPA considers the polluting industries, and not the citizens, their "constituents"!

We have been lied to repeatedly. The EPA treats us like second class citizens. We have found out that the system set up to protect the public doesn't work, and the political and regulatory agencies have so far been unresponsive to our concerns. The realization that the EPA was not there to protect us but to further the polluting industry's mission, caused me and thirty-two other good, law abiding citizens to peacefully scale the eight foot fence at the WTI site in order to draw attention to the failure of the agency to do its job. Unless this body brings the EPA under control, we do not know what is going to happen next.

What we will reveal to this Committee through our documents and our testimony, are the following facts:

- 1) EPA granted WTI a hazardous waste permit based on an incomplete application;
- 2) Information usually available for public scrutiny has consistently been withheld from the public in the WTI case;
- 3) EPA has consistently "bent" or ignored its own regulations in order to help WTI;
- 4) EPA officials have lied to elected officials and citizens on several occasions in order to justify clear violations of EPA's own procedures;
- 5) given the location of WTI on property owned by the Columbiana County Port Authority (a public entity in Ohio) and the corporate documents of WTI, which establish no clear ownership of the facility, liability for problems at the site

remain in serious question.

1) WTI GRANTED PERMIT DESPITE INCOMPLETE APPLICATION

Richard Brudzinski, Hearing Examiner for the Ohio Hazardous Waste Facilities Board during the permitting process for WTI, stated that WTI's permit application lacked too much information for the permit to be granted (Exhibit 1). His recommendations were ignored by the rest of the Facilities Board. The Board granted WTI its permits, despite an incomplete application submitted to the Board. State and federal regulatory officials decided to accept this incomplete application, even though WTI planned to be the largest capacity hazardous waste incinerator complex ever built, directly adjacent to a populated area. Permitted to burn 176,000 tons of hazardous waste per year makes WTI roughly 5 times larger than the average commercial hazardous waste incinerator. It seems unbelievable that the EPA would approve an incomplete permit application for any hazardous waste facility, let alone an incinerator complex of the size of WTI.

2) INFORMATION HAS BEEN CONSISTENTLY WITHHELD FROM THE PUBLIC

From the beginning, WTI was given "blanket confidentiality" from public scrutiny. In fact, EPA listed as "confidential" the document detailing why WTI's request for blanket confidentiality was granted. Citizens were not even allowed an official explanation demonstrating that WTI met the requirements for confidentiality. Since that time, WTI and EPA have established a pattern and practice of keeping secrets, covering up and

providing misleading and inaccurate information.

Having granted WTI a draft permit based on an incomplete application and granted them blanket confidentiality without explanation, the EPA proceeded to hold public hearings on the WTI issue in Columbus, Ohio over 200 miles away from East Liverpool. Thus, citizens were denied a reasonable opportunity to participate in the public hearing process.

Finally, in an effort to dig deeper and find out more about WTI and its permit, citizens filed requests under the Freedom of Information Act to gain more information about WTI. On February 28, 1991, through a Freedom of Information Act request, the citizens asked for the entire WTI file from U.S. EPA Region 5 in Chicago. We were informed that this would "require copying six feet of documents" with an estimated cost of \$200.00 (Exhibit 2). The fee was paid. After numerous letters and phone calls, the U.S. EPA finally released only one third of the WTI file. Two-thirds of the WTI file remains hidden from public scrutiny. The decision by the EPA to deny us two-thirds of the information was appealed in a letter dated October 23, 1991 (Exhibit 3). To this date, the EPA still refuses to release the information even though it was paid for in advance.

In denying two-thirds of the WTI file, EPA held as "confidential" many documents which have nothing to do with proprietary or "trade secret" information. For example, such documents as "Congressional Interest," dated January 13, 1983 and a memo entitled "Administrators Involvement in WTI" are withheld

(Exhibit 3). Further, in looking at what documents were withheld and which were revealed, we noticed that EPA claimed to have NO DOCUMENTS regarding WTI from July, 1987 until January 1989. This means that nearly two years of information was simply missing.

In short, EPA and WTI have cooperated from the beginning in denying the public access to information regarding WTI's permit. As our Freedom of Information Act reply demonstrates, once we started demanding answers to our questions, the wall of secrecy was lowered more tightly.

Some of the documents which were denied to us were secured from other sources. After examining these documents, we realized that they do not involve any "trade secrets" or information which may have jeopardized WTI's "competitive position." They did, however, indicate that the EPA had continuously cut corners and carved exemptions for WTI.

In addition to all the information that has been withheld from the public in their Freedom of Information Act requests, U.S. EPA is now denying access to a risk assessment information that has been completed for the WTI facility. U.S. EPA Region 5 contracted with the firm A.T. Kearney, Inc. to provide "Community Relations Support" in handling the WTI situation. One task to be performed by A.T. Kearney was the development of a risk assessment. Phase I of that risk assessment, Preliminary Risk Assessment for the WTI Incinerator, which was to be a consideration of stack emissions and direct inhalation of the

contaminants emitted downward from the facility, was completed January 21, 1992. (Exhibit 4)

It is outrageous, not to mention unusual, to do such a study and then not make it available to the people who will be affected by WTI's toxic emissions. Clearly, this risk assessment was a P.R. move on the part of the U.S. EPA due to concern over the health problems that are typically seen in communities hosting commercial hazardous waste incinerators. The fact that they now refuse to release the study indicates that there are obvious problems that they want to hide from the public.

3) EPA HAS CONSISTENTLY "BENT" OR IGNORED ITS OWN REGULATIONS IN ORDER TO ACCOMMODATE WTI

The practice of withholding information has provided WTI the opportunity to continue activities without public scrutiny while the EPA continued to bend the rules and cut corners to protect the interests of WTI. Some of the documents leaked to us from other sources confirm these suspicions.

For example, one of the documents that was denied to the public was a letter dated July 6, 1987, to Patricia Walling, Chief, Division of air pollution Control of Ohio EPA from David Kee, Director of Air Division, U.S. EPA, stating that WTI's air permit is invalid! The Ohio EPA was notified about these violations again on May 15 and July 29, 1991. Correspondence from the U.S. EPA indicates that the state air permit "was invalid for Federal purposes in that it did not correctly limit

the potential-to-emit less than major source thresholds." According to the notifications, the permit did not "adequately prevent the source from being subject to major offset and Prevention of Significant Deterioration requirements." (Exhibit 5)

This is a very important issue since when WTI applied for and received the necessary permits, East Liverpool was considered "non-attainment" by EPA's own air pollution standards. A construction ban on new "major" sources of pollutants had been in effect since 1979. Columbiana County, in which East Liverpool is located, was on the U.S. EPA list for violation of clean air standards. If WTI had been classified as a "major source", it would have not been permitted in East Liverpool. The letters referenced above show that the U.S. EPA believed WTI to be a "major source", and yet the permit was granted and no corrective or enforcement action was taken. The EPA made exemptions in order to accommodate WTI.

The public was never notified that WTI's permits were in question as a possible "major source" of pollution. When the EPA officials finished "adjusting" WTI's emission numbers on paper, potential emissions fell just below the thresholds for a "major source" of pollution. It is doubtful, pollution levels so close to the thresholds, that the EPA will be able to keep WTI from being a "major source" of pollution, since U.S. EPA itself admits in these same documents that it cannot hope to enforce WTI's operating hours in order to keep emissions low.

It is clearly in WTI's best interests to be viewed as a "minor source" of pollution by regulatory officials. If they were viewed as a "major source" of pollution by EPA standards, two problems could delay the WTI incinerator: 1) A Federal Environmental Impact Statement would be required, and 2) neighboring residents in West Virginia and Pennsylvania would be legally required to become a part of the public hearing and permitting process. Both could indefinitely delay WTI's plans.

We believe that the circumstances under which WTI was suddenly declared a "minor source" of pollution are questionable at best. Further, EPA's attempt to cover up this invalidity of the WTI permit means officials lied to us about its validity for many months.

Another blatant example of special treatment for WTI is found in an inter-office communication dated March 21, 1989, between Ed Lim, et al, and the former Ohio EPA Director Richard Shank (Exhibit 6). In this memo, Ohio EPA's legal department had advised the agency "not to treat this facility any different than other facilities in applying the statutory standard for modification or revisions, and err, if necessary, on the side of calling it a PERMIT CHANGE." This same communication also reveals that WTI had threatened not to build the project if their request was considered a permit change, because "a formal processing of a permit change would be full of risks and could potentially lead to additional unacceptable delays..." The Ohio EPA was informed that "if there is a way to authorize this change

without a formal permit change that we should try to do so."

It is in this memo that we see the EPA openly admit that it has cut corners for WTI. These exemptions prevented public participation in the permit process. Incidentally, this memo was also withheld from the public and was leaked to us through a governmental source.

In 1990 WTI applied for a major addition to its permit. This change was the addition of a spray dryer which WTI added allegedly as a "pollution control" device. With public scrutiny growing, the EPA decided to hold a public hearing as required by law. This hearing was specifically to address the addition of the spray dryer.

Even under close public scrutiny the EPA continued to break the rules for WTI.

During this public hearing, which was held on January 17, 1991, Dr. Michael McCawley, Professor of Air Pollution Control at West Virginia University, and Dr. Paul Connett, Chemistry Professor at St. Lawrence University in New York, testified before the Ohio EPA that the incorporation of the spray dryer proposed by WTI will eventually result in an increase of toxic emissions into the atmosphere. These toxic emissions include, dioxins, furans, and mercury. These toxic emissions cannot be continuously measured or monitored by any state of the art system, and any increase will cause a violation of the Clean Air Act. (Exhibit 6)

An EPA official, Dr. T.G. Brna of Research Triangle Park,

unofficially validated their findings.

On September 9, 1991, citizens met with EPA officials in East Liverpool to discuss the spray dryer. The agenda for the meeting was negotiated in advance, and the EPA promised to bring the agency's most knowledgeable spray dryer expert, together with any scientific documentation that refuted Dr. Connett's analysis. The EPA brought Mr. Wen Huang, an EPA RCRA mechanical engineer to address the issue.

Mr. Huang agreed that Dr. Connett was correct when he said the addition of the spray dryer would increase emissions. But, he added that was only if "the equipment not changed - stays same as original." Mr. Huang stated, "If all of this equipment are not changed - stays the same - and you put in spray dryer, and put all the pollutants back in the system, naturally, this will increase emissions - absolutely no question about that!" In order to address the problem of increased emission, Mr. Huang further stated that WTI had "completely reengineered the whole system." (Exhibit 7)

This redesigning and reengineering process took place without any formal application or approval as mandated by EPA regulations. Region 5 continues to ignore design modifications that substantially change the incinerator from what was originally permitted. These secret EPA-sanctioned changes have further fueled the citizens beliefs that the regulatory system is being manipulated by WTI and the EPA. Since the spray dryer addition was the only change presented at a public hearing, we

can only speculate as to how many changes have been made behind close doors to ensure that WTI is completely satisfied.

The testimonies of the two experts were never refuted. By EPA's own requirements each piece of testimony regarding the spray dryer must have been responded to in writing. Instead the EPA denied having ever received their testimony and granted WTI a permit to install the spray dryer.

There was a good reason for the EPA to avoid looking at the experts' testimony. IF THE EPA AGREED THAT THE SPRAY DRYER COULD POTENTIALLY INCREASE EMISSIONS, THEN EPA WOULD BE FORCED, BY FEDERAL LAW, TO RECONSIDER THE SUITABILITY OF THE WTI SITE, JUST 300 FEET FROM THE NEAREST RESIDENCE AND 1100 FEET FROM AN ELEMENTARY SCHOOL. According to 40CFR 270.41(c): the suitability of a facility location will be considered at the time of permit modification if new information or standards indicate that a threat to human health or the environment exists which was unknown at the time of permit issuance (Exhibit 8).

Strangely enough, in August, 1984, just six months after the WTI permit was issued, Ohio enacted new siting criteria which prohibits any hazardous waste facility from being built within 2000 feet of any residence, school, hospital or prison, or within a 100-year flood plain. WTI lies 300 feet from residences, 1100 feet from an elementary school and within a 100-year flood plain. East Liverpool citizens must ask: why were these siting criteria enacted just six months after WTI received its permits? Was EPA unaware of this legislative development as it granted WTI its

permits?? Construction DID NOT begin on the WTI incinerator until 1990, six years after these siting criteria was enacted. No one addressed this obvious injustice for over six years; yet, when Connett and McCawley's testimony FORCED EPA to address the siting issue under federal law, they broke the rules again and hid their heads in the sand.

If the WTI permit would have been reopened, as required by law, it would never have been allowed to build or operate in this location.

Was this the real reason that Region 5 Administrator Adamkus purposely ignored the testimony of the citizens' experts?

4) EPA OFFICIALS HAVE LIED TO ELECTED OFFICIALS AND CITIZENS ON SEVERAL OCCASIONS IN ORDER TO JUSTIFY CLEAR VIOLATIONS OF EPA'S OWN PROCEDURES

Perhaps most shocking in EPA's trail of rule-bending and deceit are the three documented cases in which Valdas Adamkus, Region 5 Administrator, has been caught lying to public officials.

LIE #1:

Since we have just been talking about the spray dryer, let us begin with that lie!

The spray dryer has been a topic of critical concern of both citizens and public officials, not only because the addition of the spray dryer will cause an even greater threat by increasing toxic emissions in violation of the Clean Air Act, but also because the U.S. EPA has refused to provide answers to vitally

important questions about it.

In his letter dated October 15, 1991, to Senator Robert Byrd, U.S. EPA Region 5 Administrator, Valdus Adamkus, lied. The third paragraph of his letter refers to the addition of the spray dryer to the WTI incinerator. Mr. Adamkus writes:

"We have not received scientific documentation from Dr. Connett and Dr. McCawley to support their claim."
(Exhibit 9)

I know this to be false, because I personally sent Dr. Connett's written scientific documentation to Region 5 of the U.S. EPA. I sent it certified mail. It was received at Region 5 by Ruth Abraham on January 30, 1991. The signed return receipt card indicates that Region 5 had, in fact, received the documentation (Exhibit 10).

Furthermore, in a February 22, 1991, letter to Mrs. Jane Massey, Mr. Adamkus admits to having received a copy of Dr. Connett's written statement:

"However, the U.S. EPA has received a copy of Dr. Connett's written statement, which was addressed to the OEPA." (Exhibit 11)

LIE #2:

In an April 2, 1992, letter, Robert Springer writing for Region 5 Administrator, Valdus Admakus, addresses the issue of air stagnations. This is another area of grave concern about the siting of this facility because it is located in a river valley where air inversions and stagnation conditions will cause the toxic emissions from the WTI stack to blanket the area two out of three days.

Air inversions and valley stagnations were not given proper consideration when WTI was permitted. The July 1986 U.S. EPA guideline on Air Quality Models states, "If stagnation conditions are determined to be important to the analysis, then techniques specific to the situation and location MUST be developed." (emphasis added) (Exhibit 12)

In his letter, Mr. Springer states for Mr. Adamkus, "Stagnation conditions are rare events occurring in few locations, and are not expected to occur in the area of WTI."

On May 1, 1992, Dr. Michael McCawley, Professor of Air Pollution Engineering at West Virginia University, responded to Mr. Adamkus in a letter stating, "Korshovar, in U.S. Public Health Service Publication No. 999-AP-34, published in 1967, cites evidence of stagnations occurring approximately 220 times over the thirty year period from 1936-1965 for this area. [S]tagnation conditions are indeed not rare at all. This area of the country provides the textbook example of air stagnation problems... It is unclear to me what basis you or the state of Ohio used to conclude that stagnation conditions were not a concern at this location." (Exhibit 13)

Are we then to conclude that the EPA did no research on the weather conditions in the Ohio River Valley before siting the world's largest capacity hazardous waste incinerator?

LIE #3:

Once again Mr. Adamkus has lied to a U.S. Senator. He lied to Senator John Rockefeller regarding the involvement of the

Columbiana County Port Authority (CCPA) as co-permittee of the WTI incinerator (Exhibit 14). The CCPA owns the land upon which the WTI facility is constructed. The CCPA leases the land to WTI. As owner of the property, the CCPA was legally required to be a party to the permit process as a co-permittee/partner, because the landowner of an EPA permitted hazardous waste management facility must be held equally responsible with the operator and must co-sign the permit application. This is clearly spelled out in the May 19, 1980, regulations (45 FR 33066 [Exhibit 15]), and yet the original 1983 permit for WTI failed to include the owner of the land. The CCPA did not sign the permit application, and was not identified in the permit as owner of the facility as required v9EPA regulations.

In his December 2, 1991, letter to Senator Rockefeller, Mr. Adamkus indicates that at the time the agency issued permits to WTI, that U.S. EPA had no policy which would distinguish between property owner and facility operator.

Mr. Adamkus states in his letter:

"It is true that the property upon which the facility sits is owned by the Columbiana County Port Authority. It is also true that the Agency was aware of that fact at the time the permit was issued, and that the permit was issued solely to WTI. 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. It now issues permits to property owners and facility operators as co-permittees."

Valdas Adamkus has since arbitrarily added the Port Authority to the permit as co-permittee, without its application and against its wishes. U.S. EPA Region 5 cannot legally modify

the permit without the request of the Port Authority. As justification for this action, Region 5 legal counsel, Nancy Ellen Zusman, cited an EPA administrative order RCRA appeal No. 90-9, in the matter of Ford Motor Company Applicant, and RCRA appeal 90-9A, in the matter of Michigan Disposal, Inc. and Ford Motor Company (Exhibit 16). Upon reading this document, it is obvious that this is not the same situation as presented in East Liverpool.

In the case cited, Ford Motor Company had leased the land to Michigan Disposal Company, much as the CCPA leased land to WTI. However, unlike the WTI case, Ford Motor Company co-signed and submitted a RCRA hazardous waste facility application along with its tenant, Michigan Disposal. It was later that Ford Motor Company argued it should not be included on the final permit. EPA correctly rejected Ford Motor Company's argument. In the WTI case, the CCPA never applied for a RCRA permit and in fact now objects to being arbitrarily forced on to the permit against its wishes (Exhibit 17).

There is a more closely related case in U.S. EPA Region 9. The National Cement Company in Los Angeles, California, the only commercial facility in that State permitted to incinerate liquid hazardous waste, had recently applied for new five year Federal and State operating permits. The permits have now been stalled because the cement company operates on land LEASED by the Tejon Ranch Corp. Tejon Ranch Corp refuses to sign the permits. U.S. EPA Region 9 officials insist that the permits CANNOT LEGALLY be

issued unless Tejon signs as co-permittee, because Tejon OWNS THE LAND and MUST share responsibility.

It is absolutely unconscionable that the Region 5 Administrator would not have known the law or would not have thoroughly researched it.

These lies are consistent with the pattern that has been established over the last decade in relation to the WTI incinerator.

To paraphrase Churchill, "Never have so many been so misled by so few for so long."

5) GIVEN THE LOCATION OF THE WTI ON PROPERTY OWNED BY THE COLUMBIANA COUNTY PORT AUTHORITY (A PUBLIC ENTITY IN OHIO) AND THE CORPORATION DOCUMENTS OF WTI, WHICH ESTABLISH NO CLEAR OWNERSHIP OF THE FACILITY, LIABILITY FOR PROBLEMS AT THE SITE REMAIN IN SERIOUS QUESTION

Since receiving its permits, WTI has changed owners, operators and partnerships. The partnership that obtained the original permits in 1983 is different than the partnership that exists today. The problem with the ownership issue is extremely important for several reasons:

1. No one knows who really owns WTI
2. It is unclear who would be accountable in the event of an accident
3. Under Federal law, RCRA permits are not transferable without modification of the permit

Despite the fact that the WTI owners have changed, WTI has never applied for modification of its permit. Ownership of WTI

remains unclear. The EPA remains unconcerned about this issue and has failed to enforce the rules.

The true ownership of WTI has been hidden by a confusing series of corporate name mutations using commas and parenthesis. PLEASE PAY ATTENTION TO THE PLACEMENT OF COMMAS AND PARENTHESIS IN THE VARIOUS CORPORATIONS' NAMES. Various documents obtained prove that these are NOT JUST TYPOGRAPHICAL ERRORS. These subtle differences distinguish one corporation from another.

The original owner of WTI was a partnership comprised of four different corporations.

According to WTI's original permit application of September 4, 1981 (Exhibit 18), and a Joint Venture Agreement dated June 26, 1981 (Exhibit 19), the companies were:

- Koppers Environmental Corporation
- Energy Technology Company
- Waste Technologies, Inc.
- Von Roll America, Inc.

The 1987 Amendment to the Joint Venture Agreement of Waste Technologies Industries (Exhibit 20) lists the partners as:

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

In a letter dated January 24, 1991, WTI attorney, Charles H. Waterman, III, indicates to Mr. Ed Lim of the Ohio EPA that the partners are (Exhibit 21):

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

In a document from the Office of the Ohio Attorney General, Lee Fisher, dated November 18, 1991 (Exhibit 22), the owners of WTI are listed as:

Von Roll (Ohio), Inc.
Environmental Elements (Ohio), Inc.
Waste Technologies, Inc.
Energy Technology Company dba Enertech Development, Inc.

A mere visual comparison of the original partners with the current partners clearly shows that the partnership has changed.

Von Roll (Ohio), Inc. is listed on the above document from the office of the Ohio Attorney General as current partner in WTI, but it was not one of the "original partners." Articles of incorporation for Von Roll (Ohio), Inc. (Exhibit 23) show that it did not come into existence until February 24, 1986 - more than four years after the WTI partnership was formed.

Waste Technologies, Inc. is listed as current partner on the same Ohio Attorney General's document. This cannot be possible since Waste Technologies, Inc. was dissolved on December 31, 1987 (Exhibit 24).

The fact that WTI has chosen to weave this web of confusion surrounding the ownership of WTI leads one to believe that they are trying to shield the true identity of the owners.

Our questions are:

1. Why did the WTI partners create these dozens of corporations with similar names?
2. Having done so, why has WTI not been forthcoming at sharing all of these names with the Ohio

Attorney General for purposes of background checks?

6) OTHER PERMIT DEFECTS

There are other inconsistencies involving the permit.

A. CHANGE IN THE OPERATOR

Not only was the Port Authority not included as a co-permittee as required by law, but U.S. EPA has allowed Von Roll (Ohio), Inc. to add their name to the permit as facility operator (Exhibit 25) without going through the proper permit requirements to do so. On the original permit application, WTI was listed as the operator of the facility (Exhibit 26). EPA regulations allow for the transfer of a permit to a new owner or operator only if the permit has been modified or revoked and reissued (40CFR 270.10 (b) [Exhibit 27]). Von Roll (Ohio), Inc. never signed the original permit application. In fact, Von Roll (Ohio), Inc. was not even one of the original partners and did not even exist until February 24, 1986, when it was incorporated in Delaware. There has been no request for a permit modification to indicate Von Roll (Ohio), Inc. is the facility operator.

B. ADDITION OF AUTHORIZED ACTIVITIES WITHOUT PROPER PROCEDURE

Under "authorized activities" on the original cover sheet for WTI's Federal Hazardous Waste Management Permit dated June 24, 1983, "Surface Impoundment" is NOT marked as an authorized activity (Exhibit 28). A "Surface Impoundment" is an open

chemical pit that under Ohio law is not allowed within 100 year flood plain. On the newly revised cover sheet, dated February 3, 1992, of the Federal Hazardous Waste Management Permit, "Surface Impoundment" IS marked as an authorized activity (Exhibit 29).

According to the point number 48 under "Findings of Facts" of the Hearing Examiners Report and Recommendation of the Ohio Hazardous Waste Facility Approval Board, as of June 1983, "the Facility has NOT requested permits to store or treat hazardous waste in surface impoundments or waste piles." (Exhibit 30)

This is yet another example of the EPA altering WTI's permits behind closed doors.

C. ILLEGAL ALTERATION OF PERMIT DOCUMENT?

There are two versions of a signed EPA Region 5 permit cover sheet for the WTI facility. The Original cover sheet shows an effective date of July 24, 1983, with an expiration date of July 24, 1993 (Exhibit 31). On February 22, 1991, WTI attorney, Charles Waterman, III, wrote to U.S. EPA Region 5 seeking a clarification of the permit effective and expiration dates. He argued that the dates on the cover sheet should be extended to reflect the fact that a final permit decision was held up by an appeal.

In a March 12, 1991, response, EPA advised Mr. Waterman to "request a permit modification to amend the permit effective and expiration dates pursuant to 40 CFR 270.42." (Exhibit 32)

A June 17, 1991, cover letter from Charles Waterman to EPA Region 5 has, as an attachment, a second copy of the permit which

shows an effective date of January 25, 1985, and expiration date of January 25, 1995 (Exhibit 33). In his cover letter he states, "we would appreciate your cooperation in replacing the original cover sheet with the one enclosed herein."

The only discernible difference between the two permits is what appears to be the alteration of the effective and expiration dates. The signature of the EPA Region V Administrator, the date of issuance and all other words and marks are identical on both documents.

The obvious conclusion is that the original permit document was altered. When such a permit modification is required, the EPA must sign and date a new permit at the time modification is made.

Apparently, no formal request to modify the permit was ever made. It appears that Charles Waterman just took the original documents, whited out the dates and replaced them with the new dates.

Could these changes in dates have been requested due to concerns that WTI may not be complete by the original deadline of June 24, 1993?

Even if these changes were legal, why did Mr. Waterman choose to change an original, official document rather than go through the proper procedures to revise the permit cover sheet? Has Mr. Waterman become so confident in his relationship with the EPA to assume all of his actions will be accepted without scrutiny?

CONCLUSION

In the history of the WTI project, the EPA has tried to reassure us that a "properly operated incinerator would not endanger human health and the environment." Having studied and researched the seventeen existing commercial hazardous waste incinerators in this country, we looked to the EPA to name just one that was properly operated and had not endangered human health and the environment. When pressed about the issue at a meeting on September 9, 1991, EPA Division Chief, Bill Muno, named the Chem Waste incinerator in Chicago. We were quite surprised by Mr. Muno's answer since we were aware of Chem Waste's disastrous track record.

Since 1984 when Chem Waste began operations as EPA's flagship facility, it has been fined more than \$10 million. Many of the violations were quite serious, including the falsification of records, bypassing air pollution control monitoring devices, overloading the incinerator with wastes, and mislabeling of wastes to be incinerated. In fact, over 50% of the waste on site was inaccurately identified. In February of 1991 the Chem Waste incinerator blew up.

From what we have experienced during the permitting process and construction phase of the WTI project, and from what we have learned about what the EPA considers a safe, well-operated incinerator, we can only come to one of two conclusions:

1. The EPA is too inept to be trusted to regulate hazardous waste management facilities, or

2. this agency conspires with the polluting industry on a continuing basis to promote industry's interests at the expense of public health and safety

Thank you for giving us the opportunity to express our concerns regarding this issue. We hope that this is the beginning of a much closer scrutiny of the EPA and its regulatory process. We can only hope that no other community will have to suffer through what we have for the past twelve years.

We look forward to your commitment to the people by resolving this issue.

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.

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 improper violations of EPA regulations described above assure the inability of the government and the public to hold any entity accountable and liable to pay for damages, fires, explosions, and other problems that occur at these types of facilities. In fact, in investigating the WTI site, a citizen investigator, Connie Stein, found approximately four dozen different companies were created and demolished 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. 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 each state to be in

Hugh B. Kaufman, Testimony
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Page 6

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.

BEFORE THE COMMITTEE ON THE JUDICIARY
SUBCOMMITTEE ON ADMINISTRATIVE LAW

AND

GOVERNMENTAL RELATIONS
HOUSE OF REPRESENTATIVES
102ND CONGRESS OF THE UNITED STATES

Prepared Statement

of

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Counsel to Warts Technologies Industries

May 7, 1992

Mr. Chairman, Members of the Subcommittee, I am Charles H. Waterman III of the law firm of Bricker & Eckler in Columbus, Ohio. Before beginning my remarks I would first like to thank you for the invitation to appear and testify before this Subcommittee. I hope the information I can provide is helpful to this Subcommittee in performing its work.

I am here at the request of a client, Waste Technologies Industries (WTI), to answer questions which the Subcommittee might have regarding permit application review procedures under the Resource Conservation and Recovery Act of 1976 (RCRA), both generally and as applied to WTI. I have represented WTI in matters relating to federal, state and local environmental regulation since March 1981. I have also represented a number of other RCRA-regulated facilities in permit application matters in my 15 years of practice, including siting, permitting, testing and operation of a rotary kiln hazardous waste incinerator facility just south of my hometown of Columbus which, incidentally, is also a Von Roll-designed facility like WTI.

Based upon my experience I believe that WTI has been subjected to a most rigorous permit application review process. At the state level, WTI was required to secure state permits under the Clean Air Act and the Clean Water Act. Those permits were published in draft form late in 1982 and were subject to a comment period and a public hearing. Interestingly, no appeals of those permits were pursued after final issuance in 1983.

Also at the state level, WTI was required to secure a permit for siting, installation and operation of the East Liverpool facility from the Ohio Hazardous Waste Facility Board (the "Board"). That permit application was subjected to a 14-month "preliminary" review by the Ohio Environmental Protection Agency, and then referred to the Board, which over the next two years conducted a public comment period, two public hearings, a second technical review and a month-long adjudication hearing. Participants in that trial-like hearing, which considered siting and other state law issues, included the State of West Virginia, city and county governments, and citizen opponents.

Following these proceedings, in April 1984 the Board issued the siting, installation and operation permit. An appeal of that permit was taken by the State of West Virginia to the Court of Appeals and the Ohio Supreme Court. All appeals finally concluded in December 1986, and all upheld the validity of the permit.

Meanwhile, at the federal level, WTI applied for the required installation and operation permit under RCRA in September 1981. U.S. EPA Region V determined the application to be complete, and following a 14-month technical review issued a draft permit. There followed a comment period and public hearing, during which a number of interested parties, including the State of West Virginia, provided comments. Following another half year of review, a final permit decision was issued by Region V in June 1983.

Several petitions were filed requesting U.S. EPA Headquarters review of the permit decision. In addition, the State of West Virginia requested that the public comment period be reopened to enable it to file additional comments, a request which was granted by U.S. EPA. After review of West Virginia's additional comments and consideration of all of the other petitions for further review, U.S. EPA Headquarters determined that the final permit decision was correct, and instructed Region V to effect permit issuance, which was done in January 1985. No appeals of this permit were taken.

Interested persons, including the State of West Virginia, have been provided several opportunities over the years to comment upon and appeal actions taken by both the Ohio and federal agencies. Recent changes to the facility to improve its performance and further minimize its impact upon the surrounding communities have provided additional opportunities for public participation. What has resulted from this 10-year process of scrutiny by all levels of government and the public is a facility that will define the standard of safe industrial waste management well into the next century, a facility that is the embodiment of Congress' mandate to effectively treat hazardous waste prior to disposal.

Questions about the permits issued to WTI have been raised by Greenpeace and other facility opponents as reported in the press. To assist the Subcommittee I have attempted to identify those questions in anticipation of this hearing, and to provide brief answers based upon my understanding of the pertinent law and facts.

QUESTION: Who owns the East Liverpool facility?

WTI is an Ohio general partnership formed in 1981 by four companies: Von Roll Ltd.; Koppers Company; Mustang Fuel Corp.; and Stephens, Inc. The purpose of the partnership was to site, secure permits for, build and operate an advanced technology industrial waste treatment facility.

Each of the four investor companies either formed a new subsidiary corporation or used an existing subsidiary to hold their respective partnership interests. Over the ensuing decade, and for a variety of business and tax-related reasons, the identity of some of the corporations holding the respective investors' partnership interests changed; however, the entity which prepared and submitted the permit applications, leased the land for the facility, and received and held the permits for its construction, i.e., the Ohio general partnership WTI, remained unchanged.

In 1987 two of the investors entered into conditional sales agreements with Von Roll relating to their interests in WTI. Following notification to the agencies the sale was consummated in 1990. Shortly thereafter Von Roll purchased the interest of the third investor. Today the permit holder, WTI, remains as it has been since 1981, an Ohio general partnership of four corporate partners; however, instead of four separate investors, the stock of those four corporate partners is owned by the remaining original investor, Von Roll Ltd., through its North American subsidiary Von Roll America, Inc.

This question of ownership of the East Liverpool facility is usually raised in two contexts. First, there is the question of whether the change in the identity of individual partners required a change or transfer of the state and federal permits issued to the partnership. Based upon my understanding of the pertinent regulations and relevant Ohio partnership law, because the "person" (which under federal law includes a partnership) to whom the permits were issued - WTI - has not changed, no change to the permits was required.

The second context in which this ownership question is asked is with respect to who may be held liable for closure of the facility or any damages caused by an accident at the facility. WTI is owned entirely by Von Roll, and Von Roll is responsible for WTI. Von Roll has invested \$140 million in the construction of this facility, and takes its commitment to the project, the law and the community seriously. To back up its commitment Von Roll has caused WTI to secure liability insurance for both sudden and nonsudden accidental occurrences in the amount of \$4,000,000.00 per occurrence and \$8,000,000.00 aggregate, and to purchase an irrevocable bank letter of credit in the amount of \$6,000,000.00, which was issued to the Ohio Environmental Protection Agency to provide financial assurance for final

closure of the East Liverpool facility. Thus, financial guarantees exist independent of the continued existence of WTI or Von Roll to protect the host community and its citizens from loss arising from facility operations.

QUESTION: Why are there two versions of the RCRA permit cover sheet?

In June 1983 U.S. EPA Region V issued its final permit decision approving the WTI application. The cover sheet for that permit decision specified that the permit would become effective on July 24, 1993, i.e., 30 days after the permit decision, and would expire on July 24, 1993, i.e., 10 years after the effective date. However, several requests for review of the permit decision were filed, which prevented the permit from becoming effective until those requests were resolved. Consequently, the permit did not become effective until January 24, 1985, and under condition A.3. of the permit, did not expire until January 24, 1995. When the permit did become effective U.S. EPA failed to correct the error on the original cover sheet.

Region V staff member Thelma Codina noticed this discrepancy early in 1991, and asked me to review my files for the correct effective and expiration dates. After I provided Ms. Codina with that information, Region V responded that WTI would have to complete a permit modification to correct the dates on the cover sheet. Because the correction was to remedy a typographical error in the original permit cover sheet, I proceeded under 40 C.F.R. 270.42(a), published notice of the change to persons on the facility mailing list and notified U.S. EPA of the change. As is customary, I provided U.S. EPA with the corrected cover sheet after completion of the permit modification procedures. That correction has now been incorporated into the permit, as evidenced by the revised cover sheet published by U.S. EPA on February 3, 1992.

I hope this information is helpful to the Subcommittee. WTI looks forward to completing construction of the facility and initiating operations; then will WTI be able to show the citizens, the community and this Congress a superior industrial waste treatment alternative which is consistent with protection of human health and the environment.

ACLRBEC

The following excerpts are from reference material concerning the siting of Waste Technologies Industries as outlined by the State and Federal Environmental Protection Agencies.

Ohio Environmental Protection Agency
Waste Technologies Permitting History
Pages 8 and 9

Ohio Environmental Protection Agency
Responsiveness Summary
Draft Revised Permit Dated August 23, 1991
Page 9

United States Environmental Protection Agency
Region 5
February 3, 1991
Response to Comments Regarding the Issuance of the Resource
Conservation and Recovery Act

STATEMENT OF
WILLIAM E. MUNO
ASSOCIATE DIVISION DIRECTOR FOR RCRA
WASTE MANAGEMENT DIVISION
U.S. ENVIRONMENTAL PROTECTION AGENCY, REGION 5
BEFORE THE
SUBCOMMITTEE ON ADMINISTRATIVE LAW AND GOVERNMENTAL RELATIONS
OF THE
COMMITTEE ON THE JUDICIARY
U.S. HOUSE OF REPRESENTATIVES

MAY 7, 1992

Good morning, Mr. Chairman and members of the Subcommittee. I am William Muno, the Associate Division Director for the Office of RCRA at the U. S. Environmental Protection Agency, Region 5, in Chicago. I am pleased to be here today to provide the Subcommittee with information regarding the U.S. EPA hazardous waste permitting activities for the Waste Technologies Industries, Inc., or "WTI," incinerator in East Liverpool, Ohio. I would like to give you a brief background regarding WTI's regulatory history, followed by a status report on Region 5's present activities relative to this facility.

BACKGROUND

The U.S. EPA originally issued a permit under the Resource Conservation and Recovery Act (RCRA) for the construction and operation of two commercial hazardous waste incinerators at this facility in June of 1983. U.S. EPA regulations require that before such a permit can be issued, technical analysis must be performed on the permit application to assure that all U.S. EPA standards can be met. In addition, a public involvement process must be followed, which includes the issuance of a draft permit, the publication of a public notice, the opening of a public comment period, and, if requested, the opportunity for a public hearing. All of these requirements were met prior to the 1983 decision

to issue this permit. In 1983, the State of Ohio also issued a permit to WTI under Ohio hazardous waste regulations.

Both the State and the Federal permit decisions were appealed by opponents of the incinerator. After reviewing the petitions, the Administrator of the U.S. EPA remanded the appeal to Region 5 for the reopening of the comment period for an additional 45 days, to allow the State of West Virginia opportunity for comment. Following review of all comments, the Federal permit was upheld, and it became effective in January of 1985. The State permit was upheld by the Ohio Supreme Court in 1984. Following the resolution of these appeals, the Company proceeded with construction of the permitted incineration facility, and the facility is now nearing completion. Even though the Federal and State permits allow the construction and operation of two incinerators at this site, the Company has chosen to erect only one incinerator at this time.

Between 1985 and 1990, there was virtually no regulatory involvement with this facility. Physical construction of the incinerator and related storage and blending building began in 1990.

In 1990, WTI requested a modification to the State and Federal permits for this facility to allow for an improved design. Specifically, WTI proposed to incorporate a piece of equipment, known as a spray dryer, into the duct between the incinerator and the air pollution control system. The spray dryer would receive wastewater from the final stages of the air pollution control system, and evaporate the water out of that wastewater by spraying it into the hot flue gas.

By so doing, the spray dryer would eliminate the wastewater discharge from the incinerator system.

The U.S. EPA Region 5 analyzed the proposed modification and determined that the spray dryer would be environmentally beneficial since it would eliminate a wastewater discharge. Since the permit was being modified, the U.S. EPA also imposed additional emission standards, as necessary, to reflect current permitting guidance. These additions to the permit are more protective of the environment.

To adhere to the regulatory procedures for granting a permit modification, the U.S. EPA and the Ohio EPA issued draft permit modifications and public notices, and scheduled a joint public hearing. In addition, both Agencies scheduled a public information meeting the day before the formal hearing, and made a number of experts available from the two Agencies who could respond to a broad spectrum of technical and environmental issues regarding the permits.

In September of 1991, the U.S. EPA and the Ohio EPA attempted to hold both the public information meeting and the formal public hearing. Citizens boycotted the information meeting, disrupted the public hearing, and prevented the hearing from taking place. However, a number of written comments were submitted for the record.

After analyzing the technical data submitted pursuant to the modification and the comments received during the public comment period, the U.S. EPA determined that the modification was approvable. On February 3, 1992, the U.S.

EPA granted the permit modification. At that time, all significant public comments were responded to, as required by Federal regulation. Since you may be interested in reviewing both the comments and the responses, I have brought with me today a copy of the official Response to Comments from the February 3rd decision to grant the modification, which can be entered into the record.

One other change to the permit made at the time of the modification was the addition of the property owner, the Columbiana County Port Authority, as a co-permittee. This change reflected a stricter interpretation of our regulations than was common practice in 1983.

A final permit decision such as this generally becomes effective 30 days after the notice of decision, unless a petition for review (or "appeal") is requested. In the case of this permit modification, the Administrator timely received a total of seven petitions for review, including petitions by the State of West Virginia, the City of Pittsburgh, the Columbiana County Port Authority, the Sierra Club, and a citizens group known as SOS. The permit modification therefore is not effective and the original permit is considered to remain in effect. That original permit requires the incinerator to be built to the original design, without the spray dryer.

The State of Ohio also approved its permit modification in December, 1991 and that modification was also timely appealed. However, the Ohio regulations do not impact the effectiveness of a modification pending appeal resolution. Because of this, the State permit now includes the spray dryer, while the Federal

permit requires that the incinerator be built and operated without the spray dryer.

PRESENT STATUS

On March 13 of this year, WTI requested temporary authorization, as provided under U.S. EPA regulations, to operate the spray dryer. According to the hazardous waste permitting regulations, a temporary authorization may be granted for a number of reasons, one of which is the facilitating of changes to protect human health and the environment. If granted, the temporary authorization would allow the company to operate the spray dryer for a period of up to 180 days.

Because of the complexity of the regulations and the importance of this matter, U.S. EPA Region 5 has requested guidance from U.S. EPA Headquarters on whether or not this request for temporary authorization would meet all the regulatory criteria. Region 5 has not, as of this date, made a decision on the temporary authorization.

At present, U.S. EPA Region 5 is also analyzing the trial burn plan proposed by the Company. Even with a temporary authorization, the trial burn plan would still need to be approved before the Company could proceed.

Due to the number of commenters who have expressed concern over the potential health effects of this facility on the surrounding communities, U.S. EPA Region 5 is also currently performing a two-phase risk assessment. We are

performing a "screening" risk assessment, using presently available information, to determine what risk the WTI facility poses to human health or the environment. A second, more detailed risk assessment will also be completed using more specific meteorological data when that data becomes available. Actual emission data from a trial burn could also be used to further refine the risk assessment. The detailed risk assessment will take into account the terrain, demography, actual receptors, and local climatological conditions.

CONCLUSION

During the permitting process which led to the original permit, the resolution of the subsequent appeal, and the process of issuing the permit modification to add the spray dryer, the U.S. EPA followed the appropriate requirements of the regulations implementing RCRA. The U.S. EPA will continue to adhere to the appropriate procedures as the present appeals are resolved.

This concludes my statement. I would like to thank the members of the Subcommittee for inviting the U.S. EPA to participate in today's hearing, and would be pleased to answer any questions you may have at this time.

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ABUSE AND CONTROL

Statement
Congressman William F. Clinger, Jr.
"Hazardous Waste Management Permitting"
for
Subcommittee on Administrative Law
and
Governmental Relations
Judiciary Committee

May 7, 1992

Mr. Chairman and Congressman Gekas, the subject of your hearing today is of great interest to me as well as to my constituents. I appreciate the opportunity to comment on one of the most difficult issues that our nation faces -- hazardous waste disposal. Although your hearing today focuses on a specific hazardous waste facility located in East Liverpool, Ohio permitted by the EPA, it certainly raises the specter of the broader issue of how we manage our hazardous waste.

I am very concerned that as a society we focus on disposal of hazardous waste rather than prevention and reduction. Very few of our resources are going towards prevention, and, as a result, the demand for building additional waste disposal facilities appears to be growing at an alarming rate. In fact, I am concerned that in Pennsylvania, although we generate a large amount of hazardous waste, we may actually end up with having too much capacity.

In addition, the vast majority of these facilities, approximately 75%, are located in small towns and rural areas which inequitably places the burden of disposal on rural citizens. Our citizens living in these areas are overly burdened with having to take our nation's hazardous waste even though they are not responsible for its generation. The location of these facilities often has multiple impacts on the surrounding communities.

To this end, I have introduced H.R. 4212 which would expand the public information requirements under RCRA to provide information to citizens about the potential impacts of a facility. The bill would provide a process by which rural communities would be able to assess the social and economic impacts -- both positive, and negative -- before the facility is built. Very simply, this is called "good planning."

H.R. 4212 would require that an independent contractor, selected jointly by the community and the permit applicant, prepare an impact statement that would analyze all social and economic impacts. Public information is the thread with which the fabric of our country is woven. Without this information, public participation is not possible. If our rural citizens are to assume more than their fair share, then in return they should be given sound, objective information as part of the decision-making process.

One other area which I intend explore further is the worker health and safety requirements of operating hazardous waste incinerators, which affect not only the incinerator workers but also the community. A report issued jointly by OSHA and EPA last year concluded that widespread deficiencies in the area of worker health and safety training could lead to very serious operational problems.

The report indicates that a total of 62 unannounced inspections were conducted at 29 incinerators (out of approximately 140). OSHA identified a total of 320 violations while EPA identified 75 violations of Federal standards. Specifically, there were 22 violations in which incinerators were cited for deficient emergency action plans; 14 violations for failure to provide adequate information and training to incinerator employees; and a significant and frequent use of safety emergency equipment to prevent explosions. Even before the report, we already had plenty of examples in which incinerators have had fires (New Jersey) and doors blown off with explosions (Chicago). The report merely draws attention to the extent of the problem -and the need for Congress to examine this issue further through oversight and potentially legislation.

Again, thank you for the opportunity to discuss this issue and I look forward to working with you further.

OVERVIEW

WTI Incinerator, East Liverpool, Ohio

Construction has recently been completed on a commercial hazardous waste incinerator permitted to Waste Technologies Industries (WTI) located in East Liverpool, Ohio. According to press accounts, WTI's permit allows burning of a total of 176,000 tons/yr. of hazardous waste in two rotary kilns when operational, making it the world's largest.

The incinerator is located approximately 400 yds. from an elementary school, 100 yds. from a residential area, and 1,000 ft. from a business college. Near the borders of Pennsylvania, West Virginia, and Ohio, it lies above two fresh-water aquifers and adjacent to the Ohio River which provides drinking water for millions. According to West Virginia Congressman Harley O. Staggers, Jr., a study shows that air inversions occur in the Ohio River Valley region two out of every three days on average. The WTI incinerator is situated in a flood plain and has been built on land contaminated with up to 200,000 gals. of leaked chemicals from a former oil tank farm, according to press accounts. ?

The WTI incinerator is constructed on land paid for by Ohio taxpayers. In 1979, the Ohio General Assembly granted \$4 million to the Columbiana County Port Authority (CCPA) through the Ohio Department of Transportation (ODOT) "to acquire property and make such improvements as are necessary to enhance the use of Ohio Rivers." Press accounts indicate, "The idea was to build a river port to help boost the sagging economy of the region." According to the Cleveland Plain Dealer, "The authority got the money thanks to the eager and heavy-handed assistance of then Gov. James A. Rhodes and state Sen. Harry Meshel" despite "studies showing that a port would not help the economy" and that there was no current market for a publicly-owned terminal facility.

Port officials stated that they would attract only "river-related industry." However, no port has been built, the CCPA's only development is the WTI incinerator, and the Ohio EPA has prohibited importation of waste by barge, according to press accounts. In addition, the Army Corps of Engineers permit issued to CCPA to build the dock and dredge the river prohibits handling of hazardous waste at the facility. ?

Three months before the CCPA and ODOT took the land under eminent domain in August 1981, the port authority signed an option to lease the property for the incinerator with Waste Technologies, Incorporated.

In July 1981, the CCPA announced that WTI intended to build and operate a \$80-million waste treatment and disposal facility on Authority property. WTI was, at that time, a joint venture of Energy Technology Company (a subsidiary of Mustang Fuel Corporation of Oklahoma City, OK); Waste Technologies, Incorporated (a subsidiary of Stephens Inc. of Little Rock, AR); Koppers Environmental Corporation (a subsidiary of Koppers Company Inc. of Pittsburgh, PA); and Von Roll America, Inc. (an affiliate of Von Roll Ltd. of Gerlafingen, Switzerland).

According to the Cleveland Plain Dealer, Waste Technologies, Incorporated was formed in 1975 by Jackson Stephens, founder of Stephens Inc. of Little Rock, Arkansas, one of the country's largest investment banks outside of Wall Street. In 1977 and 1978, Stephens served as a broker to Bank of Credit and Commerce International (BCCI) principals. The federal Securities and Exchange Commission

sued BCCI and Stephens Inc. in 1978 for SEC violations, charging they misrepresented the reasons they acquired stock to try to gain influence over American financial institutions.

WTI filed its first permit application in September 1981. US EPA issued a permit to WTI in June 1983 and the Ohio Hazardous Waste Facilities Approval Board issued a permit to WTI in April 1984. Four months later, Ohio enacted new siting criteria which would prohibit WTI's facility being sited in its current location.

After several appeals of the permits and court challenges won by WTI, construction began on the incinerator in 1990. In September 1990 WTI obtained \$128 million in financing from the Union Bank of Switzerland. At the same time, an operating contract was signed by WTI as facility owner and Von Roll (Ohio), Inc. as facility operator. The contract indicated that Von Roll (Ohio), Inc. -- a company incorporated in Delaware in 1986 -- held management control over the project. Press accounts indicate that Jackson Stephens sold his interest in the incinerator in 1990.

According to the Cleveland Plain Dealer, subsidiaries of Waste Management, Inc. (WMI) have built the WTI incinerator. WMI has also contracted to import waste to the East Liverpool incinerator and haul out the ash. According to Von Roll, Inc. President D. J. Blake Marshall, the WTI incinerator was developed and manufactured by Von Roll, whose technology is used in 420 incineration units worldwide, with two in the United States. In the U.S., Von Roll owns Von Roll Transport in Atlanta, GA and New Jersey Steel Corporation in Sayreville, NJ.

The WTI incinerator is not needed to handle Ohio hazardous wastes. Without the WTI incinerator, Ohio already has incineration capacity on line to handle 20,000 more tons than Ohio industries need, according to EPA estimates. The WTI incinerator will give Ohio 21 percent of the incinerator capacity in the nation, according to Ohio EPA Director Donald Shregardus. According to Von Roll, Inc.'s Marshall, chemical giants DuPont, BASF and Chemical Waste Management have "pre-purchased" WTI's capacity for the next ten years.

Despite federal regulatory requirements that permit applications disclose the name, address, and telephone number of both the facility owner and operator, and requirements that both the owner and the operator sign the application, WTI's permit application filed in 1981 was not signed by the landowner (i.e., the ODOT which currently owns the land or the CCPA which is slated to assume ownership). In response to public revelation of the violation, US EPA added the CCPA as co-permittee to WTI's permit in February 1992 even though the CCPA had never applied and, in fact, objected to being listed as co-permittee. The permit also included approval of a spray dryer. Because appeals to EPA's February 1992 permit blocked it from becoming effective, in March 1992 WTI requested temporary authorization to operate the spray dryer up to 180 days.

When Congressional hearing testimony in May 1992 revealed the September 1990 operating contract with Von Roll (Ohio), Inc. as manager (and indicating that management control had changed without EPA pre-approval), significant questions were raised as to who the real facility owners and operators actually are.

Two weeks later, Von Roll President Marshall asked for Vice President Dan Quayle's assistance to obtain a temporary permit since "the valid permits to construct we once had are now invalid." In June 1992, WTI proponents met at the

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White House with Vice President Quayle's Competitiveness Council, 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 an EPA official.

On July 9, 1992, US EPA issued WTI a temporary permit while continuing to try to find out who actually owns and operates the facility.

WTI responded to an EPA information request on July 23, 1992 documenting that the ownership of the facility has indeed changed; the incinerator is now owned and operated by Von Roll (Ohio), Inc. -- formed in 1986 as an affiliate corporation of Von Roll, Inc., three years after US EPA issued WTI its permit. According to WTI, WTI is now a general partnership comprised of: Energy Technology Company, Waste Technologies [no comma] Incorporated, Environmental Elements Ohio (Inc.), and Von Roll (Ohio), Inc.

Documentation indicates: original partner Koppers Environmental Corporation changed its name to Environmental Elements Ohio (Inc.) in 1983; original partner Waste Technologies, [comma] Incorporated changed its name to WTI, Inc. in 1986 and then dissolved in 1987; new partner Waste Technologies [no comma] Incorporated originally was incorporated in November 1986 as WTI Acquisition, Inc. and had its name changed in December 1986; and new partner Von Roll (Ohio), Inc. -- a subsidiary of Von Roll America, Inc. -- was incorporated in February 1986.

Thus, one of the original WTI partners has since dissolved, and two of the current WTI partners did not exist when the permits were issued in 1983 by US EPA and in 1984 by Ohio.

According to WTI attorney Charles H. Waterman III, none of the changes "involved a change in the ultimate beneficial owner of a partner" and "the only substantive change that occurred since the permits (were) issued is concentration of ownership of the partners of WTI under Von Roll America, Inc."

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didn't pass →
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Prepared for presentation August 27, 1992, Williamsport, Pennsylvania

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WTI Incinerator, East Liverpool, Ohio

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Aug. 18, 1981	Land taken by CCPA and ODOT under eminent domain from River Services Company for \$923,700 in compensation
Sept. 4, 1981	Waste Technologies Industries files permit application with US EPA to build hazardous waste incinerator on CCPA land taken under eminent domain
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Apr. 27, 1984	Ohio Hazardous Waste Facilities Approval Board issues permit to WTI
August 1984	Ohio enacts new siting criteria which would prohibit WTI's facility being sited in its current location
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June 12, 1992 US 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 US EPA officially requests change of ownership information from WTI (under Sec. 3007, RCRA)

- July 9, 1992 US 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 citizen participants arrested and thrown in jail.
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Prepared for presentation August 27, 1992, Williamsport, Pennsylvania

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OVERVIEW
WTI Incinerator, East Liverpool, Ohio

Construction has recently been completed on a commercial hazardous waste incinerator permitted to Waste Technologies Industries (WTI) located in East Liverpool, Ohio. According to press accounts, WTI's permit allows burning of a total of 176,000 tons/yr. of hazardous waste in two rotary kilns when operational, making it the world's largest.

The incinerator is located approximately 400 yds. from an elementary school, 100 yds. from a residential area, and 1,000 ft. from a business college. Near the borders of Pennsylvania, West Virginia, and Ohio, it lies above two fresh-water aquifers and adjacent to the Ohio River which provides drinking water for millions. According to West Virginia Congressman Harley O. Staggers, Jr., a study shows that air inversions occur in the Ohio River Valley region two out of every three days on average. The WTI incinerator is situated in a flood plain and has been built on land contaminated with up to 200,000 gals. of leaked chemicals from a former oil tank farm, according to press accounts.

The WTI incinerator is constructed on land paid for by Ohio taxpayers. In 1979, the Ohio General Assembly granted \$4 million to the Columbiana County Port Authority (CCPA) through the Ohio Department of Transportation (ODOT) "to acquire property and make such improvements as are necessary to enhance the use of Ohio Rivers." Press accounts indicate, "The idea was to build a river port to help boost the sagging economy of the region." According to the Cleveland Plain Dealer, "The authority got the money thanks to the eager and heavy-handed assistance of then Gov. James A. Rhodes and state Sen. Harry Meshel" despite "studies showing that a port would not help the economy" and that there was no current market for a publicly-owned terminal facility.

Port officials stated that they would attract only "river-related industry." However, no port has been built, the CCPA's only development is the WTI incinerator, and the Ohio EPA has prohibited importation of waste by barge, according to press accounts. In addition, the Army Corps of Engineers permit issued to CCPA to build the dock and dredge the river prohibits handling of hazardous waste at the facility. *or just prohibits transport on the river*

Three months before the CCPA and ODOT took the land under eminent domain in August 1981, the port authority signed an option to lease the property for the incinerator with Waste Technologies, Incorporated.

In July 1981, the CCPA announced that WTI intended to build and operate a \$80-million waste treatment and disposal facility on Authority property. WTI was, at that time, a joint venture of Energy Technology Company (a subsidiary of Mustang Fuel Corporation of Oklahoma City, OK); Waste Technologies, Incorporated (a subsidiary of Stephens Inc. of Little Rock, AR); Koppers Environmental Corporation (a subsidiary of Koppers Company Inc. of Pittsburgh, PA); and Von Roll America, Inc. (an affiliate of Von Roll Ltd. of Gerlafingen, Switzerland).

According to the Cleveland Plain Dealer, Waste Technologies, Incorporated was formed in 1975 by Jackson Stephens, founder of Stephens Inc. of Little Rock, Arkansas, one of the country's largest investment banks outside of Wall Street. In 1977 and 1978, Stephens served as a broker to Bank of Credit and Commerce International (BCCI) principals. The federal Securities and Exchange Commission

sued BCCI and Stephens Inc. in 1978 for SEC violations, charging they misrepresented the reasons they acquired stock to try to gain influence over American financial institutions.

WTI filed its first permit application in September 1981. US EPA issued a permit to WTI in June 1983 and the Ohio Hazardous Waste Facilities Approval Board issued a permit to WTI in April 1984. Four months later, Ohio enacted new siting criteria which would prohibit WTI's facility being sited in its current location.

By whom? On what grounds? In which courts? After several appeals of the permits and court challenges won by WTI, construction began on the incinerator in 1990. In September 1990 WTI obtained \$128 million in financing from the Union Bank of Switzerland. At the same time, an operating contract was signed by WTI as facility owner and Von Roll (Ohio), Inc. as facility operator. The contract indicated that Von Roll (Ohio), Inc. -- a company incorporated in Delaware in 1986 -- held management control over the project. Press accounts indicate that Jackson Stephens sold his interest in the incinerator in 1990. — to whom?

According to the Cleveland Plain Dealer, subsidiaries of Waste Management, Inc. (WMI) have built the WTI incinerator. WMI has also contracted to import waste to the East Liverpool incinerator and haul out the ash. According to Von Roll, Inc. President D. J. Blake Marshall, the WTI incinerator was developed and manufactured by Von Roll, whose technology is used in 420 incineration units worldwide, with two in the United States. In the U.S., Von Roll owns Von Roll Transport in Atlanta, GA and New Jersey Steel Corporation in Sayreville, NJ.

The WTI incinerator is not needed to handle Ohio hazardous wastes. Without the WTI incinerator, Ohio already has incineration capacity on line to handle 20,000 more tons than Ohio industries need, according to EPA estimates. The WTI incinerator will give Ohio 21 percent of the incinerator capacity in the nation, according to Ohio EPA Director Donald Shregardus. According to Von Roll, Inc.'s Marshall, chemical giants DuPont, BASF and Chemical Waste Management have "pre-purchased" WTI's capacity for the next ten years.

Despite federal regulatory requirements that permit applications disclose the name, address, and telephone number of both the facility owner and operator, and requirements that both the owner and the operator sign the application, WTI's permit application filed in 1981 was not signed by the landowner (i.e., the ODOT which currently owns the land or the CCPA which is slated to assume ownership). In response to public revelation of the violation, US EPA added the CCPA as co-permittee to WTI's permit in February 1992 even though the CCPA had never applied and, in fact, objected to being listed as co-permittee. The permit also included approval of a spray dryer. Because appeals to EPA's February 1992 permit blocked it from becoming effective, in March 1992 WTI requested temporary authorization to operate the spray dryer up to 180 days.

When Congressional hearing testimony in May 1992 revealed the September 1990 operating contract with Von Roll (Ohio), Inc. as manager (and indicating that management control had changed without EPA pre-approval), significant questions were raised as to who the real facility owners and operators actually are.

Two weeks later, Von Roll President Marshall asked for Vice President Dan Quayle's assistance to obtain a temporary permit since "the valid permits to construct we once had are now invalid." In June 1992, WTI proponents met at the

White House with Vice President Quayle's Competitiveness Council, 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 an EPA official.

On July 9, 1992, US EPA issued WTI a temporary permit while continuing to try to find out who actually owns and operates the facility.

WTI responded to an EPA information request on July 23, 1992 documenting that the ownership of the facility has indeed changed; the incinerator is now owned and operated by Von Roll (Ohio), Inc. -- formed in 1986 as an affiliate corporation of Von Roll, Inc., three years after US EPA issued WTI its permit. According to WTI, WTI is now a general partnership comprised of: Energy Technology Company, Waste Technologies [no comma] Incorporated, Environmental Elements Ohio (Inc.), and Von Roll (Ohio), Inc.

Documentation indicates: original partner Koppers Environmental Corporation changed its name to Environmental Elements Ohio (Inc.) in 1983; original partner Waste Technologies, [comma] Incorporated changed its name to WTI, Inc. in 1986 and then dissolved in 1987; new partner Waste Technologies [no comma] Incorporated originally was incorporated in November 1986 as WTI Acquisition, Inc. and had its name changed in December 1986; and new partner Von Roll (Ohio), Inc. -- a subsidiary of Von Roll America, Inc. -- was incorporated in February 1986.

Thus, one of the original WTI partners has since dissolved, and two of the current WTI partners did not exist when the permits were issued in 1983 by US EPA and in 1984 by Ohio.

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first drawing

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July 9, 1992

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July 23, 1992

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Prepared for presentation August 27, 1992, Williamsport, Pennsylvania

Aug. 11th Zussman memo shows EPA will
modify permit.

THE PLAIN DEALER

OHIO'S LARGEST NEWSPAPER

CLEVELAND, SUNDAY, MARCH 22, 1992

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Ohio paid for a port and got a waste plant

By T.C. BROWN

PLAIN DEALER REPORTER

EAST LIVERPOOL, O.

State taxpayers paid for the land for a river port in Columbiana County in the early 1980s, but the only development to emerge has been a private, for-profit hazardous-waste incinerator.

In 1979, the Columbiana County Port Authority got \$4 million from the Ohio General Assembly to buy 44 acres along the Ohio River in the east-end industrial section of East Liverpool. The idea was to build a river port to help boost the sagging economy of the region.

The funds were granted despite studies showing that a port would not help the economy. The authority got the money thanks to the eager and heavy-handed assistance of then Gov. James A. Rhodes and state Sen. Harry Meshel.

Meshel, D-33, of Youngstown, who represented Columbiana County then, said recently that he and Rhodes spearheaded the drive for the port along with now deceased port Chairman Raymond Lewis.

"We wanted to build a port of some

kind to enhance the use of the river," Meshel said. "The truth is, we made arrangements with the governor on getting the money."

Rhodes said he provided active leadership in any project that would provide jobs.

"We wanted a port there to connect Lake Erie with the river," he said. Rhodes referred to Ohio 11 as the transportation link between the lake and the river.

Twelve years later, the economy in the area is worse than ever and no river port exists. Instead, one of the nation's largest hazardous waste incinerators — Waste Technologies Industries — is nearly ready to start up on the banks of the Ohio River, near schools and homes. Opponents, saying they are frightened for the health of their families, have battled the incinerator for years. Some have been arrested. Many others say they will do whatever it takes to stop the facility.

The creation of the port authority, its schemes for success and the resulting inclusions of the burner on the site are a study in political con-



PD Me

JAMES A. RHODES: "We wanted a port there to connect Lake Erie with the river."

nections, misinformation, manipulation of studies and statistics, and high hopes gone awry.

Hugh Kaufman, a 20-year U.S. Environmental Protection Agency investigator, said he has never seen a case more in need of a special prosecutor or grand jury.

SEE OHIO/19-A

Ohio

FROM/1-A

"He said targets of such an investigation should include Rhodes and Meshel.

Kaufman said he had studied Ohio statutes and the deeds for the port's land and the permits issued to the incinerator. He noted that the lease with WTI was signed before the port even bought the land.

"The state's \$4 million was used to get a hazardous-waste facility up and running," Kaufman said. "I've seen no laws that allow the state to buy land to build a hazardous-waste incinerator."

U.S. EPA spokesmen say Kaufman is not speaking on behalf of the agency.

Questioned last week, Ohio Attorney General Lee I. Fisher said he would examine the expenditure of state funds for the port authority.

"We will look to see if there is a basis for believing the funds were somehow misspent," Fisher said.

Stephens Inc., of Little Rock, Ark., formed WTI to operate in Ohio in January 1980 to build and operate regional hazardous-waste incinerators. Records and Stephens officials say the company has been — but is no longer — financially connected to the Bank of Credit and Commerce International, a politically influential international banking firm that has pleaded guilty to racketeering, criminal fraud and conspiracy.

Don Brown, a Stephens official and former East Liverpool resident, contacted city leaders in January 1980 and said the company wanted to build a waste-to-energy plant.

At a port authority meeting on June 6, 1980, Brown said WTI wanted to locate on land sought by the port because it was perfect in every way, including for environmental concerns. Port officials had said they would attract only river-related industry.

"Brown said it was best to locate on the river because it was safer, easier, and less costly for industry to ship by barge," the meeting's minutes show. "WTI would at least need access to the water. But WTI does not want anyone to draw the conclusion

that the port is necessary for their purpose."

Brown was careful at the meeting to suggest that incoming waste would not be dangerous.

"Only improper disposal makes a product a hazardous waste," Brown said. WTI currently is permitted to burn more than 300 hazardous chemicals, many of which are known cancer-causing agents.

WTI signed a lease with the port authority in May 1981. The lease was signed even though the authority did not buy the land for the incinerator until months later.

Since then, the incinerator has received all necessary permits except the final air-pollution permits. The last permit it received from the state Hazardous Waste Facility Board in 1984 was granted one week before WTI's lease option expired with the authority. Authority officials say no pressure was applied to the board to grant the permit before the lease option was terminated.

But new state laws now prohibit locating such a facility so close to the river and residential areas. The state EPA also has ordered that no waste be imported by barge.

Brown left the company in April 1983 and could not be reached. Carol Cookerly, spokeswoman for WTI, said she was unable to comment because Stephens Inc. is no longer involved in the project. Von Roll America is now the sole stockholder in the plant.

"Stevens Inc. were the original partners; we weren't the original partner," Cookerly said.

Carl Pelini, vice chairman of the authority, said WTI owes the authority \$1.3 million plus interest in deferred lease-option payments due when the facility opens. The authority viewed WTI as money in the bank.

"We wanted to use WTI as a funding source to go to banks to apply for additional grants," Pelini said. "Once WTI goes into operation we feel we will be able to do things."

The original goal was to build a river port by the Columbiana County Port Authority in conjunction with the Ohio Department of Transportation as a pilot project for the state. Studies by ODOT and the U.S. Army Corps of Engineers in the 1970s showed that river ports could attract

other industry and help depressed local communities bounce back.

The Columbiana County Commissioners created the port authority in 1977. Its primary objective was to "encourage new industry to locate in East Liverpool," records show. The authority snared \$250,000 in seed money from the state legislature for feasibility studies. Van Auken Bridges Inc. and Ernst & Ernst, of Cleveland, completed the study in April 1978.

But Ernst found that existing private ports were not operating at full capacity and that a new port would offer no economic advantages. Similar conclusions were reached in an earlier study by another research institute in Columbus, according to records.

Port board members then and now said they were angry with those findings. Gov. Rhodes had pushed for a

port in East Liverpool because it was the closest spot to the river from Lake Erie.

"We may have thumbed our noses at (the study)," Sen. Meshel said.

Rusty Albright, the port's chairman and an official with Teamsters Local 92 in Canton, put the money wheels in motion. Albright said he was a strong supporter and friend of Rhodes and Meshel.

Rhodes said the Teamsters and Albright played an important role, but there were no quid pro quos.

"Rusty was very active and very vocal," Rhodes said. "When I wanted something, he was in the automobile and would go find it."

Albright dismissed Ernst's findings. Albright told the port board that a program would have to be developed before the legislature would approve funds to buy land, records show.

19-A

"I had a governor who had a dream to build a port and here was a company that said there was no need for a port," Albright said last week. "I didn't like it and Rhodes and Harry Meshel were friends of mine."

The problem was solvable. Both Albright and Pelini said a positive study was needed to gain support from the Statehouse.

The port commissioned G. Raymond Lorello, executive director of the East Liverpool Chamber of Commerce, to do a second study. That report said a new port was viable.

The General Assembly in 1979 approved \$4 million for ODOT to appraise, negotiate and acquire the land in the port's name. The stated purpose in the legislation was to "enhance the use of Ohio's rivers."

But records show that ODOT officials questioned the role of the agency in the deal, even as recently

as 1990. Memos detail ODOT's responsibility to ensure public funds are spent wisely. Ronald H. Snyder, legal counsel for ODOT, noted in May 1990 that no controls were built into the ODOT contract with the port authority to ensure the future use of the land was confined to river enhancement.

Michael B. Cull, ODOT spokesman, said ODOT did what the legislature directed it to do.

"At the time, it seemed a wise use of public funds," Cull said. "The intent was to have a port authority, but that didn't work out and you can't undo what we did."

Albright and Pelini believe the WTI facility will operate safely.

"It disturbs me about the school, but as far as pollution goes, (the plant) doesn't concern me," Albright said. "If we had a second shot, maybe there is a better location."

THE PLAIN DEALER

OF CLEVELAND, OHIO

25*

OHIO'S LARGEST NEWSPAPER CLEVELAND, MONDAY, MAY 4, 1992

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House to probe EPA approval of incinerator

By T.C. BROWN

PLAIN DEALER REPORTER

EAST LIVERPOOL, O.

One of the country's longest environmental battles, waged here for 12 years over a hazardous-waste incinerator, winds its way to the nation's Capitol this week.

Incinerator opponents and proponents are scheduled to testify before a subcommittee of the House Judiciary Committee Thursday. The hearing is an investigation of the U.S. Environmental Protection Agency's role in granting approval to the \$140 million Waste Technologies Industries incinerator in East Liverpool. The incinerator is nearly ready for operation.

Officials say it is the first time Congress has examined the EPA's regulatory process on any hazardous-waste project. If misdeeds are found, the hearing could be a first step in tightening restraints or changing the methods of how the nation's approximately 160 private and commercial hazardous-waste incinerators are regulated.

The hearing is meaningful in other ways, too.

Incinerator opponents say it demonstrates lawmakers' concerns that the EPA's regulatory process may have broken down.

More importantly, the hearing provides a look-see at an EPA that opponents say has cozied up with industry at the expense of protecting the public health.

"This gives us the credibility we have always sought to establish by documenting everything," said Terri Swearingen of the Tri-State Environmental Council, which opposes the incinerator.

SEE PROBE/6-A

6-A

Probe

FROM/1-A

"The EPA either stretches regulations or ignores them to accommodate the industry, and that's why people should be concerned," she said. "We see the EPA not acting in the best interest of people they are charged to protect."

Incinerator officials call the hearing a waste of taxpayers' money and an abuse of power by politicians seeking re-election. They say the hearing is meaningless because no wrongdoing has been found.

"Anybody and everybody has looked at these permits under a magnifying glass," said Carol Cookerly, spokeswoman for Waste Technolo-

gies. "We plan to be present at the hearing, but we can decline to attend. It will be a vindication of WTI whether we are there or not."

EPA officials aren't saying much. "There's nothing to comment on," said Suzanne Kircos, spokeswoman for EPA Region V in Chicago, which regulates the East Liverpool plant. "We'll describe the permitting process as best we can."

The House subcommittee on administrative law and governmental relations, chaired by Rep. Barney Frank, D-Mass., will hold the hearing. Rep. Harley O. Staggers Jr., D-W.Va., sits on the subcommittee and promoted the action. The subcommittee has no Ohio lawmakers.

The national debate over disposal of hazardous waste, and thus the regulation of incinerators, is more critical than ever because recent federal

legislation prevents many substances from being buried in landfills.

At the same time, problems abound at the nation's hazardous-



Swearingen
regulations.

For instance, an incinerator in Region V's hometown owned by Waste Management Inc., a company closely involved with the East Liverpool plant, was shut down last year after an explosion. An investigation of the Chicago incinerator revealed that employees kept two sets of records and intentionally mislabeled waste.

Subsidiaries of Waste Management are building the Waste Technologies burner and providing operating technology. Waste Management has also contracted to import waste to the East Liverpool plant and haul out the residual ash when the plant opens later this year.

The location of the East Liverpool incinerator is particularly repugnant to opponents. The 22-acre site and an additional 20 acres were bought in

the early 1980s by Ohio taxpayers, ostensibly for a river port that has never been developed. Ohio Attorney General Lee I. Fisher is investigating to see if the \$4 million payment for the land was proper.

The land is owned by the Columbus County Port Authority.

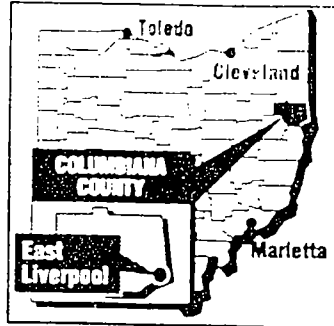
The plant is on the bank of the Ohio River, across from the West Virginia panhandle near Pennsylvania. The river is a drinking-water source for thousands of people.

The plant was built in a flood plain over two fresh-water aquifers on ground already contaminated with up to 200,000 gallons of toxic chemicals from a former oil-tank farm. The contaminants remain in the ground.

The incinerator squats in a valley prone to air inversions that would trap pollutants. The 150-foot smokestack is below a bluff that holds a 500-student elementary school and a business college a little more than 1,000 feet away. The plant is about 400 feet from a residential neighborhood.

The incinerator will burn more than 60,000 tons of hazardous waste annually but has a permit to add a second kiln that would incinerate more than 176,000 tons a year. More than 300 chemicals are approved for burning. The list contains dozens of cancer-causing agents and chemical-war gases, including Agent Orange.

The stack legally can spew 9,400 pounds of lead, 2,560 pounds of mercury, 199,600 pounds of sulfur dioxide and 157,400 pounds of suspended particulates annually. Although the



PD graphic

EPA acknowledges that it cannot measure all of the toxins spewed from the stack, plant officials say actual emissions will be well under the safety ceiling. They say the process will destroy 99.99% of the materials burned.

While operating safely, the plant will prop the city's income with an annual fee and tax bill of \$4 million, say Waste Technologies officials. In addition, the city will get \$600,000 a year as part of a tipping fee.

But a two-year study by Cleveland consultant Isaac Yomtovian indicated that the minimal health and environmental risks cited by the plant and the EPA were unreliable. Yomtovian also found that the permits granted to the plant in 1983 and 1984 were outdated and incomplete.

Different advisers for the Ohio Hazardous Waste Facilities Board told the board that the incinerator was not needed to burn Ohio's waste. One told the board not to approve the plant without further information. Both were ignored.

But some legislators have listened. Congressmen and senators from Ohio, West Virginia and Pennsylvania called for an EPA investigation and a General Accounting Office probe. The EPA declined. The GAO completed a preliminary inquiry and will seek further guidance from Congress this week.

And Sen. Howard Metzenbaum, D-O., introduced legislation last week to prevent the plant from opening because of its location.

The 1980 proposal to build the incinerator in cash-starved East Liverpool and the rising tide of opposition to the plant are like twins separated at birth. Today, proponents say Waste Technologies will provide jobs for about 100 workers in an area of Eastern Ohio that has seen unemployment rates as high as 20% in recent years.

The incinerator company was started in 1975 by Jackson T. (Jack) Stephens, founder of Stephens Inc. of Little Rock, Ark., one of the country's largest investment banks outside of Wall Street.

Incinerator opponents have raised concerns about Stephens' involvement in light of his ties to the Bank of Credit and Commerce International. Records show that in 1977 and 1978, Stephens helped BCCI gain a foothold in American financial markets. Stephens served as a broker for BCCI principals.

BCCI, charged in New York for bilking depositors of at least \$3 billion, recently turned over \$550 million in U.S. assets after pleading guilty to racketeering. Stephens apparently played no role in the violations, but the Securities and Exchange Commission sued BCCI and Stephens Inc. in 1978 for SEC violations. The SEC charged that the firms misrepresented the reasons they acquired stock to try to gain influence over American financial institutions. The case was settled.

Opponents point to the parent company's background as one more reason for suspicion. Other reasons? About 12 years ago, plant officials told citizens that no pollutants would spew from the burner's smokestacks. They also said the toxins shipped into the city would be so diluted, children could play in the puddles of waste spills.

Construction on the plant was not begun until 1989 because of appeals and court challenges, won by Waste Technologies, and because of the company's financial difficulties.

The company had financial problems because it lacked investors with the capital needed to build the plant. The partnership later obtained enough financing from the Union Bank of Switzerland.

The opposition movement has grown in size and sophistication since the early days. The grass-roots group from three states has concentrated on documenting the system's "flaws."

For instance, the EPA failed to include the Columbiana County Port Authority on the permit as a co-responsible operator. The port authority was added recently, meaning taxpayers could be held liable to pay for accidents.

And a dispute over the plant's location caused the Federal Emergency Management Agency to threaten pulling disaster aid in Ohio. Plant officials say the matter is settled, but the federal and state agencies are still working to solve the disagreement.

Also, the U.S. EPA in 1987 declared invalid a state air-quality permit that is just now being resolved.

Frank's subcommittee has several choices. The matter could be dropped. More investigations and hearings could be pursued. A special prosecutor could be appointed.

Charles Waterman III, the plant's legal counsel, is expected to testify, along with an EPA representative, on behalf of proponents.

"We have no concerns. This is just a subcommittee hearing," said Waste Technologies' Cookerly.

Connie Stein of Wheeling, W.Va., and Hugh Kaufman, a senior U.S. EPA investigator, are expected to testify for opponents. Kaufman will not represent the EPA.

"WTI is a symptom of a national problem that shows the EPA process for regulating the waste-disposal industry is riddled with deceit and deception at best, and fraud at worst," Kaufman said. "The ramifications to America are more serious than the savings-and-loan fraud. It's not just money; if the regulatory process has broken down, it's the health of the citizens at risk."

THE PLAIN DEALER

OHIO'S LARGEST NEWSPAPER CLEVELAND, MONDAY, JULY 20, 1992

HOME DELIVERY Daily for six issues
Daily & Sunday for seven issues

Incinerator permits tangled in name changes

By T.C. BROWN

PLAIN DEALER BUREAU

EAST LIVERPOOL, O.

A series of subtle name changes, rather than a decade of legal challenges, may threaten the government operating permits of the controversial Waste Technologies Industries incinerator here.

A business partnership that owns the permits for the hazardous waste incinerator, one of the nation's largest, is not the same organization that applied for and received those licenses, public records show.

The visible changes in companies found in

an investigation by The Plain Dealer are mostly subtle. The organizations have similar names or they barely appear to be different because of the inclusion or lack of commas or parentheses in the project partnership's official names.

For example, one original partner, Waste Technologies, Inc. was incorporated in 1975. It was dissolved in 1987. A separate company, Waste Technologies Incorporated, was formed in 1986 and added to the incinerator partnership in place of the first firm in 1987. Today, that partner is known on some documents as Waste Tech, Inc., according to records.

The partnership has tried to protect its per-

mit from more detailed examination by regulators. The firm once threatened not to build the plant in the economically depressed region, saying it did not want to risk further examination.

At risk is the permit, which itself is a marketable commodity and which allows the plant to operate an incinerator that could generate \$200 million yearly in revenue.

Critics contend the partnership is attempting to shield true ownership in the plant through various subtle name changes to dodge liability in case of an environmental disaster. Federal officials and others acknowledge they are uncertain which corporations today are the operators.

Business law and environmental regulation experts say the permits given to the Waste Technologies Industries incinerator in 1983 and 1984 are invalid if plant officials failed to notify regulatory agencies of changes in ownership. If corporate ownership has been purposely concealed, officials could be subject to charges of fraud and criminal and civil penalties, according to federal law.

But incinerator officials have consistently contended that the four original partners in the project remain the same. They admit some companies have different names now, but they say such alterations do not mean that the founding partners have changed.

SEE NAME/8-A

Name

FROM/1-A

Charles H. Waterman III, legal counsel for the incinerator, and other officials last week declined to discuss partnership history, citing pending litigation.

The partnership maintained that principals had not changed when it applied in 1987 for \$139 million in revenue bonds backed by the Ohio Water Development Authority. The tax-exempt bonds, which have not yet been issued, can be applied toward construction costs at the \$140 million hazardous waste incinerator on the Ohio River on the West Virginia border near Pennsylvania.

Yet one of the current partners named in the application that incinerator officials claim to be a founder, Environmental Elements (Ohio), Inc., is no longer licensed to do business in the state, records show.

The PD investigation reveals numerous corporate substitutions of the four original partners in the incinerator project. The switches occurred among similarly named organizations between 1983 and 1990, from the time the incinerator received its first government permits to the beginning of construction.

If a new owner or operator enters a partnership for a hazardous waste incinerator, federal law requires operators to notify the U.S. Environmental Protection Agency three months before the change. Those changes must then be approved in writing by the EPA director. No such notification or approval has been given. Submitting false information or omitting material information to the government can result in penalties of up to \$50,000 a day and two years in jail.

Told last week of The PD's findings, Steven J. Grossman, executive director of the state Water Development Authority, said the agency could launch its own investigation.

"If the information on the application is incorrect or misleading, the (bond) inducement agreement could be terminated," he said.

Although changes in the corporate partnerships seem to be subtle name changes, some of the organizations replacing original partners are separate entities with different officers, corporation dates, headquarters locations and other differences.

Some have officially given each other permission to use similar-sounding corporate names.

Elliot Klayman, an Ohio State University professor and author on business law and government regulations, said it is impossible for the incinerator partnership to claim that the founders remain the same. Klayman, who examined a corporate flow chart constructed by The PD from the public documents, said the name changes may be subtle, but the partnership is different.

"It's like a person born in 1982 and another born in 1985 that have the same name. They are still two differ-

ent people," Klayman said. "(The partnership is) not making full disclosure (to the government). They're fudging. They're different entities now than they were in the beginning. If they're actively concealing that information, that is fraud, and that is grounds for revoking their license."

The controversial incinerator is licensed to burn more than 60,000 tons of hazardous waste a year at startup. It is about a quarter mile from a 500-student grammar school and 100 yards from the Ohio River. Despite a 12-year battle by residents and activists, the plant is nearly complete and awaiting final approval for a test burn from the U.S. EPA.

Hugh Kaufman, a court-protected whistle-blower and 20-year investigator with the U.S. EPA, said the partnership wants to avoid a new review of the permit because current Ohio law prohibits siting an incinerator so close to a school or river.

"The permit is invalid because there was no prior EPA approval for changes and some of the initial companies are no longer in business," Kaufman said. "These permits are sold as commodities across the country because once you have a permit, it's a legal license to make more money than drug dealers."

A similar permit in Nebraska was sold for \$2 million, he said.

Kaufman estimates Waste Technologies Industries will make up to \$240 million annually. He has testified before Congress and in court that the incinerator corporations play a shell game to avoid liability.

"This is like all shaky business deals," Kaufman said. "The ultimate receivers of the cash want to escape liabilities, so they create and dissolve a raft of different entities to make it impossible to sue anybody with assets when problems occur."

A series of documents from 1987 through 1988 show that a subsidiary of Waste Management Inc., a multi-billion-dollar corporation that is the world's largest waste disposal company, had agreements to buy the plant. Letters from the incinerator partnership say that the deal was canceled after the Ohio EPA said a change in ownership would require a review of the plant's permit. Waste Management has been fined millions of dollars across the nation for violating waste laws.

Other subsidiaries of Waste Management constructed the East Liverpool plant and hold contracts to deliver waste to the plant.

The U.S. EPA ordered incinerator officials to produce this week a complete corporate history of the companies involved in the project because of questions raised by Connie Stein, of Wheeling, W.Va., and other opponents. The agency said it would delay approving a test burn until the information was provided.

In a July 7 letter to incinerator officials, the U.S. EPA said it had information "that the facility ownership and operational control may have changed, that it is unclear who is responsible for day-to-day operations

at the facility or who is responsible for the financial assurance."

The agency said it is unsure who is authorized to sign documents that bind the plant to legal requirements.

Similar information was requested at the close of a May congressional hearing by a House Judiciary subcommittee that also is pursuing an investigation.

The PD's examination of corporate records for the Waste Technologies Industries project show how the joint-venture partnership that owns the waste permits has changed since it was formed in June 1981:

The four firms that comprise the original partnership are:

■ Waste Technologies, Inc., which was dissolved as a corporation in December 1987 and replaced in the partnership with a different company — Waste Technologies Incorporated. This second company was not incorporated until five years after the original incinerator alliance was formed. Plant officials say Waste Technologies Incorporated holds 30% equity in the partnership. Officials also claim a company called Waste Tech, Inc. holds a controlling interest in the incinerator.

■ Von Roll America, Inc., which has never been registered to do business in Ohio despite joining the original Ohio partnership. The company did not file a business disclosure statement with the Ohio attorney general as required by state law to depict involvement in the hazardous waste project. Replacing Von Roll America, Inc. in the incinerator partnership was Von Roll (Ohio), Inc. This replacement company, appointed as the project's managing partner, was not incorporated until five years after the original incinerator alliance was formed.

■ Energy Technology Company, which filed a business disclosure statement in 1990 with the Ohio attorney general as an incinerator partner. But a separate disclosure lists a company called Energy Technologies, Inc., which officials say holds a 30% interest in the incinerator alliance. Both companies share the same corporate officers and both claim to do business using each other's names.

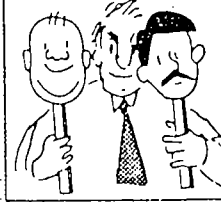
■ Koppers Environmental Corporation, which changed its name to Environmental Elements Ohio (Inc.) in 1983. Neither company has filed a disclosure form with the attorney general as a partner currently involved in the project. Instead, two other companies with similar names filed business disclosure statements — Environmental Elements Ohio, (Inc.) and Environmental Elements Ohio, Inc. Both claim the corporate history of Koppers and both claim a 20% partnership interest in the incinerator project.

One of the earliest recorded changes in the joint-venture partnership occurred when incinerator officials signed an amended property lease with their landlord, the Columbiana County Port Authority, in 1984.

That lease shows different cor-

More than the name game

The partner firms holding operating permits for the WTI incinerator may not, in fact, be the same organizations that originally received those permits



- ¹ Koppers Environmental Corporation (6/26/81)
- ² Environmental Elements Ohio (Inc.) (10/29/87)
- ³ Environmental Elements (Ohio) Inc. (11/4/87)
- ⁴ Environmental Elements Ohio, Inc. (4/26/90)

- ¹ Energy Technology Company (6/26/81)
- ⁴ Energy Technologies, Inc. (4/26/90)

- ¹ Waste Technologies, Inc. (6/26/81)
- ² Waste Technologies Incorporated (10/29/87)
- ⁴ Waste Tech, Inc. (4/26/90)

- ¹ Von Roll America, Inc. (6/26/81)
- ⁴ Von Roll (Ohio), Inc. (4/26/90)

SOURCE: 1) Joint Venture Agreement, 2) Certificate of General Partnership, 3) Joint Venture Agreement Amendment, 4) Waste Technologies Industries disclosure to Attorney General

PD/COOKE

porate entities with similar names for three of the four original partners: Von Roll of America replaces Von Roll America, Inc.; Energy Technology, Inc. replaces Energy Technology Company; and Environmental Elements (Ohio), Inc. replaces Environmental Elements Ohio (Inc.). Only Energy Technology, Inc. was registered as a corporation in Ohio at the time. Its license was canceled in December 1988 for failure to pay franchise taxes.

Another change in the 1987 gen-

eral partnership certificate included the addition of Von Roll (Ohio), Inc., replacing the original partner, Von Roll America, Inc.

A Jan. 24, 1990, letter from the partnership's legal counsel, Charles H. Waterman III, to the Ohio EPA says that Von Roll (Ohio), Inc. is an original partner from 1981. But records show that company was not even incorporated until 1986.

"It's impossible for Von Roll (Ohio) to be an original partner," OSU professor Klayman said.

STATE

& REGION

SATURDAY, AUGUST 1, 1992

CTORY/5-7-C

Hunger strikers hanging tough

BROWN

EALER REPORTER

EAST LIVERPOOL, O.

Michael Fitch knows what you had for dinner as soon as you say hello.

Casey dreams of pizza.

Black Smith's mother wonders if he is eating.

Casey and Smith shared experiences in a meeting here this week with 11 other people who began their hunger strike July 20. The strikers, now numbering 25, hope to draw attention to their cause — the potential revocation of operating permits for the Waste Technologies Industries incinerator here.

They held vigils for the strikers scheduled by 20 environmental groups for 10 p.m. today nationwide, drawing in members of Green-

peace up food. It's not so much of a meal. "I may never eat again," the 17-year-old Smith joked.

Despite cheery bursts of feelings shared with other strikers, red-lined eyes and occasional scraps of conversation marked their strike. Nine men, three women and a 17-year-old girl are participating. The oldest striker is 64. They say they are drinking juice, but most are having an easy time.

The hunger strike is the latest in a lengthy battle over the incinerator. The plant will initially burn 60,000 tons of hazardous waste annually and is awaiting regulatory approval for its first test burn.

Residents say they fear the potential health effects of the incinerator, located on the Ohio River. They want the regulatory agencies to stop the plant from opening and they want an investigation into issues of potential illegalities.

Plant officials say they have legally obtained all permits and that the incinerator will operate safely.

The hunger strike began after 12 of the protesters, six men and six women, brought their cause to the U.S. Environmental Protection Agency in Washington. The agency refused to act and the group was arrested and hauled off to the Police Central Cell Block in Washington.

"They could have escorted us from the building, but they wanted to teach us a lesson," said Terri Swearingen, an opposition leader. "The real corporate criminals are being protected by the government, but citizens don't have the same political clout."

Smith said he and a couple of other male protesters spent nearly two hours in handcuffs because they were processed first. Everyone was locked up for nearly 11 hours with other prisoners charged with felonies, including drug offenses and assault.

At least four of the women protesters said several male prisoners masturbated in front of them. They all said an X-rated movie was shown in the holding area, but they tried to make the best of a bad situation.

"We sat around the old urinal and

sang our songs," said Rebecca Ammon.

Cell Block supervisors said they had no knowledge of the protesters' treatment or of the pornographic movie. They said they would look into it.

Robin Woods, an EPA spokeswoman, said the decision to arrest the protesters was made by the Federal Protective Services. The U.S. attorney's office, responsible for pressing charges, did not respond to questions.

"We processed them at the EPA so they wouldn't have to spend the night in a D.C. jail," Woods said. "But something went awry here and they were reprocessed."

Sen. Howard M. Metzenbaum, D-O., said he is outraged over the way protesters were treated and had contacted U.S. EPA Administrator William Reilly. Reilly has not yet responded.

Six of those arrested began the hunger strike that day; others have since joined. Most say they struggled with the decision. Many say they will continue until they drop.

Julia Bircher, an incinerator spokeswoman, said the plant is not responsible for hunger strikers' actions.

"They must take responsibility for their own actions, whether it's a hunger strike or they are being arrested," Bircher said.

Port Authority seeks to sell land to WTI waste plant

By T.C. BROWN

PLAIN DEALER BUREAU

EAST LIVERPOOL, O.

The Columbiana County Port Authority wants to sell land taken by eminent domain and paid for with state tax dollars to a partnership that owns one of the nation's largest hazardous waste incinerators.

Carl Pelini, vice chairman of the authority, yesterday confirmed that land-sale discussions were under way on the authority's Waste Technologies Industries incinerator committee. The authority owns the land along the Ohio River, site of the plant.

Nancy-Ellen Zusman, assistant counsel for the U.S. Environmental Protection Agency Region V, said she had known "for a while" that the port was discussing selling the land to the plant. The EPA has attempted to force the authority to sign the incinerator's government operating permits because it owns the site. The authority has resisted signing to avoid liability in case of an environmental accident.

Federal law requires the landowner to be a co-permittee.

Incinerator opponents have fought to get the EPA to declare the permits invalid because the authority has never been included on the licenses.

The land was taken by eminent domain in 1981 by the Ohio Department of Transportation on behalf of the authority. The state paid \$900,000 for the 22-acre site.

Land taken by eminent domain must be used for a public purpose, according to state law. But the authority has never included the incinerator on its development plans; it has not held a public hearing to discuss the incinerator's development; and it has never issued proposal requests for bids for the private enterprise, as required by state law.

Pelini said eminent domain laws would not prevent the authority from selling the land, even though the land would not be used for a public purpose.

The plant is waiting final approval to conduct its first test burn. When operational, it will burn 60,000 tons of waste annually, about 400 yards from a grade school.

STATE & REGION

WEDNESDAY, AUGUST 5, 1981

WTI sought Quayle's aid

Regulators granted waste-burning permit two months late

By T.C. BROWN

PLAIN DEALER REPORTER

EAST LIVERPOOL, O.

Federal regulators gave one of the nation's largest hazardous waste incinerators here approval to burn waste two months after a top plant official sought help from Vice President Dan Quayle because of regulatory delays.

D.J. Blake Marshall, president of Von Roll, Inc., which is furnishing equipment for the Waste Technologies Industries incinerator, wrote the May 21 letter, obtained yesterday by The Plain Dealer.

Marshall told Quayle that the plant's construction permits are invalid, that the \$140 million incinerator was \$15 million over budget, that the company was "technically" in default with its bankers and that 100 jobs could be lost.

Marshall complained of regulatory inaction and asked Quayle for help in obtaining a temporary permit from the U.S. Environmental Protection Agency. The temporary permit would allow the plant to finish construction and conduct initial shake-down burns.

Supporters of the incinerator met with staff from the President's Council on Competitiveness, headed by Quayle, three weeks after Marshall wrote the letter. The EPA granted the plant a temporary permit a month later. Officials representing Quayle, the EPA and the plant say the vice president did not intervene.

Jeff Nesbit, Quayle's spokesman, said he was not aware of any communication between Quayle and the EPA.

"When proponents met with (the

Competitiveness Council) they discussed general policies. There have been no other meetings," Nesbit said.

The incinerator, on the bank of the Ohio River on the West Virginia border about 400 yards from a grade school, has been the focus of one of the nation's longest environmental battles since the plant's 1980 proposal. The burner is waiting final test-burn approval from the EPA.

"Both sides have tried to get attention to WTI, and we make no apology for it," said Carol Cookerly, a plant spokeswoman. "The opponents have made substantially greater efforts in Washington than we have."

Marshall could not be reached for comment about his reference to the plant's "invalid" permits.

SEE WTI/2-C

The Honorable J. Danforth Quayle
Vice President of the United States
The White House
Washington, D.C.

Dear Mr. Quayle,

Von Roll America, a subsidiary of Swiss based Von Roll A.G., is engaged in an intensely pitched battle to open a \$140 million hazardous waste incinerator in East Liverpool, Ohio. I believe our story -- an incredible one, to say the least -- underscores the need for the same measures you have taken to balance the nation's regulatory process and put America back to work.

Mr. Quayle, over the last several months you have spoken up for companies like mine. To move forward we must have a 180 day temporary authorization permit from the U.S. EPA which can be granted while the EPA reviews the appeals. I believe we need your help and ask that you please consider whether there is anything you can do to assist Von Roll.

WTI

FROM/1-C

Cookerly said Marshall might have been referring to the addition of new technology that was allowed when the EPA approved the temporary permit last month.

Hugh Kaufman, a court-protected whistle-blower and 20-year investigator with the EPA, said the temporary permit was improperly issued and may be invalid. It also shows the political clout of the Swiss-based Von Roll, he said.

"This demonstrates that the permit issuance and project go-ahead from the EPA was based on politics,

not law," Kaufman said. "Since when is the Competitiveness Council interested in the competitiveness of the Swiss. I thought we were concerned about America first."

Marshall's letter also accused Greenpeace and "short-sighted" politicians of mounting smear campaigns against the company. He said the majority of residents support the plant.

Beth Newman, of Greenpeace, said 11 organizations representing thousands of people in the Ohio Valley oppose the plant. She referred to an EPA study released last year that shows the nation has an overcapacity to incinerate hazardous waste without the new plant.

"Any facility that wants to spew 4½ tons of lead into a schoolyard deserves a death penalty," Newman said.

The vice president is scheduled to attend a fund raiser in Hanoverton in Columbiana County about 20 miles from East Liverpool tomorrow.

Meanwhile, the Ohio EPA ordered the plant's landlord, the Columbiana County Port Authority, to co-sign the state's permit as a liable party or face enforcement action. Co-signing the permit means the authority could share liability for an environmental accident.

Newman said the action is meaningless because the authority has said publicly it will sell the land to the incinerator operator.

"This is a cheap political trick by the administration of Gov. George Voinovich to give the appearance they are doing their jobs by protecting Ohio citizens," Newman said.

United States Senate

WASHINGTON, DC 20510

December 7, 1992

Mr. Charles A. Bowsher
Comptroller General of the United States
General Accounting Office
441 G Street N.W.
Washington, D.C. 20548

Dear Mr. Bowsher:

We are writing with regard to the WTI incinerator plant in East Liverpool, Ohio. It has come to our attention that many questions remain unanswered over the process by which the EPA approved the plant construction and initial stages of operation. Moreover, we are deeply concerned that potential impacts on the health and safety of area residents have not adequately been examined.

Accordingly, we are requesting a thorough and immediate investigation by the GAO of the EPA approval process. This would serve as a follow up and expansion on a previous GAO report conducted at the request of Congressman Mollohan of West Virginia. It should address all questions left unanswered by the previous report, and there should be no doubt that the incinerator plant is prepared to operate in full compliance with the law and in the interest of the health and safety of area citizens and their families.

We request that the following issues be addressed in detail:

*Did the federal Environmental Protection Agency properly handle the original request for a permit required under the federal Resource Conservation and Recovery Act?

*Has the ownership of WTI substantively changed enough to warrant permit review?

*What was the role, if any, of the Competitiveness Council in allowing the EPA to approve "shakedown" procedures and allow hazardous waste on site? It is our understanding that WTI officials contacted and met with the Council last summer. Just days after that meeting, a temporary permit was granted to WTI by the EPA.

*Have the health and safety concerns of the area residents and their families been adequately addressed by the EPA and the state of Ohio?

*Does the plant meet all federal and state environmental, and health and safety requirements, particularly the 1990 Clean

Air Act Amendments and the Resource Conservation and Recovery Act? The WTI plant has been in the planning process for a number of years and a question is raised as to whether the permits applied for in the past are adequate in meeting current standards.

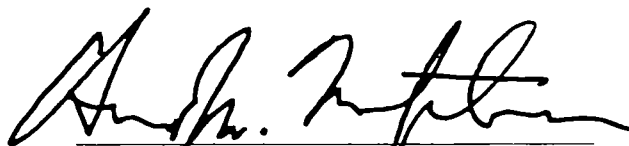
We ask that this investigation be given prompt attention.

Thank you for your assistance.

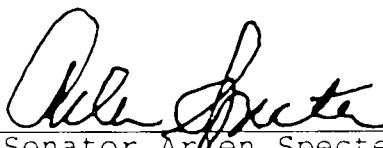
Sincerely,



Senator Albert Gore, Jr.



Senator Howard Metzenbaum



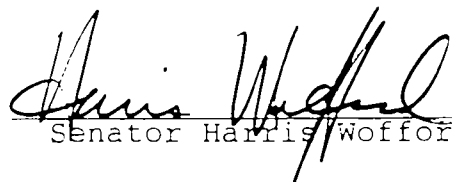
Senator Arlen Specter



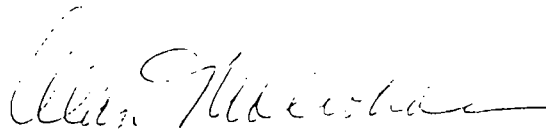
Senator John Rockefeller



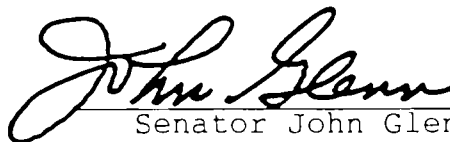
Senator Robert Byrd



Senator Harris Wofford



Congressman Alan Mollohan



Senator John Glenn

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Tlx 89-2359 • Fax (202) 462-4507

TO:

Pam McElwee

FROM:

Rick Hund

DATE:

12/21/92

NUMBER OF PAGES:

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MESSAGE:

Attention: WTI Protesters coming to Sen Gore'soffice.

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FOR MORE INFORMATION:

Rick Hind, Blair Palese, Jeanne Whalen
202/462-1177

GREENPEACE STATEMENT ON INCINERATOR PROTEST

WASHINGTON, DECEMBER 21, 1992 -- Greenpeace today was protested by people supporting the start-up of the nation's largest hazardous waste incinerator. The protest took place outside the Greenpeace national headquarters in Washington, DC.

Waste Technologies Industries is the largest hazardous waste proposal in the world. WTI has completed construction of one kiln, with plans to construct another. If completed, the plant would have the capacity to burn 176,000 tons of toxic waste per year. The plant is located on the flood plain of the Ohio River, 300 feet from a residential neighborhood. An elementary school is located on a bluff 1100 feet away from the incinerator.

"Communities shouldn't have to choose between pollution and poverty," said Rick Hind, Greenpeace spokesperson. "It's no coincidence that these kinds of plants are sited in communities that are desperate for jobs. Companies like WTI prey on such circumstances to force communities to accept polluting industries in their back yards."

Even now, Greenpeace employees and East Liverpool residents and activists are facing jail terms through the holidays for protesting the plant's start. "These are people who are putting their own jobs on the line," said Hind. "Yes, East Liverpool needs jobs. No, East Liverpool does not need WTI."

This plant is being opposed not only by citizens of East Liverpool and national environmental groups, but by the incoming Clinton/Gore administration who have identified this as their first environmental issue of importance. The Clinton/Gore administration is protesting not only long-term environmental impacts, but the legality of the siting process as well.

"Greenpeace was asked by members of the East Liverpool community to support them in their fight to stop the incinerator. This debate should be taking place in Ohio where the real long-term effects of the decision before us will be played out," said Hind.

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