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WTI [Waste Technologies Industries] Current Issues [2]

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U.S. ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

Assistant Administrator
Office of Solid Waste and Emergency Response

DEC 28 1992

Note:

Here is the latest status in the WTI matter. We will wait for them to respond and then see where we are. Let me know if you need additional information.

Don R. Clay
(202)260-4610

WTI

DATE: Dec. 7, 1992
CONTACT: Julia Bircher
(216) 385-7337

MEDIA RESPONSE

TO: Tri-State Editors and Reporters

FROM: Blake Marshall, President, Von Roll America, Inc.

SUBJECT: Response to Senator Gore's call for further investigation of WTI

We are surprised after the intensive scrutiny this plant has received from the state and federal Environmental Protection Agencies to the Federal District Court that yet another investigation would be called for. However, it is our intention to cooperate with full disclosures on any issue of interest.

Last year we met with the General Accounting Office and the GAO issued a preliminary response regarding WTI. However, a more far-reaching report was issued by the Office of the Inspector General on July 15, 1992 that addressed and answered many of the same issues raised by Senator Gore -- namely the EPA's permitting process of WTI, the effects of air inversions on air quality, WTI's technology and the facility's ownership and financial assurance issues.

The senatorial call for yet another investigation seems to reflect the special interests of extremists and radicals who have been fighting WTI on a local and national level. They have consistently broken laws and now, unfortunately, their voices have been heard over the majority of scientists and engineers who support incineration and over the courts and regulators who have addressed the many issues raised by plant opponents to delay the opening of the facility.

The following is a brief reply to a few issues raised in Senator Gore's press release:

o The U.S. EPA also conducted an extensive and thorough investigation into the so-called ownership issues, and both regulatory agencies and the courts are thoroughly satisfied with the ownership of the plant and that responsibility for the facility has in no way been compromised.

o The company did not receive permission for a temporary permit because of a visit to the Competiveness Council. To our knowledge, the Competitiveness Council never took any interest in the plight of incineration advocates in general, or WTI in particular.

o Siting criteria boils down to one essential question -- Is this plant safe? Expert after expert, including those within the EPAs have said this plant is safe no matter where its located. Considering the huge responsibility a company has in our position, we would not rely on this site or our technology if it were not safe. Not only does the plant meet all state and federal environmental standards; it will be setting a new efficiency and low emission standard that will meet or exceed current and future regulatory requirements.

Finally, having scrutinized to the degree that we have been, we are aware that one important thing is overlooked: This plant is designed to clean up the environment. That is the business we are in and how we provide jobs for more than one hundred people in East Liverpool.

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ane gas produced by the compost." And these waste mountains are rising in the Third World not only because of the pressures of population growth; equally responsible is a pattern of conspicuous consumption that has been exported to these countries along with Western culture and its consumer products.

The latest scheme masquerading as a rational and responsible alternative to landfills is a nationwide — and worldwide — move to drastically increase the use of incineration. In the United States, the percentage of municipal waste incinerated more than doubled — from 7 percent in 1985 to over 15 percent in just four years — and investments in new incineration capacity are expected to double that percentage again in the next several years. In some of these projects, the heat generated by the incineration process is used as a source of energy to make steam, which is then sold to help offset the cost. In still other designs, the waste is molded into burnable pellets of "refuse-derived fuel." But even though the virtue of converting waste to energy is widely touted, the actual amount of energy produced is small and the principal and overwhelming reason for building such plants is that something has to be done with the massive amounts of garbage we create.

The huge new investment in new incinerators — almost $20 billion worth — is being made even though major health and environmental concerns have never been adequately answered. According to congressional investigators, the air pollution from waste incinerators typically includes dioxins, furans, and pollutants like arsenic, cadmium, chlorobenzenes, chlorophenols, chromium, cobalt, lead, mercury, PCBs, and sulfur dioxide. In the case of mercury emissions, a lengthy study by the Clean Water Fund found that "municipal waste incinerators are now the most rapidly growing source of mercury emissions to the atmosphere. Mercury emissions from incinerators [have] surpassed the industrial sector as a major source of atmospheric mercury [and] are likely to double over the next five years. If the incinerators under construction and planning come on line, with currently required control technology, mercury emissions from this source are likely to double. This growth will add millions of pounds of mercury to the ecosystem in the next few decades unless action is taken now." Mercury, of

course, does not break down in the environment but rather accumulates, especially in the food chain, by means of a process called bio-accumulation, which concentrates progressively larger amounts in animals at the top of the food chain, such as the fish we catch in lakes and rivers.

The principal consequence of incineration is thus the transporting of the community's garbage — in gaseous form, through the air — to neighboring communities, across state lines, and, indeed, to the atmosphere of the entire globe, where it will linger for many years to come. In effect, we have discovered yet another group of powerless people upon whom we can dump the consequences of our own waste: those who live in the future and cannot hold us accountable. It is still basically a Yard-a-Pult approach.

But toxic air pollution is not the only problem. Incineration also creates a new solid waste problem that is in some ways worse than the one we have now. While 90 percent of the solid waste volume is reduced by incineration, the 10 percent that remains as ash is highly toxic, much more hazardous than the larger volume of waste before incineration. The burning concentrates some of the most

The Yard-A-Pult, invented for a "commercial" on *Saturday Night Live*, invites disposal of waste by catapulting it over the back fence into the yards of nearby neighbors. Our real waste disposal practices are not as different from this spoof as we would like to believe.

toxic ingredients, such as heavy metals, and complicates the task of finding a place to dump them. And 10 percent of a whole lot is still a lot.

Most communities do not even treat this toxic ash as hazardous waste. And because of political pressures from communities increasingly desperate to find a way to deal with their garbage, Congress and the EPA have been reluctant to require that the ash be handled as the hazardous waste that it is, since this would make its disposal much more expensive and significantly change the economics of incineration. Municipal officials also like incineration because it doesn't require a new way of thinking about waste. A single garbage truck can still collect all of the neighborhood garbage and not worry about sorting or recycling. Instead of dumping it in the landfill, it just dumps it in the incinerator.

The underlying problem remains that we are simply generating too much garbage and waste of all kinds. As long as we continue this habit, we will be under growing pressure to use even unsafe disposal methods. As the former New York State sanitation commissioner Brendan Sexton has bluntly put it, "People can complain about these incinerators all they want. They can argue against them, they can write to editors, but in the end, the garbage is going to win."

Many communities in the United States have decided that the real answer is recycling, the reintroduction of what used to be considered useless waste back into the stream of commerce. And some recycling projects have been remarkably successful. The states of Washington and New Jersey have achieved high rates of recycling; Seattle and Newark, along with San Francisco and San Jose, are among the cities with the best recycling records. But many have found that products manufactured and packaged for the mass marketplace often have features that frustrate recycling efforts. For example, some newspaper supplements and many magazines have glossy surfaces made of substances that cannot be processed by machines that recycle paper. Many plastic containers have built-in components that make recycling prohibitively expensive and complicated. Most packaging is designed exclusively for its usefulness in marketing its product, with no thought to the space it consumes

in landfills or the toxic chemicals it releases into the air when burned. As a result, far less municipal waste is recycled today than is burned in incinerators.

Moreover, in order for waste (or "postconsumer resources," as some recyclers have labeled it) to be reintroduced into commerce, there has to be a market for it. Unfortunately, most manufacturers are comfortably locked into a pattern of purchasing virgin raw materials and are not equipped, either by habit or machinery, to use recyclable raw materials even though they might well be cheaper, after an admittedly difficult adjustment period. In addition, there are often public subsidies for the use of virgin materials but no comparable encouragement for using the recyclable substitutes. Take paper, for example. Many of the largest paper consumers and manufacturers have large investments in forests and tree farms, and they are therefore loath to use recycled paper instead of making additional profit by cutting the trees in which they have invested and for which they receive large tax subsidies.

In conducting workshops in Tennessee and hearings in Washington on recycling, I have found overwhelming public enthusiasm for the process. But I have also found tremendous disappointment among individuals and groups who have dutifully collected and sorted those elements of their municipal waste that they knew could be profitably recycled, only to find that it was impossible to find buyers for the material. Most people who have experienced this problem believe strongly that federal legislation is required to even the odds between recyclable and virgin materials, to discourage the sale of nonrecyclable products and packages, and to ensure that claims of recyclability are not misleading. (Such legislation is pending before Congress.) In order for recycling to work, more than individual enthusiasm is necessary. The system has to change and our mass processes have to be modified.

Our thinking has to change too. We cannot simply create larger and larger quantities of waste and dump it into the environment and pretend that it doesn't matter. As with all of our most critical environmental problems, the waste disposal crisis stems from our lost sense of place within the natural world. In nature, all species produce waste, virtually all of which is "recycled" — not by that

NEWS FROM

U.S. Senator Al Gore

(D - Tennessee) SR 393 Russell Building, Washington, D.C. 20510 (202) 224-4944

OFFICE OF THE VICE PRESIDENT-ELECT

FOR IMMEDIATE RELEASE
MONDAY, December 7, 1992

CONTACT: Marla Romash
202-973-1515
301-585-9408 (H)
Heidi Kukis
202-224-7155

GORE ASKS FEDERAL WATCHDOG AGENCY TO INVESTIGATE OHIO INCINERATOR
With OH, WV, PA Lawmakers, Says Questions Must Be Answered
CLINTON-GORE ADMINISTRATION WOULD NOT ISSUE TEST BURN PERMIT

WASHINGTON, D.C. -- Serious questions concerning the safety of an East Liverpool, Ohio, hazardous waste incinerator must be answered before the plant may begin operation, Vice President-elect Al Gore said today (12/7), announcing that he and his colleagues from Ohio, West Virginia, and Pennsylvania are asking the General Accounting Office for a thorough investigation. And, Gore said, the new Clinton-Gore Administration would not issue the plant a test burn permit until these questions are answered.

"For the safety and health of local residents rightfully concerned about the impact of this incinerator on their families and their future, a thorough investigation is urgently needed. Too many questions remain unanswered about the impact of this incinerator and the process by which it was approved," said Gore, who is requesting the GAO investigation with Sens. Robert Byrd, D-WV, Jay Rockefeller, D-WV, John Glenn, D-OH, Howard Metzenbaum, D-OH, Harris Wofford, D-PA, and U.S. Rep. Alan B. Mollohan, D-WV.

Gore's request follows efforts by the Ohio, West Virginia, and Pennsylvania lawmakers over several years to persuade government regulators to comply with state and federal environmental laws. Controversial issues relating to the legality of the federal permit, ownership of the corporation involved, health effects of lead and mercury emissions, construction standards, and facility location have consistently been downplayed or ignored by the Environmental Protection Agency.

Keeping his promise to local residents made during visits to the area in recent months, Gore had instructed his staff to conduct a preliminary investigation into the incinerator and questions that have been raised about its safety. Gore said

(MORE)

information gathered in that effort convinced him a full investigation by the GAO is warranted and necessary.

In addition, Gore said that when he and President-elect Bill Clinton take office, their Administration will not issue the permit needed to allow test burns of the incinerator.

"Until all questions concerning compliance with state and federal law have been answered, it doesn't make sense to grant any permit," Gore said. "The potential impact on the people of this community -- on their health, on their children's health, on the investment they have made in their homes and businesses -- is too great to proceed without study and caution."

The incinerator operated by WTI, Inc. has been the center of a more than decade-long controversy in the East Liverpool, Ohio, area. Over the years, questions have been raised about the process by which the incinerator was approved and about the safety of the incinerator, with the operators paying more than $100,000 in fines.

While Gore, Byrd, Rockefeller, Glenn, Metzenbaum, Wofford, and Mollohan are asking GAO for a comprehensive investigation, issues they raised for study by the GAO include:

** How the Environmental Protection Agency handled the original request for a permit required under the federal Resource Conservation and Recovery Act;
** Ownership of WTI, since over the years, name changes and buy-outs have reshaped the original groups that had sought the permits;
** The role of the Competitiveness Council in allowing the EPA to issue a temporary permit. WTI officials had contacted and met with the Council, and just days after that meeting a temporary permit was granted to allow test burns;
** Safety and health concerns of area residents and their families;
** Whether the plant meets all federal and state environmental standards.

##

5-1081

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

DEC 24 1992

REPLY TO THE ATTENTION OF:

R-19J

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

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

Dear Mr. Marshall:

The United States Environmental Protection Agency ("U.S. EPA") has reviewed Revision 4 of the Trial Burn Plan for the Waste Technologies Industries ("WTI") plant in East Liverpool, Ohio. The Trial Burn Plan was submitted pursuant to the effective permit under the Resource Conservation and Recovery Act ("RCRA") for the purpose of demonstrating compliance with the incinerator performance standards contained in that permit.

The U.S. EPA reviewed the Trial Burn Plan pursuant to 40 CFR 270.62(b)(5) and has determined that the following information must still be provided before the trial burn is likely to determine whether the incinerator performance standards can be met by the WTI incinerator system:

1) The Trial Burn Plan must include a description of the quantitative analyses which will be performed on the scrubber water, ash residues, and other residues, for the purpose of estimating the fate of the trial burn principal organic hazardous constituents pursuant to 40 CFR 270.62(b)(6)(iii). Such description may be submitted either in a revised Trial Burn Plan or in an addendum letter;

2) WTI must establish a relationship between incinerator volumetric flue gas flow and the induced draft fan motor current. Tests which WTI performs for the purpose of developing the data necessary to establish this relationship

must be performed in consultation with U.S. EPA, Region V staff.

When WTI has satisfactorily met the above requirements, U.S. EPA, Region V, will be able to fully evaluate the Trial Burn Plan for purposes of approval.

In addition to obtaining U.S. EPA approval of the Trial Burn Plan, WTI must perform certain other activities during the shakedown period before beginning trial burn testing. These activities are as follows:

1) WTI must successfully demonstrate during the shakedown period of operation that all waste feed cutoff control equipment has operated as designed; and

2) WTI must provide the U.S. EPA with the number of steel containers which will be fed to the incinerator per hour during the trial burn. This information is necessary to determine the maximum capability of the kiln to handle drummed waste in steel containers.

In addition, it has come to my attention that a Supply Contract exists between Chemical Waste Management, Inc. and WTI dated September 21, 1990. Until quite recently, U.S. EPA had not received a copy of this contract, even though U.S. EPA had previously requested all such documents. Please explain why this document was not provided to U.S. EPA in response to the § 3007 request. In addition, please supply any other responsive documents which have not been provided previously, as well as all similar supply contracts with other companies.

U.S. EPA would also like a more complete explanation of the nature of the role of Von Roll, Inc. ("VRI") during the shakedown and trial burn phases, and how that is distinguished from the role Von Roll (Ohio), Inc. will play during full commercial operation. Also, what is the nature of the role of VRI, as project manager, during commercial operations? Please address the issue of whether VRI is an "operator" within the meaning of RCRA.

As to the Chemical Waste Management Supply Contract, please explain what recourse the Customer has pursuant to its monitoring functions set forth in Section 11.1 of the contract or if it is unhappy with the results of its environmental audit of the incinerator referred to in Article XI, Section 11.2.

Should you have any questions regarding this letter, please do not hesitate to contact Nancy-Ellen Zusman or Gary Victorine of my staff.

Sincerely yours,

Valdas V. Adamkus
Regional Administrator

ALBERT GORE, JR.
TENNESSEE

393 RUSSELL SENATE OFFICE BUILDING
PHONE: 202-224-4944

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,

Al Gore

Senator Albert Gore, Jr.

Howard M. Metzenbaum

Senator Howard Metzenbaum

Arlen Specter

Senator Arlen Specter

Jay Rockefeller

Senator John Rockefeller

Robert C. Byrd

Senator Robert Byrd

Harris Wofford

Senator Harris Wofford

Alan Mollohan

Congressman Alan Mollohan

John Glenn

Senator John Glenn

To: Carol
Fr: Katie
Re: WTI

1-4-93

Attached is a comprehensive memo on all events relating to WTI. Al first learned (and became involved) in this issue when travelling through West Virginia in first bus tour after the Convention in July. He travelled through the area on one other occasion during the campaign. On both occasions the substance of his comments was to the effect that he was very concerned about the situation and that he has asked his staff thoroughly to investigate it.

After the election, controversy surrounding the incinerator escalated -- citizen demonstrations and arrests increased. Al then (on Dec. 7th, 1992) called for a comprehensive GAO investigation and stated that "the new Clinton-Gore Administration would not issue the plant a test burn permit until these questions are answered."

The big issues here:

o First, the press has been trying to broaden Al's statements with regard to WTI to a general statement on incineration. <u>This is not the case</u>. Our actions here have been about trying to get to the bottom of <u>this</u> very complicated and involved situation. It's not about new rules and regulations with regard to incineration but about ensuring that the rules and regs that are on the books have been followed in this case. We have met both with citizens groups and with WTI reps -- the record is quite confusing and conflicted. GAO investigation necessary to sort it out. (Note here however that Al's statements on incineration in his book are much more critical -- he broadly criticizes the increased use of incineration. Statements are attached).

I would recommend that your position on this issue should similarly be that you will take a close look at the record <u>in this case</u> and cooperate fully with GAO. As a general matter, you will do your best to ensure that RCRA and all other applicable statutes are fully and fairly enforced.

o Second -- what about the test burn permit? Here I think you will have to distance yourself from Al's comments a bit. I would suggest that your position should be that if -- in your judgment -- WTI has met all requirements for test burn permit then your position will be that it should issue. (In fact, in my confidential follow-up meetings with EPA I have told them that we do not intend to stand in the way here -- if all statutory requirements have been met, Al would not interfere in WTI's right to receive the permit. Again, what we are about here is whether the law has been followed in this case --

last thing Al will do is interfere with the fair treatment of WTI under the law. His statement of December 7, however, did go further.)

o Note: Al has never cosponsored a bill to impose incinerator moratoria nor has he ever voted on such a proposal.

NOTE: I AM HAVING RECORD SEARCHED FOR ALL CAMPAIGN STATEMENTS BY CLINTON AND/OR GORE ON INCINERATION AND WILL FORWARD THAT INFORMATION LATER TODAY.

Q	NE	NC
N	-16.2	-1
N	372.7	NC
N	-47.5	-11
S	-19.8	13
N	NE	NC
F	NE	NC
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F	15.6	4
N	11.9	30
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N	18.6	NC
N	23.9	23
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N	8.7	NC
F	NE	NC
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N	NC	NC
N	NE	NC
S	NE	NC
N	176.9	38
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Q	NE	NC
N	50.0	NC
N	2.1	33
F	NE	NC
Q	NC	8
N	32.7	NC
N	55.1	50
Q	46.9	NC
	5.7	90
N	NE	NC
	157.7	NC
Q	97.5	NC
N	NE	NC
Q	-19.9	22
F	67.8	13
S	9.9	NC
N	-73.3	NC
F	25.7	76
Q	41 9	48
N	7.3	21
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Terry Clark for The New York Times

The incoming Clinton Administraton has announced it is seeking to halt operations indefinitely at the nation's newest hazardous-waste incinerator in Ohio pending the outcome of an investigation of the plant's safety. The plant looms over East Liverpool, along the Ohio River.

Gore Says Clinton Will Try to Halt Waste Incinerator

By KEITH SCHNEIDER

Special to The New York Times

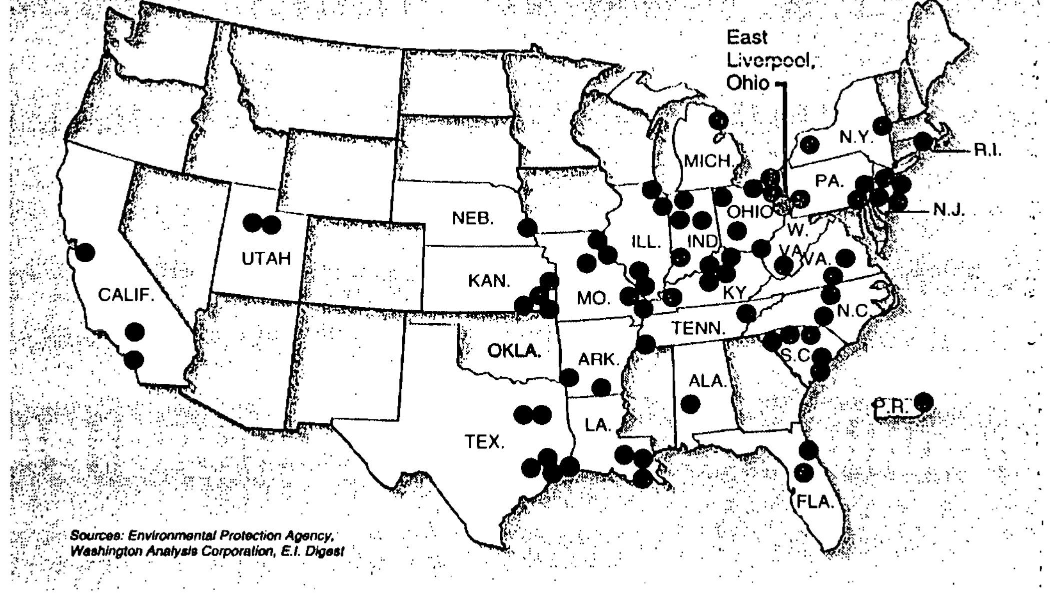
WASHINGTON, Dec. 6 — Vice President-elect Al Gore says the Clinton Administration will seek to halt operations at the nation's newest hazardous-waste incinerator until Congress investigates the plant's safety and how it got its state and Federal operating permits.

The move is the first environmental policy decision of the Administration that takes office next month, and it sends two clear signals: that Mr. Gore will have a leading role in setting environmental priorities and that the new Administration plans an aggressive approach to enforcing environmental laws.

It also sets up a confrontation between the new Administration and the Swiss-owned company that operates the long-disputed $160 million incinerator, in East Liverpool, Ohio. Janice Bircher, a spokeswoman for the company, Von Roll Inc., said today that the plant would begin limited burning of wastes this week and added that in January it would hold a crucial test to full commercial operation.

Burning Toxic Waste

Locations of incinerators permitted to burn hazardous wastes on a commercial basis.



Sources: Environmental Protection Agency, Washington Analysis Corporation, E.I. Digest

The New York Times

Pollution, Jobs and Health

Ms. Bircher said the company would not interrupt its schedule in response to Mr. Gore's action. "It's a scary turn of events when political intervention takes precedence over our legal system, over an army of qualified regulatory officials," she said.

The incinerator, which can burn 60,000 tons of toxic wastes a year, was completed earlier this year amid a decadelong battle over pollution, public health, jobs and allegations that Government officials broke the law in approving its construction and operating permits. The plant is built on a flood plain near a residential neighborhood in a river valley known for its stagnant air.

Twice during the campaign Mr. Gore visited the Ohio River Valley and promised to conduct an investigation. In a statement to be issued Monday by President-elect Bill Clinton's transition office in Washington, Mr. Gore said five Senators from Ohio, Pennsylvania and West Virginia had joined him in calling for the investigation, which is to be conducted by the General Accounting Office, an arm of Congress. He said the new Administration would seek to prevent the Environmental Protection Agency from issuing a permit for the test in January.

"For the safety and health of local residents rightfully concerned about the impact of this incinerator on their families and their future, a thorough investigation is urgently needed," Mr. Gore said. "Too many questions remain unanswered about the impact of this incinerator and the process in which it was approved."

Under the Reagan and Bush Administrations, the environmental agency has considered incineration the safest way to dispose of toxic wastes, and the industry has thrived in recent years. Though most such waste is still buried in barrels or treated at the plants where it is produced, the nation has about 60 commercial incinerators that burn three million tons of toxic waste each year, about 1 percent of the total produced.

A City Divided

In East Liverpool, Von Roll executives said the investigation demanded by Mr. Gore would turn up nothing new. The company has passed every regulatory test and legal obstacle thrown in its path by opponents. Last month, a Federal district judge in West Virginia refused to grant an injunction that would have stopped the initial tests of the incinerator.

"This is a state-of-the-art plant," said Jeffrey R. Zelik, the plant manager, "and it will put much less pollution into the air in this valley than the steel and chemical plants and coal-burning power plants up and down the river. The public is being misled by a group of zealots who will do anything and say anything to prevent us from operating."

Because the plant will employ more than 100 people in a town of 13,000 that has not seen a new industrial investment in decades, the battle has divided East Liverpool almost from the day it was proposed in 1980. "If you took a poll, you'd find 33 percent are for it, 33 percent against it, and 33 percent who are hoping the fight ends soon," said Mayor James Scafide, who counts himself a skeptic but not an outright opponent.

The plant would release thousands of pounds a year of pollutants like mercury, heavy metals, lead and sulfur dioxide into the air of the Ohio River Valley, 30 miles from Pittsburgh. Though the state and Federal governments say these emissions will not be harmful because they will be dispersed in the air, opponents say the plant is far too close to an elementary school and to hundreds of homes. "If this plant opens," said Sandra Estell, a mother of five children who lives 1,000 feet from the incinerator's smokestack, "it will turn our air into a toxic waste dump."

The fight in East Liverpool is seen by state and community groups as a prime opportunity to force the Government to reconsider its support for incineration.

In the past year, opponents of the incinerator drew attention to the struggle by sneaking in and taking over the office of the director of the Ohio Environmental Protection Agency, and doing it again in July at the Washington office of William K. Reilly, the Federal E.P.A. Administrator. Last month they held eight days of noisy protests at the plant gate.

The opponents persuaded a House Judiciary subcommittee to hold a hearing in May, at which two E.P.A. officials from Chicago admitted that the Government had violated the hazardous-waste law during the process of granting the company a permit to build the plant.

A decision shows Gore will have a big policy role on the environment.

'Mistakes Were Made'

Two of the group's leaders, 36-year-old Terri Swearingen, a nurse and mother, and Beth Newman, a 32-year-old staff member for the environmental group Greenpeace, have been charged with contempt of court for organizing demonstrations at the plant gate.

"It is outrageous what we have learned about the Government's behavior in this case," Mrs. Swearingen said. "They've broken the law. They have tried to cover up a completely illegal situation here. And they have acted dishonestly and unethically."

Richard J. Guimond, Deputy Assistant E.P.A. Administrator for Solid Waste and Emergency Response, denied that the Government had acted irresponsibly or illegally in authorizing the construction and operation of the incinerator. "Obviously, hazardous waste incinerators are sensitive facilities," he said. "The issue that is most contentious is this facility's proximity to housing and a school. We did an assessment of its risk, using conservative assumptions, and we've concluded it is safe."

Mr. Guimond acknowledged that "mistakes were made" in considering the incinerator's permits, but said those mistakes were not so serious that the project should be halted.

But others in the environmental agency say they are dismayed that the incinerator got this far. Hugh B. Kaufman, an agency official who helped write the 1976 law that regulates hazardous wastes, said some of the most critical decisions made by the Government were illegal.

"Was the law broken in the rush to build this incinerator?" he said in an interview. "The answer is, Yes, it was. The Government aided and abetted the company to get this facility built illegally."

Among the most important questions being asked by Mr. Kaufman and other experts concern the validity of the incinerator's construction permit.

In September 1981, when Waste Technologies Industries, now owned by Von Roll, applied to build the incinerator, the application did not include the name of the landowner, the Columbiana County Port Authority. The hazardous-waste law requires the name on the application to establish liability in case of an accident or future discovery of contamination.

After the omission became public at the House hearing in May, the E.P.A. admitted that the law had been violated but said the violation should not jeopardize the entire project.

But Mr. Kaufman said the law required Waste Technologies to reapply for a permit because it submitted an incomplete application. Such a process would involve new public hearings. Mr. Kaufman's superiors resisted that, and last summer the agency waived the requirement. Mr. Kaufman said the action was illegal because "the agency does not have the discretion to waive those provisions."

Mr. Guimond said in an interview that the E.P.A. now regards the issue as moot because Waste Technologies Industries bought the land in September for $5 million.

Questions of Ownership

In 1990 and 1991, Mrs. Swearingen and Connie Stein, a 44-year-old homemaker and mother from Wheeling, W. Va., identified more than 40 corporations that were involved in the ownership and control of the incinerator since the early 1980's.

Sending a signal that the new Administration will be tough.

Mrs. Swearingen said that by 1987, three of four of the incinerator's original partners had changed. The hazardous waste law allows for a transfer of ownership, but only after a 90-day notice to the agency and written approval by the E.P.A. Administrator. None of that occurred in this case, she said.

"The point is that he hazardous waste law was set up to prevent the buying and selling of a permit as a commodity," Mrs Swearingen said. "If Waste Technologies is allowed to get away with an illegal transfer of a permit they have cricumvented the law with the blessing of the agency."

The ownership issue has attracted the attention of Lee Fisher, the Ohio Attorney General, who is investigating to determine whether violations of state law occurred. Mr. Guimond, the E.P.A. official, said the issue had already been studied by the agency and lawyers were "satisfied the law was not broken."

NY Times Dec 7 1992

WSJ 12-30-92

REVIEW & OUTLOOK

Environmental Preview?

In what we fear may be a preview of Clinton administration environmental policies, Al Gore promised earlier this month to block a crucial EPA permit for a hazardous waste incinerator in East Liverpool, Ohio. On his Senatorial stationery, with his position as vice president-elect typed in, he cast his lot with a Greenpeace campaign explicitly billed as an effort to stop the incineration industry nationwide.

Von Roll, a 170-year-old Swiss company, designed, built and would operate the plant. It has already spent 13 years jumping through political hoops, winning the approval of every court and agency it came before. Indeed, the plant would be running today except that the company chose to add an expensive spray dryer so water wouldn't have to be discharged into the Ohio River. Von Roll is a world leader in antipollution technology and East Liverpool would be its North American showcase.

Greenpeace dreams that the town will become the "Waterloo of the incineration industry," according to Scott Sederstrom, an activist who parachuted in from Boston for the holy wars. Von Roll's early partners got fed up with the delays two years ago, and Von Roll bought them out. Now Greenpeace denounces this as a "corporate shell game" and thus a reason for canceling the plant's permits. Mr. Gore harrumphs that, of course, everything must be put on hold while the lapdog General Accounting Office investigates. Meanwhile, the company is losing $115,000 a day on top of the $160 million already invested.

Naturally, Mr. Gore couches his meddling as solicitude for "the health and safety of the residents." That didn't stop a busload of East Liverpool residents from trekking all the way to Washington last week to march in front of Greenpeace's offices. The protesters want the plant and the jobs it would bring.

The phrase "hazardous waste" is understandably worrisome to people, but plants like the one in East Liverpool aren't dealing with anthrax and nerve gas. They cremate things like dry-cleaning fluids, drugs that are past their expiration dates, and paint sludge from auto plants. This stuff is handled by hundreds of thousands of people every day. It rolls along the highways and railroads at all hours. It has to go somewhere, and burning it is the safest method of disposal.

What's more, anything coming out of Von Roll's smokestack is bound to be cleaner than the gunk billowing from dozens of other industrial plants in the Ohio Valley. Up the road, a single zinc smelter puts out 32,000 pounds of lead in one year. By helping to clean up after Ohio's paint, chemical and other industries, Von Roll will create new jobs and preserve old ones.

No doubt some of the local opponents are sincere chemophobes. Terri Swearingen quit her nurse's job and has poured $25,000 into the fight (her husband is a dentist). She goes to Washington at least once a week and has testified on Capitol Hill and made the TV rounds. "I spend every second of every day on this. There's nothing else in my life right now," she tells us, not sounding particularly unfulfilled. "The idea of incinerating anything, I'm opposed to."

Not everyone in East Liverpool can afford such exquisite standards. An old pottery-making capital, the town has slid downhill since the 1970s. Von Roll would mean hundreds of "good jobs at good wages," not to mention $2.3 million a year in tax receipts. And chasing out a foreign investor who's bringing state-of-the-art technology isn't exactly the best advertisement for Ohio, or for an administration pushing global competitiveness.

Greenpeace's agitprop has "scarred and divided this city," a local businessman, Larry Walton, told one reporter. "Greenpeace will move on after this, but we have to live here." The group's various outfits budgeted at least $8 million for the toxics jihad in 1990. Beth Newman from the Chicago office belly-landed in East Liverpool almost two years ago and has been busy improving the natives ever since. "Any facility that wants to spew four and a half tons of lead into a schoolyard deserves the death penalty," she preached to the local press. (Actually, the plant would emit less than 76 pounds of lead a year, about the same as a pre-1970s car.)

At bottom Greenpeace is theologically opposed to any form of waste disposal. Presumably then society would have to stop making waste, and Mother Earth would revert to a pristine, pre-industrial state. In other words, where most nature lovers recognize that technology is the only hope for solving most environmental problems, the Greenpeace Luddites turn this on its head. They see environmentalism as the club with which they'll beat down technology.

All through the campaign Mr. Gore bragged that pollution control would yield a jobs bonanza. On ABC this month he warned that "if we keep arguing among ourselves," Japan "will eat our lunch" in the battle for this global market. But the still-evolving Mr. Gore seems mainly to be "arguing" with himself these days. And it's hardly encouraging that on his first outing as the new administration's environmental czar, he's lined up with the antitechnology pagans in the environmentalist camp.

American Hispanics

The Clarence Thomas affair ...

By KEVIN PRITCHETT

Laura D'Andrea Tyson, the newly tapped chairman of President-elect Clinton's Council of Economic Advisers, is joining an administration that prides itself on including many "New Democrats." But a review of Ms. Tyson's writings over the years produces a troubling picture of an economist a bit to the left of that moderate title. In fact, as an economist, Ms. Tyson has made the centralization of economic decision making one of her main tenets.

Ms. Tyson's *dirigisme* pops up early, in her 1974 Massachusetts Institute of Technology doctoral thesis, "Inflation in Yugoslavia, 1962-1972: An Empirical Analysis." It is important to understand here that in the years Ms. Tyson was writing, Yugoslavia was the darling of academicians interested in arguing the case for a "third way" between capitalism and socialism. They praised Yugoslavia's economic programs, in particular its worker management teams, while bemoaning the nation's inflation, without seeing a link that is obvious in hindsight: Central banks of socialist governments, or even near-hybrids such as Yugoslavia, inflated their currencies in a race to sustain unsustainable regimes.

Shortsighted View

In her dissertation, Ms. Tyson gives a typical display of the shortsighted view. She blames the inflationary and monetary chaos in Yugoslavia not on the incompleteness of the reforms themselves, but on the lack of firm central control of the economic levers. The causes of inflation were "the unresolved political and ideological contradictions which influence the government's ability to formulate and execute the macroeconomic policies required for price stability."

Laura Tyson

The conclusion to Part I of her dissertation is a defense of Yugoslavia's reforms of state-dominated enterprises – reforms that later proved no barricade against economic collapse. She writes that her "results call into question the hypothesis that the Yugoslav inflation has been the product of workers' control over prices and wages." Ms. Tyson – prophetically – sums up her dissertation with the argument that chances for economic stability are "poor" unless ethnic and political problems can be resolved there. But in several other pieces, including book

Solving U

By ZALMAY KHALILZAD

Russia and the U.S. have reached an agreement on a follow up to 1991's Start treaty. But at a news conference yesterday, Dmytro Pavlychko, head of the foreign affairs commission of the Ukrainian Parliament, said Parliament would not be able to ratify the Start accord itself until February at the earliest. It also hasn't ratified the Nuclear Nonproliferation Treaty. There is a lot at stake for the U.S. in the coming Ukrainian debate over the disarmament pacts.

Start requires that Ukraine accept the elimination of existing nuclear weapons and offensive arms on its territory. Under the Nuclear Nonproliferation Treaty, Kiev would make a legally binding commitment not to produce nuclear

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

DEC 24 1992

REPLY TO THE ATTENTION OF:

R-19J

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

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

Dear Mr. Marshall:

The United States Environmental Protection Agency ("U.S. EPA") has reviewed Revision 4 of the Trial Burn Plan for the Waste Technologies Industries ("WTI") plant in East Liverpool, Ohio. The Trial Burn Plan was submitted pursuant to the effective permit under the Resource Conservation and Recovery Act ("RCRA") for the purpose of demonstrating compliance with the incinerator performance standards contained in that permit.

The U.S. EPA reviewed the Trial Burn Plan pursuant to 40 CFR 270.62(b)(5) and has determined that the following information must still be provided before the trial burn is likely to determine whether the incinerator performance standards can be met by the WTI incinerator system:

1) The Trial Burn Plan must include a description of the quantitative analyses which will be performed on the scrubber water, ash residues, and other residues, for the purpose of estimating the fate of the trial burn principal organic hazardous constituents pursuant to 40 CFR 270.62(b)(6)(iii). Such description may be submitted either in a revised Trial Burn Plan or in an addendum letter;

2) WTI must establish a relationship between incinerator volumetric flue gas flow and the induced draft fan motor current. Tests which WTI performs for the purpose of developing the data necessary to establish this relationship

must be performed in consultation with U.S. EPA, Region V staff.

When WTI has satisfactorily met the above requirements, U.S. EPA, Region V, will be able to fully evaluate the Trial Burn Plan for purposes of approval.

In addition to obtaining U.S. EPA approval of the Trial Burn Plan, WTI must perform certain other activities during the shakedown period before beginning trial burn testing. These activities are as follows:

1) WTI must successfully demonstrate during the shakedown period of operation that all waste feed cutoff control equipment has operated as designed; and

2) WTI must provide the U.S. EPA with the number of steel containers which will be fed to the incinerator per hour during the trial burn. This information is necessary to determine the maximum capability of the kiln to handle drummed waste in steel containers.

In addition, it has come to my attention that a Supply Contract exists between Chemical Waste Management, Inc. and WTI dated September 21, 1990. Until quite recently, U.S. EPA had not received a copy of this contract, even though U.S. EPA had previously requested all such documents. Please explain why this document was not provided to U.S. EPA in response to the § 3007 request. In addition, please supply any other responsive documents which have not been provided previously, as well as all similar supply contracts with other companies.

U.S. EPA would also like a more complete explanation of the nature of the role of Von Roll, Inc. ("VRI") during the shakedown and trial burn phases, and how that is distinguished from the role Von Roll (Ohio), Inc. will play during full commercial operation. Also, what is the nature of the role of VRI, as project manager, during commercial operations? Please address the issue of whether VRI is an "operator" within the meaning of RCRA.

As to the Chemical Waste Management Supply Contract, please explain what recourse the Customer has pursuant to its monitoring functions set forth in Section 11.1 of the contract or if it is unhappy with the results of its environmental audit of the incinerator referred to in Article XI, Section 11.2.

Should you have any questions regarding this letter, please do not hesitate to contact Nancy-Ellen Zusman or Gary Victorine of my staff.

Sincerely yours,

Valdas V. Adamkus

Valdas V. Adamkus
Regional Administrator

Pam - please work on this.

to: marla
from: katie
re: wti

i'm attaching pam's memo which outlines some of the most important details involved in this mess. the bottom line on what we should recommend at this point is: (1) we are awaiting conclusion of the Ohio Atty General report on whether the permit complies with Ohio law; (2) we will call for a gao investigation of whether all federal requirements are being met; (3) we will not re-issue the temporary permit wti currently has (and which is set to expire in december) until all questions concerning compliance with state and federal law have been resolved.

further elaboration: you will see in the memo that the ohio atty genl is conducting an investigation and is due to report shortly. our best indication of what they will find is that there were improprieties in the issuance of the permit but that they do not rise to the level of invalidating it. we need to say that we are closely monitoring the development of that report -- if the ohio atty genl invalidates the permit (which we pretty much know they will not), then the plant will not begin operating full scale and we will not have to take further action. HOWEVER, because the ohio investigation is only with regard to whether ohio laws have been met, we need to say that, in the event that the ohio a.g. decides plant meets ohio law, we will still call for investigation (by gao) of whether federal law has been and is being met. IN ADDITION -- because the state of w.v. lost their effort to have an injunction imposed on wti to prevent test burns of the facility to be conducted, those burns are on the verge of taking place (that's why people chaining themselves to plant gates, etc.). therefore we also need to say that we would not re-issue the test permit (and therefore not let any further test burns to proceed) until all of the legal questions have been ironed out.

I HAVE NOT DISCUSSED THESE RECOMMENDATIONS WITH AL. I AM FAXING SIMULTANEOUSLY TO BETH FOR AL'S REVIEW.

To: Katie

From: Pam

Re: WTI, the incinerator from hell...

WTI CHRONOLOGY:

March 14, 1977 - Economically depressed Columbiana County, Ohio, creates through the county commission a Columbia County Port Authority (CCPA) charged with developing a port on the Ohio river to create jobs and revenue.

March 21, 1979 - East Liverpool Chamber of Commerce director supports new port idea and requests funds from the state.

July 30, 1979 - The Ohio General Assembly appropriates $4 million to the Ohio Department of Transportation (ODOT) to acquire property and make improvements to enhance the use of the Ohio river.

February 28, 1980 - An agreement is reached between the State of Ohio and the Columbiana Port Authority to purchase land for a port facility on behalf of the CCPA.

May 19, 1980 - EPA hazardous waste permitting regulations are adopted to implement the Hazardous Waste Permit Program of the Solid Waste Disposal Act, as amended by RCRA. The regulations specifically require that the landowner of an EPA permitted hazardous waste facility must be held equally responsible with the operator and must co-sign the permit applications (this was done for liability purposes). NOTE that the Columbiania Port Authority, the owners of the WTI site, were not listed as such on the permit processed at a later date by the EPA.

September 16, 1980 - Army Corps of Engineers issues approved permit for a river port facility, but prohibits the handling of hazardous wastes at the site.

February 11, 1981 - Wayne Disposal, Inc. in Dearborn Michigan, submits a application to US EPA Region V for a Hazardous Waste Management Facility. Application is signed by both the landowner, Ford Motor Company and the facility owner, Wayne Disposal Inc. (This sets a precedent for Region V's permitting process -- i.e. the assertion that the regulations for landowners signatures were loosely followed by the Regions is belied by the fact that other permits were properly issued before the WTI permitting was done.)

May 15, 1981 - Waste Technologies, Incorporated signs a lease option to lease 22.5 acres of riverfront property from the CCPA on which to build a commercial hazardous waste incinerator. Waste Technologies, a subsidiary of Jackson Stevens' financial empire is later sold to Von Roll (America), Inc.

June 26, 1981 - Waste Technologies Industries files a joint venture agreement with four corporate partners : Koppers Environmental Corporations {a wholly owned subsidiary of Koppers Company Inc}; Energy Technology Company { a wholly owned subsidiary of the Mustang Fuel Corporation}; Waste Technologies, Incorporated { wholly owned by Stephens, Inc (NOTE: as in Jackson Stephens, ARK native and $100,000 contributor to the Clinton campaign)}; and Von Roll America, Inc. {wholly owned by Von Roll AG, a Swiss company}.

August 18, 1981 - Land is taken by CCPA and Ohio Department of Transportation under eminent domain from River Services Company for $900,000 + in compensation.

September 4, 1981 - Waste Technologies Industries files permit application with US EPA to build a hazardous waste incinerator on CCPA land. The RCRA permit (required by the RCRA regulations 45CFR 33074, issued May 19, 1980) does not include the CCPA as the owner of the land.

July 28, 1982 - WTI files permit application with Ohio EPA for state hazardous waste permit. Application is referred to the Ohio Hazardous Waste Facility Board for public hearing and permit approval. Note that Ohio law also requires landowners to be included on the permit application. CCPA is not included as a landowner on this permit either.

February 8, 1983 - Koppers Environmental Corporation changes its name to Environmental Elements Ohio (Inc.).

June 7, 1983 - Congressman Doug Applegate writes to US EPA Administrator William Ruckleshaus concerning the WTI permit, stating: "Part of the proposal by WTI 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."

June 14, 1983 - Hearing Examiner of the Hazardous Waste Facility Approval Board 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 emissions.

June 17, 1983 - Memo circulated by John Skinner, US EPA Director, Office of Solid Waste to all hazardous waste branch chiefs, notifying offices that the landowner _must_ sign the permit as required by the regulations or the permit is _not_ valid or legal.

June 24, 1983 - US EPA issues Federal RCRA permit to WTI without the required landowners signature (CCPA). The State of West Virginia appeals the decision by US EPA to issue WTI a RCRA permit. WV will continue to battle US EPA and Ohio EPA and WTI in court for years. Final decision in final temporary restraining order (TRO) injunction issued fall of 1992.

April 27, 1984 - Ohio Hazardous Waste Facilities Approval board issues permit to WTI without the required landowner signature, in spite of recommendation by the Hearing Examiner that the permit be denying or amended.

July 25, 1983 - Congressman Applegate writes again to Ruckleshaus stating that: "I have raised concerns about the process used to permit the facility used by the US 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 nonsequitors and bureaucratic rhetoric -- and no real answer except "we believe them"... In sum, Mr. Ruckleshaus, 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."

August of 1984 - Ohio enacts new siting criteria which would prohibit the siting of a waste incinerator 2000 feet from any school, hospital, prison or residence or in a flood plain. WTI is within 1100 feet of a school and in a 100 year flood plain. Should WTI's permit be declared invalid, these new permitting requirements would most likely prevent the approval of a new permit.

November 19, 1986 - A WTI Acquisition, Inc. incorporates in ARK.

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

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

May 20, 1987 - Memo by US EPA Air and Radiation Branch Chief Steve Rothblatt to Deputy Regional Counsel Dave Ullrich concerning WTI's Air Pollution permits issued by Ohio EPA states:

"The location of the proposed construction is under Section 110(a) (2) (I) construction ban for total suspended particulates... The 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, US EPA should consider the permit invalid." In spite of determinations that WTI is a "major source" under Clean Air Act (CAA) laws, and that the amount of lead emitted by WTI would likely violate federal standards, EPA concludes that since the levels of lead allowed are so far below the possibility of impacts of human heath, WTI should not be punished for its excessive emissions. There is no precedent for such action with regards to other incinerators.

July 10, 1987 - The partners in the plant are listed as Environmental Elements Ohio (Inc) {a wholly owned subsidiary of Environmental Elements (Delaware) Inc.}; Energy Technology Company {wholly owned by Mustang Production Company}; Waste Technologies Incorporated { wholly owned by Stephens Holding Company} ; and Von Roll (Ohio), Inc. {wholly owned by Von Roll (America), Inc}.

December 3, 1987 - WTI applies for financing assistance from the Ohio Water Development Authority requesting OWDA permission in issuing tax free revenue bonds for up to $139,000,000. In WTI's description of permitted equipment, WTI lists a spray dryer.

December 3, 1987 - WTI, Inc. (formerly Waste Technologies Incorporated) is dissolved.

February 11, 1988 - Business disclosure statements with the Ohio Attorney General's office show that the officers and directors of Environmental Elements Ohio, Inc., Energy Technologies, Inc., Waste Technologies Incorporated, and Von Roll (Ohio) Inc. are the same for each company and all took office on this day.

October 1989 - Ohio EPA completes its 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.

May 7, 1990 - US EPA contends that records indicate WTI construction commenced on May 7, 1990.

June 22, 1990 - Agreement between Environmental Elements (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. Von Roll (America), Inc. becomes the sole owner of WTI.

July 9, 1990 - WTI files request for 8 changes to its Ohio EPA Installation and Operation Permit. Included among other changes is the addition of a spray dryer to the incineration system

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 violation of RCRA regulations which specifically require 90 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. Had the changes been labelled as modifications, repermitting through the Ohio hazardous materials board would have been required.

October 29, 1990 - WTI requests one change to its US EPA RCRA permits for the addition of the spray dryer, which WTI has characterized as advanced pollution control equipment that would bring the WTI facility up to date.

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.

January 30, 1991 - WTI cited by Ohio EPA for four Construction violations - most stemming from failing to change requirements for its permits. These are eventually resolved as "revisions", not modifications.

April 22, 1991 - WTI submits revised hazardous waste permit application to Ohio and US EPA with the proposed changed listing Von Roll (Ohio) Inc., as the operator of the WTI facility.

May 15, 1991 - Memo written in Ohio EPA Air Enforcement Branch raising the question of illegality of WTI building in a prevention of significant deterioration zone.

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

July 29, 1991 - US EPA writes to Ohio EPA warning them again that the violation of the permit for Prevention of significant deterioration requirements had not been corrected. Note there is a great deal of infighting between Ohio and federal EPA. WTI later cites this as "bureaucratic red tape" in their appeal to the Competitiveness Council.

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

November 12, 1991 - Metzenbaum, Glenn, Rockefeller staffers hold first meeting with citizen and EPA officials. Bill Muno, the EPA Region 5 official in charge of permitting the WTI incinerator said that EPA did know of the illegality of not including the Columbiana Port as an owner of the WTI site.

December 2, 1991 - Region V Adminstrator Adamkus writes to Senator Rockefeller concerning landowner signatures on permits, stating that "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 its policy." This contradicts, however, the memo from John Skinner, Office of Solid Waste, in 1983 stating that landowner must be on permits. Note also that EPA Region V had required a landowner signature on the Michigan permit referred to earlier.

December 20, 1991 - US EPA Region 5 Counsel Nancy Ellen Zusman notifies the CCPA by letter the Region 5 intends to modify the US EPA-WTI permit to include CCPA as a co-permittee.

January 9, 1992 - WTI proceeds with construction of the spray dryer and is fined $129,000 by US EPA for proceeding without a permit. Although WTI has a state permit revision for the dryer, they do not have a federal permit revision yet.

January 20, 1992 - Von Roll President Blake Marshall writes to the Associate Director of the Office of Cabinet Affairs, James Fitzhenry, at the White House saying that regulatory relief was needed for his company. He particularly asked for relief in granting consideration for EPA Region V to approve a spray dryer for the facility, since the dryer was not approved in the original WTI permit.

January 30, 1992 - J. Michael Kapp, attorney for the CCPA responds to the US EPA letter of December 20, 1991 notifying the EPA that the CCPA did NOT wish to be named as a co-permittee for the incinerator, in spite of their ownership of the land.

February 3, 1992 - US EPA issues a RCRA permit including approval for a spray dryer to WTI. The Columbiana County Port Authority is added to this permit revision as a landowner over CCPA's previous objections.

March 13, 1992 - WTI makes request for a temporary authorization from US EPA for a 180 test burn period.

April 21, 1992 - The Attorney General's office of West Virginia files a lawsuit against WTI, U.S. EPA and Ohio EPA asserting claims under common law and federal environmental law.

May 7, 1992 - Congressional Hearing is held before the House Judiciary Subcommittee on Administrative Law to explore the WTI controversy. US EPA witnesses testify that EPA had issued illegal permits originally by not listing CCPA as a co-permittee. Claim mistake was inadvertent. Attention is also drawn to the fact the Von Roll (Ohio), Inc. -- an owner of WTI -- had become responsible for the day to day operation of the facility. EPA was not notified of this change to WTI's 1990 Operating Contract. U.S. EPA then requests that WTI initiate a modification to its permit to add Von Roll (Ohio), Inc. as an additional operator. A thirty day comment period on this proposed modification closed on Nov. 2, 1992. Responses have not been published.

May 20, 1992 - Ohio Senator Metzenbaum introduces an amendment to the RCRA reauthorization (S. 976) that would prohibit WTI from burning hazardous waste until court and administrative appeals have been fully resolved.

May 21, 1992 Blake Marshall again writes the White House, this time to Quayle's Competitiveness Council, asking again fora 180 day temporary permit to conduct a test burn.

June 10, 1992 - The Competitiveness Council, along with OMB and CEA, conduct a meeting with WTI proponents.

June 12, 1992 - US EPA informs WTI's attorney that the Sept. 21, 1990 operational contract which was signed as WTI as owner and Von Roll (Ohio) as operator was a change in operational control from the original permits as granted to the four company partnership constitute a change in operational control and the WTI should have notified the Agency about this change.

July 7, 1992 - US EPA Region 5 issues formal information request inquiring into the identification of the corporate partners of WTI.

July 9, 1992 - EPA issued the first phase of the Agency's risk assessment of WTI. Final risk assessment will be completed after the Trial Burn period. This risk assessment is not required by law.

July 9, 1992 - US EPA grants WTI a temporary authorization to proceed with the shakedown (preparation for test burn).

The congressman from the East Liverpool Ohio area, Douglas Applegate, offers an amendment to HR 3865, a RCRA bill, that says: (a) The Comptroller General shall conduct as study of the manner in which the Environmental Protection Agency handled the hazardous waste permit application for the commercial hazardous waste incinerator located in East Liverpool, Ohio, with respect to which a permit was issued with the Environmental Protection Agency hazardous waste permit identification number OH980613541. The Comptroller General shall submit to Congress a report on such study not later than 6 months after the date of the enactment of this Act. The report shall include such recommendations as the Comptroller General considers necessary for the Environmental Protection Agency to correct irregularities in the process by which the permit was issued. (b) The Administrator of the Environmental Protection Agency many not approve a trial burn plan for the commercial hazardous waste incinerator referred to in subsection (a) until such time as the Administrator implements all recommendations contained in the report of the study conducted under subsection (a). (c) Nothing in this section shall be construed as authorizing an investigation or review into the merits of the commercial hazardous waste incinerator referred to in subsection (a). The amendment passes but the final bill does not.

July 10, 1992 - Citizens groups travel to Washington to protest the EPA decision. They occupy Reilly's office - Associate Administrator Lew Crampton is assigned to handle discussions with the citizens.

July 15, 1992 - The Inspector General's Office of EPA issues an audit stating no illegalities in the permitting had occurred.

July 20, 1992 - Another meeting in Washington between citizens and Lew Crampton of the EPA is held. After meeting for several hours, the citizens declare they will not leave EPA until EPA signed a document that revoked WTI's temporary permit. They are arrested.

July 22, 1992 - US EPA Assistant Administrator Don Clay sends memo to EPA staff on WTI, saying that while is "true that the individual partners constituting WTI have changed, but this does not affect the permit status."

July 23, 1992 - WTI attorney Charles Waterman responded to US EPA's information request on ownership. The WTI incinerator is owned and operated by a 1986 created affiliate of Von Roll (America), Inc. - Von Roll (Ohio) Inc. The changes in the original four partners to one Von Roll subsidiary had occurred without mandatory EPA notification and pre-approval.

July 24, 1992 - Environmental Appeals Boards of the US EPA overturns the EPA Region V decision of February 3, 1992 to arbitrarily add the CCPA to the WTI permit. The determination was not made, however, that this oversight of adding the CCPA renders the permit invalid, but recommended that the permit be modified to include the Port Authority. The EAB upheld the spray dryer modification for the permit.

August 1, 1992 - CCPA announces it will sell the land -- taken by eminent domain and paid for with state tax dollars -- on which the incinerator is located to WTI.

August 4, 1992 - Ohio EPA director Don Schregardus asks CCPA to add their name as co-permittee to the WTI permit. The permit change will then be sent to the Ohio Hazardous Waste Board.

August 11, 1992 - CCPA and WTI signed a real estate purchase contract for $5 million for the sale of CCPA public property to WTI.

August 20,, 1992- Memo from Law Clerk Ignacio Arrazola to US EPA Region 5 Council Nancy Ellen Zusman. The memo explores the legal aspects of whether there has been an unapproved transfer of the ownership of WTI for purposes of the RCRA permit - and should the permit be revoked?

"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," the memo says. This is repeated to me (Pam McElwee) by the Ohio AG's office. Paula Cotter, the staffer heading the AG's investigation told me that "Ohio law will ignore the formalities if it doesn't express true reality. If something is done to defraud somebody, that's one thing. Under the law, I don't believe this is the case with WTI".

August 20, 1992 - Memo written by Nancy-Ellen Zusman, Region 5 counsel to other EPA officials laying out a schedule of items to be accomplished in relation to the WTI incinerator. The memo assumes that EPA will eventually approve the permits although legal investigations were ongoing. The memo "serves to memorialize the schedule of times to be accomplished in relation to the WTI incinerator... which was discussed in a briefing of the Regional Administrator on August 20, 1992." In it, a timeline of action was laid out in which the actions included:

-- A letter would be written to the Ohio AG's office that formally requests its determination on the ownership and operational control issues for the WTI permit.

-- The US EPA will inspect the WTI facility on 8/25 and 8/26 to determine compliance with its permit. {The inspection later was positive and WTI was allowed to bring waste on site.}

-- The EPA will issue a letter to WTI stating the results of the technical inspection and that there are problems with the permit in relation to the ownership and operation control of the facility. Until those issues are cleared up to U.S. EPA's satisfaction no hazardous waste will be permitted to be brought on site. (Early Sept.)

-- 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).

-- WTI will submit its revised permit application, as previously requested (Mid Sept).

-- The Ohio AG's office will give US EPA its preliminary assessment of the owner/operator issue (mid Oct) { NOTE THAT THIS IS NOT DONE AS OF JAN 2, 1992.}

-- US EPA will take enforcement action against WTI for failure to notify and will request a Class 2 modification to correct the problems with the current permit. (Mid Oct)

-- Ohio will issue its formal determination (Early Nov.)

-- WTI will initiate a Class 2 modification (Early Nov)

-- The permit will be modified to correct the owner operator issue. (Jan - Feb. 1993)

-- WTI will be allowed to bring hazardous waste on-site. {Approved September 30, 1992.}

The big uproar over this memo was that it seemed to assume, before ownership questions were resolved and inspections done, that WTI would be allowed to operate. However, the memo does add this caveat: "The majority of these dates are tentative. The dates and/or milestones may change at any time if U.S. EPA determines that human health or the environment is not being protected." So while EPA does make clear that they intend to process WTI with caution, this memo is so controversial that Metzenbaum calls for all involved to "resign".

The memo concludes with the statement, "There is nothing to indicate that the original permit is invalid, nor that the Agency did not have a viable liable party to pursue...". However, note that a law clerk memo dated that same day makes clear that there are some legal loopholes that EPA <u>has</u> left open.

<u>August 24, 1992</u> - Nancy Ellen Zusman writes to Paula Cotter in the Ohio AG's office formally requesting the AG investigation of the change of ownership and partnership status for WTI under Ohio state law. This is the report that is ongoing. NOTE that the AG report was requested AFTER the temporary "shakedown period" burn was approved. Also note that the Ohio report will deal only with Ohio state issues.

<u>September 1, 1992</u> - Hearing on a Temporary Restraining Order filed by the West Virginia Attorney General's office. WTI agrees to give seven days notice to all the parties before accepting hazardous waste.

<u>Septmeber 8, 1992</u> - Nancy Ellen Zusman writes to WTI Attorney Chuck Waterman asking WTI to submit a formal modification request to list on the facility permit Von Roll (America), Inc. as the owner of the facility (since the original four partners had all been bought out by Von Roll (America), Inc.)

<u>September 18, 1992</u> - CCPA sells land to WTI.

<u>September 30, 1992</u>- Region 5 EPA, changing its mind from 3 weeks earlier, writes to WTI president Blake Marshall that US EPA has concluded that there has been no change in ownership for the purposes of RCRA that would require modifications in the permit. Region V concludes that WTI can begin accepting hazardous waste.

<u>October 1, 1992</u> - EPA determines that WTI may accept hazardous waste and begin shakedown period. In the shakedown, non-hazardous materials (i.e. fossil fuels) are burned to determine if the equipment works properly. A Trial Burn plan must be approved by US EPA before hazardous waste may be burned. Note that a failure of equipment to perform properly during the shakedown is not necessarily taken into

account in the approval of the Trial Burn plan. WTI has serious problems with a fan in the incinerator, but this fan is not addressed in the Trial Burn plan now being reviewed by US EPA.

October 5, 1992 - Metzenbaum finds out about August 21 memo setting out a finalized schedule of permitting changes and declares that he was shocked by the memo and asks EPA administrator Reilly to suspend all parties involved and make a new team to deal with WTI.

October 8, 1992 - The judge in the WV TRO case dismisses defendants US EPA and Ohio EPA, on the grounds that there was no jurisdiction over the federal and Ohio EPA, leaving WTI as the sole defendant.

October 9, 1992 - WTI gives seven days notice that it will begin accepting hazardous waste.

October 13, 1992 - Hearing on injunction against WTI begins.

November 12, 1992 - US district court judge Frederick Stamp Jr. rules against AG Mario Palumbo of WV in his injunction to prevent the WTI shakedown on behalf of the citizens of WV. Stamp rules that Palumbo failed to prove that the state or public would be harmed without the injunction. He also stated that the WTI officials had testified that they were losing $115,000 each day the incinerator was not running and that jobs were in danger of being lost (100 people are employed at the plant). NOTE that this case did not reopen the legal permitting issues. This case explored whether or not there was cause for an injunction. Because US EPA testified on behalf of WTI, the judge deferred to their judgement on the heath and safety of the incinerator. However, US EPA whistleblower Hugh Kaufmann, an opponent of the incinerator, was not allowed to testify for the state of WV by a federal administrative rule enacted by Reagan that prevents testimony against the government by its employees. However, note that EPA or Ohio EPA were not parties to the suit, so its is unclear why exactly Kaufmann was prevented from presenting his testimony.

November 13, 1992 - Ohio EPA issues conditional air permit to allow the plant to conduct the test burns. WTI begins bringing hazardous waste on site.

November 30, 1992 - Arrests at the plant of WTI protestors have been going on for several weeks. Over 100 people have been arrested for trespassing on WTI property. Most pay fines but 8 people with multiple arrests face trial and go to jail.

December 7, 1992 - Senators Gore, Metzenbaum, Specter, Rockefeller, Byrd, Wofford, Glenn and Congressman Mollohan of WV write to the General Accounting Office (GAO) asking for an investigation of the EPA approval process. Specific areas of concern are: the proper handling of the EPA permit process; the landowner issue; the ownership issue; and the health and safety concerns of residents.

<u>December 7, 1992</u> - WTI issues statement in response to GAO investigation that states:

"The US EPA also conducted an extensive and thorough investigation into the so-called ownership issues, and both regulatory agencies and the courts are thoroughly satisfied with the ownership of the plant and that responsibility for the facility has in no way been compromised... The company did not receive permission for a temporary permit because of a visit to the Competitiveness Council. To our knowledge, the Competitiveness Council never took any interest in the plight of incineration advocates in general, or WTI in particular."

<u>December 16, 1992</u> - WTI supporters take out full page ads in the Washington Post, NY Times, WSJ, and Arkansas Democrat Gazette protesting the Gore GAO letter.

<u>December 17, 1992</u> - The Ohio Senate approves a moratorium on the construction of hazardous waste incinerators. The bill is supported by the Governor and probably will be signed. The bill does not affect start up of WTI, but does prevent the construction of an incinerator in Nova, Ohio. The state currently has four times the capacity to burn hazardous waste generated within Ohio. Ohio currently disposes of 20 percent of the nations commercial hazardous waste without WTI start up.

<u>December 18, 1992</u> - AP reports that the EPA "will act on WTI's request to conduct a test burn at its hazardous waste incinerator in East Liverpool." Administrator Reilly says that the Region V office will handle the WTI permit before inauguration. "They will have action on their trial burn proposal in the very near future." said Reilly. Reilly also says "It could have been better sited... but siting is not the jurisdiction of EPA".

<u>December 22, 1992</u> - GAO representatives meet with Congressional Staff of the Senators making the investigative request. GAO asks for more specific guidelines on questions to be explored. A three month time line for the initial report exploring the most serious allegation surrounding WTI is requested by the Senators' staffs.

<u>December 25, 1992</u> - Region V Adminstrator Adamkus writes to Von Roll (Ohio) Inc. President Blake Marshall after reviewing the WTI Trial Burn plan. Adamkus states that more information on the trial burn is needed before approval will be granted by the EPA. Specific areas of concern are technical, such as "estimating the fate of the trial burn principal organic hazardous constituents" and "establishing a relationship between the incinerator volumetric flue gas flow and the induced draft fan motor current". Adamkus also asks WTI to clarify a Supply Contract with Chemical Waste Management, Inc. that the US EPA was not previously made aware of, and to clarify the role that Von Roll Inc (VRI) will play in WTI and how that is distinguished from Von Roll (Ohio), Inc. and Von Roll (America) Inc. {-- There is a reputed connection between Von Roll Inc -- the Swiss Corp -- and New Jersey Steel, which is a VRI subsidiary that may involve a Thomas Petrizzo, a

alleged mob boss. The role of VRI and subsidiaries in operating WTI is unclear which is presumably why EPA is asking for clarification of VRI's role.}

MAJOR ISSUES GORE AND OTHERS WILL BE ASKING THE GAO TO INVESTIGATE:

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

The EPA permit for WTI, issued on June 24, 1983, did not include the land owner, 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 Region V office knew how to process the permits -- on Feb 11, 1981 they processed a Michigan application with the landowner and operator. The office was also reminded by the US EPA on June 17, 1983 by John Skinner, head of the Office of Solid Waste, that landowners must be on the permit or it is not valid or legal. The permit was approved without the signature by the US EPA on June 24, 1983 and by Ohio on April 27, 1984.

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

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

In December of 1991, Region V Adminstrator Adamkus wrote to Senator Rockefeller concerning landowner signatures on permits, stating that "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 its policy." This contradicts, however, the memo from John Skinner, Office of Solid Waste, in 1983 stating that landowner must be on permits. Note also that EPA Region V had required a landowner signature on the Michigan permit referred to earlier.

EPA said again in a memo dated Sept. 30, 1992 that "Although US EPA's regulations require that landowners be included on RCRA permits, the practice in US EPA regional offices at the time of permit issuance varied, and WTI's permit, as well as others, was issued without identifying the landowner as permittee. As we have explained, the failure to include the Port Authority was inadvertent, and the issue was not raised by anyone during two rounds of public comment on the draft permit... In any event, the issue is now moot because WTI purchased the land form the Port Authority effective Sept. 18, 1992".

SPECIFIC QUESTIONS WE WILL BE POSING FOR THE GAO:

a) Who has owned the land on which WTI operates under Ohio law since 1977 and for what periods of time?

b) Was the taking of land under eminent domain for commercial purposes legal? The lease option between the Ohio Department of Transportation, River Services Company, CCPA and VRA was clearly for commercial purposes, and not for a port.

c) Please provide evidence of all deeds for the transactions between these companies.

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

<u>2) Ownership of WTI has changed since the original permit.</u>

The original four partners in the permit were Koppers Environmental Corp, Energy Technology Co, Waste Technologies, Inc., and Von Roll America, Inc. However, through name switching and subsidiary buyups, WTI was sold to WTI Acquisitions, wholly owned by Stephens, Inc. Additionally, VRA created Von Roll (Ohio), Inc. as a subsidiary, and then sold its shares to VRO. Koppers changed its name to Environmental Elements Ohio, Inc. Although the four original companies had separate corporate parents, all are now owned by VRA. The EPA permit for WTI does not identify the facilities operator, Von Roll (Ohio), Inc., because VRO did not come into existence until 1986, three years after the permit was issued.

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

Regarding the dissolution of the original four partners of WTI, US EPA has since determined that "based on the express provisions of the joint venture agreement, we cannot conclude that the transfer of partnership interest dissolved WTI." However, an Ohio State University business law professor has written that "the WTI of 1981 is not the WTI of 1992...WTI does not meet the definition of a partnership in Ohio law any longer." He based this determination on the fact that not only had all the partners had changed, but also on the fact the Von Roll (America), Inc. owns all the stock in the corporate entities now, but does not share those profits with these entities. VRA is not one of the partners claimed by the owners (Von Roll (Ohio), Inc.) of the plant. The Ohio AG's office thinks that although formal legal law probably has been broken with regards to the original permit, they do not think the partnership is a sham. The original partnership may be different, but the AG's office does not think this was done in willful attempt to defraud.

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

SPECIFIC QUESTIONS WE WILL BE POSING TO GAO:

a) Under what authority does EPA have to waive the federal requirements of a minimum 90 day pre-notification/approval process pending a change in owner or operator of a facility?

b) Does EPA have the authority to issue negotiable financial instruments? I.e. can EPA transfer the original permit for WTI to a new owner/operator if that company was not even in existence at the time of the permitting?

c) Please provide a copy of stock certificates, board of director lists and meetings of all companies named as original or later owners of WTI. Additionally, please track the sale of the original stock to Von Roll (America), Inc. and establish the exact nature of liability in light of stock transfers.

d) Did WTI and/ or Von Roll (Ohio), Inc. notify EPA prior to the change of operating control vis-a-vis the Sept. 21, 1990 Operation Contract that established Von Roll (Ohio), Inc as the operator of the facility?

e) When was the EPA permit modified to show Von Roll (Ohio), Inc. as the managing partner and Von Roll (America), Inc. as owner? Under what authority may EPA change the RCRA permit in this fashion?

<u>3) What was the role of the Competitiveness Council in allowing EPA to issue a temporary start up permit?</u>

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

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

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

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

SPECIFIC GAO QUESTIONS:

a) Did EPA have instruction from the Council to approve the permits, regardless of what the ownership investigation turned up?

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

c) Who was at the June 10 meeting and what was discussed? Please provide notes, agendas or telephone logs.

CHRONOLOGY:

March 14, 1977 - Economically depressed Columbiana County creates thru the county commission a Columbia County Port Authority, charged with developing a port on the Ohio river to create jobs and revenue.

March 21, 1979 - East Liverpool Chamber of Commerce director supports new port idea and requests funds from the state.

July 30, 1979 - The Ohio General Assembly appropriates $4 million to the Ohio Department of Transporation to acquire property and make improvements to enhance the use of the Ohio river.

February 28, 1980 - An agreement is reached between the State of Ohio and the Columbiana Port Authority is to purchase land for a port facility on behalf of the CCPA.

May 19, 1980 - EPA hazwaste permitting regulations are adopted to implement the Haz Waste Permit Program of the Solid Waste Disposal Act, as amended by RCRA. The regulations speicically reguire that the landowner of an EPA permitted hazwaste facility must be held equally responsible with the operator and must co-sign the permit applications (this was done for liablity purposes) NOTE that the Columbiania Port Authority, the owners of the WTI site, were not listed as such on the permit processed by the EPA.

May 15, 1981 - Waste Technologies, Incorporated signs a lease option to lease 22.5 acres of riverfront property from the CCPA on which to build a commercial hazwaste incinerator.

June 26, 1981 - Waste Technologies Industries files a joint venture agreement with four corporate partners : Koppers Environmental Corporations (a wholly owned subsidiary of Koppers Company Inc); Energy Technology Company (a wholly owned subsidiary of the Mustang Fuel Corporation); Waste Technologies, Incorporated (wholly owned by Stephens, Inc (NOTE: as in Jackson Stephens, ARK native and $100,000 contributor to the Clinton campaign)); and Von Roll America, Inc. (wholly owned by Von Roll AG).

September 4, 1981 - Waste Technologies Industries files permit application with US EPA to build hazardous waste incinerator on CCPA land. The RCRA permit (required by the RCRA regulations 45CFR 33074, May 19, 1990) does not include the CCPA as the owner of the land.

July 28, 1982 - WTI files permit application with Ohio EPA for state hazardous waste permit. Application is referred to the Ohio Hazardous Waste Facility Board for public hearing and permit approval. Note that Ohio law also requires landowners to be included on the permit application.

February 8, 1983 - Koppers Environmental Corporation changes its name to Environmental Elements Ohio (Inc.).

June 7, 1983 - Congressman Doug Applegate writes to US EPA Adminstrator William Ruckleshaus concerning the WTI permit, stating: "Part of the proposal by WTI includes estimates of particulate emmissions in Columbiana County -- a non-attainment area for particulates -- of 95 tons per year in particulates. This figure is predicated on the elecrostatic precipitator operating at 99.6% efficiency. Simple mathematics will tell you that a decrease of .05% in effeciency 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." {I need to check with the new levels of particluates under 1990 CAA amendments -- don't know if new changes will affect WTI. A GAO investigation should include an examination of this issue.}

June 14, 1983 - Hearing Examiner of the Hazardous Waste Facility Approval Board recommends denying the WTI State Hazardous Waste permit, based on an imcomplete application. Inadequacies included : waste analysis, closure plan, contingency plan, personnel training and performance standards, no analysis of emissions.

June 17, 1983 - Memo circulated by John Skinner, US EPA Director, Office of Solid Waste { check on this title} to all hazardous waste branch chiefs, notifing offices that the landowner must sign the permit as reguired by the regulation or the permit is not valid or legal.

June 24, 1983 - US EPA issues Federal RCRA permit to WTI without the required landowners signature (CCPA). The State of West Virginia appeals the decision by US EPA to issue WTI a a RCRA permit. WV will continue to battle US EPA and Ohio EPA and WTI in court for years. FInal decision in final injuction issued fall of 1992.

April 27, 1984 - Ohio Hazardous Waste Facilites Approval board issues permit to WTI without the required landowner signature.

July 25, 1983 - Congressman Applegate writes again to Ruckleshaus stating that: " I have raised concerns about the process used to permit the facility used by the US EPA... frankly, I am not sure the procedures have adequately safeguarded the public in this instance. Again the reponse "not within the scope of RCRA". Finally I have raised technical questions that have brought about a slew of nonsequitors and bureaucratic rhetoric -- and no real anser except "we believe them... In sum, Mr. Ruckleshaus, I would be much more comforatable with this situation if it were not for a decided feeling that EPA wants this facility as much as WTI does and that this pernmit is too important to the agency to deny no matter what the consequences are to East Liverpool."

August of 1984 - Ohio enacts new siting criteria which would prohibit the siting of a waste incinerator 2000 feet from any school, hospital, prison or residence or in a flood plain {I need to find out from teh Ohio AG's report the official language on this, specifically how the grandfathering clause might apply to a

→ If no change of permit req'd
then facility is grandfathered.

change of permits for WTI)

November 19, 1986 - A WTI Acquisition, Inc incorporates in ARK.

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

December 4 , 1986 - Waste Technologies, Incorporated gives consent to WTI Acquisitions, Inc to use a similar name Waste Technologies Incorporated

May 20, 1987 - Memo by US EPA Air and Radiation Branch Chief Steve Rothblatt to Deputy Regional Counsel Dave Ullrich concerning WTI's Air Pollution permits issued by Ohio EPA states:
"The location of the proposed construction is under Section110(a)(2) (I) construction ban for total suspended partuculates... The 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, US EPA should consider the permit invalid." (I dont have the complete memo and will try to get)

July 10, 1987 - The partners in the plant are listed as Environmental Elements Ohio (Inc) (a wholly owned subsidiary of Environmetnal Elements (Delaware) Inc.); Energy Technology Company (wholly owned by Mustang Production Company); Waste Technologies Incorporated (wholly owned by Stephens Holding Company) ; and Von Roll (Ohio) Inc (Von Roll (America), Inc).

December 3, 1987 - WTI applies for financing assistance from the Ohio Water Development Authority requesting OWDA permission in issuing tax free revenue bonds for up to $139,000,000. In WTI's description of permitted equipment, WTI lists a spray dryer.

December 3, 1987 - WTI, Inc. (formerly Waste Technologies Incorporated) is dissolved.

February 11, 1988 - Business disclosure statements with the Ohio Attorney General's office show that the officers and directors of Environmental Elements Ohio, Inc., Energy Technologies, Inc., Waste Technologies Incorporated, and Von Roll (Ohio) Inc. are the same for each company and all took office on this day.

August 14, 1989 - WTI fines $9500 for failure to provide information as requested by US EPA under Section 3007 of RCRA (I still need to double check with RCRA as to what determines fines)

October 1989 - Ohio EPA completes its 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.

May 7, 1990 - US EPA contends that records indicate WTI construction commenced on May 7, 1990.

June 22, 1990 - Agreement between Environmental Elements(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.

July 9, 1990 - WTI files request for 8 changes to its Ohio EPA Installation and Operation Permit. Included among other changes is the addition of a spray dryer to the incineration system

how wrong is this?

Ocotber 8, 1990 - The Ohio EPA classifies WTI's July 9 ,1990 permit changes including the spray dryer, as revisions. Had the changes been labelled as modifications, repermitting thru the Ohio hazardous materials board would have been required.

October 29, 1990 - WTI requests one change to its USEPA RCRA permits for the addition of the spray dryer, which WTI has characterized as advanced pollution control equipment that would bring the WTI facility up to date.

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.

January 30, 1991 - WTI cited by Ohio EPA for four Construction violations - most stemming from failing to change requirements for its permits. These are eventually resolved as "revisions", not modifications.

April 22, 1991 - WTI submits revised hazardous waste permit application to Ohio and US EPA with the proposed changed listing Von Roll (Ohio) Inc., as the operator of the WTI facility.

Still a problem?

May 15, 1991 - Memo written in Ohio EPA Air Enforcemnt Branch raising the question of illegallity of WTI building in a prevention of significant deterioration zone.(I have not seen this memo and only know if its existance. The GAO should include viol;ation of CAA in its investigation.)

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

July 29, 1991 - US EPA writes to Ohio EPA warning them again that the violation of the permit for Prevention of significant deterioration requirements had not been corrected. Note there is a great deal of infighting between Ohio and federal EPA. WTI later cites this as "bureaucratic red tape" in their appeal to the Competitiveness Council.

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

Nov 12, 1991 - Metzenbaum, Glenn, Rockefeller staffers hold first meeting with citizen and EPA officials. Bill Muno, the EPA Region 5 official in charge of permitting the WTI incinerator said that EPA did know of the illegallity of not including the Columbiana Port as an owner of the WTI site.

December 20, 1991 - US EPA Region 5 Counsel Nancy Ellen Zusman notifies the CCPA by letter the Region 5 indends to modify the US EPA -WTI permit to include CCPA as a co-permitee.

January 9, 1992 - WTI proceeds with construction of the spray dryer and is fined $129,000 by US EPA for proceeding without a permit. {I need to find out more about fine and under which law this was invoked}

January 20, 1992 - Von Roll Presidnet Blake Marshall writes to the Associate Director of the Office of Cabinet Affairs, James Fitzhenry, at the White House saying that regulatory relief was needed for his company. He particularly asked for relief in granting consideration for EPA Region V to approve a spray dryer for the facility, since the dryer was not approved in the original WTI permit.

January 30, 1992 - J. MIcheal Kapp, attorney for the CCPA responds to the US EPA letter of December 20, 1991 notifying the EPA that the CCPA did not wish to be named as a co-permittee for the incinerator.

Canadian Competitor intervention ??

February 3, 1992 - US EPA issues a RCRA permit including approval for a spray dryer to WTI and the Columbiana COunty Port Authority over CCPA's previous objections.

March13, 1992 - WTI makes request for a temporary authroaztion from US EPA for a 180 test burn period.

May 7, 1992 - COngressional Hearing is held (House Judiciary - Subcommittee on Administrative Law) ~~(which committee??)~~ to explore the WTI controversy. US EPA witnesses testify that EPA had issued illegal permits originally by not listing CCPA as a copermittee. Claim mistake was inadvertant.

through legal challenges over all this period per page 1 of memo?

May 20, 1992 - Ohio Senator Metzenbaum introduces an amendment to the RCRA reauthorization (S. 976) that would prohibit WTI from burning hazardous waste until court and admistrative appeals have been fuly resolved.

May 21, 1992- Blake Marshall again writes the the WHite House, this time to Qualyes Competitiveness Council, asking again fora 180 day temporary permit to conduct a test burn.

June 10, 1992 - The Competitiveness COuntil, along with OMB andnCEA, condusct a meeting with WTI proponets.

June 12, 1992 - US EPA informs WTI's attorney that the Setp 21, 1990 operational contract which was signed as WTI as owner and Von

Roll (Ohio) as operator was a change in operational control from the original permits as granted to the four company partnership contatute a change in operational control and the WTI should ahve notified the Agnecy about this change.

July 7, 1992 - US EPA Region 5 issues formal information request inquiring into the identification of the corporate partners of WTI.

July 9, 1992 - US EPA grants WTI a temporary authorization to proceed with the shakedown (preparation for test burn).

July 10, 1992 - Citizens groups travel to Washington to protest the EPA decision. They occupy Reilly's office - Associate Administrator Lew Crampton is assigned to handle discussions with the citizens.

July 20, 1992 - ANother meetin in Washington between citizens and Lew Crampton of the EPA. After meeting for several hours, the citizens declare they will not level EPA until EPA signed a document that revoked WTI's temporary permit. They are arrested.

July 22, 1992 - US EPA Assistant Adminstrator Don Clay sends memo to EPA staff on WTI, saying that while is "true that the individual partners constituting WTI have changed, but this does not affect the permit status.

July 23, 1992 - WTI attorney Charles Waterman responsed to US EPA's information request on ownership. The WTI incinerator is owned by a 1986 created affliate of Von Roll - Von Roll (Ohio) Inc.

July 24, 1992 - Environmental Appeals Boards of the US EPA overturns the EPA region 5's decision of February 3, 1992 to arbitrarily add the CCPA to the WTI permit.

August 1, 1992 - CCPA announces it will sell the land on which the incinerator is located to WTI.

August 4, 1992 - Ohio EPA director Don Schregardus asks CCPA to add their name as co-permittes to the WTI permit. The permit change will then be sent to the Ohio Hazardous Waste Board.

does this cure earlier permit problem?

August 11, 1992 - CCPA and WTI signed a real estate purchase contract for $5 million for th sale of CCPA public proerty to WTI.

August 20, 1992 - Memo from Law Clerk Ignacio Arrazola to US EPA Region 5 Council Nancy Ellen Zusman. The memo explores the legal aspects of whether there has been an unapproved transfer of the ownership of WTI for purposes of the RCRA permit - and should the permit be revoked?

" Good faith legal argumetns 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." the memo says. This is repeated to me by the Ohio AG's office. Paula Cotter, the staffer heading the AG's investigation told me, "Ohio law will ignore the formalities if it doesn't express true reality. If something is done to defraud somebaody, that's one thing. Under the law, I don't believe this is the case with WTI". Ultimately too, if we call for GAO investigation, WE may have to make a POLICY determination that either this incinator was not needed or is unsafe or is in such violation of the law that it needs to be repermitted. The law itself can be streched several different ways, depending upon how one looks at it.

August 20, 1992 - Memo written by Nancy-Ellen Zusman, Region 5 counsel to other EPA officials laying out a schedule of items to be accomplished in relation to the WTI incinerator. The memo assumes that EPA will eventually approve the permits altho legal investiagions were ongoing. The memo "serves to memorialize the schedule of times to be accomplished in realtion to the WTI incinerator... which was discussed in a briefing of the Regional Adminstrator on July(August) 20, 1992." In it, a timeline of action was layed out in which the actions included:

-- A letter would be written to the Ohio AG's office that formally requests its determination on the ownership and operational control issues for the WTI permit.

-- The US EPA will inspect the WTI facility on 8/25 and 8/26 to determine compliance with its permit.

-- The EPA will issue a letter to WTI stating the results of te technical inspection and that there are problems with the permit in relation to theownership and operation control of the facility. Until those issues are cleared up to U.S. EPA's satsifaction no hazardous waste will be permitted to be brought on site. (Early Sept.)

-- The real estate trasnaction between the Columbiana County Port Authorityand WTI/VonROll will be consummated, clearing up the property owner problem. (Mid Sept).

-- WTI will submit its revised permit application, as previously requested (Mid Sept).

-- The Ohio AG's office will give US EPA its preliminary assessment of the owner/operator issue (mid Oct) NOTE THAT THIS IS NOT DONE AS OF NOV 20, 1992.

-- US EPA will take enforcement action against WTI for failure to notify and will request a Class 2 modification to correct the problems with the current premit. (Mid Oct)

-- Ohio will issue its formal determination (Early Nov.)

-- WTI will initiate a Class 2 modification (Early Nov)

-- The permit wil be modified to correct he owner operator issue. (Jan - Feb. 1993)

--WTI will be allowed to bring hazardous waste on-site.

The big uproar over this memo was that it seemed to assuem, before ownership questions were resolved and inspections doen, that WTI would be allowed to operate. However, the memo does add this caveat " The majority of these dates are tentative. The dates and /or milestones may change at any time if U.S. EPA determines that human health or the environment is not being protected." So while EPA does make clear that they intend to process WTI, I don't think this memo is so controversial that all involved should "resign' as Metzenbaum has called for.

The memo does, however, conclude with the statement, " There is nothing to indicate that the original permit is invalid , nor that the Agency did not have a viable liable party to pursue..". However, a law clerk memo dated that same day makes clear that there are some legal loopholes that EPA has left open.

On July 9, 1992, EPA issued the first phase of the Agency's risk assessment of WTI

Will need GAO if Ohio says ok. If thus sufficient history then not necessary

August 24, 1992 - Nancy Ellen Zusman writes to Paula Cotter in the Ohio AG's office formally requesting the AG investigation of the change of ownership and partnership status for WTi under Ohio state law. THis is the report that is ongoiing. NOTE that the AG report was requested AFTER the temporary burn was approved. ALso note that the Ohio report is supposed to deal only with Ohio state issues. That is why I am repeatedly suggesting that altho we wait untilthe report comes out, that it may not resolved all the federal questions that still remain, and hence the GAO may need to get involved.

September 8, 1992 - Nancy Ellen Zusman writes to WTI Attoney Chuck Waterman asking WTI to submit a formal modification request to klist on the facility permit Von Roll America Inc as the owner of the facility (since the origianl four partners had all been bought out by Von ROll America)

Semptember 18, 1992 - CCPA sells land to WTI.

Semptember 30, 1992 - REgion 5 EPA, changing its mind from 3 weeks earlier, writes to WTI president Blake Marshall that US EPA has concluded that there has been no change in ownership fo rthe purposes of RCRA that would require modifications in the permit.

Ocotber 1, 1992 - EPA determines that WTI may accept hazardous waste and begin shakedown.

Ocotber 5, 1992 - Metzenbaum finds out about August 21 memo setting out a finalized schedule of permiting changes and declares that he was shocked by the memo and asks EPA admisntrator Reilly to suspend all parties involved and make a new team to deal with WTI.

November 13, 1992 - Ohio EPA issues conditional air permit to allow the plant to conduct the test burns.

November 14, 1992 - US district court judge Frederick Stampt Jr. rules against AG Mario Palubo of WV in his injuction to prevent the WTI shakedown on behalf of the citizens of WV. Stamp rules thatt Palumbo fialed to prove that the state or public would be harmed withour the injuction. He also stated that the WTI officials had testified that they were losing $115,000 each day the incinerator was not running and that jobs were in danger of being lost (100 people are employed at the plant). NOTE that this case did not reopen the legal permitting issues. This case explored whether or not there was cause for an injunction. Because US EPA testified on behalf of WTI, the judge deferred to their judgement on the heath and safety of the incinerator. However, US EPA whistleblower Hugh Kaufmann, an opponent of the incinerator, was not allowed to testify for the state of WV by a federal adminstrative rule enacted by Reagan that prevents testimony against the government by its employees. However, note that EPA or Ohio EPA were not parties to the suit, so its is unclear why exactly Kaufmann could have been prevented from making his testimony.

solely on injury determination ??

November 30, 1992 - Arrests at teh plant have been going on for several weeks. Over 100 people have been arested for tresspassing on WTI property. Most pay fines but 8 people with multiple arrests face trial this morning and will most likely go to jail.

Specific questions that I have over how this has been handled. These issues need to been resolved either by the Ohio AG's report or by the GAO. (This is a rehashing of much of the chronology, but I'm attempting to draw things together)

1) Questions have been raised over EPA's handling of the RCRA permit required to start an incinerator.

- The original land on which the incinerator is located was owned until 1992 by the Columbiana, Ohio port authority. However, in violation of RCRA laws, the port was not listed as the owner of the property. Ownership is required on permits to establish liability, especially if the owner and operator are separate entities. EPA says in a memo dated Sept. 30, 1992 that " Although USEPA's regulation require that landowners be included on RCRA permits, the practice in USEPA regional offices at the time of permit issuance varied, and WTI's permit, as well as others, was issued without identifying the landowner as permitee. As we have explained, the failure to include the Port Authority was inadvertent, and the issue was not raised by anyone during two rounds of public comment on the draft permit... In any event, the issue is now moot because WTI purchased the land form the Port Authority effective Sept. 18, 1992".

sufficiently aggregious to stop whole facility ?

Issue? or is this a provision violated requires whole deal?

- Ownership of WTI has changed since the original permit. The original four partners in the permit were Koppers Environmental Corp, Energy Technology Co, Waste Technologies, Inc., and Von roll America, Inc. However, thru name switching and subsidiary buyups, WTI was sold to WTI Acquisitions, wholly owned by Stephens, Inc . Additionally, VRA created VonRoll Ohio as a subsidiary, and then sold its shares to VRO. Koppers changed its name to Environmental Elements Ohio, Inc. Although the four original companies had separate corporate parents, all are now owned by VRA.
EPA has determined that "based on the express provisions of the joint venture agreement, we cannot conclude that the transfer of partnership interest dissoved WTI".

However, an Ohio State University business law professor has written that "the WTI of 1981 is not the WTI of 1992...WTI does not meet the definition of a partnership in Ohio law any longer". He based this determination on the fact that not only had all the partners had changed, but also on the fact the VonRoll America Inc, owns all the stock in the corporate entitites now, but does not share those profits with these entitites. VRA is not one of the partners claimed by the owners of the plant. EPA at one point asked WTI to include VRA as the owner, but 3 weeks later changed their minds. The Ohio AG's office thinks that altho formal legal law probably has been broken with regards to the original permit, they do not think the partnership is a sham. The origiani partnershipmay be different, but the AG's office does not think this was done in willful attempt to defraud.

The August 20, 1992 EPA memo written by an EPA law clerk assigned to determine the legal status of this partenrship concluded that "good faith legal arguments can be made to either buoy or sink WTI's existing permit. Ultimaly the decision of wther the permit should pass through the legal niceties unscatched is a policy determination". (Aug 20 1992). The same clerk concluded that "WTI appears to be a valid partnership on paper becuase there are are rour validly existing corporations acting as general partners.... If these subsidiaries are the "mere instrumentalities' of Von Roll America Inc, a valid argument could be made that WTI is no longer a legitimate partnership because it is no longer an associations of two or more persons. A single individual or entitity cannot be the owner of a partnership".

- The recent lawsuit brought by West Virginia against WTI did not resolve the ownership questions.

According to Attorney General Mario Palombo of WV, the judge in this case ruled that an injunction against WTI was improper. He deferred to EPA's recommendation on this case. However, if EPA acted improperty in issuing the original permits, their judgement in this case is suspect. The court did not conduct its own investigation into the permits - it relyed on EPA testimony. Palumbo thought this was an outrage that EPA was testifying for WTI since they may have been involved in a coverup. He is contemplating refiling the case - he says their is a fifty-fifty chance he will.

- There are a number of peripheral issues as well that should be looked into : What was the role of the Competitivenss Council in allowing EPA to issue a temporary statr up permit? Blake Marshall, President of Von Roll wrote to the Council on May 21, 1992 asking for regulatory relief. Von Roll people met with the Council and white house staff on June 10, 1992. EPA issued on July 5 a temporary authorization for WTI while the ownership issue was still completely up in the air. An EPA memo from Nancy-Ellen Zusman dated August 20 sets out a timeline for approval of WTI, even though the report from the EPA law clerk on the legal acpects of the permits did not come out until that day. Did EPA have instruction from the Council to approve the permits, regardless of what the ownership investigation turned up? NOTE that the Ohio AG's report will not explore this issue. I think that it is significant enough, however, that the GAO should look into it. It seems quite a coincidnece that WTI got its temporary permit for a test burn just days after the Council met with WTI officials. Call me Ross Perot, but its a little suspicious and an investigation might help clear up the matter.

December 11, 1992

ISSUE PAPER ON WASTE TECHNOLOGIES INDUSTRIES (WTI)

BACKGROUND

The Waste Technologies Industries* (WTI) hazardous waste treatment facility is located in the Tri-State area of Ohio in East Liverpool, Ohio. The facility is situated on approximately twenty-two acres within a 45 acre industrial zone and is bordered by the Ohio River. Residential neighborhoods and an elementary school are located nearby. The facility directly employs 104 people in East Liverpool with additional jobs stemming indirectly from the facility. The WTI facility represents an investment of $170 million.

WTI is the holder of a valid and enforceable Federal RCRA permit. At present the only remaining Agency approval that is needed prior to full operation is approval of the facility's Trial Burn Plan. Under RCRA, if a facility meets all its permit conditions, it is legally entitled to operate. Except for the approval of the trial burn plan, WTI has met all its permit conditions. (see attached explanation of RCRA Permitting Process).

The WTI facility has undergone permitting procedures for over a decade, beginning in 1981 with the filing of the facility's permit application. The U.S. EPA issued a hazardous waste facility permit, pursuant to RCRA requirements, to WTI on June 24, 1983. At that time, Ohio EPA did not have an EPA-authorized state hazardous waste program. The Ohio Hazardous Waste Facility Board, the only state certifying agency at the time, issued a state hazardous waste permit to WTI on April 27, 1984. Both the EPA and Ohio permits were appealed. EPA's Administrator upheld the EPA permit in 1985, and the Ohio Supreme Court upheld the state permit in 1987. After the appeals were decided, facility construction was initiated. In addition, Ohio EPA has issued an air permit. These permits have been modified several times over the last eight years, including a February 3, 1992 U.S. EPA-approved modification allowing WTI to add additional pollution control equipment (a "spray dryer") to the facility.

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* WTI was originally formed as a partnership of four corporations. Since then, the ownership of the corporate partners has changed, including apparently the purchase of three of the corporations by the fourth, Von Roll (America), Inc. The other three corporations are now wholly owned subsidiaries of Von Roll (America), Inc. Von Roll (Ohio) is the managing partner. Notwithstanding these changes in the ownership of WTI, WTI remains a general partnership and remains the owner of the facility.

Citizens concerned about the safety of the facility and incineration in general, have been very vocal about WTI. Local grassroots organizations and Greenpeace believe that EPA has illegally permitted this facility and that other procedural mistakes render the permit invalid. In addition, they are concerned that the facility's proximity (1100') to a local school will endanger the health of the students. EPA has worked very closely with the citizens throughout the permitting process. They have raised many procedural concerns which EPA has reviewed and responded to. EPA officials have personally visited the site and have met several times with leaders of the citizen's groups. In addition, EPA has responded to a number of Congressional inquiries. There is also strong support for the facility in the East Liverpool area; however, the proponents are not as vocal.

MAJOR ISSUES

The facility's permit has been extensively scrutinized. In the last year, several issues surrounding the validity of the permit have been raised. The facility has been the subject of an EPA Inspector General (IG) Audit which examined a variety of issues raised by the citizens. Overall, the IG found no significant problems. He did recommend that EPA review issues related to the landowner named on the permit and issues related to the ownership and operational control of the facility.

The landowner, the Columbiana County Port Authority, did not sign the original permit application and was not listed as a permittee on the permit. EPA's Region 5 had attempted to correct the problem by modifying the permit to add the Port Authority at the same time it approved a modification to add a spray dryer to the facility. Seven petitions seeking administrative review of these modifications were received. They were ultimately consolidated and sent to EPA's Environmental Appeals Board (EAB) for review.**

The EAB rendered a decision on July 24, 1992 overturning, solely on procedural grounds, Region V's addition of the Port Authority to the permit as a co-permittee. They also determined that such an error would not render the permit invalid, but recommended that the permit be modified to include the Port Authority. Before the Agency could take any further action on the matter, WTI purchased the property from the Port Authority, rendering the landowner issue moot. Regarding the addition of the "spray dryer," the EAB upheld the modification.

** Pending the EAB's decision, Region 5 granted WTI a Temporary Authorization to conduct a Trial Burn subject to prior approval of the Trial Burn Plan. WTI agreed not to use this authority until the EAB rendered its decision.

The second issue involved a change in operational control pursuant to a 1990 Operating Contract, whereby Von Roll (Ohio), Inc.--an owner of WTI--became responsible for the day to day operation of the facility. The Agency was not aware of the existence of this contract until it was raised by citizens at a May 1992 Congressional Hearing. As a result, U.S. EPA requested that WTI initiate a modification to its permit add Von Roll (Ohio), Inc. as an additional operator. Although, under EPA regulations, this kind of modification does not require public comment, EPA initiated a 30 day public comment period to keep the public involved in the process. The 30 day public comment period on the proposed modification closed on November 2, 1992. EPA Region 5 is currently preparing a written response to all comments. EPA will make a decision on the modification after this response is completed.

The third issue related to the facility's permit was whether the ownership of the facility had changed as a result of changes in WTI's corporate partners. In July 1992, Region 5 sent an exhaustive RCRA section 3007 Information Request to WTI. After extensive review of the response and several meetings with both the public and WTI, staff in the Office of Regional Counsel (ORC) and the Office of General Counsel (OGC) issued a joint memo analyzing the ownership and operational control issues (October 1, 1992). ORC and OGC staff reached the conclusion that although the corporate partners had changed, these changes did not constitute a change of ownership under RCRA.

On April 21, 1992, The Attorney General's Office of West Virginia (AG) filed a lawsuit against WTI, U.S. EPA, and Ohio EPA asserting claims under certain environmental statutes, regulations and common law. In August, the AG filed a motion for a Preliminary Injunction and a Temporary Restraining Order (TRO). In addition, various parties, including the City of Pittsburgh filed Motions to Intervene.

At a September 1, 1992 Hearing on the TRO WTI agreed to give seven days notice to all the parties before accepting hazardous waste. At that time, the Judge scheduled a hearing on the Preliminary Injunction for October 13th. On September 30th, 1992 Region V gave WTI the final go ahead to begin accepting hazardous waste. Region V also imposed additional emissions limits on WTI for shakedown because of the public's concern.

On October 8, 1992 the Judge dismissed defendants U.S. EPA and Ohio EPA. The next day, WTI gave its seven days notice to all parties that it would begin accepting hazardous waste. The Judge held a four day hearing starting on October 13th. At the hearing, WTI agreed not to accept any hazardous waste until the Judge ruled. The Judge heard from all parties and issued a decision on November 12, 1992 in favor of WTI, and declining to enjoin operation of the WTI incinerator.

WTI began bringing hazardous waste on site on Friday, November 13, 1992.

CURRENT STATUS

The facility has begun burning non-hazardous materials (i.e., fossil fuels). Although WTI is allowed to burn limited amounts of hazardous waste during the shakedown period, it has not done so yet because of minor repairs to an operating fan. The facility indicated that burning of hazardous waste may begin by December 10, 1992. A representative from Ohio EPA and U.S. EPA will be at the facility throughout the shakedown phase.

The shakedown phase will be followed by a Trial Burn. EPA Region 5 and Ohio EPA must approve a Trial Burn plan before WTI can proceed. The plan is very close to being approved. WTI expects the Trial Burn will begin in approximately six weeks. After a successful Trial Burn is completed, WTI can begin commercial operation. During this time, the incinerator must comply with the performance standards contained in the permit.

Because of the citizens concerns about air emissions and the facility's proximity to the school, EPA's Region 5 has undertaken an extensive risk assessment which is <u>not</u> required under RCRA. The first phase of the risk assessment included local meteorological data and data from other incinerators similar to WTI. The Trial Burn will provide essential data for the final phase of the risk assessment. If the risk assessment suggests that the facility endangers human health or the environment and that a permit modification is needed to address the danger, EPA can modify the permit to include needed conditions. Analysis and completion of the risk assessment will take approximately four months.

Please contact Rich Guimond at 260-4610 for further information.

Attachment
RCRA Permitting Background

RCRA Permitting Process

Under the Resource Conservation and Recovery Act (RCRA), EPA is responsible for issuing Federal RCRA permits for hazardous waste incinerators. States can also operate hazardous waste programs and issue State incinerator permits. EPA regulations allow a State to receive Agency approval to operate its own hazardous waste program and issue permits in place of the Federal RCRA program.

Federal regulations (40 CFR 124 and 270) define RCRA permitting procedures and the public's right to appeal permit decision. After EPA receives and reviews and application, EPA makes a tentative decision to either prepare a draft permit or deny the application. EPA announces all draft permits (or tentative decisions to deny the permit) for public comment and must respond to the comments before it makes a final decision to issue or deny the permit. The final permit becomes effective 30 days after issuance, unless the EAB receives a petition for appeal. When EPA receives an appeal, the EAB either grants or denies the appeal. If denied, the conditions of the permit become final. If granted, the applicant cannot operate until EPA resolves the appeal.

Modification or Revocation and Reissuance

During the life of the permit, EPA can either modify or revoke and reissue existing RCRA permits. However, the Agency's authority to modify or reissue a permit is limited to the specific situations identified in the RCRA regulations. The most common modifications are in response to new information or new regulatory requirements. When EPA modifies a permit, only the modified permit conditions are opened for public comment. However, when EPA Revokes and reissues a permit, the entire permit is reopened.

Facilities may also initiate three classes of permit modification - 1, 2 and 3 - under EPA regulations. Class 1 are minor or routine changes to the facility or its operations that only require the permittee to notify the Agency and the public. Classes 2 and 3 are more significant changes to the facility. They require public meetings and the public can appeal the modifications. While an appeal is in process, EPA can, under certain circumstances, allow a permittee temporary authorization to implement the modification as if it had been granted.

Trial Burn

A trial burn allows EPA to collect and examine data to determine whether the incinerator meets the Agency's performance standards. Prior to beginning a trial burn, a permittee must submit a trial burn plan to EPA. The plan includes an analysis of wastes to be burned, an engineering description of the incinerator, a description of sampling and monitoring procedures, the test schedule, and test procedures. The permittee cannot begin the trial burn until EPA approves the trial burn plan. After EPA reviews the results of the trial burn, EPA can modify the permit's operating conditions, to ensure that the incinerator is meeting EPA's incinerator performance standards.

THALL PAM + KATIE

TO: Vice President-Elect Albert Gore
EPA Administrator-Designee Carol M. Browner
EPA Transition Team

FROM: Hugh B. Kaufman Hughy

DATE: December 15, 1992

SUBJECT: Commercial Incineration of Hazardous Wastes: A Necessary EPA Policy.

INTRODUCTION:

The burning of hazardous wastes in cement kilns began in the 1970's. The amount of burning was very small and limited to clean, generally low chlorinated content, liquids. By the mid 1980's, with EPA's active encouragement and studied failure to regulate, the burning of hazardous wastes in cement kilns began to increase very rapidly. At the present time, of all of the commercial, i.e. off-site, incineration of hazardous wastes in the United States, some 90% of the liquids and two thirds of liquids and solids are incinerated by cement kilns.[1] In the meantime, while public pressure forced some state agencies and EPA Regions to tighten the permitting and regulation of some incinerators, the pattern has been very uneven, as can be seen in the case of Waste Technology Industries (WTI). [See attached information from a citizen's group in Ohio concerned about cement kiln incineration.]

PROBLEM:

The public has seen the EPA as lowering standards and accepting a continuing level of violations in order to encourage the commercial incineration of hazardous wastes in cement kilns and specialized incinerators such as WTI. There is an apparent lack of uniform standards, fairly and consistently applied.[2] As can be seen from the attached Ohio information, given the WTI policy decision, the public will continue to perceive an uneven and unfair EPA policy in 1993 unless the new administration takes immediate action to spread the effect of the WTI decision to all commercial incineration.

POLICY IMPLICATION/RECOMMENDATION:

EPA must ***immediately level the regulatory and enforcement playing field*** for all commercial incineration, no matter in what device or location. Then, we must ***raise the level of the playing field*** for all commercial incineration of hazardous wastes. Are hazardous waste and cement kiln incinerators the best that they can be? No. The regulatory strategy has been to define some "safe" level using dubious computer models and animal studies and then allow pollution to that level. The public will not accept this approach. They must not be forced to accept this approach. Until all incineration is the best that it can be, the public response will be: "Do not burn in anyone's backyard."

Leveling and raising the regulatory playing field can be simply and quickly accomplished by immediately adopting the following permitting policy strategy:

No commercial hazardous waste incineration permit shall be issued or renewed unless the permittee, when requested by any member of the affected public, makes an affirmative showing that the permit contains provisions representing the best technology and the best management practices.[3]

SOME REAL WORLD EXAMPLES:

OHIO:

Attachment 1 is a comparison of the proposed WTI permit with the levels of contaminants allowed a cement kiln in the same state. Clearly, this is not a level playing field. The citizens see the tighter restriction burner being stopped, and rightfully so, while the cement kiln burners are allowed to go forward.

FLORIDA:

Solite is a BIF burner. Its wet scrubber sludge was exempted from regulation under EPA's interpretation of the Bevill amendment. Due to a quirk in a change in the Bevill rules, the wet sludge would have become a derived from hazardous waste, i.e. not excluded. Solite has now gone to dry gas cleaning and will dump the material on the ground or put it into its product. In the meantime a proposed incinerator, Florida First Processors (FFP), was issued a Notice of Intent to Deny by the Florida DER on 11 June 1991. The FFP incinerator proposed to dispose of all residuals by hazardous waste landfilling out of state.

While the EPA regulations call for a 0.08 gr/dscf particulate limit, FFP proposed a 0.01 limit and was rejected as "a demonstration is needed that the facility will utilize pollution control equipment that will abate or prevent pollution to the greatest degree practical."[4] FFP proposes to control mercury emissions by limiting its feed to 0.59 pounds per hour and adding lime and activated carbon to the baghouse to control the emissions to 0.0591 pounds per hour maximum. As a comparison, 40 CFR 266 Appendix I of the BIF rules allows a cement kiln in non-complex terrain with an effective stack height of 120 meters in an urban area, to emit 6,000 grams of mercury per hour. This is 13.2 pounds per hour, over 200 times the amount proposed by FFP, or an astounding 115,000 pounds per year in an urban area. ***This EPA allowed amount of mercury emissions is over three times the total amount released per year in Ohio, the top mercury emitter of all of the states.*** The BIF values are even higher for rural areas. It should be noted that mercury contamination of streams and rivers in rural Arkansas is a newly documented environmental problem.

TEXAS:

The Texas Air Control Board has assembled a group to assess cement kiln incineration policy. A grassroots group, Texans United, made a presentation to the Task Force on Cement Kiln Incineration of Hazardous Waste on 20 November 1992. It is instructive as it defines the problems and issues resulting from EPA's failure to effectively regulate commercial incineration. The first part of the full presentation is attached, excerpts follow:

The point of view of this briefing book is that any disposal of hazardous wastes must be done only under the most conservative of circumstances. The location, equipment and justification used for the establishment of any facility that will routinely collect, store and handle tons of society's most serious poisons must be judiciously considered. We should especially use this kind of strict process for the assessment of toxics-burning cement plants, since they were created by a lack of regulation, not a deliberate policy choice on the part of the state.

*First and foremost among the questions for any waste facility is "Do we need it?" A conservative approach demands **that disposal take place at the fewest number of facility sites adequate to meet the needs of a locality or state.** Any contamination at disposal sites - accidental or routine - should be kept to a minimum by limiting the number of communities exposed to the risks inherent in the hazardous waste business to begin with. This examination of need for the facility is the first line of defense against unnecessary threats to the public health and the environment.*

It is clear from all available evidence that the proliferation of toxics-burning cement plants violates this first rule of thumb to "show need". According to state and federal projections, Texas, and the nation as a whole has more than enough disposal capacity for liquid wastes in existing fully-licensed commercial incinerators to adequately meet the needs of industry without having to resort to toxics-burning cement plants.... Because Texas cement plants represent so much excess disposal capacity, they actually act as a magnet for out-of -state wastes. They become a detriment to pollution prevention goals. They unnecessarily expose communities to the risk of contamination....

Secondly, a conservative approach to hazardous waste disposal demands that we use only those facilities which achieve and sustain the best possible technological standards. This is especially true for waste incineration, which has the potential to leave widespread harm in its wake. The consequences of incomplete burns and inadequate air pollution control can be disastrous to a *surrounding communities....*

Our policy recommendation is:

"Commercial incineration of hazardous wastes in Texas should be done only at facilities that meet the best, achievable technological standards. Currently, cement kilns do not meet such standards."

"If cement kiln incineration of hazardous wastes is ever considered necessary for the adequate disposal of Texas-generated wastes, facilities should be held to these strict standards across the board, including air pollution control, solid waste disposal and cement product labeling."

Finally, criteria for a conservative approach to hazardous waste disposal would have to also include the goal of siting disposal facilities in locations that would best minimize risks of contamination to public health and the environment. Even at the best "state-of-the-art" sites, there are problems with routine releases and accidents....converting a cement plant to burn hazardous wastes preempts all of these considerations because the site is already chosen.

Our policy recommendation is:

"Since they were not originally designed as hazardous waste disposal sites, cement plants have not traditionally been located to best minimize risks to public health and the environment from disposal activity. Moreover, because of the source of raw material, cement plants are sometimes concentrated close together, creating clusters of potential disposal sites based on geology, not environmental impact. Texas should prohibit the incineration of hazardous wastes at cement plants that have not planned from the beginning as hazardous waste disposal sites."

The contents of this briefing book are outlined along these three policy issues: Need, Equity in Standards and Siting, We think they are the central issues of the debate. If these are addressed honestly, Texans United believes that you will agree with us that cement kiln incineration of hazardous wastes is a disposal option that does not serve the interests of the state of Texas, her natural resources or her people.

Enough said.

ATTACHMENTS:

1. Memo from Bruce Cornett, Greene Environmental Coalition to Hugh Kaufman, December 15, 1992.

2. Citizen's Briefing Book on Cement Kiln Incineration of Hazardous Wastes in Texas, Prepared for the Texas Air Control Board's Policy Task Force on Cement Kiln Incineration by Texans United, November 20, 1992.

FOOTNOTES:

1. Kohel, S.: Quoted in Smith, J.D. and Strand, B.: *Cement and Lightweight Aggregate Kilns 1992*; EI Digest; August 1992, p. 26.

2. Enforcement is very uneven, even with the weak BIF rules. EPA Region IV has proposed very large fines on some cement kilns burning hazardous wastes. Indeed, the practices, if proved should result in the lifting of Interim Status and shut down. Meanwhile, cement kilns in Region V and VII, owned by the same companies and apparently engaged in the same practices are not even issued NOVs.

3. For example, best management practices would include round-the-clock inspectors paid for by the permittee but working for the state or EPA and telemetering of emission levels to the regulatory agency and the public. Best simply means that. The concept is that the most rigorous permit conditions should eventually apply to all burners. The existing regulatory scheme under RCRA simply becomes the base if no affected citizen demands better.

4. Another reason for denying the proposed permit was that "[t]he applicant has failed to provide the signature of the landowner on the application as required by 40 CFR 270.10...."

times over the last eight years, including a February 3, 1992 U.S. EPA-approved modification allowing WTI to add additional pollution control equipment (a "spray dryer") to the facility.

Citizens concerned about the safety of the facility and incineration in general, have been very vocal about WTI. Local grassroots organizations and Greenpeace believe that EPA has illegally permitted this facility and that other procedural mistakes render the permit invalid. In addition, they are concerned that the facility's proximity (1100') to a local school will endanger the health of the students. EPA has worked very closely with the citizens throughout the permitting process. They have raised many procedural concerns which EPA has reviewed and responded to. EPA officials have personally visited the site and have met several times with leaders of the citizens groups. In addition, EPA has responded to a number of Congressional inquiries. There is also strong support for the facility in the East Liverpool area; however, the proponents are not as vocal (a press conference by proponents reportedly is scheduled for December 10).

EPA answered

MAJOR ISSUES

The facility's permit has been extensively scrutinized. In the last year, several issues surrounding the validity of the permit have been raised. The facility has been the subject of an EPA Inspector General (IG) Audit which examined a variety of issues raised by the citizens. Overall, the IG found no significant problems. He did recommend that EPA review issues related to the landowner named on the permit and issues related to the ownership and operational control of the facility.

how fixed for ?

The landowner, the Columbiana County Port Authority, did not sign the original permit application and was not listed as a permittee on the permit. EPA's Region 5 had attempted to correct the problem by modifying the permit to add the Port Authority at the same time it approved a modification to add a spray dryer to the facility. Seven petitions seeking administrative review of these modifications were received. They were ultimately consolidated and sent to EPA's Environmental Appeals Board (EAB) for review.**

The EAB rendered a decision on July 24, 1992 overturning, solely on procedural grounds, Region V's addition of the Port Authority to the permit as a co-permittee. They also determined that such an error would not render the permit invalid, but recommended that the permit be modified to include the Port Authority.

** Pending the EAB's decision, Region 5 granted WTI a Temporary Authorization to operate. Because of great public concern, WTI agreed not to begin operation until the EAB rendered their decision.

modest ?

If that legitimate grounds

why? does statute admit of this fix?

Before the Agency could take any further action on the matter, WTI purchased the property from the Port Authority, rendering the landowner issue moot. Regarding the addition of the "spray dryer," the EAB upheld the modification because of its added protectiveness.

The second issue involved a change ~~in operational control~~ pursuant to a 1990 Operating Contract, whereby Von Roll (OHIO), Inc.--an owner of WTI--became responsible for the day to day operation of the facility. The Agency was not aware of the existence of this contract until it was raised by citizens at a May 1992 Congressional Hearing. As a result, U.S. EPA requested that WTI modify its permit to add Von Roll (OHIO), Inc. as an additional operator. Although, under EPA regulations, this kind of modification does not require public comment, EPA initiated a 30 day public comment period to keep the public involved in the process. The 30 day public comment period on the proposed modification closed on November 2, 1992. EPA Region 5 is currently preparing a written response to all comments.

So could well unravel -- why not before plant runs now?

The third issue related to the facility's permit was whether the ownership of the facility had changed as a result of changes in WTI's corporate partners. In July 1992, Region 5 sent an exhaustive RCRA section 3007 Information Request to WTI. After extensive review of the response and several meetings with both the public and WTI, staff in the Office of Regional Counsel (ORC) and the Office of General Counsel (OGC) issued a joint memo analyzing the ownership and operational control issues. ORC and OGC staff reached the conclusion that although the corporate partners had changed, these changes did not constitute a change of ownership under RCRA.

On April 21, 1992, The Attorney General's Office of West Virginia (AG) filed a lawsuit against WTI, U.S. EPA, and Ohio EPA asserting claims under certain environmental statutes, regulations and common law. In August, the AG filed a motion for a Preliminary Injunction and a Temporary Restraining Order (TRO). In addition, various parties, including the City of Pittsburgh filed Motions to Intervene.

At a September 1, 1992 Hearing on the TRO WTI agreed to give seven days notice to all the parties before accepting hazardous waste. At that time, the Judge scheduled a hearing on the Preliminary Injunction for October 13th. On September 30th, 1992 Region V gave WTI the final go ahead to begin accepting hazardous waste. Region V also added additional emissions limits to the permit for shakedown because of the public's concern.

why when injunction pending just 2 weeks away

On October 8, 1992 the Judge dismissed defendants U.S. EPA and Ohio EPA. The next day, WTI gave its seven days notice to all parties that it would begin accepting hazardous waste. The Judge held a four day hearing starting on October 13th. At the

December 9, 1992

ISSUE PAPER ON WASTE TECHNOLOGIES INDUSTRIES (WTI)

BACKGROUND

The Waste Technologies Industries* (WTI) hazardous waste treatment facility is located in the Tri-State area of Ohio in East Liverpool, Ohio. The facility is situated on approximately twenty-two acres within a 45 acre industrial zone and is bordered by the Ohio River. Residential neighborhoods and an elementary school are located nearby. The facility directly employs 104 people in East Liverpool with additional jobs stemming indirectly from the facility. The WTI facility represents an investment of $170 million.

WTI is the holder of a valid and enforceable Federal RCRA permit. At present the only remaining conditions that must be met are those specified in the permit including an approved Trial Burn plan. Under RCRA, if a facility meets all its permit conditions, it is legally entitled to operate. Except for the approval of the trial burn plan, WTI has met all its permit conditions. (see attached explanation of RCRA Permitting Process).

?= Similar Amn.??

The WTI facility has undergone permitting procedures for over a decade, beginning in 1981 with the filing of the facility's permit application. The U.S. EPA issued a hazardous waste facility permit, pursuant to RCRA requirements, to WTI on June 24, 1983. At that time, Ohio EPA did not have an EPA-authorized state hazardous waste program. The Ohio Hazardous Waste Facility Board, the only state certifying agency at the time, issued a state hazardous waste permit to WTI on April 27, 1984. Both the EPA and Ohio permits were appealed. EPA's Administrator upheld the EPA permit in 1985, and the Ohio Supreme Court upheld the state permit. After the appeals were decided, facility construction was initiated. In addition, Ohio EPA has issued an air permit. These permits have been modified several

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* WTI was originally formed as a partnership of four corporations. Since then, the ownership of the corporate partners has changed, including apparently the purchase of three of the corporations by the fourth, Von Roll (Ohio), Inc. The other three corporations are now wholly owned subsidiaries of Von Roll. Nothwithstanding these changes in the ownership of WTI, WTI remains a general partnership and remains the owner of the facility.

→ detailed analysis of each stage in the ~~permit~~ ~~new~~ application & permit procedures both @ Fed & State level.

→ detailed analysis of ea. modification of the permits & any waivers that were granted.

→ @ each step an anal. of whether any normal permitting procedures followed or something extraordinary (like a temporary permit or a waiver when there is no statutory authority).

→ Δ in operating control / ownership of the facility. → review of whether constituted a Δ of ownership under RCRA & if so report.

→ why give final go ahead & ~~accept~~ haz waste when TRO ~~about~~ case about to be brought?

hearing, WTI agreed not to accept any hazardous waste until the Judge ruled. The Judge heard from all parties and issued a decision on November 12, 1992 in favor of WTI, and declining to enjoin operation of the WTI incinerator.

WTI began bringing hazardous waste on site on Friday, November 13, 1992.

CURRENT STATUS

The facility has begun its shakedown phase, which allows it to establish operating conditions prior to a Trial Burn. Although WTI is allowed to burn limited amounts of hazardous waste, ~~it has~~ not done so yet because of minor repairs to an operating fan. Burning of hazardous waste may begin by December 10, 1992. A representative from Ohio EPA and U.S. EPA will be at the facility throughout the shakedown phase.

Status?

The shakedown phase will be followed by a Trial Burn. EPA Region 5 and Ohio EPA must approve a Trial Burn plan before WTI can proceed. ~~The plan is very close to being approved.~~ The Trial Burn will occur for approximately six weeks and then WTI can begin limited commercial operation.

Why such - still haven't done the shakedown.

Because of the citizens concerns about air emissions and the facility's proximity to the school, EPA's Region 5 has undertaken an extensive risk assessment which is not required under RCRA. The first phase of the risk assessment included local meteorological data and data from other incinerators similar to WTI. The Trial Burn will provide essential data for the final phase of the risk assessment. If the risk assessment suggests that the facility endangers human health or the environment and that a permit modification is needed to address the danger, EPA can modify the permit to include needed conditions. Analysis and completion of the risk assessment will take approximately four months.

Please contact Rich Guimond at 260-4610 for further information.

Agreed. But ? is only [illegible] to [illegible] this [illegible] now. Once after shakedown go ? want this to go [illegible] now.

42

Attachment
RCRA Permitting Background

RCRA Permitting Process

Under the Resource Conservation and Recovery Act (RCRA), EPA is responsible for issuing Federal RCRA permits for hazardous waste incinerators. States can also operate hazardous waste programs and issue State incinerator permits. EPA regulations allow a State to receive Agency approval to operate its own hazardous waste program and issue permits in place of the Federal RCRA program.

Federal regulations (40 CFR 124 and 270) define RCRA permitting procedures and the public's right to appeal permit decision. After EPA receives and reviews and application, EPA either issues a draft permit or denies the application. EPA announces all draft permits for public comment and must respond to the comments before it issues a final permit. The final permit becomes effective 30 days after issuance, unless the EPA Administrator receives a petition for appeal. When EPA receives an appeal, the Administrator either grants or denies the appeal. If denied, the conditions of the permit become final. If granted, the applicant cannot operate until EPA resolves the appeal.

public comment here?

Modification or Revocation and Reissuance

At any time, EPA can either modify or revoke and reissue existing RCRA permits. When EPA modifies a permit, only the modified permit conditions are opened for public comment. However, when EPA revokes and reissues a permit, the entire permit is reopened.

EPA regulations show three classes of permit modification - 1, 2 and 3. Class 1 are minor or routine changes to the facility or its operations that only require the permittee to notify the public. Classes 2 and 3 are more significant changes to the facility. They require public meetings and the public can appeal the modifications. While an appeal is in process, EPA can, under certain circumstances, allow a permittee temporary authorization to implement the modification as if it had been granted.

Trial Burn

A trial burn allows EPA to collect and examine data to determine whether the incinerator meets the Agency's performance standards. Prior to beginning a trial burn, a permittee must submit a trial burn plan to EPA. The plan includes an analysis of wastes to be burned, an engineering description of the incinerator, a description of sampling and monitoring procedures, the test schedule, and test procedures. The permittee cannot begin the

general conditions in the area??

trial burn until EPA approves the trial burn plan. After EPA reviews the results of the trial burn, EPA can modify the permit's operating conditions, to ensure that the incinerator is meeting EPA's incinerator performance standards.

mandated under 3 yrs to do - 1985
EPA adopt
EDF sued remanded by
court - couple of tech b/w standards
in Federal H_2O act

→ WIPP's land w/d bill
reinstated all standards
senate bill exempts ym from
standard,
NAS will do study
on ex. rad. exp. levels
on indiv. basis
compels EPA & NRC
unreasonable
→ provision dropped NAS can
do study. inappropriate -
H bill was silent - no imm.
action driven by standards
opens door

dip
Herb Reed:
501
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0303 , 370
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387-3500
3:00
Schindel
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2:3:00

--SAFETY AND HEALTH - STANDARDS

COMPLETE REVIEW OF PROCESS THROUGH WHICH OEPA (ADVOCATING FOR WTI) NEGOTIATED THE CLEAN AIR CONSTRUCTION PERMIT REVISION WITH USEPA BETWEEN 1987 AND 1992.

--USEPA CORRESPONDENCE TO OEPA STATES MORE THAN ONCE THAT WHAT USEPA IS ASKING FOR DOES NOT REQUIRE PUBLIC NOTIFICATION. WHY IS USEPA COMPELLED TO ASSURE OEPA ABOUT THIS? WHAT CONVERSATIONS WERE TAKING PLACE AT THE TIME BETWEEN WTI AND OEPA ABOUT THE STATE CLEAN AIR PERMIT? WHAT CORRESPONDENCE EXISTS?

--NEW OEPA AND USEPA AIR PERMIT CONDITIONS FINALIZED IN 1992 REQUIRE CONTINUOUS STACK MONITORING FOR MAJOR POLLUTANTS. DOES THE TECHNOLOGY EXIST, IS IT RELIABLE, WHAT IS THE OEPA PLAN FOR RELIABLE ENFORCEMENT? WHERE WILL THE MONITORS BE LOCATED?

--CAN OEPA BE TRUSTED TO ENFORCE EMISSIONS STANDARDS WHEN THE AGENCY ADVOCATED FOR WTI?

--ASSUMING THAT EMISSIONS FOR INDIVIDUAL POLLUTANTS FALL BELOW NAAQS, WHAT IS THE SYNERGISTIC HEALTH EFFECT OF THE POLLUTANTS IN THE AGGREGATE?

--THE RISK ASSESSMENT SAID LEAD COULD SLIGHTLY EXCEED THE REGULATORY STANDARD... BUT WAS WELL BELOW A LEVEL OF CONCERN FOR HEALTH. THIS DOESN'T MAKE SENSE.

IS WTI A MAJOR OR MINOR POLLUTANT SOURCE UNDER THE CLEAN AIR ACT? OEPA INDICATED WTI IS A SHADE BELOW BEING A MAJOR SOURCE. HOW AND WHY IS THAT SO?

IS COLUMBIANA COUNTY A NON-ATTAINMENT AREA FOR MAJOR POLLUTANTS OR NOT? WHAT IS THE EFFECT OF AIR INVERSION ON AIR POLLUTION AND HEALTH.

VON ROLL'S OWN ENGINEERS STATED THAT THE SPRAY DRYER WOULD CAUSE HIGHER EMISSIONS OF MERCURY FROM THE STACK. GIVEN VON ROLL'S DESIRE TO AVOID ANY ACTION THAT MIGHT ENDANGER THE PERMIT, WHY DID VON ROLL RISK A CLASS 3 PERMIT MODIFICATION TO INSTALL THE SPRAY DRYER?

WHY IS THERE A FAN IN THE STACK, WHY DOES IT KEEP BREAKING, WHY ARE CERTAIN SCIENTISTS INDICATING THAT THIS IS A REAL PROBLEM?

USEPA RECORD OF FOLLOWING THE LAW

--COMPLETE REVIEW OF USEPA PERMIT PROCESS - ASK FOR ALL RELEVANT DOCUMENTS, INTERVIEW ALL OFFICIALS.

--WERE COMPLETE AND FULL (1) RCRA PERMIT AND (2) CLEAN AIR ACT PERMIT APPLICATIONS EVER SUBMITTED TO USEPA BY WTI?

--WHY WASN'T PORT AUTHORITY PUT ON THE PERMIT TO BEGIN WITH. ADAMKUS EXPLANATION TO ROCKEFELLER IS ABSURD. USEPA REGS. FROM 1979 WERE CLEAR ON THE SUBJECT. WAS IT BECAUSE PORT AUTHORITY NEVER WOULD HAVE GONE ALONG WITH THE DEAL AT THE TIME?

--USEPA WAS WHIPSAWED BY WTI.

EXAMPLES:

--WTI OPERATOR CHANGES WITH NO PRIOR NOTIFICATION - USEPA MAKES RETROACTIVE PERMIT CHANGE

--PORT AUTHORITY NOT ON PERMIT - USEPA MAKES RETROACTIVE PERMIT MODIFICATION

OTHER EXAMPLES(?)

--THERE ARE OTHER USEPA/WTI DOCUMENTS NOT FOIA RELEASED THAT PROBABLY SHOULD HAVE BEEN. WHY WEREN'T THEY.

--<u>WHAT WAS THE INVOLVEMENT OF THE WHITE HOUSE AND COMPETITIVENESS COUNCIL?</u>

SEE WTI LETTERS TO FITZHENRY AND QUAYLE. WTI MET WITH COUNCIL STAFF. WHO MADE CALLS TO REILLY OR ADAMKUS FROM THE WHITE HOUSE OR QUAYLE'S SENATE STAFF IN AND AROUND THAT TIME. WHAT DID THEY TALK ABOUT? USEPA ISSUED WTI A TEMPORARY AUTHORIZATION TO PROCEED AT THAT TIME. WHY?

<u>--OWNERSHIP</u>

WHY THE CORPORATE SHELL GAME?

DO THE 4 WTI PARTNERS HAVE ANY ASSETS OTHER THAN THE PLANT?

DOES VON ROLL AMERICA (WTI'S U.S.PARENT) HAVE ANY ASSETS OTHER THAN THE PLANT?

DOES VON ROLL LTD. (VRA'S SWISS PARENT) HOLD ALL ASSETS OTHER THAN THE PLANT? ARE ALL ASSETS SAFE OFFSHORE IN THE EVENT OF AN ACCIDENT? WILL THE TAXPAYERS BE LEFT HOLDING THE BAG.

WHY DOES WTI MAINTAIN THE CONTINUED PARTNERSHIP CHARADE?

HOW MUCH FINANCIAL ASSURANCE HAS THE COMPANY PUT UP. IS IT ENOUGH TO COVER AN ACCIDENT? DECONTAMINATION, CLOSURE?

WHY DID CHEMICAL WASTE MANAGEMENT OPT OUT OF BUYING WTI?

WHAT IS THE EXACT NATURE OF THE CONTRACTS BETWEEN CHEM WASTE MANAGEMENT AND WTI?

WHEELING INTELLIGENCER
Wheeling, W.Va.
December 18, 1992

Permit On EPA Agenda

Outgoing Officials To Hear WTI Case

WASHINGTON (AP) — 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 in East Liverpool, outgoing EPA administrator William Reilly said Thursday.

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.

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 "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.

MORNING JOURNAL
East Liverpool, OH
December 17, 1992

'Home Show' arrives for ELO town meeting

By JAY BROOKES
Journal Staff Writer

EAST LIVERPOOL — ABC's "Home Show" will broadcast a live "town meeting" on Waste Technologies Industries from the East Liverpool Motor Lodge today.

The program's segment will air from 11-11:30 a.m., and "Home Show" star Gary Collins is expected to be at the Motor Lodge to conduct the meeting.

The town meeting is a result of Vice President-elect Al Gore's call for a General Accounting Office investigation of WTI.

The show will feature a pro and con discussion of the WTI issue, as well as questions from the audience.

There was some question yesterday whether the program would actually go on as expected. "Home Show" producer/director Turner Bridgeforth said details had not yet been worked out with supporters of WTI on their participation in the show. Those details were later worked out, and both opponents and supporters of WTI are expected to participate.

"It wouldn't be a show without them," Bridgeforth said, adding the network wants to present both sides of the issue.

Neither representatives of Greenpeace nor WTI are expected to participate in the program.

Julia Bircher, WTI spokeswoman, could not be reached for comment last night.

Al Gloeckner, owner of the Motor Lodge, said people will be admitted to the show on a first come-first served basis. He added the show's producers have placed a specific limit on the number of people who will be admitted, but said he couldn't tell what that number is.

"They put a lot of restrictions on us," he said.

MORNING JOURNAL
East Liverpool, OH
December 17, 1992

Incinerator ban won't affect WTI

By JOHN CHALFANT
Associated Press Writer

COLUMBUS — Construction of hazardous-waste incinerators in Ohio would be halted for at least three years as a result of a bill that cleared the Senate on Wednesday.

The measure, approved 26-5, would not bar operation of the $160 million Waste Technologies Industries plant in East Liverpool, which has drawn fire from opponents worried about safety and health matters.

But Sen. Richard Schafrath, R-Loudonville, said the bill would stop an incinerator proposed by Ohio Technologies Corp. in the Ashland County community of Nova.

"This moratorium will not affect Ohio's businesses because our state already has more than enough capacity to meet our industrial incineration needs," Schafrath said. "The only thing we accomplish by constructing new facilities is to provide greater capacity for out-of-state waste."

The bill now goes back to the House. Chief sponsor Rep. Katherine Walsh, D-Oberlin, said she would ask for approval of Senate changes.

House approval would send the bill to Gov. George Voinovich, who sought the moratorium.

Schafrath said the state already has four times the incineration capacity it needs to burn hazardous waste generated within its borders. He said building an incinerator at Nova would boost capacity to 12 times the need.

"If the Nova facility were to be constructed, it would be the largest incinerator in the world, with a capacity of over 524,000 tons a year," Schafrath said.

Although the bill would not affect operation of WTI, it would impose a $2 per ton fee on waste treated at incinerators to pay for biological monitoring of the East Liverpool plant. The fee would be paid by Ross Environmental Services in Grafton, and by WTI after burning begins.

Voinovich has been targeted by demonstrators for not opposing the WTI plant, started during former Gov. Richard Celeste's administration.

Voinovich welcomed the moratorium.

"When he announced a year ago that he was seeking this legislation, he indicated that enough was enough," said Michael Dawson, press secretary. "Ohio is currently disposing of 20 percent of the nation's commercial hazardous waste, and we're doing more than our fair share."

Appeals may not keep protesters from jail

By TOM GIAMBRONI
Journal Staff Writer

LISBON — Those Waste Technologies Industries' protesters who fail to post bond while appealing their contempt of court citations could go to jail anyway.

Sixteen of the 23 protesters, found in violation of county Common Pleas Court Judge Douglas Jenkins' order prohibiting them from blocking access to the hazardous waste incineration plant in East Liverpool, were sentenced to jail in addition to being fined.

Jenkins' decision was appealed to the Ohio 7th District Court of Appeals, which delayed implementation of the sentences pending outcome of the appeal, provided the protesters post $250 cash bond.

The 16 protesters with jail sentences refused to post bond and their jail sentences were ordered carried out.

The remaining seven protesters with only fines were required to also post the cash bond or face possible further contempt citations, but they failed to do so by Monday's deadline.

Jenkins said this applies to those nine additional WTI protesters who were found in contempt of his court order on Monday. This group was given until 3 p.m. Friday to post the $250 cash bond required by the district court.

Documents filed with the district court by the attorney representing protesters indicates those found in contempt are either unwilling or unable to post bond.

Opponents had asked the district court to delay imposition of its order temporarily suspending Jenkins' order pending appeal to the Ohio Supreme Court, a motion that was denied by the court.

Attorney Christopher Stanley said "not all of the appellants (protesters) can afford to come up with that amount of money in such a short time, particularly at holiday time."

Stanley equated the bond order to "ransom." "It amounts to legal ransom and puts this court in the position of being a collection agency for WTI," he wrote.

WTI opponent Terri Swearingen said Monday she chose to go to jail rather than post the required bond because any money paid to the state amounts to ransom.

If protesters continue to refuse to post bond pending appeal of their contempt convictions, Jenkins said they are then required to pay the fines, which haved ranged from $25 to $400 for repeat offenders.

The county clerk of courts office will probably issue letters requiring protesters to pay fines by a certain date or face further contempt of court action and possible jail time.

"I don't know how else you can enforce your court order," Jenkins said.

More WTI opponents accept plea agreement

By JAY BROOKES
Journal Staff Writer

EAST LIVERPOOL — Two more groups of protesters against Waste Technologies Industries accepted a plea bargain agreement in Municipal Court yesterday.

The 14 protesters — representing medical professionals and labor unions — pleaded no contest to charges of disorderly conduct in connection with demonstrations at the WTI plant last month. Each was fined $150, ordered to pay court costs and sentenced to 30 days in jail. The jail sentence was suspended, and each of the protesters was placed on one year's unsupervised probation.

Dr. Lester H. "Ted" Hill II also was charged with criminal mischief for placing a lock on WTI's main gate. He was given a consecutive fine of $150 and costs and a consecutive suspended 30-day jail sentence.

Disorderly conduct charges against all the protesters were dismissed.

The plea bargain agreement was the same one accepted by two other groups of protesters Tuesday.

The protesters have the option of serving one day in jail in lieu of the fine. Four of the protesters who accepted the agreement yesterday — Michael A. Walton of East Liverpool, Frank A. Kertesz Jr. of Georgetown, Pa., Billy E. Bradley and Deno D. Martini, both of Weirton — decided to spend a day in the county jail rather than pay the fine.

In addition, three of the protesters who accepted the agreement Tuesday — Virgil Reynolds, Ralph Bosco and Anthony Yanni, all of East Liverpool — reported to the county jail yesterday instead of paying the fine.

Two other groups of protesters — representing teachers and small business — are expected to accept a similar plea bargain agreement Friday. Elweyn C. Skinner of Toronto, who was charged with the labor union protesters and was unable to be in court yesterday, also is expected to accept the agreement then.

MORNING JOURNAL
East Liverpool, OH
December 17, 1992

MORNING JOURNAL
East Liverpool, OH
December 16, 1992

WTI backers target Gore in ad campaign

By EDNA L. JAKUBOWSKI
Journal Staff Writer

LISBON — Waste Technologies Industries' supporters are pulling out all the stops and spending a bundle on advertising in an attempt to change Vice President-elect Al Gore's stance on the East Liverpool incinerator.

Organizations supporting the hazardous waste plant spent more than $100,000 to run full-page display ads in local and national newspapers yesterday.

The ad was an open letter to President-elect Bill Clinton urging him to give hope to the area that has been plagued by financial hardship by supporting the incinerator.

Gore has appointed a Senate committee to investigate WTI.

It appeared in The New York Times, The Washington Post, The Arkansas Democrat, as well as the Morning Journal and the Evening Review. It was paid for by the East Liverpool Chamber of Commerce, the Progress Council, Tri-State EDGE, People for Progress, employees of WTI and Von Roll.

According to an employee in the advertising department of The Times the full-page ad cost roughly $50,576 and an employee at The Post said the ad cost $44,352.

The ad appeared in the front sections of both national papers.

WTI reportedly paid 20 percent of the cost.

(Continued on Page 2A)

WTI...

(Continued from Page 1A)

The ad asks Clinton to counter Gore's pledge that the new administration would block the incinerator's operation.

Gore, who in is Little Rock, Ark. with Clinton at an economic summit, saw the ad, according to his spokesman, Marla Romash.

Romash said Gore staffers conducted a study on the incinerator and the impact of WTI after he visited the area.

The ad states no one from the new administration's staff contacted citizens or plant officials.

"After visiting he asked his staff to investigate. There was a very careful study looking at the impact in everyway," Romash said, adding that the ad did not tell Gore anything he didn't already know.

"We are aware of how people feel and we're sensitive to this," she added.

The idea originated with Dick Kelly who said the campaign was expensive and all the groups listed in the ad contributed.

Kelly believes many countians are in favor of the incinerator but just haven't been vocal.

While supporters were buying up space in major newspapers, others took to the airwaves to convince the public of WTI's merits.

County Commissioner William Gotschall spent about 30 minutes on a KDKA radio call-in show Monday evening, fielding questions from the audience. Gotschall said he was asked earlier in the day to participate in the Fred Hansberger show and he went on the air at 6:20 p.m.

Gotschall estimated he responded to 15 to 20 questions posed by Hansberger and callers during the half hour. Gotschall said Hansberger was amazed there were people actually supporting WTI because all you hear about are opponents.

KDKA is one of the most powerful radio stations in the country, capable of reaching more than two-thirds of the country and parts of Canada.

T HALL PAM + KATIE

TO: Vice President-Elect Albert Gore
EPA Administrator-Designee Carol M. Browner
EPA Transition Team

FROM: Hugh B. Kaufman Hugh

DATE: December 15, 1992

SUBJECT: Commercial Incineration of Hazardous Wastes: A Necessary EPA Policy.

INTRODUCTION:

The burning of hazardous wastes in cement kilns began in the 1970's. The amount of burning was very small and limited to clean, generally low chlorinated content, liquids. By the mid 1980's, with EPA's active encouragement and studied failure to regulate, the burning of hazardcus wastes in cement kilns began to increase very rapidly. At the present time, of all of the commercial, i.e. off-site, incineration of hazardous wastes in the United States, some 90% of the liquids and two thirds of liquids and solids are incinerated by cement kilns.[1] In the meantime, while public pressure forced some state agencies and EPA Regions to tighten the permitting and regulation of some incinerators, the pattern has been very uneven, as can be seen in the case of Waste Technology Industries (WTI). [See attached information from a citizen's grcup in Ohio concerned about cement kiln incineration.]

PROBLEM:

The public has seen the EPA as lowering standards and accepting a continuing level of violations in order to encourage the commercial incineration of hazardous wastes in cement kilns and specialized incinerators such as WTI. There is an apparent lack of uniform standards, fairly and consistently applied.[2] As can be seen from the attached Ohio information, given the WTI policy decision, the public will continue to perceive an uneven and unfair EPA policy in 1993 unless the new administration takes immediate action to spread the effect of the WTI decision to all commercial incineration.

POLICY IMPLICATION/RECOMMENDATION:

EPA must ***immediately level the regulatory and enforcement playing field*** for all commercial incineration, no matter in what device or location. Then, we must ***raise the level of the playing field*** for all commercial incineration of hazardous wastes. Are hazardous waste and cement kiln incinerators the best that they can be? No. The regulatory strategy has been to define some "safe" level using dubious computer models and animal studies and then allow pollution to that level. The public will not accept this approach. They must not be forced to accept this approach. Until all incineration is the best that it can be, the public response will be: "Do not burn in anyone's backyard."

Leveling and raising the regulatory playing field can be simply and quickly accomplished by immediately adopting the following permitting policy strategy:

No commercial hazardous waste incineration permit shall be issued or renewed unless the permittee, when requested by any member of the affected public, makes an affirmative showing that the permit contains provisions representing the best technology and the best management practices.[3]

SOME REAL WORLD EXAMPLES:

OHIO:

Attachment 1 is a comparison of the proposed WTI permit with the levels of contaminants allowed a cement kiln in the same state. Clearly, this is not a level playing field. The citizens see the tighter restriction burner being stopped, and rightfully so, while the cement kiln burners are allowed to go forward.

FLORIDA:

Solite is a BIF burner. Its wet scrubber sludge was exempted from regulation under EPA's interpretation of the Bevill amendment. Due to a quirk in a change in the Bevill rules, the wet sludge would have become a derived from hazardous waste, i.e. not excluded. Solite has now gone to dry gas cleaning and will dump the material on the ground or put it into its product. In the meantime a proposed incinerator, Florida First Processors (FFP), was issued a Notice of Intent to Deny by the Florida DER on 11 June 1991. The FFP incinerator proposed to dispose of all residuals by hazardous waste landfilling out of state.

While the EPA regulations call for a 0.08 gr/dscf particulate limit, FFP proposed a 0.01 limit and was rejected as "a demonstration is needed that the facility will utilize pollution control equipment that will abate or prevent pollution to the greatest degree practical."[4] FFP proposes to control mercury emissions by limiting its feed to 0.59 pounds per hour and adding lime and activated carbon to the baghouse to control the emissions to 0.0591 pounds per hour maximum. As a comparison, 40 CFR 266 Appendix I of the BIF rules allows a cement kiln in non-complex terrain with an effective stack height of 120 meters in an urban area, to emit 6,000 grams of mercury per hour. This is 13.2 pounds per hour, over 200 times the amount proposed by FFP, or an astounding 115,000 pounds per year in an urban area. ***This EPA allowed amount of mercury emissions is over three times the total amount released per year in Ohio, the top mercury emitter of all of the states.*** The BIF values are even higher for rural areas. It should be noted that mercury contamination of streams and rivers in rural Arkansas is a newly documented environmental problem.

TEXAS:

The Texas Air Control Board has assembled a group to assess cement kiln incineration policy. A grassroots group, Texans United, made a presentation to the Task Force on Cement Kiln Incineration of Hazardous Waste on 20 November 1992. It is instructive as it defines the problems and issues resulting from EPA's failure to effectively regulate commercial incineration. The first part of the full presentation is attached, excerpts follow:

The point of view of this briefing book is that any disposal of hazardous wastes must be done only under the most conservative of circumstances. The location, equipment and justification used for the establishment of any facility that will routinely collect, store and handle tons of society's most serious poisons must be judiciously considered. We should especially use this kind of strict process for the assessment of toxics-burning cement plants, since they were created by a lack of regulation, not a deliberate policy choice on the part of the state.

First and foremost among the questions for any waste facility is "Do we need it?" A conservative approach demands ***that disposal take place at the fewest number of facility sites adequate to meet the needs of a locality or state.*** *Any contamination at disposal sites - accidental or routine - should be kept to a minimum by limiting the number of communities exposed to the risks inherent in the hazardous waste business to begin with. This examination of need for the facility is the first line of defense against unnecessary threats to the public health and the environment.*

It is clear from all available evidence that the proliferation of toxics-burning cement plants violates this first rule of thumb to "show need". According to state and federal projections, Texas, and the nation as a whole has more than enough disposal capacity for liquid wastes in existing fully-licensed commercial incinerators to adequately meet the needs of industry without having to resort to toxics-burning cement plants.... Because Texas cement plants represent so much excess disposal capacity, they actually act as a magnet for out-of-state wastes. They become a detriment to pollution prevention goals. They unnecessarily expose communities to the risk of contamination....

Secondly, a conservative approach to hazardous waste disposal demands that we use only those facilities which achieve and sustain the best possible technological standards. This is especially true for waste incineration, which has the potential to leave widespread harm in its wake. The consequences of incomplete burns and inadequate air pollution control can be disastrous to a *surrounding communities....*

Our policy recommendation is:

"Commercial incineration of hazardous wastes in Texas should be done only at facilities that meet the best, achievable technological standards. Currently, cement kilns do not meet such standards."

"If cement kiln incineration of hazardous wastes is ever considered necessary for the adequate disposal of Texas-generated wastes, facilities should be held to these strict standards across the board, including air pollution control, solid waste disposal and cement product labeling."

Finally, criteria for a conservative approach to hazardous waste disposal would have to also include the goal of siting disposal facilities in locations that would best minimize risks of contamination to public health and the environment. Even at the best "state-of-the-art" sites, there are problems with routine releases and accidents....converting a cement plant to burn hazardous wastes preempts all of these considerations because the site is already chosen.

Our policy recommendation is:

"Since they were not originally designed as hazardous waste disposal sites, cement plants have not traditionally been located to best minimize risks to public health and the environment from disposal activity. Moreover, because of the source of raw material, cement plants are sometimes concentrated close together, creating clusters of potential disposal sites based on geology, not environmental impact. Texas should prohibit the incineration of hazardous wastes at cement plants that have not planned from the beginning as hazardous waste disposal sites."

The contents of this briefing book are outlined along these three policy issues: Need, Equity in Standards and Siting, We think they are the central issues of the debate. If these are addressed honestly, Texans United believes that you will agree with us that cement kiln incineration of hazardous wastes is a disposal option that does not serve the interests of the state of Texas, her natural resources or her people.

Enough said.

ATTACHMENTS:

1. Memo from Bruce Cornett, Greene Environmental Coalition to Hugh Kaufman, December 15, 1992.

2. Citizen's Briefing Book on Cement Kiln Incineration of Hazardous Wastes in Texas, Prepared for the Texas Air Control Board's Policy Task Force on Cement Kiln Incineration by Texans United, November 20, 1992.

FOOTNOTES:

1. Kohel, S.: Quoted in Smith, J.D. and Strand, B.: *Cement and Lightweight Aggregate Kilns 1992*; EI Digest; August 1992, p. 26.

2. Enforcement is very uneven, even with the weak BIF rules. EPA Region IV has proposed very large fines on some cement kilns burning hazardous wastes. Indeed, the practices, if proved should result in the lifting of Interim Status and shut down. Meanwhile, cement kilns in Region V and VII, owned by the same companies and apparently engaged in the same practices are not even issued NOVs.

3. For example, best management practices would include round-the-clock inspectors paid for by the permittee but working for the state or EPA and telemetering of emission levels to the regulatory agency and the public. Best simply means that. The concept is that the most rigorous permit conditions should eventually apply to all burners. The existing regulatory scheme under RCRA simply becomes the base if no affected citizen demands better.

4. Another reason for denying the proposed permit was that "[t]he applicant has failed to provide the signature of the landowner on the application as required by 40 CFR 270.10...."

ATTACHMENT 1

- Memorandum -

Date:	Dec. 15, 1992
To:	Hugh Kaufman, EPA Washington, DC.
From:	Bruce Cornett, for the Greene Environmental Coalition
Subject:	Your requests regarding Hazardous Waste Incineration in Ohio.

As you know the WTI incinerator at East Liverpool is not the primary hazardous waste disposal option in Ohio. While the problems associated with this facility are extreme, there are two other major facilities in Ohio already burning. These are the cement kilns operated by Ohio's own Systech and Texas based Southdown. Southdown operates in Fairborn and Systech in Paulding, Ohio. Both kilns are currently operating without the benefit of full RCRA permitting, and are currently in the process of expanding their operations. Southdown is requesting 50% hazardous waste substitution for a total of 81,000 Tons annually (about a 500,000 pounds every day). The Paulding facility is proposing a 100% hazardous waste substitution (they may already be burning at 100%).

Both kilns do not have the strict RCRA permits required under Ohio Revised Code. Ohio EPA has failed to require compliance with the law as written by our General Assembly. We have had to sue in Common Pleas Court in order to prod Ohio EPA into applying the stringent Ohio rules to these two facilities (Greene Environmental Coalition, Ohio Environmental Council, and the Village of Yellow Springs jointly sued Southdown for operating without the Permits required by Ohio law. The judge ruled in our favor, but nonetheless sent us back to Ohio EPA for implementation.) In addition, Ohio EPA has repeatedly ignored severe violations by Southdown. As you know, I have kept several complaints before Ohio EPA regarding violations of the Hazardous Waste Manifest rules, and related issues on their Air and RCRA permits. These violations are clear and substantiated, yet the director chooses not to take action.

The most serious problem we face is the lack of equity between cement kilns as incinerators and licensed hazardous waste incinerators. Many of the problems are too technical for this brief memo, but some are obvious. These include the lack of identical emission limits, in particular CO and THC. The exemption of the ash (cement kiln dust) from proper disposal. This is particularly frightening, given the evidence that CKD concentrates the metals, dioxins, and radioactive principals of the waste stream. In may places this material is being used as farm fertilizer, or mixed with sewage sludge to produce agricultural products. Here in Fairborn, the CKD has simply been dumped in abandoned quarries. (It should be noted that this company reportedly is now storing its CKD in abandoned silos, rather than dumping it.)

Comparing WTI and Southdown's kiln in Fairborn we find a few differences.

	WTI	Southdown
Rigid emission controls:	YES	NO (BIF standards)
Proper disposal of Ash byproduct	YES	NO (dumped on quarry)
Proper employee training	YES	NO (1 chemist on staff)
Proper analysis of waste stream	YES	NO (generator dependent)
Afterburner for emission control	YES	NO (baghouse)
Engineered for proper combustion	YES	NO (reducing environment)
Annual tonnage (note WTI first unit)	60,000	81,000
Annual emissions (criteria pollutants)	Lowest	Highest (higher in all but lead)

→ The greatest problem in making a comparison like this is that it makes the WTI facility look good. Nothing could be further from the truth. The problems associated with the WTI facility are well known. Problems with cement kilns are less obvious. People still are not properly educated, because of the extensive PR campaigns to call this toxic waste "alternative fuel". The truth is that this cement kiln is a hazardous waste incinerator without the benefit of full and stringent regulation. It burns the same chemicals that WTI proposes to burn, and it burns more. It has been burning for years without the proper safeguards in place. No one will ever know the damge already done. ←

Today, in East Liverpool 16 of my friends went to jail. The judge said it was contempt of court. What sort of contempt does Southdown show the court when it starts burning days after a judge hands down a decision saying they are subject the Ohio's most stringent permitting process, and that they do not have the appropriate permits. Is it contempt is it when Southdown conceals studies that clearly document contamination of our water supply from their CKD disposal sites. Is it contempt when Southdown ignores orders to clean up these dumps (obtained only after legal action on our part).

Why has it become necessary for us to force the courts to enforce the laws that protect of homes and families? Why am I working on this tonight rather than preparing for my job presentation tomorrow (I have to make a living)? Why are my friends at various city council meetings tonight, petitioning for intervention to stop this dangerous practice, instead of being with their families?

December 9, 1992

ISSUE PAPER ON WASTE TECHNOLOGIES INDUSTRIES (WTI)

BACKGROUND

The Waste Technologies Industries* (WTI) hazardous waste treatment facility is located in the Tri-State area of Ohio in East Liverpool, Ohio. The facility is situated on approximately twenty-two acres within a 45 acre industrial zone and is bordered by the Ohio River. Residential neighborhoods and an elementary school are located nearby. The facility directly employs 104 people in East Liverpool with additional jobs stemming indirectly from the facility. The WTI facility represents an investment of $170 million.

WTI is the holder of a valid and enforceable Federal RCRA permit. At present the only remaining conditions that must be met are those specified in the permit including an <u>approved</u> Trial Burn plan. Under RCRA, if a facility meets all its permit conditions, it is legally entitled to operate. Except for the approval of the trial burn plan, WTI has met all its permit conditions. (see attached explanation of RCRA Permitting Process).

The WTI facility has undergone permitting procedures for over a decade, beginning in 1981 with the filing of the facility's permit application. The U.S. EPA issued a hazardous waste facility permit, pursuant to RCRA requirements, to WTI on June 24, 1983. At that time, Ohio EPA did not have an EPA-authorized state hazardous waste program. The Ohio Hazardous Waste Facility Board, the only state certifying agency at the time, issued a state hazardous waste permit to WTI on April 27, 1984. Both the EPA and Ohio permits were appealed. EPA's Administrator upheld the EPA permit in 1985, and the Ohio Supreme Court upheld the state permit. After the appeals were decided, facility construction was initiated. In addition, Ohio EPA has issued an air permit. These permits have been modified several

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* WTI was originally formed as a partnership of four corporations. Since then, the ownership of the corporate partners has changed, including apparently the purchase of three of the corporations by the fourth, Von Roll (Ohio), Inc. The other three corporations are now wholly owned subsidiaries of Von Roll. Nothwithstanding these changes in the ownership of WTI, WTI remains a general partnership and remains the owner of the facility.

times over the last eight years, including a February 3, 1992 U.S. EPA-approved modification allowing WTI to add additional pollution control equipment (a "spray dryer") to the facility.

Citizens concerned about the safety of the facility and incineration in general, have been very vocal about WTI. Local grassroots organizations and Greenpeace believe that EPA has illegally permitted this facility and that other procedural mistakes render the permit invalid. In addition, they are concerned that the facility's proximity (1100') to a local school will endanger the health of the students. EPA has worked very closely with the citizens throughout the permitting process. They have raised many procedural concerns which EPA has reviewed and responded to. EPA officials have personally visited the site and have met several times with leaders of the citizens groups. In addition, EPA has responded to a number of Congressional inquiries. There is also strong support for the facility in the East Liverpool area; however, the proponents are not as vocal (a press conference by proponents reportedly is scheduled for December 10).

MAJOR ISSUES

The facility's permit has been extensively scrutinized. In the last year, several issues surrounding the validity of the permit have been raised. The facility has been the subject of an EPA Inspector General (IG) Audit which examined a variety of issues raised by the citizens. Overall, the IG found no significant problems. He did recommend that EPA review issues related to the landowner named on the permit and issues related to the ownership and operational control of the facility.

The landowner, the Columbiana County Port Authority, did not sign the original permit application and was not listed as a permittee on the permit. EPA's Region 5 had attempted to correct the problem by modifying the permit to add the Port Authority at the same time it approved a modification to add a spray dryer to the facility. Seven petitions seeking administrative review of these modifications were received. They were ultimately consolidated and sent to EPA's Environmental Appeals Board (EAB) for review.**

The EAB rendered a decision on July 24, 1992 overturning, solely on procedural grounds, Region V's addition of the Port Authority to the permit as a co-permittee. They also determined that such an error would not render the permit invalid, but recommended that the permit be modified to include the Port Authority.

** Pending the EAB's decision, Region 5 granted WTI a Temporary Authorization to operate. Because of great public concern, WTI agreed not to begin operation until the EAB rendered their decision.

Before the Agency could take any further action on the matter, WTI purchased the property from the Port Authority, rendering the landowner issue moot. Regarding the addition of the "spray dryer," the EAB upheld the modification because of its added protectiveness.

The second issue involved a change in operational control pursuant to a 1990 Operating Contract, whereby Von Roll (OHIO), Inc.--an owner of WTI--became responsible for the day to day operation of the facility. The Agency was not aware of the existence of this contract until it was raised by citizens at a May 1992 Congressional Hearing. As a result, U.S. EPA requested that WTI modify its permit to add Von Roll (OHIO), Inc. as an additional operator. Although, under EPA regulations, this kind of modification does not require public comment, EPA initiated a 30 day public comment period to keep the public involved in the process. The 30 day public comment period on the proposed modification closed on November 2, 1992. EPA Region 5 is currently preparing a written response to all comments.

The third issue related to the facility's permit was whether the ownership of the facility had changed as a result of changes in WTI's corporate partners. In July 1992, Region 5 sent an exhaustive RCRA section 3007 Information Request to WTI. After extensive review of the response and several meetings with both the public and WTI, staff in the Office of Regional Counsel (ORC) and the Office of General Counsel (OGC) issued a joint memo analyzing the ownership and operational control issues. ORC and OGC staff reached the conclusion that although the corporate partners had changed, these changes did not constitute a change of ownership under RCRA.

On April 21, 1992, The Attorney General's Office of West Virginia (AG) filed a lawsuit against WTI, U.S. EPA, and Ohio EPA asserting claims under certain environmental statutes, regulations and common law. In August, the AG filed a motion for a Preliminary Injunction and a Temporary Restraining Order (TRO). In addition, various parties, including the City of Pittsburgh filed Motions to Intervene.

At a September 1, 1992 Hearing on the TRO WTI agreed to give seven days notice to all the parties before accepting hazardous waste. At that time, the Judge scheduled a hearing on the Preliminary Injunction for October 13th. On September 30th, 1992 Region V gave WTI the final go ahead to begin accepting hazardous waste. Region V also added additional emissions limits to the permit for shakedown because of the public's concern.

On October 8, 1992 the Judge dismissed defendants U.S. EPA and Ohio EPA. The next day, WTI gave its seven days notice to all parties that it would begin accepting hazardous waste. The Judge held a four day hearing starting on October 13th. At the hearing, WTI agreed not to accept any hazardous waste until the Judge ruled. The Judge heard from all parties and issued a decision on November 12, 1992 in favor of WTI, and declining to enjoin operation of the WTI incinerator.

WTI began bringing hazardous waste on site on Friday, November 13, 1992.

CURRENT STATUS

The facility has begun its shakedown phase, which allows it to establish operating conditions prior to a Trial Burn. Although WTI is allowed to burn limited amounts of hazardous waste, it has not done so yet because of minor repairs to an operating fan. Burning of hazardous waste may begin by December 10, 1992. A representative from Ohio EPA and U.S. EPA will be at the facility throughout the shakedown phase.

The shakedown phase will be followed by a Trial Burn. EPA Region 5 and Ohio EPA must approve a Trial Burn plan before WTI can proceed. ~~The plan is very close to being approved.~~ The Trial Burn will occur for approximately six weeks and then WTI can begin limited commercial operation.

Because of the citizens concerns about air emissions and the facility's proximity to the school, EPA's Region 5 has undertaken an extensive risk assessment which is not required under RCRA. The first phase of the risk assessment included local meteorological data and data from other incinerators similar to WTI. The Trial Burn will provide essential data for the final phase of the risk assessment. If the risk assessment suggests that the facility endangers human health or the environment and that a permit modification is needed to address the danger, EPA can modify the permit to include needed conditions. Analysis and completion of the risk assessment will take approximately four months.

Please contact Rich Guimond at 260-4610 for further information.

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Attachment
RCRA Permitting Background

RCRA Permitting Process

Under the Resource Conservation and Recovery Act (RCRA), EPA is responsible for issuing Federal RCRA permits for hazardous waste incinerators. States can also operate hazardous waste programs and issue State incinerator permits. EPA regulations allow a State to receive Agency approval to operate its own hazardous waste program and issue permits in place of the Federal RCRA program.

Federal regulations (40 CFR 124 and 270) define RCRA permitting procedures and the public's right to appeal permit decision. After EPA receives and reviews and application, EPA either issues a draft permit or denies the application. EPA announces all draft permits for public comment and must respond to the comments before it issues a final permit. The final permit becomes effective 30 days after issuance, unless the EPA Administrator receives a petition for appeal. When EPA receives an appeal, the Administrator either grants or denies the appeal. If denied, the conditions of the permit become final. If granted, the applicant cannot operate until EPA resolves the appeal.

Modification or Revocation and Reissuance

At any time, EPA can either modify or revoke and reissue existing RCRA permits. When EPA modifies a permit, only the modified permit conditions are opened for public comment. However, when EPA revokes and reissues a permit, the entire permit is reopened.

EPA regulations show three classes of permit modification - 1, 2 and 3. Class 1 are minor or routine changes to the facility or its operations that only require the permittee to notify the public. Classes 2 and 3 are more significant changes to the facility. They require public meetings and the public can appeal the modifications. While an appeal is in process, EPA can, under certain circumstances, allow a permittee temporary authorization to implement the modification as if it had been granted.

Trial Burn

A trial burn allows EPA to collect and examine data to determine whether the incinerator meets the Agency's performance standards. Prior to beginning a trial burn, a permittee must submit a trial burn plan to EPA. The plan includes an analysis of wastes to be burned, an engineering description of the incinerator, a description of sampling and monitoring procedures, the test schedule, and test procedures. The permittee cannot begin the trial burn until EPA approves the trial burn plan. After EPA reviews the results of the trial burn, EPA can modify the permit's operating conditions, to ensure that the incinerator is meeting EPA's incinerator performance standards.

973-1256

→ Nancy-Ellen Zusman
Region V

→ Ohio EPA
Paul Anderson

TRO as early as tomorrow,
assure court that prior
statement [illegible]

→ affidavit from Gov
or staff that would
be in charge.

EPA would review basis
for emergency - request
initiation of hear adm

[illegible] [illegible]

→ GAO should definitely be talked to by GAO

- who is liable? all assets are offshore. $6 million in bond.

Supposed 1000 share - 900 are not accounted for.

ownership
Had port authority known about facility

99.99% do not
major pollutants we regulate.

1987 - USEPA wrote ltr to Ohio EPA
↓
1991 communication. No change in operation
get list

→ Class III modif - air emissions.
CAA - after Council meeting.

→ $39 million. state of Arizona.
US. gov't

Lead / mercury US EPA
1st phase of risk asses.
~~higher than~~ exceeded reg. stand.

award could get CW permit.
other possibility.
Task III modification.

is temporary operating permit

EPA why discretionary decision?
Constately why least
get correspondence b/w WTI / EPA

EPA can conduct shakedown
TRO denied waste on site
720 hr. of burning can cost
for more.
trial burn plan approved.

→ TRO consent agreement.
held up trial burn.
2wk burn results to send to
lab to say thing is safe.
shakedown / trial burn independ.
trial burn plan can be approved.
Post trial burn operation
Final operation.

EPA will [illegible] if ~~ca~~ delay

Kaufman will know independent
by shakedown / trial burn.

Metzenbaum called him.

~~A~~ autopsie ~~of~~ test burn plan
call Region V

has Blake Marshall?

Zmosna:

Would glean shift priorities.

Monitor area over long term

ASAP [redacted]

4-6 ASAP

Kati

3 million studied
mill clean up own site, not
orphan sites.

16 million / 30 yrs to solve
Cadillac park property.
Kysor, City, Lumber,
Utility PhPPLA power purchase
argreement 24 mgw

58 mil loan
300 jobs.
tax base 1.2 mil

Ellen - asst.

Von Roll, Inc? What is role with
VRA & Von Roll Ohio

V.R.I
↓
NJ Steel
↓
AJ Ross logistics.

CRIMINA

guinard Train DA
cc meetings
Clay
Kanata

Region V
Adamkus
Ulrich - deputy.

---

1) Land ownership
Who owns land.

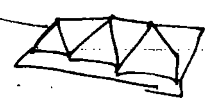
ESA
RCRA
CWA
Superfund

- Member Briefing Book
LAWS - 1st 5
pages - abstract.
dates.

- Rich Hoppe -

Kim Harris - Jim Trout
Greg Sheelin - Applegate
Metzenbaum : Johnathan Farber
Glenn - Susan Caranahan:
glenn has not

3rd + M SE
Bldg 159
20599



Sierra - mellior
editors want interviews.

- 1) Carol Browner - Tall. or
3 names for positions LR
cluster group. Barbara Chow
→ Russ Sheay policy Greg Wetstone
→ Personnel: Bonnie Casper-Winston EPA.

→ Motion to reconsider

- devastating to young people,
elderly dioxin, furan, mercury
lead. Immune system.

→ USEPA - Region 5 - Chicago
came out w/ prelim risk
V assessment. Final assessment - 1993
WTI -

→ specific solely to WTI in East
Liverpool - came out during hrg.
Weather info wasn't from E. Liverpool
-checking weather at site. Site
weather information.

USEPA - Status memorandum
dioxin more dangerous than thought.

→

→ our evidence dangerous to health vs. USEPA sided with WTI. Spent $ building incinerator. Deference to USEPA - been politized.

→ can start up. shake down burn, test burn. That info. is going to USEPA - will be used in final risk assessm

Dismissed from jurisdictional evidence standpoint. Didn't belong USEPA.

p

— Kennelly Dec 8
- Earth Prize
Klaus Nobel - United Earth

Amway:
Robin claudia Dibel Spiritual
Pop. crisis committee global -
- - — Paulina

* Nancy Pelosi

PHOTOCOPY
PRESERVATION

Logan
913 782
9293

542-2115

ALTERED doc

Under what authority EPA or permit applicants to white out the date permit begins; date permit ends after permit has been signed. Who whited out the date? Who replaced the original signature page. On what authority was replacement done. What criminal statutes applied to altering sign page?

No value. Provide copies of law statutes regulation; docs.

No analysis.

DON CLAY.

In Dec 24 1992 ltr to Marshall re trial burn. Arkansas asks for more complete explanation of VRI. list names of all cos owned by VRI and subsidiaries of VRI.

perform NCIC 3/ Nexus names of
past/present officers owned by
VR, Inc; subsidiaries where
allegations of involvement w/
organized crime. Request from FBI
whether any co. owned by VR, I
are under investigation for organized
officials, subsidiaries.?
Provide all documentation.?

Authority to ask AG
since GAO validates allegation
' GAO 18 US Code 1001 on alt. doc.
ask AG to open criminal invest.

only ask
Criminal investigation.
AG to get GAO coop.

Illegal permit.
Kimball Nebraska - seel to
Amoco going to built incineator.
lending institution will hire
investigate Private. under RCRA.
Private sector regulation of
EPA laws. Superfund before
banks / realtors buy land.
Not 5000 in EPA inspectors.

Land Ownership. 5 or 6 on

March 4 77

July 30 79. Ohio Dept of Transp. not on permit.

May 15 81

Aug 18 81 lease agreement not binding on ODOT.

Sept 4 81.

June 17 83 → Skinner memo?

June 24 83 - issue permit.

dec. 2 1991 - ltr to Rockefeller.

1) Muno's statement
2) Rockefeller letter.
3) Skinner memo
4) precedent are proofs that landowner was not WTI

1). Who owns land under Ohio law and for what periods of time

What Ohio Statutes involved

Was eminent domain legal? Lease option signed of commercial purposes COE said not for haz waste.

11. River Services Co → deeds for transaction chronology
OTDOT
URA, Inc
that ownership has

Provide copy of all relevant statutes / documents.

Ownership of facility.

Does?
→ What authority EPA has to issue negotiable financial instruments?

→ Under what authority does EPA have to waive the requirement of a minimum 90 day pre notification / approval in owner or operator. →

→ Forbes mag article.
WV case Marshall was brought in to negotiate the sale of permit.
identify who sold permit to whom!
for what benefit, priority. Ask for copy of all contracts related to sale of the permit

→ See 3007 – July 7 EPA asked for all names

Sept 1992 - EPA got all stock certificates of board of directors meetings named on stock certificates inc. VR&I Inc. where approval was give to purchase/sell stock & where there was a decision of how much stock to be issued. Dunn & Bradstreet on assets & liabilities.

Dec 3 1987 - Copy of application assessment of names of business entities that applied for application.

May 7 1992

1). if WTI and/or VR Ohio Inc notified EPA prior to hearing of change of operation control vis a vis contract of Sept 21 1990.

→ when was permit modified to show Von Roll Ohio Inc as managing partner & Von Roll Ohio Inc as owner? As evidenced by Sept 21 1990 contract.

Dan Quayle

M's 21 All telephone logs, messages, memoranda b/w M. Marshall; WT; and from WH or EPA and WH, Von Roll; CA subsequent to that letter.

June 10 1992

WH meeting. Names of all individuals at meeting. Telephone b/w participants at meeting appointment calendars, telephone logs, notes. Since then w/ WT, VRA.

~~July 9 - Who is at mtg?~~

Aug 2 1992 - $1000 plate lunch. Nobody can afford dinner.

Sponsors all $1000 plate. Date when lunch setup, organizers, affiliations donors date of when set up.

December 15, 1992

WASTE TECHNOLOGIES INDUSTRIES
East Liverpool, Ohio

I. Initial Permit Process 1981-1986

A. Partnership Formation

Waste Technologies Industries ("WTI"), a general partnership made up of four corporate partners, applied for a Resource Conservation and Recovery Act ("RCRA") permit in 1981 to operate a commercial hazardous waste incinerator in East Liverpool, Ohio (the "Facility").

B. Landowner Issue

At the time WTI applied for a permit, it was leasing the land from the Columbiana County Port Authority (the "Port Authority"), owner of the land. WTI named itself as the owner and operator of the Facility on its permit application. In 1983, EPA issued a permit to WTI as sole permittee, knowing that the Port Authority was the landowner. In the early 1980's, EPA did not consistently identify landowners as permittees of RCRA facilities.

C. Federal Permit

In 1983, Region V issued a permit to WTI to operate the Facility. The federal permit was appealed to the EPA Administrator, who remanded it to Region V to reopen the public comment period for the State of West Virginia. The Facility sits on the banks of the Ohio River, bordering both West Virginia and Pennsylvania. The EPA Administrator upheld the federal permit which became effective in January 1985 for 10 years.

D. State Permit

Because the State of Ohio was not authorized under RCRA at the time, Ohio issued its own permit for the facility in 1984. The Ohio permit was appealed on numerous grounds, including the siting of the Facility. The Facility is within 1100 feet of a school. After the permit was issued, Ohio changed its siting criteria to restrict hazardous waste facilities from being located within 2000 feet of a school. This newer rule was in effect at the time WTI began construction. However, State law exempted already existing facilities and provided the Ohio's Hazardous Waste Facility Board with the discretion to override the restriction, where facilities provided no adverse risks. Ohio has maintained that even if the regulation effected WTI, the facility would still be sited there today, because it poses no adverse risk.

In 1986, the Ohio permit and the siting of the facility were upheld by the Ohio Supreme Court. Primary responsibility for siting decisions rests with the states. The only relevant federal location requirement for this facility is a prohibition against siting within the 100-year flood plain. However, RCRA provides that if a facility can meet certain engineering requirements, this prohibition is lifted. The federal permit specifically addresses this issue. When the federal permit is up for renewal in January of 1995, the entire permit will become Ohio's responsibility, because Ohio now has an authorized RCRA program.

II. Financing and Internal Changes 1986-1989

At the time WTI applied for its permit, each partner was owned by a different corporation. RCRA does not require partnerships that are permittees to list its partners or shareholders. Since 1981, two of the partners have changed, as have the shareholders of three of the corporate partners, and one of the partners has changed its name. Currently, all four corporate partners are owned by Von Roll (America), Inc., which is owned in turn by Von Roll, Inc., a Swiss based corporation. Due to financing troubles, WTI did not begin constructing the facility until 1990.

III. Construction of Facility 1990-1992

Most of the construction of the Facility was completed in 1990 and 1991. One change to the original plan was the addition of a spray dryer to improve the quality of air emissions. In December 1991, Ohio approved the spray dryer. As soon as it received Ohio's approval for the spray dryer, WTI began building the spray dryer unit. However, because EPA had not yet approved the spray dryer, the Region took an enforcement action in January 1992, against WTI and ordered a halt to construction. WTI complied and settled the action three weeks later by signing an agreement and paying $129,000 fine.

IV. Permit Modifications 1991-1992

A. Spray Dryer Modification

In 1990, WTI applied for a permit modification to add a spray dryer to its pollution control equipment. In response to public concern, Region V treated the request as a Class 3 modification, to allow for full public participation. In September 1991, EPA and Ohio attempted to hold a public meeting and a public hearing. The meeting was boycotted and the hearing was shut down by protesters. On February 3, 1992, Region V approved the Class 3 modification to add the spray dryer.

B. Landowner Issue

Region V also modified the permit in February 1992, to add the Port Authority as a permittee through the Class 1 modification procedures, which apply to changes of ownership.

C. Petitions for Review and Temporary Authorization

Seven petitions for review were filed on the modifications, six on the spray dryer and one on the Port Authority issue. The petitions for review effectively stayed the modifications pending a decision from the Environmental Appeals Board ("EAB"). WTI then requested a "temporary authorization" in March 1992, to operate the spray dryer pending the EAB decision. On July 9, 1992, EPA issued a limited temporary authorization, finding that the incinerator with the spray dryer was more protective than the incinerator without it.

On July 24, 1992, the EAB upheld the spray dryer modification, but remanded the Port Authority modification to the Region for further action. The EAB agreed that the Port Authority should be identified as a permittee, but stated that the mechanism employed by the Region was inappropriate. Before the Agency could take further action on this matter, WTI purchased the property from the Port Authority, rendering the landowner issue moot.

V. Owner/Operator Issues 1992

A. Congressional Hearing

On May 7, 1992, Region V staff appeared before a Congressional subcommittee along with WTI and opponents of the facility. At the hearing, a September 1990 Operating Contract was produced showing that Von Roll (OH), Inc. ("VRO"), the managing partner of WTI, was operating the Facility. Before the hearing, EPA had been unaware of the contract.

B. RCRA 3007 Request for Information

In July 1992, in response to citizen concerns, Region V issued a RCRA 3007 Request for Information on WTI's financial assurance information and ownership history. WTI was also the subject of an Inspector General ("IG") Audit, which was completed on July 15, 1992, finding that there had been no illegalities in the permitting process.

C. Review and Results

Staff from EPA's Office of Regional Counsel and Office of General Counsel prepared a joint memo (the "Memo") on the ownership and operational control issues, based on a review of WTI's 3007 response and meetings with both WTI and the citizens. The Memo reached the conclusion that although the corporate partners had changed, these changes did not constitute a change of ownership under RCRA. The Memo also concluded that there had been a change in operational control. WTI had previously requested the addition of VRO as an additional operator at the Facility as a Class 1 modification. RCRA regulations allow for changes of ownership and operational control with prior Agency approval as Class 1 modifications.

In September 1992, Region V inspected the facility, which was required under RCRA before WTI could accept hazardous waste, and resolved the outstanding issues of ownership and operational control. On September 30, 1992, WTI was given the go-ahead to begin accepting hazardous waste by EPA.

On October 2, 1992, Region V initiated a 30-day public comment period on the proposed addition of VRO to the permit and on the ownership issue. Also in October, Region V added further emissions limits to the permit for shakedown and formally responded to the IG Audit, which was closed out on November 25, 1992. EPA is currently reviewing comments on the ownership and operational control issues.

VI. Preliminary Risk Assessment 1992

Despite the fact that WTI had already conducted its own risk assessment in the early 1980's, citizens continued to raise concerns about health impacts. It has been the subject of much controversy due to its proximity to a local grade school and the fact that East Liverpool is in a river valley perceived by the citizens to be an area with frequent air inversions.

Therefore, Region V initiated an additional, independent risk assessment to be completed in two parts. The first part focused on inhalation as the principal pathway, and adequately modeled air inversions in the valley. In July 1992, the first phase was completed and found no threat to human health for even the maximum-exposed individual. The second, more detailed, phase is designed to incorporate a year's worth of site specific meteorological data and trial burn data. In addition, Region V met recently with the East Liverpool Health Department to discuss its proposal to initiate a health study of the citizens of East Liverpool.

VII. West Virginia Lawsuit

On April 21, 1992, the Attorney General's Office of West Virginia (the "AG") filed a lawsuit against WTI, EPA, and Ohio. Several Motions to Intervene were also filed by various citizens groups and the City of Pittsburgh. In August, the AG filed a motion for a Preliminary Injunction and a Temporary Restraining Order ("TRO"). WTI stipulated at the September 1, 1992, hearing to give seven days notice to all the parties to the court action before accepting any hazardous waste.

On October 8, 1992, the Judge dismissed defendants EPA and Ohio in the federal court action, concluding that there was no jurisdiction over the parties. WTI gave its seven days notice to the parties on October 9, 1992. On November 12, 1992, the Judge denied the Plaintiffs' request for a TRO and Preliminary Injunction, deferring to the Agency on many of the significant issues and relying on Region V's Risk Assessment. WTI began bringing hazardous waste on site on November 13, 1992.

VIII. Shakedown Burn/Trial Burn

WTI is permitted to accept and store hazardous waste, and to commercially incinerate if it completes successful shakedown and trial burns. It is currently conducting shakedown activities. Shakedown can proceed for up to 720 hours and involves limited operations to demonstrate the mechanical and electrical soundness of the equipment. EPA and Ohio are in the final stages of reviewing WTI's trial burn plan. Trial burns are required to demonstrate an incinerator's ability to comply with its permit under normal and worst-case conditions. While EPA and Ohio analyze trial burn results (which may take about 6 months), the law allows WTI to begin limited commercial incineration. Under RCRA regulations, there are no mechanisms to stay these activities, unless EPA takes an enforcement action for violations or action if there is evidence of an imminent threat to public health or the environment.

FACSIMILE COVER SHEET

EPA

U.S. Environmental Protection Agency

Office of Emergency and Remedial Response
Hazardous Site Control Division (5203G)
Washington, D.C. 20460

Date: 1.6.93 **Pages Transmitted (including cover)** 6

To: PAM

Region/Lab/Firm:

Fax #: (202) 228-2611 **Phone #:**

FROM: HUGH

Phone #: (703/603-8782

Comments: (1) ORIGINAL "WTI" PERMIT SIGNATURE PAGE
(2) FALSIFIED "WTI" PERMIT SIGNATURE PAG
(3) WATER-MAN COVER LETTER WITH "COVER STORY" TO HIDE FALSIFICATION
(4) ACTUAL WAY TO DO CLASS 1 MOD - DONE TO INCLUDE PORT AUTHORITY ON PERMIT (HOWEVER NO PUBLIC COMMENT 1ST), NOTICE ILLEGAL INCLUSION OF SURFACE IMPOUNDMENT AS A WASTE MGT. UNIT.

Transmitted from: Office of Emergency and Remedial Response
Hazardous Site Control Division
Crystal Gateway, 14th floor
Phone: (703)603-8800
Fax: (703)603-9100

(1)

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION V
HAZARDOUS WASTE MANAGEMENT PERMIT

Name of Permittee: Waste Technologies Industries

Facility Location: 1250 Saint George Street, East Liverpool, Ohio

EPA Identification Number: OHD980613541

Effective Date: July 24, 1983

Expiration Date: July 24, 1993

Authorized Activities

In reference to Waste Technologies Industries application for a hazardous waste management permit under the Solid Waste Disposal Act, Subtitle C, as amended (42 U.S.C., Section 6901, e.t. seq., commonly known as the Resource Conservation and Recovery Act or RCRA) and the administrative record, you are authorized to conduct at the above-named facility the following hazardous waste management activities:

X Storage
- X Container
- X Tank
- ~~Waste Pile~~
- ___ Surface Impoundment

X Treatment
- X Tank
- ___ Surface Impoundment
- X Incinerator
- ___ Other

___ Disposal
- ___ Injection Well
- ___ Landfill
- ___ Land Application
- ___ Ocean Disposal
- ___ Surface Impoundment

Applicable Regulations:

The conditions of this permit were developed in accordance with the applicable provisions of 40 CFR Part:

- X 261
- X 262
- X 264, Subpart A-E
- X 264, Subpart G
- X 264, Subpart H
- X 264, Subpart I
- X 264, Subpart J
- ___ 264, Subpart K
- ___ 264, Subpart L
- X 264, Subpart O
- X 270

that are effective as of June 24, 1983. You must operate in accordance with the terms and conditions (attachments I to X) to this permit. Attachment II is a list of the effective regulations and amendments of 261, 262, 264, 270, and 124.

Permit Approval:

This permit approval is based upon the administrative record which is maintained at the United States Environmental Protection Agency (U.S. EPA) Region V Office.

Issued this 24th day of June, 1983.

by [signature]
Valdas V. Adamkus
Regional Administrator

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION V
HAZARDOUS WASTE MANAGEMENT PERMIT

Name of Permittee: Waste Technologies Industries

Facility Location: 1250 Saint George Street, East Liverpool, Ohio

EPA Identification Number: OHD980613541

Effective Date: January 25, 1985

Expiration Date: January 25, 1995

Authorized Activities

In reference to Waste Technologies Industries application for a hazardous waste management permit under the Solid Waste Disposal Act, Subtitle C, as amended (42 U.S.C., Section 6901, e.t. seq., commonly known as the Resource Conservation and Recovery Act or RCRA) and the administrative record, you are authorized to conduct at the above-named facility the following hazardous waste management activities:

X Storage	X Treatment	___ Disposal
X Container	X Tank	___ Injection Well
X Tank	___ Surface Impoundment	___ Landfill
___ Waste Pile	X Incinerator	___ Land Application
___ Surface Impoundment	___ Other	___ Ocean Disposal
		___ Surface Impoundment

Applicable Regulations:

The conditions of this permit were developed in accordance with the applicable provisions of 40 CFR Part:

X 261	X 264, Subpart G	___ 264, Subpart K
X 262	X 264, Subpart H	___ 264, Subpart L
X 264, Subpart A-E	X 264, Subpart I	X 264, Subpart O
	X 264, Subpart J	X 270

that are effective as of June 24, 1983. You must operate in accordance with the terms and conditions (attachments I to X) to this permit. Attachment II is a list of the effective regulations and amendments of 261, 262, 264, 270, and 124.

Permit Approval:

This permit approval is based upon the administrative record which is maintained at the United States Environmental Protection Agency (U.S. EPA) Region V Office.

Issued this 24th day of JUNE, 1983.

by [signature]
Valdas V. Adamkus
Regional Administrator

(3)

3

LAW OFFICES
BRICKER & ECKLER
100 SOUTH THIRD STREET
COLUMBUS, OHIO 43215-4291

TELEPHONE (614) 227-2300
FAX (614) 227-2390

WRITER'S DIRECT DIAL NUMBER

(614) 227-2378

June 17, 1991

Ms. Thelma Codina
U.S. Environmental Protection
Agency, Region V
230 South Dearborn Street
Chicago, Illinois 60604

Re: Waste Technologies Industries

Dear Ms. Codina:

Enclosed please find a revised cover sheet for Waste Technologies Industries' Resource Conservation and Recovery Act permit (EPA Identification No. OHD 980613541). In compliance with Title 40, Section 270.42 of the Code of Federal Regulations, we previously notified your office of this revision on February 22, 1991 and sent notices of the modification to all persons on the facility mailing list on May 30, 1991. Therefore, we would appreciate your cooperation in replacing the original cover sheet with the one enclosed herein on the above-referenced permit.

Please feel free to contact me if you require any additional information concerning this matter.

Very truly yours,

Charles H. Waterman

Charles H. Waterman III

Enclosure

(4)

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION V
HAZARDOUS WASTE MANAGEMENT PERMIT

Name of Permittee: Waste Technologies Industries

Name of Permittee: Columbiana County Port Authority

Facility Location: 1250 Saint George Street, East Liverpool, Ohio

EPA Identification Number: OHD980613541

Effective Date: January 25, 1985

Expiration Date: January 25, 1995

Authorized Activities

In reference to Waste Technologies Industries application for a hazardous waste management permit under the Solid Waste Disposal Act, Subtitle C, as amended (42 U.S.C., Section 6901, e.t. seq., commonly known as the Resource Conservation and Recovery Act or RCRA) and the administrative record, you are authorized to conduct at the above-named facility the following hazardous waste management activities:

Storage	Treatment	Disposal
X Storage	X Treatment	__ Disposal
X Container	X Tank	__ Injection Well
X Tank	__ Surface Impoundment	__ Landfill
__ ~~Waste Pile~~	X Incinerator	__ Land Application
X Surface Impoundment	__ Other	__ Surface Impoundment

Applicable Regulations:

The conditions of this permit were developed in accordance with the applicable provisions of 40 CFR Part:

X 261	X 264, Subpart G	__ 264, Subpart K
X 262	X 264, Subpart H	__ 264, Subpart L
X 264, Subpart A-E	X 264, Subpart I	X 264, Subpart O
	X 264, Subpart J	X 270

that are effective as of January 25, 1985. You must operate in accordance with the terms and conditions (Attachments I to X) to this permit. Attachment II is a list of the effective regulations and amendments of 261, 262, 264, 270, and 124.

Permit Approval:

Hereinafter, wherever the word "permittee" or "Permittee" appears it refers to "Permittees" (Waste Technologies Industries and the Columbiana County Port Authority).

This permit approval is based upon the administrative record which is maintained at the United States Environmental Protection Agency (U.S. EPA), Region V Office.

Issued this 3rd day of February, 1992

by David A. Ullrich
David A. Ullrich, Director
Waste Management Division

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

November 12, 1992

OFFICE OF
SOLID WASTE AND EMERGENCY RESPONSE

TO: William Reilly, Administrator

FROM: Hugh B. Kaufman
Hazardous Site Control Division

SUBJECT: ACTION MEMORANDUM -- Request to Withdraw or Stay Weak and Dubious Regulations for Burning Hazardous Waste in Cement Kilns (a Practice Regulated by the Boiler and Industrial Furnace [BIF] Rules) and Concomitant Loss of Agency Credibility

Summary

As you are aware, today the overwhelming majority of hazardous waste that is incinerated off site in the United States is burned by commercial cement kilns.

An analysis of the Agency's patterns and practices in regulating this hazardous waste management activity during the past four years demonstrates that there are two major problems in the handling of hazardous waste incineration issues. First, the Agency has failed to create a level playing field for all incineration by favoring commercial incineration of hazardous wastes in cement kilns. Second, the Agency has generally favored incineration as a means of treating hazardous wastes without rigorous standards for the protection of the public health and the environment.

This wrongheaded policy has apparently been driven by a perceived, but spurious, need to provide capacity to burn hazardous wastes regulated by the Land Ban provisions of the Resource Conservation and Recovery Act (RCRA). (This perceived need flies in the face of the conclusion that there is a documented major overcapacity for incinerable material in the nation -- a conclusion reached this year by the National Governor's Association in its EPA-sponsored report.)

With the publication of additional so-called "technical," but nonetheless substantial, revisions to the BIF rules -- revisions that again favor the regulated industry, the public credibility of the Agency on this issue has sunk to a new low. See 57 Fed. Reg. at 38558ff (August 25, 1992). This is true because the Agency allowed absolutely no public input in developing the latest BIF rule

changes. Instead, repeated contacts by the Agency with the regulated industry while developing the rules extended over a one-year period. Thus, while the regulated industry's views were both solicited and incorporated, public input was limited to zero. During this regulatory-development process, the cement kiln hazardous waste incineration industry representatives threatened that if they were not allowed to continue to operate under the existing policy of loose regulatory standards, 25 percent of cement kiln hazardous waste incineration capacity would shut down, thereby creating an alleged [but bogus] capacity shortfall.

At best, the Agency's failure to create a level regulatory playing field for hazardous waste incineration with regulations that are protective of the public health and environment is bad public policy. At worst, it can be interpreted as a payoff to the politically-favored cement kiln hazardous waste incineration industry -- an industry that is driven by at least two leaders who also enjoy membership in President Bush's Team 100 by virtue of making major financial contributions. The Agency's continued practice of tailoring regulations to fit the cement kiln hazardous waste incineration industry with the industry's collaboration results in economic harm to other industries without a shred of genuine environmental and public health protection underpinning.

The Cleveland Plain Dealer noted in an editorial on October 18, 1992 (copy attached), that with regard to the Agency's handling of the WTI hazardous waste incinerator permit in East Liverpool, Ohio, " . . . public confidence in the integrity of governmental stewardship is again eroded."

The fault, Mr. Reilly, lies within the Agency. You can start restoring public credibility in the BIF rules and in the Agency by withdrawing the latest BIF amendments and by instructing the Inspector General to investigate the propriety of the entire BIF regulatory development process. This investigation should include, but not be limited to, contacts between the regulated industry and Office of Solid Waste's Combustion Section Chief Robert Holloway and his staff (including contacts Mr. Holloway may have had while traveling outside the United States), as well as contacts between the other EPA and government officials involved in the development and promulgation of these BIF rules and the regulated industry throughout the entire four years of the rules' development.

Background

On two prior occasions I have notified you of an Agency pattern and practice of accommodating the financial interests of the cement kiln hazardous waste incineration industry. In a memorandum to you dated December 7, 1990, I urged you to halt the Agency's bias in accommodating this special interest group that, before August 21, 1991, burned hazardous waste with nonexistent, or at best, loose regulation. Notwithstanding this situation being brought to your and the Agency's attention, the Office of Solid Waste and Emergency Response Assistant Administrator Don Clay approved the offending regulations with no substantive changes. The regulations were signed on December 31, 1990 and were finally published in the Federal Register February 21, 1991, giving the industry another six months (until August 1991) to burn hazardous wastes with no RCRA regulation.

I subsequently sent you a memorandum dated September 4, 1991 describing how the Agency's regulatory-development activities regarding cement kilns burning hazardous wastes had further degenerated. That memorandum alerted you to a sham interim status loophole issued in August 1991 and created in concert with the cement kiln hazardous waste incineration industry to benefit cement kilns that merely said they intended to burn hazardous waste. This new sham interim status loophole significantly expanded the number of cement kilns that potentially qualified for grandfathering under the interim status provisions of the regulations. Of the 56 cement kilns filing for interim status by August 21, 1991, 27 had not previously burned hazardous waste on a full commercial scale. In short, the Agency created a sham interim status loophole without stating any public health or environmental protection reason. Even more egregious, the result effectively disenfranchised the public by removing over half the cement kilns intending to burn hazardous wastes from the RCRA Part B permitting process. The effect of this was a sub rosa withdrawal of the public's right to review or comment on an important issue that will affect the public health and environment of their community. Many Regions were as upset by the offensive interim status loophole as the public and found ways to deny most applications from those kilns that merely said they "intended" to burn.

New Agency Actions Weakening RCRA Regulations for Burning Hazardous Wastes in Cement Kilns

Instead of closing the loopholes and expanding public participation in the permit-writing process, EPA is continuing to write new loopholes behind closed doors without public comment. The latest example is the so-called "technical clarification" to the BIF rule about carbon monoxide and hydrocarbon emission levels. This new loophole was published in the Federal Register on August 25, 1992.

Carbon monoxide is the single best on-line parameter for assuring organic chemical destruction and, thus, limiting the formation of chlorinated dioxins and dibenzofurans. The existing BIF and hazardous waste incinerator standards are weak in this regard -- 100 ppm on an hourly rolling average basis. Indeed, even the notorious Marine Shale Processors facility in Louisiana has to meet an 80 ppm, not to exceed one minute, standard -- 20 ppm more stringent than EPA presently requires.

The initial BIF regulations, published February 21, 1991, also contain a loophole allowing an alternate carbon monoxide standard. Under the alternate standard, the stack gas concentration of carbon monoxide may exceed the 100 ppm limit provided the stack gas concentrations of total hydrocarbons (THC) do not exceed 20 ppm. This first loophole is codified at 40 CFR 266.104. In the preamble to the regulations, the Agency says that it adopted this alternate standard because the cement industry and trade groups for the cement industry voiced strong opposition to the 100 ppm CO limits for cement kilns. See 56 Fed. Reg. at 7153ff (February 21, 1991). A review of the docket shows that these trade groups and industries include the Portland Cement Association, Southwestern Portland Cement Company, Solite Corporation, Lafarge Corporation, Giant Group, Ltd., Lehigh Portland Cement Company, Ash Grove Cement Company, and Cadence Chemical Resources, Inc.

The initial BIF rules also contain a second alternate or, in essence, a loophole to the loophole. If the kiln cannot meet the 20 ppm THC limit, EPA may establish a site-specific alternate THC limit on a case-by-case basis, if THC levels when burning hazardous wastes are not greater than when not burning hazardous wastes (the baseline level). This loophole to the loophole is codified at 40 CFR 266.104(f). In the preamble to the regulations, the Agency again explains that this baseline alternate was promulgated because many cement kilns were not able to meet the 20 ppm THC limit. According to the Agency, the baseline approach was proposed by commenters such as the Cement Kiln Recycling Coalition and Southdown, Inc.

On August 25, 1992, EPA published a third loophole to the carbon monoxide/THC standard. The third loophole amends the BIF rules by allowing the Agency to increase the baseline THC levels by a variability factor that will be determined on a case-by-case basis. The Agency further states that a variability factor of 10 ppm would be appropriate in most situations. In essence, the effect is to add 10 ppm THC to the baseline and in turn to the permit for cement kilns burning hazardous wastes, thus loosening environmental and public health protection requirements even further.

A review of the docket reveals that the third loophole was proposed as a result of a series of closed-door meetings and telephone calls beginning on October 30, 1991 and attended by Office of Solid Waste's Combustion Section Chief Robert Holloway and representatives of the Cement Kiln Recycling Coalition, including individuals from Systech, Ash Grove, Cadence Chemical, and Lafarge. Representatives from environmental groups and the public were <u>not</u> present. Indeed, they were not invited. According to documentation, at the clandestine meetings, the industry representatives told EPA that many cement kilns could not meet the alternate THC provisions of the BIF rules. The Agency was again threatened by the cement incineration industry that unless it could continue to burn according to current practices, the Agency would not be able to demonstrate capacity around the country to treat hazardous wastes as required by Congress. As noted above, this threat is entirely bogus.

The docket further reflects that the cement industry wanted the Agency to make this change quickly. Under the initial BIF rules, cement kilns burning hazardous wastes had until August 21, 1992 to submit Part B applications or request a case-by-case extension for compliance with the THC controls and receive approval for the extension in an agreement that includes a THC limit based on the baseline level. The options proposed by the industry for quick action on the third loophole included a stay of the existing regulations published February 21, 1991, followed by a fast-track rulemaking -- an interim final rule, a technical amendment, and an interim final technical amendment.

The Agency chose to proceed directly with a technical clarification (amendment), effective immediately upon promulgation, thereby <u>eliminating any opportunity for notice or public comment</u>. In so doing, the Agency pursued a much more favorable course than even that proposed by the cement kiln incineration industry. In effect, the regulated industry asked for an inch, and the Agency gave it a mile. The public sees such activity as blatant favoritism. Thus, the <u>public's trust in the Agency is further eroded</u> with respect to the Agency's protection of the public health and environment and with respect to the Agency's favoring politically-well-connected special interest groups.

Disenfranchising the Public

Once again, the Agency has improperly cut the public out of the decision-making process regarding issues that directly affect them. Instead of acting through a publicly-noticed final rule, the Agency made substantive changes to the THC emission level under the ruse of a "technical clarification." As a result, the public was effectively shut out of the permitting process and was disenfranchised of its right to comment on a substantial change in the permitting rules. The Agency's very small remaining store of credibility was, thus, given up to help the regulated industry at the expense of the public.

It is noteworthy that at least two of the companies promoting these additional loopholes -- Giant and Southdown -- have corporate executives who contributed at least $100,000 apiece to the Republican Party to join Team 100. Unfortunately, the less-well-heeled citizens who live near these sites did not have an equal opportunity to comment on the new loopholes or participate in the regulatory process before they took effect.

Action Request

I respectfully request that you exercise your authority and responsibility to protect the public health and environment by withdrawing, or in the alternative, staying the so-called "technical clarification" discussed above until the public is given an opportunity to comment on this substantive change to the THC emission standards.

I further request that you instruct the Inspector General to investigate the propriety of all discussions involving Mr. Holloway or members of his staff and the regulated industry throughout the four years of the BIF rules' development leading up to the August 25, 1992 "technical clarification." This would include, but not be limited to, ex parte communications Mr. Holloway may have had while on an extended trip outside the United States.

Attachment

cc: Mr. Habicht
Inspector General Martin
Mr. Clay
Mr. Guimond
Ms. Lowrance
Mr. Longest
Mr. Clifford
Mr. Nadeau

WTI
WASTE TECHNOLOGIES INDUSTRIES

TO: DISTRIBUTION

FROM: Julia Bircher, WTI Public Relations

DATE: 1-6-93

RE: WTI DAILY CLIPS

PAGES: 10 (INCLUDES COVER SHEET)

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*	Chuck Waterman, Bricker & Eckler	FAX: (614) 227-2390
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*	Bob Reincke, CWM	FAX: (708) 572-1891
*	Raymond Wayne, EPIC	FAX: (509) 754-0506
*	Kim Harris, Congressman Traficant	FAX: (202) 225-3719
*	Pam McElwee, Senator Gore's office	FAX: (202) 228-2611
*	Barry Direnfeld, Swidler & Berlin	FAX: (202) 944-4296

1250 Saint George Street, P. O. Box 1026, East Liverpool, Ohio 43920-6026
Telephone (216) 385-7337