

# How To Deal With Trouble



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Center for Health, Environment & Justice

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# Center for Health, Environment & Justice

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## Mentoring a Movement

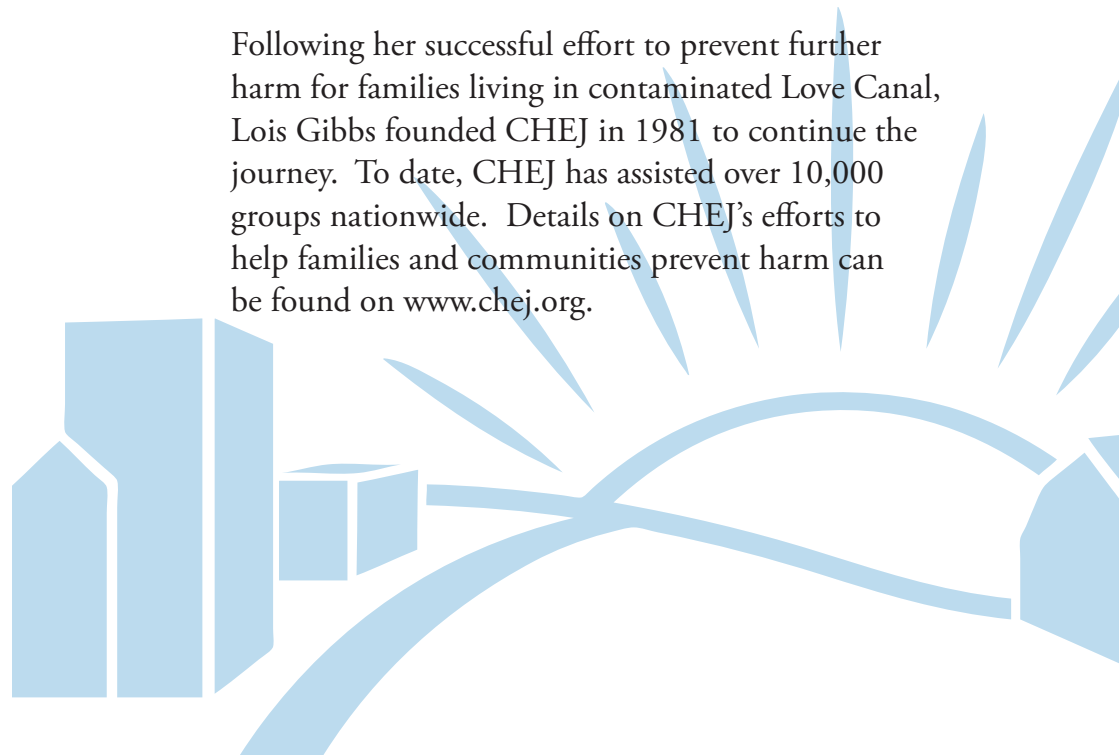
## Empowering People

## Preventing Harm

### **About the Center for Health, Environment & Justice**

CHEJ mentors the movement to build healthier communities by empowering people to prevent the harm caused by chemical and toxic threats. We accomplish our work by connecting local community groups to national initiatives and corporate campaigns. CHEJ works with communities to empower groups by providing the tools, strategic vision, and encouragement they need to advocate for human health and the prevention of harm.

Following her successful effort to prevent further harm for families living in contaminated Love Canal, Lois Gibbs founded CHEJ in 1981 to continue the journey. To date, CHEJ has assisted over 10,000 groups nationwide. Details on CHEJ's efforts to help families and communities prevent harm can be found on [www.chej.org](http://www.chej.org).



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# Chapter 1

## Introduction

Every serious fight raises serious questions: “Will we get into trouble?” or, “Can I get sued?” The honest answer to both questions is “YES” but the real question you should be asking is “How do we win our fight,” not “How do we hide from trouble?”

For many group leaders, the word “trouble” means different things. We all know life is full of trials and tribulations, as well as joys and successes. Normally, when a group leader contacts CHEJ to talk about trouble” it has these qualities.

- Something never experienced before;
- Something s/he feels s/he can’t handle, if it should arise
- Something that, of its nature, stirs up feelings of dread.

In this guidebook, we’ll address four different kinds of “trouble” that CHEJ’s members raised as concerns.

In **Chapter 2. Legal Trouble**, most commonly fears about being sued for libel or slander, but also your Constitutional rights to free speech, free association, and freedom to protest, without fear of arrest or harassment.

In **Chapter 3. Political Trouble**, particularly how to handle “backlash” when your actions are greeted by remarks labeling you a “radical”, “NIMBY” or more recently as an “environmental terrorist.”

In **Chapter 4. Physical Intimidation**, which covers issues ranging from what to do if you should happen to get anonymous phone threats to how real is the common fear of the Mafia (preview of this Chapter: not very real).

In **Chapter 5. Internal Trouble**, this goes into detail on how to prevent “buy-outs’ or “sell-outs” of key leaders as well as other sorts of internal trouble that can be “seeded” within your group by an opponent. The worst type of trouble you could get into is to LOSE by failing to act, failing to unite, failing to fight, for fear of what might happen.

Each section draws on real-life examples. We believe there’s no sort of trouble that can’t be either avoided or repaired AND, in either case, every sort of “trouble” is an opportunity in disguised! That is, every time you might run into trouble, there are ways to turn that problem into an opportunity. The main message of this guidebook is how to do that.

In the grassroots environmental movement, FEAR of trouble is more common (and sometimes worse) than ACTUAL trouble. However, you're not wrong or out of line to worry about trouble. Why? First of all, we know that your fight against toxic pollution is probably your first experience with being an "activist." Since you've never done it before, of course, you're going to wonder what you're getting into. Second, even people who've been fighting these types of fights worry, at least a little bit. Worry and fear can paralyze, but if you convert these fears into a good plan and that plan leads to effective action, then you've already learned the first point of this guidebook about turning negatives into positives! It was Franklin Roosevelt who coined the slogan, "We have nothing to fear but fear itself."

One of the easiest ways to avoid trouble is to hide, to do nothing. Many Americans choose this route and seem content to live in blissful ignorance. You're not like that, right? Otherwise, why would you be reading this book? We figure you plan to be an active fighter and want honest, practical tips on dealing with a fight you know you've got to take on. Well that's what you are going to get, so here we go!


Can you expect trouble in some form from your opponents? Sure you can, especially when you're winning and your opponent feels backed into a corner. So the amount of trouble you can expect is often in direct proportion to how good you're doing. It's a sign of your success! You might also run into trouble if you appear to be weak, or use weak tactics. This might tempt your opponent into thinking he can break your group through intimidation.

Can you be sued? In the United States of America, anybody can sue anybody for anything. Whether your enemy can win such a suit is a different question (and the answer is "NO in just about every instance). Will you be sued? The answer is probably "NO", again.

In the history of the grassroots environmental movement (beginning with Love Canal in 1978), the number of actual lawsuits against grassroots leaders is about a few dozen out of thousands of fights! That makes the odds of you actually being sued very, very low. You're more likely to be hit by a truck. Now, out of fear of being hit by a truck, you could hide in your home, but no reasonable person does that. Likewise, fear of being sued is no reason whatsoever to hide from taking action. Taking this example another step, the way most reasonable people deal with the chance of being hit by a truck is to look both ways before they cross the street. Likewise, convert your concerns about being sued into planning, which is similar to looking both ways.

There are lots of threats of lawsuits. In all but a handful of instances, these threats have been empty, done for no other reason than to scare grassroots leaders into backing off. In those few cases where leaders have actually been sued, we know of no situation where leaders ultimately got stuck with a libel or slander guilty verdict. The polluters don't really expect to win, even when they sue. They simply want to reduce or eliminate your willingness to fight them. You can further reduce your risk and turn these troubles into positives, by following the advice of this guidebook.

The best way to avoid unnecessary trouble or minimize damage your enemy can do is to BUILD A STRONG GROUP. A strong, united group is less likely to draw trouble – of all types—than a weak one. And, a strong, united group is more likely to come out of any crisis than a weak one. In fact a strong united group is likely to become even stronger and more united by crisis, by threats or attacks by the opponents. Your best insurance against trouble is organization and unity, just as the surest way to get into trouble is to play "Lone Ranger" by going off, all by yourself.



## Chapter 2

# Legal Trouble

The most common legal fear expressed to CHEJ is that of suits by an opponent for libel or slander. Here's what these terms mean:

**Slander:** malicious, untrue, oral statements that injure a person's reputation or subject him or her to ridicule. To make a slander charge stick, you normally have to prove actual damage.

**Libel:** written or recorded malicious defamation tending to injure someone's reputation or hold him or her up to ridicule. Unlike slander, a libel suit can be brought without proof of actual damage.

### Why Might You Be Sued (or Threatened)?

- To make you stop fighting or make you soften your tactics.
- To make your group disband if your opponent thinks you're weak or vulnerable. If you appear to lack unity, your opponent might be tempted to try legal threats to get you fighting among yourselves, hoping that a threat will cause your group to self-destruct.
- To respond to a provocation that can't be ignored. If you make a statement so strong and damaging

and so unsubstantiated, your opponent may feel compelled to sue or threaten to sue you, because he can't let your statement go unchallenged. These are called "fighting words." A simple example is to call a dumper "Mafia" without evidence.

- To respond to a lawsuit you filed against your opponent. This is called a "counter-suit" and it's a common defensive strategy. It's a lot like the "Golden Rule": if you sue your opponent, you can expect he will "counter" sue you. Likewise, if you opponent sues you, YOU can counter-sue them (see Section E).
- Your opponent is crazy. You will have to be the judge of how irrational your opponent is.

### Libel and Slander Suits: How Likely Are They?

Only a handful of libel or slander suits have been filed against toxics leaders. We know of NO toxics leaders who lost. There have been several dozen lawsuit threats. Most of you know CHEJ takes a tough line with toxic polluters. After more than 25 years of experience, CHEJ has NEVER



been sued and, to our surprise, has gotten only a handful of half hearted threats.

Every suit or threat of a suit by a polluter we've seen was done to make the community group or an environmental activist back off.

Every suit we've heard about involved a local leader making a statement using language often referred to as "fighting words." This means statements so strong that you force your opponent to rise to the defense. Example: in Williamsburg, OH, a local leader called BFI "Mafia" without evidence. BFI filed a \$1 million suit against her. She took it with good spirit: "Come and get me", she said, "all I've got is a contaminated home!" But the rest of the group members got scared and the group disbanded. Part of why the group disbanded was because she said these things without checking with the group leaders. In other words, she did it on her own and, when she got into trouble, she not only didn't have her group's backing, but had the worst thing happen, which was the destruction of the group!

*Moral: Actions should only be undertaken after the group has fit the action into a plan.*

Here's what you should do:

- Develop a clear, specific position ("platform") of what your group stands for, believes in, and wants.
- Establish a policy within the group that determines WHO speaks for the group and HOW decisions will be made on statements issued for the group.
- Plan your strategy. Groups usually have the greatest success when they act rather than react. To win, you're going to have to challenge your enemies by taking the offensive. But do it with a plan that takes into account the "What Ifs?" Example: "If we do this, what are the consequences and are we prepared to deal with them?"
- If some group members are constantly fussing about their fears about lawsuits or trouble, your instincts may tell you it's time to have an open

discussion about it. Trust your instincts. There may come a time when you've got to force the issue to be put on the table and get the group to confront these fears. There's no pat answer for when (or even if) you need to do this.

If your opponent reacts to your action with a threat, don't panic. Instead, take this threat and turn it to your advantage. Example: Call a news conference to denounce your opponent's effort as an "Un-American" effort to rob you of your Constitutional Rights. This forces your opponent to have to say, "Good Heavens, I wouldn't do that!" and back down. It also makes members feel more confident about their fight. Some opponents have even pledged to NEVER try to silence citizens' opposition (and even deny threats were made).

### **Standard Defenses Against Libel and Slander**

If you should happen to join that small and rare group of local leaders who actually do get sued, you should get a good attorney. You could talk with us at CHEJ for advice on what kind of attorney to hire (we generally DO NOT recommend specific attorneys) or get advice from CHEJ's Legal Counsel.

If by a wild chance you do get sued, these are the usual responses to charges that you committed libel or slander:

- I didn't do it
- What I said was true
- I didn't mean any harm
- I thought what I said was true
- I didn't do any harm
- I had a right to say what I did, even though it was false (fair comment: see Section D for details).

If the suit against you is a nuisance suit or a harassment suit, you may also find that you have the opportunity to counter-sue. A counter-suit could be filed against the person suing you, charging

them with “Malicious Prosecution.” (see Section E on “Counter Measures”)

### Fair Comment on a Public Official

A surprising number of grassroots activists have reported threats from public officials, especially in rural areas. For example, one small town mayor told a local leader that if she didn’t stop coming to town council meetings and questioning town decisions on a proposed site, he was going to sue her. She found this amusing, but did wonder if there was any chance this could happen.

When she asked us whether there was a chance he might sue, this is what we told her: Sure, there’s a chance – but an incredibly slim one. His threat against her was pretty wild, probably a violation of her constitutional rights. We told her he was just blowing smoke and she should keep up the pressure. We were right.

We felt confident in this advice because public officials are open to sharper criticism than private citizens. The courts have consistently ruled public figures give up much of their rights of privacy. Therefore, you can say just about anything you think is right about a public official that’s relevant to that public official’s duties. Your mayor, county officials, governor, representative, zoning commissioners, etc all chose to take the “heat” by accepting these posts. You have the right to criticize them by what the courts call “fair comment on a public official.”

That’s doesn’t mean you should go ahead and make deliberate, malicious false statements about public officials. In this situation, don’t expect to get away with calling the Mayor an “ax murderer” (unless, of course, that’s true). However, the courts have ruled, time and again, public officials must show substantial proof that average folks’ statements made against them were knowingly and maliciously false and caused concrete damage.

Even though “fair comment” gives you a lot of leeway to criticize public officials, your actions against public officials should be planned. Most groups struggle for public support. A sharp attack on a public official may

be legal, but that’s less important a factor than whether you will gain or lose public support. Maybe local corruption in your community is so outrageous that they’ll rally around a group that takes a stand. In other communities, the general feeling may be favorable toward public officials. Going after them sharply, right at the start, could hurt you, until you show that such an attack is warranted. Either way, use your instincts and make a plan with other group members.

### Counter Measures

If you do get sued, here are some legal strategies to discuss with your lawyer for ways to fight back.

- If it’s obvious the case against you has no merit and has no other purpose than to harass you, you may have grounds to “counter-sue,” charging “Malicious Prosecution.” Discuss this with your lawyer as tactic to turn the tables.
- File ethic charges against opponent’s lawyers. While you’re trying to make the case that the suit against you is malicious prosecution, you could also go after your opponent’s lawyer. You can make the argument that your opponent’s lawyer should have known the case against you had no merit and refused to file it. You can complain to the state Bar Association.
- Public pressure. Usually, you’re in a “David against Goliath” role anyway. As long as you keep reminding people who won that contest, you can play up the under dog role to the hilt. YOU REMIND PEOPLE BEST when you go public. Instead of letting the lawsuit silence you, take your “case” into the “court of public opinion”. For example, Verna Courtemanche, a veteran toxics activist in MI, lost her damage suit against General Motors in lower court. GM figured it would “teach her a lesson” by demanding \$120,000 in court costs from her. Instead of feeling beaten down by this legal scare tactic, Verna went public to make it clear (a) she’s still fighting and (b) GM is being the bully.

- Play along with the suit, but turn the tables. The Golden Rule applies to lawsuits: whatever they can do to you, you can do to them. One of the most potent intimidation tools lawyers have during lawsuits is “discovery” (the period before trial when both sides can demand information from their opponents). In Section H, we’ll discuss some nasty ways discovery can be used by your opponent to attack you and how to respond. In addition, deposition taking can be used to intimidate EITHER side. Depositions are the taking of sworn oral testimony. Just as we’ve heard horror stories of local leaders being grilled for hours on end in depositions, you can do the same thing to the corporate executives responsible for your problem.

### **Will Being Incorporated Save Us From Lawsuits?**

Simply put, “NO.” This is a common myth about incorporation. Remember, “Anybody can sue anybody for anything.” When your group is incorporated, you must file a list of officers with the state. Consider this irony: this means that anyone who wants to sue you has easy access to the list of key people in your group!

Being incorporated can make it easy for your opponent to find you! We’re not saying being unincorporated makes it easy to hide – if that’s what you want to do—just that it’s very convenient to find addresses for the key corporate officers of your group.

Note: it’s very rare for a toxic polluter to sue a citizen’s group on any grounds whatsoever. It’s even less common, in CHEJ’s experience, than suits against individuals for libel or slander. It’s rarer still for a polluter to pursue a suit aggressively against a citizens group that stands up to the pressure and fights back against the suit, as well as maintains its fight against the polluter in the “court of public opinion.”

If an opponent decides to sue your group, here’s what’s likely to happen: the opponent will sue your

group (the corporation), the officers (for alleged failure to exercise proper oversight of the corporation) and whichever individuals the opponent decides was responsible for the alleged offense, which your opponent will probably claim was done on behalf of the group. Everybody will get very upset. You’ll have to get a lawyer and respond to the “complaint” (the first stage in any lawsuit). In the “answers” to the complaint, your lawyer will probably ask the court to dismiss the charges against the Board members who had no role in the “offense” described in the complaint.

The judge will probably agree and then they’re off the hook — but not without the initial headaches of having to defend yourselves. Board members who did have some role in the offense will probably continue to be named in the lawsuit until later, when your lawyer can demonstrate they’re protected by having simply carried out their duties – appropriately and responsibly – as officers of the corporation. Again, these Board members are likely to get off the hook, but not without headache.

*Remember: in nearly every situation, your opponent wants to cause you headaches. That’s usually the point of any lawsuit or lawsuit threat. It’s not so much winning, but making you so aggravated that you quit fighting.*

### **Fishing Expeditions**

In any litigation, the name of the game is to win the fight (but not necessarily the lawsuit). Some groups have discovered even their own lawsuits against a polluter can be turned against them. This is the “Golden Rule” (what you do to them, they can do to you!). For example, it is a common practice by opponents of community groups to try to win by attacking the internal workings of the group. How? By making outrageous demands for information. Some examples follow:

#### **Demands for membership lists, contacts, etc.**

Your opponent could begin a “fishing expedition” by making demands for sensitive membership information during “discovery.” Some groups were shocked when they received “interrogatories” (written questions demanding information) from the other side, demanding they provide their member

names, addresses, phone numbers, etc. One group in Kentucky called CHEJ to tell us they were planning to disband.

When asked why, the group leader responded by saying, “Because our lawyer told us we had to give the company our membership list. I’d rather fold the group than violate that confidence.” Here’s what we told her: Tell your lawyer to look up *NAACP v. Alabama*, 357 US 449,462,1985 (that’s the official way legal citations are written), because that Supreme Court ruling says your membership list is protected by the First Amendment of the U.S. Constitution. Even though he looked it up, her lawyer still didn’t want to be bothered to fight for her Constitutional Rights, so she fired him! Things then started to go better for her and the group.

Another example, Concerned Neighbors in Action (fighting to clean-up of the Stringfellow Acid Pits in Riverside, CA) sued the state of California for better state action on the site. The state made the same kinds of demands of the group for personal and confidential information (membership lists again). When CNA leader, Penny Newman, asked for CHEJ’s advice, we told her about *NAACP v. Alabama*, plus we suggested CNA do even more to turn the tables. We advised CNA to hold a news conference where they would blast the state for “victimizing the victims” of Stringfellow yet again by this kind of legal intimidation and to announce they were setting up the “Stringfellow Victims Legal Defense Fund” for the purpose of protecting victims from these types of legal thug tactics. This is what we call “turning a negative into a positive.”

**Demands for excessive amounts of information.** Your opponent’s legal strategy may try to bust your “back” and break your will to fight by swamping you with demands for information. During discovery in a lawsuit, your opponent may hand you long laundry lists of questions and demands for documents requiring lots of time, work, research, money, or aggravation to answer.

Or, they might try to scare or irritate you and others in the group by summoning you for depositions

(testimony taken under oath in response to questions from the opponent’s lawyer). At these depositions, it may become obvious that the main purpose of the questioning is to make you miserable.

This legal process is a battle of wits more than anything else. Each lawyer tries to “crack” the other side to win.

Make sure your lawyer is working just as hard (if not harder) than your opponent’s lawyer. Also make sure your lawyer is clear about the group’s need to come out of this legal fight intact. Your lawyer should be protecting you from legal harassment and should also be creative and working with you to not only to deflect attacks on you and the organization, but also counter-attacking the opponent.

Example: When a Pennsylvania polluter hit a local group with incredible demands for information, the group’s lawyer first tried to get the judge to rule the request as “burdensome,” so they wouldn’t have to comply. The judge didn’t go for this. So, the lawyer worked out a plan with the group: all potentially relevant material was boxed up and put in the judge’s custody. The judge, then, would have to go through the information and make the decisions about what’s relevant and what isn’t.

This way, the group makes a good faith response to the opponent’s demands for information, without (a) compromising confidential information or (b) the hassle of digging out material and preparing detailed answers.

Other groups have approached legal harassment in the form of endless depositions with good spirit. They recognized that these tactics increase their opponent’s legal costs and, used depositions as platforms for stating their views. As your opponent starts getting those \$100+ an hour bills from his lawyers—and nothing useful to show for it—you begin to see how sweet it is to turn the tables!

**Make sure your lawyer works hard to turn the tables!** Again, we’re talking about applying the “Golden Rule.” If you are in a lawsuit with a polluter or with a government agency, all of the legal tactics we

described above could be used by your group against your opponent. Just as “discovery” with all of its demands for information, can be painful for you, so too can it be for your opponent. What kinds of information do you want to know about your opponent? Tell your lawyer to include that in the discovery demands he makes on your behalf. Want to question your opponent under Oath? Why not? Have your lawyer serve a summons on the top ranking executive in the company or agency you’re fighting to take a turn sitting in the deposition “hot seat.”

### **We’re Worried About Being Arrested!**

We’ve often surprised at how often local leaders ask us if they’ll get in trouble, even get arrested, if they pass around a petition, state their grievances in a leaflet, speak out at a public meeting or carry out a march or protest. We understand the reason for these questions is that many people in the grassroots environmental movement have never done this type of thing. There’s little reason for fear for the following reasons:

- Your right to free speech, freedom to assemble, to protest, and to petition the government for redress of grievances is protected by the First Amendment of the Constitution. Here’s the exact language of the First Amendment of the U.S. Constitution: *“Congress shall make no law respecting an establishment or religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.”*
- Most toxics group have law-abiding, solid citizens as the majority of their members. This is the main reason they worry about getting arrested. It’s also the reason why it’s so unlikely they WILL get arrested.
- Unless you plan to break the law (e.g. violence, destruction of property, etc.) it’s doubtful anything your group does will put you in danger of arrest. Yes, plenty of people have deliberately gotten themselves arrested as part of a strategy.

But, rarely have activists been arrested for antipollution activities where it wasn’t planned. In two instances that we know of it was because local government was in league with the polluter. Both times, the charges were dismissed as groundless. Both times, the arrests got the community so riled up that the campaign against the polluter got stronger.

- Further, even though you may plan a conscious act of “civil disobedience” – trespass, blockage of a site, etc. – usually you are warned first by the officer on the scene and can choose to stop the act before arrests occur. At some Love Canal protests, members WANTED to get arrested and had to argue with the police to get them to do it!
- If you maintain order and discipline within the group during the demonstration, the police will most likely respect that and let you continue.

We make these statements based on over two decades of experience. If the real risk is close to zero, why worry? If you intend to do something rowdy, plan for the “what ifs?” Let group members voice their concerns and walk them through the “what ifs?” as part of planning. Example: “What if the police come and they ask us to leave?” Options: “OK, we’ll leave.” Or “We’ll tell the police we plan to be orderly, have a right to do it and leave only if they threaten to arrest us.” Or, “We’ll insist on our rights and, if they bust us, we’ll be prepared to deal with it.” Name a spokesperson to handle this argument who’s cool, calm and well prepared.

You can assess your risk of arrested based on the following:

- How rowdy do you plan to be?
- How well organized and orderly is your action likely to be?
- What is your relationship with the police?
- How have the police handled other groups doing the similar things?

- How likely is it that your group will really break any laws?

Don't let groundless fear of arrest make your group give up its rights.

### Do You Need A Lawyer?

If it helps the group feel secure, maybe. Sometimes. It's ok to ask a lawyer, "If we do this, will we be arrested?" That's a reasonable legal question. We don't advise you to ask a lawyer, "Do you think it's a good idea to do this? This is a question about organizing tactics, not law. Unless your lawyer also has solid experience as an organizer, chances are you'll get the wrong answer, like, "Don't do that – let me handle it in the courts." (See CHEJ Users' Guide to Lawyers for more detail.)

Should you have the lawyer come to the meeting and explain the risk of arrest? Generally, no. If there's little risk of arrest, you could fan little sparks of concern into full, flaming paranoia. Rarely do people feel better after a long, drawn-out legal discussion.

Should the lawyer come to the "action?" Generally no, unless there is a high risk of arrest or the intention of being arrested and the need for a lawyer to be there is a clear and important part of the plan. Why? First, it'll probably cost you money –unnecessarily. Second, it makes the lawyer more of a "crutch" for the group than need be.

You can deal with people's insecurities by having the lawyer on call. If there's a good reason for the lawyer to be there, you should be able to express those reasons as tasks. Like, so what if the lawyer is there? What will s/he do? Some common tasks for an attorney would be to:

- Talk to the police to assure them that the group is orderly and law-abiding, though it's usually better for leadership to do this.
- Observe police behavior. Make sure they behave right. Record the facts if they don't.
- Advise leaders on matters of law. Caution: beware of a lawyer who gets excited during an "action" and starts behaving like a leader. Be sure you've got an understanding in advance about their roll and stop the lawyer who gets out of line (preferably with tact and discretion).
- Be prepared to represent arrested leaders.

We won't detail how arrest, bail, etc., works. A criminal lawyer can explain this to you if this is likely to happen, or if you plan to get arrested. You can also call CHEJ and we can either refer you to CHEJ's Legal Advisor or connect you with other leaders who've gone through it. Planning is the key. Like all other "what ifs," you deal with it best when you think through what you want to do to win. Part of that is to think through what your opponents are likely to do to stop you.



## Chapter 3

# Political Trouble

If you are an action group, you're likely to provoke a reaction from the people you're fighting. This chapter deals with "political trouble." It's a hard category to define so we've chosen to focus on (A) corrupt behavior by public officials, how it might affect you, and what to do about it. In (B), we deal with "back-lash". Usually backlash is limited to name-calling, but there have been a few instances of worse. We'll describe what could happen and how to deal with it.

### **Political Corruption**

Most leaders we talk to are absolutely convinced their local politicians are corrupt. That's the best way to explain why they're so unwilling to do the right thing when local leaders seek their help. It's one thing to suspect politicians of shady dealings. It's another thing to prove it.

Generally, it's good strategy to investigate who stands to profit from a polluter's operations. You can refer to CHEJ's Research Guide For Leaders to learn how to find out: "who owns the land the polluter uses or wants to use; which banks hold mortgage liens (liens are usually attached to the deed which can be found

at the local Registrar of Deeds Office); and who pays how much taxes on the property. This is all public information. Check government bodies' minutes to see if they've considered or passed financial benefits for the polluter (e.g. tax breaks or government backed bonds or low-interest loans).

Keep your eyes and ears open to discover hard evidence of business dealings between the polluter and governmental officials. Insist on your right to open records and know your state's open meetings law. You can go to your public library's reference room and get a copy of your state's law on open records and meetings.

You may not find hard evidence, but you don't need a "Watergate" to win if you've got the people, a plan, and determination. Sometimes you luck out and find hard evidence of wrongdoing. Then, you've got options. You can negotiate with them privately, using your evidence and the threat of disclosure to force them to stay neutral and perhaps even swing their support in your direction. Or, you can go public with your evidence and blow hostile politicians out of the water. Remember, most people are very cynical about politicians anyway and are inclined to believe

they're crooks. If you make false and irresponsible charges, you could suffer from backlash (you could even be sued) and will certainly suffer some loss of credibility.

### Political Backlash and Counter-Groups

Leaders of toxic groups are often branded as hysterics. Since most government officials seem to downplay problems by reflex, they often put people down as part of that reflex. In the case of an existing, contaminated site, they keep saying, "there's no cause for alarm," no matter what evidence exist. When residents don't believe them, officials brand them as "hysterical housewives" (or hysterical whatever if they're not female). Local politicians often call people opposed to proposed sites NIMBY's (Not In My Backyard) and accuse you of being anti-jobs, anti-prosperity, unpatriotic, etc.

Some polluters (and their allies in government) take it even further. They'll recruit the local Chamber of Commerce and even groups of unemployed residents to form counter-groups, saying you're standing in the way of progress or you're giving the community a bad name. In Jacksonville, AR and Lawrence County, KY, these counter-groups even looked like a real community organization. They had their own name, officers, letterhead, and even newsletters. Other times, the polluter might try to enlist local pressure or hate groups, such as the Ku Klux Klan.

The purpose of most of these political countermoves is to neutralize you, counter your arguments and win in the "court of public opinion." If they can't do that, they at least want to confuse your group, hoping you'll make some mistake enabling them to win. There are several ways to protect yourself:

- Do your homework. Be clear and accurate in what you say. Don't make the kinds of errors of fact that give your opponent the opportunity to make you look bad.

- Build your organization. The best way to deal with ANY threat from your opponent no matter what form it takes, is through a strong, democratic organization that is disciplined in its planning and action.
- Don't back down. They want to intimidate you. If you back down, they have achieved their purpose.
- Be clear about what you stand for. If your opponents are trying to make a strong "jobs versus the environment" case, take this case away from them by being clear that you're simply demanding that companies operating in your community behave like "good neighbors." You want jobs and prosperity, but not at the expense of your lives, families and homes and reject making the issue an "either/or" proposition. There's more on how to develop a "Good Neighbor" platform in CHEJ's guidebook, *How To Deal With A Proposed Facility*.
- Anticipate your opponents' moves and get the jump on them. Community groups do best when they ACT, not REACT. Be assertive in your words and deeds. If you develop your own plan for the fight and stick to it, always getting the word out about where you stand, this gives you the option to simply IGNORE reaction from your opponent. If your "platform" is clear and you're confident that people are getting your message, let the opponent and his allies say or do all they want. Most of the time, these counter groups are their own worst enemies. They don't need much help from you to look foolish.

Sometimes "political trouble" gets more serious. Many leaders worry about real or threatened physical intimidation. Some local leaders wonder if they'll get hurt by taking a stand against polluters, This next section deals with these concerns, whether they're real or perceived.





## Chapter 4

# Physical Intimidation

### Oh My God, It's The Mafia!

When we were children, we probably went through a phase when we feared the bogeymen and monsters in the closet. When we grew up, we transferred that fear to the Mafia. Sure, organized crime exists AND, according to the evidence, has interests in waste disposal. Between 1982 and 1992, the New York State Assembly committee chaired by Assemblyman Maurice Hinchey held an investigation into organized crime's control of the waste-hauling industry that led to the conviction of more than 20 criminal figures. These investigations and the book, *Poisoning for Profit: The Mafia and Toxic Waste in America* [Block & Scarpetti, Wm. Morrow & Co., NY, 1985], are important reference sources.

But look at the facts. Violence or murder connected to organized crime waste interests has usually been aimed at competitors, not community activists. If you're a waste hauler and the Mafia wants to muscle into your territory, then you should worry. However, it's unlikely, for example, that a homemaker from Nebraska is going to "sleep with the fishes" or join Jimmy Hoffa in the Great Trashmasher in the Sky because she's actively involved in some toxic issue.

When you think about organized crime, remember:

- The Mafia is not "omniscient." The Mafia cannot, no matter how hard it tries, read your most innermost thoughts. It's also highly unlikely that your phone is being tapped and the opposition is reading you mail.
- The Mafia is not "omni-present." The Mafia isn't, regardless of the common thinking, everywhere. The Mafia hasn't infiltrated every company, hasn't corrupted every politician, nor has the Mafia developed a yearning to control every community in the U.S., even though sources like *Poisoning for Profit* note the Mafia is active in many of our biggest cities (e.g. in the Northeast, Chicago, Las Vegas).
- The Mafia is not all powerful. Al Capone bragged, "We're bigger than General Motors!" Think about this analogy. The Mafia, like any big and power institution, has lots of power, but also lots of restraints. Like a corporation, the Mafia makes decisions based on self-interest, most importantly increasing profit. As every big corporation finds out (including General Motors),

if you make stupid corporate decisions, behave arrogantly and displease the “consumer” there is backlash that’s bad for business and hurts profits. This is why organized crime doesn’t routinely bump off mothers fighting toxic waste in Middle America. That’s simply not how toxics fights are fought. You’re more likely going to bump heads with lawyers and consultants than some big dude with a machine gun in a dark alley.

### **OK, If It’s Not Organized Crime, Who’s Making Those Phone Calls?**

Good question. Our assault on the common wisdom, above, isn’t intended to tell you there’s no chance you’ll be threatened with harm. It happens. Loonies and cranks will often zero in on anybody who seems to be a public figure. They can get your home phone number and try to mess with you. Let’s say you’re shown on TV speaking out at a rally against you local polluter. It wouldn’t be too unusual for you to get a nasty phone call from some jerk, or from somebody who genuinely believes your actions threaten his job.

It happens (rarely) that your opponent might be behind nasty phone calls. Sometimes, these calls might be very clear, specific threats. You’re vulnerable to any character with a telephone who wants to harass you.

Your options:

- Ignore the call.
- Change your number.
- Disconnect the phone (or simply unplug it during the night when most crank calls are made).
- Use an answering machine to screen your calls.
- Contact the police.
- Have the phone company use an “intercept operator” (who takes your calls before passing them on, something the phone company can reluctantly do in extreme cases of telephone harassment).
- Any combination of the above.

- Live in terror.
- Quit fighting.
- Get the phone service that shows the incoming phone number that called you and report it to the police.

### **My Phone’s Tapped and My Mail Has Been Opened!!!**

Lots of leaders tell us they’re certain their phone’s tapped or that their mail’s been opened. Aside from being very unlikely, SO WHAT if your opponent is listening in. The great thing about community organizations is there’s little you say privately that you couldn’t say publicly. SO WHAT if your opponent’s tapped your phone and can hear plans for your next protest. He can’t stop you and you’re probably going to issue a news release anyway.

If you feel your mail’s being tampered with, contact your postmaster. It’ll be a good idea to have some hard facts to present so (a) you don’t come off looking foolish or paranoid and (b) the postmaster has something concrete to investigate. Institutional criminals (e.g. organized crime) don’t generally do this because it’s not worth the risk. It’s possible (but unlikely) some crank that opposes you might think of messing with your mail.

Even though “Watergate” showed the kinds of dirty tricks government could play on it’s citizens, you’re an unlikely target for surveillance. Before you worry about the FBI, CIA, or State Police tapping your phone, ask: WHY would they do that? There are over 20,000 active leaders in the toxics movement. That’d be a lot of wiretaps! We understand most of you haven’t been in this type of fight before, but we advise you not to indulge your imagination. This could waste time, energy, hold you back from doing what needs to be done, and make others in the group either paranoid or suspicious that you’re paranoid. Instead, put your energy into an aggressive offense and into building a strong organization. Let that be your defense against all threats, whether they’re real, bogus, or imaginary.

### **But We've Actually Been Threatened! Thugs Come To Our Meetings and Try To Disrupt Them!**

We know this happens sometimes. We've seen it ourselves on site visits to Alexandria, LA; Sumter County AL; Fauquier County, VA; and Lawrence County, KY where opposition forces tried to disrupt community meetings in pretty ugly ways. In Sumter County, AL, for example, white thugs lined the back of the hall behind black citizens, behaving like local Klan delegates. This was a protest rally against Waste Management. At another rally against Waste Management, in Alexandria, LA, about two dozen drunken yahoos turned out to heckle, hoot, and threaten during a speech made by a CHEJ staff member.

Each time, we helped local leaders turn the "negative" into a positive. Like most bullies, disrupters expect threats to do the job and don't expect their bluff to be called. When they do this in a public setting, like a community meeting and YOU stand up to them, their disruptive tactics should backfire on them every time. Here's how to do it:

In Lawrence County, KY, a "citizen group" set up to support a company's proposed hazardous waste incinerator came out to a protest rally and kept interrupting CHEJ's Executive Director, Lois Gibbs when she spoke there.

Here, as in similar situations, these disrupters were their own worst enemies. Their words and action can usually be turned around. In Lawrence County, Lois answered heckling focused on the jobs issue by asking the audience: "Has the company proposing the incinerator given you the name of one company that would come to Lawrence County because of the incinerator?" Answer: No. Even the hecklers couldn't handle this question.

Lois asked for a show of hands: "How many unemployed combustion engineers are there in the crowd?" Answer: None. Unemployed chemists? None. Toxicologists? None. People trained in waste disposal technology? None. How many could run a forklift, taking barrels off a truck and putting them on the ground? 2-3 hands went up. How many could

swing a shovel? Lots of hands. "Those are the types of jobs you'll get."

The hecklers kept it up, though. One guy stood up and hung himself, but good. He said to Lois, "Miss Gibbs, if this facility is going to be as bad as you say, then why do you think my friends and I want it? He paused (big mistake) and the whole crowd, in one voice, yelled "MONEY!" That was the last the hecklers had to say that evening.

In Alexandria, LA, the hecklers didn't stop, even after they made total fools of themselves. A CHEJ organizer who was at the podium cut them off: "Look, this is a meeting called by and for folks concerned about Waste Management's dump. It's their meeting. If you want a meeting IN FAVOR of Waste Management, why don't you rent your own hall, advertise it like these folks did and see how many people show up." They quieted down somewhat and, from this point on, whenever they started up; they were told they were at the wrong meeting. It worked. Nobody had ever stood up to them before and this gave local leaders the key to dealing with them at future meetings. The next day's papers featured what fools Waste Management's supporters made of themselves.

Group leaders have asked our advice on how to handle other not-so-public kinds of physical threats. Examples include getting chased away from a site either by the owner (sometimes brandishing a weapon) or the local police acting on behalf of the polluter; mysterious trucks that try to run group members off the road; KKK-style crosses burned on people's front yards; vandalism (broken windows, slashed tires, obscenities on walls, etc.).

The name "Karen Silkwood" comes up a lot. Some local leaders tell us they're worried they'll end up like Silkwood, the union activist who died mysteriously during her fight against Kerr-McGee. Silkwood's death, sad as it is, raises two key points: (1) if murder of toxic activists were commonplace, then Silkwood's death would just be one among many. It isn't. If grassroots leaders were getting knocked

off, right and left, there wouldn't be anything special about Karen Silkwood. (2) Silkwood's martyrdom also served to teach our opponents that it's stupid for them to create martyrs. They haven't. In fact, she's the only leader we know of, killed "in the line of duty."

Silkwood's death also teaches some practical lessons about what you can do to protect yourself from harm and reduce the negative effects of harassment and intimidation from you opponents.

### Practical Ways To Protect Yourself

Threats of physical violence or death are usually bogus or the work of cranks, despite Silkwood. Karen Silkwood only became famous after her death. Before her death, she was simply one lone "trouble-maker." Except for a small circle, she wasn't well known. She was a rank-and-file worker at a nuclear plant, not really an organizer. Those who wanted her dead saw her as their main source of trouble. This practically put a bulls-eye on her back. How do you avoid becoming a Silkwood? How do you deal with really ugly trouble? More importantly, how do you deal with people's fears that things might get ugly?

First, and most important, build an organization. If you're the only troublemaker, you make it easy for your opponents to single you out. Find other people who share your concerns and build a democratic group. CHEJ can help you figure out how to do this.

**The "Cockroach Theory."** Shine a bright light and roaches scramble for cover. Stay very visible and your enemy will likely stay out of sight. Keep a light shining on yourselves, on your issue, on your enemy. If you or your group are in the newspaper or on TV every other day, your opponents will realize that, if they touch you, it'll create a public outcry and they'll have big problems.

**Shift the Bulls-eye.** Don't let any one person (you or anyone else) be seen as the key person in the group. It's bad organizing to put that kind of responsibility on one person. It also invites trouble. Your enemies might think, "Aha, if we can scare or pressure that person into dropping out, the group will collapse." It's more likely this pressure might come in the

form of economic pressure to that person's job or business, than physical threats. Advice: expand group leadership, rotate top leadership and the spokesperson. You protect against intimidation, but build a stronger group, prevent burn-out, broaden involvement and make the group more democratic.

**"Collars Up Front"** Recruit clergy into your group. Even the nastier thugs tend to behave themselves when meetings are held in a church, especially if the preacher's there. And if you're worried about organized crime, will they open fire with machine guns if you're standing next to Father Santucci? In general, you're less subject to counter-attacks of all types, including being accused of being radical or un-American when you have clergy with you. Besides, getting the churches involved is good organizing: it brings in more members (who like the idea that the churches think you're o.k.) and other benefits (such as the church's resources).

**If you're threatened, call the police.** That's their job! If there's a pattern of intimidation involving more than just you, you should definitely call the police. If the police don't respond, make it a public issue. Demand a meeting with the Chief of Police. Demand your rights as citizens. It sends a message to those who seek to intimidate you that you're not just going to take it.

**Turn Negatives into Positives.** Let's say you're worried about people being threatened when they go over to watch the dump. Set up Community Patrols. Pair people up for protection or run your own Dump Watch with a whole convoy of vehicles. Call a news conference to denounce the use of violence or threats of violence. Pledge that your group will not resort to violence and defy your opponents to make the same pledge. This way, you make yourself look like a "law and order" person, not a passive victim. Take each problem worrying you and turn that problem into a positive action your group can use to not only solve the problem but also turn it to your advantage. This improves your odds of winning. Get people involved in finding and using positive means to turn problems into actions.



## Chapter 5

# Internal Trouble

Sometimes we can be our own worst enemies. It's rare for any group to go on for any length of time without some internal crisis threatening it with self destruction. Warning Signals: in fighting, rivalries, competing factions, and dictatorial leaders, lack of direction and energy, burnout, etc. Prescriptions: good planning, clear principles, goals and objectives, democratic process, aggressive recruitment and leadership development, lots of patience and ACTION!

Details on how to handle general group maintenance are in CHEJ's Leadership Handbook and materials on burnout and stress (see Related Readings at the end of this guidebook.) Let's look at internal trouble that could be created by your opponents and seeded in your group.

Your enemy isn't totally stupid. You can assume he's looking for ways to disrupt and neutralize your group. Even the dumbest opponent might get the bright idea that, if he can divide the group and get members fighting each other, they won't be fighting him. Here are some ways your opponent may try to split your group:

### **Exploiting Timid Members**

Almost every time, public officials will tell you, "Now

you're not going to get anything accomplished by getting angry and speaking emotionally. You won't get anything done by bringing in a mob!" THIS IS A LIE! However, for timid members of your group, this is confirmation of their instincts. Since they're uncomfortable with confrontation, they'll be encouraged by such statements to argue for a meeker approach.

Advise: Do the OPPOSITE of what your enemy tells you to do; since it ought to be obvious their advice isn't meant to be helpful.

### **Isolating Gullible Leaders**

Opponents offer private meetings to talk "man to man" (male leaders often get these offers). They get your leader behind close doors with the big shots, cutting who knows what deal and giving him a puffed up ego.

Advice: Have a rule against private meetings. Nothing should be discussed privately that can't be discussed in front of all group members. Private meetings are a dangerous practice and they violate democratic principles.

### Divide and Conquer

Opponents try to “divide and conquer.” It’s common for an opponent to try to neutralize opposition from one neighborhood by offering to take the problem to some other neighborhood. Polluters also try to break up coalitions by exploiting political differences. For example, in Detroit, the city tried to break up a coalition of traditional environmental groups (e.g. Sierra Club, Audubon Society, etc.) and neighborhood folks. They offered the traditional environmentalists a deal where they promised to install the “Best Available Technology” to control smokestack emissions on their planned incinerator. It almost worked.

In Kanawha Valley, West Virginia, Union Carbide got residents to fight each other by organizing white residents who had jobs at their plant to stage a pro-Carbide march through the neighboring black community (where residents got the pollution, but not the jobs.)

Advice: Anticipate ways your group is vulnerable to “divide and conquer” tactics. Most of these should be easy to predict. If you know you might be vulnerable on, for example, the issue of jobs, YOU be the first one to raise the issue and neutralize it by showing how it’s a bogus issue.

### Creating Useless Committees

A bureaucrat’s favorite way to handle a problem is to create a commission. Many governments diffuse community opposition by creating Citizen’s Advisory Committees Roundtables to “aid communications and dialogue.” Their purpose is to sap energy, waste time and cause dissention. Some leaders fall for this. Nearly every Pennsylvania grassroots leader signed up for such a plan by former Gov. Thornburgh, and it set organizing back until new leadership came in.

These “useless committees” also cause local leaders to get puffed-up egos. One Ohio leader got caught up in the Governor’s “Roundtable” and in “seeing both sides of the issue.” He went to another group’s rally and told more than 1,000 angry people he’d seen the light, knew more than they did and attacked them for resisting a proposed hazardous waste incinerator.

Ironically, he started in the Movement by fighting a proposed facility. His action disrupted the statewide coalition he chaired and it took two years before it could be rebuilt.

Advice: WATCH OUT when you hear, “Gee, now that I’m on this panel, I see these issues are more complex than I thought ... there are two sides to the issue...” Make a conscious group judgment on these “opportunities” to sit on advisory boards. Will being on a “Citizens Advisory Committee” help your group? How? What risks do you face? Is it worth the time and energy? Most often these committees are more trouble than they’re worth.

### Buy-Out Of Leaders

We’re all human. There’s an old saying that everyone’s got his or her price. We’ve seen polluters buy allegiance from former grassroots leaders by offering them jobs, straight cash, or benefits. In a couple of instances, leaders become “moles”, taking polluters’ money while still pretending to be part of the Movement. One “mole” travels with leather luggage bearing chemical industry tags.


Many of our scientists friends are no longer the reliable sources of free or low-cost help they used to be. Demand for technical experts mushroomed. Many of our former friends command fees of \$200/hour. Given bug bucks, they figure “why work for a grassroots group for peanuts, or Heaven forbid, for free?” Now and then, they will still look for community work, but they’re tainted as “hired guns” working for polluters. More than once, we’ve been burned by “friends” who sold out like this but never let on. A couple sabotaged groups we sent to them before we found out and blew the whistle. Communities will never be able to match industry or government money, so this is very frustrating.

Advice: Stay alert and act on the policy that “if you’re the polluters’ friend, you’re no friend of ours!” In the Amish religion, they call this “shunning.” They become “nonpersons.”

Another trend: Free trips for local politicians and

group leaders to see the new technology they have planned for your community. Now who's likely to remain "objective" after being flown to Europe and treated to the vacation of a lifetime?

*Advice: No Junkets.* Make it an ethics issue, especially with the local politicians. Sure, it's fine to take a look at an example of what's being proposed for your community, but it's unethical to do this at the company's expense.



## Chapter 6

# Conclusion

A strong, democratic organization that's clear on what it's fighting for is the best defense. Most internal troubles described above can't be prevented, but they can be minimized or solved if you focus on keeping your group strong. Hold regular meetings. Encourage active participation and help people to get active. Give people a chance to ask questions and speak their mind. If you do run into trouble that makes you worry about the future of your group, it's O.K. to try to get some outside help. At CHEJ, we help lots of groups get through hard times. Every story in this book is a real-life situation we helped local groups resolve. You shouldn't feel embarrassed to talk to us. Neither should you feel stupid—many of the prescriptions we offer you in this guidebook are based on things we did to get OURSELVES out of jams.

We see groups get into the worst internal trouble when action slacks off. For example, one of the best groups in New England nearly destroyed itself through internal dissension. They went through the entire fall doing protests, getting bigger, stronger, and winning. Then winter came. Activity stopped, mainly because of the weather, but also because the group got unfocused. Instead of fighting the common enemy, they started

fighting each other. CHEJ staff had to spend four days with them to help keep them from self-destructing.

Fortunately, they refocused their energy and came out of this crisis even stronger. What we did with them was to help them refocus their energies on the common issues that brought them together in the first place. “Keep your eyes on the prize!” If you don't get into some sort of trouble, you're probably not doing your job. Most trouble described in this guidebook are signs of success! When you fight toxic polluters, you're fighting strong economic interests who think they can do whatever they please. Toxic polluters aren't nice.

They're not swayed by “facts” you reveal about how their practices can harm the environment or hurt people. They're interested in their “bottom line.” When you try to stop them, of course they're going to resist.

And that's good! Your group needs a reaction from your opponent to fuel your fight. Conflict and “trouble” are a healthy part of the democratic process. In fact, if your actions aren't provoking trouble, aren't “getting a rise” out of your opponent,



you should try harder. Plan for trouble. Think it through. Prepare members for “what ifs” so they’ll be ready for the next step. The key to dealing with trouble is for you to be the one making it, not to let trouble “un-make” you.

### **Related CHEJ Guidebooks and Factpacks**

*Fight to Win: A Leaders Manual*, by Lois Gibbs

*User’s Guide To Lawyers: How to get them to work for you so you’re not working for them*

*Should Your Group Incorporate?*

Reprints: Legal Corner from *Everyone’s Backyard*

*How to Deal With a Proposed Facility*

*Research Guide for Leaders*

“CHEJ is the strongest environmental organization today – the one that is making the greatest impact on changing the way our society does business.”

*Ralph Nader*

“CHEJ has been a pioneer nationally in alerting parents to the environmental hazards that can affect the health of their children.”

*New York, New York*

“Again, thank you for all that you do for us out here. I would have given up a long time ago if I had not connected with CHEJ!”

*Claremont, New Hampshire*



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