FROM THE FILES OF A WHISTLEBLOWER

Or how EPA was captured by the industry it regulated

By

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Introduction

Thirty-five years ago the nation became aware of a serious problem. At Love Canal, in upstate New York, toxic wastes from the disposal site of a nearby chemical plant were leaking into the basements of surrounding houses causing birth defects, miscarriages, respiratory ailments, and cancer. Industrial wastes dumped in Woburn, Massachusetts, for years were causing childhood leukemia and kidney cancer. Thousands of leaking drums of industrial toxic waste dumped in Hardeman County, Tennessee, were poisoning wells with a half dozen cancer causing chemicals. Hundreds of other examples of the damage being done by industrial waste dumping were coming to light.

A serious federal program was created to solve this serious national problem, but just when it was about to go into effect it became a political football. Implementation was delayed and corrupted for frivolous political reasons unrelated to the serious purposes of the program. Opportunists rushed in, like jackals to a wounded animal, to engorge themselves. I was a mid-level manager in this program at the U.S. Environmental Protection Agency, thoroughly disgusted with the goings-on, but I stuck with it and became a whistleblower in order to inform the public, Congress and the press on what was happening.

My activities as a whistleblower brought me to speak at grass-roots environmental citizen meetings in North Carolina, Pennsylvania, Massachusetts, Georgia, Missouri, and Canada. I testified at legal proceedings in Colorado and Puerto Rico. I addressed grass-roots leadership conferences in Ohio, Kentucky and Virginia. I testified at state legislatures in West Virginia, Georgia, and North Carolina. I was asked to testify in the U.S. Congress on my own views on five occasions. I've written many articles on hazardous waste issues and about EPA policies, and I have appeared on several TV and movie documentaries. I believe my knowledge and ideas have been influential in the passage of many state and federal laws governing hazardous waste. In short, I believe my blowing the whistle so loud and shrilly was quite effective.

But you might well ask the relevance today of events that occurred more than three decades ago at an obscure government agency. I didn't write this little book to reminisce about past adventures (although that was fun) but to tell about the lessons learned from them. Lessons learned which are not obvious to most people, in some cases counter-intuitive, but which are very relevant today. The political right is correct that regulatory agencies are bloated and over regulating. The left is correct that they are ineffective and easily corrupted. In all these years the government has been regulating it has still not figured out how to do it. While things keep changing; the more they change the more they remain the same.

The kind of work I did --- as a policy analyst and operations research analyst --- before coming to EPA, prepared me to analyze these issues. I got paid to accumulate and sift through stacks of data, using a wide variety of techniques, to find significance, insight, and relevance. My first job out of graduate school was with the U.S. Navy's think tank, the Center for Naval Analysis, which boasts of its "cutting-edge, expert analysis and high quality, impartial information for effective decision making." After four years, that was followed by several positions in industry in which I did the same sort of thing. I then became a management consultant with the firm of Ernst & Ernst (now Ernst & Young) where I managed research and analysis projects for clients such as the U.S. Postal Service and the National Air Pollution Control Administration*. The later research resulted in discovering what came to be called "Cap

* Part of the Department of HEW. In 1970 became the Air Office of EPA.

and Trade" as the most cost-effective method of air pollution control.

The work I did in air pollution control led, in 1974, to my appointment as a branch chief in the U.S. Environmental Protection Agency (EPA) where I was to put my research management and policy analysis skills to help guide the agency in implementing its new responsibilities regulating industrial hazardous waste disposal. This is where this memoir begins.

My experiences, described in this book, cover the years 1974 to 1995 and constitute my data base which I analyzed as I went along, and occasionally wrote articles (I was accused of being a "thinkaholic"). The results of this thinking are presented in the last chapter. The point is that there is nothing about this analysis that is peculiar to the EPA or hazardous waste or the two decades covered by the book; they just constitute the data base. Any two decades in most federal regulatory agencies since 1950 would generate similar data.

Nothing has changed. The whole process of federal regulation in America is dreadful. It is stupid, corrupt, ineffective, inefficient, and is just as bad now as it was then. The insight I have gained "for effective decision making" to help make the system work is just as valid now as it was then.

I understand why federal regulators did not prevent the abuses which led to the great recession, or the gigantic oil spill in the Gulf of Mexico, or the recent mine collapses, or any one of dozens of other such failures. In the last chapter I explore measures to make EPA, and perhaps other regulatory agencies, more efficient and less susceptible to corruption. I suggest the four steps necessary to make EPA work as the public expects them to. These are:

1) Agencies which enforce regulations should not write the regulations. Specifically, the President of the United States, the nation's chief enforcement officer, should not have authority over the drafting of regulations he is charged with enforcing.

2) The revolving door should be shut. Regulatory agency employees should be prohibited from working for companies they regulated for a fixed number of years.

3) Whistle blowers should be protected, encouraged and rewarded. They are the most effective and inexpensive enforcement personnel.

4) To the greatest extent feasible, those whom the regulations are intended to protect should participate in writing and enforcing the regulations.

I believe that implementing these reforms would make regulatory agencies smaller, more efficient, less susceptible to corruption, and less likely to write stupid regulations.

I became a whistleblower because my attitude has always been that the public has paid for the information that I had acquired on my job and that the public is entitled to what it paid for. Just as it is wrong for employees of a corporation to withhold information about how the corporation's management was lying, cheating or stealing from the stockholders, it is wrong for government employees to withhold such information about the government from the public, who are, in a essence, the stockholders of the United States. Indeed federal law requires federal employees to report government waste fraud and abuse. It is sad that so few have the courage to do so and so many have the ambition to avoid doing so.

I confess I have a terrible memory and at eighty years of age it's not getting any better. Because of my bad memory I've always saved documents, newspapers, and anything I thought might come in handy. However on becoming a whistleblower this became doubly important as the government was constantly trying to invent ways to fire me. I have a filing cabinet next to me with four drawers of documents covering my thirty years at EPA as well as several boxes of documents. This collection has served me well over the years. It has provided source material and supporting material for many things I have written and said. It has saved my backside on many occasions and has even earned me some money. This memoir is being written as I sift through those files and it consists largely of those files.

Figure 1.

If You Don't Like It, Get Out, White House Tells EPA Staff
By Edward Walsh Washington Post Staff Writer
The Washington Post (1974-Current file); Feb 23, 1979;
ProQuest Historical Newspapers The Washington Post (1877 - 1993)
pg. A14

If You Don't Like It, Get Out, White House Tells EPA Staff

By Edward Walsh
Washington Post Staff Writer

White House press secretary Jody Powell yesterday invited disgruntled officials of the Environmental Protection Agency to resign if they disagree with President Carter's attempts to loosen federal regulations in the fight against inflation.

EPA officials who are reportedly considering resigning, Powell said, "should be aware that their resignations will be gladly accepted at the earliest opportunity and should not be hesitant at all in offering them."

Powell was reacting to a published report of widespread dissatisfaction among EPA officials, some of whom were said to be considering resigning, because of a White House directive to reivew the cost of pending water pollution regulations and to consider alternative, less costly regulatory standards.

The directive was contained in a memorandum to EPA Administrator Douglas M. Costle from Charles L. Schultze, chairman of the Council of Economic Advisers, and Alfred E. Kahn, Carter's chief inflation adviser.

Costle met with the president for 20 minutes yesterday, but White House officials said it was related to the water pollution regulations controversy.

An EPA official yesterday acknowledged that there has been considerable unhappiness in the agency over what is viewed as White House attempts to bend environmental standards to meet the needs of the administration's anti-inflation program.

In announcing the anti-inflation program last year, Carter said the federal government would attempt to eliminate unnecessary or overly burdensome regulations in order to hold down costs and thus combat inflation. He named Costle to head a government regulatory council that is monitoring the regulatory process and its impact on the economy throughout the government.

Powell said the White House would welcome resignations from officials who oppose the president's attempts to bring "some realism" to government regulation and to "involve the government as a whole in the fight against inflation."

Chapter One – My Personal Crises

There is a streak of stubbornness that runs through members of my family; a stubborn refusal to be cowed when you know you are right. My ancestors and relatives have been jailed and persecuted for this streak, which also resides in my own genes. In my case it surfaced on June 15, 1978. The events of that day would cause me to commit the overt acts which would launch a twenty-two year career as a whistleblower against the government of the United States.

On that day, my boss, Jack Lehman, the director of the U.S. Environmental Protection Agency's Hazardous waste Management Division, had his staff assemble in a conference room so that he could tell us the results of his meeting with Tom Jorling, the politically appointed assistant administrator. I was one of the three branch chiefs in Jack's division. I summarized Jack's words in a memo[1].

On June 15, 1978, Mr. John Lehman, Director of the Hazardous waste Management Division, met with *the entire staff of the Division. The purpose of the meeting was to explain to the staff the new orders he had received from Mr. Jorling on June 12 and to present Mr. Jorling's explanations for these orders. He [Jorling] said there are several recent developments including: President Carter's directive to reduce the Federal budget to fight inflation; many new congressionally mandated programs in EPA with not enough resources to fully implement them, and the so-called taxpayer's revolt.*

As a result of these, Mr. Jorling feels the hazardous waste management regulations have to be reduced in scope. In particular, Mr. Jorling felt the definition of what waste will be covered by the regulations will have to be changed. The definition cannot be based on such characteristics of a waste as whether it; causes cancer, causes birth defects or is poisonous, because by doing that it is not possible to accurately predict how much waste or which industry will be pulled into the program (thus making it difficult to accurately assess the cost to the polluting industries in advance).

Mr. Lehman said we will delay implementing the regulations in order to examine alternatives for reducing the scope and that the staff will be involved in determining the economic impacts of those alternatives as well as their ramifications on other programs within the Agency. This exercise will consist mainly of cutting things out of the regulations that are currently there.

My first reaction was how cruel, stupid and short-sighted Jorling's orders were. By relieving industry of the burden of testing their wastes for harmful effects before dumping them, he was transferring the testing to the livers, kidneys and fetuses of the people unknowingly exposed to the wastes. He's not saving money; he's just magnifying and transferring costs. I and several others at the meeting told Mr. Lehman that we felt the orders were illegal and inconsistent with our congressional mandate to "protect human health and the environment."

Poor straight-arrow Jack Lehman was hardly aware of the significance of his words. Jack had just revealed the fact that Jorling had told him to subvert an act of Congress and to enlist himself and his staff (including me) to cover-up the betrayal. When Jorling realized what Jack had done in divulging their conversation to his entire staff, he had Jack call in his senior staff (myself included) to warn us that Mr. Jorling did not want the details of the July 19 meeting made available to the public, and that we should instruct the staff that the minutes should not be discussed with the public in any but the most general terms[2]. Jorling had closed the barn door

after the horses were out.

Since I was entrusted to draft the regulatory laws for the protection of human health and the environment, I strongly resented being told to destroy the good work that we had done and to cover it up its destruction. I later spoke to Jack and pointed this out to him. In spite of the fact that he too had worked long and hard crafting the government's hazardous waste program, Jack Lehman, ex-naval officer, would not disobey the orders of his superior. He said it was not his job to contradict his boss. Jack said Jorling would have to answer to Congress for his actions. At that point I decided to work towards that very end. How could Jorling answer to Congress if Congress didn't know what he was doing? So I started keeping a record, writing memos and letters documenting what was happening and placing them in the public docket that EPA was required by law to maintain for proposed regulations. However, my submissions were quickly, secretly and illegally removed from the docket on the instructions of Associate General Counsel James A. Rogers --- who later left EPA to represent Waste Management Inc. and other major polluters in lawsuits against EPA. This is an example of what I submitted to the docket[3]:

MARCH 15, 1979.

Mr. JOHN P. LEHMAN,
U.S. Environmental Protection Agency (WH-565),
Washington, D.C.

Dear Sir: This letter is in response to Section 3001 of the proposed hazardous waste regulations which appeared in the FEDERAL REGISTER on December 18, 1978. This letter is supplementary to the letter I sent dated January 4, 1979 on the subject of standards to define hazardous waste.

I have spent a few minutes doing research into what hazardous waste will be left unregulated by the Agency's decision to eliminate from the standards those test protocols which define whether a waste is poisonous or causes cancer or birth defects and rely instead only on identification of specific known hazardous wastes. I have found that about 80 percent of the wastes from the manufacture of pesticides are not specifically identified in the proposed standards. Some examples of wastes which your proposed regulations leave unregulated are:

Waste from the manufacture of C-56 (hexachlorocyclopentadiene) which was identified in hazardous waste disposal problems at Love Canal and "Bloody Run" in Niagara Falls; the "Valley of the Drums" in Kentucky; Montague, Michigan; Toone Tennessee; the Louisville sewer system; and the Memphis sewer system.

Waste from the manufacture of Kepone, which destroyed the fishing in the James River in Virginia.

Waste from the manufacture of Mirex which destroyed fishing in Lake Ontario.
Waste from the manufacture of pentachloronitrobenzene which contains dioxin.

Waste from the manufacture of Endrin and Heptachlor which are carcinogens.

Waste from the manufacture of DBCP which causes sterility.

Whereas previously these wastes may have been disposed of inadequately and secretly, they

can soon (thanks to a clean bill of health from EPA) be disposed of inadequately and openly. This means that such a waste may legally be:

Used as fertilizer where it can enter the food chain.

Used as landfill where it can leach into underground drinking water.

Stockpiled where it can run off into surface water and leach into ground water.

If the waste is volatile (as in Love Canal) it will be allowed to poison the air without constraint.

I would also like to point out that earlier drafts of the regulations had test protocols which would have prevented this from happening. As pointed out in my letter of January 4, EPA management ordered these protocols dropped from the regulations and then stated that suitable test protocols were not available. Nevertheless, the very same test protocols which were deemed unsuitable for bringing hazardous waste into the system, are used in section 250.15 of the proposed standards to allow wastes out of the system. This includes test protocols for cancer, birth defects, bioaccumulation, and toxicity.

Sincerely yours,
W. SANJOUR

Jim Rogers had wasted his time having my docket submissions surreptitiously removed. A year later, I would include them in my testimony before Congress for all the world to see and Jorling would be called to address them.

I had been employed by EPA since 1972, two years after its founding, and for five years before that as a contractor for EPA and one of its predecessor agencies. In July1974, Jack Lehman selected me as one of his three branch chiefs in the newly created Hazardous waste Management Division. Environmental concerns about industrial dumping of toxic wastes had been simmering on the back burner for a number of years, and in 1970 Congress directed EPA to look into it. By 1973 EPA had gathered a small but significant amount of information on the practice of toxic dumping and its environmental consequences that was shared with Congress and the public. Anticipating some kind of legislative action for the regulation of industrial dumping, EPA created the Hazardous waste Management Division within the Office of Solid waste Management Programs (OSWMP or "oh swamp") to prepare the way for possible new legislation and I was put in charge of further documenting the problems and proposing the solutions. For this I was given a staff of about 20 people and a budget of several million dollars and we proceeded to amass a wealth of new information about industrial toxic waste dumping.

The culmination of our efforts was achieved on October 21, 1976, when Congress passed a law* to regulate hazardous waste dumping. I had the job of framing the regulations. It was what I had always wanted --- the challenge of an important task where I could be gainfully utilized and had the resources to do it.

* The Resource Conservation and Recovery Act or RCRA

It was too good to last. In June, 1977, Tom Jorling was the new politically appointed assistant administrator over our office and the water programs as well. Jorling had been a Senate staffer who helped draft the Clean Water Act during the Nixon administration, but when

Brochure issued by EPA in 1975 (SW-138) to acquaint the public with the problems of hazardous waste dumping. One of several such public information documents issued before passage of RCRA. Many of the scenes were used in the documentary *The Killing Ground*.

pressured from the White House to ease the regulatory burden on industry in order to fight inflation (see Figure 1) he chose to decimate the hazardous waste regulations we were drafting rather than destroy his own Clean Water Act. Hence the June 1978 meeting described above.

I got my chance to tell of EPA's betrayal when I was invited by Senator Carl Levin to testify before his Subcommittee on Oversight of Government Management on August 1, 1979. A great deal had happened between June 1978 and August 1979. The nation's attention was drawn to the national disgrace of Love Canal and the press was all over the issue of toxic waste dumping. My co-conspirator, Hugh Kaufman, and I were among the principal feeders of the press frenzy. As a result of my outspoken opposition to the agency's actions I was transferred to a meaningless position[4] in October 1978, but didn't stop protesting.

The Killing Ground[5], an ABC documentary, which first aired on March 29, 1979, was probably the most influential press report on hazardous waste during this period[*]. It showed

[*] Written and narrated by Brit Hume and directed by Steve Singer and Tom Priestley. *The Killing Ground* won an Emmy, and was nominated for an Academy Award.

graphic scenes of thousands of barrels of industrial wastes dumped obscenely in rural pastures and swamps all over America, draining into rivers and poisoning ground water as well as chilling scenes of fires and explosions which surrounded local communities in noxious smoke. An interview with a dumper put his finger on the problem we were working to resolve.

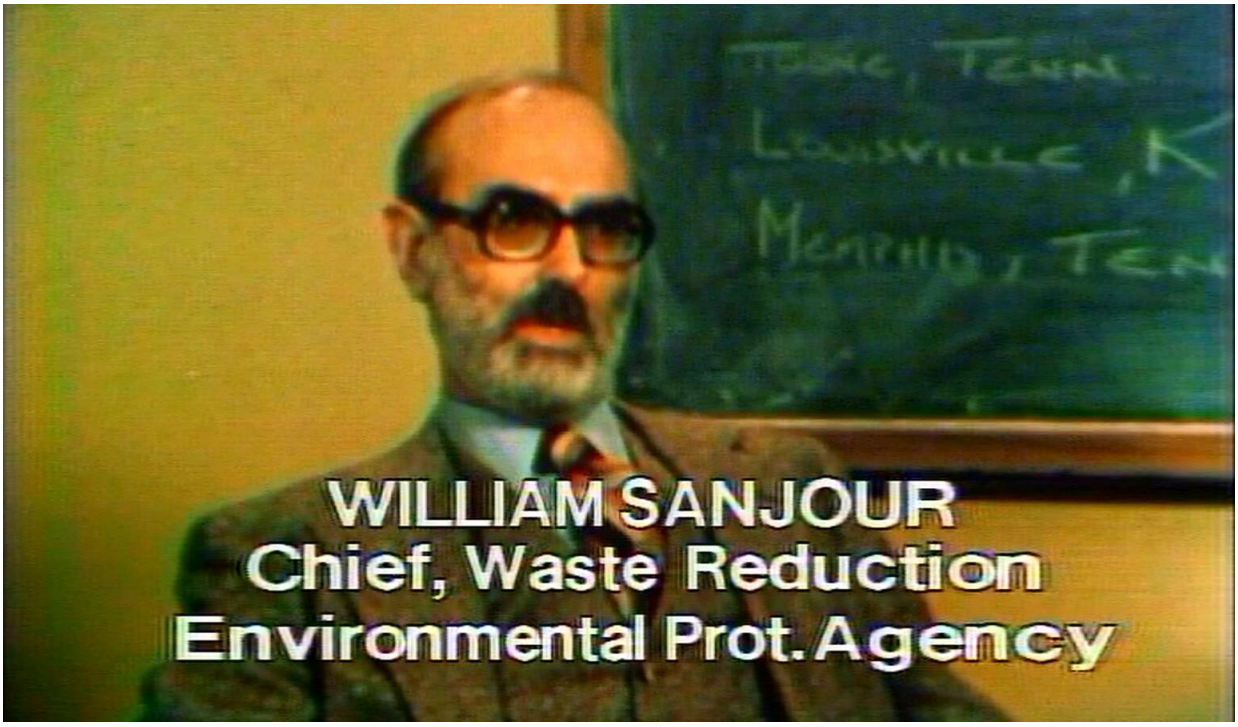
BRIT HUME: These photos of illegal dumping operations obtained by Connor show how one firm simply unloaded drums into New Jersey's Meadowlands. . .pumped waste directly out of tank trucks into waterways ...and mixed it with soil at the foot of a street so that seemingly harmless dirt could go to an ordinary garbage dump. Those operations were directed by this man, William Carracino, who is facing a two year jail term for illegal dumping. He claims he was innocent and is appealing, but in an interview with ABC News he provided a revealing glimpse of shadowy waste hauling practices in New Jersey.

WILLIAM CARRACINO: Well, I'd say maybe 80% of most of the waste shipped is being dumped illegally.

MICHAEL CONNOR: How much money is there to be made in this business?

WILLIAM CARRACINO: Millions ... you can go out and rent a piece of property, don't buy it.. .rent it... rent ten acres, rent twenty acres. Start, get a permit to handle drums. Bring them onto the property and just store them. As soon as the heat gets too great, just go bankrupt and get out. There's no law against it.

These horror scenes were juxtaposed with interviews of hapless government officials charged with controlling the problem who had neither the resources nor the authority to really do much. Some EPA executives blamed the messenger -- me. Kaufman and I were interviewed several times on camera for *The Killing Ground* and we supplied a lot of assistance off camera.



As I appeared in *The Killing Ground* in 1979.

During this period there were many press interviews. For example, in April 22, 1979, Judith Miller wrote in the New York Times[6]: "Hugh B. Kaufman and William Sanjour, officials in the agency's Office of Solid waste, claim that the E.P.A. issued regulations only after being sued by environmental groups for failing to do so by the Congressionally mandated deadline, and that the agency's initial draft of regulations was changed to reduce the number of substances that had to be controlled, to lower the cost of the program to industry and to fight inflation."

On July 1979, days before I was due to testify, Donald McNeil of the *New York Times* wrote in part[7]: "

The agency's proposed rules, now in draft form, are intended for promulgation under the Resources Conservation and Recovery Act. The two employees who complained, William Sanjour, former branch chief of the Hazardous waste Management Division (sic), and Hugh Kaufman, manager of the Hazardous waste Assessment Program, have charged that the regulations were rewritten illegally in that Congress's definition of what is to be considered "hazardous waste" was changed. …….

Mr. Sanjour and Mr. Kaufman, both of whom have been transferred within the E.P.A., are scheduled to testify Monday before a Senate subcommittee hearing on hazardous waste-disposal.

The two men have been especially critical of Thomas Jorling, Assistant Administrator for waste and waste Management (sic), and of his testimony on waste-disposal regulation before a House Commerce subcommittee last month.

Going to the Senate office building to testify was an awesome experience. It would turn out to be the first of five times I was called to testify in Congress. My written testimony is posted on the Web if you have the patience and stamina to read it[*]. And if you do, I think you will see that I was basically asking only that the law be enforced as enacted and that I was no radical environmentalist as I was sometimes portrayed. (In fact, I was not hired by EPA because I was an environmentalist but because of my skills as a policy analyst and a manager of policy studies. Indeed I knew very little about the environment when I came to EPA.) About the hearing, the trade journal Toxic Materials News[8] reported:

Sanjour said that because of pressure from the White house to fight inflation the agency had greatly curtailed enforcement and investigative activities under RCRA. Sanjour said that orders came from the agency's top management to "stop looking for hazardous waste disposal sites… to delay getting out the regulations while we re-studied all possible options, and to keep all this from the public." Also, Sanjour said, "to implement this new policy, we were told to do things we knew were not right. The press and Congress and the public were given misinformation while accurate information was suppressed."

Thomas Jorling, Assistant Administrator for Water and waste Management, was asked by Sen. Carl Levin (D. –Mich.) whether economics figured in Jorling's decision to redraft proposed hazardous waste regulations ……. Jorling replied to the Senator's suggestion that

[*] See http://home.comcast.net/~jurason/main/Congress1.htm for full text.

he had cut back coverage of the regulations with "That is a despicable lie."

If in fact it was a lie, Jorling would have had no difficulty firing me since I had said the same thing in inter-office memoranda.

That wasn't Jorling's only falsehood. When Senator Levin asked Jorling to explain the delays in issuing regulations he replied in part:[9] "……. in the case of hazardous waste, there was virtually no available expertise within the agency, or very little. …… the framework in which we were working and where we were coming from. We were coming from practically nowhere."

In fact, starting in the early seventies, in anticipation of hazardous waste legislation, EPA added about 50 people, many of them engineers, for hazardous waste alone and spent tens of millions of dollars gathering just such information. By the late seventies one could literally fill up a wall of shelves with all the reports generated on these subjects, including a mailing list of hundreds of thousands of potential hazardous waste generators. Granted, the information was not always complete, but it was a far cry from the vacuum suggested by Mr. Jorling.

It is instructive to see Jorling "pinned and wriggling on the wall" as he is cross-examined by an expert. A small sample follows[10]:

Senator LEVIN. OK, let me try to be more precise. Did you talk to Mr. Lehman about statements or allegations that, he said, in explaining your orders, that there were a number of recent developments, including President Carter's directive to reduce the Federal budget and the taxpayers' revolt?

Mr. JORLING. I do not believe, in those terms, Senator, that I talked to him about that. Both Jack and I have better things to do.

Senator LEVIN. Did you ever hear those allegations before today?

Mr. JORLING. I've seen them in print, and heard them repeated to me by staff people on many occasions.

Senator LEVIN. And you've never asked Mr. Lehman whether he said that?

Mr. JORLING. It would serve no purpose, Senator.

Senator LEVIN. Pardon?

Mr. JORLING. It would serve no purpose. We're interested in getting the best, most effective regulation in place as soon as possible. That's the job that I have sworn to do, and I'm going to continue to do it.

Senator LEVIN. You said it was a despicable lie that either you or anybody you authorized made those statements, so you feel kind of strongly that if those statements were made they shouldn't have been made.

Mr. JORLING. That should be the end of it, Senator.

Senator LEVIN. Well, let me just ask you. I take it you feel---

Mr. JORLING. I'm the responsible official.

Senator LEVIN. Let me just finish my question. I take it you feel fairly strongly that if those statements were made they should not have been made.

Mr. JORLING. But I'm not going to spend a lot of my time or my staff's time just spinning wheels on those kinds of things. We have too much work to do.

Senator LEVIN. How long does it take to ask somebody whether they made those statements?

Mr. JORLING. I don't know what purpose would be served, Senator.

Shortly before I was to testify I had won my grievance against EPA for transferring me and Senator Levin asked me[11]:

Senator LEVIN. I understand you're working again on the development of RCRA regulations. What, if anything, in the process has changed since you worked on them last?

Mr. SANJOUR. Well, I was removed from my position for almost a year. Then a few weeks ago I was given a new position again—once again, in the hazardous waste regulatory business. So I'm now attending all the meetings, and staff meetings once again in the hazardous waste business, and it's a real feeling of deja vu. Almost nothing has changed.

All those issues which I referred to as being brought up and resolved, and brought up and resolved in new committees, we're still bringing them up and resolving them, and bringing them up and resolving them.

The committees go on. In fact, I prepared for you a list of all the various committees that have reviewed our regulations since this stuff started. We have the work group, the steering committee—this isn't the complete list—a strategy development work group, the strategy review group, the implementation task force, the public participation task force, the intraagency task force, the ad hoc advisory committee, the writing committee, the smoothing committee, the decision committee.

For 3 years what we've been doing is appointing new committees. They review the regulations; they make decisions; they go away; and a new committee is appointed which reopens all the decisions again.

That process has been going on for 3 years; it's still going on. Nothing has changed

Senator LEVIN. It sounds like you need a rules committee. [Laughter.]

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Senator Levin's committee report came out in March, 1980[12]. It was everything I had hoped for. It found that "the number of substances to be regulated [under RCRA] are not sufficient to ensure protection of the public and the environment from problems emanating from improper disposal of hazardous waste. Further, EPA's departure from the use of characteristics as indicators of a chemical's hazardous nature leaves a major gap in the regulatory scheme." And that "EPA's explanation for failing to use characteristics to identify toxic, radioactive, infectious phytotoxic, teratogenic and mutagenic substances under proposed [RCRA regulations]—that of not having reliable test protocols for those characteristics—is not consistent with the Agency's use of test protocols." Elsewhere the report says that "As William Sanjour pointed out '…test protocols are available to protect fish, but not people.'"

I was very pleased that the report had cited my testimony in support of many of its findings. Particularly pleasing was that it cited the reasons I had given for the changes which Mr. Jorling had so vehemently denied. The report quotes the following exchange:

Senator Levin: "You've indicated in a number of places reference to EPA's top management; or 'upper level management'. Who specifically are you referring to in those instances?"

Mr. Sanjour: "When those June cutbacks came about, we were given instructions by Jack Lehman and Gary Dietrich and were told by both of them that these instructions were coming from Mr. Jorling."

The Committee's press release, which was issued with the report, said in part:

During the Levin subcommittee's hearings on hazardous wastes, middle-level EPA official William Sanjour sharply criticized his agency's new direction on hazardous wastes.

"Whereas previously these wastes may have been disposed of inadequately and secretly, they can soon--thanks to a clean bill of health from the EPA--be disposed of inadequately and openly."

Mr. Sanjour, chief of an EPA hazardous waste division (sic) under the Office of Solid waste, charged that White House pressure to fight inflation caused the EPA to reduce the scope of the regulations that the agency planned to impose on industries.

"We were told to avoid regulating hazardous waste from the oil and gas industry, from electric power companies and from other large industries," Mr. Sanjour said.

EPA officials disputed Mr. Sanjour's allegation at the subcommittee hearings.

Mr. Sanjour also accused the EPA of deliberately delaying the issuance of hazardous waste regulations, and the Levin subcommittee's report strongly criticized the EPA for taking four years to produce the rules as required by the Resource Conservation and Recovery Act of 1976[13]*.*

Several footnotes to this story. First, the backtracking was started by EPA almost immediately. Six days after the hearings, Jorling wrote to the Administrator[14] to reinstate in the draft regulations many of the toxic chemicals I and others had testified had been dropped by EPA from them on Jorling's orders. This backtracking was to continue for some time.

Two weeks before the hearings, the New York Times[15] interviewed those who were scheduled to testify including me, Kaufman, and Tom Jorling under the headline "E.P.A. Aides Assert Disposal Rules Exempt Some Highly Toxic Wastes". When the reporter brought up our transfer with Jorling, he lied that we were transferred because we were incompetent. The next day Kaufman left a phone message with Jorling's secretary demanding an apology and immediately got Jorling's hand written response "Go Fuck Yourself Asshole! Tom".

I tried a different approach and sent a written request for an apology through channels. A week after the hearings I was summoned to Jorling's office. Someone from the General Counsel's office was there along with Jorling. I was handed a formal letter of apology[16]. Then Jorling started berating me and I responded and the guy from the General Counsel's office broke it up and sent me on my way. But the fact that he apologized did not stop him from repeating that lie for many years into the future.

Conclusions

Congress gave the administrator of EPA broad discretionary power under RCRA to solve municipal and hazardous waste problems in America. But it also gave the president the authority to appoint as well as to discharge the administrator. Hence the expression that the administrator "serves at the discretion of the president" and thus the administrator of EPA is functionally little different from a White House staffer. Thus the broad discretionary power given to the administrator is actually given to the president to do with as he wishes. That's why the president could feel free to send his staffer, Jody Powell, to bludgeon EPA executives to cut back

regulations in order to placate industry so that they might help him to fight inflation and win reelection. There is nothing in RCRA that gives anyone the authority to fashion regulations to fight inflation. The only criterion for regulations is to "protect human health and the environment." Yet neither the president and his staffers nor the administrator and his top executives felt any compunction about breaking the law and using the authority Congress granted in any way the president pleased. The worrisome thing is that this sort of law-breaking goes on all the time.

This hearing was a benchmark in my life. It showed me that whistleblowing can work if done intelligently. As a result of that hearing and all the publicity that preceded it there were three important outcomes. First, Jorling left the agency. Second, EPA restored some but not all of Jorling's cutbacks. Thirdly, and most important, it led to the passage of "Superfund".

Superfund, or the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), is the federal government's program to clean up the nation's uncontrolled hazardous waste dump sites. In its day it was the costliest public works program in history. Most of the cost was borne by the polluting industries, which is ironic since the reason the White House demanded and Jorling implemented the cutbacks was to save industry money.

In my career, in both business and government, I have never ceased being amazed at how short-sighted our so-called leaders are. Thomas Jorling, completely lacking in subtlety and imagination, took a sledge hammer to RCRA and the Office of Solid waste in order to protect the Clean Water Act, perjuring himself in the process and prolonging the national agony over hazardous waste management unnecessarily for several years.

President Jimmy Carter, who has since earned a reputation as a benefactor of humanity, did not show that trait when he foolishly set his hounds loose on the bureaucracy to "fight inflation" in order to placate equally foolish industry and ended up being pressured by a housewife from Love Canal into supporting Superfund in order to be reelected and then losing the election anyway.

But the ultimate foolishness lies with Congress, which passes regulatory laws that give broad discretionary power to the president to use the law in any way he chooses, and we see how it gets used. Even though Congressional hearings made this fact perfectly clear, nothing came of it except to embarrass a few people.

Chapter Two – The Grass Roots NIMBYs

While the publicity of Senator Levin's hearings changed things a bit, including public attitudes, they didn't change the attitude of EPA management. If anything it got worse because of two factors. First, Jimmy Carter lost the presidential election to Ronald Reagan. Carter's legitimate concerns about inflation led him to recklessly cut back environmental regulation in order to placate industry. He'd hoped to do it quietly so as not to arouse his environmental base, but people like me wouldn't let him get away with it. However, environmentalists were not part of Reagan's base; he couldn't care less about them. Such was Reagan's indifference that Anne Gorsuch, Reagan's EPA administrator, wrote after she left the agency that she never received any guidance from the White House and had to wing it on her own.

The second factor was the dilemmas that arose now that EPA was charged with implementing RCRA. EPA finally published woefully weak regulations for the treatment, storage, and disposal of hazardous waste on May 19, 1980[17], which also established the basic "cradle to grave" approach to hazardous waste management that exists today. On one hand EPA was promulgating regulations requiring industries with hazardous wastes to register and fill out manifests and use only licensed waste haulers to dispose of their hazardous waste. On the other hand there were very few safe places to dispose of them. Into this vacuum poured the waste management industry. Firms like waste Management Inc. (WMI) scrambled to buy up old sites and create new ones.

Like an imported animal species let loose on virgin soil, the waste brokers have proliferated throughout the nation, settling into a lagoon complex in one place, a landfill in another, and focusing their attention on highly industrialized states—California, Illinois, Indiana, Ohio, Texas. Several of them—SCA Services, waste Management, Browning-Ferris Industries, Rollins Environmental Services—have reached the proportions of conglomerates, gobbling up independent landfill operations and spreading themselves on vast sites[18].

Hugh Kaufman in 1979.

The waste disposal industry became the growth industry of the 1980s and made lots of fortunes. Its practices were sloppy, their sites were often no better than the ones portrayed in *The Killing Ground*, and there were reports of connections with organized crime[19,20]. Companies bullied, lied, and bribed their way into poor rural communities who were bamboozled by them.

Their money corrupted EPA. Top EPA executives, including five administrators, like pigs to a trough, took lucrative jobs in the waste industry[*]. EPA became, as I once wrote: "a wholly owned subsidiary of waste Management Inc."

Hugh Kaufman was one of the first people to blow the whistle on what was happening; Lois Gibbs was another. As usual, Kaufman was already in contact with Lois Gibbs. Although Hugh is widely known as a whistleblower he does not fit the

[*] See Appendix 1.

normal pattern of a whistleblower*. Conventional whistleblowers find themselves inadvertently involved in a moral dilemma, not of their choosing, but which they choose not to ignore. Kaufman, however, was like a crime reporter. He assiduously cultivated or, as he called it, shemozzled sources for the purpose of uncovering instances of interesting illegal or immoral activity. He would then function as a press agent to tell what he had learned to his assiduously cultivated sources in the media, Congress and activist organizations. In short he was his own investigative reporter and press agent and brilliant at both.

Shortly after I came aboard the Hazardous waste Division I asked for Kaufman to be transferred to my Branch. One of my tasks was to enlarge the program of gathering data on the damages caused by toxic dumping. However, I realized that facts were not enough. Success in getting relevant people interested enough to swallow the facts required the spoonful of sugar of publicity. For this I got Hugh Kaufman. Not that our relationship was always smooth running. Hugh's gadfly ways were constantly getting me into trouble with my by-the-numbers ex-Navy officer boss, Jack Lehman. But Hugh along with Lois Gibbs is, in my opinion, largely responsible of bringing the problems of industrial waste dumping to the attention of America and the world.

Lois Gibbs was the young housewife and mother from Love Canal who, with no prior organizing experience, organized her neighbors into the Love Canal Homeowners Association. Under her leadership, the association became a most effective instrument for taking on both the state and the federal government, winning victory after victory, forcing the state to evacuate most of the families, and culminating in the passage of Superfund. Lois has the attributes of a brilliant union organizer. She could herd cats. She knew how to cajole or threaten the-powers-that-be; how to keep up morale and inspire her troops; how to get help from scientists and government officials; and how to work the press. How a housewife and a homemaker with no more than a high school diploma got those skills is a wonder.

Lois Gibbs with her daughter Melissa during the early days of organizing the Love Canal protests.

I first met Lois in 1981 when Hugh Kaufman brought me to a luncheon with her at a Georgetown restaurant in Washington, DC. Along with her husband, Steve Lester, she had moved to the Washington area to start a new organization, the Citizen's Clearinghouse for Hazardous waste. The purpose of CCHW would be to provide information, resources, technical assistance and organizational training to grass roots community groups fighting either existing or proposed hazardous waste dumps. She recruited me to be one of her technical resources and since I was, in part, responsible for this mess, I bought in. That decision changed me from being a one-time whistleblower to an almost permanent one.

My first speaking "gig" was in January 1982, when I accompanied Lois (on my own time) to rural Moore County, North Carolina, to speak at the local high school to a group opposing the construction of a hazardous waste landfill in their county. (Lois said she liked

* See Appendix 3.

having me along because I looked and sounded so authoritative.) Lois warned them that "If you people don't stand together and fight, you could have another Love Canal here." About me, the local paper reported:

He said that because current EPA regulations protect owners of hazardous waste disposal sites from any liability in case of an accident, the EPA has made using unsafe methods profitable.

"What we have here is the government subsidizing the disposal of hazardous wastes in the worst possible way," he said. .....

Sanjour said his employer, the EPA, is guilty of foot-dragging in the effort to regulate hazardous waste landfills. "New landfills, like the one proposed in Moore County, have no regulations attached to it," he said[21].

My first speaking gig with Lois. Moore, NC, January, 1982.

This was my first contact with the people I had been working to protect. Indeed, being a city boy whose idea of country was suburbs, I was unacquainted with rural folks. In the years to come I would meet many such who are dismissively called NIMBYs (Not In My Back Yard.) They were frightened at the prospect of a huge industrial waste dump, the size of several football fields, in their "backyards" and felt they were being given a snow job by the landfill operators, the politicians and the local business men, who in many instances may have had a financial stake in the operation. That's why they contact CCHW for help and pass the hat around to pay our meager expenses.

I told a reporter: "What they all have in common is complete distrust in their government ....These are not hippies, these are not kids, these are not radicals, these are not leftists. Every group I've been to are land owners, the farmers, the conservatives, the backbone of America[22]."

In March, 1982, Lois took me with her to Alberta, Canada, to speak. These folks in Canada were facing similar problems to ours in America. I told them that "it is the problem of the industry which creates the wastes to dispose of it in their own back yards[23]." They were very happy to see us, and when we left one of them shoved a bunch of money into my hands that they had gotten by passing the hat. I turned it over to Lois.

But not everyone was happy about my being there. In fact it caused an international brouhaha. The president of the American company trying to build the site wrote to the State Department and the Administrator of EPA to complain about me.

Over and above the Alberta project concerns, an EPA official can apparently engage in activities that have the potential for being in direct conflict with U. S. Government interests and objectives without putting his continued government employment in jeopardy by simply assuming the label of "private citizen," knowing full well that he will be perceived as an EPA expert[24].

EPA's response to the company was similar to the one given to the State Department.

I have contacted the appropriate officials in EPA to review Mr. Sanjour's visit and have ascertained that Mr. Sanjour was not on official business during the time of his remarks. Mr. Sanjour was on annual leave and he paid his own travel expenses. Before the trip, Mr. Sanjour's superiors cautioned him not to represent himself as an EPA official or associate his views with the Agency, but unfortunately he was quoted in the media as an EPA representative.

I recognize that incidents like this are not helpful in maintaining good relations with Canada nor useful in expediting the construction of waste treatment facilities on both sides of the border. However, EPA, like all government agencies, is limited in what it can do without violating an employee's rights when they are traveling in a private capacity[25]*.*

EPA officials would have to make many such responses during my "speaking" career and I'm sure it stuck in their craw. It took a few years for them to figure out what to do about it but that's for a later chapter. I'm sure that they continually reminded me to say that I did not represent the agency because they thought that would make my remarks less authoritative, but it had the opposite effect. Whenever I would open by saying "I'm here speaking for myself and not representing EPA," I would get enthusiastic applause. Such was the reputation of EPA among the NIMBYs.

Another trip fraught with repercussions was a speech I gave in May, 1982, in Lancaster County, Pennsylvania. Many in the audience were Amish or Plain People. What made this trip unique was that the Philadelphia office of EPA had sent someone to the meeting to tape record my words. This was later transcribed and accompanied a note to EPA headquarters to Assistant Administrator Rita Lavelle (later jailed for perjury on evidence contributed by Hugh Kaufman). The note said in part: "All of the press reports following Sanjour and Kaufman's Penna appearances identifies them as EPA 'spokesmen[*].' They have now appeared in Meadsville, Altoona, Lancaster & York. It is hurting us more than you can imagine[26]."

It turned out that Kaufman was also being followed and he filed a Freedom of Information Act (FOIA) request and learned that we were being tailed by investigators from the EPA's Inspector General's office. They reported Kaufman going into a motel with a young brunette who later turned out to be his wife[27]. I was thankful that the Inspector General taped and transcribed my speech since I always spoke without a script. This was pretty much my stock speech[†]. I introduce the talk saying "We spent a lot of money -- your money -- learning what the problems were and what the solutions are. And basically I am here today to give you the benefit of what it is that your money has bought and paid for -- the knowledge and the information we gained."

Perhaps the most important speech, to me, was in Warren County, North Carolina, on September 26, 1982, on the occasion that is generally credited with launching the Environmental Justice movement. In Warren County, the State wanted to locate a landfill for toxic PCBs that had been illegally dumped on North Carolina roadways. Warren County was geologically unsuitable for a landfill, but the county was one of the poorest in the state and two thirds black, which made it very *politically* suitable[28]. But this time the community organized and fought back. Just as Love Canal focused national attention on the hazardous waste problem, Warrenton

[*] The one press report I have identified me as a "disgruntled official" not a spokesman.
[†] The full text is available at http://home.comcast.net/~jurason/main/Penna.htm

focused national attention on the racist aspects of the location of hazardous waste dump sites and gave impetus to the Environmental Justice movement. Protests went on for weeks and hundreds were arrested.

I am proud to have been a speaker at one of the public meetings protesting the landfill[29]. Although it was little more than my basic speech it stirred a hornet's nest. NC

Warren County protestors lying in front of dump trucks taking soil contaminated with PCB to the landfill. The start of the Environmental Justice movement[30].

Governor James Hunt protested to EPA Assistant Administrator Rita Lavelle and a newspaper editorial called for EPA to "Rein in Sanjour[31]." (Ironically, seven months later I was invited to testify before the North Carolina legislature on the dangers of hazardous waste landfills[32], and the same newspaper wrote an editorial praising my testimony[33].) My prediction that the PCBs would leak out -- vehemently denied by official EPA spokesmen -- came true even quicker than I would have expected, leading to more protests and eventual removal of the PCBs from Warren County[34].

By the end of 1983 I had addressed three Congressional hearings, one state assembly hearing and about six or eight local counselors or citizens' groups, i.e., the NIMBYs. One case stands out because it gave me the opportunity to spell out to my boss at EPA just exactly what the NIMBY movement was all about.

In July Hugh Kaufman and I were invited to testify at a hearing of the Adams County (Colorado) Commissioners regarding a proposed hazardous waste landfill by Browning Ferris Inc. at Last Chance, CO[35]. Upset by our talk and the press reports, the Region 8 office of EPA in

Denver wrote to Commissioners to "correct some misstatements which have been made …" They did not have the courtesy to send me a copy but one of the local citizens forwarded it to me. I wrote a response to my boss and sent a copy to Denver and Adams County[36]. I summarized it:

There have been many Public hearings of the Adams County Planning Commission over the past few years concerning the BFI landfill to which EPA was invited to testify. EPA has, in the past, always declined. Most of what the public in Adams County has been told about EPA regulations and their interpretation and the technological issues surrounding hazardous waste management has come from BFI. BFI has come to be viewed as the EPA spokesman.

Only after the citizens of Adams County invited Mr. Kaufman and me to testify at the County Commissioner's hearings did EPA feel it necessary for the first time to appear at a hearing. The gist of what EPA told the Commission was that Colorado needs a hazardous waste landfill, and that they can be built safely. Mr. Johnson, the EPA representative, did not allow himself to be cross examined.

Although EPA files and EPA personnel have a wealth of information relevant to the hearing, Mr. Johnson did not volunteer it. He only volunteered information which would be helpful to BFI's case and shut the door to the citizens cross examining him to learn information which might hurt BFI's case. Similarly Mr. Duprey's letter to the County Commissioners was ostensibly written to correct "misstatements" yet the only misstatements he corrects are those which promote BFI's cause. Prior to August 10 Mr. Duprey never felt it necessary to correct misstatements from hearings and press reports. My review of the BFI submission found numerous inconsistencies, misstatements of facts and many other errors yet Mr. Duprey chose to find nothing in BFI's testimony to comment on.

The review of the BFI submission and the bulk of the factual material presented at the County Commissioners hearing by me and the other technical witnesses brought in by the citizens could just as well have been done by Mr. Johnson or Mr. Duprey. I'm sure they are quite knowledgeable and that this knowledge was gained at public expense. Therefore, although the taxpaying citizens foot the bill for the salaries of the EPA personnel, and for the knowledge that EPA personnel have acquired, the public faced with a hazardous waste siting hearing has to run bake sales and raffles to pay anew for their own technical experts. EPA will not come forward with the assistance that they readily give to the other side. EPA feels compelled to get involved only when it looks like the citizens are scoring a few points.

Mr. Duprey says that "it is the role of governments to provide hazardous waste disposal sites". I have searched EPA's legislation, the preambles to the legislation, and the legislative history and I have found no reference to Congress giving EPA any such "role". On the contrary, it is my recollection that such a role was discussed and rejected in the drafting of RCRA. EPA's mandate from Congress orders only the consideration of the protection of human health and the environment. I would be very curious to see if Mr. Duprey can cite any authority to justify his spending public funds to support this "role", or to otherwise take this "role" into account in carrying out his official duties.

Mr. Duprey also said "with existing technology all waste cannot be recycled nor can it be incinerated. Some hazardous waste must be disposed of in landfills." This is also not true and contradicts EPA's earlier policies.

EPA's dismissive attitudes toward the public in siting issues are a direct result of the dogma under which EPA operates, i.e. that hazardous waste landfills are necessary, that they

can be built safely and that it is EPA's "role" to encourage their construction. No one in EPA can carry that dogmatic baggage and still be objective in a confrontation between landfill operators and the affected community. In order to fulfill the Agency's policy, EPA personnel must protect the landfill operators and prevent the public from obtaining Information which would hurt the landfill operator's interests.

Is it any wonder that the public in hazardous waste siting cases soon comes to feel that EPA is on the side of the landfill operators? EPA IS on the side of the landfill operators.

Conclusions

The above is a description of what economists call "regulatory capture." "Regulatory capture occurs when a regulatory agency, created to act in the public interest, instead advances the commercial or special concerns of interest groups that dominate the industry or sector it is charged with regulating." This process of regulatory agencies being gradually taken over by the regulated parties has been the subject of academic study for many years and has earned economist George Stigler a Nobel Prize. The upshot of this research is that regulatory agencies captured by the industries they regulate are worse than no regulation at all since capture gives industry the power of government and gives the public a false sense of security. In this case the capturing industry is the landfill operators.

Before 1978 it was EPA policy to discourage landfilling hazardous waste. But with the implementation of RCRA came the growth of the landfill operators with waste Management Inc. (WMI) in the forefront. WMI was founded in 1965 when Wayne Huizenga bought a used dump truck that he operated himself. By 1984, at the age of 46, Huizenga retired from WMI with stock worth over $20 million and a company that grew from one used dump truck to be worth a billion dollars. The company's growth was marked with ties with organized crime; bribery; unfair competition practices; illegal political contributions; and disregard for the environment[37], and EPA officials rushed to join them[*].

Congress never intended EPA to promote the siting of hazardous waste facilities. This idea was considered and rejected during the deliberations leading to the passage of RCRA. Perhaps this stemmed from the experience with the Atomic Energy Commission whose authority to both promote and regulate the nuclear power industry and which was abolished in 1974 because of the conflict of interest in both encouraging the use of nuclear power and regulating its safety.

Between about 1978 and 1984, with the passage of the Hazardous and Solid waste Amendments (HSWA), EPA actively promoted hazardous waste landfills with ineffective controls and no insurance and did nothing to support alternatives. Only the NIMBYs stood in the way of this government/industry juggernaut.

[*] Appendix 1.

The Washington Post

May 21, 1983

Ruckelshaus Dismisses 4 EPA Officials

By Cass Peterson
Washington Post Staff Writer

Administrator William D. Ruckelshaus yesterday fired four top officials at the Environmental Protection Agency, including the heads of the agency's air and water divisions.

Kathleen M. Bennett and Frederic A. Eidsness Jr., assistant administrators for air and water, respectively, submitted their resignations to President Reagan at Ruckelshaus' request, according to agency officials.

Ruckelshaus, acting swiftly on his second day in office to make room for his own management team, also requested and received resignations from the regional administrators in Philadelphia and Boston. The EPA has 10 regions, and two regional administrators, in Seattle and Denver, have already been removed.

EPA sources said that another regional administrator, Sonia F. Crow in San Francisco, also would be asked to resign. But her office said yesterday that Crow, who was out of town and not available for comment, "remains officially the regional administrator."

Twenty high-ranking EPA officials have been ousted since a series of congressional investigations focused attention on the agency earlier this year. In addition to former administrator Anne M. Burford and her deputy, John A. Hernandez Jr., that number includes five of the agency's six assistant administrators, its general counsel and its inspector general.

The latest housecleaning came as the first subpoenas were being served in preparation for a federal grand jury investigation of allegations of impropriety against some former EPA officials.

EPA officials confirmed that subpoenas had been served on employes of the agency's enforcement office.

The Justice Department has been investigating allegations that former general counsel Robert M. Perry committed perjury when he denied.

See RUCKELSHAUS, A16, Col. 1

Ruckelshaus Fires 4 EPA Officials as Probers Subpoena Others

RUCKELSHAUS, From A1

under oath to a congressional panel, knowing anything about "green books" allegedly kept to rate his subordinates' performance.

Other matters expected to come before the grand jury are similar perjury allegations against former hazardous waste official Rita M. Lavelle and Hernandez, as well as allegations of conflict of interest against James W. Sanderson, a former adviser to Burford.

In a related matter, a contempt citation against Lavelle was certified by the House of Representatives and sent to the U.S. attorney's office, which has assigned the case to an investigator.

When Burford was found in contempt last December, the U.S. attorney's office did not assign an investigator, saying it had discretion to decline the case.

Environmentalists who met with Ruckelshaus in April urged him to make personnel changes, contending that the ideological beliefs and industry ties of some officials made them unsuitable for the EPA.

But EPA sources said privately yesterday that Ruckelshaus "agonized" over the fate of some of the officials, particularly Bennett, for whom he reportedly has high regard.

In a statement released by the EPA press office, Ruckelshaus praised Bennett and Eidsness for their "dedicated and professional service" and said both had agreed to serve him as special assistants "until the transitional period we are in is completed."

As a result of the departures, Ruckelshaus will be the only official at the agency who has been confirmed in his job by the Senate. The remaining assistant administrator, research chief Courtney Riordan, was nominated two months ago but has not been confirmed.

The EPA press office said yesterday that Bennett would be replaced on an acting basis by Charles L. Elkins, the air division's policy director, and Eidsness' job will be handled by Rebecca W. Hanmer, his deputy.

The regional administrators removed yesterday were Lester A. Sutton in Boston and Peter N. Bibko in Philadelphia.

In Boston, a spokesman for Sutton said that the resignation was requested "but very willingly given." Sutton later received a call from Ruckelshaus, according to the spokesman, who quoted Ruckelshaus as saying, "This is nothing personal. I just want people of my own."

Back at EPA, the press was having another feeding frenzy (fed by Hugh Kaufman of course) over the rampant corruption of EPA's top appointed officials. In August 1984 the U.S. House of Representatives Energy and Commerce Oversight Subcommittee found that: "During 1981, 1982 and 1983, top-level officials of the Environmental Protection Agency violated their public trust by disregarding the public health and the environment, manipulating the Superfund program for political purposes, engaging in unethical conduct, and participating in other abuses[38]." Ultimately Administrator Gorsuch resigned in disgrace[39], Assistant Administrator Rita Lavelle, who had used Superfund money to reward party faithful, was jailed for perjury[40] and over 25 agency executives were removed by the Reagan administration[41].

My contribution was in November 30, 1982 when I testified in Congress[42] at the request of Congressman James H. Scheuer[*]. My invitation to testify was to a Congress concerned about the goings-on at Anne Gorsuch's EPA in general and the landfill regulations in particular. EPA finally issued landfill regulations in 1982, five years after they were due. Although riddled with loopholes, a naive press hailed EPA's heroic achievement--although the bloom quickly faded after hearing testimony from me and many others. My testimony was aimed at taking the Congressmen behind the seemingly reasonable regulations and showing them the hollow facade they were. The summary of my testimony was that:

On July 26, 1982, four years overdue, the Environmental Protection Agency issued landfill standards required by the Resource Conservation and Recovery Act of 1976. During that four year period scientific and technical evidence accumulated to show that beyond any reasonable doubt that there is no such thing as a secure hazardous waste landfill and that no one knew how to build one. Nevertheless EPA published regulations which would continue a practice which EPA knew would not work and which will ultimately cost the nation dearly both in terms of health and money.

A hazardous waste landfill is an underground dump which contains thousands of tons of poisonous industrial wastes most of which remain poisonous forever and which will dissolve in the rainwater which inevitably passes through it. Throughout the years many technologies have been tried to keep the wastes contained and none have succeeded. On the other hand, EPA has demonstrated many alternative technologies capable of safely recycling, destroying or detoxifying these wastes. Technologies which are readily available but underutilized.

Dumping is popular because it is cheap. It is cheap because unlike the competing alternatives, the real cost of dumping is not borne by the producer of the waste or by the disposer but by the people whose health and property values are destroyed when the wastes migrate onto their property and by the taxpayers who pay to clean it up. It is in order to pander to this demand for cheap disposal that the politicians running EPA keep trying to find ways to continue the dumping of hazardous waste in landfills despite the evidence that it doesn't work.

The July 26 regulations admit that landfills will leak and the technology cannot be relied on to protect human health and the environment as required by law. But instead of banning the landfills EPA promises instead that it will provide emergency relief and remedial action when the landfill fails. This is analogous to the Federal Aviation Administration issuing

[*]Chairman, House Committee on Science and Technology, Subcommittee on Natural Resources, Agriculture Research and Environment

an airworthiness certificate to an airplane it knows to be unsafe on the basis that they promise to provide additional fire trucks and rescue vehicles and more hospital beds!

I was not alone that day. Other experts condemned EPA's hazardous waste landfill regulations:

Four witnesses told the Subcommittee ..... that EPA's land disposal regulations are not sufficient to meet the RCRA mandate to protect health and the environment.

In response to a "yes or no" inquiry from Rep. Schneider (R-RI), the first panel of witnesses at the Nov. 30 hearing, William Sanjour, an EPA branch chief speaking onhis own behalf; Kirk Brown, Texas A&M University; David Miller, a geologist with Geraghty & Miller, Inc.; and Joel Hirschhorn, Office of Technology Assessment, all gave a negative, reply despite their differences on other issues[43].

Rita Lavelle, Tom Jorling's replacement as our politically appointed overseer, was grilled hard and long by Congressman Scheuer[44], not just about the landfill regulations but also about an affidavit from an inspector with the EPA Inspector General's office who testified that she had asked for a surveillance on Hugh Kaufman so that she could get him fired.

The day before I was due to testify at Rep. Scheuer's hearings I got a less than satisfactory performance evaluation, the first in my career. It came as a shock since my boss, Bruce Weddle, gave no previous indication that he was dissatisfied my work. Weddle is one of those "clever wimps" attracted to government service who always seem to know which way the wind is blowing and whose sensitive antennae attract them to strength and power and they seek comfort and security in its embrace.

I did a little research and found out a few things. First of all, only two people, out of the 129 employees of Assistant Administrator Rita Lavelle, received less than a satisfactory performance evaluation[45]; the other one was Hugh Kaufman. Second, a recent news article had said that "Lavelle expressed amazement that an employee could publicly criticize the agency without being fired[46]." It was obvious to me that Weddle and his boss, John Skinner, were carrying out Lavelle's wishes. It was also obvious to the examiner for the grievance I had filed[47]. Rep. Scheuer wrote to Rita Lavelle:

I would like to emphasize again my views concerning EPA's apparent attempt to discredit, harass, and fire employees for criticizing the policies of this Administration. Employees of the United States Government have as their constitutional right the freedom of speech. I believe I speak for the vast majority of my Colleagues in stating that any further conduct of this sort by the Agency will not be tolerated.

Please be advised that we expect Mr. Sanjour's performance to be judged fairly and in accordance with appropriate standards for government employees. I intend to maintain a continuing interest in assuring that both Mr. Kaufman and Mr. Sanjour are treated in a proper and legally permissible manner.

We are currently reviewing your testimony from our December 16, 1982 hearing to determine if further action by a Congressional Subcommittee for appropriate Federal agencies[*] is warranted[48].

[*] I.e. the Justice Department.

My evaluation was changed to "satisfactory" but the harassment continued in other ways.

1983 was a busy year. I was invited to testify in April before a committee of the North Carolina General Assembly studying proposals for regulating hazardous waste landfills, of which there were none. The press reported:

Sanjour, speaking before a House subcommittee on Water and Air Resources, said that no hazardous-waste landfills are safe.

"No one knows of any technique to prevent landfills from leaking," Sanjour said. "There is no known way to prevent landfills from affecting the environment.

"When you're dealing with hazardous landfills, you're dealing with [them in] perpetuity[49]."

This newspaper also ran an editorial praising my testimony[50]. It is the same newspaper that urged EPA to "Rein in Sanjour" when I spoke out against at the Warren County PCB landfill a few months before. Like so many others they had, after a while, seen through EPA's nonsense.

In May I was asked to testify by then Congressman John B. Breaux, chairman of a subcommittee of the House Merchant Marine and Fisheries Committee[51]. I elaborated on my testimony of November, 1982, on the sham of landfilling and how EPA had dropped Jack Lehman's previously held position supporting alternatives to landfilling. I told them that when someone talks about the cost of the alternatives being exorbitant, they are assuming that the cost of landfilling is the price that the dumper pays to have his waste landfilled. In fact, the real cost of landfilling occurs many years after the waste is dumped when the waste starts appearing in people's wells and in their bloodstreams and their health is ruined and their property values are destroyed and the public ultimately has to clean them up and the taxpayer ultimately pays.

I said that if in fact the dumper had to include the cost of insuring his waste for liability for as long as it reminded hazardous, and had to insure the waste for cleanup costs, then his cost would be far greater than any of the alternatives. The companies that operate the alternatives have to carry insurance, but the dumpers don't. In fact, hazardous waste dumpers have so little confidence in landfills that they have successfully campaigned to get the liability and the cleanup costs passed on to the taxpayer. In other words, landfilling, or dumping, is subsidized, and that is what makes it cheaper. The competing alternatives have to pay their own way, liability insurance, cleanup costs and all.

I didn't realize at the time but Superfund would essentially nullify the "subsidy." More about that later.

Conclusions

As for Ann Gorsuch, Rita Lavelle et al., this is a further example of Congress' folly in granting broad discretionary power to the president to run a regulatory agency. In President Carter's case, the authority was abused to "fight inflation." In President Reagan's case it was to reward supporters. In both cases Congress exposed the abuse but, aside from embarrassing a few people, did nothing to change the underlining source of the abuse.

I hope my testimony before Congressman Scheuer's Committee as well of my testimony on Senator Levin's Committee and my contributions at OTA were some of the inputs to the

authors of the Hazardous and Solid Waste Amendments of 1984 (HSWA) which legislated many of the reforms I and many others had advocated. In fulfillment of that hope, I gave myself a pat on the back.

Chapter Four – Congressional Office of Technology Assessment

In late 1983 I took a break from Agency harassment to go on loan to the Congressional Office of Technology Assessment (OTA) and to do some useful work. OTA was a "think tank" run by Congress to research issues of technology raised by Congressmen. I loved the quasi-academic atmosphere of a think tank. I had spent the first four years of my professional career with the U.S. Navy's think tank*. It was a relief to be among people who analyzed problems and whose horizon was farther out than next week's political crisis.

The study, *Superfund Strategy*[52], was undertaken at the behest of the House Energy and Commerce Committee and the House Science and Technology Committee (Rep. Scheuer's committee), which had been holding oversight hearings on RCRA and Superfund. The purpose of the study was: "understanding the likely size of the uncontrolled hazardous waste site problem, and in examining technology choices for Superfund wastes." The part of the study I was asked to do dealt with "Hazardous waste Facilities." I imagine OTA asked for me because a) I knew the subject, b) I was an experienced analyst and researcher and c) I was not likely to toe the EPA party line.

This study was in line with a theme I'd been harping on. One purpose of Superfund (or CERCLA) was to clean up abandoned hazardous waste sites which were damaging "human health and the environment." The purpose of RCRA was to regulate operating hazardous waste treatment, storage and disposal sites to protect "human health and the environment." One would think, therefore, that the purpose of RCRA was to prevent sites from becoming Superfund sites. Yet within EPA that was a foreign concept. In spite of the fact that both programs reported to the same assistant administrator, there was almost no coordination between the two. They had different standards, for such things as; what were the pollutants of concern; what were the pollutant action levels of concern; what were the contaminants of concern; how to clean up contamination; etc.? In almost every case the Superfund standards were the more stringent.

For instance, Superfund was concerned about the toxic ch

emical deldrin if it was detected at levels of 5 nanograms per liter in groundwater, but RCRA, which was supposed to prevent a site from becoming a Superfund site, would not be concerned about finding deldrin at a site RCRA regulated until it reached levels of 2,500 nanograms per liter[53]. This attitude guaranteed that many RCRA sites would become eligible to be Superfund sites

It was nice to be a scholar again rather than a polemicist. By April 1984 I produced an 81 page (double spaced) paper with 69 footnotes† on: "Groundwater Protection Standards for Hazardous waste Land Disposal Facilities: Will They Prevent Superfund sites[54]?" It critiqued EPA's groundwater protection standards in depth. The introduction to my report reads:

One of the principal reasons for the passage of the Resource Conservation and Recovery Act (RCRA) in 1976 was for the regulation of future disposal of hazardous waste. It then became evident that additional legislation was needed to deal with the burgeoning number of uncontrolled sites which resulted from past practices. In 1980, therefore, Congress passed the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), also known as Superfund. There has been a general impression and hope that these

* Operations Evaluation Group of the Center for Naval Analysis.
† All OTA official studies are anonymous.

two laws would eventually provide effective protection of public health and the environment from hazardous wastes: CERCLA by cleaning up past problems and RCRA by preventing future ones.

This analysis concludes that, where groundwater is at risk, RCRA groundwater protection standards are not likely to prevent land disposal sites from becoming uncontrolled sites that will require cleanup under Superfund. The problems with the RCRA groundwater protection standards are so numerous and serious that the standards cannot compensate for what has been found to be ineffective and unproven land disposal technology. Although OTA has not focused on the details of the RCRA statute in this analysis, there does not appear to be a major statutory problem.

The limitations of the RCRA groundwater protection standards, coupled with those of land disposal technology are likely to cause serious problems for future generations. Concern for the future indicates that land disposal be limited to inert low hazard wastes, such as the stabilized residues from waste treatment operations, and to facilities where groundwater is not threatened. Otherwise, Superfund is likely to face a continuing stream of substantial burdens in the decades ahead from land disposal facilities sanctioned by the regulatory structure, but whose operators may not bear cleanup costs. There remains, moreover, a threat from the billions of tons of hazardous waste which have been disposed for many decades at what are now the interim Status facilities under RCRA.

Just three days after the report was issued it was summarized by OTA project director, Dr. Joel Hirschhorn, before Rep. Scheuer's House subcommittee. The bulk of my paper was later incorporated into *Superfund Strategy*.

My former colleagues back at EPA were apparently given the job of debunking my analysis. Sadly, these are the people who collaborated in bringing the hazardous waste program to the sorry state it was in and, with a few exceptions, didn't know or didn't want to know how dysfunctional and corrupt their program had become. I was slipped a copy of the "second draft[55]"of their debunking memo. In it they whined about the "negativism" of my report and pointed out that: "Many consider the rules to be quite stringent…" It was a poor job, consisting mostly of pleading "guilty with an explanation." It was no wonder EPA never finalized and sent it to OTA.

Although that completed the reason for my detail to OTA, I spent a little more time to follow up on a major scandal I had uncovered during my research for *Superfund Strategy*. I found that, pressured to spend Superfund money as fast as it can, EPA was paying polluters millions to move their pollution from one leaking dump site to another. I wrote a preliminary memo about it[56] titled "Where have all the Superfund wastes gone?[*]" and soon it spread through Congress, the press and EPA like wildfire and had EPA straining to cope.

The memo pointed out that thousands of tons of dangerous Superfund clean-up wastes were being moved to sites that were leaking hazardous waste into the environment, and it is inevitable that some sites to which Superfund wastes have been taken will also become Superfund sites. Ten specific cases were cited in this very preliminary review.

One case, for example, was the Stringfellow dump site near Riverside, California, which had become a Superfund site. The firm of BKK was hired by the Superfund program to haul

[*] Full text available at http://home.comcast.net/~jurason/main/OTA2.htm

millions of gallons of hazardous waste from the Stringfellow site to BKK's own landfill in West Covina, California. However, the BKK facility was also reported to be leaking into the environment. Furthermore, BKK was also named as one of the parties responsible for dumping hazardous wastes into the Stringfellow site in the first place. Thus, BKK was paid to dump hazardous wastes in Stringfellow, where they leaked into the environment, and then paid again by Superfund to haul the wastes from Stringfellow to the BKK facility where they were leaking again. (Later I learned that the BKK facility had also become a Superfund site.)

Another example: at the Seymour, Indiana, Superfund site where WMI had been one of the parties responsible for the site, WMI received a contract to haul some of the waste to its Vickery, Ohio, site where subsequently there was discovered a massive leak of millions of gallons of hazardous waste. Thus, WMI was been paid to dump the same wastes twice in succession in two different leaking sites. Furthermore, WMI was relieved of further liability for cleanup at Seymour.

The second part of the memo dealt with the four largest recipients of Superfund cleanup wastes: the WMI landfill at Emelle, Alabama; the SCA Services Inc. landfill in Model City, New York (bought by WMI in 1984); the CECOS International Corp. landfill in Williamsburg, Ohio (shut down by the state in 1988); and the CECOS landfill in Niagara Falls, New York. The WMI Emelle site had been granted a waiver from requirements to monitor for leaks; the SCA Model City landfill refused to release monitoring results to EPA; EPA had no information on the CECOS Williamsburg, Ohio, site; and the CECOS Niagara Falls, New York, site was known to be leaking. In short EPA was not providing the minimum oversight necessary to make a reasonable determination on whether the sites receiving the bulk of Superfund wastes were capable of handling them.

Two committees of Congress asked the General Accounting Office to follow up on my memo and investigate the extent to which wastes removed from Superfund sites have been disposed of in leaking facilities[57].

The press[58] cited EPA sources confirming what I had been saying that communication between EPA's Superfund & RCRA offices has not been good and reported "Superfund sources say they are hopeful that the new EPA policy document and the Congressional interest in the subject will at least spur RCRA compliance. Further, EPA sources say the new direction may encourage incineration and treatment of wastes, something EPA has been attempting through other policies."

I was awed how so little effort on my part could result in so much good effort on the part of so many others. A profitable few days' work!

As all good things must come to an end, my detail was up, and in late 1984 I had to return to the cold bosom of EPA. During my sojourn at OTA I had wounded both EPA's RCRA and Superfund programs and the agency was not forgiving. I was stripped of my branch chief job and given the title of "policy analyst." I didn't contest the action because they were actually doing me a favor. By relieving me of supervisory responsibilities I was removed from my supervisor Bruce Weddle's nit-picking harassment, which had gradually whittled away most of my authority. And my new job classification allowed me to choose the issues I wanted to research. I initially chose to follow up on the considerable fallout from my brief stay at OTA.

There are four things that happened toward the end of 1984 in which I hope I had some influence. First and most important, the president signed the Hazardous and Solid waste Amendments (HSWA) to RCRA which focused on waste minimization and phasing out land

disposal of hazardous waste. I hope that my Congressional testimony was a contribution. EPA focused on two reforms which correspond to my activities at OTA, one was a new policy for the disposal of Superfund wastes and the other a task force was formed to evaluate and upgrade the groundwater monitoring at RCRA sites. The forth was the new evidence coming to light of the power and influence of the waste management industry over EPA. This last item would consume a great deal of my time in the coming months.

One of the first things I did back at EPA was to review[59] EPA's proposed new policy for approving sites for disposing of Superfund wastes. I found that "this policy is less stringent than the policy it proposes to replace and which itself was inadequate and has never been enforced. And that rather than discouraging off-site disposal, the proposed policy actually encourages it. Thus we are perpetuating the need for Superfund by using Superfund money to move Superfund wastes to sites which will themselves become Superfund sites."

Another disappointment was the Groundwater Monitoring Task Force. This started off well but was soon stifled because EPA headquarters did not want to irritate the EPA regional offices and state governments by pointing out what a rotten job they were doing. In so doing EPA created another whistleblower, my colleague Bill Myers, who quit the task force in protest and told the whole story to Congress[60].

While I was enjoying myself at OTA, my colleague Hugh Kaufman, was busy rooting out further evidence of EPA's subservience to the waste management industry. When I returned, Hugh asked me to help him research and document three egregious cases of waste, fraud and abuse by EPA, all resulting in windfalls for waste Management Inc. Phil Shabecoff, then with the *New York Times*, wrote an excellent expose of these three cases[61] based on our memos and threw in some new facts about the "revolving door." Phil wrote:

The Environmental Protection Agency's relationship with the nation's largest disposer of toxic wastes is becoming a matter of contention within the Government.

"Two agency officials who have long been critics of the agency's efforts to clean up toxic wastes said in interviews that the agency was showing a pattern of favoritism toward the company, waste Management Inc., whose leadership and legal counsel now include former officials of the E.P.A., the Justice Department and the White House.

But the agency says that, far from showing favoritism, it is concentrating some of its strongest enforcement weapons against waste Management because it is the giant of the waste disposal industry. Agency officials said they were now looking at all of the company's facilities, not only to bring them into compliance with the toxic waste laws but also to compel the company to permanently adopt sound environmental and public health policies.

The company also said it was being singled out unfairly for enforcement action and had been subjected to excessive penalties. waste Management officers further maintained that the company's environmental record was better than those of almost all other companies in the business.

"We have been subjected to the most intense inspection and enforcement of any company in the history of E.P.A." said Walter C. Barber, the company's vice president for environmental management, who is a former Acting Administrator of the Federal environmental agency.

But Hugh B. Kaufman and William Sanjour, two middle level officials in the agency's toxic waste program, said E.P.A. actions had helped the company make millions of dollars rather than remove the competitive advantage they said it had gained through repeated

violations of law.

Mr. Kaufman and Mr. Sanjour cited three agency actions involving waste Management that they said were examples of special treatment.

One was a permit for the burning of toxic polychlorinated biphenyls, or PCBs, aboard the company's incinerator ship Vulcanus. The final permit, contrary to agency policy, included a phrase that allowed the ship to burn wastes containing dioxins from Love Canal in Niagara Falls, N.Y. A later report by the agency's inspector general found that no one in the agency would admit to inserting the phrase; to this day, agency officials say they do not know how it came to be included.

A second action was the recent complaint issued by the agency seeking penalties for violations at a company waste disposal site in Vickery, Ohio. Mr. Sanjour and Mr. Kaufman said their analysis showed the penalty did not come close to matching the money made by waste Management as a result of the violations.

The third action was the recent settlement of agency charges of violations at the company's giant disposal site at Emelle, Ala. The two E.P.A. critics said the settlement benefitted waste Management because it waived rules restricting the company's freedom in disposing of toxic wastes.

It wasn't just we who believed WMI got preferential treatment from EPA. Competitors, who incinerate or treat rather than bury hazardous waste, feel the same way. "There is a shared concern in the commercial treatment industry that E.P.A. sanctions against Chemical waste Management are grossly inadequate and frequently amount to little more than a business surcharge rather than an effective deterrent to noncompliance[62]."

Conclusions

Hazardous waste management policy	Was policy in the public interest?	Did policy benefit landfill operators?	Did EPA support policy 1979-1986?
Cradle-to-grave management	yes	yes	yes
Discourage to use of landfills and encourage technological alternatives	yes	no	no
Educate the public on known risks of landfills and other facilities	yes	no	no
Strict oversight on monitoring and reporting	yes	no	no
Punishment for violations great enough to deter violations	yes	no	no
Require insurance and financial responsibility great enough to cover future problems	yes	no	no
Encourage industry to manage its own waste on site	yes	no	no
Encourage waste reduction	yes	no	no
Encourage recycling	yes	no	no

The landfill operators were able to capture the hazardous waste management functions of EPA and put it to their own use because as Edmund Burke said: “The only thing necessary for the triumph of evil is for good men to do nothing.” I don’t blame the bureaucrats. You can’t expect them to take on a powerful and ruthless industry without the backing of the administration and the administration was not interested.

Chapter Five – Federal Recycling

Sometime in 1985, my office director, John Skinner, asked me to accompany him to the office of then Congressman Ron Wyden. Wyden, a great environmentalist, was anxious for EPA to issue meaningful "procurement guidelines" for the federal governments procurement of recycled paper and other recycled products.

These procurement guidelines are not really guidelines but regulations, and regulations are laws. Indeed most laws are regulations, also called administrative laws, i.e., laws written by administrative agencies such as EPA rather than by Congress. While it may seem unconstitutional and a violation of the separation of powers; it's not, because Congress routinely (foolishly) delegates authority to administrative agencies to write laws.

Congress had been passing laws requiring federal procurement guidelines to be written even before the 1970 creation of EPA. These guidelines were supposed to cause federal government procuring agencies to procure recycled products. In the past, EPA either ignored the requirement or wrote weasel worded guidelines with no teeth. Procuring agencies for the most part ignored the guidelines. Every few years, a disgusted Congress, seeing nothing happening and prodded by recycling industries, would pass stronger legislation, and EPA and the procuring agencies would continue to ignore then or get around them. The latest revision to the procurement requirements was included in the HSWA amendments of 1984. The new law had a lot of teeth in it, but EPA proposed a guideline for paper in April of 1985, which thwarted the law and would have let the procuring agencies off the hook

This outraged the recycling community and the Congressional sponsors of the procurement guidelines. They called the Director of EPA's Office of Solid waste on the carpet, and he promised to re-propose a paper procurement guideline with teeth in it. It was at that point that I was put in charge of the procurement guideline program. I was told by my management that the Agency took the guidelines seriously and that I was to issue meaningful guidelines that would have a real effect on reducing the solid waste streams going to landfills. As is usually the case, this was because the agency was under court-ordered deadlines issued as a result of a suit by the National Recycling Coalition and others[63].

It was a strange arrangement for me. Normally a job like that would be given to a branch chief. But I was no longer a branch chief and they clearly didn't want to make me one again (nor was I anxious to be one again.) Instead I was given lots of money to hire my own choice of consultants and contractors. (If I had been a branch chief I would have been stuck with the people I had.) I brought one consultant aboard full time and hired the rest as needed.

In the course of four years I got out four procurement guidelines. No one in EPA had ever produced four major regulations in four years. It usually took that long to produce one regulation. After advertising your intent to regulate in the Federal Register you first have to research your facts, then conduct endless meetings with everyone under the sun while you hammer out a draft. This is then circulated, step-by-step, through every level of EPA in a game of "Chutes and Ladders" where any office can shoot you down and it's back to the drawing board. Then when it gets the administrator's signature it goes to the Office of Management and Budget (and to the White House staff) and to every federal agency involved. If that's approved you get to publish a *proposed* regulation in the Federal Register and invite public comment. After the public comment period you write up a summary which addresses all the public comments and then start all over again on the *final* regulation.

The four guidelines were for recycled paper, re-refined oil, retread tires and recycled

building insulation products. The fundamental problem was that the federal procurement officers were under instructions not to buy recycled products. These instructions took different forms in each of the different areas, and the usual justification was that recycled goods were inferior and usually they were.

For example: "Re-refined oil used to have a bad color associated with it because in the old days they didn't have modern technologies. They did some filtering and poured it over clay. They had these very, sort of, antique technologies. It did not make a high quality oil and it got a very bad reputation[64]."

However, modern technology can re-refine used oil to the same standards as virgin oil; the tire treads from trucks on the highways that you see today are just as likely to come from new tires as from retreads, which are capable of being made to new tire standards; similarly for paper and insulation. The thrust was to require the various procurement agencies to write product specifications that make no distinction between new and recycled products and to procure products on quality and price. After a struggle the agencies came around.

For example the General Services Administration, which oversees federal tire procurement, fought us on this every inch of the way. They had numerous meetings, bringing in people from all over. The docket is full of their letters. They made phone calls. I had no doubt they went over my head. They presented one excuse after another about why they could not buy retread tires. Retreads are unsafe; we have no specifications; the National Highway Traffic Safety Administration says we can't; the Administrator says we can't; we can't warehouse tires; there's too much variability in quality; it will hurt small businesses; it will raise cholesterol levels; et cetera, et cetera, et cetera.

The final guideline addressed every one of their excuses, and disallowed every one of them; we left them no room to wiggle. In the end GSA marshaled its efforts to figure out how to comply with the guideline instead of fighting them. The phone calls we got from GSA were no longer saying "we can't" but "how do we?"

Since no good turn goes unpunished, my reward for a job well done was to have my one man operation become a whole division with a large staff at the direction of ---- Bruce Weddle.

I opted out.

Conclusions

In the four years, 1985-1989, it took to issue the guidelines, there was an awakening in EPA. The agency rediscovered municipal solid waste and the procurement guidelines program took on new importance. At the state and county level the guidelines had a strong influence in getting states and counties to set up procurement programs for recovered materials. In most jurisdictions, just as in the Federal government, there were those who wanted to do the recycling thing and those who thought it was too much bother. We were told that the guidelines frequently tipped the balance in favor of recycling. I hope that the fact that I have a recycling receptacle in my kitchen is due in part to the procurement guidelines.

This project illustrated to me the difference between what motivated bureaucrats can do when they have the administration backing them up instead of turning their backs.

Chapter Six – The GSX Saga

Getting back to 1985; all the time I was working on the procurement guidelines I never stopped responding, on my own time, to pleas for help from the NIMBYs. The most important and far reaching one came from North Carolina. This time it was a new hazardous waste treatment facility.

In 1985, a company called GSX applied for a permit to build a commercial liquid hazardous waste treatment plant in Scotland County, North Carolina, which had a largely poor population of blacks and Indians. This was the beginning of a new wave of hazardous waste facilities in response to the Hazardous and Solid waste Amendments of 1984 (HSWA) which severely limited land disposal of hazardous waste. wastewater from the plant would be discharged into the Lumber River upstream of the drinking water intake of the town of Lumberton. It turned out to be a long, involved case with many unexpected twists.

The first twist came when the protesting citizens of Scotland and Robeson counties and the town of Lumberton were able to get the state legislature to pass a law, in June, 1987, requiring GSX to dilute its waste water with 1000 parts of fresh water before discharging it into the river. Then GSX and its allies petitioned EPA to withdraw the authority of the State of North Carolina to administer the federal hazardous waste program claiming that the dilution requirement would put the GSX facility out of business and was not necessary to protect human health and the environment. The regional office of EPA in Atlanta was very sympathetic.

EPA has ten regions. Region 4, headquartered in Atlanta, encompasses the Southeastern states. Regional administrators are appointed by the president, usually at the recommendation of the leading politician of the president's party in that region. Often they are local politicians with no environmental background or ethic. The Region 4 administrator was a Republican politician while the North Carolina legislature was dominated by Democrats.

We had had a meeting with Mr. Lee Thomas and members of his staff in 1986 to discuss, among other things, corruption within the agency and how some persons, especially in Region 4, are using their official positions to promote the interests of the commercial waste management industry. At the conclusion of that meeting; Mr. Thomas urged us to bring to his attention anything else along these lines if it should come up in the future

I was alerted to the GSX situation in October of 1987 by Richard Regan, a Lumbee Indian and community activist in Lumberton, North Carolina. Mr. Regan told Hugh Kaufman and me that EPA Region 4 was going to challenge North Carolina's RCRA authority because the state had passed more stringent regulations than EPA, which was claiming they were inconsistent with RCRA. We thought he must be mistaken. While we had not been involved with this issue recently, we had been some years ago. We thought that the entire controversy over stringency of state laws versus consistency with RCPA had been put to bed by Congress years ago, in favor of state's rights to be more stringent, with the passage of the Bumpers amendment. That was why the Bumpers amendment was written. Nevertheless, to our great surprise, after talking to several people in the Agency, we found that Mr. Regan was correct. We then called some staffers in the Senate who had been involved with the passage of the Bumpers Amendment to see if something had changed or if our understanding was incorrect, but they too were shocked and couldn't understand how EPA could continue to ignore the requirement that states may pass more stringent rules than EPA and not be inconsistent with RCRA

We were alarmed by this situation and we wrote the following letter to the then EPA Administrator Lee Thomas in November 6, 1987:

It has been brought to our attention that there are some EPA employees who are contemplating taking an action which might result in, or create the appearance of affecting adversely public confidence in the integrity of the government and we feel obligated to make you aware of lt.

The state of North Carolina has passed a law limiting the discharge of hazardous waste into streams which provide drinking water. This was done In order to control the discharge of a proposed commercial hazardous waste treatment facility by the GSX corporation in Scotland County, N.C. GSX wants to discharge five times the amount that the state would allow. They have convinced the EPA regional office in Atlanta to threaten to have EPA take over the management of the hazardous waste program in North Carolina and cut off federal funds if the state does not rescind the law and allow GSX to discharge all it wants.

You may not be aware but a similar situation arose, before your time, in the previous administration. States which had more stringent environmental rules than the federal government were similarly threatened by EPA on the grounds that their rules did not satisfy the Congressional requirement to be consistent with federal rules. These threats were brought to the attention of Congress by us and others and the reaction there was outrage. As a result, Congress amended the law to specifically allow the states to have more stringent requirements than EPA.

EPA Region 4 personnel are now trying to pervert the law, arguing that North Carolina's more stringent requirements impede and restrict the flow of hazardous waste into the state. This is the same argument that was used by your predecessors. It is as fallacious now as it was then, since any rule controlling the environmental impact of hazardous waste will restrict its flow. If one truly wants wastes to flow freely then one must abolish all rules.

We pointed out to you at our last meeting that many of your employees in EPA have very friendly relations with the commercial hazardous waste management industry, the industry which they are charged with regulating, and that this has been especially true in Region 4. Indeed, Jack Ravan, the former EPA Regional Administrator who instigated these proceedings against North Carolina, has since left EPA to work in the hazardous waste management industry as have some of his predecessors as well as other former high ranking EPA officials. While this may be legal, it does tend to create the appearance of a conflict of interest in the mind of the public that could undermine confidence in the integrity of the government.

We would also like to point out to you that although EPA rules specifically disallow dilution as a treatment method for hazardous waste, this proposed facility takes advantage of a loophole in the federal law to treat wastes by dilution. The loophole is that while GSX is not allowed to dilute the waste, they are permitted to dump undiluted hazardous waste into the sewer where it is no longer technically considered to be a hazardous waste and can then be diluted at the sewage treatment plant. EPA Regional office personnel are not only aware of this subterfuge hut actually encourage its use.

We have reviewed the draft permit issued to GSX. Nowhere does it specify that the hazardous wastes must be treated so as to be rendered non-hazardous. As mentioned above, hazardous waste may be dumped directly into the sewer. This being the case, the question which the public may ask is why is EPA encouraging hazardous wastes to be shipped hundreds of miles just to be dumped down a sewer. That could be done just as well and a lot cheaper by the plant that originated the waste. At least in that case the waste would remain

In the community where it originated and which profited from its production.

In addressing the public, EPA frequently criticizes communities for being "NIMBYs" i.e. communities whose attitude toward waste management faculties is "not in my back yard". Nevertheless some persons in EPA encourage a system whereby manufacturers and other generators of hazardous waste, rather than treating their own wastes in their own back yard, pay a handsome price to turn it over to one of the large commercial hazardous waste management companies (run by former EPA officials) where it is dumped in someone else's back yard. There might be some justification for the system if it resulted in environmentally sound management but, as you well know, most commercial hazardous waste facilities have been environmental disasters.

In summary, we felt obliged to bring to your attention the fact that some EPA employees, in order to promote a dubious undertaking, are advancing a scheme which would be detrimental to public confidence in the integrity of the federal government by knocking down a state law designed to protect the health of its citizens[65]*.*

That same month, November 1987, EPA formally announced plans to initiate proceedings to determine whether to withdraw authorization of the North Carolina hazardous waste program. Kaufman and I and others campaigned behind the scenes to alert the press and the Congress of what was happening. Shortly after that there was a flood of mail from Congress questioning Thomas's actions against North Carolina. The press also picked up the story and ran with it.

By March of 1988 Administrator Thomas halted the withdrawal proceedings and initiated an internal task force to study the matter and by June the task force recommended EPA back off using the threat of withdrawing hazardous waste (RCRA) authority. Administrator Thomas agreed but commissioned a nine month $1.2 million study to follow up the earlier study. The massive second study looked at alternative ways of assuring that states had adequate hazardous waste management capacity. It was completed in December 1988, when, shortly before leaving office, Thomas issued a policy memo, based on the study, which, among other things, conceded North Carolina's right to act as it had. One would think that that was the end but it was only the end of round one.

In January 1989 President Reagan was succeeded by George H. W. Bush and Lee Thomas resigned as EPA administrator, to be replaced by William K. Reilly in February. (In my opinion, Lee Thomas was the best administrator during my time as an EPA employee.) Reilly was a professional environmentalist and was president of the World Wildlife Fund at the time of his appointment.

One of Reilly's first acts, in April 1989, without any explanation or public discussion, was to reopen the proceedings to withdraw North Carolina's authority to manage the RCRA hazardous waste program. Anticipating this in March, Kaufman and I wrote another letter, this time to Administrator Reilly[66]. It reads in part:

About eighteen months ago, we were concerned that some persons in EPA were trying to overthrow a state law designed to protect public health and the environment of its citizens and we brought it to the attention of your predecessor. This was being done in order to force the siting of the so-called GSX treatment plant in Scotland County North Carolina. Eventually, EPA did relent and allowed the state law to stand.

Now, with a new administration, we understand that these persons are trying to get

EPA to reverse its position. We think this would be a very bad mistake: bad for you, bad for EPA, bad for the Administration, bad for the environment, and bad for the public welfare. ……

Regardless of motivation, the state law restricting the discharge is really necessary. The evaluation by EPA headquarters was that the facility design allows too little margin for error. If the facility is built as planned, sooner or later something will go wrong and the Lumberton drinking water supply will be poisoned. Judging by how GSX operates its Pinewood, SC facility, this would happen sooner rather than later.

A careful reading of the fine print on the permit reveals that no treatment of the hazardous waste is actually required in this so-called treatment plant, and that untreated wastes could simply be diluted and legally dumped into the Lumber River via the local municipal waste water treatment plant.

EPA, in general, and Region 4 in particular, has an unhealthy cozy relationship with the hazardous waste management industry. ….. many federal government executives have used EPA's hazardous waste program as a stepping stone to high paying jobs in the industry they were supposed to control. If EPA reverses itself and allows GSX to build this facility, we should not be surprised if some EPA personnel, who are now promoting this facility, go to work tor GSX, thus further reducing the credibility of EPA.

The "Bumpers Amendment" to RCRA was clearly written to allow states to do exactly what North Carolina is doing. It is EPA who has distorted the law. …..

In the long run, commercial hazardous waste facilities are bad for the environment. The future of responsible management of all wastes, including hazardous waste, lies in source reduction, source Separation, recycling, and waste treatment by the generator. The very existence of commercial facilities works against this and encourages profligate management of hazardous waste by generators. EPA should be discouraging commercial facilities in favor of responsible management of wastes by the producers of the wastes.

The public, those who have to deal with EPA on siting issues, superfund issues, and RCRA facility issues, have come to view EPA as little more than shills tor the waste management industry. EPA appears to show far more enthusiasm for siting hazardous waste facilities than it does tor controlling them. By removing a state's authority for trying to protect its citizens, while other states go unpunished when they fail to enforce environmental protection laws, only enhances this opinion.

To pursue the last point further, EPA's RCRA regulations contain minimum requirements for enforcement authority and authority to assess penalties that states must have before they can be authorized to run the federal hazardous waste management program. Nevertheless, EPA has approved state programs which do not have the required authority. There are examples of states that are doing a poor job of administering EPA approved RCRA programs, in part, because they lack adequate enforcement laws.

……

The comparison between EPA's attitude toward North Carolina and Nebraska is revealing. The Nebraska Legislature is now debating whether it should adopt EPA's minimum requirements for a federally authorized state program, two years after it was authorized by EPA to run the federal hazardous waste program. There is no talk in EPA about withdrawing Nebraska's authority if they do not pass such legislation. In contrast, EPA sent public employees to Raleigh to lobby the North Carolina Legislature against passing a law to protect its own citizens and threatened to withdraw authorization of the hazardous waste program if they did so, even though such state legislation is explicitly allowed under federal law.

We have been with EPA since its inception, and this is typical of what has happened to the agency over the years. We have gradually moved from protecting the public interest to promoting the commercial waste management interest. We hope that you will not contribute to the further debasement of the agency by re-opening the GSX business.

The official announcement, "To Recommence Proceedings to Determine Whether to Withdraw Hazardous waste Program Approval," was published in the Federal Register on April 20, 1989 and was signed by Regional Administrator Greer C. Tidwell. Once again the letters started coming in and the press interest perked up. Not all the letters were in opposition. waste Management Inc. wrote letters praising the Reilly/Tidwell action. An especially strong letter in opposition was sent to Reilly on April 20 by the heads of five environmental organizations[67]. It reads in part:

We have just learned of an EPA decision which, if taken to its expected conclusion, would sadly reverse one of the few correct environmental decisions made by the Reagan administration.

The cause of our concern is EPA's announced intention to "restart" the proceeding to rescind the Resource Conservation and Recovery Act authority of The State of North Carolina. We believe that decision is a grave misjudgment that will have significant political and resource ramifications tor the Agency.

….. we firmly hold that the proceeding against North Carolina is unwarranted and illegal. The Bumpers amendment to RCRA and the Agency's own regulations regarding RCRA "consistency" make it clear that more stringent state laws with a basis in health and environmental protection are specifically protected from federal preemption.

….. Lee Thomas, made the wise decision to dismiss the waste industry's nagging pleas and protestations to have the Agency "go after" the North Carolina law

….. Mr. Thomas announced this policy decision in an Agency memorandum and committed EPA to this course of action only a few short months ago.

….. Behind the complex, legal morass in this case is a simple and straightforward public relations maneuver by the hazardous waste treatment industry. In this case, it is a maneuver geared toward winning the pocketbooks of potential investors and intimidating the general public. Industry representatives -- weary of dealing with local citizens -- wish to "make an example" of North Carolina, showing that citizens cannot beat "city hall," the waste handling industry or, better yet, EPA. …..

We thank you for your attention to this matter and urge you to reconsider this short-sighted decision.

The hearings to disenfranchise North Carolina's hazardous waste program took place before EPA Administrative Law Judge Spencer T. Nissen. We once sat in on one session of the proceedings. It was a sad spectacle. The lawyer from the EPA Office of General Counsel was accompanied only by lawyers for the waste management industry who did most of the talking for him. Indeed, the industry lawyers answered most of the questions Judge Nissen addressed to EPA. Sitting on the other side, opposed to the industry and EPA, we saw not only the attorneys for North Carolina, but also two representatives of national environmental organizations, and a representative of a grass-roots citizens group. It was obvious to any observer that EPA being led in these proceedings by the hazardous waste management industry.

On April 21, 1989 Reilly was interviewed about the April 20 letter from the five environmental groups by a reporter from the Winston-Salem Journal[68]. With naïveté and candor that one doesn't expect from someone in that position, Reilly opened up a Pandora's Box that would have repercussions for years. The article said in part:

The criticism of Reilly yesterday came from five of Reilly's former colleagues -- the presidents or executive directors of the Sierra Club, the National Wildlife Federation, the Audubon Society, the Environmental Policy Institute and the Natural Resources Defense Council.

Reilly had been the president of the Conservation Foundation and the World Wildlife Fund until February, when he became the first environmentalist to head the EPA.

Reilly said yesterday in Washington that he was surprised that Jay D. Hair, the president of the National Wildlife Federation, was among his critics.

"Jay Hair hosted the breakfast at which I was lobbied to do the very thing that we are doing," Reilly said. He said that one of the people who spoke to Reilly at that breakfast was Dean Buntrock, the chairman of waste Management Inc. of Oak Brook, Ill., the nation's largest hazardous-waste management company.

Hugh Kaufman and I felt we now understood what the motivation was for Administrator Reilly's strange behavior --- he was doing some powerful friends a favor. An unnamed EPA official was once quoted as saying[69] "Reilly's always looked up to rich people, and he's infatuated by money and prestige. He's Jay Gatsby." Dean Buntrock was one of the largest corporate contributors to the Conservation Foundation, which Mr. Reilly had just left as President (and to which he would return after leaving EPA). Mr. Reilly also had a breakfast meeting with William Ruckelshouse on April 17. Ruckelshouse --- who preceded Reilly as administrator of EPA and was Reilly's sponsor for the job --- became the CEO of Browning-Ferris Industries Inc. and was a member of the board of directors of the Conservation Foundation. waste Management and Browning-Ferris were the first and second largest hazardous waste management firms in America. They had a strong and abiding vested interest in overthrowing the North Carolina statute. They were weary of dealing with the NIMBYs who were frustrating their attempts at expansion and they wanted to send a message to other States which had passed or were contemplating passing similar legislation to North Carolina's. (I remember attending an environmental conference, during this time period, at which Mr. Ruckelshouse berated EPA employees for failing to do their duty to clamp down on the NIMBYs.)

As a result, Kaufman and I filed a formal complaint with the EPA Inspector General[70] for "Possible Criminal and Ethical Violations by the Administrator and Regional Administrator."

The complaint against Atlanta Regional Administrator Greer Tidwell was based on the Federal Register notice he filed on April 20, reopening the proceedings against North Carolina. That notice omitted material information and was flagrantly misleading. It stated that EPA had postponed the hearing pending a review of consistency and capacity issues, and now the review has been completed --- period. This suggested that the hearing was a natural outgrowth of the review. In other words, the hundreds of hours of interviews, analysis and research over nine months; the millions of dollars of taxpayer's money; and the EPA policy that was the culmination of this massive effort were all ignored. Mr. Tidwell attempted to deceive the public

by pretending it never happened or had no bearing on the hearing. We have no doubt that this deception was intentional since Mr. Tidwell and his subordinates in Region Four have repeatedly voiced their opposition to the EPA policy published in December, 1988.

The specific ethics provisions which we believe Mr. Reilly and Mr. Tidwell may have violated were listed[71]. These rules state that: "Employees may not use their official positions for private gain or act in such a manner that creates the reasonable appearance of doing so.

"Employees therefore must not …. take any action, whether specifically prohibited or not, which would result in or create the reasonable appearance of: (1) Using public office for private gain; (2) Giving preferential treatment to any organization or person; ….. (4) Losing independence or impartiality of action; (5) Making a Government decision outside official channels; or (6) Adversely affecting public confidence in the integrity of the Government or EPA."

The specific criminal provision which we believe Mr. Tidwell may have violated was section 3008 (d) (3) of RCRA, which states:

CRIMINAL PENALTIES. Any person who … knowingly omits material Information … in any document … used for compliance with regulations promulgated by the administrator under this subtitle … shall, upon conviction, be subject to a fine of not more than $50,000 for each day of violation, or imprisonment not to exceed two years, … or both.

EPA Inspector General John C. Martin undertook an investigation and, of course, it was a whitewash and a farce. In a September 28, 1989 memo to Martin[72], critiquing a preliminary look at his investigation results[73], we pointed out to him that on May 19, 1989, the day after he received our May 17th memo, he and three of his deputies met with Administrator Reilly and two of his deputies, to discuss our memo. The meeting was scheduled to last forty-five minutes. This was not part of the official investigation of our charges, as the preliminary inquiry had not opened until June 27, forty-one days later. A meeting between the Inspector General and the subject of an investigation, before the investigation is officially opened, has the appearance of collusion for the purpose of damage control, which would also appear to be a felony under the criminal code.

Once Mr. Reilly was acquainted with the nature of the charges against him, and allowing forty-one days to elapse before the start of the investigation, there was more than enough time and opportunity to get the stories of everyone who attended the March 15th breakfast meeting straight before the inspector came calling

When finally interviewed, Mr. Reilly, Mr. Buntrock, Dr. Jay D. Hair, and Mr. James Range, Vice President of waste Management Inc., all claimed that Mr. Reilly had not been lobbied to re-open the hearings to suspend North Carolina's hazardous waste management authority at a breakfast meeting on March 16, 1989. Yet in a newspaper interview, published in the Winston-Salem Journal on April 21, 1989, regarding Mr. Reilly's plans to re-open the North Carolina hearings, Mr. Reilly was quoted as saying: "Jay Hair hosted the breakfast at which I was lobbied to do the very thing that we are doing."

Jon Healey, the reporter who interviewed Reilly for the Winston-Salem Journal, told us that he had verbatim notes on the interview and he was quite sure of their accuracy but he was not even interviewed as part of Inspector General Martin's investigation.

There were other obvious lies and inconsistencies by these people contained in the preliminary report memo. Mr. Reilly stated that his decision to resume the North Carolina

hearing was based on the unanimous advice of his staff, yet we had spoken to three senior staff members who told us that they had advised against resumption.

Mr. Reilly said that his policy was consistent with the policy of former Administrator Lee Thomas, yet Mr. Thomas said just the opposite.

Mr. Range told the investigator that waste Management Inc. has taken a public position urging EPA to pursue a different process than the one pursued against North Carolina. However, the position paper given to Mr. Reilly at that meeting by waste Management Inc. takes just the opposite position.

Mr. James Banks, Director of Government Affairs for waste Management Inc. told the investigator that waste Management Inc. had no interest in RCRA proceedings in North Carolina and would have advised against them. However, the position paper given to Mr. Reilly at that meeting by waste Management Inc. takes just the opposite position. Furthermore, we have copies of letters from executives of waste Management Inc. congratulating Mr. Tidwell on re-opening the North Carolina hearing.

We told Mr. Martin "that this report, combined with other facts, causes us great concern. It suggests possible criminal violations by you, Administrator Reilly, Dean Buntrock, and others. EPA regulations require that we report these facts to you, but given the nature of the charges, we feel that you should turn the investigation over to someone who is not subordinate to you or Mr. Reilly."

Richard Wagner, an inspector at the Inspector General's office and also a whistleblower, was also disgusted at the corruption when he read our memo, so he conducted his own unofficial investigation of our accusations and the IG investigation of them. Until he started blowing the whistle on the corrupt activities within the Inspector General's office he had been the Divisional Inspector General for Investigations. Wagner had been giving information to Rep. John Dingell, Chairman House Committee on Energy and Commerce, Subcommittee on Oversight and Investigations. He wrote a 24 page review of the IG's investigation of our letter to Rep. Dingell on October 18, 1989[74]. In it he said that he had concluded "based upon my professional judgment and experience, that the investigation appears to have violated many professional and EPA standards, and to have failed to resolve either the allegations or the internal inconsistencies which it raises."

His chief objection was that "the investigation was conducted by persons subordinate to Administrator Reilly," suggesting that the Administrator holds the power advance or deter the IG's career. "A competent review should have questioned why an investigation was not conducted by an independent agency headed by an official not subordinate to Administrator Reilly."

Wagner's next concern was the meeting the IG and members of his staff had with the Administrator and members if his staff, the day after we wrote our memo and two and a half months before the official start of the investigation. He points out the meeting was not mentioned in any reports and violated many of the ethical rules for conducting investigations found in the OIG manual. He concluded that the evidence suggests "that Administrator Reilly may have helped to direct the course of the investigation."

In violation of common practice, Wagner points out, the interviews of the complainants, Kaufman and I, are not reported or even mentioned.

"Administrator Reilly's claim that he was misquoted as having stated that he was lobbied was accepted uncritically" said Wagner. He points out that "Reilly's assertion that he was

misquoted seems as implausible as the investigators' implicit acceptance of it." Reilly had a motive for changing his story but the reporter had no motive to misquote him and the reporter wasn't even interviewed.

No attempt was made to resolve the contradictory statements of Administrator Reilly and former Administrator Thomas. When Reilly contradicted Thomas' earlier statement, no attempt was made by the investigator to re-interview Thomas.

Some of the addition items in Inspector Wagner's critique were:

- Administrator Reilly's Assertions Concerning The Purpose And Content Of The March 16, 1989 Breakfast Were Accepted Uncritically
- Resources Were Expended Before The Investigation was Opened
- Administrator ReilIy's Statements About Contributions To The Conservation Foundation Were Accepted Uncritically
- The First ReiIIy Interview Contains Leads Not Pursued

Regarding Richard Wagner's qualifications to conduct this review, he pointed out that he was thoroughly familiar with the EPA OIG Office of Investigations, its procedures, and its manual, which he helped write.

But when Congressman John Dingel and Congressman Thomas Bliley, the ranking Republican member of the Subcommittee on Energy and Commerce, announced the start of their investigation of the EPA Inspector General in December 6, 1989[75], there was no mention of a botched investigation of EPA Administrator William Reilly. And there it died.

But the GSX story doesn't end there. All this time EPA Administrative Law Judge Spencer T. Nissen was conducting hearings "To Determine Whether To Withdraw Approval of North Carolina's Hazardous waste Management Program." On April 11, 1990, he dropped his bomb[76]. Judge Nissen found against EPA and for North Carolina. His 122-page decision was a sweeping rejection of almost every EPA/hazardous waste management industry position.

First, the story that by re-opening the proceedings EPA was merely continuing the process started by his predecessor, Lee Thomas. This story was put out by Administer Reilly in a press interview and in a Federal Register notice by Regional Administrator Greer Tidwell. However, Judge Nissen did not accept these stories. His finding[77] was that: "Then Administrator Lee Thomas issued a policy memorandum on December 22, 1988, which was interpreted within the Agency as requiring or leading to the withdrawal or cancellation of the instant proceeding."

EPA gave to itself authority to essentially preempt state laws which are more stringent than EPA's and which interfere with the expansion of the commercial hazardous waste management industry. Judge Nissen suggested that these regulations were probably illegal because they ignored the clear message from Congress in the Bumpers Amendment that allows states to adopt more stringent hazardous waste laws than the federal program especially in regard to siting of facilities[78]. Elsewhere Nissen says: "The Supreme Court has held that RCRA is not preemptory….expressly allowing more stringent requirements than those established by Federal regulations.…[79]"

EPA claimed that the proposed GSX facility, which it was promoting, was environmentally adequate and, therefore, the North Carolina law requiring more stringent environmental standards adds nothing to the protection of human health and the environment.

Judge Nissen disagreed and found ample justification for North Carolina's more stringent standards[80]. In order for EPA to reach the conclusion that the North Carolina law was unnecessary it had to ignore the advice of its own experts that the GSX site was, in fact, a threat to the drinking water supply of Lumberton, NC[81] Furthermore, several witnesses, including EPA's own experts, testified that even the North Carolina law may not be sufficiently stringent[82].

EPA violated its own prohibitions against the use of dilution[83] as a waste treatment technique. EPA had almost no standards for siting hazardous waste facilities but nevertheless tried to prevent North Carolina from establishing standards of its own[84]. EPA claimed that North Carolina's standard was "arbitrary", but the finding was that EPA's own standards were just as "arbitrary" [85].

EPA claimed that the real intent of North Carolina's statute was to block the construction of any commercial hazardous waste facility and that the state's assertion of an environmental protection motive was a sham. The judge's finding was that EPA has no business looking beyond the stated purpose of the law, which was to protect the environment[86]. I might add the two motives are not contradictory, since the citizens living near the proposed site feared for their health and environment if this commercial facility were built, EPA's assurances notwithstanding.

Most pleasing to me was Judge Nissen debunking the EPA/hazardous waste industry's claim that commercial hazardous waste facilities were no different than non-commercial ones and should be treated no differently. Judge Nissen's finding was that commercial hazardous waste facilities can be far more dangerous than non-commercial facilities and a more stringent standard for them is justified[87].

Conclusion

I seem to see people, whom many consider heroes, in their worst light. I saw Jimmy Carter, the humanitarian, as a stupid bumbler who uses hatchet men to do his dirty work. I saw environmentalist Tom Jorling wreck an important environmental program and commit perjury when quizzed about it. I saw Bill Ruckelshouse, the hero of "the Saturday night massacre" who wouldn't cave in to President Nixon, become the shill of a bunch of sleazy billionaires. And I saw William Reilly, the handsome, well-spoken, Ivey Leaguer and darling of the country club environmental set as an empty suit being led by the nose by the same bunch of sleazy billionaires.

Stopping GSX was important. It was not the end of the hazardous waste industry's dominance of EPA but it was the beginning of the end. It was the siege of Stalingrad or the Battle of Midway. It put a brake on the expansion of the industry. By running EPA and cowering state governments, the industry was planning on having dozens of sites like GSX all over the country. After the defeat of GSX the industry's ambitions were more modest and the battle for each site harder fought. In April 1990 BFI discontinued all hazardous waste business segments. It restored a little bit of luster to Bill Ruckelshouse for me.

Expansion of the commercial hazardous waste industry would have retarded the impetus of industry to design and operate its factories so as to eliminate or safely treat or dispose its waste on site. That was the goal of EPA before it got taken over by the hazardous waste industry. Unfortunately the defeat of GSX did not change EPA, as we shall see in the next chapters.

Chapter Seven – LWD in Kentucky

Mrs. Corinne Whitehead of Benton, Kentucky was a friend of mine. She was the past president of the Kentucky League of Women Voters and was the head of a group called the Coalition for Health Concern. One of the organization's chief health concerns over the years was a Kentucky hazardous waste disposal company called LWD, Inc. (Liquid waste Disposal) which owned several hazardous waste incinerators and landfills in Kentucky. LWD had achieved national notoriety when it was featured in a PBS Nightline documentary. It was later the subject of an extensive review in *In These Times*[88].

I visited Corinne to give a talk to her group in November, 1990. She told me about what it's like dealing with LWD and the state regulators. I've talked to many people who live near hazardous waste incinerators and I have reviewed many records and this is the way it really works. Inspectors typically work from nine to five Monday through Friday. So if the incinerator has anything particularly nasty to burn it will do so at night or on weekends. When the complaints come in to the inspector's office the next day, he will call the incinerator operator and ask him what's going on. He may also visit the plant, but rarely finds any violations. The enforcement officials tend to view the incinerator operator as their client and the public as a nuisance.

I have illustrated this in the chronology below from actual records of the Kentucky Division of Air Pollution Control for the LWD incinerator in Calvert City collected by Mrs. Whitehead.

> May 30, 1986. Mrs. Bernett Dossett complained that "Company is burning something after 3 am which causes an odor like a skunk dipped in creosote and burned." The inspector states that since no dates were specified in the complaint, no action was taken.
>
> June 2, 1986. The inspector wrote of the complaint from Mr. James Owen: "Odor was so bad on Saturday he could hardly breathe. He drove around and decided odor was coming from LWD. Mostly in morning but bad all day. He could not describe odor - just that it had a sickening smell." The inspector went out to LWD on June 16. Her report read: "Investigation of complaint about nauseating odor of 5-31-86. Both units were in operation on day of complaint. Record review showed operating temperatures for both units above the permitted limits. Operators log showed no special problems for that day. ... No strong odors were detected."
>
> June 20, 1986. Mr. Owen again called to complain about smoke, odor, fumes, respiratory irritation, and reduced visibility from the night before. A scheduled inspection made at 1 pm found no serious problems.
>
> June 24, 1986. Mr. Owen again complained about odors from LWD. When the inspector came down from Paducah he found no problem. Furthermore, he noted: "The plant has been inspected twice in the last week and further inspection would be considered harassment."
>
> November 11, 1986. Once again Mr. Owen called about blue smoke and a

sickening odor coming from LWD and once again the inspector found nothing.

February 13, 1987. Bob Ivey from the nearby B.F. Goodrich (BFG) plant called to complain about LWD. The report says: "He is president of the union at BFG and has received numerous complaints from employees at BFG about a sharp, burning odor from LWD which is causing eye & throat irritation. Mr. Ivey said it smells like an acid."

The inspector came at 4:15 pm and found no problem. He called Mr. Ivey at 4:55 pm and Mr. Ivey told him the odor had stopped at 4:00 pm.

April 16, 1987. Mr. Owen called again and again the inspector found nothing.

May 15, 1987. Mr. Owen called again. This time the inspector issued a notice of violation for excess opacity of the plume.

June 8, 1987. Mr. Owen called about odor and smoke from LWD the previous week. No action was taken.

August 31, 1987. Mr. Owen called about "bad odor from LWD today." The inspector's report states: "Today there was a phenolic type odor present on the gravel road east of the facility. No odor survey could be performed because of scentometer failure."

September 2, 1987. Sylvia Champion called about LWD. The report says: "Mrs. Champion is concerned about emissions from the accident which occurred recently. was it only a brief flash fire or did it burn longer. She heard that ... people felt a burning sensation on their skin at the scene after the fire. Also she heard that the man who had been burned had walked through some material on the ground just 2 days before the incident and his boots had caught on fire."

The inspector talked to the plant manager, Mr. Trivedi. He told her there had been no fire or release of vapors and "Regarding workers boots catching on fire, Mr. Trivedi is aware of no such instance."

September 8, 1987. James Owen called 9:40 am and Ken Simmen called at 10:50 am to complain about a bad odor coming from LWD. The inspector showed up at 2:55 pm and found no significant problem. Furthermore, his report states: "No odor survey was possible using a scentometer because the winds were shifting and the odor from all the plants in Calvert City are mixing together."

November 7. 1987. Don Siebert, Charlie Doom and James Champion called the inspector at home on Saturday morning to complain about the haze with "a very unusual odor" over the valley. She arrived at the site at 12:20 pm and found nothing of significance.

In these two years covered, despite numerous complaints, only one Notice of Violation was issued. Notice that in every instance the inspector accepts the plant manager's word without

question but any claims by the public have to be proven or personally verified by the inspector. The situation for the people living near the incinerator has not improved over the years and is even worse today.

Mrs. Whitehead also asked me to look into why her repeated complaints to EPA about LWD facilities had gone unanswered. I reviewed the many charges her organization had made about LWD and I selected one to follow up on which I thought would be rather simple and straightforward.

In the town of Clay in Webster County, Kentucky, LWD owned an unsophisticated hazardous waste incinerator which, although it was permitted by EPA, had been closed by the state Fire Marshall in 1982 as a fire hazard shortly after a tanker truck had exploded there. Nevertheless, for many years afterward, neighbors of the facility complained about trucks going out to the facility at all hours of the night and early morning. The neighbors claimed that a well driller had drilled a well to an abandoned underground mine and the trucks were hauling hazardous waste onto the closed facility and pouring it down the well. If the charges were true, it could very likely be a felony and could send someone to prison. Mrs. Whitehead said that she had made several calls to the Office of Criminal Investigations* (OCI) in the Atlanta office of EPA in 1986 and 1987 on behalf of the Webster County citizens and that they had sent investigators but no one had ever heard another word about it.

Mrs. Whitehead showed me a videotaped interview, made in late 1990, of a former LWD truck driver who confirmed that he had brought hazardous waste to the facility after it had been closed but had never brought any out. He said that a fellow employee who worked at the Webster County facility had told him that the waste was being poured down a well shaft. I later made a phone call to a couple who lived near the Webster County facility who confirmed that they had twice been visited by EPA investigators in 1987 in response to Mrs. Whitehead's call. Neither they nor Mrs. Whitehead had ever heard back from EPA on the results of EPA's investigations and the alleged illegal dumping did not stop.

On January I6, 1991, I submitted the following Freedom of Information Act (FOIA) request to EPA headquarters:

This is a Freedom of Information request for the report of a criminal investigation conducted out of the Atlanta office of the Office of Criminal Investigations of a company by the name of LWD in Kentucky.

The investigation was requested by Mrs. Corinne Whitehead in a telephone conversation with Mr. John West in 1986 and a further conversation with a Mr. Hart in 1987. I spoke with Mr. West and he remembers conducting an investigation.

I received a letter dated February 5, 1991 from a Mr. Howard Berman whose title was Criminal Enforcement Counsel at EPA in washington. He said:

I have been informed by Region IV [Atlanta] OCI [Office of Criminal Investigation] that

* There are three different branches of EPA discussed here. The Hazardous Waste Management Division in the Altanta (Region 4) office of EPA has responsibility for issuing and enforcing permits for hazardous waste management facilities in the Southeast. The Office of Criminal Investigations investigates alleged criminal violations of EPA regulations. The Office of The Inspector General investigates alleged criminal and other violations by EPA personnel and EPA contractors.

no report of investigation was generated in that case. No formal investigation was conducted. The matter was closed on January 29, 1987.

I had been told by friends inside the EPA Inspector General's office that if OCI investigators went on a field visit they would have to have filed a report. I therefore went to see Mr. Berman on February 11th. I explained to him about the charges that hazardous waste had illegally been dumped down a well shaft into an abandoned mine. He laughed and said that was a clever way to get rid of hazardous waste. I further told him that if investigators had visited the site, there would have to be a report in the files and the fact that there wasn't any would lead one to suspect that someone in the Atlanta office of EPA had removed it or prevented it from getting there in the first place. In any case, it would be a crime to cover up a crime.

Mr. Berman patiently explained that I was probably asking for the wrong thing in my FOIA request when I asked for a "Report of Investigation." This was a term of art, he said, which had a very specific meaning and whoever searched the files in Atlanta was probably looking for a document titled "Report of Investigation." He assured me that if I rephrased my FOIA request in less specific terms I would probably find that there was some sort of informal report filed.

Before I had a chance to re-submit my FOIA request, I received a letter from Mr. James Scarbrough, a branch chief in the Hazardous waste Management Division in Atlanta, dated February 22, 1991, in response to my original FOIA request. Attached was a document titled "Report of Investigation." Indeed, just as Mr. Berman said, the investigation had been closed on January 29, 1987..... but it was a different investigation.

The report was of an investigation of a different complaint that Mrs. Whitehead had made about a different LWD incinerator in Calvert City, Kentucky and not the one in Webster County. The complaint involved an eye witness to the illegal burial of thousands of drums of hazardous waste at the LWD site. The investigators interviewed the witness and then closed the case almost as soon as they opened it with these concluding words in their report:

On January 21, 1987, a meeting was held with Mr. Michael Newton, Deputy Regional Counsel, legal advisor, and Mr. Donald Stone, technical advisor. After relating the content of the [name deleted] interview Mr. Newton concurred <u>that the allegations of drum dumping did in all probability occur</u> but these incidents happened prior to enactment of RCRA, and the statute of limitations have expired.

Therefore, based on the facts and circumstances as reported it is this agent's recommendation that this criminal case be closed as unfounded. [Emphasis added]

No one at EPA had ever bothered to send a copy of this report to any of the citizens in Kentucky. When I showed the report to Mrs. Whitehead she said it only confirmed her impression of EPA's indifference, if not collusion with LWD. She pointed out that the burial of those drums was common knowledge. She even had a map of where the drums were buried. She also knew of other witnesses with more recent experiences whom the investigators could have interviewed if they really wanted more details, instead of just looking for an excuse to close the case.

On February 26th, I resubmitted my FOIA request. This time it read:

For reasons which may be my own fault in the way that my January 16 request was worded, the report does not contain all the information I am looking for. The attached report

was apparently in response to Mrs. Whitehead's call to Mr. West in 1986 which, I am told, concerned the LWD facility in Calvert City, KY. As I stated in my letter of January 16, there was a second call to Mr. Hart in 1987. That call, I am told, concerned the LWD incinerator facility in Webster County, KY.

Mrs. Whitehead told me that she reported to Mr. Hart that although the Webster County incinerator had been closed by the fire marshall, it was continuing to accept hazardous waste and that the waste was being dumped down a well drilled into an abandoned mine. Surely such a serious accusation must have merited some action on the part of EPA, which must have resulted in some written document or documents. By whatever name these documents might be called, I would like to have a copy.

I received a package dated March 20th from Mr. Berman again. His letter said: "I have requested and received a complete copy of all documents existing within the Region IV Criminal Investigations Division office regarding LWD."

All the material was about the LWD incinerator in Calvert City. There was nothing in the package concerning the Webster County facility. If the people I talked to in Webster County weren't hallucinating when they told me they were visited twice by investigators from EPA, then something was very wrong.

Although the package contained nothing relevant to my inquiry, it confirmed some of the things Mrs. Whitehead had told me. She had said that anything she sent to the State of Kentucky or to the Atlanta office of EPA ended up in the hands of Mr. Amos Shelton, the owner of LWD. An EPA memorandum from James F. Bycott, assistant regional counsel to Alan Antley, chief, waste Compliance Section dated February 19, 1987, said: "On February 5, 1987 representatives of L.W.D., Inc. visited Region IV and accidentally obtained a copy of a citizen's complaint, with pictures and a map which I advised the waste Compliance Section to withhold."

The next package I received was from Mr. James Scarbrough of the Region IV waste Management Division dated March 29, 1991. This package contained inspection reports and other data from the LWD incinerator in Webster County and another LWD incinerator in Louisville, Kentucky.

Inspection reports of the Webster County facility dated February 1984, April 1985, and July 1985, all made reference to the fact that there were spills on the ground needing cleaning up, even though the facility had been officially closed since February 1982. Furthermore, even though it still has an EPA permit, there was nothing in the Hazardous waste Management Division files on the Webster County site later than July 1985.

Mrs. Whitehead had other reasons for harboring suspicions about the relationship between LWD and the EPA Region IV office in Atlanta. In 1988, Mr. Don Harker, was chosen as the administrator of Kentucky's waste Management Division. In 1989 he tried to close down LWD's Calvert City incinerator because of numerous violations. Then, in October of 1989, Mr. Tom Nessmith, EPA Region IV chief of policy planning and evaluation, told the press that if the incinerator were closed, EPA would cut off the funds to Kentucky (then totaling $40 million) that Congress had appropriated for cleaning up Superfund sites. The next month, Mr. Harker was fired and the incinerator continues to operate. A newspaper article reported[89] that the governor of Kentucky was paid $500,000 to pull that off and gives his source as "a former very high official in Kentucky government".

That same year, 1989, PBS ran a *Frontline* documentary titled "Who's Killing Calvert City?" Among the revelations was the fact that in 1987 EPA Region IV commissioned an audit

of the LWD Calvert City facility by the consulting firm of PRC Environmental Management. The report showed many gross violations of air, hazardous waste and worker safety rules as well as keeping two sets of records on the treatment of wastes. EPA kept the report secret until someone leaked it to *Frontline*.

There was also the fact that large numbers of people in Region IV had left government service for lucrative jobs in the commercial hazardous waste management industry. Although this situation is common throughout EPA, my observation has been that the so called "revolving door" seems to be most popular in Region IV. The previous regional administrator, Jack Ravan, became CEO of the second largest hazardous waste company in America. The regional administrator at that time, Greer Tidwell, admitted that he got his appointment with the help of the influence of Howard Baker, a director of waste Management, Inc., the largest hazardous waste company in America[90].

A former employee of LWD was found dead under violent circumstances shortly after he had exposed alleged illegal waste disposal practices of LWD to a local newspaper. Although the medical examiner, after 30 days, said the death was by natural causes, Mrs. Whitehead, and other local citizens, suspect otherwise.

At this point I felt that there was more than enough grounds to suspect skullduggery at EPA's Atlanta office, so on April 2, 1991, I sent the following letter to Mr. John C. Martin, EPA's inspector general:

A lady by the name of Mrs. Corinne Whitehead has brought some facts to my attention which I think warrant an investigation. She told me that in 1987 she made several calls to the Atlanta office of EPA to inform them that the LWD hazardous waste incinerator in Webster County, Kentucky, (EPA ID No. KYD088438874) which had been closed by the fire marshall, was continuing to accept hazardous waste and that this waste was being poured down a well which had been drilled into an abandoned mine shaft. She told me that several EPA investigators had visited some local citizens but no action was taken. She also showed me a video taped interview of a former LWD driver who said he had taken hazardous waste to the site after it had been closed and that another employee of LWD had told him that the waste was being poured down a well to an abandoned mine.

I put in several Freedom of Information Act requests for information on the investigation. There was nothing in the EPA files. I spoke, by telephone, to Mrs. Ellis Gardner of Providence, Kentucky. She confirmed that she and her husband had twice been visited by EPA investigators in 1987 and that they had come as a result of Mrs. Whitehead's call and that as far as she knew, no action resulted from their visit. Furthermore, neither she nor Mrs. Whitehead had received any report from EPA.

I do not believe it is possible that there was no report of investigation or any other documentation for such a serious charge, especially one which merited two field visits, unless the documentation had been removed from the files or suppressed.

This does not seem far fetched in light of the following:

- *The fact that LWD was able to "accidentally" obtain copies of citizen's complaints and other documents from the EPA Atlanta office which were part of a criminal enforcement proceeding.*
- *The ease with which the Atlanta office was willing to dismiss charges of illegal dumping at the Calvert City LWD plant*

- *The fact that the Atlanta office had suppressed a report from its own contractor about wrongdoing at LWD.*
- *The continual "revolving door" of personnel from the Atlanta office to the hazardous waste management industry.*

I therefore urge you to investigate the missing report of the investigation of the Webster County LWD facility. I would also like to be kept informed about the disposition of this request for investigation.

The next letter I got was the greatest shock yet. It was from my old correspondent, Mr. James H. Scarbrough of the Region IV waste Management Division dated April 22, 1991, informing me that the inspector general had turned the investigation over to him! Not only had the inspector general turned the investigation of missing reports over to one of my leading suspects, but he had also compromised my confidentiality, which is a serious violation of the law governing investigations by inspectors general[91]. The letter contained nothing relevant to my inquiry.

Then, on June 18, I got a phone call from Ms. Barbara Vandermer of the Office of the Inspector General telling me that the Inspector General had decided not to conduct an investigation and that the case was closed. There was no explanation for the action. When I asked for some documentation on who made the decision and why, she said she would check with her boss and call me back. On June 24th Ms. Vandermer called back to tell me that her boss, Mr. John C. Jones, would not write such a memorandum but I was free to put in still another FOIA request for the inspector general's file on my case. She said that the file contained a memorandum from one of the divisional inspectors general which gave the reasons for not opening the case. So I put in another FOIA request on the same day for the file.

Just when I thought there were no more surprises, on July 12th, I got a letter from Mr. John C. Jones, assistant inspector general for management, dated July 10, 1991. He had denied my FOIA request on the grounds that the case was still open!

I called Ms. Vandermer that same day. She was expecting my call and she sounded very nervous and upset. When I asked what was going on, she said she could not give me any more information than was in Mr. Jones' letter except to confirm that she had told me, on instructions from Mr. Jones, that the case was closed and that I could get the file through a FOIA request. She said she would be going out on a very fragile limb to say anything more. Shortly after that conversation, she called me back with an odd request: would I confirm that she had given me no information other than what she had given me so that she could tell that to Mr. Jones?

I tried calling Mr. Jones, but when I gave my name to his secretary she refused to put me through. I finally told the secretary to tell Mr. Jones that he may have committed a felony when he signed that letter and he had better talk to me. He did, but he refused to give me any explanation for his strange behavior.

Two weeks later, on July 24th, I talked over the telephone to Mr. James Johnson, the divisional inspector general for investigations in Atlanta, to find out if my case truly was still under investigation. Since Mr. Johnson was the officer in charge of all inspector general investigations in the Atlanta region, it seemed reasonable to assume that any investigation of wrongdoing at the Atlanta office of EPA would be under his jurisdiction. He said he had never heard of the case and didn't know anything about it.

I talked to several other people who had similar experiences with the inspector general. It

was their opinion that the EPA inspector general frequently held cases open solely for the purpose of denying FOIA requests when there was material in the case files that was embarrassing to him.

These are the questions that I was left with. Since the Atlanta Office of Criminal Investigations did investigate Mrs. Whitehead's complaint about illegal dumping at the Webster County facility of LWD, they must have found something incriminating because it would make no sense to remove or suppress a report which found nothing. This was corroborated by the fact that there were no site inspection reports in the Atlanta Hazardous waste Management Division files after 1985.

But suppose I was completely wrong and there was an innocent explanation for the fact that there no reports, such as, perhaps there was no investigation. This could have been readily ascertained by the divisional inspector general in Atlanta, yet the inspector general at headquarters in washington never turned the case over to him. Instead he sent my letter to the Hazardous waste Management Division. If there was an innocent explanation, why didn't the Inspector General produce it? Why didn't he even try to find out? Why was he preventing me from seeing the files by keeping the case open while he does nothing with it?

The inspector general may claim that the case was too trivial or lacks merit to make it worth his while to investigate, but then why did it take him three months to reach that conclusion ... and without even consulting with his own Atlanta office? And why was he hiding that conclusion from me? Furthermore, I am aware that the inspector general has put considerable resources into investigating far more trivial and far less meritorious cases than this one. If accusations of EPA personnel covering up environmental felonies by the people they are supposed to be regulating are not worth investigating by the inspector general, then what is?

Conclusion

Further evidence of the corruption of the state inspectors and the EPA Inspector General's office and how deeply EPA was in the pocket of the hazardous waste industry especially in Region 4. LWD had to take the prize as one of the sleaziest commercial hazardous waste operation in America, yet that couldn't stop EPA from promoting it.

Chapter Eight – Environmentalists vs. Environmentalists

There are two kinds of environmentalists; two routes to environmentalism, one through idealism and one through experience. The former includes most of the well-known national environmental organizations while the later includes the lesser known grass-roots organizations and the few national and regional organizations which support them and includes the Environmental Justice movement. An example of the former is the Conservation Law Foundation whose Web site says:

Since 1966, Conservation Law Foundation has used the law, science, policymaking, and the business market to find pragmatic, innovative solutions to New England's toughest environmental problems. Whether that means cleaning up Boston Harbor, protecting ocean fisheries to ensure continued supply, stopping unnecessary highway construction in scenic areas, or expanding access to public transportation, we are driven to make all of New England a better place to live, work, and play.

While an example of the latter is The Center for Health, Environment & Justice whose Web site says

The Center for Health, Environment & Justice is a national, nonprofit, tax-exempt organization that provides organizing and technical assistance to grassroots community groups in the environmental health and justice movement. The Center was founded in 1981 by Lois Gibbs, who helped win the relocation of over 900 families from their neighborhood which was contaminated by chemicals leaking from the Love Canal landfill in Niagara Falls, NY. Through this effort, Gibbs and her neighbors woke up the nation to recognize the link between people's exposures to dangerous chemicals in their community and serious public health impacts.

Both are noble organizations doing good things but in Greater Boston, in 1989, they collided head on, probably without being aware of each other.

My first contact was in June 1989 from Larry Bassignani representing a NIMBY grass roots group in suburban Boston. I learned that Boston Harbor for years had been the depository of raw sewage and chemical discharges which made it a foul, toxic dump threatening the health and well-being of the surrounding communities. A law suit under the Clean Water Act was filed by Conservation Law Foundation and others and in 1985 U.S. District Judge A. David Mazzone ruled in their favor and required the Massachusetts Water Resources Authority (MWRA) and the U.S. EPA to draw up plans to clean up the harbor.

However, it seems, the $6 billion clean-up plan includes a "backup landfill" located in suburban Walpole. That was the concern of Mr. Bassignani's group. They felt they were being given a snow job by the MWRA.

I wrote Mr. Bassignani[92] that the material he sent gave me a feeling of deja vu. Fifteen years earlier we were trying to make the world aware of the dangers of hazardous waste dumps. One of the biggest problems we faced was to try to convince the EPA Water Office that you cannot solve the problems of water pollution by dumping the pollution into a hole in the ground. This just creates new pollution sources. Now I see you are back to "square one" with the

Massachusetts Water Resource Authority.

I told him I thought it was ludicrous for the taxpayers of Massachusetts to pay six billion dollars to create a sewage sludge dump which will inevitably leak and pollute the groundwater and the rivers flowing back into Boston harbor and ultimately become a "Superfund" site which will cost the taxpayers more billions for remedial action. I wished him and his neighbors all the luck in the world in stopping this nonsense and please call on me for any assistance.

His group invited me and Hugh Kaufman to speak at a public meeting and in August of 1989 we did[93]. There was another public meeting in February 1990 with Lois Gibbs as the invited speaker and she asked me to join her. Ms. Gibbs told of her experiences at Love Canal and how they should organize to defeat the landfill[94]. I had also written letters Administrator Reilly[95], the MWRA and others and given several interviews to the press and Kaufman and I had a meeting with the editorial board of the Boston Globe.

The Sun Chronicle (Attleboro, Massachusetts) February 1, 1990.

LESSON FROM LOVE CANAL: 'FIGHT LIKE HELL'

Staff photo by Martin Gavin

William Sanjour, a policy analyst with the U.S. Environmental Agency, and Lois Gibbs, a former Love Canal resident who heads a clearinghouse for hazardous waste information, applaud other speakers Wednesday at a rally held by opponents of state plans to locate a sludge dump in Walpole near the Norfolk line.

My message was that the U.S. EPA regional office in Boston and the MWRA have come up with a plan to clean up the notorious Boston harbor which was contrary to good environmental practice. The goal of these two agencies should be to reduce pollution; instead, this plan allowed polluters to continue to dump over a ton a day of toxic wastes into the Boston area sewers. The plan then called for the people of Massachusetts to pay over six billion dollars to build sewage treatment plants which would treat all the sewage from municipalities and factories which have been discharging into Boston Harbor. The sewage treatment plants would then remove all or most of the bad stuff from the sewage in the form of sewage sludge, before discharging into the harbor.

This sewage sludge was heavily contaminated with industrial toxic wastes. According to MWRA it contains arsenic, cadmium, lead, nickel, zinc, copper, chromium, mercury, molybdenum, PCB' s, bis(2-ethylhexylphthalate), butylbenzylphthalate, di-nbutylphthalate, di-n-octylphthalate, ethylbenzene, toluene, 4-methylphenol, methylnaphthalenes, phenols, and xylenes. According to the National Toxics Campaign, it also contains many other toxic chemicals that MWRA does not measure.

MWRA changed the definition of "solid waste" so that it did not include sewage sludge. This allowed MWRA to locate a sewage sludge landfill at a site in Walpole which Massachusetts law prohibited from use as a "solid waste" landfill. (The U.S. Congress and even EPA classified sewage sludge as a "solid waste"). This sewage sludge, of which over twenty percent of the input was industrial toxic wastes, was certainly more toxic than household trash and garbage. Yet the rules had been changed to allow MWRA to locate a sewage sludge landfill where the law would not have allowed a trash and garbage landfill to be located.

It was MWRA's intention to sell or give away the sludge for "land application," i.e. a low grade fertilizer and soil conditioner, and landfill only what sludge could not be gotten rid of, which MWRA, naturally, assumed would be negligible. This sludge was too filthy to be used as fertilizer under Massachusetts law. It was too filthy for all of New England and New York. It fell far short of the standards that EPA proposed. The agency, charged with protecting the environment, ignored the proposed federal regulations and proceeded to shop around for states with weak environmental laws where they could market their contaminated sludge as fertilizer. They had focused in on Texas and Florida in particular. (Senator Lloyd Bentsen of Texas, upon reading my memo in the press, told Massachusetts Governor Dukakis to keep his sludge.) The sludge ended up fertilizing citrus crops in Florida[96].

MWRA put on a public relations blitz telling the public fairy stories that the landfill would be leak proof and if it does leak, they will fix it, and even if they didn't fix it, it would take a million years for the leak to reach a well. These are lies more bold than I've seen used by the most corrupt commercial hazardous waste management firm.

Picture a landfill the size of several football fields filled to the grandstands with toxic sludge and somewhere at the bottom is a hole no bigger than your little finger that is polluting the groundwater. MWRA was telling the public they can find that hole and plug it up[*].

The fundamental problem for the people of Walpole and Norfolk was that Mr. Devillars, by virtue of being in charge of the MWRA, was the advocate and promoter of the back-up sewage sludge landfill and Mr. DeVillars, by virtue of being in charge of the Massachusetts Department of Environmental Protection (DEP), was the protector and defender of public health and the environment against promoters and advocates of sources of pollution including landfills.

[*] Bill Myers tells me that today they may have technology capable of locating a leak by electrical resistivity tomography---but getting to it would be something else.

Unfortunately, Mr. DeVillars the promoter seemed to be dominant over Mr. DeVillars the protector.

What would have happened if Mr. DeVillars got his landfill, which hat would he wear? Suppose the sale of the sludge did not quite live up to expectations and some of it had to be landfilled. Suppose after two or three years they detect some di-methyl-badstuff in the monitoring well. What would Mr. DeVillars do?

When he would ask DEP to find the leak in the landfill and fix it, they would tell him they don't know how to do that. They would also tell him that closing down the landfill would not stop the leak. The only thing they could do is to institute a corrective action program costing tens of million of dollars, to try to interdict and clean the toxic plume in the ground.

When Mr. DeVillars is faced with this decision will he close down and cap the landfill and start a corrective action program? If so, where would he send the sludge still rolling off the production line? Or will he instead conclude that:

- the di-methyl-badstuff really carne from the glue used to join the pipes in the well and not from the landfill or

- the monitoring well was in the wrong place and was really measuring contamination from an old dump that used to be there, or

- the action level for di-methyl-badstuff is way too low and should be raised a hundredfold, or

- the di-methyl-badstuff was really come from the septic tank cleaner used in the local homes, or

- the monitoring results are not statistically valid and several more years of monitoring will be necessary, or ... or ... or

I did not invent these excuses. I have seen every one of them used at one time or another by environmental protection officials (including EPA) when faced with the awful consequences of a leaking landfill, especially one which they have promoted and approved.

At that time, Mr. Kaufman and my experience and knowledge of landfills went back more than a decade. We had heard lies, like those quoted above, many times by landfill promoters trying to con a gullible public. Every year seems to bring a new crop of hustlers for the latest in state-of-the-art landfills, "guaranteed not to leak", only to have their landfills end up on the "Superfund" list or undergoing "corrective action" a few years later. We were chagrined to see EPA engaged in this con.

Neither EPA nor the Congress of the United States shares the Boston EPA regional office's high opinion of the reliability of landfill technology. Congress had such a low opinion of landfills that they passed legislation which greatly restricts their use.

The largest polluter of the Boston sewer system was the Polaroid Corporation. Some of the other well known companies which dumped toxic chemicals and petroleum into the Boston sewer and Boston harbor include; Proctor & Gamble, Monsanto, Raytheon, Gillette, Honeywell, TRW, Hewlett Packard, General Electric, The U.S. Army, GTE, General Motors, Exxon, the Boston Globe, and BASF.

A federal court had ordered the State to stop dumping untreated wastewater into the harbor. Under the Clean Water Act, the EPA Boston regional office and the MWRA have the mandate and the authority to require these polluters to eliminate or significantly reduce their toxic discharges. If this were done, the resultant sewage sludge would be free of toxic chemicals and could safely be used as fertilizer. But instead, the plan allows the polluters to continue to pollute. Like typical bullies, the federal and state authorities in Massachusetts apparently have no stomach for regulating big corporations but have no compunction against bullying and lying to the local citizens.

A sad postscript to this story was that the late federal Judge A. David Mazzone, who ordinarily would have been our hero, attacked me and Kaufman in an article in the Boston Globe[97] headlined "US judge lashes out at EPA pair critical of Boston harbor cleanup". Judge Mazzone had written a court order which said, referring to us: "It is unfortunate that these individuals, cloaked with immunity of their official position would use EPA letterhead without authority to publish information that was apparently factually inaccurate. Moreover, their comments, no matter how inaccurate, or unjustified will always find a receptive audience in those communities affected by these difficult siting decisions."

Two weeks before, Kaufman had asked for a copy of the order and requested a meeting with the judge but was ignored. So after the story hit the Boston Globe we were forced to respond. We wrote to him saying that the Boston Globe article said that his criticisms were based on reports by EPA and the MWRA. These were the very people that we accused of lying and malfeasance. How could you call yourself a judge, we asked, when you publicly libel the accusers based only on the statements of the accused?

We told him we never sought a "cloak of immunity." If he felt that the memo we wrote to Administrator Reilly on EPA letterhead constitutes hiding behind a cloak of immunity, then we tore off the cloak by sending him a copy of the same memo on our personal stationary, freeing him to "roust us for committing truth." We never heard back from him.

Later, in March, 1991, Joanne Muti of the Walpole Citizens Action Committee wrote to tell me they had gotten hold of some shocking memos from the Corps of Engineers. The Boston Globe reported[98]; "Officials of the US Army Corps of Engineers had doubts about environmental and public health effects of a sludge landfill proposed for state-owned land in Walpole but were pressured by other federal officials to speed approval of the project, according to internal memos from the corps."

The Governor proposed a compromise solution which would only send the sludge to the landfill if there were a plant breakdown and I was asked my opinion of it. Because this case was different from most others, it required a different approach. The opposition here was not just the usual alliance of government and industry, but the environmental movement to clean up Boston Harbor which had allied themselves with the government. To break that alliance (with Judge Mazzone in mind) I needed this to be seen as the moral issue it was.

I wrote in response that the main problem, in dealing with this compromise, is; how good is any deal you make with people who have so little respect for truth and honor?

I wrote: it is immoral for EPA officials to coerce the Corps of Engineers into granting approval to a site which the Corps' own technical experts recommend against. I've seen the same kind of bull-headedness in EPA officials many times; most recently when they unsuccessfully tried to coerce North Carolina to allow the construction of a waste management facility which

EPA's own experts said was unsuitable.

It is immoral to solve the pollution problems in one area by moving them to another. It is immoral to create a new potential for pollution in a pristine environment in order to ameliorate the pollution in an already contaminated one. It is doubly immoral when the solution has a greater potential for harming human health and the environment than the problem.

It is immoral for EPA officials to mislead the public into thinking that a safe landfill can be built when all of EPA's experience and research demonstrates the opposite. Some of the Superfund and RCRA Corrective Action site have liners as good as or better than the one being proposed for Walpole-Norfolk. The list of Superfund sites and Corrective Action sites contain many landfills which, at one time, EPA Officials swore would never leak. To my shame, I was one such official.

Finally, I said, it is immoral for officials in EPA to mindlessly pursue a course of action which has no basis in truth, justice, logic or fact.

The landfill was never built. The NIMBYs (Larry Bassignani, Marco Kaltofen, Joanne Muti, and the Walpole Citizens Action Committee) were very politically savvy and used many resources to fight their battle, of which I was glad to be one.

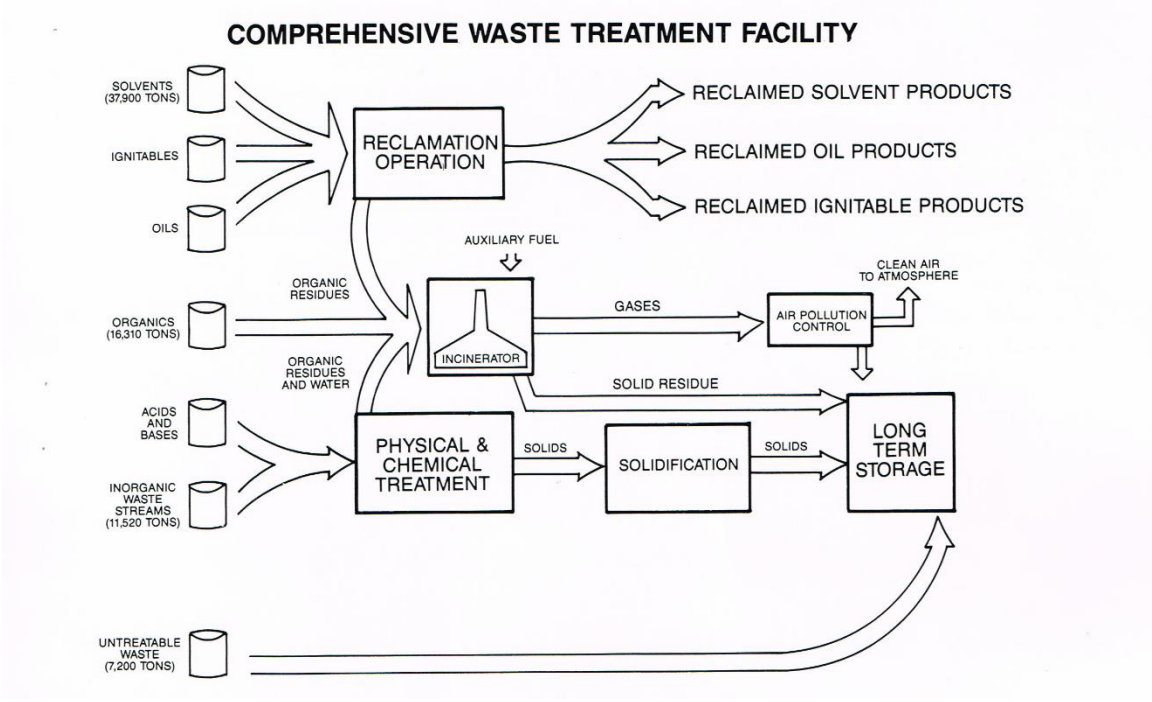
Conclusion

I was used to seeing NIMBYs protecting their world by fending off greedy corporations allied with corrupt lying government officials, but it's not pleasant when the role of the greedy corporation is taken by high-minded sincere environmentalists who are being steered by the same old corrupt lying government officials. "When you sleep with dogs you get up with fleas."

John DeVillars, like Tom Jorling, went on to advance in his government career and then to private industry.

Chapter Nine – Georgia & North Carolina (again)

Georgia was another of the new breed of supposedly high tech hazardous waste treatment facilities, like GSX, popping up in a few places around the country. Like GSX it was a novel concept in hazardous waste management, full of gimmicky ideas which gave it a superficial air of high tech engineering (see diagram below.)



Proposed Georgia hazardous waste facility.

Aside from the fact that it is a design concept that would challenge NASA---being run by an industry with a reputation of failure at operating the simplest of facilities---it has a strange box called "long term storage."

I wrote to Jan Caves, on October 27, 1989, about that box. She was one of a group of NIMBYs who were concerned about the proposed facility in Taylor County being pushed by the governor and our old friend Greer Tidwell, the EPA Region 4 administrator. I told her there is no such thing as "long term storage."

I told her that although under the law there is no such thing as "long term storage," nevertheless as I understand it, the State of Georgia would build and own this facility and turn it over to a commercial waste management company to operate. In addition to the incineration and treatment residue, the waste management company would collect a fee for accepting untreatable hazardous waste from any source, anywhere in the country, for "indefinite storage". Furthermore, I understand that this stored waste would become the property of the State of Georgia.

When the storage capacity of the facility is full, EPA rules require the facility be closed. It is not clear from the literature that you sent me, but I would imagine that at this juncture, the waste management company's involvement would be over. In any event, the State of Georgia would then have the responsibility of removing all the indefinitely stored waste to a permitted hazardous waste disposal facility.

I told her, if I understand this correctly, the State of Georgia would be assuming the disposal costs for all the Georgia and out of state wastes stored at the facility. I can make a very crude estimate of what this would cost. The brochure says the facility will be designed to store 80,000 tons per year. Assuming a twenty year life, this would mean an accumulation of 1,600,000 tons. If we further assume a cost of $300 per ton to ship and dispose of the, this would come out to $480 million.

The whole thing sounded like a big rip-off to me. The people of Georgia would pay to build the facility and then pay again to dispose of all the wastes left in "long term storage" and assume responsibility for any future damage while WMI, or whomever, walks off with all the profits and none of the risks.

Then on February 9, 1990, I was invited to appear before the Georgia Senate on February 14 to discuss waste management. I got to meet a lot of Georgia politicians including Mac Cleland, the severely wounded highly decorated veteran, before he became a U.S. senator. The talk I gave was a good summary of everything I had learned about the politics of hazardous waste management.

After the usual warning that I was not there as a representative of EPA, I told them I was there to testify, on my own behalf, in support of Senate Bill 643 to provide for toxics use reduction and waste reduction and Senate Bill 644 to create a waste reduction assistance service.

I had been with EPA for eighteen years, sixteen of those with the hazardous waste management program. I had supervised investigations of the damages caused by hazardous wastes, I had supervised studies of the ways to manage hazardous waste, and I had supervised the drafting of regulations for hazardous waste management. I have testified on hazardous waste management (also on my own behalf) before committees of both houses of Congress as well as in committees of the legislatures of North Carolina, Minnesota, and West Virginia.

In the early days of the EPA hazardous waste program, I said, it was believed that by making rules for the safe management of hazardous waste, waste reduction by generators would automatically follow. This has not happened to any great extent although fourteen years have passed since the passage of federal hazardous waste management laws. The rules passed to prevent new Superfund sites are still creating new Superfund sites. Toxic wastes are still being shuttled from one medium to another, from water to land to air. Whole industries have sprung up to give hazardous waste generators a "way out" that avoids their doing any serious thinking about waste reduction.

I no longer feel, I told them, as I once did, that government should avoid getting involved in manufacturing processes. Something has to be done to get industry to focus on seriously reducing their waste output. It needs the attention of the corporate engineering department and not just the public relations department.

Although I'm not an expert on waste reduction, I said, I had reviewed Senate Bills 643 and 644 and I was impressed with the way these bills both force and help industry to find ways to reduce their wastes without actually dictating the processes to accomplish it. I was also impressed, I said, with the strong public participation and public information features. Experience has taught me that public oversight is essential in environmental legislation to assure that the public interest is protected.

Unfortunately, what I had to say was that while Senate Bills 643 and 644 are very good and important, the environment they are being placed into is sure to render them relatively

useless. I was referring to the fact that Georgia was planning to construct a huge commercial hazardous waste incinerator and hazardous waste "perpetual storage" facility to service the entire country.

In my opinion, a commercial hazardous waste facility was completely incompatible with waste reduction programs. A commercial facility, be it incineration, storage, disposal, or recycling, makes its money on the quantity of waste entering its gates. Any attempt to reduce the amount of waste available to them would be met with resistance, and the waste management industry has demonstrated that it was capable of exerting considerable influence, both with states and the federal government. This influence was due to the close working relationships formed with government officials who are lured by the huge profits made by the waste management industry.

As an example, I told them, you need look no further than your neighboring State of Alabama, home of the nation's largest hazardous waste landfill. The deal to permit and then sell this landfill to waste Management Inc. (WMI) was set up by, among others, James Parsons, son-in-law of then Governor George Wallace, and Drayton Pruitt, the Governor's associate and longtime mayor and county attorney in Sumter County, site of the landfill. They used their influence to quickly get the facility permitted. They then further used their influence with the legislature to pass a law transferring liability for the wastes disposed in the landfill to the state. The facility was then sold to WMI for a huge profit and it is reported that Parsons still gets over a million dollars a year in royalties. Several years later a law was passed barring any competition in the state. In spite of promises of many benefits to the people of Sumter County, the county has gone downhill ever since the landfill opened.

Once a facility like that enters a state, their influence is magnified by the influence of every company and government agency who uses the facility, since once their wastes are sent there, the waste generators have a vested interest in protecting the facility. Their power is so strong that it is not always clear whether the government is controlling the facility or the facility is controlling the government. In the case of the WMI's Alabama landfill, it not only received hazardous wastes from most large American corporations, but it was one of the largest recipient of wastes from the federal government's Superfund program as well.

There are many examples of the cozy relationship with the government regulatory agencies. I will just point out a few. In 1984 WMI's Alabama facility was found to be in violation of the law by storing PCBs contaminated with dioxin without a permit. As "punishment", the State of Alabama and the federal EPA signed a consent agreement with WMI. For a fine of $450,000 and an agreement to follow some, but not all, of the existing regulations which govern such facilities, WMI received a PCB disposal permit, a waiver to remove illegally stored PCBs, and a waiver for most other regulations. The value to WMI of these actions was perhaps over one hundred million dollars.

I'm sure, I said, you are familiar with the case of Buck Ward who was tried by federal authorities and sent to prison for spreading 30,000 gallons of PCBs along North Carolina roadsides. The federal government spent $2.5 million cleaning up the PCB contaminated oil. In contrast, WMI in Ohio illegally sold 600,000 gallons of PCB contaminated oil, possibly laced with dioxin, for use as road oil. No criminal action was taken. No attempt was made to clean up the PCBs. WMI was fined $17 million even though the government concluded WMI had made $20 million by breaking the law on just one of the six counts it was charged with. Furthermore, by failing to inform the public of the spill and by failing to require it to be cleaned up, the

government saved WMI perhaps tens of millions of dollars in clean-up costs and hundreds of millions of dollars in civil suits.

The power of this industry to influence government actions is further enhanced by the ease with which government regulatory officials are hired by the industry. Over thirty state and federal officials have gone over to the waste management industry in the southeast region alone including a former EPA Regional Administrator in Atlanta. This practice extends even to the highest levels of government. William Ruckelshaus, a former Administrator of EPA and a close advisor to President Bush, is CEO of the second largest waste management company in America. He is credited with getting William Reilly, the present Administrator, his job. Howard Baker, President Reagan's chief of staff, is on the Board of Directors of WMI and is credited with getting Greer Tidwell, the present EPA Region 4 Administrator in Atlanta, his job.

The boldness and power of this industry is further illustrated by the fact that they were able to get EPA to attempt to strike down a law in North Carolina designed to protect its drinking water from effluent from a proposed hazardous waste facility on the grounds that this interfered with the free movement of hazardous waste. In Kentucky, a notorious hazardous waste incinerator was denied a permit by the state Division of waste Management because of a dreadful environmental record. WMI wanted to buy the facility if it got a permit. EPA threatened to cut off federal funds if a permit was not issued. As a result of this pressure, Don Harker, the head of the state agency, was fired.

With this kind of influence and power, trying to have a meaningful hazardous waste reduction program after you've allowed a large commercial hazardous waste management facility into your state is, frankly, like trying to have a meaningful egg laying program after you've let the fox into the chicken coop.

If, after due consideration, it is felt that there is nevertheless a need for off-site hazardous waste management capacity in Georgia, I believe it should be owned and operated by the state and it should be limited to wastes generated in the state. Furthermore, it should not be run as a business. That is precisely what's wrong with the commercial hazardous waste management industry. For a business, income is produced by taking in wastes through the door. The more the better. Expense is incurred by treating the waste so as to protect human health and the environment. A successful business maximizes income and does everything it can to reduce expenses. These goals are just the opposite of the goals of society, which are to reduce hazardous wastes (hence income) and maximize protection of human health and the environment (expenses).

I summarized by saying that hazardous waste management facilities should not be run as profit centers but as adjuncts to the waste reduction program. The waste reduction program should have primacy, and all waste management programs should be subordinated to it, otherwise waste reduction cannot achieve its maximum effectiveness. For too long government and industry have paid lip service to the importance of waste reduction but put all their money and energy into waste management. It has not worked.

I was asked by the Atlanta Constitution for an op-ed piece and they published an abbreviated version of the talk I gave to the state legislation[99].

The subject was heating up in Georgia. In response to my op-ed piece, James Stevenson wrote to the Atlanta Constitution:

Although Mr. Sanjour's analysis was superb, he evaluated Georgia's environmental problem in bloodless terms. .....

Assisted by Georgia's lenient environmental laws and regulations, the waste-processing industry is descending on the rural counties and communities of Georgia like carrion birds of prey.

If left unchecked by our state Legislature, they may, in time, be feasting on the rotting, carcinogenic bodies of a generation of children who grew up in areas saturated with potentially lethal dioxins, furans, heavy metals and a variety of synergistic compounds that everyone should fear as potentially devastating[100].

In May I was invited to speak at one of the NIMBY's rallies in Thomaston also attended by several politicians including representatives of candidates for governor and lieutenant governor. There had been newspaper reports of big contributions to candidates from companies hoping to profit from the facility[101] and other reports of the state hiring a firm headed by a man who "has had close ties to waste Management Inc." to conduct a study for the facility[102]. It was delightful to hear Debbie Buckner (later to become a state legislator) and Jan Caves get up and chew out the pols. I gave pretty much the same (bloodless?) talk I'd given the state legislators in February. Afterwards I was introduced to the proper way to eat grilled catfish.

I helped stir the pot by supplying NIMBY Mark Woodall with the benefits of an informal survey I had conducted. I asked six persons I had dealt with, at six different hazardous waste facilities, four questions: 1) had the site attracted new industrial growth? 2) had it created new jobs? 3) had the state assured responsible operation? and 4) What other benefits or dis-benefits have there been to the community?

The results were uniformly negative for both the industry and the government and put the lie to all the propaganda coming from both. The results can be seen at http://home.comcast.net/~jurason/main/Woodall.pdf. Here are some excerpts:

The incinerator actually causes prospective businesses to shy away.

The state authorities say it would cost $300,000 to monitor the site full time and they can't afford it.

There is a high rate of cancer in the community.

No new plants have been sited. The smell is bad for tourism.

They use a lot of high school dropouts and otherwise unemployable people.

The head of state waste management authority ... was fired when he tried to deny a permit

[There is a] high incidence of children born with brain tumors and cancer.

[T]he Secretary of the Department of Environmental Quality (DEQ) tried to shut down

Rollins because of numerous violations. She was fired within days and the plant remained open.

Regulators leave and go to work for GSX.

The community has lost ten industries and no one has moved in because of the site.

Most violations are detected by the local citizens rather than the state regulatory agency.

Many former state and federal officials are working for the landfill.

Prosecutors may avoid going after companies with good political connections because it's a waste of their time.

Another pair of Georgia NIMBYs was retired Air Force Lieutenant General Jammie Philpott and his wife Lucy. (I spent a lovely week with the Philpott family on Okracoke Island, fishing by day and playing hearts at night.) On August 28, 1990 I wrote to General Philpott congratulating him on being appointed by Governor Harris to the Joint Study Committee on Hazardous waste. (You know the NIMBYs must be gaining ground when one of them gets appointed to something like this.)

I attached and referred him to articles by some of the world's leading authorities on groundwater contamination[103,104]. Prof. John Cherry, in particular, is frequently consulted by EPA on such matters. I told him that because of the large amounts of liquid hazardous waste which would be incinerated and/or permanently stored at the proposed facility in Taylor County, I thought he should be aware of the problem of groundwater contamination by what scientists refer to as Dense Non-Aqueous Phase Liquids (DNAPLs). These include many of the liquids commonly disposed of in hazardous waste facilities, including such chemicals as trichloroethylene (TCE), perchlorethylene (PCE), Freon, 1,1,1 trichloroethane (TCA), chloroform, and PCBs. It is well known that spills of very small amounts of DNAPLs can wipe out an entire water supply aquifer requiring tens of millions of dollars to clean up with very little chance of success. Such aquifers are referred to as having "terminal cancer".

I told him that in reviewing these articles he should note that during the lifetime of the proposed site hundreds of millions of gallons of DNAPLs will probably be transferred, treated and perpetually stored and that it is inevitable that there will be some spillage yet Superfund sites have been created by less than one drum of DNAPLs, causing contamination plumes in over a billion gallons of water. In a commercial hazardous waste disposal facility, (typically worked by high school dropouts), spillage sometimes represents a cost savings to the facility operator if it is waste that he does not have to pay to treat, store or dispose. Furthermore the article points out that it is impossible to clean groundwater underlain with fractured bedrock should it become contaminated by DNAPLs, which is the situation at the Taylor County site.

Overlapping my help to the grass roots NIMBYs in Georgia was another battle in North Carolina. This one got very nasty and personal between me and the executive director of the Governor's waste Management Board, Linda Little. It started with a letter I received from Mrs. Jean Colston in March of 1991, which was like so many others I've received. She complained

that “Governor Martin is trying to force the people of Northhampton County in North Carolina to accept a huge regional hazardous waste incinerator that we do not want.”

My response was very typical of the dozens of such letters I’ve responded to, saying “I can well understand your concern about constructing a huge commercial hazardous waste incinerator in your county, especially one which, as you say, is ten times the size North Carolina needs. This would result in hazardous wastes coming into the state from all over the world. My personal view is that these facilities are counterproductive to EPA's goal of reducing the amount of hazardous waste production.” I then proceeded to point out all the evils of the commercial hazardous waste industry and its EPA minions.

It hit the fan. On April 15, 1991, Governor Martin wrote a “Dear Bill” letter to his friend, EPA Administrator Bill Reilly, saying “Under your leadership, the Environmental Protection Agency has encouraged, supported and pressured my administration to meet our responsibility for siting and permitting a hazardous waste incinerator ….. Recently, I spoke with a group of fine citizens from Northampton County, which has been considering inviting ThermalKem to build the facility there, provided I could arrange for additional incentives. These good people have been terrorized by people posing as ‘environmentalists’, who have created fear among the potential neighbors. One of your officials in the Solid waste Division has been active in stirring up this chemophobia.

“His name is William Sanjour. As I attempted patiently to explain to these constituents that our proposal has the support of the EPA, and that your agency endorses the need for incinerators to destroy those combustible organics which cannot be recycled and should not be buried, I was shown a letter from Mr. Sanjour on EPA stationery which disputed my argument.”

Three months later, in July, Reilly sent a bland response to “Dear Governor Martin”, saying “I support the state’s efforts to site facilities in accordance with the provisions of its capacity assurance plan.” Reilly had learned to be cautious. No way was he going to admit in writing that he had “encouraged, supported and pressured” the governor to site and permit a hazardous waste incinerator when he knew he had no authority to do so and he was just helping out a friend.

Before Reilly’s response I got a letter in June from Linda Little, the governor’s lead person on siting the ThemalKem incinerator. In the last paragraph she asks. “Because your letter is receiving wide circulation in North Carolina and because it is being used to oppose the establishment of facilities which are necessary to fulfill the State's Capacity Assurance Plan, I would appreciate your letting me know as soon as possible whether you responded to Mrs. Colston in your capacity as an employee of the USEPA.”

I responded that the answer to her question was yes. I told her my letter to Mrs. Colston was written as an employee of EPA. I recognized that the letter may possibly not have reflected current EPA official policy in all respects at that moment in time, and for that reason I prefaced my remarks by pointing out that it was "my personal view". My personal view was based on twenty years of experience at EPA, most of it in hazardous waste issues. This experience and insight was gathered at public expense as part of my official duties and I believed that the public was entitled to what it paid for. Furthermore, I did not believe that my letter failed to reflect EPA policy so much as it sheds light on many aspects of that policy which are not common knowledge and are often misunderstood. The need for this was clearly demonstrated in your letter, I wrote, which, although very brief, nevertheless, makes two statements of the kind that my letter to Mrs. Colston was meant to correct. In the third and last paragraph of your letter you mention "facilities which are necessary to fulfill the State's Capacity Assurance Plan" and in the

first paragraph you seem to imply that there is an EPA policy which states that new hazardous waste facilities are needed.

First of all, I said, I knew of no EPA claims that there was a shortage of hazardous waste management facilities, and even if there were, it would have been beyond EPA's authority to do anything about it outside of the provisions of CERCLA Section 104 (c) (9). As I stated in my letter to Mrs. Colston in regards to that Act, the Federal law frequently cited as justification for these facilities, only requires that each state have a plan for handling its own wastes. The law does not require that the waste be handled by an offsite commercial facility. There is nothing in the law that precludes a state from requiring its hazardous waste generators to practice waste reduction and/or treat the waste on the site where the waste is generated. If additional capacity were needed, the law did not preclude a state owning and operating a facility limited to wastes generated within the state. The decision to build a huge commercial hazardous waste facility, many times larger than required by North Carolina's industries, was the state government's decision. EPA, or individuals in EPA, may have encouraged such a decision, but they could not mandate it.

I ended the letter with: "I understand you will be attending a panel discussion on the proposed Pender County incinerator in Wilmington on July 10. I have been asked by the local citizens to sit on the same panel (in an unofficial capacity) and I look forward to meeting you and continuing this dialogue."

NCWARN is a formidable environmental organization in North Carolina which started as a coalition of 54 grassroots groups organized in the late 1980s by the late Billie Elmore. Billie gave up her practice as a psychotherapist in order to organize these grassroots groups into NC WARN which had been fantastically successful in keeping incinerators and dumps out of North Carolina thanks in great part to Billie's remarkable organizing skills and unfailing energy. I greatly admired her as the North Carolina version of Lois Gibbs.

In July 1991, NC WARN and two of its grassroots organizations brought me and Dr. Paul Connett to Pender County to debate Dr. Linda Little and a representative of the ThermalKem Corporation. Paul was a professor of chemistry and a long time fellow worrier. Billie, of course, was there too. The debates were quite heated. The TermalKem guy promised the moon (no toxic fumes would go past the fence line) and Paul brought him down to Earth. Paul was a very good orator, he could have been a preacher. My contribution pretty much followed the lines of our written exchanges while Linda praised the virtues of capitalism. The next day we did it again in New Hanover County and afterward met with a group of New Hanover County and Wilmington city officials at their request. Billie told me we were very helpful in addressing their concerns.

We must have been because soon after ThermalKem abandoned its efforts to locate the incinerator along the border of these two counties and moved on to other North Carolina counties where, after a considerable struggle, they were likewise defeated.

Not everyone was happy. Senator Jesse Helms forwarded a hand written letter to EPA reading: "Dear Sen. Helms, Action is req'd to remove ass hole Sanjour from his position with the EPA. This country is being destroyed by so called environmental experts who don't know their ass from a hole in the ground. Please advise what action has been taken to remove Sanjour from his well pay'd position. (signed) Damn Mad"

And a year later, In June, 1992, the State of Georgia also abandoned its plans to build a hazardous waste facility in Taylor County Georgia.

But EPA won a victory too. They finally figured out how to stop me and Hugh Kaufman from going around the country helping grass roots NIMBYs to stop the growth of the hazardous waste industry. The North Carolina trip would be my last.

Conclusions

I had met many different kinds of NIMBYs but only the more affluent ones would even think of paying my carfare and putting me up in a local motel. Even in very poor regions like Warrenton or Lumberton, the small group of middle class folks in the region were responsible for my appearance. I never dealt directly with the members of the poor black communities who were frequently the victims but I only dealt with some of their activist representatives like Margie Richard, Connie Tucker, and Beverly Wright. The people who would invite me (and I didn't solicit invitations) were politically savvy and, as I said, reasonably affluent. The Boston folks had an ally in Congressman Barney Frank and other local politicians. In North Carolina, NCWARN, led by Billie Elmore, depended on massive organization *ala* Lois Gibbs at Love Canal. The Georgia group was smaller but some of them moved in the same social circles as the movers and shakers in the state. In other words there was not one pattern for success. But every successful grass roots group was dedicated, hardworking and indiscriminately used every resource that was available to them. My input, while it may have been helpful, was never a deciding factor in their victory.

Chapter Ten – Grounded

On January 17th, 1991, the federal Office of Government Ethics (an oxymoron) published an interim rule in the Federal Register. Buried deep in the rule is the provision (5CFR 2636.202(b))

An [federal government] employee is prohibited … from receiving … travel expenses for speaking … on subject matter that focuses specifically on … the responsibilities, policies, and programs of his employing agency.

I suppose I should be flattered that the United States government wrote a law just to silence only me and one other person. The law was a result of years of frustration at EPA trying to silence Hugh Kaufman and me from speaking out in public in opposition to government policy and the embarrassment at having to answer complaints from important people why the agency had to tolerate this conduct. For example a letter asks "I cannot understand how Sanjour has time to go around the country, ostensibly on his own time and expense, stirring people up about dangers that might or might not exist, and at times bad-mouthing his own employer." Another letter writer wondered how a government official could do that "without putting his continued government employment in jeopardy." Then there was the newspaper editorial calling for EPA to "Rein in Sanjour." Complaints came from governors, corporate executives, even the State Department. Complaints about Kaufman were even more numerous and more vociferous.

In every case EPA could only feebly reply that we were speaking on our own time and did not reflect agency policy and either said or implied that we were protected from agency action by the First Amendment. Obviously this rankled many government executives. I'm sure this policy change originated at a high level in the administration and that it was written to silence Mr. Kaufman and me. Having been a mid-level career civil servant for twenty years, I found it inconceivable that mid-level career civil servants in the Office of Government Ethics would take it on themselves to change government policy with no Congressional mandate to do so and hide the change in a rule published in the Federal Register to implement an act of Congress. I believe that this could only have been done if officials of the Office of Government Ethics were told to do it by a higher authority. So much for "government ethics."

When I had to cancel my plans to speak at a Greenpeace meeting in Atlanta, I was advised by Bill Walsh of Greenpeace to contact attorney Steve Kohn at the National Whistleblower Center (NWC). It was a newly created organization to lobby for whistleblowers and to provide legal representation to them. Kohn thought the new law was unconstitutional and offered his firm of Kohn, Kohn & Colapinto to represent me *pro bono* on behalf of the NWC in a suit against EPA which became Sanjour v. EPA.

Kohn wrote to EPA Administrator on October 22, 1991 saying:

There is no regulatory basis to prohibit Mr. Sanjour from accepting travel reimbursement from Greenpeace for his attendance at the upcoming Atlanta convention. But even if there were, such restrictions would violate Mr. Sanjour's (and other employee's) right to freedom of speech under the U.S. Constitution. Requiring an employee to pay out of his own pocket, and not accept travel reimbursement for out-of-town speaking engagements would severely impede Mr. Sanjour's right to speak out on matters of public concern. ……

Not only would such a regulation be unconstitutional on its face, but it would be

retaliatory as implemented against Mr. Sanjour. Mr. Sanjour has in the past, criticized the conduct of the EPA at conferences and out-of-town speaking engagements. Establishing a regulation which impeded such conduct would be retaliatory and would violate of Mr. Sanjour's (and the public's) First Amendment rights.

Given the significant constitutional and regulatory issues at stake, Mr. Sanjour will be forced to challenge the legality of EA 91-1 if the problems with that advisory opinion are not corrected. lf I do not hear front you or your representative by Friday, October 25, 1991 we will be forced to file for injunctive relief and for a Temporary Restraining Order an Monday, October 28, 1991. I apologize in advance for the expeditious nature of this request, but given Mr. Sanjour's commitment to speak in Atlanta on Friday, November 1, 1991 we will be compelled to file for injunctive relief on Monday.

When Steve Kohn didn't get the answer we had hoped for, on October 29, the National Whistleblower Center issued the following press release.

Whistleblower Challenges EPA Censorship Travel Restrictions Under First Amendment

The National Whistleblower's Center is supporting a lawsuit against Mr. William Reilly, Administrator of the U.S. Environmental Protection Agency (EPA) on behalf of EPA whistleblower William Sanjour. Mr. Sanjour has been with EPA in various capacities for over twenty years and for the last ten he has been an outspoken critic of the Agency's hazardous waste management policies. In April of this year, EPA issued a directive which forbids employees front receiving travel expenses when they speak on their own time on any matters within EPA's purview. This rule, which has no basis in law, gags employees who are critical of Agency policies, from voicing their concerns to the people who most need to hear it, and it prevents the public front hearing any views front EPA experts except the views approved by the Administration.

Since 1982 Mr. Sanjour has spoken at many grass-roots environmental citizen meetings in North Carolina, Pennsylvania, Massachusetts, Georgia, Missouri, and Canada. He has been brought by grass-roots groups to testify at legal proceedings in Colorado and Puerto Rico. He has addressed grass-roots leadership conferences in Ohio, Kentucky and Virginia. He has been brought by grass-roots organizations to testify at state legislatures in West Virginia, Georgia, and North Carolina. All of these activities would have been prevented if Mr. Reilly's gag order had been in effect at the time.

In addition to state legislatures, Mr. Sanjour has been asked to testify in the U.S. Congress on his own views on four occasions. He has written many articles on hazardous waste issues and about EPA policies, and he has appeared on several TV and movie documentaries. His technical knowledge and ideas have been influential in the passage of many state and federal laws governing hazardous waste including the Resource Conservation and Recovery Act of 1976, the Comprehensive Environmental Response, Compensation, and Liability Act of 1982 and the Hazardous and Solid waste Amendments.

In connection with Mr. Reilly's travel ban Mr. Sanjour has said:

> *EPA officials, paid by the public, go out to these small poor rural towns and deceive the people into believing that the law requires them to have a hazardous waste*

dump or incinerator which will bring in toxic wastes from all over the country. They lie to them about the safety of these facilities and the efficacy of government enforcement. When the citizens recognize that they cannot trust their own government, they run bake sales to raise money to try to get some outside expert advice. So, when I'm asked to attend a public meeting on my vacation time with no compensation other than a plane ticket and a motel room, I do it because I'm ashamed of the way EPA treats these people. I figure the public has a right to know what 1 know.

Lois Gibbs, the grass-roots leader of Love Canal fame who now heads the Citizens Clearinghouse for Hazardous waste, said:

Bill Reilly has a lot of nerve telling the grass-roots movement that we can't listen to any experts except the ones he'll allow us to listen to and who are usually in the pockets of the polluters. He should be proud of honest EPA experts like Sanjour and Kaufman instead of trying to muzzle them.

Mr. Sanjour's attorney, Stephen M. Kohn, criticized the rule as "clearly in violation of the First Amendment" and an "unlawful attempt to harass and silence employee whistleblowers". Mr. Kohn serves as the Chairperson of the Board of the National Whistleblower Center.

Mr. Sanjour, of course, is not be the only target of this ban. In particular, Mr. Sanjour's colleague, fellow EPA employee Hugh Kaufman, has been even more active in helping grass-roots groups. He has spoken out in Arkansas, Pennsylvania, North Carolina, New York, Nebraska, Indiana, Mississippi, Massachusetts, Colorado, California, Rhode Island, Kentucky, New Jersey, Maryland, West Virginia, Florida, Alabama, Missouri, South Carolina, washington, South Dakota, Minnesota, Wisconsin, New Hampshire, Illinois, Kansas, Louisiana, Iowa, and Texas. It is likely that Mr. Kaufman, along with Mr. Sanjour, are the primary targets of Mr. Reilly's gag rule.

The injunction was denied by Judge Harris. I didn't expect much out of him. Before he was a federal judge, Stanley S. Harris was the head of the U.S. Attorney's office in the District of Columbia at the time of the Anne Gorsuch/Rita Lavelle blow-up during the Reagan administration. When EPA administrator Anne Gorsuch was found in contempt of Congress, Harris refused to do his duty and bring the case before a grand jury. Instead he turned around and sued the House of Representatives! He claimed he was not acting on orders from the White House, but, of course, no one believed him in Congress and they were on the verge of starting impeachment proceedings against him when Anne Gorsuch saved his skin by resigning.

Even though Congressional investigations had revealed that dozens of high level EPA appointees had broken the law, when the public pressure got unbearable, Stanley Harris' U.S. Attorney's office selected only one scape goat for sacrificial prosecution, poor dumb Rita Lavelle. The most politically damaging crime that Congress had uncovered was that EPA Assistant Administrator Lavelle had met with the Reagan White House to discuss how to dispense billions of dollars of Superfund toxic waste cleanup money to political friends and withhold it from enemies. The U.S. Attorney saw to it that these charges were never brought up at her trial and refused to explain why. Almost immediately, President Reagan appointed Stanley Harris to the federal bench where he sat in judgment of me.

What especially disgusted me was that this judge could accept the government's case with a straight face. This is what the government argued:

The prohibition on using public office for private gain is plainly designed to ensure that federal employees devote themselves solely to do the work of the people rather than use their government jobs to advance their private interests. The prohibition against receiving free airline tickets, hotel rooms and meals for nonofficial speeches from private sources if the subjects of the speech are the programs, policies and responsibilities of the agency is clearly consistent with this laudable objective.

So Judge Harris believed that a coach ticket on USAIR and two nights in a room at the Budget Motel, when I could be home with my family sailing my boat or watching a Redskin game, constitutes using my public office for my private gain.

It's amazing that when EPA Administrator, Bill Ruckelshaus, left the agency to become an instant millionaire by heading a corporation with one of the worst pollution records in America, a company which he helped considerably when he was in office, he was welcomed at the White House and was George H. W. Bush's environmental advisor. No one in the Justice Department thought to mention that he may have used his public office for private gain.

One could easily fill a book with the names of people who have become multi-millionaires as a result of their government jobs. Almost every day the newspapers contains new scandals. Government Service has become the springboard for the careers of ambitious creeps without an ounce of civic conscience.

Clearly this case had nothing to do with my coach plane ticket. It had nothing to do with ethics (except for the lack of it on the part of the government ethics officials). It was about censorship and nothing else. Just as the NWC press release pointed out, the government wanted to control what the public could hear. If government officials were looking forward to becoming rich working for the companies they are supposed to be regulating, or if they need the campaign contributions, they didn't want me or people like me, contradicting the lies that they had been telling the public.

I was reminded of the Lincoln-Douglas debates, which took place shortly after the Dred Scott decision. Lincoln pointed out that the government's plan to spread slavery throughout the country was clear because it was like knowing the kind of house that was being built after seeing the framework. It's plain from the framework of this case that if the government gets away with preventing the public from hearing whistleblowers out of town, the next step is to prevent them in town, and then to prevent them from writing and talking to the press and testifying in Congress. In fact the government has tried all of this at one time or another, only this time it was succeeding.

If EPA thought that by grounding me they ended the need to defend themselves against my accusations, they were mistaken. See, for example, the letter they wrote to an editor of the Steubenville, Ohio Herald Star[105].

In your Sunday, May 19, 1996 edition of the Herald-Star, you quoted William Sanjour, an employee of the U. S. Environmental Protection Agency (EPA), in one of your articles as follows:

'Ohio has one of the worst environmental records in the country'; says William Sanjour of the federal Environmental Protection Agency. 'Kentucky is pretty bad. Louisiana is bad,'

Sanjour says. 'Ohio is the pits. It's amazing how bad they are.'

While Mr. Sanjour is an employee in the Office of Solid Waste and Emergency Response, he is not authorized to serve as an official Agency spokesperson. The opinions quoted in your newspaper therefore represent the personal opinions of a private citizen and are not appropriately attributable to the Federal Government. Mr. Sanjour's views do not represent the views of the Agency or the Federal Government. If, in his interview with you, Mr. Sanjour did not identify himself as a private citizen, he should have done so.

Consistent with the 'Standards of Ethical Conduct for Employees of the Executive Branch,' I have reminded Mr. Sanjour that he must make clear to every audience and media representative to whom he speaks that he is doing so as a private citizen and not as a representative of the EPA or the Federal Government. Likewise, we at the EPA would appreciate your printing a correction of your May 19, 1996 article to make your readers aware that the Agency's views on these important state environmental programs are not represented by Mr. Sanjour's personal comments. Thank you for your cooperation in issuing this clarification.

So, in1991 I was grounded and prevented from traveling to the NIMBY sites. Fortunately my job description, as a GM-15 Policy Analyst, gave me the freedom to choose the areas of policy I wished to analyze so I did a study of the regulation of commercial hazardous waste incinerators in America. I delivered a report to my boss in October, 1992[106]. I'm not opposed to incinerators per se but to EPA's regulations and lack of enforcement. The once burgeoning incinerator business had been thwarted by citizen opposition which might have been avoided had EPA written community friendly regulations.

Most hazardous waste incinerators were owned and operated by manufacturing companies for their own use. Of the 260 hazardous waste incinerators permitted EPA at the time I wrote the report, only fifteen were commercial incinerators, i.e., incinerators operated by a waste management company and available to anyone who can pay their price. Commercial incinerators handled only a minute fraction of the hazardous waste generated in this country. Nevertheless, they generated problems, violations, fines and news stories far out of proportion to their numbers and the percentage of wastes they handled. Nearby almost every commercial hazardous waste incinerator there had formed a grass-roots environmental group trying to close them down. The citizens complained of horrible odors, of high incidence of disease, of explosions and spills, and of the indifference state and federal environmental enforcement officials who tended to view the public as the enemy.

Commercial hazardous waste incinerators were extremely profitable, so much so that starting in 1985, after passage of HSWA*, which required EPA to curtail landfilling hazardous waste, there was a frenzied rush to build new hazardous waste incinerators all over the country. This construction had been encouraged by EPA. The hazardous waste management industry usually seeks out poor rural areas with high unemployment rates for their facilities. However, because of the dreadful reputation of these incinerators, grass-root environmental movements formed in communities to block new projects even at the hint of one trying to locate there. For the most part, the grass-roots opposition had been successful despite frequent vigorous promotion by federal and state officials.

* Hazardous and Solid Waste Amendments to RCRA of 1984.

All too frequently this promotion had corrupt overtones. For example, in Georgia, Governor Joe Frank Harris and his Commissioner of the Department of Natural Resources, Leonard Ledbetter, pushed very hard to get a commercial hazardous waste incinerator located in Taylor County. When they left office in 1991, both Harris and Ledbetter took high paying jobs with a firm that wanted to build the incinerator. In June of 1992, a committee of the Georgia Hazardous waste Management Authority found that the siting of a facility in Taylor County was based on politics rather than on environmental considerations and that the public in Taylor County had been intimidated and prevented from participating in the process. I had been working closely with these Georgians with technical advice. As a result, Governor Harris's decision to build an incinerator in Taylor County was overturned[107].

Another example was the federal EPA issuing a permit for a commercial hazardous waste incinerator in East Liverpool, Ohio, in an already heavily polluted area surrounded by homes and schools and subject to frequent thermal inversions. (Behind the project is a consortium of investors put together by Arkansas billionaire Jackson Stephens, a golfing partner of Dan Quayle and contributor of hundreds of thousands of dollars to George Bush's presidential campaigns.) Local citizens found that the permit originally issued by EPA was full of irregularities and outright violations of the law[108]. Thus when the incinerator operator asked for a permit modification to install new equipment, EPA could have used the opportunity to re-issue the permit.

However, given the public mood, this was likely to result in long delays, if not revocation of the permit. The incinerator operator told the Ohio EPA that he couldn't "risk any appeals." The Ohio EPA agreed, saying that "if there is a way to authorize this change without a formal permit change, we should try to do so." EPA went along, and the EPA permitting official said in his agency's defense that EPA "had to treat our constituents [i.e. the incinerator operator] in a fair and equitable manner[109]."

The corruption involved in siting commercial hazardous waste facilities by the largest waste management firm, waste Management Inc., was the subject of a report by the District Attorney of San Diego County, California[110]. The report said "[I]t is clear that waste Management engages in practices designed to gain undue influence over government officials. ... These practices suggest an unseemly effort by waste Management to manipulate local government for its own business ends. If unchecked, these practices, like other more direct forms of improper attempts to gain influence, may have a corrupting impact on local government and lead to decisions unsuitable to the best interests of the public." Furthermore, as shown in the East Liverpool, Ohio, case, state and federal officials can be corrupted as well[111].

The history of EPA's regulation of hazardous waste incinerators did nothing to encourage anyone to want to live near one. In 1978, after considerable internal debate (more on this later), EPA decided to regulate hazardous waste incinerators through the use of operation standards alone. What this means was that certain operating parameters inside the facility were monitored, every fifteen minutes or so, often by computer. These parameters includes the furnace temperature, the rate at which the waste was fed into the furnace, the amount of carbon dioxide and oxygen in the stack (which indicates the efficiency of combustion), the electric current in the precipitator, etc. If any of these parameters exceeds the range specified in the permit, the computer makes a note of it. The facility was then supposed to shut down and correct the problem.

In addition, a chemical and physical analysis of the waste was supposed to be performed routinely in a manner specified in the permit to see that the waste does not contain materials not

included in the permit. Records were supposed to be kept of this analysis and if discrepancies were found it must be noted and the waste returned to the generator.

The theory that EPA operates under was that if these rules were scrupulously followed, human health and the environment would be adequately protected. This theory has been seriously questioned, for example in the Greenpeace report Playing With Fire[112] which demonstrated that even if EPA's theoretical assumptions were all realized, there were still a great deal of toxic air emissions to be concerned about.

A second category of concern was whether it was technologically feasible to achieve the operating conditions that EPA postulates. For example, EPA scientists have recently admitted that modern hazardous waste incinerators simply cannot achieve the 99.99% DRE (destruction/removal efficiency) required by federal law[113].

However, another issue which I addressed at some length is; what were the prospects that these rules would be scrupulously followed or that if they aren't followed, EPA would take action? It should have been obvious that with the rules set up by EPA it was rather easy to cheat. The operator of the incinerator produced and maintained most of the records which could show whether or not he was breaking the law. (This is analogous to writing our own W2 Forms and all the records that go with our income tax returns.) It was impossible for anyone outside the plant to check up on it. They may see dark plumes coming out of the stack, they may smell horrible odors which make them sick, their eyes may burn, there may be increases in respiratory diseases and cancer rates, the paint may peel from their houses, but none of that was a violation of the standards. For the most part, only the records kept by the operator or observations made by an EPA or state inspector would be able to prove that the facility was in violation.

Despite widespread violations, it was rare for an enforcement agency to issue a formal Notice of Violation and the consequence of issuing one was usually nothing more than a promise by the operator not to do it again. EPA's cumbersome enforcement procedure, as illustrated in the chart in Appendix 2, provides numerous avenues for the operator to delay, procrastinate, negotiate, adjudicate and appeal for years and years while he keeps on operating. Looking at this chart, it is easy to understand why there was so little interest on the part of enforcement officials for going through this maze.

EPA assures the public that an incinerator will be shut down if it deviates from the operating conditions specified in the permit. For example, in an EPA document[114] meant to provide "answers to questions that citizens may have about hazardous waste incineration" we find the following: “During operations, the permit requires continuous monitoring of certain parameters (for example, combustion temperature) to ensure that they were within the ranges specified by the permit. If parameters deviate from these ranges, a sensor will trigger the automatic waste feed shut-off system which is required in all permitted incinerators. The waste feed will not resume until the required operating conditions have been restored.”

In real life the situation was very different. If serious violations were found it did not follow that the incinerator would be shut down or that the violations would even be quickly corrected. This was true even if the violations was causing an increase in the risk to the health of the people living nearby.

Take, for example, the hazardous waste facility in Sauget, Illinois, owned by CWM (Chemical waste Management Inc.), the hazardous waste subsidiary of WMI (Waste Management Inc). CWM bought the facility, known as Trade Winds Incineration in 1983. It had three hazardous waste incinerators at the time and CWM added a fourth "state of the art" incinerator in 1989. This facility, located in southern Illinois, accepted hazardous waste from all

over the country including wastes from as far away as Puerto Rico, British Columbia and Tijuana. Sauget (which before 1967 was called Monsanto) was located just two miles from East St. Louis, Illinois and St. Louis, Missouri which had a combined population of about a half million people.

In January 1990 an explosion in a holding tank caused the state and federal EPA to take a close look at the Sauget facility. Among the deficiencies that they found was the fact that the new number 4 incinerator was operating at a temperature considerably below the temperature at which it was required to operate. This meant that the DRE (destruction/removal efficiency) was considerably below the much touted level of 99.99 percent. As a result, toxic pollutants were being emitted into the air at a much greater rate than legally permitted. Nevertheless, state and federal authorities have been trading communications for two and a half years without correcting the problem while the people of Sauget continued to be exposed to these illegal emissions. The following is a chronology of correspondence from EPA to the facility[115].

January 1990. An explosion in a holding tank alarmed the state and federal EPA and causes them to take a close look at the Sauget facility.

September 28, 1990. A letter from EPA informs CWM of numerous violations which might lead EPA to stop shipping Superfund wastes to its Sauget incinerator. Among the violations was the fact that CWM had not made a chemical and physical analysis of the waste before burning it and that "incinerator No. 4 had been operating 300 degrees F below the permit required kiln temperature since January 1990." Thus the public had been exposed to illegal toxic emissions for at least eight months with the full knowledge of federal and state EPAs.

December 7, 1990. Another letter from EPA informs CWM that they have not corrected the problems pointed out in the September 28th letter. Meanwhile EPA continues to ship Superfund wastes to the facility and the public continues to be exposed to the illegal toxic emissions.

December 28, 1990. A letter was sent to CWM stating that "the U.S. EPA had made a final determination of unacceptability concerning Incinerator #4". The letter also says that EPA urges CWM to enter a consent agreement with EPA and the State of Illinois to resolve all of the violations. Presumably EPA stopped shipping Superfund wastes to Incinerator No. 4 at that point but other hazardous wastes continued going there and the public continued to be exposed to the illegal toxic emissions.

January 28, 1991. EPA sent a letter to CWM informing them of a new set of violations which would further threaten their ability to accept Superfund wastes in the future. Meanwhile the public continues to be exposed to the illegal toxic emissions from Incinerator No. 4.

February 4, 1991. Another letter from EPA informed CWM that they have not resolved

the issues raised in the letter of September 28, 1990. Meanwhile the public continued to be exposed to the illegal toxic emissions.

April 11, 1991. EPA informed CWM that since the issues raised in the letters of September 28, 1990 and January 28, 1991 have not been resolved, Superfund wastes would not be sent to Incinerators No. 1, 2, or 3. Meanwhile the public continued to be exposed to the illegal toxic emissions from non-Superfund hazardous waste

August 13, 1991. Additional violations caused EPA to issue another order banning Superfund wastes (which were already banned) to the Sauget facility, but other hazardous wastes continued to be burned under conditions which violate their permit and expose the public to the illegal toxic emissions.

December 23, 1991. CWM signed a consent agreement with the State of Illinois and, without admitting guilt, agreed to pay a civil penalty of $1.9 million. The agreement stipulated, among other things, that Incinerator No. 1 (which had been burning hazardous wastes for over a decade) was unfit for burning hazardous waste and must be replaced or upgraded. In addition, Incinerator No. 4, which had been operating at 300 degrees below its permitted temperature, must undergo a new series of test burns to demonstrate that it can operate under the required conditions. This process could take six months to a year; meanwhile the incinerator would continue to operate and expose the public to the illegal toxic emissions.

December 24, 1991. Additional violations caused EPA to issue still another order banning Superfund wastes to the Sauget facility, but other hazardous wastes continue to be burned under conditions which violate their permit and expose the public to the illegal toxic emissions.

July 2, 1992. As of this date the test burns required in the consent agreement have not been carried out[116], and the facility was still in violation of its permit and the public continues to be exposed to illegal toxic emissions.

A common violation, which was almost unenforceable, was the failure to perform a chemical and physical analysis of the waste before throwing it in the furnace. Incinerator permits were issued for specific wastes only; however incinerator operators frequently took the waste generator's word for what's in the waste. Keep in mind that hazardous waste is a factory's garbage. If they typically ship out say a thousand gallons a month of waste solvents and they find themselves with say fifty gallons of waste PCB which they don't know what to do with, what is more natural than dumping it in with the waste solvent to be hauled away to the incinerator? No one would be the wiser. If the incinerator was not permitted to burn PCBs it means it was not designed to destroy PCBs, therefore the community would be exposed to illegal toxic emissions.

Every now and then a commercial hazardous waste incinerator explodes. This happened in February 1991 to an incinerator operated by Chemical waste Management Inc. (CWM) in Chicago. This can only happen if the waste was not analyzed. CWM was fined $3.75 million for

violations at their Chicago incinerator which included the failure to keep records on what was being burned. An Illinois EPA spokesperson said: "It turned out that they didn't really have a good idea of what all they had there. It was woefully inadequate[117]." Yet these inadequacies were not discovered until the incinerator blew up. Years of routine inspections by state and federal officials had failed to uncover them.

Not all illegal wastes burned in incinerators were the result of a lack of attention on the part of the incinerator operator. In some cases the operator would turn a blind eye and would accept wastes he was not permitted to accept if he knew it could not harm his incinerator, regardless of the affect it may have on the community. For example low level radioactive wastes from nuclear weapons plants had been sent by DOE (Department of Energy) contractors to commercial hazardous waste incinerators and landfills all over the country[118] even though these facilities were not permitted to accept radioactive waste. The biggest recipients were the CWM landfill in Emelle, Alabama, the ENSCO incinerator in El Dorado, Arkansas, and the Rollins incinerator in Baton Rouge, Louisiana[119]. DOE contractor, Martin Marietta, not only knew that the wastes were radioactive but took pains to eradicate that fact from the shipping papers. This practice had been going on for six years before it was discovered in 1991.

In 1990, a special joint task force of the U.S. EPA and the U.S. OSHA (Occupational Safety and Health Administration) conducted 62 unannounced inspections of 20 hazardous waste incinerators[120]. They found 75 violations of EPA regulations including numerous instances where automatic safety devices had been bypassed, allowing toxic emissions to escape into the atmosphere. Bear in mind that these violations were found in the incinerator operator's own records. These facilities were inspected many times a year by state and federal EPA inspectors who were supposed to review those records. Yet at 20 facilities the task force was able to find 75 serious violations which were not reported by the routine inspectors.

Why was the quality of inspection so bad? Inspectors were typically poorly trained. They have low morale and high turnover. EPA statistics showed that 41% of RCRA inspectors had conducted ten or fewer inspections[121]. There was no reward to inspectors for finding serious violations and indeed, zealous inspectors were typically given a hard time by their supervisors. Thus, they ended up as "bean counters" while they look for other work. One of the best places for enforcement officials to find good paying job opportunities was with the facilities they regulate. It was common to find former state and federal enforcement officials working for hazardous waste facility operators. The hazardous waste management industry abounds with conflicts of interest with their government regulators[122].

Not all my writing was self-generated. Some were specifically requested by my boss such as this memo I wrote in response to an assignment[123]:

I have reviewed the assignment you have proposed for me, i.e. to come up with more and better quantitative measures of the benefits of our regulatory actions particularly the listing of hazardous waste, and I have concluded that what you are asking me to do is illogical, unethical, illegal, and immoral.

In preparing for this assignment, I have reviewed several Regulatory Impact Analyses (RIAs). I was very troubled with what I found. It seems that tens of millions of dollars are already being spent for each proposed listing to have contractors run elaborate computer models and analysis in order to generate quantitative cost estimates of the benefits of the proposed listing. Estimates which, everyone knows, are so imprecise as to be almost

meaningless. When I was a contractor doing cost/benefit analysis and computer modeling, we referred to this kind of analysis as GIGO, garbage in--garbage out.

The law (RCRA) only requires us to show that regulating the proposed waste is necessary in order to protect human health and the environment. In reviewing the RIAs, I found more than adequate justification for regulating the proposed waste without going into elaborate quantitative analysis. Two examples of this are attached. One is from the RIA for the listing of petroleum refinery separation sledges and the other from the RIA for the listing of wood preserving wastes. Both reports were produced by contractors for the Economic Analysis Staff of the Office of Solid Waste in late 1990.

To my mind, these statements (provided they can be factually supported) are more than adequate justification to regulate the wastes. They show that the wastes are sufficiently toxic or carcinogenic so as to be a threat to the health of persons coming in contact with them, and because of the way that the wastes are handled, they can and have leaked into the environment, especially into ground water. Why then do we need expensive, elaborate models to generate dubious quantitative data on such things as the number of cancer cases averted in the next 300 years or the dollar cost averted to replace contaminated groundwater over the next ninety years (see attached example from the from oil separator study)?

I put this question the Chief of the Economic Analysis Branch. She said that while there are many who subscribed to my view, there are several that didn't. The White House Office of Management and Budget (OMB) was, of course one, but others were 'the Twelfth Floor', i.e. the EPA Administrator and/or his staff, and the EPA Science Advisory Board.

They felt, she said, that the benefits of our regulatory actions must be quantified and the benefits must outweigh the costs to the regulated industry.

This approach is an illogical perversion of the science of cost/benefit analysis because it weighs one group's cost against a different group's benefits. To make sense, the costs and benefits must be put on equal footing. This is often difficult, if not impossible, to do, and therefore, cost/benefit analysis is not always applicable and, if inappropriately applied, can do more harm than good.

The approach is certainly unethical. It says, in effect, that it is alright for me to throw my garbage on your lawn if it costs you less to clean it up than it would cost me to dispose of it properly. The argument used by OMB, that the costs and benefits are all "societal" costs and benefits, might have gone over with the late Joseph Stalin, but I doubt if it would sit well with most Americans' ideas of ethical behavior.

You must know that the approach being used is also illegal. Many of the statutes under which EPA operates, require EPA to balance the costs of regulation against the benefits. RCRA is the exception. RCRA requires EPA to set standards so as to protect human health and the environment--period. It does not allow EPA to set standards to protect human health and the environment so long as it doesn't cost the polluters more than it saves the victims. There are good and sound reasons why RCRA is different from other statutes in this respect, and if you ever want to know, I would be glad to discuss it with you.

It is immoral also because public funds and resources are being squandered to do unnecessary analysis while the Office of Solid Waste pleads for more money and more people and more time. More important, however, it is immoral because by subscribing to this approach, you are illogically, unethically, and illegally denying the protection of the law to those who are entitled to it. I wonder if you or the Twelfth Floor or OMB or the Science Advisory Board would like to face the victims of careless hazardous waste disposal, whose

wells have been poisoned, and tell them that it wasn't worth while protecting them because it would cost them less to get a new water supply than it would cost the polluter to stop dumping into their well water.

It is no good to argue that you are serving mankind by doing your best to get these regulations through an obstreperous bureaucracy, for by playing the game by their rules, you are covering up for them and you become part of the problem. If you played by the rules of the law, you would force the Twelfth Floor and OMB to take responsibility for their actions. Let them debate their divergent views on cost/benefit analysis in public in the courts and in Congress where the debate belongs and not behind closed doors.

I continued to help the grass-roots NIMBYs whenever they asked even if I could no longer go to them. This letter on EPA letterhead to Carol Puckett of Pulaski, Tennessee is typical of many that I wrote.

Thank you for your interest in the testimony I gave before the Georgia State Legislature and for sharing with me your similar concerns about plans to build a hazardous waste incinerator in Tennessee. Please be advised, however, that I gave that testimony as a private citizen and it does not reflect official EPA policy.

I can well understand your concern about constructing a huge commercial hazardous waste incinerator in your state, especially one which, as you say, is many times the size Tennessee needs. This would result in hazardous wastes coming into the state from all over the world. My personal view is that these facilities are counterproductive to EPA's goal of reducing the amount of hazardous waste production.

The commercial hazardous waste business is a business. As a business, its income is produced by taking in wastes through the gate. Waste is money. Expense is incurred by treating the waste so as to protect human health and the environment. This costs money. A successful business maximizes income and does everything it can to reduce expenses. These goals are just the opposite of EPA's, i.e. to reduce the production of hazardous wastes and maximize protection of human health and the environment.

I am aware of the attempts to build huge hazardous waste incinerators in Tennessee, and in many other southern states. The Federal law frequently cited as justification for these facilities, only requires that each, .state have a plan for handling its own wastes. The law: does not require that the waste be handled by an offsite commercial facility. There is nothing in the law that precludes a state from requiring its hazardous waste generators to practice waste reduction and/or treat the waste on the site where the waste is generated. If additional capacity is needed, the law does not preclude a state owning and operating a facility limited to wastes generated within the state.

I realize there are many people expressing contrary views, encouraging the creation of a huge commercial hazardous waste treatment and disposal facility. I've listed below, some of the arguments being used and my response to them:

- *A commercial hazardous waste disposal facility will attract new industry, however experience has proven that just the opposite is true.*

- *The state will see to it that any commercial hazardous waste facility is run in an environmentally sound manner. Again, experience in other states have shown the*

opposite is frequently the case.

- *A commercial hazardous waste facility must be large in order to be economically viable. This may be true, but is the economic viability of the commercial hazardous waste industry of greater concern than the health and well-being of the citizens of Tennessee?*

In light of the fact that so many public officials, after advocating the need for commercial hazardous waste management facilities, have left public service in order to take high paying jobs with the waste management industry, I would recommend you very carefully examine the motives of any public official urging Tennessee to accept a commercial hazardous waste management facility many times larger than it needs.

I suggest you also examine the neglected issue of what will happen to the waste residues after the proposed commercial facility closes in twenty years or so. In proposals that I have seen for other states, these toxic waste residues would become the property and responsibility of the state. The cost to the state for maintaining the toxic residues of hazardous waste from all over the world in perpetuity could far exceed any benefits to the state. Furthermore, if these residues should leak into the environment, which is likely, the state would be faced with the prospect of having to pay fifty percent of the cost of cleaning up a Superfund site.

I am enclosing some material which may be of some use to you and I would be glad to help you in any way that I can.

Chapter Eleven – Why EPA Is Like It Is and Barney Frank's Congressional hearing

In 1990 I was invited by Corinne Whitehead to present a paper to a meeting of her Coalition of Health Concern in November at Kenlake Kentucky. I wrote "Why EPA Is Like It Is." Which begins:

I am frequently asked why the United States Environmental Protection Agency does not seem to be particularly interested in protecting the environment. The question usually comes from people who are dealing directly with EPA for the first time. People who, before they had to deal with EPA, had always assumed that EPA was the guys in the white hats putting the bad polluters in jail.

The people I'm talking about are ordinary citizens, usually rural middle class people with no extreme political views or life styles, who find themselves living close to where somebody wants to build or has built a hazardous waste facility, or an incinerator, or a nuclear waste dump, or something like that. These are people who usually start out with a strong faith in their country and its institutions. A frequent refrain is that the government wouldn't let them do it (whatever "it" is) if there was anything wrong with it.

But when these folks get deeper into the issues they frequently find that EPA officials, whom they thought would be their allies, are indifferent and even antagonistic. They find that they themselves, rather than the polluters, are viewed by EPA as the enemy and that the hazardous waste dumpers and EPA and state officials are very close and work together while they, the public, are the outsiders. They don't understand why this should be since they thought that all these government officials were being paid by the taxpayers to protect them from the polluters.

They thought that the resources of the government would be at their disposal to gather information about the health and environmental threat posed by these facilities, and to take whatever action was necessary to protect them under the law. What they find, instead, is that they have to spend their own time or hire their own experts with their own money to gather data while the government sits on the same data collected at public expense. And if they want to go to court, they have to run bake sales and pass the hat around to pay for lawyers who are up against government lawyers whose salaries are paid by the public.

This is not just true in the area of hazardous waste where I have most of my experience. In almost all other areas of involvement, EPA is frequently cited as failing to protect the environment and even working at cross purposes to environmental protection. Since I work for EPA, I am asked why this should be. Why should people who are paid by the public to protect the environment, not do so? I tell them the answer isn't simple (and it isn't) and I rarely have time to go into it in detail. But that's what I'll try to do now.

My friend Dr.Peter Montague, Director of the Environmental Research Foundation, liked the article and wanted to publish it but felt it was the statement of a problem with no suggestions for solutions --- so in 1992 I wrote "Why EPA Is Like It Is And What Can Be Done About It" and Peter published it. I think it's one the best things I've ever written, certainly the most popular. It runs into 35 pages and parts, especially the "Revolving Door" in Appendix 1, have been widely reproduces on environmental Web sites. It's too long to include it here but can be

seen on the Web*.

Terry Martin, writing in the Winston-Salem Journal, wrote a very nice summary review, tying it in with what had been going on in North Carolina[124].

The federal agency that oversees North Carolina's plans for a hazardous-waste incinerator is riddled by conflicts of interests and coddles major hazardous-waste management companies, according to a worker for the agency.

William Sanjour, a 20-year employee of the Environmental Protection Agency, says in a new report on EPA policies that:

o The agency spends more time and money figuring out how to remove companies from regulation than to get them regulated.

o More enforcement cases against influential polluters are started as a result of environmental groups, news accounts and angered residents than by government regulators.

o Taxpayers' money is used to defend EPA against lawsuits that would force it to enforce regulations that its employees are paid to administer.

Sanjour writes in a 35-page report published by the Environmental Research Foundation, "Thousands of people have spent hundreds of millions of dollars over decades with nothing to show for it but their own career advancement."

The report says that the agency serves as a revolving door for officials who use it to gain high-paying jobs with waste industries.

Sanjour names 35 former EPA or federal employees who have left their positions to join waste industries or become consultants.

He specifically cites the EPA regional office in Atlanta, which governs North Carolina, as one of the worst offenders.

"The worst regions are in the South ... Atlanta and Dallas respectively," the report says. "The revolving door is well greased in these regions where state and federal environmental officials rush to take high-paying jobs in the industries they were formerly paid to regulate."

EPA spokesmen in Atlanta and at the agency's headquarters in Washington declined to respond at length.

Robin Woods of the central office said: "He speaks for himself. We would disagree with him."

But Daniel F. McLawhorn, a deputy state attorney general who defended North Carolina against an EPA lawsuit initiated in 1989, said he saw a basis tor Sanjour's accusations from that case.

"We found what we believed were serious violations of ethical rules," McLawhorn said.

He said that, if the case had been appealed, the state had intended to cross-examine EPA Administrator William K. Reilly about a luncheon he had with the chief executive officer of the nation's largest waste company, Waste Management Inc., even as Reilly was to make a decision in the North Carolina case.

North Carolina prevailed in the suit, in which EPA tried to withdraw the state's authority to regulate hazardous waste because the state enacted a strict law in 1987 that stopped a huge waste-treatment plant that GSX Chemical Services Inc. planned to build in Scotland County.

* At www.precaution.org/lib/why_epa_is_like_it_is.19920201.pdf and at my Web site http://sanjour.us.

The suit was initiated after threatening letters from Jack Raven, a former EPA regional administrator in Atlanta, failed to dissuade state legislators.

Sanjour's report singles out Raven and his boss, Lee Thomas, who recommended the suit.

"He frequently praised the hazardous-waste management industry as an environmental blessing," Sanjour writes of Raven. "He left EPA to become president of Rollins Environmental Services, the second largest hazardous-waste management firm in America.

"Rollins had a dreadful environmental record when Raven took over and it was made even worse when they were caught illegally taking radioactive waste, in their Louisiana plant in May of 1991. By the end of July, Raven had left Rollins."

Thomas left as EPA's administrator to become the chief executive officer of Law Environmental, a hazardous-waste consulting company.

William D. Ruckleshaus, who preceded Reilly as the EPA administrator, is the chief executive officer of Browning-Ferris Inc., currently the nation's second largest waste-management company.

Sanjour's public appearances to question plans for a hazardous-waste incinerator in North Carolina, now targeted for Northampton County, prompted Gov. James G. Martin to complain to Reilly last year. Nancy J. Pekarek, Martin's director of communications, said Friday, "There's a question about Mr. Sanjour's motivation and the accuracy of his information."

"What we're trying to do is find the best way, the safest way, to manage waste that fulfills our obligations and protects the citizens."

The Financial Times wrote[125]:

Somewhere in a corner of EPA is William Sanjour, a "whistle blower" who has served the agency for 20 years and has been isolated by his superiors for calling attention to the agency's failings. The administrator, he says, is invariably a "team player" who "can make all the speeches he wants about cutting down Brazilian forests and environmental ethics, but he must not do anything to make waves."

Sanjour says employees who like to see "concrete results" do not last long at EPA. "When it comes to drafting and implementing rules for environmental protection, getting results means making enemies of powerful and influential people," he said. "No, they don't usually get fired, but they don't get advanced either, and their responsibilities are transferred to other people and they usually leave the agency in disgust.

"The kind of people who get ahead are those clever ones who can be terribly busy while they procrastinate, obfuscate and can consistently come up with superficially plausible reasons for not accomplishing anything."

Sanjour talks about one deadline for action after another missed with little notice. Enforcement cases against influential polluters are started, not by the EPA, but by a combination of environmental organizations, the media or local citizens, he said. It often takes years of badgering before the agency will act. When fines are ultimately imposed, they are less than the polluter earned by breaking the law.

"Why EPA Is Like It Is And What Can Be Done About It" had three more rebirths. In September, 1992 the Sierra club reprinted an abbreviated version in their magazine as "In Name

Only[126]." In 2010, after the failure of the SEC and the agencies that regulate offshore drilling and mine safety, I saw the catastrophic failure of three different regulatory agencies as a wakeup call for Congress to, this time, really reform how we regulate industries in America. I was disappointed to see that that was not happening and that Congress appeared to be going down the same old well-trodden path that leads back to where we started. I therefore felt compelled to write "Designed to Fail: Why Regulatory Agencies Don't Work[127]" based largely on "Why EPA….." In 2012 I prepared an updated version for the Independent Science News. And finally, this memoir is nothing more than a puffed up version of "Why EPA Is Like It Is And What Can Be Done About It"

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I and some of my friends had been lobbying Congressman Barney Frank, as Chairman of the House Subcommittee on Administrative Law and Government Relations, to hold hearings on the law which grounded me and Hugh Kaufman. By then Hugh and Billie Elmore of NCWARN had joined the lawsuit, Sanjour v. EPA, as co-plaintiffs. On February 19, 1992 I was invited to testify at hearings to be held on March 5.

I told the Committee that "I know of no other persons, outside of Mr. Kaufman and myself, affected by this rule. My attorney, who is a specialist in whistleblower cases, has encountered no other cases. We are in touch with many organizations that deal with controversial issues and to my knowledge no other federal employee has come forward to protest this ruling. We know of no federal agency, outside of EPA, that have felt it necessary to inform its employees of this provision.

"While this policy may have changed suddenly, one could see something like this coming for some time. The talks that Mr. Kaufman and I have been invited to give over the years have not only been critical of EPA and other government policy, but have frequently stepped on the toes of some powerful business interests, particularly the commercial hazardous and nuclear waste management industry."

Hugh Kaufman, Billie Elmore and Steve Kohn testified among others. The Wilmington (North Carolina) Morning Star reported my testimony[128]:

An 1989 (sic) ethics law aimed at curbing influence peddling in government came under fire Thursday from environmental activists who said the measure is being used to silence dissenters.

The hearing was prompted, in part, by North Carolina's ongoing efforts at siting a hazardous waste incinerator. An outspoken administrator within the Environmental Protection Agency who visited the state last year and spoke out against plans to build that facility, said the executive branch has used the law to clamp down on whistleblowers.

"lt's censorship in the guise of ethics," said William Sanjour, an analyst within the EPA who has long challenged official agency policy on a number of issues.

During the debate last summer over a hazardous waste incinerator proposed for Pender County, Mr. Sanjour was among the speakers brought in for an information session on the issue.

His anti-incinerator speeches in North Carolina prompted Gov. Jim Martin to complain about him in a letter to EPA Administrator William K. Reilly.

Mr. Sanjour said his appearances to speak against incineration and in favor of waste reduction were done on his own time.

Specifically, Mr. Sanjour - who is also pursuing his claim in federal court - objects to

regulations which prohibit government employees from accepting travel expenses from outside groups when the employees speak about their work on their own time.

The Ethics Reform Act of 1989 banned government employees from accepting money for outside speeches or articles.

Jon Healy of the Winston-Salem Journal[129] described the hearing under the headline "Dissenting Federal Workers Are Kept From Public, Panel Told."

For government dissidents like William Sanjour, there has been no such thing as a free lunch, or a free motel room or plane ticket, since last year.

The gravy train continues to run, however, for government employees who toe the official agency line. And that double standard may prompt action by the leaders of the House Subcommittee on Administrative Law and Governmental Relations.

Sanjour, who works for the U.S. Environmental Protection Agency, is best known for what he does on his free time: helping community groups resist hazardous-waste landfills and incinerators.

Sanjour and Billie Elmore, an environmentalist from Sanford, N.C., told the subcommittee yesterday how two new government regulations keep dissenters within the government away from the public.

One regulation prohibits government workers from receiving compensation for speeches or writings relating to their agencies. Thus, Sanjour said, when opponents of a proposed incinerator in Northampton County, N.C., invited him to speak last year, he had to say no because he couldn't afford the trip.

The EPA apparently didn't enforce the regulation, adopted in January 1991, against Sanjour and an EPA whistle-blower, Hugh B. Kaufman, until last fall. Now the EPA's inspector general is investigating whether Sanjour and Kaufman violated the regulation earlier.

The idea behind the regulation is to avoid conflicts of interest, or the appearance of conflicts. But witnesses at the hearing yesterday said that a second regulation proposed by the Government Services Administration would allow agencies to accept travel payments from businesses or groups even when there is a blatant conflict of interest.

Ann McBride, a senior vice president of Common Cause, said that agencies would be allowed to accept travel payments for officials who attend an event when the event is judged more important than any conflict of interest it might create, real or imagined. "What we're setting up is a cost-benefit analysis for ethics," Ms. McBride said.

Rep. Barney Frank, D-Mass., responded, "I never saw one of those where ethics won."

Frank, the subcommittee's chairman, and Rep. George Gekas of Pennsylvania, the subcommittee's top Republican, suggested that reimbursement be allowed whenever there is no conflict of interest, and prohibited whenever there is, regardless of the content of the speech.

Frank said he would like to act before the GSA's proposed regulation takes effect in six weeks.

Good to their word, Congressmen Frank and Gekas wrote to Stephan Potts[130], Director of the Office of Government Ethics saying:

We appreciate your testimony at the recent oversight hearing held by this Subcommittee on regulations governing the acceptance of private travel expense reimbursements by federal employees.

As you know, much of the discussion at that hearing centered on the regulation issued by your agency which prohibits federal employees from accepting private payment of travel expenses in connection with non-official speaking activities on subject matter that focuses specifically on their official duties or on their agencies' responsibilities, policies and programs. 56 Fed. Reg. 1724 (1991).

In particular, concerns were raised by several of the witnesses that this OGE regulation, because it is content-based, infringes upon the First Amendment rights of employees who are invited to speak in a non-official capacity, on their own time, in a manner that may be critical of their agency's policies.

Witnesses also addressed the inconsistencies between the OGE. rule and the regulation issued by the General Services Administration, which allows agencies to accept private travel expense reimbursements for employees attending meetings in an official capacity even from a source whose interests may be affected by that employee's duties. 56 Fed. Reg. 9878 (1991).

In short, under these two regulations, an employee who speaks in a non-official capacity on his agency's policies may not accept private travel payments from any source, while an employee who speaks in an official capacity may accept, with agency approval, privately-funded travel expenses even from a conflicting source.

Thus, the question of whether or not an employee may accept privately-funded travel reimbursements depends on whether the speech is official or non-official, which, in turn, depends on whether the agency approves or disapproves of the speech. We see no public policy rationale for that content-based distinction.

We recommend, therefore, that the OGE regulation be amended to allow employees to accept private travel expense payments in connection with non-official speaking activities, subject to an appropriate conflict-of-interest test such as that set forth in your agency's Memorandum No. 84 x 5. Under that standard, an employee could not accept travel expenses from any source which (1) has, or is seeking to obtain, contractual or other business or financial relations with his agency; (2) conducts operations or activities that are regulated by his agency; or (3) has interests that may be substantially affected by the performance or nonperformance of his official duties.

We believe that applying this conflict-of-interest test to an employee's non-official speaking activities, regardless of subject matter, would more effectively balance the government's interests and the employee's First Amendment rights.

For your information, we have also written to Mr. Richard G. Austin, Administrator of General services, asking that his agency withhold promulgating a final travel acceptance regulation, in order that the Subcommittee will have an opportunity to make whatever recommendations it deems appropriate regarding the conflict-of-interest balancing test in that proposed rule.

We welcome your comments and look forward to working with you to develop an appropriate regulation governing the acceptance of private travel payments by federal employees.

This is a very lawyerly response, very much like our attorney, Steve Kohn's approach (and very much unlike my screed for justice.) Barney Frank had been much involved with the

citizen's group in Walpole, Massachusetts that I wrote about in Chapter Seven, and he made some attempts to get the rule changed but to no avail.

Meanwhile, on June 26, 1992, having lost our case in the DC Circuit Court with Judge Harris, Steve filed an appeal with the DC Appellate Court[131] with 67 *amici curiae* including national environmental groups as well as grass roots groups from all over the country, many of which Kaufman and I had helped. Kohn's brief was a masterpiece and ran to over 80 pages, I've excerpted the part that I had researched and naturally liked best. It really reveals the hypocrisy of the government's position (references omitted.)

Appellees' sole justification for prohibiting NC WARN from reimbursing two non-policy making EPA whistleblower-employees for the actual costs of their proposed speech in Jackson, NC is an alleged appearance of impropriety. Despite the fact that NC WARN is not an organization with a "conflict of interest" with EPA and the fact that neither speaker would be discussing EPA policies related to the speaker's official duties, the mere reimbursement for actual costs by a non-governmental source is deemed sufficient to raise an appearance of impropriety strong enough to justify an economic bar to speech. The weaknesses in the argument are self-evident. But the complete frivolity of the government's rationalization for this rule is made abundantly clear through a review of the public record related to third-party reimbursement for EPA employee travel.

According to public reports filed by the EPA with the OGE, between June 18, 1991 and March 31, 1992, the EPA approved 626 separate reimbursements by non-governmental sources for EPA employee travel. The organizations which <u>paid for</u> the EPA employee travel expenses included universities, foreign governments and American corporations, some of which had an admitted "conflict of interest" with the EPA.

During the nine month period for which documents were reviewed, private sources paid over $650,000 in reimbursements to EPA employees. The sole reason why these reimbursements fell outside the scope of the OGE/EPA regulation was because the EPA, in its sole discretion, determined the speech was "official" speech.

Some of the corporations and business trade associates which were allowed to reimburse EPA employees who spoke on matters directly relating to the employee's "official duties" and/or related to the responsibilities, programs and policies of the EPA were Ryder Trucking, Inc. (for an "executive seminar" on "issues and concerns to the transportation industry"); the Municipal Bond Investors Insurance Corporation (speech on Clean Water Act: "impact" on the "funding" of "their organization"); the American Petroleum Institute ("health effects of gasoline"); the Chemical Specialties Manufacturers Association ("speech on enforcement"); Westinghouse Electric Corp. ("pollution prevention workshop"); Motorola, Inc. ("to discuss proposed in situ bioremediation at Motorola's 56th Street 'site"); AT&T (seminar on the Clean Air Act); Amoco Corporation (an environmental seminar); Chevron, U.S.A., Inc. (speech regarding "risk assessment"); the American Chemical Society (Toxic monitoring); the Water Utilities Executive Council (a discussion with the 40 chief executives on "large investor-owned water companies" regarding the "implementation of" Safe Drinking Water Act regulations); and the American Coal Ash Association ("federal procurement guidelines").

A sample review of "Approval to Accept Travel Expenses Under the Ethics Reform Act of 1989" forms and supporting documentation illustrate some of the types of privately sponsored travel for which the EPA found no impermissible appearances of impropriety. For

example, no appearance of impropriety was found when the "Mardi Gras Chapter" of the "Refrigeration Service Engineers Society" reimbursed an EPA employee for a trip to New Orleans, Louisiana in March, 1992. Likewise, Neste 0il made a payment of $3731 to an EPA project manager for a trip to Helsinki, Finland; the Association of Fluorocarbon Consumers and Manufacturers made payment for an EPA official's trip to Canberra, Australia; and Sync Productions gave reimbursements for an EPA employee trip to Belize, Central America. All of these were considered to be fully appropriate. Conversely, a local grassroots environmental group like NC WARN was considered to be an inappropriate sponsor of speech.

Trips sponsored by organizations with an admitted "conflict" with the EPA were regularly permitted, on such grounds as the "importance" of a "continued cooperative relationship" with the industry (regarding EPA's approval of a reimbursement for a February, 1992 trip to Palm Beach, Florida sponsored by the Association for Battery Recyclers, a trade association for the secondary lead smelter industry) and because it is "publicly prudent that the regulated industry be properly informed," (regarding EPA's approval of an AT&T sponsored trip to Orlando, Florida in February, 1992).

Simply stated, if the receipt of travel reimbursement from the American Petroleum Institute (an organization with an admitted conflict of interest with the EPA) for an "official" talk on the "health effects of gasoline" does not raise a sufficient appearance of impropriety to prohibit said reimbursement, unquestionably, NC WARN'S reimbursement of two EPA employees for a "non-official" talk on the harmful effects of a hazardous waste incinerator should not raise a sufficient appearance of impropriety to justify prohibiting that speech.

Additionally, the viewpoint based nature of the OGE/EPA rule is obvious. Given EPA's unfettered discretion to waive "conflicts of interest" and to classify a speech as "official," the viewpoint based nature of the rule is readily apparent. Because EPA does not agree with the viewpoints offered by Messrs. Sanjour and Kaufman, NC WARN is denied access to their speech. Conversely, because the EPA agrees with the viewpoint expressed by their "official" speakers, sponsors of "official" speech, like the American Petroleum Institute (but unlike NC WARN) have private access to the knowledge, insight, and expertise of an EPA officials.

The hundreds upon hundreds of travel expense reimbursement approvals given to EPA employees over the previous nine month period underscores the public's need for information from EPA sources related to the environment. It is impermissible for the EPA to control that flow of information on the basis of the content of the speech or viewpoint of the speaker. Given the types of reimbursements regularly approved by the EPA, any claim that the acceptance by a whistleblower to address a local, grass-roots environmental group like NC WARN would raise & sufficient appearance of impropriety to justify the <u>de facto</u> censorship of that speech must fail.

<u>Conclusion</u>

I ran across an interesting quote in a book I was reading. It's about the plight of Ruthenian* peasants in the 19th Century during the hunting season of the nobility.

* Ruthenia is an obscure Balkan province.

For this pastime, 70,000 Ruthenians must be doomed to starvation by the army of the officials. The deer and the wild boar destroy the corn, the potatoes and the cover of the Ruthenians (the whole harvest of his tiny lot of half an acre). Their whole yearly work is destroyed. The people SOW and the deer of the estate harvest. It is easy to say the peasant should complain. But where and to whom? Those who have the power he sees always together. The village chief, the deputy sheriff, the sheriff, the district judge, the tax-officer, the forester, the steward and the manager all are men of the same education, of the same social pleasures, and of the same standard. From whom could he hope for justice[132]?

While the plight of the NIMBYs isn't as dire as the Ruthenian peasants still the NIMBYs have the same feeling of "where and to whom to complain" when everyone they could complain to seem to be buddies of the one they are complaining about.

Chapter Twelve – Ohio

I was only a minor player in the drawn out saga of the WTI incinerator in East Liverpool, Ohio. The major players were the Tri-State Environmental Council, headed by Terri Swearingen, Alonzo Spencer with Save Our County and Niaz Dorry with Greenpeace.

The General Accounting Office* (GAO) is a research arm of Congress. Terri (who was cast from the same mold as Lois Gibbs) lobbied successfully to get GAO to do a study of the WTI facility but was disappointed with the result. She asked me to review the GAO report. The history of the WTI facility is replete with criminal acts by EPA and the state of Ohio which GAO whitewashed. I had never thought much of the GAO reports I had read and I thought GAO was a sorry imitation of the defunct Congressional Office of Technology Assessment. My letter critique to Terri[133] read:

Per your request, I have reviewed the September 21, 1992 GAO letter report on their investigation of the WTI incinerator and I have prepared the following comments.

I found that the original request by Congress to the GAO to be wide of the mark since it addresses only the current state-of-affairs, whereas my concern has been with the corrupt practices which have led up to the current state-of-affairs.

GAO did not investigate any of the evidence of corruption such as law-breaking, lying, fraud, and conspiracy which you and I and others have brought forward concerning the siting and permitting of WTI. This cannot be completely excused by the fact that they were not explicitly charged by Congress to do so.

On page 8 of the GAO letter report it states that they have examined documents from, among others, your own Tri-State Environmental Council. You have assured me that among these documents was my letter of May 15, 1992 to the EPA Inspector General as well as other documents producing evidence of corrupt practices in the matter of WTI by EPA's Region V and the Ohio EPA.

Nevertheless, GAO proceeded as if they were unaware of these accusations. The investigators accepted, without verification, the word and the assurances of persons accused of lying and other corrupt practices in documents in their possession which they had examined. And, furthermore, they did not attempt to interview the accusers.

For example on page 8, the report states: "In May 1992 an EPA Region V official stated that, while EPA currently requires the land owner to co-sign the permit application and any final permit for a hazardous waste facility, this stricter interpretation of the regulations was not common practice in 1983."

In spite of documents in their possession questioning the above, no attempt was made by GAO to verify the assertions of the Region V official. GAO also had in its possession a letter from the Region V Administrator to Sen. Rockefeller which gave a very different account of the same event. GAO also had in its possession a 1983 memo from EPA headquarters reminding the regional office of the requirement to have the land owner's signature on the permit application. Yet Region V did not comply with the requirement until the deficiency was discovered by the public in 1991, and then the Regional office tried to evade the requirement by placing the name of the land owner on the permit without his consent, an act that was ruled illegal by an EPA administrative law judge in a 1992 document which the GAO should

* Subsequently changed to the Government Accountability Office.

also have had in its possession.

Another example appears on page 6 were the report states: "EPA concluded that no adverse health effects would be expected from the operation of the incinerator with the spray dryer."

GAO had in its possession testimony by experts which challenged EPA's conclusion, yet GAO accepted EPA's conclusions without any further investigation. Furthermore, this was done in spite of documents in their possession which accused EPA of corrupt intent.

An even more unexplainable acceptance of EPA's word is found on the same page: "EPA stated, however, that the screening document predicts that the concentration of lead in the ambient air could slightly exceed the regulatory standard. But EPA also stated <u>that this standard is well below a level of concern for health."</u> [Emphasis added.]

If EPA does not base its standards on a concern for health then what on earth are they based on!

I could go through the entire report in the same vein but I think I have made my point. It might be more profitable if I were to point out the specific acts, the sum of which leads me to believe that the process of issuing a permit to WTI was corrupt, so that it is on the record for any future investigator to see.

<u>FEDERAL EPA</u>

In 1983, all EPA regional offices were reminded by a memo from EPA headquarters that the law requires the land owner's signature on hazardous waste permit applications.

Seven days later, in violation of federal law, Region V issued a permit to WTI based on an incomplete application which did not contain the signature of the land owner.

In 1985 regional offices are again notified of the need to have the land owner's signature on hazardous waste permit applications. Nevertheless, Region V makes no attempt to comply, even though, as Region V officials later admitted, they were aware of the deficiency.

In 1991, when citizens discovered the fact that the land owner had not signed the permit application, the EPA Region V administrator wrote to a United States senator that EPA policy at the time the permit was issued in 1982 did not require the land owner's signature. In 1992 the EPA Environmental Appeals Board found that the above explanation was not true.

Only after the citizens brought this issue to the attention of Congress did EPA Region V move to get the land owner to sign the permit application. When the land owner refused to sign, EPA simply added his name to the permit without his permission.

In justifying its action, EPA Region V General Counsel's office wrote an opinion which cited two previous cases before the EPA Environmental Appeals Board as precedents. On reading these cases, however, they turn out to be completely irrelevant.

Simultaneously, Region V ignored a real precedent. EPA Region IX had denied a permit to a facility because the land owner refused to sign the application.

The 1992 EPA Environmental Appeals Board decision previously cited also found that EPA could not simply add the land owner's name to the application without his permission.

EPA conspired secretly with WTI in 1992 to arrange for WTI to purchase the land from the Columbiana County Port Authority so as to legitimatize the EPA permit.

The division director in EPA Region V who supervises the issuance of hazardous waste permits has said that he considers the hazardous waste permit holders (rather than the

public) to be his constituents.

In 1982, EPA Region V air office wrote that the WTI permit is invalid because WTI would be major source of air pollution in a "non-attainment" area and there is a construction ban on new major sources.

With EPA's connivance but without public knowledge or participation, WTI's projected air emission calculations in its permit application were adjusted so that WTI's projected emissions fell just below the threshold of being a major source.

In 1987 the EPA Region V air office wrote that WTI had illegally avoided the construction ban by changing to a minor source and that they did not have a valid permit. The warning was repeated again in 1991 by the Region V air enforcement office.

The U.S. EPA conspired with the Ohio EPA and WTI in 1989 to see to it that WTI permit revisions were treated as minor revisions in order, in their own words, to avoid public scrutiny and the resultant delays. This was done over the objections of the Ohio EPA's legal department.

By treating all WTI permit changes as minor revisions, the U.S. and Ohio environmental protection agencies were conspiring to avoid having WTI comply with the more stringent state environmental protection laws passed after the WTI permit was issued.

In 1991 EPA withheld two thirds of the WTI file requested under the Freedom of Information Act. The material was subsequently released on appeal.

A 1992 letter from Region V states that instances of air stagnation are rare in the area of WTI. An academic expert using U.S. government data showed the opposite to be true.

Until prodded by citizen activists, EPA had shown no interest in who actually owns and operates WTI and whether they are financially responsible.

EPA Associate Administrator Lew Crampton, assigned to be the "community liaison" between EPA and citizens concerned with WTI, left EPA in 1992 to work for the hazardous waste management industry.

At a trial held in West Virginia where the state was suing WTI to block their permit, EPA allowed EPA employees to testify as expert witnesses on behalf of WTI but forbade other EPA employees[*] from testifying as expert witnesses on behalf of the state.

<u>OHIO</u>

The Ohio legislature authorized the purchase by eminent domain by the Columbiana County Port Authority of waterfront property in East Liverpool in 1979 for the purpose of building a river port. Before the Port Authority even acquired the land, it was leased to WTI for the purpose of building a hazardous waste incinerator. No port was ever built.

In 1992 the Port Authority sold the land (taken by eminent domain) to WTI.

The Ohio Hazardous Waste Facilities Approval Board granted a permit to WTI in 1983 despite the fact that the Board's own hearing examiner recommended the permit be denied because the application was incomplete.

In conclusion, I believe it is futile, at this late stage, to send a lot of people out investigating whether every "i" has been dotted and "t" crossed in the WTI permit. For years you and your colleagues have been addressing irregularities in EPA's handling of WTI and by now most or all of those irregularities have probably been corrected. I think it is far more

[*] I.e. me and Hugh Kaufman.

important to investigate the process rather than the result of the process.

If I may make an analogy, it is as if you have accused a student of cheating on an exam by pointing out irregularities in his answers. But one-by-one, as you point out the irregularities, he corrects them, so that after a while the exam paper looks correct. But that doesn't mean he didn't cheat.

I was a great admirer of Terri Swearingen. Terri, along with Lois Gibbs and Margie Richard, were three recipients of the prestigious Goldman Prize honoring grass roots environmentalists, whom I had the privilege to work with.

Her energy and enthusiasm were contagious. Even though I couldn't travel, I saw her often because she frequently came to Washington to cajole Congressmen and she would bring me new documents and then get me to write letters giving her technical support. One such from Acting Assistant Administrator Richard Guimond, was very revealing and caused me to write this memorandum[134] to EPA's Inspector General:

Still more evidence has come to light of EPA officials involved in illegal and unethical practices in the permitting of the WTI incinerator in East Liverpool, Ohio.

EPA Region 5 had a contractor conduct a risk assessment for the WTI incinerator in July 1992 which showed very little risk to the neighboring inhabitants. This assessment was made public and was used by EPA to allay the fears of the citizens of East Liverpool. A second risk assessment, which added an indirect food chain assessment, was done by EPA's Office of Research and Development (ORD) and it showed that the health risk to the people living near the WTI incinerator is considerably greater than shown by the earlier assessment. This second assessment was not released to the public.

In early February of this year, the local citizens obtained a copy of a memorandum from Richard Guimond to Administrator Browner dated January 22, 1993[135] ..... which discussed the ORD assessment. The memorandum pointed out that the ORD analysis showed a significantly greater risk than the July contractor study which had been made public. Nevertheless the memo made no mention of making this study public. EPA made no attempt to release this study to the public and when the knowledge of the study was discovered, EPA tried to suppress it.

The memo was addressed to Carol Browner and copied to Linda Fisher, Dick Morgenstern, Mike Vandenbergh, Loretta Ucelli, and Diane Regas. Therefore, at a minimum, Richard Guimond and all these other high level officials had guilty knowledge of the existence of this study and that it contradicted the earlier study released to the public.

In February, the local citizens and Greenpeace brought suit against WTI and EPA in U.S. District Court in Cleveland. One of the issues before the court was the potential risk from indirect food chain exposure. This is the very issue addressed by the ORD study. Nevertheless, EPA tried to block the admission of the ORD study on technical legal grounds. When the study was admitted as evidence over EPA's objections, EPA made no attempt to discredit its findings.

This study was conducted at taxpayer expense. It contained information vital to the health and well-being of taxpayers in East Liverpool and surrounding areas. High level EPA officials, whose salaries are paid by the taxpayers, who are sworn to protect human health and the environment, tried to suppress this study for the financial benefit of the owners of WTI.

It was fortuitous that the citizens group got hold of the Guimond memo, but it suggests that there may be many more documents damaging to WTI's case which are being suppressed by EPA officials.

This behavior is consistent with other actions by EPA officials in unethically and illegally promoting the interests of hazardous waste incinerator operators as I have previously pointed out to you in my memoranda and letters of May 15, 1992, December 22, 1992, January 14, 1993, and February 12, 1993.

WTI is one of the few commercial hazardous waste facilities that I have seen that could not be stopped in spite of tremendous grass roots campaigning over many years. The facility was planned for in 1977, became operational twenty years later with protests every step of the way and still going on. A whole generation of protesters have passed on and been replaced by a younger generation. Terri Swearingen has had to give it up, Niaz Dorry has gone on to other causes and Alonzo Spencer is close to retirement, but the protests go on.

Terri explained, in her Goldman Prize acceptance speech in 1997, why WTI had triumphed:

The second lesson I have learned ties directly to the first, and that is that corporations can control the highest office in the land. When Bill Clinton and Al Gore came to the Ohio Valley [during the 1992 presidential campaign], they called the siting of the WTI hazardous waste incinerator next door to a 400 student elementary school, in the middle of an impoverished Appalachian neighborhood, immediately on the bank of the Ohio River in a flood plain an "UNBELIEVABLE IDEA." They said we ought to have control over where these things are located. They even went so far as to say they would stop it. But then they didn't! What has been revealed in all this is that there are forces running this country that are far more powerful than the President and the Vice President. This country trumpets to the world how democratic it is, but it's funny that I come from a community that our President dare not visit because he cannot witness first-hand the injustice which he has allowed in the interest of a multinational corporation, Von Roll of Switzerland. And the Union Bank of Switzerland. And Jackson Stephens, a private investment banker from Arkansas. These forces are far more relevant to our little town than the President of the United States! And he is the one who made it that way. He has chosen that path. We didn't choose it for him. We begged him to come to East Liverpool, but he refused. We begged the head of EPA to come, but she refused. She hides behind the clever maneuvering of lawyers and consultants who obscure the dangers of the reckless siting of this facility with theoretical risk assessments.

* * * * * * * *

In every case of my involvement with siting battles my input was never the major factor, except for one, the Columbus, Ohio municipal waste incinerator.

I received a phone call from Ohio activists, Stan & Sheri Loscko, in late 1993, asking for my help in closing down said incinerator. I was getting a lot of phone calls for help in those days. Lois Gibbs and other environmentalists were steering a lot of grass roots activists my way. I think my friend Rick Hind at Greenpeace steered the Losckos. I got these calls because the enviros knew the value of a technical letter from me on EPA letterhead debunking industry and

government lies and half-truths. I was inclined to reject the Loscko's plea, as I did many others, because in this case I knew little about municipal solid waste (MSW) i.e. household garbage. After I brushed-off the Losckos I got a call from her colleague, Teresa Mills. Teresa was a very different animal. She tore into me citing all kinds of statistics of how the people of Columbus are being poisoned and how EPA Region 5 in Chicago were doing nothing about it and demanded I help them. Here's how the Columbus press[136] described Teresa:

Mills is a 39-year-old housewife in Grove City who has become something of an expert on dioxin and trash incinerators. Almost single-handedly, she has mustered an influential alliance of experts, activists, regulators and workaday people whose call is, "Shut down the trash plant."

Most government officials publicly dismiss her statements about the trash plant as hysterical. But all of them know her name. [Rick] Hind, at Greenpeace, describes Mills as pretty typical of the modern grassroots environmental activist - ignored by officials, despised by her target, impatient for help, committed to ending what she and many others see as an unnecessary public health threat.

Chastised, I took down Teresa's statistics and although they meant nothing to me I knew someone who would know their significance (or insignificance.) John Schaum used to work for me (as did his wife) and we had occasionally sailed together. In 1993 he was a branch chief of his own occupied with health effects in EPA's Office of Research and Development. He was supervising a study ordered by administrator Browner, on dioxin emissions from all emission sources in the U.S. When he saw Teresa's figures he blanched. The dioxin emissions from this one incinerator, if true, were greater than all other sources in the U.S. combined. I called Teresa and told her she was living on ground zero and should sell her house and move. Her response was "NO, I was here first, you shut down that plant."

It seems that Administrator Browner had launched a campaign against dioxin and EPA was due to deliver a paper at a conference in Paris based on Schaum's dioxin emissions data. This one site I brought him threw the whole study off. John pointed me towards the sources information I would need and after some research, on January 12, 1994, I sent the following memo[137] to administrator Browner on EPA letterhead:

The Columbus, Ohio Solid Waste Reduction Facility, an incinerator owned by the City of Columbus, which burns trash and garbage to produce electricity, is emitting 2 kilograms per year of dioxin toxic equivalent. This is the highest emissions of dioxin of any incinerator in EPA's inventory. The cancer risk is probably on the order of 10^{-4}, two orders of magnitude (i.e. one hundred times) greater than the level which EPA generally considers an "acceptable" risk.

The radius effected by the fall-out from the incinerator is ten to twenty kilometers (six and a half to thirteen miles). Most of downtown Columbus lies within ten kilometers and most of Columbus and a lot of suburbs, more than half a million people, lie within twenty kilometers. The State Capital is only five kilometers away and Ohio State University is ten kilometers away.

As a consequence of these dioxin emissions, dozens of people in the Columbus area die of cancer every year this incinerator is in operation. In fact the area just down the prevailing wind from the incinerator has the highest cancer rate in Franklin County. Cancer is not the

only problem. Many more people are sickened or otherwise affected by the many other effects of dioxin. Pregnant women are particularly susceptible.

Reproductive and birth abnormalities can be caused by exposure to minute quantities of dioxin over a very short time. Recent experiments have shown that male rats are demasculinized and feminized when the mother is fed a single dose of dioxin, too small to do her any harm, on the fiftieth day of pregnancy. The sexual changes in the young males lasts into adulthood. Other reproductive abnormalities linked to dioxin include learning disabilities and aggressive or passive behavior. Dioxin can also affect the immune system which protects the body from attack by many other diseases.

Low levels of dioxin in food has been linked to endometriosis, a painful disease which afflicts millions of American women.

Dioxin can enter the food chain through vegetables, beef, fish and milk. There are dairies in close proximity to the incinerator as well as farms and a river, which means that the dioxin is also poisoning the milk and other food supplies. In addition, the University of Ohio experimental farms are only ten kilometers away from the incinerator.

Both the State of Ohio and the U.S. EPA are in violation of federal law for failing to protect the citizens of Columbus from this facility. The State of Ohio was required to submit an implementation plan by November 1991 (40 CFR 60.23) which would have reduced the dioxin emissions to 60 nangrams per standard cubic meter (ng/scm), from the current value of 17,892 ng/scm (40 CFR 60.36a). The state failed to do so. In the event of the state failure, EPA is required by law (40 CFR 60.27) to issue its own implementation plan. EPA has also failed to comply.

The excuse given for these failures is that the Clean Air Act of 1990 requires "maximum achievable technology" which EPA believes would be 30 ng/scm or less. The regulations to implement this requirement are very very slowly slogging their way through the maze of the federal bureaucracy. (The process is a lot like playing the child's game of "Chutes and Ladders" stretched out over years.) It is estimated that at the current pace, the new standards would not be implemented before the next century. In the meantime nobody, not the State of Ohio nor the U.S. EPA is implementing any standard.

EPA estimates that after the Clean Air Act of 1990 is fully implemented in the next century the 160 existing incinerators should collectively be emitting less than 200 grams per year of dioxin. Yet this one plant is currently putting out 2000 grams per year or ten times what Congress in the Clean Air Act considered necessary to protect the environment from all incinerators.

Thus the people of Columbus will have to live (and die) with 17,892 ng/scm because the State of Ohio and the U.S. EPA do not wish to inconvenience the incinerator operator to meet a 60 ng/scm standard when a 30 ng/scm may be in the offing sometime in the future. (Of course the incinerator operator could have voluntarily installed equipment to reduce the emissions to 30 ng/scm, a standard already met by half the incinerators in America.)

This is yet one more example of the policy that EPA frequently follows of placing the interests of the polluters it regulates above the interests of the public it is charged with protecting. This is further illustrated in the way both the U.S. and the Ohio EPA handles citizen concerns about the facility. Citizens have complained on numerous occasions about black soot (which carries dioxin) coming out of the plant. But EPA accepts the word of perhaps the largest polluter of its kind in America over the word of the people EPA is supposed to be

protecting from the polluter. This is analogous to a policeman calling the victim of a mugging a liar based on the testimony of the mugger.

Like most of the letters I wrote to the grass-roots NIMBYs, this letter was not really written to inform the administrator. She already knew everything I had to say. It was written to give Teresa and her friends ammunition to fight her battle. The memo was published in the Columbus Dispatch and the impact was tremendous. Eleven months later, Dispatch reporter Scott Powers, wrote[138] to me describing what followed.

That memorandum played a powerful role -- first causing immediate shock waves. (emotional and political reactions,) then indirectly forcing all sorts of detailed responses (scientific and public policy actions.)

It has been a momentous year with regard to the Columbus trash plant and most close observers would probably trace the year's beginning to Jan. 12 -- the date of your memo.

Immediately, the memo incited intense interest from politicians, activists, regulators, the media and ultimately the public -- even if that interest, in some cases, was resolved to disprove you. I can assure you that the ensuing public discussions have been of remarkable depth and detail. I think people in Columbus, Ohio, may know as much about dioxin as they do about Nicole Simpson.

The memo also gave instant credibility to a small group of community activists who had been trying in vain to raise the issue for about a year. Suddenly, public officials and the news media had to take them more seriously because their message was reaching Administrator Browner.

The memo forced local, state and federal officials, in the course of initial response, to acknowledge that they hadn't conducted any public health analysis of the trash plant's dioxin. In fact, by Jan. 12, 1994, they hadn't even bothered to validate the June, 1992, dioxin measurements you referenced, let alone put them into context.

That changed immediately. The day after the memo, Sens. Howard Metzenbaum and John Glenn and some Ohio state legislators called for study. Within two weeks the 1992 measurements were validated, and serious analysis and debate -- risk assessments studies, new dioxin measurements, ambient air studies, cancer surveys, dioxin literature reviews, speeches, public forums -- began immediately thereafter.

Some of the events already were in the works and probably could have happened anyway. But I can't imagine anyone denying that your memo was the catalyst that led this community to grapple with the trash plant and dioxin issues in a very public way, and with a strong sense of urgency.

My involvement did not end with the January 12 memo. Soon after that date I heard from a whistleblower inside the plant. On February 22 I wrote another memo[139] to Carol Browner. This one *was* for her benefit.

I received a phone call from Mrs. Sherri Loscko, one of the citizens opposing the incinerator in Columbus, Ohio, who put me in touch with a worker in the plant who had some information which may be of interest.

He said that refuse from one satellite station has been shipped in and set aside for the purpose of the test burn for dioxin to be run next month. This waste is abnormally low in

plastics and is being turned over regularly by cranes to promote drying. This is not normal procedure and workers are being admonished not to use this special stockpiled refuse for any purpose other than the dioxin test burn. As you know, these procedures will significantly reduce the dioxin content of the emissions.

This worker asked to speak to me because he did not know whether this refuse was being set aside for comparison with the emissions from normal waste burning or whether it was to be used, as he and some of his co-workers suspected, to skew the results of the burn.

He also informed me of other practices at the plant which might be of concern to you. He said that in the past when workers would have to file reports on the reason for high emissions of sulphur oxides and high opacity and they indicated the use of high sulphur coal, they were ordered to stop doing that and come up with some other explanation. He did not believe that this was reported to the regulatory authorities.

This worker wished to remain anonymous as he was concerned about retaliation by the plant management. He, as well as his coworkers, was unaware of the fact that public spirited workers like himself are protected from harassment and firing for reporting suspected violations of the Clean Air Act, RCRA, or four other environmental laws. I informed him of his rights as well as his right to remain anonymous and that if his rights were violated he could file a complaint with the Department of Labor within thirty days and obtain redress including re-instatement, legal costs, recovery of back pay and even punitive damages.

Unfortunately, almost all workers in EPA regulated facilities are unaware of their rights. If they were made aware, then EPA's enforcement against environmental crimes would improve tremendously at no cost to the taxpayer in addition to the improvement in the health and safety of the public. The Nuclear Regulatory Commission has recently implemented procedures for informing workers at nuclear plants of their whistleblower protection rights and as a result they have received vastly more tips about violations than EPA does even though EPA regulates many more facilities. I am currently working on a policy study on the need, as this anonymous tip illustrates, for EPA doing the same for facilities we regulate.

But Carol Browner did nothing to promote whistleblowing in EPA regulated facilities. Apparently she so hated whistleblowers that she would not even promote whistleblowing where it benefited her mission. However she did change EPA policy and go after the big dioxin emitters, as reported on February 18[140].

EPA Administrator Carol Browner has launched a major nationwide review of dioxin emissions from municipal waste combustors (MWCs), an initiative EPA sources say is likely to lead to interim restrictions or enforcement actions against very high emitters until the agency finalizes a Clean Air Act rule setting stringent national waste combustor emissions limits.

Agency sources say the effort was spurred by concerns over a combustor in Columbus, OH, that had exhibited dioxin emissions levels hundreds of times higher than the limits EPA is contemplating in its rulemaking.

Carol Browner never responded to me but Region 5 administrator Valdas Adamkus did. He was reputed to be a nice guy (and he later became president of his native country, Lithuania.) He explained to me how in response to my letters, EPA and the State of Ohio, were conducting tests and performing analyses and he attached copies and assured me that the "U.S. EPA and the Ohio EPA are giving this situation the utmost attention." I gave Val Adamkus the benefit of the

doubt in my own mind and assumed he was unaware that he was getting a snow job from his staff and the Ohio EPA. I answered his letter[141]:

Thank you for your memo of April 1, 1994 and for the enclosures.

The Risk Assessment of February 28 only included the dioxin inhalation risk. The comments of the EPA Workgroup of March 11 pointed out some of the limitations of that assessment.

- *Beef ingestion risk exceeds inhalation risk by about 100 times.*
- *Milk ingestion risk exceeds Inhalation risk by about 30 times.*
- *Garden vegetable ingestion risk is comparable to inhalation risk.*
- *Child soil ingestion risk is comparable to inhalation risk.*

In addition, by reviewing the reference on page 27 of the risk assessment it can be seen that when normal incinerator startup and shutdown are Included, inhalation risk increases by about 3 times.

Therefore the risk assessment only assesses a small fraction of the risk. Nevertheless, on the basis of this assessment, the people of Columbus are being told by the OEPA that "the cancer risk is not a substantial threat." Furthermore, there is no requirement in the consent order for a complete quantifiable dioxin cancer mortality risk assessment (as is being done at WTI). I feel that this is a serious omission which leaves the people of Columbus with the incorrect Impression that since the USEPA does not require further risk assessment then the OEPA's conclusion must be valid.

Another example of disinformation provided by the OEPA is the many statements, both in the risk assessment and the workgroup comments that the area surrounding the incinerator is urban and industrial and therefore the food chain risks are inconsequential. For example, the risk assessment discussion of food chain exposure (page 25) ends with the statement:

> *Probably little if any food crop production occurs in the urban area within an approximate 5-7 km radius of the incinerator considering its urban/industrial nature. Thus, the risks associated with these pathways may be less than the maximum inhalation risk.*

And further down the same page is the statement:

> *It appears that farming activities do not occur in the immediate vicinity (5-10 km) of the facility ....*

Having driven around the area, I would describe it as rural and suburban. I saw many small farms and suburban gardens within a few kilometers of the plant. In the nearby town of Grove City (6 km) I saw a farmer's exchange which sells fertilizer and cattle feed. Also of concern is the Ohio State University Farms which are located nine kilometers from the incinerator.

Citizens have complained to you and to me of ongoing problems of soot from the incinerator falling on their homes and gardens. Therefore there can be no doubt that dioxin from the incinerator is entering the food chain.

In reference to the dioxin test in mid-March to which you referred, my memo of February 22, notified the Administrator of an anonymous call from a courageous employee of the incinerator who suspected that trash, gleaned of plastics and dried, was being set aside for the purpose of skewing your test results. Although at first denied by the incinerator authorities, they later admitted trash had been set aside for the test and dried, but not, they claimed, for the purpose of cheating on the test. They continued to deny that the set aside trash was unusually free of plastics.

However, it has recently come to light that a secret contract had been issued just weeks before the test burn to a company called Mid-America which removed plastics from part of the Columbus waste stream and returned it to the incinerator. If the waste which was originally set aside for the test burn was from Mid-America, then this might constitute a criminal conspiracy to violate RCRA.

I recommend that this be investigated along with an investigation of whether or how much waste from Mid-America was used in the test burn and to what extent it may have skewed the results.

I have been told by citizens in the area that; by failing to vigorously contradict disinformation from the Ohio EPA, and by not insisting on a complete risk assessment, and by failing to pursue possible criminal violations, the USEPA has lost credibility with them. They therefore have little faith in the consent order and insist on nothing short of immediate closure until the plant can demonstrate compliance.

It never ceases to fascinate me how effortlessly bureaucrats can lie and regulated companies can cheat. Like it is the perfectly natural thing to do.

The incinerator stumbled for years with different owners and different techniques until it was finally and permanently closed down.

A parting word about Columbus. The City Health Commissioner had been assuring the community that dioxin was not toxic (this was in 1994!) This was accepted by the press, the local government, and the community over the protestations of Teresa and her colleagues. When I asked the Commissioner (an MD) why he thought dioxin wasn't toxic he explained that it was not in the EPA IRIS database which he depended on as his source of toxic substances. I then called the fellow who runs IRIS and he told me that there are many toxic substances not included in IRIS and that IRIS is a database which depends on voluntary submissions. Their only function is to check the accuracy of the submissions. I pointed out the danger of this by telling him of the Columbus experience and he agreed that a warning of its incompleteness should be included with the database. That was in 1994. Four years later I checked the IRIS Web page again and dioxin was still not included and neither was the warning.

Conclusion

I recently got an email from the Losckos saying:

The air in the city is definitely cleaner. The smog that used to cover downtown is no longer there and the terrible smell is also gone. It's hard to believe that the plant operated as

it did. Not only was the dioxin a problem but the plume used to settle often around our neighborhood and the accompanying smell was often unbearable. I recall often the image of our kids at the bus stop with their coats off and wrapped around their heads trying to avoid the smell. Our son (along with many others) suffered some serious health problems including repeated sinus infections. A doctor we were sent to by ASTDR informed us that nitrogen oxide and sulfur dioxide in the air from the plant's emissions turn to nitric acid and sulfuric acid when it hits the nostrils and undoubtedly contribute to sinus infections. The plant was allowed to operate for years without regard to what it was doing to the environment or to the health of the citizens that happened to live nearby, until you got involved. Our kids are grown now, happy and healthy.

Chapter Thirteen – Monsanto

This is the piece of whistleblowing writing of which I'm most proud. It didn't have much impact at the time I wrote it but it's been a slow burning fuse.

In February 1990, my colleague, a chemist at EPA, Dr. Cate Jenkins, based on information she had received from Greenpeace[142], wrote to the EPA Science Advisory Board [143] that there was evidence that several Monsanto dioxin studies were fraudulently done and that if the studies had been done correctly, they would have shown the connection between dioxin and cancer in humans, which EPA had denied because of those studies. The allegations in Dr. Jenkins' memo charging fraud by Monsanto, were picked up by newspapers around the world. Responding to the publicity, in August, 1990 EPA launched a criminal investigation of Monsanto.

The newspapers publishing the allegations included The Washington Post, Newsday, The Atlanta Constitution and The St. Louis Post-Dispatch. Nevertheless, when Dr. Gaffey, one of the authors of the studies in question and recently retired from Monsanto, chose to sue someone for libel, he chose the minuscule Environmental Research Foundation (ERF), a three person operation which publishes a one page weekly environmental newsletter with a circulation of 1,700.

In order to prepare for his defense, my friend, Dr. Peter Montague who published the newsletter, sent a Freedom of Information Act (FOIA) request to EPA for all the documentation concerning EPA's criminal investigation of Monsanto based on the Jenkins memo. This request languished in EPA's Criminal Enforcement Counsel Division for years until the acting director, Richard Emory, ordered the documents released. (Dick Emory and I later became friends when he too became a whistleblower.)

Peter did not know what to do with the six inch stack of censored documents he got from his FOIA request. By that time the suit had been dropped because Gaffey had died and EPA had quietly closed the investigation. It was generally assumed that EPA ended the investigation because it could not make the case against Monsanto. So Peter asked me to see what I could make of stack of documents he had received.

What I made of it was "The Monsanto Investigation[144]" published a year later on July 20, 1994. My report was not about Monsanto but rather EPA's investigation of Monsanto. My report showed that despite the fact that top executives of EPA pledged with bravado on many occasions that EPA would "investigate any allegations of fraud and, if appropriate, evaluate the full range of enforcement options" it did nothing of the kind. There was never an investigation of the allegations that Monsanto had falsified these scientific studies. No government scientists were ever instructed to evaluate the studies although there was ample evidence that most of them did believe the studies were flawed.

Instead, my report showed, that EPA spent two years dancing to the complaints of Monsanto by persecuting the messenger, Dr. Cate Jenkins, and making her life a hell. Only the intervention of her lawyers, Steve and Michael Kohn, who brought whistleblower harassment suits to federal court, kept her from being fired.

My report is too large to reproduce here in its entirety. (The complete document can be seen at http://home.comcast.net/~jurason/main/monsanto.htm.) Instead I've reprinted Peter Montague's summary[145]. (Peter was a great summarizer. He read voracious amounts of books

and reports and summarized them beautifully in his newsletter "Rachel's Hazardous Waste News." He was the "Readers Digest" of the environmental movement.)

The Sanjour memo says that the EPA opened its investigation on August 20, 1990 and formally closed it on August 7, 1992. "However, the investigation itself and the basis for closing the investigation were fraudulent," the Sanjour memo says.

According to the Sanjour memo:

- *EPA's investigation of Monsanto was precipitated by a memo dated February 23, 1990, from EPA's Dr. Cate Jenkins to Raymond Loehr, head of EPA's Science Advisory Board.*
- *The Jenkins memo said that EPA had set dioxin standards relying on flawed Monsanto-sponsored studies of Monsanto workers exposed to dioxin, studies that had showed no cancer increases among heavily exposed workers.*
- *Attached to the Jenkins memo was a portion of a legal brief filed by the plaintiffs as part of a trial known as Kemner v. Monsanto, in which a group of citizens in Sturgeon, Missouri had sued Monsanto for alleged injuries they had suffered during a chemical spill caused by a train derailment in 1979.*
- *The Jenkins memo had not requested a criminal investigation; instead Jenkins had suggested the need for a scientific investigation of Monsanto's dioxin studies. But in August 1990, EPA's Office of Criminal Investigation (OCI) wrote a 7-page memo recommending that a "full field criminal investigation be initiated by OCI."*
- *Plaintiffs in the Kemner suit made the following kinds of allegations (which we quote verbatim from the Sanjour memo):*
    - *Monsanto failed to notify and lied to its workers about the presence and danger of dioxin in its chlorophenol plant, so that it would not have to bear the expense of changing its manufacturing process or lose customers;...*
    - *Monsanto knowingly dumped 30-40 pounds of dioxin a day into the Mississippi River between 1970 and 1977 which could enter the St. Louis food chain;*
    - *Monsanto lied to EPA that it had no knowledge that its plant effluent contained dioxin;*
    - *Monsanto secretly tested the corpses of people killed by accident in St. Louis for the presence of dioxin and found it in every case;...*
    - *Lysol, a product made from Monsanto's Santophen, was contaminated with dioxin with Monsanto's knowledge." [The Sanjour memo says that, at the time of the contamination, "Lysol (was) recommended for cleaning babies' toys and for other cleaning activities involving human contact."]*
    - *The manufacturer of Lysol was not told about the dioxin by Monsanto for fear of losing his business;*
    - *Other companies using Santophen, who specifically asked about the presence of dioxin, were lied to by Monsanto;...*
    - *Shortly after a spill in the Monsanto chlorophenol plant, OSHA [Occupational Safety and Health Administration] measured dioxin on the plant walls. Monsanto conducted its own measurements, which were higher than OSHA's,*

but they issued a press release to the public and they lied to OSHA and their workers saying they had failed to confirm OSHA's findings;

- *Exposed Monsanto workers were not told of the presence of dioxin and were not given protective clothing even though the company was aware of the dangers of dioxin;*
- *Even though the Toxic Substances Control Act requires chemical companies to report the presence of hazardous substances in their products to EPA, Monsanto never gave notice and lied to EPA in reports;*
- *At one time Monsanto lied to EPA saying that it could not test its products for dioxin because dioxin was too toxic to handle in its labs."...*

OCI's August memo alleged that "Monsanto did, in fact, produce 'research' to defend its position. 'The Record however, shows a deliberate course of conduct designed to convince its employees and the world that Dioxin is harmless,'" the OCI memo said[146].

OCI's memo concluded,

> *"Based upon review of the available information submitted to the EPA-OCI by the Office of Enforcement, it is recommended that a full field criminal investigation be initiated by OCI.*
>
> *"Information in the plaintiff's brief indicate a potential conspiracy, between Monsanto and its officers and employees, exists or has existed to defraud the US EPA, in violation of 18 USC § 371. The means of the conspiracy appears to be by (1) providing misleading information to the EPA; (2) intentional failure by Monsanto to fully disclose all pertinent TSCA [Toxic Substances Control Act] related information to the EPA; (3) false statements in notices and reports to EPA; (4) the use of allegedly fraudulent research to erroneously convince the EPA, and the scientific community, that dioxin is less harmful to health and the environment."*

OCI went on to note that, "In addition to the conspiracy, substantive violations of the Toxic Substances Control Act seem to exist for Monsanto's failure to report to EPA, pursuant to TSCA § 8(E), the adverse health effects of 2,3,7,8-TCDD. Violations of 18 USC § 1001 also appear to exist, although the statute of limitations may have run." Eighteen USC § 1001 is a federal law outlawing false statements on any matter within the jurisdiction of any agency of the United States government.

The criminal investigation was opened August 20 and was formally closed two years later with Monsanto neither found innocent nor found guilty. OCI said, "The investigation is closed. The submission of allegedly fraudulent studies to the EPA were [sic] determined to be immaterial to the regulatory process. Further, allegations made in the Kemner litigation appear to be beyond the statute of limitations." In other words, OCI did not finish its investigation of the allegations against Monsanto because OCI found that some of the alleged criminal activities were more than five years old and thus could not be prosecuted; and, further, they found that the government had not relied on Monsanto's "allegedly fraudulent studies" in setting regulations.

The Sanjour memo is a documentary history of the EPA's two-year investigation, based on a Freedom of Information Act (FOIA) request for all documents related to the investigation. The FOIA request produced a foot-thick stack of papers, all carefully redacted (whited out) to remove the names of individuals.

Sanjour writes that:

- *"One gets the impression, on reviewing the record, that as soon as the criminal investigation began, a whole bunch of wet blankets were thrown over it. Almost nothing appears in the record about the first three charges [in the OCI memo] once the investigation began. The investigation concentrated on criminal fraud in the Monsanto studies."*
- *A finding of criminal fraud would have required first a finding that Monsanto's studies were scientifically flawed. Only an analysis by government scientists could have reached such a conclusion, and no EPA scientists were engaged in EPA's Monsanto investigation. "None of the scientific groups in EPA, it seems, wanted to touch this hot potato, and no one in position of authority was instructing them to do so," Sanjour writes. This left the criminal investigation essentially crippled. As Sanjour said, opening a criminal investigation without undertaking a scientific analysis was like "trying to make tiger stew without first catching a tiger."*
- *Rather than investigating all the allegations regarding Monsanto, the EPA actually spent two years investigating Cate Jenkins, the whistleblower whose memo, Sanjour says, precipitated EPA's criminal probe of Monsanto.*

After OCI investigators interviewed Jenkins she wrote them a memo on November 15, 1990 (and another on Jan. 24, 1991), describing ways that agencies of the US government-including EPA and the Veterans Administration (VA)-had relied on the Monsanto studies in setting regulations and policies. (Sanjour points out that OCI had to ignore Jenkins's lengthy, detailed memos in closing the investigation on the grounds OCI stated.) Jenkins said the VA used the Monsanto studies to deny benefits to thousands of Vietnam veterans who claimed their wartime exposure to dioxin and Agent Orange had caused cancer and other diseases.

When Jenkins released her Nov. 15 memo to the press, it was the first the world had heard of EPA's criminal investigation of Monsanto and it made headlines. According to Sanjour's memo, Vietnam veterans grabbed hold of the new information in Jenkins's memos and successfully pressured Congress to give benefits to Vietnam vets who had been denied them before. For her work, veterans organizations awarded Jenkins a plaque for exemplary service.

EPA punished Jenkins for her whistleblowing by giving her no assignments during almost two years; in April 1992 she was finally given work to do, but it was clerical. She holds a Ph.D. in chemistry. Jenkins filed a complaint with the Department of Labor. The Labor Department found in her favor, that she was being illegally harassed. But EPA appealed that decision to an administrative law judge, thus continuing the harassment. The judge ruled in Jenkins's favor, but EPA-now with Carol Browner at the helm-appealed AGAIN, this time to the Secretary of

Labor. He eventually found in Jenkins's favor, thus ending the long period of harassment. Jenkins was reinstated and her attorney's fees were paid.

Sanjour summarizes, "When Jenkins made her allegations, and when the veterans groups made known the full implication of those allegations, a government with a decent respect for the welfare of its armed forces would have publicly ordered a full and impartial investigation with all the resources and support necessary and let the chips fall where they may. Instead, our top government officials were silent or even worse, they let it be known that they despised the messenger and had nothing but friendly feelings for the accused. The United States government gave no support or encouragement to a scientific, civil, or criminal investigation of Monsanto."

A footnote to this story happened a decade after I retired in 2001. A French documentary producer, Marie-Monique Robin, asked my help in producing a documentary about Monsanto. I lent her the extensive files I had from writing "The Monsanto Investigation" and they served as the basis of much of her film which was released in September of 2012 under the title *The World According to Monsanto.*

The World According to Monsanto in 2012.

Marie Robin, on one of her trips to America, spent a day interviewing me. Knowing I was a sailor, she wanted to film me in my nautical environment. So we drove out to my marina and spent several hours filming me on my boat; docking my boat; walking to a table at the marina with a pile of papers; and being interviewed. Most of that was to end up "on the cutting room floor" and only a few seconds were used in the documentary. Which was good, I suppose, since it meant she had a lot of material and didn't need filler, but I was nevertheless

disappointed.

After filming, I took Marie and her crew to O'Leary's seafood restaurant in Annapolis where they ordered seafood and asked me to select a red wine. I choose a good American Zinfandel and pointed out I am usually chastised by my friends when I order red wine with seafood. The cameraman leaned over the table and said to me: "You tell zem ze Parisians said it was OK."

I highly recommend the documentary which is available on DVD and on You Tube.

Conclusions

I was recently reading a biography of Admiral Elmo "Bud" Zumwalt" whom I had met on two occasions. The first time was in 1968, shortly after he had been named commander of the "Brown Water Navy" i.e. the naval forces, during the Viet Nam War, patrolling the inland waterways of the Mekong Delta. I had previously worked for the Center for Naval Analysis which is the Navy's "think tank" and which Zumwalt had many relations with from his days in the Pentagon at the Office of the Chief of Naval Operations. Zumwalt's chief of staff had asked me to be interviewed to be his scientific advisor in Viet Nam. For reasons unknown to me I did not get the job and I retrospectively thank goodness I didn't.


Admiral Zumwalt

Admiral Zumwalt was the man who ordered the use of Agent Orange to clear the forest hiding places of the Viet Cong, destroying not just forests but unknowingly raining down cancer and birth defects from the dioxin which contaminated the Agent Orange. Many members of our own armed forces were among the victims including Zumwalt's own son, a young naval officer who ultimately died from lymphomatic cancer leaving a wife and two children.

This Greek tragedy caused our paths to cross again. After his retirement as the Chief of Naval Operations, Zumwalt took up the cause of the Vietnam veterans exposed to dioxin. We met at a dioxin conference where I delivered my Monsanto report and he thanked me for it. He was especially touched by the dedication which read: "This paper is dedicated to the memory of my friend Captain Cameron Appel, U.S. Army Airborne Engineers, who died of cancer after serving two tours in Viet Nam and leaving behind a young widow with two baby children." By this time "Bud" Zumwalt knew more about the despicable behavior of Monsanto and the U.S. Government than I did. His biography[147] said:

Perhaps most disturbing for Bud was the discovery that there had been several high-level memorandums issued during the Reagan administration to government agencies working on the dioxin issue. From the discovery process, Bud learned that the policy of the U.S. government during the Reagan years had been to instruct government agencies involved in studies of Agent Orange that it would be most unfortunate if a correlation between Agent Orange and health effects was found. This was because the Reagan administration had adopted the legal strategy of refusing liability in military and civilian cases of contamination

involving toxic chemicals and nuclear radiation. As a result, the government sought to suppress or minimize findings of ill health effects among Vietnam veterans that could be linked to Agent Orange exposure, because this could set a precedent for government compensation to civilian victims of toxic contaminant exposure at such places as Love Canal and Times Beach. This would have "enormous fiscal implications, potentially in the hundreds of billions of dollars," wrote Office of Management and Budget attorneys in their secret communications.

One smoking-gun memo to OMB director David Stockman stated the strategy quite clearly. "Dioxin—is a major issue in this area (Love Canal and Times Beach are largely Dioxin exposure cases); we will be in the tenuous position of denying dioxin exposure compensation to private citizens while providing benefits to veterans for in many instances lower levels of exposure." Bud considered these activities "disgraceful" for putting saving money and the protection of corporations from liabilities ahead of scientific accuracy.

I wish I had known this before I wrote my paper.

Chapter Fourteen – The Ombudsman

1993 saw the inauguration of President Clinton and a new politically appointed EPA Assistant Administrator for Solid Waste and Emergency Response, Elliot Laws. Laws' assistant was Tim Fields, who used to work for me. Tim was an energetic and competent young entry level engineer when I was appointed as his Branch Chief back in 1974. I kept him from being laid off on one occasion and gave him two promotions while he was working for me and he was a section chief when I was removed in 1978. Tim went on to have a distinguished career, being Elliot Laws` deputy and later replacement along the way. So I imagine that Tim was the reason that Elliot Laws was so nice to me.

Apparently the thought was to find constructive things for me to do within the context of EPA which would also serve the purposes of EPA and keep me out of trouble. They came up with several ideas, one was to assist the EPA Superfund Ombudsman.


Ombudsman Bob Martin

Congress established the Office of the Ombudsman as part of the Hazardous and Solid Waste Amendments of 1984 (which I flatter myself in thinking I had something to do with.) The Ombudsman was supposed to receive individual complaints, grievances and requests for information and to make recommendations to the Administrator. Attorney Robert Martin was the Ombudsman and a man I admired.

Martin had gotten EPA regional Superfund directors to back down when citizens complained to him about the agency's policies. For example, he successfully intervened on behalf of the community in a dispute over a toxic dump site in Brio, Texas, in which EPA's cleanup methods would have exposed the community to more toxic chemicals than if EPA had done nothing at all. As a result of such actions, Martin was held in high esteem by community activists and was despised by the EPA regional Superfund directors, who were more concerned with the prosperity of Superfund contractors than with the health of the public. It would seem at first blush that working for Martin would allow me to continue doing what I had been doing but keeping it inside the agency.

One of my first assignments was the McFarland site, a poor largely Hispanic farming community in the San Joaquin Valley of California which was a hot spot of child cancer and birth defects. The State of California had issued a study which showed there was no need for McFarland to become a Superfund site, which would have brought considerable medical and research resources to McFarland. My job was to review the petitioner's complaint about the State's study. After some review I wrote the following memo[148] to Bob Martin with copy to Tim Fields:

Since McFarland is not in CERCLIS [i.e. a Superfund site] a Preliminary Assessment ..... has not been performed and petitioners have the right to an assessment or an explanation of why it should not be performed within one year.

In the absence of other information, it would be sufficient to inform the petitioners that the Phase III Report of October 24, 1991[149] conducted by the State of California (with the

assistance of EPA), was the equivalent of a preliminary assessment and that study showed no need for involvement under Superfund since there was no evidence found of any hazards to public health or the environment.

However, there are several reasons for questioning the validity of the California report, not so much for what it does contain but for what it does not contain. First there is the paper by Dr. Thomas F. Lazar, a county health official, dated February 15, 1988[150]. This paper reports the following hazards caused by pesticides and other agricultural chemicals:

•five cases of disposal of toxic wastes,

•four cases of housing development built on soils containing toxic chemicals, and

•toxic contamination of the public water supply.

This paper was well known and been interminably discussed by the California health authorities. No one that I talked to has ever heard a word of criticism about the merits of the paper nor, to the best of my knowledge, has any criticism of Dr. Lazar's paper been published. Nevertheless the paper is not referenced in the California study; the facts brought out in the paper were not investigated in the California study; and furthermore the California study denied that there was any "public record that hazardous waste facilities ever operated in the McFarland area".

The second reason for questioning the validity of the California study comes from Dr. Beverly Paigen, a research health scientist who was a member of a blue ribbon panel to review the scientific data on McFarland. She contributed an informal paper[151] which, based on data neonatal deaths and low birth weight babies in McFarland, suggested that the cause of the diseases was from a high incidence of pesticide exposure during the period from 1981 to 1983. This paper too was well known and interminably discussed by the California health authorities. Nevertheless this paper is also not referenced in the California study and the facts brought out in this paper were not investigated in the California study.

The third reason for questioning the validity of the California study is the belief of Dr. Paigen, who was intimately involved, that the California study did not adequately investigate pesticides as a source the McFarland health concerns. Note that the two papers mentioned above both deal with pesticides.

The fourth reason for questioning the validity of the California study relates to Dr. Lynn R. Goldman. Dr. Goldman is an epidemiologist who was a post doctoral associate of Dr. Paigen and who later joined the California Health Department where she quickly rose to the position of the Chief of the California Environmental Epidemiology and Toxicology Program where she was one of the principal authors of the California study. She is now the EPA Assistant Administrator for Prevention, Pesticides, and Toxic Substances. Even though Dr. Goldman has recused herself she has nevertheless asked EPA management not to get involved in McFarland, saying that the Governor of California does not want the case re-opened and one citizen, Marta Salinas, was trying to stir things up. This in itself is reason enough to look more closely at Dr. Goldman's record.

Drs. Paigen and Ozonoff have told me that Dr. Goldman is an excellent scientist yet she omitted two very relevant studies from her report. Both of these studies adversely affect California's agribusiness. Dr. Paigen, who considers herself a friend of Dr. Goldman,

nevertheless expressed the opinion to me that Dr. Goldman's very rapid rise through the California bureaucracy could not have been accomplished without her being willing to compromise her scientific integrity to political expediency. It is understandable that a poor scientist might do bad science, but when a good scientist does bad science which also promotes her career interests, that is cause for concern.

Recommendations

The preliminary assessment should be done expeditiously since the information regarding McFarland has been available since 1984. The assessment should include the issues raised in the two aforementioned studies. Because McFarland is a small isolated community surrounded by farms and subject to aerial crop dusting, the preliminary assessment should investigate if this is an inherently hazardous situation regardless whether or not there has been past dumping.

PERSONS INTERVIEWED

In addition to yourself, I spoke to the following persons:

Dr. David Ozonoff, MD, MPH, epidemiologist, Chairman, Dept. of Environmental Health, Boston University School of Public Health.

Dr. Beverly Paigen, health research scientist, Jackson Laboratory.

Mick Harrison, attorney, Greenlaw.

Marta Salinas, Director, Healing our Mother Earth.

Steve Caldwell, Acting Deputy Division Director, Hazardous Site Control Division. Deborah Duffy, Hazardous Site Control Division.

Gershon Bergeisen, Hazardous Site Control Division.

I'm sure neither Tim Fields nor Elliot Laws were pleased by my fingering fellow politically appointed assistant administrator Lynn Goldman and California governor Pete Wilson (who never met an agribusiness he didn't like or a Mexican he did like.) Nevertheless the Ombudsman's report resulted in reopening the investigation of McFarland in 1996 and again they concluded that there were no unusual levels of contaminants and the cause of the childhood cancers was still undetermined. This is consistent with Dr. Paigen's theory that the cancer cluster was caused by a short-lived high pesticide or other carcinogen exposure during the period from 1981 to 1983 from sources unknown.

Dr. Beverly Paigen, by the way, is the scientist who gave technical and medical support to Lois Gibbs during her Love Canal battles and Lois is a big fan of hers, me too.

Another case I worked on for the Ombudsman was the Bloomington, Indiana Superfund

site[152]. Even to my jaundiced eye this one was one of the most corrupt.

For decades, the Westinghouse Corporation disposed of its toxic waste at several dump sites in Bloomington, Ind. In the early '80s, the dumps came under the aegis of the EPA. Superfund program. While negotiations with Westinghouse over how to clean up the wastes dragged on for years, EPA, in order not to upset the negotiations, kept from the public the fact that toxic air levels near the sites were more than 15 times greater than the Superfund target risk level. At the same time that EPA was secretly recommending to its staff that they wear respiratory protection whenever on-site, it was assuring the people of Bloomington that they were in no immediate danger.

After several years of negotiation, in 1985, EPA reached a consent agreement with Westinghouse the City Bloomington, Monroe County, the State of Indiana and EPA. Contrary to the requirements of the law, no analysis of the alternative ways of treating the hazardous waste was performed and the citizens were outraged at the agreement from which they were excluded.

The decree had Westinghouse design and build an incinerator to burn the PCBs and all the other wastes they had dumped in the landfill. Under the consent decree the City and County would give Westinghouse their municipal garbage to burn as primary fuel in this incinerator and the City and County would pay Westinghouse to take the garbage at a fee set in the decree.

The concept of using garbage to fuel a hazardous waste incinerator had been rejected by EPA in the past as unsafe and has never been approved of since[153]. As a result, the citizens objected to the consent agreement and tried to intervene but the judge wouldn't allow it. However, the public outcry had enough political power to prevent the construction of the incinerator despite the judge.

The incinerator would have created 700 or 800 thousand tons of hazardous ash a year. The only hazardous waste landfill in Indiana which could have taken the ash from the proposed Westinghouse incinerator was bought by Waste Management Inc. shortly before the decree was issued. WMI stood to get the contract for hauling and disposing that residue because of proximity if for no other reason. Also the precedence of EPA approving a garbage burning hazardous waste incinerator would be a windfall to WMI who had a lot of both.

The City of Bloomington was named as one of the “Principal Responsible Parties” for the dumping in Bloomington. Joe Karaganis, the attorney hired by the City to negotiate the consent decree was working for WMI on another project at the same time. Westinghouse was represented in the negotiations by Jody Bernstein, former EPA General Counsel, who was also working for WMI. After negotiating the consent decree she was made a vice president of the Chemical Waste Management subsidiary of WMI. Barbara Magel, the EPA attorney who negotiated the consent decree on behalf of EPA went to work for Joseph Karaganis shortly after consent decree was signed.

Bloomington citizens had fought the consent agreement for years. They succeeded in blocking its implementation as originally drafted but they have failed to get EPA to perform the legally required analysis of alternatives (called an RI/FS). Even a stern rebuke by the Assistant Administrator for Solid Waste and Emergency Response, Elliot Laws, failed to move them.

I asked Dan Hopkins, Regional Project Manager of the Bloomington sites why they did not do an RI/FS in order to quell community complaints. He told me they wouldn't do it because Westinghouse did not want it done. A later meeting with Westinghouse representatives, at which Ombudsman, Bob Martin was present, confirmed this.

Thus, William Muno and his superiors, were apparently willing to violate the law, perpetuate public ire, and withstand the rebuke of an assistant administrator in order please the

Westinghouse Corporation. However, those of us who are acquainted with Mr. Muno's willingness to bend and break any number of rules and laws in order to permit the infamous WTI incinerator in East Liverpool, Ohio, will not be surprised by his loyalty to another one of, what he calls, "his clients".

This showed me not just how little authority the Ombudsman had but that even the Assistant Administrator's authority didn't go beyond Washington. That made me wonder if I was spinning my wheels in the ombudsman's office. But the clincher came when I was told to attend a meeting of the newly formed Regional Ombudsmen created by Administrator Carol Browner. I was so disgusted at that meeting that I wrote a memo to Bob Martin and Tim Fields detailing what had happened. When I got no response from Tim I quit the Ombudsman assignment and shortly afterward I turned the memo over to Lois Gibbs. By then Elliot Laws had resigned and Tim Fields had taken his place. Lois wrote the following article[154] for her magazine.

Webster's Dictionary defines ombudsman as, "a government official who investigates citizens' complaints against the government or its functionaries."

The Environmental Protection Agency (EPA) initiated an Ombudsman Program to better communicate with community based groups concerned about environmental threats and public health. This program provides one national ombudsman and [ten] regional ombudsmen, one located in each of EPA's regional offices. EPA's intent, as we understand this program, was to provide local group leaders with a way to call an investigator, or ombudsman, when they don't receive responses to their inquiries or believe their concerns are not being taken seriously.

Some of the grassroots leaders in our network have had direct experience with these ombudsmen. The national ombudsman, Bob Martin, has been involved in Lock Raven, Pennsylvania; Pensacola, Florida; Tifton, Georgia; Times Beach, Missouri; and East Liverpool, Ohio. The majority of the grassroots leaders from these areas felt that Mr. Martin listened to their concerns and was responsive to their requests. They appreciated his efforts, but were frustrated because Martin has little or no power to make or change decisions.

What about the other regional ombudsmen? CCHW hasn't heard much about them, and a memo we recently obtained gives us some clues as to why. This memo from EPA headquarters provides us with shocking insights of the people who have been assigned the responsibility of assisting communities through this program. EPA whistleblower William Sanjour attended the regional ombudsman training session this past June. He followed this meeting with a memo to former EPA Assistant Administrator for Solid Waste and Emergency Response Elliott Laws, Laws' Deputy Tim Fields and National Ombudsman Bob Martin, expressing his concerns. He waited over six months for a response to his memo, and receiving none, decided to circulate his memo in the environmental community. The memo is summarized as follows:

"Six of the ombudsman can be divided into two categories of three. George Zachos (Region 2), Ron Wilson (Region 4) and Eddie Sierra (Region 6) all showed contempt and distaste for community activists. Wilson refers to the National Environmental Justice Commission [NEJC, pronounced knee-jack] as 'knee jerk'. He is contemptuous of Margaret Williams (community leader from Pensacola, Florida) and the fact that she can call Tim Fields or Elliott Laws any time she wants, and does so frequently. Eddie Sierra ridicules and mimics the speech and walk of activists in his region. He resents communities using political influence.

George Zachos, while less outspoken than Sierra and Wilson, generally agrees with those two and deeply resents Lois Gibbs. He believes that in dealing with EPA, the regional ombudsman should be viewed as a team player. These three especially have the attitude that EPA is under attack by communities, the media, politicians, etc., and they tend to have an 'us-against-them,' 'circle-the- wagons' mentality."

"The second category consists of John Smaldone (Region 1), John Armstead (Region 3), and Doug Ballotti (Region 5). These gentlemen do not believe it is appropriate for a regional ombudsman to question existing EPA processes or the conduct of EPA personnel. They are ambitious and are obviously very reluctant about being drafted for what could be a career breaking job."

"Of the remaining ombudsmen," Sanjour observed, "Michelle Pizadeh (Region 10), was the only person there who seemed to understand and sympathize with the community viewpoint. She would often contradict her fellow ombudsmen. Craig Smith (Region 7) did not say much, but from the little he did say, I would guess he shares the concerns of those in the second group, but nevertheless willing to take on the job. Rob Henke (Region 8) said so little, I could form no impression, and Sally Seymour (region 9) was not there."

It is outrageous that some of the very people assigned to investigate community concerns and complaints have contempt for community based organizations. It is immature and repulsive that some of these ombudsmen have no respect for the very people whom they are charged with assisting, to the extent that they openly mock their language, culture and actions. Mr. Sanjour referred to Eddie Sierra's mocking behavior as practicing to be a stand up comedian, while Mr. Sierra might have thought he was funny, I'm sure the citizens in his region would not be amused. In addition, this was government funded training meeting. Taxpayer money is not meant to fund meetings where public employees show their ignorance and lack of sensitivity to the rich diversity of our society.

Their disrespect isn't limited to the community leaders. By referring to the NEJC as "knee jerk," these public employees showed grave disrespect for the President of the United States, who initiated the establishment of NEJC. This sort of egregious behavior is a direct slap in the face of his administration. Participants in this meeting, regardless of whether they were the ones to imitate community leaders or make a mockery of NEJC should be held accountable for their actions. Only Mr. Sanjour had the courage to speak out, and he should be recognized and applauded for this act.

National Ombudsman Bob Martin was held up as a model for the way in which ombudsman should behave. Martin does not get involved in situations unless he is asked to by a community leader. This practice was met with resistance from some participants at the meeting with Ron Wilson (Region 4) saying that they [the ombudsmen] would inject themselves uninvited [into the community]. Why would an ombudsman get involved if there was no dispute or complaints? The purpose of this program is to investigate citizen's complaints, not inject oneself into a situation as an outsider.

The memo also discussed the agreement by those at the meeting that the ombudsmen should not be a barrier to timely agency decision making. What if the citizen's complaints have to do with the way those decisions we made? The ombudsmen's job is to settle disputes, and if that means a decision gets delayed, so be it. Lastly, the memo discussed how the regional offices want the ombudsmen to report to their regional administrator, in many cases the very person they are supposed to field complaints about. This makes it difficult, if not impossible, for the ombudsmen to do their jobs.

This memo concludes by stating that many of the ombudsmen want to conduct a public relations blitz advertising the regional ombudsman and all the wonderful things they are going to do for the public. Investing resources in an advertising blitz, rather than finding the right people for the program and getting it off to a good start, is throwing good money away. Communities faced with serious threats need people who respect their culture, views and needs, not someone who has contempt and distaste for the process. The program needs people who don't see the situations as us versus them. That mentality isn't new; discouraging it is exactly the reason why this program was initiated in the first place. If you find the situation described in Mr. Sanjour's memo intolerable, call your regional EPA offices and demand that action be taken. Call EPA Administrator Carol Browner and Assistant Administrator Tim Fields and demand that EPA get rid of these insensitive, rude public servants. We deserve ombudsmen who are sensitive to society's diversity and not afraid of working with communities.

Not all news was bad. In May, 1995, the DC Appellate Court struck down as unconstitutional the law banning me and Kaufman from accepting travel expenses to speak on our own time about agency business. The court ruled the law was a violation of our first amendment right of free speech. The reporter's Committee for Freedom of the Press wrote[155]:

Environmental Protection Agency employees will be allowed to accept travel expense reimbursement from private groups for non-official speaking engagements after the U.S. Court of Appeals in Washington, D.C. (D.C. Cir.) overturned agency regulations in late May that thwarted efforts by two employees to speak out against EPA policies. The 1991 EPA regulation permitted employees to receive travel and accommodation expenses only if they obtained prior EPA authorization to speak in an official capacity. EPA employees William Sanjour and Hugh Kaufman have been giving speeches in an unofficial capacity since the 1970s, frequently criticizing policies of the EPA. Because the regulation prohibited them from accepting any compensation for travel expenses, Sanjour and Kaufman were forced to turn down a speaking engagement with NC WARN, a North Carolina environmental advocacy group. The employees challenged the regulation in federal District Court in Washington, D.C. in October 1991, alleging that the "official speech requirement" violated the First Amendment. The district court held that the regulation was constitutional because it was "narrowly tailored to meet a legitimate government objective" and "not designed to limit First Amendment freedoms." The Court of Appeals balanced the interests of the government against those of employees and the potential audience "in receiving the speech suppressed." The employee speech at issue, the court determined, relates to a matter of public concern, and a restriction on that speech would deprive the public of the employees' expertise and experience. The court rejected the government's argument that the regulations would protect against an appearance of impropriety on the part of employees who accepted travel expense reimbursements. The court said that under the regulation, "official" speaking engagements would give rise to the same appearance of impropriety. The regulation also grants "essentially unbridled" discretion to the agency to approve or disapprove expression based on the employee's viewpoint. (Sanjour v. Environmental Protection Agency; plaintiffs' counsel: Stephen M. Kohn)

Although controversial when it was decided the precedent setting decision is now widely accepted and has been cited favorably by judges such as Supreme Court Justice Samuel Alito.

On this happy note I will end the narrative of my picaresque adventures. Not that they ended but they did kind of dwindle down and I'm anxious to get on to writing the summary chapter.

The Wasington Post July 31, 2013

EPA chief vows to tackle climate change

McCarthy says she will work with utilities, other industries on policy

BY JULIET EILPERIN

BOSTON — The new head of the Environmental Protection Agency told an audience at Harvard Law School on Tuesday that cutting carbon pollution will "feed the economic agenda of this country" and vowed to work with industry leaders on shaping policies aimed at curbing global warming.

"Climate change will not be resolved overnight," EPA Administrator Gina McCarthy told the 310-member audience. "But it will be engaged over the next three years. That I can promise you."

McCarthy made a full-throated defense of her agency's right to address greenhouse-gas emissions and other pollutants, saying that air-quality regulations and environmental cleanup efforts have already produced economic benefits in the United States.

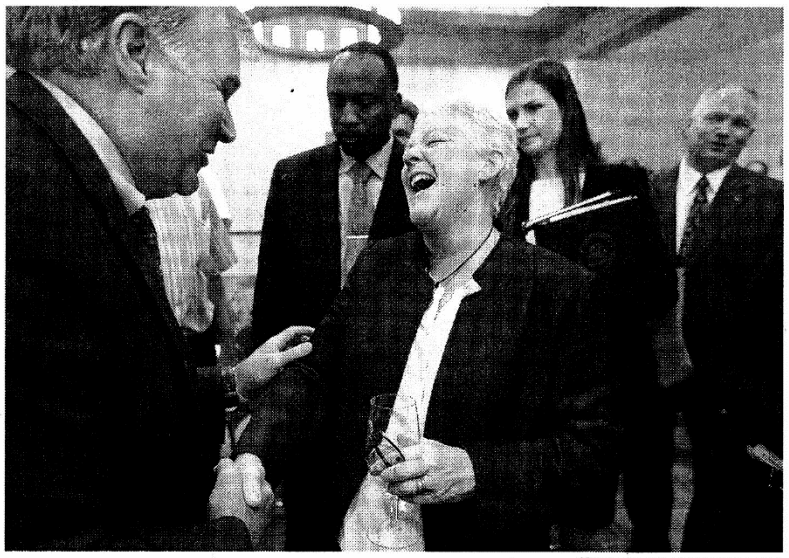
"Can we stop talking about environmental regulations killing jobs, please?" she asked, prompting loud applause. "We need to embrace cutting-edge technology as a way to spark business innovation."

She also made a joke of her strong Boston accent by repeating, "And I said, 'spaahrk.'" McCarthy also joked about the challenge she faced in getting her post, calling her confirmation "the honor of a lifetime."

"That's a very good thing, because I swear it took two lifetimes to get confirmed," she said.

The speech represented a homecoming for McCarthy, a Boston area native, who was introduced by her 27-year-old daughter, Maggie McCarey, a program coordinator at the Massachusetts Department of Energy Resources.

McCarthy, a veteran of Republican administrations in Massachusetts and Connecticut, has spent much of the past four years at the EPA shepherding through air regulations, which have come under attack from business groups for helping shut down power plants. Her nomination to succeed former EPA administrator Lisa P. Jackson dragged on for more than four months as several GOP senators used the pick as a way to highlight their problems with President Obama's environmental agenda.



STEVEN SENNE/ASSOCIATED PRESS

Environmental Protection Agency Administrator Gina McCarthy laughs while greeting Bob Valair of Staples after her speech at Harvard Law School. "We need to embrace cutting-edge technology as a way to spark business innovation," she told the audience.

In her Tuesday speech, McCarthy pointed to the EPA's history of improving the environment in places such as Lowell, Mass., where she watched the river run blue, yellow and other colors depending on what dyes the textile mills dumped in the water.

She said climate change was now the top priority for the agency, which plans to model its efforts on the administration's earlier agreement with the auto industry on stricter fuel efficiency standards for cars and light trucks.

"EPA cannot dictate solutions," McCarthy said. "We have to engage."

McCarthy has already been meeting with utility executives and coal industry officials, some of whom fear that the administration's plan to limit carbon dioxide emissions from existing plants will close many plants.

McCarthy also said the agency would continue to focus on water quality and environmental justice, a hallmark of her predecessor, which refers to the problems facing poorer communities that bear the brunt of pollution and other environmental risks.

Hal Quinn, president and chief executive of the National Mining Association, said that McCarthy was "keenly interested" in the group's technical assessments of the impact of EPA rules during a meeting earlier this year.

But Quinn said he remains worried that the agency will press for unrealistic carbon standards. He said a 2011 rule on mercury and air toxins had forced utilities to retire at least 40,000 megawatts of coal-fired electricity.

"The investments that have been made in utilities could be jeopardized or stranded because of the rules on greenhouse-gas emissions," Quinn said.

In an interview Tuesday, McCarthy said the utility-closing announcements came far in advance of any EPA rule requirements. "It's hard for me to think our rule is the driving factor behind these closures," she said. "This is about the abundance of low-cost natural gas. It's about how utilities are making decisions, company-wide, about how to invest in the future the way they see it right now."

On the controversial Keystone XL pipeline, McCarthy said in the interview that the EPA would not weigh in on the issue until the State Department releases a final environmental assessment of the project. While she did not indicate what position the agency would take, McCarthy noted that Obama "sent a very strong signal" during his June climate speech "that climate's impact would be taken into consideration in this decision, and in others."

During the question-and-answer portion of Tuesday's speech, McCarthy jokingly began to cut off the session once a Sierra Club member posed a question about the Keystone pipeline.

But she vowed to "continue to work with the administration as difficult decisions are made" and compared charting national environmental policy to reconciling interests in a noisy family.

"It's not supposed to be easy. It's supposed to be hard. It's supposed to be all the different voices coming together screaming at the top of their lungs like three children," she said, adding that she would work to allow "all those voices to be heard and to listen to them. And it's my obligation to keep peace in the family, whether it's my EPA one or my little one."

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Part I, the President

I was partly through writing this chapter when I came upon the above article. To an environmentalist or a liberal it sounds perfectly rational, encouraging, hopeful and on the right track. My wife described it as beguiling. I realized that if I was going to achieve anything in this summary, indeed in this book, I have to show why this article is wrong and wrong in many ways. I'm not sure I have the skill to do that but I have to try.

First let me remind you what the job of the administrator of EPA is under the law. First it is to write regulations which implement specific requirements of specific Congressional environmental laws and second to enforce those laws. I know of no environmental law that requires the administrator to implement the President's economic agenda. Yet there is nothing in the article about Congress' policy as stated in the law and everything about the President's economic policy. Ms. McCarthy is quoted as saying:

cutting carbon pollution will "feed the economic agenda of this country"

"We need to embrace cutting-edge technology as a way to spark business innovation,"

"air-quality regulations and environmental cleanup efforts have already produced economic benefits in the United States."

These may all be excellent objectives but none of them is in the administrator's job description. Perhaps I'm being unnecessarily legalistic. What is the harm in doing good things for the environment which also help the economy? If you think there is nothing wrong with Ms. McCarthy using EPA to advance the President's economic policies then why would you think it wrong for Jody Powell to wreck EPA's hazardous waste laws to implement President Carter's economic policies? And do you think it OK for President Reagan to use EPA to support *his* economic policies? If you accept the concept of the President using EPA to further his policies in ways not authorized by acts of Congress, then why bother with the law. EPA simply becomes part of the White House staff.

If Congress wanted EPA to "feed the economic agenda of this country" it would have said so. Instead Congress has said that EPA was to figure the economic costs of its rules, but not to base its rules on the economic costs. McCarthy, in her interview noted that *Obama* "sent a very strong signal." But she made no mention of any signal sent by the many acts of Congress she is charged with carrying out. It's understandable that she feels obliged to the President who nominated her and I'm sure she is a very good and competent person but I would feel better if she were a good and competent administrator who did not feel obliged to the president but only to the law.

Take former Administrator William Reilly (Chapter Six.) Just as Ms. McCarthy feels it her duty to foster certain commercial interests, Reilly felt it was his duty to promote the commercial hazardous waste industry and in addition to prevent North Carolina from impeding that policy. Neither of these goals were authorized by Congress, indeed, the latter was explicitly denied by Congress. Yet he did it anyway until he was stopped by Judge Nissen.

Former Assistant Administrator Tom Jorling carried out the will of President Carter by sabotaging the hazardous waste laws knowing full well he was breaking the law (Chapter One).

Former Administrator Anne Gorsuch Burford felt it was best for the country to dismantle EPA (Chapter Three.) That was not authorized by Congress but she did it anyway until stopped

by Congressional oversight and forced to resign. Her assistant administrator, Rita Lavelle, was sent to jail for awarding Superfund grants to friends of the administration.

Former Administrator Christine Todd Whitman saw it her duty to implement President Bush's policy to lie to the public and deny that there were any adverse environmental effects to first responders from Ground Zero[156]. Not only was she not authorized by Congress to make such denials but it flies in the face of every environmental law[*].

Former Administrator Lisa Jackson covered up EPA reports on adverse environmental impacts of "fracking" for mining natural gas[157] because of President Obama's policies promoting natural gas. President Obama also delayed implementing controversial rules during the years leading up to his re-election[158].

So my question is: do we want an administrator who follows her sense of duty, i.e. duty to the president, or one who follows the law? I want one who follows the law, i.e. the Constitution, but we can't have that so long as the administrator "serves at the pleasure of the president."

There are ways of running regulatory agencies without putting the president in charge of them. Some regulatory agencies are commissions, such the Securities and Exchange Commission (SEC,) the Federal Trade Commission (FTC,) and the Federal Communications Commission (FCC.) For example the president appoints the board and the Chairman of the SEC with the consent of the Senate, but they are appointed for fixed terms and cannot be removed by the president, which significantly reduces the influence the president can have over the SEC.

I can't imagine President Carter bullying the SEC the way he bullied EPA.

As for President Reagan dismantling the SEC the way he tried to dismantle EPA; that would have been impossible.

Would Christine Whitman have lied to cover up the administrations lies about the fallout at ground zero if she did not serve at the pleasure of the President George W. Bush?

Would Lisa Jackson have suppressed EPA reports unfavorable to the President Obama's policy supporting "fracking" if she did not serve at the pleasure of the president?

I have pointed out many negative aspects of having the president be the real head of EPA. In fairness I should point out the positive ones. President Richard Nixon created EPA and pretty much gave Administrator Ruckelshaus a free hand which resulted in the Clean Air Act and the Clean Water Act. But that was the last time any EPA administrator had a free hand including Ruckelshaus's second term under President Reagan. Clearly the president's support for environmental legislation can help tremendously, both by the use of the "bully pulpit" and by greasing the approval process through the Office of Management and Budget and other government agencies. BUT, there is nothing preventing the president from supporting EPA actions even if the administrator did not serve at his pleasure.

Of course no president of the United States would ever go along with divesting his authority over EPA or any other regulatory agency. No one likes to give up power, least of all the kind of people who seek the Office of the President. Don't get me wrong, I don't begrudge

[*] EPA whistleblowers Hugh Kaufman and Cate Jenkins were among those bringing this to public attention.

the president his power, but why create an Environmental Protection Agency if it's just part of the White House staff? Why give the president the power to use environmental laws in ways never intended by Congress and to ignore the laws intended by Congress. Let the president do the president's thing and let the administrator of EPA do the EPA thing.

Part II, Separation of Powers

Our Founding Fathers chose to separate the legislative, executive and judicial functions of government. For some reason, this example was not followed when regulatory agencies were established. Regulations are laws, they have the same weight of law as if they were written directly by Congress. Today, most laws on the books are laws written by regulatory agencies, i.e. the executive branch of government, called administrative law. Furthermore, if you look at Appendix 2 you see judicial functions are also a part of regulatory agencies. Thus, despite the wishes of the Founding Fathers, the executive branch now includes a great many regulatory agencies whose functions span all three branches of government. A large part of the corruption and inefficiency noted in this book flows from that fact.

Look at the flow chart in Appendix 2. If an EPA inspector finds a violation, this only triggers a lengthy complex process with many levels of warning, review, appeal, negotiation, and adjudication before any action is taken (or, more often, avoided). The agency enforcement procedure resembles the child's game of "chutes and ladders."

Compare this with what happens when you park under a "No Parking" sign. A policeman writes a ticket, and you can either pay the fine or tell it to the judge. If the EPA wrote the rules for parking violations, the officer would first have to determine if there were sufficient legal parking available at a reasonable cost and at a reasonable distance, and would then have to stand by the car and wait until the owner showed up so that he could negotiate a settlement agreement[*].

I propose that the complexity of EPA regulations is a consequence of the fact that the people who write the regulations are in the same organization as the people who enforce them. Furthermore the complexity is a way of hiding loopholes put in the regulations in order to protect the regulators.

Picture a world in which the police force is part of the district attorney's office and the district attorney writes the laws that the district attorney is charged with enforcing. This is analogous to the situation that exists in EPA. But unlike the district attorney, the EPA is up against the biggest corporations in the world who can hire the best and most expensive lawyers in the world. Since this is a world run by lawyers for lawyers, what kind of laws would they write? These lawyers then, would write laws which protect agency attorneys from their worst fears – looking bad by losing cases. And the way to do this when finding violations against large powerful corporations is to provide loopholes for the corporations to squeak through with a reprimand or in the most egregious cases to negotiate a settlement or consent agreement.

You've seen the articles in the newspapers or on the TV of some regulatory enforcement officials bragging about the huge dollar settlement and all the commitments they got as part of the record breaking settlement which would send a clear message to the polluters. In Chapter 3 we saw the sweetheart settlement with Waste Management Inc. described as "E.P.A. sanctions against Chemical waste Management are grossly inadequate and frequently amount to little more

[*] Settlement, settlement agreement, consent agreement, and consent decree are used interchangeably here which, on doubt, would make a lawyer cringe,

than a business surcharge rather than an effective deterrent to noncompliance." In Chapter 14 there was the corrupt consent agreement EPA made with the Westinghouse Corp.

Let's take a closer look at an EPA consent agreement. This is an excerpt of an article that appeared in the Washington Post[159] in 1987:

A major gas pipeline company accused of dumping cancer-causing polychlorinated biphenyls (PCBs) in 89 earthen pits along a 10,000-mile transmission route has agreed to pay a $15 million fine plus cleanup costs expected to reach $400 million, the Environmental Protection Agency said yesterday.

The agreement by Texas Eastern Transmission Corp. represents the highest penalty and cleanup settlement negotiated by the EPA, officials said.

According to the EPA, Texas Eastern disposed of PCB-laden liquids in 14 states from Texas to New Jersey, leaving soil contaminated at levels as high as 240 times the agency's safety guideline. Deposits of the banned chemical in mostly rural areas were found within 200 feet of residential drinking wells.

"The contamination was extensive," said Frederick F. Stiehl, an associate enforcement counsel for the EPA, explaining the record fine. "This is no mom-and-pop operation. They were fully capable of understanding what the law requires."

Texas Eastern spokesman Fred Wichlep said the agreement by the Houston-based company, one of the nation's largest pipeline distributors of natural gas and which last year had $1.3 billion in profits, does not represent an admission of wrongdoing. It was intended, he said, to "expedite a settlement and avoid the uncertainties of litigation."

The dumping "was not intentional," said Wichlep. "It was a problem created in the natural course of doing business" in which PCBs were used by Texas Eastern and other pipelines as a fire retardant.

But company executives have also admitted that the company discharged PCBs into earthen pits long after it pledged to stop. . . . . .

According to Wichlep, the company stopped using PCBs in 1977. But chemical residues remained in compressor crankcases and continued to taint pipeline liquids.

Texas Eastern and other companies whose pipelines were found to be contaminated by PCBs agreed in May 1981 to remove the chemical and dispose of it in landfills licensed to handle hazardous waste. Fifteen months later, after discovering high levels of PCBs in Texas Eastern's equipment, the EPA agreed to waive fines of $160,000 in return for a company pledge to properly dispose of the chemical.

A Texas Eastern executive testified to Congress last March that the company continued to discharge pipeline liquids, including PCBs, into the earthen pits until 1984. . . . . .

First note that the company was fined in $160,000 in 1982 for dumping but EPA waived the fine in return for the company's pledge to stop illegal dumping. In other words they received no punishment in return for a promise to stop breaking the law. Boy, don't we wish the government treated us like that!

But they didn't stop breaking the law. EPA caught up with them again after there were Congressional hearings. This time EPA gave them a $15 million fine but the company admitted no guilt. (The $400 million is not a punishment, it is the cost of complying with requirements of the law.) While EPA bragged about the record setting penalty, I'm sure the company's executives chuckled over a penalty for decades of law-breaking that amounted to about one

percent of its annual profits. If the company stopped illegally dumping after that it wasn't because of EPA's puny penalties but because of a Superfund court decision which assigned "joint and several liability" to Superfund polluters and made the cost of clean-up very expensive and difficult to avoid.

Why are government regulatory attorneys so risk adverse? It comes from knowing that they have no back up. There is no one above them telling them to "go ahead and take a chance, I'll back up your play."

When I was drafting regulations and I wasn't sure of the legality of something I wanted to do I'd ask an EPA attorney what he thought my chances were of this getting through the courts. If they said 70% I'd say go for it, but it was them and not me who would look bad if they lost in court*. They want something 90% or better and the way to reduce your risk is to write regulations with no teeth, which is precisely what I was asked to do by agency attorneys on more than one occasion.

Ironically on the rare occasions when the president or the White House wants to back some regulatory action they ridicule and the bureaucratic regulations which hamstring them. Regulations which wouldn't have been written that way if the agency could count on the president's support in the first place.

So why doesn't the president support the regulatory agencies that work for him? A president, regardless of party, has an agenda of about a half dozen issues with which he and his staff are most concerned. These are usually national security, foreign affairs, the economy, the budget, and maybe one or two others; call them Class A priorities. All others housing, education, transportation, veterans affairs, the environment are in Class B.

A president, any president, expects performance in Class A. He will expect the military to be able to deploy forces anywhere in the world when he chooses, and if it isn't, he will bang heads until it is. If Congress doesn't support his budget, he will call the budget director into his office and pound his fist on the table. But can you picture a president bringing the secretary of transportation into the Oval Office and yelling because of poor bus service in Sheboygan? Or summoning the administrator of the Environmental Protection Agency in and chewing him out for pollution in the Cuyahoga River? I can't. A president expects performance in Class A; in Class B he expects only peace and quiet.

But regulatory agencies, by their very nature, can do little that doesn't adversely affect business, especially big and influential businesses, corporations with big power, money, and influence, corporations with money which elects governors, congressmen, senators and presidents.

But EPA, cannot write regulations that don't affect big business who are, after all, the big polluters. For example, if EPA must regulate the petroleum industry, representatives of the oil companies flock to the White House screaming 'energy crisis!' When the FDA wants to thoroughly evaluate a new drug, the pharmaceutical company lets loose a public relations barrage about how the bureaucratic delays are costing lives. Regulatory agency employees soon learn that drafting and implementing rules for big corporations means making enemies of powerful and influential people. Only if the White House intervenes will you get meaningful regulations. However usually the White House intervenes to prevent meaningful regulations. Hence a breed of risk adverse bureaucrats.

* Strictly speaking its attorney's with the environmental section of the Department of Justice who actually appear in court.

Part III, What to Do

I like to figure out how to make things work better and I'm very good about it[*]. That's why I became an Operations Research Analyst and a Policy Analyst. So, of course I've figured out how to make EPA, and perhaps some other regulatory agencies, work better. By better I mean:

- With less corruption,
- With more effective, efficient, fair and reasonable regulations, and
- With fewer personnel and at less cost.

As a first step let's separate EPA into two agencies, one to write regulations and one to enforce them[†]. This removes the problem of EPA writing regulations to make the enforcement look good while it's not doing much enforcing. Second, let's take the regulation writing agency away from the president's control and make it a commission. Call it the Environmental Regulatory Commission (ERC.) I have not really decided on whether the enforcement arm should be a commission as well. For the time being let's call it the Environmental Enforcement Agency (EEA.)

I once asked then Congressman Jim Florio, who was responsible for a lot of the hazardous waste legislation, why Congress gave so much discretionary authority in writing regulations to the Administrator of EPA when they knew he would use it to try to thwart the intent of Congress. Why didn't Congress just write the regulations it wants in the form of law and limit the Administrator's job to administration? He said they had no choice. Congressional staffs were too small and overworked to do the detailed work necessary for regulations whereas the Administrator had thousands of people to write regulations. He said that wherever possible, they wrote the laws as specifically as they could, but for the most part, all they could do was write broad statements of what they would like to see happen and give the Administrator the task of writing the regulations to implement their intent.

Sometime later I realized that it would not be necessary for Congress to expand its staff to write regulations, the staff already existed. EPA has units for drafting regulations, located in its headquarters in the Washington, DC area, and units for enforcing regulations, located mostly in the ten regional offices with a small unit at headquarters. If my scheme were followed then those units which draft regulations would become the body of the Environmental Regulatory Commission (ERC.) It would not be necessary to hire a single soul or to move a single desk. The only thing that would change would be the organization chart. Likewise the enforcement units of EPA would become the body of the Environmental Enforcement Agency (EEA.)

Part IV, The Environmental Regulatory Commission (ERC)

Since we're dreaming, let's dream about how the ERC would work. In choosing a director or commissioner I would follow the procedure used for the Government Accountability Office (GAO.) The President selects a nominee from a list of at least three individuals recommended by an eight member bipartisan, bicameral commission of congressional leaders. The nominee would serve a fixed term and could NOT be removed by the President, but only by

[*] If I am not for myself, who is or me? Hillel

[†] Where we put EPA's research activities I leave unanswered.

Congress through impeachment or joint resolution for specific reasons.

The procedure for drafting a regulation at EPA is to give the responsibility to one person and to provide him/her with a staff of agency employees and/or contractors. A work group is formed which meets frequently to review and critique the work of the drafters. The work group consists of representatives of the various offices in EPA which may have an interest in the regulation and the work group may also have representatives of other government agencies and also state governments. The latter because the enforcement of many EPA regulations are delegated to the states.

The members of the work group can recommend, suggest, or object, but they cannot veto. However, before the administrator will sign off on a regulation he ask all the department heads represented in the work to sign off on it. It is cause for consternation if one department head will not sign off. Sometimes the administrator will override the objection and sometimes he will send the proposed regulation back for further consideration. After the EPA administrator signs off it is (surreptitiously, I believe) sent to the White House for approval before being published.

I bring this up to propose that in my dream agency, representatives of the president and the Congressional committees involved should also be represented on the work group. However, this would limit the extent of the involvement of the president and the Congress. In my proposed scheme, if the Congressional committee chairmen are unhappy with the head of the ERC they can always seek a joint resolution to remove him/her. This would reduce the influence of the president in drafting regulations and increase the influence of Congress.

Now to the question of why I think my imaginary ERC would change environmental regulations for the better. As I pointed out, the "chutes and ladders" enforcement regulations are designed to give cover to enforcement officials so that they can appear to be tough enforcers while not really controlling the big corporate polluters. As we've seen companies like Westinghouse, Monsanto and Waste Management do pretty much what they want to do, treating EPA enforcement as little more than mosquito bites. By removing the need for the regulation writers to protect the enforcers we create, at least, the opportunity to have simple straight forward easily understood and easily enforced regulations. Like a policeman writing a parking ticket.

In the past Congressional reforms have been thwarted and distorted by the interference of enforcement officials and the Executive Branch. Once you remove this source of interference then it is more likely that reforms would be implemented as intended by the regulation writers. I have indicated my ideas of some reforms in the following Parts.

Part V, Public Participation

For the most part EPA people don't care for public participation in their affairs. They tend to think of themselves as environmentalists who are charged with protecting the environment and they resent when other people calling themselves environmentalists don't like what they are doing. Their concept of public participation is to convince the public that they are doing the right thing. Witness the Charter Fourteen description of regional ombudsmen.

In Chapter Seven we saw how when citizens were exposed to pollution from LWD incinerators "like a skunk dipped in creosote and burned," their only recourse was to call a government inspector who came at his own good time, after informing the plant he was coming

and smelled nothing when he got there, so he did nothing. In other words the noses of dozens of citizens counted for naught relative to the golden nose of the inspector, when and if he chose to use it.

Rather than rely solely exclusively on civil servants to enforce the law, I would propose that regulations be written to maximize the use of the affected public to aid in the enforcement. For example in the case of the LWD incinerator we could write a regulation that says that if six residents in an area make a sworn statement that they smelled bad odors near the incinerator then that would have the same weight as if an inspector made the same statement. For another example when an inspector inspects inside a facility the neighboring citizens can select one of their own to accompany him.

One of my favorite people is Denny Larson, promoter of the "Bucket Brigade."

The inspiration for an easy-to-use air sampling device came in 1995, when attorney Edward Masry (depicted in the movie "Erin Brockovich") got sick from fumes from a petroleum refinery he was suing on behalf of residents of Contra Costa County, Calif. When he called the local, state and federal environmental authorities, they told him that their monitors detected no problem. This angered Masry, whose clients were being exposed to toxic releases daily. He hired an environmental engineer to design a low-cost device, and the bucket was born.

The bucket is a $75 version of a much more expensive device, a $2,000 summa canister. Air is drawn into a Tedlar bag ($15), a non-reactive plastic, inside the bucket. The valve on the bag is then closed, and the bag is shipped overnight to a laboratory for analysis.

At $500 per sample, the lab analysis is the most expensive part of the operation. The air from the bag is run through a Gas Chromatograph Mass Spectrometer, which compares the "fingerprints" of the sample with the fingerprints of about 100 toxic gases in the computer library.

Working closely with Ed Masry, Denny Larson of Communities for a Better Environment, now director of Global Community Monitor, promoted the use of the buckets in other communities exposed to toxic air emissions. Larson produced a community manual to educate fenceline neighbors on how to build and operate their own buckets. The manual helped spread the buckets throughout the refinery belt of Contra Costa County in California, and eventually to Louisiana.

The biggest hurdle was getting authorities, who belittled the idea of citizen bucket brigades, to accept the results. Larson met with EPA Region 9 officials, including then-administrator Felicia Marcus, in 1996 and asked the agency to approve and fund bucket air sampling. To its credit, EPA Region 9 invested in a quality assurance evaluation of the bucket results and ended up accepting them. With the EPA approval, Larson was able to work with grassroots groups around the country to launch local bucket brigades[160].

I don't think I have to go through many more examples to make the point that citizens living near a regulated facility know what's going on better than a government inspector ever could. Their number makes them more pervasive than the largest government agency. And because citizens work, play, and live in the area they have a personal stake in a healthy environment, more so than any government agency. They are omnipresent, motivated, and uniquely interested in their environmental quality and they cost the taxpayer less than any civil servant.

Of course Congress would have to authorize and encourage my invented ERC to use its imagination to come up with ways the public can become part of the enforcement process but by separating the regulation writers from the enforcers (who would fight such regulations) I think it could happen.

Part VI, Whistleblowers

One guaranteed fix would be to reward whistleblowers. At present, a person who calls attention to waste, fraud, or abuse at high levels of the EPA can only look forward to harassment and isolation, with no hope of promotion or even a responsible position. Congress ought not only to protect whistleblowers, but to reward them when their charges prove correct. This would greatly increase the number of whistleblowers and decrease the amount of waste, fraud, and abuse. If you think rewarding public servants for doing their duty is excessive, consider the cost of failing to do so.

A recent study[161] of corporate fraud among U.S. companies looked at different groups responsible for fraud detection and found that corporate employees (i.e. whistleblowers) were the leading group with 19 percent of the fraud cases revealed, while the SEC was the least effective group with only 7 percent. This, in spite of the fact that SEC employees are paid comfortable salaries to uncover corporate fraud while corporate whistle blowers risk losing their jobs. In the health care industry, the problem is the same. Some 41 percent of the fraud cases are brought by employees because the Federal Civil False Claims Act entitles whistle blowers to between 15 and 30 percent of the money recovered. Monetary rewards for whistle blowers pay benefits far in excess of the cost when compared with hired regulatory bureaucrats.

During more than thirty years of government service, I have met and come to know many whistleblowers. If I could make a generalization about them I would describe them this way: Whistleblowers are over-achievers. They are competent and efficient, the kind of people who are concerned that things be done right. They are also people who have the moral fiber to stand up to corruption. In almost every case, they became whistleblowers because a moral dilemma, not of their own seeking, was thrust upon them[*]. They were asked to do something immoral and they refused. Ninety-nine out of a hundred people when faced with such a dilemma, will hold their nose and remember where their bread is buttered. Or they will convince themselves there is no dilemma. The more stubborn whistleblowers remain unrepentant and even defiant. From that inevitably follows harassment, persecution and vilification. This is not the path for a malingerer.

Each year taxpayers pay billions of dollars for goods and services ranging from health care and defense to public safety. And each year taxpayers pay millions of dollars to police and prosecute fraud against the public purse. Yet, as the above study shows, one whistleblower can frequently accomplish more than a room full of inspectors or policemen, and cost far less. Whistleblowers know the system, and speak out in a spirit of public service.

It is not the whistleblower who needs protection so much as it is the public that needs the protection of the whistleblower.

Part VII, Etcetera

[*] See Appendix 3.

Here are additional reforms.

The Revolving Door*. It should be perfectly clear that a person in a regulatory agency who views the agency as a stepping-stone to a better-paying job cannot serve the public faithfully. Yet Congress has never passed a law restricting persons in regulatory agencies from going to work for the companies their agency regulates. I would propose a law forbidding government employees involved in writing and enforcing regulations from accepting any form of direct or indirect compensation from any person regulated by their agency for a period of five years after they leave government service.

It is argued that this would prevent top quality people from accepting these jobs. I would argue that I would rather have honest mediocrities in these jobs than brilliant traitors. These ambitious job-jumpers with an eye out to their next job, weaken and corrupt everything they do. If the revolving door is not closed then most other reforms would be compromised.

Bad-Boy Laws. Several states have laws that bar them from doing business with chronic offenders. Unfortunately these laws are usually discretionary and are rarely invoked in hazardous-waste cases. If they were, all of the big commercial hazardous-waste firms would be out of business in those states--which is why the laws are not used. I would like to see a mandatory federal bad-boy law applied to the licensing of hazardous-waste sites and to the awarding of Superfund contracts.

Of course, EPA officials always argue that if we close down the big commercial operators, there will be no one left to run the hazardous-waste business. That's like saying that we have to let racketeers run gambling casinos because no one else knows how. The hazardous-waste business is extremely profitable, and there are plenty of honest businesspeople who would love to get a foot in the door. There's no reason to tolerate crooks.

Consent Agreements. One of the most egregious abuses of discretionary authority by the EPA is the use of consent agreements to settle regulatory violations. A consent agreement is like a plea bargain, a contract wherein a defendant agrees to stop an illegal activity without admitting guilt. Consent agreements by the EPA usually result in the defendant paying a fine and promising to sin no more.

A big problem with consent agreements is that they are drawn up in secret, with no public review. While they usually concern cleanup of dumps or hazardous-waste spills, the injured community does not participate. This secrecy is an open invitation to corruption and abuse. Polluters with good connections and good lawyers are able to get consent agreements that grant them all sorts of privileges to which they are not entitled, in exchange for paltry fines. A good example is what happened when Chemical Waste Management was denied a permit to store carcinogenic polychlorinated biphenyls (PCBs) at its hazardous-waste dump at Emelle Alabama. They stored them there anyway, and got caught. An eventual consent agreement fined Chem Waste far less than it made by its illegal action, and threw in a PCB-storage permit. The agreement also exempted the firm from punishment for any other past violations, even those that had not yet come to light. In short, for a $450,000 fine, Chem Waste received waivers worth more than $100 million.

Congress should limit the scope of consent agreements. They should only be part of a guilty plea. It should be required that they be made public, and require the court to hear from

* See Appendix 1.

any past or potential injured party before signing. Before a fine is assessed the government should determine how much money was saved by breaking the law in order to assure that the fine is greater.

Part VIII, The Environmental Enforcement Agency (EEA)

I would pattern the EEA after a municipal police department. Their job is to inspect regulatory facilities and write up tickets when they see violations. Hopefully the ERC would write laws that are easily enforceable --- since they have no motivation to do otherwise --- and would make liberal use of citizen participation and whistleblowers.

The whole business of appeals and fines would be left to the courts, just like the police department. The EEA attorney's functions would be limited to representing the EEA in court and would not involve lawmaking or consent agreements without public participation.

Part IX, The End

My profession was an Operations Research Analyst and Policy Analyst. Before I became a branch chief at EPA in 1974 I was always a consultant, meaning the I conducted studies for a client, wrote a report, made recommendations and turned it over to the client and went on to other things. Sometime my recommendations were acted on, sometimes they weren't. In any event, I usually didn't know.

Sometimes it takes years to come to light. Most dramatically in the late 1960's when I was a management consultant with Ernst & Ernst (now Ernst & Young) we conducted a series of studies for the National Air Pollution Control Administration of the Department of Health, Education, and Welfare, which, with the founding of EPA in 1970, became the EPA Air Office. These studies used mathematical models of several cities and their air pollution emission sources in order to compare the cost and effectiveness of the usual kinds of control strategies that regulatory agencies use. In addition we thought of the idea of calculating, what we called, a "least cost" strategy. We discovered in each case that the least cost strategy was dramatically less costly than the same amount of pollution reduction produced by any conventional abatement strategy.

These reports were turned over to the government regulators and forgotten by me. Thirty years later, the "least cost" strategy emerged from the EPA Air Office as the "cap-and-trade" system as part of the US Acid Rain Program, and the rest is history.

My point is I don't expect anything to come of this book at least not in my lifetime. But I am an analyst and the stories I selected for this book are the data base from which the ideas and recommendations in the book arose

Appedix 1 EPA's Revolving Door

A partial list of federal officials who found employment in the waste management industry.

WILLIAM RUCKELSHAUS, EPA Administrator 1971-73.
Director of Weyerhaeuser, Monsanto, and other companies with severe environmental problems.

DOUGLAS COSTLE, EPA Administrator 1977-81.
Chairman of Metcalf & Eddy, hazardous-waste consultants and Superfund contractor.

WALTER BARBER, Acting EPA Administrator 1981.
Vice-president of Chemical waste Management, the country's largest hazardous-waste management company--and a subsidiary of waste Management, Inc..

WILLIAM RUCKELSHAUS, EPA Administrator 1983-85.
CEO of Browning-Ferris Inc., the country's second largest non-hazardous-waste-management company.

LEE THOMAS, EPA Administrator 1985-89.
CEO of Law Environmental, hazardous-waste consultants and Superfund contractor.

ALVIN ALM, Deputy EPA Administrator.
Senior vice-president of SAIC, Superfund contractor and major EPA contractor.

JOAN Z. BERNSTEIN, EPA General Counsel.
Vice-president of Chemical waste Management.

CHRISTOPHER BECK, EPA Assistant Administrator for Hazardous waste.
Chairman and CEO of Air & Water Technologies, hazardous-waste consultants and Superfund contractor.

FRANK MOORE, Chief legislative liaison for President Carter.
Vice-president of waste Management, Inc..

RITA LAVELLE, EPA Assistant Administrator for Solid waste and Emergency Response (sent to prison for perjury).
Consultant to hazardous-waste management industry.

JACK RAVAN, EPA Regional Administrator in Atlanta.
President of Rollins Environmental Services, the country's second largest hazardous-waste company.

JOHN SCHRAMM, EPA Regional Administrator in Philadelphia.

Director of government affairs in waste Management, Inc.'s washington office.

ANGUS MACBETH, Deputy Assistant Attorney General for Environmental Affairs in the Justice Department.
Attorney representing Chemical waste Management.

JAMES RANGE, On staff of Senate Environment and Public Works Committee; helped write hazardous-waste laws.
Vice-president of waste Management, Inc..

MARCIA WILLIAMS, Director, EPA Office of Solid waste.
Washington representative for Browning-Ferris, Inc..

JAMES SANDERSON, Advisor to EPA Administrator Anne Gorsuch..
Attorney representing Chemical waste Management (held both positions simultaneously).

GARY DIETRICH, Director, EPA Office of Solid waste.
Vice-president of consulting firm that writes permit applications and does other consulting work for waste Management, Inc..

BRIAN MOLLOY, EPA enforcement attorney who helped write hazardous-waste regulations.
Attorney representing Chemical waste Management.

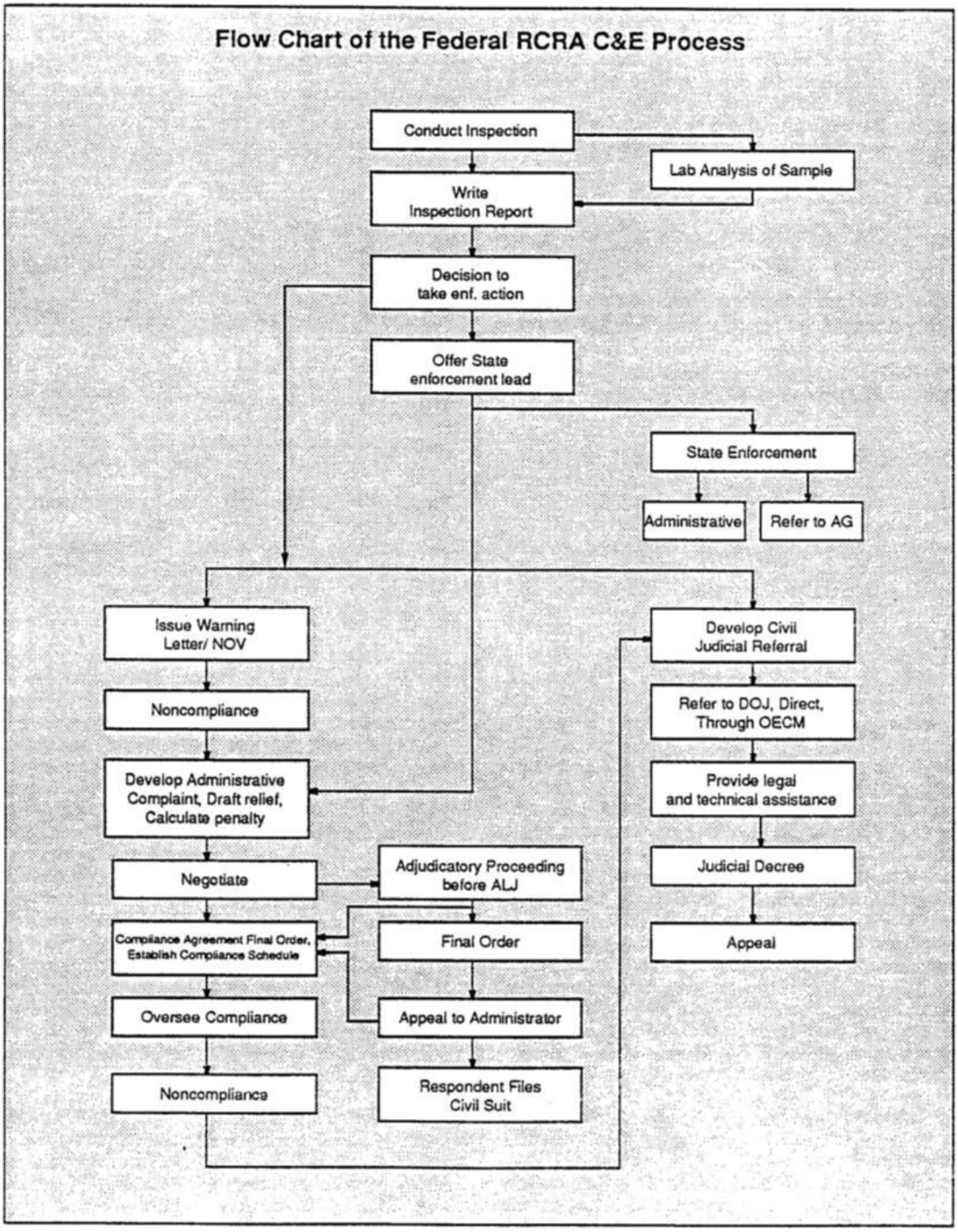
SUSAN VOGT, EPA Deputy Assistant Administrator for Pesticides and Toxic Substances.
Washington representative for Law Environmental.

RICHARD FORTUNA, Congressional legislative aide, helped write hazardous waste laws.
Director and lobbyist for the Hazardous waste Treatment Counsel, which represents most large hazardous-waste management firms.

JEFF MILLER, Head of EPA hazardous-waste enforcement task force.
Attorney representing Chemical waste Management.

JAMES A. ROGERS, EPA Associate General Counsel.
Attorney representing Chemical waste Management and other major polluters in lawsuits against EPA.

Appendix 2[162]



Appendix 3

INTRODUCTORY REMARKS FOR UNDECLARED WHISTLEBLOWERS*

by

William Sanjour

September 18, 1993

Most whistleblowers do not start out to blow the whistle on anyone. They simply do what they think they ought to be doing. This is especially true of professional people, who when acting within the accepted practices and ethics of their profession sometimes find themselves vilified as whistleblowers when, in their minds, they are merely professionals carrying out their professional responsibility. The classic description of this phenomenon appears in a play written in 1882 by Henrik Ibsen called An Enemy of the People. The play's protagonist, a physician living in a resort town, finds himself unanimously branded a public enemy because he maintains that the town's economic base, a tourist spa, is polluted and should be closed for expensive repairs. (This play should be required reading in all professional schools.)

It is important to remember that one becomes a whistleblower not because he thinks of himself as such, but because others view him as a whistleblower.

Most nascent whistleblowers (who may not consider themselves whistleblowers) will back down when they find strong opposition from their employers, peers, or colleagues. A few, convinced that they are right and will be vindicated, will press on in spite of the opposition. This is usually accompanied by a belief that it is just a big misunderstanding and that the appropriate authority or authority figure will straighten it all out once they understand what it is all about. (I call this the "Stalin syndrome" after the character in a novel by Aleksandr Solzhenitsyn who feels that his unjust imprisonment at the hand of Soviet authorities would end "if only Stalin knew.")

Sooner or later they find out that "Stalin" does know or doesn't care and that they alone must face the cold winds of vilification. At this point, most of the few who have come this far decide it isn't worth it. They will enter a state of purgatory where they will pull in their horns, keep a low profile and hope to purge themselves. Sometimes, after a suitable period of obeisance, their whistleblowing is chalked up to youthful indiscretion (or mid-life crisis) and they are restored to the good graces of the-powers-that-be. Sometimes not. Sometimes the harassment never stops, forcing the whistleblower to change jobs, locations, or professions. Some end up digging ditches. Some even die. But some fight back. This is the hard-core whistleblower. He's angry. He knows he's right and he wants vindication, often with a damn-the-consequences attitude.

My advice to people, in general, is don't be a whistleblower. Avoid open challenge or defiance of authority or power. Try to satisfy your conscience or your sense of duty without getting personally involved. For example you can leak stuff to a known whistleblower who is willing to take the heat, or to an activist organization, or to a plaintiff's attorney. Leaking to politicians and the press, on the other hand, is a tricky business and can easily blow your cover whereas there is a better chance of remaining anonymous by dealing with activists. A word of caution, however;

if the-powers-that-be figure out who the leaker is and harass him, he has greater legal protection if he leaked to Congress or the press than if he leaked anonymously.

The next thing I would advise a prospective whistleblower is to know the law, the rules and one's rights long before you start out. Know what to expect by talking to people who have been down the road. Read books and articles about whistleblowers and whistleblower protection laws. Small subtle differences on how you blow the whistle, what you blow it on and where you blow it can make big differences in the kind of legal protection you have. If legal counsel is needed, get the name of an attorney who specializes in whistleblower law from an activist group. Do not rely on local attorneys. They are probably not familiar with the laws protecting whistleblowers and they are often subject to local pressures which may be against your interests.

If you have taken the first step but are short of being a hardcore whistleblower then keep a low profile. Don't make unnecessary waves. But don't kid yourself. With a few exceptions, management prizes loyalty above competence. Therefore, protect yourself against the possibility of future harassment. Keep good contemporaneous records, i.e. meeting notes, phone logs, calendar, diary etc. These carry a lot of weight in legal proceedings, much more so than accounts written months after the fact. Do not let false accusations of misconduct, especially written charges, go unanswered, but be polite, diplomatic, and respectful in your response.

However, if you elect to become a hard-core whistleblower, then elect it, don't stumble into it. Don't count on having your cake and eating it. Don't think you can continue defying the-powers-that-be and still enjoy the same lifestyle as before just because you are right or acting within the confines of your profession. Many whistleblowers have been destroyed by that kind of naivete (or professional arrogance).

Hard-core whistle-blowing is an entirely different game. Here the object is to protect yourself by keeping a high profile. Seek out the constituency that you are benefiting by your whistleblowing activities and work with them so that they can protect you as you help them. Learn effective techniques for dealing with the press, Congress, and other politicians.

To my mind, Martin Luther is the perfect model of the professional turned hard-core whistleblower. He was an ordained priest and a doctor of theology. In his professional capacity as a parish priest and professor of theology at the University of Wittenberg he raised certain moral and theological issues for debate. These received widespread publicity and were viewed as a challenge to the church by the hierarchy who proceeded to harass Luther. Rather than back down, Luther formed alliances with the public and the powerful north German princes who shared his views and defied the authority of the church. Protected by a bodyguard of German knights, he stood at the Diet of Worms, convened to drive him into submission, and spoke the words which can serve as the credo of the hard-core whistleblower: "Here I stand. I cannot do otherwise."

Luther recognized (what many whistleblowers fail to acknowledge) that having publicly confronted the-powers-that-be head-on he could never return to the life he led before. Instead, with the help of his allies, he carved out a new life for himself. In doing so he had to make many changes and develop many new skills but he took command of his life and never allowed himself

to became a victim.

Presented at the Fourth Scientific Assembly for Environmental Health, Environmental Health Network, Washington, DC, September 18, 1993.

End Notes [under construction]

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