

RACHEL'S HAZARDOUS WASTE NEWS #287

Providing news and resources to the Movement for Environmental Justice -- May 27, 1992

THE BREAKDOWN OF MORALITY

While he was in California recently, playing golf and eating caviar, Vice-President Dan Quayle announced that the cause of the recent riot in Los Angeles was a breakdown in morality among residents of south-central L.A.

Mr. Quayle did not mention it, but it is apparent that an even more pronounced breakdown in morality occurred among the nation's leaders during the previous 15 years as they encouraged white-collar criminals to raid the public treasury and thumb their noses at government regulations.

A Case in Point: Crooks in High Places

The largest hazardous waste incinerator in the world--called WTI--is currently being built in East Liverpool, Ohio. Local citizens have been fighting the facility for 12 years. They say it is located in a place that is simply not safe or even sensible. The huge furnace is being built right on the edge of the Ohio River, which provides drinking water to many thousands of people. The site is in the 100-year flood plain and is underlain by two high-quality aquifers (sources of potable water). The site has previously been contaminated with 200,000 gallons of toxic chemicals which are presently being cleaned up as construction of the huge new pollution-source proceeds. The incinerator sits in a valley where thermal inversion conditions occur frequently; a thermal inversion is a warm layer of air that hangs over a cooler layer, thus putting a "lid" on the sky, allowing a buildup of pollutants which would otherwise drift away. The 150-foot WTI smoke stack sits below a bluff, on top of which lie an elementary school and a business college about 1100 feet from the stack as the crow flies. Homes lie 400 feet from the stack.

WTI is licensed to burn 176,000 tons of hazardous waste each year. Legally it can emit 9400 pounds of lead, 2560 pounds of mercury, 199,600 pounds of sulfur dioxide, and 157,400 pounds of fine particles each year. Because it is licensed to burn pesticides, solvents, and leftover chemical weapons (Agent orange from Vietnam), it is a certainty that WTI will create and emit substantial quantities of dioxins and furans.

WTI sits on land owned by a government unit called the Columbiana County Port Authority, which was created by the Ohio legislature in 1977. In 1979 the Port Authority leased land to WTI *before the Port Authority even owned any land*. The Ohio Department of Transportation then bought land for the Port Authority using \$4 million of Ohio taxpayers' funds explicitly earmarked "to enhance the use of Ohio's rivers." WTI will discharge liquid wastes into the river but will not use the river in any other way; it is explicitly forbidden from transporting wastes on the river. How WTI will "enhance Ohio's rivers" is known only to highly-placed political tricksters. This is merely one among many irregularities Ohio governor George Voinovitch and his

cronies have been willing to overlook on behalf of WTI.¹

Federal officials are likewise playing fast and loose on WTI's behalf. When WTI sought a permit from U.S. EPA (Environmental Protection Agency), the application for the permit was signed only by WTI and not by the land owner, the Port Authority. This behavior was just plain illegal.

The nation's hazardous waste law is called RCRA [Resource Conservation and Recovery Act] and the RCRA regulations published in the Federal Register May 19, 1980 explicitly say that a "facility" includes "all contiguous land." Thus the "owner" of a "facility" explicitly includes the owner of the land.²

The preamble to the May 19, 1980 regulations explicitly spelled out *why* owners were required to sign a RCRA permit application:

Some facility owners have historically been absentees, knowing and perhaps caring little about the operation of the facility on their property. The Agency believes that Congress intended that this should change and that they should know and understand that they are assuming joint responsibility for compliance with these regulations when they lease their land to a hazardous waste facility. Therefore, to ensure their knowledge, the Agency will require owners to co-sign the permit application and any final permit for the facility.

Despite these regulations, in 1983 EPA Region 5 in Chicago accepted a RCRA-permit application signed by WTI alone without the Columbiana County Port Authority and subsequently issued a RCRA permit to WTI alone, a clear violation of EPA's own regulations.

Late last year, with local activists from three states nipping at its heels, Region 5 EPA tried to cover its tracks. EPA regional administrator Valdis Adamkus wrote to Senator John D. Rockefeller IV of West Virginia on December 2, 1991:

"It is true that the property upon which the facility sits is owned by the Columbiana County Port Authority," Adamkus wrote. "It is also true that the Agency was aware of that fact at the time the permit was issued, and that the permit was issued solely to WTI. In 1983 the Agency did not make the distinction between property owners and facility owners." Mr. Adamkus's letter to Sen. Rockefeller continues: "Since 1983, the Agency has changed its policy. It now issues permits to property owners and facility operators as co-permittees."

It is evident that there was no such policy before 1983 and no change of policy in 1983. When challenged to produce the earlier policy, Mr. Adamkus's staff could not.³

Having been caught in a violation of law, which Mr. Adamkus tried to cover up with a lie, EPA's next step was to break the law again by adding the Columbiana County Port Authority to the WTI RCRA permit even though the Port Authority has never applied to EPA to

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be put on the permit. EPA has no authority to issue a hazardous waste permit to someone who does not apply for one.⁴ In fact, the Port Authority has appealed EPA's decision, demanding that its name be removed from the WTI permit. It seems the Port Authority (a public body) does not want its name on a RCRA permit since it has no legal mandate to become a hazardous waste permit-holder.

A most unusual situation. Or is it? The San Francisco office of EPA (Region 9) faced a similar situation recently. Here EPA and the State of California had issued a permit to a cement kiln to burn hazardous waste. When the permit was up for renewal, local environmentalists pointed out that the landowner had never signed the permit application and refused to do so. EPA Region 9 refused to allow the RCRA permit to be renewed on grounds that the law requires the landowner to co-sign the permit application.⁵ In making its decision, Region 9 explicitly stated that EPA does not have the authority to waive its own rules, which is precisely what Region 5 is doing in the WTI case. According to the logic of this precedent, Region 5 should revoke WTI's permit because the land owner (the Port Authority) refuses to apply to become a party to the permit.

It seems clear that, in the case of WTI, EPA Region 5 broke the law, lied about it, then broke the law again trying to cover its tracks.

What could cause high ranking career civil servants and government attorneys to risk their careers, their pensions and perhaps their freedom for the benefit of WTI? We can only speculate, but we believe the answer lies in knowing the background of WTI.

WTI was initially a consortium of investors put together by Jackson Stephens who operates Stephens, Inc., in Little Rock, Arkansas, one of the largest investment banks outside of Wall Street, according to the *Wall Street Journal*. Mr. Stephens's personal fortune is estimated to be \$1.7 billion.⁶ He was a classmate of Jimmy Carter at the Naval Academy and was a heavy supporter of Carter in 1976 and 1980. Stephens profited tremendously by Carter's changes in natural gas policy. Because of Stephens, the Bank of Credit and Commerce International (known in the banking trade as the Bank of Crooks and Criminals) got a foothold in the American banking industry. The *Wall Street Journal* says it was Stephens who "suggested to BCCI in the late 1970s that it try to take over what is now Washington, DC's, biggest bank company, First American Bankshares, Inc."

In the 1980s, Stephens became a benefactor of the Republican party and a member of George Bush's financial committee. Stephens's wife, Mary Anne, served as Arkansas co-chair of the Bush for President Committee. Stephens himself donated \$100,000 to Team 100, a GOP group that collected funds for the campaign. In May, 1991, Stephens, Inc. donated another \$100,000 to the Bush dinner committee, according to the *Wall Street Journal* (12/6/91). Last year Vice-President Quayle flew to Augusta, Georgia on a military jet at a cost to the taxpayers of \$27,000. His purpose: a game of golf with Jackson Stephens.⁷

When Republican Governor George Voinevitch and EPA Region 5 administrator Val Adamkus, a Bush appointee, evade the rules to let WTI get away with murder, they signal a breakdown in morality that only the likes of Mr. Quayle could fail to notice.

—Peter Montague and William Sanjour

[1] These irregularities are spelled out in an 11-page memorandum April 30, 1992, by Ashley Schannauer, an attorney with the City of Pittsburgh, Penna., Law Department.

[2] See *Federal Register*, May 19, 1980; the regulations begin on pg. 33036; the definition appears on pg. 33074.

[3] Personal communication with Cleveland *Plain Dealer* reporter T.C. Brown May 14, 1992.

[4] EPA Region 5 claims that there are two precedents for issuing a RCRA permit to someone who has never applied for one: a case involving Ford Motor Co., and one involving Olin Corp. However, in these cases, both Ford and Olin signed the permit application, then tried to keep their names off the permit. EPA wouldn't let them do it. Columbiana County Port Authority refuses to sign the permit application, so the Ford and Olin cases aren't the same at all. See *In the Matter of: Ford Motor Company* and *In the Matter of: Michigan Disposal, Inc. and Ford Motor Company, RCRA Appeal No. 90-9 and 90-9A*, October 9, 1991 and *In the Matter of: Olin Corporation, Badger Army Ammunition Plant, RCRA Appeal No. 88-18*.

[5] John Chandler, "Waste Plant Is Threatened With Closure," *Los Angeles Times*, March 20, 1992, p.B3.

[6] Christopher Knowlton, "Of Bibles, Bonds and Billions," *Fortune* Feb. 12, 1990, pg. 112.

[7] Jim Dwyer, "Quayle and His Golf Outings: Putting One Over on the Taxpayers," *Atlanta Constitution* April 15, 1992. Thanks to Jan Caves of Fortson, Georgia, for this.

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