

Everyone's Backyard

CITIZEN'S CLEARING HOUSE FOR HAZARDOUS WASTES, INC.

Vol. 2 No. 3 — Summer, 1984

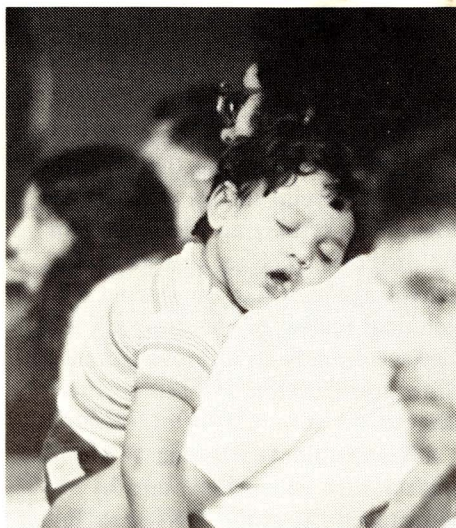
Citizens Winning Fight Over Hazardous Wastes. . .

by KEITH GORDON

A small but determined group of citizens in Fairmont, West Virginia are showing that people power can overcome greater resources of corporate and government power. At the same time, they have asserted the right of local communities to control their destinies, and prevent callous government policies and industrial indifferences from jeopardizing their families, homes, and the future of their town.

Citizens Holding Out for a Clean Environment, CHOE, has fought for five years against Sharon Steel Corporation, the U.S. E.P.A., and the West Virginia Dept. of Natural Resource (WVDNR). Though at the outset few in or outside the group had much expectation for success, this hardy band of active citizens won at every stage of their long effort.

Sharon Steel Corp., the 10th largest steel producer in the U.S., had operated a coke plant in Fairmont for over three decades. By the mid-seventies, the plant was in such poor condition, through neglect of maintenance, that it was nearly falling down. Many of the ovens were inoperable. Sharon had earned a reputation in the steel industry for being the dirtiest company in the country, and its coke ovens in Fairmont caused terrible water and air pollution. For years, the state and



He's the reason why we're fighting!

federal regulatory agencies were unable or unwilling to make Sharon make even minimal efforts to comply with clean air and water standards. Finally, EPA filed enforcement suits for hundreds of millions of dollars. In 1979, Sharon closed the Fairmont Coke Works to settle the air pollution portion of the federal suit. Though Sharon claimed it had to lay off 80 employees due to harassment from the government, the truth was the plant could no longer be operated economically, and Sharon had refused to make any improvements to make the plant safe.

When the plant closed, many residents in the vicinity noticed

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What Has CCHW Been Up To?

Landfill Moratorium is Working

Citizens working in Florida and New York, are drinking champagne in victory — the hauling of certain toxic chemicals from landfills in their state.

Pollution Probe, a Canadian environmental group, and Operation Clean in Lewiston, New York, have fought for years to make SCA Chemical Services stop the expansion and close their landfill operation. This long, hard fight is finally beginning to pay off with SCA agreeing to reduce the size of its proposed 25 acre site to three acres and not to bury certain chemicals, such as dioxins, furans, and PCB's, in the landfill. In addition, the *state* Environmental Commissioner has restricted the burial of toxic wastes in any NYS facility that can "be safely destroyed or neutralized by an appropriate high technology." Regulations in the state of Florida are also being proposed to stop the landfilling of toxic wastes.

Victims Compensation Meeting II

Our December issue discussed our CCHW meeting that brought together victims of toxic waste problems, environmental lobbyists, scientists, lawyers and congressional staff. Victims listed 31 needs a compensation program must include and discussed proposed programs, which they decided were inadequate to meet

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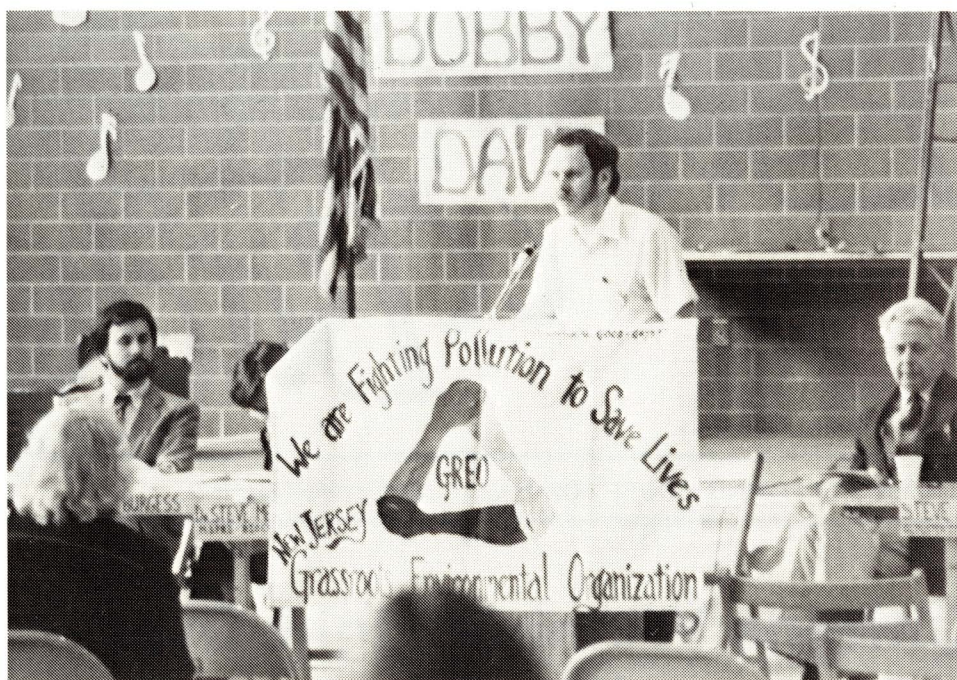
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remarkable improvements in their health, especially those with chronic respiratory problems like emphysema, bronchitis, asthma, and allergies. This was the first time many residents connected the air pollution from the coke plant with their own health. Their doctors had failed to tell them the risks. Their relief was short-lived, as Sharon announced that it planned to build a new coke plant on the same site. This sparked the formation of CHOKe, a group of neighbors concerned Sharon would repeat its past history. Local surveys confirmed high numbers of cancer and lung disease in the area. Slowly, these few residents began asking hard questions of the company and its promoters.

At first, CHOKe members were extremely unpopular in Fairmont, as it seemed everyone else cared only for the prospect of new jobs from the building and operation of the plant. CHOKe persevered in spite of ridicule and intimidation, and embarked on its own investigation of the technical, scientific, and legal issues involved in the proposed new plant.

It did not take long for this research and vigilance to pay off. It was discovered that Sharon had amassed half of a million tons of toxic wastes from the old operation that were in ponds, piles, and landfills. These wastes included acids, phenols, arsenic, heavy metals, benzo-pyrenes, coal tar, and other toxic or carcinogenic materials that were washing off the site into the Monongahela River, a drinking water source for eight communities downstream. Before Sharon could even begin to do anything about its new plant plans, it had to resolve its hazardous wastes problem, and settle the remaining half of the EPA water pollution suit. The WVDNR proposed issuing a permit to allow Sharon to bury the wastes in "secure landfills" on site. Sharon had hired its own engineers to design the plan, and discussed it only with DNR and EPA.

CHOKe demanded that landfills be presented for a public hearing, and began a crash course in self-education on landfill design problems. At the hearing CHOKe



Over 100 groups, churches and communities took part in the Nationwide Day of Action on May 5th. Some groups extended their "celebration" of the Day of Action over several days, and in some cases weeks, surrounding the May 5th date. Here, the Grassroots Environmental Organization (GEO) of New Jersey, held a "People's Hearing" on hazardous waste and municipal waste issues in their state. Jim Hilbert presents testimony on the dangers and environmental hazards of municipal incinerators.

mobilized a strong showing, with every speaker opposing the plan, and presented several inches of written documents criticizing the defects in the proposal. Neither the state nor federal agencies had conducted a technical review of the design; yet they were ready to approve it and allow construction without further ado.

CHOKe blocked the hasty permit process with its critique, and by pointing out that the DNR had failed to follow its own Hazardous Waste Law. Then CHOKe stopped the EPA attempt to settle (more like sell out) on its enforcement suit by accepting the same unexamined plan for landfills. CHOKe by now found out and publicized that *there was no new coke plant coming to Fairmont*. Sharon had cooked up this scheme to convince everyone to go along with the "cleanup," which was little more than a coverup of its waste problem. This revelation marked a major change in CHOKe's local reputation. The City Manager and Council were angry about being had by Sharon's false promises of illusory and began to listen to CHOKe's concerns. The citizens in the group were no longer considered "crazy environmentalists"

The jobs issued was completely turned around when CHOKe pointed out that no "clean" industry would invest in construction of new plants in a town with a toxic time bomb that threatened to make the community as unattractive as Love Canal.

As a result of CHOKe's new credibility, and a concerted lobbying and media campaign, CHOKe convinced the City Council to pass an ordinance declaring the Sharon site a public nuisance. Then the City intervened in the EPA enforcement suit and helped CHOKe prevent the irresponsible settlement proposal the government had reached with Sharon. Later, as independent studies of the disposal scheme were conducted by EPA, its consultants and DNR, most of CHOKe's criticisms were confirmed, and both EPA and DNR denied Sharon's applications for permits to construct the landfills. Sharon is now appealing these decisions. In the interim, nothing was done to halt the continuing contamination of the groundwater and river from this site. CHOKe's demands for temporary remedial measures were ignored.

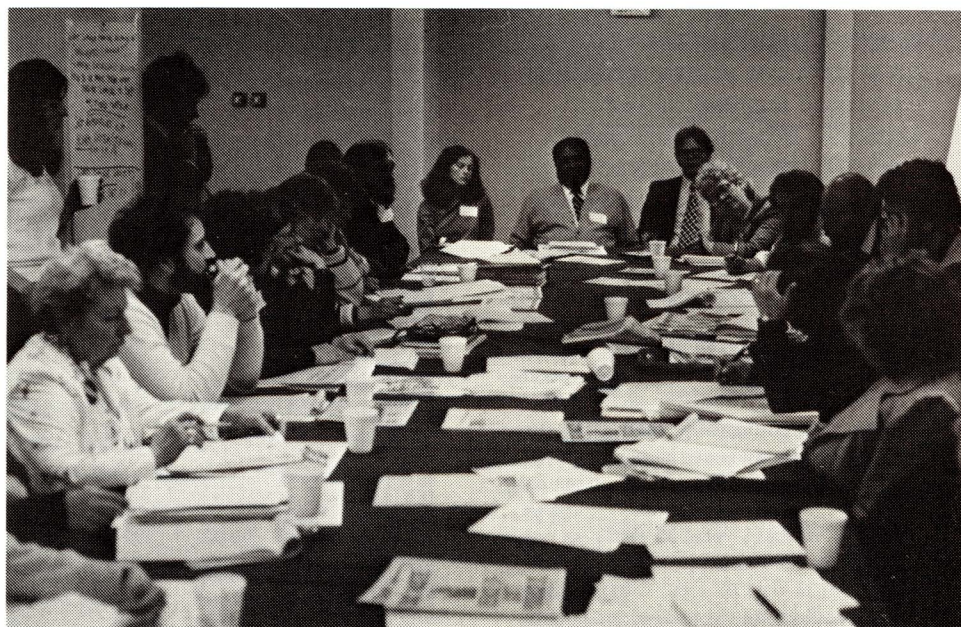
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most of their 31 needs. (Minutes of this meeting are available at \$. , our copying costs).

A second meeting was convened on March 9th to brainstorm ideas. We came up with:

- Key issues which must be in any compensation plan, including:
 - Emergency response, funds to address short term immediate needs.
 - Long term compensation for children and adults exposed now but who may not develop problems until well in the future.
 - Full participation of victims as equals, in all decision-making affecting and involving their communities.
 - Control of the trigger by the residents of the community rather than a bureaucrat deciding what must be done.
- Participants planned how to respond in an emergency to environmental contaminations.
 - Emergency action
 - Obtaining technical/expert assistance
 - Further evaluation/study
 - Establishing a citizen's registry to keep track of exposed victims.
- Emergency response plans must:
 - Remove people from risk.
 - Collect data to help make decisions about what must be done.
 - Provide trigger mechanisms to achieve ultimate goals (clean-up, relocation, etc)
 - Provide information to help decide on a just compensation system.
- Participants were skeptical that any administrative system controlled by bureaucrats and politician could meet the needs of citizens exposed to toxic chemicals.
- Presentations on two major compensation settlements, one in and one out-of court, were given.
- Victims felt an additional meeting was needed to develop more specific details on how a response and compensation program could actually work.



LEADERSHIP ROUNDTABLE ON VICTIMS COMPENSATION/EMERGENCY RESPONSE: grassroots leaders from New Jersey, Florida, Alabama, California, Connecticut, Vermont, Massachusetts, Louisiana, Pennsylvania work with staff from national environmental groups and labor unions at CCHW meeting.

- Victims clearly must be able to get emergency assistance with their immediate needs. Although long term compensation needs clearly exist, how to best obtain such compensation was not defined.
- Victims defined general principles that must be part of any compensation plan.

More Roundtables

CCHW is also planning on having meetings to discuss hazardous waste issues. If you/your group is interested in participating, please contact us. We will be discussing: incineration, resource/recovery plants, recycling, landfills (including both municipal and hazardous wastes), deep-well injection systems, stabilization processes, and reduction.

For each issue it is critical to have the participation of communities with such facilities near their homes. The first person, hands-on experience, that can be provided to the group discussion is vital. Please contact the Clearinghouse and let us know what issue you are working on and whether you would like to be part of this group. Funds for travel can be arranged.

California Leadership Development

CCHW with Concerned Neighbors in Action held a Leadership Develop-

ment Conference May 5th and May 6th in California. What a success! People joined together from different communities in Southern California to learn from each other, and from scientists, and health professionals.

The conference was lively, participatory, with group problem-solving and active role playing. Stephen Lester, CCHW's Science Advisor, led a series of workshops aided by Dr. Ruth Heifitz, Dr. Beverly Paigen, and Amanda Hawes discussing toxicology, health related affects due to exposures to toxic wastes and legal strategies. Will Collette, Penny Newman, DeDe Hapner and Lois Gibbs held workshops to discuss organizing your community, tactics, strategies and fundraising ideas. Southern California may never be the same. Government and industry had better watch out.

Groups of leaders in other states have asked us (you too are invited to ask) about working with CCHW to set up Leadership Development programs in their areas. All it takes to start is a local steering committee willing to take responsibility for starting and following through. For more information call us at (703) 276-7070. □

Organizing Toolbox: Research by WILL COLLETTE

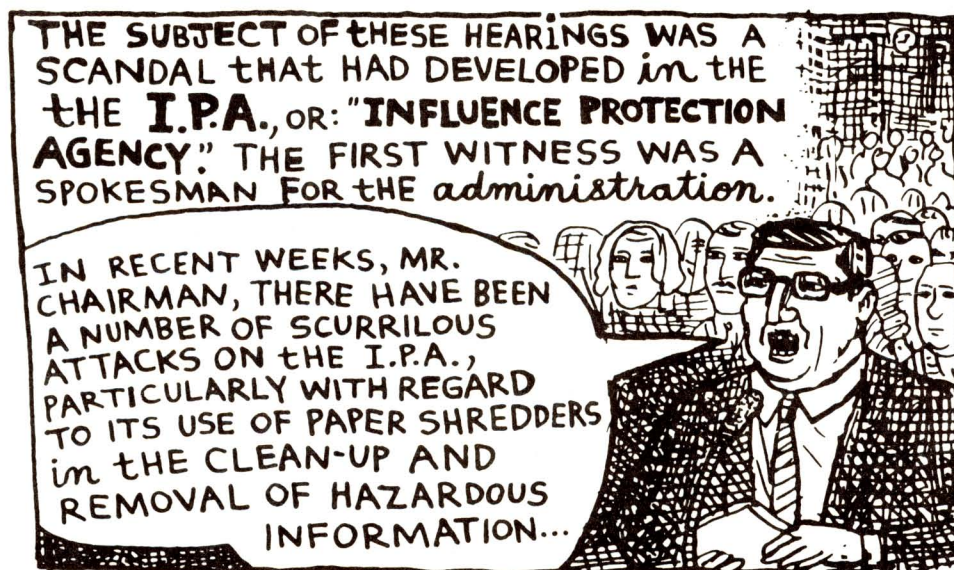
"Research is digging facts. Digging facts is as hard as mining coal. It means blowing them out, butting them, picking them, shoveling them, loading them, pushing them to the surface, weighing them and then turning them loose on the public for fuel for light and heat. Facts make a fire which cannot be put out."

—John Brophy, United Mineworkers (1921)

You do research to:

- Gather facts to weaken your opponent's position (Examples: They've been breaking the law; They really DO have the money for clean-up or the authority to do what you want).
- Dispel fear and doubt (Example: Their threat to move their factory is bogus they are so heavily invested in your town they'd go bankrupt).
- Get people angry (Example: The president of your local dumper, Chemikill Industries, makes \$525,000 a year, living in the lap of luxury while his company poisons your town).
- Identify and focus on the right targets: WHO's Responsible? WHO's got the power to give us what we want?
- Map out good places to recruit members. Sit down with a map and do a "community analysis" of where in the community people may have a reason to join your group (for example, because they live or work near the source of the problem).
- Pinpoint your opponent's strengths and weaknesses and, while you're doing that, find out your own. (Example: Where is your opponent getting the money to support the waste site? From a bank or a government bond?)
- Build leadership by spreading the work around. When people uncover facts, they "own" them — it builds their determination and will to win.

Much has been written about the mechanics of research and the



attitude you need to do research for organizing. Invest in a couple of the organizing research guides listed at the end of this article. But, first understand that your research **MUST** be part of an organizing strategy. You are not doing this research to gain general knowledge, but to **WIN A CAMPAIGN**. In a lot of ways, organizing research is more like "military intelligence" (a contradiction in terms?) than like research for a high school term paper.

Some people figure, "We don't need a lot of research if we've got enough people." In fact, they're right! You need people more than you need facts to win. But you'll be stronger if you marshal your facts as well as your members. Or you can err in the opposite direction.

It's easy to become "slaves" of research, delaying action until "we gather just a little more information," or thinking, "Once this stuff gets in the paper, we're sure to win." This pitfall taken to the extreme is the feeling that you have to become an expert before you can do anything.

The answer to, "How much research is enough?" is another question: How much research do you need to organize enough people to win? Research is a tool, not an end product.

Some Tips for Researchers.

Only believe what you see with your own eyes and have your eyes examined regularly." In organizing research, much of what you collect will be rumor, hearsay and unsubstantiated. Wherever possible, **GET IT IN WRITING**. . .and **GET IT CONFIRMED**.

- When you use the phone, know its limitations. Your source can lie (I'm sorry Mr. Dioxin is in conference. . .") hide emotions and fail to volunteer information you might uncover when you go in person.
- Inside sources can be great. . .if you can find them and win their confidence. My best "Deep Throats" are mid-level bureaucrats who were passed over for promotion or otherwise don't like their bosses or agency. Always protect your sources.
- Know the rules for access to information and use them. Generally the public has a right to information. But in most bureaucracies, the only power the lower level bureaucrat has is the "power to obstruct" plus a general suspicion of anyone asking out of the ordinary questions.

LEGAL CORNER

By RON SIMON

Q. *I live at a Superfund site. The Government has sued the operator of a local dump to require clean-up. Someone suggested to me that our group "intervene" in this litigation. What does that mean?*

A. The legal term "Intervention" refers to a situation in which a 3rd party participates in litigation that already exists between two other parties. Thus, "intervention" is the correct term to describe your desire to become an actual participant to litigation that already exists.

This definition is important to distinguish a particular legal posture from other options that may be open to you. A person can file a separate lawsuit against either or both parties either before or after they have gone to court without "intervening" in the existing case.

If you don't want to file a separate lawsuit or intervene in an existing one, you can take advantage of what is happening. Once a case has been filed in court, much of what happens is public record and you can find out about it without becoming a party. You can attend hearings and see and copy papers filed in court.

Intervention has some very clear advantages. An intervenor is an actual participant in the case. Not only will you know everything that goes on but you will be able to speak out and have your views considered. As the case goes on, a variety of decisions may be made about methods of clean-up and other activities. The government's view of what is needed and/or is best is not necessarily the same as your view. Intervention provides the opportunity to have your views considered by the court.

Even if you are considering an independent lawsuit against responsible parties, your participation in the government's suit can provide information and input into the solution. Since the government's actions are so important, this opportunity should be very carefully considered. It provides a way to apply pressure, get information and keep things moving in a desired direction.

If you decide not to intervene and become a party to the lawsuit, this should not stop your efforts to be heard and participate. under 28 C.F.R. §50.7 you have 30 days to comment from when a settlement agreement is published in the Federal Register. Government officials may tell you that they can't discuss the case with you since it's very delicate or it's "in litigation." (In fact, the Freedom of information Act allows the government to keep certain documents prepared in litigation secret from you). You should expect this response but not settle for it. You must use all of your political efforts to participate. The alternative is to have your rights, health, and safety effected without you having any say-so at all which strikes me as a very bad idea.

In some instances, the government agency which is bringing the legal action will be enthusiastic about your participation. Some officials have realized that citizens have the best information about a site. In addition, active participation by citizens helps the government force the offending party to take the desired action.

Ron Simon is special counsel to the Citizens' Clearinghouse for Hazardous Waste. He is on the faculty of American University Law School and represents citizens around the country exposed to hazardous chemicals. He represents workers who are exposed to chemicals in the workplace. He is also counsel to the White Lung Association (asbestos victims).

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- Use routine information sources and tools. Keep a newspaper clipping file. Get to know your local reference librarian, the journalists who cover environmental stories, academics and students in "Public Interests Research Groups" (PIRG'S) at the university.
- Talking to people is the most effective way to collect intelligence.
- Make a plan. What do you want to know? Why do you need to know it? Where will you find it? Don't lose sight of the issue for which the research is conducted.
- Your research is useless if it is (a) too complicated to be distilled into a simple fact sheet or given to leaders in briefing; (b) too late to be used in the organizing campaign; (c) unfocused or off-the-point, or (d) wrong.
- Let people in on the fun, don't underestimate them.

No one, remember, took the housewives of Love Canal seriously either when they started an indepth health study on the effects of toxic chemicals on their community. It's amazing what you can do with a little common sense, some street smarts and a determination to fight for what is yours.

Sources:

- "Piercing the Corporate Veil," CCHW \$1.95
- "Research for Action," CA Institute for Rural Studies, Box 530, Davis, CA 95616, \$7.50
- "Tactical Investigation," Train, 10129 Thornwood Rd., Kensington, MD 20895 \$1.75
- "Open the Books," Midwest Academy, 600 W. Fullerton Ave., Chicago, IL 60607 \$4.50
- "Manual on Corporate Investigations," AFL-CIO, Food and Beverage Trades, 815 16th Street, Washington, D.C. 20006 \$10.00
- "Action Research," Institute for Social Justice, 4415 San Jacinto, Dallas TX 75204 \$4.00
- "Researching Corporations," National Training and Information Center, 954 W. Washington Blvd, Chicago, IL 60607 □



organize!

EXEMPTIONS, *From page 8*

RCRA and Superfund. Two have significant impact on public health: First, many industries that generate hazardous wastes are *completely* unregulated or exempt from regulation and secondly Interim Status facilities are essentially unregulated "permitted" sites.

Exemptions from Regulation

When EPA was writing the regulation for RCRA, the agency, in its infinite wisdom, saw fit to allow many industries to treat, handle or dispose of their wastes any way they chose to. They totally exempted certain wastes from regulation: mining and agricultural wastes; drilling waste from gas, oil or geothermal energy production; fly and bottom ash from burning coal or other fossil fuels; waste oil; household garbage; and research and hospital laboratory wastes.

EPA also "thought it best" to exempt small quantity generators and allow all companies who generate less than 1000 kilograms (2200 lbs) of hazardous wastes each month to dispose of wastes as they please. When the Congressional Office of Technology Assessment (OTA) evaluated this decision, they found that: "EPA's decision was not based on any detailed evaluations of several types of risks associated with exempting small generators. . . EPA's exemption policy was apparently based on a cost/benefit approach. . . The benefit of regulating waste from small generators being insufficient relative to the cost of regulation." However, consider the total quantities of wastes generated by this exempted group: Estimates range from 5% (EPA) of the total hazardous wastes generated in the US annually, to roughly 50% (the Natural Resources Defense Council). OTA concluded: "Several hundred million tons of wastes are now exempt annually that pose significant hazard."

When you think about where these small generators and other exempt industries dispose of their wastes, it is easy to understand OTA's concerns. Most end up in sanitary or municipal landfills or are discharged directly into sewer systems. Most of these sanitary landfills are built without



An interim status facility (photo courtesy of Marie Gilstrap)

liners, leachate collection systems, and lack adequate monitoring. Combine this with the fact that small generators do dispose of benzene, vinyl chloride, chloroform and other toxic chemical wastes and the unnecessary public health risks posed by this exemption become clear.

Congress is currently considering lowering this exemption from 1000 to 100 kg/month as part of it's evaluation of the effectiveness of RCRA. Hopefully congress will show more wisdom than EPA and lower this number.

Interim Status Facilities

One area that is not likely to change is the lack of regulation of "interim status" waste site facilities. As of November 19, 1980, all existing hazardous waste facilities were automatically given a temporary permit to operate. These facilities were then considered by EPA to be "interim status" facilities, exempt from EPA's regulations. No safety requirements and few standards for operating were imposed on these facilities, even though these facilities clearly were not designed nor operated to EPA's specifications. EPA's land disposal regulations do require that facilities are designed so that they do not leak for 30 years, but if they do, **there is no requirement to do anything about it!** The facility operator is not responsible for stopping or fixing the leak. Furthermore, the facility operator's responsibility under RCRA stops at his

property line. If a landfill, surface impoundment, deep well injection or storage pile leaks, the owners need not do anything about it, even if contaminants are found in the monitoring wells on or off site! In fact, they don't even have to stop dumping or change how they operate in any way. This is exactly what is happening in Naugatuck, CT where a leaking landfill has been placed on the Superfund list but the owner continues to operate the site.

The consequences of these and other RCRA inadequacies is that permitted sites, interim status sites in particular, are likely to become future Superfund sites (see insert) and potentially other Love Canals. Changes in RCRA are being considered, but the general sentiment of the politicians is one of indifference: these details are too complicated! How will these changes win me any votes!? Who cares, leave RCRA alone.

The communities affected by these wastes, groups such as CHOKe in West Virginia will have to be the ones to bring these problems to public attention. But this is not new. Afterall, if it weren't for Love Canal and other nightmares, there'd still be no Superfund or RCRA regulations.

So the burden is on the local communities to bring problem sites to the attention of the bureaucrats and politicians and force them to do their jobs, to protect our health and well-being. Together we can do it, we've done it before. □

More Love Canals?

The Congressional Office of Technology Assessment (OTA) has recently released a report which evaluates the likelihood that RCRA regulations will prevent future Love Canals. The Report, "Groundwater Protection Standards for Hazardous Waste Land Disposal Facilities: Will They Prevent More Superfund Sites?"; April 6, 1984, provides excellent technical analysis and scientific documentation of the inadequacies of the regulations and the resulting problems posed to nearby communities. OTA concludes "where groundwater is at risk, RCRA *cannot* prevent land disposal sites from becoming uncontrolled sites. The problems... are so numerous and serious that they cannot compensate for what has been found to be ineffective and unproven land disposal technology." A must for community groups. Available from CCHW or OTA, Washington, DC 20510 (202) 226-2195



Everyone's Backyard is published by the Citizen's Clearinghouse for Hazardous Wastes, Inc. CCHW is a nonprofit, tax-exempt, public interest center which primarily focuses its work on grassroots environmental organizations across the nation.

Lois Marie Gibbs, PRESIDENT

EDITORIAL BOARD: Will Collette, Lois Gibbs, Laurie Hofheimer, Barbara Kollander, Steven Lester, Iris Rothman, and Ron Simon.

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CCHW
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703/276-7070.



Madelyn Hoffman from Jew Jersey GREO and Dr. Joseph Highland from Princeton University testified before the U.S. House of Representatives in April for strengthened Superfund legislation.

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CHOKÉ returned to the political process. In June 1984, we won unanimous passage of a city ordinance banning the permanent storage or disposal of hazardous wastes within the city limits. This law imposes criminal fines upon violators. Sharon immediately sued to overturn the local law, claiming that the city had no business interfering with what Sharon and the State/Federal agencies were involved with. This legal attack was turned aside in the County Court, and is soon to be appealed to the State Supreme Court (and from there probably to the US Supreme Court). If CHOKÉ and the city

prevail, they will establish the need and right for local control where the state and federal agencies have proven themselves to be impotent or unresponsive to local needs.

The lesson from the Fairmont experience is that citizens cannot sit back and rely on government agencies to protect their communities. Instead, they must get involved, become informed, keep active, and be creative in shaping the right solution to fit their own situation. □

Keith Gordon is a public interest attorney and member of CHOKÉ, whose leader is Rosemary Patrick, 211 Hoult Rd. Fairmont, WV 26554 (304) 363-9214.

YES!

I want to fight the improper disposal of toxic wastes and help suffering families. Include me as a member of CCHW. Enclosed is my tax-deductible donation.

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*Individual donors of \$50 or more receive a free, autographed copy of *Love Canal: My Story* by Lois Marie Gibbs. All members receive CCHW's quarterly newsletter, *Everyone's Backyard*.

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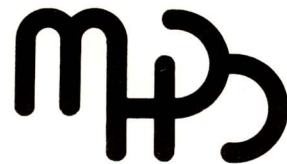
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UNCONTROLLED HAZARDOUS WASTE — Does Anybody Care?

In the wake of Love Canal, Times Beach, MO., The Valley of the Drums, it would be comforting to think that these toxic nightmares could not happen again. One would expect the government to do everything possible to avoid any recurrence. Afterall, they claimed Love Canal and other deathly sites were due to "poor management" or "the lack of regulations".

But what really has been done to prevent more Love Canals? EPA has written regulations, Resource Conservation and Recovery Act, (RCRA) passed in 1976 by Congress to control hazardous wastes; more recently in 1980, Congress passed Superfund to provide funds for cleanup. So with RCRA and Superfund all our troubles are behind us right?! Wrong! There are too many loopholes in the "safety net" of both

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