1997-98 SESSION COMMITTEE HEARING RECORDS

Committee Name:

Senate Committee on Agriculture and Environmental Resources (SC-AER)

Sample:

- Record of Comm. Proceedings
- 97hrAC-EdR_RCP_pt01a
- 97hrAC-EdR_RCP_pt01b
- 97hrAC-EdR_RCP_pt02

- Appointments ... Appt
-

- Clearinghouse Rules ... CRule
-

- Committee Hearings ... CH
-

- Committee Reports ... CR
-

- Executive Sessions ... ES
-

- Hearing Records ... HR
- 97hr_sb0008_pt02

- Miscellaneous ... Misc
-

- Record of Comm. Proceedings ... RCP
-

Kidney Island --- (Renard Isle)

Eleven years ago, Brown County, the U.S. Army Corps of Engineers and the DNR officially proposed to more than triple this 55 acre dump in the Bay --- to 181 acres. It would hold several years worth of contaminated sediments dredged from the Green Bay Harbor shipping channel. Our main concerns:

- **Toxic Dump in the Water** --- This island will hold 42,000 pounds of PCBs --- plus large amounts of furans, dioxins, mercury, lead, pentachlorophenol, and hundreds of other persistent toxic chemicals which cause serious health concerns for fish, wildlife and humans. Many chemicals, like mercury and lead, will never break down.

- **Guaranteed to Fall Apart** --- This island is not built to last. It has a 50 year design life and is built to withstand only 20-year storms. It is exposed to the full strength of Northeast storms, combined with freezing and thawing, ice shoves and constant wave erosion. It will require constant repairs and upkeep for thousands of years into the future --- to prevent spilling the toxic chemicals into the Great Lakes system. This spillage could undue years of expensive clean-up work. The island is a poor, temporary solution. A permanent solution is needed instead.

- **Blocks Circulation Patterns** --- The island was placed at a pivotal point, where the Fox River flows into the bay and currents turn to follow the East Shore. Historically, this current kept the East Shore flushed and clean of sediment --- leaving sandy or rocky beaches. Now the island blocks this current, creating stagnant pockets at Bay Beach Park where large toxic mud flats are forming offshore. Tripling the island will create even greater stagnation and more extensive mudflats along the East Shore. This ruins our hopes of re-establishing Bay Beach as a public swimming beach. By deflecting concentrated Fox River pollution to the west, the island also threatens fish spawning areas in mid-Bay and along the West Shore. Stagnation may cause oxygen deficiency--- leading to fish kills.

- **Toxic Trap for Wildlife** --- During the many years it takes to fill the island, the pond and mudflats within the confining walls will attract wildlife, particularly birds, to nest and feed on trapped fish and insects. Because the dredging will stir up the sediments, these trapped fish and insects will be more contaminated than wildlife outside the walls. The existing island has attracted many beach-nesting birds --- the expansion will make this problem worse.

- **Local Taxpayers Liable for High Costs** --- Once the island is complete, the U.S. Army Corps of Engineers will turn it over to Brown County, leaving Brown County property tax payers covering all future maintenance costs. This is an enormous liability, stretching centuries into the future.

- **Corporate Welfare at Taxpayer Expense** --- Most of the expenses arising from this sediment management are paid for by taxpayers. Little or nothing is contributed by the polluters who created this toxic contamination problem. It's ironic that Fort Howard Corporation, which is one of the main beneficiaries of this port, is also one of the main polluters of the sediments. Such polluters should be held accountable for these costs.

- **Harbor's Future Questionable** --- The Port of Green Bay is small and serves relatively few businesses when compared to major ports like Duluth/Superior or Milwaukee. The Bay is not a natural Great Lakes port. 17 miles of channel must be dredged regularly to bring in big ships, and even then, the channel is authorized only to 24 feet, not the standard depth of 27 feet. This means many ships arrive partly loaded to create a shallow draft, affecting the economics of shipping at this harbor. Furthermore, the Green Bay Harbor is a detour off the main shipping lines, because ships must navigate past Door County peninsula. Given the high cost of channel maintenance and the low returns, the long term future of the Port is bleak. Many businesses now served by the Port could operate well with truck and rail transport. Many already do. Does continued channel dredging make economic or environmental sense?

- **Valuable Resource at Stake** --- The Great Lakes contain 20% of the world's fresh surface water. It is a priceless source of drinking water, and domestic and industrial supply water. The fisheries of Green Bay alone have an estimated value of approximately $50 million annually. The recreation and tourism industries employ thousands of residents. The Bay and Lake Michigan are critically important wildlife areas. This resource deserves careful long-term stewardship for continued use by future generations.

Possible Answers

1. Build a secure, temporary, monitored, retrievable storage area for these sediments, on dry land.
2. Pursue an aggressive research program to develop safe detoxification technologies.
3. Treat the sediments, once a safe detoxification technology is proven.
4. Require those who caused the contamination to pay all expenses. Don't put the burden on taxpayers.
5. Remove the existing island and treat the contents just as the new dredgings are treated.
6. Close the Port, allow the channel to fill in, and concentrate clean-up efforts on the worst toxic hotspots in the Fox River and Bay. It doesn't make sense to mix cleaner sediments with highly contaminated hotspot sediments.

This factsheet prepared by Clean Water Action Council of N.E. Wis., 2220 Deckner Avenue, Green Bay, WI 54302 --- July 7, 1995

Thurs. MJS Nov. 27 '97

Town official accuses DNR of violating its own rules

Agency pumps 1.25 million gallons of waste into wetland

By Don Behm
of the Journal Sentinel staff

Town of Osceola officials say the state Department of Natural Resources violated its own regulations by failing to notify local residents before pumping more than 1 million gallons of liquid waste into a wetland at Long Lake Recreation Area in eastern Fond du Lac County.

Now residents and officials fear the waste could contaminate water wells with nitrates and the popular recreational lake with bacteria and unneeded nutrients, Town Supervisor Bill Bialk said.

Melting snow and heavy spring rains also could fill the wetland to its brim, flooding the adjacent low-lying road and sending even more of the waste toward the lake, he added.

"We have several shallow wells here," said Bialk, who lives in a subdivision just north of the wetland.

Skimming the liquid waste off the top of two aging sewage ponds at the recreation area was done from late September to late October as the first step in improving the campground's sewage system, said Jerry Leiterman, superintendent for the northern unit of the Kettle Moraine State Forest.

About 1.25 million gallons of the so-called effluent, which he described as a clear

Please see **WASTE** *page 4*

liquid, was poured into the 30-acre wetland. Remaining sludge will be excavated in spring.

Leiterman acknowledged the public was not informed of the wetland discharge, a step that DNR regulations require of municipalities or industries if there would be significant interest in a proposed change in permitted activities.

Pouring the effluent into the wetland was a big change, because the recreation area is not permitted to discharge to surface water. The old lagoons were designed so that liquid either evaporated or seeped into ground water.

Even so, Leiterman and other DNR officials determined there would be little interest in the agency's actions, and the plan was approved without a hearing or published notice.

"With hindsight, it would have been good to notify the residents," Leiterman said.

But Bialk finds it hard to believe that DNR officials were not aware of local concerns. He and several others had opposed the department's plan to spray liquid effluent from the ponds onto cropland in the future.

"I was at two public meetings on the new waste system to oppose the spraying. They never said they would pump this waste into the wetland," Bialk said. "I would have opposed that, too.

"Now they tell me it was the cheapest thing to do."

But the end result is that the waste has been moved closer to the private drinking water wells, Bialk said.

The transfer was less costly than shipping the effluent to a sewage treatment plant, said Leiterman. Though no cost estimate was prepared, DNR officials decided it was not feasible to load a steady stream of tanker trucks and send the overweight vehicles onto Division Road, the boundary between Fond du Lac and Sheboygan counties.

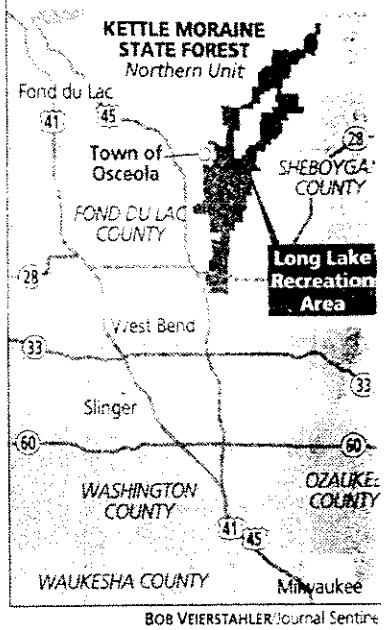
Bialk first learned of the wetland discharge on Nov. 16, when a hiker called him to complain of a sewage stench in the wetland, he said. Bialk said he went to the site the next morning and saw an unusual amount of water standing in the wetland.

He also saw a steady stream of wastewater leaking through sandbags that had been piled on both sides of a culvert pipe that had previously drained the wetland into a intermittent creek. The creek is a tributary of Long

Waste

Town upset at DNR

Town of Osceola officials are questioning why the Department of Natural Resouces didn't notify them that it was dumping more than 1 million gallons of waste into a wetland at Long Lake Recreation Area.



BOB VEIERSTAHLER/Journal Sentinel

Lake, he said.

After contacting Leiterman Bialk collected water samples a three locations downstream o the wetland and drove them t Sheboygan to be tested for bac teria and nitrate. He had not re ceived the nitrate results thi week, but the analysis foun each sample contained fec bacteria that would have com only from human or anima waste.

Leiterman went. out to th wetland on Nov. 17 in respons to Bialk's call and could smell sulfur odor, which he says gen erally comes from decayin plants.

A small leak through th sandbag barrier prompted hir to order soil to be piled in fror of the culvert to ensure th drain was fully plugged, Leiter man said.

The small amount of wast that leaked out of the culver likely will not harm the creek c lake, said Nancy Gloe, a waste water hydrogeologist with th DNR in Milwaukee. Gloe ha reviewed the discharge plan an was surprised to learn of th standing water in late Novem ber.

"We did not anticipate stanc ing water in November," Glc said in reference to the effluen "We clearly overestimated th ability of the wetland to absor the water."

ENVIRONMENTAL PROTECTION UNIT CASES ASSIGNED
NOVEMBER 1997

1997															
	Non-Environmental	Air	Fish & Game	Hazardous Substance/ LUST	Hazardous Waste	Zoning	Solid Waste	Solid Waste (Tire)	UST	Water Supply	Water Pollution/ Wastewater	Water Reg.	Multi-Media	Other Environmental	TOTAL
CIVIL ENFORCEMENT	4	7*		4	1	7*	3	3	4	3	6	7	6	2	57
CRIMINAL	3	2			6										11
CIVIL DEFENSE	1	1	2	1		4	1				4	10		1**	25
TOTAL	8	10	2	5	7	11	4	3	4	3	10	17	6	3	93

* (2) Amicus: Air; Zoning
** Other Environmental: Forestry, FERC, SERB/EPCRA
Multimedia: Hazardous Waste & Solid Waste
(2) Hazardous Waste & Hazardous Substance Spills
LUST & Hazardous Substance Spills
Water Reg. & Water Pollution

1996															
	Non-Environmental	Air	EPCRA	Hazardous Substance	Hazardous Waste	LUST	Solid Waste	Solid Waste (Tire)	UST	Water Supply	Water Pollution/ Wastewater	Water Reg. & Zoning	Multi-Media	Other Environmental	TOTAL
CIVIL ENFORCEMENT		27		28		1	2	8		1	10	18	5	9	109

CRIMINAL		1			1						3				5
CIVIL DEFENSE		1		5	1		2	1		1	5	35		5	56
TOTAL		29		33	2	1	4	9		2	18	53	5	14	170

*MULTI MEDIA: SOLID WASTE & WATER POLLUTION
HAZARDOUS WASTE & WASTEWATER
HAZARDOUS WASTE & WASTEWATER & HAZARDOUS SUBSTANCE SPILLS
HAZARDOUS SUBSTANCE SPILLS & WATER SUPPLY
HAZARDOUS SUBSTANCE SPILLS & AIR POLLUTION

1995

	Non-Environmental	Air	EPCRA	Hazardous Substance	Hazardous Waste	LUST	Solid Waste	Solid Waste (Tire)	UST	Water Supply	Water Pollution/ Wastewater	Water Reg. & Zoning	Multi-Media	Other Environmental	TOTAL
CIVIL ENFORCEMENT	1	14	1	21	13	3	4	1		3	13	17		5	96
CRIMINAL	4	2			5			1			6		1	1	20
CIVIL DEFENSE	1	8		4 (PECFA)	2	1	4	2		1	4	13	1	8	49
TOTAL	6	24	1	25	20	4	8	4		4	23	30	1	14	165

1994

	Non-Environmental	Air	EPCRA	Hazardous Substance	Hazardous Waste	LUST	Solid Waste	Solid Waste (Tire)	UST	Water Supply	Water Pollution	Water Reg. & Zoning	Other	TOTAL

CIVIL		6		6	12		5	5	14	1	7	18	4	78
CRIMINAL	1	4			8						1		1	15
DEFENSE	4	1		4	1		13			3	3	13	7	49
TOTAL	5	11		10	21		18	5	14	4	11	31	12	142
1993														
CIVIL		13	4	8	6	8	3	3			11	26	6	88
CRIMINAL		4			7						4			15
DEFENSE		12		2	6		14				5	13	2	54
TOTAL		29	4	10	19	8	17	3			20	39	8	157

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Minergy case may have ripple effect

By Cliff Miller 12-8-97
Post-Crescent Madison Bureau

Will the project be halted or should opponents have taken on the DNR?

MADISON – The Minergy Corp. is within months of finishing construction and starting up its $45 million plant to recycle paper mill waste in Neenah. The state Supreme Court is on a similar timetable toward deciding whether private citizens may resume a lawsuit that their lawyer hopes will result in getting the plant torn down.

The court will hear arguments and question lawyers on both sides on Jan. 6 and make a decision before the court session adjourns on June 30.

Attorneys on opposing sides disagree not only on which is right but on the outcome if the project's opponents were to win.

William P. O'Connor, Madison attorney for the citizens fighting the project, said if the Supreme Court rules that the case may proceed, it would be returned for a trial in Winnebago County Circuit Court where O'Connor said the objective is nothing less than to get an order forcing the $45 million plant to be torn down.

He said the owners made "the business decision" to start construction after the court challenge was begun. The opponents argue that the paper mill waste landfill where the plant is being built still belongs to the public. Merely imposing fines or other monetary penalties on the builders would not restore the property to public use, he argued.

"If I bought land next to yours and built a garage and it just happened to be on your side of the lot line, what would be a satisfactory outcome to you?" asked O'Connor. "Wouldn't you want me to get my damned garage off your land?"

Attorney Michael Apfeld, Milwaukee, part of the team representing the City of Neenah, Minergy and P.H. Glatfelter paper company, said O'Connor and his clients are dreaming if that is their goal.

"We think it is highly unlikely that any judge will ever order that this plant be torn down," he said. The opponents were offered the chance by Circuit Judge Robert Hawley to seek a court order delaying construction of the plant and passed it up, Apfeld said.

The first argument in defense of the project is that the case is moot because the plant already is under construction, he pointed out.

The dispute is being watched statewide. From the sidelines new voices have joined the dispute in "friend of the court" briefs.

The central issue as stated by the Court of Appeals in asking the Supreme Court to take the case is whether a citizen may "directly sue a private party whom the citizen

Please see **MINERGY**, B-3

MINERGY: Court's resolution on recycling plant may have a ripple effect

From B-1 12-8-97 (2)

believes was inadequately regulated by the Department of Natural Resources."

Atty. Gen. James Doyle, speaking for the state, supports the right of the citizens to sue Minergy, the city and Glatfelter. The Wisconsin Alliance of Cities argues that the citizens long ago missed their chance and should have challenged the DNR instead of suing the city and the companies.

The League of Wisconsin Municipalities has taken a similar tack in a third brief.

Known in legal Latin as amicus curiae briefs, the arguments are offered with the court's permission as background information from parties who are interested in the outcome without being involved in the case. The briefs parallel arguments raised by the two sides.

Doyle and Assistant Atty. Gen. John S. Greene pleaded with the seven justices not to "shut the courthouse door" on lawsuits by citizens seeking to protect their rights to public waterways.

DOYLE

Doyle argued that the citizens had no right to sue the DNR because that would interfere with the "discretionary decisionmaking" right of state agencies to decide when and when not to enforce laws.

"The courts have steadfastly recognized the necessity of insulating decisionmakers from challenges to such decisions," Doyle argued. Attorneys compare the situation to a citizen suing a police officer for declining to arrest a speeder.

The Alliance argued that allowing the citizens to press their suit after the DNR allowed the project to go ahead would undercut DNR authority and discourage Wisconsin cities from undertaking several proposed lakefront improvement projects requiring DNR approval.

Without the "finality" of knowing a DNR decision was immune from similar citizen lawsuits, "those projects will never move forward. The result will be continued urban blight adjacent to the waters of our state," the 31-city alliance argued.

The plant is being built on a landfill made of paper mill waste deposited by the former Bergstrom paper mill now owned by Glatfelter. The waste sludge was dumped on the former bed of Little Lake Butte des Morts.

The Legislature granted the segment of lake bed to the City of Neenah in 1951 "for a public purpose," according to wording of the act. Once the area was filled the city planned to develop Arrowhead Park there.

Instead it leased part of the filled area to Bergstrom and now Glatfelter for industrial purposes and the rest to Minergy. The recycling plant will convert paper mill sludge to a glass-like substance for use in the construction industry, at the same time eliminating tons of paper mill sludge from being buried in area landfills.

The opponents in the lawsuit are John and Ann Gillen, William Dunwiddie, and groups called Friends of Our Neenah Parks and the Clean Water Action Council of Northeastern Wis.

They object that the project is private, contrary to the "public purpose" terms of the state lake-bed grant to Neenah, and in violation of the "public trust doctrine" that historically reserves all waters and lake and river beds beneath them for the public.

The DNR originally also opposed the project as a violation of the public trust doctrine. But DNR later allowed the project to go ahead in a legal settlement with the city, Minergy and Glatfelter.

The settlement agreement said DNR still considers the project to be a public trust violation. But because the state had allowed previous industrial uses of the filled lake bed the DNR agreed to refrain from taking enforcement action or preventing the project.

Judge Hawley dismissed the citizens' lawsuit, agreeing with the city and the companies that the citizens should have challenged the DNR decision at the administrative level rather than waiting to sue the companies and city.

The Court of Appeals said it found court decisions and other legal precedents on both sides of the dispute and asked the Supreme Court to make the decision.

DO WE WANT A LARGE INCINERATOR IN DOWNTOWN NEENAH?

DNR proposes to issue an air pollution permit to Minergy Corporation, a Milwaukee firm applying for the construction and operation of a $45 million "glass aggregate manufacturing facility" along the Fox River on the Little Lake Butte des Mort flowage, in the City of Neenah.

This is a **very large** incinerator, which will burn 1,000 tons of waste sludge **per day** from 4 different paper mills, virtually all the paper sludge generated in Winnebago County --- from Kimberly-Clark, P.H. Glatfelter, Wisconsin Tissue Mills, & Ponderosa Pulp Products.

Ironically, the pollution is coming full circle. The sludges are created by improvements in wastewater treatment plants at the paper mills --- now the pollution will be released into the air, and ultimately re-contaminate the Fox River, Green Bay, Lake Michigan and other area water bodies.

Other major concerns:

1. Misleading Name

The company misled the citizens of Neenah and concealed the true nature of this incinerator, by calling it something which sounds harmless --- a "glass aggregate plant."

They even call incineration "recycling." The company claims that the resulting bottom slag generated by the facility can be used as the "aggregate" gravel in asphalt, sandblasting grit, roofing shingles and landscaping products. But why spend $45 million to create gravel which can be obtained much less expensively from other sources?

DNR should not allow the company to mislead the public. It's clear that the primary purpose of this facility is to reduce the volume of paper mill sludge and reduce it to glass. The definition in state codes is clear: *"Incinerator: A processing facility designed and operated for controlled burning of solid wastes **primarily** to achieve volume and weight reduction or to change waste characterization.* [NR 500.03 (60) Wisconsin Admin. Codes - emphasis added]

2. Rushing the Process to Avoid Public Scrutiny

The company was assisted by local and state government in accelerating the normal deliberation process and pushing the project through before Neenah citizens were aware of the true nature of the facility. More than 13 closed negotiation meetings were held between the company and local government officials. A formal contract and lease has already been signed by the Neenah City Council locking local government into full support for the facility, even before the DNR granted the final permit or certified the environmental assessment. Many serious questions remain unanswered but decisions have already been made.

3. FewEconomic Benefits to the Community

The contract signed by the Neenah City Council gives a 99 year lease to Minergy, in exchange for a few years of special payments to cover city infrastructure costs. Minergy will not pay any property taxes. In the later years of the contract, the city will receive no benefits, only costs. The longterm liability for the city is unclear.

4. Future Economic Growth Hindered

This huge plant will create only a few dozen new jobs, and will eliminate several trucking jobs. Unfortunately, at the same time, it will use up many increments of air pollution allowances for the Neenah area, which could restrict the growth of new industries which would provide many more jobs. With increased population and traffic growth (which also creates air pollution) the city could find its development potential "capped", just as it is in Racine, Kenosha, and Milwaukee Counties.

6. Odor Could Be a Serious Problem

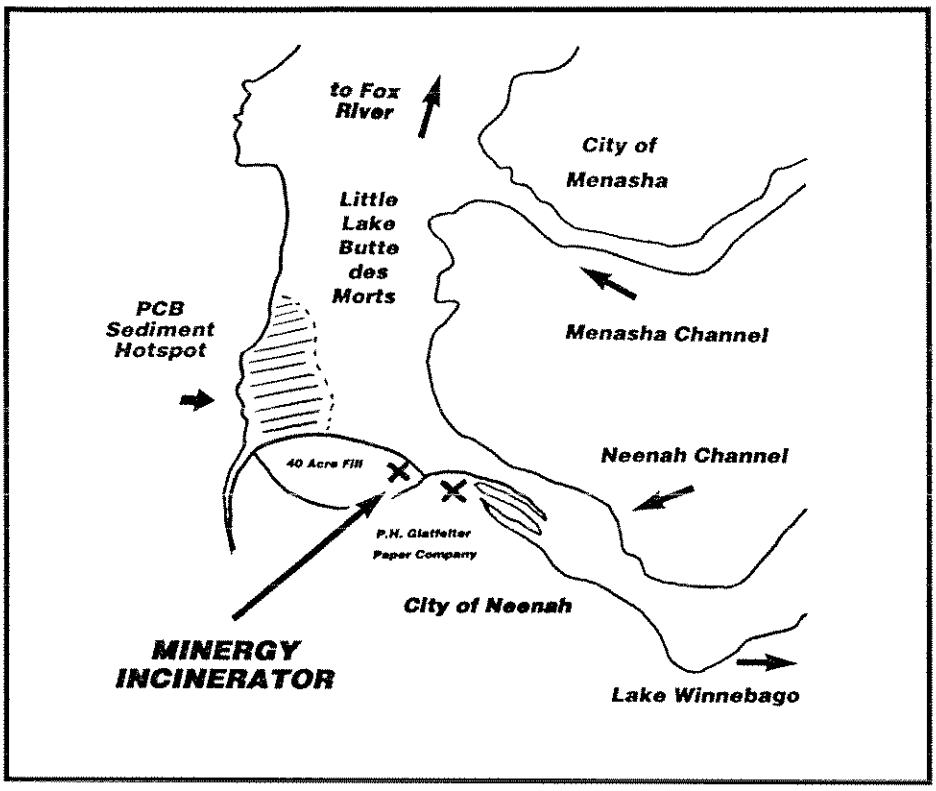
Minergy claims that odor will not be a problem from their incinerator, but they admit their plant will release 734 tons of sulfur dioxide each year into downtown Neenah. Undoubtedly, many other sulfur compounds will also be emitted and these are often foul smelling. For example: the smell of Kaukauna results from sulfur compounds called "mercaptans."

Sulfur dioxide and other sulfur compounds also aggravate asthma sufferers --- potentially causing serious asthma attacks, especially in children.

The DNR staff admitted to the Neenah City Council that DNR is powerless to stop odor problems once they are created (as at Kaukauna). And the City of Neenah has given up many of its rights through their recent contract.

7. Precedent-Setting

Minergy is the first of a series of similar proposals for Northeast Wisconsin. If Minergy is allowed,



citizens will have a hard time preventing similar future projects. The cumulative impacts of several incinerators will be added to our already high toxic air emissions. (Other proposed or possible incinerators: Fort Howard Incinerator in Green Bay, Neutralysis in De Pere, Green Grove in Green Bay, Thilmany in Kaukauna, and Green Bay Packaging in Green Bay. And there may be many others.)

8. Poor Pollution Control and Uncertainty

Thousands of tons of serious air pollutants would be emitted *(see box)* into downtown Neenah, yet DNR proposes to require only a baghouse filter as a control (similar to a vacuum cleaner bag) --- claiming that this would collect 99.9% of the pollutants.

Minergy admits this plant is the first of its kind, which raises concerns about the accuracy of their predictions. When another sludge processor in Green Bay couldn't meet its limits, DNR simply raised the limits to equal their emissions (with a generous margin for error.) The limits there were up to 100 times higher than originally proposed to the public.

9. Persistent Toxics

Flouride and lead are serious toxins which never break down once they've been released into the environment. The long-term build-up of these chemicals as fallout on soil and water is a large concern.

In addition, many of the sludges are chlorinated and some are from recycling and de-inking operations which produce sludges contaminated with hundreds of inks, dyes, coatings, plastics, and other contaminants. Many pigments contain toxic heavy metals.

The company claims that high temperature burning will destroy all the toxics --- but basic elements like heavy metals, lead and mercury would never be destroyed, and many other toxics (like dioxin) would be created as the gases leaving the burn chamber cool down and chemicals recombine.

Some chemicals, such as lead and mercury, will pass right through the baghouse as gases. Others will leave attached to the 31.5 tons of particles Minergy would release into downtown Neenah each year.

10. Acid Rain

This incinerator is a large new source of sulfur dioxide and sulfuric acid --- the main precursors of acid rain --- yet DNR is not requiring scrubbers to control these toxic releases. Sulfur compounds also smell horrible and aggravate asthma patients --- potentially causing serious asthma attacks, especially in children.

Minergy will also release more 1,077 tons per year of Hydrogen Chloride, some of which becomes hydrochloric acid on exposure to rain and melting snow. Minergy is receiving an exemption from stack height restrictions to allow them to erect an unusually high stack --- so all of Northeast Wisconsin can share in this pollution.

11. Ignoring Alternatives

Incineration is touted as the ideal solution to the landfill problem --- but really it's just a cheap and dirty shifting of the problem from one form to another. It will allow the paper mills to avoid their responsibilities for many more decades.

DNR assists the paper mills by stating in their "Environmental Assessment" that no alternatives exist. They ignore proven technologies for intensive recovery of waste fibers, and of the clay coatings. They ignore the wonderful potential for reducing the use of toxic chemicals in paper making (such as chlorine elimination) and in the printing business (toxic inks, dyes, coatings, pigments, etc.) If the sludge were uncontaminated, other safer and more beneficial uses could be found for the sludge.

12. Avoiding Liabilities

The paper companies admit they want to avoid their long-term liabilities at the landfills. By dispersing their toxics widely through the air and through untraceable aggregate sales, they will become immune to liability suits for

the poisoning of wildlife and the public.

13. Final Product Contaminated

Minergy claims the glass aggregate consists of inert minerals, such as silica (from clay paper coatings), but they mislead the public. Most toxics not emitted to the air will leave the plant with the aggregate as contaminants in the "glass." The aggregate will also include considerable dust in downtown Neenah, and over years of aggregate wear, will shed additional toxics to the air, land and water.

13. Toxic Ash

Minergy admits their facility will still produce fly ash, though it will be recirculated several times to be incorporated in the aggregate. This ash will contain many toxics, in highly leachable form, which will require landfilling. This ash is difficult to handle without some escaping as blowing dust in downtown Neenah.

14. No Toxic Clean-up by P.H. Glatfelter Mill

Minergy is negotiating with the City of Neenah for siting the plant on "Arrowhead Park", a waterfront fill area created by P.H. Glatfelter's dumping of waste sludge over several decades. The fill is highly contaminated with PCBs to concentrations higher than 500 ppm, plus numerous other toxic chemicals (50 ppm PCBs is considered hazardous waste) --- and is not engineered to prevent leakage to Little Lake Butte des Mort.

The DNR is exempting Minergy from hazardous waste and solid waste regulations to allow them to build on top of it without thorough site clean-up, thus preventing future clean-up of this area (DNR has also failed to require toxic remediation at other portions of this site.)

14. Violates Public Trust Doctrine and Lakebed Grant Restrictions

Under Wisconsin's Public Trust Doctrine, all lakebed is held in public trust and can only be used for public purposes.

The paper mill received a lakebed grant from the state legislature in the 1950's, on the condition that the sludge fill area would eventually become a public park. Now, the City of Neenah has signed a lease, and DNR has signed a questionable waiver to allow this private incinerator to be built on this public park land. Even though the "park" is contaminated, this project will violate the Doctrine and set a terrible precedent for other areas of the state. It's important to oppose this violation as a matter of principle.

Prepared for Neenah residents by Clean Water Action Council of N.E. Wisconsin, 2220 Deckner Avenue, Green Bay, WI 54302 Phone: 920-468-4243.

Permitted Air Pollution

(from information in the DNR draft permit and preliminary determination)

Chemical	Per Year	Minergy Air Pollution Over 30 Years	Four Incinerators in Fox Valley Over 30 Years
Hydrogen Chloride	1,077 tons	32,310 tons	129,240 tons
Aluminum	854 tons	25,620 tons	102,480 tons
Calcium Oxide	836.6 tons	25,098 tons	100,392 tons
Sulfur Dioxide	734 tons	22,020 tons	88,080 tons
Nitrous Oxide	460 tons	13,800 tons	55,200 tons
Carbon Monoxide	243 tons	7,290 tons	29,160 tons
Volatile Organics	77 tons	2,310 tons	9,240 tons
Sulfuric Acid	33.7 tons	1,011 tons	4,044 tons
Ammonia	36.7 tons	1,101 tons	4,404 tons
Particulates	32 tons	960 tons	3,840 tons
Hydrogen Flouride	26.5 tons	795 tons	3,180 tons
Flouride	25.2 tons	756 tons	3,024 tons
Copper	17.5 tons	525 tons	2,100 tons
Barium	9.7 tons	291 tons	1,164 tons
Manganese	7.5 tons	225 tons	900 tons
Chromium	3,557 lbs	106,710 lbs	426,840 lbs
Selenium	1,699 lbs	50,970 lbs	203,880 lbs
Cobalt	1,296 lbs	38,880 lbs	155,520 lbs
Lead	818 lbs	24,540 lbs	98,160 lbs
Nickel	162 lbs	4,860 lbs	19,440 lbs
Mercury	53.7 lbs	1,611 lbs	6,444 lbs
Arsenic	17.5 lbs	525 lbs	2,100 lbs
Cadmium	17.5 lbs	525 lbs	2,100 lbs
Beryllium	14 lbs	420 lbs	1,680 lbs
Chromium (insoluble)	1.4 lbs	42 lbs	168 lbs

(Plus numerous trace chemicals)

MINERGY INCINERATOR UPDATE

Last summer, Clean Water Action Council joined with local Neenah citizens John and Ann Gillen, William Dunwiddie, and a local group called *Friends of Our Neenah Parks* in a legal challenge of a city permit to allow construction of a huge private sludge incinerator on top of **Public Trust Land** on the edge of Little Lake Butte des Morts, in downtown Neenah.

Public Trust Violated

The land was created by filling into the lake, starting in the 1950's, after a lakebed grant was issued by the Wisconsin Legislature with the understanding that the new land would only be used for public purposes and a public park forever into the future.

This is an important legal definition under Wisconsin's **Public Trust Doctrine**, which holds all lake and stream beds in public ownership forever. It is critically important for our government to respect and abide by this doctrine, to protect the future of Wisconsin's water resources. The Minergy Incinerator sets a terrible precedent.

Unfortunately, the DNR, under Governor Thompson's control, signed a stipulation and agreement with the company and city allowing this improper use of public trust land --- before the public was even aware of the effort.

In the past, citizens have relied on DNR to be a staunch supporter of the Public Trust Doctrine, so this marks a major negative shift in policy for the agency. (... just one of many under Gov. Thompson.)

Toxic Pollution

Clean Water Action Council is also concerned that the incinerator will be a major new source of toxic air pollution (without a scrubber) in the already polluted Fox River Valley, and that the filled area of the Lake (the building site for the incinerator) contains hazardous waste levels of PCBs in contact with groundwater supplies, and these toxic chemicals needed to be cleaned up, not simply built on.

Supreme Court Will Take Our Case!

Last summer the local judge refused to hear our case, claiming we should have challenged DNR and not the City. We were never allowed to present our arguments.

When our attorney, William O'Conner, appealed to the next higher court, they decided the issues raised in the case represent significant issues of statewide concern and sent it to the Supreme Court without making a decision.

Now, we've just been notified that the Wisconsin Supreme Court has agreed to take the case, an exciting but nervewracking development. It may be many more months before they reach a final decision.

Can Private Citizens Defend Public Rights?

One of the big legal questions, and one of the most disturbing, is whether any of us has the legal "standing" or right to argue on behalf of the general public's rights.

Private citizens may not be allowed to defend the Public Trust Doctrine. We might only be allowed to challenge actions where we can prove we are personally injured, a more difficult test.

This was a key issue when Gov. Thompson and Republicans in the state legislature, in a straight party-line vote, destroyed the Wisconsin Public Intervenor's Office two years ago.

For 27 years, the Intervenors had been charged with protecting public rights in Wisconsin natural resources, and had been champions of the Public Trust Doctrine on many occasions, but now they are gone.

The Wisconsin Dept. of Justice (DOJ) also has legal standing to protect public rights, but seldom does, because they have a conflict of interest --- the DOJ is charged with defending the DNR's decisions, and in this case DNR violated the Public Trust Doctrine. So who's protecting our public rights?

Phony Intervenor Kept Out of Case

When the Republican's destroyed the Intervenor's Office they created a phony Intervenor Office in the DNR. The attorney is a sincere and well-meaning person, but she has no power or support for true Intervenor legal actions.

Recently, she requested permission to file a "Friend of the Court" brief in support of our legal effort, to help shore-up our legal rights, but the appointed Board which controls her work turned her down. She argued that "Friend of the Court" briefs are only advisory or informative documents, and would not make her a formal party to the suit, but her Board felt it was the kind of "legal action" that Republicans abolished.

The five Board members are Thom Ciske of Menasha, John Rose of Green Bay, Don Mills of Madison, Louis Andrew of Fond du Lac, and State Assembly member Tom Hebl of Sun Prairie.

State Gives $265,000 to Minergy

To add insult to injury, the construction has proceeded despite our unresolved legal efforts.

And now, the **Wisconsin Recycling Market Development Board** (also under Republican control) has awarded a $250,000 grant to Minergy Corporation, to assist with the construction and operation of the 1,000 ton per day paper sludge incinerator. DNR is also giving $15,000 to help Minergy market the final bottom slag as a construction aggregate. The state funding will help purchase the plant's boiler system, where the sludge will be burned.

This is disturbing for obvious environmental reasons , but the taxpayer issues are just as alarming.

1. The company doesn't need this taxpayer handout. Four major paper companies and the largest utility in Wisconsin (WEPCO) are invested in this project. They can afford the costs. It's ironic that Wisconsin Republicans are ending welfare for children, while continuing Corporate Welfare.

2. It's outrageous to define a sludge incinerator as a "recycling" operation. We have supported market development for recyclables, but this is not what taxpayers consider recycling. This is a misuse of public funds.

Intervenor kept out of suit against sludge plant

Public Intervenor Board will not allow a friend-of-the-court filing

1

By Cliff Miller 8-7-97
Post-Crescent Madison bureau

MADISON – The state Public Intervenor Board told the public intervenor Wednesday to stay out of Neenah's Minergy Corp. lawsuit.

Intervenor Edwina Kavanaugh told the board she believed the limited range of authority given her office by the Legislature allows her to file a friend-of-the-court brief in the suit.

The five board members disagreed. "I think it's against the plain black and white meaning of the statutes," said Louis Andrew, the board chairman and a Fond du Lac attorney.

The decision is significant because it is the first time the board has faced the possibility of the intervenor taking part in a court case since the Legislature reorganized the office and revoked its former authority to file lawsuits on behalf of the public in environmental cases.

Kavanaugh, a state Department of Natural Resources staff lawyer, sought to urge the state Supreme Court to allow Neenah citizens and citizen environmental groups to sue the city of Neenah, Minergy Corp. and P.H. Glatfelter paper company over the controversial paper sludge recycling plant that is being installed in Arrowhead Park.

"We have to decide how expansively or narrowly we are going to read this statute," she told the board. In revoking the intervenor's power to sue, the Legislature did not specifically say whether that included filing friend-of-the-court briefs, she said.

The board's decision was to read the law narrowly. All five board members participating in a teleconference Wednesday told her the law lacks any provision allowing her to seek friend-of-the-court status.

The Supreme Court must grant that status to petitioners, and Kavanaugh argued that the court's decision would amount to a definitive ruling on her authority.

Kavanaugh argued that under court rules, filing a friend-of-the-court brief would not make her a party to the suit. Courts consider such briefs to be advisory or informative documents submitted by interested outsiders.

The authority for the intervenor to file lawsuits was repealed after Gov. Tommy Thompson and mostly fellow Republican legislators objected to employing attorneys at

2 Please see **MINERGY**, B-3

MINERGY: State intervenor told to stay out

From B-1 3 8/7/97

taxpayer expense to sue state agencies. Citizens and environmental groups should get private attorneys for that purpose, they argued.

Kavanaugh said the Minergy case directly confronts that argument since Neenah and the two companies maintain that the citizens lack legal authority to file the suit. The citizens argue that the DNR failed to perform its duty to protect the waters of the state for the public when it allowed Neenah to lease part of Arrowhead Park for the $45 million project.

The Supreme Court is considering whether to accept a request by the 2nd District Court of Appeals to decide the case that Winnebago County Circuit Judge Robert Hawley dismissed last year.

The park is on a former paper mill sludge disposal site built on the bed of Little Lake Butte des Morts. Because it is a former lake bed, it belongs to all citizens of the state under the "public trust doctrine," the challengers argue.

They contend that Minergy's plan to operate a plant there to convert paper sludge to a glass-like substance is a private use.

Board members who denied Kavanaugh's request were Andrew, Thom Ciske of Menasha, John Rose of Green Bay, Don Millis of Madison and state Rep. Tom Hebl of Sun Prairie.

A state budget amendment endorsed by Senate Democrats proposes to restore the intervenor's former full range of authority, including filing lawsuits and to place the office back in the Justice Department where it began in the 1970s.

Wisconsin
County Code
Administrators

SEN. ALICE CLAUSING, CHAIR
AGRICULTURE AND ENVIRONMENTAL RESOURCES COMMITTEE
119 MARTIN LUTHER KING JR BLVD
MADISON WI 53703

December 17, 1997

RE: Senate Bill 8 Public Intervenor For Natural Resources

Dear Sen Clausing,

As a note of introduction, the Wisconsin County Code Administrators (WCCA) is the organization representing the professionals employed by local units of government in the administration of a wide range of state and county codes, including zoning, farmland preservation, wetlands and shoreland zoning and private sewage systems.

The WCCA is on record in opposition to the changes to the office of the public intervenor in 1995. While we did not always agree with the position that the public intervenor's office held, we respected the office and the process by which actions of the intervenor were governed.

We are totally convinced that the office was responsible for keeping state agencies in check when they took actions that could be contrary to the public interest. On the surface this may have appeared to be one state agency suing another, and therefore an inefficient use of taxpayers money. Our experience convinced us that the intervenor was acting as an advocate on behalf of taxpayers to ensure that the state bureaucracy was accountable. This definitely was in the public interest and very likely saved money in the long run.

Due to our experiences both before and after the changes made to the public intervenor's office we are in full support of the effort to restore the office to a meaningful role in protecting public rights in issues relating to the waters of the state and other natural resources. We totally agree that this office should be located in the department of justice.

We appreciate the opportunity to testify in support of Senate Bill 8. We also encourage the committee, the Senate and the Assembly to approve this legislation.

Sincerely,

James P. Clark, President
Wisconsin County Code Administrators

BRIAN BURKE

WISCONSIN STATE SENATOR

Senate Chair, Joint Committee on Finance

TESTIMONY
OF SENATOR BRIAN BURKE

On Senate Bill 8
Before the Senate Committee on Agriculture
& Environmental Resources
December 18, 1997

Chairperson Clausing and committee members, thank you for this opportunity to testify in support of Senate Bill 8, which would re-create the Public Intervenor's Office at the Department of Justice.

As you likely know, the unique concept of a Public Intervenor was originally established in 1967 to "protect public rights in water and other natural resources." It was part of a comprehensive government reorganization effort (i.e. the "Kellett Commission Bill"), and supported by Governor Warren P. Knowles.

The clear purpose was to provide an advocate for public rights - in the heart of state government - to ensure fair play and due process in environmental decision-making by Wisconsin courts and agencies. This is a vital and specific role, not fully performed by any other agency, bureau or person in or out of state government.

Prior to 1995, the Public Intervenor performed the role envisioned by the Legislature and Governor Knowles extremely well (apparently too well). For nearly 30 years the Office advocated on behalf of public rights in water under Wisconsin's "public trust doctrine" and public rights in other natural resources such as land, groundwater, air and wildlife. Whether as "ombudsman" for bewildered citizens, courtroom advocate or insurer of fair play in the administrative process, the Public Intervenor was a true asset to the people of Wisconsin. It's loss is unsettling.

No one can seriously suggest that cutting this office was a money saving effort. The former 2-attorney office cost

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less than a nickel per Wisconsin citizen per year. The proposed 1-attorney office under SB 8 is about half that.

Further, the Public Intervenor performs a distinctly different role than private environmental and conservation groups. The Public Intervenor protects very general "public rights" - the rights we all share and need in order to fish a stream, hunt a slough, canoe a river, drink clean water, breathe clean air and enjoy scenic vistas. Private groups can and do take a much narrower view.

Lastly, state agencies have different missions, goals and constituencies. It is not wise to make one agency both judge and advocate for public rights in natural resources. Having an active custodian of public rights inside state government helps protect the environment and the taxpayer as well. The Public Intervenor's environmental successes are well documented, and this office has saved taxpayer money by cutting red tape and heading-off foolish decisions early on.

The Public Intervenor was the voice of average citizens in state government. It's imperative that we give this voice back to the people.

I urge you to join with me and re-create this unique and invaluable vestige of Wisconsin's once rich environmental heritage.

Thank you for your consideration.

HOW THE PUBLIC INTERVENOR SERVES YOU

What does the Public Intervenor do?

The Public Intervenor is your "watchdog" to make sure that the Wisconsin you enjoy--clean air, clean water, and abundant recreational resources--stays that way.

The Intervenor is your natural resource voice in the legislature, in state agencies, and in the courts.

The Public Intervenor is your advocate. The Intervenor cuts bureaucratic red tape and provides answers for citizens seeking help on environmental problems.

Why does the Public Intervenor office exist?

The Public Intervenor office was one of the good government reforms created under Governor Warren Knowles at the insistence of the "red shirt" conservationists in the controversy that surrounded the 1967 reorganization of state government. The Public Intervenor office and the citizen board for the Department of Natural Resources both were created to ensure citizen input and advocacy in resource matters.

The Public Intervenor office has served for almost 30 years under both Republican and Democratic Governors and Attorneys General.

How does the Public Intervenor protect the state's natural resources?

The Public Intervenor office cuts through government red tape for citizens who call and write the office daily asking for help on environmental matters. The Public Intervenor works wherever needed--through the agencies, courts and Legislature to protect natural resources. The Public Intervenor works with towns and cities, farmers and factory workers, homeowners and businesses to find solutions to environmental problems. While only the big issues make the news headlines, most of the Public Intervenor's time is devoted to building consensus on real solutions and negotiating protection of our resources.

What has the Public Intervenor office accomplished over the years?

Some examples may answer the question best:

► Worked with local governments and the big mining companies in the late 1970's to overhaul state laws regulating environmental

impacts of future metallic mines; in 1984 negotiated with industry and farm groups to adopt what is considered the country's most comprehensive groundwater protection law; in 1994 worked with sand and gravel mining industry and community groups to create state regulation of quarries across the state.

► Went to bat for the small Town of Casey in Washburn County, taking a court case all the way to the U.S. Supreme Court for the right of all local communities to reasonably regulate pesticide use. And won!

► Successfully petitioned state agencies to improve state regulations on wetlands and septic systems, ground and drinking water, pesticides, lowland nonmetallic mining, environmental impact statements, and dam safety.

► Intervened in the proposal by Exxon to construct a 55-million ton mine near Crandon in Forest County and hired experts to help predict and prevent contamination of groundwater and the Wolf River.

► Is working with local governments, rail advocates, transit workers, elderly and handicapped organizations, and many others to improve our state's transportation system at the least environmental and economic costs.

► Answers countless citizen calls and letters seeking advice on how to prevent or deal with environmental problems in their communities.

How are Intervenor decisions made?

A Citizens Advisory Committee of 9 members from all across the state and who are appointed by the Attorney General for 4-year terms meets regularly in open public meetings to decide broad priorities for Public Intervenor intervention.

Who are the Intervenors?

Past public intervenors include Court of Appeals Judge William Eich, Attorney Peter Peshek in private practice, and Chief Counsel of the Public Service Commission Steven Schur; today's intervenors are Tom Dawson and Kathleen Falk, with Laura Sutherland temporarily appointed to work on the proposed Exxon mine near Crandon.

Milwaukee Journal Sentinel

MJS 5-6-95

State's environment dealt a blow

The cause of environmental protection in Wisconsin took a heavy hit this week when the Legislature's Joint Finance Committee emasculated the Office of the Public Intervenor.

Since 1967, the public intervenor has been a conscience and watchdog, filing lawsuits and taking other action to protect the state's environment, especially its waterways. This is a job not performed by any other state or local agency. In fact, the two-lawyer office even files lawsuits against state departments and local governments in pursuit of its goals.

That's what seems to irk Gov. Tommy Thompson the most. Arguing that the state shouldn't hire people whose only job is to sue state agencies, he recommended that the office be abolished.

This week, the Joint Finance Committee gave the governor most of what he wanted. It voted to eliminate one of the office's two lawyer positions, end its power to file or join lawsuits, destroy its independence by making it a part of the Department of Natural Resources and create a new board to oversee its activities.

Intervenors Thomas J. Dawson and Kathleen M. Falk have often gone to court to correct the wayward ways of government. But their office also negotiates with agencies on pending rules and performs other chores that end disputes before they wind up in court. It's possible the office has prevented more lawsuits than it has filed, saving the state time, money and trouble.

The proliferation of environmental legislation enacted in the last 25 years has not made the public intervenor superfluous. On the contrary, a more complex legal environment makes it even more necessary to preserve an office that cuts red tape, interprets legal requirements and resolves disputes.

Eliminating the office was vindictive and shortsighted; it will probably perpetuate disputes, cost the state more money, and endanger one of Wisconsin's most precious resources: its waterways. Dumb, dumb, dumb.

3/26/95 Milw. Journal Outdoors

Intervenor office worth saving

JAY REED
Outdoors columnist

Madison, Wis. — Memory tells me that the Wisconsin Legislature, over the years, has displayed an almost lustful desire to mess with the rules and policies that govern those of us who hunt and fish.

And faithful readers of this space will know that I have tended to resist that effort, for the most part.

Having said all of that, I point out now three areas in Gov. Tommy G. Thompson's budget where the Legislature could, if it wanted, if it really understood, make a significant difference for the public good, again appropriate to hunting and fishing.

First is the matter of the Public Intervenor office.

The governor's budget bill abolishes that office.

That's a mistake and the Legislature should do those things it can to avoid it.

The reasoning is simple. The office of public intervenor and the Wisconsin Conservation Congress represent the two protective buffers that exist between those of us who hunt and fish and those who make and write the laws that govern hunting and fishing, among many other issues.

In Milwaukee, for example, the Intervenor Office worked, successfully, for greater public access to Lake Michigan at the Summerfest grounds. Its record of advocacy goes well beyond that, but you get the idea.

I really don't know why the governor wants to abolish the office. But he does. Legislators could make a difference here. For the public good.

The state needs to cut the budget. I understand that. But cuts should be made in areas that serve no great good. There are many. The governor knows that. He should retain the intervenor office and look elsewhere for savings.

I have used this space before to suggest that the governor is wrong in attempting to turn the Department of Natural Resources into a political entity.

He wants whoever is sitting governor to appoint the secretary of the Department of Natural Resources and he wants to reduce the clout, the responsibility, of the Board of Natural Resources.

Why? Thompson often sees things in a clearer light than the rest of us. But he has not articulated his position on this one very well. Or, at least, he hasn't to my satisfaction.

This smacks of politics. And isn't that a dirty word? To turn the Department of Natural Resources into a completely political affair is to banish your mother from the house, order your brothers into prison and sell your sisters to the king.

There's a better way, of course. The public Intervenor's Office is functioning, and has, in the public's best interests. It should remain as it is.

The Department of Natural Resources may be the best of all public agencies just as it is right now. To turn it over to political knee-jerks and position payment would be the greatest sin of all.

They talk about quick response, these days. They talk about greater control.

Toss a political appointee into the job of DNR secretary, make him answerable to the governor who picked him, and look to the DNR Board that would be a shadow organization with no real clout.

Do that, if you are a Legislator.

And then vote accordingly.

Beyond that, as far as hunting interests are concerned, is the matter of pheasant stocking.

The budget would, for the most part, eliminate it. Let the record be clear. I have no quarrel with terminating put-and-take pheasant stocking on state properties. It serves no real purpose so far as I can see, except for providing a couple of days of semi-fruitful, mostly artificial, hunting on those lands.

It is the elimination of the day-old-chick program that is bothersome. This has served, and continues to serve, a good purpose. It helps, more than anything else, to improve wild pheasant stocks.

And if Wisconsin is to be something in the way of pheasant hunting, the wild flock must be improved.

Lawmakers have a chance, here, to do a turn for hunting interests. I would like to think they have the intellect to do it.

If nothing else, there'll be some votes in it. That, always, gets their attention.

NEWS RELEASE

12/18/97
FOR IMMEDIATE RELEASE

Contact: Rebecca Katers 920-468-4243 | Jim Wise 715-453-8769 | Will Fantle 715-839-7731 | Keith Reopelle 608-251-7020

GROUPS CALL FOR RETURN OF PUBLIC INTERVENOR AT SENATE HEARING

Environmental groups today called upon state legislators to restore the Office of the Public Intervenor in testimony before the State Senate. The Senate's Environment Committee will hold a hearing at 1 pm in Madison on Senate Bill 8 which would restore the Office. In 1995, Governor Thompson's state Budget Bill eliminated the tiny office housing two attorneys in the state's Justice Department.

"The Public Intervenor was an effective watchdog that protected the public and our state's natural resources from bad proposals and government action or even inaction," said Rebecca Katers, of the Green Bay-based Clean Water Action Council. "Thousands of citizens and even many legislators consulted the Public Intervenor's Office after it was established in 1967 by Republican Governor Warren Knowles," added Katers. "Many bad ideas never even saw the light of day because the Intervenors legal and technical assistance demonstrated the weakness of the ideas."

The attorneys working as Public Intervenors had the ability to sue industry and even state agencies to protect Wisconsin's natural resources. "It's important to realize," said Keith Reopelle for Wisconsin's Environmental Decade in Madison, "that they rarely went to court over resource issues. Instead, they acted as an early warning system alerting agencies like the DNR and businesses of potential problems related to their activities. But it was their ability to sue that usually prevented unwise resource decisions."

The environmental groups point to the recent Kidney Island sludge case in Green Bay and Exxon's Crandon's mining proposal as examples of the need for the Public Intervenor. Two weeks after the office was abolished, the DNR reissued a permit for the Kidney Island sludge disposal site in Green Bay. The permit had been successfully fought in court by the Intervenors Office in 1988. Citizen opposition to the plan again stopped the permit, but only after great expense to the citizens involved with the effort.

"We think northern Wisconsin is at risk because of the threat posed by mining and, in particular, Exxon's Crandon project," said Jim Wise, a member of ECCOLA in Tomahawk. "Small grassroots groups don't have the resources to bird dog the DNR and make sure they have the willpower to stand up to Exxon. The Public Intervenor was our balance against powerful interests."

(- more -)

One of the last activities the Public Intervenors were involved with before the Office's termination was an investigation of Exxon's groundwater model data and the impact of the mining proposal. The work stopped with the elimination of the office.

"If we need another example of why we need the return of the Public Intervenor, look at the recent decline in DNR enforcement activities," said Will Fantle, a Northern Thunder member in Eau Claire. "The DNR now calls polluters 'clients' and 'customers.' This attitude may help explain the documented drop in cases the agency is referring to the Department of Justice for enforcement of state environmental laws."

"We need the watchdog," said Katers. "Critical decisions face the use of our state's natural resources. What we do today will affect Wisconsin's land, water, and wildlife for generations to come."

# # #

Good Afternoon

I am Bill Bialk a Supervisor for the Town of Osceola, located in the southeast corner of Fond du Lac County. I came to urge passage of SB-8 for the following reasons:

Approximately 2 years ago a public information meeting was held at the ice age center in the Kettle Moraine State Park where the Park Manager and representatives from the DNR tried to explain the need for a new waste disposal system for the campgrounds and how it would work. After a short time it became clear to those in attendance that they had not completed their homework and they were not prepared to answer our questions. After much opposition was expressed by those in attendance the meeting was ended and we were informed that another meeting would be scheduled when they had more in formation

After a while a second meeting was held and the same unprepared presentation was given but this time they had more people to do it. When they were asked questions about runoff, odors, bacteria counts or other questions of that nature, they didn't have a clue. One of the presenters became very short and arrogant when we persisted in wanting answers. A different one put on what is known in most government circles as a dog and pony show, In an attempt to make us feel good, but did not give us any satisfactory answers. I asked if they had completed an environmental impact study, which would have addressed some of our concerns. Their response was that they didn't feel they needed one and they weren't going to get one. After the concerned citizens in attendance voiced their concerns again, we were informed that we will be notified of another meeting.

We did not hear a thing until November 16, 1997, when I received a report from a hiker that wastewater had been pumped into a wetlands in the State Park. On Monday, November 17, I checked the site and found that they had pumped all the wastewater from one of the two holding ponds into an adjacent wetlands causing it to flood. An attempt to contain the effluent had been made by blocking two culverts with sandbags but a significant amount was leaking through the culverts into a creek that led directly into Long Lake.

I took a sample of the water and reported my findings to the park manager who stated that it could not be leaking into the lake. We finally went out to the site so he could see. He said he would get the leak fixed and that I shouldn't worry about the water. That just because it smelled like raw sewage did not mean it was contaminated.

That afternoon they attempted to seal the culverts by dumping a load of dirt on the end of the culvert which did slow down the leak. Later that evening I returned to the site with a neighbor and met the park manager. He again tried to reassure us that the wastewater was safe. We asked why they would pump wastewater into a wetland instead of trucking it out like the rest of us do. He said that they were starting construction on the new treatment unit and it was necessary to empty the ponds. Since the ponds held 1.25million gallons of liquid it would have been too expensive to truck.

On Tuesday, November 18th we returned to the site to take some additional water samples from three locations. The first at the site of the first culvert, the second about half way to the lake, and the third sample about 300 feet from the lake shore.

Saturday, November 22nd I received the lab reports that showed there were unsafe levels of coliform bacteria as well as the presence of fecal coliform bacteria. I immediately showed the results to the Town Board Chairman and was instructed to pursue the issue. On Monday November 24th I discussed the findings with a reporter and a subsequent article was published in the Milwaukee Sentinel on Thursday November 27th.

At the request of the park manager a meeting to clear up any misunderstandings was scheduled for Thursday, December 4th at the Park Headquarters. During the meeting the Park Manager apologized for not notifying us prior to the pumping and was sorry for underestimating of the ability of the wetlands to absorb the 1.25 million gallons of effluent. Then their engineer admitted that the wetland was approximately 6 acres, not the 30 acres that was stated in the newspaper. They also felt that the fecal coliform count was insignificant, but when questioned about what will happen to the bacteria that got into the lake, they could not provide us with an answer. Their only reply was that the State issued them permits and they wouldn't have done so if they thought it was a health hazard.

We requested that due to the large number of residents with shallow wells in the area that they do some random well testing. They would not agree to this, but they agreed to do some ground water tests. Since that meeting I have been informed that they will not be able to do the ground water test, for fear of putting more contaminants into the ground water.

During the discussions about the new project they were vague when asked about the bacteria count in the effluent to be sprayed and did not satisfy our concerns. That high contents of fecal coliform bacteria will end up being sprayed onto the fields.

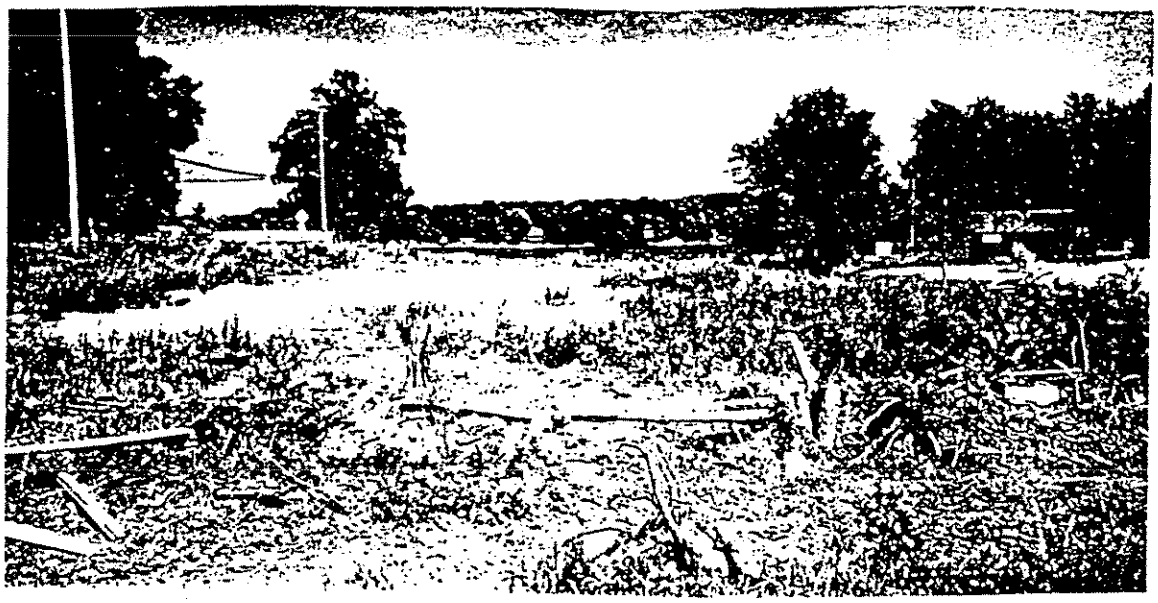
As neighbors we wanted to know about any possible runoff, odors and the duration of these when they are pumping. All they can give us is the word of the engineers that are approving the project. Incidentally they are the same ones that were wrong the first time. Once again I requested an environmental impact study to get an insight of what effect this project will have on the area; and we are simply told that they don't feel that they need one and they won't get one.

In closing, I only hope you can realize why citizens need SB-8 passed to protect us from our protectors

ISN'T IT NICE.....TO SEE THAT PROGRESS IS FINALLY BEING MADE ON THE GONRING DRIVE SITE?

THE CEDAR LAKES CONSERVATION FOUNDATION HAS BEEN TRYING TO ENHANCE AND BEAUTIFY THIS AREA SINCE EARLY 1996!

YOU, AS NEIGHBORS HAVE HAD TO PUT UP WITH THIS MESS, DUE TO THE DELAYING TACTICS OF OTHERS.



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STATE SENATOR, MARY PANZER 334-7283
STATE ASSEMBLYMAN, MICHAEL LEHMAN 673-7979 OR (800) 362-9472

SINCERELY,

Anita Hauske and Eugenie Olsen
4664 Fontana Beach Rd 6267 Riesch Dr
RIESCH

ANITA HAUSKE AND EUGENIE OLSEN, DIRECTORS, CLCF
ON BEHALF OF THE BOARD OF DIRECTORS OF THE CEDAR LAKES CONSERVATION FOUNDATION
..... AND OTHER CONCERNED PROPERTY OWNERS.

Facts About the Public Intervenors Office

Claim:

Saved Taxpayers' Money

It has been claimed that eliminating the office saved taxpayers $232,000 per year.

Response:

For less than a nickel per person per year, citizens of Wisconsin had an entire office with two full-time attorneys, 1.5 clerical staff and 8 non-paid legal interns to represent their public rights in the environment and respond to their calls. The "saving" from eliminating the office amounted to only .00001166% (one one thousandth of one percent) of the $ 15 billion budget.

Compare the Public Intervenors Office budget with the $ 1.6 billion budget of DOT, $ 437.5 million budget of DNR, $ 288.6 million budget of DILHR and $ 57 million budget of DATCP --- four state agencies the public intervenors were charged with watchdogging.

The Intervenors Office was already streamlined --- one of few agencies which grew little over the past 20 years.

Claim:

Intervenor Represented Environmental Groups

It has been claimed the Public Intervenors Office filed lawsuits on many occasions against the state on behalf of well-funded environmental groups.

Response:

The Public Intervenors Office did not represent environmental groups or their interests in courts. The intervenor represented "public rights in the water and other natural resources of the state." Wisconsin's natural resources are not the special interest of environmental groups --- public rights are shared by all. Everyone has a stake in clean water, clean air, abundant wildlife, and a healthy environment.

Wisconsin environmental groups collectively have few staff, and are frequently unable to muster the $50,000 required for a typical lawsuit. Further, environmental groups represent their members in lawsuits, not necessarily "public rights" in our natural resources. In fact, the intervenors have differed with environmental groups on issues. Often, intervenors worked on public rights issues unaddressed by any other agency or private group. Opponents of public rights in the environment frequently have lawyers to protect their interests.

Claim:

Duplicates Services

It has been claimed there are plenty of lawyers in the Department of Justice or private attorneys who can do what the intervenors do.

Response:

Department of Justice (DOJ) lawyers and private lawyers don't do what the Public Intervenors Office did, and cannot challenge unconstitutional laws. In court, DOJ lawyers represent the agencies the public intervenor occasionally sues. Private attorneys represent the interests of their private clients and do not represent "public rights." The public intervenor represented "public rights" in the state's natural resources. Many public rights are not represented now that the office is abolished.

Claim:

Why Should the State Sue Itself?

It has been claimed it doesn't make sense for the state to pay lawyers to sue the state.

Response:

Sure it makes sense --- if you believe government can make mistakes, exceed its powers, succumb to political pressure, or violate public rights.

The Legislature created the Public Intervenors Office in 1967 to watchdog state government and intervene when government action or inaction threatened public rights in natural resources. Conservationists demanded this outside advocate be created precisely to ensure advocacy for resource issues. This checks and balance system was lost when the public intervenor was abolished.

Further, lawsuits are only a small part of the picture. The intervenor's authority to sue was often enough to bring people to the negotiating table to avoid lawsuits. The intervenors were able to negotiate reasonable compromises and out-of-court settlements. In addition, the intervenors often provided valuable information to agencies and legislators in non-confrontational forums, and provided advice to hundreds of citizens who contacted the office each year.

Claim:

Costs Industry and the State

It has been claimed that the Public Intervenors Office cost industry and the state millions of dollars.

Response:

The office saved the state money over the years. It is cost-effective to have an intervenor question the decisions of state agencies before they go too far in implementing them. If agencies had been allowed to proceed with decisions prevented by the intervenor, taxpayers and industries often could have faced more costly lawsuits and clean-up actions. The intervenors worked to reach concensus on regulations so that problems wouldn't grow into major liabilities for the state and the business community.

Accomplishments of the Public Intervenors Office

Citizen Advocacy and Empowerment

Worked to reach consensus on regulations and cases to avoid conflict, prevent lawsuits, and adopt laws that all interested parties can live with.

Responded to numerous legislative requests to help their constituents.

Continually went to bat each year for hundreds of citizens suffering property devaluation and risks from well water contamination, leaking landfills and underground storage tanks, nuisances, highway construction, pollution, and irresponsible land development.

Advisedand helped citizens use existing local and state government processes to advocate protection of their public rights in lakes and rivers, and to protect their families and property from environmental threats.

Intervened in major permit cases --- including the Kennecott copper mine and the Exxon/Rio Algom zinc mine ---to bring scientific review and input into the process.

State Law and Consensus

Advised Legislative Branch ---

- Responded to numerous requests by legislators and committee chairs to review and identify issues in regula tions being adopted by state agencies and to provide testimony and comments.

Underground Drinking Water Supplies ---

- Negotiated with industry the 1984 landmark Wisconsin Groundwater Law (Act 410) requiring pollution activities meet groundwater enforcement standards, setting up environmental repair clean-up program and polluted well victim compensation program.
- Held the line in protecting groundwater from approval of on-site sewage systems (septic tanks and mound systems) in inappropriate lands.
- Turned back a DNR rule that would have allowed drinking water to be degraded with solvents (toluene and xylene) to the point of being smelly and undrinkable. New standards are now being developed.
- Turned back a rule that would have prevented the DNR from replacing contaminated wells of poor families.

Metallic Mining ---

- Negotiated consensus metallic mining laws and regulations.
- Prioritized recent mining proposals to protect surface and groundwater resources. Recently hired 3 world-class technical experts to evaluate and comment on impacts of the Exxon/Rio Algom metallic sulfide mine near Crandon.

Solid Waste and Hazardous Chemicals ---

- Negotiated passage of state community right-to-know law so communities and workers are prepared to deal with chemical spills and emergencies.
- Reached consensus on strengthening amendments to recent DNR rules for the clean-up of hazardous pollutant spill sites.
- Worked with legislators to change DNR rules in order to uphold legislative prohibition on dumping of waste oil in landfills.

Sand and Gravel Mining ---

- Negotiated consensus non-metallic mining (gravel and rock) reclamation bill.

Wetlands ---

- Petitioned for and negotiated major state wetland shoreland zoning and water quality protection rules.

Mixed Resource Uses ---

- Petitioned for and negotiated DNR policies on wetlands, scenic beauty and forest multiple use.
- Advised lake property associations and local governments on regulations of nuisance watercraft.

Pesticides ---

- Successfully pushed for restrictions on use of the pesticides aldicarb and atrazine in groundwater contaminated areas.

- Turned back a Dept. of Ag rule that would have restricted local authority to adopt ordinances prescribing pesticide use lawn signs.
- Negotiated consensus on strengthened Dept. of Ag rules governing pesticide use, including aerial spraying, lawn care pesticides, pesticides in irrigation systems, and groundwater protection.
- Worked with farm organizations to fund research into sustainable agricultural practices and policies.

Public Access ---

- Reached consensus on DNR and legislative standards for providing public access to navigable waters.

Water Supplies ---

- Convinced DNR to review Wisconsin groundwater supplies and policies to assure adequate quantities of water for future business, domestic and ecological use. Review is underway.

Forests ---

- Worked with DNR, county officials, and county foresters in developing adequately protective state standards for the withdrawal of county forest lands for other purposes.

Environmental Review ---

- Successfully petitioned for regulations requiring state agencies to review environmental impacts of their decisions.

Court Cases

Sewage and Public Notice --- Won court decision forced the Department of Industry, Labor and Human Relations to follow rule making procedures, preventing them from weakening already inadequate private sewage regulations. (Working now to strengthen rules.)

Solid Waste --- Prevented a solid waste landfill from being sited in the middle of the Machickanee Forest in Oconto County because lower cost alternatives existed, preserving this area for wildlife, recreation and forestry purposes. Defended local government authority in landfill siting matters, allowing more stringent local controls.

Wetlands --- prevented wetland destruction at the Tank Farm Marsh for an unnecessary railroad spur track in Green Bay. (Saved the City of Green Bay more than $450,000.) Promoted alternatives and prevented fill of ecologically valuable wetlands at Lily Lake, Kenosha County. Prevented unnecessary dredging of pristine area of Partridge Lake, Waupaca County. Protected several wetland and aquatic resources over the years, in favor of non- or less-damaging alternatives. Exposed and reversed improper Department of Transportation sponsorship of local wetland filling projects to avoid wetland protection standards.

Public Access --- Fought for and retained popular public access points to Lake Michigan and other waters for fishing and other enjoyment.

Local Shoreland and Floodplain Zoning --- Won court decision striking down a provision exempting lake property owners from complying with shoreland zoning regulations that protect public waters. Won court decision striking down provision that prevented county enforcement of floodplain zoning regulations in the Mississippi River to protect public safety, prevent costly property damage and taxpayer liabilities from floods.

Pesticides and Local Rights --- Won U.S. Supreme Court decision establishing right of local governments to set stronger standards than federal law to protect public health and the environment.

Tourism --- Defended right of local governments to regulate forest clear-cutting near town roads to protect the local tourist economy. Promoted an alternative and prevented unnecessary private bridge on Pelican River, to protect navigation and scenic beauty.

Transportation and Environmental Impact Statements --- Won landmark court decision requiring the Department of Transportation to disclose environmental consequences of their multi-million dollar highway building plan.

Lakebed and Creekbed Protection --- Won court decision striking down an exemption to a DNR order requiring restoration of Oak Creek to it's former natural value, after it was illegally lined with concrete. Required Eau Claire to protect a major trout stream from development runoff and erosion. Won court decision preventing construction of private condominiums on public lake bed, and other illegal structures in the water, helping to preserve the waterfront for public uses.

Contaminated Sediments and Water Quality --- Won court decision denying permit for building a dredge spoil lakefill in Green Bay because standards were not met. (Private citizens were forced to spend more than $50,000 repeating this same case after the Intervenors were abolished. Again, the court ruled that DNR violated the law.)

Fort Howard Sludge Incinerator

The DNR has proposed an air pollution permit for a big new sludge incinerator at Fort Howard Corporation in downtown Green Bay, which would burn 250 tons of sludge per day. Currently, roughly half of Fort Howard's sludge goes to their Sludge Lagoons by the airport. The rest goes to GranTech. Fort Howard claims the incinerator will not divert sludge away from Grantech, so both facilities would operate at once. The sludge is contaminated with PCBs, dioxins, mercury and hundreds of other toxic chemicals. The incinerator would be a major air pollution source, releasing 195 tons of Hydrogen chloride, 15 tons of Carbon monoxide, 65 tons of Nitrous oxides, 39 tons of Sulfur dioxide, 1,752 lbs. of several different Volatile Organic Compounds (toxic solvents, etc.), 17 tons of toxic dust, 53 lbs. of Mercury, and 557 lbs. of other toxic metals. These estimates may be too low, because they're based on faulty testing (see other side.)

• **Scientists' and Leaders Warn Against Incineration** --- Incinerators have a bad track record. The American Public Health Association has called for a moratorium on incineration of solid wastes, because of serious toxic pollutants which result. The International Joint Commission between Canada and the U.S. calls for "zero toxic discharge" policies to protect the Great Lakes from contamination, and has called for a ban on new incinerators. The Institute for Agriculture and Trade Policy has called for a ban on incineration, to protect our food supply and farmers, because 75% of public dioxin exposure is through meat and dairy products contaminated by air pollution. Several European countries have already banned incineration.

• **Dioxin is Created by Burning Chlorine Wastes** --- The EPA has identified incinerators as the major new source of dioxin contamination in our environment. Fort Howard claims dioxins are destroyed by burning --- which may be true in the initial stages. But EPA cites numerous studies showing dioxins are created in incinerators as the gases and fly ash leave the burn chamber, cool down and recombine --- ending with more dioxin than originally existed in the sludge. All the necessary conditions would be present at this incinerator --- and tons of the building-block chemicals, especially chlorine compounds.

Fort Howard claims no dioxins were found in their pilot test, but this is untrue. Dioxins and furans were detected in significant quantities in the raw sludge, fly ash and air emissions, though only three samples were taken and the results were variable. Furthermore, the pilot test was seriously flawed (see other side). Dioxin formation requires adequate time and mixing of the chemicals within a certain range of temperature. In the extremely small pilot plant, the chemicals wouldn't have had time to form much dioxin before samples were taken. A full size plant would be very different.

• **Fort Howard Dishonest About Chlorine** --- Fort Howard claims they don't use "elemental chlorine," which is misleading. They use tons of hypochlorite chlorine compounds in their deinking and bleaching processes, which is still serious cause for concern. Chlorine is a highly reactive chemical which forms thousands of compounds. DNR predicts 195 tons of Hydrogen chloride emissions per year from this incinerator, which is 32 times higher than state standards. Hydrogen chlorides contribute directly to dioxin formation. In addition, Fort Howard is the worst source of Chloroform (another chlorine compound) air pollution in the state, releasing 185,800 lbs in 1992. DNR estimated this chloroform alone created a 1-in-10,000 cancer risk in the neighborhood. The waste papers recycled by Fort Howard also contain many chlorine compounds, including dioxins, furans, and PCBs which end up in the sludge.

• **Environmental Impact Statement Needed** --- This incinerator is a public health threat, and warrants a full Environmental Impact Study which would examine treatment alternatives for Fort Howard's contaminated sludges, and would detail the long-term environmental, social and economic impacts. Fort Howard's proposal is experimental and involves considerable uncertainty. It sets a regional precedent for numerous additional incinerators.

• **Comprehensive Health Study Needed** --- Our area is already highly contaminated. We can't eat the fish, drink the water, or swim in the water. Wildlife is sick. We already have serious levels of toxic air emissions, yet the DNR still hasn't conducted a full health risk assessment for our community. A study is needed which looks at total combined air pollution from all sources. All potential health effects should be included --- such as cancer, reproductive, respiratory, immune, and nervous system impacts --- and multi-generational impacts. The study should include all routes of exposure in our community --- through food, water, air, and occupational exposures. The most vulnerable people must be studied --- unborn children, the elderly, people with specific chemical sensitivities, etc. Until such a study is completed, how can the public or the regulatory agencies truly evaluate the safety of adding another large air pollution source to our community?

• **Total Fort Howard Information Needed** --- Fort Howard has more than 6 different air permits, which obscures the company's total air pollution --- yet we know Fort Howard Corporation is the third largest toxic air polluter in the entire state of Wisconsin. We believe area residents deserve to know the full air impacts of the entire Fort Howard complex before the incinerator is discussed and approved. DNR should delay any decision until after this information is provided and the public has had another hearing opportunity.

• **This is an Incinerator, Not a Boiler** --- Fort Howard and the DNR are trying to mislead the public by calling this a "boiler" instead of an incinerator, yet it meets all the state definitions for an "incinerator" --- a high-temperature furnace designed to reduce the volume of the sludge and allow recovery of valuable minerals in the ash.

Numerous Pilot Test Flaws

Fort Howard's proposed incinerator permit is based primarily on the results of a pilot test performed five years ago in California --- yet that test was flawed:

a. **Pilot Plant Only 16 Inches Tall** --- It's impossible for such a small burner to represent a full size plant which burns 200 times as much sludge --- yet DNR took Fort Howard's pilot test results and based the full-size incinerator permit limits on straight-line projections. Many chemicals would behave differently in a larger unit with greater mixing and temperature variability. Small inaccuracies in the pilot test would be compounded tremendously when multiplied by 200.

b. **Results Based on Trust** --- The public is forced to trust the company's results knowing that DNR did not supervise any portion of the pilot test. In Fort Howard's case, this trust is inappropriate. For example: Fort Howard was caught red-handed burning barrels of PCB oil in their coal-fired power plant. This was clearly illegal and they knew it. The state fined the company $40,000. Fort Howard was also recently fined by EPA for violating PSD requirements at its Boiler #9 coal burner. Fort Howard has also dragged its feet for more than 10 years on the issue of cleaning up the tons of toxic chemicals they dumped in the Fox River.

c. **Containers Contaminate Results** --- During the pilot test, waste sludge was carried into the burn chamber in paper containers, which also burned along with the sludge. These paper cups were 17% of the dry weight inputs. No containers would be used in the full size incinerator; therefore, this could significantly change the predictions of pollution.

d. **Sludge Too Low In PCBs, Mercury, and Moisture** --- Typical Fort Howard sludge contains 10 times as much PCB as was contained in the sludge burned in California. The mercury calculations for GranTech were also almost 4 times higher than that predicted for the Incinerator --- though the two facilities would process roughly the same quantity of sludge. The sludge used in the pilot test also contained only 47% moisture, but typical Fort Howard sludge contains 56% or 60% moisture. These three discrepancies suggest that the sludge burned in California was not typical Fort Howard sludge --- therefore the test results can't be applied to Green Bay.

e. **Used Same Sampling Methods Used in GranTech Fiasco** --- The Incinerator pilot test used some of the same methods used in the GranTech pilot test, which gave the public grossly inaccurate predictions of GranTech's actual emissions.

f. **Circulating Unit?** ---- The permit doesn't specify "circulating" in the description of the fluidized bed unit, which is important because the pilot test was conducted on a circulating fluidized bed burner. If a different incinerator design (for example, a "bubbling" fluidized bed burner) will be used by Fort Howard, this could significantly change the predicted emissions.

g. **Statistically Weak** --- The pilot test results were based on very limited sampling, and involved only 3 tests which ran only 4 hours each. For most chemicals, only 3 samples were taken. For many important chemicals, including dioxin, the results were highly variable. Despite theseweaknesses, the DNR averaged the three sample numbers, then extrapolated by multiplying them 200 times, to make predictions of the full scale plant's pollution emissions. This is not scientifically sound.

h. **Aging Units Behave Differently** --- Corroded, worn, encrusted burners and pollution control equipment has a different efficiency from brand-new equipment. The pilot plant was undoubtedly in peak operating condition. Any test with unrepresentative equipment will give unrepresentative results.

j. **Continuous Operation Different** --- The pilot test was a tightly controlled 4 hour test. A full scale plant in continuous operation 24 hours a day, 365 days a year, would be distinctly different and variable. Much more room for human errors, mismanagement, mechanical failures, weather and seasonal effects, and other variability.

k. **Old, Inappropriate Data and Technologies** --- Fort Howard began incinerator investigations in 1987, did the pilot test 5 years ago, and now wants another 3 years to begin construction. This is an 11 year period, making their proposal no longer state-of-the-art. It's inappropriate for DNR to allow Fort Howard to use out-dated solutions which increase public health risks, when new sludge detoxification technologies are being perfected rapidly to provide better solutions to Fort Howard's sludge problems.

This factsheet prepared by Clean Water Action Council of N.E. Wis., 2220 Deckner Avenue, Green Bay, WI 54302 --- July 7, 1995