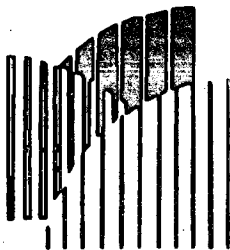


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ATLANTIC STATES LEGAL FOUNDATION

NEWSLETTER SPRING 1990

*"When people are engaged in something they are not proud of,
they do not welcome witnesses.
In fact, they come to believe the witness
causes the trouble."*

-John Steinbeck, 1962

Dear Member:

I recently came across this quote in a small art exhibit and realized that it not only described the need for the work we do on behalf of the environment, but also captured the reaction we often get from polluters who have been caught in the act.

And so, as we compile in this newsletter a summary of the work in which we have been engaged for the past year, I can report to you that there are many places throughout this country where we are welcomed by the concerned public but seen as troublemakers by industries and agencies. That's just the reality of the work we do and being called troublemakers tells us that we have been doing it very effectively.

In our first few years of existence, we concentrated our resources as an organization on insuring compliance with the federal Clean Water Act. Soon thereafter we developed a significant program component to address the Great Lakes ecosystem, a natural extension of our clean water program because of the parallels between the Clean Water Act and the Great Lakes Water Quality Agreement. More recently, we implemented the first comprehensive enforcement program in the nation under the Emergency Planning and Community Right-to-Know Act. In each of these efforts we have all too often been witness to the reality that the corporate community, the regulatory agencies, and sometimes even individual citizens, do not take seriously their responsibility to protect the environment. More importantly, we have also served as a catalyst for change by using our considerable legal expertise, technical skills and networking ability to insure that the public has a right to intervene on behalf of their environment.

The progression from one program area to another has been a logical one for us because our fundamental motivation in each area of endeavor has been to insure that the public has a meaningful role in protecting and restoring the quality of the natural environment. We have been successful thus far in exerting on behalf of the environment an influence that is incredibly disproportionate to the size of our organization. That enviable accomplishment has been possible only through the help of you, our members, a rapidly expanding corps of volunteers and interns, and a small but incredibly dedicated staff.

We have been witness to some outrageous abuses against the environment and we have also been remarkably successful in holding the responsible parties accountable for those actions. We firmly believe that the 1990's will indeed be the Decade of the Environment. Please join us in our work and bear witness to a growing movement in which we will score many more victories for clean water and clean air and in which individual citizens assume greater responsibility for protecting our environment.

Many thanks for your continued enthusiastic support.

Sincerely,

Steven W. Kulick

Chair, Board of Directors

STATEMENT OF PURPOSE

OUR PURPOSE IS TO PROTECT AND RESTORE THE QUALITY OF THE NATURAL AND HUMAN ENVIRONMENT

We have chosen to pursue this goal through the concepts of process, empowerment and accountability.

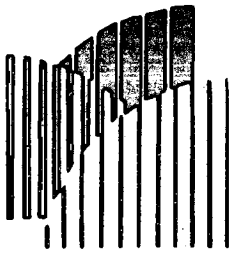
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Achieving environmental balance is the responsibility of all the players of the community in its broadest sense - the global community.

WHAT'S INSIDE:

Clean Water Program	2
Great Lakes Program	4
Toxics & Public Rights Program	7
Home.....	9
People	10
Membership Corner	11

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Clean Water Program.....	2
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CLEAN WATER PROGRAMS

Since Atlantic States Legal Foundation's beginnings in 1982, we have focused our energies on programs implementing the Clean Water Act. This landmark piece of federal legislation was passed over President Nixon's veto in November, 1972. The law is complex and relates to all aspects of pollution control in the surface waters of the United States, including the boundary waters with Mexico and Canada.

One key part of the law is the citizen suit provision of section 505 which enables us to bring enforcement actions against violators. While we are continuing to serve as a resource, to research cases, and to act as liaison between the community and outside counsel, our staff attorneys are taking a more active role in the courtroom itself as lead attorneys in many of our Clean Water Act cases. The following articles display this new development, and as well, also represent our continuing cooperative relationship with other attorneys.

Sunny (and Polluted) Puerto Rico

This past September, Atlantic States Legal Foundation negotiated a settlement with Eli Lilly Industries, Inc. after revealing the company's Puerto Rico plant was discharging illegal levels of numerous pollutants into the Rio Grande De Loiza, located on the North coast of the island. Under the agreement, the company will undertake all actions necessary to achieve compliance with its NPDES permit and will provide funding for environmental projects in Puerto Rico.

In addition to the Eli Lilly settlement, ASLF in recent months has completed enforcement actions against other water polluters in Puerto Rico including Chevron, Caribbean Refrescos (a subsidiary of Coca Cola) and Puerto Rico Cryogenics. Money from these settlements will support a diverse array of environmental projects including a \$30,000 payment to the Nature Conservancy's Latin America Program (for acquisition of critical watershed lands), for studies conducted by the University of Puerto Rico's Department of Environmental Health and the American Clean Water Project focusing on solving Puerto Rico's acute shortage of safe drinking water.

PCBs: When "Zero" is too Much

Last year, the New York State Department of Environmental Conservation (DEC) acknowledged that large quantities of PCBs were entering the St. Lawrence River. PCBs are poisoning the water fish and wildlife and threatening the Mohawk community at Akwesasne. In early 1989 DEC issued modified wastewater permits to the 3 large industries (GM, ALCOA and Reynolds) on the St. Lawrence imposing PCB discharge limits termed "no discharge." This was referred to as "no discharge" in the permit because current technology proposed by DEC provides detection levels at 65 parts per trillion (ppt) for each of the seven common forms (called arochlors) of PCBs. Thus the new permits still allow a potential discharge of 455ppt ($7 \times 65 = 455$ ppt). GM already has the technology to achieve this level, and so accepted the modification. But ALCOA and Reynolds have challenged the new permit standards, contending that existing technology is inadequate, and/or too costly. Why don't they just ask GM?

ASLF, Great Lakes United and the St. Regis Mohawk Tribe have intervened in the proceedings on these permits. We support the goal of zero discharge (see sidebar, p. 5) and see the new lower limit for PCBs as a major step towards this goal. But we believe zero is zero and should not be confused with "non-detect", which is an interim accommodation based on current technology. Even based on technological constraints, we contend that by using the best available methods, total PCB can be detected as low as 20 ppt and treated to as low as 50ppt- a far cry from 455!

In a related issue, ASLF filed suit in federal court in June, 1988, against Reynolds Metals Company for violations of the Clean Water Act, and accused Reynolds of illegally discharging PCBs into the St. Lawrence. Reynolds argued that since its permit did not mention PCBs, ASLF had no legal basis to commence a suit. On February 16, 1990, in a precedent-setting decision, a federal judge ruled in our favor, stating that "...a person of reasonable intelligence would certainly know that PCBs are pollutants" and cannot be discharged at will. The ruling notifies industries and municipalities nationwide that the discharge of wastes not regulated by their permits is illegal. A victory for "reasonably intelligent" folks everywhere!

PCBs

Polychlorinated Biphenyls (PCBs) are a group of synthetic organic compounds. Because of their stability at high temperatures, they were commonly used in high temperature lubricants, in transformers and other electronic equipment, and as fire retardants in linoleum and other products.

Ironically, it is their stability, that very characteristic that made them valuable to industry, that makes PCBs particularly dangerous in the environment. These persistent chemicals continually accumulate in the food web, causing reproductive problems in fish and wildlife.

The primary human exposure to PCBs comes from consumption of contaminated fish. PCBs have been identified as a risk to humans, possibly causing cancer and other health problems.

The first major PCB contamination detected was at a General Electric facility on the Hudson River. Following this discovery, all industrial manufacture of PCBs was outlawed. Equipment containing PCBs continues to be used, however, and leakage from old equipment and contaminated industrial sites continues to impact the ecosystem.

Clean Water Act Cases

We can't list all our cases. Often when we send a notice letter, the company decides to clean up without having to be sued, and some cases are in sensitive negotiations. But here are some highlights.

Chesterton, IN Bethlehem Steel agreed to pay \$10,000 in penalties, and to commission a study on reducing the thermal pollution from its plant on the Little Calumet River, which had been raising water temperature enough to substantially change the fishery.

Baltimore, MD We have identified close to a hundred pretreatment violators, and together with other local environmental groups we are developing a strategy for going after them. As we go to press, we are sending out the first notice letter.

Syracuse, NY In December, 1989, we filed suit against Bristol-Myers. Upon receiving our notice letter Bristol, instead of attempting to reduce its discharges, petitioned the County to change its permit to legalize its current level of pollution. Incredibly, the County agreed to many of the changes. ASLF is considering a suit against the County to reverse these illegal permit revisions. (note: Bristol discharges into Onondaga Lake - see story, p 4.)

...Continued on p. 8

Where Does the Money Go?

When you read about a \$25 million lawsuit, what does that number mean?

Usually the really big number is the **potential** fine. If the judge awarded the maximum fine of \$25,000 per day per violation under the Clean Water Act for 1000 violations, it would be \$25,000,000.

But judges usually award less than the maximum - sometimes **much** less.

When ASLF settles a case, we generally insist on three components:

- **Compliance & Remediation:** The company agrees to bring itself into compliance with its permit. In some cases, they agree to remediate problems caused by the violations in addition to just stopping them.
- **Penalties:** What we think the courts might fine the company. This is the number most often reported in the media. Sometimes instead of going to the US Treasury, some of this money can go to environmental groups or government agencies for specific environmental benefit projects in the area of concern.
- **Fees & Costs:** The company pays the costs in bringing the suit, including attorneys' and expert witnesses' fees.

The Clean Water Act: Discharge Permits and Citizen Enforcement Suits

DIRECT DISCHARGER:

- Releases wastes directly into surface water.
- Is required under the Clean Water Act to have a NPDES (National Pollutant Discharge Elimination System) permit, limiting types and amounts of pollutants released.
- Is issued a draft permit, accompanied by a public notice, allowing thirty days for public comments.

INDIRECT DISCHARGER:

- Releases wastes to a treatment facility (a NPDES permit holder), where pollutants are treated and THEN discharged into a body of water.
- Is required to have a "pretreatment" permit, and must remove pollutants, including those the treatment plant is unable to handle.
- There is no public comment period in the permitting process for pretreaters.
- All permit holders (direct and indirect) must file regular Discharge Monitoring Reports (DMRs).

ANATOMY OF A CWA SUIT:

- **DMRs AND PERMITS OF** suspected violators are researched to document specific violations. This information is available to anyone under FOIA (The Freedom of Information Act).
- Data collected from research is used to write a notice letter to the violator announcing our intention to sue after a required sixty-day waiting period. This period allows for government intervention, or for the violator to prove compliance with its permit.
- Our preference is settlement out of court, which avoids the costs, delays and uncertainties of going to court, while providing immediate remedies.
- Settlements may include clean up requirements as well as compliance requirements, payment of fees and costs, payment of penalties to the federal government or allocation of part of the penalty to a specific environmental project.
- If no agreement is reached, ASLF files a formal complaint with the appropriate federal court, and the long, tedious process of litigation begins.

GREAT LAKES PROGRAMS

We are in contact with more and more concerned people living around the Great Lakes. There is a great need to communicate with those who want to know what is going on and what they can do to help clean up and protect the Lakes. The effectiveness of the environmental community rests on our ability to coordinate and cooperate. The articles "America's Most Polluted Lake" and "Give it a Mickey Mouse Watch" on this page and the next relate to the Great Lakes program in two ways. First, they are located in the Lake Ontario watershed so the problems associated with them are added to the mess that is already in that lake. Second, they are both examples of the effectiveness of working collectively. We are convinced that the use of networks and coalitions is our best bet for maximum progress.

Programs under the Great Lakes Water Quality Agreement

The Great Lakes Water Quality Agreement (GLWQA) is driving many clean-up programs in the Basin. This is an agreement between the US and Canada that sets out specific goals for the Great Lakes, outlines explicit structures for remediation planning and provides clear-cut philosophical concepts from which to work.

The amendments of 1987 gave birth to two complementary programs mandating public input: RAPs (Remedial Action Plans) and Lakewide Management Plans. RAPs address the problems in the 42 designated Areas of Concern (AOCs) or "toxic hotspots" around the Great Lakes Basin. Citizens' Advisory Committees on each RAP help develop a clean up plan tailored to that Area. Lakewide Management Plans have committee structures that include citizen representation and deal with each Lake as a whole. Together these cover the Lakes themselves and the sources of contaminants upstream in the basins.



The LOON is one of our favorite Ontario water-birds, making it a good symbol for the Lake Ontario Organizing Network. All organizations located in the Great Lakes Basin are invited to join this network (see page 11), be included in the Directory and get a jump on the next step, which of course is to expand throughout the entire Great Lakes Basin!

"America's Most Polluted Lake"

Onondaga Lake in Central NY holds this dubious distinction. The federal government has begun a process for clean-up, but the Syracuse environmental community suspects that tax dollars earmarked for the project won't be well spent

On February 13, 1990, US Senator Daniel Patrick Moynihan and Representative James Walsh convened a so-called 'Management Conference' to begin the planning process. Funded with a \$500,000 federal appropriation, the Conference includes the state governor and attorney general, the Onondaga County Executive, the Mayor of Syracuse, the EPA and the Army Corps of Engineers.

We are pleased that the long-neglected lake is receiving governmental attention, but concerned that the Conference is misguided. For example, its first action ordered the Army Corps to do a three year study. This study will put off actual actions. Of deep concern is the absence of any voting representative from the environmental community. ASLF has taken the lead in organizing a coalition of environmental groups including the Sierra Club, Audubon Society, Trout Unlimited, the Izaak Walton League and the Adirondack Mountain Club to demand a more influential role in the planning process.

We have a long-standing legal commitment with the Lake. Last year, as a result of an ASLF lawsuit, Onondaga County agreed in a consent order to upgrade its Metro Sewage Treatment Plant, one of the Lake's largest sources of pollution. The County's progress with implementing required changes will be monitored.

LAKE ONTARIO ORGANIZING NETWORK

In the spirit of working smart as well as hard, environmental organizations around Lake Ontario are continuing to support the development of LOON, the Lake Ontario Organizing Network. This network acts as a vehicle for enhancing the ability of the member organizations to work together. One of the goals of the groups involved is to develop cooperative or joint projects. Through the united support of multiple organizations, these projects have far a greater impact than projects under just one name.

ASLF is spearheading the next development phase of the Network by coordinating a LOON directory (with initial funding provided by the Laidlaw Foundation). This will involve a great deal of outreach to groups that have not participated yet and will give them an essential tool to use in their own communication efforts. Information about each organization will be listed on a separate page and all organizations will be thoroughly cross-indexed to increase the potential usefulness of the directory. Along with the directory we hope to develop a database of issues and actions within the Basin.

By using the Directory, it will be far easier for organizations to connect with others working on similar projects and issues with these resources. Our goal is to foster a dynamic and current picture of environmental activity in the Lake Ontario Basin. We can do more when we work together!

PUBLIC INVOLVEMENT IS THE KEY

In recent years Atlantic States has played an integral role in fostering the development of several RAPs as well as the Niagara River/Lake Ontario Toxics Management Plan (see sidebar p 4). Currently, ASLF serves on the Citizens' Advisory Committees (CACs) and Public Outreach Subcommittees for the Oswego and Massena RAPs in New York, the Calumet RAP in Indiana and provides organizational support and advice for RAP citizens' groups fighting to clean waterways in Indiana, Wisconsin, and Ohio. Closer to home, we are trying to develop a RAP for highly polluted 18 Mile Creek in Lockport, NY. ASLF is also represented on three committees of the Niagara River/Lake Ontario Toxics Management Plan. Active public support is vital to the success of RAPs and Lakewide Management Plans. Our role here is to promote citizen empowerment in addition to providing technical advice on proposed remedial programs.

The Oswego RAP exemplifies a successful result from ASLF involvement with an active citizens' group. Pressure from the CAC prodded the Department of Environmental Conservation to restructure the writing team for the RAP document. The process is now smoother and has a much tighter timeline.

This struggle is being repeated in many CACs. Only through concerted public action can recalcitrant government agencies be pushed to provide the funding and support needed for such a large undertaking. In the future, we will continue to support RAPS and Lakewide Management Plans -- potent tools in the hands of concerned citizens in the struggle to protect the Great Lakes' ecosystem.

EDUCATION: ANOTHER FACET OF PUBLIC INVOLVEMENT

Outside of that portion of the environmental community that is actively concerned with water dischargers, very few people know much about permits and how they work. This is actually an area where public input can have a surprisingly large effect. The public has explicit rights for involvement in the Clean Water Act permitting process (see sidebar, p 3) through making comments and testifying in public and adjudicatory hearings.

ASLF was funded by the Charles Stewart Mott Foundation to provide training on the permitting system and guidance in writing comments on draft permits to the public in the Lake Ontario Basin. Several staff members and consultants were involved in the project, holding a total of six workshops around the basin (five in New York State and one in Toronto, Ontario) and drafting comments on significant permits as they came out. Follow-up plans include a permit watch throughout the basin.

Meanwhile, the concerned public must take every available opportunity to push toward zero discharge. With every comment given and every action taken by the public, demands are repeated that the laws do what they were originally intended to do--reduce to zero the amount of contaminants being put into all parts of the ecosystem.

For a copy of the Great Lakes Water Quality Agreement, write to: Public Information Office, 345 Third St., Suite 530, Niagara Falls, NY 14303.

It is up to those who care about the future of the Lakes and the people who live around them to hold zero discharge up as the only acceptable means for restoring them.

ZERO DISCHARGE

Since the Amendments to the Great Lakes Water Quality Agreement came out, controversy has been raging over zero discharge.

What is all this hoo-ha about, anyway?

The Great Lakes Water Quality Agreement states [Annex 12.2 (a) (ii)] that "the philosophy adopted for the control of inputs of persistent toxic substances shall be zero discharge."

This makes sense to the environmental community. We believe the Great Lakes will never be clean until we stop putting pollutants into them.

The 'hoo-ha' seems to originate with industries and agencies now facing the implications of the word 'zero'. They are trying to redefine 'zero' - claiming the authors of the Agreement didn't really mean it. (Hint: they really did.)

ZERO means none. DISCHARGES are pollutants emitted into the ecosystem. We want the realization of that goal as it is meant - no more wastes put into the ecosystem: ZERO DISCHARGE!

THE ECOSYSTEM AS A GUIDING CONCEPT

Ecosystems include all the components of a geographical area (air, land, water and all life) and their interrelationships. The effects of contamination are not isolated. Pollutants move through the ecosystem from one medium to another without regard for political boundaries. An ecosystem approach deals with the fact that solutions must also cross jurisdictional lines and focus on the system as a whole. Plans based on the ecosystem approach should include:

- The possibility of synergistic effects of multiple exposures on the living things in the system - including humans!
- Migration of contaminants through all the parts of the ecosystem
- Elimination of inputs from all sources (direct and indirect sources and nonpoint sources such as sediment resuspension, air deposition, surface runoff, landfills, hazardous waste sites, etc.)
- Land use issues and other human activities that degrade the system

Meltdowns and Half-life

Although the nuclear industry would have us believe an accident at a nuclear facility is unlikely, the Nuclear Regulatory Commission (NRC), the federal agency charged with assuring safety within the industry, has admitted a shocking 45% probability, nearly one in two chance of a meltdown at some nuclear plant. There are now 110 nuclear reactors operating in the U.S.

While such a meltdown would release an extreme amount of radiation, the fact is that dangerous releases already occur far too often.

At a nuclear reactor such as Nine Mile Point 1 (NMP1) in Oswego, NY, the low-level radioactive waste produced has a half-life of between 1000-10,000 years (that is, in a minimum of 1000 years, radioactivity would be reduced by 1/2, and in another 1000 years, reduced by half of that, etc...).

There is no conclusive information about the effects of exposure to radioactivity. However, people living near nuclear plants have reported an unusually high incidence of cancer deaths in humans and birth defects and low productivity in farm animals.

State Environmental Quality Review Act - SEQRA

SEQRA is a New York State act created to prevent excessive damage to the environment from human development. Under the act, Environmental Impact Statements (EISs) serve as an investigative tool, a method of assessing potential damage to the environment, possible alternative proposals, and ways to mitigate damages.

The procedure requires that citizens be given the "opportunity to contribute to the process" via public hearings which allow citizens to comment on the draft EIS. The party interested in developing the resource is required to note all arguments against development, and address them in the final EIS. (see article p. 7)

Give it a Mickey Mouse Watch

(or: Save the Cows and put Nine Mile 1 out to pasture)

A coalition of concerned farmers, neighbors and scientists have organized a "Retire Nine Mile 1", and with help from ASLF are trying to keep the Nine Mile Point 1 nuclear reactor in Oswego, NY from coming on line after a 25-month shut down for repairs. We are considering writing a petition to the NRC demanding a permanent shutdown of this facility.

The plant was originally shut down by the NRC in December of 1987 for minor repairs. The problems turned out to be more extensive, and the plant has been closed since. NMP1 is scheduled to reopen in April, although many are not satisfied with the repairs and renovations, and are concerned with the safety of this aging plant.

NMP1's troubling history includes, but is not limited to the following series of events:

- Because of expected high radiation levels, the storage room and loading system for drums containing radioactive waste were supposedly designed to operate without human contact, allowing for no routine maintenance. The system was actually undersized, easily overwhelmed, and broke down almost immediately. Waste drums in this storage area measured radiation levels so high a mere half hour exposure would be expected to pose a significant cancer threat. Workers now have to enter the area to clean up.
- Faced with insufficient waste tank storage, plant owner Niagara Mohawk (NIMO) decided to use the sub-basement as a liquid waste tank, flooding the area and floating waste barrels off conveyor racks. Additional contents have been spilled into the water.
- Although more water has been added to the sub-basement storage area, the level has dropped. There are no adequate explanations for this.
- Records of Waste shipments to licensed landfills show unusually large amounts of waste being shipped from the plant. While volumes are comparable with those shipped from Oyster Creek, NMP1's twin, NMP1 waste contains 10-100 times more radioactivity.
- Since December 1978, local farmers have reported unusual problems with cow fertility and birth rate, etc. Similar problems occurred near the Three Mile Island reactor following the 1979 accident. In 1981, NIMO began reporting higher levels of radioactivity in air and water around the plant.
- On July 8, 1981, 50,000 gallons of reactor coolant were purposely discharged into Lake Ontario. NIMO finally reported the discharge to NRC October 30, 1989, but still neglected to mention that at the time, uncapped barrels were floating and overturned in the sub-basement, spilling their radioactive contents.

Niagara Mohawk must be held accountable for its disregard of the health of its workers and neighbors and the NRC must do its job to insure safety and health. This will only happen out of the concern, diligence and perseverance of citizens using our rights to protect our communities.

TOXICS AND PUBLIC RIGHTS PROGRAM

The pervasive nature of chemical toxicants is of concern to all. This rapidly expanding program provides a balance of activities among legal action, technical assistance and community organizing. In addition to the Clean Water Act, there is a legal framework enacted by the Congress and the state legislatures, as well as common law remedies which give citizens specific rights. We provide assistance to empower you to utilize the laws that include citizen suit provisions. We are breaking new ground (We are the first group in the nation to initiate comprehensive EPCRA litigation) and are extremely optimistic about the future of this program.

What happened to the three R's?

In 1980, Onondaga County (NY) legislators agreed to build a mass-burn incinerator in the Town of Onondaga, but officially abandoned the project in 1984. The County again introduced the idea of a mass-burn incinerator in 1987, denying that the original project was formally abandoned in order to avoid preparing a new Environmental Impact Statement (see sidebar: SEQRA, p6).

ASLF heads a coalition that sued the County on the basis that the earlier incinerator project was legally abandoned and that the later one must have a new EIS reflecting changes in technology, differences between the two projects, and a current evaluation of proposed sites. The current project is quite different from the one described in the 1980 proposal. Unfortunately, the county judge decided in favor of the county. We are contemplating an appeal.

We are outraged at the County's attempt to bypass regulations designed to provide environmental safeguards. ASLF favors intense **Recycling, Reuse and Reduction (the 3 R's of Solid Waste)** efforts over costly, high-tech solutions to the solid waste crisis. Mass-burn incineration and recycling are incompatible. Furthermore, incineration releases pollutants into the air, produces dangerous chemicals such as dioxins and concentrates toxics (e. g. heavy metals) in the ash. Send those legislators back to school to learn about the three R's!

4-County Landfill Update

As we went to press last year, a landmark RCRA (Resource Conservation and Recovery Act) decision was handed down in the case of STOP (Supporters to Oppose Pollution) and USA vs. Environmental Waste Control, a/k/a 4-County Landfill. This is the first case in which a commercial hazardous waste disposal facility was permanently closed through court action. The decision was based upon testimony from STOP members and other witnesses, who provided videotapes, photos and reports. Since STOP's inception, ASLF staff members have provided vital organizational and legal assistance (including assistant counsel during the 30 trial days).

In addition to permanently closing the landfill, the court imposed \$2,778,000 in penalties, ordered clean-up of the site and payment of STOP's attorneys' fees. Within two weeks of the court's order, 4-County declared bankruptcy, delaying clean up and the payment of fines and fees.

The day of the verdict, STOP members were threatened. Two members and their children were chased by a waste hauling truck. The following night, a shotgun was discharged outside the same member's house, and roofing nails were scattered in their driveway. These intimidation tactics stopped immediately after an alerted FBI agent talked to the owner of the dump.

Several legal actions are still pending. STOP has filed suit against the Heritage Group to make them liable as co-owners/operators of the landfill, and a separate motion seeking sanctions against 4-County's lawyers (Pendygraft & Plews) for withholding evidence of groundwater contamination. While STOP seeks to recover attorneys' fees totaling less than \$300,000 for years of effort, Four County has paid its lawyers over \$1.5 million. In January oral arguments on the dump's appeal were heard. We await the court's decision.

Citizen Suit Provisions: Empowering the Public to Protect the Environment.

Congress has recognized that federal and state agencies cannot possibly monitor and enforce all of the broad and complex environmental statutes enacted over the past three decades. In addition to the Clean Water Act and EPCRA (see sidebars, pp.3 & 9) there are numerous laws that include citizen suit provisions including the following:

- The Clean Air Act - CAA
- The Resource Conservation and Recovery Act - RCRA
- The Comprehensive Environmental Response, Compensation, and Liability Act - CERCLA, better known as "Superfund"
- The Safe Drinking Water Act
- The Endangered Species Act
- The Marine Protection, Research, and Sanctuaries Act
- The Surface Mining Control and Reclamation Act -SMCRA
- The Toxic Substances Control Act - TSCA
- The Deepwater Port Act
- The Noise Control Act
- The Outer Continental Shelf Act.

For copies of any of the above laws, write your congressperson.

Grassroots Solid Waste Solutions

Coping with the mass of materials that Americans continue to discard is one of the most pressing problems of urban America. The old "solution" of dumping it into a depression in the earth -- usually a wetland -- is no longer acceptable.

ASLF is involved with communities from coast to coast in trying to develop rational, long-term solutions to this problem. One such effort is the legal action we are undertaking in our own backyard trying to defeat an incinerator planned for greater Syracuse (see article p 7). Solid waste dilemmas in New York State are not exclusive to Syracuse. Virtually every municipality is faced with finding a solution. Unfortunately, the "solution" often results in an undemocratically-empowered governmental authority that circumvents public opinion in implementing solutions, which often include creating new taxes.

For example, in the Oneida-Herkimer area a consultant was paid over \$250,000 to prepare a generic Environmental Impact Statement on solid waste solutions. The core proposal seems to tear down and reconstruct as a "state-of-the-art" facility the three year old, once-rebuilt Rome incinerator! In rural Jefferson County, officials are proceeding with an effort to secure permits for a 200 acre landfill in the Town of Rodman. Ironically, this innovative, North Country community of 850 currently recycles over 65% of its wastes. In Tompkins County the current landfill -- located in a wetlands area that is the headwaters of Cayuga Lake -- is over capacity. A proposed landfill in Dryden would be situated adjacent to a wetland that overlays the aquifer that serves as Cornell University's water supply. Similar tales of woe can be told of other counties throughout New York state.

Recently ASLF staffers met with other environmentalists from some twenty states in the idyllic Adirondack setting of the Blue Mountain Center to discuss solutions to solid waste problems. The conference spawned a new movement called GRASSROOTS - Grassroots Action for Solidwaste Solutions. It is not a new organization but an umbrella for like-minded groups who favor source reduction, reuse, and recycling over costly, polluting incinerators. The Institute for Local Self-Reliance in Washington, DC is coordinating this effort. Those interested in additional information and/or participating in GRASSROOTS should contact us at ASLF.

HISTORIC STRIP MINE VICTORY IN INDIANA

Residents of Blanford, IN have some peace of mind and cleaner air as the result of a major victory against the Universal Mine of Peabody Coal Company. With initial organizing and research assistance of Atlantic States Legal Foundation more than 100 residents of this area joined together and sued the mine for violations of the Strip Mine Act, the Clean Air Act, and for personal injury and damages to property.

After the federal court issued an injunction against Peabody that severely restricted their operations at Universal, the company and plaintiffs finally agreed to a settlement that is of great benefit to the residents and the environment.

The precedent setting nature of this victory will enable other communities to confront similar abuses perpetrated in the name of cheap coal. This is a victory we can all share but special commendation must be given to Shirley Zell and the others who persevered to bring this case to fruition and to David Pope and the other attorneys who put their all into making this victory possible.

CWA Cases - continued from p.3

Rochester, NY We are suing Kodak, one of the state's worst polluters. Their present permit allows a discharge of 1800 lbs. per day of pollutants into the Genesee River. Kodak has repeatedly exceeded this limit, including large spills of toxic methylene chloride and dichloropropane.

Johnstown/Gloversville, NY Several leather companies have caused severe pollution of Cuyadetta Creek. We have sued Johnstown Leather, and are investigating others.

Indianapolis, IN

After we sent a notice letter to Rock Island Refinery, both the State and the City filed suit, precluding our action, and ended up settling the case for a small penalty. Later we learned that the company had asked the State to sue so it wouldn't have to deal with us.

Naval Avionics, a US Navy facility, is our first suit against a federal facility. Our government should not be illegally discharging toxics, including lead, chromium, silver, mercury, copper, zinc, and cyanide into municipal sewers.

Quemetco, a lead battery recycler agreed to pay \$75,000 in penalties including \$35,000 to the Nature Conservancy for urban wetlands preservation and \$20,000 to the Hoosier Environmental Council--and to stop releasing metals, especially lead, into the sewers.

Illinois The Illinois Sierra Club asked ASLF to research Illinois permit files. As a result, ASLF is preparing dozens of notice letters, and assisting Sierra Club members trying to strengthen weak permits.

Wisconsin We have numerous cases at all stages from initial research to final settlement and in all parts of the state, including pretreaters in Milwaukee, Green Bay, Sheboygan, and Manitowoc.

Kansas City, MO We have researched dischargers in the Kansas City area, and expect to sue several major corporations.

Right to Know

While the EPA had brought various actions under the administrative penalty provisions of EPCRA (see sidebar) since the law's inception in 1986, a citizen's enforcement suit had never been filed in federal court prior to ASLF action taken in the fall of 1989. Staff counsel Charlie Tebbutt sent notice letters of intent to sue to seven Onondaga County, NY companies for failure to comply with toxic chemical release reporting requirements of EPCRA.

After receiving copies of these notice letters, EPA inspected the seven facilities and determined that five were definitely in violation of the Act. On the 58th day of the requisite 60-day notice period, the EPA intervened by filing administrative actions against these companies, proposing penalties totaling \$222,500. EPA's actions precluded further ASLF involvement, an ironic development considering the EPA's decision was based on countless hours of ASLF's work.

Following their intervention in the Onondaga cases, we talked with EPA representatives who agreed to work more cooperatively with ASLF in EPCRA enforcement to avoid duplication. News of our actions has prompted calls from citizens and community groups throughout the country seeking our advice on pursuing litigation under EPCRA.

ASLF is continuing to investigate potential violators of EPCRA, as well as working with local citizens and emergency planning commissions to bring polluters into compliance. We encourage citizens to take an active part in EPCRA enforcement, and pressure companies to adopt toxic-use-reduction strategies as part of any settlement packages.

EPCRA:

Created largely in response to the Union Carbide disaster in Bhopal, India, the Emergency Planning and Community Right-to-Know Act (EPCRA) was passed in 1986. The environmental and labor communities pushed for this legislation because they wanted and needed to know what toxics they were working with. Without accessible information, citizens cannot begin to fight polluters and protect communities.

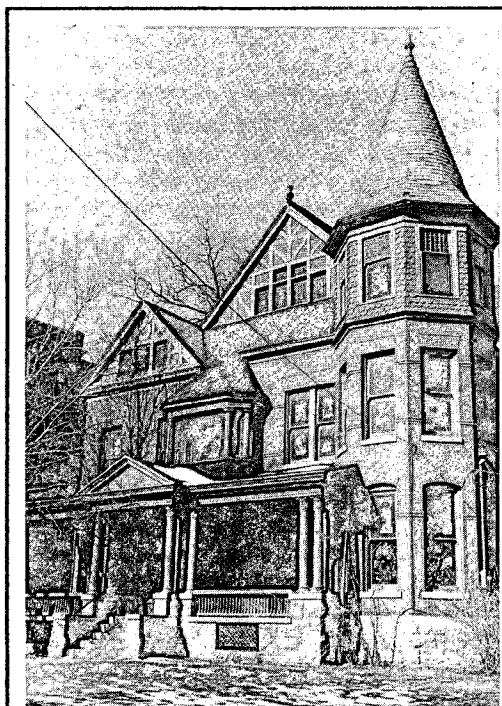
Companies are required to report on specified hazardous substances stored, used, and/or released exceeding defined limits. EPCRA's list of regulated substances grows, while allowable limits decrease. The EPA has not yet set limits for toxic air emissions under the Clean Air Act, but thanks to info collected under EPCRA, Congress can no longer ignore the mag-

"HOME"

We've finally settled into the old Victorian mansion that we have worked in since October, 1988. Fund for the Environment (FFE), a not-for-profit organization that facilitates the preservation of historic buildings, purchased the building in the fall of 1989, with Atlantic States as the principal tenant. Other current tenants include In Concert With Nature, an organization producing artistic events to help raise funds for and awareness of environmental issues, and Central New York Sane/Freeze, a not-for-profit organization that advocates a nuclear weapons freeze. We are pleased to be sharing the building with other community groups promoting a safer, more peaceful environment and welcome other kindred organizations.

Fund for the Environment is working to establish the building as the Simon J. Volpert Environmental Center in honor of ASLF President Samuel Sage's grandfather, an environmentally-conscious individual concerned with pollution in late 19th Century Syracuse. The Center will offer reasonably priced office space as well as a full range of resources and services specifically tailored for other environmental organizations. These services are expected to include library facilities, payroll and bookkeeping services, health insurance plans, computer and graphics services, conference facilities and more. FFE is raising funds to renovate the building's interior to make more efficient use of space, while preserving the splendid exterior architecture. Tax-deductible donations can be made to the Simon J. Volpert Environmental Center Fund of Fund for the Environment.

Our second annual Open House will be held on Earth Day, April 22, 1990 from 4:30 to 7:00 p.m. Please stop by to tour our new home, meet our staff and other community environmentalists, talk with us about our work and our plans for the future, and enjoy a wonderful assortment of refreshments.



*The Simon J. Volpert Environmental Center:
Home for Atlantic States and other local
environmental groups.*

"FRIENDS"

(in order of appearance)

Samuel Sage, President, is a chemist who founded ASLF in the spring of 1982. He saw the need for an organization that actually helped enforce environmental laws. A master strategist, Sam is the visionary of the organization, shaping the overall direction of programs and acting as a resource for the staff.

Charlie Tebbutt, Staff Counsel, claims that living on the mighty St. Lawrence River helped him understand the need to protect the environment. Charlie plays an essential part in the litigation process - analyzing, overseeing, and in a number of cases, litigating suits. His most recent victories include Four County Landfill and Reynolds. Our most recent victory is getting him to wear shoes to court.

Sue Mihalyi is Vice President for Administration and Great Lakes Coordinator. In addition to her administrative duties, she coordinates FLOW, LOON, and other Great Lakes and public education projects. Most of her energy is devoted to networking. "Public concern is on the rise and the potential to channel it into action is at an all time high," she believes. Sue is a musician, artist and craftsperson and has "more hobbies than one person should be allowed to have."

Don Forman, Director of Clean Water Programs, is a devoted environmentalist and former linguist. His job, overseeing Clean Water Act case preparation, includes selecting and researching new areas, managing ongoing cases and coordinating in-house and out-of-house attorneys. Heading Don's agenda for this upcoming year is managing pretreatment work. In his free time, Don enjoys studying and collecting mushrooms.

Lin Kaatz Chary, Lake Michigan Program Director, is a native of Detroit who now runs our operations from a base in Gary, Indiana. Before working for ASLF, she was executive director of the Grand Cal Task Force. She works as a consultant and environmental strategist and has done work for Lake Michigan Federation, Hoosier

Environmental Council, Save The Dunes, Greenpeace, United Citizens Organization and others.

Steve Kulick, Vice President for Development and a native Syracusean, worked for the city of Syracuse for 12 years before coming to ASLF last year. Steve creates grant proposals and conducts administrative work involving budget and financing. His primary concern is helping ASLF develop a greater level of self-sufficiency. His personal agenda includes volunteering for several other environmental groups and dessert (not necessarily in that order).

Rosemary Pooler, Vice President for Legal Affairs, brings her political savvy to environmental issues. She has taken on the difficult issues of the Onondaga County Incinerator and the Oswego County nuclear power plant.

Radell Roberts, Office Manager, started out answering phones last May, and now is an essential part of the administrative team. Radell's interests extend beyond the office, however, and include women's issues, music and spirituality. She is currently co-producing a documentary about the experiences of lower income women. "Everyone is a valuable part of the community," she believes. Radell's communities include the Syracuse Community Choir, the Syracuse Alternative Media Network and a household full of pets.

John Soluri is the newest member of the ASLF staff. So new, in fact, that he doesn't even have a title yet. John's responsibilities range from moving ranges to assisting on Great Lakes projects to acting as "Kitchen Czar." Having such a diverse workload, John claims he is seldom bored. "I welcome the opportunity to work for a grassroots organization where I can gain experience as a mover."

Sahne, staff mascot and fuzzy person, concentrates on staying out from under big feet. She is the official affection sponge, faithfully promising undying devotion to the person scratching her ears at the moment.

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Thanks!

Many thanks to those who gave a helping hand during the past year. We have accomplished so much more because of you!

Alan Rosenthal, Amy Middleton, Andrea Ray, Barb Conover, Betty Whitworth, Brian Cohen, Carey Maus-Pugh, Charlie Sam, Charlotte Read, Chris Mahoney, Chris Wasiuntynski, Clark Burdick, Dave Young, David Jester, David Karnas, Dixie & Greg Sefchek, Dolores Gernhardt, Don Hughes, Doree Stein, Doris Forman, Ed Buonvecchio, Eric Marcus, Evan Karnasch, Evan Springfield, Fannie V. Sage, Grant Smith, Greg Hazarabedian, Irwin Birnbaum, Jane Dustin, Janet Kenyon, Jean Douglas, Jeffrey Ventrella, John Malfa, John McKernan, John Post, Judy Thurber, Karen Tavalaro, Kathy Bero, Laura Wachob, Lee Botts, Linda & Stephen C. Robinson, Lorianne Bernadine, Marcia Post, Marge Rusk, Mary Ellen Kavanaugh, Mary Merner, Mike Dalal, Mimi Flack, Paul Burns, Rich Fedele, Rick Capozza, Ron Scudato, Sean Egan, Stew Theobald, Sue Heffron, Sue Nuccio, Sue Tooley, Syracuse Law School's Public Interest Law Firm (PILF), Vivian Newman

Our apologies to those we left out!

We would also like to acknowledge the interns who worked with us in the past year:

Audrey VanVoolen, Brian Cohen, Chris LaMarca, Dan Young, Doug Onsi, Glen Fechner, Jackie Jones, Jessica Thomas, Joanne Grover, Karen Mehan, Kimberly DeBaun, Lauren Rosenberg

Farewell and good luck to those staff members who have moved on:

Chris Spies, Donna Rogler, Karen Murphy, Patrick Starke, Sandy Cioffi and Buttons

FUNDRAISING

Like many other non-profits, we struggle to raise the funds needed to support our environmental advocacy and research. Unfortunately, we are not always able to respond to inquiries for help because of financial limitations. We hope to create a reserve fund specifically to cover expenses necessary to respond to such requests.

We also would like to respond to the many phone calls we receive requesting information and referrals. One of our vital roles is to provide information and resources not readily available or accessible to the general community -- information necessary for citizen involvement.

This spring, we are completing a very successful eighteen-month project (funded by the Charles Stewart Mott Foundation) aimed at reducing the level of toxic contaminants in the Lake Ontario sub-basin of the Great Lakes basin (See article on page 5, "Education, Another Facet"). We hope to replicate this model for the other Great Lakes.

We are still raising funds to maintain and expand our work in the Midwest, particularly in the States of Indiana and Wisconsin and to fully staff our office in Gary, Indiana. We have an extensive program in Illinois and hope to expand into Michigan later this spring.

Our funding comes mainly from foundations and community support. If you know of foundations (especially local ones) that might be interested in our work, please pass that information along. Our membership base is important in raising program revenue and educating the community. If you feel our work is important, consider making a donation, expanding your current support or inviting others to join.

As important as it is to receive monetary contributions, donated services or equipment such as computers, filing cabinets, or a new phone system are also important. Please let us know if you can help.

Membership Corner

Only with your support can Atlantic States Legal Foundation continue doing its part to help protect and restore the quality of the natural and human environment.

Yes! I can help ASLF protect and preserve our environment.

- _____ 1. Eyes: I can look up files in my area.
- _____ 2. Hands: I can help in the ASLF office.
- _____ 3. Ears: I can pass on info I hear (or see in the papers, etc.).
- _____ 4. Other specialized skills: _____

Yes! I want to help ASLF further by making a contribution.

Sign me up in the membership category checked below:

- _____ 1. Spill Stopper \$15-\$20
- _____ 2. Barrel Buster \$25-\$50
- _____ 3. Toxic Avenger \$50-\$100
- _____ 4. Super Funder \$100-\$250
- _____ 5. Benefactor \$250 +
- _____ 6. Can't afford much right now, but please consider me a member.

Yes! I want to join the Lake Ontario Organizing Network

(LOON). Anyone in the Great Lakes area is welcome-see story on page 5.

I am affiliated with the following organizations which are members of ASLF:

I am also affiliated with the following organizations which aren't members yet:

_____ Send me _____ newsletters to distribute in my area.

_____ I am enclosing a list of people who would like more information about Atlantic States

My Name: _____ Phone: _____

Address: _____

City _____ State _____ zip _____

A copy of our latest annual financial report, filed with New York State, is available by writing to Atlantic States Legal Foundation, Inc., 658 West Onondaga Street, Syracuse, New York 13204 or New York State Secretary of State, Office of Charities Registration, 162 Washinton Avenue, Albany, New York 12231

All contributions to ASLF are tax-deductible to the full extent of the law. Please return this form to: Atlantic States Legal Foundation, 658 West Onondaga Street, Syracuse, New York 13204-3757

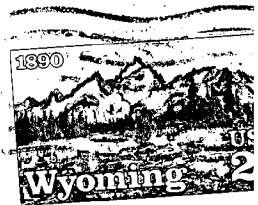
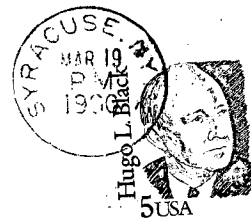
Thank you!

But Seriously, folks...

No doubt about it, saving the planet from environmental destruction is a tough job. But somebody's got to do it and we think we add a little spice to the fight. To have the right attitude to keep at it day after day, we try to take ourselves at least as seriously as some of the polluters take us. Here are a few helpful hints and highlights from this year's newsletter:

- o What company best exemplifies the philosophy which holds that "if it looks like you're going to get in trouble for something you are doing, don't change the behavior, just change the rules?" A: Bristol-Myers, See p. 3
- o What is Naval Avionics' motto when it comes to disposing of toxic discharges? A: "Shape up or ship out...or send it down the municipal sewer." See p. 8
- o What company apparently takes a "negative" view of its permit discharge limits and often exceeds those limits to see what "develops?" A: We "shutter" to mention the name of such a poor corporate leader, but it's Kodak. See p. 8
- o What's the recycling capital of the country? A: Onondaga County, New York where they cook up new incinerator schemes but "recycle" the old project name to circumvent EIS requirements. See p. 7
- o What is the environmental community's attitude toward leather companies charged with polluting our water resources? A: "If the shoe fits..." See p. 8

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