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TESTIMONY TO THE SPECIAL HOUSE LEGISLATIVE COMMITTEE
ON HAZARDOUS WASTE LEGISLATION

PRESENTED ON BEHALF OF
THE WEST MICHIGAN ENVIRONMENTAL ACTION COUNCIL

BY

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MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE: MY NAME IS JEFF DAUPHIN AND I AM THE ENGINEERING / PLANNING COORDINATOR FOR THE WEST MICHIGAN ENVIRONMENTAL ACTION COUNCIL LOCATED IN GRAND RAPIDS, MICHIGAN. AT WMEAC I AM THE STAFF PERSON IN CHARGE OF SOLID AND HAZARDOUS WASTE ACTIVITIES. WMEAC IS A NON-PROFIT, NON-GOVERNMENTAL ORGANIZATION ORGANIZED IN 1968 WITH ITS PRIMARY GOAL BEING TO IMPROVE AND ENHANCE ENVIRONMENTAL QUALITY IN THE STATE OF MICHIGAN. FOR THE PAST FIVE YEARS THE WMEAC HAS BEEN ACTIVELY INVOLVED IN THE SOLID AND HAZARDOUS WASTE ISSUE. TWO YEARS AGO OUR ORGANIZATION ORGANIZED THE MICHIGAN COALITION FOR BETTER WASTE MANAGEMENT WHICH IS NOW AN EFFECTIVE AND INFLUENTIAL STATEWIDE NETWORK OF INDIVIDUALS AND ORGANIZATIONS REPRESENTING ENVIRONMENTAL, BUSINESS AND INDUSTRY, AND LOCAL GOVERNMENT INTERESTS. THIS COALITION HAS PROVEN THAT IT CAN BRING TOGETHER MANY DIVERSE INTEREST GROUPS AND FIND THE COMMON GROUND NECESSARY TO ACHIEVE CONSTRUCTIVE, PRACTICAL SOLUTIONS TO WASTE MANAGEMENT PROBLEMS IN THE STATE. MOST NOTABLE, FOR EXAMPLE, WAS THE COALITION'S EFFORTS TO COORDINATE THE VARIOUS DIVERSE INTERESTS WHICH SUPPORTED AND LED TO THE PASSAGE OF PA 641, THE SOLID WASTE MANAGEMENT ACT OF 1979. IN ADDITION, THE COALITION HAS, AND IS, INFLUENCING THE DEVELOPMENT OF RULES THAT WILL UPGRADE LANDFILL DESIGN STANDARDS IN THE STATE,

AND HAS BEEN ACTIVE IN CHANGING THE DIRECTION OF STATE PLANNING FOR RESOURCE RECOVERY AND HAS EDUCATED HUNDREDS OF CITIZENS, PUBLIC OFFICIALS, LANDFILL DESIGNERS, WASTE MANAGEMENT OPERATORS AND OTHERS THROUGH EXTENSIVE EDUCATIONAL PROGRAMS INCLUDING MEETINGS, CONFERENCES, NEWSLETTERS AND COMMUNICATIONS. CURRENTLY, I SERVE AS THE CHAIRMAN AND STAFF COORDINATOR FOR THE COALITION, HOWEVER, I SPEAK ONLY ON BEHALF OF THE WMEAC. OTHER MEMBERS AND PARTICIPANTS IN THE COALITION WILL, I AM SURE, BE PRESENTING TESTIMONY AND INPUT TO YOUR COMMITTEE ON THEIR OWN BEHALF.

LET ME SAY AT THE ONSET THAT I HAVEN'T TALKED TO ANYONE WHO DOESN'T AGREE THAT WE HAVE A CRITICAL HAZARDOUS WASTE MANAGEMENT PROBLEM AND THAT SOLUTIONS ARE NECESSARY IMMEDIATELY OR SOONER. WMEAC IS CERTAINLY IN AGREEMENT WITH THAT STATEMENT. HOWEVER, AS IS OFTEN THE CASE WHEN A PROBLEM REACHES THE CRISIS STAGE, AS THIS ONE CERTAINLY HAS, THE NATURAL TENDENCY IS TO GRASP FOR ANY SOLUTION QUICKLY. IN MANY RESPECTS WE FEEL THAT THIS IS EXACTLY WHAT IS HAPPENING WITH HAZARDOUS WASTE LEGISLATION THAT IS CURRENTLY BEFORE THE LEGISLATURE, NAMELY HOUSE BILL 4006.

DURING THE LAST LEGISLATIVE SESSION OUR ORGANIZATION AND OTHERS WERE CRITICIZED BY MANY FOR OFFERING SUBSTANTIAL COMMENTS ON THAT PIECE OF LEGISLATION, EVEN THOUGH WE WERE REQUESTED TO DO SO, BY THE DEPARTMENT OF NATURAL RESOURCES, THE GOVERNOR'S TASK FORCE, AND LEGISLATIVE COMMITTEES. IT WAS CERTAINLY NOT OUR INTENT TO STALL THE PASSAGE OF HAZARDOUS WASTE LEGISLATION, BUT IT WAS OUR INTENT TO BRING TO THE ATTENTION OF KEY DECISION MAKERS THE INHERENT PROBLEMS OF THIS LEGISLATION.

AS YOU WILL RECALL FROM LAST WEEK'S TESTIMONY BY THE DNR AND THE GOVERNOR'S OFFICE MUCH OF OUR COMMENT ON HB 4006 WAS CHARACTERIZED AS A DEBATE OVER "LEGISLATIVE SPECIFICITY". I AGREE THAT, SO CALLED SPECIFICITY, IS AN ISSUE AND ONE THAT I WILL COMMENT ON, BUT I THINK THAT IN MANY RESPECTS THE TERM LEGISLATIVE SPECIFICITY IS BEING USED AS A SCAPEGOAT FOR LACK OF "LEGISLATIVE

CLARITY" AND "LEGISLATIVE RESPONSIBILITY". IF WE SIMPLY WANT THE STATE DEPARTMENT OF NATURAL RESOURCES TO HANDLE THE PROBLEM BY THE RULE-MAKING PROCESS, AND COP-OUT OF OUR LEGISLATIVE RESPONSIBILITY, WE CAN DO THAT BY A VERY SIMPLE BILL, WHICH IN MANY RESPECTS WOULD BE LIKE HB 4006. I REALIZE THIS IS AN OVER GENERALIZATION BUT IF YOU LOOK CAREFULLY AT HB 4006, YOU WILL FIND THAT IT HAS VERY LITTLE SUBSTANCE. IN FACT, MOST OF THE SUBSTANTITIVE PROVISIONS HAVE BEEN "TACKED" ON AS A RESULT OF WMEAC COMMENTS AND THE COMMENTS OF OTHERS DURING THE LAST LEGISLATIVE SESSION. THE RESULTING BILL IS A HODGEPODGE, PIECEMEAL APPROACH THAT MAY IN FACT CREATE MORE PROBLEMS IN DEALING WITH THE HAZARDOUS WASTE PROBLEMS OF THE STATE THAN IT SOLVES. SINCE WE HAVE BEEN TALKING ABOUT "SPECIFICITY" - LET ME BE SPECIFIC WITH A FEW EXAMPLES.

1. WHAT DOES THE BILL PROPOSE TO REGULATE? ?

IT SEEMS THAT EVEN IF WE DISAGREE ON HOW SPECIFIC A BILL SHOULD BE, THAT WE WOULD PROBABLY AGREE THAT IT SHOULD AT LEAST BE CLEAR WHAT THE BILL DEALS WITH, AND WHAT IT IS DESIGNED TO REGULATE: I CHALLENGE THIS COMMITTEE OR ANYONE TO TELL ME, BASED ON THE LANGUAGE OF THE BILL, WHAT THIS BILL WILL REGULATE? WE HAD CONSIDERABLE TESTIMONY FROM THE DNR AND THE GOVERNOR'S OFFICE LAST WEEK, YET THERE STILL SEEMS TO BE CONFUSION OVER THIS MOST BASIC QUESTION. FOR EXAMPLE, THE DNR SEEMED TO IMPLY THAT THE BILL DEALS ONLY WITH "HIGHLY TOXIC, AND EXTREMELY HAZARDOUS WASTES" AND THEY ESTIMATE THAT THERE IS SOMETHING ON THE ORDER OF 1.3 MILLION TONS PER YEAR OF THIS MATERIAL. THE GOVERNOR'S TASK FORCE, ON THE OTHER HAND IN ITS REPORT OF JUNE 12, 1978, USES AN EPA ESTIMATE OF "4.8 MILLION TONS OF HAZARDOUS WASTE EACH YEAR". BOTH FIGURES ARE STAGGERING, BUT ONE WOULD HAVE TO AGREE THERE IS AN ENORMOUS DISPARITY IN THE FIGURES. AS WAS POINTED OUT IN THE GOVERNOR'S TESTIMONY, THE REASON FOR THE DISPARITY IS THAT DIFFERENT PEOPLE HAVE DIFFERENT DEFINITIONS OF WHAT IS A "HAZARDOUS WASTE?"; AND OBVIOUSLY THIS MAKES A LOT OF DIFFERENCE. THE QUESTION IS WHAT WASTE DOES HB 4006 DEAL WITH? ? I SUBMIT THAT WE STILL DO NOT KNOW AND AS A RESULT THERE IS CONSIDERABLE LEGITIMATE

CONFUSION AND CONCERN. THIS CONFUSION RAISES ALL SORTS OF CONCERNS ABOUT THE REGULATORY PROCESS AND THE DESIRABILITY OF A STATE-OWNED HAZARDOUS WASTE DISPOSAL FACILITY. IT IS THIS LACK OF DEFINITION, CLARITY OR SPECIFICITY THAT HAS CLOUDED DEBATE ON HB 4006 FROM THE START. FOR EXAMPLE, THE GOVERNOR IN A STATEMENT ON SEPTEMBER 19, 1978 STATED THAT THE STATE FACILITY WOULD BE "CAPABLE OF INCINERATING OR CHEMICALLY NEUTRALIZING ANY NONRADIOACTIVE TOXIC WASTE PRODUCED BY INDUSTRY". THAT SEEMS TO IMPLY THAT THE FACILITY WOULD BE DEALING WITH MORE THAN JUST EXTREMELY TOXIC MATERIALS. HOWEVER, THE DNR BROCHURE DESCRIBING THE FACILITY SAYS THAT "IT WOULD HANDLE ONLY HIGH-HAZARD MATERIALS. THE LARGE QUANTITIES OF LOW-HAZARD WASTE GENERATED BY MICHIGAN INDUSTRY WOULD CONTINUE TO BE TAKEN CARE OF IN OTHER WAYS". IF, IN FACT, THE PROPOSED STATE-OWNED FACILITY WOULD ONLY BE USED FOR HIGH-HAZARD MATERIALS; THE BEGGING QUESTION IS HOW ARE THE OTHER WASTES TO BE HANDLED AND UNDER WHAT STATUTES OR LAWS ARE THEY TO BE REGULATED?? IF THE EPA ESTIMATE IS RELIABLE, AND WE SUBTRACT OUT THE DNR'S ESTIMATE OF 1.3 MILLION TONS OF HIGH-HAZARD WASTE, THEN WE ARE TALKING ABOUT 3.5 MILLION TONS PER YEAR OF ADDITIONAL HAZARDOUS WASTE. EVEN IF THESE FIGURES ARE NOT EXACT, I THINK THAT WE CAN AGREE THAT THERE WOULD BE A SUBSTANTIAL AMOUNT OF MATERIAL THAT WOULD FALL IN THE CATEGORY OF LOW-HAZARD OR MODERATE HAZARD MATERIAL WHICH WOULD STILL BE CLASSIFIED AS "HAZARDOUS" (MOST LIKELY UNDER THE EPA REGULATIONS OF THE RESOURCE CONSERVATION AND RECOVERY ACT - RCRA OF 1976). THUS, STILL ASSUMING THE STATE-OWNED FACILITY FOR A MINUTE AND ASSUMING THAT RECENTLY ENACTED PA 641 WILL REGULATE ALL NONHAZARDOUS SOLID WASTE - HOW IS THE LOW AND MODERATELY HAZARDOUS WASTE "IN BETWEEN" GOING TO BE REGULATED??

MY READING AND INTERPRETATION OF HB 4006 CERTAINLY DOES NOT EXCLUDE THESE WASTES AND THEREFORE I MUST ASSUME THAT THEY WILL BE REGULATED UNDER THAT BILL. SECTION 18 OF THE BILL PROVIDES THAT THE DIRECTOR SHALL ESTABLISH A LIST OF ALL HAZARDOUS MATERIALS TO BE CONTROLLED UNDER THIS ACT. I SUPPOSE THAT THE LOW-HAZARD WASTES COULD BE EXCLUDED FROM THE LIST - BUT THEN WHAT??

SECTION 12 OF THE BILL SAYS THAT "IN THE DEVELOPMENT OF A PROGRAM FOR SAFE MANAGEMENT OF HAZARDOUS WASTES THE DIRECTOR SHALL CONSIDER OTHER WASTE MANAGEMENT NEEDS OF THE STATE." THUS I COULD ASSUME THAT THE DIRECTOR WOULD DEVELOP A PROGRAM TO HANDLE THESE LOW-HAZARD WASTES UNDER THAT PROVISION AND DEVELOP A REGULATORY PROGRAM BY RULE. ALTHOUGH THERE MAY BE OTHER STATE STATUTES THAT COULD BE USED TO HANDLE OR REGULATE THE HAULING ASPECTS OF LOW-HAZARD WASTES (e.g. THE LIQUID INDUSTRIAL WASTES ACT OF 1969), IT DOES NOT APPEAR THAT THERE IS ANY OTHER STATE STATUTE THAT COULD REGULATE THE ULTIMATE DISPOSAL OF THESE MATERIALS. THE RECENTLY ADOPTED SOLID WASTE ACT WOULD NOT SEEM APPLICABLE EVEN THOUGH THE DEFINITION OF SOLID WASTE IN THAT ACT INCLUDES "MUNICIPAL AND INDUSTRIAL SLUDGES". IT WAS CLEARLY NOT THE INTENT OF THAT ACT TO REGULATE HAZARDOUS WASTES OR LIQUID WASTES AS SECTION 25 OF THAT ACT CLEARLY REQUIRES THE PREPARATION OF A PLAN FOR "NONHAZARDOUS SOLID WASTE" AND THEN SECTION 30 (3) OF THAT ACT PROVIDES THAT THE DIRECTOR CANNOT ISSUE A LICENSE FOR A FACILITY THAT IS NOT CONSISTENT WITH THE APPROVED PLAN. THUS THERE APPEARS TO BE LITTLE BASIS FOR ASSUMING THAT ONLY HIGH-HAZARD WASTE WOULD BE REGULATED UNDER HB 4006, AS HAS BEEN SUGGESTED.

THE QUESTION NOW MUST TURN TO WHAT PLANNING AND REGULATORY PROGRAM IS PROVIDED FOR IN HB 4006 AND IS IT ADEQUATE TO DEAL WITH THE MULTITUDE OF HAZARDOUS WASTES THAT WILL BE REGULATED UNDER IT??

LET'S LOOK AT A FEW VERY BASIC ITEMS FIRST.

ENVIRONMENTAL IMPACT ASSESSMENT

IS ONE REQUIRED?? NOWHERE IN HB 4006 DOES IT REQUIRE THAT AN ENVIRONMENTAL IMPACT ASSESSMENT BE PREPARED FOR A HAZARDOUS WASTE DISPOSAL AREA. IT SEEMS ODD THAT AN ENVIRONMENTAL ASSESSMENT WILL BE REQUIRED FOR A NORMAL SOLID WASTE LANDFILL UNDER PA 641 BUT MAY NOT BE SPECIFICALLY REQUIRED FOR A HAZARDOUS WASTE DISPOSAL AREA.

ENGINEERING PLANS

HB 4006 IS SILENT YET THESE PLANS ARE REQUIRED FOR NONHAZARDOUS SOLID WASTE LAND-FILL

HYDROGEOLOGICAL REPORTS

HB 4006 IS SILENT YET REQUIRED FOR/SOLID WASTE LANDFILL

MONITORING PROGRAMS FOR GROUNDWATER

HB 4006 IS SILENT YET REQUIRED FOR/SOLID WASTE LANDFILL

PUBLIC NOTICE

HB 4006 REQUIRES HEARINGS ONLY FOR STATE-OWNED FACILITIES AND IS SILENT ON PRIVATE FACILITIES, AND IS ALSO SILENT ON HOW AND WHEN NOTIFICATION TO THE PUBLIC IS REQUIRED. IN CONTRAST, THE DEVELOPMENT OF NONHAZARDOUS SOLID WASTE DISPOSAL AREAS REQUIRES NOTIFICATION OF THE MUNICIPALITY IN WHICH THE FACILITY IS PROPOSED AND A NOTICE IN A LOCAL PAPER INCLUDING A MAP OF THE LOCATION, IMMEDIATELY UPON RECEIPT BY THE DNR OF THE APPLICATION TO DEVELOP THE SITE AND HEARINGS ARE PROVIDED FOR ALL SITES WHETHER PUBLIC OR PRIVATE.

WELL MAYBE THIS IS JUST LEGISLATIVE SPECIFICITY, BUT I KNOW THAT UNTIL THEY WERE REQUIRED BY THE NEW SOLID WASTE LAW THEY WERE NOT REQUIRED OR ENFORCED OR ADMINISTERED CONSISTENTLY UNDER THE RULES OF THE OLD SOLID WASTE ACT, and THAT'S WHY THEY WERE ADDED TO THE NEW LAW. IN ADDITION MANY OTHER THINGS WERE ADDED TO THE NEW SOLID WASTE LAW AND MADE "STEP-BY-STEP" SPECIFIC SO THAT THERE COULD BE NO MISTAKE ABOUT THE INTENT. WHY WAS THIS NECESSARY?? THE DEPARTMENT HAD RULE-MAKING AUTHORITY UNDER THE OLD LAW, BUT OBVIOUSLY THEY CHOSE NOT TO USE IT. WE CONSTANTLY HEARD THE EXCUSE THAT THE LAW DIDN'T SPECIFICALLY MENTION ENVIRONMENTAL ASSESSMENTS, SPECIFIC PLANS, PUBLIC NOTICES, ETC. AND THEREFORE THE DEPARTMENT WOULD BE OVERSTEPPING THEIR BOUNDS IF THEY REQUIRED THESE THINGS BY RULES. THE ADDITIONAL EXCUSE WAS THAT IF THESE THINGS WERE ADDED BY RULE THEY WOULD COST THE DEPARTMENT MORE MONEY AND STAFF TO IMPLEMENT THEM. AND IF THEY WENT TO THE LEGISLATURE FOR

MORE MONEY THE LEGISLATURE WOULD SAY THAT THESE THINGS WERE NOT REQUIRED IN THE LAW, BUT INSTEAD WERE ADDED BY RULE, AND THEREFORE WERE NOT PART OF THE LEGISLATIVE INTENT. SO YOU BEGIN TO SEE THE SCENARIO: THE LEGISLATION IS NOT SPECIFIC; THE RULES ARE NOT SPECIFIC BECAUSE THE LEGISLATION IS NOT SPECIFIC; AND FINALLY THE FUNDING TO IMPLEMENT THE ACT IS INADEQUATE BECAUSE THE LEGISLATION AND RULES AREN'T SPECIFIC. LET'S TURN NOW TO A FEW OTHER AREAS.

PERMIT PROCESS

ANOTHER REASON THAT WE CONSTANTLY HEARD FOR THE LACK OF PROPER CONTROL OVER SOLID WASTE SITES WAS THAT THE LEGISLATION ONLY REQUIRED THE DEPARTMENT TO ISSUE ONE PERMIT--A LICENSE TO OPERATE AND THEREFORE THEY COULDN'T ADEQUATELY CONTROL THE DEVELOPMENT OF THESE SITES--WHAT THEY WANTED WAS A 2-STAGE PROCESS INVOLVING A CONSTRUCTION PERMIT AND A LICENSE TO OPERATE, BUT THE LEGISLATION DIDN'T PROVIDE FOR THAT AND THEY DIDN'T FEEL "COMFORTABLE" DOING IT BY RULE.

FRED KELLOW, CHEIF OF THE RESOURCE RECOVERY DIVISION OF THE DNR, WHICH HANDLES LANDFILL LICENSING SAID IT THIS WAY TO THE NATURAL RESOURCES COMMISSION WHEN QUESTIONED BY A COMMISSIONER ABOUT WHETHER WE NEED TO HAVE NEW LAWS TO DO A BETTER JOB OF REGULATING LANDFILLS IN THE STATE: (AND I QUOTE FROM MR. KELLOW'S RESPONSE) "RIGHT NOW SOMEBODY COMES IN, APPLIES FOR A LICENSE, WE HAVE TO ISSUE THE LICENSE. AND THAT WASN'T BAD YEARS AGO WHEN WE WERE TALKING ABOUT SMALL OPERATIONS, BUT NOW WHEN WE GET INTO THE KIND OF DESIGN THAT WE ARE REQUIRING TO PROTECT THE GROUND AND SURFACE WATER, WE'D LIKE TO SEE THAT CONSTRUCTION COMPLETED, THEN WE'LL ISSUE THE LICENSE WHEN WE HAVE VERIFIED THAT IT HAS BEEN INSTALLED ACCORDING TO PLANS. A LICENSE TODAY IS ISSUED AS SOON AS THEY GIVE US THE PLANS AND, THEORETICALLY, THEY COULD TAKE WASTE IN THERE EVEN BEFORE THE FACILITY IS CONSTRUCTED PROPERLY. WE DON'T FEEL WE HAVE THE CONTROL TODAY AND THAT'S WHAT WE WANT TO CHANGE."

AND THAT'S WHY THE 2-STAGE CONSTRUCTION PERMIT AND LICENSE PROCESS WAS WRITTEN INTO THE NEW SOLID WASTE ACT. WHY DIDN'T THE DEPARTMENT JUST DO IT BY RULE? BECAUSE THE LEGISLATION WASN'T SPECIFIC. THAT'S WHY WMEAC HAS RECOMMENDED A

RATHER SUBSTANTIAL AMENDMENT ESTABLISHING THIS PROCESS IN THE HAZARDOUS WASTE BILL. IF WE DIDN'T HAVE CONTROL OF THE SOLID WASTE BECAUSE OF THE LACK OF THIS PROVISION THEN WE MUST SURELY NEED IT TO CONTROL HAZARDOUS WASTE.

SITING PROBLEMS

I CONTINUALLY HEAR THE ARGUMENT THAT YOU WILL NEVER BE ABLE TO LOCATE A LANDFILL OR HAZARDOUS WASTE DISPOSAL FACILITY BECAUSE THE PEOPLE SIMPLY "DON'T WANT IT IN THEIR BACKYARD." WELL THAT IS SIMPLY A SIMPLE EXCUSE FOR A VERY COMPLEX AND REAL PROBLEM. IT SIMPLY SAYS THAT THE STATE SHALL NOT BE SUBJECT TO LOCAL PERMIT REQUIREMENTS OR ORDINANCES AND THAT PRIVATE FACILITIES OR SITES WILL BE. NO ONE SEEMS TO WANT TO ADDRESS THE REAL ISSUE OF WHY PEOPLE DON'T WANT THESE FACILITIES IN THEIR BACKYARD. THEY DON'T WANT THEM FOR VERY SPECIFIC REASONS: (ONE) THEY'RE SCARED AND THEY SHOULD BE: (TWO) THERE IS A VERY REAL LOSS OF PROPERTY VALUE WHEN A LANDFILL OR HAZARDOUS WASTE SITE IS LOCATED NEAR PROPERTY, AND WHY SHOULD A FEW PEOPLE THROUGH THEIR LOSS SUBSIDIZE A WASTE DISPOSAL FACILITY THAT IS BENEFITING THE ENTIRE COMMUNITY OR POSSIBLY THE ENTIRE STATE.

IT DOESN'T MATTER HOW ENVIRONMENTALLY SOUND THE DISPOSAL SITE MAY BE ON PAPER, BOTH OF THESE CONSIDERATIONS STILL EXIST. THESE ARE TOUGH ISSUES AND WE HAVE CONTINUED TO IGNORE THEM AND RATIONALIZE THE WHOLE MATTER AWAY BY SUGGESTING THAT THESE CONCERNS ARE UNFOUNDED AND EMOTIONAL. BUT THEY AREN'T--THEY ARE VERY REAL AND UNLESS WE BEGIN TO DEAL WITH THEM THEY WILL CONTINUE TO FRUSTRATE THE PROBLEM OF DEALING WITH THE WASTE WE, AS A SOCIETY, GENERATE.

WHY ARE PEOPLE SCARED? THEY'RE SCARED BECAUSE THE AGENCIES THAT ARE PROMISING THEM THAT THIS NEW FACILITY WILL BE SAFE AND ADEQUATELY REGULATED ARE THE SAME AGENCIES THAT HAVE FAILED SO MISERABLY IN THE PAST TO CONTROL AND REGULATE SIMILAR FACILITIES. FOR EXAMPLE, EVEN IN THE DNR'S OWN ANALYSIS OF ITSELF SUBMITTED TO THE DIRECTOR ON DECEMBER 28, 1977, A TASK FORCE CONCLUDES THAT: "FORMAL ENFORCEMENT ACTION HAS ONLY BEEN PURSUED WHEN VIOLATIONS WERE FLAGRANT OR EXTREMELY REPETITIOUS". THEY INDICATE THAT THE DNR HAS "GONE TOO FAR IN ACCOMMODATING THE NEEDS OF COMPANIES

FOR TIME EXTENSIONS, PLAN MODIFICATIONS, AND CHANGES IN PERMIT CONDITIONS." AS A RESULT EVEN THE COURTS ARE "RELUCTANT TO TAKE IMMEDIATE ACTION TO STOP POLLUTION FROM A SOURCE THAT HAS BEEN ALLOWED TO OPERATE IN VIOLATION OF PERMIT CONDITIONS OVER AN EXTENDED PERIOD OF TIME. EFFECTIVE LEGAL ACTION IS THUS SEVERELY LIMITED, OR EVEN PRECLUDED..." THE REPORT CONCLUDES THAT "THE DEPARTMENT MUST BE MUCH MORE RESPONSIVE TO THE PUBLIC INTEREST IN ENVIRONMENTAL PROTECTION THAN THE INTERESTS OF INDUSTRY IN EXCESSIVE, DETRIMENTAL USE OF THE NATURAL RESOURCES OF THE STATE." NOW IF YOU DON'T LIVE NEXT TO A HAZARDOUS WASTE SITE OR A LANDFILL PERHAPS THIS DOESN'T MEAN MUCH, BUT IF YOU DO, IT IS A VERY REAL PROBLEM. I'M AWARE OF NUMBERS OF FACILITIES WHERE VIOLATIONS HAVE OCCURED AND PROBLEMS HAVE NOT BEEN CORRECTED OR COMPLIANCE SCHEDULES WERE NOT MET. WHY SHOULD PEOPLE NOW BELIEVE THAT ALL OF THE PROBLEMS OF ENFORCEMENT AND REGULATION OF THE PAST ARE NOW GOING TO MAGICALLLY DISAPPEAR AND THINGS ARE GOING TO BE ALL RIGHT.

YOU AND I AND MANY OTHERS IN THIS ROOM KNOW THAT TECHNOLOGY HAS IMPROVED AND THAT WE ARE NOW MORE KNOWLEDGEABLE ABOUT THESE PROBLEMS AND THEREFORE WE ARE CAPABLE OF DESIGNING AND OPERATING MUCH BETTER FACILITIES NOW. BUT WHAT HAVE WE DONE TO EDUCATE THE PUBLIC ABOUT THESE NEW TECHNIQUES AND APPROACHES. AND THE BOTTOM LINE IS ARE WE WILLING TO SPEND THE DOLLARS NECESSARY TO INSURE ADEQUATE ENFORCEMENT AND MONITORING AND GUARANTEE QUICK CORRECTION OF PROBLEMS AND COMPENSATE PEOPLE FOR REAL LOSSES IN PROPERTY VALUES? AND WHAT ABOUT OTHER REAL ISSUES THAT PEOPLE ARE CONCERNED ABOUT LIKE TRANSPORATION ACCESS ROUTES TO THESE SITES AND THE RELATIONSHIP OF THESE FACILITIES TO LOCAL LAND USE PLANS? ARE WE PREPARED TO DEAL WITH THESE CONCERNS AS BEST WE CAN TO TRULY MAKE THESE SITES SAFE AND COMPATIBLE WITH PEOPLE AND COMMUNITIES?

MY OBSERVATION HAS BEEN THAT WE MAY HAVE THE BEST INTENTIONS BUT THAT OUR ACTIONS DO NOT MATCH OUR INTENTIONS. HB 4006, BY NOT DEALING WITH THIS PROBLEM IN A COMPREHENSIVE WAY, SUBSTANTIATES THAT OBSERVATION.

WHY, FOR EXAMPLE, DID THE 7,500 GALLONS OF C-56 END UP IN A TOTALLY INADEQUATE LANDFILL IN PIERSON TWP. (MONTCALM CO.) WHEN WE ALREADY HAVE ON THE BOOKS PA 136 OF 1969 - THE LIQUID INDUSTRIAL WASTE ACT? ? THAT ACT REQUIRES, AMONG OTHER THINGS THAT:

"EVERY PERSON WHO ENGAGES, EMPLOYS OR CONTRACTS WITH ANY OTHER PERSON TO REMOVE LIQUID WASTES FROM HIS PREMISES SHALL MAINTAIN DETAILED RECORDS OF ALL SUCH WASTE REMOVALS EFFECTUATED ON FORMS PROVIDED BY THE COMMISSION (WATER RESOURCES COMMISSION) AND SHALL SUBMIT SUCH INFORMATION IN SUCH DETAIL AND WITH SUCH FREQUENCY AS THE COMMISSION MAY REQUIRE."

AND FURTHER THAT:

"THE LICENSEE (HAULER) SHALL KEEP RECORDS OF ALL TRIPS WHERE THE PICK UP, HAULING OR DISPOSAL OF LIQUID WASTES ARE INVOLVED. THE RECORDS SHALL STATE THE DATE, SOURCE OF THE WASTE, QUANTITY, TYPE, AND THE POINT AND METHOD OF DISPOSAL, AND TOTAL MILEAGE OF THE TRIP. TRIP RECORDS FOR THE LAST TWO MONTHS SHALL BE CARRIED ON THE VEHICLE FOR INSPECTION. THE LICENSEE SHALL PRESERVE TRIP RECORDS FOR TWO YEARS."

AND FURTHER THAT:

"THE LICENSEE SHALL NOT DISPOSE OF WASTES UNTO OR INTO THE GROUND EXCEPT AT LOCATIONS SPECIFICALLY APPROVED BY THIS COMMISSION . . . NO WASTE SHALL BE PLACED IN A LOCATION WHERE IT COULD ENTER ANY PUBLIC OR PRIVATE DRAIN, POND, STREAM, OR OTHER BODY OF SURFACE OR GROUND WATER."

NOW THAT IS PRETTY SPECIFIC AND IT HAS BEEN A LAW IN THE STATE FOR NEARLY A DECADE.

THE COMPANY WAS REQUIRED TO REPORT TO DNR THE WASTE IT HAD HAULED. THE HAULER WAS REQUIRED TO KEEP DETAILED RECORDS AND COULD ONLY DISPOSE OF THE WASTE AT A SITE APPROVED BY THE STATE. WITH JUST A LITTLE ADMINISTRATIVE INGENUITY THAT SOUNDS PRETTY CLOSE TO A MANIFEST SYSTEM THAT WE HAVE BEEN SAYING WE DESPERATELY NEED TO BEGIN TO GET A HANDLE ON THE HAZARDOUS WASTE PROBLEM. HAD THE DEPARTMENT EXERCISED THE ADMINISTRATIVE FLEXIBILITY TO IMPLEMENT THIS EXISTING LAW THAT IT NOW CLAIMS IT MUST HAVE TO HANDLE HAZARDOUS WASTE, WE WOULD NOW KNOW HOW MUCH HAZARDOUS WASTE WE HAVE AND WHERE IT IS, AND HAS BEEN GOING.

WHAT HAPPENED? WHERE DID THE SYSTEM BREAK DOWN? HOW WILL A NEW MANIFEST LAW TO BE DEVELOPED UNDER HB 4006 (WHICH IS EVEN LESS SPECIFIC THAN THE EXISTING LAW) CORRECT THESE PROBLEMS? I DON'T KNOW, BUT THEY ARE SURE GOOD QUESTIONS TO BE ASKED.

BUT EVEN MORE IMPORTANT: WHY WHEN THE CITIZENS AND OFFICIALS OF PIERSON TWP. DISCOVERED THIS TRAGIC HAPPENING DID IT TAKE THE STATE SO LONG TO EVEN BEGIN TO INVESTIGATE THE PROBLEM AND TAKE ACTION? THOSE PEOPLE HAD TO LITERALLY BEG FOR ACTION AND FINALLY HAD TO BE BELLIGERENT BEFORE THEY GOT ANY RESPONSE. AND THEN IT WAS NEARLY A YEAR. AND FINALLY, AND STILL MORE IMPORTANT, WHY DOES THE FACILITY CONTINUE TO OPERATE TODAY WHEN GROUND-WATER CONTAMINATION HAS BEEN DOCUMENTED AND THERE ARE VIRTUALLY NO ENVIRONMENTAL SAFEGUARDS AT THE SITE? ? NOT ONLY DOES THE FACILITY CONTINUE, BUT THE DNR IS ACTUALLY CONSIDERING AN APPLICATION FOR EXPANSION OF THE SITE.

DO YOU THINK THE PEOPLE OF PIERSON TOWNSHIP WOULD CONSIDER A PROPOSAL FOR A HAZARDOUS WASTE FACILITY IN THEIR AREA?? DO YOU THINK THEY WILL BELIEVE US WHEN WE TELL THEM WE ARE GOING TO USE NEW TECHNOLOGY AND METHODS? ? WHY SHOULD THEY? ? BASED ON THIS KIND OF TRACK RECORD, WHY SHOULD ANYONE? ?

WE ARE TRYING TO CONVINCING PEOPLE THAT THOSE WERE MISTAKES OF THE PAST AND WON'T HAPPEN AGAIN. YET, WE REMAIN INSENSITIVE TO THEIR LEGITIMATE CONCERNS AND FEARS. AND TALK ABOUT "THE NOT-IN-MY-BACKYARD SYNDROME".

MORE SITING PROBLEMS

NOW LET'S LOOK AT ANOTHER FLAW OF HB 4006 RELATING TO THE SITING ISSUE: THERE ARE TWO VERY LEGITIMATE SPECIFIC PROPOSALS IN THE STATE RIGHT NOW THAT COULD PERHAPS SOLVE A SIGNIFICANT HAZARDOUS WASTE PROBLEM - THE STABLEX PROPOSAL IN GROVELAND TWP., OAKLAND COUNTY AND THE FENSKE/VANDERSTEL PROPOSAL IN CASCADE TWP., KENT COUNT. BOTH ARE DESIGNED TO DEAL WITH MODERATELY HAZARDOUS INDUSTRIAL SLUDGES AND BOTH APPEAR TO BE ENVIRONMENTALLY SOUND. HB 4006 WOULD DO NOTHING TO ASSIST IN THE DEVELOPMENT OF THESE PROPOSALS AND, IN FACT, WOULD PROBABLY SERIOUSLY DETER BOTH OF THEM. HB 4006 PROPOSES NO METHOD TO DEAL WITH THE SITING OF PRIVATE FACILITIES, OR FACILITIES DEVELOPED BY A LOCAL GOVERNMENTAL UNIT SUCH AS A COUNTY DEPARTMENT OF PUBLIC WORKS. THUS, FACILITIES COULD EFFECTIVELY BE ZONED OUT BY LOCAL REGULATIONS REGARDLESS OF HOW SUITABLE THE FACILITY WAS OR HOW MANY MITIGATING CONDITIONS WERE MET. IF IT IS THE DESIRE OF THE STATE TO PROVIDE SOLUTIONS TO THE HAZARDOUS WASTE PROBLEMS, IT WOULD SEEM THAT ANY HAZARDOUS WASTE LEGISLATION SHOULD PROVIDE SPECIFIC GUIDANCE ON THIS ASPECT OF THE SITING ISSUE.

PLANNING PROCESS

AND FINALLY, LET'S EXAMINE ANOTHER MAJOR MISSING COMPONENT OF HB 4006 - THAT IS A LACK OF ANY SECTION DEALING WITH PLANNING FOR HAZARDOUS WASTE MANAGEMENT. I'VE HEARD THE ARGUMENT THAT "THIS HAZARDOUS WASTE PROBLEM IS SO CRITICAL THAT WE DON'T HAVE TIME FOR PLANNING". I WOULD SUGGEST THAT THE PROPONENTS OF THAT ARGUMENT ARE NOT TAKING THE PROBLEM SERIOUSLY. IF WE HAD DONE SOME PLANNING SEVERAL YEARS AGO, WE COULD HAVE PERHAPS AVOIDED THE CRISIS THAT WE NOW FACE. AND WE ARE ONLY KIDDING OURSELVES IF WE THINK THAT WE ARE GOING TO CONSTRUCT ONE NEW, SHINY BLACK BOX AND ALL THE PROBLEMS ARE GOING TO GO AWAY. EVEN A NEW BLACK BOX WON'T LAST FOREVER. FACILITIES REACH CAPACITY

OVER TIME AND THEN WE WILL NEED NEW ONES - AND ON AND ON.

IT IS INTERESTING TO LOOK ONCE AGAIN AT THE DNR'S OWN INTERNAL ANALYSIS OF ITSELF (DECEMBER 28, 1977 REPORT). THAT REPORT INDICATES THAT "LACK OF PLANNING" IS ONE OF THE KEY FACTORS CONTRIBUTING TO ENFORCEMENT PROBLEMS WITHIN THE DEPARTMENT, AND I QUOTE:

"THERE IS INSUFFICIENT STRATEGIC PLANNING FOR OVERALL WASTE DISPOSAL AND INADEQUATE PROCEDURES FOR ESTABLISHMENT OF SPECIFIC ENVIRONMENTAL QUALITY GOALS AND OBJECTIVES. INADEQUATE PLANNING AND STANDARDS FOR PROTECTION OF GROUND WATER AND DISPOSAL OF TOXIC WASTES CONTRIBUTED TO SERIOUS POLLUTION PROBLEMS AT OAKLAND-ANDERSON, STORY CHEMICAL, PRODUCTION PLATED PLASTICS, LAKEWAY CHEMICAL , CAST FORGE, AND OTHER LOCATIONS."

IT APPEARS THAT THE DEPARTMENT HAS FAILED TO TAKE ITS OWN ADVICE BECAUSE I DON'T THINK THAT EVEN THE WORD "PLANNING" IS INCLUDED IN HB 4006. THIS IS TREMENDOUSLY SHORT SIGHTED.

WMEAC IS NOT PROPOSING THAT WE STOP EVERYTHING FOR TWO OR THREE YEARS WHILE WE DEVELOP A PLAN, BUT WE FEEL IT IS ESSENTIAL THAT ANY HAZARDOUS WASTE LEGISLATION CONTAIN A PLANNING COMPONENT. NOT ONLY IS THIS ESSENTIAL TO GUIDE THE LONGER-RANGE DEVELOPMENT OF FACILITIES, BUT IT WILL BE CRITICAL IN MAKING DAY-TO-DAY ADMINISTRATIVE DECISIONS ON A RATIONAL BASIS AS SOON AS A PLAN IS COMPLETED.

FOR EXAMPLE, CONSIDER THIS SCENARIO; THE DIRECTOR RECEIVES FIVE APPLICATIONS FOR INDUSTRIAL SLUDGE DISPOSAL FACILITIES IN SOUTHEAST MICHIGAN AND THERE ARE ALREADY TWO EXISTING OPERATIONS LICENSED. BASED ON THE QUANTITIES OF MATERIAL IN THE AREA, THE LOCATION OF GENERATORS, AND THE COST-EFFECTIVENESS OF OPERATIONS THERE IS ONLY A NEED FOR THREE SUCH FACILITIES REGIONALLY-

DISTRIBUTED IN THE AREA. ON WHAT BASIS DOES THE DIRECTOR APPROVE OR REJECT A PROPOSAL IF THERE IS NO PLAN, ASSUMING THAT THEY CAN ALL BE DESIGNED TO BE ENVIRONMENTALLY SOUND?? THE ANSWER IS, THAT WITHOUT A PLAN THAT HAS BEEN DEVELOPED WITH FULL PUBLIC INVOLVEMENT, HE HAS NO LEGAL BASIS FOR DENIAL AND THEREFORE HE MUST CONSIDER ALL PROPOSALS - EVEN THOUGH IT MAY BE BAD MANAGEMENT AND NOT IN THE BEST PUBLIC INTEREST. THUS, A PLAN IS ESSENTIAL TO THE WISE MANAGEMENT OF THE NUMBER, LOCATIONS AND TYPES OF HAZARDOUS WASTE DISPOSAL FACILITIES.

IN CONCLUSION, I WOULD LIKE TO SAY THAT IT IS NOT MY STYLE OR THE STYLE OF THE WEST MICHIGAN ENVIRONMENTAL ACTION COUNCIL TO CRITICIZE WITHOUT OFFERING CONSTRUCTIVE, ALTERNATIVE SOLUTIONS.

WE HAVE BEEN WORKING CLOSELY WITH YOUR STAFF AND REPRESENTATIVE TOMBOULIAN TO DEVELOP AN ALTERNATIVE PIECE OF HAZARDOUS WASTE LEGISLATION. THAT LEGISLATION PROPOSAL IS NOW IN DRAFT FORM AND I BELIEVE ADDRESSES MOST ALL OF THE CONCERNS I HAVE RAISED HERE TODAY. I'M SURE THAT FURTHER REFINEMENT WILL BE NECESSARY, HOWEVER, I THINK THE BILL IS COMPREHENSIVE AND PROVIDES A SUBSTANTIALLY DIFFERENT APPROACH TO THIS PROBLEM. I HOPE THAT YOU WILL CAREFULLY EVALUATE THAT BILL AND CONSIDER IT OVER HB 4006. AT A FUTURE DATE I WILL SUBMIT THREE ADDITIONAL PROPOSALS TO YOU REGARDING A "SOLID AND HAZARDOUS WASTE EDUCATION FUND"; AN "ENVIRONMENTAL MEDIATION FUND" FOR WASTE DISPOSAL FACILITY SITING AND A CONCEPT TO PROVIDE FOR "PROPERTY VALUE LOSS COMPENSATION".

THANK YOU VERY MUCH FOR YOUR ATTENTION AND THIS OPPORTUNITY TO COMMENT.