

Ms. Terri Swearingen
Tri-State Environmental Council
Road 1 Box 365
Chester, WV 26034

Dear Ms. Swearingen:

Thank you for your letters of April 21 and May 3, 2000 regarding the WTI permitting issue. Your April 21st letter states that you found the April 4, 2000 letter from Francis Lyons, U.S. EPA Region 5's Administrator, Avery disappointing@ and raises a number of issues. Your May 3rd letter states that you support the Ombudsman=s schedule for the investigation and report process as reported to you on April 26th by Robert Martin, EPA National Ombudsman. I regret that you found Mr. Lyons April 4th letter disappointing. This letter will address what I believe to be the remaining issues from your April 21st and May 3rd letters.

You indicate in the April 21st letter, that you were told that Aresponsible officials at the Agency@ may have already made a decision on issues being addressed in the Ombudsman=s review before it is complete. This is not the case. As requested, you have my personal assurance that full consideration will be given to the Ombudsman recommendations and to all available options.

You also raised issues of Ombudsman=s independence. I can assure you that the Ombudsman=s review will be independent. You specifically asked if the Ombudsman will Abe able to chose his own staff or will you select who will be allowed to assist in his investigation.@ The Ombudsman was free to select his own staff with the guidelines that people selected should be impartial to the investigation. As you are aware, the Ombudsman investigative team consists of himself, Dean M. Gottehrer, and Spencer Hanes.

You asked if I believe WTI may be one of the most serious cases@ which would justify cause to terminate the permit, and you listed three facts to support your case. I will reserve judgement regarding the seriousness of the WTI case until after the Ombudsman has finished his review. I would, however, at this time like to briefly address the three points you raise. Your first point is that the A.U.S. EPA=s risk assessment identified 27 different accident scenarios in which children at the East Elementary school could be killed.@ Although EPA=s risk assessment did identify potential accident scenarios, as stated in the accident analysis, all of these scenarios were found to be very unlikely to occur. An accident analysis is performed by selecting a wide range of potential accidents reflecting a range of severity of consequence. The purpose of the analysis is to identify accident scenarios that have a reasonable likelihood of occurrence in order to determine where extra precautions might be warranted. The fact that these scenarios were evaluated and found to be very unlikely to occur is a good thing.

Your second point is that current AOhio law and U.S. EPA=s RCRA hazardous waste facility siting criteria would rule out locating an incinerator 1,100 feet from a school.@ While I=m not familiar with Ohio law, U.S. EPA did publish a brochure entitled ASensitive Environments and the Siting of Hazardous Waste Management Facilities@ in May 1997. This brochure discusses sensitive types of environments that pose special challenges to the siting, expansion, and operation of RCRA hazardous waste management facilities. However, as you know, WTI was built well before this guidance was available. Additionally, please note that this brochure is only guidance consisting of recommendations that are not legally binding. The applicable federal regulations have not changed. Since the brochure provides guidance in areas not covered by federal regulations, we would not be able to deny or terminate a permit based on this guidance alone. Finally, and most importantly, the WTI site-specific risk assessment performed by Region V took into account the location and showed that the facility was protective of human health and the environment when operated according to their permit conditions.

Your third point is that AWTI=s operator=s permit expired in 1995, they have been fined for serious violations and the Ohio EPA may not reach a final decision on their permit renewal until 2002." WTI=s federally issued permit did expire in 1995. However, the permit continues in force until the effective date of the issuance or denial of a state-issued RCRA permit. The State of Ohio anticipates making a final permit decision in 2001. Therefore until the state reaches a final decision, WTI will continue to operate under their federally issued permit which has been shown to be protective of human health and the environment. Regarding WTI=s violations, it is my understanding that to date EPA has judged that the violations at WTI have not risen to the level of grounds for termination of the permit.

Additionally, your April 21st letter states that Mr. Lyons April 4th letter Aseems

to imply that U.S. EPA will pass the buck to the Ohio EPA for the ultimate decision regarding WTI=s permit.@ I want to assure you that EPA is not abdicating responsibility for WTI=s permit. Rather, because Ohio is authorized under section 3006 of RCRA to implement the RCRA hazardous waste program, we are implementing the program the way Congress intended RCRA to be implemented. When EPA authorized Ohio to implement the regulations, we found them fully capable of administering a legally acceptable permitting program.

You go on to ask Awhat is the relevance of the U.S. EPA=s Ombudsman review@ and will Athe U.S. EPA ever supersede the authority of the Ohio EPA.@ The purpose of the Ombudsman review is to evaluate the facts in light of the laws, regulations, policies or procedures and make a finding on each allegation. The Ombudsman will make recommendations designed to resolve any problems or prevent them from happening again. Based on the Ombudsman=s recommendations, we could initiate procedures to modify or terminate the federally issued RCRA permit, and/or pass the information along to the Ohio EPA for their consideration in WTI=s permit renewal application.

As far as U.S. EPA ever superseding Ohio=s authority, I refer you to Mr. Lyons April 4th letter where it says AU.S. EPA may comment on permit applications and on draft permits prepared under a federally-authorized state RCRA program. ... If the State issues the permit without addressing U.S. EPA=s comment, 40 CFR ' 271.19 allows U.S. EPA to initiate proceedings to terminate the state-issued RCRA permit under certain conditions.@ ... AU.S. EPA would exercise this authority to initiate permit termination proceedings only in rare cases. Our practice is to work with the State to finalize a permit that includes all the necessary operating conditions.@ In general, we expect that we can work cooperatively with the states to resolve any potential concerns, but we do have the authority to go further in the unlikely event that the need arises.

Additionally, you ask if the U.S. EPA has copies of the notices of deficiency (NODs) issued by the Ohio EPA and our evaluation of them. U.S. EPA Region V has received and reviewed a copy of the Ohio NOD, and has determined that the issues in the NOD were relatively minor. There is, therefore, nothing in the NOD that would cause the permit renewal application to be considered incomplete by the Agency. Enclosed are copies of the Ohio NOD and Region V=s evaluation.

Finally, you state that you were A perplexed@ by Mr. Lyons= presumption that Athe there is no evidence linking WTI@ to ongoing investigations by the U.S. Attorney, IRS, FBI and Criminal Investigation Division of US EPA. You were A amazed that any impartial body could rule out any link to WTI until these investigations are completed.@ We have not been following this case, but we have no reason to question Mr. Lyons= statement.

Thank you for this opportunity to address these remaining issues.

Sincerely,

Timothy Fields, Jr.
Assistant Administrator

cc: Alonzo Spencer, Save Our County
Jennifer O'Donnell, Ohio Citizen Action
Bruce Cornett, Green Environmental Coalition
Teresa Mills, Buckeye Environmental Network
Myron Arnowitt, Clean Water Action
Lois Gibbs, Center for Health & Environmental Justice
Rick Hind, Greenpeace
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