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February 23, 1983

WPL-117

Mr. Russel H. Wyer, Director  
Hazardous Site Control Division  
Office of Emergency and Remedial Response (WH-548-3)  
Environmental Protection Agency  
401 M Street, S.W.  
Washington, D.C. 20460

Re: Comments of Landfill & Resource Recovery, Inc.,  
North Smithfield, Rhode Island, to Proposed  
"Amendment to National Oil and Hazardous Substance  
Contingency Plan; the National Priorities List"

Dear Sir:

This firm represents Landfill & Resource Recovery, Inc. ("LARR"), which runs a landfill in North Smithfield, Rhode Island.

LARR has been included by your agency in the proposed National Priorities List ("NPL"), as set forth in the Federal Register, Vol. 47, No. 251, Thursday, December 30, 1982, p. 58476 et seq. at p. 58482.

We would respectfully suggest that the EPA's listing of LARR was based on faulty information and was in error. We submit the attached comments and documentation in support of our position.

To summarize, it is our position that any calculation is only as good as the information upon which it is based.

In the instant case, it is evident from documents we obtained under the Freedom of Information Act that the HRS score for LARR was based on incorrect information.

We would respectfully suggest that had you used the correct information, the HRS calculation would have been different and LARR would not have appeared on your list.

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As it turns out, there is information available which refutes the factual assumptions upon which the EPA's HRS calculations were made.

Wehran Engineering, of Middletown, New York, has done a variety of extensive studies of LARR and the surrounding areas of which the EPA was evidently unaware. Wehran has consulted for LARR since 1978.

Wehran has done detailed hydrogeologic studies of: (1) LARR, (2) the aquifers in the vicinity of LARR, (3) the direction of groundwater flows, (4) the existence and location of groundwater divides, aquacludes, and discontinuities in the aquifers, (5) the identification and location of all public drinking water supply wells in the vicinity, (6) identification and location of all surface water bodies in the vicinity of LARR, and (7) the pattern and measurement of surface water flows of those surface waters.

As a result of those studies, Wehran has concluded that: (1) LARR is not in the recharge area of any planned or existing public drinking water well within a several mile radius and that, (2) LARR does not pose a threat to population or a threat to any public drinking water supplies.

As you are aware, Wehran Engineering is one of the leading waste management consulting firms in the country. The EPA itself has used Wehran as a consultant, and, in fact, Wehran Engineering prepared "the book" on groundwater monitoring for the EPA.

In the current situation, we would respectfully suggest that the failure (1) to notify LARR that it was under consideration, (2) to make any attempt to verify information with LARR or Wehran Engineering, or (3) to afford LARR a hearing, would appear to have two consequences:

First, it would appear to invalidate the proposed action as violative of both the Federal Administrative Procedures Act and due process of law.

Second, it has resulted in your making a determination based on hearsay and repeated factual errors, which we had no opportunity to correct.

We attach documentation in support of our contentions that (1) your determination was based on incorrect factual assertions, and (2) had you received accurate information, you would have reached a different result.

Included with our material is a statement from Kevin Burger. Mr. Burger is currently employed by Wehran Engineering. Until this past May, he worked for your agency.

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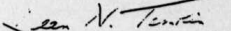
He was employed by the EPA Surveillance and Analysis Division, Region 2, for six years and was involved in investigations of over 75 sites, including using the MITRE matrix.

It is Mr. Burger's judgment, based on an independent review of the available data, that the factual assumptions used in the HRS calculations were incorrect, and that had the correct information been used, LARR would not have appeared on the list.

Based on the foregoing and the documents contained herein, we would respectfully request that you regrade LARR's HRS score after ascertaining the correct facts and that you afford LARR a hearing, including the opportunity to rebut incorrect information.

In addition, I would point out that our experts are available to you at any time, that we would be happy to meet with you at your convenience, and that we would be happy to supply you with additional backup documentation, which we have in substantial quantities.

Very truly yours,



Dean N. Tenkin

ent:cag

Documents included:

1. Report of Kevin M. Burger, Senior Scientist, Wehran Engineering
2. Report of Richard A. Peluso, P.E., Senior Vice-President, Wehran Engineering
3. Report of William J. Siok, Senior Hydrogeologist, Wehran Engineering
4. Letter of David J. Wilson, landfill operator, to Kevin M. Burger, dated February 18, 1983
5. Legal Memorandum on Background of LARR by Dean N. Tenkin

We would appreciate your stamping a copy of this cover letter as evidence of receipt.

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M E M O R A N D U M

TO: Dave Wilson and Dean Temkin  
FROM: Kevin M. Burger  
Senior Scientist, Wehran Engineering  
SUBJECT: Evaluation of Hazard Ranking System Score for the LR&R  
Landfill in North Smithfield, RI  
DATE: February 23, 1983

As you are well aware, prior to my employment by Wehran Engineering (May 1982), I was employed at the USEPA Region 11 Surveillance and Analysis Division in Edison, New Jersey from 1976 to 1982. During that period, I participated in detailed investigations of over 75 hazardous waste sites within Region 11 including New York, New Jersey, Puerto Rico, and the Virgin Islands. In response to your request, I have conducted a thorough review of the file information regarding the LR&R landfill site in North Smithfield. This review included an evaluation of the Hazard Ranking Score (HRS) for the site that was prepared by USEPA Region I and their contractor Field Investigation Team (FIT). The following list of factual information (along with the attached memoranda of Dave Wilson, Richard Peluso, and William Siok) regarding the LR&R site as compared with information utilized for USEPA in developing the HRS clearly indicates that the score for it was based on incorrect factual information. Furthermore, this information was available at the time the site HRS was developed and could have been utilized in the evaluation of the site had a more detailed site investigation been conducted by USEPA. In presenting this factual information, I have utilized my past experience with EPA in preparing the scores and, as such, have developed what I feel the actual score for this site should be based upon the facts.

The two primary routes of contamination that were utilized by EPA in developing the score for the LR&R site were ground water and surface water.

Using the ground-water route work sheet of the HRS system, the first rating factor is observed releases. Analytical data contained in file information regarding the site indicates that contaminants in excess of background levels are present in monitoring wells at the site. As such, the rating score of 45 that was assigned by the EPA is correct.

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Since the release score was 45, the route characteristics and containment sections of the work sheet do not apply. However, it is extremely important to note the fact that in December of 1979, prior to the enactment of CERCLA (December 1980), the facility owners voluntarily initiated site containment measures. This containment included installation of 200,000 square feet (4.7 acres) of 20 mil PVC liner at the site. The actual area of hazardous waste placement at the site is only one-half an acre and is located in the center of the liner. The containment area has been constructed to divert any runoff away from and around the lined area of the site. More detail on the containment measures at the site is contained in the attached memorandum to the file from Richard Peluso of Wehran Engineering.

The section on waste characteristics rates the site on the toxicity and persistence of vinyl chloride, a compound detected in the monitoring wells in relatively low concentrations. This compound has a toxicity rating of 3 as well as a persistence of 3. As such, the assigned value of 18 is developed in accordance with guidelines contained in the users manual for the HRS.

The hazardous waste quantity subsection of waste characteristics indicates that over 2,500 tons of hazardous waste were disposed at the LRBR site. This is not true and is clearly based on incorrect information. The attached memorandum to Kevin Burger from Dave Wilson of LRBR clearly indicates, contrary to EPA data, that less than 100 tons of actual hazardous wastes are contained at the site. Previous data supplied to the State and Federal regulatory agencies by LRBR was based upon:

- Outdated definitions of hazardous waste as contained in the State of Rhode Island regulations. Current definitions would substantially reduce estimates of quantities of wastes previously reported. Substantial volumes of reported wastes consisted of dilute water with a minimum percentage (1-2%) of contaminants as well as soils and other debris which were mixed with small quantities of hazardous wastes. As stated in the HRS users manual (page 23), the amounts of soil or water contained in the hazardous substances should not be included in the amounts of wastes for a site.

- As stated previously, containment measures have been taken at the site to divert runoff around the hazardous waste area and the landfill has adequate cover. As such, the assigned containment value should be zero (0). Page 23 of the HRS users manual states that all wastes should be included in estimating quantities except when the containment value for a given site is zero.

In consideration of the above facts, the actual site quantity score could fall between 0 and 3. For the purposes of the ranking score that

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I am presenting, I assumed the worst case and utilized a ranking value of 3 as opposed to the incorrect EPA assigned value of 8.

Section 5 of the ground-water route work sheet deals with targets of contamination. The attached memorandum to the file from William Siok of Mehran Engineering presents documentation contrary to the information utilized by EPA in developing their site score. Four key points contained in Mr. Siok's memoranda are:

- (1) The aquifer of concern provides an extremely low yield, making it unsuitable for use.
- (2) There are no water supplies or wells located in the aquifer of concern beneath the site and Trout Brook (Federal Register, page 31232, Vol. 47, No. 137, dated July 16, 1982).
- (3) All ground water beneath the site flows in an easterly direction toward Trout Brook and discharges to it to become surface water.
- (4) The nearest well is almost 3,000 feet away. All wells located in the vicinity of the site are beyond the influence of the aquifer of concern used to identify the release. The aquifer beneath the site, due to hydrologic barriers including Trout Brook, the Slatersville Reservoir, and ground-water divides, is not the same aquifer serving the population of the surrounding area (Federal Register, page 31190, Vol. 47, No. 137, July 16, 1982).

The EPA indicates that the aquifer in question is utilized for drinking water, with no other supplies currently available. The location of the site (as discussed in more detail in Mr. Siok's memorandum) positions it hydrologically so that it would not be possible for contaminants from the site to impact the aquifer in question. In fact, the conditions of the aquifer at the site make it unsuitable for use due to its low yield. As such, the correct HRS based upon the facts as contained in Mr. Siok's memorandum should be zero.

The population served value of 4 for a corresponding population of 3,210 persons as calculated by EPA would also be corrected as a result of the above-mentioned facts. If the hydrogeologic conditions present at the site do not permit contaminants from the site to enter the aquifer, then the population served would be zero. As such, the overall score for the distance to nearest well/population served section would be zero based upon guidelines contained in the HRS user manual.

Figure 1 is the ground-water route work sheet that I utilized to develop the site score for this portion of the HRS. As can be seen, a significant change occurs as a result of the hydrologic and geologic information that was not utilized by EPA in conducting their scoring of the site. As presented here, the HRS score for ground-water route should be zero.

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In developing a score for surface water route utilizing the HRS surface water route work sheet, the first item is observed release. All available analytical data contained in the file information indicate that no contaminants have been observed in the surface waters that have a potential to be impacted by the site. This certainly lends some merit to the fact that the containment measures initiated by L&R have prevented migration of contaminants from the site to the surface water which is the discharge point for the ground water beneath the site. Therefore, the score of zero as determined by EPA is correct and is based upon factual information.

Section 2 of the work sheet addresses route characteristics. Score values as contained in this section and as determined by EPA are based upon factual information and are correct.

Section 3 addresses containment and, as stated previously, when discussing the ground-water issues, there are containment measures taken at the site (see attached memorandum to file from Richard Peluso). As such, the containment value assigned to this site should be zero as opposed to the incorrect score assigned by EPA of 3.

The fact sheet (Page 7) utilized by EPA in developing the containment score of 3 for the site has a note that states the following: "A plastic liner was installed over the part of the landfill which received hazardous waste when the site was closed in 1979. Since this can be considered remedial action, it was not considered." It goes on to state that the method of containment was a "landfill with no known runoff diversion system present." The individual who prepared this fact sheet did not appear to even know the detailed design of the containment system in place at the facility. To begin with, the PVC liner covers an area far in excess of the area where hazardous waste was disposed. In addition, measures have been taken to divert runoff away from the area of hazardous waste disposal.

Section 4 addresses waste characteristics including toxicity/persistence and hazardous waste quantity. The criteria used by EPA in assigning a score of 18 for toxicity and persistence are based upon the values for vinyl chloride. However, there were no contaminants found in the surface water. This is clearly a fault of the HRS system whereby a site can be ranked high (in this case, 18) even if evidence indicates otherwise. Therefore, although it makes no sense to rate a site based upon potential rather than hard facts, we must agree with the EPA assigned value of 18. The hazardous waste quantity as discussed previously should be assigned a value of 3, bearing in mind that the actual ranking value could be as low as zero when the containment measures at the site are considered, as is indicated in the HRS user's manual.

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Memorandum (cont.)

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The final section on targets as contained in the EPA scoring report is based upon factual information regarding the site and is correct.

Scores for the HRS as prepared by EPA regarding air routes and fire or explosion hazards were zero and had no impact at all on the overall site ranking.

As can be seen, based upon my ranking of the site, the score for it should be zero for the ground water and surface water as well as the air and fire or explosion routes. I would strongly recommend that LR&R respond to EPA during the comment period provided and, if necessary, meet with EPA to present them with the true facts regarding the site. It is evident that incorrect information was utilized to calculate the HRS for the LR&R site. The Federal Register (Volume 47, No. 251, dated December 30, 1982) indicated that in another case (Allen Transformer of Arkansas) more accurate information became available and was used to recalculate the HRS for that site. As such, LR&R should present EPA with this information and request that its site be removed from the list in the same manner as the Allen Transformer site.

I will be happy to provide you with any further input regarding this matter and would be available to discuss the matter with EPA should they request it.

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Figure 1

| GROUND WATER ROUTE MARK SHEET   |   |                               |       |            |                |     |
|---|---|-------------------------------|-------|------------|----------------|-----|
| Rating Factor   | Assigned Value (Circle One)                 | Multiplicator                 | Score | Max. Score | Ref. (Section) |     |
| 1   | OBSERVED RELEASE                            | 0 (45)                        | 1     | 45         | 45             | 3.1 |
| If observed release is given a score of 45, proceed to line 2.<br>If observed release is given a score of 0, proceed to line 2. |   |                               |       |            |                |     |
| 2   | ROUTE CHARACTERISTICS                       |                               |       |            |                | 3.2 |
|   | Depth to Aquifer of Concrete                | 0 1 2 3                       | 2     |            | 6              |     |
|   | Max Permeability of Unsaturated Zone        | 0 1 2 3                       | 1     |            | 3              |     |
|   | Physical State                              | 0 1 2 3                       | 1     |            | 3              |     |
| Total Route Characteristic Score  |   |                               |       |            | 15             |     |
| 3   | CONTAMINANT                                 | 0 1 2 3                       | 1     |            | 3              | 3.3 |
| 4   | WASTE CHARACTERISTICS                       |                               |       |            |                | 3.4 |
|   | Toxicity/Persistence                        | 0 2 6 8 12 15 (18)            | 1     |            | 18             | 18  |
|   | Hazardous Waste Quantity                    | 0 1 2 (3) 4 5 6 7 8           | 1     |            | 3              | 3   |
| Total Waste Characteristic Score  |   |                               |       |            | 26             | 26  |
| 5   | TARGETS                                     |                               |       |            |                | 3.5 |
|   | Ground Water Use                            | 0 1 2 3                       | 3     |            | 9              |     |
|   | Distance to Nearest Well/Population Served  | 0 4 8 12 16 20 24 30 37 45 60 | 1     |            | 0              | 40  |
| Total Targets Score   |   |                               |       |            | 9              | 49  |
| 6   | If line 2 is 45, multiply 15 x 3 = 45       |                               |       |            |                |     |
| 7   | If line 3 is 0, multiply 26 x 0 = 0         |                               |       |            |                |     |
| 8   | Divide line 6 by 57,320 and multiply by 100 |                               |       |            |                | 0   |

Figure 1  
Ground Water Route Mark Sheet

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Figure 2

| SURFACE WATER ROUTE WORK SHEET  |  |                     |       |           |              |     |
|---|--|---------------------|-------|-----------|--------------|-----|
| Rating Factor   | Assigned Value (Circle One)  | Multiplicator       | Score | Sum Score | Ref. Section |     |
| 1   | OBSERVED RELEASE   | 0 45                | 1     | 0 45      | 4.1          |     |
| If observed release is given a value of 45, proceed to line 5.<br>If observed release is given a value of 0, proceed to line 7. |  |                     |       |           |              |     |
| 2   | ROUTE CHARACTERISTICS  |                     |       |           | 4.2          |     |
|   | Facility Slope and Intervening Terrain                                     | 0 1 0 3             | 1     | 2         | 3            |     |
|   | Layer, 24-hr. Rainfall   | 0 1 0 1             | 1     | 3         | 3            |     |
|   | Distance to Downfall   | 0 1 2 0             | 2     | 3         | 6            |     |
|   | Surface Water  | 0 1 2 0             | 1     | 3         | 3            |     |
|   | Physical State   | 0 1 2 0             | 1     | 3         | 3            |     |
| Total Route Characteristics Score   |  |                     |       | 13        | 35           |     |
| 3   | CONTAMINANT  | 0 1 2 3             | 1     | 0         | 3            | 4.3 |
| 4   | WASTE CHARACTERISTICS  |                     |       |           | 4.4          |     |
|   | Toxicity/Persistence   | 0 1 2 3 4 5 6 7 8 9 | 1     | 10        | 10           |     |
|   | Hazardous Waste Quantity   | 0 1 2 3 4 5 6 7 8 9 | 1     | 3         | 3            |     |
| Total Waste Characteristics Score   |  |                     |       | 21        | 36           |     |
| 5   | TARGETS  |                     |       |           | 4.5          |     |
|   | Surface Water Use  | 0 1 2 3             | 3     | 6         | 9            |     |
|   | Distance to a Sensitive Environment  | 0 1 2 3             | 2     | 6         | 6            |     |
|   | Population Served  | 0 1 2 3 4 5 6 7 8 9 | 1     | 0         | 40           |     |
|   | Distance to Water Intake Downstream  | 0 1 2 3 4 5 6 7 8 9 | 1     | 24        | 30 32 37 40  |     |
| Total Targets Score   |  |                     |       | 12        | 55           |     |
| 6   | If line 1 is 45, multiply 5 x 4 = 20<br>If line 1 is 0, multiply 2 x 4 = 8 |                     |       |           | 64,330       |     |
| 7   | Divide line 6 by 64,330 and multiply by 100                                |                     |       |           | 0            |     |

Figure 7  
Surface Water Route Work Sheet

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M E M O R A N D U M

TO: FILE (WE Project No. 02340101)  
FROM: Richard A. Peluso, P.E., Sr. Vice President  
RE: Containment at L & RR Facility  
DATE: February 22, 1983

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In order to preclude the release of any hazardous materials into the subsurface environment or the surface flow system, certain actions were initiated by L & RR at the advice of Wehran in December, 1979, voluntarily and on its own initiative and at its own expense without any prompting or intervention by any regulatory agency.

The action consisted of the installation of a PVC liner over that portion of the L & RR sanitary landfill in which "hazardous wastes" had been deposited as the term "hazardous waste" was formerly defined by the old Rhode Island regulation. Not only was the PVC liner placed over the area in which the waste had been deposited, but large excess amounts of additional liner were also installed so as to extend considerably beyond the hazardous waste disposal area proper. The identified area of hazardous waste disposal is approximately 0.5 acres in size. The PVC liner covers approximately 4.7 acres. The 0.5 acre area of hazardous waste disposal is located under the center of the large PVC liner.

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The liner was constructed and installed to serve a number of functions. Its primary purpose was to prevent infiltration and to divert runoff away from the disposal area. The liner was placed to promote runoff and in a manner which created a lined trough around the perimeter of the lined area. The trough diverts runoff to the edge of the landfill from which point the runoff becomes part of the normal surface drainage.

Since the installation of the PVC liner, the potential for increased production of dissolved hazardous constituents has been reduced to a minimum. Likewise, by promoting runoff, the liner has prevented dissolved hazardous constituents from reaching surface flow systems.

In summary, the entire L & RR sanitary landfill and in particular that portion of the landfill which is now covered by the PVC liner is adequately covered and surrounded by a sound runoff diversion system.

It should be noted that the PVC liner was installed at L & RR in December of 1979, one year prior to the enactment of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, more popularly known as "Superfund."

/lbp

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M E M O R A N D U M

TO: FILE (WE Project No. 02340101)  
FROM: William J. Siok, Project Mgr. & Sr. Hydrogeologist  
RE: HYDROGEOLOGIC CONDITIONS,  
L & RR SLF SITE  
DATE: February 17, 1983

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During the course of the past four years, Wehran has provided technical services to L & RR, Inc. regarding the sanitary landfill located in North Smithfield, Rhode Island. One aspect of the technical services was to perform various hydrogeologic assessments and studies to determine overall hydrologic and geologic conditions at and near the site.

Specifically, Wehran has developed data from our own on-site and related investigations and also evaluated data available from numerous other sources. The following hydrogeologic summary is based upon these and personal observations of the site and surrounding area.

SITE LOCATION

The L & RR sanitary landfill covers approximately 15 acres of land. It is located on the east side of Old Forge Road (also known as Oxford Road) in the town of North Smithfield, Rhode Island, approximately half-way between Tiffet Road to the north and Sand Hill Road to the south. Adjacent to the landfill, and to the south is a small tributary to Trout Brook which is located approximately 1200 feet east of the landfill.

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Trout Brook flows due north from the vicinity of the L & RR site and discharges to the lower of the two Slatersville Reservoirs at a point 0.8 miles from the site. The surface reservoirs are used solely for recreational purposes.

#### SITE EVALUATION

In order to understand the hydrogeologic conditions of the L & RR site and vicinity, we did on-site and related work consisting of soils investigations, monitoring well construction, water level and flow measurements, soils analyses for grain size distribution, and field surveys.

Separate from that, we also reviewed available literature, including:

1. East - West Geologic Profile, L & RR site and vicinity prepared by Perkins Jordan
2. State of Rhode Island "208" Areawide Water Quality Management Plan map.
3. Slatersville area showing ground-water reservoir in Glacial Drift Aquifer prepared by Perkins Jordan.
4. Planview (general schematic) showing entire L & RR site, prepared by Perkins Jordan.
5. North - South Geologic Profile, L & RR site and vicinity, prepared by Perkins Jordan
6. Hydrogeologic Profile, Northwest - Southeast direction, L & RR site, prepared by Perkins Jordan.
7. Plate 3 from Rhode Island Water Resources Board, entitled "Slatersville Area Showing Ground-Water Reservoir in Stratified - Drift Aquifer."
8. USGS Georgiaville Quadrangle, Rhode Island, 7.5 minute series. 1954, photo revised 1970 and 1975.

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9. "Availability of Ground Water in The Branch River Basin, Providence County, Rhode Island," December 1974, H. E. Johnston and D. C. Dickerman, U.S. Geological Survey, Water-Resources Investigation 18 - 74.
10. "The Geology and Ground-Water Resources of the Georgiaville Quadrangle, Rhode Island," 1951, Gerald M. Richmond and William B. Allen, U. S. Geological Survey, Rhode Island Port and Industrial Development Commission Geological Bulletin No. 4.
11. DEM Record Sheets showing water quality analyses for the following wells:
  - (1) CW-4 at 70' background
  - (2) LFRR-C2 at 81' background
  - (3) W & H at 40'
  - (4) W & H at 50'
  - (5) W 7 H at 60'
  - (6) W & H at 70'
  - (7) CW-2 at 34' - 37'
  - (8) CW-2 at 55' - 58'
  - (9) CW-2 at 73' - 76'
  - (10) LFRR-B at 7' - 11' Slotted iron pipe (B-1)
  - (11) LFRR-B at 30' (B-2)
  - (12) LFRR-B at 54' (B-3)
  - (13) CW-1 at 27'
  - (14) CW-1 at 60' - 63'
  - (15) CW-1 at 96' - 99'
  - (16) LFRR-A1 at 2' - 12' Slotted metal pipe
  - (17) LFRR-A2 at 33'
  - (18) LFRR-A3 at 53'
  - (19) CW-3 at 28' - 31'
  - (20) CW-3 at 44' - 47'
  - (21) CW-3 at 62' - 65'
12. "Monitoring Well Installations, Rhode Island DEM," March 1980, by Goldberg Zoino Associates.
13. Report: "Review and Evaluation of Closure Plans for Landfill and Resource Recovery, Inc., North Smithfield, RI," March 30, 1981, Whitman & Howard, Inc., Wellesley, MA
14. Report: "Preliminary Site Assessment for Landfill and Resource Recovery, North Smithfield, Rhode Island," April 21, 1981, Ecology and Environmental, Inc.

15. L & RR water Quality Analyses - Report to L & RR from Rhode Island Analytical Laboratory. Sample date 10/22/82, report date 11/16/82.
16. L & RR Water Quality Analyses - Report to L & RR from RIAL. Sample date 1/26/82, report date 3/1/82.
17. AMENDMENT TO NORTH SMITHFIELD, RI ZONING ORDINANCE
18. AN ACT RELATING TO DISPOSAL OF SOLID WASTE OVER DRINKING WATER SOURCES  
Rhode Island General Law § 23-18.9-8.2
19. 40 CFR Part 141 - National Interim Primary Drinking Water Regulations; Control of Trihalomethanes in Drinking Water. Fed. Reg. V44, No. 231, Th, Nov. 29, 1979.
20. 40 CFR Part 141 - National Interim Primary Drinking Water Regulations; Control of Trihalomethanes in Drinking Water; Correction. Fed. Reg. V45 No. 29, Th, March 11, 1980.

#### AREA GEOLOGY

The L & RR, Inc. sanitary landfill is located in an area of glacial outwash consisting predominantly of stratified medium to fine sand with clayey silt or stratified fine sand and silt. For the study area, outwash deposits are generally referred to as stratified drift in the 1974 report by H. E. Johnston and D. C. Dickerman of the USGS entitled "Availability of Ground Water in the Branch River Basin, Providence County, Rhode Island." (This report is also known as the "Water Resources Investigations 18 - 74" report),

The stratified drift at the L & RR site occurs at a variable thickness of 70 to 90 feet and overlies granite bedrock. The bedrock underlying the L & RR site slopes at approximately 4 percent to the east southeast.



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The stratified drift overlying the entire L & RR site is associated with glacial activity which resulted in widespread deposition of glacially derived sediments over much of the Branch River Basin. However, the soils beneath L & RR exhibit much lower permeability and transmissivity characteristics than are associated with other sediments in the vicinity of the Slatersville Reservoirs to the north. In contrast to L & RR, some areas of the stratified drift deposits located in proximity to the reservoirs are identified by Johnston and Dickerman as exhibiting characteristics of high permeability and transmissivity which establish these outwash deposits as productive aquifers.

#### GROUND WATER OCCURRENCE

Ground water at the L & RR site as well as surrounding areas occurs in the stratified drift and underlying geologic formations. The saturated thickness of the stratified drift beneath the L & RR landfill varies from approximately 5 feet on the north side along Old Forge Road to approximately 60 feet on the southern edge. This extreme variability in saturated thickness is related to the steeply sloping bedrock surface under the stratified drift.

The location of the point at which infiltrating precipitation (or runoff or snowmelt) becomes ground water is critical in determining the direction of its migration. Infiltrating water which becomes ground water on the north side of the Slatersville Reservoirs will generally flow towards and ultimately discharge to the reservoirs. Infiltration occurring on the south side of the reservoirs will flow either directly towards one or the other of the reservoirs or towards Trout Brook, depending upon its initial point of entry into the ground-water flow system.

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On the scale applicable to the L & RR site and contiguous areas, ground water beneath the landfill flows in a generally easterly direction with a small component to the south east. All ground water occurring in the stratified drift beneath the L & RR site flows in the stated direction, through the stratified drift between the L & RR site and Trout Brook, to discharge directly to the brook or through the swamps occurring along the edges of the tributaries and brook.

On a local level, in the vicinity of the L & RR site, ground-water flow direction is also influenced and controlled by topographic and hydrologic features, including a ground-water divide.

This ground-water drainage divide extends from Ridge Hill (approximately 0.5 miles south of L & RR, Inc.) generally north, parallel to and west of Oxford Road. In the general vicinity of the intersection of Oxford Road with Tiffit Road, the ground-water divide extends generally due east to Trout Brook Pond. Ground-water flow which originates on the west and north side of the ground-water divide will flow towards the upper and lower Slatersville Reservoirs. Ground-water flow originating on the east and south side of the ground-water divide will flow towards the L & RR site and/or Trout Brook.

Field testing and measurements, complemented by laboratory analyses, indicate that the average permeability of the stratified drift deposits underlying the L & RR site and vicinity is on the order of  $1.2 \times 10^{-3}$  cm/sec or 1.7 feet/day. The rate of ground-water flow from the L & RR site towards the Trout Brook discharge area, based upon the observed permeability and a typical porosity of 30 percent,

is on the order of 15 feet/year. There may be minor increases or decreases in ground-water flow rates based upon localized permeability variations, but the rate of 15 feet/year is representative of the predominant soil types in the immediate vicinity of L & RR. Volume of ground water flowing beneath the L & RR site is approximately 7000 gallons per day.

IMPACT OF L & RR SITE UPON GROUND WATER USE

The L & RR site as described above is located on a ground-water recharge area. This implies that all infiltration occurring through the underlying stratified drift, upon entering the saturated zone to become part of the local ground-water flow system, simultaneously moves downward while migrating in an easterly direction towards Trout Brook. A short distance from the L & RR site, the vertical component of ground-water flow gradually reverses so that ground water, continuing to migrate easterly, begins to flow upwards to discharge into surface waters described previously. The phenomenon clearly indicates that the L & RR site is a ground-water recharge area from which the ground water discharges into Trout Brook, its tributaries, and the peripheral swamp.

The entire volume of ground water which flows beneath the L & RR site flows to the east and discharges to Trout Brook to become surface water. Consequently, the entire area affected by this ground-water flow is limited to this area between L & RR and Trout Brook immediately to the east. There is no evidence to suggest that ground water flows to discharge into Trout Brook in any but an easterly direction.

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It is important to understand that the area of stratified drift which is affected by the L & RR landfill is limited. Furthermore, it should be kept in mind that there are no water supply wells located within this zone of influence nor are there any plans to exploit this area in the future. The primary technical reason for not locating wells in this area in the future is that the ground-water resources contained therein may be considered unusable by virtue of being unexploitable because <sup>of</sup> the low yield of the stratified drift in that area, particularly in comparison to the extremely high daily volumes known to be recoverable from the portions of the ground-water reservoir which have been identified as highly transmissive. Specifically, based upon the average measured permeability at the L & RR site of 1.7 feet/day, a typical transmissivity would be on the order of 140 ft<sup>2</sup>/day, as compared to an estimated transmissivity of 6800 ft<sup>2</sup>/day for a well located near Tift Road where Tift Road crosses Trout Brook Pond.

There is a greater than forty-fold difference between the stratified drift transmissivity for the area adjacent to L & RR and the transmissivity for the portion of the aquifer in which the Tift Road well is located. Similarly high transmissivity values are estimated for a large portion of the stratified drift aquifer straddling the east shore of the upper Slatersville Reservoir. As a matter of fact, this latter area which is on the opposite side of the ground-water divide <sup>from it</sup> is identified and described by Johnston and Dickerman (pp. 23 - 25) as "...one of the most promising areas for ground-water development" in the Slatersville area.

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The overall point to be made here is that the ground water occurring directly between L & RR and Trout Brook to the east is unusable because (1) that intervening area is in part a ground-water recharge area and in part a ground-water discharge area which exhibits the potential for an extremely low yield and (2) a highly productive area, capable of a sustained yield of 5.5 million gallons per day has been identified near the upper Slatersville Reservoir on the opposite side of the ground-water divide.

Within the hydrogeologic environment of the Slatersville Reservoirs (surface) and the associated ground-water reservoirs and recharge areas within the stratified drift, ten public drinking-water wells have been identified. Based upon the assessments and study results set forth above, it can be concluded the L & RR is not in the recharge area of any planned or existing public drinking-water wells and that L & RR does not pose a threat to population or a threat to any public drinking-water supplies.

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LANDFILL & RESOURCE RECOVERY, INC.

65 O'KEEFE LANE, WARWICK, R. I. 02888

February 18, 1983

Mr. Kevin Burger  
Wehran Engineering  
666 East Main Street  
Middletown, New York 10940

Re: Landfill & Resource Recovery, Inc.  
North Smithfield, Rhode Island

Dear Mr. Burger:

For your review of existing data regarding L&RR, you asked me to report to you about the quantity of hazardous waste that L&RR may have accepted in the past.

To begin with, I would like to make clear that I am the original source of all information now available regarding any hazardous waste disposed of at L&RR, because I was in charge of filing for L&RR hazardous waste manifests with the Rhode Island Department of Environmental Management ("DEM") during the time when L&RR accepted hazardous waste, as that term was then defined by the State of Rhode Island.

You should be clear that at no time did state inspectors or anyone else study what waste was being accepted.

Consequently, I am the sole source of this information. Any other statements you come across are hearsay.

The significance is that other people have taken manifests I filed and have drawn incorrect conclusions because they did not check with me as to what assumptions I used.

The assumptions I used have great relevance to determining an accurate figure for the HRS calculations.

Let me spell them out.

First of all, I was using the then existing state DEM definition of hazardous waste, which is substantially different from the one adopted by the EPA and used in the regulations for the NFL.

Specifically, they are different by an order of magnitude:

In 1978 and 1979, the Rhode Island definition was ten (10) times the Primary Drinking Water Standard.

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Mr. Kevin Burger  
February 18, 1983  
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The EPA and NFL (and current DEM) definition is, however, one hundred (100) times the Primary Drinking Water Standard.

Consequently, when I filed those manifests, I was using a different and much more inclusive definition than is currently used.

To put it most bluntly, most all of what we then reported as "hazardous waste" would now not be considered to be "hazardous."

Consequently, any calculations based on manifests I filed would, in a word, be wrong. They were based on a definition an order of magnitude different from that used in the NFL.

Secondly, in filling out those manifests, I always included the full amounts of contaminated soil or water. For instance, if we took a liquid waste which was 999 gallons water and 1 gallon hazardous waste, we filed a manifest for 1000 gallons of hazardous waste. This, furthermore, was typically the case for the liquid wastes for which we filed manifests.

The method I used, however, is not the method to be used for the HRS, according to the EPA regulations.

Instead, p. 23 of the EPA "Users Manual - Uncontrolled Hazardous Waste Site Ranking System - 10 June 1982" states:

"Hazardous waste quantity includes all hazardous substances at a facility (as received) except with a containment value of 0. Do not include amounts of contaminated soil or water; in such cases, the amount of contaminated hazardous substances may be estimated."

Since I did not use this method in filling out manifests, it is evident that the manifests I filled out vastly overstate, by orders of magnitude, the "hazardous waste quantity" for HRS purposes, as that term is defined in the EPA HRS Users Manual.

Since no one from the EPA ever bothered to check with me as to how I did this, it is evident that the EPA is using incorrect information.

Based on the foregoing and after reviewing the manifests, it is evident that using the NFL definition of the term hazardous waste and the methodology outlined on page 23 of the EPA Users Manual, L&ER accepted less than 100 tons of hazardous waste, if it accepted any at all.

Very truly yours,

*David J. Wilson*  
David J. Wilson

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COUNSEL:  
JOHN S. COFFEY  
ARTHUR NOVOGROSKI

February 24, 1983

LEGAL MEMORANDUM ON BACKGROUND ON  
LANDFILL & RESOURCE RECOVERY, INC.  
NORTH SMITHFIELD, RHODE ISLAND  
RE: EPA HRS CALCULATIONS

As pointed out in my cover letter, a fundamental problem of the HRS calculations made regarding LARR is that they were based on incorrect information.

It seems relevant to note that the source directly or indirectly relied upon for almost all the information the EPA used was the Rhode Island Department of Environmental Management ("DEM").

In evaluating information supplied directly or indirectly by the DEM regarding LARR, the EPA might bear the following in mind:

1. Many of the same assertions which were made by the DEM to the EPA have been previously made by the DEM to the Superior and Supreme Courts of the State of Rhode Island, which, after hearings thereon, have each time found these assertions to be unreliable.

2. The Superior Court of this State has found, after a hearing thereon, that

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"There is absolutely no credible evidence that continued operation of this facility [L&RR] under controlled conditions poses a threat of contamination or in any way threatens the public health."

The Supreme Court of the State refused to overturn that ruling. It remains in effect to this day.

3. The Courts in Rhode Island have repeatedly found actions taken by the DEM against L&RR to be unjustified, to be "harassment," and to constitute an "abuse of power by the State."

4. On January 20, 1982, the Superior Court of the State of Rhode Island found the actions of the DEM in harassing L&RR to be in "deliberate, willful, and premeditated" contempt of court. The court fined the DEM \$250,000 unless the DEM purged itself of contempt by rescinding its latest order within 48 hours, which it did.

A little background may be helpful.

L&RR runs a landfill in North Smithfield, Rhode Island.

That landfill has been in operation since at least 1969.

It was licensed each and every year after the state landfill licensing law went into effect. Its license was renewed each and every year.

It did not have much trouble to speak of with the State DEM until December, 1980, when its license was up for renewal. At that time, the DEM scheduled a hearing on the renewal of L&RR's license, despite the fact that the DEM had not issued a single Notice of Violation against L&RR under the state landfill law the previous year.

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The date December, 1980, is significant. That date happens to mark the date the State of Rhode Island went into the landfill business.

Previous to December, 1980, the state legislators had set up a quasi-public corporation called the Rhode Island Solid Waste Management Corporation ("SWMC"). By statute, the Director of the DEM serves on the board of directors of the SWMC.

Until December, 1980, there was no particular problem with this set-up.

In December, 1980, however, the State of Rhode Island went into the landfill business. The SWMC acquired for \$10,000,000 the largest landfill in the state, the Silvestri landfill, which was LARR's chief competitor, and now is LARR's only competitor.

It is interesting to note that LARR's troubles with the DEM coincide almost precisely with this event.

One consequence of this occurrence is that the same person who is charged by statute with regulating LARR and deciding its fate, namely, the Director of the DEM, sits, by statute, on the board of directors of LARR's chief competitor.

At the hearing held on LARR's license renewal, LARR explicitly raised the issue of conflict of interest and attempt to monopolize.

No judge has as yet ruled on this issue, though the Superior Court did rule that the hearing held was "replete with procedural and substantive anomalies of grave proportions."

The hearing ran from January, 1981 to July, 1981.

On Friday, November 6, 1981, the DEM issued its order, telling LARR to shut down.

On Monday, November 9, 1981, the DEM denied a request by LARR for a stay.

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Instead, on that day, the DEM sent armed guards out to L&R and shut it down by force of arms. All this, despite the fact that the DEM had not issued a single Notice of Violation against L&R under the landfill law in the preceding year, and despite the fact that the DEM had not even listed L&R on the Open Dump Inventory.

L&R went to court to obtain a stay. An extensive hearing pursued, with the DEM making many of the same assertions to the court which it has made to the EPA.

On December 28, 1981, the Superior Court of the State of Rhode Island issued its ruling. The court found the assertions of the DEM to be incorrect or unreliable. The court found the hearing held by the DEM to be "replete with procedural and substantive anomalies of grave proportions." The court granted L&R a stay.

The Superior Court held that:

"There is absolutely no credible evidence that continued operation of this facility under controlled conditions posed a threat of contamination of ground-water, or in any way threatens the public health."

L&R re-opened that afternoon.

That same afternoon the DEM went to the State Supreme Court, made the same assertions, and asked the Superior Court to overturn the Superior Court's ruling. The Supreme Court reviewed the matter but refused to overrule the Superior Court. Consequently, that ruling and the findings set forth remain in effect to this day.

At that point, the DEM and its former Director decided to take the law into their own hands.

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They issued a new order ordering L&RR to close and threatening its operators with criminal penalties - in fact, felony penalties - if they refused, despite the fact that the Superior and Supreme Courts had just allowed L&RR to re-open.

On December 31, 1981, L&RR filed a motion to have the DEM and its Director held in contempt of court.

Hearings thereon ensued through January. Various experts of the DEM, including its then Director and its principal engineer, Frank Stevenson, testified.

After an extensive hearing thereon, on January 20, 1982, the Superior Court of the State of Rhode Island ruled the DEM of the State of Rhode Island to be in "deliberate, willful, premeditated" contempt of court.

The state court assessed \$250,000 in fines against the DEM, unless the DEM rescinded its order within 48 hours (which it did, purging itself of contempt).

In addition, because of the behavior of the DEM and its (former) Director toward L&RR, the court explicitly put L&RR under court supervision and protection, to some extent relieving the DEM of its jurisdiction.

The court ruled:

"The landfill operated by L&RR will continue to operate under the conditions imposed by the Court in its Order of December 28, 1981 and under the supervision of this Court until otherwise ordered by a court of competent jurisdiction."

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This case was written up in ENA Environmental Reporter, Current Developments, February 19, 1982, Volume 12, Number 43, at pp. 1335-1336. A copy is attached.

The ENA article noted that the DEM was appealing that January 20, 1982 contempt order to the state Supreme Court.

The state Supreme Court eventually issued a partial stay pending further judicial review as to certain findings of the January 20, 1982 order, which were moot by that point because the DEM had already purged itself of contempt by rescinding its latest order.

The Supreme Court explicitly left in full force and effect the directive set forth above putting L&RR under the protection of the Court and allowing L&RR to continue to operate under court supervision "until otherwise ordered by a court of competent jurisdiction."

This left the DEM unable to re-issue its shut-down order. The matter remains on appeal.

In April, 1982, the DEM tried to get the Superior Court to vacate its stay of December 28, 1981, so as to force L&RR to shut. The court held a hearing, heard assertions identical to those made by the DEM to the EPA, found those assertions to be unreliable or incorrect, and denied the DEM's request.

The DEM did not appeal that ruling to the Supreme Court.

There have been other hearings held to date, but L&RR continues to operate to date pursuant to those court orders under the supervision and protection of the Superior and Supreme Courts.

L&RR points this out merely to alert the EPA that:

1. The DEM is not necessarily impartial.
2. The courts of Rhode Island have repeatedly held that it was

not.

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3. There is a conflict in having a member of the board of directors of LARR's chief competitor serve, by statute, as head of the DEM.
4. Information supplied by the DEM is not necessarily beyond reproach.
5. The repeated findings by the court of this state attest to that fact.
6. The DEM is trying to get the EPA to accept a position which has been repeatedly rejected by the courts of this state.
7. The DEM appears to have a grudge against LARR unrelated to any environmental concern.
8. Having stuck its neck out in an untenable position, the DEM has left itself in a position where it must make certain assertions so as to justify actions previously taken.
9. All the above events occurred at the very time that the EPA and its consultant were gathering information from the DEM, in fact from the very same individuals at the DEM who testified (unsuccessfully) against LARR in court, upon which information the EPA and its consultant relied in the HRS calculations.

Respectfully submitted,

LANDFILL & RESOURCE RECOVERY,  
INC.

By its Attorney,  
Coffey, McGovern, Noel,  
Novogroski and Neal, Ltd.

By Dean N. Tenkin

Enclosure  
February 19, 1982 ENA Environmental Reporter

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# ENVIRONMENT REPORTER

A weekly review of pollution control and related environmental management problems

Current  
Developments

Volume 12, Number 43

THE BUREAU OF NATIONAL AFFAIRS, INC.

February 18, 1982

## HIGHLIGHTS

**ENFORCEMENT GUIDELINES** and a revised National Contingency Plan for handling chemical site and spill cleanups under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 must be issued within 90 days, the U.S. District Court for the District of Columbia tells the Environmental Protection Agency in litigation brought by the Environmental Defense Fund and New Jersey (p. 1323).

**POLLUTION OF RECEIVING WATERS** is not a factor EPA may consider when it decides on requests for variances from best practical technology effluent limitations under the Clean Water Act, the U.S. Court of Appeals for the Fourth Circuit rules, denying a petition brought by Appalachian Power Co. and 72 other utilities to invalidate language in EPA's steam electric BPT variance provision barring consideration of a discharger's impact on receiving water quality (p. 1323).

**THE TOXIC CONSENT DECREE** between EPA and five environmental groups on regulation of toxic pollutants under the Water Act does not interfere with the agency's discretion and the court-ordered settlement agreement should not be vacated or modified on that basis, the U.S. District Court for the District of Columbia decides (p. 1323).

**A DISPUTE OVER SEWER LINES** for the New York City Convention Center should be resolved soon between the House Appropriations and Public Works and Transportation committees, a committee aide says, clearing the way for action on an appropriations measure to fund the sewage treatment construction grants program (p. 1324).

**THE ARMY CORPS OF ENGINEERS** will manage private contractors used to do design and construction work for cleaning up hazardous waste sites and will function as technical advisors to EPA, according to EPA Administrator Anne M. Gorsuch, who says the agency still has overall responsibility for carrying out the superfund law (p. 1325).

**A STAY OF THE DEADLINE** ordered by a district court for issuing land disposal hazardous wastes under the Resource Conservation and Recovery Act is issued by an appeals court to enable consideration of litigation seeking EPA promulgation of the rules (p. 1326).

**EFFLUENT LIMITATIONS** setting best conventional pollution control technology requirements for 41 industrial subcategories and timber products are withdrawn by EPA, which leaves in effect BCT limits that equal best practical technology (p. 1326).

**FUGITIVE DUST** would not be considered in analyses done to determine attainment of ambient air quality standards under a Clean Air Act amendment approved by the Senate Environment and Public Works Committee (p. 1326).

**A REVISED PARTICULATE STANDARD** could be set between 150 and 350 micrograms per cubic meter, for the ambient standard averaged over a 24-hour period, EPA staff members say, but adopting a limit at the higher end would provide little margin of safety (p. 1327) ... Full Text (p. 1349).

**THE AIR ACT** should be amended to eliminate the requirement that power plants burning fossil fuel achieve a percentage reduction of potential sulfur dioxide emissions, Gorsuch tells a House subcommittee, and recommends that Section 112 be revised to make the criteria for regulating hazardous air pollutants explicit (p. 1328).

**A TRAP OXIDIZER DEVICE** for controlling particulate emissions from diesel engines is successfully tested for performance at 50,000 miles, the Environmental Industry Council announces, saying the test is the first to show that the federal 1985 diesel particulate standard of 0.2 grams per mile can be met on a continuous basis (p. 1329).

This week's supplement to Environment Reporter reference file binders includes revisions to Florida's air regulations.

parks be made available to assist you and your staff in drafting suggested improvements of the Act. In that way, perhaps, we can force recommended improvements acceptable to both this Administration as well as Congress."

Chafee, whose subcommittee is responsible for overseeing the Act, said in reply Feb. 9 that he was "pleased to have secretary's cooperation on the reauthorization of this bill." The subcommittee chairman added that, "although secretary Watt and I are not in total agreement about the length of the reauthorization, which I would prefer to be a multi-year reauthorization, I am confident that with his cooperation, we will work out our differences."

Sen. Chafee said he expects hearings on the Act's reauthorization to be scheduled for late March.

#### Enforcement

#### AGENCY APPEALS CONTEMPT HOLDING FOR ORDERING LANDFILL TO HALT OPERATIONS

Rhode Island's Department of Environmental Management on Feb. 3 filed a challenge to a Jan. 29 court decision holding it in contempt for ordering an end to refuse disposal at a landfill located over a large aquifer in the northern part of the state (Landfill & Resource Recovery, Inc. v. Rhode Island Dept. of Environmental Management, R.I. Super. Ct., Providence, C.A. No. 81-409).

The notice of appeal challenged the state superior court's finding of contempt, the restraints imposed by the order, and the attorney's fees provisions, DEM attorney Charles E. DiLeva told BNA Feb. 11.

Landfill & Resource Recovery, Inc., which operates a solid waste management facility on about 45 acres of land in rural North Smithfield, R.I., has been in operation for about 11 years, according to Dean N. Temkin, attorney for L&RR, of the law firm of Coffey, McGovern, Noel, Novogroski and Neal, Ltd., in Providence, R.I.

DEM maintained that the landfill is subject to Rhode Island's Hazardous Waste Management Act because it accepted about 1.5 million gallons of hazardous waste from March 1978 until Sept. 6, 1979. The hazardous waste was not segregated from solid waste in the landfill's northern section, according to DEM.

The landfill has been licensed each year since Rhode Island passed its Refuse Disposal Act, according to Temkin. A DEM hearing officer issued a decision on Oct. 30, 1981 on the firm's license application for the period after Dec. 1, 1980. The order directed L&RR to adhere to conditions in the hearing officer's Oct. 15, 1980, decision, which required preparation of a closure plan for the hazardous waste portion of its disposal facility. L&RR was directed to "immediately and permanently" stop disposing of solid waste in the landfill's northern section. However, the hearing officer could not conclude that there was legal evidence upon which to base a finding of cause for non-renewal for the entire facility.

On Nov. 9, DEM sent armed conservation officers to the landfill to shut it down, Temkin said. L&RR appealed the Oct. 30 administrative order and requested a stay.

#### Stay Order Issued

Superior Court Justice Corrine P. Grande Dec. 28 granted a stay of the Oct. 30 order, but imposed conditions on the stay, including disposal restrictions and sampling requirements.

The court found that compliance with the hearing officer's order would put L&RR "out of business and is virtually

consequential. There is no question but that there will be a loss of revenue, and that the revenue will, in all likelihood, be irrevocably lost." Justice Grande concluded that "no actual, real, public harm" would result from issuance of a 'stay.

The justice found that "[t]here is absolutely no credible evidence that continued operation of this facility under controlled conditions poses a threat of contamination of ground water, or in any way threatens the public health." The landfill remained closed from Nov. 9, when it was forcibly shut down, until the stay order was issued, according to Temkin. The superior court allowed L&RR's landfill to operate under the Dec. 29 stay order.

After the conclusion of the administrative hearing record that formed the basis of the Oct. 30 order, according to DiLeva, DEM received additional tests that showed contamination of the landfill site, which the department thought derived from the landfill. However, the superior court justice limited her interpretation to the administrative hearing record and would not consider the new test results, DiLeva maintained.

Stressing that test results could indicate that leachate had begun to leave the hazardous waste disposal site and migrate into the aquifer toward a reservoir, DEM issued an immediate compliance order to the landfill on Dec. 29, one day after the superior court issued its stay.

DEM directed L&RR to stop immediately all refuse disposal pending further notification from the department following receipt and analysis of results from wall tests conducted beginning Jan. 4, 1982.

#### Contempt Order

On Dec. 31, two days after DEM issued the immediate compliance order, L&RR moved to hold DEM and its director, W. Edward Wood, in civil contempt of court for defying the superior court's stay order and the state supreme court's subsequent refusal to block that order.

The superior court held DEM and Wood in civil contempt on Jan. 20. Justice Grande found that the director consciously chose to bypass reopening of the administrative hearing to present evidence on groundwater contamination and the flow and origin of contamination at the site.

In deciding to issue the stay order, the superior court treated affidavits submitted by DEM on the new evidence as conclusory and did not add them to the administrative hearing record, Justice Grande stated. It was upon that record, the justice added, that the court had to judge the department's actions.

The superior court found that DEM engaged in willful, deliberate, premeditated planning to bypass the stay order. The department was fined \$10,000 per day from Dec. 29, for each day the department was in contempt of court. However, the court permitted DEM to purge itself of contempt and the fine remitted if it withdrew its immediate compliance order by a specified time on Jan. 22, 1982, which it did. The department was ordered to pay L&RR all attorney's fees and costs incurred in bringing the contempt action.

The contempt order barred DEM from taking any action against L&RR without first obtaining a court order, Temkin observed. As a result, DEM could not reissue an immediate compliance order and therefore sought a stay of the contempt order, according to Temkin.

On Jan. 25, the Rhode Island Supreme Court stayed those portions of the contempt order finding DEM and its director in civil contempt and ordering the award of attorney's fees (No. 81-31-Appeal). However, the provision permitting the

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landfill to operate under the stay order and the superior court's supervision was left intact.

DiLava told EPA that the Oct. 30 administrative order will go through the judicial review process. Once it is assigned to a judge in superior court, according to DiLava, the administrative record will be reopened to the new test results.

#### Budget

#### GARN, HERNANDEZ SAY FUTURE UNCLEAR FOR FEDERAL FUNDS FOR SEWER CONSTRUCTION

Sen. Jake Garn (R-Utah), chairman of the Senate Appropriations Subcommittee on HUD-Independent Agencies, Feb. 10 predicted that Congress is "going to have trouble" getting the Reagan Administration to request \$2.4 billion for the sewage treatment construction grants program beyond fiscal 1983.

Garn made the comment during a subcommittee hearing on a fiscal 1982 appropriations bill (HJ Res 390), which would provide \$2.4 billion for the program under the Clean Water Act (See related story, p. 1324).

Environmental Protection Agency Deputy Administrator John Hernandez noted that the President signed the Municipal Wastewater Treatment Construction Grant Amendments of 1981 (PL 97-117), which authorize funds for the program through fiscal 1985.

But he added that Reagan also earmarked the program as one of 40 to be turned over to the states. "It's impossible to predict what will happen" after fiscal 1983, Hernandez told the panel.

Sen. John H. Chafee (R-RI), chairman of the Senate Environment and Public Works Subcommittee on Environmental Pollution, said he wished PL 97-117 "moved forward more swiftly" in reducing the federal share of project costs and the types of projects eligible for federal funds. These reductions do not take effect until fiscal 1985 under the amendments.

Chafee offered his views in response to Garn, who asked the subcommittee chairman what he would have liked to have had included in PL 97-117 but was unable to accomplish in reaching a compromise with the House.

Hernandez said EPA will encourage states to consider court orders requiring cities to improve sewage treatment when states establish project priority lists. "But we don't want to tell the states how to prioritize," he added.

#### Water Quality Standards

EPA will encourage states also to use water quality management planning funds to complete required review and revision of water quality standards, Hernandez said, but the agency will not prohibit the states from using the funds for other permitted purposes.

The deputy administrator said "many people believe" that the dollar figures submitted by many communities for EPA's construction program needs survey were "inflated." Now that communities are faced with having to pay a larger share of project costs, he added, "I think they'll find they're doing just fine" with less money.

Hernandez said Water Act provisions allowing federal reimbursement for projects built with local funds should be used only "rarely."

"You just can't go back and pick up the pieces of something that happened six or eight years ago," he told the subcommittee.

#### Leahy Raps EPA Cuts, Policy

Sen. Patrick Leahy (D-Vt) expressed general opposition to EPA budget cuts which, he predicted, would lead to a spate of "midnight dumpers" of hazardous wastes.

Leahy said the Reagan Administration would like to have many environmental statutes repealed but, since it has not been able to do this, "it simply is not enforcing the laws."

The senator said he has yet to find anyone in Vermont - Republican, Democrat, or Independent - who supports the EPA budget cuts or defends "what EPA is doing."

"What you are saying is, 'Go ahead and pollute, we don't give a hoot,' and I think it's outrageous," Leahy, told Hernandez.

Leahy criticized EPA for not providing for continuous treatment plant operator training, especially in small communities where, he said, the operator turnover rate is 100 percent every three years.

Hernandez said he "heartily" agrees that more operator training is needed. He said the Act provides discretionary funding for such training, "but we don't want to be a policeman going out there and beating them over the head."

#### Hazardous Waste

#### STATES OPPOSE SUSPENDING STANDARDS ON INCINERATORS, SURFACE FACILITIES

State agencies submitted comments to the Environmental Protection Agency opposing the agency's proposed suspension of the effective date of interim final permitting standards for existing incinerators and surface storage impoundments.

Comments from waste producing industries, however, supported the EPA proposal.

Under the proposal, the effective date of the interim rules would be suspended while EPA reconsiders whether the standards are appropriate for existing facilities (Current Developments, Oct. 23, 1981, p. 796). The interim rules were issued by the agency Jan. 12, 1981 and Jan. 23, 1981 as part of Phase II of the hazardous waste regulatory program under the Resource Conservation and Recovery Act (Jan. 9, 1981, p. 1865).

The American Paper Institute/National Forest Products Association, the American Petroleum Institute, the Chemical Manufacturers Association, and Dow Chemical U.S.A. voiced support for the rules suspension, saying the standards were unreasonable since they do not distinguish between new and existing facilities. According to API, "this deficiency could require needless and costly retrofitting of many existing national pollutant discharge elimination system wastewater treatment impoundments at major industrial plants." Dow added that the agency should "discharge its statutory duty" to make this distinction when setting standards under Section 3004 for existing incinerators and storage surface impoundments.

In supporting the proposed suspension, CMA told the agency that it should use Jan. 12, 1981 and Jan. 23, 1981 as the cut-off for describing existing facilities since "Section 3004 of RCRA directs EPA to distinguish where appropriate between new facilities and those in existence on the date of promulgation" of performance standards. The standards now identify existing standards as those for which construction commenced before Nov. 19, 1980.

#### Suspension Called 'Illegal'

The Illinois Environmental Protection Agency and the Texas Department of Water Resources said the agency